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JUDGE: M. A. Mahoney

PARTIES: Robin W. Harcey, Ashley Marie Harcey, Christopher Kern, Gaylon O'Bannon

CHAPTER: 7

ATTORNEYS:

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KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

ROBIN W. HARCEY
ASHLEY MARIE HARCEY

Case No. 95-10291

Debtors.

CHRISTOPHER KERN, Trustee,

Plaintiff,

vs.

Adv. No. 95-1203

GAYLON O'BANNON

Defendant.

ORDER

This is an action commenced by the trustee to avoid a security interest in a mobile home claimed by the defendant, Gaylon O'Bannon. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the security interest of Mr. O'Bannon is unperfected under Alabama law and the trustee may sell the mobile home on behalf of the debtors' creditors.

FACTS

In April of 1989, Ashley Harcey, formerly Ashley Ferguson, and her ex- husband, Timothy Ferguson, purchased a 1989 Sunbelt / Eastwood mobile home from Mr. O'Bannon. Mr. O'Bannon financed the purchase, and the Fergusons executed a combination bill of sale and security agreement which granted to Mr. O'Bannon a security interest in the mobile home. (Defendant's Exhibit 2) A financing statement was filed with the Probate Court of Mobile County on May 20,

1989. (Plaintiff's Exhibit 1) The effect of the filing expired after five years pursuant to Alabama Code § 7-9-403(2). Mr. O'Bannon failed to file a new financing statement or a continuation statement. On February 10, 1995, Robin Harcey and Ashley Harcey filed a joint Chapter 7 petition. On October 26, 1995, the trustee filed a complaint seeking to avoid Mr. O'Bannon's lien on the mobile home.

LAW

Alabama Code § 7-9-302(1)(d) provides that a financing statement must be filed to perfect all security interests except a purchase money security interest in consumer goods, but further provides that filing is necessary for a "motor vehicle required to be registered."

Section 7-9-109 of the Code defines consumer goods as goods which "are used or bought for use primarily for personal, family or household purposes." It is clear that the mobile home in this case meets the description of a consumer good. Section 40-12-255 of the Code involves the registration of manufactured homes, which by statutory definition apply to mobile homes. The parties do not dispute that the mobile home was required to be registered.

The question presented is whether the mobile home is a "motor vehicle" required to be registered.

The trustee argues that the mobile home is a motor vehicle required to be registered. In support of his position, the trustee refers to the case of *In re Sewell*, 32 B.R. 116 (Bankr. N.D. Ala. 1983), which dealt with the issue of whether a financing statement must be filed in order to perfect a purchase money security interest in a mobile home. The Court held that a mobile home is a "motor vehicle" for purposes of § 7-9-302(1). The Court also concluded that the pre-1982 version of the Code, which referred to motor vehicles "required to be licensed," was not functionally different from the 1982 version which specified motor vehicles "required to be registered."

Three bankruptcy appeals, including *Sewell*, were consolidated for the purpose of determining the following question of law:

Does the holder of a “purchase money security interest” in a mobile home, by virtue of said mobile home being “consumer goods” hold a perfected security interest in the mobile home, without regard to whether a related “financing statement” has been properly filed for record?

This consolidated issue was decided by the District Court on February 27, 1984, wherein it concluded at page 2 of the Memorandum of Decision that "after the 1981 amendment became effective on February 1, 1982, a properly filed financing statement became necessary to perfect a security interest in a "consumer goods" mobile home." Additionally, the Court determined that the Code terms "registration" and "license" were not equivalent; therefore, necessitating the reversal of *Sewell*.

Mr. O'Bannon argues that the mobile home is not a motor vehicle required to be registered. He asserts that the reasoning in *Sewell* and in the District Court's Memorandum of Decision is no longer sound. However, Mr. O'Bannon was unable to cite any Alabama case law and did not take note of legislative enactments subsequent to the Courts' rulings.

In response to the holding in *Sewell*, Section 7-9-403(6) of the Code was amended in 1984 to allow for extended durational periods for mobile home financing statements. In *McRae v. Security Pac. Hous. Servs., Inc.*, 628 So. 2d 429 (Ala. 1993), the Supreme Court of Alabama determined that a financing statement perfecting a security interest in a mobile home does not lapse after five years, if it “states specifically that it will remain effective until a termination statement is filed or contains other indicia of the maturity date of the obligation beyond the five year period.”

The legislature amended § 32-8-31(9) of the Code in 1989. Mobile homes, commencing with 1990 models, are no longer exempt from the requirements of the title certificate provisions

which require for perfection of security interests that a lien notation be recorded on the face of the certificate of title. It is Mr. O'Bannon's contention that he holds a perfected security interest in the mobile home, without regard as to whether there is a financing statement on file. The mobile home at issue, a 1989 Sunbelt / Eastwood model, is exempt from the requirement of the title certificate provisions of the Code because it was manufactured one year outside the new requirement. Without the filing of a financing statement, there would exist no means of providing adequate notice of a perfected security interest in a pre-1990 mobile home. The title certificate provisions cover 1990 and later model mobile homes. Therefore, Section 7-9-302(1) still governs pre-1990 models. The Court finds that the holding in the District Court's Memorandum of Decision continues to be good law.

CONCLUSION

The proper means by which to perfect a security interest in the 1989 model mobile home was by means of filing a financing statement pursuant to Alabama Code § 7-9-302. The financing statement filed on May 20, 1989, lapsed after five years. Mr. O'Bannon does not have a properly perfected security interest in the mobile home. His lien is subordinate and inferior to that of the trustee. Accordingly, it is ORDERED that the trustee may avoid the lien of Mr. O'Bannon in the 1989 Sunbelt / Eastwood mobile home.

MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE