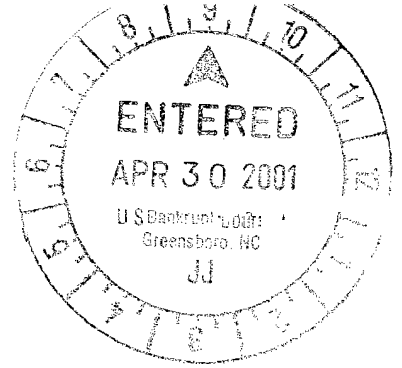


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION



IN RE:)
)
Rountree Motorcars, Inc.,) Case No. 00-12683 C-7G
)
Debtor.)

ORDER

This case was before the court on April 24, 2001, for hearing upon a motion by Transouth Financial Services, Inc., for an order requiring that documentation be provided by the Trustee or Debtor sufficient for Transouth to perfect a lien on certain motor vehicles. Larry W. Pearman appeared on behalf of Transouth and Charles M. Ivey, III appeared on behalf of the Trustee. Having considered the motion, the matters of record in this case and the presentation of counsel for the parties, the court finds and concludes as follows:

1. Prior to the filing of this case the Debtor operated a retail used car business in which automobiles were offered for sale to the general public.

2. The Debtor had a financing arrangement with Transouth under which Transouth financed the purchase of automobiles by customers of the Debtor. Under this arrangement, at the time of sale, the Debtor would obtain from customers a promissory note and documentation ("the paper") required in order to obtain a lien on the automobile involved in the sale and would then assign the paper to Transouth at which time Transouth would advance loan proceeds to

the Debtor. Under the arrangement with Transouth, the Debtor was to forward to the Division of Motor Vehicles the documentation required in order to have a new certificate of title issued in the name of the purchaser with a lien in favor of Transouth on the title. The new titles were forwarded to Transouth for Transouth to hold until the customer paid off the money loaned by Transouth. The automobiles involved in these transactions were delivered to the customers by the Debtor contemporaneously with the execution of the promissory note and other documents.

3. During last few months preceding the filing of this case, there were a number of transactions in which the Debtor sold an automobile and obtained funding from Transouth without forwarding to the Division of Motor Vehicles the documentation required in order to have new titles issued with Transouth's lien entered on the titles to such automobiles. Although the customers in these transactions received the automobile they purchased, they are now experiencing difficulties in obtaining insurance and license tags for the newly purchased automobiles because they have never been issued a title, and some are refusing to make payments to Transouth as a result.

4. The documents and records which the Trustee received from the Debtor include the old titles and the loan documentation for some of the automobiles that were sold without the Debtor having new titles issued. The motion now before the court seeks an order

directing the Trustee to turnover such titles and documentation to Transouth so that it can have the new titles issued showing Transouth as lienholder.

5. It is undisputed that the automobiles involved in the transactions in question were owned by the Debtor, that transactions occurred in which the Debtor intended to sell and transfer ownership of an automobile to a customer, that loan documentation was obtained from the customer and assigned to Transouth, resulting in Transouth disbursing the appropriate loan proceeds to the Debtor and that the automobiles in question were, in fact, delivered to the customers. The complicating factor is that the Debtor failed to take the final step required in order to have new titles issued in the names of purchasers, i.e., the Debtor failed to forward the necessary documentation to the Division of Motor Vehicles.

6. The determinative issue is whether the Debtor retained ownership of the automobiles in question under the foregoing facts. If so, Transouth is not entitled to the relief requested because the automobiles would be property of the bankruptcy estate pursuant to § 541 of the Bankruptcy Code. Transouth admittedly did not have a perfected lien on the automobiles when this case was filed and therefore would be subject to the rights of the Trustee under § 544 of the Bankruptcy Code and not entitled to the documents in question. On the other hand, if ownership of the automobiles was

transferred to the customers at the time of the transactions in question, then the automobiles are not property of the estate and there is no reason for the Trustee to retain the old titles and other documents sought by Transouth.

7. Section 541 of the Bankruptcy Code defines the bankruptcy estate very broadly, providing that it is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case. . . ." Nevertheless, in determining what property is included in the estate there is interaction between federal bankruptcy law and state law because, in the absence of controlling federal bankruptcy law or overriding federal interests, the substantive nature of the property rights held by a bankruptcy debtor is defined by state law. See In re Haber Oil Co., 12 F.3d 426, 435 (5th Cir. 1994); see also Butner v. United States, 440 U.S. 48, 55, 99 S.Ct. 914, 918, 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."). This means that in the present case this court must look to North Carolina law to determine the ownership of the automobiles in question.

