

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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Central Division

In the Matter of:

SSC CORPORATION, a Utah  
Corporation,

Bankrupt,

RENTAL ELECTRONICS, INC.,

Plaintiff,

vs

SSC CORPORATION, a Utah  
Corporation

Defendant

In Bankruptcy No. B-78-00516

MEMORANDUM DECISION AND ORDER

On or about March 30, 1978, Walter J. Moore, Vice-President of the Bankrupt, SSC Corporation (SSC), executed a rental-purchase agreement providing for the rental of three pieces of equipment with an option to purchase such equipment at the completion of the lease period for the sum of \$1.00. On about April 17, 1978, Plaintiff, Rental Electronics, Inc., accepted this agreement and, pursuant to its terms, delivered the equipment to SSC at its Salt Lake City address. On about the 1st of May, 1978, Plaintiff filed a Financing Statement with the California Secretary of State under the provisions of the California Uniform Commercial Code. SSC then filed a petition in bankruptcy on June 8, 1978.

At a Pre-Trial Conference held on November 3, 1978, respective counsel for the parties stipulated that the rental-purchase agreement was a security agreement and therefore subject to the provisions of Article 9 of the Utah Uniform Commercial Code. The question that

arises is whether or not the Plaintiff, Rental Electronics, Inc., has a perfected security interest in the equipment covered by the rental-purchase agreement which is superior to the interest of the Trustee.

The statutory provisions governing this issue are found in UTAH CODE ANN. §70A-9-103(1)(b), (c), and (d)(i) and (ii) (Supp. 1977):

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of the perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of this chapter to perfect the security interest:

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

In this case, it seems clear under the facts that the parties, at the time the agreement was made, understood that the property was to be kept and used in Utah at SSC's Salt Lake location. This

is apparent from the security agreement which states that the location of the equipment is to be at SSC's Salt Lake address. Furthermore, the equipment was shipped to Salt Lake immediately after the acceptance of the agreement by Plaintiff, to remain there for the duration of the lease-purchase agreement. Therefore, this transaction comes squarely within UTAH CODE ANN. §70A-9-103(1)(c) (Supp. 1977), which says that if the parties understand at the time the security interest attaches that the goods will be kept in another jurisdiction, and the goods are taken to that other jurisdiction before the end of 30 days, the law of that other jurisdiction will govern the perfection of the security interest and the effect that this perfection or non-perfection will have. Attachment of the security interest is governed by UTAH CODE ANN. §70A-9-203 (Supp. 1977), which states that a security interest attaches when: (1) either the secured party has possession pursuant to the agreement or the debtor has signed a proper security agreement; (2) value has been given; and (3) the debtor has rights in the collateral. Although it is unclear from the facts given whether these conditions were fulfilled at the signing of the agreement, or at the delivery of the property to the debtor SSC, at either point in time when the security interest attached, it was understood that the property was to be kept in Utah and it was so transported to this state within 30 days of the agreement. Therefore, Utah law must govern the perfection of this security interest.

Since the Plaintiff, Rental Electronics, Inc., failed to comply with the filing requirements under UTAH CODE ANN. §70A-9-401 (Supp. 1977), which under UTAH CODE ANN. §70A-9-302 (Supp. 1977) are necessary to perfect its security interest, its interest is unperfected. Such interest could not be perfected under California law as that State's law, under UTAH CODE ANN. §70A-9-

103(1)(c) (Supp. 1977), does not apply to this transaction. Under §70c of the Bankruptcy Act, 11 U.S.C. § 110c (1976), the Trustee is granted the status of a hypothetical judgment lien creditor without notice (see 4B Collier on Bankruptcy ¶70.62A at 728 (1978)), who, under UTAH CODE ANN. §70A-9-301 (Supp. 1977), takes precedence over an unperfected security interest.

It can also be asserted that the law of Utah must govern the perfection of the security interest in question based on UTAH CODE ANN. §70A-9-103(1)(b) (Supp. 1977). This subsection says that the perfection of a security agreement and its effects are to be governed "by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected." Since the Plaintiff asserts that the security interest was perfected on May 1, 1978 when a financing statement was filed with the Secretary of State of California, and the collateral in question was on that date in Utah, then under this provision the law of Utah must govern perfection of the interest, necessitating the same result as under subsection (1)(c) of UTAH CODE ANN. §70A-9-103 (Supp. 1977). But, as the Court has decided this case under subsection (1)(c) of UTAH CODE ANN. §70A-9-103 (Supp. 1977), and by the wording of subsection (1)(b) of the same section the other provisions in the subsection take precedence over it, it is unnecessary to comment on this interpretation of this provision.

Plaintiff argues that its interest was perfected in California so that under UTAH CODE ANN. §70A-9-103(1)(d) (Supp. 1977), the security interest continued to be perfected for four months thereafter in this state, during which time SSC filed its petition in bankruptcy. Plaintiff therefore argues that the Trustee took subject to a validly perfected security interest. This argument

however, clearly fails. Under subsection (1)(d) of UTAH CODE ANN. §70A-9-103 (Supp. 1977), it states that "when collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed," then the four month grace period applies. (Emphasis added.) Here, when the collateral was brought into this jurisdiction on around April 17, 1978, it was not covered by any perfected security interest. It was not until May 1, 1978, about fourteen days later, that Plaintiff attempted to perfect the interest in California, and by that time the collateral had already been located in the new jurisdiction. This conclusion is supported by the underlying policies of the creation of a four month grace period under U.C.C. §9-103. When the first version of U.C.C. §9-103(1)(d) (1957 version) was adopted, Comment 7 made it clear that the four month grace period was designed to protect against absconding debtors. See In Re Automated Book-binding Service, Inc., 471 F.2d 846 (4th Cir. 1972). Clearly this is not the case here, for the secured party not only knew, but made it part of the agreement between the parties, that the property was to be kept in Utah.

## ORDER

Pursuant to the foregoing opinion, IT IS ORDERED that the complaint and the action represented by it be dismissed and that court costs incurred in this action be paid by the Plaintiff.

Dated this 21 day of May, 1979.

  
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Ralph R. Mabey  
Bankruptcy Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

Central Division

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In the Matter of:	:	
	:	
SSC CORPORATION, a Utah Corporation,	:	Bankruptcy No. B 78-00516
	:	
Bankrupt,	:	
	:	
RENTAL ELECTRONICS, INC.,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
SSC CORPORATION, a Utah Corporation,	:	JUDGMENT
	:	
Defendant.	:	

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This action came for trial before the Court, Honorable Ralph R. Mabey, Bankruptcy Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the plaintiff, Rental Electronics, Inc., take nothing, that the action be dismissed on the merits, and that the defendant, SSC Corporation, recover of the plaintiff his costs of action.

Dated at Salt Lake City, Utah, this 31<sup>st</sup> day of May, 1979.

Ralph R. Mabey  
 Ralph R. Mabey  
 Bankruptcy Judge