

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

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In re

TRAVEL RITE RV'S, INC.,

Case No. 90-26723-K (cb)

Chapter 7 (Originally filed under Chapter 11)

Debtor.

JOHN DEERE COMPANY,

Plaintiff,

VS.

Adv. Pro. No. 90-0252

TRAVEL RITE RV'S, INC., the  
above-named debtor;  
CHRYSLER FIRST COMMERCIAL  
CORP.; and EDWARD L.  
MONTEDONICO, Chapter 7 Trustee of  
the above-named debtor,

Defendants.

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**MEMORANDUM OPINION AND ORDER**

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Plaintiff, John Deere Company ("John Deere"), filed an original and amended complaint against the defendants, Travel Rite RV's, Inc. the above-named debtor ("Debtor"), Chrysler First Financial Corp. ("Chrysler First"), and Edward L. Montedonico, Chapter 7 Trustee of the estate of the debtor ("Trustee"), seeking a judicial determination pursuant to Bankr. Rule 7001(2) regarding the validity and priority of its asserted liens on certain properties of the estate.

By virtue of the "Joint Order Consenting To Intervention Of Parties In The Adversary

Proceeding Pursuant To Bankruptcy Rule Procedure 7024", Chrysler First and the Trustee intervened and also claim a superior interest in the subject properties, described more fully, infra.

Considering a totality of the particular facts and circumstances and applicable law, the court is satisfied that John Deere has a properly perfected superior purchase money security interest in the properties in question, subject only to the outcome of the Trustee's pending "Motion To Authorize Payment Of Fees, Expenses And Costs By Trustee," also described more fully, infra.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (E), (K), and (O). The following shall constitute findings of fact and conclusions of law in accordance with Bankr. Rule 7052.

### **BACKGROUND**

The relevant background facts are not in substantial dispute and may be briefly summarized as follows: At all times relevant here the debtor was engaged in the business of selling recreational vehicles, including, for example, campers and motor homes.

On or about March 12, 1981, a financing statement was filed with the Tennessee Secretary of State by Westinghouse Credit Corporation ("WCC") wherein a security interest was perfected in, inter alia, inventory of the debtor. Subsequently, the Tennessee Secretary of State received notification that WCC's security interest was assigned to Chrysler First.

On or about May 4, 1990, John Deere filed its financing statement with the Tennessee Secretary of State perfecting a security interest in, inter alia, "all type of [the debtor's] recreational vehicles and equipment (and proceeds thereof)..." John Deere sent notice of such filing which was received by Chrysler First on May 29, 1990. It is clear that John Deere intended to and indeed did perfect a purchase money security interest in certain inventory and proceeds realized from the sale of such inventory of the debtor. (See Attachment #1 to John Deere's memorandum of law.)

Two motor homes which were subject to John Deere's purchase money security interest are the initial focus of this adversary proceeding. On June 27, 1990, a new 31 foot Bounder motor home was sold

by the debtor in the normal course of business and a 1990 Gulfstream Sun Clipper was taken in on trade. On July 18, 1990, a new Pace Arrow was sold by the debtor and a 1983 Pace Arrow was taken in by the debtor on trade. It is noted here that the aforesaid 1983 Pace Arrow was subsequently sold, post bankruptcy, by the debtor on October 12, 1990 and in return a 1978 Champion was traded in plus approximately \$15,000.00 was paid by the purchaser to the debtor to complete the purchase price.

Although the debtor originally filed a petition under chapter 11 of the Bankruptcy Code on August 3, 1990, it subsequently voluntarily converted the chapter 11 case to a chapter 7 case on October 16, 1990, whereupon the Trustee was appointed to, among other things, liquidate the properties of the §541(a) estate. During the pendency of the prior chapter 11 case, an agreed order dated November 26, 1990, allowed for the sale of a 1990 Gulfstream Sun Clipper for approximately \$24,000.00 which proceeds were deposited in an escrow account of the debtor's attorney.

### **ISSUES**

An Order dated November 30, 1990, limits the issues of this adversary proceeding to the rights of the parties in the 1990 Gulfstream Sun Clipper (or proceeds) and in the proceeds realized from the sale of the 1983 Pace Arrow - i.e., the parties rights in the 1978 Champion motor home and approximately \$15,000.00 deposited in the debtor's checking account.

### **PARTIES CONTENTIONS**

Chrysler First contends, inter alia, that it has first priority in the subject properties because it was the first to file pursuant to T.C.A. §47-9-312(5). Further, it argues that John Deere lost its "purchase money" status when the original "purchase money" motor home was sold. As to the \$15,000.00 in the deposit account, Chrysler First seeks to apply a "last in-last out" method of tracing the proceeds.

John Deere asserts, inter alia, that notwithstanding Chrysler First's earlier perfected security interest it nonetheless has a first priority in the 1978 Champion motor home, the \$24,000.00 in the bank account (proceeds from the court approved sale of the 1990 Gulfstream Sun Clipper), and the \$15,000.00 in

the debtor's deposit account. Further, John Deere contends that the "first in-first out" rule should apply to the \$15,000.00 in the debtor's deposit account.

Trustee primarily argues, inter alia, that he is entitled to the \$15,000.00 in the deposit account for the benefit of the estate contending that for distribution purposes both John Deere and Chrysler First are unsecured creditors regarding the \$15,000.00. Trustee relies upon 11 U.S.C. §544(a), which grants him the status of a hypothetical judicial lien creditor.

### CONCLUSIONS

T.C.A. §47-9-312(3) provides as follows:

"A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory of a buyer if:

- "(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and
- "(b) the purchase money secured party give notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory: (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one (21) day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of §47-9-304); and
- "(c) the holder of the conflicting security interest receives the notification within five (5) years before the debtor receives possession of the inventory; and
- "(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type."

As noted, T.C.A. §47-9-312(3) supra, is a special Code provision regarding inventory and only allows the "purchase money" creditor priority if subsections (a), (b), (c), and (d) are complied with.

The next relevant Code provision is T.C.A. §47-9-306 entitled "Proceeds". The relevant subsections are as follows:

"§47-9-306. (1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are `cash proceeds.' All other proceeds are `non-cash proceeds.' "

"§47-9-306. (3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten (10) days after receipt of the proceeds by the debtor unless:

"(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financial statement indicates the types of property constituting the proceeds; or

"(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

"(c) the security interest in the proceeds is perfected before the expiration of the ten (10) day period.

"Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type."

"§47-9-306. (4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

"(a) in identifiable non-cash proceeds and in separate

deposit accounts containing only proceeds;

- "(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;
- "(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and
- "(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is:
  - "(i) subject to any right of set-off; and
  - "(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten (10) days before the institution of the insolvency proceedings less the sum of:
    - "(I) the payments to the secured party on account of cash proceeds received by the debtor during such period; and
    - "(II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraph (a) through (c) of this subsection (4)."

Pursuant to the language of T.C.A. §47-9-306(a), it may be argued that a motor home taken in on trade from the sale of a new motor home is a "proceed". Further, in that subsection, the court notes that "[m]oney, checks, deposit accounts, and the like are `cash proceeds" . Cf. 11 U.S.C. §363(a). This instant issue therefore revolves around the word "proceeds". T.C.A. §47-9-306(3) limits a security interest in proceeds to ten (10) days unless one of three subsections is complied with therein. This court is convinced under a totality of the particular facts and circumstances and applicable state law that a motor home which is traded in on a new motor home is similar collateral, such that a security interest in the trade-in could be perfected in the same office as the original collateral. This legal conclusion is also compatible with equitable considerations. Subsections (b) and (c) of this section are inapplicable to the instant case. Therefore, as to the

1990 Gulfstream Sun Clipper, represented by \$24,000.00 held in escrow pursuant to a prior court order, John Deere maintains a first priority status against the debtor, Chrysler First, and the Trustee by virtue of its first priority "purchase money" status.

The \$15,000.00 in the debtor's deposit account is a different type of "proceed". It is remembered that T.C.A. §47-9-306(a) defines these funds as "cash proceeds". Generally, subsections (a), (b), and (c) of T.C.A. §47-9-306(4) only help a secured party if the cash proceeds are not commingled and are therefore identifiable.

It must be noted that in accordance with the Order dated September 21, 1990 (docket entry #39 on the case docket sheet) entitled "Order Granting Adequate Protection To Creditor John Deere Company And Conditionally Denying Relief From Stay", the debtor, as a chapter 11 debtor in possession, at paragraph 7 therein, was allowed the following relief:

"7. Debtor is granted leave to sell either or both of the disputed trade-in motor homes for a fair market value; however, upon any sale, debtor shall place all proceeds in escrow, pending a decision by the court on movant's amended complaint for an adjudication of the validity and priority of the security interest that movant claims in said motor home."

As noted earlier, the 1983 Pace Arrow was sold, postpetition, on October 12, 1990. Proceeds of sales under the supervision of the bankruptcy court are not subject to the provisions of the Uniform Commercial Code §9-306(4). See, e.g, In re Sunrise R.V., Inc., 107 B.R. 277 note 12, p.282 (Bankr. E.D. Cal. 1989) citing In re San Juan Packers, Inc., 696 F.2d 707, 711 (9th Cir. 1983). Having further concluded that John Deere has a first priority lien on the 1983 Pace Arrow, this court also concludes considering a totality of the particular facts and circumstances and applicable state law that John Deere also has a first priority lien on the 1978 Champion motor home and the \$15,000.00 as proceeds from the sale of the 1983 Pace Arrow. The September 21, 1990 Order explicitly allows for the sale of the 1983 Pace Arrow. It necessarily follows that such sale fell under the supervision of the Bankruptcy Court. 28 U.S.C. §1334(d); 11 U.S.C. §§363 and 1107.

John Deere's priority status as to the subject properties is without prejudice to the Trustee's

"Motion To Authorize Payment Of fees, Expenses, And Costs By Trustee." A pre-trial conference (not a hearing on the merits) shall be held on Tuesday, February 5, 1991, at 9:30 o'clock a.m. in Courtroom No. 645, 200 Jefferson Avenue, Memphis, Tennessee, to consider the Trustee's aforesaid pending motion.

Based on the foregoing and the case record as a whole,,

**IT IS SO ORDERED:**

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**DAVID S. KENNEDY**  
**CHIEF UNITED STATES BANKRUPTCY JUDGE**

**DATE: January 28, 1991**



cc: William D. Wilson, Jr., Esq.  
Attorney for John Deere Company  
P. O. Box 17212  
Memphis, TN 38138-0212

Eugene Douglass, Esq.  
Attorney for Debtor  
6510 Stage Road  
Bartlett, TN 38134

Toni Campbell Parker, Esq.  
Attorney for Chrysler First Commercial Corp.  
One Commerce Square, #2110  
Memphis, TN 38103

David Blaylock, Esq.  
Attorney for ITT Commercial Finance Corp.  
44 N. Second #700  
Memphis, TN 38103

Edward L. Montedonico, Esq., Chapter 7 Trustee  
200 Jefferson, 10th Floor  
Memphis, TN 38103

Jimmy L. Croom, Esq.  
Staff Attorney  
Office of U. S. Trustee, Region 8  
200 Jefferson #400  
Memphis, TN 38103

John McManus, Esq.  
22 N. Front #880  
Memphis, TN 38103