

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
v.)	Civil No. 91-0047 P
)	
C.I.T. GROUP/EQUIPMENT)	
FINANCING, INC.,)	
)	
Defendant)	

**RECOMMENDED DECISION ON CROSS-MOTIONS
FOR JUDGMENT ON STIPULATED RECORD**

This case comes before the court on cross-motions for judgment on a stipulated record.¹ The action arises out of a dispute over the right to proceeds from the sale of certain collateral based on the status of the parties' respective security interests in the collateral. For the reasons enumerated below, I recommend that the court grant the defendant's motion for judgment.

¹ This procedural device allows a court to resolve any lingering issues of material fact in reaching its decision on the merits. *Boston Five Cents Sav. Bank v. Secretary of the Dep't of Hous. & Urban Dev.*, 768 F.2d 5, 11-12 (1st Cir. 1985). Although the defendant identified its motion as a cross-motion for summary judgment and submitted a statement of material facts in support thereof, I proceed according to the Report of Scheduling Conference and Order (Docket Item 4), which states that "the parties agreed to submit this case to the court for decision on cross-motions for judgment on a stipulated record." The parties also agree that the pleadings, exhibits and stipulations of fact constitute the stipulated record for purposes of this action. See Docket Item 5.

I. STATEMENT OF FACTS

The undisputed facts may be summarized as follows. Defendant C.I.T. Group/Equipment Financing, Inc. ("C.I.T.") is a New York corporation with a place of business at Burlington, Massachusetts. Stipulations & 1. On February 29, 1980 Perkins Construction Co., Inc. ("Perkins") entered into a security agreement with C.I.T. whereby it granted to C.I.T. a security interest in certain personal property. *Id.* & 2; Exh. A to Complaint. C.I.T. filed a financing statement with Maine's Secretary of State ("Secretary") on February 29, 1980, Stipulations & 3; Exh. B to Complaint, and a continuation statement on January 28, 1985, Stipulations & 4; Exh. C to Complaint. On or about February 28, 1990 C.I.T.'s financing statement lapsed when it failed to file another continuation statement. Stipulations & 13.

The collateral at issue in this case is a 1979 Mack dump truck, which was one of the items listed in the security agreement between Perkins and C.I.T. Stipulations & 5; Schedule A to Exh. A to Complaint. Perkins purchased the Mack truck on April 11, 1979. *See* Certificate of Title, Exh. D to Complaint. On March 17, 1980 a state of Maine certificate of title was issued on the truck listing C.I.T. as first lienholder. Stipulations & 6; Exh. D to Complaint. C.I.T.'s lien was properly perfected by notation on the certificate of title. Stipulations & 20; Exh. D to Complaint.

On October 1, 1981 Perkins entered into a security agreement with United Bank granting it a security interest in certain personal property. Stipulations & 8; Exh. E to Complaint. United Bank filed a financing statement with the Secretary on October 7, 1981. Stipulations & 9; Exh. F to Complaint. One of the items listed in Schedule A of the security agreement is the Mack truck. Stipulations & 12. United Bank assigned its security agreement to the Small Business Administration ("SBA") and filed a UCC-3 assignment with the Secretary on June 13, 1986. Stipulations & 10; Exh. G to Complaint. The security interest and financing statement filed by United Bank were continued

by the filing of a continuation statement with the Secretary on September 23, 1986. Stipulations & 11; Exh. H to Complaint.

By notice dated April 18, 1990 the SBA informed C.I.T. and others that Perkins had defaulted on the terms and conditions of its security agreement with United Bank, then held by the SBA, and that it intended to sell the machinery and equipment listed in the security agreement. Stipulations & 14; Exh. I to Complaint. Prior to the sale, the SBA notified C.I.T. that it intended to include the Mack truck in the sale. Stipulations & 15. C.I.T. consented to the truck's sale at auction on the express condition that the proceeds be retained by Keenan Auction Company, as escrow agent, until it either receives joint instructions from C.I.T. and the SBA to release the funds or a court order directing disposition of the funds. *Id.* & 16.

On May 1, 1990 the Mack truck, among other things, was sold at public auction for a sale price of \$14,250. *Id.* & 17. The proceeds from the sale are currently being held in escrow as agreed to by C.I.T. and the SBA. *Id.* & 18. The truck was more than 10 years old at least as early as January 1, 1990. *Id.* & 22.

II. LEGAL ANALYSIS

The plaintiff claims that it is entitled to the proceeds of sale of the Mack truck because C.I.T.'s perfected lien under the Maine Motor Vehicle Certificate of Title and Anti-theft Act ("Title Act"), 29 M.R.S.A. §§ 2350 - 2461, lapsed once the truck became 10 years old. Accordingly, it argues, the priority issue must be resolved pursuant to the provisions of Maine's Uniform Commercial Code ("UCC"), 11 M.R.S.A. §§ 1-101 - 10-108. The plaintiff asserts that, under the UCC, it has the only perfected security interest entitling it to the sale proceeds.

The defendant argues that the Title Act controls the priority issue and that the truck's age at the time of sale is immaterial. It asserts that, under the Act, it retains its first priority perfected lien as noted on the certificate of title and is entitled to the sale proceeds. I find that the Title Act controls the outcome of this dispute and that the defendant is entitled to the proceeds.

The Title Act and the UCC must be read together to resolve this dispute. UCC section 9-302(3)(b) states, in relevant part, that "[t]he filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to . . . [the Title Act]. Section 9-302(4) further states that

[c]ompliance with a statute . . . described in subsection (3) is equivalent to the filing of a financing statement under this Article and a security interest in property subject to the statute . . . can be perfected only by compliance therewith Duration and renewal of perfection of security interest perfected by compliance with the statute . . . are governed by the provisions of the statute

11 M.R.S.A. § 9-302(4).

It is clear that the Mack truck is subject to the provisions of the Title Act. The Act applies to "all vehicles at the time of first registration or when a change of registration is required under section 152 by reason of a sale for consideration, except for vehicles of 1974 model year or older." 29 M.R.S.A. § 2363. The plaintiff relies on section 2362 which states, in part, that "[n]o certificate of

title . . . need be obtained for . . . [a]utomobiles and all over-the-road commercial vehicles that are more than 10 years old." 29 M.R.S.A. ' 2362(13). The plaintiff, citing no authority, interprets this section to mean that, once a vehicle reaches 10 years of age, a lien properly perfected under the Title Act lapses. There is nothing in the unambiguous language of this section that would support such a reading. Indeed, there is not a single provision in the Title Act that even suggests that a lien on a certificate of title lapses once the vehicle becomes 10 years old.

Other provisions of the Title Act only bolster the defendant's position. Section 2402 states, in relevant part, that,

[u]nless excepted by section 2401, a security interest in a vehicle of a type for which a certificate of title is issued is not valid against creditors or the owner or subsequent transferees or lienholders of the vehicle unless perfected as provided in this subchapter.

29 M.R.S.A. ' 2402(1). It further states that a security interest is perfected by delivering an existing certificate of title to the Secretary of State. 29 M.R.S.A. ' 2402(2). Finally, 29 M.R.S.A. ' 2407 provides that

[t]he method provided in this subchapter of perfecting and giving notice of security interests subject to this subchapter is exclusive. Security interests subject to this subchapter are exempted from the provisions of law which otherwise require or relate to the filing of instruments creating or evidencing security interests.

Courts have construed the above provisions according to their plain meaning. The United States Bankruptcy Court for the District of Maine found that a 1972 automobile was not subject to the Title Act when the debtor attempted to obtain a certificate of title for it in 1983. *In Re Crowley*, 42 Bankr. 603 (D. Me. 1984). The court determined that

automobiles which are ten or more years old are exempt from the [Maine Title Act]. . . . Consequently, . . . perfection of a security interest in [such] a car [is not] accomplished by the type of notice required under the relevant provisions of the [Title Act], . . . a method which is *exclusive* for vehicles *subject* to the [Title Act].

Id. at 604 (emphasis in original). The court went on to note that, "[s]ince the debtor's 1972 Mercedes is not subject to [the Title Act], the Uniform Commercial Code controls perfection of the bank's security interest." *Id.* See also *In re Lyford*, 22 Bankr. 222, 226 (D. Me. 1982) (compliance with 29 M.R.S.A. ' 2402 is necessary to perfect a security interest in a vehicle); *In Re Circus Time, Inc.*, 641 F.2d 39, 42 (1st Cir. 1981) (certificate of title is exclusive official record of security interest in vehicle).

The car at issue in *Crowley* was more than 10 years old when the debtor attempted to obtain a certificate of title. The Mack truck in this case was only a year old when Perkins obtained a certificate of title for it on March 17, 1980. It is clear, therefore, that the vehicle is subject to the provisions of the Title Act. C.I.T. has a current and valid perfected security interest in the Mack truck. The SBA, in fact, has no security interest in the truck. By failing to note its lien on the certificate of title in 1981, it did not comply with the provisions of the Title Act governing establishment of a security interest in motor vehicles. While it may have protected its security interest in other collateral listed in the security agreement by filing a financial statement with the Secretary, such filing did not establish a security interest in the Mack truck.²

III. CONCLUSION

In light of the plain language of applicable provisions in both the Title Act and the UCC, the plaintiff's position is untenable. I conclude that C.I.T. holds the only perfected security interest in the Mack truck and is, therefore, entitled to the sale proceeds.

² The SBA's argument that C.I.T. has somehow waived its perfected security interest because it also filed a financing statement with the Secretary and then allowed the financing statement to lapse is unavailing. C.I.T. was not required to complete such a filing for the truck. In fact, a UCC filing was not only unnecessary, it was ineffective to perfect a security interest in the truck. 11 M.R.S.A. ' 9-302(3).

For the foregoing reasons, I recommend that the court DENY the plaintiff's motion, and GRANT the defendant's motion, for judgment.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 15th day of August, 1991.

David M. Cohen
United States Magistrate Judge