

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
OMAHA AVIATION, INC.,)	CASE NO. BK81-1520
)	
DEBTOR)	
)	A82-593
FIRST NATIONAL BANK OF)	
COUNCIL BLUFFS,)	
)	
Plaintiff)	
)	
vs.)	
)	
OMAHA AVIATION, INC.,)	
)	
Defendant)	

Appearances: Eric W. Kruger
300 South 19th Street
Omaha, NE 68102-1967
Attorney for plaintiff

James Benak
10306 Regency Parkway Drive
Omaha, Nebraska
Attorney for defendant

MEMORANDUM

This matter comes before the Court on a Motion for Summary Judgment filed by the defendant/debtor.

The parties have agreed that the following may be established as facts for the purposes of this hearing. The Plaintiff, First National Bank of Council Bluffs (Bank), has a perfected security interest in one Beech aircraft, Model V35A, in the amount of \$45,000. The security interest, executed by John W. Gritz in favor of the plaintiff on August 19, 1980, was filed with the FAA Aircraft Registry September 5, 1980, and recorded therewith September 30, 1980. The Debtor, Omaha Aviation, Inc., performed certain mechanical work on the aircraft during the year 1981 and retained possession of the craft pursuant to a possessory artisans lien. No filing was made of that lien with the FAA Aircraft Registry. By mutual consent of the parties, the aircraft was delivered to the Bank and funds representing the amount of payment to the defendant for its mechanical work were deposited in trust. The sole issue in this case, and the one upon which motion for summary judgment has been made, is whether defendant's possessory artisan's lien for mechanical work performed on the aircraft has priority over the Bank's lien recorded in accordance with the terms

of 49 U.S.C. §1403.

It is the position of the defendant that the federal statute, 49 U.S.C. §1403, protects the validity of the plaintiff's security interest but does not necessarily establish the priority of its lien. Priority, the defendant contends, is to be determined pursuant to applicable state law. In support of this allegation, the defendant cites both 49 U.S.C. 1403 and the Nebraska artisan's lien statute. The federal statute at 1403(d) establishes the validity as against all persons of each conveyance properly recorded with the Federal Registry from the time of its filing for recordation in those offices. As priority is not part of the statutory language, state law must control. Nebraska Revised Statutes §52-201 R.R.S. 1943 (Reissue 1978), provides that any person who makes repairs on any vehicle is entitled to a possessory lien in the amount representing his reasonable or agreed upon charges for work done or material furnished and gives such artisan the right to retain the property until appropriate charges are paid. In support of its argument, the defendant cites to this Court the case Southern New Jersey Airways vs. National Bank of Secaucus, 108 N.J. Supp. 369, 261 A.2d 399 (1970), which held that federal recordation would serve to validate title or encumbrances upon an aircraft but would not necessarily create an absolute priority against competing rights arising under state law.

The plaintiff, referring to the same statutory subsection which forms the basis of defendant's argument, that is, 49 U.S.C. §1403, contends that the federal statute establishes not only the validity of such security interest but also the absolute priority thereof. Cited in support of this argument is a case from the Ninth Circuit, In Re Holiday Airlines Corp., 620 F.2d 731 (9th Cir. 1980). That case provides that the provisions of the Federal Aviation Act preempt the priority established by state artisan's liens law but does not affect the state law determination of the validity of such liens.

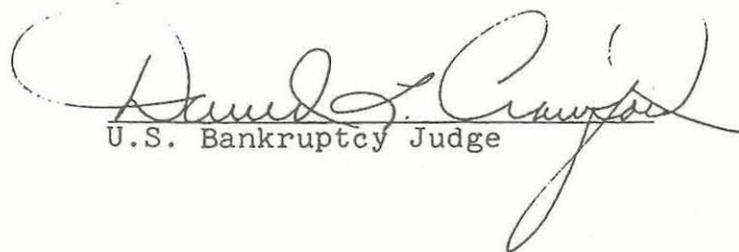
This Court has addressed the issue of the effect of 49 U.S.C. §1403 in the matter of Charles R. Turner, Cessna Finance Corporation v. Millard Aviation, Inc., et al. 13 B.R. 15,21; 32 U.C.C. Rep. Serv. 1240, 1247 (D. Neb. 1981). This Court held ". . .that the filing requirements of 49 U.S.C. §1403 only preempt state law to the extent of providing a single location for filing documents affecting interests in aircraft, leaving the question of legal effect of filing to be determined under applicable state law." (See also Sanders v. M.D. Aircraft Sales, Inc., 575 F.2d 1086 (3rd Cir. 1978)). That case is dispositive of this matter and mandates a decision in favor of the defendant. The validity of plaintiff's recorded security interest under the Federal Aviation Act is well established yet priority must be a matter considered pursuant to Nebraska state law. Under the Nebraska statute, while the defendant maintained possession of the vehicle, the artisan's lien so established had priority over the perfected security interest held by the plaintiff. Nebraska

Revised Statute 52-201 permits that artisan to retain property until his reasonable charges are paid. This section coupled with Nebraska Revised Statute U.C.C. 9-310, gives the artisan priority over a prior-recorded security interest, in this case that of First National Bank of Council Bluffs. The plaintiff would argue that Article 9 of the Nebraska Uniform Code does not apply because §9-104(a) excludes from Article 9 a security interest ". . .subject to any statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property." However, the Comments (1972) to this section indicate specific qualification of security interests arising under the Federal Aviation Act. It is suggested that to the extent that the Federal Aviation Act does not regulate the rights of parties to and third parties affected by such transactions, any security interest in the aircraft would remain subject to Article 9. As this Court has held that the Federal Aviation Act 49 U.S.C. 1403 et seq. applies only to recorded interests in the aircraft, I find that the facts of this case place it outside the exclusionary provisions of 9-104. As the lien of First National Bank of Council Bluffs is not statutory, a possessory artisan's lien obtained by virtue of work performed upon the aircraft held by Omaha Aviation Incorporated must take priority.

Defendant is therefore entitled to the funds held in trust by the law firm of Kennedy, Holland, DeLacy & Svoboda in the amount of \$2,277.08. Summary judgment is granted in favor of the defendant. A separate judgment is entered in accordance with the foregoing.

DATED: June 29, 1983.

BY THE COURT:


U.S. Bankruptcy Judge

Copies to attorneys entering appearances.