

**In re OWEN**  
**2009 WL 2145705 (Bankr. D. Idaho July 15, 2009)**

TERRY L. MYERS, United States Chief Bankruptcy Judge.

**INTRODUCTION**

This preference avoidance action involves a security interest in a motor vehicle. That security interest was perfected in California. However, the debtors relocated themselves and the vehicle to Idaho. The vehicle was then titled in Idaho and, exactly 90 days later, the debtors filed for bankruptcy relief....

**PROCEDURAL BACKGROUND**

Chapter 7 trustee Jeremy Gugino (“Trustee”) filed this adversary proceeding to avoid ... the security interest asserted by Wachovia Dealer Services, Inc. (“Defendant”) in a 2007 Mercury Marquis (the “Mercury”) owned by Bobbie and Michael Owen (“Debtors”)....

Having considered the facts as stipulated, and the parties’ oral arguments and briefs, and following an evaluation of applicable authorities, the Court determines that Defendant prevails.

**FACTS**

.... On December 10, 2007, Debtors entered into an agreement with Defendant so they could purchase the Mercury. Under that agreement, Defendant agreed to finance a portion of the purchase price, and Debtors agreed to give Defendant a security interest in the Mercury to secure that obligation. Debtors took possession of the Mercury that same day. The parties agree that, for the purposes of Article 9 of the Uniform Commercial Code, the agreement adequately described the collateral, and the security interest attached that day.

Also on December 10, Defendant applied for a California certificate of title for the Mercury showing Debtors as the owners and Defendant as the lienholder. An electronic California title was issued noting the same. The parties agree that, under applicable California law, Defendant perfected its security interest in the Mercury on December 10, 2007.

In May 2008, Debtors moved to Idaho, bringing the Mercury with them. On June 26, 2008, the Department of Motor Vehicles (“DMV”) in Ada County, Idaho, sent Defendant a letter stating that Debtors had filed an application to register and title the Mercury in Idaho and that this application listed Defendant as a lienholder. The letter requested that Defendant submit a “paper” out-of-state certificate of title.<sup>3</sup> It further stated: *“If your lien is still active, it will be*

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<sup>3</sup> The letter to Defendant explained that Idaho “requires that the out-of-state certificate of title be surrendered before titling and registration can be completed.” It then instructed: “If you have an electronic lien, please request a paper title for your state so that we may assist your customer. Please submit the title and a photocopy of this letter to the address shown below.”

recorded on the Idaho title, which will in turn be mailed to you after issuance.” A paper California certificate of title was thereafter issued. It showed Debtors as owners of the Mercury, and it noted Defendant’s lien. This paper California title had an “odometer date” of December 10, 2007 and an “issue date” of July 16, 2008. It contained no other date speaking to when Defendant’s lien was perfected. However, the parties answered that question at trial by agreeing that the perfection date of the lien under California law was December 10, 2007.

The parties stipulated that sometime between July 16 and July 30, an application was made for an Idaho title for the Mercury.<sup>4</sup> The Idaho title issued as a result of this application is dated August 6, 2008. It shows Debtors as owners and Defendant as lienholder. The Idaho title shows the “record” date for Defendant’s lien as July 16, 2008 – a date consistent with the “issue date” on the paper California title.

On October 14, 2008, Debtors filed their voluntary chapter 7 petition for relief....

On these facts, Trustee alleges that Defendant perfected its lien pursuant to Idaho law on July 16, 2008.... Defendant counters that its security interest was perfected on December 10, 2007 under California law and remained perfected as of the bankruptcy filing ....

## DISCUSSION AND DISPOSITION

\* \* \*

### 2. Idaho law controls perfection in this case

The perfection of a security interest is governed by state law. *See Elliott v. Frontier Props. (In re Lewis W. Shurtleff, Inc.)*, 778 F.2d 1416, 1420 (9th Cir. 1985) ....

Idaho Code § 28-9-303 addresses the perfection and priority of security interests in goods covered by a certificate of title, and it states ....

(c) The local law of the jurisdiction under whose certificate of title the goods are covered 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.

IDAHO CODE § 28-9-303. These principles regarding change in controlling law are illustrated by an example:

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<sup>4</sup> The letter indicates on its face that Debtors had applied to title and register the Mercury, and that letter was dated June 27, a date some weeks before the late July time frame in the parties’ stipulation. The Court therefore interprets this reference to the July 16-30 time frame as reflecting the date when other materials were submitted to DMV, or other acts taken, to accomplish the titling and registration....

Debtor's automobile is covered by a certificate of title issued by Illinois. Lender perfects a security interest in the automobile by complying with Illinois' certificate-of-title statute. Thereafter, Debtor applies for a certificate of title in Indiana.... *Under Section 9-303, Illinois law ceases to govern perfection; rather, once Debtor delivers the application and applicable fee to the appropriate Indiana authority, Indiana law governs.*

*Id.* § 28-9-316 cmt. 5, ex. 8 (emphasis supplied).

... [I]nterpreting other states' versions of § 9-303 ..., courts have determined that a certificate of title on a vehicle issued by a foreign state ceases to control the issue of perfection of a security interest once application is made in the forum state for a new certificate of title. At that time, the law of the second jurisdiction governs perfection of a lien in the vehicle. For example, in *In re Cook*, 2007 WL 680170, at \*2 (Bankr. W.D. Mo. Mar. 1, 2007), the court held:

When the Debtor bought the [car], it was "covered" by the Illinois Certificate of Title. However, under § 9-303(b), when the Missouri Department of Revenue issued its Certificate of Title on May 16, 2005, the [car] ceased to be covered by the Illinois Certificate of Title and became covered by the Missouri Certificate of Title. At that point, Missouri law became the local law of the jurisdiction under whose certificate of title the [car] was covered and, under § 9-303(c), Missouri law governs perfection of liens on it.

*Id.*; see also *Metzger v. Americredit Fin. Servs., Inc.*, 615 S.E.2d 120, 124-25 (Ga. Ct. App. 2005) (stating that pursuant to Georgia's version of Revised UCC § 9-303, "even when a security interest in goods has been perfected in another state, Georgia law determines perfection and priority issues once the goods become 'covered' by a Georgia certificate of title, which occurs when a valid application and fee are submitted to the Georgia DMV.").

Here, at the time Debtors moved to Idaho, the Mercury was subject to a perfected security interest in favor of Defendant under California law. That lien interest and its effective date of December 10, 2007, were reflected on the electronic California title, and the parties agree Defendant was perfected under California law.

... [B]etween July 16 and July 30, Debtors applied for an Idaho certificate of title.... [G]oods "cease to be covered" by a certificate of title "at the earlier of" (1) the time the certificate of title ceases to be effective under the law of the issuing jurisdiction [*i.e.*, California], or (2) "the time the goods become covered subsequently by a certificate of title issued by another jurisdiction." The statute further establishes that the "[g]oods become covered" in that second jurisdiction [*i.e.*, Idaho] "when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority." IDAHO CODE § 28-9-303(b).

Under these provisions, the Mercury ceased to be covered by the California certificate of title, and became covered by the Idaho certificate of title laws, on or about July 30, 2008, when the application and fees were tendered to the Idaho authorities. The Court must therefore look to Idaho law to address the question of Defendant's perfection of its security interest....

### **3. The lien's perfection in California remained effective**

The parties do not disagree with a fundamental proposition of Idaho law governing perfection of liens in motor vehicles found in IDAHO CODE § 49-510(3), which states:

The filing of a lien or encumbrance and the notation of it shall be a condition of perfection and shall constitute constructive notice of the lien or encumbrance and its contents to creditors and subsequent purchasers and encumbrancers. *All liens or encumbrances so filed with the department shall be perfected and take priority according to the order in which the same are noted upon the certificate of title or entered into the electronic records of the department.* (Emphasis supplied).

In applying this statute, this Court has stated that “a security interest is deemed perfected according to the date noted by the State [of Idaho] on the title certificate.” [*Fitzgerald v. First Security Bank (In re Walker)*, 161 B.R. 484, 491 (Bankr. D. Idaho 1993), *aff'd*, 178 B.R. 497 (D. Idaho 1994), *aff'd*, 77 F.3d 322 (9th Cir. 1996)]. This is true even if the lien date on the Idaho title was recorded by administrative error. *See In re White*, 08.3 I.B.C.R. 134, 136-37 (Bankr. D. Idaho 2008); *Fitzgerald v. First Sec. Bank of Idaho (In re Carson)*, 97.1 I.B.C.R. 8, 10 (Bankr. D. Idaho 1997).

Trustee emphasizes that Defendant's lien date as shown on the Idaho certificate of title is July 16, 2008. He argues that whether the Idaho authorities erroneously listed this date based upon the July 16, 2008 “issue date” on the paper California certificate of title is not relevant to deciding the perfection issue. *White*, 08.3 I.B.C.R. at 136-37.

Therefore, Trustee concludes, Defendant perfected its security interest in the Mercury under Idaho law on July 16, 2008....

... Trustee's argument overlooks another provision of Idaho statutory law. Defendant contends – correctly – that its lien, perfected in December, 2007, under California law, remained perfected as of the October 14, 2008 bankruptcy filing pursuant to IDAHO CODE § 28-9-316.

#### **a. Idaho Code § 28-9-316 provides for continued perfection**

Idaho Code § 28-9-316 .... provides a general rule that perfection continues until the earliest of (1) the time it would cease under the initial state's law, (2) four months after the debtor's change of location to another state, or (3) one year after transfer of the collateral to another person that becomes a debtor and is located in another state. *See* IDAHO CODE § 28-9-316(a)(1)-(3)....

Idaho Code § 28-9-316(d) ... is key to the present dispute. Reordering and restating that rule, “when the goods become covered by a certificate of title from this state [Idaho],” a previously perfected security interest in those goods “under the laws of another jurisdiction ... remains perfected until [the time] the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered [in Idaho].”

The Official Comment[] explain[s]:

**2. Continued Perfection.** This section [9-316] deals with continued perfection of security interests that have been perfected under the law of another jurisdiction. The fact that the law of a particular jurisdiction ceases to govern perfection under Sections 9-301 through 9-307 does not necessarily mean that a security interest perfected under that law becomes unperfected. To the contrary: This section generally provides that a security interest perfected under the law of one jurisdiction remains perfected for a fixed period of time (four months or one year, depending on the circumstances), even though the jurisdiction whose law governs perfection changes. However, cessation of perfection under the law of the original jurisdiction cuts short the fixed period. The four-month and one-year periods are long enough for a secured party to discover in most cases that the law of a different jurisdiction governs perfection and to reperfect (typically by filing) under the law of that jurisdiction. If a secured party properly reperfects a security interest before it becomes unperfected under subsection (a), then the security interest remains perfected continuously thereafter.

IDAHO CODE § 28-9-316 cmt. 2. The comment to ... the section that deals with change in the controlling law where the goods are subject to certificates of title [] is consistent:

**4. Continued perfection.** The fact that the law of one State ceases to apply under subsection (b) does not mean that a security interest perfected under that law becomes unperfected automatically. In most cases, the security interest will remain perfected. *See* Section 9-316(d), (e)....

*Id.* § 28-9-303 cmt. 4.

Recall Official Comment 5, example 8, to Idaho Code § 28-9-316, quoted *supra*, discussing that a vehicle perfected under Illinois law would become subject to Indiana law upon application in Indiana for a certificate of title given the operation of Revised UCC § 9-303(b). The balance of the comment addresses the issue of continued perfection:

**Example 8:** .... Under Section 9-303(b), Illinois law ceases to govern perfection ... once Debtor delivers the application and applicable fee to the appropriate Indiana authority .... *Nevertheless, under Indiana's Section 9-316(d), Lender's security interest remains perfected until it would become unperfected under Illinois law had no certificate of title been issued by Indiana.... If Lender's security interest remains perfected, it is senior to Creditor's judicial lien.*

IDAHO CODE § 28-9-316 cmt. 5, ex. 8 (emphasis supplied).<sup>15</sup>

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<sup>15</sup> The concept of continued perfection under Revised UCC § 9-316 has also been explained as follows:

Under Idaho Code § 28-9-316(d), the inquiry here is whether and when Defendant's security interest would have become unperfected under California law.

**b. The lien would not have become unperfected under California law**

Under California law, a security interest in a motor vehicle is perfected only by compliance with the California Vehicle Code. *See* CAL. VEH. CODE §§ 6300-6303. However, once perfected, ... “the effect of such perfection, and the creation, attachment, priority and validity of such security interest shall be governed by the Uniform Commercial Code.” CAL. VEH. CODE § 6303; *see also* *Simon v. Chrysler Credit Corp. (In re Babaeian Transp. Co.)*, 206 B.R. 536, 543 (Bankr. C.D. Cal. 1997). California, like Idaho, has adopted Revised UCC §§ 9-303 and 9-316 providing for the continued perfection of goods previously titled in one state after they become covered by a certificate of title in another state. *See* CAL. COM. CODE §§ 9303 & 9316; *accord* IDAHO CODE §§ 28-9-303 & 28-9-316 (quoted earlier). Thus, in the absence of a provision in California's Uniform Commercial Code dictating the termination of a perfected interest in a motor vehicle upon the issuance of a certificate of title in another state, the provisions of §§ 9303 and 9316 of its Uniform Commercial Code control.

Those provisions of the California Uniform Commercial Code do not cause Defendant's security interest in the Mercury to become unperfected upon the vehicle becoming covered by the certificate of title in Idaho. Nor has Trustee cited any other statutory authority or case law establishing that Defendant's interest became unperfected under California law on July 16, 2008, or elsewhere between July 16, 2008 and the petition date of October 14, 2008.

Therefore, pursuant to California's Uniform Commercial Code §§ 9303 and 9316, and absent identified law to the contrary, the Court concludes that Defendant's security interest was still perfected when Debtors filed their chapter 7 bankruptcy petition on October 14, 2008....

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[T]he second certificate issued by another jurisdiction will not eliminate the perfected security interest created by the first certificate of title as long as the interest continues to be perfected in the jurisdiction that issued the first certificate. As a result, the inquiry under revised Article 9 is whether the security interest was properly perfected in the issuing jurisdiction and continues to be perfected in that jurisdiction regardless of whether a second jurisdiction has issued another certificate of title.

Jane F. (Ginger) Zimmerman, *Moving Vehicles No Longer Hidden Treasure*, AM. BANKR. INST. J., Nov. 2005, at 20, 48. Zimmerman concludes that Revised UCC §§ 9-303 and 9-316 have “effectively closed the door on attempts by aggressive trustees in bankruptcies to exact releases or settlements from secured creditors as some were able to do under the predecessor statutes.” *Id.*; *see also* HON. WILLIAM HOUSTON BROWN, THE LAW OF DEBTORS AND CREDITORS ¶ 7:191 (stating that “[t]he gist of the ... Revised Article 9 provision [§ 9-303] ... is that in most cases the security interest will remain perfected.”).