

Chapter 21 Case Problem

1. The Motion requires the Court to determine whether a seller of goods has any rights to the goods against a debtor who has retained possession of the goods pursuant to a sales contract but has not paid for them. Specifically, is a seller entitled to relief from the automatic stay to gain immediate possession of goods for which the debtor has not paid if the seller has neither possession of the goods nor a perfected security interest in them?
 - a. It is up to the court to decide whether or not one who sells goods has any rights to those goods against a debtor who possesses them following a contract but has not yet paid for them. The more detailed question in regards to the motion is whether a seller has the right to relief from the automatic stay to gain instant possession of the goods the debtor possesses if the seller is left with nothing afterwards.

2. Based on an analysis of the relevant provisions of title 11 of the United States Code (the "Bankruptcy Code") and the Uniform Commercial Code (the "U.C.C."), the Court concludes that under these circumstances the seller is not entitled to relief from stay for the purpose of gaining immediate possession of such goods because the seller's unperfected security interest is subject to avoidance.
 - a. Based on relevant provisions of the United States Bankruptcy Code and the Uniform Commercial Code, the Court finds that in such a situation the seller is not entitled to relief from stay for the reason of gaining immediate possessions of such goods due to the seller's unperfected security interest is ground to avoidance.
 - b. Filing bankruptcy automatically stops most actions against the debtor or the debtor's property such as foreclosures, lawsuits, or garnishments. The stay is designed to preserve the debtor's property and to give the debtor a break from litigation. The stay is neither absolute nor permanent.

3. The Sales Agreement included the following provision (the "Title Provision"). 39*39 ACKNOWLEDGMENTS: I (We) promise to pay the balance due (Line 9) shown hereon in case or to execute a Time Sale Agreement (Retain Installment Contract), or a Loan Agreement for the purchase price of the Equipment, plus additional charges shown thereon, or to execute a Lease Agreement, on or before delivery of the Equipment ordered herein. Despite physical delivery of the Equipment, title shall remain in the seller until one of the foregoing is accomplished.
 - a. Although the two parties did have a Sales Agreement that included some terms and conditions along with the "Title Provision" they failed to agree on the legal consequences of this sequence of events.

4. On February 12, 2009 (the "Petition Date"), Aleris, along with certain of its affiliates, voluntarily commenced its chapter 11 case in the United States Bankruptcy Court for the District of Delaware. On June 25, 2009, Holt filed the Motion seeking relief from the automatic stay to permit it to take immediate possession of the Equipment.
 - a. On February 12, 2009, Aleris and certain of its affiliates, started its chapter 11 case in the United States Bankruptcy Court for the District of Delaware. On June 25, 2009, Holt filed the Motion looking for relief from the automatic stay to allow it to take immediate possession of the Equipment.

5. Holt contends that it, and not Aleris, owns the Equipment, and that it seeks relief from the automatic stay simply "[o]ut of an abundance of caution ... to take possession of its own property." Motion ¶ 6. In support of its ownership claim, Holt relies on the Title Provision in the Sales Agreement. Holt asserts that pursuant to this provision, Holt has retained title to the Equipment under U.C.C. § 2-401(3), and as such, the Equipment is not property of the Debtor's estate and is therefore not subject to the automatic stay.
 - a. Holt stands that it owns the Equipment, not Aleris, and that it seeks relief from the automatic stay "[o]ut of an abundance of caution ... to take possession of its own property." Motion ¶ 6. Holt makes this stand based on the Title Provision in the Sales Agreement. Holt claims that in accordance with this provision, Holt has held onto the title to the Equipment under U.C.C. 2-401 (3) and thus the Equipment is not property of the Debtor's estate and is not subject to automatic stay on such grounds.
6. The Debtor objects to the Motion on the grounds that Holt holds neither title to the Equipment nor any valid interest in the Equipment entitling it to relief from stay. First, the Debtor contends that Holt has failed to assert a valid ownership claim 40*40 because title to the Equipment has already vested in Aleris notwithstanding the Title Provision in the Sales Agreement. Second, the Debtor asserts that Holt does not have a valid security interest in the Equipment and is thereby not entitled to relief from stay. Relying on U.C.C. § 2-401(1), the Debtor claims that Holt retained, at most, a security interest in the Equipment through the operation of the Title Provision. However, because Holt did not perfect its security interest, the Debtor argues that Holt's rights are limited to those of an unsecured creditor.
 - a. Aleris objects the motion made by Holt on the basis that Holt does not hold neither the title to the Equipment nor any valid interest in the Equipment allowing it relief from stay. Aleris also contends that Holt failed to make a valid ownership claim since the title to the Equipment has already been vested in Aleris notwithstanding the Title Provision in the Sales Agreement. Aleris' next argument is that Holt doesn't have a valid security interest in the Equipment and therefrom is not entitled to relief from stay. Based on U.C.C. 2-401, Aleris claims Holt at most would retain a security interest in the Equipment through use of the Title Provision. Since Holt did not perfect its security interest, Aleris argues that Holt's rights are limited as those of an unsecured creditor.
 - b. Based on U.C.C. 2-401 (1 & 2) title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place;" Meaning that because Aleris already had the Equipment in his possession and despite their prior agreement the goods are under his title and not Holt's. Although Holt has a secured interest in his equipment because of the prolonged use of Aleris it has depreciated in value, if he were to keep it under his possession he wouldn't be able to sell, rent or lease what it was worth before.
7. Finally, with respect to the third requirement, the Court finds that Aleris had rights in the collateral when the security interest was created pursuant to U.C.C. § 9-203 (b)(2) because the Debtor was in possession of the Equipment. *Conn. Bank & Trust Co. v. Schindelman (In re Bosson)*, 432 F.Supp. 1013, 1018 (D.Conn.1977) ("The UCC does

not define the term 'rights,' except to specify that it includes 'remedies.' The caselaw establishes the proposition that once a debtor acquires possession of an item of collateral pursuant to a sales contract or like agreement, the debtor has acquired sufficient 'rights' for Article IX purposes.") (citations omitted). Thus, the third requirement has been satisfied. Accordingly, the Court holds that the security interest retained by Holt attached to the Equipment.

- a. The Court found that Aleris did in fact have rights to collateral only when the security interest was created in collateral to the U.C.C. since it had possession of the Equipment. Once a debtor has possession of an item of collateral in collateral with a sales contract or similar agreement, the debtor has thereby acquired appropriate "rights". The third requirement has been satisfied. The Court concludes that the security interest retained by Holt attached to the Equipment.
- 8.** However, because Holt held an unperfected security interest in the Equipment as of the date that the Debtor filed its bankruptcy petition, its security interest is therefore susceptible to avoidance by the Debtor under 11 U.S.C. § 544. See, e.g., *In re Phillips*, 77 B.R. at 650; *In re Cont'l Fire Trucks, Inc.*, 33 B.R. 713, 716 (Bankr.D.Mass.1983).
- a. Since Holt had a flawed security interest in the Equipment as of the date the Debtor filed its bankruptcy petition, its security interest was therefore left disposable to avoidance by the Debtor under 11 U.S.C. 544.
- 9.** Explain who won and provide a conclusion
- a. The court denied the motion originally moved for relief of the automatic stay filed by Holt. It stood by the initial ruling in favor of Aleris. Holt argued that in accordance with the U.C.C, it retained title to the Equipment, despite the fact that the Equipment had been delivered to and has remained in the possession of Aleris. Holt also argues that title to the Equipment has not passed to Aleris despite the U.C.C. having a provision that states title passes to the buyer. Holt does not hold title to the Equipment as a matter of law.