

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:)	Bankr. No. 08-10179
)	Chapter 7
BRADLEY JAY STODDARD)	
aka Brad Stoddard)	
SSN/ITIN xxx-xx-8759)	
)	
Debtor.)	
)	
FORREST C. ALLRED)	Adv. No. 10-1022
)	
Plaintiff)	
)	
-vs-)	DECISION RE: TRUSTEE-PLAINTIFF
)	ALLRED'S MOTION FOR
)	JUDGMENT ON THE PLEADINGS
DEWANE STODDARD)	
)	
Defendant.)	

The matter before the Court is Trustee-Plaintiff Forrest C. Allred's Motion for Judgment on the Pleadings. This is a core proceeding under 28 U.S.C. § 157(b)(2). This decision and accompanying order constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, the motion will be granted.

Summary.

Defendant DeWane Stoddard ("Defendant") is the father of Bradley Jay Stoddard, the debtor in related Bankr. No. 08-10179 ("Debtor"). In his bankruptcy case, Debtor scheduled as an asset a 2004 Polaris ATV (presumably meaning "all terrain vehicle"), and he was ordered to turn it over to the chapter 7 case trustee, Forrest C. Allred ("Trustee Allred").

Defendant claims a security interest in the ATV by virtue of having noted on the certificate of title a lien in his favor. He acknowledges his claimed lien arises from money he advanced Debtor to cover Debtor's legal expenses associated with the bankruptcy case; the loan was not to assist Debtor in the purchase of the ATV.

Trustee Allred commenced an adversary proceeding against Defendant, asking the Court to declare Defendant's lien invalid (doc. 1). Trustee Allred argues that under state law an ATV is not a "motor vehicle," and as such the perfection of a security interest in an ATV is governed by the Uniform Commercial Code and the filing of a financing statement. Defendant timely answered (doc. 5).

Trustee Allred filed a Motion for Judgment on the Pleadings (doc. 7), reiterating the legal arguments in his complaint. Defendant timely responded (doc 10). Defendant essentially agrees only a legal issue is presented -- how a lien on an ATV

is perfected under state law -- but argues that because an ATV has to have a certificate of title, perfection is accomplished by noting the lien on the title and a recorded financing statement is not required.

Discussion.

Sifting through applicable certificate of title and lien perfection statutes is a tricky business, as other courts have found. *See, e.g., Rice v. Simmons First Bank of Searcy (In re Renaud)*, 308 B.R. 347 (B.A.P. 8th Cir. 2004); *Horwitz v. Green Tree Financial Corp. (In re Hovland)*, 2001 WL 135821 (W.D.N.Y. Feb. 12, 2001). In South Dakota, a lien may be perfected via a notation on a certificate of title for "a motor vehicle, trailer, or semitrailer[.]" S.D.C.L. § 32-3-41. An ATV, however, does not fall under any of those three categories, as each is defined. S.D.C.L. § 32-3-1(11), (21), and (23).¹ Instead, an ATV is separately defined as an "off-road vehicle." S.D.C.L. §§ 32-3-1(15) and 32-20-1(4). Accordingly, the Court must consider the lien perfection provisions under the Uniform Commercial Code, as adopted in South Dakota.

Sections 57A-9-310(b)(3) and 57A-9-311(a)(2) of the South Dakota Codified Laws provide a financing statement is not necessary to perfect a security interest in property subject to a certificate-of-title statute. A close reading of § 57A-9-311(a)(2), however, is important. A lien notation on the certificate of title is sufficient to perfect that lien against other creditors only if the law also specifically provides for perfection of a lien by notation. S.D.C.L. § 57A-9-311(a)(2). South Dakota law does not so provide when an ATV is at issue. Though an ATV must be titled, S.D.C.L. § 32-20-12, South Dakota's statute providing for perfection of a lien by notation on a certificate of title, S.D.C.L. § 32-3-41, only applies to motor vehicles, trailers, and semitrailers, not ATVs. Thus, perfection of a lien on an ATV must still be made through the filing of a financing statement. S.D.C.L. § 57A-9-310. The South Dakota legislature could have included "off-road vehicles," such as Debtor's ATV, under the definition of a motor vehicle at § 32-3-1(11) or specifically within the lien notation statute at § 32-3-41, but did not do so.

¹ The definition for "motor vehicle" at S.D.C.L. § 32-3-1(11) includes "motorcycles" but not ATVs. The definition for "motorcycle" at S.D.C.L. § 32-3-1(10) also does not include ATVs.

An order granting Trustee Allred's Motion for Judgment on the Pleadings and an attendant judgment will be entered.

Dated: March 1, 2011.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Charles L. Nail, Jr.", is centered below the text "BY THE COURT:". The signature is fluid and cursive.

Charles L. Nail, Jr.
Bankruptcy Judge

On the above date, a copy of this document was mailed or faxed to the parties shown on the Notice of Electronic Filing as not having received electronic notice.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota

NOTICE OF ENTRY
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered
on the date shown above.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota