

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

In the Matter of: : Chapter 13  
: :  
BEN BONNER, : :  
: :  
Debtor : Case No. 02-54219 RFH  
: :  
: :  
BEN BONNER, : :  
: :  
Movant : :  
: :  
: :  
vs. : :  
: :  
: :  
PURSER TRUCK SALES, : :  
: :  
Respondent : :

BEFORE

ROBERT F. HERSHNER, JR.  
CHIEF UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For Movant: Brenda C. Youmas  
Post Office Box 12  
Macon, Georgia 31202

For Respondent: Molly L. McCollum  
3370 Vineville Avenue, Suite 103  
Macon, Georgia 31204

The Chapter 13 Trustee: Camille Hope  
Post Office Box 954  
Macon, Georgia 31202

## MEMORANDUM OPINION

Ben Bonner, Movant, filed on October 31, 2002, a Motion for Turnover of Property and for Sanctions. This matter came on for a hearing on November 12, 2002. The Court, having considered the evidence presented and the arguments of counsel, now publishes this memorandum opinion.

Movant purchased a 1998 Ford Expedition (the “vehicle”) from Purser Truck Sales, Respondent. Respondent holds the first lien on the vehicle. Movant failed to make his monthly payments. Respondent repossessed the vehicle on September 17, 2002. Movant filed a petition under Chapter 13 of the Bankruptcy Code on September 20, 2002. Respondent has possession of the vehicle and refuses to turn it over to Movant. Respondent has not sold the vehicle. Movant is still listed as the owner on the certificate of title.

Respondent contends that the vehicle is not property of Movant’s bankruptcy estate.<sup>1</sup> Respondent contends that it is not required to turn over the vehicle. Respondent relies upon Bell-Tel Federal Credit Union v. Kalter (In re Kalter),<sup>2</sup> a recent decision by the Eleventh Circuit Court of Appeals. This Court has

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<sup>1</sup> See 11 U.S.C.A. § 541(a)(1) (West 1993) (property of the estate includes all legal and equitable interests of the debtor in property as of the commencement of the case).

<sup>2</sup> 292 F.3d 1350 (11th Cir. 2002).

carefully considered the Kalter decision as well as Georgia's version of the U.C.C. and Georgia's certificate of title statutes. The Court has also considered Rozier v. Motors Acceptance Corp. (In re Rozier)<sup>3</sup> (under Georgia law, ownership not terminated until the sale of the collateral by the secured creditor or by legal process). The Court is persuaded that it should follow the decision in Rozier.

Respondent argues, however, that Rozier failed to address the last sentence of O.C.G.A. § 40-3-34(b), which provides as follows:

40-3-34 Transfer of vehicle by operation of law; joint interest with survivorship.

....

(b) . . . If the holder of a security interest or lien succeeds to the interest of the owner and holds the vehicle for resale, he need not secure a new certificate of title but, upon transfer, shall promptly deliver to the transferee the last certificate of title, if available, and such other documents as the commissioner may require by rule or regulation.

O.C.G.A. § 40-3-34(b) (2001).

That sentence simply provides that if a lienholder succeeds to the interest of the owner and holds the vehicle for resale, the lienholder need not secure a new certificate of title until the vehicle is transferred to a third party. The Court is persuaded that, as stated in Rozier, ownership of a vehicle is not terminated unless

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<sup>3</sup> 283 B.R. 810 (Bankr. M.D. Ga. 2002) (Laney, J.).

the vehicle is sold by the secured creditor or by legal process. The Court is not persuaded that repossession, by itself, is sufficient to terminate ownership under Georgia law.

An order in accordance with this memorandum opinion will be entered this date.

DATED the 2nd day of December, 2002.

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ROBERT F. HERSHNER, JR.  
Chief Judge  
United States Bankruptcy Court