

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

In Re:	)	Case No. 01-32712
	)	
Joyce Selysteen Burr,	)	Chapter 7
	)	
Debtor.	)	Adv. Pro. No. 01-3174
	)	
Patricia A. Kovacs, Trustee,	)	<b>JUDGE MARY ANN WHIPPLE</b>
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Joyce Selysteen Burr,	)	
	)	
Defendant.	)	

**MEMORANDUM OF DECISION**

This adversary proceeding is before the court upon Plaintiff Patricia Kovacs, Trustee's ("Trustee") Motion for Partial Summary Judgment ("Motion"). In response, the Defendant-Debtor, Joyce Selysteen Burr ("Burr") has filed an affidavit and exhibits. The issue raised by the Trustee's Motion and Burr's Affidavit is whether a 1997 Harley Davidson Fat Boy motorcycle is property of the estate, when the certificate of title is in Burr's name but somebody else may have made the payments for the motorcycle and improvements. The court has reviewed the submitted materials and the entire record of the case. Based upon that review, and for the following reasons, the court finds that the Motion for Partial Summary Judgment should be DENIED.

**Summary of Facts:**

On May 1, 2001, Burr filed her voluntary Chapter 7 petition. Burr listed a "1997 Fat Boy

Motorcycle” as an asset in her schedules. [Main<sup>1</sup> Case Doc. #1 (Burr’s Petition, Schedule B, p. 2, Item No. 23)]. Additionally, Burr listed a “Harley Fat Boy” as “Property held for another person” identifying “Randy Carter” as the “Owner”. [Main Case Doc. #1 (Statement of Affairs, p. 3, Item No. 14)]. Burr also listed the “1997 Fat Boy Motorcycle” as “Property to be retained” pursuant to a Section 524(c) reaffirmation. [Main Case Doc. #1 (Statement of Intention, p.1, No. 2. b.)]. At some point between June 5, 2001 and June 18, 2001 a reaffirmation agreement was signed by the Debtor and Harley Davidson Financial Services. The reaffirmation agreement, a copy of the retail instalment contract, and a copy of the “Ohio Certificate of Title” were filed on June 25, 2001. [Main Case Doc. #4].

On August 3, 2001, the Trustee filed her “Complaint Objecting To The Discharge Of Debtor 11 U.S.C. 727(a)” (“Complaint”). [Doc. #1]. The Trustee alleged in the Complaint, among other things, that the “motorcycle was destroyed by the Debtor the day before the Trustee’s agent was to pick up the said motorcycle”. [Doc. #1 (Complaint, p. 1, ¶ 3)]. On October 10, 2001, the court held a pre-trial scheduling conference. At that time, the court determined that the predicate issue of whether the motorcycle was property of the estate might be amenable to determination on a motion for partial summary judgment. [Doc. #14 (Initial Adversary Proceeding Scheduling Order, p.1, ¶ 2)]. While there appeared to be disputed facts over its destruction, if the motorcycle is not property of the estate in the first place then the Trustee does not have a cause of action against Burr under Section 727(a) based on mutilation of property of the estate.

Trustee filed her Motion with a copy of the certificate of title attached as “Exhibit A.” The “Ohio Certificate of Title” was issued on “10/14/99” in the “County of Sandusky” to “Joyce S. Burr” as “owner” and “Harley Davidson Credit” as “first lienholder”. [Doc. #15 (Plaintiff’s Motion, “Exhibit A”)].

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Burr’s underlying Chapter 7 case, Case No. 01-32712, will be referred to as the Main Case, and docket entries in that case separately identified from those in this adversary proceeding.

In response, Burr filed an affidavit and several exhibits. [Doc. #16]. Burr does not dispute the validity of the certificate of title. However, Burr's affidavit states, among other things, that Randy Carter transferred a "1994 Super Glide" to Burr "so that she could purchase the 1997 Fat Boy for Randy Carter". [Doc. #16 (Affidavit, p.1, ¶¶ 1-20)]. Further, Burr swears that "Randy Carter has been making all the payments" and paid for all the repairs and improvements. [Doc. #16 (Affidavit, pp.1,2, ¶¶ 3,5)]. The exhibits attached to her Affidavit are motorcycle parts and service receipts for a customer identified as Randy Carter. [Doc. #16 (Burr's Affidavit Exhibits)].

### **Law and Analysis:**

#### **I. Summary Judgment Standard**

Under Fed.R. Civ. P. 56, made applicable to this proceeding by Fed.R.Bankr.P. 7056, a party will prevail on a motion for summary judgment when "[t]he pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, (1986); Fed.R.Civ.P. 56(c). In order to prevail, the movant must demonstrate all elements of the cause of action, but once that burden is established, the opposing party must set forth specific facts showing there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-51, (1986). Inferences drawn from the underlying facts must be viewed in a light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-88, (1986).

#### **II. 11 U.S.C. § 541. Property of the estate**

The Motion raises the issue of what is property of the bankruptcy estate, which is governed by 11 U.S.C. § 541(a)(1) and (d), as follows:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

\* \* \*

(d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

The determination of whether the motorcycle is property of the estate under 11 U.S.C. § 541 depends on whether and to what extent, under Ohio law, the motorcycle was Burr's property when she filed her Chapter 7 petition. *See Raleigh v. Illinois Dept. Of Revenue*, 530 U.S. 15, 20 (2000); *Butner v. United States*, 440 U.S. 48, 54(1979) (Congress left determination of property rights in bankruptcy estates to state law).

The Trustee contends that Burr's name on the motorcycle's certificate of title is conclusive proof as to its owner for purposes of Section 541. In support of her position the Trustee relies upon Ohio's Certificate of Motor Vehicle Title Act, Ohio Revised Code Annotated § 4505.04, which provides:

(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 delivered to the person a manufacturer's or importer's certificate for it; 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, 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 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 sections 1309.01 to 1309.50 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.

Ohio Rev. Code Ann. § 4505.04 (Anderson 1993) (Emphasis added).

Despite the apparent clarity of the statute, the court finds neither Section 4505.04 nor its interpretation wholly support the Trustee's assertion that ownership of a motor vehicle rests irrefutably with the titleholder. *Cf. Breyfogle v. Mears (In re Mears)*, Ch. 7 Case No. 94-60902, Adv. No. 94-6118, 1995 Bankr LEXIS 2101, 1995 W. L. 903219 (Bankr. N.D. Ohio Jan. 5, 1995). Some courts have held that "legal title to motor vehicles is evidenced only by the name of the owner" on the certificate of title. *In re Gordy*, 39 B.R. 33, 34 (Bankr. N.D. Ohio 1984). The court recognizes that this interpretation, which certainly comports with the plain language of the statute, promotes clarity for courts, trustees and others respecting vehicle ownership issues.

Nevertheless, other courts have held that title to a motor vehicle is only prima facie evidence of ownership. *See, e.g., In re Masters*, 137 B.R. 254, (Bankr. S.D. Ohio 1992) (citing *Rutledge v. Toyota Motor Credit (In re Rutledge)*, 115 Bankr. 344, 346 (Bankr. N.D. Ala. 1990)). Significantly, in *In re Amos*, 201 B.R. 184 (Bankr. N.D. Ohio 1996), the bankruptcy court determined that, even though the debtor's name appeared on the certificate of title, the vehicle was not property of the estate subject to sale by the Chapter 7 trustee because the debtor did not own the equitable interest in the vehicle. In *Amos*, the debtor and her boyfriend agreed to title the boyfriend's van in the debtor's name simply as an

accommodation. *Id.* The *Amos* court ruled the “[d]ebtor’s agreement to take legal title to the [v]an in order to enable [debtor’s boyfriend] to purchase it created an express trust...”. *Id.* at 186. According to the court, this express trust was not overcome by Section 4505.04. The facts of *Amos* are very similar to the facts presented by Burr’s Affidavit in this case.

The *Amos* “express trust” ruling, that a third party may nevertheless hold an equitable interest in a vehicle titled in the debtor’s name, was subsequently adopted by the United States Bankruptcy Appellate Panel (“BAP”) for the Sixth Circuit. *See Bavelly v. Powell (In re Baskett)*, 219 B.R. 754, 761-62 (BAP 6<sup>th</sup> Cir. Ohio 1998). In *Bavelly*, the BAP held, in reversing a default judgment, that a claim of an express trust may have merit as a defense to a trustee’s turnover action, even though the vehicle was titled in the debtor’s name. *Id.* Citing *Amos* the BAP agreed with the conclusion “that there was ‘no reason to expect that the Ohio courts would interpret section 4505.04 [of the Ohio Revised Code] to invalidate express trusts where doing so would further none of the purposes the Supreme Court has said the section was intended to achieve.’” *Id.* at 762.

This court must follow the express terms of Section 4505.04, and where the Ohio Supreme Court has not spoken on the issue this court must discern how it would respond. *In re Akron-Cleveland Auto Rental, Inc.* 921 F.2d 659, 662 (6<sup>th</sup> Cir. 1990). The Ohio Supreme Court has itself recognized equitable and other exceptions to the Certificate of Title Act, in spite of the seeming clarity of the plain words of the statute. *See State of Ohio v. Shimits*, 10 Ohio St.3d 83, 461 N.E.2d 1278 (1984). *See also, Hughes v. Al Green*, 65 Ohio St.2d 110, 418 N.E. 2d 1355 (1981); *Smith v. Nationwide Mutual Insurance Co.*, 37 Ohio St.2d 150, 524 N.E. 2d 507 (1988).

In its most recent application and analysis of the Certificate of Title Act, which occurred after *Bavelly*, the Ohio Supreme Court seemed to reaffirm the primacy of the plain terms of the statute in situations involving ownership disputes. *Saturn of Kings Automall, Inc. v. Mike Albert Leasing, Inc.*, 92

Ohio St. 3d 513, 751 N.E. 2d 1019 (2001). As the dissent observes, however, the decision is confusing. *Id.* at 520. On the one hand, it tries to distinguish prior decisions such as *Hughes* and *Smith* where it declined to hold that the Certificate of Title Act was determinative of vehicle ownership questions. On the other hand, it finds such cases reconcilable with the facts and its ultimate holding in *Saturn of Kings Automall*. In *Saturn*, a car dealer sold vehicles to a second dealer who in turn sold them to yet a third dealer. The original seller retained the certificates of title, in its name, but relinquished possession of the vehicles to the second dealer pending payment. While the third dealer paid the second dealer for the vehicles, the first dealer was never paid and refused to relinquish the titles. Ultimately, the Ohio Supreme Court held that the Certificate of Title Act controlled and the original dealer was entitled to replevin the vehicles themselves because it held the certificates of title. The decision does not, however, cite *Shimits*, in which the Ohio Supreme Court explicitly recognized that equitable ownership interests can, under some circumstances, trump the certificate of title.

In this case, the bankruptcy estate acquires its rights only through Burr. There is no alleged or apparent dispute between Burr and the purported equitable interest holder, Randy Carter, as to ownership of the motorcycle. Nor is a sale or theft of the motorcycle an issue here. Accordingly, this court cannot hold that, as a result of *Saturn of Kings Automall*, the Ohio Supreme Court would now reach a different conclusion than *Amos* and *Bavely* with respect to the priority of the title over equitable interests in motor vehicles under Ohio law. This is especially so given the surprising elasticity the Ohio Supreme Court has repeatedly found in a statute that, on its face, would not appear to accommodate such flexibility. See *Akron-Cleveland Auto Rental*, 921 F2d at 663 (observing that the Ohio Supreme Court has “explicitly recognized that Section 4505.04 is not to be construed literally”).

**Conclusion:**

At the summary judgment stage the court’s function is not to weigh the evidence and determine

the truth of the matter but to determine whether there is a genuine issue for trial. Pursuant to Section 541, Burr's legal title to the motorcycle has become part of the bankruptcy estate. But at this time and in viewing the facts in a light most favorable to Burr, the court finds that sufficient facts exist which, if credible and if proven at trial, may establish at a minimum a finding that an express trust was created, with the beneficial interest in the motorcycle held by Randy Carter. While the court has credibility concerns about Burr's affidavit testimony, those simply cannot be resolved on summary judgment. *See Bavelly*, remanded at 1999 Bankr. LEXIS 1851 (Bankr. S.D. Ohio Aug. 11, 1999) (after trial on remand from the BAP, the bankruptcy court found that no express trust existed and held that the vehicle was property of the estate). Therefore, the court finds that a genuine issue of material fact, as to the ownership interest of Randy Carter in the motorcycle, does exist and Trustee's Motion must be denied.<sup>2</sup>

In reaching its conclusions, the court has considered all the evidence, exhibits, and arguments of counsel, regardless of whether they are specifically referred to in this Memorandum of Decision. A separate order in accordance with this Memorandum of Decision will be entered.

Dated:

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**MARY ANN WHIPPLE**  
**UNITED STATES BANKRUPTCY JUDGE**

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These facts raise the additional legal issue whether, if Burr is determined as a matter of fact at trial to hold only bare legal title to the motorcycle, whether any destruction or mutilation proven at trial would still fall within 11 U.S.C. § 727(a)(2) as a basis for denial of Burr's discharge.