

Dated: July 02, 2021
The following is ORDERED:



M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
James Henry Kennedy, Jr. and
Polly Deane Kennedy
Debtors

Case No. 20-25503
Chapter 13

**ORDER SUSTAINING CHAPTER 13 TRUSTEE'S OBJECTION TO SECURED CLAIM
OF ONEMAIN AND DENYING ONEMAIN'S MOTION FOR RELIEF FROM THE
AUTOMATIC STAY**

This matter is before the Court on the Chapter 13 trustee's Objection (the "Objection") [DE 30] to the secured claim filed by Creditor OneMain Financial Group, LLC ("OneMain") [Claim No. 8-1] in the amount of \$21,027.11, OneMain's Response (the "Response") [DE 35] to the Chapter 13 trustee's Objection, and OneMain's Motion for Relief ("Motion for Relief") [DE

19] from the automatic stay. A hearing was held on June 8, 2021, at which time the Court took these contested matters under advisement.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (B). This Court has both the statutory and constitutional authority to hear and determine these matters subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII (“Bankruptcy Appeals”) of the Federal Rules of Bankruptcy Procedure. This memorandum of decision constitutes the Court’s findings of fact and conclusions of law pursuant to FED. R. CIV. P. 52, made applicable to these contested matters by FED. R. BANKR. P. 9104 and 7052. Regardless of whether or not specifically referred to in this decision, the Court has examined the docket, the submitted materials, considered statements of counsel, considered all of the evidence, and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court finds that the Chapter 13 trustee’s Objection to OneMain’s secured claim is sustained, and that OneMain’s Motion for Relief is denied.

**DISCUSSION OF BACKGROUND FACTS AND
INFORMATION AND PROCEDURAL HISTORY OF THIS CASE**

The facts of this case are undisputed. Debtor James Henry Kennedy, Jr.¹ (“Debtor”) purchased a pre-owned 2011 Ford F150 truck on September 16, 2020, financed by OneMain. The purchase was secured by the truck. Mr. Kennedy, along with his spouse, Polly Deane Kennedy (“Debtors”), then filed their petition for relief under Chapter 13 of the Bankruptcy Code on November 25, 2020. Schedule D of the bankruptcy petition lists OneMain Financial as a secured creditor. OneMain subsequently filed its proof of claim on December 8, 2020 in the amount of \$21,027.11, indicating that its claim is secured for \$20,990 by a lien on the Debtor’s 2011 Ford F150 truck, with the remaining \$37.11 of the claim designated as unsecured [Claim No. 8-1]. The

¹ Debtor Polly Deane Kennedy is not a party to the contract for the purchase of the truck.

annual interest rate is listed at 19.43% (fixed), resulting in an ongoing monthly payment for the Debtors of \$586.48. There is no arrearage listed on the proof of claim.

On February 25, 2021, OneMain filed a Motion for Relief [DE 19] seeking termination of the automatic stay to allow OneMain to perfect its lien on the truck. Before OneMain's Motion for Relief was heard by the Court², the Debtors' Chapter 13 plan was confirmed on March 10, 2021 [DE 22], setting payments to OneMain for its secured claim of \$20,990, with 5.25% interest, at \$398 per month. The Chapter 13 trustee has determined that the unsecured creditors in this case will be paid at 100%. [DE 38].

After confirmation of the Debtors' Chapter 13 plan, the Chapter 13 trustee filed an Objection to the secured claim of OneMain [DE 30], objecting to the classification of the claim as secured in light of the information revealed in OneMain's Motion for Relief, and asserting that the claim should be instead classified as a general unsecured claim.

OneMain's Response [DE 35] to the Chapter 13 trustee's Objection sets forth several arguments as to why the Objection to its claim should be overruled, which its counsel reiterated at the hearing. It is evident that the truck at issue has a lengthy chain of title. In addition, OneMain contends that, given the reduced number of staff at government offices during the COVID-19 pandemic, recordation of OneMain's lien was delayed through no fault of its own. OneMain's lien was perfected, however, post-petition and prior to the filing of its Motion for Relief, on February 12, 2021. *See* Response at ¶2. The crux of OneMain's argument is that, even though its lien was not perfected at the time of the filing of the Debtors' Chapter 13 bankruptcy case, or at

² OneMain's Motion for Relief was originally set on the Chapter 13 trustee's 9:00 a.m. docket, and the minutes from that setting indicate that OneMain's Motion for Relief was granted. *See* minute entry of March 23, 2021. However, the Chapter 13 trustee subsequently filed a Certificate changing the announcement to "continued hearing." [DE 34]. Counsel for OneMain filed a letter [DE 32] requesting that the Motion for Relief be reset on the Court's 10:00 a.m. docket, to be heard with the Chapter 13 trustee's Objection to OneMain's claim, and OneMain's Response thereto.

the time it filed its proof of claim, it still had a valid secured claim which was designated as secured in the Order confirming the Debtors' Chapter 13 plan. Therefore, OneMain argues, under the holding in *Chrysler Fin. Corp. v. Nolan (In re Nolan)*, 232 F.3d 528 (6th Cir. 2000), its claim, designated as secured at confirmation, cannot now be transferred into an unsecured class. Response at ¶ 6.

OneMain also argues that the Chapter 13 trustee's Objection is not timely as it was filed outside the 30-day objection period, and that, even if its security interest is not perfected, OneMain has an unperfected lien and should be afforded different treatment than the "normal run of the mill" unsecured creditors. Response at ¶¶ 7-8.

The attorney for the Chapter 13 trustee appeared at the hearing and restated her objection to the claim. It is against this factual backdrop that the Court now considers the matters at hand.

LAW AND ANALYSIS

The Court must look to state law to determine issues regarding perfection of security interests and the time at which a security interest is perfected. *See Farmer v. LaSalle Bank (In re Morgan)*, 291 B.R. 795, 799 (Bankr. E.D. Tenn. 2003) (citing *Hendon v. Gen. Motors Acceptance Corp. (In re B & B Utils., Inc.)* 208 B.R. 417, 421 (Bankr. E.D. Tenn. 1997)). The Tennessee statute regarding perfection of liens on automobiles is very clear and provides, in pertinent part:

(a) [A] lien or security interest in a vehicle of the type for which a certificate is required shall be perfected and shall be valid against subsequent creditors of the owner, subsequent transferees, and the holders of security interest and liens on the vehicle by compliance with this chapter.

(b)(1) A security interest or lien is perfected by delivery to the department or the county clerk of the existing certificate of title, if any, title extension form, or manufacturer's statement of origin and an application for a certificate of title containing the name and address of the holder of a security interest or lien with vehicle description and the required fee.

(2) The security interest is perfected as of the date of delivery to the county clerk or the department.

TENN. CODE ANN. § 55-3-126 (2021). Notation of the lien on the certificate of title is the only means of perfection (in this case) of an automobile lien in Tennessee, “and in fact, even in cases where notation did not occur by mistake of a governmental employee, courts have held that the security interests were not perfected.” *In re Morgan*, 291 B.R. at 801-02 (citing cases).

In this case, OneMain concedes that it achieved perfection of its lien on February 12, 2021 - almost five months after Debtor purchased the vehicle, and more than two months after this Chapter 13 case was commenced and the automatic stay was in place. It is well established that “[a]ctions taken in violation of the automatic stay generally are void, even if the creditor had no notice of the stay.” *Smith v. First Am. Bank, N.A. (In re Smith)*, 876 F.2d 524, 526 (6th Cir. 1989) (citations omitted). The post-petition perfection of a lien is one such action. *See* 11 U.S.C. § 362(a)(4) (“[A] petition filed under section . . . 302 of this title . . . operates as a stay, applicable to all entities, of . . . any act to create, perfect or enforce any lien against property of the estate.”).

OneMain argues, however, that despite its unperfected security interest, it still maintains status as a secured creditor and its claim should be treated in a special category. This argument fails. Looking again to TENN. CODE ANN. § 55-3-126 (a), an *unperfected* lien is *not* valid “against subsequent creditors of the owner, subsequent transferees, and the holders of security interest and liens on the vehicle.” The Chapter 13 trustee is one such creditor. “A creditor’s claim will not be allowed as secured if it is subject to avoidance by the bankruptcy trustee.”³ *In re Riddlesprigger*, 603 B.R. 824, 827 (Bankr. M.D. Ala. 2019) (citations omitted). Bankruptcy Code § 544(a) “gives the bankruptcy trustee the priority of a judgment lien creditor and allows the trustee to avoid an

³ It is well settled that the avoidance powers of Bankruptcy Code § 544 extend to trustees in Chapter 13 cases. *In re Bonner*, 206 B.R. 387, 388 (Bankr. E.D. Va. 1997) (citation omitted); *In re Lewis*, 363 B.R. 477, 481 (Bankr. D.S.C. 2007) (citations omitted).

unperfected security interest by relegating it to the status of an unsecured claim.” *Id.* (citations omitted). The Chapter 13 trustee, therefore, standing in the shoes of a hypothetical lien creditor, has the superior interest in the vehicle and OneMain’s only interest is that of an unsecured creditor.

Likewise, OneMain’s reliance on *Chrysler Fin. Corp. v. Nolan (In re Nolan)*, 232 F.3d 528 (6th Cir. 2000), is misplaced, as OneMain’s interest was, in fact, unsecured at the time it filed its proof of claim, and at the time the Debtors’ plan was confirmed. *See In re Riddlesprigger*, 603 B.R. at 827 (“Section 544 serves the purpose of cutting off unperfected security interests *as of the commencement of the case*. This, in turn, benefits creditors by increasing the size of the bankruptcy estate.”)(emphasis added)(citations omitted).

At the hearing on June 8, 2021, the Court asked OneMain’s counsel to point to a saving statute or a “safe harbor” that might provide an exception in this case to the applicable laws pertaining to perfection of liens, and counsel was, unfortunately, unable to do so. The Court, likewise, finds no way of saving OneMain’s purported lien.

The Court accordingly finds that “the risk of loss . . . should be borne by the secured party who is ultimately responsible for seeing that the lien is properly noted.” *Farmer v. LaSalle Bank (In re Morgan)*, 291 B.R. 795, 803 (Bankr. E.D. Tenn 2003) (quoting *Waldschmidt v. York (In re York)*, 43 B.R. 36, 38 (Bankr. M.D. Tenn. 1984)).

CONCLUSION

For the foregoing reasons, the Court finds that the Chapter 13 trustee’s Objection to the secured claim of OneMain Financial Group, LLC is sustained, and OneMain’s Motion for Relief from the Automatic Stay is denied. The Chapter 13 trustee may avoid the security interest of OneMain and treat it as an unsecured creditor. OneMain is hereby ordered to release its lien on

the Debtor's vehicle, and the Chapter 13 trustee shall modify the terms of the Debtors' Chapter 13 plan and the plan payments accordingly.

cc: Debtor
Attorney for Debtor
Attorney for OneMain Financial Group, LLC
Chapter 13 trustee
The Matrix