UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

JOHN P. SANGUINE CASE NO. 90-0l679

Debtor

APPEARANCES:

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STEPHEN D. GERLING, U.S. Bankruptcy Judge

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

The contested matter presently before the Court was initiated by a motion filed by First Interstate Bank of Arizona, N.A. ("First Interstate") on November l5, l990 pursuant to §§362(d) and 554(b) of the Bankruptcy Code (11 U.S.C. §§101-1330) ("Code") seeking an order of this Court modifying the automatic stay of Code §362(a) so as to permit First Interstate to foreclose its alleged security interest in a l987 Dodge B-250 Van ("Van") owned jointly by John P. Sanguine ("Debtor") and Therese Sanguine, a non-debtor. First Interstate also seeks an order compelling the Trustee appointed in this Chapter 7 case to abandon whatever interest he may have in the Van.

The Trustee filed an affidavit in opposition ("Trustee's Affidavit") to First Interstate's motion, and the matter was heard at oral argument in Utica, New York on December ll, l990. At oral argument the Court reserved its decision and gave the parties until January 3, l99l to file any memoranda of law in support of their respective positions. Neither party requested an evidentiary hearing.

JURISDICTIONAL STATEMENT

The Court has jurisdiction over this contested matter pursuant to 28 U.S.C. §1334(b), §157(a), (b)(l) and (2)(A) and (G).

FACTS

Debtor and his wife, Therese Sanguine, while apparently residing in Scottsdale, Arizona, entered into a retail installment contract with Scottsdale Dodge, Inc. on March l0, l987 in order to purchase the Van. The retail installment contract was thereafter duly assigned to First Interstate.

It is alleged by First Interstate and not contested by the Trustee, that subsequent to the assignment, a certificate of title for the Van was issued pursuant to applicable Arizona law, thereby perfecting First Interstate's security interest in the Van.

On or about May 3l, l990 the Debtor removed the Van permanently from Arizona to New York State where he now resides. At the time of the removal of the Van from Arizona to New York State, the Debtor and his wife were in default under the terms of the retail installment contract,

having failed to make the payment due First Interstate on April 3, l990.

On July 6, l990, the Debtor filed a voluntary petition in this district pursuant to Chapter 7 of the Bankruptcy Code listing the Van as an asset and First Interstate as a secured creditor.

At the time of filing his Chapter 7 petition, the Debtor owed First Interstate $24,329.59, while the Van had a maximum value of $l0,650 and a minimum value of $8,l50. Thus, neither the Debtor nor the Trustee have any equity interest in the vehicle.[1]

ARGUMENTS

The Trustee, while not contesting the lack of equity in the Van, opposes the motion relying upon the "relevant statute", as well as an unpublished decision of this Court, In re Howard, BK-79-l759 (Marketos, B.J.) 4/l0/80, arguing that when the Van was brought into the State of New York, both Arizona and New York law required "re-filing" of First Interstate's security interest within four months of the arrival of the vehicle in New York State.

Thus, the Trustee, without contesting the validity of First Interstate's security interest under Arizona law, contends that its failure to move to lift the automatic stay and perfect its security in the Van pursuant to New York State law prior to September 30, l990, was fatal and First Interstate

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[1] Subsequent to submission of the instant motion for decision, the Court, by letter dated January l5, l99l, asked the parties to stipulate to certain operative facts regarding the re-registration and re-issuance of a title certificate for the Van in New York State.

In lieu of a stipulation, the Court received correspondence from the Trustee's counsel dated January l7, l99l and from First Interstate's Counsel dated January l8, l99l, which establish, without dispute, that as of January l8, l99l, the Van has not been re-registered or re-titled in New York State, and the Certificate of Title issued by the State of Arizona and attached to the moving papers as Exhibit B has not been surrendered.

no longer has a perfected security interest in the Van.

The Trustee attaches copies of correspondence to his Memorandum of Law which indicate that he initiated contact with First Interstate on or about August l5, l990 regarding documentation of their security interest in the Van as proof that the movant had notice of a need to re-perfect its security interest under New York law well in advance of the September 30th deadline.

First Interstate argues that pursuant to Arizona Revised Statutes ("ARS"), §47-9l03(B)(2), perfection of a security interest in an automobile is governed by the law of the state issuing the certificate of title (here Arizona) for a period of four months following removal of the vehicle from that jurisdiction and, thereafter until the vehicle is re-registered in another state, but in no event beyond the date that the (Arizona) title certificate is surrendered.

Without apparently disputing removal of the Van from Arizona on May 3l, l990, and its relatively contemporaneous notice thereof, First Interstate postures that its security interest continues perfected on two grounds. First, on the assumption that Arizona law applies, the movant points to a lack of proof that the Van was ever re-registered or re-titled in New York State, and, therefore, pursuant to ARS §47-9l03(B)(2), the security interest remains perfected to date. Second, First Interstate argues that the Debtor's Chapter 7 filing some thirty-seven days after removing the Van from Arizona, stayed its ability to perfect its security interest under New York law, pursuant to Code §362(a), and further that Code §108(c) operates to preserve a validly perfected pre-petition security interest during the pendency of the bankruptcy case.

DISCUSSION

The Court has reviewed the unpublished decision of In re Howard, BK-79-l758

(Marketos, B.J.) 4/l0/80, relied upon by the Trustee, as well as In re Howard, 9 B.R. 957 (N.D.N.Y. l98l) in which the District Court affirmed the decision of this Court, and concludes that it is factually dissimilar from this contested matter.

In Howard, supra, the debtor moved from Massachusetts to New York State in January l979 and re-registered his motor vehicle in New York State in July l979. Without ever surrendering the Massachusetts certificate of title, the debtor then filed bankruptcy in August, l979.

The District Court, relying on §9-103(2)(b) of the New York Uniform Commercial Code ("NYUCC") concluded:

> According to the plain language of subsection (b), once the bankrupt's truck was re-registered in New York state more than four months after its removal from Massachusetts, it ceased to be covered by that state's certificate of title. Thus, the certificate was not effective at the time Howard filed for bankruptcy nor was GMAC's security interest perfected in accordance with the requirements of the Title Act at V&T Law §2ll8(c)(2)(A).

See In re Howard, supra 9 B.R. at 960.

In the instant case, Debtor's Van was neither re-registered nor re-titled in New York State pre-bankruptcy, nor has either occurred post-petition up to the date of this motion.

The Court further believes that the Trustee misreads both ARS §47-9l03(B)(2) and NYUCC §9-l03(2)(B), which are generally identical in their terminology.

While it is true that both statutes provide for a four month "grace period" following removal of a motor vehicle from one state to another in which a secured creditor may re-perfect its security interest, the Trustee appears to disregard the balance of both statutes which provide that the "grace period" continues beyond four months and remains effective until the re-registration of the vehicle in another state but, in no event, beyond the surrender of the existing title certificate.

Thus, regardless of whether the Court applies ARS §47-9l03(B)(2) or NYUCC §9-

l03(2)(B), First Interstate's security interest in the Van initially perfected pursuant to the law of Arizona has continued perfected despite removal of the vehicle to New York State in May of l990, and despite the Debtor having filed his voluntary petition pursuant to Chapter 7 of the Code on July 6, l990.

Since First Interstate's security interest remained perfected, there was no requirement for it to have moved to lift the stay in this Court prior to September 30, l990.

Therefore, the Court need not reach First Interstate's argument that re-perfection of its security interest is tolled by virtue of Code §108(c) in reliance upon the Second Circuit's decision in Morton v. National Bank of New York City (In re Morton), 866 F.2d 56l (2d Cir. l989).

Having concluded that First Interstate's security interest in the Van was perfected as of the date of this motion and having further concluded that neither the Debtor nor his bankruptcy estate have an equity in the Van and that it is not necessary for an effective reorganization in light of the liquidation nature of this case, the Court will grant First Interstate's motion modifying the stay imposed pursuant to Code §362(a) and compelling the Trustee to abandon the Van pursuant to Code §554(b), so as to permit First Interstate to enforce its security interest in accordance with applicable state law.

IT IS SO ORDERED.

Dated at Utica, New York

this day of January, l99l

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STEPHEN D. GERLING
U.S. Bankruptcy Judge