

MEMORANDUM OPINION

Camille Hope, Chapter 13 Trustee, Movant, filed on January 29, 2001, a Motion to Determine Secured Status and Objection to Claim. The Bank of Upson, Respondent, filed a response on March 1, 2001. A hearing was held on April 5, 2001. The Court, having considered the stipulation of facts and the arguments of counsel, now publishes this memorandum opinion.

Ethel Corley, Debtor, purchased a 1998 Chevrolet S-10 truck on October 23, 1998. Respondent financed the purchase. Debtor signed a promissory note and a security agreement, which were assigned by the dealer to Respondent. The promissory note provided that Debtor would make sixty monthly payments of \$355.02. Respondent properly perfected its security interest on the certificate of title.

Debtor later signed a second promissory note and gave Respondent a second security interest in her truck.¹ Debtor subsequently satisfied this second obligation. Respondent's employee, a bank teller, mistakenly and inadvertently released the certificate of title on the truck to Debtor.

Debtor did not send the certificate of title to the

¹ The record does not reflect the circumstances under which this second obligation was created.

state revenue commissioner. The commissioner, therefore, did not release Respondent's security interest on the certificate of title.² Debtor continued to make the monthly payments as required by the promissory note dated October 23, 1998.

Debtor and her husband filed a joint petition under Chapter 13 of the Bankruptcy Code on April 10, 2000. The Court entered an order confirming their Chapter 13 plan on August 31, 2000.

Respondent discovered that the title to Debtor's truck had been released when Respondent prepared its proof of claim. Respondent, in its proof of claim, asserts that its claim for \$13,164.96 is secured by Defendant's truck. Movant contends that Respondent's security interest has been released and that Respondent's claim is unsecured.

A trustee in bankruptcy, under the "strong-arm" provisions of the Bankruptcy Code, has the rights and powers of a hypothetical judicial lien creditor under applicable state law. A trustee may avoid an "unperfected security interest and relegate the debt to the status of a general unsecured claim." 5 Collier on Bankruptcy ¶ 544.05 (15th ed. rev. 2001); see 11 U.S.C.A. § 544(a)(1) (West 1993).

"The secured status of a creditor is determined as of the date of the filing of the bankruptcy petition."

² See O.C.G.A. § 40-3-56(a)(1), (b) (1997).

Perkins v. Gilbert (In re Perkins), 169 B.R. 455, 458 (Bankr. M.D. Ga. 1994). Thus, Movant may avoid Respondent's security interest unless the security interest was properly perfected on the date that Debtor filed for bankruptcy relief.

In Smith v. American Honda Finance Corp. (In re Marshall),³ the creditor perfected its security interest on the certificate of title to the debtor's car. The creditor subsequently, through an error, executed a lien release on the certificate of title and mailed the title to the debtor. The underlying debt had not been satisfied. The debtor did not forward the title to the Alabama Department of Revenue. The Department of Revenue, therefore, did not issue a new certificate of title indicating that the creditor's security interest had been released.

This Court held that the creditor's security interest was still perfected and stated, in part, as follows:

Section 32-8-64(a) of the Alabama Code governs the issue of the release of a security interest in an automobile. After conducting a plain reading of § 32-8-64(a), the court finds that three steps must be completed in order for a lien release to be effective: (1) execution of a release on the certificate; (2) delivery of the certificate to the next lienholder or owner; and (3) delivery of the certificate to the DOR by the next lienholder or owner. Moreover, given the beginning language of the statute, "[u]pon satisfaction of the security interest . . .," the court finds that the

³ Ch. 13 Case No. 99-42516 JTL, Adv. No. 00-4078 (Bankr. M.D. Ga. May 21, 2001) (Laney, J.)

satisfaction of the lien is a prerequisite for a release to be valid. See General Electric Capital Corp. v. Spring Grove Transport, Inc. (In re Spring Grove Transport, Inc., 202 B.R. 862, 866 (Bankr. E.D. Va. 1996) (distinguishing Ala. Code § 32-8-64(a) from Virginia law). Therefore, because the lien was not satisfied and the final step of delivery to the DOR was not completed, the court finds that Defendant did not effectively release its security interest in the Honda.

This holding is consistent with the reasoning of the only other case found interpreting this statute which is cited by the parties. See Southtrust Bank, N.A. v. Toffel (In re Blackerby), 53 B.R. 649 (Bankr. N.D. Ga. 1985). Decided on facts different from the present case, the court in In re Blackerby held that a bank did not effectively release its security interest simply by mistakenly noting a release on the certificate of title. Id. at 653. The court reasoned that its holding was consistent with "the purposes underlying the Alabama Uniform Certificate of Title and Antitheft Act one of which is to provide a means for interested parties to ascertain essential information concerning title to vehicles." Id. at 654. To this end, the court further explained that even though the face of the title reflected a release, the DOR's records reflected the existence of a valid lien. Likewise in the present case, the DOR's records reflected, at all times, a valid lien. Therefore, the court finds that AHFC did not effectuate a release of its security interest.

Alabama Code Section 32-8-64(a)⁴ provides, in part, as follows:

§ 32-8-64. Release of security interest

(a) Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of the

⁴ Ala. Code § 32-8-64(a) (1975).

lienholder, he shall, within 10 days after demand execute a release of his security interest, in the space provided therefor on the certificate or as the department prescribes, and mail or deliver the certificate and release to the next lienholder named therein, or, if none, 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.

Ala. Code § 32-8-64(a) (1975).

The Court notes that Alabama Code Section 32-8-64(a) is very similar to Georgia Code Section 40-3-56.⁵

Georgia Code Section 40-3-56 provides, in part, as follows:

40-3-56. Satisfaction of security interest and liens.

(a)(1) If any security interest or lien listed on a certificate of title is satisfied, the holder thereof shall, within ten days after demand, execute a release in the form the commissioner prescribes and mail or deliver the release to the owner,

. . . .

(b) The owner may then forward the certificate of title, the release, the properly executed title application, and title application fee to the commissioner or the commissioner's duly authorized county tag agent, and the commissioner or authorized county tag agent shall release the security interest or lien on the certificate or issue a new certificate and mail or deliver the certificate to the owner.

⁵ O.C.G.A. § 40-3-56 (1997).

O.C.G.A. § 40-3-56(a)(1), (b) (1997).

Turning to the case at bar, Respondent mistakenly and inadvertently released the certificate of title on the truck to Debtor. Debtor did not forward the title to the state revenue commissioner to have Respondent's security interest released. Debtor's underlying obligation to Respondent has not been satisfied. The Court can only conclude that Respondent's security interest remains perfected. The Court is persuaded that Movant cannot avoid Respondent's security interest under section 544(a)(1). See Gover v. Home and City Savings Bank, 574 So.2d 306 (Fla. Dist. Ct. App. 1991) ("We join the unanimity of other jurisdictions and hold that cancellation or renunciation of an instrument [a purchase money mortgage] is ineffective if it is unintentional or procured by mistake").

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

DATED the 1st day of August, 2001.

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