

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

IN RE:)

) Chapter 7

BRIAN T. KOHLMAYER)
JENNIFER L. KOHLMAYER,)

)

Debtors.) Bankruptcy No. 02-01557

----- SHERYL YOUNGBLUT, TRUSTEE,)
) Adversary No. 02-9078

Plaintiff,)

)

vs.)

) JOHN DEERE COMMUNITY CREDIT)

UNION, et al)

)

Defendants.)

ORDER RE MOTION FOR SUMMARY JUDGMENT

This matter came before the undersigned on August 23, 2002 on Trustee's Motion for Summary Judgment. Plaintiff/Trustee Sheryl Youngblut was represented by attorneys Eric Lam and Thomas DeBoom. Defendant John Deere Community Credit Union (the "Credit Union") was represented by attorney Kenneth Nelson. After hearing arguments of counsel, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K).

STATEMENT OF THE CASE

Trustee requests summary judgment on her complaint to avoid the Credit Union's lien on Debtors' 2001 Oldsmobile Silhouette. She asserts the lien was not timely perfected under Iowa Code sec. 321.50(6). The Credit Union asserts its lien was properly perfected when title was issued in Debtors' names with its lien noted, although this occurred more than 30 days after Debtors' grant of the security interest.

STATEMENT OF FACTS

Debtors Brian and Jennifer Kohlmeyer purchased the 2001 Olds Silhouette and the certificate of title was issued on November 3, 2000 with a first security interested noted in favor of GMAC c/o POP Group. The following year, Debtors refinanced the vehicle and signed a security agreement with the Credit Union dated October 19, 2001. The Credit Union issued a check paying off GMAC. GMAC's lien was cancelled on the certificate of title on November 9, 2001. In the absence of an application for notation of lien in favor of the Credit Union, the County Treasurer forwarded the certificate of title to Debtors after it noted GMAC's lien was released. The Credit Union received the certificate of title from Debtors on December 7, 2001. It applied for notation of security interest on December 11, 2001. The County Treasurer noted the Credit Union's lien on the certificate of title on December 13, 2001.

These facts are undisputed from the exhibits. Trustee asserts that the Credit Union's lien is void and unenforceable because it did not have its lien noted on the certificate of title within 30 days of the creation of its security interest as required by Iowa Code 321.50(6). She asserts the Credit Union is presumed to be in possession of the certificate of title at the time the security interest is created and has 30 days from that date to perfect a lien. The Credit Union asserts it can and is entitled to rebut the presumption. It argues it had no control over obtaining the certificate of title.

CONCLUSIONS OF LAW

The Eighth Circuit recognizes "that summary judgment is a drastic remedy and must be exercised with extreme care." Wabun-Inini v. Sessions, 900 F.2d 1234, 1238 (8th Cir. 1990). The Eighth Circuit has also recognized that the "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'"

Wabun-Inini, 900 F.2d at 1238 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986)). In considering a motion for summary judgment, the Court must determine whether the record, viewed in a light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. In re Cochrane, 124 F.3d 978, 981-82 (8th Cir. 1997).

Under § 544(a), Trustee has the power to avoid security interests in Debtors' property that would be voidable by a hypothetical judicial lien creditor. Such interests include unperfected or unenforceable security interests. Iowa Code sec. 321.50(1) provides for perfection of a security interest in a vehicle by notation of the lien on the vehicle's certificate of title. A 30-day time limit for perfection of a lien on a vehicle is set out in sec. 321.50(6), which states:

Any person obtaining possession of a certificate of title for a vehicle not already subject to a perfected security interest, except new or used vehicles held by a dealer or manufacturer as inventory for sale, 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 purported 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. . . . For purposes of determining the commencement date of the thirty-day period provided by this subsection, it shall be presumed that the purported security interest holder received the certificate of title on the date of the creation of the holder's purported security interest in the vehicle or the date of the issuance of the certificate of title, whichever is the latter.

Iowa Code § 321.50(6) (Supp. 2001).

This Court has considered the validity of vehicle liens under these provisions in several different cases. See In re Orcutt, 280 B.R. 837, 841 (Bankr. N.D. Iowa 2002) (voiding vehicle lien not timely noted on certificate of title); In re Merritt, 267 B.R. 625, 630 (Bankr. N.D. Iowa 2001) (same); In re Lemker, No. 97-00628S, slip op. at 4 (Bankr. N.D. Iowa June 18, 1997) (same) (Edmonds, J.).

Upon examination of the language of sec. 321.50(6), the Court finds this case is distinguishable. The Credit Union's loan to Debtors constituted a refinancing of the debt on their vehicle. At the time, the vehicle was already subject to a perfected security interest held by GMAC. The first sentence of sec. 321.50(6) limits its applicability to "[a]ny person obtaining possession of a certificate of title for a vehicle not already subject to a perfected security interest." (Emphasis added.)

The loan transactions in Orcutt, 280 B.R. at 838, and Merritt, 267 B.R. at 626, occurred upon the debtors' initial purchase of vehicles from a dealer. Likewise, in Lemker, slip op. at 6, the Court notes that there was no prior lienholder. Without explanation, the Iowa Code applies the 30-day time limit for perfection of security interests only to vehicles not already subject to a lien. The Court can

find no time limit in the Iowa Code for perfecting a security interest when a lien already exists on the vehicle. As such, Trustee is not entitled to judgment as a matter of law and her motion for summary judgment must be denied.

In light of the conclusions herein, it appears this proceeding can come to final disposition without the necessity of a trial. The parties are directed to attempt to stipulate to the relevant facts and then file briefs addressing any remaining legal issues on or before October 11, 2002. At that time, the Court will determine whether a trial or further hearing is necessary or whether a final ruling can be entered on the existing record.

WHEREFORE, Trustee's Motion for Summary Judgment is DENIED.

FURTHER, the parties will submit a stipulation of facts and final briefs on or before October 11, 2002.

SO ORDERED this 17th day of September, 2002.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE