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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re ADRIAN GARCIA,

Debtor.

WILLIAM E. PIERCE, CHAPTER 7
TRUSTEE,

Movant,

v.

ADRIAN GARCIA,

Respondent.

Chapter 7

Case No. 12-12443-DPC

(Not for Publication- Electronic Docketing
ONLY)

MEMORANDUM DECISION

I. INTRODUCTION

Debtor filed his chapter 13 petition on June 4, 2012. The case was converted to chapter 7 on September 6, 2012 upon debtor’s motion, and the chapter 7 Trustee was appointed. On November 16, 2012, Trustee’s appointed counsel filed an objection to an exemption claimed by the debtor in a vehicle, a 2010 Volkswagen Toureg (the “Vehicle”).¹ The Trustee objected to the exemption because the Trustee plans to use his avoidance powers to void the lien on the

1. Trustee initially objected to Debtor’s claim of California exemption law rather than Arizona exemption law but the Court determined that, per § 522(b)(3), California exemption law applies and the Trustee apparently concedes that point now.

1 vehicle, recover the vehicle as property of the estate, and utilize any resulting sale proceeds as
2 property of the estate per § 551. Debtor filed a Response to the objection on December 10, 2012.
3 In the Response, debtor argues that the lender that financed the Vehicle did not have a security
4 interest, meaning that the Trustee would have no lien to avoid and § 551 would not apply to
5 bring the Vehicle into the estate.

6 The Court² conducted a hearing on the matter on February 25, 2013 and ordered
7 Trustee's counsel to supplement the record with appropriate case law. In this Memorandum
8 Decision, the Court has set forth its findings of fact and conclusions of law pursuant to Rule
9 7052 of the Rules of Bankruptcy Procedure. The issues addressed herein constitute a core
10 proceeding over which this Court has jurisdiction. 28 U.S.C. §§ 1334(b) and 157(b) (West
11 2013).

12 II. DISCUSSION

13 In his Objection to Exemptions and supplement thereto, the Trustee argues that
14 the avoidance of the lien on the Vehicle preserves the lien for the benefit of the estate over the
15 debtor's claimed exemption. In re Glass, 60 F.3d 565 (9th Cir. 1995); In re Heintz, 198 B.R. 581
16 (B.A.P. 9th Cir. 1996). In Heintz, the chapter 13 debtor claimed an exemption of \$100,000, well
17 beyond the statutory limit. 198 B.R. at 582 – 83. The debtor converted his case to chapter 11,
18 and the case was later converted to chapter 7. Id. at 583. The trustee took over the preferential
19 avoidance action initiated by the debtor in chapter 11 in order to avoid a lien held by the debtor's
20 brother. Id. The 9th Circuit B.A.P. found that an avoided interest or lien encumbering exempt
21 property is automatically preserved for the benefit of the estate under § 551. 198 B.R. at 584.
22 Furthermore, the Trustee may object to an exemption claimed upon such property by the debtor
23 prior to actually bringing the avoidance action. Glass, 60 F.3d 565 (9th Cir. 1995). When the
24 trustee recovers the property, the debtor may only claim an exemption to the extent that any

25
26 **2.** Although this case has been assigned to Judge Collins, Judge Curley heard this matter
27 and renders the decision herein.

1 value exceeds that lien. *See In re Donahue*, 249 B.R. 218 (Bankr. D. Mont. 2000); *In re Witt*, 273
2 B.R. 573 (2000); *See also In re Sullivan*, 387 B.R. 353 (B.A.P. 1st Cir. 2008)(allowing the
3 avoidance and preservation of a mortgage for the benefit of the estate superior to the debtor’s
4 homestead exemption).

5 In his Response, debtor relies on *In re Mingo* for the proposition that the estate
6 does not succeed to an “avoided lien” if the lien itself was not valid. 97.2 I.B.C.R. 46 (Bankr. D.
7 Idaho 1997). In *Mingo* for instance, the court determined that one of the parties did not hold a
8 valid lien because, as a judgment creditor, it had failed to renew the judgment lien by recording a
9 renewal order. *Id.* at 48. In a similar case, the lender—the father of the debtor—did not have a valid
10 lien because the parties had failed to execute any document establishing a security interest. *In re*
11 *Seibold*, 351 B.R. 741 (Bankr. D. Idaho 2006).

12 Debtor asserts that *Mingo* and *Seibold* control because the secured lender’s
13 failure to properly perfect its interest in the Vehicle renders the lien invalid. This is incorrect.
14 Failure to comply with the relevant Arizona statutes for perfection of a lien in a vehicle renders
15 the lien unperfected and “not valid *against the creditors* of an owner,” but this does not render
16 the lien wholly invalid. *See* A.R.S. § 28-2131; *See, e.g., In re GTI Capital Holdings, L.L.C.*,
17 2006 WL 6810997 (Bankr. D. Ariz. 2006); *First Nat. Bank of Arizona v. Carbajal*, 132 Ariz.
18 263, 645 P.2d 778 (1982). Indeed, the *Seibold* court makes the distinction clear. That court
19 explained that “[w]ith respect to a motor vehicle, the creation and attachment of a security
20 interest are governed by Article Nine of the Uniform Commercial Code, while perfection of that
21 security interest is governed by the Idaho Vehicle Titles Act.” *Seibold*, 351 at 745. In Arizona,
22 creation of the security interest is similarly governed by the Uniform Commercial Code and
23 perfection by the Arizona Certificate of Title and Registration statute. *See* A.R.S. §§ 28-2131–
24 28-2136; *See, e.g., In re GTI Capital Holdings, L.L.C.*, 2006 WL 6810997; *Carbajal*, 132 Ariz.
25 263, 645 P.2d 778. To the extent that the secured lender here executed a valid security agreement
26 but failed to perfect its interest on the certificate of title, *In re Mingo* does not apply.

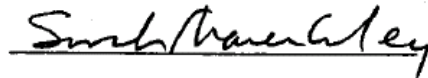
1 Pursuant to In re Heintz, the Trustee may pursue an action to avoid the lien on the
2 Vehicle. Should the Trustee prevail on his avoidance action, Section 551 preserves the lien as
3 property of the estate. Any resulting sale proceeds of the Vehicle inure to the bankruptcy estate
4 before the debtor may make any claim of an exemption.

5 III. CONCLUSION

6 Based upon the foregoing, the Court concludes that the Trustee's objection to the
7 exemption is sustained.

8 The Trustee is directed to lodge an order consistent with the Court's
9 Memorandum Decision.

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12 DATED this 6th day of March, 2013.

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16 Honorable Sarah Sharer Curley
17 United States Bankruptcy Judge
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