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6-9-2005

DEPARTMENT OF SAFETY vs. D.O.S. Case No.  
C90971997 Beaver Monterey Motor Coach VIN #  
4SLB6CN2XV1107819, Seized from: Juan Carlos  
Fernandez, Date of Seizure: February 24, 2004,  
Claimants: Jack and Judy Rhoades Lien holder:  
Ganis Credit Corp

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**BEFORE THE COMMISSIONER OF THE  
TENNESSEE DEPARTMENT OF SAFETY**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>DEPARTMENT OF SAFETY</b>	)	
	)	
<b>v.</b>	)	<b>DOCKET NO. 19.01-074132J</b>
	)	<b>(D.O.S. Case No. C9097)</b>
<b>1997 Beaver Monterey Motor Coach</b>	)	
<b>VIN# 4SLB6CN2XV1107819</b>	)	
<b>Seized from: Juan Carlos Fernandez</b>	)	
<b>Date of Seizure: February 24, 2004</b>	)	
<b>Claimants: Jack and Judy Rhoades</b>	)	
<b>Lien holder: Ganis Credit Corp.</b>	)	

**INITIAL ORDER**

This contested case was set to be heard on June 9, 2005, in Memphis, Tennessee, before Rob Wilson, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Joe Bartlett, staff attorney for the Tennessee Department of Safety was present on behalf of the State. Present on behalf of Ganis Credit Corporation was attorney Clifton E. Darnell. Both parties waived oral argument and agreed to present their arguments as written memorandums.

**PROCEDURAL HISTORY**

This matter was remanded to this court from the Davidson County Chancery Court for a determination as to the sufficiency of notice to interested parties. The interest of claimants Jack and Judy Rhoades has been settled, leaving lien holder Ganis Credit Corporation and the State of Tennessee the only remaining parties. The Department of Safety argues that the claim filed by lien holder Ganis Credit Corporation was not timely filed and therefore the subject Monterey Motor Coach should be forfeited to the State. Ganis Credit Corporation argues that it did not

receive notice of the forfeiture. The issue to be determined is whether or not the Department of Safety had a duty to notify Ganis Credit Corporation of the State's intent to forfeit.

### **FACTS**

1. Jack and Judy Rhoades purchased the Monterey Motor Coach in 1997.
2. Mr. & Mrs. Rhoades refinanced the subject vehicle through Ganis Credit Corporation by borrowing the amount of \$132,381.28 which was secured by a lien on the vehicle.
3. In November of 1999 Mr. & Mrs. Rhoades sold the subject vehicle to Nancy Batista through a contractual arrangement whereby the existing loan remained in Mr. & Mrs. Rhoades' name and Nancy Batista assumed responsibility for making the monthly payments subject to the security interest of Ganis Credit Corporation.
4. On February 24, 2004 the subject vehicle was seized in Tennessee for Violations of the Tennessee Drug Control Act.
5. The Tennessee Department of Safety sent a letter to Mr. & Mrs. Rhoades dated March 25, 2004 giving them notice that a forfeiture warrant had been issued.
6. Ganis Credit Corporation did not receive notice of the forfeiture.
7. Mr. & Mrs. Rhoades informed Ganis Credit Corporation of the State's intent to forfeit and on April 23, 2004 Ganis Credit Corporation informed the Department of Safety of their perfected security interest in the subject vehicle and requested to participate in the forfeiture hearing.

8. The subject vehicle was registered in Florida and Ganis Credit Corporation has produced a copy of the certificate of title showing Ganis Credit Corporation as the lien holder.
9. Ganis Credit Corporation also produced a certificate of title from the State of Nevada showing Ganis Credit Corporation as the lien holder.
10. On May 5, 2004 an Order was entered in response to Ganis Credit Corporation's request for hearing. The Order denied the request for hearing and held that the request for hearing was not properly filed.
11. Ganis Credit Corporation filed a petition for review of that Order to the Davidson County Chancery Court on July 2, 2004. The petition for review was remanded to this court for a determination as to the sufficiency of notice and other proceedings as may be necessary and appropriate.

### **CONCLUSIONS OF LAW, OPINION AND ANALYSIS**

1. T.C.A. §40-33-205. Security Interests. –
  - (a) If a secured party with a duly perfected security interest receives notification pursuant to [§ 40-33-204\(g\)](#) that a forfeiture warrant has been issued with regard to such secured property, such secured party must submit proof of the security interest to the applicable agency within thirty (30) days of receipt of such notification in order for the provisions of this subsection (a) to apply. A secured party with a duly perfected interest or any successor in interest to such secured party who does not receive notice of intent to forfeit such interest pursuant to [§ 40-33-204\(b\)\(3\)](#), need not file a claim to preserve any right such party may have to such property. Upon receiving proof of a security interest, no cost bond or other pleadings need be filed by the secured party or successor in interest in order to protect its interest in the seized property or to assert a claim to the property as provided in [§ 40-33-206](#). If the applicable agency notifies a secured party that it intends to seek forfeiture of the secured party's interest, it shall seek a forfeiture warrant against such secured party as provided in [§ 40-33-204\(b\)](#). Upon receiving notice that such a forfeiture warrant has been issued, the secured party is required to file a claim for the

property as provided in this part.

(b) Any secured party, other than one described in subsection (a), or any successor in interest to such secured party may file a claim for seized property by complying with the provisions of [§ 40-33-206](#), within thirty (30) days of the date the forfeiture warrant is issued.

2. T.C.A. §40-33-101(3) provides: A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.
3. At all times relevant to this matter Ganis Credit Corporation held a bona fide security interest in the 1997 Monterey Motor Home.
4. Ganis Credit Corporation had neither knowledge of or consented to the forfeiture.
5. It is apparent from the record that Ganis Credit Corporation held a perfected security interest in the 1997 Monterey Motor Coach. It is also apparent that Ganis Credit Corporation was not given notice of the forfeiture. Therefore, according to the applicable statutes, this forfeiture is subject to the interest of Ganis Credit Corporation.
6. The Department of Safety claims that the identity and address of Ganis Credit was not reasonably ascertainable from a review of the public records under the circumstances of this case. When the subject motor coach was seized it had a Florida license plate. The certificate of title from the State of Florida clearly lists Ganis Credit Corporation as the lien holder. The vehicle identification number on the State of Tennessee notice of property seizure matches the vehicle identification number listed on the Florida certificate of title.
7. The State argues that the printouts provided to them did not list Ganis Credit Corporation as the lien holder of the subject vehicle. However, there is no

wording in the Tennessee forfeiture statutes that would allow the State to forfeit a duly perfected lien holder's interest simply because the State did not locate the security interest after conducting a reasonable search.


8. Furthermore, regardless of whether or not the State's search was reasonable, the record does not show any wrongdoing on the part of Ganis Credit Corporation, and to forfeit the interest of a duly perfected lien holder without notice would clearly violate due process principles as well as the intent of the Tennessee forfeiture statutes.
9. In *Wells v. McCanless*, 198 S.W. 2d 641 (Tenn. 1947), the Tennessee Supreme court said: "We think that the Legislature meant to prescribe conditions under which and under which alone the confiscation could be accomplished, and that such provisions are not mere idle suggestions to be disregarded at will by the officers of the State."
10. Accordingly, it is CONCLUDED that at all times relevant to this matter Ganis Credit Corporation was a secured party with a duly perfected interest in the subject vehicle. Additionally, it is CONCLUDED that Ganis Credit Corporation did not receive notice of intent to forfeit.
11. Therefore, it is ORDERED that the forfeiture of the 1997 Monterey Motor Coach is subject to the interest of Ganis Credit Corporation.

This Initial Order entered and effective this 5th day of August, 2005.

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Rob Wilson  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 5th day of August, 2005.

  
Charles C. Sullivan, II, Director  
Administrative Procedures Division