

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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In re

DENNIS J. O'CONNOR  
and DEBBIE ANN O'CONNOR,

Case No. 01-27039-L  
Chapter 7

Debtors.

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The Belet Group, Inc.,  
Plaintiff,

v.

Adv. Proc. No. 01-0575

Edward L. Montedonico, Trustee,  
Defendant.

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**ORDER GRANTING SUMMARY JUDGMENT**

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BEFORE THE COURT is a motion for summary judgment filed by The Belet Group, Inc. ("Belet Group") on March 21, 2002. The plaintiff filed an amended affidavit of Jacques Belet in support of the motion on July 2, 2002. The defendant has not responded to the motion. The court has reviewed the motion and exhibits attached to the affidavit, and has concluded that summary judgment should be entered for the plaintiff. This is a core proceeding. 28 U.S.C. § 157(b)(2)(K).

Belet Group seeks a declaration that it holds a perfected security interest in a patent which is superior to the interest of the Chapter 7 Trustee; an order granting it relief from the automatic stay to allow it to foreclose its security interest; and an order directing the Trustee to abandon his interest in the patent pursuant to Bankruptcy Code section 544(b). The Affidavit of Jacques Belet recites the following:

1. Dennis J. O'Connor is indebted to Belet Group in the principal sum of \$150,000 pursuant to a promissory note dated October 17, 2000.
2. No payments have been made on the note.
3. The note is secured by a Security Agreement granting Belet Group a security interest in U.S. Patent Application No. 09/167,294, entitled Emission Control System and Method for Controlling the Amount of Airborn [sic] Particulate Matter Discharging from a Fiber Processing Plant, filed October 6, 1998, via Notice of Allowance on July 18, 2000, and currently pending in the U.S. Patent Office ("Patent Application").
4. The security interest created by the Security Agreement was perfected by filing a UCC-1 financing statement with the Tennessee Secretary of State.
5. The UCC-1 was filed by the Tennessee Secretary of State under filing no. 300059173 as shown in an Acknowledgment from the Tennessee Secretary of State dated October 31, 2000.
6. The value of the patent is no greater than \$25,000 as set forth in the Debtor's Petition, Schedule B-21.
7. Belet Group's indebtedness secured by the patent is in excess of \$150,000.
8. True copies of the note, security agreement, UCC-1 financing statement, and acknowledgment are attached to the affidavit.

In his answer, the Trustee asserts that in order to be perfected, a security interest in a U.S. patent must be recorded in the U.S. Patent office and that notice filing with the Tennessee Secretary of State is insufficient. The Trustee does not contest the allegations concerning the value of the Patent Application or the amount of debt owed to Belet Group. Thus the court concludes that the debtor has no equity in the Patent Application and that unless the Trustee has an interest superior to that of Belet Group, the Patent Application is of inconsequential value to the estate. *See* 11 U.S.C. §§ 362(d)(2)(b) and 554(b).

This Chapter 7 bankruptcy case was filed prior to July 1, 2001, so recently effective amendments to Article 9 do not apply in this case. Former Tennessee Code Annotated section 47-9-106 defined “general intangibles as any personal property other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit, and money.” Pursuant to this definition, a patent is a general intangible. Under former Tennessee Code Annotated section 47-9-302, a security interest in general intangibles was perfected by filing. The Trustee does not disagree with this analysis, but apparently would argue that federal patent law preempts state law concerning the perfection of security interests in patents. The court is persuaded by the memorandum filed by Belet Group and well-reasoned opinions in *In re Cybernetic Services, Inc.*, 239 B.R. 917 (9th Cir. BAP 1999), *aff'd* 252 F.3d 1039 (9th Cir. 2001), *cert. denied* 2002 WL 232964 (Feb. 19, 2002), that perfection of security interests in patents is governed by state law. As

this is the only issue raised in the Trustee's answer, summary judgment should be granted for Belet Group.

Accordingly, it is **ORDERED** that:

1. Summary judgment is granted to Belet Group, and the court declares that Belet Group holds a validly perfected security interest in the Patent Application which is superior to the interest of the Trustee.
2. Relief from the automatic stay is granted to Belet Group to enable it to foreclose upon its security interest.
3. The interest of the Trustee in the Patent Application is deemed abandoned.

BY THE COURT

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JENNIE D. LATTA  
United States Bankruptcy Court

Dated: July 25, 2002

cc: Plaintiff  
Plaintiff's Attorney  
Trustee  
Trustee's Attorney