

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS

IN RE: §
§
SHAUN P. SIERRA d/b/a SIERRA § CASE NO. 03-45515-DML-13
MOTOR CO., §
§
DEBTOR § CHAPTER 13

MEMORANDUM ORDER

Before the court is National Bank of Texas's ("Bank") Motion to Lift Stay (the "Motion") filed by Bank in this chapter 13 case. The court also has before it responses in opposition to the Motion filed by Debtor and Automotive Finance Corporation ("AFC"); Stipulations on Final Hearing on Motion for Relief from Stay Filed by Automotive Finance Corporation and Agreed Submission of Lien Priority Dispute Between Automotive Finance Corporation and National Bank of Texas (the "Stipulation") filed by Debtor, Bank and AFC; and AFC's brief in support of its position. On February 12, 2004, the court held a hearing on the Motion in which Debtor, Bank and AFC participated.

This matter is subject to the court's core jurisdiction pursuant to 28 U.S.C. §§ 1334(a) and 157(b)(2)(G) and (K). This memorandum order constitutes the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052 and 9014.

I. Background

Debtor is in the business of selling used motor vehicles. On May 1, 2001, Debtor and AFC executed a Demand Promissory Note and Security Agreement (the "Loan

Agreement”) and a Term Sheet for Promissory Note and Security Agreement.¹ Pursuant to the Loan Agreement, AFC agreed to make advances to Debtor to purchase vehicles to be held as inventory. Debtor granted AFC a security interest in the inventory, which AFC perfected by filing a UCC-1 financing statement with the Texas Secretary of State on May 21, 2001. Stipulation, ¶¶ 9 & 10.

On February 27, 2003, Debtor purchased at auction a 1998 Chevrolet Venture, VIN 1GNDX03E8WD137359, and a 1999 Jeep Wrangler, VIN 1J4FY29P3XP425268 (collectively, the “Vehicles”).² Stipulation, ¶ 19. AFC currently has possession of the Vehicles.

On April 30, 2003, Bank made loans to Debtor with the “Vehicles allegedly serving as collateral.” Stipulation, ¶ 22. Debtor turned over the Vehicles’ certificates of title to Bank pursuant to Debtor and Bank’s loan agreement and Bank recorded liens, dated April 30, 2003, on the Vehicles’ certificates of title. Stipulation, ¶ 20. Debtor filed his petition under chapter 13 of the Bankruptcy Code³ on June 11, 2003.

II. Parties’ Positons

Bank’s position is that it has first priority liens against the Vehicles, which were properly perfected by recording its security interests on the Vehicles’ certificates of title.

¹ The Stipulation states at paragraph 4 that the Loan Agreement and term sheet were executed “[o]n or about July 31, 2002.” Debtor’s response indicates that the Loan Agreement was executed on July 31, 2003. As discussed below, the actual date the Loan Agreement was executed is not here relevant.

² Though the Motion makes reference to three other vehicles, at the hearing held on the Motion, the parties agreed that those three vehicles are no longer relevant to the Motion because one vehicle has little or no value due to having a “blown engine” and the other two vehicles have been sold.

³ 11 U.S.C. §§ 101 *et seq.*

Bank claims that its liens are not adequately protected and moves the court to lift the stay provided to Debtor by section 362(a) of the Bankruptcy Code.

AFC's position is that it has first priority liens on the Vehicles since it properly perfected its security interests by filing a financing statement with the Secretary of State prior to the date on which Bank allegedly perfected its security interests. Debtor essentially agrees with AFC.

The court must decide whether, under Texas law, one perfects a security interest in a motor vehicle held as inventory by a person in the business of selling motor vehicles (1) by recording the lien on the vehicle's certificate of title or (2) by filing a financing statement with the Secretary of State.

III. Discussion

Section 501.111 of the Transportation Code states:

(a) Except as provided by Subsection (b), a person may perfect a security interest in a motor vehicle that is the subject of a first or subsequent sale only by recording the security interest on the certificate of title as provided by this chapter.

(b) A person may perfect a security interest in a motor vehicle held as inventory by a person in the business of selling motor vehicles only by complying with Chapter 9, Business & Commerce Code.

Tex. Transp. Code Ann. § 501.111 (LEXIS, through 2003 Sess.).

The parties agree that “[a]t all times relevant herein, Debtor was in the business of selling motor vehicles for sale to the public” (Stipulation, ¶ 24) and that at the Vehicles were inventory held by Debtor for the purpose of sale (Stipulation, ¶ 20). Thus, pursuant to section 501.111 of the Transportation Code, the only way in which Bank or AFC may perfect a security interest in the Vehicles is by complying with Chapter 9 of the Business

& Commerce Code. *Lundy v. First National Bank of El Campo (In re Dota)*, 288 B.R. 448, 460 (S.D. Tex. 2003) (stating that the only means of perfecting a security interest in a vehicle held as inventory by one in the business of selling motor vehicles is by complying with the provisions of Chapter 9 of the Business & Commerce Code).

Section 9.310(a) of the Business and Commerce Code states that, with certain exceptions that do not apply to the case at bar, “a financing statement must be filed to perfect all security interests and agricultural liens.” *Tex. Bus. & Comm. Code* § 9.310(a) (LEXIS, through 2003 Sess.). AFC properly executed and filed a UCC-1 financing statement with the Secretary of State on May 21, 2001. Bank never filed a UCC-1 with the Secretary of State. Since Bank did not comply with the requirements of the Transportation Code and the Business & Commerce Code in seeking to perfect its security interests in the Vehicles, Bank’s security interests are not properly perfected. *Lundy*, 288 B.R. at 460. Therefore, AFC’s perfected security interests in the Vehicles are superior to Bank’s unperfected security interests. *Bank One, Texas, N.A. v. Stewart*, 967 S.W.2d 419, 435 (Tex. App.--Houston [14th Dist.] 1998, pet. denied) (stating that a properly perfected secured interest takes priority over an unperfected interest).

Parties agreed at the February 12, 2004 hearing that, in the event AFC prevailed on the Motion, the parties would not oppose lifting of the stay to allow AFC to foreclose on the Vehicles.

IV. Conclusion

For the above stated reasons the Motion must be DENIED and the stay is hereby lifted to allow AFC to foreclose on the Vehicles.

It is so ORDERED.

Signed this _____ day of March 2004.

DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE