

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



**Martin P. Sheehan,
Trustee of the Bankruptcy Estate
of Ronald L. Lancaster and
Jamie L. Lancaster,
Petitioner**

v.

**Mortgage Electronic Registration Systems, Inc.,
WEI Mortgage Corporation, and
Seneca Trustee, Inc.,
Respondents**

**BRIEF OF PETITIONER, MARTIN P. SHEEHAN, TRUSTEE
OF THE BANKRUPTCY ESTATE OF RONALD L. LANCASTER
AND JAMIE L. LANCASTER**

**A Certified Question from the
United States Bankruptcy Court
for the Northern District of West Virginia**

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TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
QUESTION PRESENTED	1
STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	5
STATEMENT REGARDING ORAL ARGUMENT	7
ARGUMENT	8
Statutory Analysis	8
Policy Considerations	14
Potential Precedents	15
Taxation	18
Other Situations	19
CONCLUSION	19
CERTIFICATE OF SERVICE	21

TABLE OF AUTHORITIES

Pages

CASES

Dodson v. One Valley Bank, (In re: Johnson), 105 B.R. 352 (Bankr. S.D. W.Va. 1989)(Pearson, J.)	15
Ennis v. Green Tree Servicing, LLC, 558 F.3d 343 (4 th Cir. 2009)(Va. law)	16
Fuller v. Stonewall Casualty Co., 172 W.Va. 193, 304 S.E.2d 347, (1983)	10
L & L Electronics v. Osprey, 764 F.Supp.2d 270 (D.Mass. 2011)	14
Peoples Bank of Point Pleasant v. Pied Piper Retreat, Inc., 158 W.Va. 170, 200 S.E.2d 573 (1974)	9
Philko Aviation, Inc. v. Shacket, 462 U.S. 406 (1983)	14
Sanders v. Brown, No. 18-0017 (November 21, 2018) (per curium)(unpublished)	16, 17
Sheehan v. WFS Financial, Inc. (In re: Sorsby), 210 W.Va. 708, 559 S.E.2d 45 (2001)	17
Snuffer v. Spangler, 79 W.Va. 628, 92 S.E. 628 (1917)	17, 18
State ex rel. Perdue v. Nationwide Insurance Co., 236 W.Va. 1, 777 S.E.2d 11 (2015)	14
Transamerica Commercial Finance Corp. v. Blueville Bank of Grafton, 190 W.Va. 474, 438 S.E.2d 817 (1993)	9

FEDERAL STATUTES

11 U.S.C. § 341	2
11 U.S.C. § 544(a)(2)	3
11 U.S.C. § 544(a)(3)	3
11 U.S.C. § 701	2
11 U.S.C. § 702(d)	2
11 U.S.C. § 1322(b)	16
28 U.S.C. § 586(a)(1)	2
46 U.S.C. § 31321	14
46 U.S.C. § 31343	14
49 U.S.C. § 1301	14

STATE STATUTES

W.Va. Code § 11-5-12	18
W.Va. Code § 17A-1-1(a)	11
W.Va. Code § 17A-1-1(pp)	11
W.Va. Code § 17A-1-1(qq)	11
W.Va. Code § 17A-1-1(rr)	11
W.Va. Code § 17A-1-1(ss)	11
W.Va. Code § 17A-3-12b	2, 3
W.Va. Code § 17A-3-12b(a)	12, 18, 19, 20
W.Va. Code § 17A-4A-1	10
W.Va. Code § 17A-4A-3	10, 11
W.Va. Code § 17A-4A-4	10, 11
W.Va. Code § 17A-4A-5	10
W.Va. Code § 17A-4A-9	11
W.Va. Code § 37-15-1	11

W.Va. Code § 37-15-4	11
W.Va. Code § 38-1-1a	8, 10
W.Va. Code § 38-4-4	11
W.Va. Code § 40-1-9	11
W.Va. Code § 40-1-10	8
W.Va. Code § 46-9-303	9
W.Va. Code § 46-9-501(a)(2)	9
W.Va. Code § 46-9-311(a)(2)	11
Article 4A of Chapter 17A of the Motor Vehicle Code	18
Article 9 of Chapter 46 of the West Virginia Code	9

QUESTION PRESENTED

Does a creditor have a perfected security interest in a manufactured home that has been affixed to real estate based on the factors in Snuffer v. Spangler, 79 W.Va. 628, 92 S.E.2d 106 (1917) when it properly records a deed of trust that describes both the real estate and the manufactured home, even though the manufactured home has an active certificate of title issued by the West Virginia [Division] of Motor Vehicles pursuant to W.Va. Code § 17A-3-12, which certificate of title 1) has not been cancelled pursuant to W.Va. Code § 17A-3-12b and 2) does not show the creditor's lien on its face, particularly in light of W.Va. Code § 46-9-303(b), to cause the manufactured home to be treated as a fixture?

STATEMENT OF THE CASE

On July 27, 2020, Ronald L. Lancaster and his spouse, Jamie L. Lancaster, filed for Chapter 7 bankruptcy relief in the United States Bankruptcy Court for the Northern District of West Virginia. In conformance with 11 U.S.C. § 701, Martin P. Sheehan, a member of the panel of private trustees maintained by the United States Trustee under 28 U.S.C. § 586(a)(1), was designated as the Interim Trustee.

A meeting of creditors, provided for in 11 U.S.C. § 341, was held on November 20, 2018. When no other person was elected as Trustee at that meeting, Mr. Sheehan became the permanent Trustee pursuant to 11 U.S.C. § 702(d).

Among the assets listed by Mr. and Mrs. Lancaster on Schedule A/B attached to the bankruptcy petition was the following: “Double wide with land.” (J.A. at 22). This asset, the double wide and the land, was listed as having a fair market value of \$87,770.00.

When the Trustee examined this asset as it had been listed, the Trustee came to believe that what had been listed as a single asset, a piece of real estate with a double wide, was in fact two assets, a piece of real estate and a piece of personal property, the double wide. Mr. Sheehan specifically observed that no one had caused the double wide, which ordinarily would be considered personal property, but which had been listed by the Debtors as part of the real estate, to be transformed into real estate, as contemplated by the provisions of West Virginia law contained in W.Va. Code § 17A-3-12b.

To vindicate his view, Mr. Sheehan instituted an adversary proceeding against Embrace Home Loans, Inc., the original lender under a Deed of Trust. Also named as defendants were Seneca

Trustees, Inc., the trustee under that same deed of trust, and Mortgage Electronic Registration Systems, Inc., an entity named as the nominee beneficiary under that Deed of Trust. (J.A. at 74). WEI Mortgage Corp., at its request, has been substituted for Defendant, Embrace Home Loans, Inc. (J.A. at 121). These entities claimed a valid lien in the double wide solely through the Deed of Trust.

As the Trustee of the Bankruptcy Estate, Mr. Sheehan is defined to have the status of a bona fide purchaser for value at the moment of the filing of the bankruptcy petition, concerning real estate assets per 11 U.S.C. § 544(a)(3), and the status of a judicial lien creditor at the moment of filing of the bankruptcy petition with respect to personalty per 11 U.S.C. § 544(a)(2). Through this statute, Mr. Sheehan, and other trustees are able to enforce the principle of equal treatment of creditors in a bankruptcy proceeding against a secured creditor who claims that perfection of its secured claim entitles it to the collateral to the exclusion of other creditors, or to the first fruits of the liquidation of such collateral ahead of other creditors.

Mr. Sheehan filed a detailed complaint in the adversary proceeding. That complaint included copies of records on file with the Clerk of the County Commission of Brooke County, including portions of relevant pages from the indices of the records maintained by the Clerk. The indices were included as part of an effort to prove a negative, that is what had not been recorded. As drafted, the Complaint attempted to demonstrate that a DMV-2-TR¹ had not been recorded with the Clerk of the

¹ This is a form used by the West Virginia Department of Motor Vehicles to process a request for a titled vehicle to cease being treated as a title vehicle so that it can be attached to real estate and treated as real estate from that moment forward. The form implements the provisions of W.Va. Code § 17A-3-12b. Per that statute, when processed by DMV, a copy is forwarded to the Clerk of the appropriate County Commission for recording.

See, https://transportation.wv.gov/DMV/DMVFormSearch/DMV-2-TR_cancellation_mobile_home_title_-_WF.pdf

County Commission. (J.A. at 77).

In the responsive pleading, most of the Complaint was admitted. (J.A. at 124). The Defendants did not admit that no lien had been recorded on the titles² to the double wide. Instead the Defendants claimed a valid lien arose based on the filing of the Deed of Trust. After some discovery occurred, Mr. Sheehan understood that the Defendants had acknowledged that no lien had been recorded on the titles to the double wide maintained by the West Virginia Department of Motor Vehicles. The Trustee moved for summary judgment in the adversary proceeding. (J.A. at 129).

That motion was resisted. Briefs were exchanged. (J.A. at 138, 191). No ruling was made. Instead a motion for certification of the question at the heart of this dispute was made and granted. The request for certification was granted by this Court on January 30, 2020.

² A double wide has two titles with the same basic Vehicle Identification Number. These differ only with respect to the last alphanumeric character. One of those characters is an "A" while the other one is a "B." Sometimes these are referred to as the "A title" and the "B title."

SUMMARY OF THE ARGUMENT

For a lender to acquire an interest in collateral that will be valid against third parties, the claim against the collateral must be perfected. The Legislature has provided different systems for perfection of different types of property. Claims against real estate are perfected by filing a deed of trust with the Clerk of the County Commission of the county in which the real estate is located. Liens against most personal property are perfected by filing a financing statement with the Secretary of State. Perfection of claims against some specific types of personal property is governed by specific legislation applicable to such property. Motor vehicles constitute such property.

These systems for perfection are independent. There is no option for a lender to choose how to perfect a lien. Following the statutory scheme for perfection of liens that is applicable to specific property is a prerequisite to a successful claim of perfection. Examination of statutes applicable to perfection of a claim against real estate confirms that perfection against personal property must conform to legislation applicable to personal property. Review of the Uniform Commercial Code demonstrates that statute defers to the Motor Vehicle Code for perfection of claims against motor vehicles.

The possibility that personal property will become affixed to real estate (and the possibility of severance from real estate of what then becomes personalty) is a predictable event that is also part of modern statutory schemes. There is a specific West Virginia statute that describes how a titled motor vehicle may cease to be governed by the Motor Vehicle Code, and become part of real estate. Compliance with this statute permits a simple and efficient method for determining whether property is, by its nature, a motor vehicle, or if it has lawfully been converted to real estate. This kind of simplicity creates predictability in the law. Predictability leads to lower transaction costs for lending activity

because unnecessary examination of non-applicable systems for perfection are rendered unnecessary.

In this instance, Lenders did not comply with the statutory scheme for perfection of a lien against a double wide, a motor vehicle as defined by West Virginia law. The Bankruptcy Trustee observed the non-compliance, and filed litigation to declare the claimed lien on the double wide had not been properly perfected as required by the Motor Vehicle Code.

This outcome is supported by policy considerations. While permitting a choice of where to perfect a lien might benefit parties to secured loans, the costs associated with ruling out liens that might appear in a variety of places is antithetical to promotion of simple, efficient and inexpensive transactions.

Suggesting a 1917 common law decision remains the applicable rule in all circumstances, given the extensive statutory enactments in the Uniform Commercial Code, and the Motor Vehicle Code is to deprive the Legislature, which has spoken specifically, of the power to change the law.

There is no controlling precedent, but decisions of the United States Bankruptcy Court for the Southern District of West Virginia and the United States Court of Appeals for the Fourth Circuit are highly suggestive of the view advocated by the Trustee.

STATEMENT REGARDING ORAL ARGUMENT

This case was scheduled for oral argument by the order of January 30, 2020 accepting the certified question from the United States Bankruptcy Court for the Northern District of West Virginia. Counsel believes that oral argument would be useful because the issue arises in a procedural context, a bankruptcy case, which is outside the ordinary legal proceedings reviewed by this Court, and because the issue appears to have not been previously addressed by this Court in a published opinion.

ARGUMENT

Statutory Analysis

For a lender to acquire an interest in collateral that will be valid against third parties, the claim against the collateral must be perfected. The Legislature has provided different systems for perfection of different types of property.

Voluntarily created liens on real estate in West Virginia are created by recording a Deed of Trust³ in the real estate records maintained by the Clerk of the County Commission of the County in which the real estate is located.⁴ See W.Va. Code § 38-1-1a. That statute provides:

A deed of trust may convey both real property or some interest therein and personal property or only real property or some interest therein or only personal property in order to secure a debt. This article shall apply to deeds of trust that convey real property or some interest therein or both real property or some interest therein and personal property. Deeds of trust conveying only personal property are governed by article nine of chapter forty-six of this code. If the deed of trust conveys both real and personal property, a financing statement as to the personal property shall be required as specified in article nine, chapter forty-six of this code, and the trustee may proceed as to the sale or other disposition of the personal property involved under said article nine of chapter forty-six and of the real property involved under this article or he may proceed as to the sale or other disposition of both the real and personal property involved under this article. In all other respects this article is applicable to the conveyance of real property by deed of trust, and article nine of chapter forty-six is applicable to the conveyance of personal property by deed of trust.

For purposes of this section, personal property is any property right or interest in which a security interest under article nine of chapter forty-six of this code may be obtained or created.

This statute contemplates that personal property can be part of what is listed in a Deed of

³ Involuntary liens, such as those created by judgments, are recorded in the same office, but pursuant to a different statutory scheme.

⁴ Where real property is in more than one county, recording in each is required. W.Va. Code § 40-1-10.

Trust, but where personalty is included in a Deed of Trust, either alone, or in combination with real estate, filing a Deed of Trust does not perfect the lien on the personal property. Instead, this statute directs compliance with the method of perfection of the lien on personalty in accordance with a different statute. Compliance with the provisions of Article 9 of Chapter 46 of the West Virginia Code, better known as Article 9 of the West Virginia Uniform Commercial Code is required. Transamerica Commercial Finance Corp. v. Blueville Bank of Grafton, 190 W.Va. 474, 438 S.E.2d 817 (1993). For most personal property, that statute requires recording of a lien with the West Virginia Secretary of State. W.Va. Code § 46-9-501(a)(2). Peoples Bank of Point Pleasant v. Pied Piper Retreat, Inc., 158 W.Va. 170, 200 S.E.2d 573 (1974).

Vehicles with titles, including a double wide, are different. The Uniform Commercial Code provides, in W.Va. Code § 46-9-303(b) and (c), that a certificate of title is valid until the local law, or the law of the jurisdiction, in either such formulation, under other provisions of West Virginia law, ceases to be effective.⁵ The relevant body of law concerning titles on motor vehicles is contained in

⁵ This section provides in full as follows:

§46-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.

(a) Applicability of section. This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) When goods covered by certificate of title. Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) Applicable law. The local law of the jurisdiction under whose certificate of title the

W.Va. Code § 17A-4A-1, et seq. which pertains to Motor Vehicle Titles and Liens on such property.

The specific statutory provisions for creating a valid security interest in a motor vehicle are found in W.Va. Code § 17A-4A-3 and W.Va. Code § 17A-4A-4. These statutes cause a lien recorded on the title to a motor vehicle to be effective when tendered to the Department of Motor Vehicles with the appropriate fee. See e.g., Fuller v. Stonewall Casualty Co., 172 W.Va. 193, 198 n.7, 304 S.E.2d 347, 352 n.7 (1983). Liens recorded on titles in this way are superior to all other purported liens. W.Va. Code §17A-4A-5.

As noted, a wholly different set of requirements exists for Deeds of Trust. Liens created by Deeds of Trust are effective when recorded with the Clerk of the County Commission of the county in which the real estate is located. Liens on personalty other than property defined as a motor vehicle, are only effective under the Uniform Commercial Code when a financing statement has been properly filed with the West Virginia Secretary of State.

It appears that a Deed of Trust might include as collateral a vehicle subject to a certificate of title. But the Deed of Trust is not effective as to the titled motor vehicle simply because a Deed of Trust has been recorded with the Clerk of the County Commission describing the vehicle. Instead, as required by W. Va. Code § 38-1-1a, there must be compliance with the provisions of the Uniform Commercial Code. By its own terms that statute defers to the statutes governing liens on titles to motor vehicles. Effectively, for a lien to become perfected on a titled motor vehicle, there must be compliance

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.

with statutes pertaining to the creation, perfection and termination of liens on vehicles.⁶

A lien created by a Deed of Trust is ineffective until recorded. See W.Va. Code § 40-1-9. A lien created by a recording a lien on a motor vehicle title is ineffective until submitted to the Department of Motor Vehicles for recording. W.Va. Code 17A-4A-4 and W. Va. Code § 46-9-311(a)(2).

In the Trustee's view, a creditor can only become a perfected secured creditor with a claim against a motor vehicle⁷ by complying with W.Va. Code § 17A-4A-3. That statute provides that the sole method to perfect a lien on a motor vehicle is by causing a lien to be listed on the title to the motor vehicle.⁸

That did not occur in this instance.

⁶ The process of levying on property has not been discussed. Generally speaking that process is undertaken by issuance and execution of writs of fieri facias. W.Va. Code § 38-4-4. But when vehicles are the subject of such writs, the Motor Vehicle Code has specific provisions that apply. W.Va. Code § 17A-4A-9. If a general statement about the law were to be made, it is that the specific statute, the Motor Vehicle Code, is entitled to primacy over other more general statutes, if in conflict.

While the Trustee does not see conflict among these provisions, even if there were conflict, the Trustee would contend that the provisions pertaining to titles on Motor Vehicles are highly specific and controlling. The sole method for perfection of a lien on a motor vehicle, including a double wide, is by recording a lien on the title to the vehicle.

⁷ The reference to a double wide is a reference to either a factory built home as defined in W.Va. Code § 17A-1-1(pp) and/or a manufactured home as defined in W.Va. Code § 17A-1-1(qq) and/or a mobile home as defined in W.Va. Code 17A-1-1(rr) and/or a house trailer as defined in W.Va. Code § 17A-1-1(ss). All of the foregoing are vehicles pursuant to W. Va. Code § 17A-1-1(a).

⁸ West Virginia Code § 37-15-1, et seq. provides a comprehensive legislative scheme for various problems that can arise when manufactured homes and mobile homes are located within a trailer park. The statute primarily governs the rights of secured lenders, with liens on motor vehicles, on such vehicles where the owner appears to have abandoned the vehicle, W.Va. Code § 37-15-4. It defines the rights and obligations of the trailer park owner, and circumstances by which that person may acquire ownership of an abandoned manufactured home, or mobile home.

The Defendants claim that compliance is not necessary when personal property, including a motor vehicle, and more specifically including a double wide, has become affixed to real estate. This claim depends on the assertion that the personal property in this case had been effectively transformed into real estate, and when so transformed, then the personal property had become subject to a lien following the statutes applicable to liens on real estate.

Circumstances can arise where what has been personal property becomes affixed to real estate. The construction and remodeling of structures, such as houses, from pieces of personalty including lumber, pipes, and electrical wire represents the classic transformation of what had been personal property into realty. This process is predictable.

The notion that a modular home, which comes into being as a vehicle, might be destined for attachment to real estate is a similarly predictable event. Not surprisingly this predictable event is the subject of a specific West Virginia statute. That statute, W. Va. Code § 17A-3-12b(a), reads as follows:

The commissioner may cancel a certificate of title for a mobile or manufactured home affixed to the real property of the owner of the mobile or manufactured home. The person requesting the cancellation shall submit to the commissioner an application for cancellation together with the certificate of title. The application shall be on a form prescribed by the commissioner. The commissioner shall return one copy of the cancellation certificate to the owner and shall send a copy of the cancellation certificate to the clerk of the county commission to be recorded and indexed in the same manner as a deed, with the owner's name being indexed in the grantor index. The commissioner shall charge a fee of \$10 per certificate of title canceled. The clerk shall return a copy of the recorded cancellation certificate to the owner, unless there is a lien attached to the mobile or manufactured home, in which case the copy of the recorded cancellation certificate shall be returned to the lienholder. Upon its recording in the county clerk's office, the mobile or manufactured home shall be treated for all purposes as an appurtenance to the real estate to which it is affixed and be transferred only as real estate and the ownership interest in the mobile or manufactured home, together with all liens and encumbrances on the home, shall be transferred to and shall encumber the real property to

which the mobile or manufactured home has become affixed.

This statute permits personal property, in the form of a motor vehicle, to cease to be governed by the statutes applicable to motor vehicles, and instead to be governed by the rules for securing liens to real estate.⁹

In this case, Mr. Sheehan specifically complained there had not been compliance with that statute. The form required for submission to the Department of Motor Vehicles is a preprinted form known as a DMV-2-TR. A copy of that form was attached to the Complaint in the adversary proceeding as Exhibit D. (J.A. at 116). Compliance with this statute makes a search for a potential lien on a double wide a simple exercise. Starting with the proposition that a double wide is a motor vehicle, the only search necessary is in the motor vehicle records. If that search reveals that a title has been cancelled, and the double wide has become attached to real estate, then the existence of a lien can be examined in the real estate records of the appropriate county. This is a clean, and simple exercise. Because of the simplicity, a potential secured lender can conduct a search as part of its due diligence inexpensively and efficiently.

As has been acknowledged by the Defendants/Respondents there, was at filing, an active motor vehicle title for the double wide at issue. No DMV-2-TR had been issued by the West Virginia Department of Motor Vehicles.

Not surprisingly, the real estate records in Brooke County correspondingly establish that no copy of DMV-2-TR was ever recorded in the names of the Debtors, Ronald L. Lancaster and Jamie

⁹ Sub-paragraph (b) of this same statute, permits motor vehicles which had become attached to real estate, to be detached and resume existence as personal property.

L. Lancaster. (J.A. 117) The only conclusion to be reached on the date of the filing of the Bankruptcy Petition is that there was no validly perfected lien on the double wide.

Policy Considerations

There can be little doubt that the detailed structure of how a valid lien might be created in various types of property is a legislative function. The duty of a Court is to follow the law, as enacted by the Legislature, where the law is clear. State ex rel. Perdue v. Nationwide Insurance Co., 236 W.Va. 1, 777 S.E.2d 11 (2015). Interpretation of the law only becomes necessary where a law is ambiguous.

By defining several different methods for recording liens on different kinds of property, the Legislature did not create options for creditors to become secured creditors. Compliance with the specific legislative scheme according to the specific protocols for a specific type of property is required to perfect a lien in such property.

These rules are widely understood. Real estate liens must be recorded where real estate documents are recorded. Motor vehicle liens must be recorded where motor vehicle titles are maintained. Liens on other personal property,¹⁰ that governed by the Uniform Commercial Code, must be perfected by filing a financing statement with the West Virginia Secretary of State.

¹⁰ Liens on some property, typically property used in interstate commerce, are governed by federal law. See Philko Aviation, Inc. v. Shackel, 462 U.S. 406 (1983) (sole method to record a lien in an airplane is pursuant to the Federal Aviation Act, 49 U.S.C. § 1301, et seq.) Preferred ship mortgages and maritime liens are governed by 46 U.S.C. § 31321 and 46 U.S.C. § 31343, respectively. Preferred ship mortgages must be filed with the Secretary of Transportation and maritime liens, may be filed with that official also. See e.g., L & L Electronics v. Osprey, 764 F.Supp.2d 270 (D.Mass. 2011).

Failure to follow the details of lien perfection prescribed for specific types of property has consequences. Generally speaking, the failure to follow a law which prescribes a specific method for lien perfection of specific property means there is no validly perfected lien.

There is no unfairness in doing so. Here WEI Mortgage Corp., Mortgage Electronic Registration System, Inc., and Seneca Trustees, Inc. are in the business of making loans, filing the necessary paperwork to optimize the opportunity to collect on those loans, and otherwise collecting on those loans. Despite being sophisticated lenders, regularly involved in the market place for such transactions, those entities did not do what was required.

Instead, those entities now ask to have their own wilful disregard of the statute designed to permit creditors to secure liens in a motor vehicle be excused because those creditors followed some other rule applicable to a different type of property altogether. Recognizing deficient lien perfection in such circumstances would increase transaction costs for other parties engaging in similar transactions. Instead of searching in one place for a lien, a search would have to be conducted in any possible system where a lien might be recorded. The role of the bankruptcy trustee, whose authority to examine transactions to promote the equality of payment to unsecured creditors, would be frustrated by the cavalier evasion of statutes.

Potential Precedents

The specific issue presented in this case has been touched upon in part in several cases. None of those decisions are binding here. The earliest case involving a motor vehicle title is from the United States Bankruptcy Court for the Southern District of West Virginia. It is Dodson v. One Valley Bank. (In re: Johnson), 105 B.R. 352 (Bankr. S.D. W.Va. 1989)(Pearson, J.) In Dodson, the Bankruptcy

Trustee challenged the lien in a mobile home that was purportedly perfected by filing financial statements with the Secretary of State, and in the county where the real estate was located. No lien was filed with the West Virginia Department of Motor Vehicles. The Court held that filing documents claiming a security interest in the wrong place with the wrong official was an ineffectual filing and failed to insulate the property from the claims of the trustee. The instant case is a minor variant on the principles articulated there.

In Ennis v. Green Tree Servicing, LLC, 558 F.3d 343 (4th Cir. 2009)(Va. law), the United States Court of Appeals for the Fourth Circuit considered a similar issue arising in a Chapter 13 case. The debtor asserted that he had the right to modify, or reduce the amount of secured debt on a mobile home used as a residence, because the anti-modification language in 11 U.S.C. § 1322(b) did not apply. The resolution of this bankruptcy issue turned on whether the mobile home was personalty.¹¹ To resolve this issue, the Court of Appeals noted that Virginia law defined the property as personal property. The property was taxed as personal property. The applicable security agreement required the mobile home to remain personal property. Considering these facts, it is not surprising that the Court of Appeals concluded the mobile home had not been affixed to real estate and remained personalty. As personalty, the value of the mobile home was subject to modification.

There is also the decision in Sanders v. Brown, No. 18-0017, (W.Va., November 21, 2018) (per curium)(unpublished). Such decisions have limited precedential value. The opinion in that case reveals that this dispute was between a mother and son over the claim of the mother that the real estate

¹¹ The mobile home was in a trailer park. The debtors leased a space within that park and did not own the underlying realty.

should be re-conveyed to her under the terms of a disputed oral agreement to do so following an apparent gift of a remainder interest in the land to the son by the mother who reserved a life estate to herself. Part of the question, raised by the mother, was whether a manufactured home, titled solely to the mother, was part of the transfer of the remainder interest to the son, or whether it remained the mother's separate property. In this case, the Court looked to resolve the scope of the gift made by examination of the intent of these related parties. In hewing to common law principles to resolve this dispute, it appears the Court had declined to cause statutes, primarily designed to define and protect commercial interests in lending, from altering the personal, and familial nature of this dispute. Sanders should be considered to have little significance under these circumstances.

Of course, the issue of how personal property becomes affixed to real estate was originally governed by Snuffer v. Spangler, 79 W.Va. 628, 92 S.E. 628 (1917). In that case, the Court, examining whether machinery had become part of the land established the following principles:

First. It must be attached to the real estate, and by this we do not mean that it has to become so attached as to do serious damage to the realty, or to the property itself in order to remove it, but that it must be so attached as that the two, the real estate and the fixtures, work together to one end; Second. It must be reasonably necessary and adapted to the purposes for which the real estate is being used; and Third. It must be the intention of the party placing such property upon the real estate to make it a part thereof. If the first two of these elements concur, that is, its attachment to the real estate and its adaptability to the purposes for which the real estate is being used, it will be presumed that the party attaching it intended that it should be a part of the real estate, unless a contrary intention appears from the conduct of the parties in relation to it.

Id. at 638, 92 S.E. at ___. Those principles may apply where neither the Motor Vehicle Code or the Uniform Commercial Code are applicable. The circumstances where Snuffer remains applicable have been substantially circumscribed.

Since 1917, motor vehicles have become more significant in modern life. In 1961, the

Legislature first enacted all of Article 4A of Chapter 17A of the Motor Vehicle Code, requiring liens to be recorded on the title to a motor vehicle.¹² The specific language of W.Va. Code § 17A-3-12b, governing the process for ending a motor vehicle lien in favor recognizing a valid lien through the filing of deed of trust, and the reverse, was made part of the law in 2004.

The Uniform Commercial Code was first adopted in 1963. It was significantly revised in 2006. In addition to the provisions discussed elsewhere, the Code also addresses the continuity of agricultural liens as that type of property is routinely severed from real estate to become personalty. To suggest, as the Lenders must, that these enactments are without impact on the continuing wide-scale application of the rule of Snuffer in circumstances, now governed by specific statute, is to emasculate the authority of the Legislature to effect any meaning change in the law.

Taxation

The provisions of W.Va. Code § 11-5-12 need to be addressed in this dispute. That statute provides that where a mobile home is on real estate owned by a person other than the owner of the real estate, then regardless of whether the mobile home has been attached to the real estate, the mobile home shall be treated as personal property for tax purposes unless the title to the motor vehicle has been cancelled.¹³ In such circumstances, a mobile home is to be assessed as Class III or IV property, and subject to higher rates of taxation. Assessors retain the discretion to assess real estate and personal property, including a manufactured home, owned by the same person, as Class II property.

¹² In Sheehan v. WFS Financial, Inc. (In re: Sorsby), 210 W.Va. 708, 559 S.E.2d 45 (2001), this Court recognized that the near universal adoption of complete titling statutes in every state in the Union had rendered W.Va. Code § 17A-4-14 unnecessary.

¹³ Implicit in this language is a cross-reference to W.Va. Code § 17A-3-12b(a).

Consequently, little insight into whether a manufactured home owned by the same person as the owner of the underlying real estate is personalty or part of the real estate.

Other Situations

Since filing this case, the Trustee has encountered a case with the “reverse” of the facts that exist in this case. There, a man and his wife, Mr. and Mrs. Sypolt, owned real estate in Preston County and separately owned a manufactured home on that property. Ownership of each asset, as reflected in the Deed and the Title, was joint with right of survivorship. When the man died, his widow became the sole owner of both assets. The widow signed a Deed and transferred an interest in the land, as a joint tenant with a right of survivorship, to her daughter, Mrs. Trenum. No transfer of the manufactured home occurred.

In this situation, Mrs. Trenum and her husband filed for bankruptcy relief. Mrs. Trenum opined that the manufactured home had been attached to the land, and so increased the value of her partial interest in what she described as a single asset, the land and the manufactured home, significantly. But on investigation, there was no DMV-2-TR of record in Preston County for the manufactured home. The land and the manufactured home have remained distinct types of property.

If the manufactured home were determined to have been attached to the land despite the lack of compliance with W.Va. Code § 17A-3-12b(a), then the Trustee would have an interest in the manufactured home, beyond the ability of Mrs. Trenum to exempt. But if the statutory scheme is honored, then the manufactured home has not been attached, and the Trustee can make no such claim.

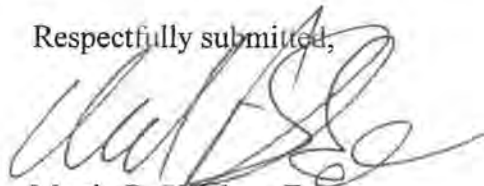
CONCLUSION

We often say that the law is no respecter of persons. We mean that the law is the law whether

rich or poor. Following the law, and not trying to find desirable ad hoc outcomes is the best policy choice. It is the only choice for an independent judiciary.

WHEREFORE, the Trustee, the Petitioner herein, asks that the certified question be answered and that the Court answer that compliance with W.Va. Code § 17A-3-12b(a) is required to perfect a lien in a what had formerly been a motor vehicle before a lender may assert there is a lien valid against third parties in said property as part of a deed of trust on real estate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Martin P. Sheehan', written over the typed name.

Martin P. Sheehan, Esq.