

In the United States Bankruptcy Court

for the Northern District of Iowa

 CREGAR'S AUTOWERKS INC.

Bankruptcy No. L92-00872C

Debtor(s).

Chapter 7

 FIRST NATIONAL BANK OF
HAMPTON

Adversary No. 92-1181LC

Plaintiff(s)

vs.

 CREGAR'S AUTOWERKS INC.
CITY NATIONAL BANK OF CEDAR
RAPIDS and TRUSTEE THOMAS G.
McCUSKEY
Defendant(s)

ORDER RE: MOTION FOR SUMMARY JUDGMENT

The above-captioned matter came on for hearing on March 31, 1994 on Motions for Summary Judgment filed by First National Bank of Hampton in both the adversary proceeding and the bankruptcy case. Hawkeye Bank of Cedar Rapids filed a resistance. Trustee Thomas McCuskey also resists. Attorney Steve Pace appeared for the First National Bank of Hampton and Lease Iowa, Inc. Attorney John Titler appeared for City National Bank of Cedar Rapids (Hawkeye Bank). Attorney Thomas McCuskey is the Case Trustee.

FINDINGS OF FACT

The following facts are undisputed in the record. James Coonley, President of Lease Iowa, leased a 1988 Mercedes from GE Capital Auto Lease, Inc. The car was titled in Florida. In April of 1992, Lease Iowa agreed to purchase the car from GE Capital. First National loaned Lease Iowa \$22,000 for the purchase of the vehicle. The sale took place on April 29, 1992.

The parties agreed that GE Capital would transfer title through Cregar's, an automobile dealer, instead of transferring title directly to Lease Iowa. This procedure was utilized to avoid paying sales tax twice on this transaction. Cregar's was apparently used as a pass through agent for no other reason than Cregar's had possession of the car for repairs at the time of the anticipated sale. GE Capital's Florida Certificate of Title shows transfer of title to Cregar's Autowerks Inc. on 4-29-92. Cregar's filed its petition in bankruptcy on May 1, 1992. The automatic stay prevented the anticipated transfer of title from Cregar's to Lease Iowa. The car remains in Cregar's possession in storage.

Hawkeye Bank asserts an interest in the car through a blanket security interest which it holds in Cregar's inventory. First National claims that a Hawkeye Bank representative disclaimed any interest

in the car before the car was purchased. Coonley's affidavit states that Hawkeye Bank's Vice President informed him that Hawkeye Bank would make no claim to the vehicle purchased by Lease Iowa with money loaned by First National. Hawkeye Bank has not filed opposing affidavits to First National's Motion for Summary Judgment. It has filed a general denial.

STATEMENT OF THE CASE

First National asserts a security interest in the 1988 Mercedes purchased by Lease Iowa, Inc., although the car is titled in the name of Debtor Cregar's Autowerks, Inc. Hawkeye Bank holds a blanket security interest in Cregar's inventory. Both Hawkeye Bank and the Trustee assert that the car is property of the estate. They resist First National's attempts to gain possession.

First National initially also asserted this argument regarding four other cars which have now been sold. The parties are apparently attempting to come to an agreement regarding their respective rights in the proceeds of that sale. The Court will assume that the motion for summary judgment is withdrawn at this point as regards the four sold vehicles.

CONCLUSIONS OF LAW

First National filed this adversary proceeding pursuant to Bankruptcy Rule 7001(2) to determine the extent of a lien or other interest in property. This matter involves application of §§ 541(a)(1) and (d) interpreting the extent of the bankruptcy estate's interest in property held by the debtor prepetition. It also addresses the question of whether, and to whom, the property should be abandoned under § 554 (b).

Summary judgment is appropriate when the moving party demonstrates that there is no genuine issue of material fact, and it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), (K) and (O). The Bankruptcy Court has core jurisdiction over a wide range of proceedings concerning property of the estate. In re Johnson, 960 F.2d 396, 401 (4th Cir. 1992).

A debtor's estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). This broad provision is restricted in § 541(d) and case law by the concept that an interest limited in the hands of the debtor is equally limited in the hands of the estate. In re Cedar Rapids Meats, Inc., 121 B.R. 562, 566-67 (Bankr. N.D. Iowa 1990). While bare legal title held by a debtor is property of the estate; where the estate has no equitable interest in the property, the trustee should abandon it. In re Cowden, 154 B.R. 531, 534 (Bankr. E.D. Ark. 1993).

The Court must first determine the respective property interests of the parties regarding the 1988 Mercedes. Rights in property for 'property of the estate' purposes are determined by state law. Cedar Rapids Meats, 121 B.R. at 567. Iowa Code sec. 321.45 governs ownership rights in vehicles. That section states, in pertinent part, as follows:

2. No person shall acquire any right, title, claim or interest in or to any vehicle subject to registration under this chapter from the owner thereof except by virtue of a certificate of title issued or assigned to the person for such vehicle . . . except in the case of:

- a. The perfection of a lien or security interest by notation on the certificate of title . . .
- ...
- c. A dispute between a buyer and the selling dealer who has failed to deliver or procure the certificate of title as promised . . .

Except in the above enumerated cases, no court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title . . . duly issued or assigned in accordance with the provisions of this chapter.

Some courts have interpreted § 521.54(2)(c), I.C.A., to permit recognition of a buyer's interest under a sales contract between any two parties. In re Bierman, 133 B.R. 484, 486-87 (Bankr. N.D. Iowa 1991). "[A]s between immediate buyer and seller to a conditional sales agreement involving a motor vehicle, the certificate of title is prima facie evidence but not conclusive proof of ownership." Sandhorst v. Mauk's Transfer, Inc., 252 N.W.2d 393, 398 (Iowa 1977). Thus a buyer may have ownership rights despite a failure to transfer the title. State v. TeBockhorst, 305 N.W.2d 705, 708 (Iowa 1981); see also Blessing v. Norwest Bank Marion, 429 N.W.2d 142, 144 (Iowa 1988) (holding that the ability to prove ownership without being named on the certificate of title is limited to the claim of the immediate buyer and seller and not extended to a third party's claim of a security interest). Where one other than the title holder has an equitable interest, that interest is provable under sec. 321.45(2)(c). Bierman, 133 B.R. at 487.

A special relationship categorized as a "resulting trust" may be created by the conduct of the parties thereby allowing a remedy for failure to transfer a certificate of title. Sandhorst, 252 N.W.2d at 398; contra Bierman, 133 B.R. at 486 (stating that sec. 321.45(2) prohibits resort to the remedy of a resulting trust where there is a failure to transfer title). A resulting trust is an intent-enforcing trust which ordinarily arises where a buyer purchases property and directs the seller to transfer the property to a third party. Slocum v. Hammond, 346 N.W.2d 485, 492 (Iowa 1984). The third party is deemed to hold the property in trust for the buyer. Id. The elements of a resulting trust, which must exist at the time legal title is acquired, are 1) payment by the buyer, 2) intent of the buyer to place legal title in the trustee and 3) acknowledgement by the trustee of assent or failure to dissent. Westcott v. Westcott, 259 N.W.2d 545, 547 (Iowa App. 1977). Iowa law also recognizes a constructive trust as an equitable remedy applied for purposes of restitution to prevent unjust enrichment. See In re Estate of Peck, 497 N.W.2d 889, 890 (Iowa 1993) (one of three categories of constructive trusts is that based on equitable principles other than fraud).

In In re Crotts, 87 B.R. 418, 419 (Bankr. E.D. Va. 1988), the plaintiff claimed that legal title to a car was placed in the debtor's name in order to insure the car. The court awarded the plaintiff funds from the sale of the car holding that the debtor held the car in a constructive trust and was required to reconvey the proceeds to the plaintiff as the beneficiary. Id. at 420. Likewise, In re Smith, 73 B.R. 211, 212 (Bankr. N.D. Fla. 1986), found that a car titled in the debtor's name was held by the debtor in trust for the benefit of her daughter. The daughter was a minor and debtor's name on the title enabled the parties to find less expensive insurance. Id. In re Cowden concerned funds held by the debtor for her minor sons. 154 B.R. at 533. The court held that the funds were protected by a resulting trust under Arkansas law from the reach of the debtor's creditors. Id. at 534.

The Court has reviewed the record as a whole and has done so in the light most favorable to Hawkeye Bank and the Trustee. It is the conclusion of this Court that Cregar's holds bare legal title and that Lease Iowa has an equitable ownership interest in the 1988 Mercedes. All the elements of a resulting trust are present. Cregar's did not pay for the car and makes no actual claim to a monetary investment in the car. Lease Iowa did pay for the car with funds borrowed from First National. The agreement between GE Capital, Lease Iowa and Cregar's to title the car in Cregar's name to avoid double sales tax confers a legal duty on Cregar's to transfer title to Lease Iowa.

Lease Iowa is the owner of the car, subject to First National's security interest. Bankruptcy proceedings intervened to preclude the transfer of title by Cregar's and notation of First National's security interest on the title as required by sec. 321.45(2). However, the commencement of Cregar's bankruptcy case and imposition of the automatic stay does not affect the parties' respective ownership rights.

The conclusion reached applies equally in the determination of Hawkeye Bank's interest in the Mercedes through its blanket security interest in Cregar's inventory. Hawkeye Bank can have no rights under that security interest because Cregar's has no enforceable property interest in the car. The principal test to determine whether goods are inventory under the U.C.C. is whether they are held for immediate or ultimate sale. Maxl Sales Co. v. Critiques, Inc., 796 F.2d 1293, 1298 (10th Cir. 1986); §554.9109(4) I.C.A.. Cregar's was not holding the Mercedes for immediate or ultimate sale. Furthermore, Hawkeye Bank as a secured party may not enforce a security interest against collateral to which Cregar's has voidable title. First Nat'l Bank v. Avondale Mills Bevelle Employees Federal Credit Union, 967 F.2d 556, 559 (11th Cir. 1992). Cregar's does not have sufficient rights in the Mercedes to allow Hawkeye Bank's security interest to attach.

Because of the breadth of 11 U.S.C. § 541, bare legal title of the car held by Cregar's in trust for Lease Iowa constitutes property of the estate. However, the Court may order the Trustee to abandon property of the estate "that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(b).

The mere certificate of title, without more, is clearly of negligible value. Thus, [the equitable owner] would be entitled to request the court to order the trustee to abandon the certificate of title as property of inconsequential value to the estate. 11 U.S.C. § 554(b).

In re Crabtree, 39 B.R. 713, 716 (Bankr. E.D. Tenn. 1984) (considering whether prepetition transfer of certificate of title to former wife is avoidable preference); see also Cowden, 154 B.R. at 536 (estate's bare legal title to funds for debtor's minor sons was of inconsequential value).

Cregar's holds nothing more than bare legal title to the 1988 Mercedes coupled with the obligation to transfer title to the buyer, Lease Iowa. As such, its property interest in the car is negligible. The Court concludes that the Trustee should abandon the certificate of title as property of inconsequential value to the estate.

Ordinarily, the analysis would end at this juncture because property abandoned from the estate reverts to the control of the debtor as though no bankruptcy had occurred. In re McGowan, 95 B.R. 104, 107 (Bankr. N.D. Iowa 1988). However, if creditors hold possessory interests prior to the filing of bankruptcy, they may be entitled to possession by exercise of contractual or other rights. In re Manchester Heights Associates, ___ B.R. ___, 1994 WL 81980, slip op. at 2 (Bankr. W.D. Mo. March 10, 1994). In re Johnson, 960 F.2d 396, 401 (4th Cir. 1992), considered the issue of the bankruptcy court's power to order funds to be distributed directly to beneficiaries of a constructive

trust which arose when debtor's illegal pyramid scheme collapsed. The court stated that the determination of the proper beneficiaries is inextricably tied to finding a constructive trust and thus was a core matter. Id. at 402. It approved the bankruptcy courts distribution to the trust beneficiaries. Id. Here, Cregar's has bare legal title and holds the car in trust for Lease Iowa. This Court concludes, based on the foregoing legal principles, that Lease Iowa has a possessory interest entitling it to have possession of the car upon abandonment by the trustee.

A final issue is whether abandonment may now be ordered without providing for notice and opportunity for hearing as required for abandonment under § 554(b) or for relief from stay under § 362(d). The file establishes that Lease Iowa filed a motion to compel abandonment at the same time the adversary complaint was filed (September 1, 1992). Judge Edmonds' Proceeding Memo and Order filed October 13, 1992 states that the motion was withdrawn by Lease Iowa. It appears that it was anticipated that the adversary proceedings would resolve disposition of the car. Also, creditors had an opportunity to object between the filing and the withdrawal of the motion. The only creditor resisting the motion to compel abandonment was Hawkeye Bank, aka City National Bank, which has now had an opportunity to protect its interest through its participation as a named defendant in the adversary. In light of these determinations, no further notice is necessary.

In summary, there is no genuine issue of fact and First National is entitled to judgment as a matter of law. Cregar's has bare legal title to the 1988 Mercedes. It holds the car in trust for Lease Iowa. Lease Iowa's interest is subject to First National's security interest arising from the purchase money loan of approximately \$22,000. Hawkeye Bank has no security interest in the car through its blanket security interest in Cregar's inventory. The Trustee must abandon the certificate of title. Cregar's shall transfer both possession and the certificate of title to the 1988 Mercedes to Lease Iowa with notation on the title of First National's security interest.

WHEREFORE, Motions for Summary Judgment filed by First National Bank of Hampton are GRANTED.

FURTHER, the Trustee is ordered to abandon the certificate of title to the 1988 Mercedes, VIN WDBCA35D8JA388788.

FURTHER, Cregar's Autowerks, Inc. is ordered to transfer title to Lease Iowa, Inc. with notation on the title of First National Bank's security interest.

FURTHER, Cregar's Autowerks, Inc. is ordered to deliver possession of the 1988 Mercedes to Lease Iowa, Inc.

SO ORDERED this 12th day of May, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge