DOCKET NUMBER: 99-10118
ADV. NUMBER: None
JUDGE: M. A. Mahoney
PARTIES: Curtis Bruner Scott, Colonial Bank
CHAPTER: 13
ATTORNEYS: J. A. Lockett, Jr., B. B. Griggs
DATE: 3/24/99
KEY WORDS:
PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

CURTIS BRUNER SCOTT Case No. 99-10118-MAM-13

ORDER OVERRULING OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND CONFIRMING PLAN

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This matter came before the Court on Colonial Bank's objection to confirmation of Curtis Bruner Scott's ("debtor" or "Mr. Scott") Chapter 13 plan. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons indicated below, the Court finds that Colonial Bank released its lien on Mr. Scott's mobile home. Therefore, Colonial Bank's objection to confirmation is overruled and the plan is confirmed.

FACTS

1. On January 12, 1999, debtor filed for relief pursuant to Chapter 13 of the Bankruptcy Code.

2. On October 4, 1996, Colonial Bank loaned debtor $9,816.60 to purchase a 1991 Peachstreet Mobile Home. The loan was to be paid over 48 months at 11.866% yearly interest. The payments totaled $12,422.40. In return for the loan, debtor granted Colonial Bank a purchase-money security interest in the mobile home.

3. Colonial Bank caused its security interest to be noted on the certificate of title for the mobile home and it maintained possession of the title.

4. On November 3, 1997, Colonial Bank mistakenly executed the "RELEASE OF LIEN" portion on the certificate of title. The bank mailed debtor the title, along with a letter stating that it had "released all liens" on the mobile home and that the loan had been paid in full. The certificate of title is presently in possession of the debtor.

5. American General Finance, on behalf of Colonial Bank, filed a secured claim in debtor's bankruptcy case totaling $8,678.36.

6. Debtor's Chapter 13 plan did not list American General Finance or Colonial Bank as a secured creditor. His plan proposes to pay unsecured creditors 1% of their allowed claim.

7. On March 1, 1999, Colonial Bank filed an objection to confirmation of debtor's plan.

8. On March 4, 1999, a hearing was held regarding Colonial Bank's objection to debtor's chapter 13 plan. Debtor admitted that the loan had not been paid in full. At the conclusion of the hearing, the Court took the matter under advisement.

LAW

The issue to be addressed is whether Colonial Bank released its security interest and/or totally satisfied debtor's debt when it mistakenly signed the lien release portion of the mobile home's certificate of title and delivered the title to the debtor. If it did release the lien, then Colonial Bank is at best an unsecured creditor. If the release also satisfied the debt, then Colonial Bank is not a creditor at all. The answers to these questions determine whether Mr. Scott's plan is confirmable.

The Court concludes that the actions of Colonial Bank resulted in a release of the lien of the bank, but not a satisfaction of the debt. This result is reached for four reasons: (1) the Alabama statute itself states that signing the lien release on the certificate of title releases the

security interest only; (2) Colonial Bank delivered the title containing the lien release to the debtor; (3) the result does not conflict with the purpose of the Alabama title statute; and (4) the result is fair to other innocent creditors.

A.

Alabama's version of the Uniform Certificate of Title and Antitheft Act (UCTAA) provides the method to perfect a security interest in a person's manufactured or mobile home. ALA. CODE § 32-8-1 et seq. (1989). ALA. CODE § 32-8-64 deals with release of those security interests. *SouthTrust Bank of Alabama v. Toffel (In re Blackerby)*, 53 B.R. 649, 653 (Bankr. N.D. Ala. 1985). The provision states:

> Upon the satisfaction of a security interest in a vehicle for which a certificate of title is in the possession of the lienholder, he shall, within 10 days after demand execute a release of his security interest, in the space provided therefor on the certificate . . . and mail or deliver the certificate . . . to the owner. The owner . . . shall promptly cause the certificate and release to be mailed or delivered to the department, which shall release the lienholder's rights on the certificate or issue a new certificate.

The language of this section speaks to satisfaction of the "security interest." The statute does not speak of satisfaction or payment of the debt. ALA. CODE § 32-8-2(19) defines a security interest as "[a]n interest in a vehicle or a manufactured home reserved or created by agreement which secures payment or performance of an obligation." ALA. CODE § 32-8-2(19) (West 1989). Therefore, release of the security interest only releases the rights of the lender to collect its obligation from specific collateral.

Some courts with statutes similar to Alabama's have interpreted the language as requiring satisfaction of the debt in order for release of the security interest to be effective. *General Electric Capital Corp. v. Spring Grove Transport, Inc. (In re Spring Grove Transport, Inc.)*, 202 B.R. 862 (Bankr. E.D. Va. 1996); *Mottaz v. Mid American Bank & Trust Company of Alton*

(In re Office Machines Exchange, Inc.), 47 B.R. 644 (Bankr. S.D. Ill. 1985); *Lansdowne v. Security Bank of Coos County (In re Smith & West Construction, Inc.)*, 28 B.R. 682, 684 (Bankr. D. Oregon 1983). The *Spring Grove* case says that the Alabama statute (and the Illinois and Oregon statute) states that the lien is released upon "*satisfaction*" of the security interest. Since the statute speaks in terms of satisfaction, no lien release occurs until the debt is actually paid. By contrast, the statute in Virginia applicable to the *Spring Grove* case does not speak of satisfaction of the interest. The court therefore ruled that a mistaken release of the lien prior to satisfaction of the full debt resulted in a release of the lien. The *Spring Grove* case also cited an Alabama case as "implying" that the Alabama statute required actual satisfaction of the debt before the lien is released. *Supra* at 865 (citing *SouthTrust Bank, N.A. v. Toffel (In re Blackerby)*, 53 B.R. 649, 653-54 (Bankr. N.D. Ala. 1985). The *Spring Grove* court stated:

> The statutes involved, those of Alabama, Illinois, and Oregon, each begin with the language, "Upon the satisfaction of a security interest in a motor vehicle" and then go on to require the lienholder to execute a release. Relying on this language, it is understandable that two of the courts explicitly held that satisfaction of the lienholder's 'claim was a prerequisite for a release to be valid (cites omitted). The court in *Blackerby* implied as much by going one step further and requiring that not only must the lienholder execute the release provision (therefore implying that the claim had been satisfied), but the lienholder must also deliver the release to the next junior lienholder as required by the statute in order for the release to be effective. *Blackerby*, 53 B.R. at 653-54.

Spring Grove at 866.

The Court disagrees with this analysis. As stated above, security interest is a defined term under Alabama's UCTAA. A security interest is not the same as the obligation itself. Black's Law Dictionary defines "satisfaction" as "the discharge of an obligation by paying a party what is due to him (as on a mortgage, lien, note, or contract)." BLACK'S LAW DICTIONARY 1342 (6th ed. 1990). However, later definitions of "satisfaction of lien" and "satisfaction of

mortgage" do not indicate that a lien satisfaction requires full payment. Both definitions indicate "satisfaction" can be a document releasing the lien.[1] This reading is logical. There may be situations in which lienholders intentionally release a lien against a mobile home without full satisfaction of the debt (e.g., a third party agrees to pay the debt). Liens under the Uniform Commercial Code can be released without full satisfaction. ALA. CODE § 7-9-406 (1997) ("a secured party . . . may by his signed statement release all or part of any collateral"). Mortgage liens can be released without full satisfaction. *Musgrove v. French*, 117 So.2d 136 (Ala. 1959) (citing 59 C.J.S. Mortgages § 458, p. 723). It is not logical to read a statute to *require* satisfaction unless that is necessary to fulfill the purpose of the statute. As part 3 below states, the statute is to prevent thefts and provide accurate motor vehicle records. Allowing nonfraudulent lien releases will not deter these purposes. The parties to an agreement should be able to contract as they wish and release liens, with or without satisfaction of the debt itself.

2.

The fact that Colonial Bank delivered the certificate of title to Scott is a further reason the Court concludes the lien was released. None of the other similar cases which concluded the lien survived involved a delivery of possession to the debtor. In the *In re Smith & West Construction* case, the Court found that "the mere signature of the [bank] on the certificate of title" was insufficient to release its security interest or debt. *Supra* at 685. In *In re Office Machines*, (relying on Illinois law) the bank signed the release of lien portion of the certificate of title but never gave up possession of it. The Court held that "mere execution of the release portion on the

[1]"Satisfaction of lien" is defined as "Document signed by a lienholder in which he releases the property subject to the lien." "Satisfaction of mortgage" is defined as "a discharge signed by the mortgagee . . . indicating that the property subject to the mortgage is released or that the mortgage debt has been paid." BLACK'S at 1342.

certificate of title by a lienholder is insufficient to effectuate a release where there is not satisfaction of the security interest." *Id*. at 647 (court relied on ILL. ANN. STAT., Ch. 95 1/2, § 3-205 (Smith-Hurd 1984) which is currently found at 625 ILL. COMP. STAT. § 5/3-205 (West 1998). However, in dicta, the court stated:

> If the Bank had relinquished possession of the certificate of title, thereby creating the possibility that third parties would take positions in reliance on the Bank's executed release form, the Bank would be estopped from claiming that it had a valid lien in the Corvette, even if its security interest was not satisfied.

Id. In *In re Cavalieri*, 142 B.R. 710 (Bankr. E.D. Pa. 1992), the court denied a lender's motion to reinstate its security interest. The lender had mistakenly marked the financing agreement paid, released the encumbrance and mailed the contract and certificate of title to the debtor. The court found that pursuant to 75 PA. CONST. STAT. § 1135(a) (West 1999), the lender had effectively released its security interest when it signed the form and sent it to the debtor.

This Court agrees with the *Cavalieri* case and the dicta in the other two cases. Security interests are creatures of statute and exist only upon strict adherence to their governing provisions. *Id*. at 719. If a release is properly executed on the statutory form certificate of title and delivered to the debtor, through no fraud of his own, then a release has occurred. Delivery of the certificate prevents the creditor from undoing the release when a third party relies on the release or a bankruptcy is filed. The debtor or trustee in a bankruptcy case assumes the role of intervening creditor. 11 U.S.C. § 544.

This reasoning is consistent with the Alabama *Blackerby* case cited above. In *In re Blackerby*, the lender mistakenly noted that its lien was released on the certificate of title covering its security. The lender did not deliver the title to the debtor. The Court found that the bank's lien was still effective. The inadvertently released lien survived based upon its continued

recognition in the records of the Department of Revenue "coupled with the Bank's continued possession of the certificate of title." *Supra* at 654.

The Court interprets *In re Blackerby* to hold that a lien does not survive a secured party's execution of the release portion on a certificate of title unless: (1) the records of the Department of Revenue reflect the secured party's lien *and* (2) the secured party maintains possession of the title. In this case, Scott had not obtained a new certificate of title from the State so Colonial Bank's lien was reflected in the State's records, but he did have possession of the certificate which gave him control over the issuance of the new certificate.[2]

3.

This result does not disturb the two purposes of the UCTAA which case law has identified. One purpose is to establish records of the identity and ownership of vehicles in order to prevent theft. *Treadwell Ford, Inc. v. Campbell*, 485 So.2d 312 (Ala. 1986). Regardless of how the Court rules, the UCTAA's purpose of providing clear records to prevent theft is not violated. Any confusion regarding whether or not Colonial Bank has a perfected security interest in Mr. Scott's mobile home would not create confusion regarding who owns the mobile home because the Department of Revenue's records and the certificate of title indicate that Mr. Scott is the owner of the mobile home.

The second purpose of the UCTAA stated in case law is to provide a means for parties with legitimate interests to ascertain essential information concerning vehicles. *In re Blackerby*,

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[2]An unpublished decision of Judge G. B. Kahn of this court also held that a mistakenly released lien resulted in the debt being unsecured. The certificate of title to the vehicle had been delivered to the debtor and he sold the truck. *In re Howard and Laura Rhodes*, Case No. 86-00763, unpublished opinion dated August 27, 1987 (Bankr. S.D. Ala. 1987). A copy of the opinion is attached.

53 B.R. at 654. In furtherance of this goal, the owner of a vehicle is required to deliver the title to the Department of Revenue once the owner receives a certificate of title containing a release of lien. ALA. CODE § 32-8-64. The Department of Revenue is then required to "release the lienholder's rights on the certificate or issue a new certificate." *Id.* This requirement enables the Department to update its records so that interested parties are assured that the Department's records accurately reflect whether a lien exists on a vehicle or mobile home or to prevent competing liens.

Mr. Scott never delivered the title to the Department of Revenue. Colonial Bank's lien is still reflected in the Department's records and third parties would believe Colonial Bank still had a lien if they checked the records. No one would purchase the mobile home or take it as collateral until the filing of the release and issuance of a new certificate of title.

Since Mr. Scott did not deliver the title to the Department of Revenue, any third party would check with Colonial Bank before action and be alerted to the lien issue this Court faces—was the lien released? Therefore, the Court's decision either way will not alter the fact that the UCTAA did its job. A creditor, seeing the records at the Department of Revenue, would be alerted to a potential lien problem. The "essential information concerning vehicles" was available to them. Then, if Scott produced the original certificate with a lien release, the third party could rely on it once recorded or ask Scott to resolve the dispute with Colonial Bank.

4.

Finally, the equities in this case favor a finding that Colonial Bank's mistaken release rendered its lien ineffective. The debtor did not satisfy its debt or otherwise do anything to deserve a release of Colonial Bank's lien. Nonetheless, in the bankruptcy context, the beneficiary of a secured party's mistake is generally not the debtor, but innocent creditors. *In re*

Cavalieri, 142 B.R. at 719 (finding that in the bankruptcy context, secured party must strictly adhere to the statutory rules regarding perfection). Colonial Bank was in error, and Mr. Scott's other unsecured creditors were innocent. Consequently, the Court believes the equities support relegating Colonial Bank to the class of an unsecured creditor, equal to debtor's innocent unsecured creditors.

This is consistent with Eleventh Circuit case law on mortgage satisfaction. In a case involving an IRS claim, the court held that"mistaken satisfaction of a mortgage does not affect the validity of an unpaid secured note secured by a mortgage where no rights of innocent third parties have intervened." *Haas v. Internal Revenue Service (In re Haas)*, 31 F.3d 1081, 1086 (11th Cir. 1994) (citing *Lacey v. Pearce*, 191 Ala. 258, 68 So. 46 (1915)). In this case the trustee is an intervening innocent third party. The result should be the same for this lien.

CONCLUSION

When Colonial Bank executed the release portion of the certificate of title, and delivered the title and a signed release to Mr. Scott, it released its security interest in Mr. Scott's mobile home. If the security interest is released, then Colonial Bank obviously has no interest in Mr. Scott's mobile home and it holds an unsecured claim.

THEREFORE IT IS ORDERED that Colonial Bank's objection to confirmation is OVERRULED and the plan is CONFIRMED.

Dated: March 24, 1999

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE