

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re:

THOMAS D. FREEBERN, JR. &  
HEATHER L. FREEBERN,

Case No. 10-10799  
Chapter 13

Debtors.  
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APPEARANCES:

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Hon. Robert E. Littlefield, Jr., Chief United States Bankruptcy Judge

**MEMORANDUM-DECISION AND ORDER**

Currently before the court is the objection to confirmation of Thomas and Heather Freebern's (the "Debtors") chapter 13 plan filed by Hudson River Community Credit Union ("HRCCU"). HRCCU alleges that it has a valid security interest in the Debtors' vehicle and that the plan improperly lists it as an unsecured creditor. The Debtors dispute the validity of the lien.

**JURISDICTION**

The court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 157(a), (b)(2)(K), (b)(2)(L), and 1334.

## FACTS

On August 15, 2006, the Debtors purchased a 2004 Dodge Durango, bearing vehicle identification number (“VIN”) 1D4HB58D94F123674, from Clifton Park Dodge World. The bill of sale describes the vehicle as a used 2004 Dodge Durango Limited Hemi, with a blue body and grey accent, but incorrectly lists the VIN as 1D4HB58D94F123694. The Debtors financed the purchase through HRCCU and pledged as collateral the 2004 Dodge Durango Limited, but identified it with the incorrect VIN 1D4HB58D94F123694. This incorrect VIN was also used to insure the vehicle, as reflected on the insurance binder. The parties agree that VIN 1D4HB58D94F123674 is the correct one, and that no vehicle exists with the VIN ending in 94. HRCCU asserts that it “electronically filed with New York State’s Department of Motor Vehicle[s] the proper paperwork and required DMV fee to perfect its security interest.” (HRCCU Resp. Mem. of Law in Supp. of Objection to Debtors’ Ch. 13 Plan ¶ 4, ECF No. 23.) HRCCU, however, failed to provide any proof that it filed a certificate of title, even one with the incorrect VIN, or in the alternative, that it filed an application for a certificate of title containing the name and address of the lienholder and the required fee.

The Debtors filed a voluntary chapter 13 petition on March 8, 2010. HRCCU received notice of the Debtors’ bankruptcy filing and proposed chapter 13 plan, which did not list HRCCU as a secured creditor holding the 2004 Dodge Durango as collateral. Inquiry by HRCCU revealed a certificate of title on file with the DMV for a vehicle bearing VIN 1D4HB58D94F123674. The Certificate of Title showed co-debtor Heather L. Freebern as the registered owner. No liens were noted on the title.

There is no allegation that the Debtors are responsible for the incorrect VIN or for the

recording error on the certificate of title.

### **ARGUMENT**

HRCCU argues that New York's Uniform Commercial Code ("U.C.C.") governs the validity of the security interest in this case. According to HRCCU, its lien properly attached under the U.C.C. because (1) value was given, (2) the Debtors had rights in the collateral, and (3) the Debtors signed a security instrument that contained a description of the collateral. HRCCU contends that a secured creditor need not perfect its security interest to have rights superior to those of the Debtors. As long as a security interest has attached, it is enforceable against the Debtors.

The Debtors counter that Article 46 of New York's Vehicle and Traffic Law ("VTL") provides the exclusive procedure for perfecting and giving notice of security interests in motor vehicles. Debtors take the position that HRCCU failed to perfect a lien on the Debtors' vehicle because it failed to file a certificate of title for the correct vehicle.

### **DISCUSSION**

It is well settled that while the extent of a debtor's bankruptcy estate is determined under federal law, property interests are defined by state law. *In re Adirondack Timber Enter., Inc.*, Ch. 11 Case No. 08-12553, 2010 WL 1741378, at \*3 (Bankr. N.D.N.Y. Apr. 28, 2010) (citing *Butner v. United States*, 440 U.S. 48, 55 (1979)).

Pursuant to Article 46 of the VTL, "the *sole* method for perfecting a security interest in a motor vehicle is '[b]y the delivery to the commissioner of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the lienholder and the required fee.'" *Pileckas v. Marcucio*, 156 B.R. 721, 724 (N.D.N.Y. 1993) (quoting N.Y. Veh. &

Traf. Law § 2118(b)(1)(A)) (citing *In re Microband Cos., Inc.*, 135 B.R. 2, 5 (Bankr. S.D.N.Y. 1991); *Magnagno v. U.S.*, No. 88–CV–1329, 1993 WL 56026 (Bankr. N.D.N.Y. Feb. 25, 1993)); accord N.Y. Veh. & Traf. Law §§ 2123, 2118 (McKinney 2011). Section 2123 of the VTL, titled “Exclusiveness of procedure,” states:

The method provided in this article of perfecting and giving notice of security interests subject to this article is exclusive. Security interests subject to this article are hereby exempted from the provisions of law which otherwise relate to the perfection of security interests, including but not limited to section 9-313 of the uniform commercial code.

N.Y. Veh. & Traf. Law § 2123 (McKinney 2011). Section 2118(a) provides, in relevant part, that “a security interest in a vehicle . . . is not valid against creditors of the owner . . . without knowledge of the security interest *unless perfected as provided in this section.*” N.Y. Veh. & Traf. Law § 2118(a) (McKinney 2011) (emphasis added).

HRCCU offered no proof that it filed a certificate of title with the DMV or otherwise complied with the statutory requirements for perfection. Therefore, the court does not reach the issue of whether, absent any other deficiency, an error in the penultimate digit of the seventeen digit VIN would be sufficient to render invalid HRCCU’s claimed security interest in the vehicle. HRCCU’s failure to provide evidence that it complied with Article 46 of the VTL renders its security interest unperfected and, accordingly, its claim is unsecured. *See Pileckas*, 156 B.R. at 724–25 (citations omitted).

HRCCU cites *Continental Coffee Products Company v. Banque Lavoro S.A.* for the proposition that it has an enforceable security interest, by virtue of attachment, and therefore has rights superior to those of the debtor. (HRCCU Mem. of Law in Supp. of Objection to Confirmation of Debtor’s Ch. 13 Plan, ECF No. 17) (citing *Cont’l Coffee Prods. Co. v. Banque*

*Lavoro S.A.*, 852 F. Supp. 1235, 1237 (S.D.N.Y. 1994); N.Y. U.C.C. § 9-203)). The argument misses the mark. *Continental Coffee* concerns interests in the proceeds of a shipment of coffee. The case *sub judice* concerns a motor vehicle. Article 46 of the VTL unambiguously supplants Article 9 of the U.C.C. and provides the exclusive method for acquiring a security interest in a motor vehicle. See N.Y. Veh. & Traf. Law § 2123 (McKinney 2011); *Pileckas*, 156 B.R. at 724. Under the U.C.C., an attached lien alone may suffice to give a creditor with an unperfected security interest priority over other creditors. See *Continental Coffee*, 852 F. Supp. at 1237. Under the VTL, however, perfection of that security interest is a crucial step, without which there is no priority. See N.Y. Veh. & Traf. Law § 2118(a) (security interest not valid against creditors of the owner unless perfected). HRCCU failed to comply with the requirements of the VTL. Its claim is therefore unsecured.

### CONCLUSION

Based upon the foregoing, it is hereby

ORDERED, that HRCCU's objection to confirmation is overruled; and it is further

ORDERED, that the Trustee's Objection to Confirmation of Chapter 13 Plan (No. 10)

shall be restored to the court's **August 11, 2011 calendar at 1:00 p.m.**

It is so ORDERED.

Dated: July 22, 2011

/s/ Robert E. Littlefield, Jr.

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Hon. Robert E. Littlefield, Jr.  
Chief U.S. Bankruptcy Judge