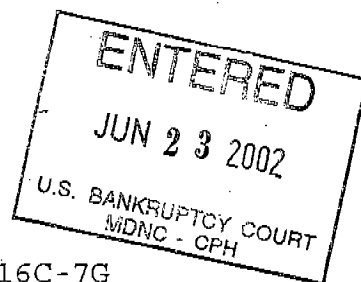


UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION



IN RE: )

Danny Malloy Durham, Jr. and )  
Betty Lee Durham, )

Debtors. )

Case No. 00-12216C-7G

Charles M. Ivey, III, )  
Chapter 7 Trustee, )

Plaintiff, )

v. )

Adversary No. 01-2093

U.R.W. 831 Members Federal )  
Credit Union, )

Defendant. )

MEMORANDUM OPINION

This adversary proceeding is before the court for decision based upon stipulated facts and briefs submitted by the parties. The plaintiff is represented in this proceeding by Joshua N. Levy and the defendant is represented by William O. Moseley, Jr.

FACTS

On or about February 2, 2000, the Debtors, residents of Pelham, North Carolina, purchased a new 2000 Dodge truck from Blackwell Motor Company, a Dodge dealership located in Danville, Virginia. The Debtors borrowed \$25,513.89 from U.R.W. 831 Members Federal Credit Union ("the Credit Union") to finance the purchase of the Dodge truck. In obtaining the loan from the Credit Union, the Debtors signed a Credit Union form document containing a

promissory note and a security agreement in which the Debtors agreed to grant the Credit Union a security interest in the Dodge truck. The promissory note was in the amount of \$35,513.44 which consisted of principal of \$25,513.89 plus the interest payable over the term of the note.

Having received payment of the purchase price from the loan proceeds, Blackwell Motor Company delivered the truck to the Debtors on or about February 2, 2000. When the truck was delivered, Blackwell Motor Company also delivered to the Debtors a certificate of origin for the truck containing an assignment to the Debtors which was signed by Blackwell Motor Company before it was delivered, and a title application which Blackwell Motor Company had prepared using a North Carolina Division of Motor Vehicles Form MVR-1 and which had been signed by the Debtors. The Form MVR-1 is a form supplied by the North Carolina Division of Motor Vehicles for purchasers of motor vehicles to use in applying for the issuance of a certificate of title for a newly purchased motor vehicle. In the owner section of the MVR-1 form the Debtors were listed as the owners of the Dodge truck and in the lien section of the form the Credit Union was listed as a lienholder.

Approximately seven months later, on September 15, 2000, the Debtors filed a voluntary Chapter 7 case. The Debtors were still in possession of the Dodge truck when the Chapter 7 case was filed. However, no certificate of title had ever been issued for the truck

because the certificate of origin and the title application had never been sent to the North Carolina Division of Motor Vehicles.

The Chapter 7 Trustee contended that the Dodge truck was owned by the Debtors and therefore was property of the bankruptcy estate pursuant to § 541 of the Bankruptcy Code, and was not subject to a perfected security interest. The Credit Union disputed the Trustee's claim. With the consent of both parties, the truck was sold on March 24, 2001, pursuant to an order that transferred claims of liens and interests to the proceeds of sale. The sale of the truck produced proceeds of \$15,100.00 which are at issue in this adversary proceeding.

#### DISCUSSION

The complaint alleges that the truck was property of the estate and that the Trustee is entitled to proceeds from the sale of the truck. In support of this claim, the complaint alleges that the Credit Union never perfected a security interest in the truck and that the position of the Trustee pursuant to § 544(a)(1) of the Bankruptcy Code is superior to that of the Credit Union. These allegations raise the following issues.

1. Was the Dodge truck property of the estate?

The first question to be addressed is whether the Dodge truck became property of the estate pursuant to § 541 of the Bankruptcy Code when Debtors' Chapter 7 case was filed. The answer to this question depends upon whether the truck was owned by the Debtors

when the bankruptcy case was filed. Determination of such an issue by the bankruptcy court is controlled by state law. See Butner v. United States, 440 U.S. 48, 54, 99 S.Ct. 914, 917-18, 59 L.Ed.2d 136 (1979) ("Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding."). Since there is no overriding federal interest in this case, state law is controlling on the question of whether the Debtors owned the Dodge truck. However, because the transaction involving the acquisition of the Dodge truck occurred in Virginia, the court must first determine whether the law of North Carolina or that of the State of Virginia is controlling.

In this Circuit, a bankruptcy court must apply the conflicts of law rules of the forum state in determining which state's law to apply in making determinations of property rights in the assets of a bankruptcy estate. See In re Merritt Dredging Co., Inc., 839 F.2d 203 (4th Cir. 1988). Thus, resort to the North Carolina conflicts of law rules is required in determining which body of state law is controlling on the issue of the ownership of the Dodge. In North Carolina "the law of the situs in general controls transfers of personalty" with the result that the law of the state in which the transaction occurred will be controlling in determining whether there was a transfer of ownership. See Ellison

v. Hunsinger, 237 N.C. 619, 624, 75 S.E.2d 884 (1953). In accord  
Hargett v. Reed, 95 N.C. App. 292, 382 S.E.2d 791 (1989). Since  
the transaction in this case occurred in Virginia, the court  
therefore will apply Virginia law in determining whether the  
Debtors acquired ownership of the Dodge truck.

The procedure for transferring the ownership of a motor  
vehicle in Virginia is set forth in Va. Code Ann. § 46.2-628 which  
provides that the transferor of a motor vehicle "shall fully and  
correctly endorse the assignment and warranty of title on the  
certificate of title of the motor vehicle, trailer, or semitrailer  
to its purchaser, with a statement of all security interests on it,  
and shall deliver the certificate to the purchaser or transferee at  
the time of delivering the motor vehicle, trailer, or semitrailer."  
Compliance with this statute, which involves properly executing the  
assignment on the certificate of title and delivering the  
certificate of title and the vehicle to the purchaser, results in  
a transfer of ownership to the purchaser under Virginia law. See  
Rawl's Auto Auction Sales v. Dick Herriman Ford, 690 F.2d 422, 427  
(4th Cir. 1982); Travelers Indem. Co. v. Nationwide Mut. Ins. Co.,  
227 F. Supp. 958 (W.D. Va. 1964); United States Fid. and Guar. Co.  
v. Trussell, 208 F. Supp. 154 (W.D. Va. 1962); Nationwide Ins. Co.  
v. Storm, 200 Va. 526, 106 S.E.2d 588 (1959); Thomas v. Mullins,  
153 Va. 383, 149 S.E. 494 (1929).

In the present case, the assignment on the back of the

certificate of origin for the Dodge truck was fully and correctly endorsed by Blackwell Motor Company, showing the Debtors as purchasers of the Dodge truck. Following such endorsement, the certificate of origin and the truck were delivered to the Debtors who took possession of both the certificate of origin and the truck. The transaction thus fully complies with Va. Code Ann. § 46.2-628, except that the Debtors received a certificate of origin rather than a certificate of title. This difference did not prevent the Debtors from acquiring ownership of the Dodge truck. The initial ownership of a new vehicle such as the Dodge truck involved in this case is evidenced by a certificate of origin rather than a certificate of title and, as a practical matter, the only way to transfer a new vehicle to a purchaser is by delivering the certificate of origin. The Virginia statutes reflect that ownership may be transferred by either a certificate of title, in the case of a used vehicle, or a certificate of origin, in the case of a new vehicle. For example, Va. Code Ann. § 46.2-1542 authorizes the issuance of a temporary certificate of ownership by a dealer if "the certificate of title or certificate of origin for the vehicle is lost . . . ." In fact, Virginia law specifically recognizes that a dealer may sell a new vehicle without a certificate of title. See Va. Code Ann. § 46.2-1544 which requires automobile dealers to have a certificate of title for motor vehicles to be sold by the dealer "except that a certificate of

title shall not be required for any new vehicle to be sold as such." Although the Virginia Courts apparently have not considered a transaction involving a new motor vehicle in which a properly endorsed certificate of origin was delivered to the purchaser along with the vehicle, the court concludes that the Virginia Courts would decide that such a transaction complies with the statute and results in a transfer of ownership. Accordingly, in the present case, the court finds and concludes that the Debtors became the owners of the 2000 Dodge truck on February 2, 2000, when the certificate of origin and the truck were delivered to the Debtors by Blackwell Motor Company. It follows that the truck became property of the estate when they filed for relief under Chapter 7 on September 15, 2000.

2. Did the Credit Union have a perfected security interest when the Chapter 7 case was filed?

Under both Virginia law and North Carolina law, a party claiming a security interest in a vehicle that is in the possession of the debtor can perfect such security interest only by having the security interest entered on a certificate of title for the motor vehicle as provided by Va. Code Ann. § 46.2-636 in the case of Virginia transactions, or N.C. Gen. Stat. § 20-58 in the case of North Carolina transactions. See In re Darrington, 251 B.R. 808 (Bankr. E.D. Va. 1999); In re Spring Grove Transport, Inc., 202 B.R. 862 (Bankr. E.D. Va. 1996); Richlands Nat. Bank v. Smith, 34 B.R. 749 (Bankr. E.D. Va. 1983) (discussing Virginia law); and

Peoples Sav. & Loan Assoc. v. Citicorp Acceptance Co., 103 N.C. App. 762, 407 S.E.2d 251, cert. denied, 330 N.C. 197, 412 S.E.2d 59 (1991); In re Carraway, 65 B.R. 51 (Bankr. E.D.N.C. 1986) (discussing North Carolina law). In the present case, it is undisputed that no lien or security interest was ever entered on a certificate of title for the Dodge truck. It follows that the Credit Union did not have a perfected security interest when the Chapter 7 case was filed.

3. Does the Trustee's status under § 544(a)(1) entitle the Trustee to prevail over the Credit Union?

Section 544(a)(1) grants a bankruptcy trustee a hypothetical judicial lien on the debtor's property as of the date the bankruptcy petition was filed. See In re Spring Grove Transport, Inc., 202 B.R. at 864. Although such status is granted by federal bankruptcy law, the priority of the hypothetical lien must be determined under state law. See In re Kitchen Equip. Co., 960 F.2d 1242, 1245 (4th Cir. 1992). Accordingly, the court in the present case must look to state law in determining whether the Trustee, as a hypothetical judicial lien creditor, has priority over the Credit Union's unperfected security interest. Under both Virginia law and North Carolina law, the answer to this question is in the affirmative. See Richlands Nat. Bank v. Smith, 34 B.R. 749 (W.D. Va. 1983) (applying Virginia law); In re Hinson, 77 B.R. 34 (Bankr. M.D.N.C. 1987) (applying North Carolina law). Accordingly, because



the Credit Union's security interest was unperfected on the date the Debtors filed for bankruptcy relief, the Trustee's hypothetical judicial lien under § 544(a)(1) has priority, entitling the Trustee to the proceeds realized from the sale of the Dodge truck. A judgment so providing will be entered contemporaneously with the filing of this memorandum opinion.

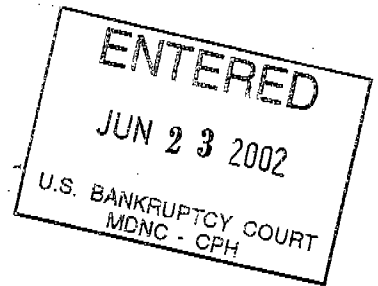
This 20<sup>th</sup> day of June, 2003.

**William L. Stocks**

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WILLIAM L. STOCKS  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION



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)  
U.R.W. 831 Members Federal )  
Credit Union, )  
)  
Defendant. )  
)

JUDGMENT

In accordance with the memorandum opinion filed contemporaneously herewith, it is ORDERED, ADJUDGED AND DECREED that the plaintiff, as Chapter 7 Trustee, retain the proceeds realized from the sale of the 2000 Dodge truck referred to in the complaint and that such proceeds be administered by the plaintiff as unencumbered funds not subject to any liens or security interests.

This 20<sup>th</sup> day of June, 2003.

*William L. Stocks*

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WILLIAM L. STOCKS  
United States Bankruptcy Judge