

DEC 29 2010

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

6	In re:)	BAP No. EC-10-1082-JuMkZ
7	ANTHONY F. STINSON,)	Bk. No. 09-27208
8	Debtor.)	Adv. No. 09-2540
9	_____)	
10	HERBERT R. GREEN,)	
11	Appellant,)	
12	v.)	O P I N I O N
13	JOHN R. ROBERTS, Chapter 7)	
14	trustee,)	
15	Appellee.)	
16	_____)	

Argued and Submitted on November 18, 2010
at Sacramento, California

Filed - December 29, 2010

Appeal from the United States Bankruptcy Court
for the Eastern District of California

Honorable David E. Russell, Bankruptcy Judge, Presiding

Appearances: _____
Appellant Herbert R. Green argued pro se.
Appellee John R. Roberts, Esq. argued pro se.

Before: JURY, MARKELL, and ZIVE,¹ Bankruptcy Judges.

¹ Hon. Gregg W. Zive, Bankruptcy Judge for the District of Nevada, sitting by designation.

1 JURY, Bankruptcy Judge:
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3 Chapter 7² trustee, John R. Roberts, commenced an adversary
4 proceeding against appellant Herbert R. Green ("Green"),
5 alleging that the transfer of a 2004 Chevrolet Silverado 1500
6 pickup truck from debtor Anthony F. Stinson to Green was a
7 voidable preference under § 547(b). After trial, the bankruptcy
8 court entered judgment for the trustee setting aside the
9 transfer and entered judgment against Green in the sum of
10 \$9,415.

11 This appeal raises an issue of first impression concerning
12 the perfection of an ownership interest in a motor vehicle under
13 California law. Green contends the bankruptcy court erred in
14 holding that his ownership interest in the truck was perfected
15 when he mailed the certificate of title for the truck to the
16 State of California, Department of Motor Vehicles ("DMV") in
17 accordance with the registration requirements under Cal. Veh.
18 Code § 5600. Green argues that, under California law, his
19 interest in the truck was sufficiently complete when he obtained
20 equitable title and possession of the vehicle even though he had
21 not yet complied with Cal. Veh. Code § 5600. Therefore, Green
22 maintains that the transfer was made outside the preference
23 period and was not avoidable. We agree with Green and REVERSE.
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27 ² Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 **I. STATEMENT OF THE CASE AND UNDISPUTED FACTS**

2 Prior to 2008, Green, debtor's father-in-law, loaned debtor
3 and his wife money to help pay their expenses. Debtor "repaid"
4 Green by giving him the truck that is the subject of the
5 transfer in this appeal.

6 In January of 2008, Green took possession of the truck and
7 the certificate of title. Shortly thereafter, Green purchased
8 several automotive parts for the truck. On March 13, 2008,
9 debtor terminated his insurance on the truck. On May 8, 2008,
10 Green added the truck to his insurance policy which showed the
11 "purchase date" of the truck as April 08, 2008. At that time,
12 Green did not take any steps to register his title. On April
13 10, 2009, Green registered his title with the DMV.

14 Six days later, on April 16, 2009, debtor filed his chapter
15 7 petition. Roberts was appointed the chapter 7 trustee. On
16 August 19, 2009, the trustee filed an adversary complaint
17 against Green alleging that the transfer of title to the truck
18 was a preference under § 547(b) and seeking either turnover of
19 the truck or its fair market value of \$7,875.

20 On February 16, 2010, the bankruptcy court held a trial on
21 the matter. Green appeared pro se. Green argued then, as he
22 does now, that the transfer of the title occurred in January
23 2008 by virtue of his possession and other indicia of ownership
24 which gave him an equitable ownership interest in the truck that
25 was superior to any interest of a judgment creditor of the
26 debtor, and thus was a perfected transfer under § 547(e)(1)(B).
27 The bankruptcy court rejected Green's argument and found that
28 the transfer date for purposes of § 547 was April 10, 2009 – the

1 date listed on the certificate of title issued by the DMV to
2 Green. The court therefore found the transfer of the title
3 occurred within the preference period and was avoidable under
4 § 547(b).

5 Judgment was entered against Green on February 23, 2010.
6 Green timely appealed.

7 **II. JURISDICTION**

8 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
9 § 1334 over this core proceeding under § 157(b)(2)(F). We have
10 jurisdiction under 28 U.S.C. § 158.

11 **III. ISSUE**

12 Whether the bankruptcy court erred in holding that, as a
13 matter of law, Green was required to comply with the
14 registration requirements under Cal. Veh. Code § 5600 in order
15 to perfect his ownership interest in the truck within the
16 meaning of § 547(e)(1)(B).

17 **IV. STANDARD OF REVIEW**

18 We review questions of statutory interpretation de novo.
19 Int'l Ass'n of Firefighters v. City of Vallejo (In re Vallejo),
20 408 B.R. 280, 299 (9th Cir. BAP 2009).

21 **V. DISCUSSION**

22 Under § 547(b), the trustee must prove seven elements to
23 successfully establish and recover a transfer as preferential:
24 (1) a transfer; (2) of an interest in property of the debtor;
25 (3) to or for the benefit of a creditor; (4) for or on account
26 of an antecedent debt; (5) the transfer was made while the
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1 debtor was insolvent;³ (6) made on or within 90 days before the
2 date of the filing of the bankruptcy petition;⁴ and (7) that
3 enabled the creditor to receive more than it would otherwise
4 have received if the transfer had not been made and the case had
5 proceeded under chapter 7. § 547(b).

6 The only element in dispute in this appeal is whether the
7 transfer was made within the preference period. Green has the
8 burden of proving any affirmative defenses which would establish
9 the nonavoidability of the transfer. § 547(g). Citing to In re
10 Marriage of Finnel, 227 Cal. Rptr. 38 (Cal. Ct. App. 1986),
11 Green asserts that the transfer occurred in January 2008 when he
12 acquired equitable title under California decisional law even
13 though he had not yet complied with the transfer requirements
14 under Cal. Veh. Code § 5600.

15 Section 547(e) governs when a transfer is made for purposes
16 of a preference. Section 547(e)(2) provides:

17 For the purposes of this section, . . . , a transfer is
18 made –

19 (A) at the time such transfer takes effect between the
20 transferor and the transferee, if such transfer is
perfected at, or within 30 days after, such time,
except as provided in subsection (c)(3)(B);

21 (B) at the time such transfer is perfected, if such
22 transfer is perfected after such 30 days; or

23 (C) immediately before the date of the filing of the
24 petition, if such transfer is not perfected at the
later of –

25 (i) the commencement of the case; or

26 ³ Under § 547(f), the debtor is presumed to have been
27 insolvent on or during the 90 days immediately preceding the date
28 of the filing of the petition.

⁴ For insiders such as Green, the reach-back period is one
year. § 547(b)(4)(B).

1 (ii) 30 days after such transfer takes effect between
2 the transferor and the transferee.

3 Thus, for preference purposes, transfers not perfected within
4 thirty days generally are deemed to have occurred at the time of
5 perfection rather than when the transfer takes effect between
6 the transferor and the transferee. Meanwhile, under § 547(e),
7 the perfection date is "when a creditor on a simple contract
8 cannot acquire a judicial lien that is superior to the interest
9 of the transferee." Under § 547(e), the issue of whether a
10 transfer is so perfected as to withstand a lien creditor's
11 challenge is determined by applicable nonbankruptcy law. See
12 Elliot v. Frontier Props./LP (In re Lewis W. Shurtleff, Inc.),
13 778 F.2d 1416, 1420 (9th Cir. 1985) (noting that the date a
14 transfer is perfected turns on state law).

15 Here, the applicable non-bankruptcy law is the Cal. Veh.
16 Code, which provides a comprehensive recording system for motor
17 vehicles "designed to accomplish . . . some of the things that
18 the real estate recording statutes accomplish in regard to land
19 and its improvements." Stoddart v. Peirce, 346 P.2d 774, 781
20 (Cal. 1959). Cal. Veh. Code § 5600 provides:

21 (a) No transfer of the title or any interest in or to
22 a vehicle registered under this code shall pass, and
23 any attempted transfer shall not be effective, until
the parties thereto have fulfilled either of the
following requirements:

24 (1) The transferor has made proper endorsement and
25 delivery of the certificate of ownership to the
26 transferee as provided in this code and the transferee
27 has delivered to the department or has placed the
28 certificate in the United States mail addressed to the
department when and as required under this code with
the proper transfer fee, together with the amount
required to be paid under Part 1 (commencing with
Section 6001), Division 2 of the Revenue and Taxation
Code with respect to the use by the transferee of the

1 vehicle, and thereby makes application for a transfer
2 of registration except as otherwise provided in
Sections 5905, 5906, 5907, and 5908.

3 (2) The transferor has delivered to the department or
4 has placed in the United States mail addressed to the
department the appropriate documents for the
5 registration or transfer of registration of the
vehicle pursuant to the sale or transfer except as
6 provided in Section 5602.

7 Cal. Veh. Code § 5600(a) plainly states in its opening provision
8 that no transfer of the title or any interest in a registered
9 vehicle shall pass unless the certificate of title is delivered
10 or mailed to the DMV. Thus, the plain language of the statute
11 suggests that it applies to both legal and equitable interests.

12 However, California courts have consistently construed the
13 transfer requirements under Cal. Veh. Code § 5600 to apply only
14 to the transfer of legal title and not equitable title. Plotkin
15 v. Pomona Valley Imports, Inc. (In re Cohen), 199 B.R. 709, 714
16 (9th Cir. BAP 1996) (citing Stoddart v. Peirce, 346 P.2d at
17 780). Therefore, under California law, equitable title to a
18 vehicle passes at the time of delivery which means that
19 "transfer of the property interest in a motor vehicle is
20 effective as between the immediate parties even though they have
21 not complied with the registration statute." Cohen, 199 B.R. at
22 714; quoting Security Pac. Nat'l Bank v. Goodman, 100 Cal. Rptr.
23 763, 767 (Cal. Ct. App. 1972), see also Finnell, 227 Cal. Rptr.
24 at 40. Accordingly, when debtor transferred the truck to Green
25 in January 2008, equitable title to the truck passed from debtor
26 to Green even though Green did not comply with Cal. Veh. Code
27 § 5600.

28 Further, although DMV title documents are prima facie

1 evidence of ownership, they are not unimpeachable or conclusive
2 evidence of ownership. Suburban Motors, Inc. v. State Farm Mut.
3 Auto. Ins. Co., 268 Cal. Rptr. 16, 20 n.4 (Cal. Ct. App. 1990).
4 Cal. Veh. Code § 460 provides that “[a]n ‘owner’ is a person
5 having all the incidents of ownership, including the legal title
6 of a vehicle” Therefore, holding legal title is just
7 one indicia of ownership.

8 Vehicle ownership is a fact question for the jury to
9 determine in light of all the circumstances. Kaley v. Catalina
10 Yachts, 232 Cal. Rptr. 384, 390 (Cal. Ct. App. 1986). Here,
11 however, there are no fact questions for a jury. Green
12 presented un rebutted evidence that supported his asserted
13 equitable ownership of the truck. Debtor satisfied his
14 outstanding obligations to Green with the transfer of his truck.
15 Further, the record shows that soon after Green took possession,
16 he purchased automotive parts for the truck. The record also
17 shows that debtor cancelled his insurance on the truck in March
18 2008 and in May 2008 Green added the truck to his insurance
19 policy. Finally, the record shows that the truck was in Green’s
20 actual possession and control after January 2008. Accordingly,
21 we conclude as a matter of law, that Green, and not debtor, was
22 the owner of the truck when he took possession and became the
23 equitable owner in January 2008 despite the fact that debtor
24 still held legal title.

25 Nonetheless, in analyzing when a transfer is made under
26 § 547, we must also consider whether Green’s unrecorded interest
27 should be recognized as superior to that of a judicial lien
28 creditor. Under California law, a judicial lien creditor does

1 not have priority over a good faith purchaser as a matter of law
2 simply because the purchaser failed to comply with the
3 registration requirements under Cal. Veh. Code § 5600. Finnel,
4 227 Cal. Rptr. at 40.

5 In Finnel, the trial court addressed the priorities of an
6 attaching creditor of the judgment debtor/seller over a third
7 party buyer who had paid for and taken possession of the
8 vehicle, but who had failed to register his title to the
9 vehicle. The trial court found, as a matter of law, that the
10 attaching creditor had superior rights to those of the buyer
11 because the buyer failed to comply with Cal. Veh. Code § 5600.

12 Relying on the California Supreme Court case of Henry v.
13 Gen. Forming, Ltd., 200 P.2d 785 (Cal. 1948), the California
14 Court of Appeal reversed. First, the appellate court noted that
15 under California law it was "well-settled that a transfer of the
16 property interest in a motor vehicle is effective as between the
17 immediate parties even though they have not complied with the
18 registration statute." Second, the court observed that "[a]
19 judgment creditor who attempts to levy against the property of a
20 debtor in satisfaction of his debt obtains a lien only upon the
21 debtor's interest. Where no actual interest is shown, the
22 attaching creditor gets nothing." Finnel, 227 Cal. Rptr. at 40.

23 The court further explained:

24 an attaching creditor who gives no new value lacks the
25 status of a bona fide purchaser. Instead, he 'stands
26 in the shoes of the debtor, and his lien attaches only
27 to the debtor's interest at the time of the levy.'
28 Insubstantial noncompliance with provisions of the
Vehicle Code 'will not give an attaching creditor of
the transferor rights superior to a prior buyer with
equitable title.'

1 Id. Following the reasoning of Henry, the California Court of
2 Appeal also observed that the ownership registration
3 requirements were not intended to protect a judgment creditor.
4 Finally, the court reiterated that the records of the DMV do not
5 conclusively establish true ownership. Id. at 41.

6 On this record, we do not perceive any facts that would
7 warrant a different outcome in this appeal. Accordingly, we
8 conclude that because under California law Green's equitable
9 title and ownership would defeat a claim by a judicial lien
10 creditor even though Green did not comply with Cal. Veh. Code
11 § 5600, the transfer was so perfected that it satisfied the
12 definition of a transfer found in § 547(e) and that transfer
13 occurred outside the preference period.⁵

14 **VI. CONCLUSION**

15 For the reasons set forth above, we REVERSE.

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⁵ We observe that the "purchase date" of April 8, 2008,
28 which was indicated on Green's insurance policy, is also outside
the one year reach-back period for preferences to insiders.