

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 UNKNOWN ALLEGED CONSIGNORS 1 - 99

DEFENDANTS

OPINION

On consideration before the court is a motion for summary judgment filed by the defendant, Foster Brothers Equipment Co., Inc., (“Foster Brothers”); a response to said motion having been filed by the plaintiff, Automotive Finance Corporation, (“Automotive Finance”); and the court, having considered same, hereby finds as follows, to-wit:

I.

The court has jurisdiction of the subject matter of and the parties to 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), (K), and (O).

II.

The debtor, Greenline Equipment, Inc., (“Greenline”), filed its voluntary petition pursuant to Chapter 11 of the United States Bankruptcy Code on August 25, 2003. On February 28, 2005, this court entered an order converting the Chapter 11 case to Chapter 7. On March 25, 2005, Automotive Finance filed a complaint to determine the validity, priority, and extent of its

lien as to the proceeds acquired from the sale or liquidation of Greenline's inventory.

Subsequent to the petition date, Foster Brothers asserts that it stored ten pieces of equipment on Greenline's property, specifically, (1) a John Deere ANV600 Green, (2) a 5310 Case, (3) a 580C Yellow, (4) a John Deere Tractor 950, (5) a John Deere Gator, (6) a Case International 495 Tractor, (7) a Ford 3910, (8) an unidentified baler, (9) a Transverse Lift 8040, and (10) a John Deere 518 Rotary Cutter ("equipment"). Foster Brothers alleges in its motion for summary judgment that Automotive Finance knew the equipment belonged to Foster Brothers, was aware that the equipment was on Greenline's premises for display only, and was further aware that Greenline was in the business of selling the equipment of third parties.

To the contrary, Automotive Finance asserts that it is entitled to the fair market value of the aforesaid equipment due to its blanket security interest covering the "to be purchased" equipment and certificated vehicles pursuant to the terms of a "post-petition financing order" which was entered in this case on October 10, 2003.

### 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.2d 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.

The court notes that it has the discretion to deny motions for summary judgment and allow parties to proceed to trial so that the record might be more fully developed for the trier of fact. Kunin v. Feofanov, 69 F.3d 59, 61 (5th Cir. 1995); Black v. J.I. Case Co., 22 F.3d 568, 572 (5th Cir. 1994); Veillon v. Exploration Services, Inc., 876 F.2d 1197, 1200 (5th Cir. 1989).

#### IV.

The central issue between Automotive Finance and Foster Brothers is whether the equipment delivered by Foster Brothers to Greenline was subject to the security interest conveyed to Automotive Finance in the post- petition financing order. Having thoroughly reviewed this matter, the court is of the opinion that there are factual issues that must be addressed by the presentation of evidence, such as, what were the details of the business arrangements between Foster Brothers and Greenline, as well as, specifically, whether the subject equipment had actually been consigned to Greenline. Furthermore, “[A] court has discretion to deny a motion for summary judgment if it believes that ‘a better course would be to proceed to a

full trial.’” *Kunin v. Feofanov*, 69 F.3d 59-61 (5th Cir. 1995); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L.Ed. 202 (1986).

Because the court is of the opinion that there are genuine issues of material fact remaining in dispute, the motion for summary judgment must be overruled.

A separate order will be entered contemporaneously herewith.

This the 29th day of June, 2007.

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