

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In re

TROY K. COOLEY,
AQUANDA M. COOLEY,
Debtors.

00-CV-0345E(M)
BK-98-13159B

BUFFALO METROPOLITAN FEDERAL
CREDIT UNION,

Appellant,

MEMORANDUM

-vs-

and

ALBERT J. MOGAVERO, ESQ., as Chapter 13
Trustee,

Appellee.

ORDER

The captioned debtors — husband and wife to each other — filed a Chapter 13 Petition for Bankruptcy May 8, 1998 and Albert J. Mogavero, Esq., was appointed trustee by the Bankruptcy Court. Their Chapter 13 plan was confirmed July 7, 1998. The trustee took the position that a lien on Aquanda M. Cooley's vehicle held by the Buffalo Metropolitan Federal Credit Union ("BMFCU") was avoidable under 11 U.S.C. §547(b) as an attempt to perfect an interest in collateral within

ninety days of a bankruptcy filing. BMFCU filed a claim with the Bankruptcy Court July 29, 1999 for the \$7,637.68 remaining on the underlying car loan, at the request of the trustee, so that the Bankruptcy Court would determine if BMFCU's lien was avoidable pursuant to section 547(b). After a hearing on the matter, U.S. Bankruptcy Judge Carl L. Bucki, in a summary order dated March 14, 2000, held that the lien alleged by BMFCU was avoided, was classified as a general unsecured claim and that, as a general unsecured claim, was expunged as a late filed claim. Appellant appealed to this Court raising a single issue — *i.e.*, whether BMFCU's security interest in Cooley's vehicle had been so perfected prior to the ninety-day preference period under section 547(b)(4)(A) that it could not be avoided.¹ This Court has jurisdiction over this matter pursuant to 28 U.S.C. §158(a)(1).

Mrs. Cooley had purchased a 1994 Ford Escort from Gambino Ford January 1997, which purchase she had financed through Consumer

¹Appellee did not bother to file any papers in opposition to this appeal or even to attend the oral argument.

Portfolio Services (“CPS”). A. Cooley Aff. ¶2. She had filed a vehicle registration application with the New York State Department of Motor Vehicles (“the DMV”) January 16, 1997 listing CPS as lienholder. The DMV issued a title February 7, 1997. She refinanced this vehicle through BMFCU February 24, 1997 executing a note and security agreement in favor of BMFCU in return for a check for \$9,522.28, the balance left on her CPS loan. Miller Aff. ¶5.² In addition, Mrs. Cooley signed a MV-954 Notice of Lien form which BMFCU forwarded that same day to the DMV along with a check for \$5.00. *Id.* at ¶6-7. By signing the Notice of Lien form, she warranted that, “[i]f a title has previously been issued in my name for this vehicle, I gave it to the Lienholder ***.” The DMV returned the Notice of Lien form to BMFCU March 6, 1997 stating that a title had already been issued February 7, 1997 and that BMFCU accordingly needed to obtain the title and forward it to the DMV along with the Notice of Lien. *Id.* at ¶8.

²Said affiant is Ann Marie Latona Miller, the BMFCU loan officer.

Miller states that, after receiving this letter, she telephoned Mrs. Cooley to obtain the title but was informed by her that she had not yet received it. *Id.* at ¶¶8-9. Miller states that she continued to telephone Mrs. Cooley, at least twelve times on approximately a monthly basis, to obtain the title. *Id.* at ¶¶10-14. Mrs. Cooley states that BMFCU told her that the DMV would send the title directly to it, that she had never received the title from the DMV and that she had never been contacted by BMFCU regarding the title. A. Cooley Aff. ¶5. BMFCU states that, after she had contacted an attorney to inquire about filing for bankruptcy, Mrs. Cooley sought on April 28, 1998 to again refinance her loan with BMFCU, at which time she allegedly turned over the title. Sandford Aff. ¶¶7-8.³ Mrs. Cooley states that her bankruptcy attorney told her to go to the BMFCU to obtain her title and that, while there, BMFCU had her sign some papers and then sent her to the DMV. A.

³Said affiant is Kent Sandford, the BMFCU Collection Manager.

Cooley Aff. ¶6-7. BMFCU forwarded the title along with the Notice of Lien and requisite fee to the DMV April 28, 1998. Sandford Aff. ¶7.

On appeal, this Court is to accept the Bankruptcy Court's findings of fact unless clearly erroneous and merely reviews *de novo* its conclusions of law. *In re Bell*, 225 F.3d 203, 209 (2d Cir. 2000). Judge Bucki issued a summary order which did not contain any findings of fact. However, the only factual issue in dispute is whether BMFCU or Mrs. Cooley had the title prior to the expiration of the ninety-day preference period, and such is immaterial.

A bankruptcy trustee may avoid any transfer of an interest of the debtor in property made on or within 90 days before the filing of the bankruptcy petition — 11 U.S.C. §547(b)(4)(A) — if such transfer does not create a perfected security interest. 11 U.S.C. §547(c)(5). Questions in bankruptcy matters regarding the perfection of liens are decided under state law. *In re Thorsell*, 229 B.R. 593, 597(Bankr. W.D.N.Y. 1999). Under New York law, perfection of security interests in vehicles required

to be titled is accomplished by the “delivery to the commissioner of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the lienholder and the required fee.” V & T Law §2118(b)(1)(A).⁴ This is the exclusive method for perfecting a security interest in a titled vehicle. *Id.* §2123. When the owner of a vehicle creates a security interest therein, the title shall be delivered to the lienholder upon its request. *Id.* §2119(a).

The vehicle was required to be titled under New York law; accordingly BMFCU needed to comply with the provisions of the Vehicle and Traffic Law to perfect its security interest. BMFCU properly delivered to the DMV an application for a certificate of title containing the name and address of the lienholder and the required fee; however, it did not deliver the existing certificate of title. It is undisputed that BMFCU’s security interest would have been properly perfected had there been no existing certificate of title at the time it attempted to record its

⁴Subsequently amended effective January 1, 1998.

lien. The specific issue to be determined is whether that lien was perfected when a certificate of title had been issued by the DMV but was not tendered to the DMV as required along with the notice of lien and required fee.

In 1982, in a case of first impression, this Court held that the mere delivery to the DMV of the required papers was not sufficient to perfect a security interest in a motor vehicle pursuant to V. & T. Law §2118(b)(1)(A); the lien had to be noted on the certificate of title as well. *General Motors Acceptance Corp. v. Waligora*, 24 B.R. 905, 907-908 (W.D.N.Y. 1982). However, in subsequently interpreting this provision, New York's courts have come to the opposite conclusion. A title is merely *prima facie* evidence of its contents and, consequently, a lien is perfected even if the lienholder is negligently omitted from the title by the DMV. *Fitzpatrick v. Bank of New York*, 461 N.Y.S.2d 703, 705-706 (N.Y. Civ. Ct.) *rev'd on other grounds*, 480 N.Y.S.2d 157 (App. Term 2d Dep't 1983). In light of the contrary interpretation of the requirements

for the perfection of security interests under V. & T. Law §2118(b)(1)(A) by the state courts, the opinion in *Waligora* has not been followed by federal courts in subsequent cases, wherein it has been held that the mere delivery to the DMV of the required documentation is sufficient to perfect a security interest in a titled motor vehicle. *E.g.*, *In re Microband Companies, Inc.*, 135 B.R. 2, 5 (Bankr. S.D.N.Y. 1991); *In re Beaudoin*, 160 B.R. 25, 30-31 (Bankr. N.D.N.Y. 1993); *Chrysler Financial Co. v. Schlant*, 243 B.R. 613, 617-619 (W.D.N.Y. 2000).

Appellant's reliance on *Waligora* and subsequent similar holdings are misplaced, because those cases addressed whether a security interest in a motor vehicle had been perfected when the lienholder had properly delivered all of the required documentation to the DMV but the DMV had negligently failed to list the lienholder on the title. However, in the present case BMFCU failed to deliver the title — one of the documents needed to perfect its security interest — to the DMV. The issue in this case is therefore whether a lien is perfected when the lienholder fails to

deliver one of the necessary documents to the DMV as opposed to the DMV, having all necessary documentation but failing to list the lienholder on the title.

A bankruptcy court essentially acts as a court of equity; however, in considering a trustee's avoidance rights, it must take into consideration the rights of all creditors and cannot view the relationship between the debtor and a single creditor in a vacuum. *Cf., In re Leasing Consultants Inc.*, 592 F.2d 103, 107 (2d Cir. 1979). "The trustee in bankruptcy stands not only in the shoes of the bankrupt he fits as well into the overshoes of the bankrupt's creditors." *Id.* at 110. When exercising the avoidance power as a representative of the estate, the "trustee is vested with the rights of creditors and is not limited to the rights of the bankrupt." *Ibid.* Accordingly, even if the creditor whose interest the trustee seeks to avoid has a valid defense against the debtor, "it does not follow that an action taken by the trustee acting as the representative of

[the debtor's] *creditors* must similarly fail." *Ibid.*⁵ When a trustee seeks to "enhance the value of the estate property, the party seeking to prevent avoidance of its interest may not raise any misconduct or malfeasance by the debtor as a defense." *In re Earl Roggenbuck Farms, Inc.*, 51 B.R. 913, 917 (Bankr. E.D. Mich.); *In re Wedtech Securities Litigation*, 138 B.R. 5, 8 (Bankr. S.D.N.Y. 1992). "The trustee, in his capacity as trustee, is not estopped by the debtor's misconduct." *Ibid.* Representations made by the debtor to a creditor are not binding on the trustee because there is no privity between the trustee and the debtor, with the result that any estoppel is inapplicable as to the trustee. *Teiger v. Stephan Oderwald, Inc.*, 31 F. Supp. 626, 627 (S.D.N.Y. 1940); *In re Best Pack Seafoods, Inc.*, 29 B.R. 23, 24-25 (Bankr. D. Me. 1983).

"[I]n determining conflict of title between the trustee and third parties, his rights are to be determined as if he were a creditor holding a lien by legal or equitable proceedings at the time the petition was filed. The trustee represents the general creditors and in this capacity may assert claims, avoid

⁵Emphasis added.

preferences and collect assets where the bankrupt, if bankruptcy had not intervened, would be estopped.” *In re Gustav Schaefer Co.*, 103 F.2d 237, 241 (6th Cir.), *cert. denied sub nom. Wells v. Boyle*, 308 U.S. 579 (1939).

Although BMFCU’s lien would have been perfected if a title had not previously been issued by the DMV, such had occurred and accordingly, BMFCU’s lien had not been properly perfected prior to the ninety-day preference period. BMFCU cannot rely on the alleged misrepresentations by Mrs. Cooley to the effect that she had not received the title because it is the trustee, acting on behalf of all creditors, who is seeking to avoid this lien, not Mrs. Cooley. The trustee is viewed as someone who obtained a lien on the vehicle ninety days before the Cooleys filed for bankruptcy and, because BMFCU’s lien had not been perfected prior to such time, the trustee may avoid BMFCU’s lien. The trustee is not estopped by any alleged misconduct by Mrs. Cooley because he is acting on behalf of all of the Cooleys’ creditors in avoiding the lien rather than on Mrs. Cooley’s behalf and, accordingly, any defenses

BMFCU may have had against Mrs. Cooley based on her alleged misrepresentations are immaterial.⁶

Accordingly, it is hereby *ORDERED* that the Order of the Bankruptcy Court is affirmed and that this case shall be closed in this Court.

DATED: Buffalo, N.Y.

February 9, 2001

S.U.S.D.J.

⁶While this Court is cognizant of the decision in *Lucas v. Pennbank*, therein the lienholder had complied with the requirements to perfect its lien, and this Court simply used the fact that the debtor had unclean hands to distinguish the facts from those in *Waligora*. 142 B.R. 68, 70-71 (W.D.N.Y. 1992)