

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN**

Cite as: [Unpublished]

Jeff M. Boylen, Debtor
Bankruptcy Case No. 05-13208-7

United States Bankruptcy Court
W.D. Wisconsin, Madison Division

January 24, 2006

Michael J. Rynes, Madison, WI for Debtor

Robert D. Martin, United States Bankruptcy Judge

MEMORANDUM DECISION

Jeff Boylen filed his Chapter 7 bankruptcy on April 25, 2005. Citizens Bank (the bank) was a creditor of Mr. Boylen and claims to have a perfected security interest in his "mobile" home.

In October of 2003 Mr. Boylen took out a loan to purchase a manufactured home and signed a promissory note granting the bank a security interest in the home. For reasons unknown, the seller did not provide him with a certificate of title. Instead of applying for a replacement title, Mr. Boylen attempted to obtain a new title certificate by mailing an application and application fee to the Wisconsin Department of Commerce (DOC) without including an existing certificate of title. The DOC returned his application stating that the DOC requires an existing certificate of title to accompany the application. Mr. Boylen took no further action to title the home.

On September 8, 2005, the bank filed a motion for abandonment, asserting that it has a perfected lien which fully encumbers Mr. Boylen's home and that the home is of inconsequential value and benefit to the estate. The trustee objected to the bank's motion, stating that the bank's lien is not perfected because there is no title that shows the bank's interest. The bank's alternative argument is that Mr. Boylen does not own his home because there is no certificate of title indicating his ownership, and because he has no interest in the home the trustee has no standing to challenge the bank's lien.

The parties agree that if the bank has a valid perfected security interest, the home is of inconsequential value to the bankruptcy estate. The issues have been submitted for decision on briefs.

Wis. Stat. § 101.9213 establishes how a security interest in a manufactured home is to be perfected. It states, in relevant part:

101.9213. Perfection of security interests

(1) Unless excepted by s. 101.9202, a security interest in a manufactured home of a type for which a certificate of title is required is not valid against creditors of the owner or subsequent transferees or secured parties of the manufactured home unless perfected as provided in ss. 101.9202 to 101.9218.

(2) Except as provided in sub. (3), a security interest is perfected by the delivery to the department of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the secured party, and the required fee. The security interest is perfected as of the later of the time of its delivery or the time of the attachment of the security interest.

...

The bank's security interest is not perfected because the requirements of Wis. Stat. § 101.9213(2) were not met. Specifically, the bank did not deliver to the DOC a copy of the certificate of title for the manufactured home. Under Wis. Stat. § 101.9214(2), it was the bank's duty to deliver the certificate of title to the DOC. Wis. Stat. § 101.9214 provides, in relevant part:

101.9214. Duties on creation of security interest

If an owner creates a security interest in a manufactured home, unless the name and address of the secured party already is contained on the certificate of title for the manufactured home:

(1) The owner shall immediately execute, in the space provided therefor on the certificate of title or on a separate form or in an automated format prescribed by the department, an application to name the secured party on the certificate, showing the name and address of the secured party, and cause the certificate, application and the required fee to be delivered to the secured party.

(2) The secured party shall immediately cause the certificate, the application and the required fee to be mailed or delivered to the department.

...

The bank argues that its security interest in the debtor's home was perfected when it delivered to the DOC a Wisconsin home certificate application and accompanying fees, because the certificate of title does not exist. The bank has provided no evidence that the title does not exist. The bank only states that the original owner did not hand over a copy of the title to Mr. Boylen when the home was sold.

Subject to a few exceptions, a certificate of title is required for manufactured homes situated in this state. Wis. Stat. § 101.9203.

101.9203. When certificate of title required

(1) Except as provided in subs. (3) and (4), the owner of a manufactured home situated in this state or intended to be situated in this state shall make application for certificate of title under s. 101.9209 for the manufactured home if the owner has newly acquired the manufactured home.

(2) Any owner who situates in this state a manufactured home for which a certificate of title is required without the certificate of title having been issued or applied for, knowing that the certificate of title has not been issued or applied for, may be required to forfeit not more than \$200. A certificate of title is considered to have been applied for when the application accompanied by the required fee has been delivered to the department or deposited in the mail properly addressed and with postage prepaid.

(3) Unless otherwise authorized by rule of the department, a nonresident owner of a manufactured home situated in this state may not apply for a certificate of title under this subchapter unless the manufactured home is subject to a security interest or except as provided in s. 101.9209(1)(a).

(4) The owner of a manufactured home that is situated in this state or intended to be situated in this state is not required to make application for a certificate of title under s. 101.9209 if the owner of the manufactured home intends, upon acquiring the manufactured home, to permanently affix the manufactured home to land that the owner of the manufactured home owns.

The bank has not stated that any exception from obtaining a certificate of title applies. Not having a title in hand is not the same as there being no title in existence. An existing certificate of title, whether it be lost, stolen, or mutilated must be promptly replaced. Wis. Stat. § 101.9207. Mr. Boylen did not obtain a replacement title. The bank did not take care to properly perfect its security interest. "It is well established that a creditor who fails to perfect a security interest prior the filing of a petition in bankruptcy is subordinate to the trustee who stands as a hypothetical ideal lien creditor under § 544(a)(1) of the Bankruptcy Code." *In re Minichello*, 120 B.R. 17, 20 (Bankr. M.D. Pa. 1990).

This situation could have been easily avoided had the bank, prior to lending to Mr.

Boylen, required him to obtain a replacement title. Had the bank done so it could have complied with the statutory requirement that it submit the certificate of title to the DOC in order to perfect its security interest. Since the bank did not comply with this requirement, its interest is not properly perfected.

Even if Mr. Boylen does not have all the legal indices of ownership of the property due to his failure to comply with Wis. Stat. 101.9209, he still has an equitable interest in the property based on his payment of the purchase price to the seller. The bankruptcy estate includes equitable interests of a debtor in property as of the commencement of the case. 11 U.S.C. § 541(a)(1). Mr. Boylen's interest in the home permits the trustee to compel delivery of a certificate of title, or to obtain a replacement title. However, perfection of the bank's lien does not follow the granting of a title. The bank did not comply with statutory requirements to timely perfect its lien and cannot perfect their lien post-petition. Its motion for abandonment must be denied. It is so ordered.