

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

In re:

Case No. 6:05-bk-13635-ABB  
Chapter 7

LISA DUNLAP,

Debtor.

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**ORDER**

This matter came before the Court on the Notice of Trustee's Intent to Sell Property of the Estate to the Debtor<sup>1</sup> ("Notice") filed by Scott R. Fransen, the Chapter 7 Trustee herein ("Trustee"), and the Notice of Objection ("Objection")<sup>2</sup> filed by David C. Goad, a creditor herein (the "Goad"). An evidentiary hearing was held on April 24, 2006. The Trustee and Goad, *pro se*, appeared at the hearing. The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings and evidence, hearing argument, and being otherwise fully advised in the premises:

**FINDINGS OF FACT**

Lisa Ann Dunlap, the Debtor herein (the "Debtor"), owns a 1997 Honda Accord, having Vehicle Identification Number 1HGCD5659VA268484 (the "Vehicle").<sup>3</sup> The Vehicle is in fair condition and has over 100,000 miles. The Florida Department of Highway Safety and Motor Vehicles, Division of Motor Vehicles, issued a Certificate of Title for the Vehicle, Title Number 91799845, dated October 4, 2005 naming the Debtor as the "Registered Owner" and listing Goad as the "1st Lienholder." The Certificate of Title sets forth an address of "P.O. Box 4265, Enterprise, Florida 32725-0265" for the Debtor and Goad. The Debtor and Goad resided in Florida at the time the Certificate of Title was issued and both continue to reside in Florida. Goad is the father of the Debtor's children. The Vehicle is in the possession of the Debtor and Goad holds the original Certificate of Title.

The Debtor filed for bankruptcy protection within days of the issuance of the Certificate of Title.

She instituted this Chapter 7 bankruptcy case on October 11, 2005 (the "Petition Date"). The Debtor lists Goad as holding an undisputed secured claim in the amount \$3,200.00 secured by the Vehicle by virtue of a 2004 "security interest."<sup>4</sup> The Debtor's Statement of Intent reflects the Debtor intends to reaffirm the alleged debt owed to Goad. The Debtor has an allowed exemption in the Vehicle in the amount of \$1,085.00.

The Trustee, as set forth in his Notice, believes equity exists in the Vehicle and intends to sell the Vehicle to the Debtor for \$3,700.00. The car has a value of \$4,785.00. The sales price reflects a deduction of \$1,085.00 for the Debtor's allowed exemption. The Trustee's Notice was properly filed and served on all creditors and parties in interest.

Goad objects to the sale asserting he holds a security interest in the Vehicle. He asserts his security interest arises from monies he paid, for the benefit of the Debtor, to a lender holding a lien on the Vehicle (Service Plus Credit Union) and to Courtesy Honda for Vehicle repairs. He issued the following checks prepetition: (i) check number 127 dated January 10, 2005 to Service Plus Credit Union in the amount \$784.00; (ii) check number 209 dated May 22, 2005 to Service Plus Credit Union in the amount of \$1,687.58; and (iii) check number 260 dated August 25, 2005 to Courtesy Honda in the amount of \$406.59.<sup>5</sup> The checks, totaling \$2,878.17, were negotiated by the payees prepetition. Goad did not present any evidence, such as a debt instrument, establishing whether the Debtor and Goad intended the amounts paid by Goad constitute a loan and the terms of repayment. Goad did not present a security agreement or any writing establishing the Debtor's and Goad's intent to create a security interest in the Vehicle and describing the collateral. A valid security interest in the Vehicle was not created.

**CONCLUSIONS OF LAW**

The issue to be decided is whether the Trustee's proposed sale of the Vehicle for \$3,700.00 should be allowed. Goad asserts a security interest in the Vehicle in the amount of at least \$2,878.17. The Debtor has an allowed exemption in the Vehicle in the amount of \$1,085.00 pursuant to Florida Statute § 222.25(1). Insufficient equity would exist in the Vehicle warranting a sale of the Vehicle if Goad holds a valid security interest. Section 363(b) of the Bankruptcy Code allows a trustee, after notice and a

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<sup>1</sup> Doc. No. 12.

<sup>2</sup> Doc. No. 13.

<sup>3</sup> Doc. No. 1 (Schedule B); Goad's Exhibit No. 1.

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<sup>4</sup> Doc. No. 1 (Schedule D).

<sup>5</sup> Goad's Exh. Nos. 2, 3.

hearing, to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b) (2005). The Trustee’s Notice was filed in conformity with 11 U.S.C. § 363(b) and was properly served on all creditors and parties in interest.

State law governs the issue of security interests in motor vehicles. In re Bennett, 208 B.R. 582, 583 (Bankr. S.D. Fla. 1997). The Certificate of Title was issued by the State of Florida and, therefore, Florida state law is controlling.<sup>6</sup> A lien or an encumbrance on a motor vehicle must be noted on the certificate title in order to be properly perfected as provided by Florida Statute § 319.27(1): “Each lien, mortgage, or encumbrance on a motor vehicle or mobile home titled in this state shall be noted upon the face of the Florida certificate of title or on a duplicate or corrected copy thereof, as provided by law. . . .” FLA. STAT. § 319.27(1) (2005).<sup>7</sup> This provision does not create a statutory lien. In re Bennett, 208 B.R. at 583; Coplan Pipe and Supply Co. v. McCann, 132 So.2d 632, 634 (Fla. 3d DCA 1961).<sup>8</sup> It is simply a notice or recording statute. Id. Subsection 319.27(2) impliedly requires there be a written debt instrument underlying a lien notated on a certificate of title:

No lien for purchase money or as security for a debt in the form of a security agreement, retain title contract, conditional bill of sale, chattel mortgage, or other similar instrument or any other nonpossessory lien, including a lien for child support, upon a motor vehicle or mobile home upon which a Florida certificate of title has been issued shall be enforceable in any of the courts of this state against creditors or subsequent purchasers for a valuable consideration

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<sup>6</sup> FLA. STAT. § 679.3031 (2003). Subsection (1) provides: “This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.” Subsection (3) provides: “The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.”

<sup>7</sup> This provision excludes motor vehicle or mobile home floor plan stock of a licensed dealer.

<sup>8</sup> Portions of Florida Statute § 319.27 were revised in 2005. The statutory provisions analyzed and relied on in these cases are identical to the provisions quoted herein.

and without notice, unless a sworn notice of such lien has been filed in the department and such lien has been noted upon the certificate of title of the motor vehicle or mobile home. . . .

FLA. STAT. § 319.27(2) (2005). Courts addressing the issue of whether a valid security interest exists where a lien is notated on a Florida certificate of title have held a written instrument is required to establish a security interest and oral agreements are inadequate. In re Mullen, 4 B.R. 748, 749 (Bankr. M.D. Fla. 1980); In re Bennett, 208 B.R. at 583; Coplan Pipe and Supply Co., 132 So. 2d at 634; In re Jenex, 18 B.R. 498, 500 (Bankr. S.D. Fla. 1982).

The requirement of a writing is further evidenced by the Florida Uniform Commercial Code (“UCC”).<sup>9</sup> Florida Statute § 319.27 must be read in conjunction with the Florida UCC, which governs, among other things, “A transaction, regardless of its form, that creates a security interest in personal property by contract.” FLA. STAT. § 679.1091(1)(a) (2003). The creation of a security interest in an automobile is within the ambit of the Florida Uniform Commercial Code. *See* FLA. STAT. § 679.1091(4) (listing transactions excluded from chapter 679).

Section 679.2031 of the Florida UCC sets forth the formal requirements for enforcement of a security interest:

(2) . . . a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(a) Value has been given;

(b) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(c) One of the following conditions is met:

1. The debtor has authenticated a security agreement

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<sup>9</sup> The state law statutes governing secured transactions in Florida are contained in The Florida Uniform Commercial Code found at Chapters 670 through 680 of the Florida Statutes. Chapter 679 of the Florida Statutes (§§ 679.1011–679.709), which was substantively revised in 2002, governs secured transactions.

that provides a description of the collateral . . .;

2. The collateral is not a certificated security and is in the possession of the secured party under s. 679.3131 pursuant to the debtor's security agreement;

3. The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under s. 678.3011 pursuant to the debtor's security agreement; or

4. The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control . . . pursuant to the debtor's security agreement.

FLA. STAT. § 679.2031(2) (2003). The conditions of subsections (c)2, 3, and 4 are inapplicable. Goad must meet the requirements of the remaining condition, (c)(1), in order to have an enforceable security interest.

There is no written instrument between the Debtor and Goad that constitutes a security agreement. The conditions of Florida Statute § 679.2031(2) have not been met. Goad does not hold a valid security interest in the Vehicle. Allowance of the proposed sale as set forth in the Notice is proper.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that the Objection of David C. Goad is **OVERRULED**; and it is further

**ORDERED, ADJUDGED and DECREED** that the Trustee's Notice is hereby **APPROVED** and the Trustee is authorized to sell the Vehicle pursuant to 11 U.S.C. § 363(b) and in conformity with the terms of the Notice.

Dated this 28<sup>th</sup> day of April, 2006.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Judge