

MAY 24 2011

SUSAN M SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No. ID-10-1299-JuMkH
	)	
JASON RUSSEL MAYER and	)	Bk. No. 09-04065
KASONDRA LYNN MAYER,	)	
	)	Adv. No. 10-06006
Debtors.	)	
<hr/>		
FROERER FARMS, INC., an Oregon	)	
Corporation; CHASE FROERER,	)	
	)	
Appellants,	)	
	)	
v.	)	M E M O R A N D U M *
	)	
JEREMY J. GUGINO, Chapter 7	)	
Trustee,	)	
	)	
Appellee.	)	
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Submitted on March 16, 2011  
at Pasadena, California

Filed - May 24, 2011

Appeal from the United States Bankruptcy Court  
for the District of Idaho

Honorable Jim D. Pappas, Bankruptcy Judge, Presiding

Appearances:	<hr/>
	John R. Hammond, Jr., Esq., Batt, Fisher, Pusch & Alderman, LLP argued for Appellants Froerer Farms, Inc. and Chase Froerer
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Before: JURY, HOLLOWELL, and MARKELL Bankruptcy Judges.

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\* This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

1 Appellants Froerer Farms, Inc. ("FFI") and Chase Froerer  
2 ("Froerer") (collectively, "Defendants") appeal the bankruptcy  
3 court's order granting summary judgment in favor of the  
4 chapter 7 trustee, Jeremy Gugino,<sup>1</sup> and denying Defendants' cross  
5 motion for summary judgment in an avoidance action under  
6 § 544(a)(1).<sup>2</sup>

7 We REVERSE.

8 **I. FACTS**

9 On July 2, 2009, debtors Jason and Kasondra Mayer sold  
10 their 100% unencumbered interest in a 2004 Mastercraft X2 boat  
11 to FFI for \$24,000. On the same day, debtors assigned the Idaho  
12 certificate of title for the boat to FFI and Froerer transported  
13 the boat to Nysaa, Oregon. FFI is an Oregon limited liability  
14 company and Froerer, FFI's agent, is a resident of Oregon.

15 On July 14, 2009, debtors executed a "release of liability"  
16 form for the boat which they delivered to the Idaho Department  
17 of Transportation.

18 In November 2009, FFI transported the boat back to Idaho  
19 for minor repairs. Within a few days, the boat was returned to  
20 Oregon where it has remained ever since.

21 Since the date of purchase, FFI has provided and paid for  
22 insurance coverage for the boat. FFI also placed a state of  
23 Oregon dealer plate on the boat. FFI was a purchaser of  
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25 <sup>1</sup> The trustee did not participate in this appeal.

26 <sup>2</sup> Unless otherwise indicated, all chapter, section and  
27 rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-  
28 1532, and to the Federal Rules of Bankruptcy Procedure, Rules  
1001-9037.

1 vehicles<sup>3</sup> and the record indicates that FFI never intended to  
2 obtain an Idaho certificate of title for the boat because its  
3 affiliate, M and W Auto, had an Oregon dealer's license in  
4 Oregon and resold the vehicles and equipment that FFI purchased.

5 On December 23, 2009, debtors filed their chapter 7  
6 bankruptcy petition. As of the date of the filing, the boat was  
7 still titled under an Idaho certificate of title in the name of  
8 "Jason R. Mayer."

9 On January 15, 2010, unaware of debtors' filing, FFI  
10 applied for a boat title with the Oregon State Marine Board.

11 On January 16, 2010, the trustee filed an adversary  
12 proceeding against Defendants, seeking to avoid FFI's ownership  
13 interest in the boat under § 544(a)(1) and compel turnover under  
14 § 542(a).<sup>4</sup> Thereafter, the trustee moved for summary judgment,  
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16 <sup>3</sup> It is unclear whether FFI was formed for the purpose of  
17 purchasing vehicles for resale. Froerer provides no further  
18 explanation in his declaration other than FFI purchases vehicles  
19 and equipment which it sells through its "affiliate," M and W  
Auto.

20 <sup>4</sup> The trustee also included a claim for relief under  
21 § 549(a). The bankruptcy court did not rule on that claim.  
22 Based on the parties' stipulation, the court entered judgment for  
23 the trustee on this claim on October 6, 2010, causing all issues  
24 raised in the adversary proceeding to be finally resolved. This  
25 procedure raises a jurisdictional concern. If the § 549 claim  
26 were unresolved, the appeal would be interlocutory, and not  
27 final. The stipulation, however, states that the parties'  
28 resolution of the §549 claim is "subject to the pending appeal."  
This type of reservation undermines the finality of the order,  
and signals potentially manufactured jurisdiction. See Am.  
States Ins. Co. v. Dastar Corp., 318 F.3d 881, 885-92 (9th Cir.  
2003); Dannenberq v. Software Toolworks, Inc., 16 F.3d 1073,  
1075-78 (9th Cir. 1994). In this case, to the extent that the  
reservation destroys finality, we grant leave to appeal, thus  
removing any jurisdictional issue.

1 asking the bankruptcy court to conclude, as a matter of law,  
2 that Idaho law should apply to the dispute. Under Idaho law,  
3 the certificate of title was dispositive on the ownership issue.

4 Defendants filed an opposition and cross motion for summary  
5 judgment, contending that Oregon had the more significant  
6 relationship to the transaction and the parties. Under Oregon  
7 law, the certificate of title was not conclusive evidence of  
8 ownership. In that event, Defendants alleged that the  
9 undisputed facts showed they were the owners of the boat.

10 On July 19, 2010, the bankruptcy court issued a Memorandum  
11 Decision ruling in favor of the trustee on the parties' cross  
12 motions for summary judgment and entered an order on the same  
13 day. Utilizing the federal common law choice of law rules and  
14 analysis set forth in Hopkins v. Shradley (In re Shradley), 03.1  
15 I.B.C.R. 7, 9 (Bankr. D. Idaho 2003), the bankruptcy court  
16 determined that the state of Idaho had the most significant  
17 relationship to the transaction and the parties.<sup>5</sup> As a result,  
18 the certificate of title in the name of "Jason R. Mayer" was  
19 dispositive as to the ownership issue. Therefore, the trustee  
20 could avoid Defendants' unrecorded interest in the boat under  
21 § 544(a)(1).

22 Defendants timely filed this appeal.

## 23 II. JURISDICTION

24 The bankruptcy court had jurisdiction over this proceeding  
25 under 28 U.S.C. §§ 1334 and 157(b)(2)(A) and (E). We have

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26  
27 <sup>5</sup> Except for the application of federal choice of law  
28 rules, Shradley is factually distinguishable from the instant  
case.

1 jurisdiction under 28 U.S.C. § 158.

2 **III. ISSUES**

3 A. Whether the bankruptcy court erred in its application  
4 of the choice of law rules; and if the bankruptcy court did err,

5 B. Whether the undisputed facts showed that Defendants  
6 had an equitable ownership interest in the boat superior to the  
7 rights of a judicial lien creditor under Oregon law.

8 **IV. STANDARD OF REVIEW**

9 In reviewing the bankruptcy court's decision on a motion  
10 for summary judgment, we apply the same standards as the  
11 bankruptcy court. Accordingly, our review is de novo. Ghomeshi  
12 v. Sabban (In re Sabban), 600 F.3d 1219, 1221-22 (9th Cir.  
13 2010).

14 **V. DISCUSSION**

15 Under § 544(a)(1), the bankruptcy trustee obtains the  
16 rights and powers of a hypothetical creditor who obtained a  
17 judicial lien on all of the property in the estate at the time  
18 of the commencement of the bankruptcy case. The trustee's  
19 rights and powers as a judicial lien creditor are based upon  
20 state law. Thus, if under state law, an actual judicial lien  
21 creditor without knowledge could obtain a superior interest to  
22 that of Defendants' unrecorded ownership interest in the boat,  
23 Defendants would be relegated to the status of unsecured  
24 creditors in debtors' estate.

25 **A. Choice of Law Rules**

26 The first question we must resolve is whether the trustee's  
27 rights and powers as a judicial lien creditor are based on Idaho  
28 or Oregon law. Which state's substantive law governs an issue

1 is a question of law. Downing v. Abercrombie & Fitch, 265 F.3d  
2 994, 1005 (9th Cir. 2001). However, determining which state has  
3 the most significant relationship to the dispute at issue  
4 involves a factual determination. Id. ("In reviewing the  
5 factual findings that underlie the choice of law determination,  
6 the court must apply the clearly erroneous standard.").

7 On appeal, Defendants do not contend there was a genuine  
8 issue of material fact that prevented entry of summary judgment  
9 for the trustee.<sup>6</sup> Instead, Defendants contend that the  
10 bankruptcy court made an error of law by giving certain factors  
11 in its choice of law analysis little or no weight. Therefore,  
12 the choice of law issue before us is purely a question of law  
13 over which we exercise free review.

14 In general, the vehicle titling laws of Idaho and Oregon  
15 serve as a simple and effective means for ascertaining the title  
16 to, and interests in, motor vehicles whether for liability or  
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18 <sup>6</sup> Defendants concede that if Idaho law applies, the  
19 certificate of title bearing Jason's name is dispositive on the  
20 ownership issue. Idaho Code § 49-503 states:

21 [N]o person acquiring a vehicle from the owner . . .  
22 shall acquire any right, title, claim or interest in or  
23 to the vehicle until he had issued to him a certificate  
24 of title to that vehicle, nor shall any waiver or  
25 estoppel operate in favor of that person against a  
person having possession of a certificate of title or  
an assignment of the certificate of the vehicle for a  
valuable consideration.

26 Idaho bankruptcy and state courts have interpreted this provision  
27 strictly. See Gugino v. Knezevich (In re Pegram), 395 B.R. 692  
(Bankr. D. Idaho 2008); Northland Ins. Co. v. Boise's Best Autos  
28 & Repairs, 970 P.2d 21 (Idaho Ct. App. 1997), rev'd on other  
grounds, 958 P.2d 589 (Idaho 1998).

1 other purposes. Although the basic policies of Idaho and Oregon  
2 behind their certificate of title laws are the same, there is a  
3 genuine conflict between the laws insofar as the outcome of this  
4 appeal is concerned. Further, both Idaho and Oregon have a  
5 legitimate interest in the enforcement of their vehicle titling  
6 statutes to establish ownership for liability and other  
7 purposes. Therefore, a choice of law analysis is appropriate.

8 The Ninth Circuit generally looks to federal choice of law  
9 rules under federal statutes. Liberty Tool & Mfg. v. Vortex  
10 Fishing Sys., Inc. (In re Vortex Fishing Sys., Inc.), 277 F.3d  
11 1057, 1069 (9th Cir. 2002); Lindsay v. Beneficial Reinsurance  
12 Co. (In re Lindsay), 59 F.3d 942, 948 (9th Cir. 1995) ("In  
13 federal question cases with exclusive jurisdiction in federal  
14 court, such as bankruptcy, the court should apply federal, not  
15 forum state, choice of law rules."). However, cases outside of  
16 this circuit specifically construe § 544(a)(1) to require  
17 application of the conflicts of law rules of the state in which  
18 the bankruptcy was filed. Krigel v. Mercedes-Benz Credit Corp.  
19 (In re Stanley), 249 B.R. 509 (W.D. Mo. 2000); Huisinga v.  
20 Greater Quad City Auto Auction (In re Hocken), 360 B.R. 282  
21 (Bankr. N.D. Iowa 2007). Although this potentially could cause  
22 a conflicts of law problem, that is not the case here. Both  
23 federal law and Idaho law look to the Restatement (Second) of  
24 Conflicts of Law (1971) (the "Restatement") for the choice of  
25 law rules. This is thus a case of "false" conflicts as  
26 contemplated by conflicts scholars. Peter Hay, Patrick J.  
27 Borchers & Symeon C. Symeonides, Conflict of Laws § 2.9 n.15  
28 (5th ed. 2010) ("False conflicts . . . include cases in which

1 the laws of the involved states are identical, or different, but  
2 produce identical results."). We therefore apply the  
3 Restatement to determine the source of the trustee's § 544(a)(1)  
4 avoiding powers in this case.

5 Section 6(2) of the Restatement lists several factors  
6 relevant to a choice of law analysis:

- 7 (a) the needs of the interstate and international systems;  
8 (b) the relevant policies of the forum;  
9 (c) the relevant policies of other interested states and the  
10 relative interests of those states in the determination of the  
11 particular issue;  
12 (d) the protection of justified expectations;  
13 (e) the basic policies underlying the particular field of law;  
14 (f) certainty, predictability and uniformity of result; and  
15 (g) ease in the determination and application of the law to be  
16 applied.

17 Comment (c) to § 6(2) of the Restatement illustrates what  
18 approach should be taken in evaluating these factors: The  
19 factors listed are not exclusive nor are they listed in any  
20 order of importance. The comment further provides that  
21 "[v]arying weight will be given to a particular factor, or to a  
22 group of factors, in different areas of choice of law."  
23 Restatement § 6 cmt. c.

24 These directives demonstrate that the Restatement is  
25 designed to avoid a formulaic approach. Rather, courts must  
26 evaluate how much weight should be allotted to each of the  
27 factors given the specific facts of the case. Furthermore, "a  
28

1 particular state's contacts are measured on a qualitative rather  
2 than a quantitative basis. Thus, more than a mere 'counting' of  
3 the contacts is required." Buffalo Molded Plastics, Inc. v.  
4 Plastic Mold Tech., Inc. (In re Buffalo Molded Plastics, Inc.),  
5 354 B.R. 731, 752 (Bankr. W. D. Pa. 2006).

6 Although § 6(2) of the Restatement states general  
7 principles for resolving conflict of law issues, there are other  
8 areas of the Restatement that provide further guidance for the  
9 weighing of specific factors related to the issue at hand.  
10 Here, the trustee's avoidance action raises the issue of  
11 competing interests in the boat. Therefore, the best  
12 characterization for choice of law purposes is that a property  
13 issue is implicated.

14 Section 222 of the Restatement states the overall principle  
15 for determining conflict of law issues as to property. This  
16 section provides:

17 The interests of the parties in a thing are  
18 determined, depending upon the circumstances, either  
19 by the 'law' or by the 'local law' of the state which,  
20 with respect to the particular issue, has the most  
21 significant relationship to the thing and the parties  
22 under the principles stated in § 6.

23 Comment (b) to § 222 of the Restatement states that  
24 protection of the justified expectations of the parties is of  
25 considerable importance in the field of property.

26 Parties enter into property transactions with  
27 forethought and are likely to consult a lawyer before  
28 doing so. They will expect certain legal consequences  
to ensue from a given transaction and, in the absence  
of strong countervailing considerations, their  
expectations should not be disappointed. The relative  
importance of a person's expectations will vary with  
the circumstances. When transfers of interests in  
things are based upon consideration, such as in the

1 case of the sale of land or of chattels, the  
2 expectations of the transferor and of the transferee  
3 are of equal importance . . . . The need for  
4 protecting the expectations of the parties gives  
5 importance in turn to the values of certainty,  
6 predictability and uniformity of result. For, unless  
7 these values are attained, the expectations of the  
8 parties are likely to be disappointed.

9 Section § 244 of the Restatement is also relevant to the  
10 conveyance at issue. This section provides:

11 (1) The validity and effect of a conveyance of an  
12 interest in a chattel as between the parties to the  
13 conveyance are determined by the local law of the  
14 state which, with respect to the particular issue, has  
15 the most significant relationship to the parties, the  
16 chattel and the conveyance under the principles stated  
17 in § 6.

18 (2) In the absence of an effective choice of law by  
19 the parties, greater weight will usually be given to  
20 the location of the chattel, or group of chattels, at  
21 the time of the conveyance than to any other contact  
22 in determining the state of the applicable law.

23 Comment (f) of this section provides in relevant part:

24 The importance of a chattel's location at the time of  
25 the conveyance in the choice of the applicable law  
26 depends somewhat upon the intended permanence of this  
27 location. If the parties intended that the chattel  
28 should remain in this location more or less  
permanently, the state of the chattel's location will  
in all probability be the state of most significant  
relationship and thus the state of the applicable law.  
The situation is different when it is understood that  
the chattel will be kept only temporarily in the state  
where it was located at the time of the conveyance.  
Here it is more likely that, with respect to the  
particular issue, some other state will have the most  
significant relationship to the parties, the chattel  
and the conveyance and be the state of the applicable  
law.

29 Defendants contend that the bankruptcy court erred in  
30 applying the above referenced choice of law rules by giving  
31 little or no weight to the factors listed in §§ 222 and 244 of  
32 the Restatement. Under the former, the protection of the  
33 justified expectations of the parties factor is of considerable

1 importance in the field of property. Section 244(2) of the  
2 Restatement instructs that when the parties to a conveyance do  
3 not intend a chattel to remain in the state where it is located  
4 at the time of conveyance, the weight to be given to the  
5 location of the chattel at the time of conveyance is  
6 significantly lessened.

7 **B. Choice of Law Analysis: Application of §§ 6 (2), 222 and**  
8 **244 of the Restatement**

9 In the first step of its choice of law analysis, the  
10 bankruptcy court considered the factual contacts with the states  
11 of Idaho and Oregon. The court observed that the sale  
12 transaction took place in Idaho, the boat was physically in  
13 Idaho at the time of the sale and it was owned by Idaho  
14 residents. The court further noted that Defendants traveled to  
15 Idaho to complete the sale, the purchase money changed hands in  
16 Idaho, and Defendants returned the boat to Idaho to have it  
17 repaired and improved. In contrast, the court found that the  
18 contacts with Oregon were relatively minimal. In that regard,  
19 the court observed that the boat was taken to Oregon after  
20 purchase by its Oregon-resident new owner. Based on these  
21 findings, the court concluded that the contacts with Idaho  
22 arising from the transaction were significant.

23 However, the contacts of the transactions and the parties  
24 with either jurisdiction are to be weighed in light of the  
25 guiding policy concerns. Here, the bankruptcy court recognized  
26 the significance of the change in the location of the boat  
27 immediately after the purchase, but gave that factor little  
28 weight. Indeed, while the transaction and purchase took place

1 in Idaho, the record shows that FFI never intended to keep the  
2 boat in Idaho and, in fact, immediately moved the boat to Oregon  
3 after the purchase. This makes sense since FFI was an Oregon  
4 corporation with its place of business in Oregon.

5 In cases involving personal property, the Restatement  
6 instructs when it is understood that the chattel will be kept  
7 only temporarily in the state where it was located at the time  
8 of the conveyance, it is more likely that, with respect to the  
9 particular issue, some other state will have the most  
10 significant relationship to the parties, the chattel and the  
11 conveyance, and be the state of the applicable law. Thus,  
12 because the boat was immediately moved to Oregon, Idaho's  
13 interest in the transaction was greatly diminished. See  
14 Restatement § 244; Compliance Marine, Inc. v. Campbell  
15 (In re Merritt Dredging Co., Inc.), 839 F.2d 203, 207-08 (4th  
16 Cir. 1988); Shoeps v. Museum of Modern Art, 594 F. Supp. 2d 467,  
17 468 (S.D.N.Y. 2009). Accordingly, as between Idaho and Oregon,  
18 we conclude that under factor (c) of § 6(2) of the Restatement –  
19 the relevant policies of other interested states and the  
20 relative interests of those states in the determination of the  
21 particular issue – the interests of Oregon outweigh those of  
22 Idaho under these circumstances. Oregon would have a  
23 significant interest in protecting a corporation which maintains  
24 its place of business in Oregon and has assets located within  
25 the state.

26 The bankruptcy court also considered factor (d) of § 6(2)  
27 of the Restatement – the protection of the justified expectation  
28 factor – in conjunction with factor (f) – the certainty,

1 predictability, and uniformity of result factor. The court  
2 recognized that the expectations of the parties pointed to  
3 application of Oregon law.

4 Without question, the expectations of both the  
5 Defendants and Debtors were that when the Boat was  
6 sold, ownership passed from Debtors to FFI, with  
7 Defendants to have immediate possession of the Boat.  
8 Arguably, this should lead the court to favor  
9 application of the laws of Defendants' home state, and  
10 not the sellers' state.

11 However, the court further concluded:

12 [W]ere the court to give strict heed to the parties'  
13 expectations, the certainty and uniformity promoted by  
14 application of the Idaho vehicle titling law to a Boat  
15 located in this state would be undermined. The Court  
16 has previously commented on the legislative policy  
17 promoted by Idaho's titling statute . . . .<sup>7</sup>

18 The bankruptcy court concluded that predictability, certainty  
19 and uniformity should weigh more heavily in this context than  
20 mechanical obedience to the parties' expectations.

21 The court's statements lead us to conclude that it made the  
22 relevant policies of Idaho the predominant factor in its choice  
23 of law analysis. Indeed, the court's discussion overlooked  
24 comment (b) to § 222 of the Restatement, which provides that  
25 protection of the justified expectations of the parties is of  
26 considerable importance in the field of property. Protecting  
27 the parties' expectations, in turn, gives importance to the

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28 <sup>7</sup> In this regard, the bankruptcy court cited Hopkins v. Brasseaux (In re Saunders), 08.1 I.B.C.R. 16, 17 (Bankr. D. Idaho 2008), where the court found that the policy promoted by the Idaho motor vehicle title system, as implemented by the case law, protects those who rely upon the certificate of title to determine ownership or other rights in a vehicle. However, it is unlikely that a judicial lien creditor would actually rely on a certificate of title. Rather, the judicial lien creditor's rights arise without any reliance.

1 values of "certainty, predictability and uniformity of result."  
2 Restatement § 222; Buffalo Molded Plastics, Inc., 354 B.R. at  
3 755.

4 Admittedly, the expectations of the transferors, the  
5 debtors in this case, is of little import in this avoidance  
6 action because it is the trustee, as a judicial lien creditor,  
7 who is seeking the avoidance on behalf of the unsecured  
8 creditors. Nonetheless, we cannot totally ignore Defendants'  
9 expectations when they took the steps to immediately move the  
10 boat to Oregon after the sale and, as a result, Idaho's  
11 substantive connection with the transaction was lessened. Under  
12 these circumstances, we conclude that greater predictability and  
13 uniformity<sup>8</sup> can be achieved by placing emphasis on Defendants'  
14 expectations as directed by comment (b) to § 222 of the  
15 Restatement. Accordingly, we conclude that factors (d) and (f)  
16 of § 6(2) of the Restatement point to the application of  
17 Oregon's certificate of title law.

18 The bankruptcy court also considered factor (g) of § 6(2)  
19 of the Restatement – the ease of determination and application  
20 of law to be applied. In doing so, the court concluded that it  
21 "was very familiar with Idaho's vehicle titling law, and has  
22 applied it on numerous occasions. The Court has no reported  
23 experience with the Oregon title laws." To some degree it is  
24 easier for a bankruptcy court in Idaho to apply Idaho law.  
25 However, bankruptcy courts frequently look to the law of other

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26  
27 <sup>8</sup> In reality, the motor vehicle titling laws in general  
28 probably work against uniformity due to the fifty states having  
diverse vehicle codes.

1 states. In any event, we conclude that this factor has little  
2 significance because the vehicle titling laws in either Idaho or  
3 Oregon are easy to determine and apply.

4 The bankruptcy court did not specifically mention factor  
5 (a) – the needs of interstate and international systems.<sup>9</sup> As  
6 discussed above, Oregon has the dominant interest in this case  
7 because the boat was transported to Oregon, had Oregon dealer  
8 plates on it and was purchased by an Oregon corporation. In  
9 short, Oregon’s vehicle titling law is not so abnormal that its  
10 application would disrupt interstate systems. Therefore, factor  
11 (a) provides some support for the application of Oregon law, but  
12 this factor is not determinative.

13 In sum, based solely on a qualitative analysis, the factors  
14 set forth in §§ 222 and 244 of the Restatement weigh heavily in  
15 favor of the application of Oregon law. The factors regarding  
16 the parties’ expectations and the removal of the boat from Idaho  
17

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18 <sup>9</sup> Comment (d) “Needs of the interstate and international  
19 systems” states:

20 Probably the most important function of choice-of-law  
21 rules is to make the interstate and international  
22 systems work well. Choice-of-law rules, among other  
23 things, should seek to further harmonious relations  
24 between states and to facilitate commercial intercourse  
25 between them. In formulating rules of choice of law, a  
26 state should have regard for the needs and policies of  
27 other states and of the community of states. Rules of  
28 choice of law formulated with regard for such needs and  
policies are likely to commend themselves to other  
states and to be adopted by these states. Adoption of  
the same choice-of-law rules by many states will  
further the needs of the interstate and international  
systems and likewise the values of certainty,  
predictability and uniformity of result.

1 immediately after the transaction in essence dictate a more  
2 significant relationship with Oregon in the context of this  
3 dispute. Other factors in § 6(2) of the Restatement also  
4 support the application of Oregon law as discussed above.

5 **C. Ownership Of The Boat Under Oregon Law**

6 Having determined that Oregon law should apply to the  
7 avoidance action under a conflicts analysis, the second issue we  
8 must decide is whether the undisputed facts conclusively  
9 demonstrate that Defendants are the beneficial owners of the  
10 boat. We conclude that they do.

11 In Oregon, although the certificate of title is prima facie  
12 evidence of ownership,<sup>10</sup> it is not unimpeachable or conclusive  
13 evidence of ownership.

14 [T]he content and design of the Oregon Vehicle Code  
15 demonstrate that the legislature did not intend those  
16 statutes to define terms (such as 'own') for purposes  
17 of contracts between private parties generally, much  
18 less for purposes of auto liability policies  
19 particularly. Rather, the legislature's express  
20 intent in the vehicle code in general, and in the  
21 'provisions . . . relating to the registration and  
22 titling of vehicles' specifically, ORS 801.020(1)(c),  
23 was 'to provide a comprehensive system for the  
24 regulation of all motor and other vehicles in this  
25 state,' ORS 801.020(1). Moreover, the definitions in  
26 the vehicle code, including the code's definition of  
27 'owner,' ORS 801.375, purport to govern only the  
28 construction of the code itself. See ORS 801.100.

22 Farmers Ins. Exch. v. Crutchfield, 113 P.3d 972, 981 (Or. Ct.

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24 <sup>10</sup> Or. Rev. Stat. § 802.240 provides in relevant part:

25 In all actions, suits or criminal proceedings when the  
26 title to, or right of possession of, any vehicle is  
27 involved, the record of title, as it appears in the  
28 files and records of the Department of Transportation,  
is prima facie evidence of ownership or right to  
possession of the vehicle.

1 App. 2005), rev. den., 127 P.3d 650 (2005). Accordingly, under  
2 Oregon law, equitable title, coupled with the actual possession  
3 of the property, bears with it all the incidents of legal title.  
4 Id. at 981. Moreover, control and dominion are important  
5 aspects of ownership and the buyer's complete performance under  
6 the contract also supports a conclusion that the buyer owns the  
7 item purchased. Id.

8 The undisputed facts in the record show that after paying  
9 the purchase price, Defendants took possession of the boat and  
10 had complete control over it. They paid for the insurance and  
11 performed the necessary repairs. Accordingly, we conclude as a  
12 matter of law, that Defendants, not debtors, were the owners of  
13 the boat under Oregon authorities.

14 We also consider whether Defendants' unrecorded interest in  
15 the boat was superior to that of a judicial lien creditor under  
16 Oregon law. Although there is no Oregon case law on point  
17 addressing the priorities between a bona fide purchaser of a  
18 vehicle and a judicial lien creditor, generally, the lien of a  
19 judgment creditor attaches only to property actually owned by  
20 the judgment debtor. "A lien will not attach to property that  
21 has previously been conveyed to an innocent purchaser for value,  
22 even if that prior interest is unrecorded." Certified Mort'g  
23 Co. v. Shepherd, 838 P.2d 1082, 1085 (Or. Ct. App. 1992);  
24 Thompson v. Hendricks, 245 P. 724 (1926) (the lien of a judgment  
25 creditor attaches only to property actually owned by the  
26 judgment debtor); see also 50 C.J.S. Judgments § 784 (2011) ("A  
27 judgment does not attach as a lien on property which formerly  
28 belonged to the judgment debtor but which, before rendition of

1 the judgment, had been sold or aliened in good faith.");  
2 7 C.J.S. Attachment § 238 (2011) ("In the absence of a contrary  
3 statute, or special circumstances such as fraud, the attaching  
4 creditor secures only such rights in the property as the debtor  
5 had at the time of attachment.").

6 Accordingly, the trustee, as a judicial lien creditor,  
7 could attach only the interest of debtors in the boat as of the  
8 commencement of debtors' case. At the time debtors filed their  
9 petition, they no longer had an interest in the boat that could  
10 be attached because it was sold to Defendants. Therefore, the  
11 trustee's rights as a judicial lien creditor would not be  
12 superior to that of Defendants who were good faith purchasers.

13 **VI. CONCLUSION**

14 For the reasons stated above, we REVERSE.  
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