

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

FILED
NOV. 10 1999

TIMOTHY A. WALBRIDGE, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

IN RE:)	
)	
CARROLL, ROBERT L.)	Case No. 98-4644-R
)	(Chapter 7)
Debtors.)	
)	
STEVEN W. SOULÉ, TRUSTEE)	
FOR THE ESTATE OF ROBERT)	
LEON CARROLL)	
)	
Plaintiff,)	
)	
v.)	Adv. No. 99-0165-R
)	
GENERAL MOTORS ACCEPTANCE)	
CORPORATION and AMERICAN)	
GENERAL FINANCE, INC.)	
)	
Defendants.)	

AGREED JUDGMENT

Now on this 10th day of ^{November}~~September~~, 1999, this case comes on before the Court. The Court, having reviewed the pleadings on file, and being advised that the parties have agreed to the entry of this Agreed Judgment, finds as follows:

1. This case was commenced by the filing of a voluntary petition under Chapter 13 of the United States Bankruptcy Code (the "Bankruptcy Code") by the Debtor on November 9, 1998 (the "Petition Date") and was subsequently converted to Chapter 7 of the Bankruptcy Code on March 4, 1999.
2. The Trustee was subsequently appointed and continues to be the duly appointed and authorized trustee of this bankruptcy estate.

DOCKETED 11/10/99
Clerk, U.S. Bankruptcy Court
Northern District of Oklahoma

3. Defendant GMAC, upon information and belief, is a corporation, which engages in retail vehicle financing throughout the United States. Defendant AmGen, also upon information and belief, is a corporation which engages in retail financing throughout the United States.

4. In Schedule B of his Bankruptcy Petition, the Debtor listed a 1996 Chevrolet truck, VIN # 1GCEC19M2TE244443 (the "Truck") as an asset of the estate. As of the Petition Date, the Debtor estimated the value of the Truck as \$18,187.50. The Debtor purchased the Truck on July 22, 1996, with financing provided by GMAC and secured by a purchase money security interest taken in the Truck by GMAC. GMAC never perfected its security interest in accordance with Okla. Stat. tit. 12A § 9-101 et seq. (1991). As a result, GMAC holds an unperfected security interest in the Truck as of July 22, 1996.

5. On April 20, 1998, the Debtor became indebted to AmGen. In order to secure this indebtedness, the Debtor granted AmGen a non-possessory security interest in the Truck. AmGen perfected its security interest in the Truck by filing a Lien Entry Form on April 23, 1998.

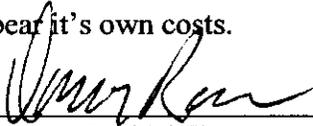
6. On December 15, 1998, GMAC filed a Proof of Claim of \$14,962.71 with the Bankruptcy Court, alleging that its claim was secured by the security agreement executed by the Debtor on July 22, 1996. On March 17, 1999, GMAC filed a Motion for Order of Abandonment, Motion for Relief from Stay and Notice of Opportunity for Hearing in connection to the Truck with this Court. On April 1, 1999, AmGen filed its Objection to the aforementioned GMAC Motion, in which it alleged that its lien had priority over GMAC's lien. On April 2, 1999, the Trustee filed an Objection to GMAC's Motion.

7. This matter is a "core" proceeding pursuant to 28 U.S.C. § 157(b) as an action brought in accordance with the provisions of 11 U.S.C. §§ 544 and 551. Therefore, this Court has

jurisdiction over the parties and the subject matter hereto pursuant to 28 U.S.C. § 1334. Venue is also proper in this district pursuant to 28 U.S.C. § 1409.

8. By virtue of its failure to file a Lien Entry Form in accordance with Okla. Stat. tit. 12A, § 9-313(d), GMAC failed to perfect its security interest in the Truck. Therefore, GMAC is an unsecured creditor with respect to the Truck. As such, the Trustee, pursuant to 11 U.S.C. § 544(a)(1) may avoid GMAC's unperfected lien in the Truck. In addition, pursuant to 11 U.S.C. § 551, the Trustee assumes the status of a lien creditor whose interest attached as of the date of the avoided transfer (July 22, 1996), in order to preserve lien priority for the benefit of the estate and the unsecured creditors. Thus, by virtue of Okla. Stat. tit. 12A, § 9-312(5)(a) and 11 U.S.C. § 551, the Trustee has priority over AmGen's security interest in the Truck.

IT IS THEREFORE ORDERED that the Trustee shall have a judgment in his favor: (A) avoiding GMAC's lien on the Truck; (B) preserving for the benefit of the estate and the unsecured creditors, the lien priority status of GMAC; and (C) declaring the Trustee's interest superior and prior to that of AmGen in the Truck, with each party to bear its own costs.

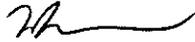


DANA L. RASURE
UNITED STATES BANKRUPTCY JUDGE

AGREED AS TO FORM AND CONTENT:



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