

IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

IN RE: MARK WAYNE ROBERTS AND  
PAMELA ANN ROBERTS

CASE NO. 4:02-bk-14679M  
CHAPTER 7

M. RANDY RICE

PLAINTIFF

VS.

AP NO. 4:02-ap-1345

TWIN CITY BANK

DEFENDANT

ORDER

This matter was heard on March 7, 2003, on the complaint filed by Randy M. Rice, Trustee, seeking a determination of the validity of the lien of Twin City Bank (“Defendant”) in the proceeds from the sale of an automobile owned by the Debtors. The Trustee also seeks to avoid an alleged preferential transfer of the automobile from the Debtors to the Defendant when the collateral was repossessed one day before the Debtors filed their chapter 7 bankruptcy on April 26, 2002.

The Trustee contends that pursuant to section 544 he has the status of a judgment lien creditor with a lien superior to the unperfected security interest of the Defendant. The Defendant acknowledges that two years prior to bankruptcy, the Debtor Pamela Roberts signed a security agreement granting the Defendant a security interest in the automobile, but that the Defendant did not perfect its security interest under the applicable provisions of

Arkansas law. Through an oversight, the Defendant had neither noted its lien on the face of the title nor registered its lien by sending the security agreement to the Department of Finance. However, the Defendant argues that because it repossessed the vehicle one day before the Debtors filed for bankruptcy, its security interest was perfected on the date of the filing by virtue of possession.

Arkansas law in effect when the Defendant's security interest attached states the following:

The filing of a financing statement otherwise required by this chapter is not necessary or effective to perfect a security interest in property subject to . . . any other laws of this state including . . . §§ 27-14-801 – 27-14-804 concerning the filing of liens and encumbrances on motor vehicles; but during any period in which collateral is inventory held for sale or lease by a person who is in the business of selling or leasing goods of that kind, the filing provisions of this chapter . . . apply to a security interest in that collateral created by him as a debtor. . . .

Ark. Code Ann. § 4-9-302(3)(b)(Michie Supp. 1999).

Thus, Arkansas's Commercial Code dictates that the proper way to perfect a lien in a motor vehicle is by complying with the provisions of the Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft Act ("Motor Vehicle Act"). See Ark. Code Ann. §§ 27-14-101– 2307 (Michie 1994 & Supp. 2001). The one exception allowing perfection of vehicles under Uniform Commercial Code provisions occurs when the collateral is held as inventory, a circumstance not present in this case. As stated above, the Defendant concedes that it did not comply with the recordation provisions of the Motor Vehicle Act.

However, the Defendant argues that possession constitutes perfection under the principles set out in Commercial Credit Corp. v. Nat'l Credit Corp., 251 Ark. 703, 473 S.W.2d 881 (1971). That case, however, involved a dispute over an automobile between two unperfected secured creditors, neither of whom had timely complied with the perfection provisions of the Motor Vehicle Act. One creditor claimed perfection by possession while the other claimed perfection through a lapsed financing statement on inventory filed under the provisions of the Uniform Commercial Code. In determining the priority between the two, the court relied on the Uniform Commercial Code because both creditors claimed perfection pursuant to the Code. Under those facts, the court awarded priority to the creditor in possession of the vehicle.

Here, the Trustee under section 544 of the Bankruptcy Code has the status of a perfected judgment lien creditor. As such, his lien is accorded a certain priority over unperfected liens by the Motor Vehicle Act, which states that:

No conditional sale contract, . . . or lien or encumbrance or title retention instrument upon a vehicle, of a type subject to registration under the laws of this state other than a lien dependent upon possession,<sup>1</sup> is valid as against the creditors of an owner acquiring a lien by levy or attachment or subsequent purchasers or encumbrances, with or without notice, until the requirements of this subchapter have been complied with.

Ark. Code Ann. § 27-14-801 (Michie 1994).

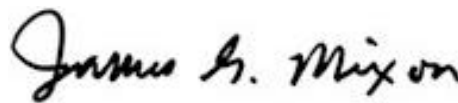
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<sup>1</sup>The sole exception to this chapter's recordation requirements is the favoring of liens dependent upon possession. In this context, a "lien dependent upon possession" has been interpreted to refer to various types of statutory liens perfected by possession. See Goff-McNair Motor Co. v. Phillips Motor Co., 226 Ark. 751, 753, 294 S.W.2d 342, 343 (1956)(statutory language relating to possession was to show how liens could be preserved and not to create new liens by mere possession).

The law is clear that unless a vehicle lien, such as the one held by the Defendant, is recorded pursuant to the Motor Vehicle Act, it is ineffective against one who acquires a lien by levy or attachment. This is precisely the position held by the Trustee in accordance with section 544 of the Bankruptcy Code. See 5 Collier on Bankruptcy ¶ 544.05 (Alan N. Resnick & Henry J. Sommer et al. eds., 15<sup>th</sup> ed. rev. 2003) (stating that the Bankruptcy Code defines “judicial lien” under section 544 as a lien obtained by judgment, levy, sequestration or other legal or equitable process or proceeding). Neither the Defendant's possession of the vehicle nor the Defendant's unperfected security interest has priority over the Trustee pursuant to his status under 11 U.S.C. § 544.

Therefore, judgment will be entered in favor of the Trustee. Because the Trustee prevails on this issue, it is unnecessary to address his argument that the repossession by the Defendant constituted an avoidable preference.

IT IS SO ORDERED.



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JAMES G. MIXON  
U. S. BANKRUPTCY JUDGE

DATE: 05-05-03

cc: M. Randy Rice, Trustee  
U. S. Trustee  
Michael Knollmeyer, Esq.  
Wade Hodge, Esq.  
Debtors