UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: GREENLINE EQUIPMENT, INC. CASE NO. 03-15350-DWH

AUTOMOTIVE FINANCE CORPORATION PLAINTIFF

VERSUS ADV. PROC. NO. 05-1076-DWH

GREENLINE EQUIPMENT, INC.; BANK OF VERNON; JOHN DEERE CREDIT; FOSTER BROTHERS EQUIPMENT CO., INC.; EMPIRE TRANSPORTATION, INC.; and KNOWN ALLEGED CONSIGNORS 1 - 99 DEFENDANTS

OPINION

On consideration before the court is a motion for summary judgment filed by the defendant, Empire Transportation, Inc.; no response having been filed by the plaintiff, Automotive Finance Corporation; and the court, having heard and considered same, hereby finds as follows, to-wit:

I.

The court has jurisdiction of the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A), (B),and (O).

II.

Empire Transportation, Inc., ("Empire"), proposed the following undisputed facts to which there was no response or objection by Automotive Finance Corporation, ("AFC"), to-wit:

1. In November, 2004, Rivers Dickerson, individually, was the lease holder of a piece of property in Columbus, Mississippi.

2. In November, 2004, Rivers Dickerson, individually, assisted Ed Gatlin, Bill Whitten, and Empire Transportation, Inc., in obtaining drivers to drive trucks owned by Empire from Atlanta, Georgia, to Philadelphia, Mississippi, where the trucks were to be sold, on behalf of Empire, at auction.

3. As Mr. Dickerson had a prior relationship with the auction house in Philadelphia, Mississippi, he assisted Empire, Ed Gatlin, and Bill Whitten in placing the trucks owned by Empire with the auction house for a discounted auction fee.

4. Rivers Dickerson did not receive any compensation for assisting Empire, Ed Gatlin, or Bill Whitten in placing the trucks with the auction house at the discounted rate.

5. After the auction, Rivers Dickerson allowed Empire, Ed Gatlin, and/or Bill Whitten to store the subject trucks on the property that he leased in Columbus, Mississippi, until such time that arrangements could be made for the transportation of the subject trucks to Memphis, Tennessee. He allowed Empire, Ed Gatlin, and/or Bill Whitten to store the subject trucks on the property that he leased in Columbus, Mississippi, as a courtesy. No rental, commission, or any other form of payment was ever asked for by Mr. Dickerson or paid by Empire, Ed Gatlin, and/or Bill Whitten for the storage of the subject trucks on the property Mr. Dickerson leased in Columbus, Mississippi.

6. At no time did Ed Gatlin, Empire, and/or Bill Whitten ever offer Mr. Dickerson an opportunity to sell the subject trucks.

7. At no time did Mr. Dickerson ever ask Ed Gatlin, Empire, and/or Bill Whitten for the right to sell the subject trucks.

8. At no time did Mr. Dickerson ever ask Ed Gatlin, Empire, and/or Bill Whitten for the right to receive any payment, commission, or other compensation in any way related to the sale or offer for sale of the subject trucks.

9. At no time has Mr. Dickerson ever received any payment from Ed Gatlin, Empire, and/or Bill Whitten in any way related to the subject trucks other than possibly a single cash payment for providing drivers to transport the trucks from Atlanta, Georgia, to Philadelphia, Mississippi, prior to the auction.

10. Mr. Dickerson may have testified in a prior deposition in this cause that the subject trucks were “consigned” to him by either Ed Gatlin or Empire. If “consigned” was the term he used, Mr. Dickerson understood the term

"consigned" to mean, and its intent was to convey, that the trucks had been temporarily placed on his property. Mr. Dickerson has no personal knowledge of the legal definition of the word "consigned" and never intended to use the word that conveyed the idea that Empire and/or Ed Gatlin and/or Bill Whitten had ever given him or Greenline Equipment, Inc., the right to sell the trucks or to receive a commission for the sale of the trucks or to otherwise incorporate the trucks into his inventory.

11. In November, 2004, Bill Whitten was acquainted with both Rivers Dickerson and Ed Gatlin.

12. In November, 2004, Mr. Whitten was directly involved in assisting Ed Gatlin in moving the trucks from Atlanta, Georgia, to Philadelphia, Mississippi, so that the trucks could be sold at auction.

13. The trucks, moved from Atlanta, Georgia, to Philadelphia, Mississippi, were the titled property of Empire.

14. Mr. Whitten made arrangements for drivers to pick up the trucks and deliver them directly to the auction yard in Philadelphia, Mississippi.

15. The tractors were delivered by Empire to the auction house for sale by auction.

16. Title for the trucks was obtained in Atlanta, Georgia, under the name of Empire. (The court would point out that although this statement was extracted verbatim from the affidavit of Bill Whitten, it is perhaps misleading. The subject trucks were actually titled to Empire in the State of Tennessee.)

17. The titles were provided to the auction house as proof of ownership.

18. The trucks did not sell at auction and, pursuant to the auction house regulations, had to be removed from the auction house property.

19. The trucks were moved, for storage, to property leased by Rivers Dickerson.

20. The trucks were stored temporarily on the property leased by Rivers Dickerson, until such time that drivers could be arranged to drive the trucks to Memphis, Tennessee.

21. Rivers Dickerson allowed storage of the trucks on his property as a favor to Ed Gatlin and to Bill Whitten.

22. Rivers Dickerson did not charge Empire, Ed Gatlin, or Bill Whitten, rent for storage of the trucks.

23. Rivers Dickerson did not enter into any agreement with Empire, Ed Gatlin, or Bill Whitten in any way related to the trucks. Specifically, Rivers Dickerson did not enter into any agreement with Empire, Ed Gatlin, or Bill Whitten whereby Rivers Dickerson, Greenline Equipment, Inc., or any agent representative or employee thereof was authorized to sell or offer the subject trucks for sale.

24. Bill Whitten personally sold two of the subject trucks over the telephone, sight unseen, by the buyer. The payment from the buyer was wired directly to Empire.

25. In no way did Rivers Dickerson, Greenline Equipment, Inc., and/or its agents, representatives or employees participate in a sale of these two trucks nor did Rivers Dickerson, Greenline Equipment, Inc., and/or its agents, representatives or employees receive any compensation from the sale of these two trucks.

26. Bill Whitten later made arrangements for drivers to deliver the remaining trucks to Memphis, Tennessee, where the trucks were stored on property owned by Empire.

27. Later the trucks were sold by Empire.

III.

Summary judgment is properly granted when pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Bankruptcy Rule 7056; Uniform Local Bankruptcy Rule 18. The court must examine each issue in a light most favorable to the nonmoving party. Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Phillips v. OKC Corp., 812 F.2d 265 (5th Cir. 1987); Putman v. Insurance Co. of North America, 673 F.Supp. 171 (N.D. Miss. 1987). The moving party must demonstrate to the court the basis on which it believes that summary judgment is justified. The nonmoving party must then show that a genuine issue of material fact arises as to that issue. Celotex Corporation v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.29 265 (1986); Leonard v. Dixie Well Service & Supply, Inc., 828 F.2d 291 (5th

Cir. 1987), Putman v. Insurance Co. of North America, 673 F.Supp. 171 (N.D. Miss. 1987). An issue is genuine if "there is sufficient evidence favoring the nonmoving party for a fact finder to find for that party." Phillips, 812 F.2d at 273. A fact is material if it would "affect the outcome of the lawsuit under the governing substantive law." Phillips, 812 F.2d at 272.

IV.

In its complaint, AFC claims that Empire delivered inventory to the debtor, Greenline Equipment, Inc., ("Greenline"), and that this inventory and/or the proceeds thereof were captured by AFC's security interest. Empire asserts that the undisputed facts conclusively establish that the trucks were never delivered to Greenline for the purpose of sale or lease, and that Greenline never had the trucks in inventory. After reviewing the undisputed facts proposed by Empire, to which AFC did not object, the court agrees with Empire's position.

As noted hereinabove, AFC contends its perfected security interest attached to the subject trucks. This would require that the trucks became a part of Greenline's "inventory," which, in turn, would necessitate that the that the trucks were transferred by Empire to Greenline by sale or by some other means for the purpose of sale or lease. Neither Greenline nor Rivers Dickerson ever had authority, express or apparent, to sell or lease the trucks. Dickerson was simply doing a favor for Ed Gatlin and Empire by temporarily storing the trucks on land that he leased individually. AFC alleges it has a security interest in Greenline's inventory, not property owned by Dickerson individually. The trucks were never even stored on property owned or leased by Greenline.

The Uniform Commercial Code is very specific in its definition of "inventory," to-wit:

> Goods, other than farm products, which: (A) are leased by a person as lessor; (B) are held by a person for sale or lease or to be furnished under a contract of service; (C) are furnished by a person under a contract of service; or (D) consist of raw materials, work in process, or materials used or consumed in business.

Miss. Code Ann. §75-9-102(a)(48); Tenn. Code Ann. §47-9-102(a)(48).

Even though the vehicles were titled in Tennessee, there is no conflict between the relevant Mississippi and Tennessee statutes.

In this proceeding, the subject trucks were delivered to property leased by Rivers Dickerson, individually, for temporary storage until Empire could have the trucks delivered to its Memphis property. The arrangement was at best only a bailment, not a "consignment," or "sale," or "return" as described in Miss. Code Ann. §75-2-326(1) and (2).

Simply delivering goods does not mean that they are delivered for sale. The Fifth Circuit has distinguished bailments from sales, stating that "the test of a bailment is that the identical thing is to be returned in the same or in some altered form; if another thing of equal value is to be returned, the transaction is a sale." *Guidry v. Continental Oil Co.*, 350 F.2d 342, 345 n. 10 (5th Cir. 1965) *citing* Black's Law Dictionary 185 (3rd ed. 1933). All bailments are not consignments. *Glenshaw Glass Co. v. Ontario Grape Growers Mkt. Bd.*, 67 F.3d 470, 475 (3rd Cir. 1995). "[T]emporary entrustments of possession by a bailor, without more, are not 'sales on consignment,' within the meaning of UCC §2-326." *Evergreen Marine Corp v. Six Consignments of Frozen Scallops*, 4 F.3d 90, 98 (1st Cir. 1993); *Walter E. Heller & Co. v. Riviana Foods, Inc.*, 648 F.2d 1059 (5th Cir. 1981).

In a legal sense, Empire would be considered the bailor, and Rivers Dickerson, not

Greenline, the bailee. As such, the court is of the opinion that the trucks were never a part of Greenline's inventory, and, therefore, they were never subject to AFC's security interest.

V.

CONCLUSION

Based on the foregoing, the court concludes that there are no genuine issues of material fact remaining in dispute with regard to AFC's claim against Empire. Empire, therefore, is entitled to judgment as a matter of law.

This the 19th day of April, 2007.

/s/ David W. Houston, III
DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE