

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON-SALEM DIVISION

ENTERED

OCT 29 2004

U.S. BANKRUPTCY COURT  
MDNC - BB

IN RE:	)	
	)	
Wesley Jason Boles and	)	Case No. 03-53196C-7W
Cindy Smith Boles,	)	
	)	
Debtors.	)	
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Riddle Farm Equipment, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 04-6027
	)	
Wesley Jason Boles,	)	
	)	
Defendant.	)	
	)	

ORDER

This adversary proceeding came before the court on October 21, 2004, for hearing upon plaintiff's motion to amend complaint. A. Carl Penney appeared on behalf of the plaintiff and Edwin H. Ferguson appeared on behalf of the defendant. Having considered the motion to amend and the other matters of record in this adversary proceeding, the court has concluded that the motion should be denied for the reasons that follow.

In the original complaint in this adversary proceeding, the plaintiff seeks to have declared nondischargeable indebtedness of \$34,147.99 which is owed to the plaintiff by the defendant. Such indebtedness arises out of two transactions involving the plaintiff and the defendant, one of which involved the purchase of a new Kubota tractor by the defendant in April of 2003 and the other

involving plaintiff's repair of a used Kubota tractor owned by the defendant. The plaintiff alleges that such indebtedness is nondischargeable pursuant to § 523(a)(2)(A) based upon the defendant having made fraudulent representations regarding his intent to pay the plaintiff when he took delivery of the new Kubota tractor and when he obtained the used Kubota tractor from the plaintiff after the plaintiff had completed the repairs to the used tractor. In the motion to amend, the plaintiff seeks leave of court to add a claim to recover possession of the new Kubota tractor that was sold to the defendant based upon the assertion that title to the tractor never passed from the plaintiff to the defendant. Although the motion contains allegations which reflect that the transaction involving the new Kubota tractor was a sale and that the plaintiff completed delivery of the tractor to the defendant, the motion asserts that the title to the tractor did not pass to the defendant on the grounds that "[t]here was no meeting of the minds because no essential terms, other than price, were ever agreed upon or executed between the parties for the essential financing." While Rule 15 of the Federal Rules of Civil Procedure provides that leave of court to amend shall be freely given when justice so requires, there is no requirement under Rule 15 that the court permit an amendment to a complaint when it is clear from the face of the proposed amendment that the proposed amendment does not state a claim for relief. That is the situation in the present

case based upon the law applicable to the transaction involving the new tractor.

Contrary to the assertion in plaintiff's motion, the law applicable to the transaction involving the new Kubota tractor is the Uniform Commercial Code and not the Common Law. Specifically, Article 2 of the Uniform Commercial Code, which was enacted in North Carolina as N.C. Gen. Stat. §§ 25-2-101, etc., is controlling in the present case inasmuch as the transaction in question was a transaction involving goods. See N.C. Gen. Stat. § 25-2-102 (providing that "[u]nless the context otherwise requires, this article applies to transactions in goods") and N.C. Gen. Stat. § 25-2-105(1) (defining "goods" as "all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which price is to be paid, investment securities (article 8) and things in action").

Turning to Article 2 of the Uniform Commercial Code as adopted in North Carolina, the controlling statute is N.C. Gen. Stat. § 25-2-401. Under N.C. Gen. Stat. § 25-2-401, if matters concerning title to goods become material in situations not covered by other provisions of Article 2, then the rules regarding title set forth in N.C. Gen. Stat. § 25-2-401 are applicable. Since the matters involved in this case are not covered by other provisions of Article 2, N.C. Gen. Stat. § 25-2-401 is controlling. The matter of when title to goods passes is dealt with in N.C. Gen.

Stat. § 25-2-401(2) as follows:

Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place . . .

In the present case, it is undisputed that Movant completed its performance with reference to the delivery of the new Kubota tractor in April of 2003.<sup>1</sup> Under N.C. Gen. Stat. § 25-2-401(2), ownership passed from Movant to Boles at the time of such delivery "despite any reservation of a security interest and even though a document of title [was] to be delivered at a different time or place . . . ." While the motion to amend asserts that the parties did not have a meeting of the minds regarding the manner in which the purchase price would be financed or paid, such a circumstance did not prevent the passage of title upon the completion of delivery of the tractor. There is no assertion in the motion that there was any explicit agreement that title was not to pass to the defendant until financing was obtained. Moreover, even if such an agreement had been made, plaintiff nonetheless would have been left at most only with a security interest in the tractor once it was delivered to the defendant. Under N.C. Gen. Stat. § 25-2-401(1),

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<sup>1</sup>Paragraph seven of the original complaint alleges that "[o]n or about April 29, 2003 Boles agreed to purchase and took immediate possession of [sic] from Riddle a new Kubota tractor. . . ."

"[a]ny retention or reservation by the seller of title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest." Under this provision, even if a seller purports to retain or reserve title in goods that are delivered to the seller, the seller will have only a security interest once delivery has been made to the buyer. See In re Bosson, 432 F. Supp. 1013, 1021 (D. Conn. 1977) ("Although § 2-401(2) begins with the phrase '[u]nless otherwise agreed,' the prior subsection places limits on the parties' contractual freedom. Specifically, § 2-401(1) negates any attempt to forestall passage of title beyond the moment of final delivery; contract language purporting to do so merely results in a security interest being retained."); Johnson v. Imported Cars of Maryland, Inc., 230 B.R. 466, 468 (Bankr. D.D.C. 1999) ("The passage of title cannot occur before goods are identified to the contract, nor can the passage of title be delayed until after shipment or delivery of the goods to the buyer. After shipment or delivery, any retention of title by the seller results only in the reservation of a security interest."). Hence, even if there had been an agreement that title would not pass until financing was obtained or the purchase price was paid, once plaintiff delivered the new tractor to the defendant, title passed to the defendant and the most that the plaintiff thereafter could claim would be a security interest.

Accordingly, consistent with the provisions of N.C. Gen. Stat. § 25-2-401, the court concludes that title to the new tractor passed to the defendant on April 29, 2003. It follows as a matter of law that plaintiff therefore does not have a valid and enforceable claim for turnover of the tractor. The motion to amend therefore shall be denied.

IT IS SO ORDERED.

This 26 day of October, 2004.

  
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WILLIAM L. STOCKS  
United States Bankruptcy Judge