

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
LISA A. PIERCE-JOHNSON,) CASE NO. BK98-81770
)
DEBTOR.) CH. 7

MEMORANDUM

Hearing was held on December 22, 1998, on Trustee's Objection to Debtor's Claim of Exemption. Appearances: G. Kirk Meade for the debtor and Ronald Sanchez as Trustee. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(B).

The debtor has claimed an exemption in the proceeds of the sale of an automobile pursuant to Neb. Rev. Stat. 25-1552 (Cum. Supp. 1998). The Chapter 7 Trustee has objected to the claim of exemption. The objection is sustained.

The debtor borrowed funds from Community First National Bank in Alliance, Nebraska, for the purpose of purchasing an automobile. She executed a note and security agreement which granted the bank a purchase money security interest in the automobile. The bank, however, failed to perfect the security interest by having the security interest noted on the title as required by Neb. Rev. Stat. 60-110 (Reissue 1993).

The bank has voluntarily agreed to the avoidance of its security interest by the Chapter 7 Trustee, without the necessity of the Chapter 7 Trustee filing an adversary proceeding. Such acquiescence by the bank, however, is totally dependent upon the proceeds from the sale of the vehicle being paid to the Trustee for the benefit of the estate and not being subject to any claim of exemption by the debtor.

The Nebraska Uniform Commercial Code--Secured Transactions §§ 9-101 et seq. applies to any transaction which is intended to create a security interest in personal property. Neb. U.C.C. § 9-102 (Reissue 1992). The bank and the debtor certainly intended to create a security interest in favor of the bank in the automobile being purchased by the debtor. As between the debtor and the bank, the security

agreement is effective according to its term and, therefore, does give the bank a security interest in the automobile. Neb. U.C.C. § 9-201 (Reissue 1992). However, if the security interest is not properly perfected, the Chapter 7 Trustee in bankruptcy, as a "lien creditor," causes the interest of the bank to be subordinated to the interest of the Trustee on behalf of the bankruptcy estate. Neb. U.C.C. § 9-301(1)(b) and (3) (Cum. Supp. 1998).

For the purposes of perfection, filing a financing statement pursuant to the Uniform Commercial Code is not sufficient and is not effective to perfect such security interest in an automobile, which is subject to Neb. Rev. Stat. § 60-110. Neb. U.C.C. § 9-302(3)(b) (Cum. Supp. 1998).

The applicable perfection statute with regard to automobiles is Neb. Rev. Stat. 60-110 which provides that a notation of a security interest made by the county clerk on the face of a motor vehicle title is valid against creditors of the debtor, subsequent purchasers, secured parties and other lienholders or claimants. In other words, the only way to perfect a security interest in an automobile, assuming the vehicle is not "inventory," is to obtain the notation of the lien on the title itself. Neb. Rev. Stat. § 60-110.

In summary, the debtor granted a security interest in the automobile to the bank. The bank failed to properly perfect the security interest by obtaining a notation of the lien on the title. Therefore, the security interest is not valid as against certain creditors and is ineffective against the Trustee, as a "lien creditor," pursuant to Bankruptcy Code 11 U.S.C. § 544(a)(1) and (2).

The Bankruptcy Code, at 11 U.S.C. § 551, provides that a transfer avoided under Section 544 is preserved for the benefit of the estate. There is no provision in the Bankruptcy Code which would permit the debtor to claim an exemption in the proceeds of an automobile following the avoidance of the security interest which encumbered it. Those proceeds accrue to the benefit of the estate because of the powers exercised by the Trustee of the bankruptcy estate. The only statutory provision which allows the debtor to avoid a security interest and then enjoy the exemption is 11 U.S.C. § 522(f). That section does not give the debtor any exemption rights with regard to property on which a security interest is avoided by the Trustee under 11 U.S.C. § 544.

Therefore, the objection filed by the Trustee to the exemption claimed by the debtor, is granted.

Separate journal entry to be filed.

DATED: January 20, 1999

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:
51 MEADE, KIRK

Copies mailed by the Court to:
Ronald Sanchez
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

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FOR THE DISTRICT OF NEBRASKA

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LISA A. PIERCE-JOHNSON,)	CASE NO. BK98-81770
)	A
<u>DEBTOR(S)</u>)	
)	CH. 7
)	Filing No. 18, 23, 26
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
)	
)	
)	DATE: January 20, 1999
<u>Defendant(s)</u>)	HEARING DATE: December
)	22, 1998

Before a United States Bankruptcy Judge for the District of Nebraska regarding Trustee's objection to Debtor's Claim of Exemption and Resistance by the Debtor.

APPEARANCES

G. Kirk Meade, Attorney for debtor
Ronald Sanchez, Trustee

IT IS ORDERED:

The objection filed by the trustee to the exemption claimed by the debtor, is granted. See Memorandum entered this date.

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

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Ronald Sanchez
United States Trustee

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