



IT IS ORDERED as set forth below:

Date: August 10, 2015

**Barbara Ellis-Monro
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

CATHY CRAFT-LATIMER,

Debtor.

CATHY CRAFT-LATIMER,

Movant,

v.
AUTOMOBILE ACCEPTANCE
CORPORATION,

Respondent.

CASE NO. 15-51383-BEM

CHAPTER 13

Contested Matter

ORDER

Debtor's Motion To Determine Secured Status of Automobile Acceptance Corporation (the "Motion") [Doc. No. 34] and Respondent's Response [Doc. No. 35] came before the Court for hearing on July 28, 2015. Respondent asserts a first priority security interest in Debtor's 2010 Mercedes. Debtor contends the vehicle is fully encumbered by a senior federal

tax lien and, as a result, Respondent's claim is wholly unsecured. Respondent contends the tax lien was not properly perfected as to the vehicle and, therefore, does not trump its security interest.

The Internal Revenue Service ("IRS") filed an amended proof of claim that included a secured claim in the amount of \$13,167 for 2004 income taxes that were assessed in 2007 [Claim No. 3-4]. Attached to the proof of claim is a document showing that the IRS filed a notice of federal tax lien with Clerk of the Superior Court of Fulton County on March 19, 2008, for 2004 and 2005 federal income tax liabilities in the total amount of \$19,044.98. *Id.*

Respondent filed a proof of claim in the amount of \$10,067.27, secured by a 2010 Mercedes worth \$10,067.27 [Claim No. 2-1]. Attached to the proof of claim is a copy of the note and security agreement between Respondent and Debtor executed on October 13, 2014. *Id.* The note shows Respondent advanced loan proceeds in the total amount of \$9,188.53, of which \$8,989.53 was disbursed to Southeast Pawn LCC, with the remainder going to document fees and filing fees. The security agreement shows Debtor gave Respondent a security interest in her 2010 Mercedes. *Id.* Also attached to the proof of claim is a copy of the certificate of title for the Mercedes issued on November 15, 2014; Respondent is the only lienholder noted on the title. *Id.*

Debtor's Schedule A shows no real property. Her Schedule B shows personal property with a total value of \$16,100, including the Mercedes valued at \$13,000. At the July 28, 2015 hearing, Debtor's counsel stated that Debtor did not contest Respondent's \$10,067.27

valuation of the Mercedes.¹ Also at the hearing, Debtor's counsel stated that Debtor resided in Fulton County at the time the IRS filed its notice of tax lien.²

At issue in this case is whether the IRS holds a perfected tax lien in the Mercedes that takes priority over Respondent's lien. "The validity and priority of a federal tax lien are questions of federal law." *Green Pastures Christian Ministries v. U.S. (In re Green Pastures Christian Ministries, Inc.)*, 437 B.R. 465, 471 (Bankr. N.D. Ga. 2010) (Massey, J) (citing *United States v. City of New Britain, Conn.*, 347 U.S. 81, 84, 74 S. Ct. 367, 369 (1954); *Griswold v. U.S.*, 59 F.3d 1571, 1575 (11th Cir. 1995)). When a taxpayer fails to pay taxes after demand, a tax lien arises on all the taxpayer's real and personal property in the amount of the taxes assessed, including interest and penalties. 26 U.S.C. § 6321. The lien arises at the time the taxes are assessed and continues until the tax liability is satisfied or becomes time-barred. *Id.* § 6322. "Absent provision to the contrary, priority [of IRS liens] for purposes of federal law is governed by the common-law principle that the first in time is the first in right." *United States v. McDermott*, 507 U.S. 447, 449 113 S. Ct. 1526, 1528 (1993) (quotation marks and citations omitted).

Federal law provides that a tax lien is not valid against a holder of a security interest until the notice of tax lien is properly filed. 26 U.S.C. § 6323(a). In the case of personal property, the notice must be filed "in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated" *Id.* § 6323(f)(1)(A)(ii). Personal property is deemed to be situated "at

¹ The IRS's first proof of claim and first two amended proofs of claim asserted a secured claim in the amount of \$16,100, which is the total value of the properly listed on Debtor's schedules [Claim Nos. 3-1, 3-2, 3-3]. The third amended claim asserts a secured claim in the amount of \$13,167, a figure that is equal to the value of Debtor's property using Respondent's valuation of the Mercedes.

² According to Debtor's petition, she resided in DeKalb County, Georgia, when she filed her bankruptcy case on January 23, 2015 [Doc. No. 1, at p.1].

the residence of the taxpayer at the time the notice of lien is filed.” *Id.* § 6323(f)(2)(B). Georgia law provides that in the case of an individual taxpayer, a federal tax lien notice as to personal property shall be filed “in the office of the clerk of the superior court of the county where the taxpayer resides at the time of the filing of the notice of lien.” O.C.G.A. § 44-14-571(b)(2).

Based on the forgoing statutory scheme, it appears the IRS’s lien was perfected as to all Debtor’s personal property when the notice of tax lien was filed with the Clerk of the Fulton County Superior Court in 2008, and that it is effective against any subsequent security interests, including Respondent’s. The tax lien extended to the Mercedes even though Debtor acquired it after the lien arose. *Atlantic States Const., Inc. v. Hand, Arendall, Bedsole, Greaves and Johnson*, 892 F.2d 1530, 1534 (11th Cir. 1990). Perfection of the tax lien as to competing security interests dated from the time the notice was filed. *McDermott*, 507 U.S. at 454-55, 113 S. Ct. at 1530-31.

Respondent contends the tax lien is not perfected because the IRS did not comply with the Georgia Motor Vehicle Certificate of Title Act (“MVCTA”), which requires the lienholder to apply to have its lien recorded on the certificate of title. O.C.G.A. § 40-3-53. Pursuant to O.C.G.A. § 40-3-53 perfection is effective when “the lien notice, application for title, fee, and current certificate of title are received by the commissioner or authorized county tag agent” and “[t]he procedure contained in this chapter shall be the exclusive method for the perfection of liens on vehicles, and no lien shall be effective as to a vehicle unless so perfected.” *Id.* §§ 40-3-53(b), 40-3-53(f). Debtor argues to the contrary and contends that the definition of a lien under the MVCTA creates an exception for federal tax liens.

Under the MVCTA, a lien is created by operation of law rather than by contract or agreement and includes “all liens for taxes due to the United States of America, constructive

notice of which is given by filing notice thereof in the office designated by state law.” *Id.* § 40-3-2(6). But in requiring that a holder of a lien apply for recordation on the certificate of title O.C.G.A. § 40-3-53(a) refers to holders of liens as defined in O.C.G.A. § 40-3-2(7). O.C.G.A. § 40-3-2(7) includes only statutory liens and does not specifically include recorded federal tax liens which is in contrast to subsection (6) which defines lien to specifically include such federal tax liens. A federal tax lien is a statutory lien and thus, could be included in the definition of lienholder under subsection (7). Notwithstanding, because a recorded federal tax lien is expressly identified in the definition of lien under subsection (6) and is not so specified in subsection (7), it is possible to conclude that Georgia intended to except perfected federal tax liens from the requirement for recording a lien on a certificate of title.

However, the Court need not parse the ambiguities of state law. As noted at the outset, perfection of federal liens is governed by federal law. *Atlantic States Const.*, 892 F.2d at 1534. Consequently, the “State of Georgia cannot impose its own additional requirements on the filing of federal tax liens[.]” *Whitfield v. Hicks*, 281 Ga. 305, 305-06, 637 S.E.2d 687, 688 (2006) (refusing to cancel a tax lien notice that failed to comply with the requirement of O.C.G.A. § 44-14-572 that the notice be certified by the Secretary of the Treasury because no such requirement was imposed by federal law). Thus, so long as the IRS fully complied with 26 U.S.C. § 6323, its lien was perfected at the time of filing the notice of tax lien notwithstanding its failure to comply with state law. *See United States v. Hunter (In re Walter)*, 45 F.3d 1023, 1029 (6th Cir. 1995) (federal tax lien on motor vehicle was valid against third parties because notice of the lien had been property filed); *Carrens v. U.S. (In re Carrens)*, 198 B.R. 999, 1004 (Bankr. M.D. Fla. 1996) (a federal tax lien does not have to be recorded on the certificate of title to be valid as to a motor vehicle); *United States v. Weissing*, No. 93-1507, 1995 WL 579928, at *3-4 (M.D. Fla.

July 20, 1995) (federal tax lien was perfected in debtor's vehicle when notice was filed with the clerk of the circuit court even though it was not recorded on the certificate of title).

Respondent argues that subordinating its security interest to the tax lien at Debtor's request leads to an inequitable benefit for Debtor because Debtor's plan proposes to pay 0% to unsecured creditors. This argument lacks force in light of the fact that (1) nothing prevented Respondent from searching for federal tax liens prior to taking a security interest in the Mercedes, and (2) Congress created express exceptions to a tax lien's priority, none of which apply to Respondent's lien. For example, under 26 U.S.C. § 6323(b)(2) a tax lien on a motor vehicle is not valid against a purchaser of the vehicle with no notice of the lien. Under § 6323(c), a tax lien is not valid against certain security interests in commercial transactions that arise after the notice of tax lien is filed. In addition, pursuant to Revenue Ruling 68-57, the IRS does not enforce its priority against later-arising purchase money security interests³ in the property that are promptly perfected. 1968-1 C.B. 553 (quoting H.R. Rep. No. 1884, 89th Cong., 2d Sess., 4 (1966). "The purchase-money mortgage priority is based upon recognition that the mortgagee's interest merely reflects his contribution of property to the taxpayer's estate and therefore does not prejudice creditors who are prior in time." *Slodov v. U.S.*, 436 U.S. 238, 258 n.23, 98 S. Ct. 1778, 1790 n.23 (1978).

Pursuant to 11 U.S.C. § 506(a) a creditor secured by a lien on property has a secured claim "to the extent of the value of such creditor's interest in the estate's interest in such property" and has an unsecured claim for the remaining amount of the claim. Here, the IRS holds a lien in the Mercedes with priority over Respondent's lien in an amount exceeding the value of the Mercedes. Because the Mercedes is fully encumbered by the IRS lien, Respondent

³ At the July 28, 2015 hearing, Debtor's counsel stated that Respondent's claim was not a PMSI, but instead was based on refinancing a title loan. The loan documents filed with Respondent's proof of claim support this statement.

has no interest in the Mercedes for purposes of § 506(a). Thus, Respondent's claim is entirely unsecured. Accordingly, it is

ORDERED that Debtor's Motion is GRANTED; it is further

ORDERED that Respondent's claim is a secured claim to the extent of \$0.

END OF ORDER

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