

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

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In re:

SANDRA KAY THOMPSON,

Debtor.

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Case No. DK 13-06389

Chapter 7

Hon. Scott W. Dales

MEMORANDUM OF DECISION AND ORDER

PRESENT: HONORABLE SCOTT W. DALES  
Chief United States Bankruptcy Judge

Claiming a security interest in a 2010 Honda Accord (the “Honda”), AmeriCredit Financial Services, Inc. (“AmeriCredit”) filed a motion for relief from the automatic stay in two separate bankruptcy cases commenced by the joint owners of the Honda.<sup>1</sup> Thomas C. Richardson, who serves as trustee in the Debtors’ respective bankruptcy cases, objected to AmeriCredit’s motions on the ground that AmeriCredit’s security interest was not perfected on August 9, 2013 (the “Petition Date”).

Later, at the parties’ request, the court issued an order permitting AmeriCredit to seize and sell the Honda, but requiring its counsel hold the sale proceeds pending the court’s decision on the perfection controversy. The parties also agreed that the court should decide the question of their respective claims to the sale proceeds in this contested matter, avoiding the expense and delay associated with an adversary proceeding. *See* Fed. R. Bankr. P. 7001(2) (requiring adversary proceeding to determine “validity, priority, or extent” of interest in property); *but see In re Klein*, 486 B.R. 853 (Bankr. E.D. Mich. 2012) (resolving perfection dispute in contested

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<sup>1</sup> Sandra Thompson and Teresa Winkelman (the “Debtors”) together purchased the Honda with loan proceeds from AmeriCredit, and each filed a separate voluntary petition for relief under chapter 7 on August 9, 2013, commencing Case Nos. 13-06389 and 13-06390. AmeriCredit filed an identical motion for relief from the automatic stay in both cases and the parties agreed to consolidate the motions for purposes of decision.

matter with consent of the parties). The court held a hearing on June 11, 2014 in Kalamazoo, Michigan, to consider the controversy. There are no material factual disputes, and the court must resolve a purely legal issue.

The parties agree that the Debtors jointly purchased the Honda on June 20, 2013 from a car dealership in Kalamazoo (the “Dealer”), and that the Honda is a motor vehicle subject to the certificate of title provisions of Michigan’s Motor Vehicle Code. As is customary, the Dealer arranged for financing, in this instance through AmeriCredit. Unfortunately, the Dealer prepared and submitted to the Michigan Secretary of State (“SOS”) two conflicting applications for title, known by their form name “RD-108.” One form RD-108 correctly identified the lienholder as AmeriCredit; the other incorrectly identified American Honda Finance as lienholder, although that company had no involvement or interest in the transaction. The SOS initially issued a certificate of title naming American Honda Finance as the secured party, but later —after the Debtors filed their respective petitions— the SOS issued a corrected certificate of title at AmeriCredit’s request and with the consent of American Honda Finance.

In his objection to the Motion, the Trustee contends that AmeriCredit’s security interest was unperfected on the Petition Date, and is therefore voidable using the Trustee’s strong arm powers. *See* 11 U.S.C. § 544. In the words of his counsel, the Trustee sets forth the undisputed facts, which he contends give him a superior claim to the Honda and the sale proceeds:

As a result of the apparent mistake made by AmeriCredit and/or its agent, the Secretary of State issued a Certificate of Title naming American Honda Finance as first secured party. See copy of Certificate of Title attached as Exhibit B. Thereafter, when the error was discovered, American Honda issued a letter confirming that it had no interest in the vehicle. See letter attached as Exhibit C. Upon receipt of American Honda Finance's letter, the Secretary of State issued a corrected RD 108 showing AmeriCredit as first secured party effective September 13, 2013 along with a corrected Certificate of Title, both issued after bankruptcy. See Exhibit D attached.

The Trustee takes the position that due to the error made by AmeriCredit or its agent, AmeriCredit's lien was not properly perfected until after bankruptcy, and the Trustee intends to file an adversary proceeding against AmeriCredit to avoid its unperfected lien.

See Trustee's Objection to AmeriCredit Financial Service, Inc.'s Motion for Relief from the Automatic Stay (DN 18) at ¶ 4.

For its part, AmeriCredit contends that because one of the RD-108 forms correctly identified it as the secured party, it properly perfected its lien. It also argues that the RD-108 listing American Honda Finance as the lienholder was not "seriously misleading,"<sup>2</sup> and substantially complied with the titling provisions of the Motor Vehicle Code.

Because the Honda is property subject to the titling provisions of the Motor Vehicle Code, the perfection of a security interest in the Honda falls under M.C.L. §§ 440.9311(2) and 257.217(10). Under the Uniform Commercial Code ("UCC"), compliance with the Motor Vehicle Code's provisions for a secured party's obtaining priority over the rights of a lien creditor is "equivalent to the filing of a financing statement under this article." M.C.L. § 440.9311(2). The key statute provides in relevant part as follows:

*Receipt by the secretary of state of a properly tendered application for a certificate of title on which a security interest in a vehicle is to be indicated is a condition of perfection of a security interest in the vehicle and is equivalent to filing a financing statement under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, with respect to the vehicle. When a security interest in a vehicle is perfected, it has priority over the rights of a lien creditor as lien creditor is defined in section 9102 of the uniform commercial code, 1962 PA 174, MCL 440.9102.*

M.C.L. § 257.217(10) (emphasis added). AmeriCredit, pointing to the correct version of the RD-108 that the Dealer prepared and that the SOS admittedly received prepetition, contends that its

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<sup>2</sup> See M.C.L. § 440.9506 ("A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.").

security interest is perfected and achieved priority over the rights of a lien creditor when the SOS received it. The court agrees.

