

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
99 APR 19 PM 2:30
DIST OF SOUTH CAROLINA

IN RE:

Copyrite, Inc., d/b/a Digitz,

Debtor.

Copyrite, Inc., d/b/a Digitz,

Plaintiff,

v.

General Electric Capital Corp.,

Defendant.

C/A No. 98-08508-W

Adv. Pro. No. 98-80259-W

ENTERED
APR 19 1999
S. R. P.

JUDGMENT

Chapter 11

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Motion for Summary Judgment filed by the Debtor Copyrite, Inc., d/b/a Digitz is hereby granted and the re-perfection of the lapsed security interest of the Defendant General Electric Capital Corporation is hereby avoided as a preferential transfer pursuant to 11 U.S.C. §547(b).


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
April 19, 1999.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

APR 19 1999

~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

SHEREE R. PHIPPS

Deputy Clerk

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
99 APR 19 PM 2:37
DIST OF SOUTH CAROLINA

IN RE:

Copyrite, Inc., d/b/a Digitz,

Debtor.

Copyrite, Inc., d/b/a Digitz,

Plaintiff,

v.

General Electric Capital Corp.,

Defendant.

C/A No. 98-08508-W

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ENTERED

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S. R. P.

ORDER

Chapter 11

THIS MATTER comes before the Court upon the Motion for Summary Judgment filed by the Debtor, Copyrite, Inc. d/b/a Digitz (“Debtor” or “Copyrite”), seeking a judgment avoiding the re-perfection of a lapsed UCC-1 financing statement (“Financing Statement”) by General Electric Capital Corporation (“GECC”) as a preferential transfer pursuant to 11 U.S.C. §547.¹

Based upon the stipulation of the parties that there are no factual issues in dispute, the arguments of counsel and the documents admitted into evidence, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable by Rule 7052 of the Federal Rules of Bankruptcy Procedure.²

¹ Further references to the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, shall be by section number only.

² The court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

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FINDINGS OF FACT

On or about December 23, 1992, Copyrite and Linotype Hell Company entered into a Purchase/License Agreement transaction whereby the Plaintiff purchased certain equipment described as a Lintronic 330 RIP40XMOTPix, an Ethernet Cable Kit for RIP, a LP400 Processor, a water panel, a Linchock, and 400 Adobe fonts (collectively "Collateral").

The transaction was financed by GECC who took a security interest in the Collateral and recorded a UCC-1 Financing Statement with the South Carolina Secretary of State's Office on January 12, 1993. Pursuant to South Carolina Code of Laws Ann. § 36-9-403(2)³, the filing of the January 12, 1993 Financing Statement was effective for a period of five years.

On or about June 1, 1998, GECC submitted an additional Financing Statement for filing with the Secretary of State but executed the document under the "Termination Statement" section of the Financing Statement. The June 1, 1998 Financing Statement further indicated that the previous Financing Statement had lapsed.

The Secretary of State's Office rejected the June 1, 1998 Financing Statement and returned it to GECC. On or about July 14, 1998, a new Financing Statement was submitted by GECC to the Secretary of State's Office which was signed by GECC in the proper section to re-perfect the lapsed security interest. The July 14, 1998 Financing Statement was accepted and filed by the Secretary of State but did not make any reference to the unsuccessful June 1, 1998 Financing Statement.

On October 1, 1998, Copyrite filed a Chapter 11 bankruptcy petition. This adversary

³ Further references to the South Carolina Code of Laws, as amended, shall be by section number only



proceeding was subsequently filed to avoid the July 14, 1998 Financing Statement as a preferential transfer occurring within ninety (90) days of the filing of the Chapter 11 petition. GECC takes the position that June 1, 1998 is the operative date of the transfer based upon its attempts to re-perfect its security interest and because June 1, 1998 is outside of the ninety (90) day preference period, the relief sought by the Debtor must be denied. GECC asserts that the June 1, 1998 Financing Statement was sufficient in all respects to be a re-perfection of its security interest rather than a termination except that it was inadvertently signed on the wrong line.

The parties have stipulated that, with the exception of whether the transfer was made within ninety (90) days of the filing of the petition, all elements of § 547(b) have been met.

CONCLUSIONS OF LAW

GECC asserts that it intended for the June 1, 1998 Financing Statement to be a re-perfection of its security interest and that its inadvertent execution was a minor error which was not seriously misleading pursuant to § 36-9-402(8) which provides that a financing statement, which substantially complies with the code, can still be effective "even though it contains minor errors which are not seriously misleading." The Court disagrees.

The Fourth Circuit Court of Appeals, in interpreting § 8.9-402(8) of Virginia's Uniform Commercial Code, which contains the same language as South Carolina's § 36-9-402(8), has held that this section "requires that errors be both 'minor' and 'not seriously misleading.'" In re Kitchin Equipment Company of Virginia, Inc., 960 F.2d 1242, 1247 (4th Cir. 1992). Similar to the facts within, in Kitchin Equipment, the creditor erroneously checked the box entitled "TERMINATION" rather than "PARTIAL RELEASE OF COLLATERAL". The creditor in



Kitchin Equipment similarly took the position that it was a harmless error when it checked the wrong box and that it was only intended to be a partial release, as indicated by the language in the property description releasing only two pieces of equipment and not all of the collateral. The Fourth Circuit Court of Appeals found that the entire interest, not just the interest in the two pieces of equipment described in document, had been terminated because the document was materially misleading in that the document on its face did not indicate it was only a partial release or that the creditor retained an interest in other assets and because the Clerk of Court stamped "TERMINATED" twice across the creditor's financing statement.

In this case, similar to Kitchin Equipment, not only was the June 1, 1998 Financing Statement not accepted for filing by the Secretary of State, it was executed as a "Termination Statement" and indicated that the previous Financing Statement had lapsed. For these reasons, the Court concludes that the errors in the June 1, 1998 Financing Statement were not minor, were seriously misleading, and did not operate to give notice to third parties of the perfection of a security interest.

The purpose of filing financing statements pursuant to the Uniform Commercial Code, as adopted in South Carolina, is to give notice to third parties of perfected security interests in personal property.

In re York Chemical Industries, Inc., 30 B.R. 583 (Bkrcty. D.S.C. 1983). In York Chemical, a creditor inadvertently sent an original previously perfected financing statement to the South Carolina Secretary of State's Office requesting that it be terminated. The creditor had intended that the financing statement be effective against a recently restructured note. Nevertheless, the security interest was in fact terminated of record several days later. The Court held that the Debtor's knowledge of the transaction was irrelevant and that, as a hypothetical lien creditor, it

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had the ability to avoid the unperfected security interest.

Since the debtor in possession is deemed to be without knowledge of the unfiled security interest, and a reasonable search by a third party would have revealed only the terminated financing statement, the plaintiff's lien was unperfected as to the debtor in possession who has the status of a hypothetical lien creditor.

The plaintiff is responsible for having terminated its financing statement – albeit unintentionally and inadvertent.

In re York Chemical Industries, Inc., 30 B.R. at 586.

For all of these reasons and because all of the other elements of 11 U.S.C. §547(b) have been stipulated, the re-perfection of the Financing Statement occurred on July 14, 1998, not June 1, 1998 and is an avoidable preferential transfer. It is, therefore

ORDERED, that the Motion for Summary Judgment filed by the Debtor Copyrite, Inc., d/b/a Digitz is hereby granted and the re-perfection of the lapsed security interest of the Defendant General Electric Capital Corporation is hereby avoided as a preferential transfer pursuant to 11 U.S.C. §547(b).

AND IT IS SO ORDERED.

Columbia, South Carolina,
April 17, 1999.


UNITED STATES BANKRUPTCY JUDGE



CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
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