

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Dublin Division

In the matter of: )  
CLAXTON TRANSPORT, INC. )  
(Chapter 7 Case 385-00192) )  
Debtor )  
H. GIBBS FLANDERS, JR., )  
TRUSTEE )  
Plaintiff )  
v. )  
CECIL CLAXTON )  
Defendant )

Adversary Proceeding

Number 386-0008

**FILED**

at 10 O'clock & 40 min. AM

Date 2/5/87

MARY C. BECTON, CLERK  
United States Bankruptcy Court  
Savannah, Georgia PCB

MEMORANDUM AND ORDER

The Plaintiff is the Trustee in the Chapter 7 case relating to Claxton Transport, Inc. The Defendant, Cecil Claxton, is a creditor in the Chapter 7 case, claiming a security interest in a number of trucks. The Trustee contends that the Defendant's liens on four of the trucks are unperfected and therefore voidable pursuant to 11 U.S.C. Sections 544 and 549. After consideration of the evidence and arguments adduced at a

hearing on January 5, 1987, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

The parties stipulated to all relevant facts. On November 10, 1981, Cecil Claxton, doing business as Cecil Claxton Trucking Company, sold 19 trucks to the debtor corporation, Claxton Transport, Inc., (Exhibit P-5). He retained a security interest in those trucks by virtue of a security agreement of the same date. Id.

Four trucks are at issue in this proceeding. They are described as follows:

- (1) 1978 IHC Tractor, # E2327HGA12814
- (1) 1978 IHC Tractor, # E2327HGA12798
- (1) 1973 Mack Tractor, # FS795LST12634
- (1) 1965 Mack Tractor, # F609ST7260

The first and second trucks are still titled in the name of Cecil Claxton Trucking Company. (Exhibits P-3 and P-1). Neither the Debtor Corporation nor Cecil Claxton ever sent the Certificates of Title on the trucks to the Georgia Motor Vehicle Division to

have the change of ownership and Cecil Claxton's lien noted on the certificates.

The third truck is titled in the name of Cecil Claxton. The Certificate of Title to this truck was issued in April of 1986 to replace a lost or stolen certificate which showed Cecil Claxton as the owner of the truck. Neither Cecil Claxton nor Claxton Transport, Inc., applied for a new title after Claxton Transport bought the truck from Cecil Claxton in 1981. (Exhibit P-2).

The Certificate of Title to the fourth truck was changed on July 22, 1983, to show Claxton Transport, Inc., as owner and Cecil Claxton as first lienholder. That Certificate of Title was lost or stolen and replaced with a new Certificate of Title in May, 1986. The new title continues to show Claxton Transport, Inc., as the owner and Cecil Claxton as first lienholder. (Exhibit P-4).

Claxton Transport, Inc., filed a Chapter 11 petition with this Court on December 4, 1985. The case was converted to Chapter 7 on December 31, 1985.

CONCLUSIONS OF LAW

When Claxton Transport, Inc., filed a bankruptcy petition, an estate came into existence which is comprised of all property in which the Debtor had an interest on the date of filing. 11 U.S.C. §541. By virtue of the "Security Bill of Sale" dated November 10, 1981, the Debtor acquired an ownership interest in the four trucks at issue in this proceeding. The sale of the trucks was valid between Cecil Claxton and the Debtor despite the fact that the sale was never noted on the vehicles' Certificates of Title. O.C.G.A. 40-3-31(d); Allen v. Holloway, 119 Ga.App. 676 (1969). Therefore, the bankruptcy estate succeeded to the Debtor's interest in all four vehicles. 11 U.S.C. §541(a)(1).

The Debtor's interest in the trucks as of December 4, 1985, was subject to the valid, albeit unperfected security interest of Cecil Claxton. The Debtor granted Cecil Claxton a security interest in the trucks by the "Security Bill of Sale" dated November 10, 1981. That security interest was enforceable against the Debtor, even though the existence of the security interest was not disclosed on three of the vehicles' Certificates of Title. Spoon v. Herndon, 167 Ga.App. 794 (1983). Therefore, the bankruptcy estate's interest in the four trucks was subject to Cecil Claxton's security interest.

Section 544 of the Bankruptcy Code gives a Chapter 7 Trustee the power of a judicial lien creditor under state law to avoid an unperfected security interest in property of the estate. See generally, 4 Collier on Bankruptcy ¶544.01 (15th Ed.). The rights of a judicial lien creditor in Georgia are superior to the rights of an unperfected, secured creditor. O.C.G.A. 11-9-301(1)(b).

A creditor may perfect a Georgia security interest in vehicles by mailing an application for Certificate of Title to the State Department of Motor Vehicles. The creditor's lien is noted on the face of the title and on the records of the Department. O.C.G.A. 40-3-50(b). Except with respect to the fourth truck, Cecil Claxton failed to take the steps required to perfect his security interest in the trucks at issue in this proceeding. Therefore, pursuant to 11 U.S.C. Section 544(a)(1), the Trustee may avoid Cecil Claxton's unperfected security interest in the first three trucks described above.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law IT IS THE ORDER OF THIS COURT that the

security interest of Cecil Claxton in the following vehicles is avoided:

- (1) 1978 IHC Tractor, # E2327HGA12814
- (1) 1978 IHC Tractor, # E2327HGA12798
- (1) 1973 Mack Tractor, # FS795LST12634



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 29<sup>th</sup> day of January, 1987.

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