

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION

IN RE: : CASE NO. 99-60376
: :
JERRY HAMPTON, : :
SSN: XXX-XX-XXXX, : CHAPTER 12
: :
Debtor. : :

MEMORANDUM OPINION

On November 1, 2000, the court held a hearing on Trustee's objection to claim number 0013 of Lasseter Tractor Company, Inc. ("Lasseter") as a secured claim and Lasseter's response to the objection. At the conclusion of the hearing, the parties were given an opportunity to submit letter briefs. Trustee filed a letter brief. Lasseter and Debtor filed letter briefs in response. After considering the parties' briefs and the applicable statutory and case law, the court will sustain Trustee's objection.

FACTS

On November 20, 1995, Debtor purchased a model 8200 John Deere Tractor ("tractor") from Lasseter at which time Debtor entered into a security agreement with Deere & Company. ("Deere"). On November 22, 1995, Deere filed a UCC-1 financing statement in the Colquitt County Clerk's office describing its security interest in the tractor. (Exh. "A").

On May 3, 1999, Deere filed a UCC-3. Presumably, Deere

executed this filing attempting to assign its interest in the tractor to Lasseter because the "Assignment" box was checked. (Exh. "B"). However, the box and sentence indicating an "Assignment" was crossed through and the "Termination" block was checked. Id. Furthermore, the reference specifically describing that an assignment to Lasseter was being made, was also crossed through and initialed by Lee Ann P. Williams, an employee of Lasseter. Id. Representatives from Lasseter and Deere signed the UCC-3.¹ The original UCC-1 filed on November 22, 1995 was stamped "terminated 5-3-99." (Exh. "A").

On May 7, 1999, Debtor filed a voluntary petition under Chapter 12 of the Bankruptcy Code. ("Code"). On September 8, 1999, Lasseter filed a proof of claim as secured in the amount of \$63,104.30 describing the tractor as its collateral. On January 31, 2000, the court confirmed Debtor's Chapter 12 plan which treated Lasseter as secured. (Doc. No. 78).

In April 2000, Lasseter filed an amended UCC-3. Attached to the amended UCC-3, Lasseter submitted an affidavit indicating that the May 3, 1999 termination was in error.²

On August 2, 2000, Trustee objected to the proof of claim as

¹ Id. Deere's representative, Roberta J. Petty, signed under "Secured Parties" and Tina Arrington, a representative from Lasseter, signed under "Signature of Debtor(s)."

² The parties have stipulated that these documents were filed in the Colquitt County Clerk's office in April 2000, however, the court notes that there is no "Filed" stamp from the Clerk's office indicating the date and time of the filing. The only date reference is the April 7, 2000 date in the affidavit. See Exh. "C".

being secured. Trustee maintains that at the time Debtor's petition was filed, no valid financing statement existed. Therefore, Lasseter had an unperfected security interest in the tractor. Trustee does not object to the allowance of the claim as unsecured.

On September 26, 2000, Debtor filed his response to Trustee's objection. In both his response and letter brief, Debtor agrees with Trustee and maintains that equity would be better served if Lasseter's claim was treated as unsecured.

On August 30, 2000, Lasseter filed its response to Trustee's objection. Lasseter asserts that the termination of the original UCC-1 was done in error and executed without Lasseter's authority. In its brief, Lasseter maintains that it lacked authority to execute a termination statement and further asserts that equitable reformation is proper.

DISCUSSION

The issue before the court is whether Lasseter held a perfected a security interest in the tractor at the time Debtor filed his Chapter 12 petition. Because this issue has arisen in the context of an Objection to Claim, Rule 3007 of the Federal Rules of Bankruptcy Procedure governs. However, "[i]f an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding." FED. R. BANKR. P. 3007 (2000). Conceivably, Trustee's Objection to

Claim seeks "to determine the validity, priority, or extent of a lien" FED. R. BANKR. PROC. 7001(2)(2000).

Although the court finds that the Objection to Claim may not be the proper procedure for presenting this issue, this is a procedural defect and not a jurisdictional defect, which may be waived. In re Felker, 181 B.R. 1017, 1020 (Bankr. M.D. Ga. 1995)(Walker, J.). "The failure of any party to raise this issue either at the hearing or subsequently at the Court's invitation to brief the issues evidences such waiver by the parties." Id. (citing In re Duke, 153 B.R. 913, 914 (Bankr. N.D. Ala. 1993). Because none of the parties in this case raised this issue either at the hearing or in their letter briefs, the court finds that all parties waived this procedural defect.

Even if there had been no waiver, the court nevertheless finds that, given the facts of this case, an adversary proceeding is not required. If a creditor fails to file documentation supporting the existence of a security interest, an adversary proceeding is not required "to reduce the claim to an unsecured claim; a less formal objection to the claim is sufficient." In re Therneau, 214 B.R. 782, 785 (Bankr. E.D.N.C. 1997); See also In re Merry-Go-Round Enterprises, Inc., 227 B.R. 775, 778 (Bankr. D. M.D. 1998)(holding that an objection to secured status is not the type of relief specified in Rule 7001(2)). In this case, Lasseter did not file a UCC-1 with its proof of claim and Trustee is seeking only to reduce the claim to an unsecured status.

Therefore, the court finds that the Objection to Claim is sufficient.

A properly filed proof of claim is prima facie evidence of the validity and amount of the claim. FED. R. BANKR. P. 3001(f) (2000). Therefore, the party objecting to the claim has the burden of overcoming this evidentiary effect. Cherry v. General Motors Acceptance Corp. (In re Cherry), 116 B.R. 315, 317 (Bankr. M.D. Ga. 1990)(Laney, J.). This burden is met when the objecting party has presented "sufficient evidence to place the claimant's entitlement at issue[,]" at which time the burden then shifts to the claimant. Id. (quoting In re Taylor, 99 B.R. 371, 373 (Bankr. S.D. Ohio 1989)).

Trustee's objection clearly raises the issue of Lasseter's entitlement as a secured creditor. The court finds that Lasseter executed the May 3, 1999 termination in error and therefore, the court agrees with the cases cited by the Trustee. See Crestar Bank v. Neal (In re Kitchin Equipment Company of Virginia), 960 F.2d 1242 (4th Cir. 1992); In re Silvernail Mirror and Glass, Inc., 142 B.R. 987 (Bankr. M.D. Fla. 1992). Although the termination statement was filed in error and did not reflect the intent of the parties, anyone who conducted a search of the public records between May 3, 1999 and April 2000 would have concluded that no security interest existed. Kitchin at 1249; Silvernail at 989-90. The court finds that Lasseter's security interest was not perfected at the time of Debtor's filing and was

ineffective as against Trustee. Accordingly, the court finds that Trustee has met its burden and thus the burden of persuasion shifts to Lasseter. See In re Cherry, 116 B.R at 317.

Lasseter's asserts that it did not have the authority to terminate the UCC-1. Deere was the secured party which, at the time the termination was made, had not assigned its interest to Lasseter.³ Citing Eleventh Circuit authority, Lasseter maintains that because no agency relationship existed between Lasseter and Deere, Lasseter had no authority to execute a termination statement on behalf of Deere, the secured party. Borg-Warner Acceptance Corp. v. Davis, 804 F.2d 1580, 1583 (11th Cir. 1986). Furthermore, Lasseter distinguishes Kitchin and Silvernail by pointing to the fact that the erroneous termination in those cases were performed by the secured parties themselves.

However, the court disagrees with Lasseter and finds Borg-Warner to be inapplicable. In this case, unlike Borg-Warner, the termination statement was signed by a representative of both Lasseter and Deere. Deere's employee, Roberta J. Petty, signed as the secured party while Lasseter's employee, Tina Arrington, signed under the heading, "Signature(s) of Debtors(s)." Although Ms. Arrington incorrectly signed as Debtor, she nevertheless signed the UCC-3. (Exh. "B"). The fact that Debtor did not sign

³ Although no assignment was executed, the court finds that the May 3, 1999 UCC-3 was most likely an attempt by Deere to assign its interest to Lasseter.

is immaterial. There is no requirement that a debtor sign a UCC-3 termination statement in order for it to be effective. Moreover, Lee Ann P. Williams, another Lasseter employee, crossed through the reference to the assignment and initialed the cross through. Id. Because both parties signed the UCC-3, the court finds that sufficient authority existed to execute the termination statement. Accordingly, Lasseter has not met its burden of persuasion.

In conclusion, the court finds that Lasseter's security interest in the tractor was unperfected at the time Debtor filed his petition. Therefore, the court will sustain Trustee's objection to claim number 0013 as being secured and will allow the claim as unsecured. Because Debtor's Chapter 12 plan was confirmed treating Lasseter as secured, the court will direct Debtor to file a modification to his Chapter 12 plan.

An order in accordance with this Memorandum Opinion will be entered.

DATED this _____ day of January, 2001.

JOHN T. LANEY, III
UNITED STATES BANKRUPTCY JUDGE