

IT IS SO ORDERED.

Dated: 04:46 PM December 11 2009



**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 08-51341
)	
ARNOLD RAY OWSLEY, dba)	CHAPTER 7
QUALITY ENVIRONMENTAL)	
TECHNOLOGIES, INC.)	
)	
DEBTOR)	ADVERSARY NO. 09-5035
)	
HAROLD A. CORZIN, TRUSTEE,)	JUDGE MARILYN SHEA-STONUM
)	
PLAINTIFF,)	
)	
vs.)	
)	
JOHN ULRING, aka)	
JOHN ULERY)	MEMORANDUM OPINION RE:
)	PLAINTIFF-TRUSTEE'S MOTION FOR
DEFENDANT.)	SUMMARY JUDGMENT [DOCKET #32]

The chapter 7 trustee administering the bankruptcy case of Arnold Ray Owsley initiated this adversary proceeding and seeks to avoid an allegedly fraudulent transfer of a Harley Davidson Fat Boy motorcycle (the "Harley") for the benefit of the bankruptcy estate. On October 27, 2009, plaintiff-trustee filed a motion seeking summary judgment against the defendant, John Ulring, a.k.a.

John Ulery, (“Ulring”) [docket #43] (the “Motion”). Ulring has not filed an answer to the Motion.

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. It is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (H) over which this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1334(b), 157(a) and 157(b). The defendant was served with the summons in this case in accordance with Fed. R. Bankr. Proc. 7004(f), and thus this Court obtained personal jurisdiction. In addition, the defendant answered the Complaint, although he did not respond to the Motion.

A court shall grant a party’s motion for summary judgment “if...there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c); FED. R. BANKR. P. 7056. The party moving for summary judgment bears the initial burden of showing the court that there is an absence of a genuine dispute over any material fact, *Searcy v. City of Dayton*, 38 F.3d 282, 286 (6th Cir. 1994) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)), and, upon review, all facts and inferences must be viewed in the light most favorable to the nonmoving party. *Searcy v. City of Dayton*, 38 F.3d 282, 285 (6th Cir. 1994); *Boyd v. Ford Motor Co.*, 948 F.2d 283, 285 (6th Cir. 1991), *cert. denied*, 503 U.S. 939 (1992). However, the ultimate burden of demonstrating the existence of a genuine issue of material fact lies with the non-moving party. *Celotex Corp.*, at 323.

Although Ulring has failed to file a response to the Motion, it cannot be granted simply for Ulring’s failure to respond. *See The Huntington Nat’l Bank v. Parton (In re Parton)*, 137 B.R. 902, 905 (Bankr. S.D. Ohio 1991). Instead, this Court must review the Motion to determine whether plaintiff-trustee has discharged his burden relative to that pleading. *Id.* However, where a non-moving party fails to respond to a motion for summary judgment, the court need not search the record

to establish an absence of a genuine issue of material fact. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir. 1989). Rather, the court may rely upon the facts presented and designated by the movant, *Guarino v. Brookfield Township Trs.*, 980 F.2d 399, 404 (6th Cir. 1992), bearing in mind that any inferences drawn from these facts still must be considered in the light most favorable to the non-movant. *In re Parton*, 137 B.R. 902, 905 (Bankr. S.D. Ohio 1991).

Plaintiff-trustee is seeking summary judgment against Ullring for an allegedly fraudulent transfer of the Harley from Arnold Ray Owsley (the “Debtor”) to Ullring. The following background facts are not disputed in this case¹: (1) the Debtor filed a petition under Chapter 7 of the Bankruptcy Code on April 21, 2008; (2) at the time of filing, the Debtor appeared on the title as the owner of the Harley; (3) on or about August 1, 2007, Ullring signed a Bill of Sale and Assignment (“Bill of Sale”) that purported to convey the Debtor’s interest in the Harley to Ullring; (4) Ullring is in possession of the Harley; and (5) Ullring paid the Debtor \$4,000 upon execution of the Bill of Sale.

In addition to the facts provided in the Stipulations, the Court also makes the following findings of fact: (1) Ullring paid the creditor holding the lien on the Harley, Harley Davidson Credit (“HDC”), \$11,431.54 between November 26, 2006 and November 26, 2008²; (2) the \$11,431.54 that Ullring paid to HDC was sufficient to discharge HDC’s lien on the Harley³; (3) HDC filed a proof of claim on July 31, 2008 (Claim #3-1) stating that HDC held a secured claim in the amount of

¹The parties filed Joint Stipulations in this case on June 23, 2009 [docket #19] (the “Stipulations”).

² Exhibit A of Ullring’s Answer [docket #10] is a print out of the payments that Ullring made to Harley Davidson Credit. The payments totaled \$11,431.54.

³Exhibit B of Ullring’s Answer [docket #10] shows the Ohio Certificate of Title with a signature indicating that HDC had discharged its lien on the Harley. The title in Exhibit B shows the Debtor’s name as the owner of the Harley.

\$4,863.05, as of April 21, 2008; and (4) Ulring has not filed a proof of claim in this case.

Plaintiff-trustee is relying upon Ohio law to determine the ownership interests of each of the Debtor and Ulring; and, thus, to determine whether the Harley is property of the bankruptcy estate.

The plaintiff-trustee cites O.R.C. § 4504.04, which provides in relevant part:

(A) No person acquiring a motor vehicle from its owner, whether the owner is a manufacturer, importer, dealer, or any other person, shall acquire any right, title, claim, or interest in or to the motor vehicle until there is issued to the person a certificate of title to the motor vehicle, or there is delivered to the person a manufacturer's or importer's certificate for it, or a certificate of title to it is assigned as authorized by section 4505.032 of the Revised Code; and no waiver or estoppel operates in favor of such person against a person having possession of the certificate of title to, or manufacturer's or importer's certificate for, the motor vehicle, for a valuable consideration.

(B) Subject to division (C) of this section, no court shall recognize the right, title, claim, or interest of any person in or to any motor vehicle sold or disposed of, or mortgaged or encumbered, unless evidenced:

(1) By a certificate of title, an assignment of a certificate of title made under section 4505.032 of the Revised Code, a manufacturer's or importer's certificate, or a certified receipt of title cancellation to an exported motor vehicle issued in accordance with sections 4505.01 to 4505.21 of the Revised Code;

(2) By admission in the pleadings or stipulation of the parties;

(3) In an action by a secured party to enforce a security interest perfected under Chapter 1309. of the Revised Code in accordance with division (A) of section 4505.13 of the Revised Code, by an instrument showing a valid security interest.

...

O.R.C. § 4505.04 (emphasis added).

This Court finds the plaintiff-trustee's argument that "[s]ubsection (A) of §4505.54 (sic) resolves the issue of who the owner was at the time of filing" to be well taken. The Bill of Sale states "[t]itle to all properties specified as being conveyed and transferred shall become fully and completely conveyed and transferred to the above-named Buyer upon payment of \$4,000." While

that document purports to transfer title to the Harley, the seller did not cause a title to the Harley to be issued to Uling. Pursuant to Ohio law, unless Uling has a title issued in his name, he does not have an ownership interest in the Harley. The record in this case shows that Uling does not have a title to the Harley issued in his name.

Another bankruptcy court in this district held that “as a matter of law, [O.R.C.] § 4505.04 compels that the name, as set forth on a vehicle’s certificate of title, controls when making a determination as to property of the estate under [Bankruptcy Code] § 541, and hence a trustee’s right for turnover under [Bankruptcy Code] § 542.” *In re Caddarette*, 362 B.R. 829 (Bankr. N.D. Ohio 2006). While the Court in *In re Caddarette* dealt with a situation where an automobile was allegedly owned by a minor child, but the child’s parent was on the title, this Court finds that the holding in *In re Caddarette* is applicable to the facts in this case.

Finally, this Court recognizes that it granted a motion for Uling’s attorney to withdraw from this case on November 5, 2009. However, Uling’s former attorney participated in the December 2, 2009 pre-trial conference and told the Court that he spoke to Uling twice between October 8, 2009⁴ and the date of his withdrawal as Uling’s attorney, and that during these conversations Uling’s former attorney provided Uling with the deadlines in the case. Further, Uling’s former attorney told the Court that he sent copies of all applicable orders to Uling via U.S. mail and e-mail. Based upon the representations of Uling’s former counsel, coupled with the plaintiff-trustee’s service of the Motion on Uling, this Court finds that Uling had appropriate

⁴On October 8, 2009, the Court held a pre-trial conference in which it gave the plaintiff-trustee a deadline to file his Motion and gave Uling a deadline to file his response. Uling’s former counsel participated in the October 8, 2009 pre-trial conference. During the October 8, 2009 pre-trial conference, Uling’s former attorney stated that Mr. Uling was not returning his calls.

notice of the deadline to file an answer to the Motion.

Based upon the foregoing, the Court finds that plaintiff-trustee has demonstrated that no genuine issues of material fact exist as to the ownership interest in the Harley pursuant to Ohio law. Without the issuance of a title in his name, Uling does not have an ownership interest in the Harley. Therefore, the Harley is property of the estate. Accordingly, plaintiff-trustee is entitled to judgment in his favor as a matter of law and the Motion is hereby granted. Pursuant to Fed. R. Bankr. Proc. 3002(c)(3), Uling has 30 days from the entry of the summary judgment to file any appropriate claims that he may have in this case. An entry of judgment consistent with this Memorandum Opinion will be entered separately in this case.

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cc: (via electronic mail)
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(via regular mail)
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