

In the United States Bankruptcy Court

for the Northern District of Iowa

MICHAEL SCOTT VOGEL and
SHERYL LYNN VOGEL

Bankruptcy No. X87-01609F

Debtor(s).

Chapter 7

Contested No. 71375

ORDER RE: MOTION TO INSTRUCT STATE SAVINGS BANK TO CANCEL LIEN

The matter before the court is a motion filed by debtor Sheryl Lynn Vogel (VOGEL) on May 26, 1988 seeking an order directing State Savings Bank, Aplington, Iowa, (BANK) to document the cancellation of its lien on the face of the motor vehicle title to a 1979 Oldsmobile Toronado.

Hearing was held on July 21, 1988 in Fort Dodge, Iowa. The debtor, Sheryl Lynn Vogel, did not appear but her husband appeared on her behalf. State Savings Bank did not appear nor did anyone for it. The matter was submitted without oral argument on the written motion and resistance.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

Debtor Sheryl Lynn Vogel filed her joint voluntary petition under Chapter 7 of the Code with her husband Michael Scott Vogel on July 20, 1987.

On November 27, 1987, this court, the Hon. Michael J. Melloy presiding, entered an order granting Mrs. Vogel's motion to avoid the non-possessory, non-purchase money security interest of Bank in her 1979 Oldsmobile Toronado (VIN 3Z57N9E147621).

The motion (Contested No. 71375) had been uncontested by bank following service of the motion upon it.

The order avoiding the lien was not appealed.

Bank's lien had been perfected pursuant to Iowa Code § 321.50(1)-(3) by the notation of the lien interest upon the certificate of title. No original or copy of the certificate was introduced into evidence.

The debtor has requested the bank to release its lien from the title.

Bank refuses, saying that since the lien has been avoided, it is the county's responsibility to remove the lien from the title, based upon the court's order of November 27, 1987.

There is no evidence before the court as to who has possession of the certificate of title. The court will presume that possession of the original certificate is with the debtor as the issue of possession was not raised by the debtor.

Iowa Code § 321.50(4) states as follows:

When a security interest is discharged, the holder shall note a cancellation of same on the face of the certificate of title over the holder's signature, and deliver the certificate of title to the county treasurer where title was issued. The county treasurer shall immediately note the cancellation of the security interest on the face of the certificate of title and in the county records system. The county treasurer shall on the same day deliver the certificate of title to the then first secured party or, if there is no such person, to the person as directed by the owner, in writing, on a form prescribed by the department or, if there is no person designated, then to the owner. The cancellation of the security interest shall be noted on the certificate of title by the county treasurer without charge. The holder of a security interest discharged by payment who fails to release the security interest within fifteen days after being requested in writing to do so shall forfeit to the person making the payment the sum of twenty-five dollars.

Iowa Code § 321.50(4) appears to distinguish between discharge by payment and other methods of discharge.

The security interest of the bank in the 1979 Oldsmobile Toronado has been discharged within the meaning of Iowa Code § 321.50(4) by the previous order of this court granting the debtor's motion for lien avoidance.

The Iowa Code does not make a distinction among methods of discharging a security interest for the purpose of effectuating the cancellation of the liens on the face of the certificate of title.

The security interest of State Savings Bank having been discharged, the Iowa Code requires the holder of the discharged security interest to "note a cancellation of same on the face of the certificate of title over the holder's signature, and deliver the certificate of title to the county treasurer where the title was issued."

This the bank has refused to do.

It is clear that the discharge of the security interest in this case was not by payment, and therefore state law has not provided for a forfeiture by the holder under the present circumstances. See Iowa Code § 321.50(4) last sentence.

CONCLUSIONS OF LAW

Iowa Code § 321.50(4) requires the holder of a security interest, upon its discharge, to note the cancellation of the security interest on the face of the certificate of title and deliver the certificate to the county treasurer for a notation of the cancellation.

ORDER

IT IS THEREFORE ORDERED that State Savings Bank shall within fourteen (14) days of the service of this order or of the obtaining of possession of the original certificate of title, whichever is

later, note cancellation of its security interest on the face of the certificate of title over its signature and deliver the certificate of title to the county treasurer where title was issued.

SO ORDERED ON THIS 27th DAY OF JULY, 1988.

William L. Edmonds
Chief Bankruptcy Judge