

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-000307-MR

ACTION CAPITAL CORPORATION

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT  
HONORABLE RODNEY BURRESS, JUDGE  
ACTION NO. 08-CI-01658

ECLIPSE BANK, INC.

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: COMBS AND LAMBERT, JUDGES; SHAKE,<sup>1</sup> SENIOR JUDGE.

SHAKE, SENIOR JUDGE: Action Capital Corporation (“Action”) appeals from the November 6, 2009, order of the Bullitt Circuit Court, granting summary judgment in favor of Eclipse Bank, Inc. (“Eclipse”). Because we hold that the trial court erred in granting summary judgment, we reverse.

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<sup>1</sup> Senior Judge Ann O’Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

The underlying action involves competing creditors, Action and Eclipse, for the money received from the liquidation of utility trailers manufactured by Integrity Manufacturing, LLC (“Integrity”). Integrity was a manufacturer of utility trailers. Eclipse loaned money to Integrity secured by an all-assets lien on Integrity’s accounts, chattel paper, equipment, and inventory. Action also loaned money to Integrity and perfected a first security interest in all of Integrity’s accounts and contract rights. Eclipse executed a subordination agreement acknowledging the priority of Action’s interest in Integrity’s accounts.

Snowbear markets utility trailers and contracts with independent manufacturers for the construction of the trailers. Snowbear contracted with Integrity for the production of 10,000 utility trailers pursuant to a purchase order. Payment terms for the trailers were to be net 15 days from their removal from the plant. Integrity issued invoices for the trailers manufactured for Snowbear and Action purchased those invoices pursuant to the security agreement between Action and Integrity.

Integrity manufactured a portion of the trailers for Snowbear, but Snowbear failed to pay for approximately 1,700 of the trailers. Further, Snowbear failed to make payment to Action for some of the invoices. Integrity closed its operations and defaulted on its obligations to Eclipse and Action. At the time of its default, the 1,700 remaining trailers remained on Integrity’s property. Snowbear and Action entered into an agreement whereby Snowbear authorized Action to

auction the remaining trailers to satisfy the outstanding invoices. The trailers were auctioned or sold and the funds are currently being held in escrow, pending resolution of this dispute.

Eclipse and Action both claimed a priority security interest in the trailers and resulting escrow funds. The trial court considered whether the trailers constituted accounts receivable, as alleged by Action, or goods and inventory of Integrity, as alleged by Eclipse. Ultimately, the trial court concluded that, because a right to payment on the trailers did not exist at the time Integrity defaulted on its obligations to Eclipse and Action, the trailers were goods. Therefore, the trial court held that Eclipse was entitled to summary judgment based on its priority concerning the trailers and the proceeds of their sale. Action filed a motion to alter, amend, or vacate, which was denied. This appeal followed.

We review a trial court's grant of summary judgment to determine "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Summary judgment is proper when it appears that it would be impossible for the adverse party to produce evidence at trial supporting a judgment in his favor. *James Graham Brown Found., Inc. v. St. Paul Fire Marine Ins. Co.*, 814 S.W.2d 273, 276 (Ky. 1991). The record must be viewed in a light most favorable to the party opposing the motion and all doubts must be resolved in his favor. *Steelvest, Inc. v. Scansteel Serv. Ctr, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). "Because summary judgment

involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court's decision and will review the issue de novo.” *Lewis v. B & R Corporation*, 56 S.W.3d 432, 436 (Ky. App. 2001).

On appeal, Action argues that upon completion of manufacturing, when the 1700 trailers were identified to the Integrity contract with Snowbear and invoices were issued to Snowbear, title then transferred to Snowbear and a right of payment for the manufactured trailers existed. Further, Action argues that Snowbear, and not Integrity, owned the remaining trailers, and that ownership interest was transferred to Action by agreement. Therefore, because Integrity did not have ownership of the remaining trailers, Eclipse could not obtain ownership of the trailers as goods of Integrity.

The trial court’s analysis read, in relevant part:

Under KRS 355.9-102, goods are “all things that are moveable when a security interest attaches.” Pursuant to KRS 355.9-102(1)(b), “accounts” are defined as “a right to the payment of a monetary obligation, whether or not earned by performance.” In his deposition, Randall Waldman testified that payment was due on any invoices when the trailers “were net 15 from the minute they were removed” from the plant. (Waldman Dep. 70).

Therefore, the right to payment required removal of the trailers from the plant, and it is completely undisputed that the trailers were never removed from Integrity by Snowbear. In order for the trailers to constitute an “account,” a right to payment must have existed. Integrity would have received a right to payment after the trailers were removed, but this never occurred.

Consequently, it appears to the Court that the trailers are “goods.”

Eclipse has a clear priority on any goods owned by integrity. Therefore, Eclipse has priority on the trailers which are the subject of this Motion.

The trial court was correct that the UCC defines an account as “a right to payment.” However, we disagree that a right to payment did not exist. The trial court reasoned that because payment was due, pursuant to the purchase order, 15 days from trailers being removed from the plant, and because the trailers never left the plant, that a right to payment did not exist. However, a *right to payment* is not the same as *when payment is due*. When Integrity finished manufacturing a batch of trailers, an invoice was generated and issued to Snowbear, creating a right to payment. This right to payment existed even though payment was not due until 15 days after the trailers had been shipped from Integrity’s facility. Accordingly, the trial court’s analysis does not support a judgment in favor of Eclipse. *See Scifres*, 916 S.W.2d 779.

Eclipse argues that title to the trailers reverted to Integrity, pursuant to KRS 352.2-401(4), when Snowbear rejected or refused receipt of the trailers. However, Action had purchased the invoices from Integrity, making it the party that held title and to which payment was owed. Therefore, titles to the trailers would have reverted to Action upon Snowbear’s rejection of the trailers, not to Integrity.

For the foregoing reasons, the trial court's November 6, 2009, order of the Bullitt Circuit Court is reversed and remanded with directions to the trial court to enter judgment in favor of Action.

ALL CONCUR.

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