

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 11
SHANKLIN'S, INC.,)
) No. BK 86-31110
Debtor(s).)

BOATMEN'S NATIONAL BANK)
OF ST. LOUIS,)
)
Movant(s),)
)
v.)
)
SHANKLIN'S, INC.,)
)
Respondent(s).)

O R D E R

This matter is before the Court on a motion for relief from stay filed by Boatmen's Bank of St. Louis ("Boatmen's"). Boatmen's requests relief from the stay in order to enforce its lien against an automobile owned by the debtor-in-possession, Shanklin's, Inc. ("debtor"). The relevant facts are as follows:

On January 30, 1985, debtor purchased a 1980 Rolls Royce from Charles Schmitt & Co. ("Schmitt"), an automobile dealer located in St. Louis, Missouri. Abraham Shanklin, debtor's president, traded in a 1972 Rolls Royce, which was registered in his name, for use as a portion of the downpayment towards the purchase of the 1980 Rolls Royce. Additionally, debtor paid \$4,817.26 in cash toward the downpayment. Debtor financed the remaining amount owed on the Rolls Royce by executing and delivering a promissory note in the amount of \$45,061.52. The note, which was signed by Abraham Shanklin and his

wife Annie Shanklin (debtor's vice-president), was assigned that day by Schmitt to Boatmen's.

The original installment sale contract and security agreement executed by debtor on January 30, 1985, as well as a vehicle buyer's order and debtor's application for Missouri title signed on January 30, 1985 by Abraham Shanklin, listed debtor's address as 5138 Page Avenue, St. Louis, Missouri. Abraham Shanklin returned to Schmitt later in the day on January 30, 1985, and had new documents prepared which showed debtor's address as 7515 State Street in East St. Louis, Illinois. The documents that were reissued with the East St. Louis address were the installment sale contract and the vehicle buyer's order. Schmitt also issued a bill of sale which listed debtor's East St. Louis address. Neither a new Missouri title application nor an Illinois title application were ever prepared.

On February 21, 1985, Boatmen's delivered to the Missouri Director of Revenue the necessary documents to perfect its security interest in the 1980 Rolls Royce. These documents included debtor's application for Missouri certificate of title, signed by Abraham Shanklin, which showed Boatmen's as the lienholder and the original Missouri Certificate of Title in the name of Charles Schmitt & Co. The reverse side of the original Missouri title contained an assignment of title identifying debtor as purchaser of the automobile and Boatmen's as lienholder.

The Missouri Director of Revenue would not issue a certificate of title for the Rolls Royce because the sales tax owed on the vehicle was not paid. Despite the lack of a certificate of title,

the parties have stipulated that Boatmen's has a perfected security interest in Missouri in debtor's Rolls Royce because it delivered the required documents to the Director of Revenue in accordance with Missouri law. See, Mo.Rev.Stat. §301.600; Ford Motor Credit Co. v. Pedersen, 575 S.W.2d 926 (Mo.App. 1978). In re Brown, 55 B.R. 172 (Bankr. W.D. Mo. 1985).

On October 31, 1986, debtor filed its petition under Chapter 11 of the Bankruptcy Code. As of that date, debtor was indebted to Boatmen's in the amount of \$39,054.68 on the promissory note. Debtor has made no payment to Boatmen's since the filing of the petition. Debtor asserts that from the time of its purchase up through the filing of the petition the Rolls Royce was garaged at debtor's corporate office at 7515 State Street in East St. Louis, Illinois and that its sole driver during that period was Abraham Shanklin.

On October 16, 1987, Boatmen's filed the instant motion for relief from stay in which it asserted, inter alia, that it had a perfected security interest in debtor's 1980 Rolls Royce and that cause existed for lifting the stay because: (1) Missouri sales tax of \$3,867.50 (as of February, 1987) has not been paid by debtor; (2) debtor has no equity in the Rolls Royce and it is not needed for debtor's reorganization; (3) the Rolls Royce has been removed to the State of Florida without Boatmen's permission, leaving Boatmen's unable to inspect and ascertain the vehicle's condition and whether it was properly insured; and (4) the debtor has been trying to sell the Rolls Royce without success since February, 1987.

In response, debtor stated that the Rolls Royce is necessary for

its reorganization and that Boatmen's does not have a perfected security interest in the vehicle. Debtor has proposed to use the proceeds from the sale of the Rolls Royce to fund its Plan of Reorganization.

