

**FILED**

JAN 05 2005

UNITED STATES  
BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In Re

GTI CAPITAL HOLDINGS, LLC, an  
Arizona limited liability company dba  
ROCKLAND MATERIALS,

Debtor.

In Re

G. H. GOODMAN INVESTMENTS  
COMPANIES, L.L.C.,

Debtor.

Chapter 11

Case Nos. 03-07923-SSC through 03-  
07924-SSC

Jointly Administered

Adv. No. 04-676

MEMORANDUM DECISION

I. Introduction

On November 4, 2004, this Court conducted oral argument on the Motion for Summary Judgment filed by the Examiner, and the Cross Motion for Summary Judgment filed by Comerica. Thereafter the Court took this matter under advisement. In this Decision, the Court has set forth its findings of fact and conclusions of law pursuant to Rule 7052, Rules of Bankruptcy Procedure. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1334 and 157. (West 2004).

II. Standing of the Examiner

As a preliminary matter, Comerica raises the issue of the Examiner's standing to bring this adversary proceeding on behalf of the bankruptcy estate. The Examiner is the Plaintiff in this adversary which seeks to avoid Comerica's lien on certain titled vehicles pursuant to 11

1 U.S.C. Sec. 544 (a)(1). As a part of the Statement of Facts, the Examiner includes relevant  
2 portions from the transcripts of this Court's proceedings in the administrative case and this  
3 adversary proceeding wherein the Court (a) prohibited the Debtors from continuing as Plaintiffs  
4 in the adversary proceeding; and (b) required the Examiner to proceed with the claims on behalf  
5 of the bankruptcy estate. Examiner's Declaration, Exhibit B, transcripts from March 3 and  
6 December 15, 2003. Such action by the Court provides the Examiner with the requisite standing  
7 pursuant to 11 U.S.C. Sec. 1106. Comerica's argument <sup>regarding</sup> the lack of standing of the Examiner  
8 must necessarily be summarily dismissed.

9 III. Factual Discussion

10 The Debtors filed their bankruptcy petitions on May 8, 2003. Pre-petition, the  
11 Debtors had entered into certain loan transactions with Imperial Bank, a California banking  
12 corporation ("Imperial Bank"), on September 10, 2001. Edward McDonough was appointed the  
13 Examiner in these administratively consolidated cases on July 3, 2003. The Examiner sold  
14 certain assets of these bankruptcy estates on February 19, 2004, to Arizona Materials, LLC for  
15 the sum of \$8,000,000.<sup>1</sup> Included in the sale of the Debtors' assets were 71 titled vehicles. On  
16 February 23, 2004, the sale transaction closed.

17 Through a notice and hearing process, the Court, based on the recommendation of  
18 the Examiner, ascribed the value of \$32,406 to those titled vehicles which noted the liens of  
19 Comerica on the certificates of title at the time of the closing with Arizona Materials. The  
20 Comerica liens on the vehicles were then transferred to the \$32,406 in proceeds. However, as to  
21 the remaining titled vehicles, the Examiner proposed a value of \$1,010,581, which the Court  
22 accepted.<sup>2</sup> The Examiner subsequently obtained the certificates of title and, in the vast majority  
23 of cases, the releases of the liens, as to the remaining titled vehicles (hereinafter "Titled Vehicles  
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26 \_\_\_\_\_  
27 1. See Docket Entry No. 594.

28 2. See Allocation Report, Docket Entry No. 699, page 9.

1 in Controversy”).<sup>3</sup>

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3 The Court has reviewed Exhibit E, which reflects (although certain exhibits are  
4 somewhat difficult to read) that most of the Titled Vehicles in Controversy were titled in the  
5 name of GTI, one of the Debtors, as the owner of the Vehicle, and Safeco Credit Company was  
6 listed as the lienholder of record. The Exhibit also included a release of the vast majority of the  
7 Safeco liens on June 12, 2000. One of the Safeco liens was released on August 31, 1998.

8 The Exhibit also includes three certificates of title as to Titled Vehicles in  
9 Controversy that reflect the liens of Eng and the subsequent release of said liens or interests,  
10 which occurred on December 30, 1999. The remaining three certificates of title reflect that  
11 Associates Commercial is the lienholder of record and that the Vehicles have been transferred to  
12 Arizona Materials. There are no releases of the Associates’ liens.

13 Comerica does little to support its position that it is entitled to the contractual or  
14 equitable remedy of subrogation. First, the Comerica Statement of Facts in support of its Cross  
15 Motion does not contain any affidavit or declaration to support its position. It does include, as  
16 Exhibit A, a non-verified complaint from a proceeding commenced on March 23, 2003 by the  
17 Debtors in the Arizona State Courts. The Examiner is correct in stating that such a pleading  
18 should be stricken. First, it is not a pleading which was filed with this Court, so it is not entitled  
19 to judicial notice under the Ninth Circuit doctrine as set forth in the decision of In re E.R. Fegert,  
20 Inc., 887 F.2d 955 (9th Cir.1989). Next, it is not verified, so it is difficult for this Court to give  
21 the pleading any evidentiary weight in these bankruptcy proceedings. Finally, the complaint is  
22 vague, so it is unclear what weight or relevance should be given to the pleading by the Court.  
23 For instance, although the complaint refers to the Debtors entering into certain loan transactions  
24 with Imperial Bank for which Imperial Bank obtained a presumably perfected security interest,  
25 the complaint refers to generic items of collateral such as equipment or other assets, not the  
26 specific Vehicles which are in controversy in this proceeding. The complaint does not provide

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<sup>3</sup>. See Declaration of the Examiner in support of the Statement of Facts, Exhibit E.

1 any information as to the intent of the parties. Although Comerica believes that the intent of the  
2 parties was clear, there is no indication of that intent in the complaint. The complaint also refers  
3 to the "Existing Equipment Term Loan" and states that it was "refinanced and consolidated"  
4 with loans provided by Comerica. However, a reference to equipment and certain loan  
5 transactions is not specific enough for this Court to determine any type of intent of the parties.  
6 Moreover, the Examiner is proceeding under Section 544 (a)(1), which refers to the rights of the  
7 hypothetical judicial lien creditor, irrespective of the knowledge of the Examiner, the Debtors,  
8 or any other interested party which is bringing the claim on behalf of the estate, so the complaint  
9 has no relevance to the issues that the Court must address in this adversary.

10 Comerica does refer in its Statement of Facts to a Declaration and Appendix of  
11 Exhibits filed with this Court on May 14, 2003.<sup>4</sup> The Examiner objects to the use of these  
12 documents and requests that they be stricken as well. Although Mr. King, who made the  
13 statements in the Declaration well over a year ago, was then an employee of Comerica, he no  
14 longer is. It is difficult for the Court to take a pleading or document filed for a different issue (in  
15 this case, cash collateral) well over a year ago by an individual that is no longer an employee of  
16 Comerica and ascribe any weight to the document as a part of these adversary proceedings.

17 Even allowing the Declaration and the Appendix to be considered as a part of the  
18 Cross Motion for Summary Judgment, the documents only create confusion in the record. First,  
19 although Mr. King might have been, at the time of the Declaration, a custodian of Comerica's  
20 records and, perhaps, even the records of Imperial Bank, he was not personally familiar with the  
21 refinancing by Imperial Bank of the loans to the Debtors in September 2001. Exhibit 16 in the  
22 Appendix reflects that Comerica, as the successor by merger to Imperial Bank, only became  
23 involved with the Debtors at the time of the execution of the Modification Agreement on  
24 September 4, 2002, a year later than the transaction with Imperial. Given the limited Declaration  
25 of Mr. King on this issue, the Court must conclude that Mr. King only became involved with the  
26 Debtors in September 2002, when Comerica entered into the Modification Agreement.

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28 <sup>4</sup>. See Docket Entry No. 12 in the administrative case.

1 Therefore, no information is provided by Mr. King, nor are there any documents in the Appendix  
2 of Exhibits, which reflect when the Titled Vehicles in Controversy were financed by the  
3 Debtors, which lenders were involved in the financing or relied on the Vehicles as security for  
4 their obligations, and why the liens were released in 1998, 1999, and 2000, well prior to the  
5 loans with Imperial Bank and the Modification Agreement with Comerica.

6           Although the Appendix does include the Modification Agreement from  
7 September 2002 and, as Exhibit 17 in the Appendix, a letter from Comerica's counsel that the  
8 Debtors were in default under certain provisions of the Comerica and Imperial Bank loan  
9 documents, the letter did not refer to the Titled Vehicles in Controversy, suggesting that neither  
10 Comerica nor Imperial Bank had requested, or relied on, a security interest in any vehicles other  
11 than those vehicles upon which Comerica listed its lien on the titles as being collateral for its  
12 loan.

13           The ambiguity in the record is not clarified in Comerica's Statement of Facts.  
14 For instance, Paragraph 14 of the Statement of Facts provides a citation to one of the loan  
15 documents, entered into between the Debtors and Imperial Bank, which reads "If the collateral  
16 includes motor vehicles, Debtor shall cause the Security Interest to be shown as a valid first lien  
17 on the Certificate of Title for all titled vehicles and shall deliver lien filing receipts to Secured  
18 Party as evidence thereof." Did the collateral, as to the September 2001 loan transaction,  
19 include motor vehicles? The document only states "if." Moreover, which vehicles are to be  
20 included in the loan package? The language in the loan documents does not focus on these  
21 issues. Moreover, Exhibits C and D to the Examiner's Declaration also reflect that Comerica  
22 actually noted its lien on the Certificates of Title on certain vehicles in July 2002, well after  
23 Imperial Bank entered into the loan transactions with the Debtors in September 2001. Why was  
24 there such a delay? Given the actions of Comerica so long after the fact, there is nothing in the  
25 record which clarifies the intent of the parties as to the cited loan provision and whether it was  
26 satisfied.

27           As for Paragraph 16 of the Statement of Facts, Comerica asserts that it paid off  
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1 the Debtors' prior lenders which had liens on the Debtors' vehicles through refinancing and that  
2 the liens on those vehicles were not released until the vehicles were sold to Arizona Materials in  
3 2004. But the record does not reflect what Comerica has asserted. The Examiner's Declaration,  
4 Exhibit E thereto, reflects that the liens were released on the titled vehicles in 1998, 1999, and  
5 June 12, 2000, none of these dates relates to the loan transaction with Imperial in September  
6 2001. Comerica has failed to provide the necessary evidence to support its Statements of Fact.  
7 There is nothing in the record to show that Comerica intended to acquire the lien positions of  
8 those secured creditors which released their liens in 1998, 1999, and 2000.

#### 9 10 11 IV. Legal Discussion

##### 12 A. The Perfection of the Security Interest

13 The Examiner has asserted a claim under 11 U.S.C. Sec. 544 (a)(1) which states  
14 as follows: (a) The trustee shall have, as of the commencement of the case, and without regard  
15 to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any  
16 transfer of property of the debtor or any obligation incurred by the debtor that is voidable by--

17 (1) a creditor that extends credit to the debtor at the time of the commencement of the  
18 case, and that obtains, at such time and with respect to such credit, a judicial lien on all  
19 property on which a creditor on a simple contract could have obtained such a judicial  
20 lien, whether or not such a creditor exists. 11 U.S.C. § 544 (a)(1).

21 The knowledge of the Debtors or the Examiner is irrelevant in determining  
22 whether the Examiner GTI will succeed in his claim for relief. The Examiner is possessed with  
23 the rights of a hypothetical judicial lien creditor, with all of the rights and remedies of such a  
24 creditor under applicable law. In re Lockridge, 303 B.R. 449 (Bankr.D.Ariz.2003) (trustee has  
25 the rights of a hypothetical judicial lien creditor as of the date of the petition); In re Agent  
26 Systems, Inc., 289 B.R. 828 (Bankr.N.D.Tex.2002); In re Patton's Busy Bee Disposal Serv., Inc.,  
27 182 B.R., 681, 684 (Bankr.W.D.N.Y.1995); In re Carnegie International Corp., 51 B.R. 252, 254

(11c)

*Court has authority to direct that a party other than the debtor*

1 (Bankr.S.D.Ind.1984) (bankruptcy in possession handle the litigation) ~~court has authority to direct~~  
2 ~~that a party other than the debtor~~ The State law which controls in determining the rights of  
3 such a hypothetical judicial lien creditor is the law of the State where the property at issue is  
4 located. In re Santa Fe Adobe, Inc., 34 B.R. 774 (9th Cir. BAP 1983). In this case, the Court  
5 must apply the law of Arizona, the situs of the Titled Vehicles in Controversy.

6 One way for Comerica to defeat the rights of such a hypothetical creditor would  
7 be to present facts which support that Comerica had a perfected security interest in the Titled  
8 Vehicles in Controversy. Under Arizona law, a lien on titled vehicles is not valid unless A.R.S.  
9 § 28-2153 has been followed. A.R.S. § 28-2131. It is the exclusive means to reflect such a  
10 perfected security interest under the Arizona statutes. A.R.S. § 28-2133 (B) and (C). Arizona  
11 law also provides a method to protect those lienholders that are assignees of, or acquire a  
12 security interest subsequent to that of, the original lienholder. For instance, under A.R.S. § 28-  
13 2134 (A), the holder of the lien that is paid in full by another proposed lienholder shall release  
14 the lien and "deliver the certificate of title to the next holder of a lien or encumbrance entitled to  
15 the possession of the certificate of title..." Only if there is to be no other lienholder does the  
16 original lienholder deliver the certificate of title to the owner of the vehicle. Moreover, A.R.S. §  
17 28-2134 (B) allows an assignee of the original lienholder to hold the certificate of title until the  
18 obligation is paid in full, and if the lienholder has had possession of the certificate of title, the  
19 assignee may require that the original lienholder deliver the certificate to the assignee.

20 The Arizona Supreme Court decision of Noble v. Bennet, 577 P.2d 248 (Ariz.  
21 1978) provides that if a creditor wishes to assert a lien on a titled vehicle, the exclusive remedy  
22 is to follow the statutory provisions. The Court recognized that in certain cases, its ruling might  
23 work a hardship on the affected parties. The Court concluded that given the clear language of the  
24 statute, A.R.S § 28-325 A-F, the Court had no choice but to enforce it strictly. <sup>5</sup>

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27 <sup>5</sup>. Former Title 28, Transportation, consisting of Chapters 1 to 26, §§ 28-101 to 28-  
28 3075, was repealed by Laws 1995, Ch. 132, § 1, as amended by Laws 1996, Ch. 76, § 306,  
effective October 1, 1997. New Title 28, Transportation, consisting of Chapters 1 to 25, §§ 28-

1           The Bankruptcy Appellate Panel has also considered a similar issue under  
2 Arizona law in the decision of In re Santa Fe Adobe, Inc., 34 B.R. 774 (BAP 9th Cir. 1983).  
3 This Panel decision is binding on this Court, since the decision arose out of a case before an  
4 Arizona Bankruptcy Court Judge and was determined under Arizona law. In re Windmill  
5 Farms, Inc., 841 F.2d 1467 (9th Cir. 1988).

6           In the Sante Fe Decision, the debtor and secured creditors entered into a secured  
7 loan transaction, and the creditors filed financing statements with the Arizona Secretary of State.  
8 No further action was taken by the creditors. The debtor defaulted under the terms of the loan  
9 documentation, and the creditors pursued foreclosure proceedings in the State Court. Before the  
10 debtor filed its bankruptcy petition, the creditors obtained a judgment from the State Court  
11 determining that they had "perfected their security interest in accordance in with the Uniform  
12 Commercial Code." Since the judgment was obtained pre-petition, the Bankruptcy Judge  
13 believed that he was bound by the principle of res judicata or collateral estoppel. The Panel  
14 ultimately disagreed, stating that although the trustee would normally be in privity with the  
15 debtor, and generally would lose if an adverse judgment were entered against the debtor,  
16 succeeding to the same rights as the debtor, the trustee armed with the additional rights of a  
17 hypothetical judgment lien GTI creditor under Section 544 (a)(1) trumped and, hence, vitiated  
18 the rights of the secured creditors with a favorable State Court judgment.

19           Based upon these decisions, this Court must rule in favor of the Examiner, at least  
20 on the perfection issue.

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23 **B. The Subrogation Claim**

24           Comerica still believes that irrespective of its failure to perfect its security  
25 interests in the Vehicles under Arizona law, it may still succeed on the argument of subrogation.  
26 Comerica relies on Arizona State Court decisions, as well as two bankruptcy court decisions,

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28 101 to 28-8536, was effective October 1, 1997.

1 one from North Carolina, the other from Maryland, in support of its argument. At oral  
2 argument, the parties agreed that Arizona law would determine the issue of subrogation.

3 The party asserting a claim of subrogation carries the burden of proof. Del E.  
4 Webb Hotel Co. v. Bentley, 446 P.2d 687 (Court of Appeals, Div. 1, 1968). To succeed on its  
5 Cross Motion for Summary Judgment, or to create a genuine issue of material fact in support of  
6 its defense in this adversary, Comerica carries the burden of proof. Anderson v. Liberty Lobby,  
7 Inc., 477 U.S. 242, 106 S.Ct. 2505 at 2512, 91 L.Ed.2d 202 (1986). The Del Webb Court  
8 described the concept:

9 Subrogation is the substitution of another person in the place of a creditor, so  
10 that the person in whose favor it is exercised succeeds to the rights of the  
11 creditor in relation to the debt. It is a creature of equity, and was adopted from  
12 the Roman and not the common law. Its purpose is the prevention of injustice  
13 and is the mode which equity adopts to compel the ultimate payment of a debt  
14 by one who in justice, equity and good conscience ought to pay it. Mosher v.  
Conway, 45 Ariz. 463, 468, 46 P.2d 110, 112 (1935)....

15 It is said that subrogation is not a matter of absolute right but ...rather, a matter  
16 of grace to be granted or withheld as the equities of the case may demand.

17 Id. at 690. However, to succeed on such a claim, it is incumbent on Comerica to present  
18 sufficient facts for this Court to conclude that it is entitled to such a claim in equity.

19 Unfortunately, as noted in the factual discussion, Comerica has presented no one that has  
20 sufficient information, as a custodian of records or as an individual who was involved in the loan  
21 transactions, to attest to the intent of the parties when Imperial Bank, the apparent predecessor in  
22 interest to Comerica, entered into the loan transactions with the Debtors. It is unclear to this  
23 Court why most of the Vehicles, titled in the name of the Debtors but which reflected the liens  
24 of Safeco, were released in June 2000, with other liens being released as to other Vehicles in  
25 1998 and 1999. Comerica's statements on the record at oral argument that the liens remained of  
26 record up to the time of the post-bankruptcy sale by the Examiner in 2004 are simply incorrect.  
27 The liens on the Vehicles were released well prior to the Debtors ever filing their bankruptcy  
28 petitions in 2003, let alone the 2004 sale of certain of the Debtors' assets. Moreover, Comerica

1 has presented no credible evidence why the liens released on these Vehicles in 1998, 1999, and  
2 2000 would be collateral for a loan or loans that Imperial Bank entered into with the Debtors in  
3 September 2001.

4 Arizona law as to motor vehicles also provides a number of remedies to secured  
5 creditors that are assignees of the original lienholders. Comerica has provided no evidence as to  
6 why it did not avail itself of these remedies under Arizona law.

7 Finally, Comerica has provided no evidence that the Debtors were uncooperative  
8 or did not execute the required documents to provide Comerica with liens on the Titled Vehicles  
9 in Controversy. The reality is that Imperial Bank obtained liens or perfected security interests on  
10 several parcels of real property, inventory, accounts receivable and other assets. It believed that  
11 it was oversecured with the assets that served as its collateral. Imperial Bank had no desire to  
12 take the necessary steps to attach and perfect its security interest in the Vehicles. Comerica, as  
13 the apparent successor in interest, took no action as well except as to the 8 vehicles that it noted  
14 its lien on the certificates of title. With such a factual predicate, it is difficult for this Court to  
15 find any facts which support Comerica's assertion of an equitable claim of subrogation.

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17 At oral argument, Comerica relied on the decision of Lamb Excavation, Inc. v.  
18 Chase Manhattan Mortgage, 95 P.3d 542 (Court of Appeals, Div. 2, 2004). In Lamb, the  
19 Torrejons obtained construction financing from Commercial Federal Bank, with the loan secured  
20 by a deed of trust on the Torrejons' real property. Several subcontractors were unpaid during the  
21 course of construction and served the initial notices of mechanics' liens on the Bank.  
22 Subsequently, Chase extended permanent financing to the Torrejons, paying the Bank in full,  
23 and obtaining its own deed of trust on the property. Chase then became engaged in a priority  
24 lien dispute with the subcontractors. Id. at 543. The Court considered the doctrine of equitable  
25 subrogation, which substitutes one lienholder for another.<sup>6</sup> The Court stated that there were

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27 <sup>6</sup>. Over the years, the doctrine of subrogation has been described as being of one or  
28 more kinds. For instance, in the decision of Rinn v. First Union National Bank of Maryland, 176  
B.R. 401 (D. Maryland 1995), the Court described two kinds of subrogation: legal and

1 several approaches in determining whether a secured creditor that paid off a first lien would be  
2 able to defeat the rights of intervening lienholders. After defining the majority and minority  
3 approaches to subrogation, the Court then determined a third, or Arizona approach, was  
4 appropriate to the case. Id. at 545-46. The party requesting subrogation must show an express  
5 or implied agreement to be subrogated to the rights of the party that had the initial lien, and the  
6 intervening lien claimant must suffer no prejudice. Id. at 546. The Court stated that the  
7 underlying loan documents and escrow instructions concerning Chase's loan reflected at least an  
8 implied agreement that Chase was to have a first lien on the property and that Chase was to  
9 payoff the construction loan financing on the property. Chase was acting as a lender, not a  
10 volunteer, and the mechanics' lien claimants remained in the same position. Although the  
11 mechanics' lien claimants argued that Chase had been negligent, they could not show how they  
12 had been prejudiced. Id. at 547.

13           However, the facts in this case are far different than Lamb. Comerica is unable to  
14 show, from a factual standpoint, that Imperial Bank had an understanding with the Debtors that  
15 its September 2001 loan transactions would repay numerous secured creditors as to the Vehicles  
16 and that Imperial Bank would be placed in the same position as those creditors. If nothing else,  
17 the timing of the transactions in 2001 does not match the release of the liens on the vehicles in  
18 1998, 1999, and 2000. It is also of concern to this Court, assuming that Comerica is entitled to  
19 some type of lien on the Vehicles, to apply such an equitable principle to defeat the rights of the  
20 administrative expense claimants of these estates, when Comerica, or its predecessor, Imperial  
21 Bank, was negligent, for a number of years, in noting its liens on the certificates of title. At  
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23 Footnote 6 continued.

24 conventional. The first arises as a doctrine of equity and does not require a contract. The other  
25 is based on some understanding or agreement, express or implied, and is similar to assignment.  
26 Id. at 407-408. The Court noted that some courts had recognized a third kind known as statutory  
27 subrogation. Id. at 408. In Arizona, the decision of Fire Insurance Exchange v. Thunderbird  
28 Masonry, Inc., 868 P.2d 948 (Court of Appeals, Div. 1, 1993) defined two types of subrogation:  
conventional (relying on the specific language of a document) and equitable (one party should,  
to promote substantial justice, be substituted for another.) Id. at 951-952. The Lamb decision  
seems to blend both types of subrogation in developing the Arizona approach.

1 some point, there is injustice to the creditors of these estates if the Court simply allows  
2 Comerica to step in at this late date and succeed on its claim of subrogation. As with any  
3 equitable principle, the party requesting such relief must be entitled to it. Comerica has made no  
4 such showing in this case.

5           As to the bankruptcy decisions from North Carolina and Maryland upon which  
6 Comerica relies, they are inconsistent with the rights accorded to the trustee under Section 544  
7 (a)(1) in the Santa Fe Adobe decision, which this Court must follow. In Santa Fe Adobe, the  
8 Panel focuses on the requirements of a secured creditor to note its lien on the certificate of title  
9 as being the exclusive means to defeat the “strong arm powers” of the trustee under Section 544  
10 (a)(1). Any legal or equitable principles, such as res judicata or collateral estoppel, are defeated  
11 by the strong arm powers under the Bankruptcy Code. It is difficult to conceive that the  
12 equitable principle of subrogation would survive under such an analysis. Moreover, in In re  
13 White, 183 B.R. 713 (Bankr. M.D. N.C. 1995), the Court, relying on applicable State law, was  
14 able to trace factually the payment of the initial secured creditor by the subsequent creditor, and  
15 the transfer of the certificate of title (with the duly executed release of lien) from the initial  
16 lienholder to the subsequent creditor, creating an equitable claim of subrogation. The debtors  
17 also behaved inequitably, when one of the debtors, just prior to filing of the bankruptcy petition,  
18 refused to execute the documentation which would provide the subsequent creditor with a lien  
19 on the certificate of title. Given the clear facts reflecting subrogation and the inequitable  
20 conduct of the debtors, the Court concluded that the trustee was not able to avoid the lien of the  
21 subsequent creditor under Section 544 (a)(1). There has been no such clear factual showing or  
22 inequitable conduct in this case.

23           The other principal authority relied on by Comerica is Rinn v. First Nat’l Bank of  
24 Maryland, 176 B.R. 401 (Dist. Md. 1995), but that case, from another Circuit, may also be  
25 distinguished. First, the Rinn Court noted that the extent of the trustee’s strong arm powers must  
26 be defined by the situs of where the property is located. Id. at 408, n.7. As noted previously,  
27 this Court must follow the Santa Fe Adobe decision to determine the powers of the Examiner in  
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1 this matter. Moreover, the Rinn Court was focusing on a different type of collateral: personal  
2 property which would be perfected pursuant to the provisions of the Uniform Commercial Code.  
3 Section 1-103 of the U.C.C. allows the Court to apply principles of equity to secured loan  
4 transactions. Id. at 411. The facts of the Rinn decision also supported the agreement of the  
5 parties that the initial secured creditor was assigning its rights in the collateral to a subsequent  
6 secured creditor which was discharging the initial loan. The Court noted that such an  
7 arrangement was essentially an assignment of one perfected secured creditor's rights to another  
8 for which no financing statement or other filing was required. The lien of the initial secured  
9 creditor, including its priority and perfection, was assigned to the subsequent creditor, with the  
10 same rights and remedies to the latter. Id. Under such an analysis, it is not difficult to determine  
11 how the Court reached the conclusion that subrogation should apply and defeat the rights of the  
12 trustee under Section 544 (a)(1). However, this case does not have the same clear factual  
13 predicate reflecting the assignment of the security interest in the collateral, and it does not  
14 involve the Uniform Commercial Code which ties into the equitable principles of subrogation.

15 The Court also reviewed various other cases cited by the parties. Comerica cited to  
16 Rowley Plastering Co., Inc. v. Marvin Gardens, 883 P.2d 449 (Ariz.App. Div. 1,1994) and  
17 Kilpatrick v. Superior Court In and For Maricopa County, 466 P.2d 18 (Ariz. 1970) for the  
18 proposition that Arizona courts liberally apply the doctrine of equitable subrogation. In Rowley,  
19 an injured carpenter brought a negligence action against a developer, prime contractor and  
20 stucco subcontractor. The Superior Court entered judgment in favor of the subcontractor on its  
21 equitable subrogation claim, and the prime contractor appealed. The Court of Appeals held that  
22 the nonnegligent subcontractor was entitled to restitution from the negligent prime contractor for  
23 part of the settlement the subcontractor paid to carpenter. In Kilpatrick, the Supreme Court  
24 granted writ of certiorari to determine whether under the Constitution and Workmen's  
25 Compensation Law an action may be maintained by an employee for damages against a fellow  
26 employee, predicated on negligence arising out of and in course of employment. The Supreme  
27 Court held that an employee, who is injured by fellow employee, and who is entitled to  
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1 workmen's compensation, has a right to sue a fellow employee. The Court will not rely on either  
2 Rowley or Kilpatrick. Both cases are significantly distinguishable from the case at bar, as noted  
3 by the facts of each respective case. This is not a dispute between contractors, or an action  
4 between employees.

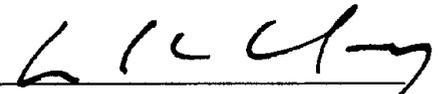
5           The parties also cited to In re Bridge, 18 F.3d 195 (3rd Cir. 1994). In Bridge, a  
6 Chapter 7 trustee sought to avoid an equitable lien which a mortgagee, holding an unrecorded  
7 mortgage, sought to impose on the Chapter 7 estate. The Third Circuit Court of Appeals held  
8 that § 544(a)(3) accorded the trustee bona fide purchaser status and thus entitled the trustee  
9 under New Jersey state law to avoid the equitable lien of an unrecorded mortgage. The Court  
10 will not rely on Bridge for two reasons. First and foremost, the Bridge decision cannot be viewed  
11 as controlling law. The doctrine of stare decisis does not bind one bankruptcy court to follow the  
12 decision of another bankruptcy court, even if that decision is from another bankruptcy judge in  
13 the same district. In re Suburban Motor Freight, 134 B.R. 617, 626 (Bankr.S.D.Ohio 1991).  
14 Furthermore, the analysis undertaken Bridge was under § 544(a)(3), while the matter before the  
15 Court is pursuant to § 544(a)(1).

16           Based upon the foregoing analysis, the Examiner's Motion for Summary  
17 Judgment must be granted; Comerica's Cross Motion for Summary Judgment is denied. The  
18 Examiner's request that Exhibit A to Comerica's Statement of Facts be stricken is granted. The  
19 Examiner's request that the Declaration of Mr. King and the Appendix be stricken from the  
20 record for purposes of the Motion and Cross Motion in this Adversary is denied; however, as  
21 noted in this Decision, the Court is able to give it little weight.

22           The Court will execute a separate order incorporating this Memorandum  
23 Decision.  
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DATED this 5<sup>th</sup> day of January, 2005.

  
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Honorable Sarah Sharer Curley  
Chief U. S. Bankruptcy Judge

Copy of the foregoing mailed

January 6, 2005 to:

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