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

FILED

JUL 12 2000

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

IN RE: LARRY JAY CASE and ANN NICOLE CASE, Debtors.	Case No. 99-04777-M Chapter 7
PATRICK J. MALLOY III, TRUSTEE, Plaintiff, v. CONSECO FINANCE SERVICING CORPORATION, Defendant.	Adv. Proc. No. 00-0055-M

MEMORANDUM OPINION

THIS MATTER was submitted to the Court on stipulated facts and briefs. At issue is whether a lien held by Conseco Finance Servicing Corporation ("Conseco") may be avoided by Patrick J. Malloy III ("Malloy"), the trustee in this Chapter 7 bankruptcy case. The following findings of fact and conclusions of law are made pursuant to Bankruptcy Rule 7052 and Federal Rule of Civil Procedure 52.

Jurisdiction

The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C.A. §1334(b).[1] Reference to the Court of this contested matter is proper pursuant to 28 U.S.C.A. §157(a). This is

[1] Unless otherwise noted, all statutory references are to sections of the United States Bankruptcy Code, 11 U.S.C.A. § 101 *et seq*. (West 2000).

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a core proceeding as contemplated by 28 U.S.C.A. §157(b)(2)(K).

Findings of Fact

On the basis of a Stipulation of Facts filed by the parties on May 23, 2000, the Court makes the following factual findings:

1. Larry Jay Case and Ann Nicole Case ("Debtors") filed an original petition for relief under Chapter 7 of the United States Bankruptcy Code on December 16, 1999.
2. Among the assets of this estate is the Debtors' right, title and interest in and to a 1998 28 x 66 Solitare Mobile Home, Serial Number EHID-OK-B423FB (the "Mobile Home").
3. On or about April 7, 1999, Debtors executed and delivered to Green Tree Services Financial Corporation ("Green Tree") a security agreement (the "Security Agreement") granting a security interest in the Mobile Home.
4. On or about June 17, 1999, Green Tree filed a lien entry form (the "Lien Entry Form") with respect to the Mobile Home with the Motor Vehicle Department of the Oklahoma Tax Commission.
5. The Lien Entry Form did not contain the date of the Security Agreement.
6. Conseco has succeeded to the interests of Green Tree in the Mobile Home and is the real party in interest in this adversary proceeding.

To the extent the "Conclusions of Law" contain any items which should more appropriately be considered "Findings of Fact," they are incorporated herein by this reference.

Conclusions of Law

The sole issue before the Court is whether the failure to list the date of the Security Agreement on the Lien Entry Form invalidates the lien held by Conseco on the Motor Home. *See Complaint, Docket No. 1.* Malloy argues that Oklahoma law "requires the lien entry form to identify the date of the security agreement in order for the creditor to properly perfect its security interest in a vehicle or mobile home." *See Trustee's Opening Brief in Support of Judgment for the Plaintiff*, p. 2.[2] Conseco argues that it has "substantially complied" with the laws of the State of

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[2] The relevant statute reads as follows:

> A. 1. Except for a security interest in vehicles held by a dealer for sale or lease, as defined in Section 1-112 of this title and a vehicle being registered in this state which was previously registered in another state and which title contains the name of a secured party on the face of the other state certificate or title, a security interest, as defined in Section 1-201 of Title 12A of the Oklahoma Statutes, in a vehicle as to which a certificate of title may be properly issued by the Oklahoma Tax Commission shall be perfected only when a lien entry form, and the existing certificate of title, if any, or application for a certificate of title and manufacturer's certificate of origin containing the name and address of the secured party <u>and the date of the security agreement</u> and the required fee are delivered to the Commission or to a motor license agent. When a vehicle title is presented to a motor license agent for transferring or registering and the documents reflect a lien holder, the motor license agent shall perfect the lien pursuant to subsection G of Section 1105 of Title 47 of the Oklahoma Statutes. For the purposes of this section, the term "vehicle" shall not include special mobilized machinery, machinery used in highway construction or road material construction and rubber-tired road construction vehicles including rubber-tired cranes. The filing and duration of perfection of a security interest, pursuant to the provisions of Title 12A of the Oklahoma Statutes, including, but not limited to, Section 9-302 of Title 12A of the Oklahoma Statutes, shall not be applicable to perfection of security interests in vehicles as to which a certificate of title may be properly issued by the Commission, except as to vehicles held by a dealer for sale or lease and except as provided in subsection D of this section. In all other respects Title 12A of the Oklahoma Statutes shall be applicable to such security interests in vehicles as to which a certificate of title may be properly issued by the Commission.

Okla. Stat. Ann. tit. 47, § 1110(A) (West 2000) (emphasis added).

Oklahoma regarding lien perfection. For the reasons set forth herein, the Court concludes that the lien held by Conseco may not be avoided.

The issue raised by Malloy has previously been decided in favor of the secured creditor by this Court (per Rasure, J.). That decision has been affirmed by the United States District Court for the Northern District of Oklahoma (the "District Court") and the United States Court of Appeals for the Tenth Circuit (the "Court of Appeals"). *See Malloy v. Arcadia Financial, Ltd. (In re Suddarth)*, 222 B.R. 352 (Bankr. N.D. Okla. 1998), *aff'd* 232 B.R. 769 (N.D.Okla. 1999), *aff'd* 201 F.3d 449 (table), 40 UCC Rep.Serv.2d 571 (10th Cir. slip op. Dec. 10, 1999) (hereafter "*Suddarth*"). Conseco argues that the rulings of the District Court and the Court of Appeals are binding upon this Court. Malloy argues that this Court need not follow the unpublished decisions of the District Court and Court of Appeals in *Suddarth*. Malloy's analysis is flawed for the most obvious of reasons: the District Court published its decision in *Suddarth*.[3]

In bankruptcy cases, the United States District Court for the Northern District of Oklahoma sits as an appellate court with respect to decisions rendered by the United States Bankruptcy Court for the Northern District of Oklahoma. When the District Court publishes a decision involving an appeal from a bankruptcy court decision, that decision is binding upon the attorneys which practice bankruptcy law in the Northern District of Oklahoma, and the bankruptcy judges sitting in the Northern District of Oklahoma. *See, e.g. U.S. v. Spedalieri*, 910 F.2d 707, 709 (10th Cir. 1990) (district court bound to follow precedent of the circuit court); *see also IRR Supply Centers v. Phipps*

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[3] In his arguments to the Court, Malloy time and time again refers to the decision of the District Court in *Suddarth* as an "unpublished decision." Given the fact that Malloy was the plaintiff (and acted as his own counsel) in *Suddarth*, the Court is at a loss to explain or understand Malloy's lack of familiarity with the procedural history of that case.

(In re Phipps), 217 B.R. 427, 429-431 (Bankr. W.D.N.Y. 1998) *aff'd on other grounds* No. 98-CV-0294-C (W.D.N.Y. July 16, 1999) (concluding that bankruptcy courts are bound by published decisions of the district courts in their districts). Malloy's protests notwithstanding, this Court is not free to ignore published decisions of the District Court. Having found the decision of the District Court to be controlling precedent, the Court does not reach the issue of the precedential effect of the unpublished decision of the Court of Appeals.

This Court thus looks to the following portion of the District Court's decision in *Suddarth* for guidance:

> Title 47 O.S. § 1110 governs the perfection of security interests in motor vehicles. The section expressly incorporates the principles of the UCC. "In all other respects, Title 12A of the Oklahoma Statutes shall be applicable to such security interests in vehicles as to which a certificate of title may be properly issued by the Commission." 47 O.S. 1991, § 1110.
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> * * *
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> In accordance with 12A O.S.1991, § 9-402(8), "[a] financing statement substantially complying with the requirements of this section [regarding form of financing statement] is effective even though it contains minor errors which are not seriously misleading."
>
> In *Woodson v. General Motors Acceptance Corporation (In re Hembree)*, 635 P.2d 601, 603 (Okla.1981), the Oklahoma Supreme Court noted that "[t]he policy underlying the perfection and recordation of security interests is to provide notice to interested parties." The Court additionally found that a "policy of liberal construction shall be applied to promote the underlying purpose of the UCC." *Hembree*, 635 P.2d at 603, citing 12A O.S.1971, § 1-102(1) ("This Act shall be liberally construed and applied to promote its underlying purposes and policies,") and 12A O.S.1971, § 1-102(2) ("Underlying purposes and policies of this Act are: (a) to simplify, clarify and modernize the law governing commercial transactions; (b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties; (c) to make uniform the law among the various jurisdictions."). The *Cook* court reaches the same conclusion with similar language.

For the reasons stated we hold that Section 23.2b is properly

> construed as a notice filing statute with requirements similar to those of Article 9 of the U.C.C., holding Ford's security interest was perfected if it substantially complied with the statute. Whether the filing requirements have been substantially complied with so as to give requisite notice to other creditors depends on the facts of each case.
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> 12A O.S.1971 § 9-402(5) provides that a filing substantially complies if it contains "minor errors" which are not "seriously misleading."

In re Cook, 637 P.2d at 590.

> The Bankruptcy Court concluded that Arcadia had substantially complied with the perfection requirements. The Magistrate Judge recommends that the District Court affirm the decision of the Bankruptcy Court.
>
> The Bankruptcy Court noted that "[s]ubstantial compliance with the perfection statute is achieved if deviations from the strict requirements of the perfection statute do not seriously mislead the creditor." See Order of Bankruptcy Court at 7. This is in accord with Oklahoma law. Under the facts of this case, substantial compliance occurs if (1) notice is given to the parties, and (2) no trustee or creditor is misled. Notice, which is the purpose of the statute, was achieved.
>
> The Bankruptcy Court additionally noted that an evaluation of substantial compliance requires a case by case factual analysis which considers: (1) whether sufficient information has been imparted to the creditor to give the creditor notice of the existence of the lien, (2) whether the collateral upon which the lien has attached [is sufficiently described], (3) provides a general idea of when the lien arose, and (4) contains the identity of the debtor and the secured party to permit a third party to make further inquiry. See Bankruptcy Order at 9, n. 3, *citing Liberty Nat'l Bank and Trust Co. v. Garcia*, 686 P.2d 303, 305 (Okla.App.1984).

See Suddarth, 232 B.R. at 791, 792-793 (footnote omitted).

Applying the four factors outlined by the District Court in *Suddarth* to the facts of this case, the Court concludes that the Lien Entry Form substantially complies with the Oklahoma perfection statutes. The Lien Entry Form provides notice of the existence of the lien claimed by Conseco. It contains a thorough description of the Mobile Home, including its serial number. It provides a general idea of when the lien arose; i.e., no later than June 11, 1999, the date that Green Tree

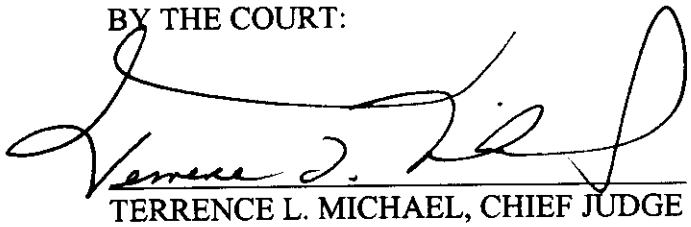
executed the Lien Entry Form. Finally, the Lien Entry Form identifies both the Debtors and the Secured Party, giving third parties ample opportunity to make further inquiry as to the nature and existence of the lien at issue.

Conclusion

Malloy may not avoid the lien of Conseco on the Mobile Home. A separate order consistent with this Memorandum Opinion is entered concurrently herewith.

Dated this 12th day of July, 2000.

BY THE COURT:



TERRENCE L. MICHAEL, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

cc: Brent A. Austin
Patrick J. Malloy III

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