

11 U.S.C. § 547(b)
11 U.S.C. § 547(e)(2)
Preference

Grassmueck v. First Security Bank, Adversary No. 00-03418-elp
In re Bridges, Case No. 99-38881-elp7
Appellate No. CV-01-1163BR

09/20/2001 AB aff'g ELP

Unpub

District Court affirms bankruptcy court's decision that the trustee could not avoid a security interest in the debtors' automobile under 11 U.S.C. § 547(b). The issue in this case was whether the transfer was for or on account of an antecedent debt. Resolution of this issue turned on whether the security interest was perfected within the 10 days allowed under § 547(e)(2). The bankruptcy court determined that the requirements for perfection under Oregon law were satisfied within the 10 day period and that the transfer was not avoidable.

FILED

2001 SEP 20 P 4: 22

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
FOR THE DISTRICT OF OREGON

BY _____

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*lod 9-25-01
USBC*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re SCOTT J. BRIDGES and)
LAURIE A. BRIDGES,)
)
 Debtors.)

CV 01-1163-BR

BR Case No. 399-38881-elp7

Adv. Proc. No. 00-03418-elp

MICHAEL A. GRASSMUECK, INC.,)
Trustee,)
)
 Plaintiff-Appellant,)

OPINION AND ORDER

v.)

FIRST SECURITY BANK,)
)
 Defendant-Appellee.)

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Attorneys for Plaintiff-Appellant

Certified to be a true and correct
copy of original filed in my office.

Dated 9-21-01

By *[Signature]* Deputy
Donald M. Cinnamon, Clerk

1 - OPINION AND ORDER

29

28

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Attorneys for Defendant-Appellee

BROWN, Judge.

This matter comes before the Court on Plaintiff-Appellant's appeal of a final decision of the bankruptcy court in an adversary proceeding. Pursuant to 28 U.S.C. § 158(b)(1) and LR 2200-2, Plaintiff objected to referral of this matter to the Bankruptcy Appellate Panel and elected to have the appeal heard by this Court. The Court, therefore, has jurisdiction over the appeal pursuant to 28 U.S.C. § 158(a).

This Court reviews *de novo* a bankruptcy court's conclusions of law. *Grey v. Federated Group, Inc.*, 107 F.3d 730, 732 (9th Cir. 1997). The bankruptcy court's findings of fact cannot be set aside unless "clearly erroneous." Fed. R. Bankr. Pro. 8013.

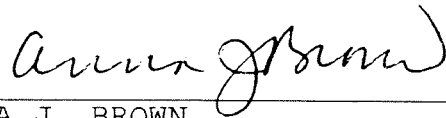
Plaintiff-Appellant is the trustee in bankruptcy in the Chapter 7 proceedings for debtors' Scott and Laurie Bridges. Plaintiff-Appellant filed an adversary proceeding in bankruptcy court seeking to avoid the security interest claimed by Defendant First Security Bank (FSB) in an automobile owned by the Bridges. The trustee contended the transfer of the security interest to FSB was a preferential transfer under 11 U.S.C. § 547(b). A

trial was held on stipulated facts. In a letter opinion issued March 15, 2001, Bankruptcy Judge Elizabeth L. Perris ruled FSB timely perfected its security interest in the Bridges' vehicle and, therefore, the transfer of the security interest was not a preferential transfer. A judgment dismissing the adversary proceeding was entered accordingly.

This Court has carefully and thoroughly reviewed the record *de novo* and finds no error. The decision of the bankruptcy court, therefore, is **AFFIRMED** in all respects.

IT IS SO ORDERED.

DATED this 20th day of September, 2001.



ANNA J. BROWN
United States District Judge

BridgesCV01-1163.O&O.9-21-01.wpd

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

ELIZABETH L. PERRIS
BANKRUPTCY JUDGE

1001 S.W. FIFTH AVENUE, # 700
PORTLAND, OREGON 97204
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LOZETTA B. DOLL, JUDICIAL ASSISTANT
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March 15, 2001

David B. Mills, Esq.
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Pamela Egan Singer, Esq.
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Re: Michael A. Grassmueck, Inc. v. First Security Bank,
Adversary Proceeding No. 00-3418-elp;
Bankruptcy Case No. 399-38881-elp7

Dear Counsel:

The purpose of this letter is to rule on the trial held on the parties' stipulated facts in the above-referenced adversary proceeding. After considering the pleadings filed and the arguments raised at the hearing, I conclude that Michael A. Grassmueck, the chapter 7 trustee ("the Trustee"), may not avoid the security interest of First Security Bank ("FSB") under 11 U.S.C. § 547(b).

FACTS

The record presented establishes the following facts.

Larry Krutsinger sold a vehicle ("the vehicle") to Hood River Ford Mercury ("Hood River"). On September 6, 1999, Debtors Scott and Laurie Bridges ("Debtors") entered into a contract ("the Contract") to purchase the vehicle on credit from Hood River and took possession of the vehicle on that same day. Under the terms of the Contract, Debtors granted Hood River a security interest in the vehicle. Hood River subsequently sold the Contract to FSB, the defendant in this avoidance action.

Debtors filed their chapter 7 petition on November 15, 1999.

ISSUE

Whether the Trustee may avoid FSB's security interest pursuant to § 547(b).

DISCUSSION

Section 547(b) states as follows:

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property-

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made-
 - (A) on or within 90 days before the date of the filing of the petition; or
 - (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if-
 - (A) the case were a case under chapter 7 of this title;
 - (B) the transfer had not been made; and
 - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

The parties stipulate that all of the requirements for avoidance of a preferential transfer under § 547(b) are present with the exception of whether the transfer was for or on account

of an antecedent debt.

Section 547(e)(2) provides, in relevant part, that a transfer is made

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 10 days after, such time, except as provided in subsection (c)(3)(B); [or]

(B) at the time such transfer is perfected, if such transfer is perfected after such 10 days[.]

Resolution of the issue before this court turns on the date FSB's security interest was perfected. If FSB's security interest was perfected within 10 days after September 6, 1999, the date the security interest took effect between Debtors and Hood River, the transfer is deemed to have been made on September 6, 1999 and was not for or on account of an antecedent debt. In re Loken, 175 B.R. 56, 63 (9th Cir. BAP 1994). On the other hand, if FSB's security interest was perfected after the ten-day period, the affirmative defense set forth in § 547(c)(3) may be available to FSB so long as its security interest was perfected within 20 days of the date that Debtors took possession of the vehicle.¹ Id.

¹ Section 547(c) provides that a trustee may not avoid a transfer

(3) that creates a security interest in property acquired by the debtor -

(A) to the extent that such security interest secures new value that was -

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the debtor to acquire such property; and

(iv) in fact used by the debtor to acquire such
(continued...)

For the reasons set forth below, I conclude that FSB's security interest was perfected within the 10-day period. As a result, the requirements for avoidance under § 547(b) are not met. I therefore do not reach the issue of whether the affirmative defense set forth in § 547(c)(3) applies in this case.

ORS 803.097 governs the perfection of a security interest in a vehicle and provides, in relevant part, as follows:

(1) Except as provided in subsection (4)^[2] of this section, the exclusive means for perfecting a security interest in a vehicle is by application for notation of the security interest on the title in accordance with this section. The application may accompany the application for a title or may be made separately at any time prior to issuance of title and must be accompanied by evidence of ownership as defined by the Department of Transportation by rule unless the department is in possession of evidence of ownership when it receives the application. . . .

(2) When the department processes an application for a security interest the department shall mark on the application or otherwise indicate on the record that date the application was first received by the department. . . .

(3) If the department has the evidence required by subsection (1) of this section and if the application contains the name of each owner of the vehicle, the name and address of the secured party and the vehicle identification number of the collateral, the security interest is perfected as of the date marked on the application or indicated in the record by the department. If the application does not contain the information required by this subsection, or if the department does not have the required evidence, the department shall indicate on the application or on the

¹(...continued)

property; and

(B) that is perfected on or before 20 days after the debtor receives possession of such property;

² ORS 803.097(4) applies to the perfection of a security interest where the debtor is in the business of selling vehicles and the vehicle constitutes inventory held for sale. This subsection is not applicable in this case.

record that the date placed on the application or the record pursuant to subsection (2) of this section is not the date of perfection of the security interest.

"Evidence of ownership" for purposes of this statute is defined by administrative rule as follows:

(1) "Evidence of Ownership" as used in ORS 803.097 in reference to the application for notation of a security interest in a vehicle must be in the form of a document, unless otherwise provided by rule, that:

(a) Contains a description of the vehicle;

(b) Identifies who owns the vehicle or to whom interest is assigned, awarded, transferred, etc; and

(c) Is the primary ownership document required for issuance of a title, as provided in OAR 735-020-0010; or

(d) Is a transitional ownership document (TOD)^[3] . . .

OAR 735-020-0000(1). A primary ownership document is the same as a primary ownership record and is defined by ORS 801.402 as 1) a manufacturer's certificate of origin or equivalent record; 2) the current title, or 3) any other record as determined by rule. OAR 735-020-0000(3).

On September 9, 1999, Hood River submitted three documents to the Department of Motor Vehicles ("DMV"):

1. The Certificate of Title ("the Title"). Larry Krutsinger is shown as the owner on the front of the Title. The back of the Title shows Hood River as the first assignee, but Krutsinger's signature is missing.

2. An Application for Title and Registration ("the Application")

3. A document entitled Secure Odometer Disclosure/Reassignment ("the Reassignment"). The Reassignment shows Debtors as the buyers and Hood River as the seller. The Reassignment is signed by both parties.

³ The parties do not argue that a transitional ownership document is implicated in this case.

David B. Mills, Esq.
Pamela E. Singer, Esq.
March 15, 2001
Page 6

Exhibit 1, pages 6-10.

On October 4, 1999, DMV sent a letter to Debtors stating, in relevant part:

We have not received everything we need to complete the transaction for the vehicle noted above. The bill of sale was either missing or incomplete.

We need an original bill of sale from Larry Krutsinger. . . .

Please respond promptly so we can give your application further attention. . . .

Exhibit 1, page 12.

On October 11, 1999, Hood River submitted a Secure Power of Attorney and a Secure Odometer Disclosure/Reassignment to DMV. Exhibit 1, page 4 and 11. These documents show Krutsinger as the seller and Hood River as the buyer and are signed by both parties. Thereafter, the DMV issued a certificate of title showing Debtors as the owners and FSB as a security interest holder.

The question is whether the documentation submitted to the DMV by Hood River on September 9, 1999, was sufficient to perfect FSB's security interest as of that date. The Trustee contends that FSB's security interest was not perfected as of September 9, 1999, because Hood River did not submit the required evidence of ownership in accordance with ORS 803.097(1) and OAR 735-020-0000.⁴

In his opening brief, the Trustee asserts that the evidence of ownership submitted by Hood River was deficient in two regards: 1) Hood River did not submit Krutsinger's release and 2) the primary ownership document/Title does not show Debtors as the owners of the vehicle. The Trustee appears to have abandoned his

⁴ Under ORS 803.097(3), the application, as distinguished from the evidence of ownership, must contain the name of each owner, the name and address of the secured party and the vehicle identification number. The application clearly meets the statutory requirements and the Trustee does not claim otherwise.

David B. Mills, . g.
Pamela E. Singer, Esq.
March 15, 2001
Page 7

position with regard to the omission of Krutsinger's release.⁵ Therefore, the issue is whether the evidence of ownership submitted by Hood River was insufficient to permit the perfection of FSB's security interest because Debtors are not listed as owners on the back of the Title.

FSB's security interest was perfected under Oregon law as of September 9, 1999 because all of the requirements for perfection of a security interest were present as of the initial date of submission.

While it is true that the primary ownership document/Title does not describe Debtors as owners of the vehicle, the Reassignment clearly does. The Reassignment is a secure document used by dealers in connection with the transfer of ownership of vehicles. See OAR 735-028-0110.⁶ It is identical in form to the back of a certificate of title and should be considered to be an attachment or addendum to the Title when submitted to the DMV simultaneously with the title. To hold otherwise would be to put form over substance; it would in effect hold that when the name of the actual owner is on the DMV reassignment form rather than the title, the evidence of ownership is insufficient to permit perfection of a security interest. There was no deficiency in the evidence of ownership submitted by Hood River on September 9, 1999 because the primary ownership document/Title, including the attached Reassignment, contains all of the required information.

At the hearing, the Trustee argued that my conclusion is not consistent with OAR 735-020-0010(2), which sets forth the circumstances under which the DMV shall consider a document other than a certificate of title to be a primary ownership document. My decision in this proceeding is not contrary to OAR 735-020-0010(2). I simply find that the Reassignment submitted simultaneously with the Title is in effect part of the Title, not that the Reassignment itself separately qualifies as a primary

⁵ If the Trustee has not abandoned this position I would have rejected it. See OAR 735-020-0010(7) (a missing release will not invalidate a primary ownership document for purposes of perfecting a security interest).

⁶ The rules governing dealers are different in a number of regards from those governing non-dealer buyers and sellers of motor vehicles. See, e.g., ORS 803.092(2)(b) (a dealer purchasing a motor vehicle is not required to re-title the vehicle while a non-dealer transferee must submit a title application within 30 days of the date of transfer).

David B. Mills,
Pamela E. Singer, Esq.
March 15, 2001
Page 8

ownership document. I disagree with the Trustee's rigid interpretation of the definition of evidence of ownership set forth in Oregon statute and administrative rule.

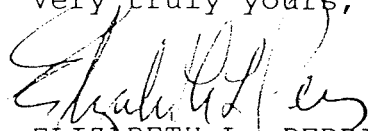
The Trustee's argument is centered around the October 4, 1999 letter from the DMV. In that letter, the DMV requests documentation of Krutsinger's release of his interest in the vehicle. The DMV did not reject the primary ownership document/Title as being insufficient evidence of ownership for purposes of perfection. The only action requested in the letter was submission of Krutsinger's release. The administrative rules make it clear that the DMV will not determine a primary ownership document to be invalid as evidence of ownership for the purpose of perfecting a security interest based only on missing title requirements, specifically including releases. OAR 735-020-0010(7).

The DMV's handling of the transaction is consistent with my conclusion. The Application is date stamped as received on September 9, 1999. If the date an application is received is not the date of perfection, the DMV is required to indicate as such on the application or on the record. ORS 803.097(3). The date stamped on the Application was not invalidated as the date of perfection in this case. The Trustee asserts that the DMV record reproduced in Exhibit 1 at page 13 is evidence that FSB's security interest was not perfected as of the original submission date. I disagree. The DMV record notes a secured interest holder perfection and states that a "requirement" is missing. The requirement referenced is Krutsinger's release, the omission of which did not prevent perfection of FSB's security interest.

CONCLUSION

For the reasons set forth above, the Trustee may not avoid FSB's security interest under § 547(b). Ms. Singer shall submit a judgment within 10 days.

Very truly yours,



ELIZABETH L. PERRIS
Bankruptcy Judge

ELP:lbd