

**IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

**IN RE: ANGELIA MICHELLE BUFORD  
DEBTOR**

**CASE NO: 5:08-bk-11968  
CHAPTER 7**

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**RENEE S. WILLIAMS, CHAPTER 7 TRUSTEE**

**PLAINTIFF**

**VS.**

**AP No. \_\_\_\_\_**

**AMERICAN HONDA FINANCE CORPORATION**

**DEFENDANT**

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**COMPLAINT FOR DECLARATORY JUDGEMENT AVOIDING LIEN AND  
FOR DAMAGES AND SANCTIONS**

**Introduction**

1. This is an action brought by Renee S. Williams, Chapter 7 Trustee, by and through her attorneys, Joel Hargis and Annabelle Patterson, for a Declaratory Judgment avoiding the lien of American Honda Finance Corporation (hereinafter “Honda Finance”) pursuant to 11 U.S.C. §544(a)(1). This is also an action to determine the secured status of the Defendant in this case pursuant to Sections 105(a), 502(b) and 506 of the Bankruptcy Code and Amended Rule 3007 of the Bankruptcy Rules.

2. The Plaintiff is also seeking the recovery of actual and punitive damages from the Defendant pursuant to Section 105(a) of Title 11 of the United States Code, as amended, and commonly referred to as the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (hereinafter the “Bankruptcy Code”).

3. The Plaintiff also seeks the recovery of actual and punitive damages from the Defendant pursuant to 11 U.S.C. §362(a)(3) for a violation of the automatic stay.

### **JURISDICTION**

4. This is a core proceeding as that term is defined by Section 157(b)(2) of Title 28 of the United States Code in that it concerns claims and matters arising out of the administration of this bankruptcy case and rights duly established under Title 11 of the United States Code and other applicable federal law. In the unlikely event this Court determines that this is not a core proceeding, then the Plaintiff consents to the entry of a final order by the Bankruptcy Court.

5. This Court has both personal and subject matter jurisdiction to hear this case pursuant to Section 1334 of Title 28 of the United States Code and Section 157(b)(2) of Title 28 of the United States Code.

6. Venue lies in this District pursuant to Section 1391(b) of Title 28 of the United States Code.

### **PARTIES AND THE BASE CASE**

7. Plaintiff is the duly appointed trustee in this Case commenced by the filing of a petition with the clerk of this Court on March 31, 2008.

8. Defendant, Honda Finance, is a foreign corporation doing business in the State of Arkansas, with its principal business location at 700 Van Ness Ave., Torrance, California. Honda Finance has a designated agent for service in the State of Arkansas, registered with the Arkansas Secretary of State's Office as The Corporation Company, 124 W. Capitol Ave., Ste. 1400, Little Rock, AR. 72201.

9. Debtor's petition and schedules filed in this case indicate that debtor had

an ownership interest in a 2007 Honda Accord, bearing Vehicle Identification Number #1HGCM55197A092926, with an alleged secured debt owing to Honda Finance in the amount of \$18,820.84. Debtor listed the value of the vehicle as unknown. Debtor's Statement of Intentions indicated that Debtor would reaffirm the debt allegedly owed on the vehicle to Honda Finance.

10. Honda Finance, by its attorney, filed a Motion for Relief from Stay on April 29, 2008. The Motion for Relief states that Honda Finance is a creditor of debtor by virtue of a retail installment contract entered into on February 27, 2007. The Motion further alleges that Honda Finance holds a validly perfected, first priority security interest in the 2007 Honda Accord, bearing Vehicle Identification Number #1HGCM55197A092926, as noted on the Direct Lien Filing and/or Certificate of Title issued by the State of Arkansas. A copy of the contract and title are attached to the Motion for Relief from Stay, and the Certificate of Title shows "American Honda Finance", as first lienholder. The Plaintiff alleges that by filing the contract and title with the motion, the Defendant has made a judicial representation to this Court that it is the lawful "holder" of the Retail Installment Sales Contract, and that it is the lawful beneficiary and owner of the first lien on the said certificate of title.

11. Plaintiff has filed a response to the Motion for Relief from Stay on May 15, 2008, denying that Honda Finance holds a validly perfected security interest in the 2007 Honda Accord, in conjunction with this adversary proceeding.

12. The Plaintiff is informed and believes and therefore alleges that the Defendant is engaged in the business of providing interim financing to duly licensed franchised dealers of Honda Motor Company U.S.A., which financing allows consumers

to purchase new and used motor vehicles from the Honda dealers. Such financing is arranged by the agreement of the Defendant to purchase certain designated Retail Installment contracts from the respective dealers. In connection with these transactions, the Plaintiff believes and therefore alleges that the respective Honda dealers are required to file proper documentation with their respective State Divisions of Motor Vehicles so as to reflect on the certificates of title that the Defendant holds a first lien position with respect to the financed vehicles.

13. In the ordinary course of business, the Plaintiff alleges upon information and belief, that the Defendant sells all or a significant portion of its automotive finances receivables (e.g., the Retail Installment Sales Contracts) to trusts and third-party entities as asset-backed securitizations and as whole loan sales. The Plaintiff also believes and therefore alleges that these asset-backed securitizations involve the “true sale” of the retail installment obligations from the Defendant to the depositor and from the depositor to the trusts and to other third parties. The trusts and third parties purchase these assets with cash raised through the issuance of beneficial interests (usually bonds, debt instruments, etc.) to third-party investors (hereinafter collectively referred to as “the trusts”).

14. The Plaintiff believes that after the sale of the contracts the respective trusts and third-party entities become the legal and beneficial owners of the financial instruments.

15. The Plaintiff believes and therefore alleges that in many of these transactions the Defendant retains a residual beneficial interest in the cash flow from the receivables, but that such a residual interest is subordinated to the rights of the owners of

the trusts to the income streams. To that extent, the residual interest is a credit enhancement to the investors in the respective trusts designed to absorb substantially all credit defaults, prepayments of loans, and interest-rate risks of the receivables transferred to the trusts. The Plaintiff further alleges on information and belief that the retention of these “residual” rights does not provide the Defendant with any direct interest in any of the underlying assets of the respective trusts.

16. The Plaintiff believes and therefore alleges that in a smaller number of transactions the Defendant transfers the automotive finance receivables (i.e., the Retail Installment Sales Contracts) to third-party trusts in transactions wherein it does not retain any residual interest in the trusts and therefore bears no risk of loss related to the receivables. The Plaintiff alleges that the Defendant refers to these transactions as “whole loan sales.”

17. The Plaintiff alleges that these trusts are considered Qualifying Special Purpose Entities (“QSPEs”) under the Generally Accepted Account Standards (SFAS 140) and are therefore are not considered to be a “consolidated group” with Defendant. The Plaintiff also believes that these trusts are considered to be variable interest entities (“VIEs”) under applicable Federal law and regulations.

18. Since most of the trusts are QSPEs, they are also multi-seller and multi-collateralized bank conduits subject to regulation by the Office of Thrift Supervision and the Comptroller of the Currency as well as the Securities and Exchange Commission.

19. The Plaintiff alleges that the bonds or investment certificates issued by the trusts are subject to specific registration requirements as provided for by the Securities and Exchange Commission Act. Under the Act, the trusts are required to file and register

with the SEC a Prospectus and Prospectus Supplement for the benefit of the potential third-party investors. The Plaintiff alleges that the purpose of these required filings is to, among other things, apprise the public of all known risks associated with the investments.

20. Upon information and belief, the Plaintiff avers that the true owner and holder of the security interest in the debtor's vehicle is "Honda Auto Receivables 2007-2 Owner Trust" (hereinafter referred to as the "trust"), or a subsequent Trust agreement between Honda Finance and Honda Auto Receivables Owner Trust. Plaintiff cannot determine at this point which trust the Retail Installment Contract in this case was placed in because the schedule of receivables has been omitted from the Receivables Purchase agreements. However, the agreements state that the schedules are kept on file at the offices of the seller, purchaser, and indenture trustee. Plaintiff believes that the schedule of receivables evidencing the trust that owns the contract at issue herein can be obtained through discovery. A copy of the Prospectus and Prospectus Supplement for Honda Auto Receivables 2007-2 Owner Trust is attached hereto as Exhibit "A" and made a part hereof. The Prospectus and Prospectus Supplement are attached hereto for purposes of demonstration, and Plaintiff believes that if the vehicle in question is not part of the specified trust, that the vehicle is in a trust governed in all material respects by substantially similar or virtually identical documents.

21. Upon information and belief, the Plaintiff avers that upon origination of the debtor's Retail Installment Sales Contract and security interest on February 27, 2007, the contract and security interest were subsequently bundled with other such contracts and security interests, sold to American Honda Receivables Corporation as depositor, and then re-sold to the trust. A copy of the Receivables Purchase Agreement between Honda

Finance as “seller” and American Honda Receivables Corporation as “purchaser” is attached hereto as Exhibit “B” and made a part hereof. The Receivables Purchase Agreement is attached hereto for purposes of demonstration, and Plaintiff believes that if the vehicle in question is not part of the specified trust, that the vehicle is in a trust governed in all material respects by substantially similar or virtually identical documents.

22. The Receivables Purchase Agreement clearly states that seller, Honda Finance, hereby sells, transfers, assigns, sets over, and otherwise conveys, to the purchaser, and the purchaser hereby purchases from the seller, *without recourse*, ..., all of the right, title, and interest of the seller, to and under the following: (i) the Receivables listed in the Schedule of Receivables and all monies due thereon or paid thereunder or in respect thereof; ... (ii) the security interest in the Financed Vehicles....

23. Plaintiff further alleges that the Receivables Purchase Agreement states that:

“(xiv) Good Title. It is the intention of the Seller that the transfer and assignment herein contemplated, taken as a whole, constitute a sale of the Receivables from the Seller to the Purchaser and that the beneficial interest in and title to the Receivables not be part of the debtor’s estate in the event of the filing of a bankruptcy petition by or against the Seller under any bankruptcy law.”

24. Plaintiff further alleges that American Honda Receivables Corporation, through a sales and servicing agreement, further sold, transferred, or assigned its interest in debtor’s vehicle to a Honda Auto Receivables Owner Trust, whether the 2007-2 Trust or a subsequent similar trust. The Sales and Servicing Agreement is attached hereto as Exhibit “C” and made a part hereof. The Sales and Servicing Agreement is attached hereto for purposes of demonstration, and Plaintiff believes that if the vehicle in question is not part of the specified trust, that the vehicle is in a trust governed by a substantially

similar or virtually identical document.

25. Plaintiff alleges that the Sales and Servicing Agreement under Section 2.01(a) states, in pertinent part:

“In consideration of the Issuer’s [Honda Auto Receivables 2007-2 Owner Trust] delivery to or upon the order of the Seller [American Honda Receivables Corporation] of the Certificates and the net proceeds of the sale of the Notes, ..., the Seller does hereby sell, transfer, assign, set over, and otherwise convey to the Issuer, *without recourse* (subject to the obligations of the Seller set forth herein), all right, title and interest of the Seller in, to and under:

- (i) The Receivables and all monies due thereon or paid thereunder or in respect thereof;
- (ii) The security interest in the Financed Vehicles; ...

The Seller hereby confirms to the Issuer that, as of the Closing Date, the Seller shall have caused the portions of all related electronic records relating to the Receivables to be clearly and unambiguously marked, and shall have made the appropriate entries in its general accounting records, to indicate that such Receivables have been transferred and sold to the Issuer.

26. The Plaintiff alleges that the Prospectus Supplement clearly states that Honda Finance, as the originator, will assign its security instruments to the depositor, who will assign it to the trust. Furthermore, the Prospectus Supplement states that Honda Finance, will continue to hold the certificates in the capacity of an administrative lien holder.

27. The Plaintiff alleges that the Prospectus in the Risk Factors Section, beginning on page 11 of the Prospectus clearly and unequivocally states:

“Another person could acquire an interest in a vehicle financed by a receivable that is superior to the trust’s interest in the vehicle because of the failure to identify the trust as the secured party on the related certificate of title. While American Honda Finance Corporation, as originator, will assign its security interest in the financed vehicles to the depositor, and the depositor will assign to the trust its security interests in the financed vehicles, the servicer will continue to hold the certificates in the capacity of an administrative lienholder of title or ownership for the vehicles. However, for administrative reasons, the servicer **will not endorse or otherwise amend the certificates of title or ownership to identify the trust as the new secured party. Because the trust will not be identified as the secured party on any certificates of**



**title or ownership, the security interest of the trust in the vehicles may be defeated through fraud, forgery, negligence or error and as a result the trust may not have a perfected security interest in the financed vehicles in every state.”** (Emphasis added.)

28. The debtor alleges that pursuant to Ark. Code Ann. §27-14-806 a security interest in a motor vehicle may only be perfected by the application to and notation of the name and address of the holder of the security interest on the certificate of title for the motor vehicle. Specifically, the Plaintiff alleges that Ark Code Ann. §27-14-806 provides that:

**27-14-806 Optional Means of Recording**

(a)(1)(A) At his or her option, a lienholder may:

(i) Record the lien of the manufacturer's statement of origin; or

(ii) Record the lien on an existing certificate of title; and

(B) File with the Revenue Division of the Department of Finance and Administration a certified copy of the instrument creating and evidencing the lien or encumbrance.

....

(4) The recording or filing shall constitute constructive notice of the lien against the vehicle described therein to creditors of the owner, subsequent purchasers, and encumbrancers, except those liens that are by law dependent upon possession.

....

(b)(1)(A) The lien shall be deemed perfected and the constructive notice shall be effective from the date of the execution of the instrument creating and evidencing the lien or encumbrance if it is filed as authorized in this section within thirty (30) days after the date of the execution thereof.

(B) If the instrument is filed more than thirty (30) days after the date of the execution thereof, the lien shall be deemed perfected and the constructive notice shall date from the time of the filing of the instrument.

29. The Plaintiff further alleges that the provisions of Ark Code Ann. §27-14-806 provide the exclusive methods of giving constructive notice of a lien or encumbrance upon a registered vehicle pursuant to Ark. Code Ann. §27-14-807.

30. The Plaintiff is informed and believes and therefore alleges that under the mandatory provisions of Ark Code Ann. §27-14-806 if the application for notation of a security interest with the required fee is delivered to the Department of Finance and

Administration within 30 days after the date of the security agreement, the security interest is perfected as of the date of the execution of the security agreement. Otherwise, the Debtor alleges that the security interest is not perfected until the date of the actual delivery of the application to the Division.

31. The Plaintiff further alleges that pursuant to Ark Code Ann. §27-14-908, any person holding a lien or encumbrance on a vehicle may assign the title or interest in or to the vehicle to another party without the consent of the owner, but is under a legal duty to give written notice of the assignment to the owner. The Office of Motor Vehicles, upon receiving a certificate of title assigned by a lien holder, is required to issue a new certificate of title. If the said secured party fails or neglects to enter the transferee's name on a properly endorsed certificate of title, or fails or neglects to properly endorse and deliver a certificate of title to a transferee or owner entitle thereto, Ark Code Ann. §27-14-901 provides that such failure constitutes a criminal misdemeanor under Arkansas Law.

32. The Plaintiff alleges that under Ark Code Ann. §27-14-909 upon the satisfaction or other discharge of a security interest in a motor vehicle for which the certificate of tile is in the possession of the secured party, the secured party shall within 10 days after receipt of final payment under Ark. Code. Ann. §4-4-215, execute a release of his security interest, in the space provided on the certificate, and mail or deliver the certificate and release to the next secured party named therein, or if none, to the owner or other person authorized to receive the certificate for the owner. Ark. Code Ann. §4-4-215 states, in pertinent part, as follows:

(a) An item is finally paid by a payor bank when the bank has first done any of the following:

- (1) paid the item in cash;
- (2) settled for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement....

33. The debtor alleges that the sale of the retail installment contract and security interest in this case by the Defendant to a trust as alleged herein was for cash or equivalent consideration and that such transaction triggered the mandatory provisions Ark Code Ann. §27-14-909. The Plaintiff further alleges that rather than complying with this mandatory provision the Defendant did not release its lien on the certificate of title but rather retained such title with the lien duly noted thereon.

34. Alternatively, if the transaction was not completed by cash settlement, Plaintiff alleges that the Receivables Purchase Agreement between the seller, Honda Finance, and the depositor, Honda Receivables, was made without recourse, thus satisfying the requirements for a final payment pursuant to Ark. Code Ann. §4-4-215.

35. The Plaintiff also alleges upon information and belief that after the sale of the retail installment contract and security interest to the trust the Defendant failed by its own admission to notify the debtor or the Office of Motor Vehicles pursuant to Ark Code Ann. §27-14-908.

36. The Plaintiff alleges upon information and belief that the Defendant and the trust had actual knowledge of the Arkansas motor vehicle title laws and of the consequences of their failure to follow the same, but in order to avoid the expenses of compliance, willfully and intentionally elected not to comply at their own risk and as a fully disclosed risk to the investors who purchased bonds or certificates issued by the Underwriter for the trust.

**FIRST CLAIM FOR RELIEF**  
**DECLARATORY JUDGMENT THAT BOTH THE DEFENDANT AND**  
**TRUST ARE UNSECURED, VOIDING THE LIEN OF DEFENDANT, AND FOR**  
**TURNOVER OF THE PROPERTY TO THE TRUSTEE**

37. The allegations contained in Paragraphs 1 – 36 of this complaint are realleged and incorporated herein by this reference.

38. The Plaintiff, pursuant to 11 U.S.C. §544 shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by--

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists; ....

39. Defendant, Honda Finance, by virtue of the sale of debtor's note to the trust, no longer has a valid security interest in the note.

40. Defendant, Honda Finance, has never transferred its security interest pursuant to the Arkansas Motor Vehicle Title Laws to the trust.

41. The trust is not notated as a lien holder on the certificate of title, and is therefore not perfected under Arkansas law. The trust, by not being properly perfected, has only the rights of an unsecured creditor.

42. The Plaintiff's interest under 11 U.S.C. §544 is therefore superior to the interest of the trust, and the lien of Defendant may be avoided.

43. Based upon the foregoing, the Motion of the Defendant to abandon the property should be denied, and the property should be turned over to the Trustee as property of the estate.

**SECOND CLAIM FOR RELIEF**  
**VIOLATION OF THE AUTOMATIC STAY PURSUANT TO 11 U.S.C.**  
**§362(a)(3)**

44. The allegations contained in Paragraphs 1 – 43 of this complaint are realleged and incorporated herein by this reference.

45. Defendant, in its Motion for Relief from Stay, has stated unequivocally that it holds a validly perfected, first priority security interest in debtor's vehicle.

46. This statement is false and misleading. The Receivables Purchase Agreement states that the parties intent is that the transfer of the receivables is intended to constitute a sale between the parties. The Prospectus and Prospectus supplement clearly indicate that the note is owned by the trust. Furthermore, the Defendant and the trust both have knowledge the trust may not be perfected in some States because of the language in the Prospectus under risk factors.

47. Defendant's Motion for Relief from Stay is an attempt to exercise control over property of the estate in which it has no enforceable rights or interests to the detriment of the estate, the trustee, and other unsecured creditors. If the vehicle is deemed unsecured, then there will be non-exempt assets subject to sale by the trustee. The trustee is, therefore, subject to the loss of her statutory percentage of the funds realized from the sale of the non-exempt property. Unsecured creditors will be harmed due to the preferential treatment received by another unsecured creditor, the Defendant.

48. As such, defendant is liable for actual damages for violation of the automatic stay.

49. Defendant should also be liable for punitive damages for its willful misrepresentation of its legal status as the owner and holder of the note at issue herein.

**WHEREFORE**, the Plaintiffs respectfully pray of the Court as follows:

- A. That this Court issue its Order denying Defendant's Motion for Relief from stay;
- B. That this Court issues its Order avoiding the security interest claimed by American Honda finance Corporation in the 2007 Honda Accord;
- C. That this Court issue its Order for the turnover of the 2007 Honda Accord to the trustee;
- D. That the Plaintiff be awarded actual damages for Defendant's violation of the automatic stay;
- E. That the Plaintiff be awarded punitive damages for Defendant's violation of the automatic stay;
- F. For attorneys' fees and costs incurred in this matter; and
- G. For all other just and proper relief to which she may be entitled.

Dated this 15th day of May, 2008.

Respectfully submitted,

/s/ Joel G. Hargis  
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