UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

TIMOTHY M. MALES
KAREN A. MALES, CASE NO. 9l-00684

Debtors

MICHAEL RELIGA, Trustee,

Plaintiff

vs. ADV. PRO. NO. 9l-60062A

CHRYSLER CREDIT CORPORATION,

Defendant

APPEARANCES:

COSTELLO, COONEY & FEARON, ESQS.
Attorneys for Plaintiff-Trustee
205 South Salina Street
Syracuse, New York l3202

MICHAEL RELIGA, ESQ.
Of Counsel

DEILY, TESTA & DAUTEL, ESQS.
Attorneys for Defendant
80 State Street
Albany, New York l2207

LOUIS J. TESTA, ESQ.
Of Counsel

STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Chrysler Credit Corporation ("CCC"), Defendant in this adversary proceeding, has moved for summary judgment to be entered in its favor pursuant to Federal Rule of Bankruptcy Procedure ("Fed.R.Bankr.P.") 7056.

Michael Religa, the Trustee and Plaintiff ("Trustee") herein, has cross-moved for summary judgment pursuant to the same Rule.

Both motions were argued at the January 21, 1992 motion term of this Court held at Syracuse, New York after which the Court reserved decision.

JURISDICTIONAL STATEMENT

This Court has jurisdiction of this motion and the adversary proceeding in which it is made pursuant to 28 U.S.C. §§1334(b), 157(a), (b)(1) and 2(b)(2)(A) and (K).

FACTS

Timothy M. Males and Karen A. Males ("Debtors"), while residents of the State of New Hampshire, purchased a 1988 Eagle Premier ("Eagle") automobile and a 1988 Dodge pick-up truck ("Dodge"). The Eagle was purchased in April 1988 while the Dodge was purchased in October 1988. Both vehicles were purchased on retail installment contracts which were subsequently assigned to CCC.

On May 10, 1988, the State of New Hampshire issued a Certificate of Title for the Eagle listing the Debtors as owners and CCC as the first lienholder. Likewise, on November 7, 1988, the State of New Hampshire issued a Certificate of Title for the Dodge containing the same information. Both vehicles were duly registered in the State of New Hampshire.

On October 13, 1989, the Debtors moved from New Hampshire to Clay, New York, their residence at the time they filed a voluntary petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. §§101-1330) ("Code") on March 11, 1991.

Upon their relocation, the Debtors registered both vehicles in New York State, the Eagle on October 30, 1989 and the Dodge on September 2, 1990, thus obtaining New York registrations and license plates for both vehicles. No new title certificates were issued for either vehicle and as of the date of the filing of the bankruptcy petition, the Certificates of Title issued by the State of New Hampshire remained in place.[1]

On or about May 2, 1991, the Trustee commenced this adversary proceeding seeking to set aside and void the lien of CCC on both vehicles, preserve said lien for the benefit of Debtors' estate and thereafter liquidate both vehicles free and clear of any interest of CCC.

ARGUMENTS

CCC contends that §9-103(2)(b) of the New York Uniform Commercial

[1] It appears from testimony taken under oath in Syracuse, New York on November 13, 1991, that the Dodge may actually have been registered in New York State at the same time as the Eagle and that the September 2, 1990 date may have been a registration renewal.

Code ("NYUCC") controls the continued perfection of a security interest in a motor vehicle which is moved from one state to another.[2] However, CCC argues that the phrase "registered in another jurisdiction" found in NYUCC §9-l03(2)(b) must reasonably be interpreted to contemplate the issuance of a new title certificate in the state to which the vehicle is removed, rather than simply re-registration of the motor vehicle in that state. In arguing its view of NYUCC §9-103(2)(b), CCC recognizes that this Court will be required to reject the conclusion of the U.S. District Court for the Northern District of New York in In re Howard, 9 B.R. 957 (N.D.N.Y. 1981).[3]

CCC asserts that In re Howard, supra, is clearly a minority view of UCC §9-103(2)(b) and has been overwhelmingly rejected by other federal and state courts as well as noted UCC scholars.

The Trustee acknowledges that there is a split of authority between the Courts which have interpreted UCC §9-103(2)(b), but supports the conclusions of the District Court in In re Howard, supra, as well as an unpublished decision

---

[2] NYUCC §9-103(2)(b) provides:

> Except as otherwise provided in this subsection perfection and the effect of perfection or non perfection of the security interest are governed by the law (including the conflict of law rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

[3] While In re Howard, supra, dealt with an interpretation of NYUCC §9-103(2)(b), that section is generally identical to UCC §9-103(2)(b) as adopted in various other states and will be generally referred to as Uniform Commercial Code ("UCC") §9-103(2)(b). In that case, the District Court concluded that the section should be read literally and once the debtor's vehicle was re-registered in New York State more than four months after its removal from Massachusetts, the Massachusetts title certificate ceased to be effective. The District court relied on the Official Comments to the UCC which assert that to continue the effectiveness of a title certificate issued by one state after the motor vehicle has been re-registered in another state would create "a danger of deception to third persons".

of this Court In re Sanguine, Case No. 90-01679, January 28, 1991,(Gerling, B.J.).

The Trustee argues that the term "registration" as used in UCC §9-103(2)(b) is an act which is clearly separate from "issuance of a certificate of title", and the latter cannot be superimposed on the former. Thus, the Trustee further argues that the fact that Debtors re-registered both vehicles in New York State and more than four months had elapsed since the removal of the vehicles from New Hampshire to New York at the time of the bankruptcy filing, results in a failure of CCC's security interest in both vehicles.

DISCUSSION

Procedurally, CCC has moved for summary judgment pursuant to Fed.R.Bankr.P. 7056 which incorporates by reference Federal Rule of Civil Procedure ("Fed.R.Civ.P.") 56. The Trustee has cross-moved for summary judgment in his favor.

Summary judgment must be granted where the record indicates there is "no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law", Federal Deposit Ins. Corp. v. Bernstein, 944 F.2d 101, 106 (2d Cir. 1991) (quoting Fed.R.Civ.P. 56(c)). The movant has the burden of establishing the absence of any genuine issues of material fact and any ambiguities are to be resolved in favor of the non-moving party. See id. (citing, respectively, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); Celotex Corp. v. Catnett, 477 U.S. 317, 330, n.2 (1986). Additionally "[t]he motion should be granted if 'reasonable minds could not differ as to the import of the evidence before the Court'." Id. at l06. (quoting Cable Science Corp. v. Rockdale Village Inc., 920 F.2d 147, 151 (2d Cir. 1990)).

It is clear from the moving papers filed by both CCC and the Trustee that there is no factual dispute and thus summary judgment is appropriate.[4] The

[4] The Court notes that CCC asserts a "Third Affirmative Defense" in its Answer which seeks to raise certain constitutional arguments. However, nowhere in its motion for summary judgment does it raise such arguments and, therefore, the Court will confine its decision only to those questions of law appropriately raised by the motion.

(continued...)

Court is left with a question of law which focuses on an interpretation of UCC §9-103(2)(b) as it applies to the facts of this case.

Admittedly, if this Court is compelled to follow the decision of the District Court in In re Howard, supra, 9 B.R. at 957, it must void the security interest of CCC, since both of Debtors' vehicles were re-registered, though not re-titled, in New York State prior to the time their bankruptcy petitions were filed and more than four months had elapsed since the arrival of both vehicles in New York State.

While there is a split of authority as to the stare decisis effect of a district court decision on the bankruptcy courts of that district, the better view is enunciated in two recent bankruptcy court decisions: In re Gaylor, 123 B.R. 236, 241 (Bankr. E.D.Mich. 1991) and In re Rheuban, 128 B.R. 551, 554 (Bankr. C.D.Cal. 1991). See also In re Morningstar Enterprises Inc., 128 B.R. 102, 106 (Bankr. E.D.Pa. 1991).

The conclusion reached by the bankruptcy courts in the foregoing cases is that a decision of the district court is not binding on the bankruptcy courts of that district unless it is binding on the district court as a whole. In other words, the decision of one district court judge, in a multi-judge district, is not entitled to stare decisis effect in the bankruptcy courts of that district and thus, this Court is not bound by the District Court decision in In re Howard, supra.

CCC's view of UCC §9-l03(2)(b) relies primarily on commentary by recognized UCC scholars, as well as, the decisions of a district court, a bankruptcy court and New York State court, and is meant to encourage the Court to depart from the rationale of the District Court in In re Howard, supra. See General Motors Acceptance Corp. v. Rupp, 122 B.R. 436 (D.C.Utah 1990); In re Murray, 109 B.R. 245 (Bankr. E.D.Mich. 1989); Brewton Corp. v. Midland Bank, 115 Misc.2d 475 (S.Ct. Queens Co. 1982); and J. White and R. Summers, Uniform Commercial Code §24-22 at 40l (3d Ed l988).

The Trustee appropriately points out, however, that in the Murray and Rupp cases other provisions of both Michigan and Utah law negate the conclusion

---

(...continued)

that the re-registration of a motor vehicle removed from one state to another destroys the perfected security interest of a creditor holding a valid certificate of title, if the vehicle is merely re-registered as opposed to re-titled in the state to which it is removed.

In General Motors Acceptance Corp. v. Rupp, supra, the District Court referred to Utah Code Ann. §41-1-23(c), which provided that re-registration of a vehicle in Utah did not affect the rights of a lienholder in another jurisdiction notwithstanding the provisions of Utah's version of UCC §9-103(2)(b). Id at page 439.

In his decision in In re Murray, supra, Bankruptcy Judge Spector, considering the term "registered" as used in Michigan's version of UCC §9-103(2)(b), concluded that by virtue of §257.222(1) of Mich.Comp.Laws, the term included both the issuance of a registration certificate and a certificate of title. Id. at page 248.

It is apparent that the New York Vehicle and Traffic Law ("NYV&T") recognizes that registration and titling are distinct acts. See NYV&T §2110. If that were not the case, the Debtors here could not have re-registered both vehicles in New York State without surrendering the New Hampshire Certificate of Title. Further, there does not appear to be any applicable provision of New York law other than NYUCC §9-103(2)(b) dealing with the continuation of a security interest of a lienholder who is noted on a non-New York State certificate of title when the vehicle is brought into New York State.

CCC's reliance on Brewton Corp. v. Midland Bank, supra, while appropriate, has little persuasive effect, because as the Trustee points out, the New York court in that case provided little support for its conclusion that when NYUCC §9-103(2)(b) "speaks of 'registration' the court construes the language to contemplate the issuance of a title certificate and not merely the procurement of non-title registration." Id at page 477.

This Court concludes that the rationale of the District Court in In re Howard, supra, relying upon the Official Comments to §9-103 to the effect that failure to place a time limit on the effectiveness of a security interest in a motor vehicle removed to and re-registered in another state would result in deception to innocent third parties, is the better view, and in fact, is not a

minority view as CCC suggests. See In re Tuders, 77 B.R. 904 (Bankr. N.D.Ala. 1987); Matter of Hrbek, 18 B.R. 631 (Bankr. D.Neb. 1982); In re Hartberg, 25 UCC Rep.Serv. 1429 (Bankr. E.D. Wis. 1979).[5]

Based on the forgoing, it is

ORDERED, that CCC's motion for summary judgment is denied, and it is further,

ORDERED, that the Trustee's motion for summary judgment is granted, and it is further,

ORDERED, that pursuant to Code §§544(a) and 551, CCC's lien in both vehicles is avoided and is further preserved for the benefit of the Debtors' estate without costs to either party, and it is finally,

ORDERED, that Trustee shall take possession of both vehicles and liquidate them in accordance with the appropriate provisions of the Code and Fed.R.Bankr.P.

Dated at Utica, New York
this day of April, l992

STEPHEN D. GERLING
U.S. Bankruptcy Judge

[5] While the Trustee contends that this Court has previously adopted the view of the District Court in In re Sanguine, (Case No. 90-01679, 1/28/91), it is apparent that this Court never reached the issue presented in In re Howard, supra, since in Sanguine, the debtors had neither re-registered the vehicle in New York nor sought the issuance of a new certificate of title prior to filing bankruptcy.