

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

MARK LESLIE MILLER and)
CHRISTI JAYE MILLER,)

CASE NO. BK81-1494)

DEBTORS)

A81-694)

FARMERS STATE BANK OF)
DOUGLAS, NEBRASKA, A)
Corporation,)

Plaintiff)

vs.)

MARK LESLIE MILLER and)
CHRISTI JAYE MILLER, and)
JOHN F. AKIN, Trustee,)

Defendants)

MEMORANDUM

This matter is before me upon a stipulated set of facts appearing in the order on pretrial conference which I incorporate by reference. In substance, Mr. and Mrs. Miller, before the filing of their petition for relief, obtained a loan from Farmers State Bank of Douglas, Nebraska, for the purchase of a 1981 automobile. The Millers purchased the automobile and received a certificate of origin for it. The stipulated facts provide, in Paragraph 4a:

"A certificate of origin for the 1981 AMC originating in Wisconsin on 11/24/80 and transferred by McGinnis Ford of Lincoln to debtors on 3/14/81."

The issue is whether the Farmers State Bank of Douglas, Nebraska, with its claimed security agreement should take priority over the trustee in bankruptcy.

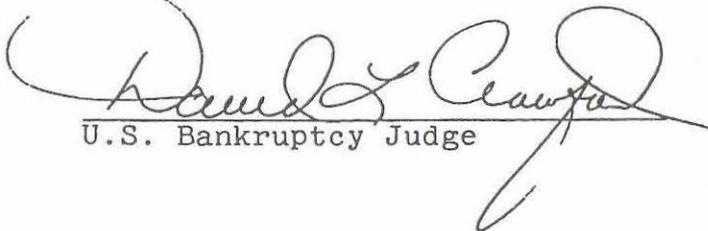
Under the facts before me, it is not clear whether the certificate of origin was in the possession of the Farmers State Bank of Douglas, Nebraska, at the time of the filing of this petition for relief. Under §60-10 R.R.S. 1943 and, specifically, the second sentence thereof, a security interest may be perfected by notation on the certificate of title or by possession of the manufacturer's certificate by the holder of the security interest. Under the posture of this case, the plaintiff claims priority over the rights of the trustee and bears the burden of establishing the facts to disclose

that priority. Since the evidence before me does not disclose the continued possession of the manufacturer's certificate of origin by the plaintiff, I conclude that the plaintiff has failed to meet the burden of establishing priority over the rights of the trustee and that its complaint should be dismissed. A separate order is entered in accordance with the foregoing.

DATED:

6-28-83

BY THE COURT:



U.S. Bankruptcy Judge

Copies to:

John M. Guthery, Attorney, 1806 First National Bank Bldg., Lincoln, NE
68508

John F. Akin, Attorney, 530 So. 13th Street, Lincoln, NE 68508

Leonard Dunker, Attorney, 907 Stuart Building, Lincoln, NE 68508