

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA

In Re: )  
 )  
ROGER L. WILLARD, JR. ) No. B-99-50394 C-13W  
JOANN PHILLIPS WILLARD, )  
 )  
Debtors. )

**ORDER SUSTAINING DEBTORS' OBJECTION TO THE CLAIM OF  
THELMA WILLARD**

**THIS MATTER** came on for hearing before the undersigned bankruptcy judge on December 1, 1999, on the Objection by Debtors to Claim No. 0020 of Thelma Willard in the amount of \$44,400.00. Appearing before the court were Phillip Bolton, on behalf of Roger and Joann Willard (hereinafter the "Debtors"), Warren Sparrow, on behalf of Thelma Willard (hereinafter the "Claimant"), and Kathryn Bringle, Chapter 13 Trustee. After hearing the testimony presented, reviewing the evidence, and hearing the arguments of the parties, the Court sustains the Debtors' objection to the claim of Thelma Willard but finds that the male Debtor breached his fiduciary duty when he had the title of the vehicle transferred solely into his name. Therefore, the transaction is void, and the Claimant and the male Debtor are again joint owners of the vehicle.

**BACKGROUND FACTS**

The Claimant is the mother of the male Debtor. The claim arises due to a dispute over the ownership of a 1985 Pace Arrow recreation vehicle (hereinafter the "RV"). The RV was purchased on June 29, 1995, for \$16,000.00 by the Claimant from Bill Plemmons RV World. It is undisputed that the only funds used to purchase the RV came from the Claimant. However, at the time of purchase, both the Claimant's and the male Debtor's names were placed on the title

to the vehicle. Contemporaneously with the execution of the sale documents, a one-line document purporting to give power of attorney over the RV to the male Debtor by the Claimant was also executed and notarized. In August of 1998, the one-line power of attorney was used by the male Debtor to have the title of the RV changed from both names into his name only. The Claimant does not remember signing the power of attorney and asserts that she never intended to extinguish her ownership interest in the RV.

Debtors filed their Chapter 13 petition on March 5, 1999. In their petition, Debtors listed the RV as one of their assets. The Claimant filed a proof of claim in the Debtors' bankruptcy case for \$44,400.00 based on a complaint she filed in state court alleging conversion of her RV, fraud and seeking treble damages for alleged unfair and deceptive trade practices.<sup>1</sup>

### **DISCUSSION**

The North Carolina Supreme Court in Whitford v. Gaskill addressed the question of whether a general power of attorney was sufficient to authorize the attorney-in-fact to make a gift of the principal's real property. See Whitford v. Gaskill, 345 N.C. 475, 480 S.E.2d 690 (1997). In Whitford, the court upheld a gift of real property of a husband made by his wife under a power of attorney which stated that the wife had the specific authority to conduct real property transactions including transfers of the real estate at issue. See id. at 478, 480 S.E.2d at 692. The Whitford court followed the majority view that an attorney-in-fact has a duty to act in the best interest of the principal and, therefore, a general power of attorney authorizing the

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<sup>1</sup>The Claimant attached her state court complaint alleging unfair and deceptive trade practices to a Motion for Relief from Stay previously filed in this bankruptcy case. However, since no judgment was entered in the state court action and this Court finds that the unfair and deceptive trade practices statute is not applicable in the instant proceeding, the issue will not be further addressed.

conveyance of property implies a sale for the benefit of the principal and does not authorize the agent to make a gift of the property or to transfer it without consideration benefitting the principal. See id. at 477, 480 S.E.2d at 691 (citing King v. Bankerd, 492 A.2d 608, 613 (Md. 1985)). “Since the power to make a gift of the principal’s property is potentially hazardous or adverse to the principal’s interests, such power will not be lightly inferred from broad grants of power contained in a general power of attorney.” Id. at 478, 480 S.E.2d at 692. However, the North Carolina Supreme Court, relying on the use of the word “transfer” in the language added to the general power of attorney granting the wife the authority to make decisions regarding the transfer of the specific property in question, held the power of attorney was sufficient to give the wife authority to make a gift of the property. See id.

Although the Whitford case concerned the power to make a gift of real property, the Court of Appeals of North Carolina found that the same rationale can be applied to a gift of the principal’s personal property. See Honeycutt v. Farmers & Merchants Bank, 126 N.C.App. 816, 819, 487 S.E.2d 166, 167-68 (1997). In Honeycutt, a daughter used the power of attorney from her mother to have herself named the beneficiary of a trust account that her mother had opened previously naming the brother as the beneficiary. See id. at 817, 487 S.E.2d 166-67. The Court of Appeals, following the Whitford decision, examined the power of attorney to see if it expressly provided for the making of a gift of the mother’s property and determined that the general power of attorney did not so provide. Therefore, the daughter lacked authority to make a gift of her mother’s property to anyone, but she particularly lacked the authority to give it to herself. See id. at 820, 487 S.E.2d at 168.

The Honeycutt Court also referred to North Carolina General Statute §32A-14.1, which is

a codification of the Whitford decision.<sup>2</sup> See id. at 819, 487 S.E.2d at 168. The statute provides, “[U]nless gifts are expressly authorized by the power of attorney, a power described in subsection (a) of this section [the authority to do or execute any act that the principal might do] may not be exercised by the attorney-in-fact in favor of the attorney-in-fact . . .” N.C. Gen. Stat. § 32A-14.1(b) (1998).

The controlling case law and the statute are clear -- a general power of attorney is not sufficient to authorize the attorney-in-fact to make a gift of the principal's property. Express language permitting the gift must be included in the power of attorney. The one-line document that purports to be the power of attorney in this case states only, “I THELMA WILSON WILLARD GIVE ROGER LEE WILLARD JR. FULL POWER OF ATTORNEY OVER THE 1985 PACE ARROW MOTOR HOME.” This language clearly falls short of expressly granting the male Debtor the power to make a gift of the RV and is not sufficient to meet the higher standard set by the statute dealing with a gift to oneself.<sup>3</sup> Since the authority to transfer the title of the RV into his name only is outside of the scope of authority given to the male Debtor under the power of attorney, the transfer is void. See Whitford v. Gaskill, 119 N.C.App. 790, 793, 460 S.E.2d 346, 348 (1995), rev'd on other grounds, 345 N.C. 475, 480 S.E.2d 690 (N.C. 1997). The male Debtor and the Claimant have the same interests in the RV as they did before the attempted

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<sup>2</sup>In Honeycutt, the daughter argued that N.C. Gen. Stat. §32A-14.1 is not applicable since it was not in effect at the time the events in that case occurred. The court found that the statute codifies the common law so the result is the same even if the statute is not applied. Clearly, in the case currently before this Court, the statute applies.

<sup>3</sup> Although the document here is similar to the one the Whitford court examined in that it does grant power of attorney over the specific property in question, the Whitford court found the language to be sufficient because the document specifically gave the attorney-in-fact power to transfer the property which the instant document does not do.

transfer of title and, therefore, they are again joint owners.

**IT IS THEREFORE, ORDERED THAT** the Debtors' objection to the claim of Thelma Willard is sustained inasmuch as the male Debtor's breach of his fiduciary duty in transferring title to the RV into solely his name makes the transaction void and the male Debtor and the Claimant are again joint owners of the RV.

This the 1 day of February, 2000.

**CATHARINE R. CARRUTHERS**

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U. S. Bankruptcy Judge