

held by the Chapter 13 Trustee. The Chapter 13 Trustee objected to the Motion. Based upon the parties' oral arguments, briefs and the applicable authorities, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The relevant facts are uncontested. Debtor, Jessie Burt Steverson, and his non-debtor wife purchased a 1991 Chevrolet S-10 pickup truck from Norman shortly before filing a Chapter 7 petition. Title to the truck was in both names, but only Jessie Steverson signed the retail installment contract/security agreement. The agreement granted Norman a security interest in the truck, all unearned insurance premium rebates and any insurance proceeds payable on the truck. Norman subsequently sold the installment contract to General Motors Acceptance Corporation ("GMAC") on a recourse basis.

The Chapter 7 Trustee brought a preference action against GMAC, alleging that GMAC's security interest was unperfected because it had attempted to perfect its interest within the preference period under 11 U.S.C. Section 547. This Court entered a default judgment in the Chapter 7 Trustee's favor, thereby avoiding GMAC's security interest in the vehicle. GMAC subsequently compelled Norman to repurchase the sales contract covering Debtor's truck.

Prior to the entry of default judgment against GMAC, the Debtor converted his case to Chapter 13 of the Bankruptcy Code. Shortly thereafter, the Debtor was involved in a traffic accident which totalled the truck. As a result, Georgia Farm Bureau Insurance Company paid \$7,200.00 to the Chapter 13 Trustee on a casualty policy which Mrs. Steverson had purchased on the truck. Under the sales contract, the Steversons were required to maintain such a policy on the truck with GMAC named as the loss payee. The policy did in fact name GMAC as the loss payee, and GMAC subsequently assigned any interest it holds in the policy proceeds to Norman.

Norman does not dispute the fact that it no longer possesses a security interest in the truck. However, Norman asserts that it is entitled to the insurance proceeds under Georgia law. Norman bases this assertion on two distinct legal theories. First, it contends that, under Georgia law, the insurance policy and the proceeds therefrom constitute additional collateral for the debt, and that, the Trustee has not avoided its interest in this collateral. Second, it contends that, because GMAC is an express third-party beneficiary of the insurance policy, Norman, as GMAC's assignee, is entitled to the proceeds regardless of the avoidance of its security interest in Debtor's vehicle.

The Trustee counters by pointing out the following facts. First, Norman holds only an unsecured claim in the Chapter 13 case, no longer possessing any interest in

the truck. The truck became unencumbered property of the estate under 11 U.S.C. § 541. The truck was subsequently destroyed in the accident, and as a result, the bankruptcy estate is entitled to recover its value, in the form of the insurance proceeds paid by Farm Bureau Insurance Company.

CONCLUSIONS OF LAW

Because I find Norman's argument that it is entitled to the proceeds as the named third-party beneficiary under the Georgia Farm Bureau insurance policy dispositive in this matter, I will not consider its other contention. Under Georgia law, a named loss payee in a casualty insurance policy need not have an interest in the property of the insured to recover the policy proceeds. *See Calvert Fire Ins. Co. v. Environs Dev. Co.*, 601 F.2d 851, 855 (5th Cir. 1979) ("[A lender's] status as loss payee gives it no less a separate contractual remedy than would an additional security deed on other property.") A number of Georgia cases have allowed a creditor, who is a named loss payee under an casualty insurance policy, to recover proceeds payable under the terms of the policy to the extent of its indebtedness, even after the extinction of the creditor's security interest. *See e.g., Georgia Farm Bureau Mut. Ins. Co. v. Brewer*, 202 Ga. App. 127, 413 S.E.2d 770 (1991); *Palmer v. Mitchell County Federal Sav. & Loan Ass'n*, 189 Ga. App. 646, 377 S.E.2d 4 (1988); *Mathis v. Rock Springs Wholesale Co., Inc.*, 157 Ga. App. 726, 278 S.E.2d 484 (1981). *See also*

Insurance Co. of North America v. Gulf Oil Corp., 106 Ga. App. 382, 384-85, 127 S.E.2d 43, 45 (1962) ("A clause which makes loss payable to the mortgagee as his interest may appear does not insure the mortgagee's interest in the property, but the interest which he has in the indebtedness.").

In Palmer, a lender foreclosed on real property shortly after it was damaged by fire. The lender was named in the casualty insurance policy as the loss payee. The debtors contended, however, that they and not the lender were entitled to the insurance proceeds because the lender's lien on the property was extinguished by foreclosure. The Court of Appeals held that the lender was entitled to the policy proceeds as a contractual loss payee, at least to the extent of the unpaid indebtedness. Palmer v. Mitchell County Federal Sav. & Loan Ass'n, 189 Ga. App. at 647-48, 377 S.E.2d at 6-7.

In Mathis, Frances Mathis sold a parcel of real estate and took back a first priority deed to secure debt on the property. The purchasers were obligated under the security deed to maintain insurance on the building located on the property with the loss payable to protect the interest of Ms. Mathis. Ms. Mathis subsequently assigned the note and security deed to a bank with full recourse against her, and was therefore secondarily liable to the bank. The property was damaged by fire and the bank compelled Ms. Mathis to repurchase the contract. A dispute arose between Ms. Mathis and the debtor as to who

was entitled to the proceeds of the casualty insurance policy. The trial court granted summary judgment to the debtor, based upon the fact that Ms. Mathis had no lien on the property at the time of the damage. The Court of Appeals reversed, concluding that, as long as Ms. Mathis was co-indebted on the Debtor's note by virtue of the recourse agreement with the Bank, Ms. Mathis had an insurable interest in the debt even though she had no interest in the property at the time of the loss. Mathis v. Rock Springs Wholesale Co., Inc., 157 Ga. App. at 727, 278 S.E.2d at 486.

Finally, this Court has faced a similar situation in Matter of Rick Taylor Timber Co., Inc. (Rick Taylor Timber Co., Inc. v. Orix Credit Alliance, Inc., et al.), Adv. Pro. No. 92-5038, Ch. 11 No. 92-50324, slip op. (Bankr. S.D.Ga. June 14, 1993). In that case, two creditors, who had taken security interests in the debtor's logging equipment, claimed to have priority over the other as to the insurance proceeds paid under a casualty insurance policy after some of the logging equipment was destroyed. One of the creditors was found to be perfected, while the other was not because it had not properly filed a financing statement before the debtor's bankruptcy. Accordingly, the unperfected creditor was reduced to an unsecured creditor under 11 U.S.C. § 544(a)(1). The unsecured creditor, however, was named as the loss payee on the casualty insurance policy covering the logging equipment. Thus, as this court set forth in the opinion, "the ultimate question is whether the insurance check belongs to the [secured creditor] as proceeds or to [the other creditor], even

though its claim is unsecured because [of its] interest as loss payee of the policy."

This court concluded that, under the Georgia law, the unsecured creditor named as loss payee in the insurance policy had the superior claim to the insurance proceeds, limited only by the amount of the outstanding debt. *See Matter of Rick Taylor Timber Co., Inc.*, Adversary Proceeding No. 92-5038, Chapter 11 No. 92-50324, slip op. at 20.

Based upon the foregoing authorities, it is apparent that Norman is entitled to the insurance proceeds as the assignee of the party named as loss payee in Debtor's casualty insurance policy, GMAC. Although Norman did not possess a security interest in the truck, it clearly had an insurable interest under Georgia law by virtue of the \$8,200.00 claim which it holds against Debtor.

Accordingly, Norman's Motion for Abandonment must be granted.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that Norman Pontiac Buick GMC, Inc.'s Motion for Abandonment by is hereby GRANTED.

FURTHER ORDERED that the Trustee is directed to forthwith remit the \$7,250.00 in insurance proceeds to Norman.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of April, 1994.