

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

In Proceedings  
Under Chapter 7

RAY & CHERRI CROSS

Case No. 02-42572

Debtor(s).

DELMAR SHORB

Plaintiff(s),

Adv. No. 03-4146

v.

MICHELLE VIEIRA, Chapter 7  
Trustee, and VOLVO  
COMMERCIAL FINANCE

Defendant(s).

OPINION

Defendant, Michelle Vieira, Chapter 7 trustee, filed a motion to dismiss Count I of the plaintiff's complaint, which seeks a determination that plaintiff is entitled to funds held by the trustee from sale of the debtors' 1994 Kenworth truck. The trustee argues that at the time she sold the truck, there was no lien recorded on the truck's title by either the plaintiff nor any other secured creditor and that she properly holds the funds for distribution to unsecured creditors. The trustee maintains that because Count I of the plaintiff's complaint fails to allege that plaintiff has a valid and perfected lien on the truck, it fails to state a cause of action against the trustee and should be dismissed.

Plaintiff, Delmar Shorb, argues that the trustee is a necessary party to this action because the Court previously reserved ruling concerning the validity of liens, if any, on the debtors' truck. The Court agrees. The Court has reviewed its ruling in the debtors' bankruptcy case on the trustee's motion to sell the debtors' truck and finds that no determination of validity of liens was made at that time. At hearing held on March 25, 2003, on the objection of Hamilton County Loan' to the trustee's notice of sale, the Court

allowed the trustee's sale of the truck but reserved ruling on the issue of validity of liens, if any, on the debtors' truck. In the absence of determination concerning the validity of liens, any valid liens would attach to the sale proceeds held by the trustee.

For the reasons stated, the Court finds that the trustee is a necessary party to the plaintiff's action for declaratory judgment concerning its interest in the debtors' truck, and, accordingly, DENIES the trustee's motion to dismiss Count I of the plaintiff's complaint.

SEE WRITTEN ORDER.

ENTERED: January 13, 2004

/s/ Kenneth J. Meyers  
UNITED STATES BANKRUPTCY JUDGE

<sup>1</sup>Hamilton County Loan's interest in the vehicle has now been assigned to plaintiff, Delmar Shorb.