UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

TAPISTRON INTERNATIONAL, INC.

Debtor

Case No. 01-14159
Chapter 11

TAPISTRON INTERNATIONAL, INC.

Plaintiff

v.

RBI INTERNATIONAL, INC.

Defendant

Adversary Proceeding
No. 01-1208

MEMORANDUM OPINION

Appearances: Thomas E. Ray, Samples, Jennings, Pineda & Ray, Chattanooga, Tennessee, Counsel for Plaintiff

Edward Hine, Jr., Law Offices of Edward Hine, Jr., P.C., Rome, Georgia, Co-counsel for Defendant

Bruce C. Bailey, Chambliss, Bahner & Stophel, P.C., Chattanooga, Tennessee, Co-counsel for Defendant

HONORABLE R. THOMAS STINNETT,
UNITED STATES BANKRUPTCY JUDGE

The Chapter 11 debtor, Tapistron, was in the business of manufacturing and selling tufting machines. It obtained loans from the defendant and attempted to secure the debts by granting the defendant a security interest in particular machines and their sale proceeds. The defendant filed a proof of claim asserting a security interest in two machines and their sale proceeds. As debtor in possession, Tapistron brought this adversary proceeding to avoid RBI's security interests on the ground that they were not perfected before Tapistron filed its Chapter 11 case. 11 U.S.C. § 1107, § 544(a)(1), (2) & § 547(b), (e); Ga. Code Ann. § 11-9-301(1)(b) (2000); *Deere Credit, Inc. v. Pickle Logging, Inc. (In re Pickle Logging, Inc.)*, 286 B.R. 181 (Bankr. M. D. Ga. 2002) *(§ 544)*; *Kelley v. Chevy Chase Bank (In re Smith)*, 236 B.R. 91 (Bankr. M. D. Ga. 1999) (§ 547). This matter is now before the court on cross motions for summary judgment.

Names and identities

The named defendant is R.B.I. International, Inc., but the answer was filed by Reg Burnett, Inc., doing business as RBI International, Inc. Reg Burnett himself has filed an affidavit in support of the defendant's motion for summary judgment. He identifies himself as the chief executive officer of Reg Burnett, Inc., doing business as RBI, Inc., RBI International, Inc., RBI International Carpet Consultants, and RBI. The parties apparently do not dispute that Reg Burnett, Inc., is the creditor's correct or legal name. For convenience, the court will refer to the defendant as RBI.

When the court refers to statements made by Mr. Burnett, the court is referring to statements in his affidavit. The court will follow the same procedure for statements by Floyd

Koegler, Jr. Mr. Koegler was Tapistron's chief financial officer at all the relevant times and was the person who dealt with Mr. Burnett.

Facts

In September 1998, Tapistron borrowed $50,000 from RBI and executed a promissory note for that amount to R.B.I., Inc. This promissory note – the 50K note – did not specifically grant RBI a "security interest" in any machine or sale proceeds. The note's wording, however, was sufficient to give RBI a security interest in proceeds from the sale of machine number 115. Tapistron does not dispute this point.

The 50K note came due in September 1999 but was not paid. Tapistron asked for another loan of $200,000. RBI agreed. In November 1999 Tapistron executed a note to Reg Burnett, Inc., for $250,000. This note – the 250K note – expressly grants RBI a security interest in machine number 506. It does not mention machine number 115 that was covered by the earlier 50K note.

The 250K note included the $50,000 loan debt for which Tapistron had executed the 50K note. Mr. Burnett states that he and Mr. Koegler agreed not to extinguish the 50K note. According to Mr. Burnett, they agreed that RBI would keep 50K note, and it has not been marked as paid, renewed, satisfied, or in any way released; furthermore, they agreed that RBI would continue to have a security interest in machine number 115 to secure Tapistron's debt to RBI. Mr. Koegler agrees with Mr. Burnett. Mr. Koegler states that RBI was to retain the 50K note to signify that it had not released its security interest in machine 115 and so that the debt to RBI would be secured by machine 506 and machine 115.

On November 17, 1999, RBI filed a financing statement. It identifies the secured party as RBI International, Inc. The address given for RBI International, Inc., is the same address used by Reg Burnett, Inc. Affidavit of Reginald Burnett; Affidavit of Valerie Richardson (on behalf of Tapistron). Mr. Burnett states that Reg Burnett, Inc., has always done business from this address under the trade name by which it is known in the carpet industry, "RBI International" or simply "RBI"; furthermore, the business is listed in the telephone book under RBI, not Reg Burnett, Inc.

Valerie Richardson's affidavit on behalf of Tapistron states that she did search of the on-line records provided by the Georgia Secretary of State and discovered an RBI, International, registered in Georgia but not related to Reg Burnett, Inc.

The financing statement identifies the collateral as:

> One Tapistron 15 foot Machine, Number 506, located at 6203 Alabama Highway, Ringgold, Georgia, 30736, and all contract rights pursuant to agreements and any other contracts related thereto.

After this transaction, RBI and Tapistron went through a series of transactions in which they intended to substitute collateral. The transactions began shortly after November 1999.

Mr. Burnett states that he knew before the end of 1999 that Tapistron was about to sell machine 506, and he agreed to Mr. Koegler's request to release the security interest in machine 506 and substitute a security interest in the receivable from the sale of machine 505. Mr. Koegler agrees with this history. Mr. Koegler talked to Mr. Burnett in late December 1999,

before Tapistron received the documents from the purchaser; he and Mr. Burnett reached an agreement in late January 2000. In February 2000, RBI simultaneously filed a termination statement as to machine 506 and a financing statement as to machine 505. The description of machine 505 includes Tapistron's address as the location of the machine and the "all contract rights . . ." provision.

The record also includes an affidavit from Bruce Elliston. He identifies himself as an employee of Tapistron beginning in March 1999 and as vice-president of Tapistron when it filed its Chapter 11 case. According to Mr. Elliston, Tapistron's records show that machine 505 was sold in August 1999.

Mr. Burnett states that the parties went through the same process as to machine 505. He agreed to release RBI's security interest in the receivable from the sale of machine 505 and replace it with a security interest in machine 508, which he and Mr. Koegler expected to be sold soon. In March 2000, RBI simultaneously filed a termination statement as to machine 505 and a financing statement as to machine 508. The description of machine 508 includes Tapistron's address as the location of the machine and the "all contract rights . . ." provision.

Mr. Burnett describes the same process again in August 2000. In August 2000, Tapistron simultaneously filed a termination statement as to machine 508 and a financing statement covering machines 115, 511 and 512. According to Mr. Elliston's affidavit, Machine 512 had been sold in March 2000. Again, the description in the financing statement includes Tapistron's address as the location of the machines and includes the "all contract rights . . ." provision.

This was the first time RBI filed a financing statement as to machine 115 that was listed as collateral in the 50K note. According to Mr. Burnett, this was when he found out that RBI had never perfected a security interest in the machine. Mr. Koegler states that he discovered the failure to perfect as to machine 115 in August 2000, and it was added to the financing statement to correct the problem.

Mr. Burnett states that Tapistron sold machine 511 in November 2000, and Mr. Koegler again asked him to release the old collateral and accept substitute collateral. Mr. Burnett and Mr. Koegler agreed to release machines 511 and 512 and their sale proceeds, to continue RBI's security interest in machine 115, and to grant RBI a security interest in machine 1501. In January 2001 Tapistron simultaneously filed a termination statement as to machines 511, 512 *and* 115, and a financing statement as to machines 1501 *and* 115. The description in the financing statement includes Tapistron's address as the location of the machines and the "all contract rights . . ." provision.

Mr. Koegler states that machine 115 was included in the termination statement as the result of his secretary's confusion. She did not realize the earlier financing statement included not only machines 511 and 512 but also machine 115; to correct the error of including machine 115 in the termination statement, she added machine 115 to the new financing statement filed at the same time.

The first financing statement filed in November 1999 was signed by Mr. Koegler on behalf of Tapistron but was not signed by anyone from RBI. All the other financing statements and termination statements were signed by both Mr. Koegler and Mr. Burnett. All the financing statements identify RBI International, Inc., as the secured party.

The parties have stipulated that RBI did not have a floating security interest in Tapistron's property. Instead, RBI took or attempted to take a security interest in particular machines and their sale proceeds.

Tapistron filed its Chapter 11 case on July 2, 2001. In his affidavit, Mr. Elliston states that machines 115 and 1501 were sold in the bankruptcy case with liens to attach to the proceeds. The holders of prior perfected security interests, Cohutta Banking Company and Northwest Georgia Bank, have been paid. The outcome of this adversary proceeding will determine whether RBI has any claim to the remaining proceeds.

DISCUSSION

The first two arguments apply to all the financing statements. Tapistron contends (1) the financing statements failed to perfect a security interest because they used the wrong name for the secured party, and (2) the financing statements did not perfect a security interest in sale proceeds because the terminology is wrong. For the purpose of considering these two arguments, the court assumes RBI had a security interest in every machine for which it filed a financing statement.

The court can grant summary judgment only if there is no genuine issue of material fact, and based on the undisputed facts, the law entitles the moving party to judgment in its favor. Fed. R. Bankr. P. 7056; Fed. R. Civ. P. 56(c). As to both of these arguments, the court is concerned with the legal effect of undisputed facts. The court can grant summary judgment based on its conclusions as to what the law is and what result should flow from applying the law to the facts. *Finnell v. Cramet, Inc.*, 289 F.2d 409 (6th Cir. 1961); *Thrifty Oil*

Co. v. Bank of America National Trust & Savings Assoc. (In re Thrifty Oil Co.), 249 B.R. 537 (S. D. Cal. 2000).

Name of the secured party

Tapistron argues that RBI's security interests were not perfected because the financing statements used RBI International, Inc., instead of Reg Burnett, Inc., as the name of the secured party. The court disagrees. If a person wanted information regarding the security interest and contacted RBI International at the address shown in the financing statement, he would have actually contacted Reg Burnett, Inc. As to the identity of the secured creditor, the financing statement served its purpose. Ga. Code Ann. §§ 11-9-110 & 11-9-402(1), (8) (2000); *Hergert v. Bank of the West (In re Hergert)*, 275 B.R. 58 (Bankr. D. Idaho 2002); *Unsecured Creditors Committee v. Marepcon Financial Corp. (In re Bumper Sales, Inc.)*, 907 F.2d 1430 11 U.C.C.Rep.Serv.2d 1044 (4th Cir. 1990).

Security interest in proceeds

Generally, a perfected security interest in a machine would give RBI a perfected security interest in the sale proceeds even if the security agreement and the financing statement did not mention proceeds. But perfection of the security interest in the proceeds would not necessarily continue indefinitely; it could expire for various reasons. Ga. Code Ann. §§ 11-9-203(3) & 11-9-306 (2000). Tapistron's argument may be aimed at showing a break in perfection for the purpose of answering RBI's continuous perfection argument. The continuous perfection argument apparently is aimed at showing that none of the collateral changes could have preferred RBI or diminished Tapistron's assets that were available to unsecured creditors. 11

U.S.C. § 547(b)(5); *Strauss v. Chrysler Financial Co. (In re Prindle)*, 270 B.R. 743 (Bankr. W. D. Mo. 2001). In any event, the court will consider Tapistron's argument as presented.

The financing statements identify the collateral as a particular machine and "all contract rights pursuant to agreements and any other contracts related thereto." This obviously means Tapistron's contract rights related to the machine. Tapistron argues this language does not include an account receivable from the sale of the machine. The court disagrees.

Contract rights were defined separately and more narrowly than accounts, but the distinction was dropped long ago. Ga. Code Ann. § 11-9-106 (2000); *Metter Banking Co. v. Fisher Foods, Inc.*, 183 Ga.App. 441, 359 S.E.2d 145 (1987). This has caused problems in determining what a financing statement covers when it refers to "contract rights." When the contract is *not* for the sale or lease of goods or for the performance of services, the debtor's right to payment comes within the definition of "general intangible." Such contract rights may not qualify as "contract rights" for the purposes of a financing statement. Ga. Code Ann. § 11-9-106 (2000); *Gordon Car and Truck Rental, Inc. v. American Motors Leasing Corp. (In re Gordon Car and Truck Rental, Inc.)*, 80 B.R. 12 (N. D. N. Y. 1987); *Crichton v. Himlie Properties, Inc. (In re Himlie Properties, Inc.)*, 36 B.R. 32 (Bankr. W. D. Wash. 1983); *but see Dominion Bank v. Wilson (In re Wilson)*, 86 B.R. 871 (W. D. Va. 1988) *rev'd on other grounds* 867 F.2d 203 (4th Cir. 1989). But a contractual right to payment for goods sold, goods leased, or services performed should qualify as a "contract right." It follows that Tapistron's contract rights related to the machine should include Tapistron's right to payment from the machine's buyer.

The court concludes that the description of the collateral in the financing statements was sufficient to include sale proceeds.

The facts raise questions as to effectiveness of the financing statements for machines 505 and 512 and their proceeds. The financing statements describe the machines as located at Tapistron's place of business even though the machines had already been sold. The court need not consider that question immediately because it may be irrelevant. It may be irrelevant because Tapistron argues that execution and filing of the financing statements did not create or perfect a security interest in any of the machines except machine 506, the one specified in the 250K note. This is actually a two part argument that begins with the contention that RBI lost its security interest in machine 115 long before Tapistron filed bankruptcy.

Loss of the security interest in machine 115

Tapistron admits the 50K note created a security interest in machine 115 or the proceeds of its sale. The court has decided the financing statements were sufficient to include proceeds from the sales of the machines. Tapistron argues that RBI lost the security interest in machine 115. The argument has several elements. First, execution of the 250K note extinguished the 50K note, including the security agreement as to machine 115. Second, the financing statements that included machine 115 were not effective to amend the security agreement in the 250K note to include machine 115 as collateral for the 250K debt. Third, the financing statements as to machine 115 were not security agreements that created a security interest in machine 115. Fourth, the 250K note and the financing statements taken together do not amount to a security agreement that covers machine 115.

As to summary judgment, the situation is the same as it was with the two earlier arguments. The court is concerned with the legal effect of undisputed facts. The court can

grant summary judgment based on its conclusions as to what the law is and what result should flow from applying the law to the facts. *Finnell v. Cramet, Inc.*, 289 F.2d 409 (6th Cir. 1961); *Benzin Supply Co. v. Bank of America National Trust & Savings Assoc. (In re Thrifty Oil Co.)*, 249 B.R. 537 (S. D. Cal. 2000).

Did execution of the 250K note extinguish the 50K note, including the security agreement as to machine 115?

Tapistron argues that executing the 250K note for a larger amount that included the $50,000 debt represented by the 50K note necessarily extinguished the earlier note, including the security agreement. The Georgia courts have used the "novation" terminology in guaranty and surety cases. The guarantor or surety is secondarily or contingently liable for another person's obligation under a contract. Suppose the parties to the contract change it. The question is whether the change releases the guarantor or surety. An increase in the obligation for which the guarantor or surety is liable will usually result in a release. *Upshaw v. First State Bank,* 244 Ga. 433, 260 S.E.2d 483 (1979); *American Surety Co. v. Garber*, 114 Ga. App. 532, 151 S.E.2d 887 (1966); *Regan v. U.S. Small Business Administration*, 729 F.Supp. 1339 (S.D. Ga. 1990), *aff'd* 926 F.2d 1078 (11th Cir. 1991); *Rockwell Intern. Corp. v. Riddick*, 668 F.Supp. 674 (N.D. Ga. 1987), *aff'd* 840 F.2d 24 (11th Cir. 1988)(Table); *Westinghouse Credit Corp. v. Hall*, 144 B.R. 568 (S.D. Ga. 1982).

That rule should not, however, be applied to this situation. The court is not dealing with a guarantor or surety. The following cases deal with situations that are much more similar to this case. They reveal that whether a prior contractual obligation is extinguished by a later contract depends on the intent of the parties. *Carlton Supply Co. v. Battle*, 142 Ga. 605, 83

S.E. 225 (1914); *Harrell v. First National Bank*, 21 Ga.App. 159, 93 S.E. 1018 (1917); *Foy-Adams Co. v. Smith*, 19 Ga.App. 172, 91 S.E. 242 (1917); *Georgialina Enterprises, Inc. v. Frakes*, 250 Ga.App. 250, 551 S.E.2d 95 (2001); *Feely v. First American Bank*, 206 Ga.App. 53, 424 S.E.2d 345 (1992); *Farmers & Merchants Bank v. Rogers*, 55 Ga.App. 38, 189 S.E. 274 (1936); *see also Williams v. Rowe Banking Co.,* 205 Ga. 770, 55 S.E.2d 123 (1949); *Blackshear Mfg. Co. v. Harrell*, 191 Ga. 433, 12 S.E.2d 328 (1940); *International Harvester Credit Corp. v. Clenny*, 505 F.Supp. 983 (M.D. Ga. 1981).

Among these cases, *Foy-Adams* suggests the rule for which Tapistron is arguing, but its discussion of *Carlton Supply* suggests otherwise. It suggests that consolidating an old debt and a new one into a larger note is only a fact indicating the intent to extinguish the earlier note.

Furthermore, executing the new larger note may extinguish the earlier note as a debt obligation but not as the source of a contractual lien that secured the debt. Whether the new note extinguishes the lien should depend on the parties' intent. *See Georgialina Enterprises, Inc. v. Frakes*, 250 Ga.App. 250, 551 S.E.2d 95 (2001); *Harrell v. First National Bank*, 21 Ga.App. 159, 93 S.E. 1018 (1917).

The parties' intent is clear in this case. They did not intend to extinguish the security interest created by the 50K note. The court concludes that the parties' execution of the 250K note did not extinguish the security interest created by the earlier 50K note as to machine 115 or the proceeds of its sale. Furthermore, the two notes taken together give RBI a security interest in machine 115 to secure the entire debt.

RBI did not file a financing statement as to machine 115 or its proceeds until August 2000, almost two years after the 50K note created the security interest. Tapistron has not argued that this delay prevented RBI from having or perfecting the security interest when the financing statement was filed. It follows that RBI perfected the security interest in August 2000.

In January 2001 RBI simultaneously filed a termination statement and a financing statement covering machine 115 or its proceeds. This should not result in non-perfection of the security interest. Anyone searching the records would be put on notice that RBI might have a security interest in machine 115 and its proceeds. Ga. Code Ann. § 11-9-402, Official Comment 2; *compare In re Martronics, Inc.*, 2 U.C.C.Rep.Serv. 364, 1964 WL 8567 (Bankr. D. Conn. 1964); *and Tuftco Sales Corp. v. Garrison Carpet Mills, Inc.*, 158 Ga.App. 674, 282 S.E.2d 159 (1981).

In summary, after execution of the 250K note, the 50K note was still effective to give RBI a security interest in machine 115, and RBI perfected the security interest more than 90 days before Tapistron filed its Chapter 11 case. It follows that Tapistron cannot avoid the perfected security interest in machine 115.

Because the security interest created by the 50K note continued after execution of the 250K note, the other arguments as to machine 115 are no longer relevant. Those arguments, however, come up again with regard to the machines other than 115 and 506 that are covered by the financing statements.

Failure to create a security interest in the substitute collateral

The 250K note created a security interest in machine 506. Afterward the parties attempted to substitute different collateral several times. They apparently intended to make the substitute collateral subject to the security interest created by the 250K note. The question is whether they accomplished it.

To create a security interest in a machine that Tapistron would keep in its possession and in the sale proceeds, the parties needed a security agreement signed by Tapistron. Ga. Code Ann. § 11-9-203(2) & § 11-9-105(1)(l) (2000). The 250K note satisfied this requirement as to machine 506.

The 250K note did not describe the collateral generally as other machines that Tapistron had on hand or other machines that Tapistron would manufacture later. This left the parties two methods of creating security interests in other machines.

They could have executed a separate security agreement whenever they wanted to secure the debt with a different machine. They did not do this. They executed only the financing statements – beginning with the February 2000 statement covering machine 505. They are ordinary financing statements that only gave notice of a possible security interest in RBI. They did not attempt to create a security interest or identify the secured debt. *Compare First National Bank & Trust Co. v. Olivetti Corp.*, 130 Ga.App. 896, 204 S.E.2d 781, 14 U.C.C.Rep.Serv. 825 (1974) *and Trust Company of Columbus v. Associated Grocers Co-op, Inc.*, 152 Ga.App. 701, 263 S.E.2d 676, 28 U.C.C.Rep.Serv. 824 (1979); *see also In re Carmichael Enterprises, Inc.*, 334 F.Supp. 94, 9 U.C.C.Rep.Serv. 990 (N. D. Ga. 1971) *aff'd*

per curiam 460 F.2d 1405, 11 U.C.C.Rep.Serv. 895 (5th Cir. 1972); *Citizens & Southern National Bank v. Capital Construction Co.*, 112 Ga.App. 189, 144 S.E.2d 465, 2 U.C.C.Rep.Serv. 1098 (1965); *Technology Distributors, Inc. v. American Computer Technology, Inc.*, 199 Ga.App. 785, 405 S.E.2d 907 (1991); *Food Service Equipment Co. v. First National Bank*, 121 Ga.App. 421, 174 S.E.2d 216, 7 U.C.C.Rep.Serv. 878 (1970). These financing statements did not create or provide for a security interest.

In the alternative, the parties could have amended the 250K note to substitute the later machines as collateral. The statute requires a signed security agreement with a description of the collateral. Ga. Code Ann. § 11-9-203(2) (2000). This means an amendment to substitute collateral should also describe the collateral and be signed by the debtor. *Walden v. Smith*, 249 Ga.App. 32, 546 S.E.2d 808 (2001); *Smith v. Davis*, 245 Ga.App. 34, 536 S.E.2d 261 (2000); *Krueger v. Paul*, 141 Ga.App. 73, 232 S.E.2d 611 (1977); *see also F.S. Credit Corp. v. Shear Elevator, Inc.*, 377 N.W.2d 227, 42 U.C.C.Rep.Serv. 658 (Iowa 1985). The financing statements are the only writings signed by the debtor that contain a description of the collateral. The court has already decided that the financing statements by themselves were not security agreements. The next question is whether they were sufficient as amendments to the original security agreement, the 250K note. The court thinks not.

The financing statements are not worded as amendments to the 250K note. They do not provide for changing or substituting collateral, and they do not refer to any particular obligation secured by the machines. They do not even refer to the earlier financing statements. *Compare Bossingham v. Bloomington Production Credit Assoc. (In re Bossingham)*, 49 B.R. 345 (S. D. Iowa 1985) *and Klosinski v. Bank of Dudley (In re Spivey)*, No. 96-30671, 1998 WL

34066138 (Bankr. S. D. Ga. Mar. 16, 1998); *see also First National Bank & Trust Co. v. Olivetti Corp.*, 130 Ga.App. 896, 204 S.E.2d 781, 14 U.C.C.Rep.Serv. 825 (1974); *Trust Company of Columbus v. Associated Grocers Co-op, Inc.*, 152 Ga.App. 701, 263 S.E.2d 676, 28 U.C.C. Rep.Serv. 824 (1979).

This leaves the question of whether the financing statements and the 250K note should be considered together – whether the combination of documents amounts to a security agreement. In this regard, the financing statements were all signed by Mr. Koegler on behalf of Tapistron.

Taken together, the financing statements and the 250K note still do not amount to an agreement signed by Tapistron that creates or provides for a security interest in the machines in question. RBI has a security agreement – the 250K note – without any later documents signed by Tapistron that amount to an amendment to substitute collateral. RBI also has a series of financing statements for different collateral. There is a missing link in this situation. *See In re Carmichael Enterprises, Inc.*, 334 F.Supp. 94, 9 U.C.C. Rep.Serv. 990 (N. D. Ga. 1971) *aff'd per curiam* 460 F.2d 1405, 11 U.C.C.Rep.Serv. 895 (5th Cir. 1972); *In re Dykes*, 20 U.C.C.Rep.Serv. 524 (Bankr. E. D. Tenn. 1976); *Klosinski v. Bank of Dudley (In re Spivey)*, No. 96-30671, 1998 WL 34066138 (Bankr. S. D. Ga. Mar. 16, 1998).

The court must also point out that none of the machines covered by a financing statement filed after November 1999 can be considered non-cash proceeds of machine 115, machine 506, or any other machine that was listed in an earlier filed financing statement. Each subsequently listed machine was not obtained by Tapistron as the result of disposing of an earlier machine or its proceeds. Ga. Code Ann. § 11-9-306(1) (2000).

In summary, the court concludes that RBI did not obtain a security interest in machine 1501. Tapistron's rights under Bankruptcy Code § 544 are superior to RBI's claim to machine 1501 or its proceeds.

Finally, the court must deal with the effect of Georgia's version of the revised Article 9 of the Uniform Commercial, which took effect on July 1, 2001, the day before Tapistron filed its bankruptcy case. Ga. Code Ann. § 11-9-701. It makes no difference to the outcome of this case. RBI's security interest in machine 115 attached and was perfected before the effective date of the new law. Tapistron does not contend that RBI lost a perfected security interest in machine 115 because it failed to take steps required by the new law to maintain perfection.

As to machine 1501, RBI failed to obtain a security interest in it before the effective date of the new law (July 1, 2001) and before Tapistron filed its bankruptcy case. The transition provisions of the new law protect security interests that were enforceable under the old law. RBI did not have an enforceable security interest in machine 1501 because it did not have a written security agreement that was signed by the debtor and described the collateral. The transitions statutes do not provide a cure for that problem; they do not allow RBI to create a security interest that will come ahead of Tapistron's rights as a lien creditor. Ga. Code Ann. §§ 11-9-703 & 11-9-704; Ga. Code Ann. § 11-9-203(1)(a) (2000); *In re Stout*, 284 B.R. 511 (Bankr. D. Kan. 2002).

The court will enter an order that Tapistron does not have a security interest in machine 1501 or its proceeds that is superior to Tapistron's rights as debtor in possession.

This Memorandum constitutes findings of fact and conclusions of law as required by *Fed. R. Bankr. P.* 7052.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

TAPISTRON INTERNATIONAL, INC.

Debtor

Case No. 01-14159
Chapter 11

TAPISTRON INTERNATIONAL, INC.

Plaintiff

v.

RBI INTERNATIONAL, INC.

Defendant

Adversary Proceeding
No. 01-1208

ORDER

In accordance with the court's memorandum opinion entered this date,

It is ORDERED that the defendant, Reg Burnett, Inc., doing business as RBI International, Inc., has a security interest in the proceeds from the sale machine 115 and the security interest is superior to the rights of the plaintiff, Tapistron International, Inc., as debtor in possession;

It is FURTHER ORDERED that the defendant, Reg Burnett, Inc., doing business as RBI International, Inc., does not have a security interest in the proceeds from the sale of machine 1501.

ENTER:

BY THE COURT

_____
R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

(entered 4/24/03)