

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

)	
In Re: RYAN J. DEFOREST)	Chapter 7
ELLEN DENISE DEFOREST)	
)	
Debtors)	Case No. 05-71325
)	

DECISION AND ORDER

At Roanoke in said District this 31st day of March, 2006:

The matter before the court is the Trustee’s motion for turnover of property by the debtors to the estate pursuant to 11 U.S.C. §§ 521(a)(4), 542(a). The court conducted a hearing in Roanoke on January 10, 2006 on the motion of the trustee for turnover. For the reasons stated in this Decision and Order, the Trustee’s motion is granted.

BACKGROUND

On April 8, 2005, the debtors filed a Chapter 7 voluntary petition for relief. On September 6, the trustee filed a motion for turnover of a 2003 Jeep

Liberty because the debtors had failed to produce a written security agreement for the vehicle. The debtors objected to the motion on the grounds that the debtors entered into an oral agreement with Richard G. Deforest, who supplied the purchase money for the 2003 Jeep Liberty. Debtors stated that the oral agreement provided that Ryan J. Deforest would pay back the loan to Richard G. Deforest with interest, and that the loan would be secured by the vehicle. The debtors submitted a copy of the certificate of title for the vehicle which listed Richard G. Deforest as a lienholder. The debtors argued that the certificate of title constitutes notice to third party creditors such as the trustee pursuant to Va. Code § 46.2-638. On October 4, 2005, the court heard the matter at which time the parties agreed to submit the matter in briefs for decision by the court. The court continued the matter until January 10, 2006 to give the parties ample time to submit briefs of position and authority. Both parties submitted briefs and the court took the matter under advisement following the January 10, 2006 hearing. The matter is now ripe for decision.

LAW AND DISCUSSION

This court has jurisdiction over the parties and subject matter of this proceeding under 28 U.S.C. §§ 151, 157, and 1334. This is a case filed under title 11, and the court may hear and determine such proceeding under 28 U.S.C. §

157(b)(2)(E). Venue is proper in this District under 28 U.S.C. § 1409(a).

The filing of a joint case under the Code creates a bankruptcy estate comprised of all legal or equitable interests in property held by each debtor on the date of filing. 11 U.S.C. § 541(a). State law determines the interests of a debtor in personal property, but federal law dictates to what extent the debtor's interest are property of the estate. According to the Code, it is the debtors duty to surrender to the trustee all property of the estate and any recorded information relating to the property. 11 U.S.C. § 521(a)(4). Further, an entity shall deliver to the Trustee any property that the Trustee may use, sell or lease under § 363. 11 U.S.C. § 542(a). The definition of "entity" encompasses a debtor in possession of the property that the Trustee can administer for the benefit of the estate under § 363. 11 U.S.C. § 101(15).

In this case, the debtors scheduled a jointly held 2003 Jeep Liberty on their list of personal property in Schedule B valued at \$8,785.00, but did not exempt the vehicle under Schedule C. The debtors listed Richard Deforest as a creditor holding a secured claim for \$8,785.00 and an unsecured claim for \$7,915.00 on the vehicle in Schedule D.¹ According to § 541(a), the vehicle became property of the estate at the time of filing the petition. In addition, under § 363(f)(4), the trustee may sell the 2003 Jeep Liberty free and clear of the interests of an entity other than

¹ Richard Deforest does not appear to have filed a proof of claim for the unsecured portion of his claim.

the estate when that interest is in bona fide dispute. Here, the parties agree that the certificate of title for the vehicle showing a lien on the face of certificate serves as notice of the lien pursuant to Va. Code § 46.2-638. However, Va. Code § 46.2-638 does not prove the existence of a lien on the certificated vehicle. The showing of the lien on the certificate of title only provides notice that a lien may exist and invites inquiry by the fact-finder as to its validity. Leake v. Oakwood Acceptance Corp. (In re Wuerzberger), 271 B.R. 778, 783-88 (Bankr. W.D. Va. 2002). This court does not pursue that line of inquiry², but suffice to say that the parties are in genuine dispute as to the validity of the interest of the lienholder indicated upon the certificate of title of the vehicle. Thus, the plain meaning interpretations of §§ 521(a)(4) and 542(a) require that the debtors deliver the property to the trustee.

CONCLUSION

For the reasons stated above, it is

ORDERED:

That the Trustee's motion for turnover is GRANTED. It is

FURTHER ORDERED:

² Federal Rules of Bankruptcy Procedure 7001 require parties to pursue an adversary proceeding to determine the "validity, priority, or extent of a lien or other interest in property. . . ." Fed. R. Bankr. P. 7001(2).

That the debtors SHALL CONTACT the Trustee to schedule a suitable time and place for the Trustee to take delivery of the 2003 JEEP LIBERTY AND ALL RECORDED DOCUMENTS RELATING TO IT. It is

FURTHER ORDERED:

That the debtors SHALL DELIVER the 2003 JEEP LIBERTY WITH CERTIFICATE OF TITLE AND REGISTRATION AND ALL OTHER REGISTERED DOCUMENTS RELATING TO IT to the Trustee, with due care for the vehicle so as to not diminish its value to the estate or to any scheduled secured creditor of the vehicle.

Copies of this Order are directed to be sent to the Counsel for the Debtors, George I Vogel III, Esq., 354 W. Campbell Ave SW, Roanoke, VA 24016; and to the Chapter 7 Trustee, Evelyn K Krippendorf, Esq., P.O. Box 18188, Roanoke, VA 24014-0188.



Ross W. Krumm

Ross W. Krumm
United States Bankruptcy Judge