

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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IN RE:

GLOBAL AIRCRAFT PARTS, LTD.,

BK #90-25400-WHB

Debtor

GEORGE W. EMERSON, JR.,  
TRUSTEE,

Plaintiff,

v.

Adversary Proceeding  
NO. 90-0256

FEDERAL EXPRESS CORPORATION,

Defendant,

AND

WASHINGTON SQUARE CAPITAL, INC.

Intervenor/Cross Plaintiff,

v.

FEDERAL EXPRESS CORPORATION,

Cross-Defendant,

AND

GEORGE W. EMERSON, JR.,  
TRUSTEE,

Counter-Defendant.

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**SUPPLEMENTAL MEMORANDUM OPINION AND ORDER ON  
CROSS MOTIONS FOR PARTIAL SUMMARY JUDGMENT**

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The Court previously entered a Memorandum Opinion and Order On Cross Motions for Partial Summary Judgment on June 10, 1991, in which opinion the Court noted that the issue was whether Federal

Express Corporation ("Federal Express") was entitled to assert a lien upon goods stored on behalf of the debtor and if so, whether that lien may be avoided by the Trustee in bankruptcy. The Court refers to that earlier opinion for a recitation of the essential facts. However, it is critical to an understanding of the present posture of the adversary proceeding to note that there was a pre-bankruptcy dispute between Federal Express and Washington Square Capital, Inc. ("Washington") as to which of the two had priority in lien positions. Washington had filed a suit against Federal Express and the debtor in the Chancery Court of Shelby County, Tennessee to determine the rights of those parties in the goods stored by Federal Express. (Trustee's Complaint, Ex. A)

A Chancery Court order had been entered to permit the sale of the disputed goods, and of course the Trustee was not a party to that pre-bankruptcy order. (Trustee's complaint, Ex. B) The effect of that Chancery Court order is now an issue in this adversary proceeding.

In this Court's first Memorandum Opinion, the Court denied both the Trustee's and Federal Express's motions for partial summary judgment stating that it "must first be established that a warehouseman's and/or carrier's lien in favor of Federal Express was in fact created." June 10, 1991 Memorandum Opinion, p. 10. Subsequent to that ruling, the Court has conducted several status conferences with counsel for the three parties. During the course of events since June 10, 1991, Federal Express has provided to the Trustee copies of its documentation upon which it relies for the establishment of a lien, and at one point in the status conference process, the Court understood that, for purposes of the summary judgment motions only, the parties would stipulate that Federal Express did in fact have a valid warehouseman's lien for at least some amount of charges. Such a stipulation would have placed the Court in the posture of then deciding whether Federal Express lost its liens through the Chancery Court action or whether the Trustee could avoid the liens. However, in further conferences the Court has now been advised that Washington is not able to stipulate to the existence of any lien in favor of Federal Express, but the counsel for all three parties have asked the Court to assume, for purposes of the summary judgment motions, that Federal Express did have a warehouseman's lien prior to the bankruptcy filing.

The Court will make such an assumption because the decision that then will follow will determine that this bankruptcy estate has no interest in the property subject to Federal Express's lien and the dispute that remains is limited to a dispute between Federal Express and Washington, which dispute may be resolved in the Chancery Court action pending between those two parties. The Court should observe that in its earlier opinion, the Court noted that the example receipt previously submitted by Federal Express "strongly indicates the existence and sufficiency of warehouse receipts," but the Court was reluctant to assume that all receipts issued by Federal Express were like the example furnished to the Court. June 10, 1991 Memorandum Opinion, p. 10. Counsel for the Trustee has now examined the documents relied upon by Federal Express and the Trustee's counsel was willing to stipulate for purposes of the pending motions that the documents did constitute warehouse receipts giving Federal Express a lien, at least in some amount. The Court does not believe that it constitutes an advisory opinion under all of the facts and circumstances of this proceeding to assume that Federal Express did have a pre-bankruptcy lien in some amount so that the Court may proceed to rule upon whether Federal Express lost that lien or whether the Trustee may avoid that lien.

### **LOSS OF LIEN**

The heart of the Trustee's argument is that Federal Express lost any liens it had through the consent order entered in the Chancery Court on June 5, 1990, which order provided in substance that possession of the disputed goods stored by Federal Express would be relinquished to Washington for sale, and the Trustee therefore concludes that Federal Express lost its possessory warehouseman's lien by voluntary surrender of possession. However, this Court concludes that to so construe the Chancery Court order would defeat the purpose of that order. The order provides in pertinent part:

2. In order to resolve this conflict and in order to mitigate the amount of damages which Washington may incur, Washington should have possession of the goods in order that it may proceed to foreclose its security interest against Global Aircraft Parts, Ltd. ("Global") and the Federal Goods and, to the extent applicable, Washington's sale will foreclose the lien asserted by

Federal pursuant to T.C.A. §47-7-209 and §47-7-307 [warehouseman's and carrier's lien].

3. This voluntary surrender of possession of the Federal Goods by Federal to Washington, subject to the jurisdiction and orders of this Court, shall not prejudice in any way Federal's right to assert any lien it may have pursuant to T.C.A. §47-7-209 and §47-7-307 or any other claim of right.

The Chancery Court order went on in its ordering clauses to require Washington to post a bond in the amount of \$200,000.00 to protect Federal Express.

It is obvious that the purpose of that Chancery Court order was to permit the sale of the goods, which were subject to declining value, while preserving the lien priority dispute between the competing creditors. The Chancery Court order is not unlike in effect orders which are commonly entered in this Court wherein sales of assets are authorized with any liens attaching to the proceeds of sale and any lien dispute preserved for later litigation if necessary. While the Chancery Court order does not utilize "magic" language so specifying that liens are preserved and attach to the sale proceeds, the meaning and result is obviously the same. The Court can find no other way to read or naturally construe the above quoted language from the Chancery Court order. This Court therefore concludes that Federal Express did not voluntarily surrender possession so as to lose its warehouseman's or carrier's liens; rather, its liens were preserved and attached to the proceeds of sales. This conclusion is enforced by the language quoted above from paragraph 2 of the order wherein the Chancery Court provided that any sales by Washington would act as a foreclosure of both Washington's security interest but also of Federal Express's liens. Such language would have been unnecessary if Federal Express were losing its liens by surrender to Washington for sale.

## AVOIDABILITY OF LIENS

The first issue of avoidability is raised under 11 U.S.C. §545(2) which permits a trustee to avoid a statutory lien on the debtor's property to the extent that the lien "is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser..." 11 U.S.C. §545(2). Contrary to the Trustee's argument and position, this Court concludes that under the terms of the Chancery Court order, the liens of Federal Express were not extinguished by its surrender for sale, and a bona fide purchaser under the terms of that Chancery Court order would be taking free of all liens but the liens would attach to the sale proceeds. In all other respects the liens were enforceable against bona fide purchasers who would not have been able to purchase and obtain possession of the warehoused goods without satisfaction of Federal Express's liens.

The Trustee further argues that Federal Express locked the warehouse, freezing access to the stored goods on May 11, 1990, within 90 days of the involuntary bankruptcy filing; therefore, the Trustee argues that at that point Federal Express gained exclusive possession which constituted a preferential transfer under 11 U.S.C. §547(b). This Court disagrees with the Trustee. Based upon the assumption that Federal Express obtained valid statutory possessory liens each time it obtained goods for storage or carriage, Federal Express's liens were perfected with possession. T.C.A. §47-7-209 and §47-7-307; Compare K Furniture Co. v. Sanders Transfer & Storage Co., Inc., 532 S.W.2d 910, 911 (Tenn. 1975) (For discussion of priority between prior perfected secured creditor and warehouseman). Federal Express could not become more perfected on May 11, 1990 than it already was, and the exercise of possessory lien rights under state law could not be a preference since it would not permit the secured creditor to receive more within the 90 day reach back period than it would have received in a chapter 7 liquidation. 11 U.S.C. §547(b)(5). This Court therefore concludes that Federal Express's actions on May 11, 1990 could not constitute a preferential transfer.

## CONCLUSION

Based upon the foregoing, this Court concludes that the Trustee may not avoid the statutory liens of Federal Express and that Federal Express did not lose those liens under the terms of the Chancery Court order referred to herein. As a result, summary judgment is granted in favor of Federal Express against the Trustee, and any remaining disputes between Federal Express and Washington shall be resolved in the pending Chancery Court action between those parties, the outcome of which will have no effect upon this bankruptcy estate since the value of the goods is insufficient to satisfy both the secured claims of Federal Express and Washington. See Status Report on Disposition of Collateral filed by Washington. Upon this order becoming final, this adversary proceeding shall be closed by the clerk of this Court and each party shall bear its own costs.

**SO ORDERED** this 17<sup>th</sup> day of January, 1992.

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WILLIAM HOUSTON BROWN  
UNITED STATES BANKRUPTCY JUDGE

cc:

Toni Campbell Parker  
Attorney for Trustee  
2110 One Commerce Square  
Memphis, TN 38103

George W. Emerson, Jr., Trustee  
Suite 1113  
One Memphis Place  
200 Jefferson Ave.  
Memphis, TN 38103

Ellen B. Vergos  
Attorney for Federal Express Corp.  
1300 Morgan Keegan Bldg.  
50 N. Front St.  
Memphis, TN 38103

Harris P. Quinn  
Attorney for Washington Square Capital, Inc.  
2000 First Tennessee Bank Bldg.

165 Madison Ave.  
Memphis, TN 38103

Julie C. Chinn  
Assistant U.S. Trustee  
Suite 400  
One Memphis Place  
200 Jefferson Ave.  
Memphis, TN 38103