

In the United States Bankruptcy Court

for the Northern District of Iowa

ERIN L. WRIGHT

Debtor(s).

Bankruptcy No. 95-51594XS

Chapter 7

WIL L. FORKER Trustee

Plaintiff(s)

Adversary No. 95-5153XS

vs.

FIRST BANK AND TRUST

Defendant(s)

ORDER RE: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Wil L. Forker, trustee, moves for summary judgment on his complaint against First Bank and Trust. Hearing on the motion was held March 5, 1996 in Sioux City. Wil L. Forker appeared pro se. No one appeared for defendant First Bank and Trust (BANK). Bank did not file a resistance or any opposing affidavits.

Trustee's complaint contends that on the date the debtor filed her chapter 7 petition, Bank held an unperfected security interest in debtor's car, and that under 11 U.S.C. § 544, he may avoid Bank's interest.

Trustee seeks summary judgment under Fed.R.Bankr.P. 7056 which incorporates Fed.R.Civ.P. 56. The Rule provides that "[t]he judgment sought shall be rendered forthwith if the pleadings . . . together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c).

The trustee has filed his affidavit in support of his motion. He attaches copies of relevant documents. These documents show that on July 10, 1995, Erin Wright filled out a loan application for the purpose of purchasing a 1991 Oldsmobile Cutlass Supreme automobile, VIN 1G3WS14T7MD343630. According to the application, Wright hoped to finance \$10,589 of the purchase price. The application does not indicate to whom it was submitted, if anyone.

On July 12, 1995, Wright agreed in writing to buy the car from The Car Bazaar, Inc. of Spirit Lake for \$11,575. Also on July 12, Wright signed a combined security agreement and promissory note in favor of the seller. According to the agreement, she would finance \$9,275 of the purchase price at 11.5 per cent over 48 months. She granted the seller a security interest in the car. On the same date, The Car Bazaar, Inc. assigned the note and security agreement to First Bank and Trust.

Someone filled out an application for a certificate of motor vehicle title for the car showing the seller, buyer and first security interest of the Bank. It was unsigned. Trustee represents to the court orally that it was never filed. He attaches to his affidavit, as part of the same document, a copy of the certificate of title to the car showing a Woodbury County registration in the name of Big Deal Auto Plaza. Trustee states in his affidavit that this is the current title to the car.

Section 544(a) of the Bankruptcy Code, 11 U.S.C. § 544(a), is the so-called "strong arm" provision of the Code. It gives the trustee, as of the date of the bankruptcy petition, the rights and powers, inter alia, of a judicial lien creditor. 11 U.S.C. § 544(a)(1). If such creditor, under state law, may prevail over a prior lien, the trustee will so prevail, and may avoid the prior lien.

From the affidavit and exhibits, it appears that Bank has an unperfected security interest in the car. The purchase money note and security agreement granted such interest to The Car Bazaar. It assigned its interest to Bank. Perfection of an interest in a motor vehicle is governed by Iowa Code § 321.50(1). It provides that a security interest in a vehicle, not held as inventory, is perfected by delivery to the county treasurer of the county where the certificate of title was issued of an application for notation of security of interest signed by the owner. Id. Trustee implies in his affidavit that the application for title, noting a security interest, was never signed or delivered to the county. Trustee's motion and affidavit have not been resisted or controverted by Bank. There is no genuine issue as to any material fact.

I conclude that on August 22, 1995, the date of debtor's Chapter 7 petition, Bank held an unperfected security interest in the Oldsmobile Cutlass. The provisions of the Uniform Commercial Code, Chapter 554, Article 9, of the Iowa Code apply to transactions intended to create security interests in motor vehicles in Iowa. Iowa Code § 321.50(5). In Iowa, a judicial lien creditor is entitled to priority over an unperfected security interest. Iowa Code § 554.9301(1). I conclude, therefore, that the trustee's rights as a judicial lien creditor under 11 U.S.C. § 544(a)(1) prevail over Bank's unperfected security interest in the motor vehicle. Plaintiff is entitled, as a matter of law, to judgment avoiding Bank's unperfected lien.

IT IS ORDERED that plaintiff's motion for summary judgment is granted.

IT IS ORDERED that the unperfected purchase money security interest of First Bank and Trust in a 1991 Oldsmobile Cutlass Supreme, VIN 1G3WS14T7MD343630, is avoided. Judgment shall enter accordingly.

SO ORDERED THIS 6th DAY OF MARCH 1996.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on a copy of this order and a judgment were provided to: Wil Forker, Daryl Hecht and U. S. Trustee.