

**In re SCHWALB**  
**347 B.R. 726 (Bankr. D. Nev. 2006)**

BRUCE A. MARKELL, Bankruptcy Judge.

**I. Introduction**

\* \* \*

Possession is the central theme in this case. Pioneer Loan & Jewelry, a pawnbroker, possesses two certificates of title that list it as the owner of two motor vehicles. Michelle Schwalb, the debtor, possesses those vehicles. Pioneer claims exclusive ownership, and that Ms. Schwalb has no legal or equitable interest in the vehicles beyond mere possession. Schwalb counters that Pioneer has no interest in the vehicles because she never transferred title or granted any other interest in them to Pioneer.

Pioneer seeks possession of the vehicles, and has asked this court to force Ms. Schwalb to turn them over to it. Ms. Schwalb seeks to keep the vehicles and pay Pioneer nothing under her chapter 13 plan, the confirmation of which is the subject of this opinion.

Both parties' fallback position is that Pioneer's interest is that of a secured creditor, as it is not disputed that Pioneer originally lent money to Ms. Schwalb on the strength of the vehicles as collateral. But this presents a different problem: the documents under which Pioneer lent Ms. Schwalb money provided for an annual interest rate of approximately 120%. As a result, by the time Ms. Schwalb filed her bankruptcy, Pioneer's claim had grown to more than double the original loan. Pioneer thus believes that Ms. Schwalb has insufficient resources to pay this claim over the life of her chapter 13 plan. Ms. Schwalb responds that Pioneer's secured claim is less than Pioneer alleges. She offered evidence that she can afford plan payments at the current plan value. She also asserts, and Pioneer does not dispute, that Pioneer's failure to file a proof of claim prevents Pioneer from asserting any unsecured claim related to its loans.

.... After hearing the testimony, and reviewing all the evidence and the pleadings, the court finds that Pioneer is a secured creditor ....

**II. Relevant Facts**

Michelle Schwalb is not a typical chapter 13 debtor. She holds no job, because she can't hold one. Seven years ago she had a brain tumor removed, leaving her unsteady and unable to concentrate for extended periods of time. Social Security disability payments are her only regular income. She is 34 years old, diabetic, has a non-working pituitary gland, and has initial symptoms of Grave's disease. She must take steroids to live. Ms. Schwalb lives with a man who fathered her only child, and they have been together as a family for thirteen or fourteen years. He works outside the home, and pays most of the household expenses.

Ms. Schwalb's chapter 13 plan is being funded entirely from her monthly disability payments, which are currently \$580, and from contributions by her father. Her father's current monthly contribution is \$640....

Ms. Schwalb's father gave her the two vehicles at issue, a 1997 Infiniti QX4 Sport Utility Vehicle and a 2002 Cadillac Escalade. Before dealing with Pioneer, Ms. Schwalb had clean title to both vehicles. Then, sometime during 2004, the debtor, her father and her partner decided they needed to contribute funds to a business that Ms. Schwalb's partner ran. They went to Pioneer and obtained two loans totaling \$20,000.

The business, however, failed. Ms. Schwalb had no way to repay Pioneer. At this point, Pioneer began to take action to obtain the vehicles. To understand the actions Pioneer took, however, it is necessary to review the transactions by which Ms. Schwalb obtained the \$20,000.

Ms. Schwalb and her father initially approached Pioneer in June of 2004. Mr. Schwalb had done business with Pioneer and, at that time, enjoyed some goodwill with it. Ms. Schwalb's Infiniti QX4 Sport Utility Vehicle was offered as collateral, and Pioneer advanced \$4,000 against possession of the certificate of title for the vehicle. The parties testified that Ms. Schwalb gave Pioneer her certificate of title after she signed it as seller. The buyer's name was left blank.

When she received the \$4,000 in loan proceeds, Ms. Schwalb signed a document referred to by the parties as a pawn ticket. The pawn ticket is a preprinted form used by Pioneer in its pawnbroker business. It is a simple 5-inch-by-8-inch form, with text front and back. Among other things, the front has blanks for describing the property pawned, for the amount of the loan and for the repayment date.

On Ms. Schwalb's pawn ticket, the parties designated the property pawned as an Infiniti QX4 Sport Utility Vehicle, and included its Vehicle Identification Number (VIN). The ticket also contained the loan terms. Ms. Schwalb was to repay the \$4,000 in 120 days, plus \$1,605 interest. The disclosed annual interest rate was 122.04%.<sup>1</sup> If Ms. Schwalb did not "redeem" the pawn and pay the loan within the 120 days, the pawn ticket indicated that "you shall ... forfeit all right and interest in the pawned property to the pawnbroker who shall hereby acquire an absolute title to the same." Just before the blank on the pawn ticket in which the parties inserted the description of the Infiniti and its VIN, the pawn ticket indicated, in very small five-point type, "You are giving a security interest in the following property: "Pioneer did not retain possession of the vehicle. Ms. Schwalb drove off in it with her \$4,000. Pioneer put the signed certificate of title in a safe on its premises.

The transaction with the Cadillac was essentially the same, except Pioneer advanced \$16,000 against possession of the signed certificate of title, and the interest rate was 121.76%. This transaction occurred on August 19, 2004. In each case, Pioneer's representative testified

---

<sup>1</sup> Interest was payable at 10% per month, or 120% per year, but Pioneer added a \$5 charge at the initiation of the transaction, which increased the effective interest rate for the first year of the loan to 122.04%.

that the amount Pioneer lent against the certificates of title was within Pioneer's general practice of lending no more than 30% to 40% of the retail value of the vehicle offered as collateral.

Approximately \$1,605 in interest on the Infiniti loan was paid on or around November 6, 2004, thus extending the redemption period to March 6, 2005. No interest was ever paid on the Cadillac loan. The final 120-day term expired on the Infiniti loan on March 6, 2005, and on December 17, 2004, for the Cadillac loan.

When Ms. Schwalb did not repay either loan, Pioneer took both certificates of title to the Nevada Department of Motor Vehicles ("DMV") where, sometime in April 2005, Pioneer requested that the DMV reissue the certificates showing Ms. Schwalb as the owner and Pioneer as the "lienholder." The DMV complied. After Pioneer's initial efforts to obtain the vehicles were unsuccessful, Pioneer then presented the newly reissued certificates of title to the DMV, this time requesting that the DMV reissue the certificates of title without any mention of Ms Schwalb, and listing Pioneer as the sole owner. Again the DMV complied. Pioneer then filed a state court lawsuit apparently alleging conversion and seeking recovery of both vehicles....

Ms. Schwalb filed her chapter 13 case on August 9, 2005....

Ms. Schwalb's plan, filed with her chapter 13 petition, proposes to pay her creditors over 36 months. Her monthly payment is \$555 for the first 12 months of her plan, and \$709 per month for the remaining 24 months of her plan.

Initially, Ms. Schwalb contends that Pioneer is not a secured creditor, and is barred from participating in her case as an unsecured creditor. Her initial proposal is thus to pay Pioneer nothing under her plan. If Pioneer is found to be a secured creditor despite her objection, she proposes to value the collateral for the secured claims at \$16,000 for the Cadillac loan and \$4,000 for the Infiniti loan. The plan would then pay these two secured claims full over the life of the plan, together with 10% simple interest.

### **III. Pioneer's Property Interests**

The parties have focused on the nature of Pioneer's property interest, if any, in the two vehicles. Relying on its pawn ticket and the laws of other states, Pioneer contends that it owns both vehicles, and that Ms. Schwalb has no legal or equitable interest in them. Ms. Schwalb counters that Pioneer is not a pawnbroker with respect to the vehicles since it did not retain possession of them after making the loans. Ms. Schwalb further argues that the language of the pawn ticket is insufficient to create an Article 9 security interest under Nevada's version of the Uniform Commercial Code (UCC).

Pioneer, if forced to yield on its ownership claims, contends that the language in the pawn ticket is sufficient under Nevada's version of Article 9 to create a security interest ....

\* \* \*

### *C. Applicability of Article 9 to Pioneer's Loans*

... Section 9-109 makes Pioneer's transactions with Ms. Schwalb subject to Nevada's version of Article 9. This was not unexpected. Pioneer's form of pawnbroking ticket expressly states that Ms. Schwalb was "giving a security interest" in the two vehicles to Pioneer. Although more will be said about this language below, it is a clear indication that Pioneer was both aware of the term "security interest," and wanted to use it in the two transactions. And if a "security interest" is involved, the default statute of applicability is Article 9 of the UCC.

Beyond that, however, as the courts and commentators cited above have found, each transaction here fits within the text of Section 9-109 – that it be a "transaction ... that creates a security interest in personal property or fixtures by contract." NEV. REV. STAT. § 104.9109.1(a). This can be seen from an analysis of the components of Section 9-109.

The component most obviously present is a contract – a provision that requires that transaction to be consensual. "Contract," as defined in the UCC is "the total legal obligation that results from the parties' agreement ..." NEV. REV. STAT. § 104.1201.2(l).<sup>12</sup> The UCC defines the term "agreement" as "the bargain of the parties in fact, as found in their language or inferred from other circumstances ...." *Id.* § 104.1201.2(c).

Here, Ms. Schwalb and Pioneer had an "agreement" – Pioneer would lend money to her on the security of her two vehicles. That was their bargain in fact. This agreement gave rise to legal obligations – that is, rights that courts would vindicate – some supplied by Nevada's common law of contracts, and others by Nevada's version of Article 9. This consensual agreement combined with the attendant legal consequences form the necessary contract; or, put another way, the transaction was consensual, and breach of it implied various legal consequences.

Was it a contract to create or provide for a security interest? "Security interest" is defined in Article 1 as "an interest in personal property ... which secures payment or performance of an obligation." NEV. REV. STAT. § 104.1201.2(ii). Here, Ms. Schwalb gave Pioneer an interest in her vehicles as a condition of obtaining the two loans, and Pioneer held onto the title to ensure repayment. When Ms. Schwalb did not repay the loans within the 120-day redemption period, Pioneer's position is that exclusive ownership of the vehicles passed to it. This type of arrangement – in which rights to possession of personal property arise upon failure to repay debt or honor some other obligation – is a classic security interest and fits the definition of "an interest in personal property [that] secure[d] payment ... of an obligation." NEV. REV. STAT. § 104.9201.2(ii).

As a result, the transactions here were covered by Article 9 of the UCC. This conclusion has serious repercussions for the parties.

---

<sup>12</sup> Article 9 expressly provides that the definitions from Article 1 apply when interpreting Article 9's provisions. NEV. REV. STAT. § 104.9102.3.

## 1. Attachment Generally

The initial consequence of Article 9's applicability is that the creation and status of Pioneer's interest is governed by a combination of the common law of contract law and the statutory provisions of Article 9. For an Article 9 security interest to be enforceable, it must "attach." NEV. REV. STAT. § 104.9203.

Attachment, in turn, has three requirements: (1) value has to have been given; (2) the debtor must have rights in the collateral; and (3) either (a) the debtor has authenticated a security agreement that provides a description of the collateral, or (b) the secured party possesses the collateral pursuant to a security agreement. NEV. REV. STAT. § 104.9203.2(a)-(c).

Value is present in the form of the loans extended by Pioneer to Ms. Schwalb. NEV. REV. STAT. § 104.1204. Similarly, there is no doubt that, at the time of each transaction, Ms. Schwalb's ownership rights in the vehicles were sufficient "rights in the collateral" for a security interest to attach. *Foothill Capital Corp. v. Clare's Food Market, Inc. (In re Coupon Clearing Service, Inc.)*, 113 F.3d 1091, 1103 (9th Cir. 1997) ("Where a debtor has rights to collateral beyond naked possession, a security interest may attach to such rights.") (citing *Morton Booth Co. v. Tiara Furniture, Inc.*, 564 P.2d 210, 214 (Okla. 1977)).

The issue thus boils down to whether the "debtor authenticated a security agreement that provides a description of the collateral," or whether the collateral was "in the possession of the secured party under NRS 104.9313 pursuant to the debtor's security agreement." NEV. REV. STAT. § 104.9203.2(c)(1)-(2).

### *a. Authenticated Agreement*

Ms. Schwalb contends that the pawn ticket is legally insufficient as a security agreement. At trial, she testified that she did not know what she was signing<sup>15</sup> at the time she received each of the two loans. Each pawn ticket used, however, contained the following preprinted language just before a description of the automobile involved as well as its VIN: "You are giving a security interest in the following property ..."

Under Article 9, a "security agreement" is "an agreement that creates or provides for a security interest." NEV. REV. STAT. § 104.9102.1(ttt). The pawn ticket was clearly an "agreement" as the UCC uses that term. It contained "the bargain of the parties in fact," as expressed in "their language or [as could be] inferred from other circumstances ..." *Id.* § 104.1201.2(c). The bargain was simple and standard: Ms. Schwalb borrowed money at interest, and agreed to repay it within 120 days.

Thus, the only question is whether the agreement also included collateral as security for repayment of the loan. Each pawn ticket definitively described the vehicle at issue, by make,

---

<sup>15</sup> Her signing each of the pawn tickets was sufficient authentication, as signing is a form of authentication under Article 9. NEV. REV. STAT. § 104.9102.1(g)(1).

model and VIN. The issue is thus whether the words “[y]ou are giving” adequately “create[ ] or provide[ ]” for a security interest in the vehicles. The safest and traditional words to accomplish this task are words of grant or assignment, such as “I hereby grant a security interest in X to secure repayment of my debt to you” or “I assign this property to you to secure what I owe you.”

In these phrases, the operative verbs – grant, assign, etc. – are in the present tense and indicate a present act. But the word used by the pawn ticket – “giving” – is not in the present tense but instead is the present participle of the verb “to give.” Ms. Schwalb contends that use of the participle “giving” can only be read to refer to Pioneer’s description of what Pioneer thought Ms. Schwalb had done or was doing – not as Ms. Schwalb’s acknowledgment that she was engaging in a legally significant act. The analogy would be to something like noting that the statement “You are falling” describes an action taken by another rather than separately constituting the act of falling.

But this is a quibble. While a description may not be the act it describes, by signing the pawn ticket Ms. Schwalb acknowledged and adopted the act it described – giving a security interest. Moreover, the statutory verbs are “creates” *or* “provides.” Even if the language did not “create” the security interest as Ms. Schwalb contends, it certainly did provide for “giving” one.

The insistence on formal words of grant or transfer is inconsistent with the structure and intent of Article 9. As the Idaho Supreme Court noted ...:

[N]o magic words are necessary to create a security interest and that the agreement itself need not even contain the term ‘security interest.’ This is in keeping with the policy of the code that form should not prevail over substance and that, whenever possible, effect should be given to the parties’ intent.

*Simplot v. Owens*, 805 P.2d 449, 451-52 (Idaho 1990); *see also Nolden v. Plant Reclamation (In re Amex-Protein Dev. Corp.)*, 504 F.2d 1056, 1059-60 (9th Cir. 1974) (“There is no support in legislative history or grammatical logic for the substitution of the word ‘grant’ for the phrase ‘creates or provides for.’”).<sup>17</sup>

The proper policy considerations are well stated by a leading commentator on Article 9: “There is no requirement for words of grant. In fact, such a requirement smacks of the antiquated formalism the drafters were trying to avoid.” 1 BARKLEY CLARK & BARBARA CLARK, *THE LAW OF SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE* ¶ 2.02[1][c], at

---

<sup>17</sup> The confusion over the necessity of formal words of grant or conveyance can be traced to the early decision in *American Card Co. v. H.M.H. Co.*, 196 A.2d 150 (R.I. 1963), which was read to require formal words of grant or transfer. As recently noted, *American Card’s* “‘express grant rule’ has been fiercely criticized and ultimately rejected.” *Bank of America v. Outboard Marine Corp. (In re Outboard Marine Corp.)*, 300 B.R. 308, 321 (Bankr. N.D. Ill. 2003). Grant Gilmore, one of the principal architects of original Article 9, was similarly harsh in his criticism of *American Card*: “Certainly, nothing in § 9-203 requires that the ‘security agreement’ contain a ‘granting’ clause.... The Rhode Island court gives it an effect reminiscent of the worst formal requisites holding under the 19th century chattel mortgage acts.” 1 GRANT GILMORE, *SECURITY INTERESTS IN PERSONAL PROPERTY* § 11.4, at 347-48 (1965).

2-16 (1993 & Supp. 2006); *see also* 4 WHITE & SUMMERS, *supra*, § 31-3 (“[T]he drafters did not intend that specific ‘words of grant’ be required.”).

Ms. Schwalb’s further argument that she did not understand the import of the words she subscribed to is also unavailing. Even though they appear in tiny five-point type, the words are discernable as an integral part of the pawn ticket. It has long been the common law rule that signing a document authenticates and adopts the words it contains, even if there was a lack of subjective understanding of the words or their legal effect. In essence, people are presumed to be bound by what they sign. *Campanelli v. Conservas Altamira, S.A.*, 477 P.2d 870, 872 (Nev. 1970) (“[W]hen a party to a written contract accepts it [a]s a contract he is bound by the stipulations and conditions expressed in it whether he reads them or not. Ignorance through negligence or inexcusable trustfulness will not relieve a party from his contract obligations....”).<sup>19</sup>

Ms. Schwalb contends that cases such as *Expeditors Int’l of Washington, Inc. v. Official Creditors Comm. (In re CFLC, Inc.)*, 166 F.3d 1012 (9th Cir. 1999), require a finding of a subjective intent to grant security, an intent that she contends is lacking here.<sup>20</sup> In particular, she points to the following quotation from *CFLC* in support of her position:

Determining whether the parties intended to create a security interest is a two-step process. The court must find both language in a written agreement that objectively indicates the parties’ intent to create a security interest and the presence of a subjective intent by the parties to create a security interest.

*Id.* at 1016.

This quotation appears at odds with Nevada’s common law of contracts set forth above. Yet upon examination, this antinomy dissolves. In *CFLC*, a shipping concern, Expeditors, handled CFLC’s domestic and international shipping needs. Concurrently with Expeditors’ receipt of goods to ship, Expeditors issued invoices to the debtor, CFLC, Inc., that contained the following language: “The Company [Expeditors] shall have a general lien on any and all property (and documents relating thereto) of the Customer [CFLC], in its possession, custody or

---

<sup>19</sup> As summarized by the late Professor Farnsworth with respect to the common law of contracts:

The fact that one gives the matter no thought does not impair the effectiveness of one’s assent, for there is no requirement that one intend or even understand the legal consequences of one’s actions. For example, one who signs a writing may be bound by it, even though one neither reads it nor considers the legal consequence of signing it. This rule, making a party’s intention to be legally bound irrelevant, has the salutary effects of generally relieving each party to a dispute of the burden of showing the other’s state of mind in that regard and of helping to uphold routine agreements.

1 E. ALLAN FARNSWORTH, FARNSWORTH ON CONTRACTS § 3.7 (2d ed. 2001).

<sup>20</sup> Debtor [testified] that her understanding of the transaction was that her failure to pay the debt when due would only disable her from selling the vehicle without paying Pioneer; she testified at trial that she did not think that Pioneer could take the vehicles “because I never gave them an extra set of keys.”

control or en route, for all claims for charges, expenses or advances incurred by the company in connection with any shipments of the Customer ....” *Id.* at 1014.

Over the course of several years, Expeditors sent 330 such invoices to CFLC. CFLC never signed any of them, and it did not discuss or take special note of the terms found in them. *Id.* When CFLC filed for bankruptcy, Expeditors had possession of goods it was transporting for CFLC, and Expeditors ultimately sued to assert its claimed lien on those goods. *Id.* at 1014-15.

The Ninth Circuit found that the unsigned invoices did not meet the requirements of California’s version of Section 9-203. Initially, and most importantly, CFLC did not sign any of the invoices, so the requirement of a signed security agreement was not met. *Id.* at 1016. When pressed with the argument that CFLC had evidenced an intent to be bound by the invoice’s provision of a security interest, the Ninth Circuit responded:

[W]e decline to apply course of dealing analysis to non-Article 2 transactions in which there has been only a tacit acceptance of a contract term repeatedly sent to the offeree on a pre-printed form. Even under the common law, “silence in the face of an offer is not an acceptance, unless there is a relationship between the parties or a previous course of dealing pursuant to which silence would be understood as acceptance.”

*Id.* at 1018 (quoting *Southern Cal. Acoustics Co. v. C.V. Holder, Inc.*, 456 P.2d 975, 978 (Cal. 1969)). Put another way, the Ninth Circuit was unwilling to find either objective or subjective manifestation of intent to be bound from a course of dealing.

... [O]f course, Ms. Schwalb signed each pawn ticket, distinguishing this case from *CFLC*. Her signatures were each authentications; that is, each signature signaled her assent to the contract and her agreement to be bound by its terms; that is the common law understanding of what it is to “sign” a contract. *See, e.g., Campanelli*, 477 P.2d at 872; FARNSWORTH, *supra*, § 3.7. As “signing” is “authentication” under UCC § 9-102(a)(7)(A), Ms. Schwalb’s signatures effectively authenticated each pawn ticket within the meaning of Section 9-203. Because each pawn ticket adequately described the collateral covered by listing its VIN number, *see* UCC § 9-108(b), Ms. Schwalb’s signature thus completed the requirements of Section 9-203(b)(3)(A). Under *CFLC* and the UCC, then, Pioneer’s interest attached upon such authentication.<sup>23</sup>

---

<sup>23</sup> Ms. Schwalb also contends that she signed the certificates of title over to Pioneer at a later date, thus depriving any agreement to grant security of validity for lack of any legal consideration. This argument misapprehends the facts. The pawn ticket, without more, constituted a legally sufficient security agreement. Consideration was present because Pioneer extended credit on the basis of Ms. Schwalb’s promise to repay the loan and upon her grant of security. The signatures on the certificates of title would be relevant only with respect to the timing of perfection, a legal issue not relevant here. Moreover, even if the loan had been initially made on an unsecured basis, and later secured, such “past consideration” – while insufficient to validate a simple contract – is sufficient to provide “value” for purposes of Section 9-203. *See* NEV. REV. STAT. § 104.1204.2.

***b. Attachment Based on “Constructive Possession” of the Certificates of Title***

Pioneer argues in the alternative that its security interest attached through constructive possession of the vehicles, which was accomplished by possession of the certificates of title. Although at least one court has accepted a form of this argument, *Floyd v. Title Exch. & Pawn of Anniston, Inc.*, 620 So. 2d 576 (Ala. 1993),<sup>24</sup> it does not square with tradition, commercial practice or Nevada law.

In commercial parlance, a record or writing stands proxy for goods it covers only if it is a “document of title” as defined in Article 1 of the UCC. [See] NEV. REV. STAT. § 104.1201.2(p).

Documents of title, as defined, include warehouse receipts, bills of lading and the like. *Id.* Commercial parties deal with these documents as if they were dealing with the goods themselves; indeed, Article 9 allows perfection of goods covered by a negotiable document to be perfected by possession of that document. *Id.* § 104.9312.3.

But the automobile certificates of title here bear little resemblance to the documents of title described in Article 1. Certificates of title do not serve the commercial purpose of standing proxy for vehicles; they are generally held by the owner or lienholder of the car, not a bailee who controls the goods as its business. This is not particularly surprising. Certificate of title statutes were not designed to facilitate commerce; rather, they are regulatory and anticrime statutes that allow “big-ticket” items such as cars to be tracked by law enforcement authorities. LYNN M. LOPUCKI & ELIZABETH WARREN, *SECURED CREDIT: A SYSTEMS APPROACH* 406 (5th ed. 2006) (“Certificates of title are part of a complex system that serves a variety of purposes, most unrelated to secured credit. Certificates of title are part of the system by which the police identify the owner of a vehicle that is involved in an accident, lost, stolen, or used in the commission of a crime. Certificates of title are also used to transfer ownership of motor vehicles and to keep track of successive annual registrations and taxation of vehicles.”).

Indeed, although Article 9 brings certificates of title into its system, it is only to provide a proxy for the financing statement, not the vehicle. In most states, the only way to perfect an interest in a car or other vehicle is to note the secured party’s interest on the certificate of title. Except in rare circumstances, possession of the car will not perfect the already-attached secured

---

<sup>24</sup> At issue in *Floyd* was whether possession of endorsed certificates of title and a spare set of keys for a car was “constructive possession” of the car sufficient to bring the transaction within Alabama’s pawnbroker law (which had the collateral effect of permitting the lender to charge higher interest rates). The court held, by a 5-2 vote, that because the lender’s acts were not excluded from the pawnbroker law, the transaction was governed as “tangible personal property.” 620 So. 2d at 579. In the present case, of course, Pioneer did not retain a separate set of keys to the vehicles (thus depriving Pioneer of immediate access to the vehicles and lending to the impression that Ms. Schwalb remained the residual owner). In addition, *Floyd* also recognized its limitations, noting that “[w]hether actual physical possession of the personal property itself is necessary to retain a perfected, superior lien in the property is not an issue before the court.” *Id.*

Another case from Alabama, *Blackmon v. Downey*, 624 So. 2d 1374 (Ala. 1993), has a similar holding....

party's security interest. NEV. REV. STAT. § 104.9313.2.<sup>25</sup> The upshot of this is that mere possession of the certificate of title is of little legal significance under Article 9; that possession neither creates a security interest nor perfects one otherwise granted in the vehicles. *See, e.g., Lee v. Cox*, 18 U.C.C. Rep. Serv. 807 (M.D. Tenn. 1976) (possession of registration certificates for eight Arabian horses did not perfect interest in horses). At best, Pioneer possessed the certificates of title for what they were worth – which is not much, as it turns out; their possession facilitated Pioneer's perfection of its interests as will be seen, but it did not assist Pioneer in divesting Ms. Schwalb of her interests.

Pioneer's interests were thus attached, but that alone is insufficient in this case. While attachment may make the security interest enforceable against the debtor, more is needed when the debtor is a debtor in bankruptcy. What is required in the later case is that the security interest be good against the world. The process by which such validity is obtained is referred to in Article 9 as perfection.

\* \* \*

---

<sup>25</sup> That rare circumstance is when a secured party initially perfects correctly by noting its interest on the certificate of title, and the debtor moves to another state and does not submit the paperwork during the time required by the destination state's law, or four months, whichever is sooner. NEV. REV. STAT. § 104.9316.5. Only then may a secured party perfect by taking possession of the car. *See* 4 WHITE & SUMMERS, *supra*, § 31-8(c).