In the United States Bankruptcy Court

for the Northern District of Iowa

DANIEL F. ORWIG and KAREN S. ORWIG	Bankruptcy No. 98-00871F
Debtor(s).	Chapter 7

DEBTORS' MOTION FOR CONTEMPT

The matter before the court is debtors' motion asking the court to hold Rolfe State Bank in contempt for violation of the court's discharge injunction. Hearing on the motion was held April 21, 1999 in Fort Dodge. William M. Alexander appeared for Daniel F. and Karen S. Orwig, the debtors. Steven W. Hendricks appeared for Rolfe State Bank (Bank). The court has jurisdiction under 28 U.S.C. §§ 1334(a) and 157(a). This is a core proceeding under 28 U.S.C. § 157(O).

Debtors' motion was filed pursuant to Fed.R.Bankr.P. 9020(b). In order to find Bank in civil contempt, the court must find that it knowingly violated a definite and specific court order. In re Ryan, 100 B.R. 411, 417 (Bankr. N.D. Ill. 1989). The burden of persuasion is on the movant who must prove contempt by clear and convincing evidence. Wycoff v. Hedgepeth, 34 F.3d 614, 616 (8th Cir. 1994). Orwigs allege that the bank has knowingly violated the automatic stay by filing a state court replevin action against them in order to obtain possession of the Orwigs' two motor vehicles. However, because the case had been closed and the vehicles were property of the debtor, not of a bankruptcy estate, it is correct to state that if the filing of the replevin action was contemptuous, it was because it violated the court's discharge injunction.

Findings of Fact

Orwigs were customers of the Bank for many years. On August 29, 1997, Karen Orwig obtained a loan of $5,500.00 from the Bank. She signed a combined promissory note and security agreement. By the security agreement, she granted Bank a security interest in the couple's jointly titled motor vehicles, a 1990 Ford Ranger pickup truck and a 1989 Dodge Caravan. Also on August 29, Bank obtained Karen Orwig's execution of an Iowa Department of Transportation form entitled "APPLICATION FOR NOTATION OF SECURITY INTEREST." The application requested that the Bank's lien be noted on an Iowa Certificate of Title issued to Orwigs. The application contained the following paragraph:

> Holder of title certificate not already subject to a perfected security interest must present this form and certificate to County Treasurer within thirty days from date of receipt of certificate of title.

Exhibit 11, attachment B to replevin petition.

At the time of the loan, Ford Motor Credit held a perfected security interest in the pickup. It held the vehicle title. The parties do not seem to dispute that Ford had had its lien noted on the title. Another creditor, Brenton Bank, had a perfected security interest in the Dodge Caravan. It held the title to that vehicle, and the parties do not appear to dispute that its lien was perfected by notation. At least part of the loan from Bank was to be used to pay off Orwigs' debt to Brenton Bank.

Bank did not send the application to the county treasurer, nor did it request the titles from Ford and Brenton Bank. Its customary procedure was to take such an application and wait for the borrower to procure a title. Bank would do nothing more than monitor title notations on an annual basis. Bank Executive Vice President William J. Winkleblack testified that it was not unusual for it to take months to get possession of a motor vehicle title.

Brenton Bank did not release its lien until March 19, 1998. On March 30, 1998, Orwigs filed their joint chapter 7 bankruptcy petition. Orwigs showed the vehicles on their schedule of personal property and claimed them as exempt. No objection was filed to the exemption claim. The meeting of creditors took place May 4, 1998. Almost immediately thereafter, Orwigs' attorney and Mr. Winkleblack began discussing possible reaffirmation of Karen Orwig's debt. Ultimately, Orwig's attorney took the position that Bank did not have an enforceable security interest in the vehicles because of Bank's failure to submit the application to the county treasurer. Bank took the position that it has an unperfected, but nonetheless, enforceable lien against the vehicles. There was a stalemate on reaffirmation.

The court entered a discharge order on July 9, 1998. The case was closed by Final Decree on August 13, 1998. Shortly thereafter, Bank filed a motion for relief from stay so it could file a replevin action against the vehicles in state court. Bank did not send the required fee for the motion, and it did not seek reopening of the case to prosecute its motion. Debtors resisted the motion and refused Bank's request to agree to a waiver of the filing fee. Because the case had been closed and no fee was paid, the clerk notified Bank that no action would be taken on the motion.

Bank filed its replevin action in state court on October 26, 1998. Orwigs sought and obtained a reopening of their case and filed an Application for Order to Show Cause, asking the court to hold Bank in contempt.

Discussion

The discharge order notifies creditors that they are prohibited from "any attempt to collect from the debtor a debt that has been discharged." Discharge Order (docket no. 11), p. 2. The Bank and its counsel were aware of the order. By example, creditors were told that they may not file a lawsuit against the debtor. Id. The prohibitions in the order are given pursuant to 11 U.S.C. § 524(a). After the prohibitory language, the discharge order contains the following statement:

> However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case.

Id. It has been well established that valid liens pass through bankruptcy unaffected. Farrey v. Sanderfoot, 111 S.Ct. 1825, 1829 (1991); F.D.I.C. v. Union Entities (In re Be-Mac Transport Co., Inc.), 83 F.3d 1020, 1025 (8th Cir. 1996).

There is no dispute that Mrs. Orwig's debt to Bank was discharged. The dispute is whether Bank is wrongfully attempting to collect the debt or instead is legitimately attempting to enforce a valid security interest.

Orwigs and their counsel take the position that under Iowa law, Bank's security interest in the motor vehicles is void and unenforceable, and that Bank's replevin action is merely an effort to harass the debtors into paying a discharged debt. The statute Orwigs rely on is Iowa Code § 321.50(6). In pertinent part it states:

> Any person obtaining possession of a certificate of title for a vehicle not already subject to a perfected security interest ... who purports to have a security interest in such vehicle shall, within thirty days from the receipt of the certificate of title, deliver such certificate of title to the county treasurer of the county where it was issued to note such security interest and, if such person fails to do so, the person's security interest in the vehicle shall be void and unenforceable and such person shall forthwith deliver the certificate of title to the county treasurer of the county where it was issued. If no security interest has been filed for notation on the certificate of title, the certificate shall be mailed by the treasurer to the owner of the vehicle.

Iowa Code § 321.50(6). Orwigs contend that because Bank did not deliver the certificate to the county treasurer within thirty days of taking the application, the security interest is void and unenforceable.

Bank agrees this would be true if Bank had held the certificate at the time of taking the application or had obtained it later, but that subsection (6) is inapplicable because the certificate of title was never provided to Bank by the debtors or the prior lienholders. It may be that subsection (6) is inapplicable for the additional reason that it refers to vehicles "not already subject to a perfected security interest." Each vehicle in this case was subject to a prior lien. Bank argues that it still has enforceable, although unperfected, liens against the vehicles.

It would have been a simple matter for Bank to perfect its interests in the vehicles. Perfection could have been accomplished without possession of the titles by delivery to the county treasurer of the application for notation along with a fee of $5.00. Iowa Code § 321.50(1). Indeed, Bank had collected a $5.00 fee from Mrs. Orwig. Upon receipt of the application and the fee, the county treasurer would have been responsible for obtaining the certificates of title from the prior lienholders. Iowa Code § 321.50(2). Failure to deliver would have made the prior lienholders liable to anyone harmed by the failure. Id. Upon receiving the titles, the treasurer would have noted Bank's liens and returned each title to the respective prior lienholder--Ford or Brenton Bank. Iowa Code § 321.50(3). Or if Brenton Bank was paid off, its lien would have been discharged.

Bank made no effort to avail itself of the provisions of the statute which allowed perfection of its liens without its submitting the titles. Now, whether such failure has the same effect of voiding its interests as a failure to submit a title in its possession on an unencumbered vehicle, is not expressed in the statute. Moreover, I cannot find an Iowa decision which discusses the matter, and neither attorney has cited one.

It is not necessary to determine the matter on the pending motion. I need only determine that it is a legitimate dispute on a colorable claim. Bank officers and their counsel could reasonably believe that Bank has unperfected, yet enforceable, security interests in debtors' vehicles. Whether the security interests remain viable under Iowa law is an issue best left to the Iowa District Court in the replevin action. I do not construe the discharge order or anything in 11 U.S.C. § 524 to prevent Bank from

pursuing a legitimate state court claim against the vehicles. I find no knowing violation of the discharge order. It may be that the state court will adopt Orwigs' construction of Iowa Code § 321.50 (6). Nonetheless, for purposes of this motion, I do not find Bank in contempt.

IT IS ORDERED that debtors' motion to find Rolfe State Bank in contempt of court for violation of the discharge order is denied.

SO ORDERED THIS 14th DAY OF MAY 1999.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed by U.S. mail a copy of this order and a judgment to William Alexander, Steven Hendricks, David Sergeant and U.S. trustee.