

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

In Proceedings
Under Chapter 7

COMMODORE SLOAN
REBECCA SLOAN

Case No. 04-41401

Debtor(s).

CYNTHIA A. HAGAN, TRUSTEE

Plaintiff(s),

Adv. No. 04-4128

v.

CITIZENS AUTOMOBILE FINANCE, INC.,

Defendant(s).

OPINION

This matter comes before the Court on the trustee's complaint to avoid preferential transfer and for order of turnover. At a pretrial hearing on October 12, 2004, the parties represented to the Court that the matter could be decided based upon a stipulation of facts and briefs to be filed within 14 days. The plaintiff filed her brief on October 26, 2004, and the Court granted the defendant an extension of time until November 9, 2004, to file its brief. The defendant, however, failed to file a brief in support of its position.

The Court has reviewed the trustee's complaint and supporting brief and finds that sufficient basis exists to grant the relief requested. The undisputed facts show that on February 7, 2004, debtor Commodore Sloan purchased a 2002 Ford Escort from dealer,

Heartland Ford ("Heartland"), and financed the purchase by entering into a retail installment contract with defendant, Citizens Automobile Finance, Inc. ("Citizens"). Heartland prepared a title application noting Citizens as lienholder and forwarded the application to the Illinois Secretary of State for processing. The application was received by the Illinois Secretary of State on April 29, 2004. On June 16, 2004, the debtors filed for Chapter 7 bankruptcy relief.

The trustee asserts that the Court should avoid Citizens' lien on the debtor's vehicle because Citizens' lien was perfected within 90 days prior to the debtors' bankruptcy filing but not within the twenty day "enabling loan" exception of 11 U.S.C. § 547(c)(3)(B). The Court agrees. The facts of this case bring it within the rule of In re Jarvis, 242 B.R. 172, 174 (Bankr. S.D. Ill. 1999), in which the Court held that the creditor's lien that was perfected by delivery of a title application to the Illinois Secretary of State within 90 days of bankruptcy but more than twenty days after purchase of the vehicle resulted in a preferential transfer avoidable by the trustee.

In the present case, Citizens' lien was perfected on April 29, 2004, within 90 days of the debtors' bankruptcy filing but more than twenty days after the date of purchase. Under the facts of this case and based on the Court's ruling in Jarvis, the Court finds the trustee's complaint to be well-taken. Accordingly, the

Court rules for the trustee and against the defendant on the trustee's complaint.

SEE WRITTEN ORDER.

ENTERED: November 23, 2004

/s/ Kenneth J. Meyers
UNITED STATES BANKRUPTCY JUDGE