8. An examination of the North Carolina statutes reveals that

both the Uniform Commercial Code¹ and the Motor Vehicle Act² deal with the transfer of ownership of motor vehicles. Which of these statutory provisions is applicable depends upon the nature of the transaction and the purpose for which the determination of ownership is being made.

9. For matters involving tort law and liability insurance coverage, in which the rights of parties other than the parties to the transaction are involved, the Motor Vehicles Act is controlling. See Nationwide Mut. Ins. Co. v. Haves, 276 N.C. 620, 174 S.E.2d 511 (1970). The Haves case arose out of a motor vehicle accident which gave rise to tort liability and the dispute addressed was one between two insurance companies who were litigating over which one provided the liability coverage for the tort liability. The North Carolina court held that under such circumstances, N.C. Gen. Stat. § 20-72 of the Motor Vehicle Act was controlling.

10. On the other hand, in transactions involving the sale and financing of motor vehicles in which the rights of the parties to the sale or financing transaction are involved, the Uniform Commercial Code is controlling in North Carolina. See American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984). The American Clipper case involved a dispute between the

¹N.C. Gen. Stat. § 25-1-101, et seq.

²N.C. Gen. Stat. § 20-38 et seq.

manufacturer of a motor vehicle and an individual who had purchased the motor vehicle from a dealer to whom the manufacturer had delivered possession of the motor vehicle, but not the manufacturer's statement of origin, the title document for such a vehicle. The North Carolina court rejected the assertion that the Haves case was controlling and held that the provisions of the Uniform Commercial Code controlled. After noting that the Haves case "dealt with the situation in which the rights of the parties not privy to the sales transaction itself, hinged on the time when legal title to the vehicle passed"³, the court stated:

We conclude, therefore, that the provisions of the UCC and not the MVA properly resolve the contest here. As the court tacitly recognized in both Hawkins and King Homes, Inc., the title transfer provisions of the MVA were not designed to resolve the kind of question here presented. The UCC, which generally has supplanted the principles relied on in Hawkins and King Homes, Inc., was so designed and should have been, but was not, employed by Clipper in this case. . . . We now proceed to apply the pertinent provisions of the UCC to the transactions before us.

311 N.C. at 163, 316 S.E.2d at 192-193. Accord N.C. National Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

11. The present case does not involve tort law or liability insurance coverage. Instead, the matter now before the court arises out of business transactions involving the sale of automobiles by an automobile dealer to consumers. At issue are the

³311 N.C. at 161, 316 S.E.2d at 192.

rights of the parties to those sales transactions. Such transactions are the type of transactions intended to be encompassed and controlled by the Uniform Commercial Code. The rights of the parties in this case therefore must be determined under that body of law.

12. Turning to the Uniform Commercial Code as adopted in North Carolina, the controlling statute is N.C. Gen. Stat. § 25-2-401(2) which, in pertinent part, provides:

Unless otherwise explicitly agreed title passes to the buyer at the time at which the seller completes his performance with reference to the physical delivery of the goods⁴ despite any reservation of a security interest and even though a document of title is to be delivered at a different time . . . "

13. It is undisputed that the Debtor completed its performance with reference to the delivery of the automobiles in question when it delivered the automobiles to the buyers. At that point, the documentation required of the purchasers had been executed and it was the intent of the parties that the buyers become the owners of the automobiles. Under N.C. Gen. Stat. § 25-2-401(2), ownership passed from the Debtor at the time of delivery of the automobiles "despite any reservation of a security interest

⁴Under N.C.Gen. Stat. § 25-2-105 "goods" means "all things . . . which are movable at the time of identification to the contract for sale other than the money in which the price is paid, investment securities (article 8) and things in action", and is broad enough to include an automobile. See Gillespie v. AMC, 51 N.C. App. 535, 277 S.E.2d 100 (1981).

and even though a document of title was to be delivered at a different time or place" As the quoted language makes clear, it makes no difference regarding transfer of ownership that the new title had not been issued prior to delivery or that a lien in favor of Transouth was to be shown on the new title when issued. Therefore, in accordance with the provisions of N.C. Gen. Stat. § 25-2-401(2), the court concludes that when this case was filed, the Debtor no longer owned the automobiles in question and such automobiles are not property of the estate in this case.

Accordingly, Transouth's motion will be granted to the extent of requiring that the Trustee turnover to Transouth all existing titles and other documentation in the Trustee's possession related to automobiles that were sold and delivered by the Debtor prior to the filing of this case and that were financed by Transouth.

IT IS SO ORDERED.

This 30 day of April, 2001.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge