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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

In re:) Case No. 05-28609-C-7
) Docket Control No. BHS-1
MARYANN TRUJILLO,)
)
Debtor.)
_____)

MEMORANDUM DECISION

Richard Hanf, chapter 7 trustee (the "Trustee"), has objected to a claim of exemption filed by Maryann Trujillo (the "Debtor"). The claim of exemption relates to the Debtor's interest in a 2002 Toyota Echo four-door sedan (the "Vehicle").

For the reasons set forth below, the court will overrule the objection.

I. INTRODUCTION

The Debtor filed her chapter 7 petition on July 15, 2005. In the B-Schedule filed with her petition, the Debtor values the Vehicle in the amount of \$7,000. In her D-Schedule, the Debtor identifies Saruti Patel as a "[c]reditor holding ownership certificate to [the Vehicle]." The D-Schedule states that Ms. Patel's claim totals \$16,800, and that \$9,800 of that amount is unsecured.

In her C-Schedule filed with the chapter 7 petition, the Debtor claims as exempt the aggregate amount of \$7,000 in regard to the Vehicle, and identifies California Code of Civil Procedure ("CCP") section 703.140, subsections(b)(2) and (b)(5), as the law providing for the claimed exemption.

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1 presumptively valid exemption, whereupon the burden of production
2 shifts to the debtor to demonstrate that the exemption is proper.
3 The burden of persuasion remains with the objecting party. In re
4 Carter, 182 F.3d. 1027, 1029-30 n.3 (9th Cir. 1999).

5 In this case, the Trustee does not object to the application
6 of CCP section 703.140(b)(2) and (b)(5) to the Vehicle. The
7 Trustee instead argues that any lien claimed by Ms. Patel, the
8 amount of which would exceed the value of the Vehicle, is "valid"
9 and can be avoided, presumably pursuant to 11 U.S.C. section 544,
10 on the ground that Ms. Patel's security interest is unperfected.
11 The Trustee further argues that his successful avoidance of the
12 lien will leave the Debtor without the ability to claim the value
13 of the Vehicle as exempt under any provision of California law,
14 because 11 U.S.C. section 522(g)(1)(A) will not be satisfied due
15 to the voluntary nature of the transfer of the security interest
16 by the Debtor.

17 In her opposition, the Debtor argues that "there is no lien
18 on the [V]ehicle, perfected or otherwise," and states that the
19 Debtor listed Ms. Patel's claim on the D-Schedule merely for
20 notice purposes, "to show that the lender was physically holding
21 the Certificate of Title." In her declaration, the Debtor states
22 that in 2001 Ms. Patel loaned her \$16,800 to purchase an
23 automobile, which amount Ms. Patel paid the seller directly for
24 the Vehicle. The Debtor also states that while Ms. Patel and the
25 Debtor "did not sign a contract for payment of the loan," the
26 Debtor agreed to permit Ms. Patel to hold the certificate of
27 title "until the loan was paid." An exhibit attached to the
28 / / /

1 Debtor's declaration establishes that the Vehicle is registered
2 with the California Department of Motor Vehicles ("DMV").

3 The Trustee's argument fails because it does not distinguish
4 between the attachment of a security interest and its perfection
5 under California law. To perfect a security interest in a
6 registered motor vehicle in California, the secured party must
7 submit to the DMV a properly endorsed certificate of ownership
8 showing the secured party as legal owner of the vehicle. Cal.
9 Veh. Code § 6300; see also id. § 6303 (effect of such perfection
10 governed by the UCC); and Cal. Comm. Code § 9311(a)(2)(A) (making
11 filing of a financing statement ineffective to perfect a security
12 interest in a registered vehicle or boat).

13 But a security interest does not attach (come into being)
14 until it can be enforced, unless the agreement expressly
15 postpones attachment. Cal. Comm. Code § 9203(a). Further, a
16 party cannot enforce a security interest in goods without meeting
17 the requirements of Commercial Code section 9203(b), which
18 includes, in the case of goods like the Vehicle, that the debtor
19 "authenticate[] a security agreement that provides a description
20 of the collateral." Cal. Comm. Code § 9203(b)(3) (listing four
21 alternative conditions).

22 The Debtor's declaration establishes that no written loan
23 contract was signed. The Debtor did not offer specific evidence,
24 however, regarding whether she signed or authenticated any
25 written security agreement.

26 At the same time, however, the Trustee also submitted no
27 evidence to support the Objection, including evidence that a
28 security agreement was in fact signed or authenticated by the

1 Debtor, or even that Ms. Patel claims to hold a security interest
2 in the Vehicle. The court cannot "infer" that a security
3 agreement exists. Because it is the Trustee's burden to produce
4 evidence to rebut the presumptively valid exemption by the
5 Debtor, and because the Trustee produced no such evidence, the
6 court will, notwithstanding the incomplete factual record,
7 overrule the Objection to the Debtor's claim of exemption as to
8 the Vehicle under CCP section 703.140(b)(2) and (b)(5).

9 III. CONCLUSION

10 For the reasons set forth above, the court will overrule the
11 Objection. The court will issue an order consistent with this
12 memorandum.

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14 Dated: January 13, 2006

_____/s/_____
ROBERT S. BARDWIL
United States Bankruptcy Judge

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