The Trustee's position focuses, incorrectly, on the admittedly erroneous certificate of title. Although a subsequent purchaser who reviewed the certificate of title on the Petition Date would not have been apprised of AmeriCredit's security interest, the applicable statutes make the RD-108, rather than the certificate of title, the dispositive document. From the stipulated facts it appears that the Dealer, acting as AmeriCredit's agent, mistakenly caused the SOS to issue the inaccurate title certificate. It is clear, however, that before the Petition Date the SOS also received a "properly tendered application for a certificate of title on which a security interest in a vehicle is to be indicated . . ." M.C.L. § 257.217(10). The Trustee offers no authority for treating the two RD-108 forms as one or for requiring the court to treat the correct RD-108 as something other than "properly tendered." His focus on the fact that the SOS issued an incorrect title, or that AmeriCredit took steps postpetition to correct the title, though intuitively appealing,<sup>3</sup> is beside the point—both are immaterial under M.C.L. § 257.217(10).

In reaching this decision, the court follows cases within our state holding that Michigan law requires "only substantial compliance," not "strict compliance," with titling provisions in order for a creditor to perfect a security interest in a motor vehicle. *In re Klein*, 486 B.R. at 871; *In re National Welding of Michigan, Inc.*, 61 B.R. 314, 317 (W.D. Mich. 1986) (secured party listed as owner on title certificate rather than secured party substantially complied with title statute). The court, however, need not accept AmeriCredit's argument that naming American Honda Finance on the RD-108 substantially complies with the Motor Vehicle Code. AmeriCredit asks the court to find that the RD-108 identifying American Honda Finance as

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<sup>3</sup> The Trustee's interpretation of the statute is preferable to AmeriCredit's argument as a matter of UCC Article 9 policy, which generally abhors secret liens, but AmeriCredit's view is more faithful to the text of the statute. The court, however, enforces statutes, not policies.

secured party was not “seriously misleading” under M.C.L. § 440.9506.<sup>4</sup> For purposes of this decision, it will suffice that the SOS received an RD-108 properly tendered, substantially complying with the Motor Vehicle Code, and naming AmeriCredit as lienholder.

The court acknowledges that *National Welding*, which espouses a flexible standard for compliance with motor vehicle titling provisions, may be distinguished on the ground that some interest of the secured party in that case appeared on the title, albeit the wrong interest, whereas AmeriCredit’s interest did not appear on the original certificate of title at all, at least not as of the Petition Date. The court notes, too, that subsequent purchasers might have been misled by the inaccurate certificate that the SOS issued in this instance evidently in response to the Dealer’s erroneous RD-108. Nevertheless, as *Klein* demonstrates, Michigan law is clear that perfecting a security interest in a vehicle does not depend on the SOS’s issuance of a correct title certificate, or any certificate at all; instead, receipt by the SOS of a substantially compliant RD-108 “is equivalent to filing a financing statement” under the UCC. *See* M.C.L. § 257.217(10).

Although AmeriCredit, unlike the secured party in *Klein*, may bear some responsibility for its agent’s inducing the SOS to issue the original (erroneous) certificate of title, applicable provisions of the UCC and the Motor Vehicle Code to which the Trustee refers do not require or allow the court to compare fault or consider the ultimate accuracy of the certificate of title. Because AmeriCredit did tender a correct RD-108 before the Petition Date, it thereby perfected

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<sup>4</sup> Assuming for the sake of argument that M.C.L. § 440.9506 applies when considering whether a secured party complied with the Motor Vehicle Code, the argument depends on an over-reading of M.C.L. § 440.9506(2), which says only that “a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9503(1) is seriously misleading.” The section does not purport to circumscribe the universe of errors in a financing statement that might render it misleading. Indeed, a financing statement must include the “name of the secured party or a representative,” not a stranger to the transaction. *See* M.C.L. § 440.9502(1)(b); *see also Id.* § 440.9511(secured party of record); *cf. In re McGee*, No. 09-11860, 2010 Bankr. LEXIS 3251 (Bankr. N.D. Ind. 2010) (although initial secured party was unperfected by financing statement that identified a different entity as the secured party, the security interest became perfected when, five months after closing, the security interest was assigned to the named secured party).

its security interest under M.C.L. §§ 440.9311(2) and 257.217(10) in time to defeat the Trustee's strong arm powers as hypothetical lien creditor.

NOW, THEREFORE, IT IS HEREBY ORDERED that AmeriCredit may retain the proceeds of the sale of the Honda, notwithstanding the court's Order dated June 7, 2014 (DN 25), and apply them to reduce the Debtors' joint debt in accordance with applicable law and the agreement of the parties.

IT IS FURTHER ORDERED that the Clerk shall enter a copy of the Memorandum of Decision and Order in the dockets of both Debtors, Sandra Thompson and Teresa Winkelman, Case Nos. 13-06389 and 13-06390.

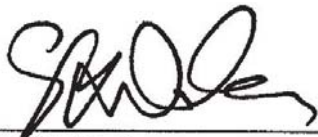
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Memorandum of Decision pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Sandra Kay Thompson, David C. Andersen, Esq., Paul F. Davidoff, Esq., Thomas C. Richardson, Esq., chapter 7 trustee, Teresa Fae Winkelman, and S. Thomas Padgett, Esq.

END OF ORDER

**IT IS SO ORDERED.**

Dated June 16, 2014



  
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Scott W. Dales  
United States Bankruptcy Judge