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JUDGE: M. A. Mahoney

PARTIES: Shirley Ann King, Greenpoint Credit Corporation

CHAPTER: 13

ATTORNEYS: R. R. Blair, B. C. Dumas

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In Re:

SHIRLEY ANN KING

Case No. 99-12260-MAM-13

**ORDER AND JUDGMENT DENYING MOTION OF  
GREENPOINT CREDIT CORPORATION FOR RECONSIDERATION OF  
ORDER DENYING OBJECTION TO CONFIRMATION**

Robert R. Blair, Selma, Alabama, Attorney for Debtor  
Barre C. Dumas, Mobile, Alabama, Attorney for Creditor

This matter is before the Court on the motion of Greenpoint Credit Corporation (“Greenpoint”) for the Court to reconsider its denial of Greenpoint’s objection to confirmation of Shirley Ann King’s 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 motion of Greenpoint is denied.

**FACTS**

1. Carolyn K. Moss, sister of the debtor Shirley Ann King, purchased a mobile home in 1995. Ms. Moss executed a retail installment contract under which she was obligated to pay BAHS Bank of America for the home. She granted BAHS a lien on the home.
2. Ms. Moss is noted as the owner on the certificate of title to the home and the title reflects the lien of BAHS. Greenpoint is the assignee of BAHS and Greenpoint services the loan.
3. The retail installment contract provides that the purchaser will be in default if she sells or attempts to sell the home without consent from the creditor. The contract permits Ms. Moss to assign it to any person.

4. Debtor alleges that Ms. Moss transferred the home to her. There is no bill of sale or other document evidencing this transfer.

5. Debtor and her three children reside in the home and they maintain it. Debtor made monthly payments on the home prior to filing bankruptcy. No payments have been made since March 1999.

6. Greenpoint sued Ms. Moss and debtor in state court to obtain possession of the mobile home. This precipitated debtor's filing of this chapter 13 case on July 1, 1999.

7. As of September 2, 1999, the loan balance exceeds the value of the home.

8. Debtor filed a plan in which she proposed to provide Greenpoint with payments to satisfy its arrearage claim and the monthly amount due under the retail installment contract.

9. The plan was confirmed on September 2, 1999 over the objection of Greenpoint.

#### LAW

Greenpoint filed this motion to reconsider based essentially on the same theories raised at the hearing on confirmation: the home is not property of debtor's estate and it therefore cannot be shielded from Greenpoint in debtor's plan of reorganization or Greenpoint is not a creditor of debtor and it is improper to treat its claim in debtor's plan.

#### A.

Section 541(a) of the Bankruptcy Code provides that the bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case."

11 U.S.C. § 541(a). The legislative history indicates that the scope of § 541 is broad. H.R. Rep. No. 95-595, p.367 (1977).

State law governs property rights in bankruptcy. *Butner v. United States*, 440 U.S. 48, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979). Transfer and ownership of mobile homes in Alabama is

governed by its version of the Uniform Certificate of Title and Antitheft Act. ALA. CODE § 32-8-1 *et seq.* (1989). Section 32-8-44 of this Act generally requires a transfer of the certificate of title to effectuate a transfer of ownership of a mobile home. However, this provision is not the exclusive method of transferring ownership. *Congress Finance Corp. v. Funderburk*, 416 So.2d 1059, 1062 (Ala. Ct. App. 1982). The certificate of title is not absolute evidence of ownership; it is prima facie evidence of ownership that may be rebutted in certain instances. *Id.*

*Rutledge v. Toyota Motor Credit (In re Rutledge)*, 115 B.R. 344 (Bankr. N.D. Ala. 1990), *aff'd* 121 B.R. 609 (N.D. Ala. 1990) involved facts similar to this case. Debtor sought turnover of a vehicle. Toyota argued that the vehicle was not property of debtor's estate. Debtor's father was listed as the owner on the vehicle's title; the insurance policy listed debtor as an insured party; debtor made payments on the vehicle and provided a trade-in when the vehicle was purchased; debtor used and possessed the vehicle. The Court found the facts "sufficient to establish at a minimum an equitable interest or ownership" in the debtor. *Rutledge*, 115 B.R. at 346.

Analogous to *Rutledge*, the debtor in this case is not listed as the owner on the home's title, but there is evidence that the titled owner, Ms. Moss, verbally transferred the home to debtor. The Court understands Greenpoint's concern about the implications of a decision in which a verbal agreement is deemed sufficient to rebut a certificate of title and provide an equitable interest in the transferee. However, this case involves more than a verbal agreement. The home in this case is possessed by the debtor and her three children. Payments were made by the debtor and Greenpoint accepted these payments. The Court finds that, under the facts in this case, the debtor has an equitable interest in the mobile home.

Greenpoint also argued that any transfer by Ms. Moss to debtor violated the terms of the retail installment contract and is therefore void. However, the contract does not necessarily void the transfer; it only permits Greenpoint to declare Ms. Moss in default. Moreover, the Court finds that the debtor has an equitable interest in the home notwithstanding the terms of the contract between Ms. Moss and BAHS. *See In re Allston*, 206 B.R. 297 (Bankr. E.D.N.Y. 1997) (fact that transfer of property by mortgagor to debtors was not in accordance with terms of mortgage was not cause to lift stay). Debtor's bankruptcy estate includes her interest in the home.

B.

Greenpoint's contention that its claim cannot be treated in debtor's plan is without merit. An entity that has a prepetition "claim" against a debtor is a "creditor" under the Bankruptcy Code. 11 U.S.C. § 101(10). The Code's definition of a "claim" is broad. 11 U.S.C. § 101(5).

Greenpoint accepted payment from Ms. King prior to the commencement of this case and it sued her in state court. Based on this and the unique facts in this case, the Court concludes that Greenpoint has a claim and is a creditor of Ms. King. Accordingly, it is proper for Ms. King to include Greenpoint's claim in her plan. *See In re Rutledge*, 208 B.R. 624 (Bankr. E.D. N.Y. 1997) (mortgagee not entitled to relief from stay notwithstanding lack of privity between debtor and mortgagee); *compare Washington v. General Motors Acceptance Corp. (In re Washington)*, 137 B.R. 748 (Bankr. E.D. Ark. 1992) (despite father being named as owner on title, motor vehicle was property of daughter's bankruptcy estate; however, daughter was not entitled to turnover of vehicle or to adjust debt of lender in her chapter 13 plan because lender was not her creditor).

Greenpoint asserted at the reconsideration hearing that recognizing a protected interest in Ms. King would encourage frequent transfers of assets before bankruptcy filings to thwart creditors who were in the process of exercising their rights against the actual titleholder. This fear is misplaced under these facts because this is not a case of a recent “flip” to a new owner. Ms. King had lived in the mobile home for some time and had a record of paying the monthly mortgage payment. She and her family are the sole occupants of the home. Greenpoint sued her in state court. If an abusive situation is shown, e.g. transfer of ownership on bankruptcy eve, no payments or minimal payments by the debtor on the asset, etc., the Court would not confirm a debtor’s plan. The plan might be proposed in bad faith or no actual transfer of the asset might have occurred based upon the facts. The evidence did not show bad faith in this case.

THEREFORE IT IS ORDERED AND ADJUDGED that the motion of Greenpoint Credit Corporation to reconsider the order of this Court denying the objection of Greenpoint Credit Corporation to confirmation of Shirley Ann King’s chapter 13 plan is DENIED.

Dated: November 12, 1999

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MARGARET A. MAHONEY  
CHIEF BANKRUPTCY JUDGE