

EDDIE'S WHOLESALE JEWELRY § STATE OF ALABAMA  
266 North Beltline Highway DEPARTMENT OF REVENUE  
Mobile, Alabama 36607, § ADMINISTRATIVE LAW DIVISION  
Taxpayer, § DOCKET NO. MV. 94-445  
v. §  
STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

FINAL ORDER

Eddie's Wholesale Jewelry ("Eddie's Wholesale") applied with the Revenue Department to be recorded as first lienholder on a certificate of title for a 1985 Pontiac 6000 STE, VIN # 2G2AH19W6F9731285. The Department denied the application and Eddie's Wholesale appealed to the Administrative Law Division. A hearing was conducted on March 24, 1995 in Mobile, Alabama. Assistant counsel Duncan Crow represented the Department. Candy Povilonis appeared for Eddie's Wholesale. Attorney Greg Carwie represented David Sweatt, who also appeared at the hearing. No address was available for A. V. Osborn.

This case involves two related issues: (1) Should the outstanding replacement certificate of title for the vehicle in question be revoked; and (2) should a new certificate be issued showing Eddie's Wholesale as first lienholder.

On March 29, 1993, the Department issued a certificate of title for the subject vehicle to "David H. Sweatt or Anthony V. Osborn". The certificate listed SouthTrust Bank as first lienholder.

On March 30, 1994, Osborn pawned the certificate of title with

Eddie's Wholesale for \$900 cash. Osborn signed the blank assignment of title section on the back of the certificate and left the certificate with Eddie's Wholesale.

Osborn failed to make a scheduled payment, and Eddie's Wholesale repossessed the vehicle from Osborn. Eddie's Wholesale later agreed to release the vehicle to Sweatt with the understanding that back interest due would be paid in full and future payments would be timely made. Sweatt paid the back interest due of \$450 on August 1, 1994. Sweatt and Osborn later met with Candy Povilonis at Eddie's Wholesale on August 8, 1994, at which time Povilonis showed Sweatt the outstanding certificate of title for the vehicle in her possession.

Sweatt subsequently applied to the Department for a replacement certificate of title for the vehicle. Sweatt stated on the application that the original certificate had been lost. That application was signed by Sweatt on August 8, 1994, and was received by the Department on August 19, 1994. The Department approved the application on September 19, 1994, and a replacement certificate was issued to Sweatt on September 30, 1994.

In the meantime, Sweatt and Osborn failed to make the monthly payment due to Eddie's Wholesale on August 30, 1994. Eddie's Wholesale attempted to again repossess the vehicle. However, the vehicle could not be located, and Eddie's Wholesale thereafter sought to perfect its security interest in the vehicle by applying with the Department to be listed as first lienholder on the

certificate of title. Eddie's Wholesale submitted the application to be listed as lienholder and the original certificate of title to the Department on September 19, 1994. However, by the time the Department could review the application, the replacement certificate of title had already been issued to Sweatt and Osborn, and the original title revoked. Consequently, the Department denied the application by letter dated October 28, 1994. Eddie's Wholesale thereafter appealed to the Administrative Law Division.

The first issue is whether the replacement certificate of title was properly issued to Sweatt and Osborn.

Code of Ala. 1975, §32-8-49 authorizes the Department to revoke a certificate of title if the title was fraudulently procured or erroneously issued. The application for the replacement title signed by Sweatt on August 8, 1994 indicated that the original certificate of title had been lost. However, Povilonis had showed Sweatt the original title in her possession when they met at Eddie's Wholesale on August 8, 1994. Sweatt thus knew that the original certificate of title was not lost. Consequently, because Sweatt's application for replacement title erroneously indicated that the title was lost, the replacement title was erroneously issued and should be revoked.

The next issue is whether Eddie's Wholesale should be listed as first lienholder on any subsequent certificate of title for the vehicle.

Eddie's Wholesale obtained a security interest in the vehicle

pursuant to the pawn transaction on March 30, 1994. A security interest in a motor vehicle must be perfected as provided at Code of Ala. 1975, §§32-8-61 and 32-8-62. If a creditor properly applies to be listed as a lienholder within 20 days after the security interest is created, the interest relates back and is deemed perfected at the time of its creation. If the creditor applies after the 20 day grace period, the security interest is perfected as of the time the creditor files his application with the Department. In other words, a lienholder can still perfect his security interest in a vehicle more than 20 days after its creation. The only difference is that the perfection does not relate back to the date of creation, but rather is good only from the time the lienholder applies with the Department.

Eddie's Wholesale delivered its application to be listed as first lienholder, the outstanding certificate of title for the vehicle, and the required fee to the Department on September 19, 1994. Eddie's Wholesale complied with §32-8-61 and thus perfected its security interest in the vehicle effective that date, notwithstanding that a replacement certificate of title was approved on that same day and issued on September 30, 1994.

The above considered, the Department is directed to revoke the replacement certificate of title previously issued to Sweatt and Osborn, and to issue a new certificate of title showing Sweatt and Osborn as owners and Eddie's Wholesale as first lienholder.

I should add that while Eddie's Wholesale's security interest

in the vehicle was unperfected, it was not valid against any creditors of Sweatt or Osborn or against any subsequent transferees or lienholders. See, §32-8-61(a). However, the vehicle was not transferred by Sweatt or Osborn, and no creditors or other lienholders perfected an interest in the vehicle prior to Eddie's Wholesale. Eddie's Wholesale thus should be listed as first lienholder on the title.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered April 13, 1995.

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BILL THOMPSON  
Chief Administrative Law Judge