

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE

Wright Way Express

CASE NUMBER 98-14126

Chapter 11

**MEMORANDUM OPINION AND ORDER RE
(1) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM BY
LEASING INNOVATIONS, (2) UNITED STATES TRUSTEE'S OBJECTION TO
APPLICATION, (3) TERRY MOODY'S OBJECTION TO APPLICATION AND
(4) GECC'S OBJECTION TO APPLICATION**

The Court conducted a hearing on Leasing Innovation's Request for Payment of Administrative Expense Claim and the objections thereto on June 30, 1999. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

In January 1997, Leasing Innovations agreed to purchase five (5) Stoughton trailers from Trucks, Trains, and Planes and then lease the trailers to the debtor, Wright Way Express, ("Wright Way"). Despite this arrangement, Trucks, Trains and Planes' manager, Perry Orlando, fraudulently caused the certificates of title for the trailers to be issued in the name of Wright Way instead of Leasing Innovations. Orlando then pledged the trailers as collateral to General Electric Capital Corporation on a separate loan.

On November 24, 1998, Leasing Innovations filed a “Motion to Terminate Automatic Stay, to Compel Performance of Lease Obligations, or for Adequate Protection” which was resolved by an agreed order on December 28, 1998. The terms of the agreed order provided for the assumption of the lease by the Debtor-in-Possession. Subsequent to this assumption, the debtor defaulted on the lease and Leasing Innovations discovered the fraudulent issuance and pledge of the titles. As a result of these occurrences, the Chapter 11 trustee rejected the lease.

II. CONCLUSIONS OF LAW

Rule 9024 of the Federal Rules of Bankruptcy Procedure provides:

(b) On motion and upon such terms as are just, the court may relieve a party or a party’s legal representative from a final judgment, order, or proceeding for the following reasons: . . . (3) fraud, . . . misrepresentation, or other misconduct of an adverse party . . .

Fed. R. Bankr. P. 9024(b)(3). As a result of the Debtor-in-Possession’s fraudulent issuance of the trailers’ certificates of title in Wright Way’s name, the Court finds that, under Rule 9024, the December 28, 1998, order in which the trailer lease was assumed may be set aside. Because the estate benefitted from use of the trailers during the assumption period, however, the Court finds that the estate is obligated to pay the lease payments as an administrative expense from the time of assumption until the time of rejection.

The Court finds it important to point out that even though there was fraud on the part of the Debtor-in-Possession in dealing with Leasing Innovations and GE Captial Corporation, the Court would have allowed either the assumption of the lease or adequate protection payments for use of the trailers. The fraud would have had no effect on the Court’s decision to allow the

debtor-in-possession to use the trailers. When an entity is trying to reorganize under chapter 11, it is imperative that they continue to operate their business. With a debtor who is a trucking firm, trailers are vital to that reorganization. As a result, the Court must use its equitable powers to assist debtors in this continuation. It is out of this obligation, that the Court makes today’s finding. The Court must point out, however, that this finding is limited to the particular facts of this case.

III. ORDER

It is therefore **ORDERED** that Leasing Innovations’ Request for payment of Administrative Expense Claim is **GRANTED**.

It is **FURTHER ORDERED** that the Order in which the Debtor-in-Possession assumed the lease of the five Stoughton Trailers with Leasing Innovations is hereby **SET ASIDE**. Said Lease is **REJECTED**.

It is so ordered.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: August 11, 1999