As noted earlier, the parties have stipulated that Boatmen's has perfected its lien in Missouri. However, debtor argues that the lien should have been perfected in Illinois where debtor is incorporated, where its corporate offices are located and where the Rolls Royce had been garaged from the date of purchase until after the filing of the petition. Debtor does not have a place of business in Missouri.

The issue to be decided by the Court is whether Boatmen's had a perfected security interest in debtor's 1980 Rolls Royce on or before October 31, 1986 when debtor filed its bankruptcy petition. Debtor has stipulated that it cannot provide adequate protection to Boatmen's and that if the Court finds that Boatmen's has a perfected security interest, Boatmen's would be entitled to relief from the stay.

In Illinois, security interests in personal property are normally governed by the Uniform Commercial Code. Ill-Rev.Stat., ch. 26, ¶9-101 et seq. However, with respect to the perfection of security interests in motor vehicles, the provisions of the Illinois Vehicle Code preempt those stated in Article 7 of the U.C.C. See, Ill-Rev.Stat., ch. 26, ¶¶9-302(3)(b) and 9-203(4); Ill-Rev.Stat., ch. 95 1/2, ¶13-207; Huber Pontiac, Inc. v. Wells, 59 Ill.App. 3d 14, 16 Ill. Dec. 518, 521, 375 N.E. 2d 149, 152 (1978).

The mechanism by which a security interest in a motor vehicle is

perfected in Illinois is described in Ill.Rev.Stat., ch. 95 1/2, ¶3-202. The statute provides that if a vehicle is subject to a security interest when brought into Illinois, the validity of that security interest is determined by the law of the state where the vehicle was when the security interest attached, subject to the following provisions:

2. If the security interest was perfected under the law of the jurisdiction where the vehicle was when the security interest attached, the following rules apply:

(A) If the name of the lienholder is shown on an existing certificate of title issued by that jurisdiction, his security interest continues perfected in [Illinois].

(B) If the name of the lienholder is not shown on an existing certificate of title issued by that jurisdiction, a security interest may be perfected by the lienholder delivering to the Secretary of State the prescribed notice and payment of the required fee. Such security interest is perfected as of the time of delivery of the prescribed notice and payment of the required fee.

Ill.Rev.Stat., ch. 95 1/2, ¶3-202(c)(2).

Debtor argues that although Boatmen's lien was perfected in Missouri, its lien never appeared on a Missouri certificate of title and so the lien was not perfected in Illinois under the first method of perfection described above. Debtor further argues that Boatmen's never perfected its lien in Illinois under the second method of perfection because it never delivered notice of its lien to the Illinois Secretary of State.

The crux of debtor's position is that it was necessary for

Boatmen's to take steps to perfect its security interest in Illinois because the Rolls Royce was owned by an Illinois corporation, garaged in East St. Louis, Illinois and driven by an Illinois driver.

When Abraham Shanklin purchased the 1980 Rolls Royce for debtor, he traded in a 1972 Rolls Royce, registered in his name, as part of the downpayment for the 1980 Rolls Royce. Shanklin had purchased the 1972 Rolls Royce from the same dealer, Charles Schmitt & Co., some years earlier. At the time of that purchase Shanklin lived in Missouri and the 1972 Rolls Royce was registered in Missouri.

On January 30, 1985, when Shanklin purchased the 1980 Rolls Royce on debtor's behalf, he was asked if he could supply a Missouri address for the vehicle's registration. Shanklin gave Schmitt the address of 5138 Page Avenue, St. Louis, Missouri, which, as he later explained at the hearing, was the home of a friend where he sometimes stayed. Using that address, the sales people at Schmitt filled out several documents, including a Missouri title application, which Shanklin signed. Later on January 30, 1985, when Shanklin returned to Schmitt, new documents were drawn up showing debtor's address in East St. Louis, Illinois. However, a new title application was never prepared.

Shanklin stated that he did not know where the certificate of title on the 1980 Rolls Royce would be issued. However, Shanklin also testified that he thought that Schmitt would handle the sales tax on the purchase in the same manner as it had handled the sales tax on his 1972 Rolls Royce. Since Shanklin's 1972 Rolls Royce was titled in Missouri, it is clear that Shanklin expected that debtor's 1980 Rolls

Royce would be titled there as well.

Support for this conclusion can be found in Shanklin's failure to either ask for an Illinois title application when he changed debtor's address on the sales documents or to tell Schmitt that he had moved to Illinois since his purchase of the 1972 Rolls Royce. Even with the change of address on the sales documents, Schmitt's sales staff could logically have assumed that debtor was an Illinois corporation that had a Missouri address at which it wished to register its Rolls Royce. Shanklin made no attempt to notify either Schmitt or Boatmen's that the Rolls Royce was to be kept in Illinois or that it should have been registered there.

Assuming for the sake of argument that Boatmen's had later found that the Rolls Royce was being kept in Illinois, the obligation of registering the vehicle in Illinois was on debtor, not Boatmen's. Ill.Rev.Stat., ch. 95 1/2, ¶3-101(a) specifically requires that every owner of a vehicle in Illinois (with certain exceptions not relevant here) shall apply to the Illinois Secretary of State for a certificate of title. The application for a first certificate of title in Illinois must be made by the owner to the Secretary of State. Ill-Rev.Stat., ch. 95 1/2, ¶3-104(a). Illinois law also includes a requirement that an application for Illinois title for a vehicle purchased from a dealer must be submitted to the Illinois Secretary of State by the dealer. See, Ill.Rev.Stat., ch. 95 1/2, ¶3-104(b). However, in the present case, debtor's agent indicated that the Rolls Royce was to be registered in Missouri. Later, when debtor ended up moving the vehicle to Illinois, it was debtor's obligation to apply for an Illinois

certificate of title. Therefore, debtor was the one who failed to comply with Illinois law, not Boatmen's.

Furthermore, Boatmen's was not required to reperfect its security interest in Illinois after it had a valid perfected security interest in Missouri. The statute relied on by debtor, Ill.Rev.Stat., ch. 95 1/2, ¶3-202(c)(2)(B), specifies the method of perfection in Illinois where the name of the lienholder does not appear on an existing title issued by the state where the security interest was perfected. In the present case, there is no existing certificate of title other than the Missouri certificate of title showing Charles Schmitt & Co. as the owner of the 1980 Rolls Royce. Schmitt's sales people filled out the "assignment of title" section on the back of that certificate and gave it to Boatmen's which submitted it to the Missouri Director of Revenue as part of the successful effort by Boatmen's to perfect its lien.

Therefore, there was no longer any "existing" certificate of title for Boatmen's lien not to appear on for the purpose of perfecting its security interest under Ill.Rev.Stat., ch. 95 1/2, ¶3-202(c)(2)(B).

That section of the Illinois perfection statute does not address the unusual situation presented in this case, i.e., the validity in Illinois of a properly perfected security interest under Missouri law where there is no existing certificate of title. However, given the virtual identity of Ill.Rev.Stat., ch. 95 1/2, ¶3-202(b)¹, which

¹"A security interest is perfected by the delivery to the Secretary of State of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the lienholder and the required fee. It is perfected as of the time of its creation if the delivery is completed within 21 days thereafter, otherwise as of the time of the delivery."

provides for the perfection of security interests in Illinois by delivery of specified documents and the required fee to the Secretary of State, with Mo.Rev.Stat., §301.600.2², the statute under which Boatmen's perfected its lien in Missouri, it is clear that the type of perfection in the present case, which does not appear on the face of an existing Missouri certificate of title, would also be recognized in Illinois. Therefore, this Court concludes that Boatmen's security interest, which was properly perfected in Missouri, is also perfected in Illinois.

Given the Court's finding that Boatmen's has a perfected security interest in debtor's 1980 Rolls Royce and also given debtor's admitted inability to pay adequate protection, the Court will order that the automatic stay will be lifted in order to allow Boatmen's to enforce its lien against the vehicle.

IT IS ORDERED that the motion for relief from stay filed by Boatmen's Bank of St. Louis is GRANTED.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

²"A lien or encumbrance on a motor vehicle or trailer is perfected by the delivery to the director of revenue of the existing certificate of ownership, if any, an application for a certificate of ownership containing the name and address of the lienholder and the date of his security agreement, and the required certificate of ownership fee. It is perfected as of the time of its creation if the delivery of the aforesaid to the director of revenue is completed within thirty days thereafter, otherwise as of the time of the delivery."

ENTERED: April 14, 1988