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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

Central Division

In re CARREN MARIE VAN WYCK and DOUGLAS WAYNE VAN WYCK Bankrupts CLAY M. ROBINSON and BARBARA W. ROBINSON Plaintiffs vs NANN NOVINSKI-DURANDO, Trustee Defendant	Bankruptcy No. B-78-00325 B-78-00324 MEMORANDUM DECISION AND ORDER

A trial was held in this case on July 2, 1979. At that time, the Court issued a preliminary ruling on the record, expressing its intention to work out the details of such decision and to employ finally such decision in a memorandum opinion and order. No judgment was entered. Subsequently, before any written decision was rendered as promised, and before judgment was entered, the Court decided pursuant to thorough research and consideration that its preliminary conclusions made on the record had been incorrect and accordingly issued a written decision on August 7, 1979, embodying its corrected view. Judgment was then entered on August 9, 1979 based on the memorandum decision. Although the decision finally issued, and upon which judgment was entered, differed from the preliminary ruling given during the trial, the issues upon which the decision rested had been fully raised and argued during the course of the trial. Based primarily on the Court's change in decision, plaintiffs objected to the memorandum decision and judgment which held that plaintiffs' lien was unperfected and thus null and void as against the intervening trustee in bankruptcy. Because of the corrected

ruling which had been issued, the Court granted a re-hearing on October 31, 1979 to insure that all parties had a full and fair opportunity to argue their position before the Court and to allow the Court an opportunity to reconsider the case and the result that had been reached.

At the scheduled re-hearing, Nann Novinski-Durando appeared on her own behalf as trustee. D. Clayton Fairbourn appeared on behalf of the objecting plaintiffs. Although plaintiffs' initial objection seems to be that the Court in its final written opinion contradicted its preliminary ruling on the record, it is an elementary principle of civil procedure that a court has the power and right to change its rulings in order to promote just and correct results. This is true even after a judgment has been entered. See e.g. Rule 752, Fed.R. Bankr.P.; Rules 52 and 59, Fed.R. Civ.P. A fortiori, a court may change its ruling to insure a correct result before any final decision has been rendered and before judgment has been entered.

Plaintiffs' other objections consist of a plea to the Court to reconsider their original arguments made at trial. The Court has now accordingly re-studied plaintiffs' brief as requested, has completely reviewed the trial recording, and has reconsidered plaintiff's arguments. Upon careful reconsideration, the Court concludes that its decision of August 7, 1979 is correct.

Most of plaintiffs' objections center on the Court's findings of fact. Confusion on this issue is created because the oral testimony given completely contradicts the written document covering the Van Wyck-Robinson transaction. The two are irreconcilable. The Court has reviewed the entire testimony given at trial and the document covering the transaction which was admitted as evidence, and it is convinced that its prior interpretation is correct. The oral testimony given cannot be used to alter completely the clear meaning of the document, which appears by its terms to be a security

agreement. This is particularly true when the document was drafted by the parties who now wish to ignore its content. Paragraph 1 specifically states that the purpose of the "loan" is to enable the Van Wycks to purchase the mobile home "from Richard C. Kisselburg." The Robinsons are not referred to as sellers but as the "first lienholder" in paragraph 4 of the agreement. The rest of the agreement is consistent with this catagorization. Reference to the Robinsons "retain[ing] the title" in paragraph 4 is clarified on the following page where it says, "The Robinsons will keep the title on the mobile home in their possession. . . ." (Emphasis added.) By virtue of the document, the plaintiffs are secured parties, and not sellers as they orally contend. It should be noted that this holding by the Court was not altered from its original ruling during trial. Only the conclusion as to whether the plaintiffs were rendered partially or totally unsecured by virtue of their failure to perfect was affected by the final decision. The Court has reconsidered its holding of August 7, 1979, that plaintiffs were rendered wholly unsecured by their failure to perfect, and is still convinced that it represents a correct statement of the law.

Plaintiffs' other main contention is that by terms of UTAH CODE ANN. sec. 41-1-72, title never passed to the Van Wycks as a new title certificate was never issued in their names as owners. Thus, they argue that the trustee can claim no interest in the mobile home. According to the cases interpreting sec. 41-1-72, plaintiffs' contention as to the meaning and application of this section is misconstrued. UTAH CODE ANN. sec. 41-1-72 states that until a new certificate of title is issued to the new owner, "title thereto shall be deemed not to have passed, and said intended transfer shall be deemed to be incomplete and not to be valid or effective . . . ." In the case of Jackson v. James, 97 U. 41, 89 P.2d 235 (1939), where a transferor held a proper title certificate in his name as owner and transfered the vehicle by gift to a

transferee, who never had a new title certificate reissued in her name as owner, the Court held that sec. 41-1-72 was not to be construed to mean that title had not passed or that the transferee could not be the owner. The Utah Supreme Court specifically stated that this section

> is not to be construed, as contended by appellant, as absolute and mandatory to pass a title. In the light of the whole chapter it is evident that its provisions were written to protect innocent purchasers and third parties from fraud but was not intended to be controlling as between the parties to the transaction.

Id at 237. Further, the court noted the language of the provision, which states only that title "shall be deemed not to have passed" and the transfer "shall be deemed to be incomplete" (emphasis added), and explained that

> [t]hese provisions are not absolute, mandatory, or controlling in their application. They do not confer or deny substantive rights. They are procedural or evidentiary in nature. They provide a flag of warning to prospective transferees or encumbrancers, much as do the registry acts relative to real estate or chattel mortgages.

Id at 237. The court thereafter held that title could pass between parties to a transaction without the issuance of a new title certificate. The language of sec. 41-1-72 was held to be "non-conclusive." See Brimm v. Cache Banking Co., 269 P.2d 859, 864 (1954). Two other cases cited by plaintiffs, Swartz v. White, 80 U. 150, 13 P.2d 643 (1932), and Stewart v. Commerce Ins. Co. of Glen Falls, N.Y., 114 U. 278, 198 P.2d 467 (1948), although differing in result because of factual variance, are in complete agreement with the statutory interpretation outlined in Jackson. See Jackson v. James, supra at 237. In both Swartz and Stewart, unlike Jackson, the purported transferor did not have a title certificate issued in his or her own name before selling the vehicle to a transferee. Transfer was held not to have been completed between the registered owners and the purported transferors for the purpose of enabling the passing of a valid title to the third party transferees. In Swartz,

title was not intended to pass to the purported transferor, who took the endorsed in blank title certificate from the registered owner without her permission. In Stewart, proper procedures had not been followed to have title reissued in the names of the heirs of the deceased owner before a sale was attempted.

The present case is analogous to the Jackson situation, for the transferor, Kisselburg, held a validly issued title certificate when he sold the mobile home to the Van Wycks. Therefore, just because a new title was not issued does not abrogate that transaction between the parties. See Dahl v. Prince, 230 P.2d 328 (1951) which discusses the passage of equitable title in spite of the wording of sec. 41-1-72. The Van Wycks, therefore, held a valid ownership interest at the time of their filing in bankruptcy, and the trustee had a right to succeed to that interest to the extent it stood free and clear of any perfected security interest. This brings us back to the questions of whether the Robinsons had a validly perfected security interest in the mobile home concerned, and the Court concludes that it has correctly answered this question in its prior memorandum decision.

The Court having fully reconsidered the case,

ORDERS that plaintiffs' objection to the memorandum decision and judgment is dismissed.

DATED this 12 day of February, 1980.

Ralph R. Mabey
United States Bankruptcy Judge

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