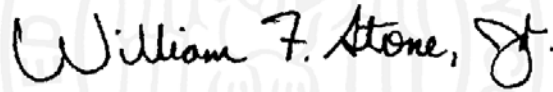


Avoid Lien was also heard on May 17 although it had just been filed on May 16. Counsel for Southeastern Lending filed an Objection to such Motion. The Debtors have claimed that their Nissan truck is exempt on varying grounds, initially to the extent of \$4,000 by Va. Code § 34-26(8), next by claiming a portion of its value exempt by means of a homestead deed filed pursuant to Va. Code § 34-4, and lastly after the hearing on the basis of the assertion made during the hearing that time that the truck was necessary for the male Debtor's occupation as a minister and therefore exempt to its full indicated value of \$7,850 under the exemption provided by Va. Code § 34-26(7). The exemption pursuant to § 34-26(8) is not properly claimed because the creditor has a perfected security interest in such vehicle as evidenced by the copy of the certificate of title filed with its Motion for Relief from the Stay, an exception provided by such Code section to that exemption. The exemption pursuant to §34-4 is not properly claimed because the homestead deed was not timely filed within five days of the date originally set for the 341 meeting of creditors as mandated by § 34-17(A). Insufficient proof has been offered to support a claim of exemption pursuant to § 34-26(7) because, as counsel for Southeastern points out, the Debtors' Schedule I reports the male Debtor's occupation as that of electrical field engineer, from which he earns a gross salary of \$4,000 per month, and their Statement of Affairs reports no additional source of income for him for either the current year or the preceding two years. Accordingly, his contribution, apparently, of his services as a minister of the gospel, while no doubt commendable, cannot be deemed an occupation or trade within the meaning of § 34-26(7) and no evidence was offered that he needed his truck for his principal occupation of electrical field engineer for anything other commuting to and from work, again an exception to the exemption provided by such subsection. While the failure of the Trustee or any other party in interest to object to the various exemption claims may result in the claim of exemption being

valid against the Trustee and general creditors pursuant to Federal Rule of Bankruptcy Procedure 4003, it does not affect the right of a perfected lien creditor to contest a motion to avoid its lien on the ground that the exemption claimed by the debtor does not apply. *See Crowell v. Theodore Bender Accounting (In re Crowell)*, 138 F.3d 1031 (5th Cir.), *mandamus denied*, 552 U.S. 807 (1998). Accordingly, it is ORDERED that the Motion to Avoid Lien is DENIED without prejudice to the Debtors' right to file an amended motion and notice of new hearing if they be advised that some other proper legal ground for avoidance of Southeastern Lending's security interest is proper under the applicable facts and law.

The Clerk is directed to serve this Memorandum Decision and Order upon the Debtors, their counsel, counsel for Southeastern Lending, the Chapter 7 Trustee, and the Office of the United States Trustee for this District.

ENTER this 27th day of May, 2005.



UNITED STATES BANKRUPTCY JUDGE

