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FILED

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

SEP 9 1986
CLERK, U.S.
BANKRUPTCY COURT

In re:

Case Number:

RONALD V. SIELAFF
DIANNE L. SIELAFF

EF11-85-02359

Debtors.

RONALD V. SIELAFF,

Plaintiff,

Adversary Number:

v.

86-0173-11

NORTHERN CENTER CREDIT UNION,

Defendant.

ORDER

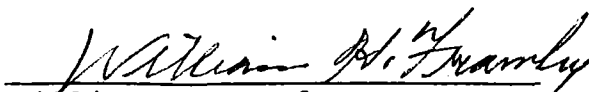
The court having this day entered its memorandum opinion, findings of fact, and conclusions of law;

NOW, THEREFORE, IT IS ORDERED that Northern Center Credit Union possesses a valid perfected security interest in the 1982 Chevrolet Citation.

IT IS FURTHER ORDERED that debtor may not avoid Northern Center Credit Union's security interest in the 1982 Citation and the debtor's complaint is hereby dismissed.

Dated: September 9, 1986.

BY THE COURT:


William H. Frawley
U.S. Bankruptcy Judge

cc: Attorney Steven Cray
Attorney Peter Grosskopf

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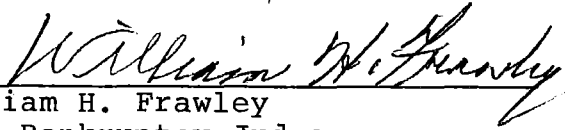
ORDER

The court having this day entered its memorandum opinion,
findings of fact, and conclusions of law;

NOW, THEREFORE, IT IS ORDERED that Northern Center Credit
Union's motion seeking relief from the § 362 automatic stay is
hereby granted.

Dated: September 9, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge

cc: Attorney Steven Cray
Attorney Peter Grosskopf

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NORTHERN CENTER CREDIT UNION,

Defendant.

MEMORANDUM OPINION,
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The Northern Center Credit Union (NCCU), by Steven Cray, has brought a motion seeking relief from the 11 U.S.C. § 362 automatic stay in order to proceed against collateral. The debtor appears by Peter Grosskopf and objects to the motion. The debtor has also initiated an adversary proceeding seeking to avoid NCCU's security interest in the subject collateral. A trial was held on these matters on September 4, 1986. This memorandum opinion addresses the issues involved in both matters.

The collateral which is the subject of these matters is a 1982 Chevrolet Citation automobile. The debtor purchased this vehicle in the State of Minnesota on July 31, 1984, by tendering

\$1,350.00 in cash to Central Auto Parts, Inc. The title to the vehicle was not provided to the debtor because Minnesota law apparently required state inspection of vehicles before title could be issued. The original application for vehicle registration dated July 31, 1984, listed secured parties as "none." On November 23, 1984, NCCU loaned the debtor \$6,544.19. As part of the security for this loan the debtor granted NCCU a security interest in the 1982 Citation. At the time of this loan the debtor had not yet received possession of the title to the vehicle. Therefore, NCCU was not able to perfect its security interest on the title to the vehicle. The debtor advised NCCU that he would take the appropriate measures to cause the title to be issued and would provide the title to NCCU so that NCCU could perfect its security interest.

The debtor apparently delayed in taking any affirmative actions that would cause the title to the vehicle to be issued. NCCU had numerous contacts with the debtor requesting him to obtain the title and provide it to NCCU. The debtor repeatedly assured NCCU that he would comply with the requests. Finally, on November 12, 1985, the vehicle was inspected. On November 15, 1985, a certificate of title was issued by the State of Minnesota for the 1982 Citation listing NCCU as a secured party. The title stated the date of the security interest to be July 31, 1984.¹

¹It is not clear how NCCU came to be listed as a secured party on this title or why the date of July 31, 1984, was listed on the title.

The debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code on November 25, 1985. A certificate of title was issued by the Wisconsin Department of Transportation for the 1982 Citation on December 14, 1985, listing NCCU as a secured party.

Both parties agree that the fair market value of the vehicle is \$1,500.00. The debtor argues that NCCU does not possess a properly perfected security interest in the vehicle. Alternatively, the debtor argues that any perfection of the security interest constitutes a preference within the purview of 11 U.S.C. § 547. The debtor asserts that as a debtor in possession he has the powers of a trustee and can avoid NCCU's security interest. 11 U.S.C. § 1107. NCCU argues that it possesses a security interest in the vehicle and that equity requires that the debtor should not be allowed to escape his obligations through his own wrongful conduct.

The bankruptcy court is a court of equity and may issue all necessary orders to carry out the provisions and purpose of the Bankruptcy Code. 11 U.S.C. § 105. There is no question but that NCCU possesses a valid security interest in the 1982 Citation. NCCU is listed as a secured party with respect to the vehicle on both the certificate of title issued in Minnesota and the certificate of title issued in Wisconsin. The fact that NCCU is listed as a secured party on the title to the vehicle is evidence that NCCU possesses a perfected security interest. The debtor has not succeeded in demonstrating that NCCU failed to properly perfect its security interest.

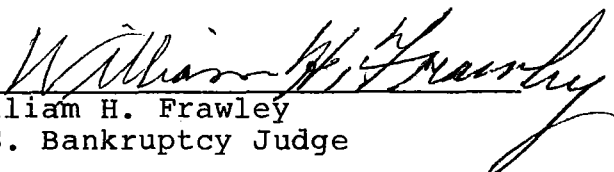
The debtor implicitly argues that NCCU obtained a preference within the meaning of 11 U.S.C. § 547 when the title to the vehicle was issued listing NCCU as a secured party. The court disagrees. Section 547 of the Bankruptcy Code embodies two bankruptcy policies. See White & Summers, Uniform Commercial Code (2nd ed. 1980). "First is the policy that within some arbitrary time period prior to bankruptcy the debtor should be required to treat equally-situated creditors equally. ... The second policy is to discourage secret liens." Id. at 999. The attempt by the debtor to use § 547 to avoid NCCU's security interest does not further either of these legitimate objectives. NCCU perfected its security interest as soon as it was able. The delay in perfection was strictly due to the actions of the debtor. The court cannot allow the debtor to take advantage of his own wrongful conduct. The debtor may not avoid NCCU's security interest.

The debtor admits that there is no equity in the vehicle. 11 U.S.C. § 362(d)(2)(A). There is no allegation that the vehicle is necessary for an effective reorganization. It is the conclusion of the court that NCCU possesses a valid security interest in the 1982 Citation and the debtor may not avoid such security interest. The debtor does not have any equity in the vehicle and it is not necessary for an effective reorganization. NCCU should be granted relief from the 11 U.S.C. § 362 automatic stay so that it can proceed against the collateral securing its loan.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

Dated: September 9, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge