

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

IN RE:)

) Chapter 7

BRIAN T. KOHLMEYER)

JENNIFER L. KOHLMEYER,)

)

Debtors.) Bankruptcy No. 02-01557

----- SHERYL SCHNITTJER, TRUSTEE,)

) Adversary No. 02-9078

Plaintiff,)

)

vs.)

) JOHN DEERE COMMUNITY CREDIT)

UNION, et al)

)

Defendants.)

ORDER RE COMPLAINT TO DETERMINE LIEN RIGHTS

This matter came before the undersigned on April 18, 2003 for a status conference. Plaintiff/Trustee Sheryl Schnittjer was represented by attorney Eric Lam. Defendant John Deere Community Credit Union ("JDCCU") was represented by attorney Kenneth Nelson. The parties agree this matter is ready for determination without further evidence. The time to file briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (K).

STATEMENT OF THE CASE

Trustee seeks to avoid JDCCU's lien on Debtors' 2001 Oldsmobile Silhouette. She asserts the lien was not timely perfected under Iowa Code sec. 321.50(6). JDCCU asserts its lien was properly perfected when its lien was noted on the certificate of title, although this occurred more than 30 days after Debtors entered into the Security Agreement.

STATEMENT OF FACTS

The parties filed a Stipulation of Facts, as follows:

1. On May 9, 2002, Debtors, Brian T. Kohlmeyer, Sr., and Jennifer L. Kohlmeyer, ("Kohlmeyers") filed a voluntary Chapter 7 Petition in this Court.

2. Kohlmeyers purchased a 2001 Oldsmobile Silhouette, and the Certificate of Title was issued by the Black Hawk County Treasurer on November 3, 2000, with a security interest noted thereon in favor of GMAC c/o POP Group.

3. On October 19, 2001, Kohlmeyers entered into a Promissory Note and Security Agreement with John Deere Community Credit Union ('JDCCU') in order to refinance the GMAC loan.

4. JDCCU issued a payoff check to GMAC, and GMAC's lien was canceled on the Certificate of Title on November 9, 2001.

5. GMAC forwarded the Certificate of Title to the Black Hawk County Treasurer for cancellation of its security interest. The Black Hawk County Treasurer noted the release of lien on the Certificate of Title on November 14, 2001.

6. The Black Hawk County Treasurer forwarded the Certificate of Title to Kohlmeyers after it noted GMAC's lien as having been released.

7. On December 7, 21301, JDCCU obtained possession of the Certificate of Title to the 2001 Oldsmobile Silhouette.

8. On December 11, 2001, JDCCU forwarded to the Black Hawk County Treasurer at the Black Hawk County Courthouse, the Certificate of Title to the 2001 Oldsmobile Silhouette along with a signed Application For Notation of Security Interest dated December 7, 2001, signed by the Kohlmeyers, requesting JDCCU's security interest to be noted on the Title.

9. On December 13, 2001, JDCCU's security interest was noted on the Certificate of Title.

On September 17, 2002, the Court entered an Order denying Trustee's Motion for Summary Judgment. It concluded that Iowa Code sec. 321.50(6) applies a 30-day time limit for perfection of security interests only to vehicles not already subject to a lien. In this case, the 30 days did not begin to run at the time Debtors entered into the Security Agreement with JDCCU because the vehicle was already subject to GMAC's lien.

Trustee's sole remaining argument is that the 30-day requirement in sec. 321.50(6) began to run when the holder of the prior lien, i.e. GMAC, released its lien on November 9, 2001. JDCCU argues it perfected its lien by notation on the certificate of title within 30 days of actually obtaining possession of the title on December 7, 2001. Alternatively, it argues that the 30-day limit did not expire between the time the County Treasurer noted the release of GMAC's lien on November 14, 2001 and December 13, 2001 when JDCCU'S lien was noted on the title.

CONCLUSIONS OF LAW

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 section requires a creditor to perfect its lien "within 30 days of receipt of the certificate of title" of a vehicle not already subject to a perfected security interest. It presumes the creditor received the title on the date the security interest was created. In this case, the presumption is rebutted as the vehicle was subject to GMAC's perfected lien at the time the parties entered into the Security Agreement. GMAC had possession of the certificate of title at that time.

Therefore, the Court must determine when JDCCU "obtain[ed] possession of" the unencumbered certificate of title under the statute. The parties' stipulated

facts state that this date is December 7, 2001, which is less than 30 days before its lien was noted on the title on December 13, 2001. The Court concludes December 7 is the beginning of the 30-day time period of sec. 321.50(6). JDCCU was not in possession of the certificate of title at any time prior to that date. GMAC cancelled its lien on the certificate of title and forwarded the title to the County Treasurer after it received the payoff from JDCCU. The Treasurer forwarded the title to Debtors. JDCCU finally and initially received the certificate of title on December 7, as the parties stipulate. It is on that date that JDCCU became required to perfect its security interest within 30 days.

Trustee argues that the release of GMAC's lien triggers the 30-day time period. Section 321.50(6) speaks in terms of the creditor's receipt of or obtaining possession of the certificate of title. The statute is applicable only to unencumbered vehicle titles. Thus, the existence of a lien is an issue. However, the timing of the release of a lien is not relevant to determining when the 30-day limit for perfecting a security interest begins. As JDCCU properly perfected its security interest within 30 days of receiving or obtaining possession of the certificate of title, the lien is valid and is not avoidable by Trustee.

WHEREFORE, Trustee's Complaint to Determine Lien Rights, to Avoid Lien, and for Other Relief is DENIED.

FURTHER, the lien of John Deere Community Credit Union on Debtor's 2001 Oldsmobile Silhouette is valid and not avoidable by the Trustee.

SO ORDERED this 14th day of May, 2003.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE