



SO ORDERED.

SIGNED this 10 day of February, 2005.

Dale L. Somers

Dale L. Somers
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In Re:

ALETHA LEE KNOWLES,

DEBTOR.

**AFFORDABLE RESIDENTIAL
COMMUNITIES,**

PLAINTIFF,

v.

**J. MICHAEL MORRIS, Chapter 7 Trustee,
and MID AMERICAN CREDIT UNION,**

DEFENDANT.

**CASE NO. 01-13992-DLS
CHAPTER 7**

ADV. NO. 02-05250

MEMORANDUM OF DECISION AND ORDER

This is an adversary proceeding to determine rights in a 2001 manufactured home in the possession of the Debtor on the date of filing. Plaintiff Affordable Residential Communities (ARC),

which entered into a prepetition contract to sell the home to the Debtor, Aletha Lee Knowles, filed this adversary complaint against the Chapter 7 Trustee, J. Michael Morris, and Mid American Credit Union¹ seeking a determination that it is the owner of the home. A counterclaim for lien avoidance, pursuant to 11 U.S.C.A. § 544², was filed by the Trustee. The Plaintiff appears by William H. Zimmerman, Jr. The Chapter 7 Trustee, J. Michael Morris, appears by J. Michael Morris. There are no other appearances. The Court has jurisdiction, which is not contested by the parties.³

The Final Pretrial Conference Order provides for the parties to file stipulations of fact and briefs, with the matter to be set for trial "after [the] Court's ruling on the stip facts and briefs, if necessary."⁴ The parties have submitted a joint stipulation and memoranda on legal issues concerning ARC's interests in the manufactured home and the Trustee's claim of lien avoidance. The Court holds, as explained below, that two of ARC's contentions fail as a matter of law and as to one of ARC's contentions there are issues of fact for which the stipulation is insufficient to sustain ARC's burden of proof. The Court further rules, that if ARC does not request a trial and prevail at trial on this contention, the Trustee will be entitled to judgment on his claim of lien avoidance.

¹ After the filing of the case, Plaintiff ARC acquired the interest of Mid American and has been assigned Mid American's rights under the real estate mortgage on the property where the manufactured home is located. (Amended Stipulations of Fact ¶12 (Doc. No. 43). Plaintiff ARC is to submit to the Court an order of dismissal of defendant Mid American. (Doc. No. 32).

²References to the Bankruptcy Code are hereafter cited to the code section only.

³ 28 U.S.C.A. §157(b)(2)(B) and (K) and 28 U.S.C.A. § 1334.

⁴ Final Pretrial Conference Order ¶12.1 (Doc. No.31).

STIPULATED FACTS⁵

1. On March 28, 2001, the debtor, Aletha Lee Knowles, (“Knowles”), executed a purchase agreement by which she agreed to purchase from Affordable Residential Communities (ARC), a 2001 Skyline manufactured home, (the “home”), Model 7105CTB, Serial No. 7C51-0529-NAB.

2. The home is a “manufactured house” as defined by the Kansas Manufactured Housing Act, K.S.A. 58-4202.

3. To obtain financing for the transaction, Knowles applied for permanent financing from Pilot Financial, Inc.

4. On March 2, 2001, Pilot Financial, Inc. (“Pilot”) issued preliminary approval of financing “subject to appraisals, title verification, income verification.”

5. On April 3, 2001, Pilot issued an unconditional commitment letter in favor of Knowles.

6. In late April 2001, ARC delivered, located and affixed the manufactured home upon a foundation which had been prepared by third parties at 5421 South Vine, Wichita, Kansas. Knowles owned such land, subject to a mortgage to Mid American Credit Union.

7. On July 13, 2001, ARC mailed the executed original Manufacturer’s Certificate of Origin (“MCO”) -- assigned to Knowles – to Pilot.

⁵ The following facts are quoted from Amended Stipulation of Facts (Doc. No. 43).

8. Subsequently, Pilot returned the MCO to ARC and advised ARC that it was denying permanent financing, and would not finance Knowles' purchase of the home. ARC retains the MCO.

9. No application for title has ever been submitted to the Kansas Department of Revenue, or any other agency authorized to issue a Certificate of Title with respect to the home.

10. ARC never mailed, or otherwise delivered, a notice of security interest to the Kansas Department of Revenue, with respect to the home.

11. The bankruptcy case was filed August 17, 2001.

12. After the filing of this adversary action, ARC acquired the interest of defendant Mid American and has received an assignment of its rights under the real estate mortgage it holds on the property at 5421 South Vine, Wichita, Kansas.

13. Neither defendant Mid American, nor Plaintiff ARC as its assignee, claim an interest in the home by virtue of the real estate mortgage. ARC does claim an interest in the home in its own right, as seller of the home.

14. The home and real estate were sold by the Trustee on January 15, 2003, pursuant to Court order.

15. The property was offered for sale separately as to the home and the real estate, and then together. The highest offer for the home was \$36,000.00. The highest offer for the real estate alone was \$23,000.00. The highest offer for both was \$60,000.00.

16. Debtor Aletha Knowles never moved into the home. It was vacant at the time of the bankruptcy filing.

POSITIONS OF THE PARTIES

ARC seeks determination that it is the lawful owner of the home and that the estate, as successor to the Debtor, has no interest in it. ARC contends it is entitled to a declaratory judgment that it is the sole owner and should receive all of the proceeds from sale of the home. The Trustee seeks a determination that the Debtor had an interest in the home, which passed to the bankruptcy estate upon filing of her Chapter 7, and further that the “deemed” security interest of ARC in the home was unperfected and avoidable by the Trustee. The Trustee seeks the remaining money from sale of any home.⁶

Plaintiff ARC asserts three theories of recovery. First it contends that the manufactured home is not property of the estate because pre-petition the Debtor rejected the manufactured home, such that title to the home was revested by operation of law in the seller pursuant to K.S.A. 84-2-401⁷. Second, it contends that ARC is the owner of the manufactured home by operation of K.S.A. 58-4204(c), concerning the titling of manufactured homes. Finally, ARC contends that equity requires rescission of the contract of sale between ARC and the Debtor. The Trustee rejects each of ARC’s positions and alleges that ARC is an unpaid seller which holds only an unperfected security interest in the manufactured home, which may be avoided under § 544.

⁶ Final Pretrial Conference Order ¶ 8 (Doc. No. 31).

⁷ All citations to the Kansas Statutes Annotated are to the current hard volume unless otherwise noted.

DISCUSSION

A. Applicable law.

This case concerns determining the extent of property interests and the right to lien avoidance. The Bankruptcy Code, particularly §§ 541, 544, and 546, is of major significance. In addition, because the property interests are determined by state law and arise from a contract for sale of goods in Kansas which were movable at the time of the sale, Article 2 of the Kansas Uniform Commercial Code is relevant.⁸ Article 9 is also applicable regarding security interests.⁹ Moreover, because the property which is the subject of the contract for sale is a manufactured home, the Kansas Manufactured Housing Act, K.S.A. 58-4202 must be considered.¹⁰

B. ARC's contentions of ownership.

Section 541 creates a bankruptcy estate, which consists of all of the property that will be subject to the jurisdiction of the bankruptcy court. It includes all legal and equitable interests of the Debtor in property as of the commencement of case. The stipulated facts establish that the estate does

⁸ K.S.A. 84-2-102; K.S.A. 84-2-105(1).

⁹ Aspects of this sale occurred both before and after July 1, 2001, the effective date of Revised Article 9. The parties have not contended and the Court has not found it necessary to determine whether the old or the new version of Article 9 applies. The Court therefore cites the applicable sections of Revised Article 9 throughout this opinion.

¹⁰ Neither party has argued that the Kansas Manufactured Housing Act supersedes Article 2 of the Uniform Commercial Code in any respect. See *Ladd v. Ford Consumer Finance Co., Inc.*, 217 Mich. App. 119, 500 N.W. 2d 826 (1996); *Nashville Eagle, Inc. v. Ford Motor Credit Company (In re Superior Ground Support, Inc.)*, 140 B.R. 878 (Bankr. W.D. Mich. 1992). In the analogous situation of a sale of a titled vehicle, the Kansas Court of Appeals has recognized that Article 2 and the vehicle licensing statutes are not necessarily inconsistent and that both may be considered in the resolution of issues of title. *Werdann v. Hambelton Ford, Inc.*, 32 Kan. App. 2d 118, 79 P.3d 1081, 1087 (2003) *rev. denied*, Feb. 11, 2004.

include interests in the manufactured home. As of the date of filing, the Debtor had entered into a contract to purchase the manufactured home, had possession of the manufactured home which had been installed by ARC on property owned by the Debtor, and the Manufacturer's Certificate of Origin (MCO) had been endorsed to the Debtor, delivered to Pilot Financial, and returned by Pilot to ARC with a statement that it would not provide financing.

1. Revesting of title pursuant to K.S.A. 82-2-401(4).

ARC contends that, notwithstanding the foregoing, the manufactured home is not property of the estate. ARC argues that the Debtor rejected the home thereby revesting title, to the extent it had passed to the purchaser Debtor, in the seller ARC by operation of K.S.A. 84-2-401(4).

The subsection states as follows:

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such a revesting occurs by operation of law and is not in a "sale."

ARC argues that Debtor never accepted the manufactured home or rejected the home because she took no actions consistent with ownership such that ARC is entitled to return of the home.

Generally, pursuant to K.S.A. 84-2-401(2), title to goods passes to the buyer at the time and place in which the seller completes his performance with respect to the physical delivery of the goods. For example, the Kansas Court of Appeals has held that under Article 2 of the Uniform Commercial Code, legal title to a van passed to the buyer on the date the van was delivered even

though the certificate of title was not delivered simultaneously¹¹. The reversion of title in the seller pursuant to K.S.A. 84-2-401(4) requires a refusal to receive or retain the goods or rejection or revocation of acceptance. For example, in *Pacific Express v Teknekron Infoswitch Corporation (In re: Pacific Express, Inc.)*,¹² title reversioned in the seller, because prepetition the debtor buyer gave notice of cancellation while the equipment was being shipped and after receipt of delivery notified the seller that the equipment was being held for the seller, which needed to make arrangements for the return. In contrast, title does not reversion in the seller for failure of payment.¹³

In this case, the stipulated facts are insufficient to support ARC's contention that title reversioned in it by operation of law under K.S.A. 84-2-401(4). There is no evidence that Debtor refused to accept or retain the home; to the contrary the stipulation supports the conclusion that Debtor accepted and retained the home. K.S.A. 84-2-602 addresses the manner and effect of rightful rejection. Subsection (1) provides that rejection of goods must be within a reasonable time after delivery or tender of delivery. It also states that a rejection is "ineffective unless the buyer seasonably notifies the seller." As stated in the official Uniform Commercial Code comment to the subsection,

¹¹ *Werdann v. Mel Hambelton Ford, Inc.*, 32 Kan. App. 2d 118, 79 P. 3d 1081, 1087 (2003) *rev. denied* Feb. 11, 2004; *see Home Bank & Trust Company v. Cedar Bluff Cattle Feeders, Inc.*, 25 Kan. App. 2d 152, 157-158, 959 P.2d 934 (1998) (absent explicit agreement otherwise, title passes to the buyer upon delivery). As discussed below, where as in the sale by ARC to Debtor, the seller attempts to reserve title in itself pending payment, such reservation constitutes the reservation of a security interest. K.S.A. 84-1-201(37).

¹² 780 F. 2d 1482, 1488-89 (9th Cir.1986).

¹³ *Myers v. Columbus Sales Pavilion, Inc.*, 575 F. Supp. 805, 808 (D. Neb.), *aff'd* 723 F. 2d 37 (8th Cir. 1983).

rejection therefore requires affirmative action on the part of the buyer.¹⁴ In this case, the Debtor received the home in April 2001 and retained the manufactured home as of the date of filing, August 17, 2001. The stipulation of facts lacks evidence that Debtor even attempted to give notice to ARC of rejection of the home, so as to constitute a rightful rejection. Pursuant to K.S.A. 84-2-606(1)(b) goods are accepted when the buyer fails to make an effective rejection.

Similarly, the evidence now before the Court does not support a finding that Debtor revoked acceptance. Revocation of acceptance is addressed by K.S.A. 84-2-608. Pursuant to subsection (2), revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for revocation and is not effective until the buyer notifies the seller. As with rejection, the stipulation of facts includes no evidence of notice from the Debtor to ARC indicating intent to revoke acceptance. The only evidence upon which ARC relies is the failure of the Debtor to live in the home and the Debtor's ambiguous bankruptcy schedules, which, when construed in favor of ARC's position, do not include an ownership interest in the manufactured home or the obligation to pay ARC for the home. These omissions do not constitute notice to ARC of revocation of acceptance pursuant to K.S.A. 84-2-608.

The Court therefor holds that the stipulations are insufficient to sustain ARC's burden to prove that the ownership of the home revested in ARC pursuant to K.S.A. 84-2-401(4) before the bankruptcy was filed. Trial will be necessary if ARC has additional evidence to submit on this issue.

¹⁴ K.S.A. 84-2-401 off. UCC cmt. ¶ 1.

2. Kansas title laws.

Next, ARC argues that it is the legal owner of the manufactured home under Kansas title laws because the manufactured home was never titled in the Debtor for registration and tax purposes as required for purchases by K.S.A. 58-4204(c)¹⁵. ARC cites no authority by which this provision of Kansas law supersedes the provisions of Article 2 of the Uniform Commercial Code concerning transfer of title in the sale of goods, which are discussed above. The Court finds Article 2 controlling. It directly addresses transfer of title in sale transactions. The Kansas Manufactured Home Act, although requiring title documentation, does not address the actual transfer of ownership. As a matter of law, the Kansas title laws do not establish that ARC is the owner of the manufactured home.

3. The remedy of rescission.

Finally, ARC argues that it is entitled to invoke the equitable remedy of rescission to invalidate the sale to the Debtor. ARC's primary authority is *Perry v. Goff Motors, Inc.*¹⁶ On May 13 Perry purchased a Pontiac from Goff Motors, making a down payment and financing the remainder through GMC. Goff agreed to deliver the certificate of title to Perry within 15 days from the day of the agreement. Goff's agent claimed that he mailed the certificate of title to the plaintiff five days after the sale. On June 12, Perry contacted Goff and told him he had not received the title. Goff applied for a duplicate title and contacted Perry, asking him to come to the dealership so he could pick up the title. By that time Perry wanted to return the car and refused to accept the title. Perry sued Goff for

¹⁵ Since the sale occurred in the Spring of 2001, the 2002 and 2003 amendments are not applicable.

¹⁶ 12 Kan. App. 2d 139, 736 P. 2d 949 (1987).

rescission of the contract of sale. The court held that the sale was fraudulent under the provisions of K.S.A. 1986 Supp. 8-135(c)(7), which provided in part as follows:

The sale of a vehicle required to be registered under the laws of this state, without assignment of the certificate of title, is fraudulent and void, unless the parties shall agree that the certificate of title with assignment thereof shall pass between them at the time other than the time of delivery, but within 30 days thereof .

Because the sale of the Pontiac was “fraudulent and void,” the court held that Perry was entitled to rescind the sale.

ARC contends that because of the similarity of K.S.A. 8-135 (which provided the basis for rescission of the sale of the titled vehicle in *Perry*) to K.S.A. 58-4204(e) (which is applicable to sale of the manufactured home in issue), it is entitled to rescission of the contract of sale with the Debtor. There is no Kansas Appellate court decision addressing this contention. Subsection (e) of K.S.A. 58-4204 provides in part:

(e) Dealer shall execute, upon delivery to the purchaser of every new manufactured home, a manufacturer’s statement of origin stating the liens and encumbrances thereon. Such statement of origin shall be delivered to the purchaser at the time of delivery of the manufactured home or at a time agreed upon by the parties, not to exceed 30 days, inclusive of weekends and holidays.

Significantly, this subsection applicable to manufactured homes does not include the express provision that failure to timely deliver the manufacturer's statement of origin renders the sale void and fraudulent, as in the case of a motor of vehicle. Further, K.S.A. 58-4203, applicable to manufactured housing, states that the Kansas Manufactured Housing Act is not subject to the laws, rules and regulations applicable to vehicles, including expressly the titling and registration requirements imposed by the

statutes contained in Article 1 of Chapter 8. Therefore, the Court finds that the rule of *Perry* that a sale is void and fraudulent if the title is not delivered in 30 days does not apply to the sale of a manufactured home, where the MCO is not timely transferred to a buyer.¹⁷

Under Kansas law, ARC's rights as an unpaid seller of goods are therefore determined by Article 2 of the Uniform Commercial Code. Three sections are particularly relevant. First, K.S.A. 84-2-507(2) provides that when payment is due and demanded upon delivery to the buyer, the buyer's right to retain the goods as against the seller is conditional on payment. The section has been construed to give the seller by implication a right to reclaim the goods if the buyer's payment fails.¹⁸ The second is K.S.A. 84-2-511, which provides that payment by check is conditional and is defeated as between the parties by dishonor. It also gives rise to an implied right to reclaim.¹⁹ Third, K.S.A. 84-2-702(2) provides that where a seller discovers that the buyer has received goods on credit while insolvent the seller may reclaim the goods upon demand and satisfaction of statutory conditions.

However, when the buyer is in bankruptcy, these Article 2 rights of the seller to reclaim the goods are circumscribed by §546(c). This subsection both limits the avoidance rights of

¹⁷ Moreover, even if *Perry* were applicable, the Court questions whether under that case ARC would have any right to rescind when it is the party that did not deliver the MCO. Further under the common law, whereas a buyer had a right to rescind if there was material breach by the seller, the seller's parallel remedy was replevin, not rescission. *Gicinto v. Credithrift of America No. 3, Inc.*, 219 Kan. 766, 549 P. 2d 870 (1976).

¹⁸ K.S.A. 84-2-507(2) Ks. cmt. 1996.

¹⁹ K.S.A. 84-2-511 Ks. cmt. 1996.

the Trustee when the seller of goods to the Debtor satisfies the conditions of the § 546 and also protects, to a limited extent, the seller's right to reclaim under state law.²⁰

Section 546(c) provides in part:

(c) Except as provided in subsection (d) of this section, the rights and powers of the trustee under § § 514(a), 545, 547, and 549 of this title or subject to any statutory or common law right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, but –

(1) such a seller may not reclaim any such goods unless the seller demands in writing reclamation of such goods –

(A) before 10 days after receipt of such goods by the debtor; or

(B) if such 10-day period expires after the commencement of the case, before 20 days after receipt of such goods by the debtor.

For a seller's right of reclamation to be recognized in bankruptcy, the seller must have a right to reclamation under non-bankruptcy law, the debtor must have possession of identifiable goods, and the conditions of § 546(c) must be satisfied.²¹ These include the unpaid seller's having made demand for reclamation of the goods before 10 days after their receipt by the debtor, or, if bankruptcy intervenes, before 20 days after receipt by the debtor.

In this case there is no doubt that ARC has not satisfied these conditions. The stipulation includes no demand by ARC for reclamation of the home within 10 days after Debtor's receipt of the goods. In fact, the primary basis for ARC's claim of rescission, the lack of payment, did

²⁰ 5 *Collier on Bankruptcy* ¶ 546.04 [1](Alan N. Resnic and Henry J. Sommer eds.-in-chief, 15th ed. rev. 2004).

²¹ *Id.* at ¶546.04[2]; see *In re: Pike Tool & Grinding v. Storage Technology Corp. (In re Storage Technology Corp.)*, 48 B.R. 862 (D. Colo. 1985); *Dilco Distributing Company v. Buyer's Club Market, Inc. (In re Buyer's Club Market, Inc.)*, 100 B.R. 35 (Bankr. D. Colo.1989).

not become known to ARC until long after expiration of the 10 day period for demand for reclamation. The home was delivered in April. The notice of nonpayment was not received by ARC until after July 13.

The failure of ARC to satisfy the conditions of § 546(c) bars reclamation of the manufactured home from the estate. A leading commentator states, “ Section 546(c) is the exclusive reclamation remedy in bankruptcy. Once a bankruptcy case has commenced, a seller may exercise reclamation rights only if the requirements of § 546(c) are met.”²² This conclusion is supported by many cases, although none from the Tenth Circuit. *B. Berger Co. v. Contract Interiors, Inc. (In re Contract Interiors, Inc.)*²³ is a frequently cited case adopting this construction. Based upon an examination of the remedy provided by § 2-702 of the Uniform Commercial Code and the legislative history of § 546(c), the court concluded that the drafters of the Code “intended to retain only that part of the § 2-702, which permits reclamation if demand was made for the return of the goods within 10 days after receipt and to make this right to reclaim exclusive in order to put an end to disruptive litigation engendered by § 2-702 (2).”²⁴ Because the creditor in *Contract Interiors* did not make written demand within 10 days of the receipt of the goods by the debtor, the creditor had no right to reclamation either under § 2-702 of the Uniform Commercial Code or based upon a theory of common-law fraud.²⁵ In *Chemical-Ways Corporation & Holes Machine Tool, Inc. (In re*

²² 5 *Collier on Bankruptcy* at ¶546.04[2].

²³ 14 B.R. 670 (Bankr. E. D. Mich. 1981).

²⁴ *Id.* at 674.

²⁵ *Id.* at 671.

Dynamic Technologies Corporation)²⁶ the court held that the exclusivity of § 546 (c) precluded the unpaid seller's attempt to recover goods sold to the debtor under the theories of theft by trick, rescission, and constructive trust.

In this case, ARC seeks rescission of the contract of sale based upon the argument that there has been a total failure of consideration due to mistake. The stipulation of facts reveals that ARC did not comply with the prerequisites for reclamation under § 546(c). ARC's attempt to rescind the manufactured home from the estate fails as a matter of law.

C. Trustee's lien avoidance.

Next, the Court addresses the Trustee's arguments in support of lien avoidance. It is the position of the Trustee that ARC as an unpaid seller has only a an unperfected security interest which may be avoided and preserved for the benefit of the estate under §§ 544(a) and 551.

Assuming the ARC does not prevail on any of the foregoing theories of ownership, the Court finds that the Trustee is it correct when asserting that ARC as an unpaid seller has a security interest, rather than ownership of the manufactured home. On March 28, 2001, the Debtor executed a purchase agreement by which she agreed to buy the manufactured home from ARC. In late April 2001, ARC delivered, located, and affixed the manufactured home upon a foundation which had been prepared by third parties on property owned by the Debtor. The contract provided the following regarding payment:

1. IF NOT A CASH TRANSACTION. If I do not complete the purchase as a cash transaction, I know before or at the time of delivery of the unit purchased, I will enter into a retail

²⁶ 106 B.R. 994 (Bankr. D. Minn. 1989).

installment contract and sign a security agreement or other agreement as may be required to finance by purchase.

2. TITLE. Title to the unit purchased will remain in you until the agreed upon purchase price is paid in full in cash, or I have signed a retail installment contract and it has been accepted by a bank or finance company, at which time title passes to me even though the actual delivery of the unit purchased, may be at a later date.

The foregoing constitutes an attempt by the seller to retain or reserve title to the manufactured home notwithstanding delivery to the buyer. It is therefore a reservation of a security interest as defined by K.S.A. 84-1-201(37), which provides in part, “The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (K.S.A. 84-2-401 and amendments thereto) is limited to a reservation of a 'security interest'.” K.S.A. 84-2-401 similarly provides that “any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest.” A security interest arising under K.S.A. 84-2-401 is subject to Article 9 of the Uniform Commercial Code.²⁷

The Trustee under § 544(a)(1) has the rights and the powers, as of the date of the commencement of the case, to avoid any transfer or obligation of the debtor that is avoidable by a hypothetical creditor on a simple contract with a judicial lien on the property of the debtor unsatisfied as of the date of the commencement of the case.²⁸ The Trustee may use this “strong arm power” to avoid unperfected security interests in personal property.²⁹

²⁷ K.S.A. 2003 Supp. 84-9-110; *Holiday Rambler Corp. v. Morris*, 32 UCC Rep. 1222 (D. Kan. 1981); *In re Hartman*, 102 B.R. 90 (Bankr. N.D. Texas 1989).

²⁸ 5 *Colliers on Bankruptcy* at ¶ 544.02.

²⁹ *Id.* at ¶ 544.05.

The foregoing allows the Trustee to avoid an unperfected lien of an unpaid seller of goods which arises through the attempt to reserve title until payment in full. For example, in *In re Hartman*,³⁰ the trustee prevailed on his lien avoidance claim under § 544 against the seller of farm equipment. The sale agreement provided that the goods would be delivered to the buyer debtor, but title was to remain in the seller until the contract price was paid in full. The court held that the reservation of title constituted a security interest which the seller, in order to have priority over the trustee, should have perfected by filing.

In this case, if ARC does not fulfill its burden of proof that the title revested pursuant to K.S.A. 84-2-401(4), the Trustee will prevail on his claim of lien avoidance. In Kansas, the exclusive method of perfecting a security interest in the manufactured home was notice of security interest to the Division of Vehicles of the Department of Revenue and notation of its lien or security interest on the certificate of title for the manufactured home.³¹ The seller ARC did not perfect its security interest in the manufactured home.

³⁰ 102 B.R. 90 (Bankr. N.D. Texas 1989); *see Cohen v. Spinelli (In re Simonelli)*, 33 B.R. 777 (Bankr. M.D. Fla. 1983).

³¹ K.S.A. 58-4204; K.S.A. 200 Supp. 84-9-311(3); *Morris v. Citifinancial (In re Tribble)*, 290 B.R. 838 (Bankr. D. Kan. 2003). In *Tribble*, Chief Judge Nugent decided that in 2000 notice to the Division of Vehicles of the Department of Revenue and notation of the lien on the certificate of title for a mobile home was the exclusive means of perfection under K.S.A. § 84-9-302(3)(d) and K.S.A. 58-4204. Since that decision, Revised Article 9, became effective on July 1, 2001. The sale in this case occurred in the spring of 2001, but the MCO was not delivered by Plaintiff to the potential lender until July 13, 2001. The Court need not decide whether Revised Article 9 applies, as the provisions regarding perfection of security interests in titled vehicles and manufactured homes were not changed by the enactment. *Compare* K.S.A. 84-9-302(3)(d) (1993) *with* K.S.A. 2000 Supp. 84-9-311(3).

CONCLUSION

After carefully considering all the circumstances that have been presented, the Court concludes based solely upon the stipulated facts that ARC has not proven that it was the owner of the manufactured home on the date of filing. This determination is made as a matter of law on the issues of failure to issue a certificate of title in the name of the Debtor and ARC's claim of entitlement to rescission of the sale. With respect to ARC's contention that title to the manufactured home reinvested in it as a matter of law pursuant to K.S.A. 84 -2-401(4), the Court's decision is based upon ARC's failure to fulfill its burden of proof based solely upon the stipulated facts. If ARC desires a trial on this issue, it must so advise the Court and the Trustee by filing a Request for Trial within 10 days of the filing of this Memorandum of Decision and Order. If no such request is filed, the Court will enter judgment against Plaintiff, and in favor of the Trustee on his counterclaim.

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