

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

IN RE:	)	CHAPTER 7
)	
D&H AUTO RENTAL, INC.,	)	CASE NO. 02-66069
)	
Debtor.	)	JUDGE RUSS KENDIG
LOREN N. WINGERT,)	
	)	ADV. NO. 03-6039
Plaintiff,)	
)	
v.	)	MEMORANDUM OF DECISION
)	
MANHEIM AUTOMOTIVE FINANCE SERVICE, et al.,)	
)	
Defendants.)	
)	
IN RE:	)	CHAPTER 7
)	
D&H AUTO RENTAL, INC.,	)	CASE NO. 02-66069
)	
Debtor.	)	JUDGE RUSS KENDIG
JOHN M. BRIDEWESER and BETTY A. BRIDEWESER,)	
	)	ADV. NO. 03-6052
Plaintiffs,)	
)	
v.	)	MEMORANDUM OF DECISION
)	
MANHEIM AUTOMOTIVE FINANCE SERVICE, et al.,)	
)	
Defendants.)	

Before the court are motions to dismiss and responses thereto filed in two adversary proceedings that were consolidated for decision in the interest of judicial economy. The court is asked to determine whether subject matter jurisdiction exists before the cases can proceed further. The following constitutes the court's findings of fact and conclusions of law pursuant

to Federal Rule of Bankruptcy Procedure 7052.

FACTS

D&H Auto Rental, Inc. (hereafter "D&H"), a used car business, filed a petition under Chapter 7 of the Bankruptcy Code on December 16, 2002. *See* Pet. The meeting of creditors was held February 4, 2003 and was continued until February 18, 2003. *See* Minutes of Mtg. of Creds., Docket Nos. 8 and 9. As of yet, Joanne Paulino, Chapter 7 trustee (hereafter "Trustee"), has not determined whether the case is an asset case. *See* Minutes of Mtg. of Creds., Docket No. 9.

D&H entered into an agreement with defendant Manheim Automotive Financial Services, Inc. (hereafter "Manheim") whereby Manheim financed D&H's purchase of used automobiles and Manheim secured its interest therein by holding the title and noting its security thereon. *See* Manheim's Am. Mot. to Dismiss. When D&H turned over the money to Manheim for the vehicles, Manheim released its security interest and turned the title over to D&H. *See id.*

I. Facts of the Wingert Case

Plaintiff Loren N. Wingert (hereafter "Wingert") purchased a 2001 Ford Windstar Sport vehicle from D&H on August 22, 2002 for \$13,350.00 plus tax and title fees. *See* Comp. A total down payment of \$3,500.63, including the value of a trade-in and a cash deposit, was made with the balance being paid through financing from defendant First Merit Bank (hereafter "First Merit"). *See id.* D&H did not turn the money over to Manheim, and consequently, Manheim did not release its lien nor turn over the title to D&H. *See* Manheim's Am. Mot. to Dismiss. Wingert has never received the title to the vehicle, and Wingert requests, pursuant to the complaint, that the court order the title of the vehicle be transferred to Wingert subject to the lien of First Merit. *See id.*

II. Facts of the Brideweser Case

Plaintiffs John M. Brideweser and Betty A. Brideweser (hereafter collectively "Brideweser") purchased a 2002 Buick LeSabre Custom vehicle from D&H on August 16, 2002 for \$17,550.00 plus tax and title fees. *See* Comp. A down payment of \$3,112.61, the value of a trade-in, was made with the balance being paid through financing from First Merit. *See id.* D&H did not turn the money over to Manheim, and consequently, Manheim did not release its lien nor turn over the title to D&H. *See* Manheim's Am. Mot. to Dismiss. Brideweser has never received the title to the vehicle, and Brideweser requests, pursuant to the complaint, that the court order the title of the vehicle be transferred to Brideweser subject to the lien of First Merit. *See id.*

ARGUMENTS

In response to the complaints in the Wingert and Brideweser cases, Manheim filed motions to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 7012(b). *See* Am. Mot. to Dismiss. Manheim argues that the sales of the vehicles in both cases occurred several months prior to the bankruptcy filing, and therefore, neither D&H, nor Trustee, through the bankruptcy filing of D&H, have an interest in the vehicles or their titles meaning the court lacks subject matter jurisdiction over these proceedings. *See id.* Additionally, Manheim argues that the outcome of the adversary proceedings commenced by Wingert and Brideweser will not affect the rights, liabilities, options or freedom of action of D&H or its bankruptcy estate. *See id.* Finally, Manheim argues that Trustee has only a nominal interest in the vehicles at issue and that this interest is insufficient to confer subject matter jurisdiction on this court. *See* Reply to Resp. to Mot. to Dismiss.

In response to the motions to dismiss filed by D&H, Wingert and Brideweser argue that at the time of the filing of their complaints, the title to the vehicles that they had purchased from D&H were in the name of D&H. *See* Resp. to Mot. to Dismiss. They argue that the bankruptcy court has jurisdiction over these proceedings and that they are core proceedings pursuant to 28 U.S.C. § 157(b)(2)(A), (H) and (O). *See id.* They argue that the critical fact for the court to take notice of is that title to the vehicles never transferred to them prior to the bankruptcy filing of D&H. *See id.* They argue that pursuant to O.R.C. § 4505.01 *et. seq.*, the Motor Vehicle Title Act, title to the vehicles remains in the name of D&H, and therefore, the vehicles came into the bankruptcy estate upon the filing of its bankruptcy. *See id.* Further, Wingert and Brideweser argue that the bankruptcy estate of D&H could be affected by a resolution of these proceedings if the court determines that the security interest of Manheim is superior to that of First Merit and Wingert and Brideweser. *See id.* Finally, Wingert and Brideweser argue that the fact that Trustee has not yet determined whether D&H's case is an asset case means that the present adversary proceedings could have an impact on the administration of the case. *See id.*

In reply to the responses of Wingert and Brideweser to the motions to dismiss, Manheim argues that several facts are in dispute, including that Manheim's interest is perfected via floor plan financing and that First Merit financed the purchases of the vehicles by Wingert and Brideweser. *See* Rep. to Resp. to Mot. to Dismiss. Manheim also argues that the court's ruling regarding the priority interest of the parties will have an effect on the bankruptcy estate as at least one of the parties will have a claim against the estate as a result of its ruling. *See id.* Additionally, Manheim admits that the title to the vehicles did not transfer to Wingert or Brideweser, pursuant to O.R.C. § 4505.04(A), prior to the bankruptcy filing, and so Manheim argues that the Ohio Revised Code governs the proceedings. *See id.*

ANALYSIS

I. Standard of review

Federal Rule of Civil Procedure 12(h)(3), applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 7012(b), provides that a complaint shall be dismissed for lack of jurisdiction over the subject matter. Fed. R. Civ. P. 12(h)(3). Motions to dismiss under this Rule

come in two varieties. A *facial* attack on the subject matter jurisdiction alleged by the complaint merely questions the sufficiency of the pleading. In reviewing such a facial attack, a trial court takes the allegations in the complaint as true, which is a similar safeguard employed under 12(b)(6) motions to dismiss. On the other hand, when a court reviews a complaint under a *factual* attack . . . no presumptive truthfulness applies to the factual allegations. . . . When facts presented to the district court give rise to a factual controversy, the . . . court must therefore weigh the conflicting evidence to arrive at the factual predicate that subject matter jurisdiction exists or does not exist.

Ohio Nat'l Life Ins. Co. v. United States, 922 F.2d 320, 325 (6th Cir. 1990) (emphasis in original); *see also* Atek Information Services, Inc. v. Hartman (In re Atek Information Services, Inc.), 1994 WL 263431, *3 (Bankr. N.D. Ohio 1994).

Manheim's motions to dismiss constitute a facial attack on the subject matter jurisdiction of the complaints of Wingert and Brideweser. As such, the facts in the complaints will be given the deference accorded them pursuant to Ohio Nat'l Life Ins. Co. in determining the merits of the subject matter jurisdiction dispute of the adversary proceedings at issue.¹

II. Burden of Proof

The plaintiff has the burden of proof to establish that the court has subject matter jurisdiction over a proceeding. Federated Dept. Stores, Inc. v. White Flint Lmt'd. Part. (In re Federated Dept. Stores, Inc.), 240 B.R. 711, 717-18 (Bankr. S.D. Ohio 1999) (quoting Weaver v. University of Cincinnati, 758 F.Supp. 446 (S.D. Ohio 1991) (citations omitted)).

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Even if Manheim's motions to dismiss would be construed to represent a factual attack, there is no meaningful dispute about the facts relevant to this motion. Manheim disputes the facts relating to its method of perfecting its security interest and whether First Merit financed the purchase of the vehicles. While material to the underlying merits of the proceedings, this is not material to the issue of subject matter jurisdiction.

III. Jurisdiction

A. General Power to Determine Jurisdiction

“[F]ederal courts have the power to determine their own jurisdiction,” including the bankruptcy courts’ determination whether a proceeding is core or non-core. 1 Collier on Bankruptcy, § 3.02[6][a] (15th ed. 2003); *see also* 28 U.S.C. § 157(b)(3) and Central Nat’l Bank v. Kwak, 49 B.R. 337, 340 (N.D. Ohio 1985).

B. Subject Matter Jurisdiction Exists Because the Bankruptcy Court Has Exclusive Jurisdiction Over Property of the Debtor and the Estate

Section 1334(e) of title 28 governs the existence of jurisdiction in bankruptcy courts, providing that “[t]he district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.” 28 U.S.C. § 1334; *see also* Noletto v. Nationsbank Mortgage Corp., 244 B.R. 845, 854 (S.D. Ala. 2000) (finding § 1334(e) “is limited to giving the ‘home court’ exclusive jurisdiction over *in rem* matters” based on statutory scheme, legislative history, and nature of bankruptcy practice); Piper v. United States (In re Piper), 291 B.R. 20, 23 (Bankr. D. Mass. 2003) (“bankruptcy *in rem* jurisdiction extends not only to assets of the estate but also to “all assets of the debtor . . . as of the commencement of the case” (quoting § 1334(e)); Saunders v. United States (In re Saunders), 243 B.R. 847, 849 (Bankr. S.D. Fla. 1999) (“clear language of § 1334(e) provides for jurisdiction over all property of the Debtor, not merely property of the estate”).

Section 157(a) of title 28, in turn, provides that “[e]ach district court may provide that any and all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.” 28 U.S.C. § 157(a). In this district, the district court has referred matters under § 157(a) to the bankruptcy court pursuant to its general order of reference entered on July 16, 1984.

Manheim argues that the court does not have subject matter jurisdiction over the within adversary proceedings under 28 U.S.C. § 1334 because the sales of the vehicles in question occurred several months prior to the bankruptcy filing of D&H, the outcome of the adversary proceedings will not affect the rights, liabilities, options or freedom of action of D&H or its bankruptcy estate, and the interest Trustee possesses in the vehicles at issue is insufficient to confer subject matter jurisdiction on this court. The authority of § 1334(e) demonstrates that these arguments are irrelevant.

Section 541 of the Bankruptcy Code defines property of the estate as “all legal or equitable interests of the debtor, in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). According to the legislative history, the purpose of § 541(a) is to “bring anything of value that the debtors have into the estate.” H.R. Rep. No. 95-595, at 176 (1977). Section

541(a) should be construed broadly in determining what constitutes property of the estate. U.S. v. Whiting Pools, Inc., 462 U.S. 198, 205-06 (1983).

Federal law determines what property becomes property of the estate. In re Gunder, 8 B.R. 390, 392 (Bankr. S.D. Ohio 1980). State law determines the type or extent of the debtor's interest. Id. Further, "[p]roperty of the estate is generously defined under federal law and does not exclude novel interests." Id. (citing Segal v. Rochelle, 382 U.S. 375 (1966) (construing the predecessor to § 541)). The exclusions from property of the estate are listed in subsections (b) and (c)(2) of § 541 and have no applicability to the proceedings at issue. 11 U.S.C. § 541.

In the instant case, there has been no dispute that the titles to the vehicles that Wingert and Brideweser request that Manheim turn over constitute property of the estate. State law determines the interest of D&H in those vehicles.

Ohio Revised Code § 4505.04(A) provides:

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.

O.R.C. § 4505.04(A). The legislature enacted the Certificate of Motor Vehicle Title Act, O.R.C. § 4505.01 *et seq.*, in part "to create an instrument evidencing title to, and ownership of, motor vehicles." Saturn of Kings Automall, Inc. v. Mike Albert Leasing, Inc., 92 Ohio St. 3d 513, 516 (2001) (quoting Hughes v. Al Green, Inc., 65 Ohio St. 2d 110, 115 (1981)).

In the instant case, it is undisputed that the titles to the vehicles in question are in the name of D&H subject to the liens of Manheim notated on the titles. An internet search confirms this. *See Exhibit A* appended. Accordingly, neither Wingert nor Brideweser have obtained title to the respective vehicles they purchased pursuant to the provisions of O.R.C. § 4505.04(A), and therefore, the vehicles, or at least some interest therein, became property of the bankruptcy estate of D&H upon the filing of its petition on December 16, 2002.

D&H holds valid title to the vehicles pursuant to O.R.C. § 4505.04(A). The titles became property of the bankruptcy estate pursuant to 11 U.S.C. § 541(a)(1). Consequently, the court has subject matter jurisdiction of this proceeding pursuant to 28 U.S.C. § 1334(e).

CONCLUSION

The court finds that subject matter jurisdiction exists over the within adversary proceedings. Orders consistent with this memorandum of decision shall enter forthwith in each case.

/s/ Russ Kendig

RUSS KENDIG
U.S. BANKRUPTCY JUDGE JUL - 1 2003

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Memorandum of Decision and accompanying Order was mailed, via regular U.S. mail, to counsel for Plaintiffs, counsel for Defendants, Defendants, counsel for Debtor, and Debtor on the 10th day of July 2003.

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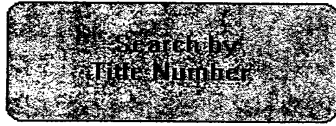

Deputy Clerk



Ohio Department Of Public Safety
Online Vehicle/Watercraft Title Inquiry

OHIO
PUBLIC
SAFETY

Date: 7/1/2003



Search Title by entering **Property Type** **Identification #**

E-mail any comments or concerns to [Help Support](#).

The title information available from this web page is obtained from Ohio county title offices. Title information may not exist in the system and on this web page for titles issued prior to March 1993, because all Ohio county offices were not automated until March 1993. The information contained on this web page represents detailed information for titles issued in the State of Ohio.

By making this information available, the Ohio Department of Public Safety and the Bureau of Motor Vehicles are not certifying that title information is accurate. Ohio Revised Code 4505.07 prohibits the filing of false information on title assignments and applications.

Ohio Revised Code 4501.27 prohibits the BMV from releasing private owner information.

For further assistance, contact the Title Section by telephone at (614) 752-7671 or email to: [Ask Titles A Question](#)

Property Information

Type: Vehicle	VIN#: 1G4HP54K724128170	Year: 2002	Make: BUICK	Model: LESABRE CUSTOM	Body Type: Four
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Current Title Information

Title number: 7601820218	Title status: Active	Owner name: D & H AUTO RENTAL INC	Number of owners:
Issue date: 08/20/2002	Title type: Original	Liens 1: MANHEIM ATOMOTIVE FINANCIAL SERV INC.	Liens 1 cancel date:
Control Number: 051086443		Liens 2:	Liens 2 cancel date:
Mileage: 15930	Mileage brand: Actual	Brands 1:	Brands 2:
			Brands 3:

No History Information



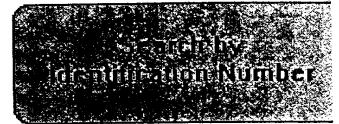
<https://www01.dps.state.oh.us/atps/titleinquiry.asp?id=1G4HP54K724128170&propid=V>

7/1/2003



Ohio Department Of Public Safety Online Vehicle/Watercraft Title Inquiry

Date: 6/5/2003



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For further assistance, contact the Title Section by telephone at (614) 752-7671 or email to: [Ask Titles A Question](#)

Property Information

Type: Vehicle	VIN#: 2FMZA57431BB10188	Year: 2001	Make: FORD	Model: WINDSTAR
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Current Title Information

Title number: 7601787879	Title status: Active	Owner name: D & H AUTO RENTAL INC	Number
Issue date: 07/02/2002	Title type: Original	Liens 1: MANHEIM FINANCIAL SER INC	Lien 1 c
Control Number: 051024835		Liens 2:	Lien 2 c
Mileage: 25485	Mileage brand: Actual	Brands 1:	Brands
		Brands 2:	

History

Title Number	Issue Date	Title Type	Title Status	Inactive Reason Type	Mileage	Mileage brand	Mileage justify	
6700658899	05/22/2002	Original	Inactive	Transferred Out of County	25474	Actual		EAS