

Protecting Lenders and Noting Liens: Lessons Learned from a Recent Bankruptcy Case

Amundsen Davis Financial Services Alert
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A recent case from the Bankruptcy Court for the Southern District of Indiana exposed risks that financial institutions can incur in protecting their rights to collateral. In *Marocco v. AmeriCredit Financial Services*, Adversary Proceeding No. 18-58001, the lender's failure to have its lien noted on the certificate of title to an automobile within 30 days after the debtor received possession proved fatal in a preference action filed by the bankruptcy trustee.

The debtor in this case purchased a 2015 Chrysler 200 on July 27, 2017. He financed the transaction with a lender that submitted the application for certificate of title on August 17, 2017. The Indiana Bureau of Motor Vehicles ("BMV") did not issue the certificate of title noting the lender's lien until September 5, 2017, 40 days after the purchase of the vehicle. The problem was that the debtor filed bankruptcy on August 22, 2017, 14 days before the certificate of title was issued. The Bankruptcy Court determined that the grace period granted by the Bankruptcy Code for perfection of a lien is only thirty (30) days. Because the BMV did not issue the title noting the lien until 40 days after the purchase, the lender's perfection was outside of the grace period and therefore was subject to a successful attack as a preference. Ultimately, the bankruptcy trustee was awarded insurance proceeds and the right to liquidate the vehicle and the lender was left with an unsecured claim.

This ruling seems difficult from the perspective of the secured lender because the lender has no control over how quickly the BMV processes an application for certificate of title. Nevertheless, this opinion confirms that the lender is not relieved of risk because of these delays.

Financial institutions should seek to perfect its liens by submitting applications for certificates of title as quickly after the closing as possible to minimize the delay. Hopefully, that perfection in the form of the issuance of the title with the lien noted thereon will occur within the thirty-day grace period. However, there is no guarantee that this will protect the lender in the event a longer delay occurs. There is really nothing that the financial institution can do to force the BMV to act more rapidly. It is possible that a claim could be filed against the BMV for the loss

PROFESSIONALS

Mark R. Wenzel
Partner

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that is suffered under these circumstances, but there is no guarantee that the claim will be allowed or that there will be funds available to cover the loss that may be incurred.

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