

July 14, 2003

**Barbara A.
Schermerhorn
Clerk**

NOT FOR PUBLICATION
**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE ALAN LAWRENCE PICARD,
Debtor.

BAP No. WY-03-016

MEDVED CHEVROLET SOUTH, INC.,
Appellant,

Bankr. No. 02-10280
Chapter 7

v.

ORDER AND JUDGMENT*

RANDY ROYAL, Trustee,
Appellee.

Appeal from the United States Bankruptcy Court
for the District of Wyoming

Before BOHANON, MICHAEL, and BROWN, Bankruptcy Judges.

MICHAEL, Bankruptcy Judge.

The parties did not request oral argument, and after examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

In a situation that can only be described as unique, we are asked to reverse the decision of the bankruptcy court in allowing for the sale of a motor vehicle over the objection of a party who is not a creditor, an unsuccessful bidder, or a disgruntled debtor. Instead, this party claims that the bankruptcy court erred when it allowed a

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

Chapter 7 trustee to obtain possession of the vehicle and release the lien of record thereon by negotiation instead of litigation. Finding no error, we affirm.

I. Background

Alan Lawrence Picard (“Debtor”) filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on June 19, 2002. Randy L. Royal (“Trustee” or “Royal”) was appointed to serve as the trustee in the case. One of the assets listed by Debtor was a 2001 Chevy Silverado Pickup Truck (the “Truck”). Apparently, Debtor had pledged the Truck to General Motors Acceptance Corporation (“GMAC”) as collateral for a loan.¹

In the course of performance of his duties as trustee, Royal made the determination that the lien held by GMAC on the Truck was subject to his avoiding powers. Royal was successful in convincing GMAC to release its lien and surrender the Truck to Royal without resorting to litigation.² After taking possession of the Truck, Royal made arrangements to sell it, and on November 15, 2002, filed a notice of intent to sell the Truck at public auction.

The only objection to the sale was filed by Medved Chevrolet South, Inc. (“Medved”), appellant herein. Medved claimed to have an interest in the Truck (or at least its disposition) due to its contractual relationship with GMAC.³ Medved further

¹ We use the word “apparently” because Appellant has not provided us with a transcript or anything other than a few pleadings from which to determine what transpired at the lower court. It is our understanding that no evidentiary hearing was held and that these facts are not subject to any real dispute. Most of our findings are based upon the allegations made by Appellant in the court below.

² GMAC had taken possession of the Truck prior to the filing of the bankruptcy case.

³ The relevant portion of Medved’s objection reads as follows:

13. Following its voluntary surrender of the vehicle to the Trustee, General Motors Acceptance Corporation made demand upon Medved that Medved satisfy the obligations of the debtor under his installment loan agreement.

(continued...)

contended that GMAC's lien upon the Truck was not subject to attack by the Trustee. Medved claimed that GMAC had demanded payment upon Medved under the contractual arrangement between GMAC and Medved.⁴ As a result of this alleged demand, Medved asked the bankruptcy court to determine that Medved had standing to object to the sale and asked the bankruptcy court to prevent Royal from selling the Truck.

The bankruptcy court held a hearing on Medved's objection to the sale of the Truck on January 9, 2003.⁵ After hearing argument from the parties, the court overruled Medved's objection. In an order entered on February 3, 2003, the bankruptcy court made the following findings:

GMAC, as the lien holder of record, endorsed the certificate of title in favor of the Trustee for the 2001 Chevrolet pickup having previously conceded that perfection of its lien was preferential under 11 U.S.C. § 547 and mailed to the Trustee an appropriate lien release. The trustee obtained legal title in the name of the estate and is authorized to sell the vehicle.

The facts related to the perfection of GMAC's lien are similar to others that previously came before the court, and it appears therefore, that the lien was likely avoidable. Regardless, the lien having been voluntarily released by GMAC, Medved's dispute is with GMAC.⁶

The bankruptcy court went on to approve the sale of the Truck by Royal. This appeal

³ (...continued)

14. While Medved denies it has any obligation to General Motors Acceptance Corporation with respect to this issue, it nonetheless objects to the sale of the vehicle to protect its interests in the vehicle, as they may appear, should Medved become a successor in interest to the claims of GMAC in and to the vehicle in question.

Medved's Objection at 2, *in* Appellant's App. at 3.

⁴ This contractual arrangement was not made a part of the record. Apparently GMAC provides financing for consumers who purchase vehicles from Medved.

⁵ The parties have described this hearing as a "non-evidentiary hearing." Once again, we have no record of what actually transpired at the hearing nor do we know whether the court refused to allow the offering of evidence or whether the parties simply chose not to present evidence.

⁶ Order at 1, *in* Appellant's App. at 6.

followed.

II. Jurisdiction

This Court has jurisdiction to hear timely-filed appeals from “final judgments, orders, and decrees” of bankruptcy courts within the Tenth Circuit, unless one of the parties elects to have the district court hear the appeal.⁷ Neither party elected to have this appeal heard by the United States District Court for the District of Wyoming, thus they have consented to our review. A decision is considered final “if it ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’”⁸ In the present case, the order allowing the sale resolved all of the issues raised by Medved. The matter is thus ripe for review.

III. Standard of Review

The parties agree that the decision by the bankruptcy court is based upon a finding that Medved lacked standing to object to the sale of the Truck. An issue of standing is a question of law that we review *de novo*.⁹ When reviewing questions of law *de novo*, the appellate court is not constrained by the trial court’s conclusions, and may affirm the trial court on any legal ground supported by the record.¹⁰

IV. Discussion

In the brief which it submitted, Medved listed four issues for this Court’s consideration:

1. Whether the bankruptcy court erred when it noted that the lien held by GMAC might be subject to attack as a preference;
2. Whether the lien held by GMAC was in fact properly perfected;

⁷ 28 U.S.C. § 158(a)(1), (b)(1), and (c)(1); FED. R. BANKR. P. 8001; 10th Cir. BAP L.R. 8001-1.

⁸ *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

⁹ *See Wilson v. Glenwood Intermountain Properties, Inc.*, 98 F.3d 590, 593 (10th Cir. 1996).

¹⁰ *See Wolfgang v. Mid-America Motorsports, Inc.*, 111 F.3d 1515, 1524 (10th Cir. 1997).

3. Whether steps taken by GMAC had the legal effect of divesting the bankruptcy estate of any interest in the Truck; and
4. Whether the Trustee was entitled to avoid the lien upon the Truck.¹¹

We note that three of these issues were never presented to the bankruptcy court. GMAC voluntarily delivered the Truck as well as a release of its lien to Royal. As such, the bankruptcy court was not required to determine the validity, priority or extent of GMAC's interest in the Truck. All issues relating to the lien on the Truck were removed from any consideration by the court as a result of the agreements between GMAC and Royal.

The only possible bankruptcy issue for this court to consider is whether the fact that GMAC repossessed the Truck prior to the filing of the bankruptcy case operated to terminate any right, title and interest of the debtor (and therefore Royal as trustee) in the Truck. In support of its position, Medved cites WYO. STAT. ANN. § 31-2-104(c) (Michie 2002). That section deals with the steps which a creditor must take to obtain title after repossession of a motor vehicle; it is silent as to when a debtor loses all interest in a motor vehicle after repossession.¹² However, the Wyoming Supreme Court

¹¹ Brief of Appellant at 1-3.

¹² The section of the statute cited by Medved reads as follows:

(c) In the event of a transfer by operation of law of any interest in a vehicle as upon an order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or sales contract or otherwise than by voluntary act of the person whose title or interest is transferred, the administrator, receiver, trustee, sheriff, creditor or other representative or successor in interest of the person whose interest is transferred shall forward to the county clerk an application for a certificate of title together with a verified or certified statement of the transfer of interest. The statement shall set forth the reason for the involuntary transfer, the interest transferred, the name of the transferee, the process or procedure effecting the transfer and other information requested by the county clerk. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in a vehicle in such cases shall be furnished with the statement. If a transfer of title to a creditor is accomplished in accordance with the provisions of this subsection, a creditor retains the right to seek any deficiency balance which may exist after sale, provided the creditor has complied with all applicable law, and the transfer by itself shall not be

(continued...)

has provided some manner of guidance regarding the interests of a debtor in property that has been repossessed:

The UCC, as adopted in Wyoming, Wyo.Stat. §§ 34.1-1-101 to -10- 104 (Supp.1993 and 1991 Repl.), preserves the historic rights and remedies of the parties when money is loaned and a repayment is secured by personal property. On default, the creditor or secured party can reduce the claim for the money owed to judgment and proceed to levy upon the collateral, in which case the judicial sale is a foreclosure of the security interest. Wyo.Stat. § 34.1-9-501 (1991 Repl.). Alternatively, the creditor or secured party can obtain possession of the property; cause it to be sold; and pursue a claim for any deficiency. Wyo.Stat. § 34.1-9-504 (1991 Repl.). The disposition of the collateral may be by public or, under some limited circumstances, private sale. Wyo.Stat. § 34.1-9-504(c). In addition, if sixty percent of the debt has not been paid, the creditor or secured party may propose to retain the collateral in satisfaction of the obligation. Wyo.Stat. § 34.1-9-505(b) (1991 Repl.). If this latter remedy is pursued, notice of such a proposal is required unless it has been waived by the debtor. The UCC also preserves the right of the debtor to redeem the property, but that right must be exercised prior to the time that the secured party has disposed of the property or made a contract for its disposition under § 34.1-9-504, or prior to the time the obligation is satisfied under § 34.1-9-505(b).¹³

Under Wyoming law, a debtor retains the right to redeem collateral until the collateral has been sold. Under § 541 of the Bankruptcy Code, property of the bankruptcy estate includes “all legal or equitable interests of the debtor in property as of the

¹² (...continued)
considered a strict foreclosure or an election to retain the collateral in satisfaction of an obligation as provided by W.S. 34.1-9-505(b) and does not affect the debtor's right to redeem the collateral under W.S. 34.1-9-506. If from the records of the county clerk there appears to be any lien on the vehicle which was recorded prior to the lien of the creditor applying for title and which has not been released, the certificate of title shall contain a statement of the lien. The creditor repossessing and applying for title to the vehicle shall notify all persons holding liens on the vehicle by certified mail return receipt requested at least fifteen (15) days prior to filing the application for title. Any proceeds from the sale, lease or other disposition of the vehicle shall be distributed in accordance with the provisions of W.S. 34.1-9-504(a) and (b)34.1-9-608.

Wyo. Stat. Ann. § 31-2-104(c)(Michie 2002). The statute has since been amended by 2003 Wyo. Sess. Laws Ch. 33, H.B. No. 166.

¹³ *Comer v. Green Tree Acceptance, Inc.*, 858 P.2d 560, 562-63 (Wyo. 1993) (emphasis added).

commencement of the case.”¹⁴ The right to redeem the Truck constitutes an interest in the Truck. GMAC had not sold the Truck prior to the filing of the bankruptcy case. Accordingly, the conclusion that the Debtor (and hence the bankruptcy estate) had an interest in the Truck on the date the bankruptcy case was filed is inescapable. The bankruptcy court correctly determined that the estate had an interest in the Truck and that Royal had the authority to sell the same.¹⁵

In the balance of its brief, Medved takes issue with the decision of GMAC to release its lien on the Truck as well as GMAC’s apparent decision to demand some sort of recovery from Medved. Neither of these matters fall within the jurisdiction of the bankruptcy court. Bankruptcy courts are courts of limited jurisdiction. As the United States Court of Appeals for the Seventh Circuit has noted,

there is no [bankruptcy court] jurisdiction to resolve all disputes among creditors of a bankrupt. There is jurisdiction under § 157(c)(1) only when the issue is “related to” the bankruptcy—meaning that it affects the amount of property available for distribution or the allocation of property among creditors. The bankruptcy jurisdiction is designed to provide a single forum for dealing with all claims to the bankrupt’s assets. It extends no farther than its purpose. That two creditors have an internecine conflict is of no moment, once all disputes about their stakes in the bankrupt’s property have been resolved.¹⁶

Our court of appeals, citing the *Xonics* decision with approval, has ruled that “the bankruptcy court lacks related jurisdiction to resolve controversies between third party creditors which do not involve the debtor or his property unless the court cannot complete administrative duties without resolving the controversy.”¹⁷ Indeed, this court is

¹⁴ 11 U.S.C. § 541(a)(1). Unless otherwise noted, all statutory references are to sections of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*

¹⁵ We are at a loss to understand how this principle of law escaped the ken of counsel for Medved. The Wyoming Supreme Court has spoken directly as to the issue, and the Uniform Commercial Code, adopted in Wyoming as well as 48 other states, is the basis for the legal principle. Indeed, the statutory provision cited by Medved is part of the Wyoming Uniform Commercial Code.

¹⁶ *In re Xonics, Inc.*, 813 F.2d 127, 131 (7th Cir. 1987) (citations omitted).

¹⁷ *In re Gardner*, 913 F.2d 1515, 1518 (10th Cir. 1990) (citations omitted).

at a loss to find any authority to the contrary.¹⁸

In the present case, the bankruptcy court correctly noted that Medved's recourse in this matter, if any exists, is with GMAC under the terms of their contractual arrangements. Resolution of the dispute between GMAC and Medved will have no effect on the bankruptcy estate; it is a matter solely between them. To the extent GMAC and Medved are at odds, their dispute is not within the jurisdiction of the bankruptcy court.

V. Conclusion

The decision of the Bankruptcy Court is affirmed.

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¹⁸ See, e.g., *In re Shirley Duke Assoc.*, 611 F.2d 15, 18 (2nd Cir. 1979); *Schwinn Cycling & Fitness, Inc. v. Benonis (In re Schwinn Bicycle Co.)*, 210 B.R. 747, 756 (Bankr. N.D. Ill. 1997) (referring non-debtor parties to state court for resolution of their post-confirmation disputes); *Rajala v. Guaranty Bank & Trust (In re United Fruit & Vegetable, Inc.)*, 191 B.R. 445 (Bankr. D. Kan. 1996) (same).