UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: HUMBERT ROBINSON and
SHANII ROBINSON — CASE NO. 02-17725-DWH

BANK OF AMERICA and SELENE MADDOX, TRUSTEE — PLAINTIFFS

VERSUS — ADV. PROC. NO. 06-1128-DWH

BOBBY WREN, HUMBERT ROBINSON, and
BANCORPSOUTH — DEFENDANTS

OPINION

On consideration before the court is a complaint filed by the plaintiffs, Bank of America and Selene Maddox, Trustee, against the defendants, Bobby Wren, Humbert Robinson, and BancorpSouth; motion to dismiss, affirmative defenses, and answer to amended complaint and counter-complaint filed by the defendant, Bobby Wren; answer and affirmative defenses filed by the defendant, BancorpSouth; answer to counter-complaint, etc., filed by the plaintiffs/counter-defendants; on proof in open court; and the court, having heard and considered same, hereby finds as follows, to-wit:

I.

JURISDICTION

The court has jurisdiction of the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157(b). This is a core adversary proceeding as defined in 28 U.S.C. §157(b)(2)(A), (E), (K), and (O).

II.

PROCEDURAL HISTORY

Replevin Cause of Action Filed in the Circuit Court of Alcorn County, Mississippi:

A declaration in replevin was filed in the Circuit Court of Alcorn County, Mississippi, Cause No. CV04-075AA, on March 17, 2004, by Greenpoint Credit, LLC, Plaintiff, v. Bobby Wren, Defendant. This cause of action, which will be discussed further hereinbelow, was assigned to Circuit Judge Sharion R. Aycock, who entered an order of dismissal with prejudice on June 15, 2005.

Replevin Cause of Action filed in the Circuit Court of Prentiss County, Mississippi:

A declaration in replevin was filed in the Circuit Court of Prentiss County, Mississippi, Cause No. ZV05-116F, on May 26, 2005, by Bank of America, Plaintiff, v. Bobby Wren, Defendant. A notice of removal to the United States District Court for the Northern District of Mississippi was filed by Bank of America on March 9, 2006. The proceeding was referred by United States District Judge Glen H. Davidson to this court pursuant to an order dated May 1, 2006.

Adversary Proceeding in the United States Bankruptcy Court,
Northern District of Mississippi:

Parties to the Proceeding:

Plaintiff, Selene Maddox, Chapter 7 Trustee, appointed trustee on February 24, 2006, as the successor to former Chapter 7 Trustee, Jacob C. Pongetti, who had been initially appointed trustee on December 13, 2002, but who was replaced by Maddox after his retirement.

Plaintiff, Bank of America, which asserts that it has a first lien position in a 1997 Buccaneer manufactured home, Serial No. ALBUS26435AB, as a result of a purchase money security interest created by an installment sales contract, dated November 7, 1997, with buyers

James W. Roberson [sic] and Humbert C. Roberson [sic], whose address was reflected as 278 County Road 8301, Rienzi, Mississippi, 38865. (Exhibit P-1) (This contract was assigned by the seller, Southern Housing, Inc., to NationsCredit Manufactured Housing Corporation, which was listed as the secured party on the related UCC-1 Financing Statement. According to the United States Securities and Exchange Commission Form 10-K, filed by Bank of America, (Exhibit P-10), and the National Information Center Financial Data Report compiled by the Federal Reserve System, (Exhibit P-11), NationsCredit Manufactured Housing Corporation was acquired by NationsCredit Financial Services Corporation, a subsidiary of Bank of America. Consequently, Bank of America is the named plaintiff in this adversary proceeding.)

Defendant, Bobby Wren, who acquired certain real property located in Prentiss County, Mississippi, from the defendant, BancorpSouth, by a special warranty deed, dated November 21, 2003, on which was situated the aforementioned 1997 Buccaneer manufactured home, in addition to five other mobile homes, as well as, other assorted personal property. (Exhibit P-6) (BancorpSouth had acquired the real property as a result of a foreclosure sale conducted on August 29, 2003, wherein it foreclosed a deed of trust which had been executed by the defendant, Humbert C. Robinson, to BancorpSouth on October 11, 2001. (Exhibit D-19) There is no mention in the special warranty deed or the substituted trustee's deed of the 1997 Buccaneer manufactured home or any of the other mobile homes. With the exception of a 1997 Southridge mobile home, which was previously repossessed by Bombardier Capital, Inc., the Buccaneer manufactured home and the other mobile homes are currently in the possession of the defendant, Bobby Wren.)

Defendant, Humbert C. Robinson, who filed the above captioned Chapter 7 bankruptcy case along with his wife, Shanii Robinson, on December 13, 2002. (Robinson and his father, James W. Robinson, now deceased, initially acquired the 1997 Buccaneer manufactured home as noted hereinabove. Robinson, at one time, owned the other mobile homes which were disclosed in his bankruptcy schedules.)

Defendant, BancorpSouth, held the first deed of trust encumbering Robinson's real property which it foreclosed on August 29, 2003. (Several months after purchasing the property at the foreclosure sale, BancorpSouth conveyed the real property to the defendant, Wren. Significantly, in its answer and affirmative defenses, BancorpSouth asserted that it did not claim any interest in the 1997 Buccaneer manufactured home, nor has it ever claimed any interest therein. BancorpSouth also asserted that it never conveyed or purported to convey the manufactured home to Wren or to any other person. BancorpSouth held liens on other collateral owned by Robinson, including several mobile homes, but has expressly disclaimed any interest in these properties. This issue will be discussed further hereinbelow.)

Assets that are Pertinent to this Proceeding:

On Schedule B. Personal Property, the Robinsons listed the following mobile homes among their assets: (The descriptions are set forth exactly as they appear on the schedule.)

1997 Legacy Mobile Home	$ 9,000.00
1989 Clayton Mobile Home	2,500.00
1985 Fleetwood Mobile Home	2,500.00
1979 Stratton Mobile Home	2,500.00
1997 Doublewide Buckaneer Mobile Home	30,000.00

1997 Southridge Mobile Home 16,000.00

A review of the exhibits attached to an agreed order lifting the automatic stay and abandoning property, dated May 13, 2003, signed by a BancorpSouth representative, the Robinsons' attorney, and the Chapter 7 trustee, Jacob C. Pongetti, reflects the following:

a. 1988 new Legend 80x16 mobile home, Serial No. HL54694AL, 1985 Fleetwood mobile home, Serial No. 7811, and a 1989 Clayton 14x56, Serial No. TEN142408, to be located at CR 8301, Box 278, Rienzi, Prentiss County, Mississippi, were listed on a BancorpSouth UCC-1 Financing Statement filed on August 21, 1997.

b. First T/D (trust deed) on residence and 4.29 A/L (acres of land) and 2 mobile homes, as well as, the above described Legend, Fleetwood, and Clayton mobile homes, were listed on a promissory note and security agreement in favor of BancorpSouth, dated March 24, 1998.

Although the court saw no security agreement or financing statement, the Robinsons listed the 1979 Stratton mobile home in their bankruptcy schedules as collateral securing the BancorpSouth indebtedness.

Notwithstanding that Schedule B reflected that the Robinsons owned a 1997 "Legacy" mobile home, the court is of the opinion that this is actually the "Legend" mobile home set forth on the exhibit attached to the agreed order lifting the automatic stay and abandoning property, as well as, described in the BancorpSouth security documents.

(The court would point out that the agreed order mentioned hereinabove, and the attached exhibits which include the security documents, were a part of the court file which the plaintiffs requested the court to judicially notice.)

After analyzing the overall effect of these various documents, the court concludes that BancorpSouth held a security interest in the Legend, Clayton, Fleetwood, and Stratton mobile

homes. Bombardier Capital held a security interest in the Southridge mobile home, and Bank of America held and still holds a security interest in the Buccaneer manufactured home.

Agreed Order Lifting the Automatic Stay and Abandoning Property

As mentioned in the preceding paragraphs, on May 13, 2003, an agreed order (hereinafter "agreed order") was entered which abandoned certain collateral and lifted the automatic stay to allow BancorpSouth to enforce its security interest in the collateral. The pertinent property that was addressed in the agreed order that is applicable to this proceeding was described as follows:

> 1st TD ON RESIDENCE & 4.29 ACRES OF LAND AND TWO (2) MOBILE HOMES AND A 1998 NEW LEGEND 80X16, #HK54694AL AND A 1989 CLAYTON 14X56 MOBILE HOME, #TEN142408; 1998 FLEETWOOD 14X80 MOBILE HOME, #7811 LOCATED AT CR 8301 BOX 278, RIENZI, PRENTISS COUNTY, MS AND A 1997 FORD F150 PK/1FTEX08LXVKC52544.

At the trial of this proceeding, this agreed order was presented by the defendant Wren to the court at the conclusion of the plaintiffs' presentation of evidence. The agreed order was not introduced as a separate exhibit, but was judicially noticed as a part of the court's file. After the trial had been concluded, the court examined the file in order to review the agreed order and was surprised to learn that a subsequent order had been entered vacating the agreed order. None of the parties was aware of this latter event, which was precipitated by the filing of a motion to vacate by the Robinsons' attorney, Gregory Keenum, on June 9, 2003, for the following limited reasons, to-wit:

> That on May 13, 2003, this Court entered an Agreed Order Lifting Automatic Stay and Abandoning Property, as shown on the attached list. Pursuant to an understanding between attorneys, the Agreed Order Lifting Automatic Stay and Abandoning Property was only for the real property and mobile homes. Further, the Debtors would show that certain personal property contained on said list has been paid off, and should not have had liens, otherwise, the Debtors would never have agreed to lift the stay as to these items. (emphasis supplied)

The motion to vacate was duly noticed and set for a hearing on July 28, 2003. The proceeding memorandum applicable to this hearing reflects that the matter was "settled," and that Keenum was to thereafter submit an order addressing the settlement. After the passage of several weeks, an order vacating the agreed order was forwarded to the court and entered on September 23, 2003. Differing somewhat from Keenum's motion to vacate, which apparently did not intend to affect the real property and the mobile homes, the order set forth the following language:

> IT IS, THEREFORE, ORDERED that the Agreed Order Lifting Automatic Stay and Abandoning Property entered on May 13, 2003 be and the same is hereby set aside to allow the Debtors the opportunity [to] prove that the personal property listed in said Agreed Order Lifting Automatic Stay and Abandoning Property had been paid off and there should have been no lien. Further, that a hearing should be scheduled to determine if BancorpSouth is entitled to take possession of said property.

Because Keenum's motion and the resulting order could have an impact on the course of this proceeding, particularly insofar as the Legend, Clayton, Fleetwood, and Stratton mobile homes are concerned, the court contacted all of the parties post trial on two occasions telephonically to inform them of this discovery and to solicit their comments. BancorpSouth again advised the court that it claimed no interest in any of the mobile homes. The court made inquiry as to whether any of the parties wanted to supplement the trial record with additional proof relative to the efficacy of Keenum's motion and order, but none elected to do so. Consequently, the court had to determine, based on the information available, whether the mobile homes remained abandoned following the entry of the September 23, 2003 order, (hereinafter "subsequent order"). The real property is not impacted because the foreclosure sale had already been consummated prior to the entry of the subsequent order. Since BancorpSouth has disclaimed its interest in the mobile homes, this issue is only pertinent to the claim of the

present Chapter 7 trustee who seeks recovery of the mobile homes for the benefit of the bankruptcy estate.

In resolving this dispute, the court has carefully examined Keenum's motion and the subsequent order that was entered. The motion is unambiguous in that it does not seek relief from the agreed order lifting the automatic stay and abandoning property relative to the real property and the mobile homes. The motion encompasses other personal property (vehicles, equipment, etc.) that was located on the Robinsons' real estate. While it is certainly not as clear as the motion, the subsequent order setting aside the agreed order appears to address the "other" personal property which would exclude the mobile homes. Although this is certainly not a "clear cut" decision, the court concludes that Keenum's motion and the subsequent order, when examined together, do not undo the effects of the earlier agreed order insofar as the mobile homes are concerned. Therefore, the mobile homes were abandoned effective May 13, 2003, and were not brought back into the estate by the subsequent order. This conclusion is consistent with the relief requested in Keenum's motion.

The effect of the agreed order was to abandon the real property and the mobile homes to the debtor, and the automatic stay was lifted so that BancorpSouth could exercise its contractual rights under state law. As to the real property, it did so by conducting the foreclosure sale. As to the mobile homes which were encumbered by its lien, i.e., the Legend, Clayton, Fleetwood, and Stratton, it has now disclaimed its interest. Technically, these four mobile homes would still be owned by the debtor/defendant, Humbert Robinson, but he has chosen not to participate in this adversary proceeding. The defendant Wren remains in constructive possession of these mobile homes which have been situated on the real property that he acquired from BancorpSouth for

almost five years. If Robinson wishes to pursue any claims relative to these four mobile homes, he must do so in state court. The plaintiff trustee has no claim to these mobile homes because they were abandoned by her predecessor, who correctly presumed that they were subject to the lien of BancorpSouth.

Needless to say, the events concerning the agreed order and the subsequent order do not affect the rights of Bank of America as to its security interest in the 1997 Buccaneer manufactured home or of Bombardier Capital as to its security interest in the 1997 Southridge mobile home.

III.

ADVERSARY PROCEEDING ISSUES

After Wren received the deed from BancorpSouth to the real property, he presumed and took the position that he had also acquired the manufactured home and mobile homes that were located on the property. Wren testified that he was told by BancorpSouth representative, Joe Brown, that everything on the real property was now his. BancorpSouth, however, could not convey what it did not own or assets which were not subject to its primary security interest. This is clearly evidenced by the fact that Bombardier Capital, which held a purchase money security interest in the 1997 Southridge mobile home, listed in the Robinsons' personal property schedule, repossessed and removed this mobile home from Wren's real property after it had obtained relief from the automatic stay from this court. In the proceeding now under consideration, Bank of America is attempting to accomplish the same thing as a result of its purchase money security interest in the 1997 Buccaneer manufactured home.

Wren removed the Buccaneer home from the property that he acquired from BancorpSouth and relocated it on property approximately five miles away. Wren has occupied this home as his residence since that time and has resisted vigorously the efforts of Bank of America to enforce its security interest.

IV.

REPLEVIN CAUSE OF ACTION IN THE CIRCUIT COURT OF ALCORN COUNTY, MISSISSIPPI - SHOULD THE DISMISSAL ORDER BE GIVEN COLLATERAL ESTOPPEL OR RES JUDICATA EFFECT?

As noted hereinabove, Greenpoint Credit, LLC, an apparent loan servicing entity, filed a declaration in replevin against Bobby Wren in the Circuit Court of Alcorn County, Mississippi, on March 17, 2004, Cause No. CV04-075AA. The case was assigned to Circuit Judge Sherion R. Aycock, who after hearing the presentation of evidence and oral arguments, entered an order of dismissal with prejudice on June 15, 2005. (Exhibit D-16) Wren contends that the order of dismissal should be given collateral estoppel or res judicata effect to preclude the litigation of this adversary proceeding. This court has addressed both of these theories in the case of *In re Harris*, 297 B.R. 61 (Bankr. N.D. Miss., 2003), as follows:

> Because they are very similar, the theories of res judicata (claim preclusion) and collateral estoppel (issue preclusion) will be considered by the court.
>
> [2][3] The requirements for the application of res judicata where recently re-articulated by the Supreme Court of Mississippi in *Reid v. American Premier Insurance Company*, 814 So.2d 141 (Miss. 2002), to-wit:
>
> The rule of law known as res judicata provides that when a court of competent jurisdiction enters a final judgment on the merits of an action, the parties or their privies are precluded from relitigating claims that were decided or could have been raised in that action. *Walton v. Bouorgeois,* 512 So.2d [698] at 700 [(Miss. 1987)]. This Court has listed four identities that must be present before a subsequent action may be dismissed on the grounds of res judicata:

(1) identity of the subject matter of the original action when compared with the action now sought to be precluded;

(2) identity of underlying facts and circumstances upon which a claim is asserted and relief sought in the two actions;

(3) identity of the parties to the two actions, an identity met where a party to the one action was in privity with a party to the other; and

(4) identity of the quality or character of a person against whom the claim is made.

Dunaway v. W.H. Hopper & Assocs., Inc., 422 So.2d 749, & 751 (Miss. 1982).

814 So.2d at p. 145.

[4] The Fifth Circuit Court of Appeals in *White v. World Finance of Meridian, Inc.*, 653 F.2d 147, 151 (5th Cir. 1981), set forth the following test for applying the doctrine of collateral estoppel, to-wit:

1. The issue to be precluded must be identical to that involved in the prior action.

2. The issue must have been actually litigated in the prior action, and

3. The issue determined in the prior action must have been necessary to the resulting judgment.

See also, In re Shuler, 722 F.2d 1253 (5th Cir. 1984), and *In re Nunley*, 237 B.R. 907 (Bankr. N.D. Miss. 1999).

297 B.R. 61 at 66, 67.

In the bankruptcy adversary proceeding, there are significant differences in the factual and legal issues from those that were before the state court in the replevin cause of action. A reading of Judge Aycock's opinion indicates that the proof presented at the hearings before her was so insufficient that she could not reasonably identify the property sought to be replevined, nor could she conclude that Greenpoint Credit, LLC, was the proper plaintiff. Excerpts from her

bench opinion taken from the trial transcript, dated May 3, 2005, (Exhibit D-10, pages 31, 32), reflect the following:

> The Court finds that there has - - that the plaintiff has not proven its case by a preponderance of the evidence to show that it has legal title or legal right to claim - - I'm going to say the subject mobile home since I'm not even certain which one we're talking about.
>
> Greenpoint asserts that it has a superior claim to that of Bobby Wren. The Court cannot determine that it has or does not have a superior claim to Bobby Wren, because the Court is unable to determine even if Greenpoint has a claim to this mobile home. And that proof has not been offered to the Court, and for that reason the declaration in replevin is denied or dismissed.

In the adversary proceeding, Bank of America has established that it has a legitimate purchase money security interest in the 1997 Buccaneer manufactured home, and, as such, is the proper plaintiff since it is the parent company of NationsCredit Financial Services Corporation, which acquired NationsCredit Manufactured Housing Corporation. This issue was not determined in the replevin proceeding.

A plaintiff who was not present in the state court proceeding is the Chapter 7 trustee who asserts a claim for the benefit of the Robinsons' bankruptcy estate as to the unencumbered equity in the manufactured home, as well as, the four remaining mobile homes.

In the adversary proceeding, Wren candidly indicated that he moved and now has possession of the 1997 Buccaneer manufactured home which was formerly located on the Robinson property foreclosed by BancorpSouth. At trial, there was no dispute that this is indeed the same manufactured home that was described in the installment sales contract, executed by Humbert C. Roberson [sic] and his father, James W. Roberson [sic], on November 7, 1997, when the manufactured home was purchased from Southern Housing, Inc. (Exhibit P-1) Robinson made a positive identification of the home during the trial after he inspected photographs

(Exhibit P-3) that were taken of the home now situated on Wren's property. In his bankruptcy schedules, Robinson acknowledged that he owed the sum of $55,652.80, on the indebtedness secured by the home, and this amount corresponds exactly to the principal balance of the indebtedness reflected on the computer generated print screen which was introduced into evidence by Bank of America. (Exhibit P-9) None of these issues were determined in the replevin proceeding.

At the state court trial, Wren injected the issue that the UCC-1 Financing Statement which had been executed by Robinson and his father in favor of NationsCredit Manufactured Housing Corporation had been recorded in the wrong county. Wren pointed out that the financing statement had been recorded in Alcorn County, Mississippi, when it should have been recorded in Prentiss County, Mississippi, where the manufactured home was actually located. The recording error is perfectly understandable since Wren has an Alcorn County mailing address, but actually lives just inside Prentiss County. Regardless, this issue is only a "red herring" since there was no need to file a financing statement in either county. At the time that the security interest was created in the 1997 Buccaneer manufactured home, the version of the Mississippi Uniform Commercial Code that was applicable provided as follows:

> 1. A financing statement must be filed to perfect all security interests except the following:
> (d) A purchase money security interest in consumer goods; ...

Miss. Code Ann. §75-9-302.

Consequently, since a manufactured home, utilized as a residence, is considered a consumer good, the filing of a UCC-1 Financing Statement was not necessary. Once the security

interest was created in the manufactured home, it was considered perfected no matter where the home was physically located.

Because of the reasons stated hereinabove, the court does not believe that the theories of res judicata or collateral estoppel preclude the litigation of the adversary proceeding or any issue set forth therein.

V.

DEFENDANT WREN'S COUNTER-CLAIM AND
PLAINTIFFS' OTHER RELIEF CLAIMS AGAINST WREN

In his counter-claim, Wren asserts that if the manufactured home or the mobile homes are returned to the plaintiffs that he should be compensated for his efforts in rehabilitating and refurbishing the homes. At the adversary proceeding trial, perhaps much like the replevin proceeding in the Alcorn County Circuit Court, Wren testified that he expended significant monies in improving the properties, but he never supported these statements with any repair bills, receipts, invoices, or other documentary evidence. Consequently, the court could only speculate at best as to the actual value of these alleged improvements.

On the other hand, the plaintiffs contend that in addition to being entitled to possession of the homes that they should also be reimbursed for the rent that Wren has wrongfully collected since he took possession of the homes. In addition, the plaintiffs point out that Wren has occupied the 1997 Buccaneer manufactured home as his residence for almost five years "rent free." The testimony concerning the rents received by Wren, as well as, the value of the manufactured home as a residence during the time that it has been occupied by Wren was equally speculative.

Since the court cannot quantify with any degree of reasonableness the amount of Wren's counter-claim or the plaintiffs' claims for other relief against Wren, the court considers these claims to be a "wash." Consequently, no damages will be awarded on the counter-claim, and no damages will be awarded on the other relief claims against Wren.

VI.

CONCLUSION

Insofar as the 1997 Buccaneer manufactured home is concerned, the court is of the opinion that this property could not have been legally conveyed by BancorpSouth to Wren since BancorpSouth was not the owner of this property, nor did it have a primary lien encumbering this property. The evidence is clear that Bank of America, as the parent corporation of NationsCredit Financial Services Corporation, has the primary security interest in this manufactured home pursuant to the installment sales contract, dated November 7, 1997, which was introduced into evidence as Plaintiffs' Exhibit P-1. Wren will be directed to turn the Buccaneer manufactured home over to the plaintiffs, after being given a period of five days to remove his personal furnishings and effects from the home. Thereafter, the plaintiffs will report to the court as to whether the plaintiff trustee has any interest in the home which could benefit the bankruptcy estate.

As set forth hereinabove, the court finds that the Legend, Clayton, Fleetwood, and Stratton mobile homes were effectively abandoned from this bankruptcy estate as a result of the agreed order entered on May 13, 2003. Consequently, the plaintiff trustee's claim as to these four mobile homes is not well taken. Should the debtor/defendant, Humbert Robinson, choose to

exercise his claim of ownership, if any, to these mobile homes, he must do so in a state court of competent jurisdiction.

A separate judgment consistent with this opinion will be entered contemporaneously herewith.

This the 26th day of August, 2008.

/s/ David W. Houston, III
DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE