

IT IS HEREBY ADJUDGED
and DECREED this is SO
ORDERED.

The party obtaining this order is responsible for
noticing it pursuant to Local Rule 9022-1.

Dated: June 23, 2005



Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re)
EDWARD A. TUCKER and DEOLINDA)
V. TUCKER)
Debtors.)

Chapter 7
CASE NO. 2-01-10348-RJH

ROBERT J. DAVIS, Trustee,)
Plaintiff,)

ADVERSARY NO. 03-00709

v.

PAR WHOLESALE AUTO, INC.,)
Defendant.)

DAVCO ENTERPRISES, dba DAVCO)
MOTORS & DAVCO LEASING; and C.T.)
COOK,)
Plaintiff.)

ADVERSARY NO. 04-1179-RJH

v.

PAR WHOLESALE AUTO, INC., a Texas)
corporation; and JOHN and JANE DOES I)
thru X and BLACK & WHITE)
CORPORATIONS I thru IV,)
Defendants.)

**MEMORANDUM DECISION
GRANTING PAR WHOLESALE
SUMMARY JUDGMENT AS AGAINST
DAVCO ENTERPRISES**

Pending before the court are cross motions for summary judgment on the conflicting ownership claims made by Par Wholesale Auto, Inc. ("Par") and Davco Enterprises ("Davco") as to three vehicles.

The Court concludes that the undisputed facts establish the following:

1. Par sold the three vehicles to Debtor Tucker in April, 2001. When Tucker's

1 check bounced and he could not make it good, Par demanded return of the vehicles, with which
2 Tucker complied.

3 2. Davco provided inventory financing to Tucker and their relationship was that of
4 creditor and debtor.

5 3. Par obtained an issuance of new certificates of title for the vehicles in Texas in
6 May, 2001.

7 4. Although Davco may have held a certificate of title for the vehicles, he never had
8 possession of the vehicles and did not apply for a certificate of title with the Arizona Motor Vehicle
9 Division until June, 2001, after Par had already obtained certificates of title in Texas.

10 From these facts, the Court concludes that summary judgment must be granted in
11 favor of Par, and against Davco, for one or more of the following reasons:

12 1. The relationship between Tucker and Davco was merely that of debtor and
13 creditor, and Davco was at most a secured creditor holding an unperfected security interest.

14 2. The return of the vehicles to Par was pursuant to A.R.S. § 47-2702(B), and was
15 not subject to any superior rights of Davco pursuant to A.R.S. § 47-2702(C).

16 3. The purported transfer of ownership from Tucker to Davco is void as to Par
17 pursuant to A.R.S. § 44-1061.

18 4. Par's title to the vehicles is superior to Davco's because Par perfected first by
19 obtaining new certificates of title in Texas.

20 The Court will subsequently issue a supplemental memorandum decision providing
21 a more detailed analysis. In the meantime, however, the Court suggests that the Trustee or Par file
22 a motion for summary judgment for a determination of the legal issue as to whether a seller's
23 successful exercise of reclamation rights under UCC § 2-702 is immune from a trustee's preference
24 action.

25 Because this decision does not resolve all issues between all the parties, it is not a
26 final, appealable judgment pursuant to Bankruptcy Rule 7054.

27 DATED AND SIGNED ABOVE

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1 Copy of the foregoing faxed/delivered
2 this 24th day of June, 2005, to:

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16 _____
17 Deputy Clerk

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GRANTED