

but denies that Debtor has any interest in the vehicle by virtue of the Certificate of Title Act. The matter came on for trial on September 11, 1997. At that time the evidence revealed the following.

In 1996, Debtor made several attempts to purchase a car.¹ In October, she visited Nalley Honda, a dealership in Brunswick, and was told she would need a co-signor after a credit check revealed that several accounts were in collection status. (Exhibit D-2). She returned to Nalley Honda on November 11, 1996, with Archie Bryant and Paul Williams. Debtor testified that she and Mr. Bryant bought the subject car and that Mr. Bryant was only purchasing the car as her co-signor; however, only Mr. Bryant signed the sales contract and only Mr. Bryant's name appears on the certificate of title. (Exhibit D-1). Debtor testified that she noticed that her name was not on the contract; she then called Nalley and was told not to worry. Paul Williams testified that he accompanied Mr. Bryant and Debtor to the dealership and that the general understanding was that Mr. Bryant was to be only the co-signor and Debtor was the purchaser. He further testified that the salesman dealt directly with Debtor and handed Debtor the keys to the car.

Debtor had sole possession of the car and was responsible for its maintenance from November 1996 until it was repossessed in April 1997. Debtor testified

¹ Debtor denied at trial that she had visited other dealerships, then recanted and admitted to visiting a Pontiac dealer in September of 1996. She denied visiting any other dealers, although it appears from her credit report that she at least visited a Chevrolet dealer in April of that year. (Ex. D-2).

that although Mr. Bryant's name appears on the bank book, she made the two payments in December 1996 and January 1997 and that it is her address which appears under Mr. Bryant's name. (Exhibit P-1). The address listed, however, is Route 8 Box 255, Baxley Georgia 31513: the same address listed on both Debtor's and Mr. Bryant's credit reports. (Exhibit D-2). Although Mr. Bryant and Debtor are not related, she testified that he helped her purchase the car because she occasionally ran errands for him and they were good friends. Insurance on the car was issued in Debtor's name by Thornton Insurance Agency, effective December 7, 1996. (Ex. P-2).²

Mr. Bryant passed away in January of 1997. Under Mr. Bryant's will, his step-daughter, Valencia Johnson, was named as Executrix. (Ex. P-4). As executrix, Ms. Johnson transferred to Debtor on May 1, 1997 "the title and all interest . . . vested in said Archie Bryant at the time of his death" in the Escort and in a 1995 mobile home.³ Debtor testified that she did not make the monthly payments on the car for February or March because the dealer told her not to, although she notified them that Mr. Bryant had died and that she had inherited the car.

² Debtor testified that she requested credit life insurance on the car at the time the car was purchased, but that she discovered when Mr. Bryant died that no such insurance had been placed on the car.

³ Apparently a similar situation as here existed with regard to the mobile home mentioned in Mr. Bryant's will. Debtor lived in the mobile home, but Mr. Bryant signed on the contract for its purchase in 1996. This mobile home is the subject of an order entered on September 10, 1997, by this Court, denying relief from stay to the secured creditor and imposing strict compliance upon the Debtor. See Order Denying Movant's Motion for Relief From Stay, Chapter 13 Case No. 97-20444 (Sept. 10, 1997).

Keane Kurz, the financial director at Nalley, testified in defense that it is customary for Barnett Bank to purchase the conditional sales agreements; moreover, Barnett has set certain parameters for approving loans. According to Debtor's credit report, she was not eligible under those parameters to finance the purchase of a car from Nalley. In that regard, Barnett's policy is that "straw purchases" -- those in which a buyer purchases for someone who is not himself eligible-- are not permitted.

CONCLUSIONS OF LAW

Debtor's bankruptcy estate consists of "all legal or equitable interests of the debtor in property *as of the commencement of the case.*" 11 U.S.C. § 541(a)(1) (emphasis supplied). The car was repossessed on the same day that Debtor filed her bankruptcy petition, April 14, 1997.⁴ Defendant contends that because the certificate of title lists Mr. Bryant as the owner, Debtor has no legal or equitable interest in the car. Property interests in bankruptcy are defined under state law. Butner v. United States, 440 U.S. 48, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979). Under Georgia law, the Certificate of Title Act provides a method of proving ownership to motor vehicles. O.C.G.A. § 40-3-1 *et seq.*; Hightower v. Berlin, 129 Ga. App. 246 (Ga. App. 1973), *reh'g denied*, (June 20, 1973).

The Title Act, however, is not the sole means of proving ownership. Other

⁴ The transfer of the car from Mr. Bryant's estate to the Debtor did not take place until May 1, 1997.

methods include proof of repairs and payments. Hightower, 129 Ga. App. at 248; *See also Perkins v. Gilbert*, 169 B.R. 455 (Bankr. M.D.Ga. 1995) (Walker, J.) (auto in claimant's husband's name but ownership shown by other evidence that claimant bought car and was listed in sales agreement); In re Estate of Adamson, 215 Ga. App. 613 (1994) (vehicles titled in name of decedent but wife allowed to make further showing). Certificate of title provides prima facie evidence of the facts appearing within, including the name of the owner, but does not alter the claimant's ability to prove ownership by other means. Hightower, 129 Ga. App. at 248. Once the claimant has established ownership by other evidence, the burden shifts to the defendant to rebut such evidence if the car belongs to someone else. Id.

Assuming *arguendo* that Debtor has established that she owns the car and that it is property of her bankruptcy estate, Barnett is still excused from turnover of the car if other provisions of the Code are not met. The Code defines "creditor" as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor," 11 U.S.C. § 101(10). A claim is defined as "a right to payment." 11 U.S.C. § 101(5). Thus, Debtor must show that Barnett has a right to payment *from Debtor*. 11 U.S.C. § 101(10). This she cannot do. Debtor's name does not appear on the sales contract between Mr. Bryant and Nalley; therefore, she is not liable on that debt and Barnett would be unable to force her to make the contractual payments if she were unwilling to do so. In re Washington, 137 B.R. 748 (Bankr. E.D.Ark. 1992). The debt

owed to Barnett is not owed by Debtor, and thus is not a claim within the meaning of Section 101(5).

It follows, therefore, that Barnett is not subject to Section 1322's provisions which permit a Chapter 13 debtor to “modify the rights of holders of secured claims.” 11 U.S.C. § 1322(b)(2); *See also* Washington, 137 B.R. at 753 (Creation of involuntary contractual relationship “is not permitted in general contract law, and the Court will not sanction it here.”). While in some circumstances a debtor may alter the terms of prepetition contracts, Barnett Bank’s rights with regard to the car cannot be modified under Section 1322.⁵ The sales contract was between Nalley and Mr. Bryant, and was subsequently assigned to Barnett. Neither Barnett nor Nalley contracted with Debtor; moreover, Debtor may not use the provisions of the Code to create a credit relationship where none exists. Washington, 137 B.R. at 752 (“There is no basis in the Code for altering the parties to a contract or another party’s contract.”).

CONCLUSION

The Code provides that relief from the automatic stay should be granted

⁵ 11 U.S.C. § 1322 states in pertinent part:

“The plan may modify the rights of holders of secured claims.”

“for cause.” 11 U.S.C. § 362(d)⁶. I conclude that Debtor’s inability to modify or restructure the Barnett claim, even though it is secured by what is arguably Debtor’s automobile, renders this forum without jurisdiction to deal with the Barnett claim.⁷ Barnett’s and Debtor’s remedies are exclusively a matter of state law. As such, I hold that it would be inappropriate to permit the automatic stay to remain in effect and the stay is therefore lifted “for cause.”

ORDER

Pursuant to the foregoing findings of fact and conclusions of law, IT IS THE ORDER OF THIS COURT THAT Debtor’s request for turnover of property is denied. IT IS FURTHER ORDERED THAT Defendant Barnett Bank’s Motion for Relief from Stay is granted.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

⁶ 11 U.S.C. § 362(d) provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . for cause, including the lack of adequate protection of an interest in property of such party in interest; with respect to a stay of an act against property . . . if the debtor does not have equity in such property; and such property is not necessary to an effective reorganization.

⁷ 11 U.S.C. § 1327(a) provides that this Court, by confirming a Chapter 13 plan, has the authority only to bind “the debtor and *each creditor*.” (emphasis supplied). Since I hold that Barnett is not a creditor within the scope of Chapter 13, this Court cannot force Barnett to abide by the terms of the debtor’s plan.

Dated at Savannah, Georgia

This ____ day of October, 1997.