

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

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**IN RE**

**James R. Hollingshead,**

**Case No. 01-13759**

**Debtor.**

**Chapter 11**

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**MEMORANDUM OPINION AND ORDER RE  
(1) MOTION TO DISBURSE FUNDS filed by DEERE CREDIT SERVICES and  
(2) OBJECTION TO MOTION TO DISBURSE FUNDS filed by TENNESSEE  
DEPARTMENT OF AGRICULTURE**

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The Court conducted a hearing on Deere's Motion to Disburse Funds and the State's objection thereto on May 15, 2002. 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**

At issue in this matter is what entity is entitled to payment of cotton equities on the debtor's cotton crop for the year 2000. The debtor currently has checks, jointly payable to himself and other entities, in his possession in the approximate amount of \$7,300.00. Deere Credit Services, ("Deere"), asserts that it has a first lien on certain of the proceeds and that Planters Bank, ("Planters"), may also hold a first lien on certain of the proceeds. Planters approves of Deere's motion. The State of Tennessee, through the Tennessee Department of Agriculture, ("State") asserts that it is entitled to the proceeds pursuant to the Tennessee Boll Weevil Eradication Program.

On February 2, 2000, Deere executed a promissory note in favor of the debtor in the amount of \$150,000.00. As security for this loan, Hollingshead granted Deere Credit Services a security interest in "all inventory, chattel paper, accounts, general intangibles, farm products and farm equipment" as well as:

[a]ll crops and crop and crop products, whether stored, planted, growing or to be grown by Grantor or to be acquired from third parties, including crops hereafter grown, owned or acquired, and all supplies, including without limitation all seed, fertilizer, fungicides, and pesticides.

*Collective Exhibit A, Commercial Security Agreement.* Deere perfected its security interest by filing a UCC-1 Financing Statement on February 9, 2000, in the Register of Deeds' office in Crockett County, Tennessee. Deere currently holds an allowed secured claim of \$52,767.74 in the instant case.

On March 28, 2000, the Debtor entered into a crop financing loan in the amount of \$77,000.00 with Planters Bank. As collateral for this loan, Planters took a security interest in "406 acres of cotton, more or less, to be grown in Crockett Co., Tn. in calendar year 2000."

*Collective Exhibit B, Universal Note and Security Agreement.* Planters perfected its security interest by filing a UCC-1 Financing Statement on April 7, 2000, in the Register of Deeds' office in Crockett County, Tennessee. Planters currently holds an allowed secured claim in the amount of \$16,872.00 in the instant case.

The Tennessee Department of Agriculture claims a superceding statutory lien based on Tenn. Code Ann. §§ 43-6-426(b) and (c). The State filed a secured claim in the amount of \$8,219.50 on November 14, 2001. The State's claim is for fees incurred on the debtor's 2000

cotton crop under the Eradication of the Cotton Boll Weevil statutes. Pursuant to these statutes, a Boll Weevil Eradication Program assessment is made once a year. The assessment on the debtor's land for the year 2000 was made on October 16, 2000, in the amount of \$16,177.84. Hollingshead paid a total of \$10,375.84 of the assessment, leaving a balance due of \$5,802.00. Pursuant to T.C.A. § 43-6-426(a), the State then applied a late payment penalty of \$5.00 per acre to the unpaid balance in the amount of \$2,417.50. As a result, the remaining balance due for Hollingshead's 2000 cotton crop was \$8,219.50. The State has filed a claim for this amount in the debtor's case.

## **II. CONCLUSIONS OF LAW**

Tenn. Code Ann. § 43-6-426(c) and (d) provide that:

(c) Whenever a cotton grower fails to pay all assessments, penalties, and costs associated with the treatment and/or destruction of a cotton crop, the commissioner may recover the amount due from the buyer of the grower's crop, equal to but not exceeding the amount the buyer paid for the crop. Notice of the commissioner's claim shall be given in writing to the grower and the buyer. The buyer shall pay the commissioner's claim before payment for the crop is made to the grower. Beginning on the date written notice is received by the buyer, the commissioner's claim shall apply to any cotton crop grown by the grower, including future crops, until the commissioner's claim is paid in full. The buyer shall be liable for making such payment to the commissioner; however, any buyer of cotton shall take free of the commissioner's claim if such buyer has not received written notice of the claim by the date the grower receives payment for the crop.

(d) *If the grower's cotton crop fails or is not sufficient to pay the commissioner's claim* as provided for in subsection (c), the commissioner shall have a lien of equal dignity with other liens for moneys owed to the state against all real and personal property owned or subsequently acquired by the grower in accordance with the provisions of § 67-1-1403. The commissioner shall cause a notice of a lien for payment of such claim to be recorded in the office of the appropriate county register of deeds as provided for in § 67-1- 1403.

*T.C.A. § 43-6-426 (emphasis added)*. The State has alleged that *T.C.A. § 43-6-426(c)* grants them a statutory lien which supercedes the properly perfected security interests held by Deere and Planters. The State also asserts that their alleged subsection (c) statutory lien is exempted from the exceptions of *T.C.A. § 67-1-1403*. Both Deere and Planters have alleged that the State's lien is created by *T.C.A. § 43-6-426(d)* and that it does indeed come within *§ 67-1-1403's* exceptions.

*T.C.A. § 67-1-1403(c)* provides as follows:

(c) The lien of the state of Tennessee for taxes or fees, or both, shall be superior to all liens and security interests created under Tennessee law except:

- (1) County and municipal ad valorem taxes;
- (2) Deeds of trust which are recorded prior to the recordation of notice of the state lien;
- (3) Security interests created pursuant to Article 9 of the Uniform Commercial Code, complied in title 47, chapter 9, which require filing for perfection and which are properly filed prior to recordation of the notice of the state lien;
- (4) Security interests perfected under the Uniform Commercial Code without filing, as provided in title 47, chapter 9, which are properly perfected prior to recordation of the notice of the state lien; and
- (5) Vendors' liens on real estate provided for in title 66, chapter 10 which are recorded prior to the recordation of notice of the state lien.

*T.C.A. § 67-1-1403(c)*. Section 67-1-1403 further requires the state to record a notice of a lien in the county register of deeds' office. *T.C.A. § 67-1-1403(b)*.

In researching this case, the Court found neither legislative history nor caselaw interpreting T.C.A. § 43-6-426. As a result, the Court finds that it must interpret the statute based on the plain language contained therein. Subsection (d) of § 43-6-426 clearly states that:

[i]f the grower's cotton crop fails or is not sufficient to pay the commissioner's claim as provided for in subsection (c), the commissioner shall have a lien of equal dignity with other liens for moneys owed to the state against all real and personal property owned or subsequently acquired by the grower in accordance with the provisions of § 67-1-1403.

*T.C.A. § 43-6-426(d)*. In the case at bar, the amount of the check at issue is approximately \$7,300.00. The money due the State under the Boll Weevil Eradication Program statutes is \$8,219.50. Clearly, the \$7,300.00 in checks is not sufficient to pay the State's claim; therefore, the Court finds that the State has a lien under T.C.A. § 43-6-426(d). Such lien's priority is determined by T.C.A. § 67-1-1403. Section §67-1-1403 states that a state's lien is superior to all liens and security interests except "security interests created pursuant to Article 9 of the Uniform Commercial Code . . . which require filing for perfection and which are properly filed prior to recordation of the notice of the state lien." In the case at bar, Deere and Planters filed their UCC-1 filing statements before the debtor's 2000 Boll Weevil Eradication assessment was made. As a result, The Court finds that the security interests Deere and Planters hold in the debtor's crop proceeds are superior to the State's T.C.A. § 43-6-426(d)'s lien.

**III. ORDER**

It is therefore **ORDERED** that:

(1) the Motion to Disburse Funds filed by Deere Credit Services is **GRANTED**

(2) the Objection to the Motion to Disburse Funds filed by Tennessee Department of Agriculture is **DENIED**.

**It is so ordered.**

**By the Court,**

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**G. Harvey Boswell**  
**United States Bankruptcy Judge**

**Date: June 19, 2002**

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