

The relief described hereinbelow is SO ORDERED.

SIGNED this 28th day of April, 2023.




Robert D. Berger
United States Bankruptcy Judge

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

In re:

SHELITA C. WILLIAMS,

Case No. 21-21115

Chapter 7

Debtor.

PATRICIA E. HAMILTON,

Adv. No. 22-06041

Chapter 7 Trustee,

Plaintiff,

v.

GLOBAL LENDING SERVICES, LLC,

Defendant.

ORDER GRANTING TRUSTEE'S MOTION FOR SUMMARY JUDGMENT

Global Lending Services, LLC (“GLS”) has a security interest in a vehicle owned by debtor Shelita Williams. The Chapter 7 Trustee brought this adversary proceeding to avoid that security interest pursuant to 11 U.S.C. § 544(a)(1) and preserve the avoided interest for the benefit of the bankruptcy estate. The Trustee now moves for summary judgment.¹ The Court will grant the Trustee’s motion because GLS’s security interest was unperfected under California law at the time Williams filed for bankruptcy.

I. Undisputed Material Facts

In their jointly-submitted pretrial order,² GLS and the Trustee stipulated to the following material facts:

1. Williams, then a Kansas resident,³ purchased a 2017 Volkswagen Jetta with a California title at Cable Dahmer of Kansas City on June 18, 2021.
2. Cable Dahmer delivered the California title to Williams along with the Jetta.
3. Williams granted GLS a security interest in the Jetta in connection with her purchase.

¹ ECF 11.

² ECF 14.

³ This fact is not reflected in the pretrial order. However, Williams’s Chapter 7 petition and statement of financial affairs (both of which were submitted under penalty of perjury) state that she was a Kansas resident from 2012 through the petition date. *See* Case No. 21-21115, ECF 1.

4. On June 21, 2021, GLS filed a notice of security interest with the Kansas Department of Revenue.

5. GLS did not file a title transfer application in California.

6. Williams did not file a title application in Kansas.

7. On September 29, 2021, Williams filed a voluntary Chapter 7 bankruptcy petition.

8. The Jetta remains covered by its California title.

II. Analysis

Fed. R. Civ. P. 56 applies to this adversary proceeding via Fed. R. Bankr. P. 7056. Under Fed. R. Civ. P. 56(a), a court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

The parties agree that Kansas choice-of-law rules apply to this dispute.⁴

Because the Jetta is covered by a certificate of title, the applicable rule is Kan. Stat. Ann. § 84-9-303, which provides:

⁴ “[T]here is a tension as to whether bankruptcy courts follow federal common law choice-of-law principles or the forum state’s choice-of-law principles.” *Jafari v. Wynn Las Vegas, LLC (In re Jafari)*, 569 F.3d 644, 648 (7th Cir. 2009); see 19 Fed. Prac. & Proc. Juris. § 4518 (3d ed.) (“One situation in which the choice between adopting forum state law and fashioning a uniform federal rule still is unresolved is the application of choice-of-law rules in cases in which the court’s jurisdiction is based on federal bankruptcy law rather than on diversity of citizenship.”).

The majority view, expressed by the Second and Fourth Circuits, is that a bankruptcy court should apply the choice-of-law rules of the forum state absent some specific federal policy or interest that would dictate the use of a federal rule. See *Collier on Bankruptcy* ¶ 544.02[1] (Richard Levin & Henry J. Sommer eds., 16th

(a) **Applicability of section.** This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) **When goods covered by certificate of title.** Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) **Applicable law.** The *local law of the jurisdiction under whose certificate of title the goods are covered* [emphasis added] governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

In other words, “the law of the issuing jurisdiction governs perfection and priority from the time the certificate is issued until the vehicle is no longer covered by that certificate.” 3 Barkley Clark & Barbara Clark, *The Law of Secured Transactions*

ed.); *Bianco v. Erkins (In re Gaston & Snow)*, 243 F.3d 599 (2d Cir. 2001); *Compliance Marine v. Campbell (In re Merritt Dredging Co.)*, 839 F.2d 203 (4th Cir. 1988). The minority view, expressed by the Ninth Circuit, is that bankruptcy courts should apply federal choice-of-law rules, which follow the approach of the Restatement (Second) of Conflict of Laws. See *In re Sterba*, 852 F.3d at 1177 (citing *Lindsay v. Beneficial Reinsurance Co. (In re Lindsay)*, 59 F.3d 942, 948 (9th Cir. 1995)). Other circuit courts, including the Tenth Circuit, have yet to decide the issue. See *Walters v. Stevens, Littman, Biddison, Tharp & Weinberg, LLC (In re Wagenknecht)*, 971 F.3d 1209, 1214 n.4 (10th Cir. 2020); *In re Jafari*, 569 F.3d at 649; *Fishback Nursery, Inc. v. PNC Bank, Nat’l Ass’n*, 920 F.3d 932, 935 (5th Cir. 2019); *Arrow Oil & Gas, Inc. v. J. Aron & Co. (In re SemCrude L.P.)*, 864 F.3d 280, 291 n.5 (3d Cir. 2017).

Under the Uniform Commercial Code § 15.06 (LexisNexis A.S. Pratt 3d ed.). Here, because the Jetta remains covered by its California title, the local law of California governs perfection, the effect of perfection or nonperfection, and the priority of security interests in this dispute.

Section 6301 of the California Vehicle Code provides:

When the secured party, his or her successor, or his or her assignee, has deposited, either physically or by electronic transmission pursuant to Section 1801.1, with the department a properly endorsed certificate of ownership showing the secured party as legal owner or an application in usual form for an original registration, together with an application for registration of the secured party as legal owner, the deposit constitutes perfection of the security interest and the rights of all persons in the vehicle shall be subject to the provisions of the Uniform Commercial Code

Compliance with § 6301 is (with exceptions not relevant here) the “exclusive” method of perfecting a security interest in a vehicle in California. *See* Cal. Comm. Code § 6303. Here, it is undisputed that GLS filed a notice of security interest in Kansas but did not comply with § 6301. Therefore, GLS’s security interest in the Jetta is unperfected under California law.⁵

⁵ GLS argues that Kan. Stat. Ann. § 84-9-303(c) requires this Court to apply Cal. Comm. Code § 9301, itself a choice-of-law rule, and that under § 9301, Kansas law governs whether its security interest was perfected. That argument fails for two reasons. First, § 84-9-303(c) directs this Court to apply the “local law” of California—i.e., the law of California *exclusive of its choice-of-law rules*. *Cf.* Restatement (Second) Conflict of Laws § 4 (1971) (defining “local law”). Second, even if § 84-9-303(c) did direct this Court to apply California choice-of-law rules, which it does not, the applicable rule would be Cal. Comm. Code § 9303, not § 9301—and under § 9303, which is substantially identical to § 84-9-303, California law would govern whether GLS’s security interest is perfected.

Under § 544(a)(1) of the Bankruptcy Code, the Trustee may avoid any security interest that would be voidable by a creditor who obtained a judicial lien on the petition date. *See* 11 U.S.C. § 544(a)(1). The rights of such a creditor are determined under state law. *See Morris v. Hicks (In re Hicks)*, 491 F.3d 1136, 1140 (10th Cir. 2007) (citing *LMS Holding Co. v. Core-Mark Mid-Continent, Inc.*, 50 F.3d 1520, 1523 (10th Cir. 1995)). And under the California Commercial Code, an unperfected security interest is subordinate to the rights of a lien creditor. *See* Cal. Comm. Code § 9317(a)(2); *see also* Cal. Comm. Code § 9102(a)(52)(A)(iii) (providing that “lien creditor” means, *inter alia*, “[a] trustee in bankruptcy from the date of the filing of the petition”). Therefore, the Trustee may avoid GLS’s unperfected security interest under § 544(a)(1).⁶ The Trustee is thus entitled to judgment as a matter of law.

III. Conclusion

The Trustee’s motion for summary judgment is hereby granted. The Court will enter a separate judgment pursuant to Fed. R. Civ. P. 58 and Fed. R. Bankr. P. 7058.

⁶ “Even though the Uniform Commercial Code uses the term ‘subordinate’ instead of ‘voidable,’ a security interest that would be ‘subordinate’ to a creditor that obtained a judicial lien on the date of the filing of the bankruptcy petition is ‘voidable’ by the bankruptcy trustee.” David G. Epstein & Steve H. Nickles, *Principles of Bankruptcy Law* 168 n.9 (2d ed. 2017). In other words, “[a]lthough Code § 544 speaks in terms of property interests or obligations that are avoidable by the lien creditor, that section has been interpreted in conjunction with former UCC § 9-301(1)(b) to permit bankruptcy trustees to avoid any unperfected security interest.” 4 *Norton Bankruptcy Law & Practice* § 63:5 (3d ed. 2023).

IT IS SO ORDERED.

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