

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

**IN RE: JOSEPH H. BURTON AND
 JAMIE E. BURTON, DEBTORS**

**4:02-bk-20518 E
CHAPTER 7**

M. RANDY RICE, TRUSTEE

PLAINTIFF

v.

AP NO.: 4:03-ap-1064

REGIONS BANK

DEFENDANT

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Plaintiff's Motion for Summary Judgment pursuant to Federal Rule of Bankruptcy Procedure 7056, Defendant's response, and Plaintiff's reply are before the Court. No application has been made for a hearing in this matter.

The parties do not dispute the facts stated herein. At the time Debtors filed their bankruptcy petition on September 19, 2002, Mr. Burton owned a 2001 Honda 4-wheeler all-terrain vehicle, serial number 47BTE224114212824 ("ATV").¹ Mr. Burton gave Defendant a security interest in the ATV, as demonstrated by the Regions Bank Consumer Security Agreement ("**the Security Agreement**"). Defendant filed a UCC financing statement ("**the Financing Statement**") covering the ATV with the Saline County Circuit Clerk on or about May 31, 2001. The Financing Statement lists Mr. Burton's address as a location in Benton, Arkansas.² Defendant did not file the Security Agreement, Financing Statement, or any other document related to the ATV with the Office of the Secretary of State for the State of Arkansas or the Department of Finance & Administration for the State of Arkansas ("**DF&A**"). At no time did Defendant cause a lien to be placed upon the title of

¹ Although the parties agree that the above-referenced serial number is correct, the Court notes that the Financing Statement lists the serial number as 478TE224114212824.

² Per Defendant's request in its Brief in Support of Response to the Motion for Summary Judgment, the Court takes judicial notice of the fact that Benton is the county seat of Saline County, Arkansas.

the ATV. An agreement reaffirming the debt between Mr. Burton and Defendant (“**Reaffirmation Agreement**”) was filed with the Court on November 29, 2002. The trustee in this case did not sign the Reaffirmation Agreement.

Plaintiff moves for summary judgment on the issue of whether, under these facts, Defendant has properly perfected its security interest in the ATV. Plaintiff argues, in sum, that an ATV does meet the definition of “motor vehicle” under Ark. Code Ann. § 27-14-207(b), thus rendering ATVs subject to the perfection requirements of motor vehicles. Defendant denies this assertion and responds that since Ark. Code. Ann. § 27-21-103 does not require an ATV “to be registered as a motor vehicle, motorcycle, or motor-driven cycle for operation on the public streets and highways,” it would be ludicrous to suggest that an ATV be subject to the same filing requirements as an automobile. Defendant also argues that the ATV is a consumer good and that filing requirements are governed by prior law, Ark. Code. Ann. § 4-9-401(1)(a) (amended 2001), thus permitting the filing of the Financing Statement with the circuit court clerk of the county of the debtor’s residence (in this case, Saline County) for perfection of the security interest in the ATV .

In examining the relevant code provisions, including Ark. Code Ann. §§ 27-20-201 *et seq.*, 27-21-102, and 27-21-103, the Court finds that “ATV” as defined in Ark. Code Ann § 27-21-102 and the vehicles described as “three-wheeled or four-wheeled all terrain cycles” in Ark. Code Ann. § 27-20-201 *et seq.* are coextensive, especially in light of the specific cross-reference to ATVs in the subchapter describing the all-terrain “cycles.” Therefore, the provisions of Ark. Code Ann. §§ 27-20-202 (requiring that three-wheeled or four-wheeled all-terrain cycles not otherwise registered be registered with the DF&A) and 27-20-205 (stating that the DF&A shall issue a certificate of title and that any lienholder shall be identified on the title) apply with full force to the ATV at issue in this case. This rationale is further supported by the existence of a specific cross-reference to all-terrain cycle registration requirements under the chapter of the Arkansas Code relating to ATVs.

It is true that Ark. Code Ann. § 27-21-103 does not require an ATV to be “to be registered as a motor vehicle, motorcycle, or motor-driven cycle.” However, reading these statutes in

conjunction, it is evident that this code provision exempts ATV's from registration only for purposes of "operation on the public streets and highways," Ark. Code Ann. § 27-21-103 (emphasis added), not for purposes of lien perfection.

Admittedly, clearer statutory language on these matters would have been of great assistance in crafting an appropriate ruling. *See, e.g.*, Mo. Rev. Stat. § 301.700 (stating specifically that ATVs are to be treated as motor vehicles for purposes of perfection of liens); N.Y. Veh. & Traf. Law § 125 (specifically excluding ATV from definition of motor vehicle). Defendant's arguments are therefore well-taken. Nevertheless, it is clear to the Court that perfection of this lien required the notation of the lien on the certificate of title, especially in light of the Arkansas Supreme Court's decision that ATVs constitute "motor vehicles." *See Fitch v. State*, 313 Ark. 122, 125, 853 S.W.2d 874, 876 (1993) (finding that ATVs meet definition of "motor vehicle" under Ark. Code Ann. § 27-14-207(b)); *see generally* Ark. Code Ann. § 27-14-801 *et seq.*; Ark. Code Ann. § 27-14-807 ("The methods provided in this subchapter of giving constructive notice of a lien or encumbrance upon a **registered vehicle** shall be exclusive . . .") (emphasis added); *see also* Robert Laurence, *Some Practical Advice on How to Perfect a Security Interest in an All-Terrain Vehicle*, 1996 Ark. L. Notes 59 ("[s]ecurity interests in [ATVs] should be noted on the title . . . filing a UCC-1 form is of no effect . . .").

Accordingly it is

ORDERED that Plaintiff's Motion for Summary Judgment is hereby **GRANTED**.

IT IS SO ORDERED.



HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATE: July 14, 2003

cc: Mr. M. Randy Rice, Plaintiff/Trustee
Mr. George D. Ellis, attorney for Defendant
Joseph H. & Jamie E. Burton, Debtors
Robert Danecki, Esq., attorney for Debtors
U.S. Trustee