STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: May 10, 2016)

PET FOOD EXPERTS, INC.	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. KC-2015-1033**
	:	
ALPHA NUTRITION, INC. d/b/a DOGGIEFOOD.COM	:	
Defendant.	:	

DECISION

STERN, J. Before the Court is Pet Food Experts, Inc.'s (Plaintiff) motion for a writ of replevin (the Motion). Plaintiff argues that it is entitled to the repossession and liquidation of an automobile identified as a 2015 Cadillac Escalade (the Vehicle) in partial satisfaction of a promissory note given to it by Alpha Nutrition, Inc. d/b/a Doggiefood.com (Defendant). Greenwood Credit Union (Greenwood), another creditor of Defendant, has objected to the Motion, arguing that it maintains a security interest with a superior priority to Plaintiff in the Vehicle. Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13 and 8-2-14. For the following reasons, the Court grants the Motion.

I

Facts[1] and Travel

On September 19, 2014, Defendant executed and delivered a promissory note (the Note) to Plaintiff in the amount of $700,000. SUF at ¶ 1; Ex. A. To secure Defendant's obligations under the Note, Defendant and Plaintiff entered into a security agreement (the Agreement),

[1] The following facts are garnered from the Statement of Undisputed Facts (SUF) filed by the parties on March 16, 2016.

which provided that the Note would be secured by Defendant's currently owned and after-acquired equipment, inventory accounts, general intangibles, deposit accounts, investment property, letter of credit rights, supporting obligations, property in its possession, and its books and records. See Ex. B at 1-3. After executing the Agreement, Plaintiff filed a UCC-1 Financing Statement (the Financing Statement) with the Rhode Island Secretary of State. SUF at ¶ 2; Ex. B.

Plaintiff claims that the Agreement extends to the Vehicle, which was acquired by Defendant after the execution of the Note and the Agreement and filing of the Financing Statement. SUF at ¶ 7. The Vehicle was purchased by Defendant when David Paolo (Paolo) executed a Motor Vehicle Purchase Contract (the Purchase Contract) on behalf of Defendant. Id. at ¶ 8. Defendant financed the purchase of the Vehicle with Greenwood through a Loan and Security Agreement (the Greenwood Loan). Id. at ¶ 11. The Greenwood Loan was dated March 6, 2015, totaled $71,959.47, identified Defendant as the borrower, and granted a security interest in the Vehicle to Greenwood. Id. at ¶ 11; Ex. D. On March 7, 2015, a motor vehicle certificate of title (the Title) was issued for the Vehicle, identifying Defendant as the owner and listing no lienholders. Id. at 12; Ex. F. Paolo delivered the Title to Greenwood, who currently holds it in its possession. Id. at ¶ 13.

Subsequent to the execution of the Agreement, filing of the Financing Statement and purchase of the Vehicle, Defendant failed to make payments on its loan to Plaintiff and defaulted on the terms of the Note. Id. at ¶ 3. As a result, Plaintiff filed the instant suit and filed a motion for pre-judgment attachment against any and all of Defendant's assets, which was granted. Id. at ¶ 4. Defendant failed to file an Answer and a default judgment was entered against it in the amount of $616,000 (the Judgment). Id. at ¶ 5. Subsequently, in October 2015, Anthony

Gabrielle (Gabrielle), Defendant's president, demanded that Paolo return the Vehicle to Defendant, which he did. Id. at ¶ 17. Gabrielle then turned the Vehicle over to Plaintiff. Id. at ¶ 18. However, Paolo, who was aware of the pre-judgment attachment order and that Defendant voluntarily remitted the Vehicle to Plaintiff, used a spare set of keys to take the Vehicle from Plaintiff's property. Id. at ¶ 20. Thereafter, Plaintiff filed the instant Motion. At an initial hearing on the Motion, Paolo agreed to store the Vehicle on Plaintiff's property pending a further order of the Court, and on December 12, 2015, he delivered the Vehicle to Plaintiff. Id. at ¶ 22.

II

Standard of Review

"'Replevin is merely a provisional remedy that applies prior to a trial on the merits.'" Moseman Constr. Co. v. State Dep't of Transp., 608 A.2d 34, 36 (R.I. 1992) (quoting Goldberg v. Lancellotti, 503 A.2d 1129, 1130 (R.I. 1986)). "Stated differently, the replevin statute applies only when the plaintiff seeks pretrial seizure of personal property pending a trial to determine ownership." Id. The issuance of a writ of replevin is governed by Rule 64 of the Superior Court Rules of Civil Procedure, which provides, in pertinent part, that a writ of replevin shall be granted "only upon a showing that there is a probability of a judgment being rendered in favor of the plaintiff and that there is a substantial need for transfer of possession of the goods and chattels to the plaintiff pending adjudication of the claim." Super. R. Civ. P. 64(a).

III

Analysis

In order to prove that it has a probability of judgment in its favor, Plaintiff must demonstrate that its interest in the Vehicle is superior to Greenwood. Plaintiff maintains that its interest is superior because the Agreement is valid and was properly perfected because the

Financing Statement was filed with the Secretary of State and identified the secured collateral. Conversely, Greenwood avers that it has a superior interest in the Vehicle because the Agreement is invalid for three reasons: (1) Plaintiff did not give value for the Vehicle; (2) the Agreement does not adequately describe the secured collateral; and (3) the purchase of the Vehicle is a consumer goods purchase, which is exempt from any after-acquired clause in Plaintiff's Agreement. Such claims attack the sufficiency of the Agreement, the perfection of Plaintiff's claim, and the priority of the Plaintiff.

A

Sufficiency of the Agreement

Any document granting a security interest in personal property is governed by Article 9 of the Uniform Commercial Code (UCC) unless a specific exemption applies. E. Turgeon Constr. Co. v. Elhatton Plumbing & Heating Co., 110 R.I. 303, 308, 292 A.2d 230, 233 (1972); 9A Hawkland UCC Series § 9-109:1. Rhode Island adopted Article 9 in Title 6A, chapter 9 of its General Laws. See §§ 6A-9-101, et seq. A security agreement attaches to the collateral described therein "when it becomes enforceable against the debtor with respect to the collateral." Sec. 6A-9-203(a). A security agreement becomes enforceable against a debtor with respect to the collateral when (1) value is given by the secured party; (2) the debtor has "rights in the collateral" and transfers those rights to the secured party; and (3) the debtor has authenticated the security agreement, (4) which adequately describes the collateral.[2] Sec. 6A-9-203(b)(1-3). A security interest will not attach until all four requirements are met. See id.; 8A Anderson's Uniform Commercial Code § 9-203:242 ("A security interest cannot attach in the absence of any

[2] Section 6A-9-203(b)(3)(i-iv) provides several other ways that a secured party can attach its security interest in collateral; however, § 6A-9-203(b)(3)(i) is most relevant and applicable in the instant suit.

one of these . . . elements, and, conversely, it comes into existence at the very moment all . . . elements co-exist.").

Pursuant to § 6A-1-204, a person gives "value" when they enter into a commitment to extend credit or immediately extend credit. Sec. 6A-1-204(1). Further, a creditor gives "value" when an agreement serves "[a]s security for, or in total or partial satisfaction of, a preexisting claim."[3] Sec. 6A-1-204(2).

"The phrase 'rights in the collateral' . . . has no clear definition," Gen. Motors Acceptance Corp. v. Washington Trust Co. of Westerly, 120 R.I. 197, 200, 386 A.2d 1096, 1098 (1978); however, § 6A-9-202 does suggest that title to the collateral is immaterial. See § 6A-9-202. Accordingly, "a debtor may have rights in the collateral even though the debtor lacks title to the collateral." 8A Anderson's Uniform Commercial Code § 9-203:203. "Article 9 is only concerned with whether the debtor has acquired sufficient rights in the collateral for the security interest to attach and is not concerned with the title to the collateral." Id. Therefore, the phrase "rights in the collateral" means that a debtor has "at least some degree of control or authority over the collateral." Id. at § 9-203:199. While owning the collateral is not necessary for a security interest to attach, "it is obvious that the debtor has rights if, in fact, the debtor is the owner of the collateral. Thus, a debtor has 'rights in property' that he or she owns." Id. at § 9-203:205. In interpreting this requirement, our Supreme Court has held that a purchaser, who makes a down payment and executes an installment sales contract for purchase of an automobile, has rights in an automobile for purposes of attaching a security interest to said automobile, despite the fact that a third party holds title to the automobile. Gen. Motors Acceptance Corp., 120 R.I. at 200, 386 A.2d at 1098; see also 8A Anderson's Uniform Commercial Code § 9-

[3] "Value" has several other definitions, but for purposes of the instant matter, these two definitions are applicable. See § 6A-1-204.

203:230 ("A buyer/debtor has rights in a motor vehicle in his or her possession even though the buyer/debtor has yet to receive the title certificate.").

In instances in which a secured creditor is not in possession of the collateral, the security agreement must be "[a]uthenticate[d]," which means that the debtor must sign or "[w]ith present intent" adopt the security agreement. Sec. 6A-9-102(a)(7); see § 6A-9-203(b)(3)(i). Such authentication requirement infers that the security agreement must also be in writing when the secured party is not in possession of the collateral. 8A Anderson's Uniform Commercial Code § 9-203:58.

An authenticated security agreement must also adequately describe the collateral. Sec. 6A-9-203(b)(3)(i); see also 8A Anderson's Uniform Commercial Code § 9-203:126 ("A reasonable description of the collateral is a precondition to attachment and perfection."). Collateral is adequately described when "whether or not it is specific, . . . it reasonably identifies what is described." Sec. 6A-9-108(a). "[A] description of collateral reasonably identifies the collateral if it identifies the collateral by . . . a type of collateral defined in the Uniform Commercial Code." Sec. 6A-9-108(b)(3). Such types of collateral include equipment,[4] § 6A-9-102(a)(33); farm products, § 6A-9-102(a)(34); and inventory, § 6A-9-102(a)(48); among others. These terms may not be used to describe collateral that is a consumer good or consumer transaction. Sec. 6A-9-108(e)(2). A consumer-goods transaction is one in which "(i) [a]n individual incurs an obligation primarily for personal, family, or household purposes; and (ii) [a] security interest in consumer goods secures the obligation." Sec. 6A-9-102(a)(24). In the same

[4] Equipment is defined as "goods other than inventory, farm products, or consumer goods." Sec. 6A-9-102(a)(33).

vein, consumer goods are any "goods that are used or bought for use primarily for personal, family, or household purposes." Sec. 6A-9-102(a)(23).[5]

After the aforementioned requirements are met, a "security agreement is not restricted to creating a security interest only in collateral presently existing but may extend to property subsequently acquired"; the reservation of such security interest is typically referred to as an "after-acquired property" clause. 8A Anderson's Uniform Commercial Code § 9-204:9. Article 9 explicitly provides that a security agreement may create and provide for security interest in after-acquired collateral. Sec. 6A-9-204(a). However, a security interest only attaches to after-acquired property if the security agreement extends to such property; "the secured creditor is bound by the same rules to which the secured creditor was subject with respect to the original collateral." 8A Anderson's Uniform Commercial Code §§ 9-204:9, 9-204:24. Therefore, value must be extended, the debtor must have rights in the after-acquired property, and the after-acquired property must be adequately described in the security agreement. See id. at §§ 9-203:11, 9-204:33. Notably, "[v]alue is given for the purposes of an after-acquired property clause when it is given in connection with the original secured transaction." Id. at § 9-203:185. "The majority rule is that as long as the secured party has given value at some time during the lending relationship, value sufficient to provide for attachment of the security interest to the after-acquired property has been given." 8 Hawkland UCC Series § 9-203:11. Such rule prevents the need for the secured creditor to extend credit each time the debtor acquires new property. While an after-acquired property clause is broad sweeping, it is limited in that it does

[5] Article 9 provides for four types of "goods": consumer goods, equipment, farm products, and inventory. Sec. 6A-9-102, comment (4)(a). "The classes of goods are mutually exclusive. For example, the same property cannot simultaneously be both equipment and inventory. In borderline cases—a physician's car or a farmer's truck that might be either consumer goods or equipment—the principal use to which the property is put is determinative." Id.

not cover consumer goods unless the debtor acquires the consumer good within ten days after executing the security agreement. Sec. 6A-9-204(b)(1); see also In re Dunne, 407 F. Supp. 308, 311 (D.R.I. 1976).

Here, Plaintiff's Agreement is valid and has attached to the Vehicle through the after-acquired property clause because it extended credit, Defendant had rights in the Vehicle, and Defendant executed the Agreement, which adequately described the Vehicle as collateral.[6] First, Plaintiff extended value to Defendant when it either extended credit to Defendant or forgave Defendant's preexisting debt.[7] See § 6A-1-204(1-2). In relation to the Vehicle—which was acquired after the execution of the Agreement—an extension of credit or forgiveness of debt is sufficient to attach to the Vehicle. See § 6A-1-204(1-2); 8A Anderson's Uniform Commercial Code § 9-203:185; 8 Hawkland UCC Series § 9-203:11. Plaintiff was not required to reissue value each time Defendant acquired new property that would be covered by the after-acquired

[6] At the outset, the Court is not satisfied that Greenwood has introduced evidence sufficient to prove that the Vehicle is a consumer good and is therefore covered by the Agreement's after-acquired property clause. See § 6A-9-204(b)(1); In re Dunne, 407 F. Supp. at 311. There is nothing in the record to indicate that the Vehicle was "used or bought for use primarily for personal, family, or household purposes." See § 6A-9-102(a)(23) (emphasis added). While several facts suggest that the Vehicle bore indicia of personal use, such as a personal vanity plate, the purchase and sale agreement bearing Paolo's name, and Paolo trading in his personal car to purchase the Vehicle, the Court cannot dismiss the fact that Defendant is on the title, paid for the car, insured the Vehicle, and was the loss payee on the Vehicle. SUF at ¶¶ 8, 9, 10, 14, 15, 16; Ex. C. Further, Paolo returned the Vehicle to Defendant upon request from Gabrielle. Id. at ¶ 17. The entirety of the record reveals that Defendant paid for and had authority over the Vehicle and thus allowed Paolo to use it for business purposes. While it may have had some personal utility, such use was not the Vehicle's primary purpose. See § 6A-9-102(a)(23).

[7] While the stipulated facts make no reference as to a preexisting debt, the procedural history discussed in several pleadings (introduced as Exhibit C) reveal that the dispute between Plaintiff and Defendant began in a receivership proceeding arising out of Defendant's default on certain monetary obligations owed to Plaintiff. However, rather than proceed with the receivership, Plaintiff agreed to dismiss the receivership petition if Defendant agreed to the Note, which provided that Defendant would pay $700,000. Whether this be a forgiveness of debt or an extension of a $700,000 credit to Defendant—as implied in the statement of undisputed facts—either scenario would be sufficient to satisfy the "value" requirement. See § 6A-1-204(1-2).

property clause. See 8A Anderson's Uniform Commercial Code § 9-203:185; 8 Hawkland UCC Series § 9-203:11.

Second, Defendant's rights in the Vehicle are evidenced by the fact that it was listed as the owner on the Title. See Ex. F; 8A Anderson's Uniform Commercial Code § 9-203:205 (it is clear that "a debtor has 'rights in property' that he or she owns."). Even if the Title was not considered, Defendant still had rights in the property sufficient to establish attachment when Paolo signed the Purchase Contract on behalf of Defendant. See SUF at ¶ 8; Gen. Motors Acceptance Corp., 120 R.I. at 200, 386 A.2d at 1098.

Third, the Agreement between Plaintiff and Defendant is validly executed as it bears the signature of the Defendant—through Gabrielle as its representative—as the debtor. See §§ 6A-9-102(a)(7)(i), 6A-9-203(b)(3)(i); Ex. A.

Lastly, the Agreement sufficiently describes the Vehicle as after-acquired collateral. Despite Greenwood's contention that the Vehicle is a consumer good, the primary use of the vehicle does not fit such definition. See supra n.5, 6; § 6A-9-102(a)(23). Further, the Vehicle does not fit into the definition of "inventory" or "farm products" because the most fundamental definition of those terms are not applicable. See §§ 6A-9-102(a)(34), 6A-9-102(a)(48). Therefore, in compartmentalizing the Vehicle into one of the four mutually exclusive definitions employed by Article 9, it must be classified as "equipment" because it is neither consumer goods, farm products, nor inventory. See supra n.5; § 6A-9-102(a)(33). The Agreement covers all after-acquired equipment as it states that Plaintiff is secured in "[a]ll of Debtor's presently owned and hereafter acquired equipment (as defined in the Uniform Commercial Code), including without limitation all automotive equipment . . . ." See Ex. A. The use of the word "equipment" as defined in the Uniform Commercial Code is sufficient to describe any collateral

that fits within its definition. See § 6A-9-108(b)(3). Accordingly, the Agreement adequately describes the Vehicle.

A careful review of the evidence reveals that Plaintiff has extended value to Defendant, Defendant had rights in the Vehicle, Defendant authenticated the Agreement, and the Agreement adequately describes the Vehicle as after-acquired "equipment." Therefore, the Agreement is valid and Plaintiff's security interest is attached to the Vehicle.

Notably, Greenwood is also attached in the Vehicle. Greenwood extended credit in the amount of $71,959.47 to Defendant for the purchase of the Vehicle, which is sufficient value for purposes of a security interest attaching to collateral. See § 6A-1-204(1-2); SUF at ¶ 11; Ex. E. Defendant had rights in the Vehicle when it signed the Purchase Contract, and Defendant gave to Greenwood an authenticated security agreement that "reasonably identifies the collateral" as a "2015 Cadillac Escalade VIN – 1GYS4PKJXFR582571." See § 6A-9-108(b)(3); Ex. D. Therefore, Greenwood also has an attached security interest in the Vehicle.

B

Perfection of a Security Agreement

Mere attachment of a security agreement to the collateral described therein does not give a secured creditor priority over other creditors with interests in the same collateral. 8A Anderson's Uniform Commercial Code § 9-203:250. "'Attaching' is the act of [a security interest] coming into existence while 'perfecting' relates to the doing of some additional act required to make the security interest effective as against third parties." Id. To perfect its security interest in collateral, a secured creditor must file a financing statement. Sec. 6A-9-310; see also 8A Anderson's Uniform Commercial Code § 9-302:6 ("The usual method of perfecting a security interest is for the secured party to file a financing statement . . . [u]nless otherwise

specifically exempted, a financing statement must be filed to perfect all security interests."). A financing statement is a document that "indicates that the secured party claims a security interest in the debtor's personal property and describes the types of collateral in which such an interest is claimed." 8A Anderson's Uniform Commercial Code § 9-302:6. "The purpose of the filing requirements for perfection of security interests is to guarantee that third parties will have notice of existing security interests in collateral." Gen. Motors Acceptance Corp., 120 R.I. at 201, 386 A.2d at 1099. Pursuant to Article 9, a financing statement must include (1) the name of the debtor; (2) the name of the secured party; and (3) "[i]ndicat[e] the collateral covered by the financing statement." Sec. 6A-9-502(a)(1-3).

The requirement that a financing agreement contain the debtor's name is easily satisfied. See 6A-9-503(a)(1). In the instance where the debtor is a "registered organization,"[8] the financing statement need only include "the name that is stated to be the registered organization's name on the public organic record[9] . . ." Id. Article 9 does not impose such specificity concerning the name of the secured party. See id.

The requirement that the financing statement indicate the collateral covered is also easily fulfilled. See § 6A-9-504. To adequately "indicate" the collateral that the security agreement covers, the financing statement must merely (1) describe the collateral in the same way the collateral would be described in a security agreement, or (2) indicate that the financing statement

---

[8] A "[r]egistered organization" is any corporation, limited partnership, limited liability company, and statutory trust. Sec. 6A-9-102(a)(71).

[9] A "[p]ublic organic record" is defined, in pertinent part, as

> "[A] record that is available to the public for inspection and is:
>
> "(i) A record of [sic] consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state of the United States which amends or restates the initial record . . ." Sec. 6A-9-102(a)(68).

covers "all assets" or "all property" of the debtor. Sec. 6A-9-504. "The description of the collateral in a financing statement may be more abbreviated than in a security agreement because of the difference in the function of the two documents." 8A Anderson's Uniform Commercial Code § 9-203:128.

While the filing of a financing statement may perfect a secured party's interest in collateral, there are several exceptions. See § 6A-9-310. One exception is that the filing of a financing statement is not necessary or effective to perfect a security interest in property "subject to . . . [a] statute of this State, which provides for a security interest to be indicated on a certificate as a condition or result of perfection, including chapter 3.1 of Title 31 . . ." (the Title Statute). Sec. 6A-9-311(a)(2). The Title Statute requires that all vehicles have a certificate of title. G.L. 1956 § 31-3.1-1. It further provides that "a security interest in a vehicle of a type for which a certificate of title is required is not valid against creditors of the owner or subsequent transferees or lienholders of the vehicle unless perfected as provided in this chapter."[10] Sec. 31-3.1-19(a). In Rhode Island, a security interest in an automobile perfects when the secured party:

> "deliver[s] to the division of motor vehicles [] the existing certificate of title, if any, an application for a certificate of title containing the name and address of the lienholder, and the date of his or her security agreement. A security interest may also be perfected by the execution of a security lien statement and the required fee of fifty dollars ($50.00) and registration card." Sec. 31-3.1-19(b).

[10] There are three exceptions to this rule; however, none are applicable in the instant matter. See § 31-3.1-18. Further, for this reason, Greenwood's argument that it maintains a super priority status because it received a purchase money security interest in the Vehicle must fail. Such super priority as a result of a purchase money security interest is limited by state laws. See § 6A-9-309(a)(1). While Greenwood may, in fact, have a purchase money security interest in the Vehicle, the priority of that security interest is not governed by the purchase money priority rules, but by the State's rules governing perfection of security interests in motor vehicles. See id.; § 6A-9-311(a)(2).

Such method of perfection "is exclusive," and security interests subject to title requirements "are exempted from the provisions of law which prescribe technical requirements in execution or acknowledgment of or otherwise require or relate to the filing of instruments creating or evidencing security interests." Sec. 31-3.1-24. Stated in a more applicable way,

> "the mere fact that the secured party has a security interest in the debtor's after-acquired property perfected by the filing of a financing statement does not result in the secured party having a perfected security interest in a motor vehicle governed by a certificate of title statute that is subsequently acquired by the debtor." 8A Anderson's Uniform Commercial Code § 9-302:27.

Here, Plaintiff filed the Financing Statement, which identifies Plaintiff as the secured party and Defendant as the debtor, and validly indicates the secured collateral as "[a]ll of Debtor's presently owned and hereafter acquired equipment." Ex. B; see §§ 6A-9-502(a)(1-3), 6A-9-504. Such general indication of the collateral is sufficient in the Financing Statement as it identifies the collateral as it is described in the Agreement. See § 6A-9-504. However, while the Financing Statement may be valid to perfect other equipment described in the Agreement, under Rhode Island law, Plaintiff's interest in the Vehicle can only be perfected by making application to be a lienholder on the Title. See §§ 6A-9-311(a)(2), 31-3.1-19(a). Accordingly, as Plaintiff is neither listed on the Title as a lienholder nor has it submitted evidence that it has made application to be listed as a lienholder on the Title, its security interest is not perfected in the Vehicle and not enforceable against other perfected parties. See § 31-3.1-19(a-b); Ex. F. Similarly, Greenwood has not perfected its interest in the Vehicle because it is also not listed on the Vehicle's Title. See § 31-3.1-19(a-b); Ex. F. As a result, both Plaintiff and Greenwood have competing claims in the Vehicle and are unperfected.

C

Priority of Secured Parties

When two parties have competing interests in collateral, the rules of priority determine whose interest is superior. See § 6A-9-322. A secured party's priority is largely dependent on whether it is perfected and how it is perfected. See id. For instance, if both parties are perfected in the collateral, the secured party that first filed a financing statement indicating its collateral will have superior priority. Sec. 6A-9-322(a)(1). If one party is perfected and the other is unperfected, the perfected party will have priority; and if both parties are unperfected, the party with a superior priority in the collateral is the one who attached to the collateral first. Sec. 6A-9-322(a)(2-3). Therefore, the timing of Defendant and Greenwood's attachment in the Vehicle will be dispositive of their priorities in the Vehicle. As previously stated, for a secured party to attach to collateral, three requisites must be met: (1) the secured party must give value; (2) the debtor must have rights in the collateral; and (3) there must be an executed security agreement that adequately describes the collateral. See supra § III(A); § 6A-9-203(b)(1-3). As the Court has already determined that both Plaintiff and Greenwood's security interests have attached in the Vehicle, see supra § III(A), the operative question is not if the secured party has attached, but when attachment took effect.

Here, turning first to Plaintiff's attachment, Plaintiff extended value for the after-acquired vehicle on September 19, 2014 when it replaced Defendant's preexisting debts with the Note. See Ex. A; §§ 6A-9-203(b)(1-3), 6A-9-204(1-2); 8A Anderson's Uniform Commercial Code § 9-203:185 (value, for purposes of after-acquired property clauses, is adequate when it is given in connection with the original secured transaction). On that same day, Plaintiff and Defendant executed the Agreement, which is properly authenticated and adequately describes the

collateral.[11] See Ex. A; §§ 6A-9-102(a)(7), 6A-9-108(b)(3), 6A-9-203(b)(3)(i). Therefore, Plaintiff's interest attached when Defendant gained "rights" in the collateral on March 7, 2015 when Paolo executed the Purchase Contract on its behalf. See SUF at ¶ 8; Gen. Motors Acceptance Corp., 120 R.I. at 200, 386 A.2d at 1098; 8A Anderson's Uniform Commercial Code § 9-203:242 (a security interest attaches "at the very moment all [] elements co-exist").

Greenwood, however, gave value to Defendant on March 6, 2015 when it agreed to extend credit to Defendant in the amount of $71,959.47 pursuant to the Greenwood Loan. See Ex. D; §§ 6A-9-203(b)(1-3), 6A-9-204(1-2). On that same day, Defendant gave to Greenwood a validly executed Agreement that sufficiently described the Vehicle as collateral. See Ex. D; supra § III(A); §§ 6A-9-102(a)(7), 6A-9-108(b)(3), 6A-9-203(b)(3)(i). Because Greenwood extended credit and held a validly executed Agreement, the Greenwood Loan attached to the Vehicle when Defendant gained "rights" in the collateral, which was on March 7, 2015 when Paolo executed the Purchase Contract on behalf of Defendant. See SUF at ¶ 8; Gen. Motors Acceptance Corp., 120 R.I. at 200, 386 A.2d at 1098; 8A Anderson's Uniform Commercial Code § 9-203:242 (a security interest attaches "at the very moment all [] elements co-exist").

Plaintiff and Greenwood attached to the Vehicle simultaneously, both attaching at the moment Defendant gained "rights" in the Vehicle; therefore, the priority of their claims cannot be ascertained by the timing of attachment. As Article 9 does not provide a mechanism to determine the priority of unperfected secured creditors who simultaneously attach to the same collateral, the Court looks to the purpose and goals of Article 9 to make a determination of priority in the Vehicle in equity.

[11] The Court found that the Agreement was properly authenticated and adequately described the collateral, supra § III(A).

D

Equity

The instant matter illustrates a tempest in which an after-acquired property clause collides with a state's title statute and creditors' simultaneous attachment. In analyzing this circumstance, the Court recognizes that although Article 9 governs such transactions, its rules on priority fail to resolve the dispute or otherwise provide guidance, despite a complete analysis. Similarly, Rhode Island's Title Statute is inapplicable because neither party is on the Vehicle's Title. Yet, the question of priority remains. Therefore, absent a mandate from Article 9 or the Title Statute, the Court will invoke its equitable powers to determine priority solely for purposes of the Motion until a party demonstrates its priority by complying with Article 9 and the Title Statute. See § 8-2-13. Section 8-2-13 grants the Court equitable jurisdiction, providing that "[t]he superior court shall, except as otherwise provided by law, have exclusive original jurisdiction of suits and proceedings of an equitable character and of statutory proceedings following the course of equity . . . ." Therefore, the Court can only exercise its equitable powers when confronted with a proceeding "of an equitable character." Sec. 8-2-13. Our Supreme Court has held that a writ of replevin is an equitable remedy in which a Court may invoke its equitable powers. See Moseman Constr. Co., 608 A.2d at 36.

Further, the UCC permits courts to use their equitable powers unless expressly displaced by a particular provision of the UCC. See § 6A-1-103(b). In fact, the UCC provides that a court must liberally construe and apply the provisions of the UCC "to promote its underlying purposes and policies, which are: (1) To simplify, clarify, and modernize the law governing commercial transactions; (2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and (3) To make uniform the law among the various

jurisdictions." Sec. 6A-1-103(a). Therefore, in employing its equitable powers, the Court will make its determination as to the parties' priority in the Vehicle consistent with the purposes and policies of Article 9 transactions.[12]

First, the Court recognizes the purpose of an after-acquired property clause: so that a creditor is not unduly burdened by filing a financing statement each time a debtor acquires new property. See § 6A-9-204, comment. The interplay between the purpose of an after-acquired property clause and the requirements of § 31-3.1-19(b) conflict; while an after-acquired property clause relieves a creditor from reperfecting its collateral, § 31-3.1-19(b) requires such action. However, in the instant matter, since neither party has perfected its interest according to § 31-3.1-19(b), the Court finds it equitable to give effect and priority to the after-acquired clause creditor because the after-acquired clause conflicts with a statute that is frustrated by the inaction of each of the parties.

Second, the Court notes that Plaintiff conducted due diligence in perfecting its security interest, albeit not in the Vehicle, but of the other collateral in the Agreement. Specifically, it took all action required under Article 9 necessary to perfect its interest in the original Agreement, although it may have failed to take necessary steps to perfect its interest in the Vehicle—subsequently-acquired collateral—pursuant to § 31-3.1-19(b). The same cannot be said for Greenwood. Greenwood did not perfect its original security agreement by financing statement and did not perfect its interest in the car pursuant to § 31-3.1-19(b). Further, the Court finds that Greenwood was not diligent in lending money to Defendant because it did not search the State's

[12] For the purposes of determining "priority" from equitable considerations, the Court will only do so for purposes of the Motion. The following determination of "priority" shall not be construed as an adjudication of the parties' rights on the merits because either party may perfect its interest, and achieve priority, by complying with the Title Statute. Accordingly, in exercising its equitable powers, the Court will determine "priority" for the purposes of the Motion and until either party complies with the Title Statute.

financing statement index to determine if another creditor had already lent money to Defendant, or if another creditor was secured in after-acquired collateral. See supra n.8. In short, Greenwood did not exercise due diligence in lending Defendant money because it did not perfect its original security agreement and did not conduct a search of other possible creditors. The Court finds it inequitable to reward such inaction and finds that priority should be given to the party that exercised the most diligence in complying with Article 9.[13]

Lastly, the instant matter reveals that perfected secured creditors, with an after-acquired property clause, are at a severe disadvantage when the after-acquired property is an automobile financed by a subsequent creditor. For instance, once Plaintiff filed the Financing Statement perfecting its interest in after-acquired property, there was no way for it to know if Defendant was purchasing an automobile in which it would need to apply to be listed as a lienholder on the title. Not only would Plaintiff not know, but the subsequent creditor—lending money for the purchase of the automobile—would be the first to know and first to be able to perfect its claim due to its proximity to the transaction. Because an after-acquired property lender would assume that any thereafter acquired property would be covered by an after-acquired property clause, the creditor would have knowledge—actual or constructive—about the debtor's acquisition of the property.[14] To allow subsequent creditors to covertly perfect in an automobile, and gain priority over the after-acquired property creditor, would be inequitable. For that reason, the Court finds

[13] The Court finds that Article 9's "first to file, first to perfect" rule seeks to "reward" the diligent creditor with priority of its security interest over other creditors' claims. The spirit of this rule supports the Court's finding that Plaintiff should have a superior interest to Defendant.

[14] The Court notes that while Plaintiff may have been diligent in perfecting its security interest, it may also be prudent for such after-acquired property creditors to include within a security agreement a provision that requires a debtor to notify the creditor in the event it acquires property covered by title statutes. Such provision is not required by Article 9 for a creditor to be deemed diligent; yet, until Article 9 offers a solution to the problems inherent in the instant suit, such action may be wise.

it equitable to find that Plaintiff, as an after-acquired property creditor, should have priority over the Vehicle.

The aforementioned equitable determinations based upon the goals of Article 9 demonstrate a probability of judgment in Plaintiff's favor until either party can perfect their interest pursuant to § 31-3.1-19(b). Further, due to the uncertainty of the priority of Plaintiff and Defendant's claims in the Vehicle, Plaintiff has established a need for possession of the Vehicle to ensure that Defendant does not foreclose its interest before the instant priority dispute is determined on the merits. Accordingly, Plaintiff has satisfied the requirements of a writ of replevin, and the Motion shall be granted.

IV

Conclusion

The Court grants the Motion because equitable relief should be awarded to Plaintiff on the basis of its diligence and policy considerations; thus, Plaintiff has demonstrated a probability of judgment in its favor and has established a need to possess the Vehicle prior to a trial on the merits of its claim. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Pet Food Experts, Inc. v. Alpha Nutrition, Inc. d/b/a Doggiefood.com**
CASE NO:	**KC-2015-1033**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**May 10, 2016**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**Vincent A. Indeglia, Esq.**
For Defendant:	**Alpha Nutrition, Inc., pro se**
For Interested Parties:	**V. Edward Formisano, Esq.; Paul DeMarco, Esq.; Michael D. Pushee, Esq.; Edward L. Gnys, III, Esq.**