

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN**

In re:

Case No. HG 06-00256

LISA MARIE SCHILLER,

Debtor.

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LISA E. GOCHA, Trustee,

Plaintiff,

vs.

Adv. Pro. No. 06-80289

JPMORGAN CHASE BANK, N.A.,

Defendant.

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**OPINION**

Appearances:

Lisa E. Gocha, Esq., Holland, Michigan, attorney for Plaintiff

Susan Jill Rice, Esq., Traverse City, Michigan, attorney for Defendant

Defendant, JPMorgan Chase Bank (“Chase Bank”), filed a motion for summary judgment with respect to the Chapter 7 Trustee’s complaint. That complaint seeks to avoid Chase Bank’s claimed lien in a vehicle through the Chapter 7 Trustee’s exercise of her “strong arm” powers under 11 U.S.C. § 544(a).<sup>1</sup> Chase Bank’s motion is granted for the reasons stated in this opinion.

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<sup>1</sup>The Bankruptcy Code is set forth in 11 U.S.C. §§ 101-1532. Unless otherwise noted, all further statutory references are to the Bankruptcy Code.

## **PROCEDURAL BACKGROUND**

The Chapter 7 Trustee filed her complaint against Chase Bank on March 18, 2006. Chase Bank thereafter filed its motion for summary judgment on May 11, 2006.

Chase Bank's motion was heard on June 22, 2006. Both parties filed briefs. Chase Bank's brief was supported by three exhibits. I took the matter under advisement at the conclusion of the hearing.

## **FACTUAL BACKGROUND**

The facts are uncontested. Debtor purchased a new Chevrolet Impala in Milwaukee, Wisconsin in December 2003. Chase Bank financed the purchase. Debtor, who was at that time a resident of Wisconsin, arranged for a Wisconsin certificate of title to be issued. Chase Bank's name appeared as a secured creditor on that certificate of title.

Debtor thereafter moved to Michigan. However, Debtor did not apply for a new certificate of title from the State of Michigan. Rather, she simply re-registered the Impala with the Michigan Secretary of State's office as permitted by this state's laws.

## **DISCUSSION**

The Chapter 7 Trustee contends that Chase Bank's security interest in the Impala is no longer perfected and, therefore, subject to avoidance under Section 544(a), because Debtor did not replace the Wisconsin certificate of title with a Michigan certificate of title. The Chapter 7 Trustee relies upon MICH. COMP. LAWS § 440.2805 as support for her contention.

“[W]ith respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law of the jurisdiction issuing the certificate until the earlier of the following:

(a) Surrender of the certificate.

(b) Four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.”

*Id.*<sup>2</sup>

However, the Chapter 7 Trustee has overlooked a crucial point. The parties agree that the financing arrangement between Debtor and Chase Bank is a secured transaction. However, MICH. COMP. LAWS § 440.2805 appears in the segment of Michigan’s version of the Uniform Commercial Code devoted to lease transactions (*i.e.*, Article 2A). Moreover, it is quite clear that the scope of Article 2A is limited to only lease transactions. MICH. COMP. LAWS § 440.2802. Therefore, MICH. COMP. LAWS § 440.2805 does not govern the issue presented by the Chapter 7 Trustee.

Secured transactions are covered by Article 9 of the Uniform Commercial Code. Chase Bank acquired its security interest in the Impala after Michigan adopted the revised version of Article 9 first.<sup>3</sup> Therefore, it is to revised Article 9 that one must turn to determine whether Chase Bank’s security interest in the vehicle remained perfected after Debtor’s move to Michigan.

Revised Article 9 includes a section that specifically addresses perfection and priority issues regarding security interests claimed in automobiles and other goods that are subject to certificate of title statutes. Michigan’s version of this section appears as MICH. COMP. LAWS § 440.9303 and

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<sup>2</sup>It is unclear whether Chase Bank contests the Chapter 7 Trustee’s assertion that Debtor and her Impala have been located in Michigan for more than four months. However, for the reasons stated in this opinion, this issue is irrelevant even if it is contested.

<sup>3</sup>Revised Article 9 became effective in Michigan on July 1, 2001. P.A. 2000, No. 348.

Wisconsin's version appears as Wisc. Stat. Ann. 409.303. The two versions, which are identical, read as follows:

(1) 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.

(2) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(3) 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.

MICH. COMP. LAWS § 440.9303 and Wisc. Stat. Ann. 409.303.

Therefore, the choice of law is the same under both the applicable Michigan and Wisconsin statutes.

Wisconsin issued the original certificate of title for the Impala and no other state, including Michigan, has issued a subsequent certificate to replace it. Consequently, Wisconsin law controls.

The Chapter 7 Trustee agrees that Chase Bank was in compliance with Wisconsin law regarding the perfection of its security interest in the Impala when Debtor filed her bankruptcy petition. Specifically, Chase Bank's name appears as a secured creditor on the Wisconsin certificate

of title issued to Debtor on account of the Impala. Therefore, Chase Bank is entitled to summary judgment as a matter of law. The court will enter a separate order consistent with this opinion.

/s/

Honorable Jeffrey R. Hughes  
United States Bankruptcy Judge

Signed this 4th day of August, 2006  
at Grand Rapids, Michigan.