

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

IN RE:)	
)	
FRANK J. WRIGHT,)	Bankruptcy Case No. 02-34224
)	
Debtors.)	
_____)	
)	
DONALD M. SAMSON, Trustee,)	
)	
Plaintiff,)	
)	
vs.)	Adversary Case No. 03-3037
)	
TRIAD FINANCIAL CORP., d/b/a)	
ROADLOANS,)	
)	
Defendant.)	

OPINION

This matter having come before the Court on a Complaint to Avoid Preferential Transfer filed by Donald M. Samson, Trustee/Plaintiff; the Court, having reviewed the written Memoranda filed by the parties, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The material facts in this matter are not in dispute and are, in pertinent part, as follows:

1. On August 3, 2002, the Debtor purchased a 2000 Pontiac Grand Am, which he financed through Household Auto Finance (Household).

2. Immediately after the purchase, Household applied for a title with the Illinois Secretary of State, which would reflect Household's lien on the vehicle. The title reflecting Household's lien was not prepared by the Illinois Secretary of State until September 10, 2002, and received by Household sometime thereafter.

3. On August 21, 2002, the Debtor sought to refinance the Household loan with the Defendant herein, Triad Financial Corp., d/b/a Roadloans (Triad), using the vehicle as collateral. Triad agreed to the refinancing, funded the transaction, and paid off the Household lien on or about August 30, 2002.

4. As of October 3, 2002, Triad had not yet received the title to the vehicle from Household, and, on that date, placed a call to Household to request that the title be forwarded.

5. On October 9, 2002, Triad received the title to the vehicle, which included an endorsement releasing Household's lien.

6. After receiving the title from Household, Triad applied to the Illinois Secretary of State's Office for a new title. Said application was received by the Illinois Secretary of State on October 25, 2002, and a new title was issued showing Triad as the lienholder thereafter.

7. On November 13, 2002, the Debtor filed for relief under Chapter 7 of the Bankruptcy Code, and Donald M. Samson was appointed as Trustee.

8. On February 14, 2003, the Trustee filed the instant adversary proceeding seeking to avoid the lien of Triad on the Debtor's 2000 Pontiac Grand Am, as a preferential transfer, pursuant to 11 U.S.C. § 547.

Conclusions of Law

The parties agree that the decision in this matter turns on the interpretation of 11 U.S.C. § 547(c)(1), which states:

- (c) The trustee may not avoid under this section a transfer -
 - (1) to the extent that such transfer was -
 - (A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and
 - (B) in fact a substantially contemporaneous exchange;

The parties also agree that the issue is not whether the Debtor and Triad intended for the transfer to be a contemporaneous exchange for new value, but whether the transfer of the security interest was, in fact, a substantially contemporaneous exchange.

In support of its position that the transfer at issue was, in fact, substantially contemporaneous, the Defendant cites the case of Pine Top Insurance Company v. Bank of America Nat'l. Trust & Savings Association, 969 F.2d 321 (7th Cir. 1992). In reviewing the Pine Top decision and the cases cited therein, the Court finds that the transfer at issue was, in fact, a substantially contemporaneous exchange. The purpose of the preference statute is to prevent the debtor, on the eve of his bankruptcy, from favoring creditors with payment. In re Tolono Pizza Products Corp., 3 F.3d 1029 (7th Cir. 1993). The Court finds that the transfer at issue did not fall within the spirit of 11 U.S.C. § 547, as a preferential transfer.

In the Pine Top decision, the Seventh Circuit did not adopt a hard and fast rule as to what time period would elapse before an exchange would not be considered to be substantially contemporaneous. Rather, the Court found that matters should be reviewed on a case by case basis looking at the chronology of events and the surrounding circumstances to determine the applicability of § 547(c)(1). In the instant

case, the Court finds that the delay in noting the lien of the Defendant on the title was through no fault of the Defendant. From the undisputed facts, it is apparent that the Defendant acted with due diligence in seeking to have its lien noted on the title to the subject vehicle, and that the factual circumstances of this case do not rise to the level of a preference as contemplated by 11 U.S.C. § 547, and the cases interpreting that statute within the Seventh Circuit. As such, the Court finds that the Complaint to Avoid Preferential Transfer must be denied.

ENTERED: August 28, 2003.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge