

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

In re: *

SUZANNE F. WRIGHT, *

Debtor. *

* * * * *

ALLFIRST BANK, *

Appellant, *

vs. * CIVIL ACTION NO. MJG-01-847

SEAN C. LOGAN, TRUSTEE, *

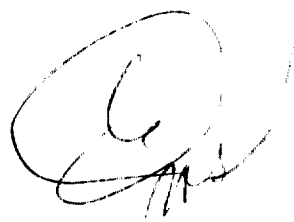
Appellee. *

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DECISION ON APPEAL

The Court has before it Appellant Allfirst Bank's appeal of a final order in which the United States Bankruptcy Court for the District of Maryland (Schneider, J.) denied Appellant's Motion for Summary Judgment and granted Appellee's Counter-Motion for Summary Judgment. Having considered the materials submitted by the parties, the Court finds a hearing unnecessary.

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I. BACKGROUND¹

On October 5, 1999, Suzanne F. Wright ("Debtor") executed and delivered to Dave Wilson Buick Pontiac GMC Truck, Inc. (the "Dealer") a Maryland Motor Vehicle Installment Sale Contract (the "Contract") in connection with her purchase of a pre-owned 1997 Oldsmobile Bravada ("Oldsmobile").² Shortly thereafter, the Dealer assigned, for value, its interest in the Contract to Allfirst Bank ("Allfirst" or "Appellant"). By the terms of the Contract, the Debtor granted a security interest in the Oldsmobile to Allfirst.

On October 19, 1999, the Dealer submitted the following documents to the Motor Vehicle Administration's Easton Maryland Office ("MVA"): (a) Application for Certificate of Title; (b) State of Michigan Certificate of Title for the Oldsmobile; (c) Dealer's Bill of Sale and a reassignment for new and used vehicles; (d) the Contract; (e) Transmittal sheet dated October 7, 1999; and (f) Check No. 012893 in the amount of \$4,784.00 (the "Check").

The portion of the Check applicable to the Debtor's purchase

¹The parties stipulated to the factual information contained in this Opinion. See Stipulation of Facts (filed January 8, 2001 in the Bankruptcy Court).

²Debtor took possession of the Oldsmobile on or about October 5, 1999.

of the Oldsmobile was \$1,132.82, consisting of \$1,084.82 in taxes, a \$20 title fee, an \$8.00 tag transfer fee, and a \$20.00 security interest filing fee. An additional tag transfer fee of \$20.25 was inadvertently left out of the Check, causing the MVA to delay processing the Certificate of Title and issuing the Security Interest Filing Statement ("SIF Statement") until the amount was paid by the Dealer. Upon payment of the additional tag transfer fee, the MVA processed the application and issued an SIF Statement and a Certificate of Title on October 30, 1999.

On May 24, 2000, Sean C. Logan ("Appellee"), as Trustee for the Bankruptcy Estate of the Debtor, filed a Complaint to Avoid Preferential Lien (the "Complaint") against Allfirst in the United States Bankruptcy Court for the District of Maryland pertaining to the Bank's security interest in the Debtor's Oldsmobile. Allfirst answered the Complaint by denying that its lien could be avoided for the benefit of the Estate because its interest had been perfected within twenty days of the Debtor taking possession of the Oldsmobile, as set forth in 11 U.S.C. § 547(c)(3). Cross motions for summary judgment were filed by the parties, and subsequent to a hearing on the motions, the Bankruptcy Court (Schneider, J.) denied Allfirst's Motion for Summary Judgment and granted Appellee's Counter-Motion for Summary Judgment, holding that perfection of a security interest

in an automobile requires payment of all fees applicable under Maryland Motor Vehicle Law as set forth in Md. Code Ann., Transp. § 13-202(b)(1)(ii), including the tag transfer fee.

Allfirst now appeals the Bankruptcy Court's February 21, 2001 Order on the ground that the Bankruptcy Court erred in its interpretation of Md. Code Ann., Transp. § 13-202(b)(1)(ii).

II. STANDARD OF REVIEW

When a District Court reviews a Bankruptcy Court final Order, the District Court acts as an appellate court. Matters within the Bankruptcy Court's discretion are reviewed under an abuse of discretion standard. In re Arnold, 806 F.2d 937, 938 (9th Cir. 1986). That is, the Bankruptcy Court's decisions within its discretion will be reversed only if they were "based on an erroneous conclusion of law or when the record contains no evidence on which the [Bankruptcy Court] rationally could have based [the decisions]." In re Windmill Farms, Inc., 841 F.2d 1467, 1472 (9th Cir. 1988) (citations omitted). Accordingly, legal conclusions are reviewed de novo, whereas findings of fact may be set aside only if "clearly erroneous." In re Bulldog Trucking, Inc., 147 F.3d 347 (4th Cir. 1998).

II. DISCUSSION

Once a borrower takes possession of property purchased through a secured loan, a creditor has twenty days to perfect its security interest in the property in order to prevent the security interest from being avoidable by a trustee in the event the borrower files for bankruptcy. See 11 U.S.C. § 547(c)(3)(B). A security interest is perfected when the secured party fulfills all the necessary requirements to perfect a security interest under state law.

The requirements for perfecting a security interest in an automobile within the State of Maryland are set forth in Md. Code Ann., Transp. § 13-201, et seq.³ Section 13-202 provides the general procedures for perfecting a security interest, and in relevant part states:

(b) Manner and time of perfection; fee. - (1) A security interest is perfected by:

(i) Delivery to the Administration of every existing certificate of title of the vehicle and an application for certificate of title on the form and containing the information about the security interest that the Administration requires; and

(ii) Payment of a filing fee established by the Administration, which is in addition to any other fees that apply under the Maryland Vehicle Law.

³Unless otherwise indicated, all Section references refer to the Security Interests subtitle of the Transportation Statute.

(2) The security interest is perfected at the time of its creation, if the delivery and payment to the Administration are completed within 10 days of the date of its creation. Otherwise, the security interest is perfected at the time of delivery and payment.

Md. Code Ann., Transp. § 13-202.

The Bankruptcy Court interpreted the Maryland Transportation Statute to require "not only the presentation of documentation but the payment of the filing fee and all other fees in order to have the security interest perfected." Logan v. Allfirst Bank (In re Wright), Ch. 7 Case No. 00-5-0486-JS (D.Md. 2001).

Appellant argues that the Bankruptcy Court erred as a matter of law by interpreting the phrase "which is in addition to any other fees that apply under Maryland Vehicle Law" to require that all fees, not merely the Security Interest Filing fee ("SIF" fee), be paid in order to perfect a security interest in a motor vehicle. Appellant Brief at 9.

The Maryland Legislature's use of the phrase "which is in addition" denotes that the payment of a filing fee to perfect a security interest is separate and distinct from payment of any other fees that apply under the Maryland Vehicle Law. The term is not used to create a requirement that the "other fees" be paid in order to perfect a security interest. If the legislature had intended to require the payment of all motor vehicle fees applicable to the sale or transfer of a vehicle, it could have

done so clearly and simply. For example, the legislature could have omitted the phrase "which is," or, alternatively, could have expressly stated that all applicable fees that apply under the Maryland Vehicle Law must be paid before a security interest can be perfected.⁴ The Legislature, instead, appears to have borrowed language from the Uniform Commercial Code, as adopted by Maryland, to construct the security perfection subtitle applicable to automobiles. See Md. Code Ann., Comm. Law § 9-403 (stating the filing requirements for perfecting a security interest in goods and requiring only the presentation of a financing statement and filing fee in order to perfect a security interest).

The act of securing an interest in a good or automobile is a distinct act and should not be commingled with other acts, such as transferring vehicle tags. Once delivery of the required

⁴Other sections of the Security Interests Subtitle are consistent with the Court's interpretation of Section 13-202. Under Section 13-203, if an Owner creates a security interest in a vehicle, he must deliver the certificate of title and application to the MVA, in addition to the same SIF fee required in Section 13-202, in order to perfect his interest. Section 13-203 does not mention any other fees that must be paid in order for the Owner to perfect his security interest in a vehicle. Likewise, Section 13-204 requires that an assignee of a security interest deliver certain documents to the MVA and the Section 13-202 SIF fee in order to perfect a security interest in an automobile. Once again, there is no mention of other fees that must be paid before the security interest is perfected.

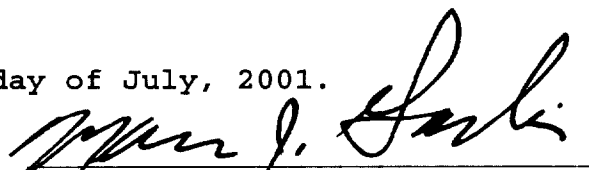
documentation and filing fee is completed, the secured party's responsibility insofar as perfecting a security interest in an automobile has been completed. Debtor signed the Contract and received possession of the Oldsmobile on October 5, 1999. The required certificate of title documents and SIF fee were delivered fourteen days later on October 19, 1999, to the MVA. On that date, Appellant had completed all the requirements for perfecting its security interest in the Oldsmobile. Hence, the security interest held by Appellant is not avoidable pursuant to 11 U.S.C. § 547(c)(3).

IV. CONCLUSION

For the foregoing reasons:

1. The Bankruptcy Court's February 21, 2001 Order Granting Trustee's Counter-Motion for Summary Judgment Against Allfirst Bank shall be REVERSED.
2. The Bankruptcy Court's February 21, 2001 Order Denying Defendant Allfirst Bank's Motion for Summary Judgment shall be REVERSED.
3. A separate Order reversing the Bankruptcy Court shall be issued.

SO DECIDED this 6th day of July, 2001.



Marvin J. Garbis
United States District Judge