

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

THE BENNETT FUNDING GROUP, INC.

Debtors

CASE NO. 96-61376

Chapter 11

Substantively Consolidated

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OXFORD BANK & TRUST

Plaintiff

vs.

ADV. PRO. NO. 96-70318A

THE BENNETT FUNDING GROUP, INC.

Defendant

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APPEARANCES:

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION AND ORDER

On January 28, 1998, an Evidentiary Hearing was conducted in connection with a motion

seeking relief from the automatic stay pursuant to sections 362(d)(1) and (d)(2) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (“Code”), filed by the First National Bank of Carmi.<sup>1</sup> Pursuant to a stipulation, dated September 27, 1997 (“Carmi Stipulation”), certain banks agreed to participate in the Evidentiary Hearing as intervenors. Oxford Bank & Trust (the “Bank”) was one of the intervenors and pursuant to ¶ 12 of the Carmi Stipulation is now requesting that the Court render a decision as to the specific objections of Richard C. Breeden, chapter 11 trustee in the above-referenced consolidated case (“Trustee”), relating to twelve equipment leases (“Leases”) in which the Bank has asserted a perfected security interest on the basis that they are chattel paper.

For the most part, the Trustee’s objections are based on the lack of model and serial numbers identifying the goods/equipment in the Leases. As this Court has previously found, in order for a lease to be chattel paper, there must be a “writing or group of writings which evidence both a monetary obligation and a security interest in specific goods.” Section 9-105(b) of the New York Uniform Commercial Code (“NYUCC”) (McKinneys 1990) (emphasis added); *see Carmi Decision* at 12.

The Court has reviewed the Leases and the additional documentation relevant to the particular transactions to which the Trustee has objected<sup>2</sup> and concludes that the following Leases sufficiently identify the leased equipment or goods and are chattel paper: 95032760, 95040368, 95040506. With respect to Lease 95040455, which includes reference to five SONY dictators,

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<sup>1</sup> On May 6, 1998, the Court rendered its Memorandum-Decision, Findings of Fact, Conclusions of Law and Order. *See In re The Bennett Funding Group, Inc.*, Case No. 96-61376 (Bankr. N.D.N.Y. May 6, 1998) (“Carmi Decision”).

<sup>2</sup> “A determination of whether a lease transaction is evidenced by chattel paper is not necessarily limited to a review of the lease itself, and may be based upon all the documents which are relevant to the particular transaction.” *See Carmi Decision* at 13 (citations omitted).

four SONY transcribers and twelve SONY portables, the Court concludes that Lease 95040455 constitutes chattel paper only as to the three items specifically identified by serial number, namely the SONY Dictator SN# 610506, SONY Transcriber SN# 27145 and the SONY Portable SN# 503851. Accordingly, the extent of the Bank's security interest in that particular Lease, insofar as it is deemed to be chattel paper, is limited to a one-seventh interest.<sup>3</sup>

With respect to Leases 95030694, 95031432, 95031586, 95031830, 95040291, 95040293, 95040467 and 95040408, the Court finds that they do not contain sufficient identification of model/manufacturer or serial numbers for the Court to determine that they are chattel paper. Accordingly, they are deemed to be accounts.

Based on the foregoing, it is hereby

ORDERED that the Trustee turn over to the Bank the proceeds of the Leases found to be chattel paper, as identified above, in accordance with the terms of the Carmi Stipulation.<sup>4</sup>

Dated at Utica, New York

this 27th day of January 2000

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STEPHEN D. GERLING

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<sup>3</sup> The balance of the equipment listed in Lease 9504055 are not identified by serial numbers. In the event that it is determined on appeal from the Carmi Decision that the intervening banks have a perfected security interest in accounts, then the Bank will be entitled to assert such an interest in all the proceeds generated from Lease 95040455, not simply one-seventh of them. An account is defined as "any right to payment for goods . . . leased . . . which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance." *See* NYUCC § 9-106.

<sup>4</sup> This Decision shall be deemed an interim, interlocutory decision that shall not become final and appealable until such time as certain "Non-Common Issues" as defined in the Stipulation are finally resolved with respect to the Bank.

Chief U.S. Bankruptcy Judge