IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 00-31694

GEORGE GREGORY PHELPS
SHEILA LYVONE PHELPS
d/b/a SHEILA'S

Debtors

N. DAVID ROBERTS, JR., TRUSTEE

Plaintiff

v. Adv. Proc. No. 01-3053

MOUNTAIN NATIONAL BANK

Defendant / Third Party Plaintiff

v.

EAST TENNESSEE NISSAN, INC.

Third Party Defendant

MEMORANDUM ON
MOTIONS FOR SUMMARY JUDGMENT

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

On April 13, 2001, Chapter 7 Trustee N. David Roberts, Jr. (Trustee) filed a Complaint against Mountain National Bank (Mountain National). The Complaint seeks to avoid Mountain National's security interest in the Debtors' 2000 Nissan Xterra (Nissan) as a preferential transfer under 11 U.S.C.A. § 547(b) (West 1993) and to recover the Nissan or its value pursuant to 11 U.S.C.A. § 550(a) (West 1993).

On June 1, 2001, Mountain National filed a Third-Party Complaint against the Nissan's seller, East Tennessee Nissan (East Tennessee). By its Third-Party Complaint, Mountain National seeks recovery from East Tennessee, to the extent that Mountain National is found liable to the Trustee, under either a negligence or third-party beneficiary theory of recovery.

The Trustee filed a Motion for Summary Judgment on August 16, 2001. That same day, East Tennessee also filed a Motion for Summary Judgment. Both motions seek summary judgment against Mountain National.

The parties have filed copies of the relevant loan and sale documentation, the authenticity of which is not in dispute. Also before the court are the affidavits of: the Trustee; the Debtors; Greg Perry, East Tennessee's Office Manager; and Jeannie Allen, a Vice President of Mountain National. All parties have submitted briefs in support of their respective positions.

The Trustee's Complaint is a core proceeding. 28 U.S.C.A. § 157(b)(2)(F), (K) (West 1993). The court's jurisdiction over the Third-Party Complaint will be discussed herein.

I

On March 20, 2000, Debtor Gregory Phelps (Debtor) signed a New Vehicle Buyer's Order to purchase the Nissan from East Tennessee. That document, which was not signed by a representative of East Tennessee, provides in material part:

> This order is not valid unless signed and accepted by dealer and credit approved by a responsible finance company as to any deferred balance.

Two other documents, a Bill of Sale and a Supplement to Purchase Contract, were also generated relating to the Nissan purchase. The Bill of Sale is dated March 20, 2000, and is unsigned by any party. The Supplement to Purchase Contract is signed by the Debtor, is undated, and partially provides as follows:

> [T]he completion of this sales transaction is contingent upon approval of a lender. Pending the credit approval for me/us, by a financing institution and completion of the sales transaction, delivery of said vehicle by Dealer is hereby made to me/us as a convenience to me/us and is subject to all terms and conditions in said Sales Agreement and in the promissory note and security agreement, if any executed concurrently or in accordance therewith. Said vehicle shall remain the property of the Dealer.

The Debtors took possession of the Nissan on March 20, 2000.

Mountain National subsequently approved the Nissan financing. Both Debtors signed a Simple Interest Note, Disclosure, and Security Agreement (Security Agreement), possessing a

typewritten date of March 30, 2000,[1] in favor of Mountain National. Through that document, the Debtors acknowledged granting Mountain National a security interest in the Nissan.

Also on March 30, 2000, First National issued a check made payable jointly to East Tennessee and the Debtors in the amount of $9,233.07. According to the undisputed Affidavit of Greg Perry, East Tennessee received the check ?some time after it was issued," and the Debtors did not endorse the check until on or after April 7, 2000.[2] East Tennessee deposited the check into its bank account on April 10, 2000.

On April 20, 2000, East Tennessee applied for a certificate of title and registration for the Nissan noting Mountain National's lien. The parties do not dispute that the document was correctly prepared and submitted pursuant to Tennessee law.

The Debtors then filed their Chapter 7 Petition on April 27, 2000. According to the Trustee's Affidavit, the Internal Revenue Service has filed a priority claim in the amount of $15,781.51, and thirteen unsecured claims have been filed totaling over $56,000.00. The Trustee further states that the only known recoverable asset of the estate would be the proceeds from the sale of the Nissan.

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[1] By the Third-Party Complaint and the Answer of Third-Party Defendant, East Tennessee and Mountain National agree that the Security Agreement was signed on March 30, 2000. However, the Debtors' Affidavit indicates that the document was signed on March 20, 2000. This discrepancy is not germane to the resolution of the issues presently before the court.

[2] ?If an instrument is made payable to two payees jointly, both payees must endorse." TENN. CODE ANN. § 47-3-116 cmt. 2 (1996).

II

Summary judgment is governed by FED. R. CIV. P. 56, which is made applicable to this adversary proceeding by FED. R. BANKR. P. 7056. Rule 56 provides in pertinent part:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

FED. R. CIV. P. 56(c).

The movant bears the initial burden of proving both that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. *See Owens Corning v. National Union Fire Ins. Co.*, 257 F.3d 484, 491 (6th Cir. 2001). The burden then shifts to the nonmovant to demonstrate evidence of a genuine issue for trial. *See id*. The court's function is not **?**to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505, 2511 (1986). There is no **?**genuine issue for trial" if the record, taken as a whole, **?**could not lead a rational trier of fact to find for the non-moving party[.]" *Owens Corning*, 257 F.3d at 491 (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 106 S. Ct. 1348, 1356 (1986)).

III

As noted, the Trustee seeks to avoid Mountain National's security interest as a preferential transfer under 11 U.S.C.A. § 547(b).[3] The Trustee bears the burden of proving each element of that section by a preponderance of the evidence. *See* 11 U.S.C.A. § 547(g) (West 1993); *Hunter v. Dupuis (In re Dupuis)*, 265 B.R. 878, 881 (Bankr. N.D. Ohio 2001).

The granting of a security interest in an automobile is a transfer for purposes of § 547(b). *See Field v. Lebanon Citizens Nat'l Bank (In re Knee)*, 254 B.R. 710, 712 (Bankr. S.D. Ohio 2000); 11 U.S.C.A. § 101(54) (West Supp. 2001) (?transfer' means every mode . . . of disposing of or parting with property or with an interest in property, including retention of title as a security interest"). It is undisputed that Mountain National is a creditor as defined by 11 U.S.C.A. § 101(10)(A) (West 1993) and that the transfer was made within ninety days of the Debtors' April 27, 2000 Chapter 7 filing. The Debtors are presumed to have been insolvent during that ninety-day period. *See* 11 U.S.C.A. § 547(f) (West 1993). Mountain National makes no effort

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[3] Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

(1) to or for the benefit of a creditor;
(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
(3) made while the debtor was insolvent;
(4) made—
(A) on or within 90 days before the date of the filing of the petition; or
(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
(5) that enables such creditor to receive more than such creditor would receive if—
(A) the case were a case under chapter 7 of this title;
(B) the transfer had not been made; and
(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C.A. § 547(b) (West 1993).

to rebut that presumption. Further, for purposes of § 547(b)(5), the Trustee's uncontroverted Affidavit establishes that the transfer places Mountain National in a better position than if it were an unsecured creditor under Chapter 7.

At issue, however, is whether the transfer of the security interest was ?for or on account of an antecedent debt owed by the debtor before such transfer was made" as required by § 547(b)(2). Although the term ?antecedent debt" is not defined by the Bankruptcy Code, ?a debt is ‹antecedent' if it is incurred before the transfer: the debt must have preceded the transfer." 5 KING, COLLIER ON BANKRUPTCY ¶ 547.03[4], at 547-33 (15th ed. rev. 2001); *see also Hendon v. General Motors Acceptance Corp. (In re B&B Utils., Inc.)*, 208 B.R. 417, 421 (Bankr. E.D. Tenn. 1997). A debt is, in turn, ?‹incurred' on the date upon which the debtor first becomes legally bound to pay." *Dickinson v. Meredith (In re Wathen's Elevators, Inc.)*, 37 B.R. 870, 871 (Bankr. W.D. Ky. 1984) (citations omitted). The debt must also be ?based upon a ‹property interest in the consideration exchanged.'" *Whittaker v. BancOhio Nat'l Bank (In re Lamons)*, 121 B.R. 748, 751 (Bankr. S.D. Ohio 1990) (quoting *Barash v. Public Fin. Corp.*, 658 F.2d 504, 509 (7th Cir. 1981)).

A loan debt is incurred when the funds have been advanced and the debtor has agreed to repay them. *See Ford Motor Credit Co. v. Ken Gardner Ford Sales, Inc. (In re Ken Gardner Ford Sales, Inc.)*, 10 B.R. 632, 647 (Bankr. E.D. Tenn. 1981), *aff'd*, 23 B.R. 743 (E.D. Tenn. 1982); *see also Lamons*, 121 B.R. at 751 (A debt does not exist under § 547(b) until the loan funds are advanced by the bank.); *but see Weaver v. Ford Motor Credit Co. (In re McFarland)*, 131 B.R. 627 (E.D. Tenn. 1990) (deciding, without discussion, that debt was incurred on date

installment contract was signed). In the present case, the Debtors signed the Security Agreement on or before March 30, 2000, and Mountain National issued its check on March 30, 2000. The court accordingly finds that the debt was incurred on March 30, 2000.[4]

As for the date of the transfer of the security interest, "[w]hat constitutes a transfer and when it is complete' is a matter of federal law." *Barnhill v. Johnson*, 112 S. Ct. 1386, 1389 (1992) (quoting *McKenzie v. Irving Trust Co.*, 65 S. Ct. 405, 407-08 (1945)). Section 547(e) speaks to the timing of transfers, providing in material part:

> (2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made—
>
> > (A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 10 days after, such time, except as provided in subsection (c)(3)(B);
> >
> > (B) at the time such transfer is perfected, if such transfer is perfected after such 10 days; or
> >
> > (C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of—
> >
> > > (i) the commencement of the case; or
> > >
> > > (ii) 10 days after such transfer takes effect between the transferor and the transferee.

11 U.S.C.A. § 547(e)(2) (West 1993 & Supp. 2001). For purposes of § 547, subsection (e)(2) dates most transfers as of the date the transfer "takes effect" between the parties, if the transfer is

[4] East Tennessee contends that the debt was incurred at some point after April 10, 2000, at the point in time when Mountain National honored the check. In support of its position, East Tennessee looks to *Barnhill v. Johnson*, 112 S. Ct. 1386 (1992). In *Barnhill*, the Supreme Court held that a transfer of *a debtor's funds* by check is not completed under § 547(b) until the check is honored by the issuing bank. *See id.* at 1389-91. This court declines to extend *Barnhill* to the question of when the debt was incurred, particularly as there is no indication in the present case that the check was not honored prior to the transfer of the security interest.

perfected within the next ten days. *See* 11 U.S.C.A. § 547(e)(2)(A); *cf. McFarland*, 131 B.R. at 631 (The phrase ?takes effect between the transferor and the transferee" is synonymous with the term ?attachment" as used under Article 9 of the Uniform Commercial Code.).

However, § 547(e)(2)(A) is by its terms inapplicable to enabling loans such as the one presently at issue. For those loans ?that create[] a security interest in property acquired by the debtor[,]" 11 U.S.C.A. § 547(c)(3)(B) (West Supp. 2001), § 547(e)(2) adopts the time period set by § 547(c)(3)(B).[5] Section 547(c)(3)(B) provides that a trustee may not avoid a transfer ?perfected on or before 20 days after the debtor receives possession of such property[.]"[6]

It is undisputed that Mountain National's security interest was not perfected within twenty days of March 20, 2000 — the date that the Debtors took possession of the Nissan. Section 547(e)(2)(A) therefore does not set the date of transfer in this case. Since subsection (A) is not satisfied, the transfer date is the actual date of perfection, *see* 11 U.S.C.A. § 547(e)(2)(B), unless perfection did not occur prior to the filing of the petition, in which case the transfer is fixed ?immediately before the date of the filing of the petition[.]" *See* 11 U.S.C.A. § 547(e)(2)(C).

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[5] In its Supplemental Brief, East Tennessee urges a reading of § 547(e)(2)(A) that would allow relation back of the transfer date if perfection occurs within ten days of attachment *or* if the § 547(c)(3)(B) deadline is met. East Tennessee's proposed construction completely ignores the plain language of § 547(e)(2)(A). Congress' use of the word ?except" clearly makes the ten-day perfection period inapplicable to enabling loans. *See* 5 KING, COLLIER ON BANKRUPTCY ¶ 547.03[4], at 547-33 n.37 (15th ed. rev. 2001) (Section 547(e)(2)(A) contains an ?explicit exception" for purchase money security lenders.).

[6] Section 547(c)(3)(B) is intended to establish a uniform federal perfection period, thereby eliminating the possibility of inconsistent decisions resulting from conflicting state law perfection periods. *See Fidelity Fin. Servs., Inc. v. Fink*, 118 S. Ct. 651, 656 (1998); 5 KING, COLLIER ON BANKRUPTCY ¶ 547.03[4], at 547-33 n.37 (15th ed. rev. 2001).

In Tennessee, a security interest in a motor vehicle is perfected by delivering, *inter alia*, an application for a certificate of title, containing the name and address of the lienholder, to the county clerk or the division of motor vehicles. *See* TENN. CODE ANN. § 55-3-126(b)(2) (1998 & Supp. 2000). Perfection is complete when the application is received by the county clerk or the division of motor vehicles. *See id*.

The Trustee's Motion for Summary Judgment is supported by a certified copy of the Application for Certificate of Title and Registration showing an application date of April 20, 2000. This date is uncontested by any party. The transfer of the security interest therefore took place on April 20, 2000. *See* 11 U.S.C.A. § 547(e)(2)(B).

The debt at issue is antecedent because it was incurred on March 30, 2000, prior to the transfer of the security interest on April 20, 2000. *See B&B Utils.*, 208 B.R. at 421. Accordingly, the Trustee has met his burden of proof on all elements of § 547(b), and his Motion for Summary Judgment must be granted.

The Trustee, having avoided Mountain National's lien, also seeks to recover the avoided transfer under 11 U.S.C.A. § 550(a) (West 1993). However, the court has recently determined that § 550(a) had no application to an action brought by the Chapter 7 Trustee seeking to avoid a trust deed encumbering property of the estate. *See Hendon v. G.E. Capital Mortgage Servs., Inc. (In re Carpenter)*, 266 B.R. 671 (Bankr. E.D. Tenn. 2001). Specifically, the court held in material part:

> Avoidance and recovery are recognized in the Sixth Circuit as two distinct remedies. The Plaintiff's Complaint was brought solely as an avoidance action

> under § 544(a). As noted, the Plaintiff may avoid the Defendant's security interest under § 544(a). Once that occurs, the interest is preserved for the estate's benefit and protection by § 551[7] and becomes property of the estate pursuant to § 541(a)(4).[8] These events are meaningful in and of themselves and necessitate no additional **?**recovery" by the Plaintiff. Section 550 is simply not implicated . . . .

Carpenter, 266 B.R. at 676.

The analysis under *Carpenter* has equal application to the present matters which involve the avoidance of a security interest as a preference pursuant to 11 U.S.C.A. § 547(b).

IV

It is well-settled that the court may *sua sponte* inquire whether it has jurisdiction over proceedings brought before it. *See* 28 U.S.C.A. § 157(b)(3); *see also United States v. Corrick*, 56 S. Ct. 829, 831 (1936); *Mansfield, C. & L.M. Ry. Co. v. Swan*, 4 S. Ct. 510, 511 (1884); *In re G.T.L. Corp.*, 211 B.R. 241, 244 (Bankr. N.D. Ohio 1997); *Maislin Indus., U.S., Inc. v. Certified Brokerage Sys., Inc. (In re Maislin Indus., U.S., Inc.)*, 75 B.R. 170, 174 (Bankr. E.D. Mich. 1987). Mountain National's Third-Party Complaint is brought pursuant to FED. R. BANKR.

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[7] Any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title . . . is preserved for the benefit of the estate but only with respect to property of the estate.

11 U.S.C.A. § 551 (West 1993).

[8] (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

. . . .

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

11 U.S.C.A. § 541(a)(4) (West 1993).

P. 7014 and FED. R. CIV. P. 14.[9] Those rules, which establish the statutory basis for third-party practice, do not answer the separate question of the court's jurisdiction. *See* FED. R. BANKR. P. 7014 Advisory Committee Note (1983) (?This rule does not purport to deal with questions of jurisdiction."); *see also Scott v. Equitable Fed. Sav. & Loan Ass'n (In re German)*, 97 B.R. 373, 375 (Bankr. S.D. Ohio 1989); *Maislin*, 75 B.R. at 172; *Harrison v. Helena Fuel & Harbor Serv., Inc. (In re H & S Transp. Co., Inc.)*, 35 B.R. 67, 68-69 (Bankr. M.D. Tenn. 1983).

Instead, bankruptcy jurisdiction over proceedings involving nondebtors is ?determined solely" by 28 U.S.C.A. § 1334(b). *See Michigan Employment Sec. Comm'n v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1140 (6th Cir. 1991). Section 1334(b) provides:

> Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C.A. § 1334(b) (West 1993).

Under § 1334(b), the court has subject matter jurisdiction over those proceedings ?arising under title 11,"[10] ?arising in" a case under title 11,[11] or ?related to" a case under title 11. *See id.*;

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[9] Rule 14 provides in material part:

> At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff.

FED. R. CIV. P. 14(a).

[10] Proceedings ?arising under title 11" are those ?that involve a cause of action created or determined by a statutory provision of title 11." *Beneficial Nat'l Bank USA v. Best Receptions Sys., Inc. (In re Best Reception Sys., Inc.)*, 220 B.R. 932, 943 (Bankr. E.D. Tenn. 1998) (quoting *Wood v. Wood (In re Wood)*, 825 F.2d 90, 96 (5th Cir. 1987)). The (continued…)

see also Wolverine Radio, 930 F.2d at 1141. These categories ?operate conjunctively to define the scope of jurisdiction." *Wolverine Radio*, 930 F.2d at 1141. At a minimum, the matter must at least be ?related to" the debtor's bankruptcy case. *See id*.

The Sixth Circuit has adopted the *Pacor* standard for determining ?related to" jurisdiction:

> The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy*. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Robinson v. Michigan Consol. Gas Co., Inc., 918 F.2d 579, 583 (6th Cir. 1990) (quoting *Pacor, Inc. v. Higgins (In re Pacor, Inc.)*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis in original) (citations omitted)). In other words, ?bankruptcy courts have no jurisdiction over proceedings that have no effect on the debtor." *Celotex Corp. v. Edwards*, 115 S. Ct. 1493, 1499 n.6 (1995). Furthermore, ?an extremely tenuous connection" to the bankruptcy estate does not create jurisdiction. *Robinson*, 918 F.2d at 584 (quoting *Kelley v. Nodine (In re Salem Mortgage Co.)*, 783 F.2d 626, 634 (6th Cir. 1986)).

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[10](…continued)
negligence and breach of contract theories underlying the Third-Party Complaint are not ?created or determined by a statutory provision of title 11."

[11] Proceedings ?arising in" a case under title 11 are ?those ‹administrative' matters that arise *only* in bankruptcy cases. In other words, ‹arising in' proceedings are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of bankruptcy." *Best Reception Sys.*, 220 B.R. at 943 (quoting *Wood*, 825 F.2d at 97 (footnote omitted) (emphasis in original)). It cannot be said that Mountain National's negligence and breach of contract complaints are ?matters that arise only in bankruptcy cases."

The Third-Party Complaint is not sufficiently ?related to" the Debtors' estate. Mountain National seeks indemnification from East Tennessee, not from the Debtors. No conceivable outcome of that litigation would ?alter the Debtors' rights, liabilities, options, or freedom of action (either positively or negatively) [or] in any way impact[] upon the handling and administration of the bankrupt estate." *Robinson*, 918 F.2d at 583; *cf. German*, 97 B.R. at 375 (?[A] determination of whether [the third-party plaintiff], which may be found liable for damages on the Trustee's Complaint, should be allowed to recapture its potential loss from [the third-party defendant] under an indemnity theory cannot be said to have any effect on Debtors' estate or the underlying bankruptcy case."); *Maislin*, 75 B.R. at 172-74 (same).

?[T]he mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of section [1334(b)]." *Lindsey v. O'Brien, Tanski, Tanzer & Young Health Care Providers (In re Dow Corning Corp.)*, 86 F.3d 482, 489 (6th Cir. 1996) (quoting *Pacor*, 743 F.2d at 994). Notions of judicial economy cannot alone justify federal jurisdiction. *See id*.

Accordingly, because the Third-Party Complaint is not at least ?related to" the Debtors' bankruptcy, the court is without subject matter jurisdiction. *See* 28 U.S.C.A. § 157(b)-(c). Mountain National's Third-Party Complaint must therefore be dismissed as must be East Tennessee's Motion for Summary Judgment.

An order consistent with this Memorandum will be entered.

FILED: October 30, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 00-31694

GEORGE GREGORY PHELPS
SHEILA LYVONE PHELPS
d/b/a SHEILA'S

Debtors

N. DAVID ROBERTS, JR., TRUSTEE

Plaintiff

v. Adv. Proc. No. 01-3053

MOUNTAIN NATIONAL BANK

Defendant / Third Party Plaintiff

v.

EAST TENNESSEE NISSAN, INC.

Third Party Defendant

O R D E R

For the reasons stated in the Memorandum on Motions for Summary Judgment filed this date, the court directs the following:

1. The Motion for Summary Judgment filed by the Defendant East Tennessee Nissan on August 16, 2001, entitled ?East Tennessee Nissan, Inc.'s Motion for Summary Judgment," is DENIED.

2. The Third-Party Complaint filed by the Defendant Mountain National Bank against East Tennessee Nissan, filed on June 1, 2001, is DISMISSED, *sua sponte*, for lack of subject matter jurisdiction.

3. The Motion for Summary Judgment filed by the Plaintiff N. David Roberts, Jr., Trustee, is GRANTED.

4. The lien of the Defendant Mountain National Bank encumbering the Debtors' 2000 Nissan Xterra automobile is avoided pursuant to 11 U.S.C.A. § 547(b) (West 1993). The Plaintiff's interest in this vehicle is superior to the interest of the Defendant.

SO ORDERED.

ENTER: October 30, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE