

96-CA-0835-MR

DON MOORE CHEVROLET-CADILLAC, INC.

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, JUDGE
ACTION NO. 95-CI-0179

FIDELITY CREDIT OF OWENSBORO, INC.

APPELLEE

OPINION

AFFIRMING

* * * * *

BEFORE: GUDGEL, Chief Judge; BUCKINGHAM, and KNOPF, Judges.

BUCKINGHAM, JUDGE. Don Moore Chevrolet-Cadillac, Inc. (Don Moore) appeals from a judgment of the Daviess Circuit Court in favor of Fidelity Credit of Owensboro, Inc. (Fidelity Credit). For the reasons set forth hereinafter, we affirm.

Joseph and Cynthia Hayden, husband and wife, jointly owned a 1988 Mercury Topaz. The vehicle was encumbered by a first mortgage lien to Midwest Federal of Evansville (Midwest Federal) and a second mortgage lien to Fidelity Credit. Each lien was properly recorded in the Daviess County Clerk's office and constituted valid liens on the vehicle, and both liens were noted on the current certificate of title for the vehicle.

In July 1994, Cynthia Hayden purchased another vehicle from Don Moore and traded in the Topaz. She presented an old certificate of title to Don Moore which showed that the Topaz was only subject to the lien held by Midwest Federal. Approximately one week later, Don Moore paid off the lien to Midwest Federal, and the lien was properly released in the clerk's office in October 1994. In late December 1994, Midwest Federal filed a document in the county clerk's office assigning its lien to Don Moore.

Don Moore discovered the existence of the Fidelity Credit lien on the Topaz when it attempted to sell the vehicle. Don Moore unsuccessfully attempted to have Cynthia Hayden pay off the lien to Fidelity Credit and to have her criminally prosecuted. Cynthia Hayden has since filed for bankruptcy and has been discharged from her obligations to Don Moore and to Fidelity Credit.

Joseph Hayden defaulted on his obligation to Fidelity Credit. In February 1995, Fidelity Credit brought suit against Joseph Hayden and Don Moore seeking a money judgment against Hayden and an order requiring Don Moore to relinquish possession of the Topaz and enforcement of its lien so that it could be sold and the proceeds used to satisfy Fidelity Credit's lien. Fidelity Credit was granted a default judgment against Joseph Hayden.

Fidelity Credit and Don Moore entered into a stipulation of facts concerning the legal issue of whether

Fidelity Credit's lien entitled it to possession of the Topaz and enforcement of its lien over Don Moore's claims. After the matter was submitted to the trial court, judgment was entered in favor of Fidelity Credit granting it possession of the Topaz and declaring that its lien was the first and superior lien. Don Moore appeals from this judgment.

Don Moore argues that it became a superior lienholder to Fidelity Credit by virtue of paying off Midwest Federal's lien (the first lien) and receiving an assignment of that lien from Midwest Federal. We disagree. When Don Moore paid off the lien, it did not become the owner of the lien. Rather, the security interest in the vehicle was terminated upon the payment of the indebtedness in full. As we stated in ITT Indus. Credit Co. v. Union Bank & Trust Co., Ky. App., 615 S.W.2d 2 (1981), "[a] security interest in something only exists when the debtor owes an obligation." Id. at 5. The later assignment of the security interest by Midwest Federal to Don Moore was a nullity because Midwest Federal had nothing to assign.

Don Moore also argues that it should prevail and be held to have taken the vehicle free from Fidelity Credit's lien because it (Don Moore) was a bona fide purchaser of value of the vehicle. Don Moore cites no authority in support of its argument in this regard except former Kentucky Revised Statute (KRS) 355.8-302(1) which defines a "bona fide purchaser" as "a purchaser for value in good faith and without notice of any

adverse claim."¹ That statute, however, is found in Article 8 of Kentucky's adoption of the Uniform Commercial Code which relates to investment securities and has no relevance to the purchaser of a motor vehicle. Even if the definition of "bona fide purchaser" set forth in KRS 355.8-302(1) were applied herein, Don Moore would not qualify as such a purchaser since it had constructive notice of Fidelity Credit's perfected security interest which was noted on the current certificate of title as required by KRS 186A.190(1).

The judgment of the Daviess Circuit Court is affirmed.

ALL CONCUR.

¹ Amendments to the statutes made effective in 1997 included renumbering and the substitution of a definition of a "protected purchaser" in new KRS 355.8-303 for the definition of "bona fide purchaser" found in former KRS 355.8-302.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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