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1. MOTOR VEHICLE—FIRST LIENHOLDER ON CERTIFICATE OF TITLE—WHERE UNDER SECTION 6290-10 G. C. HE TAKES CERTIFICATE IN HIS OWN NAME AND TAKES POSSESSION OF VEHICLE UPON OWNER'S DEFAULT, FIRST LIENHOLDER OWES NO LEGAL OBLIGATION TO NOTIFY OR INFORM SUBSEQUENT LIENHOLDERS OF HIS INTENTIONS.

2. NEW CERTIFICATE OF TITLE—CLERK OF COURTS SHOULD NOTE THEREON ALL LIENS OF RECORD IN HIS OFFICE—OMISSION—DELETION—SATISFACTION—EXTINCTION—LIENS IN FAVOR OF RECIPIENT OF NEW CERTIFICATE.

SYLLABUS:

1. Where a first lienholder on a certificate of title to a motor vehicle proceeds as required by Section 6290-10, General Code, to take certificate in his own name and take possession of the vehicle upon the owner's default of the terms of his agreement, such first lienholder owes no legal obligations to notify or inform subsequent lienholders of his intentions.

2. When a new certificate of title is issued to one entitled to same, the clerk of courts will note thereon all liens evidenced by records in his office and shall omit or delete none except where the application is accompanied by proper evidence of their satisfaction and extinction, and this applies as well to any liens in favor of the recipient of the new certificate.

Columbus, Ohio, January 24, 1950

Hon. Frank M. Quinn, Registrar, Bureau of Motor Vehicles
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"In furtherance of our telephone conversation as of today, am respectfully requesting an informal opinion on the following questions submitted to me by the Ross County Clerk of Courts:

'Please advise concerning the following:

A certificate of title is presented for repossession. The title bears two mortgages (a first and second lien) with two different lienholders.

Can the first lienholder, who has priority, repossess the car without the knowledge of the second lienholder. Is it necessary that we have the release of the first mortgage only, or the release of both mortgages before we can issue the repossession title to the first lienholder, or should the repossession title be issued showing the second lien as becoming the first lien.'

These same questions have come up in various forms, but the point brought out in Thomas L. Orr, Ross County Clerk of Courts' letter are the common questions asked by the various Clerks."

Section 6290-10 of the General Code reads, in so far as it pertains to your question, as follows:

"In the event * * * repossession is had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract or other like agreement, the clerk of courts of the county in which the last certificate of title to said motor vehicle was issued, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof to the said clerk of courts of ownership and right of possession to such

motor vehicle, and upon payment of the fee prescribed in this chapter, and presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. Only an affidavit by the person, or agent of the person to whom possession of such motor vehicle has so passed, setting forth facts entitling him to such possession and ownership, together with the copy of the journal entry, court order or instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession. * * * If from the records in the office of said clerk of courts, there appear to be any lien or liens on said motor vehicle, *such certificate of title shall contain a statement of said liens unless such application is accompanied by proper evidence of their satisfaction or extinction.*" (Emphasis added.)

In considering your question I must read the law in the light of what appears to me to be reasonable and practical business procedure and common sense. And for the purpose of clarity I will state the problem as follows:

X owns a motor vehicle and gives a first lien on same to A who is given the certificate of title issued in X's name. X afterwards becomes indebted to B and A surrenders the certificate of title to the clerk of courts who notes thereon B's lien as the second lien. X defaults on his contract mortgage or other instrument which he gave to A, and A desires to take possession of the motor vehicle in accordance with the terms of the instrument evidencing the indebtedness.

A can have only one legitimate interest in the motor vehicle and that interest is to have the value of same to the extent of his lien liquidated and applied to the payment of that lien. In order to accomplish this, one of the methods he may pursue is to gain actual possession of the vehicle. He proceeds to take full advantage of the repossession clause of his agreement with X. Under the terms of his instrument he takes possession, and he is certainly armed, without question, with the right, under the above quoted provision of law, to present his evidence and procure a certificate of title in his own name, so that he can register it, procure plates and take personal possession. When the certificate is issued to him the clerk of courts must note thereon all other liens according to their priority, and since B's lien is a matter of record in his office and is noted on the record which A surrenders, B's lien must be noted on the certificate issued to A. (See last sentence of Section 6290-10, supra.)

In such procedure as above outlined, whether B was notified, had knowledged or not, he has not been injured and A has gained no advantage over him. I do not know of any provision of law requiring A to inform B that he contemplated proceedings as he did. As a matter of fact B should have been clearly aware that in the event of X's default to A, that A would do just the thing he did.

Therefore, in answer to your first question I am of the opinion that A, first lienholder on a certificate of title to a motor vehicle, is under no legal obligation to notify a subsequent lienholder if and when he repossesses the vehicle for a default by owner of the terms of agreement evidencing the lien. Although I have given you my opinion as to your first question, I deem it proper to advise that in my opinion it is no official concern of the Registrar of Motor Vehicles or the clerks of county courts whether subsequent lienholders should be notified or not in such instances.

Coming now to your second question, which I will reword for the purpose of clarity:

Where a first lienholder on a motor vehicle presents evidence of his right to take possession of the vehicle and a certificate of title is issued to him, what liens are released, if any, on such certificate? And, if not released, in what order shall they appear on the new certificate? Designating the parties X, A and B in the same relationship as above, I think we must also approach this problem realistically in the light of good business practice and common sense in connection with applicable law.

A has made application for a certificate of title for the purpose of taking the vehicle into his possession and has issued to him such certificate. Assuming he registers the car in his own name, procures plates, and secures personal possession, he does so only for the purpose of securing his lien. The motor vehicle remains and continues to remain liable for the payment of liens other than the first lien to the extent of the value over and above the amount of the first lien. Let us assume that when A was given his certificate, his lien was not placed thereon. B's lien is required to be noted thereon and thus would become the first lien. Bear in mind that there can be only one valid certificate of title to each vehicle, and that valid certificate is the one now issued to A with a first lien by B with nothing to prevent B from bringing suit and taking judg-

ment, having execution, levy and sale, satisfaction of his own lien, and leave A without legal remedy.

I have resolved this question in my mind with as many assumed aspects and ramifications as my imagination can conceive, but only one answer presents itself, and that is that the clerk of courts need only to adhere to the requirement of law, which is: When issuing a new certificate of title, note all liens on same that appear from the records of his office, and omit or delete none unless the application is accompanied by proper evidence of their satisfaction or extinction.

Therefore, in repetition, it is my opinion that where a first lienholder on a certificate of title to a motor vehicle proceeds to take certificate in his own name and take possession of the vehicle upon the owner's default of the terms of his agreement, such first lienholder owes no legal obligation to notify or inform subsequent lienholders of his intentions.

It is also my opinion that when a new certificate of title is issued to one entitled to same, the clerk of courts will note thereon all liens evidenced by records in his office and shall omit or delete none except where the application is accompanied by proper evidence of their satisfaction or extinction, and this applies as well to any liens in favor of the recipient of the new certificate.

Respectfully,

HERBERT S. DUFFY,
Attorney General.