

The Cat Boutique Scenario

Ronald Regatta (**RR**) was the president and registered owner of all shares of The Cat Boutique Inc. (**TCB**), a corporation operating a specialty store at one location in Coral Gables, Florida. TCB sold all manner of food, clothing, toys and accessories for feline pets. TCB had a committed line of credit with Nice National Bank (**NN**). This facility allowed TCB to borrow money, as needed, to purchase inventory. Also, NN would issue letters of credit, as directed by TCB, to suppliers to TCB, naming the suppliers as beneficiaries of the letters of credit. TCB agreed to reimburse NN for all draws made on letters of credit issued for its account. Initially, this line of credit was unsecured. However, NN reserved the right to demand collateral at any time to secure repayment of obligations owed by TCB. This arrangement continued for several years.

Early in 200X, management of NN decided to "get tough" on operators of specialty stores, and demanded that TCB give it collateral. NN also demanded that RR provide a personal guarantee of repayment of all loans and reimbursement obligations. On March 15, RR signed a security agreement on behalf of TCB with the following defined term: "Secured Obligations" means all amounts owed by TCB to NN consisting of interest and principal on loans and reimbursement obligations.

On March 18, RR signed a personal guarantee and agreed to pledge its shares of TCB to NN to secure this guarantee by delivering the share certificates to NN.

On March 20, NN filed a financing statement against TCB in the filing office in Florida and paid the appropriate fee. The collateral description in the financing statement specified "All inventory owned by TCB."

On March 25, TCB ordered 500 rhinestone studded cat collars, in various colors, from Bart Weston's Texas Trinket Factory (**BW**), located in El Paso, Texas. BW demanded a letter of credit. On March 27, at RR's direction, NN's El Paso branch issued a letter of credit (**LC**) to BW in the amount of \$20,000. BW selected 500 collars for shipment. According to the LC terms, BW could draw the LC if "TCB has failed to pay BW for merchandise shipped within 5 days of shipment, certification of shipment to be made, and shipping documents to be presented, by BW at time of presentment of this LC." On March 30, RR returned from a cat show in South Beach, devastated to have learned that rhinestone was out of fashion for cats that year. RR immediately called BW to cancel the order. BW said it was "too late, the collars are already on their way."

On April 1, BW shipped the cat collars to TCB "F.O.B. El Paso." On April 3, BW presented the letter of credit to the El Paso branch of NN, together with shipping documents and BW's certification of shipment. NN called RR to advise RR that BW had presented the letter of credit for payment, together with shipping documents dated April 1, for 500 rhinestone cat collars. RR told NN not to pay the letter of credit, advised NN that BW is nothing but a fraud and that "there will be hell to pay." NN's desk clerk did not like RR's attitude and instructed the El Paso branch to pay the letter of credit. The El Paso branch forwarded the LC and shipping documents to NN's Miami office.

Upon learning of this payment, RR took the following steps. First, RR purchased a used Winnebago recreational vehicle (**RV**) with Florida license plates on credit from Home Sweet Home (**HSH**), and, in a signed security agreement, granted HSH a security

interest in the RV and all its contents, "including personal property, accessions and cat toys, whether now owned or hereafter acquired." (HSH filed a financing statement against "Ronald Regatta" in Florida.) Second, as its sole shareholder, RR caused TCB to pay RR a dividend of TCB's most valuable inventory and cash register. RR loaded these items into the RV. Third, RR left the State of Florida driving the RV north, determined never to return. RR planned to make an anonymous living selling wares in New England by traveling to flea markets, doing business as "Mobile Cat Boutique."

When NN learned that RR had skipped town, it accelerated all debts of TCB for repayment of loans and reimbursement of LC draws. Sometime thereafter, NN obtained a writ of attachment against TCB and the sheriff levied on all the remaining property at TCB's Coral Gables location. The sheriff found a notice from a local warehouse indicating that 500 rhinestone cat collars were available for pick-up upon presentation of shipping documents and gave the notice to NN. TCB's landlord claimed an interest in all personal property at the Coral Gables site to cover unpaid rent.

When RR missed its first loan payment to HSH, HSH hired "recovery agent" Sarah Spade (**SS**) to find RR and "repo" the RV. After a preliminary investigation, SS filed financing statements against "Ronald Regatta d/b/a Mobile Cat Boutique" in Maine, Vermont and Utopia, naming HSH as creditor. Time passed, but eventually SS recovered the RV in a parking lot in Anytown, Utopia. The RV was full of inventory, some brought from Florida, some new. SS left a window of the Winnebago open, and some of the inventory was damaged in a rain storm. RR returned to the parking lot and realized the game was up. RR returned to Florida and immediately filed for Federal bankruptcy protection, both for himself and for TCB. A day after the Florida bankruptcy filings, SS filed a "certificate of repossession" with the Utopia Department of Motor Vehicles (**DMV**). The DMV issued a new certificate of title for the RV, together with new Utopia license plates. SS promptly sold the RV to a local used car dealer for its "blue book" quoted price. SS sold the inventory, in bulk, at the next Utopia flea market to a traveling vendor (giving a large discount for the damaged goods). SS deducted \$15,000 for her services from the proceeds of these sales, and sent the balance to HSH in Florida by wire transfer. RR still owed HSH a portion of its purchase price for the RV.

NN learned of RR's and TCB's bankruptcy filings and SS's recovery and sale efforts. Then, NN promptly filed a financing statement in Florida, naming "Ronald Regatta" as debtor, and itself as secured party. NN demanded compensation from HSH.

Utopia is a state of the United States and has adopted the Uniform Commercial Code without significant amendment. Assume the Florida UCC is the same.

Utopia state statute UT456.07 reads: "Upon the repossession of any vehicle in this state, the DMV shall issue a Utopia certificate of title for said vehicle, together with Utopia license plates, to the repossessing party upon presentation of the vehicle to a DMV office, together with an affidavit of the recovery agent, stating that the repossession was valid and achieved without a breach of the peace. Title to any vehicle repossessed in this state passes immediately, upon repossession, to the repossessing party."

Utopia state statute UT456.11 reads: "Upon repossession of any vehicle in this state, the recovery agent shall have a lien on the repossessed vehicle to secure payment of the recovery fee, and any reasonable costs and expenses of the recovery."

FL TITLE VI, Chap. 83, Sec. 83.08 Landlord's lien for rent.--Every person to whom rent may be due, the person's heirs, executors, administrators or assigns, shall have a lien for such rent upon the property found upon or off the premises leased or rented, and in the possession of any person, as follows:

- (1) Upon agricultural products raised on the land leased or rented for the current year. This lien shall be superior to all other liens, though of older date.
- (2) Upon all other property of the lessee or his or her sublessee or assigns, usually kept on the premises. This lien shall be superior to any lien acquired subsequent to the bringing of the property on the premises leased.
- (3) Upon all other property of the defendant. This lien shall date from the levy of the distress warrant hereinafter provided.

FL TITLE VI, Chap. 76, Sec. 76.04 Grounds when debt due.--The creditor may have an attachment on a debt actually due to the creditor by his or her debtor, when the debtor:

- (1) Will fraudulently part with the property before judgment can be obtained against him or her.
- (2) Is actually removing the property out of the state.
- (3) Is about to remove the property out of the state.
- (4) Resides out of the state.
- (5) Is actually moving himself or herself out of the state.
- (6) Is about to move himself or herself out of the state.
- (7) Is absconding.
- (8) Is concealing himself or herself.
- (9) Is secreting the property.
- (10) Is fraudulently disposing of the property.
- (11) Is actually removing himself or herself beyond the limits of the judicial circuit in which he or she resides.
- (12) Is about to remove himself or herself out of the limits of such judicial circuit.

76.09 Motion when debt due.--When the debt is actually due, the motion shall state the amount of the debt that is actually due, and that movant has reason to believe in the existence of one or more of the special grounds in s. [76.04](#), stating specifically the grounds.

76.14 Writ; effect of levy.--The levy of a writ of attachment does not operate to dispossess the tenant of any lands or tenements, but a levy on real or personal property binds the property attached, except against preexisting liens. Levies on the same property under successive attachments have precedence as liens in the order in which they are made. A levy binds real estate as against subsequent creditors or purchasers only from the time of the record by the clerk of the circuit court of a notice of the levy and a description of the property levied on.