

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)

) Chapter 7

RALPH HENRY,)
MARIA HENRY,)

)

Debtors.) Bankruptcy No. 01-03369

----- SHERYL YOUNGBLUT, TRUSTEE,)

) Adversary No. 02-9004

Plaintiff,)

)

vs.)

)

SOLON STATE BANK TIFFIN,)

)

Defendant.)

ORDER RE TRUSTEE'S MOTION FOR SUMMARY JUDGMENT

This matter came before the Court on March 19, 2002 on Trustee's Motion for Summary Judgment. Defendant Solon State Bank and Debtors Ralph and Maria Henry filed objections to Plaintiff/Trustee Sheryl Youngblut's Motion for Summary Judgment. The parties agreed to submission of this matter on stipulated facts without hearing. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K).

STATEMENT OF THE CASE

Trustee asserts the Bank's lien on Debtors' vehicle, a 2000 Mustang, was unperfected on the date Debtors filed their Chapter 7 petition. She seeks to avoid the unperfected lien under § 544(a)(1). The Bank resists summary judgment, asserting that the lien on the vehicle may have been perfected by submission of an application for title and for notation of lien prior to the petition filing date. It argues an issue of fact exists concerning when the application for title was submitted.

STATEMENT OF FACTS

Trustee and the Bank have filed a Joint Stipulation of Uncontested Facts which the Court hereby adopts. In summary, Debtors purchased a 2000 Ford Mustang from Junction Auto Sales on September 5, 2001, paying a \$600 cash down payment and trading in a 2000 Jeep. The next day, Debtor Ralph Henry signed a "Substitution of Collateral" agreement, substituting the 2000 Mustang for the 2000 Jeep as the Bank's collateral. The 2000 Jeep, a 1992 Honda Accord and a CD were the original collateral securing a loan from the Bank to both Debtors dated January 24, 2001.

The Johnson County Treasurer issued a Certificate of Title for the 2000 Mustang with the Bank's lien noted on October 15, 2001. Debtors filed their Chapter 7 petition on October 1, 2001. The date that Junction Auto submitted the application for title with notation of lien to the Johnson County Treasurer is unknown at this time.

Both Debtors' names appear on the title to the 2000 Mustang issued 10-15-01. Only Debtor Ralph Henry signed the Motor Vehicle Purchase Agreement and Substitution of Collateral agreement. The Bank admits Debtor Maria Henry has no interest in the vehicle.

The issue posed is whether, as a matter of law, the Bank's lien on Debtors' 2000 Mustang was perfected at the time Debtors filed their Chapter 7 petition.

The Bank concedes that the certificate of title noting the Bank's lien was not issued until October 15, 2001, which is after the petition filing date of October 1, 2001. It argues, however, that perfection may have occurred prepetition if delivering the application for title with notation of lien constitutes perfection. The Bank asserts that the time the application was delivered is currently unknown, raising a genuine issue of material fact which precludes summary judgment. It also admits it will be difficult for any of the parties to establish the date of submission of the title to the Treasurer's office.

Trustee asserts the date the application for notation of the Bank's lien was submitted to the Treasurer is irrelevant. She argues that notation on the title, not delivery of the application, perfects the lien. Trustee also objects that the Bank has never asked for additional time for discovery to inquire further and discern the date upon which the application was submitted. She argues the Bank should not be permitted to now argue this is an issue of fact precluding summary judgment.

CONCLUSIONS OF LAW

This Court has considered similar issues in several cases concerning liens on motor vehicles. See In re Baxter, Adv. 01- 9060S, slip op. at 6 (Bankr. N.D. Iowa March 28, 2002) (voiding lien on motorcycle); In re Merritt, 267 B.R. 625, 630 (Bankr. N.D. Iowa 2001) (voiding vehicle lien not timely noted on certificate of title); In re Scott, 245 B.R. 331, 334 (Bankr. N.D. Iowa 2000) (finding vehicle lien not enforceable against trustee until noted on title); In re Lemker, No. 97-00628S, slip op. at 4 (Bankr. N.D. Iowa June 18, 1997) (voiding lien noted on title after bankruptcy petition filed); In re Howard, No. 96- 22392, slip op. at 3 (finding unperfected lien on vehicle voidable under § 544(a)); In re Wright, Adv. 95-5153XS, slip op. at 2 (Bankr. N.D. Iowa March 6, 1996) (avoiding lien where application for title was never filed).

A Chapter 7 bankruptcy trustee has the rights of a hypothetical judicial lien creditor as of the commencement of the case under § 544(a)(1). The rights of the trustee are measured by reference to applicable local law, such as Article 9 of the U.C.C. For instance, the Court in Baxter, applied Iowa Code sec. 554.9301(1)(b) (2000) in determining the Trustee's rights in relation to an unperfected security interest. Baxter, slip op. at 5.

Revised Article 9 has recently been enacted in Iowa and went into effect on July 1, 2001. See Iowa Code § 554.9701 (2001). The Court notes that the security agreement between Debtors and the Bank was dated January 24, 2001. The 2000 Mustang was purchased and substituted as collateral in September 2001. The parties have not identified which version of Article 9 is applicable in these circumstances. A review of the statute reveals that Revised Article 9 may have some impact on perfection of security interests in goods covered by a certificate of title. See Iowa Code §§ 554.9303, 554.9311(b) (2001). Whether the new law requires a result different than that reached in similar cases previously decided by this Court is not readily apparent.

Under these circumstances, the Court requests further briefing by the parties on the effect, if any, of the enactment of Revised Article 9. Trustee's Motion for Summary Judgment is denied at this time to allow further exploration of the law by the parties and the Court. It also seems appropriate to consider fully the only remaining factual issue to allow the Court to have a complete record to evaluate.

In summary, further briefs and proceedings in this matter shall address the following questions:

1. When was the application for certificate of title and for notation of lien delivered to the Johnson County Treasurer?

2. Which version of Article 9 of the U.C.C., that in effect before or after July 1, 2001, governs the enforceability of the Bank's lien?
3. If Revised Article 9 governs in this case, does it mandate a result different than that reached in this Court's prior decisions ruling on similar issues?

WHEREFORE, Trustee's Motion for Summary Judgment is denied without prejudice to subsequent renewal of the Motion after the parties have complied with this order.

FURTHER, the scheduling deputy will contact the parties within a week to schedule time for an evidentiary hearing and oral arguments in this matter.

FURTHER, simultaneous briefs shall be submitted at least 3 days prior to hearing in this matter.

SO ORDERED this 5th day of April, 2002.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE