IT IS ORDERED as set forth below:

Date: August 21, 2013

James R. Sacca
U.S. Bankruptcy Court Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	}	
	}	CASE NO. 11-77399-JRS
ANGELA LIEBEN,	}	
	}	CHAPTER 7
Debtor.	}	

AMERICAN STATES INSURANCE COMPANY,	}	ADVERSARY PROCEEDING
Plaintiff,	}	
	}	NO. 12-05615-JRS
v.	}	
ANGELA LIEBEN and A-1 TRUCK SALES D/B/A SPEEDSPORTZ, LLC,	}	
Defendants.	}	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This interpleader action was referred to this Court by the United States District Court for the Northern District of Georgia (the "District Court") at the request of the parties because (a) it

involves a determination of whether a car is property of the Debtor's estate and a resolution of claims against that property, and (b) it is related to a separate adversary proceeding[1] between the co-defendants concerning the dischargeability of an alleged debt and an objection to an exemption in Debtor/Defendant Angela Lieben's Chapter 7 case. The Plaintiff, American States Insurance Company (the "Surety"), issued a title bond to Lieben for a two-door, 2004 BMW MINI Cooper (the "Car") because she claimed she was the rightful owner of the Car when she went to title it in Georgia in 2011 without having a title issued in her name from another state. Co-defendant Speedsportz, LLC ("Speedsportz") made a claim to the Surety that it was the owner of the Car, which resulted in the Surety instituting this action to determine, *inter alia*, who is the owner of the Car, who is entitled to possession of it, and who is entitled to the proceeds of the bond. The matter came on for trial before this Court on May 21 and 22, 2013.[2]

Lieben's relationship with John Reaves, the owner of the co-defendant Speedsportz, could be described in many ways: employer/employee; car dealer/customer; live-in lovers—to name a few. Reaves was and is the President and sole owner of Speedsportz—a car dealership located in Tulsa, Oklahoma—which buys, sells, and restores exotic and classic cars. Reaves met Lieben in 2001, and they began a romantic relationship the following year. In the summer of 2003, she moved into his home. Before long, she began working for Speedsportz part-time, where she assisted with the advertising and bookkeeping. They broke up in 2005, but they got back together in 2006, at which time she not only moved back into his home, but also became the full-time office manager for Speedsportz with the job of maintaining the company's books and paying its bills. Over the course of their relationship, Reaves testified that he lavished gifts on her, including about

[1] *Speedsportz, LLC and John Reaves v Angela Lieben*, Adv. No. 11-05712-JRS.

[2] This trial was consolidated with the trial of the dischargeability proceeding and the objection to the exemption.

$40,000 worth of jewelry alone. Because of their intimate personal relationship at the time, their financial dealings were often fuzzy, and this case is no different: there is nothing in writing between them documenting their agreement about the purchase of the Car.

The MINI Cooper

Speedsportz purchased the Car from one of its customers in May 2004 and took it into its inventory. The Car was used as collateral to borrow $26,000 from People's State Bank (the "Bank") as part of a floor plan financing agreement Speedsportz had with the Bank, and the Bank placed a lien on the Car pursuant to that agreement. After acquiring the Car, Speedsportz had it titled in the name of A-1 Truck Sales DBA Speedsportz LLC. Reaves testified that he "had $32,000 into the Car." Reaves also testified that he paid $27,000 cash and traded a motorcycle worth $3,000 for the Car, but he did not explain the discrepancy between this $30,000 total and the $32,000 he claims he "had into" the Car, nor did he present any documents at trial supporting that he paid that much for the Car. Quite to the contrary, however, in Speedsportz's Objection to Plaintiff's Complaint for Interpleader and Imposition of Temporary Restraining Order, Preliminary Injunction and Permanent Injunction filed in the District Court prior to this matter being referred to this Court (the "Objection") [District Court Doc. 22], Speedsportz stated that it only paid $26,000 for the Car and attached to the Objection a copy of a check made payable to the seller for that amount—not $30,000 or $32,000 as Reaves testified.

In 2004, Lieben was driving a 2000 Volkswagen Golf GLS. Shortly after Speedsportz acquired the Car, if not on the very day, Lieben came to the home she shared with Reaves and found the Car parked out front. She liked it and was allowed to take it for a drive. Reaves told her "it's yours," but also told her she would have to pay for it. But an important question remained: what were the terms of this sale from Reaves to his live-in lover to whom he had given tens of thousands

of dollars of gifts during their several-year relationship? The parties concur that Reaves agreed to sell Lieben the Car and that he would sell her Volkswagen (and keep the proceeds as part of the price) and help her get a loan from the Bank to buy the Car. They disagree over whether Lieben had to pay more than that.

Lieben had bad credit, and it took her about a year to get a loan from the Bank to buy the Car. In the interim, she drove the Car even though she had not bought it from Speedsportz yet. In late July 2005, the Bank loaned her about $19,500—payable at about $450 per month for 48 months—which the Bank paid to Speedsportz to reduce the amount it owed on the floor plan. As part of that loan transaction, the Bank released its floor plan lien and placed a new lien on the Car only for the amount of the loan to Lieben.[3] The title to the Car, however, continued to reflect that it was owned by Speedsportz, even though the Car had been sold to Lieben and she was making the payments to the Bank on it.

According to Reaves, the proceeds from the sale of the Volkswagen and the loan constituted a "partial" payment for the Car because Lieben did not qualify for a loan to pay its unspecified full price. Reaves asserts that she was supposed to refinance the Car once she paid off her loan in order to pay the remainder owed. But aside from stating that he "had $32,000 into the Car," which the Court has found to be incorrect, Reaves never testified as to what that agreed-upon purchase price was or what the agreed-upon balance was that would have to be refinanced. The Court also finds that Reaves' version of the story is not credible because, according to a letter to him from the Bank dated December 15, 2008—attached to the Johnson deposition admitted at trial—it was Reaves, not Lieben, who requested that the Bank consider a loan to Lieben that she could repay in monthly installments of $475 over 48 months; the principal of such a loan would have totaled about $19,500.

[3] See the Affidavit of Bill Burnett, attached to the deposition of David Johnson, both of whom were officers of the Bank, which was introduced into evidence at the trial.

No evidence was presented indicating that the Bank had determined it would not loan her more or extend the payments over a longer term. If Reaves was seeking more from Lieben in exchange for the Car, he could have asked the Bank to consider a larger loan amount and perhaps consider a longer payment term to lower the payments. The Court believes he did not do so because the terms he requested provided him with the benefit of his bargain.

Lieben eventually paid off her loan on the Car in 2009, and she maintains that between the money she paid on this loan and her Volkswagen trade-in, she paid for the Car in full. According to Lieben, their agreement was that Reaves would sell her Volkswagen, keeping whatever the proceeds were, and then he would transfer the title to her after she paid off the Bank loan. She testified that Reaves told her he sold the Volkswagen for about $6,000 and that he also paid off a loan balance of about $1,000 owed on that car. But according to Reaves, he only sold the Volkswagen for about $4,000, she owed about $3,800 on it, and he had to spend $1,200 to replace a head gasket on it before selling it. No documents were produced supporting either party's version. It seems to the Court—based on its substantial experience with car values in the course of considering reaffirmation agreements and Chapter 13 plans—that a four-year-old Volkswagen Golf should have been worth more than $4,000 and that Reaves should have been able to get at least $6,000 for it, even in 2004. Reaves seems to try to sell his version of the Car purchase as more of an arm's-length transaction where he would recoup every last penny he had in it. Lieben's version, however, seems to this Court to be the more credible of the two and the kind of deal that would be agreed upon between lovers, particularly where the seller had a history of lavishing tens of thousands of dollars of gifts on his lover-buyer.

The Relationship Collapses

Over the years Lieben and Reaves spent together, their relationship had its ups and downs. They parted ways at some point in 2005, only to reconnect in 2006 after he found himself dealing with medical problems, and she moved back in. Their personal and business relationships came to a screeching halt in late October 2007 when Reaves came home and discovered that Lieben had certain people in his home while he was out of town on business and that certain photography was taking place in his home, of which he did not approve. He immediately let her know he was not pleased, kicked her out of his home, and changed the locks. But she kept the Car and continued making the payments to the Bank.

About a week after this incident, Reaves allowed Lieben to come back to Speedsportz to "straighten up the books," and he gave her a final $1,500 "going away present." He believes that while she was there that day, she took the title to the Car, which was kept in a desk drawer at the Speedsportz dealership. About a month later, in late November 2007—after Reaves claims he had discovered that Lieben had spent much more of his money than he had realized—he also discovered that the title to the Car was no longer at the Speedsportz dealership. He proceeded to get a title re-issued to Speedsportz, which invalidated the previous title and prevented Lieben from getting an Oklahoma title to the Car issued in her name.[4]

[4] According to Lieben, Reaves had signed this title over to her and had it notarized, but she no longer had it, claiming she submitted it to the tag office to get a title in late 2007 or early 2008. In depositions in the Oklahoma state court cases, portions of which were attached to the Objection filed in the District Court, she appears to have testified that she had a copy of that signed and notarized title present in a folder at the deposition, but the portions of the transcripts provided do not reveal whether it was actually produced at the deposition. Also attached to the Objection was a copy of Lieben's Consumer Complaint form against Speedsportz submitted in April 2008 to the Oklahoma Used Motor Vehicle and Parts Commission, which purports to attach a copy of the title, among other things, but the attachments are not part of the Exhibit attached to the Objection nor were they produced by either party at trial.

Post Break-up Actions Regarding the Car

As far back as April 2008, Reaves and Lieben became embroiled in litigation in the state courts of Oklahoma. They filed lawsuits against each other for various damages resulting from their relationship, and these suits were consolidated into an action styled as *Lieben v. Reaves; Speedsportz, LLC and Reaves v. Lieben*, Consolidated Case Nos. CJ-2008-3120 and CJ-2009-654. The United States District Court that referred this matter to this Court noted in its July 22, 2011 Order that there is no mention of the Car in Speedsportz's complaint filed in Oklahoma—only a brief mention of it in the pre-trial order in that matter—and that the statement of facts in the Oklahoma pre-trial order only alleged fraudulent use of checks, bank accounts, and credit cards.

Not long after their falling-out, Lieben moved to California and took the Car with her. She applied to register the Car there in her own name in December 2008, but was unable to do so because of the Oklahoma title reflecting Speedsportz as the owner of the Car. She did not receive a new title in California.

Despite the fact that her personal relationship with Reaves had devolved into bitterness and litigation, she continued to make her car payments. Reaves sued her in January 2009 for allegedly embezzling money from him, yet she continued to make her car payments and eventually paid off her loan in full later that year. If the Car was not hers—or if she did not think she would get a clean title to it after paying off the Bank—it would have made no sense for her to have kept paying for it after her break-up with Reaves, let alone after he sued her. The only plausible explanation is that the Car was hers and that she would own it unencumbered once she paid off her loan to the Bank.

In the latter part of 2009, Lieben made the last payment on the $19,500 loan to the Bank, paying off the loan. However, a few months earlier—in May 2009—the Bank's alleged floor plan

lien was added back to the title, which was in addition to the lien for the $19,500 loan,[5] so she did not get the title released to her when she paid off her loan like she thought she would.

Lieben later moved to Georgia, and in March 2011, she applied for a title in Georgia and received a title in her own name. In order to receive this title, she was required to post a motor vehicle title bond. She contracted for this bond with the Surety. The Surety furnished a title bond with a penal sum limit of $11,000 (the "Bond"). The Bond application included an indemnity agreement (the "Indemnity Agreement"), in which Lieben agreed to repay the Surety for any incidental or consequential losses or expenses that the Surety might incur as a result of issuing the Bond.

This Litigation Begins

In May 2011—just a few months after Lieben posted the Bond and received a Georgia car title in her name— Speedsportz submitted a proof of claim to the Surety, alleging that it was the owner and registered title holder of the Car.

On June 17, 2011, the Surety filed a Complaint for Interpleader (the "Interpleader Action") in the District Court. *Am. States Ins. Co. v. Lieben et al.*, 1:11-CV-01987-SCJ. The Surety sought relief on four counts: (1) a declaratory judgment regarding who is entitled to the Bond proceeds, possession of the Car, and title to the Car; (2) interpleader, *i.e.*, restraint against any other party from prosecuting any claims involving the Bond; (3) an indemnity claim against Lieben to recover its losses, costs, expenses, and attorneys fees that it alleges it is owed under the Indemnity Agreement; and (4) a claim for specific performance of a provision in the Indemnity Agreement requiring Lieben to pay it $15,000 in collateral security against its actual and potential costs and losses. A few days later, the Surety filed a motion for a temporary restraining order, preliminary and

[5] See the Affidavit of Burnett, attached to the Johnson Deposition.

permanent injunction, seeking to restrain any judicial proceedings inconsistent with the interpleader action. [District Court Doc. 3]. The Surety also filed a motion to deposit the $11,000 penal sum into the registry of the District Court. [District Court Doc. 4]. On July 21, 2011, the District Court granted both of these motions. [District Court Doc. 28]. Speedsportz challenged the District Court's jurisdiction and filed motions to dismiss along the way, which were denied. All indications were that Speedsportz wished to pursue its other actions against Lieben. But Lieben's bankruptcy filing changed everything.

The Dispute Moves to Bankruptcy Court

On September 22, 2011, Lieben filed for protection under Chapter 7 of the United States Bankruptcy Code, bringing her affairs within this Court's jurisdiction and triggering the automatic stay. Shortly thereafter, the Surety notified the District Court that Lieben had filed for bankruptcy and that the Interpleader Action should be stayed. In December 2011, Reaves and Speedsportz filed an adversary proceeding against Lieben, seeking to have certain debts she allegedly owed them declared nondischargeable. (*Speedsportz, LLC, et al. v. Lieben*, 11-05712-JRS). On the same day, Reaves, Speedsportz, and the Bank filed an objection to Lieben's exemption in the Car and cited the Interpleader Action. On February 10, 2012, this Court held a status conference in the dischargeability proceeding. Following that status conference, on February 15, 2012, the parties submitted—and this Court entered—a Consent Order which stipulated that "the partied agreed to modify the automatic stay for the limited purpose of allowing the [Surety] to file a motion in the [Interpleader Action] requesting that the District Court refer the [Interpleader Action] to this Court." (*Speedsportz, LLC, et al. v. Lieben*, 11-5712-JRS, Doc. 9). The Surety filed just such a motion, and the District Court entered an order referring the Interpleader Action to this Court (the "District Court Order"). [District Court Doc. 58].

In the District Court Order, Judge Jones explained that referral is proper because this Court has jurisdiction and authority to enter a final order in this matter. He pointed out that pursuant to 28 § USC 157(a), the District Court has the authority to refer "any or all proceedings arising under title 11 or arising in or related to a case under title 11" to the Bankruptcy Court. He then explained that this Court has authority to enter a final order in this matter because 28 U.S.C. § 157(b)(1) provides that a bankruptcy court may "hear and determine . . . all core proceedings." 28 U.S.C. § 157(b)(1). A core proceeding is one in which a bankruptcy court may enter final orders and judgments. *Stern v. Marshall*, 131 S. Ct. 2594, 2603 (2011); *Tyler v. Banks (In re Tyler)*, --- B.R. ----, 2013 WL 2477274 (Bankr. N.D. Ga. 2013). "The detailed list of core proceedings in § 157(b)(2) provides courts with ready examples of such matters." *Stern*, 131 S. Ct. at 2605. One such item on this list is "allowance or disallowance of claims against the estate." 28 U.S.C. § 157(b)(2)(B).

This matter is a core proceeding because determination of the ownership of the Car and any debts potentially owed on it must "necessarily be resolved in the claims allowance process." *Stern*, 131 S. Ct. at 2618. The parties here dispute whether or not Lieben owns the Car and whether Speedsportz has a claim against Lieben for an amount allegedly owed on the Car. In order to decide this case, the Court must determine who is the rightful owner of the Car, which Lieben has scheduled as an asset in her bankruptcy papers. In addition, if Speedsportz were to be adjudged the proper owner of the Car, the Surety would have a claim against Lieben to pay the Bond, and this Court would need to determine the amount of the Surety's claims against Lieben, which is also within this Court's core jurisdiction.

The Car's Proper Owner

As between Lieben and Speedsportz, there is no question that Speedsportz sold the Car to Lieben and that she is the owner of it. The fact that title to the Car is in the name of Speedsportz as

a matter of public record puts third parties on notice of a claim to the vehicle. The title alone, however, is not determinative as to the rights between parties who have actual notice of who is or is not the owner of a vehicle. *See Green v. Harris*, 2003 OK 55, 70 P.3d 866, 871 (2003) ("Motor vehicle certificates of title in Oklahoma are documents of convenience and are not necessarily controlling of ownership of an automobile.") (citations omitted); *see also Adkisson v. Waitman*, 1949 OK 264, 213 P.2d 465, 466 (1949) ("The certificate of title to an automobile issued under a motor vehicle code is not a muniment of title which establishes ownership, but is merely intended to protect the public against theft and . . . otherwise aid the State in enforcement of its regulation of motor vehicles.").

Speedsportz does not dispute that it sold Lieben the Car; accordingly, she is the owner. What Speedsportz does dispute is whether she has paid the full purchase price for it. That is a separate issue from who is the owner. Despite the Court's many concerns about Lieben's overall credibility—as more fully set forth in the Court's Order in the dischargeability proceeding entered concurrently with this Order—the Court finds that her story, at least with respect to the Car, is actually the more plausible one between the two versions. It should be noted, however, that Reaves' credibility is not without blemish in the matters that have been before this Court either.

Accordingly, the Court finds that Lieben purchased the Car from Speedsportz and has paid for it in full. Therefore, she is its owner, and it was proper for her to receive title to it in her name. Furthermore, because Lieben was the owner of the Car at the time it was sold to her no later than late July 2005, neither Speedsportz nor the Bank had authority to place the Bank's floor plan lien back on the Car after it had been released as part of the loan transaction, let alone in 2009. In addition to the fact that Speedsportz no longer owned the Car—which would have prevented

Speedsportz from encumbering it—the Car was obviously no longer part of the dealer's inventory, so it makes sense that it would no longer be subject to the floor plan lien.

The Court finds it interesting that the Bank did not intervene in this matter to assert a lien claim even though it had actual knowledge of the matter. Counsel for Speedsportz also represented the Bank in its objection to the exemption Lieben has asserted with respect to the Car; and in that objection both the Bank and Speedsportz cited to this Interpleader Action, even while it was still pending in the District Court. The Bank's floor plan documents attached to the Johnson deposition admitted at trial are not convincing at all that the Bank had a floor plan lien on the Car after it released it as part of the sale to Lieben in 2005. The promissory note from Speedsportz to the Bank matured by its own terms in 2004, and the list of collateral attached to that note was dated in 2006, so they could not have been part of the same transaction. Furthermore, the list of collateral for the floor plan from 2006 was typed, but the Car was added to it in handwriting, and the floor plan lien was not placed back on the title until 2009, many years later. The aforementioned December 2008 letter to Reaves from an officer of the Bank also refers in the past tense "to the period of time the auto was pledged to your floor plan loan…" It is clear to the Court that the Bank did not consider the Car as part of its floor plan collateral in December 2008. It appears to the Court that the Bank did not intervene in the Interpleader Action because it knew that between itself and Lieben, it had no claim to the Car after she paid off her loan to the Bank. Accordingly, it is appropriate to enjoin the Bank or any other person or entity from asserting any claims to the Bond.

Conclusion

For the reasons stated above, the Court finds that Defendant Angela Lieben is the proper owner of the Car and no longer has any liability to Speedsportz stemming from the purchase of the Car. Accordingly, it is hereby

ORDERED as follows:

(1) the Surety is entitled to recoup the $11,000 penal sum of the Bond;[6]

(2) to the extent that the Surety may have had any claims against Lieben for incidental and consequential damages pursuant to the Indemnity Agreement, these claims were discharged when Lieben received her Chapter 7 discharge on July 8, 2013. (*See In re Lieben*, 11-77399-JRS, Doc. 24); and

(3) all persons or entities are hereby enjoined from asserting any claims to the Bond.

[END OF DOCUMENT]

[6] The Surety can recoup its deposited funds from the District Court registry by filing a motion in the Interpleader Action that complies with Northern District of Georgia Local Rule 67.1(D), *available at* http://www.gand.uscourts.gov/pdf/NDGARulesCV.pdf.