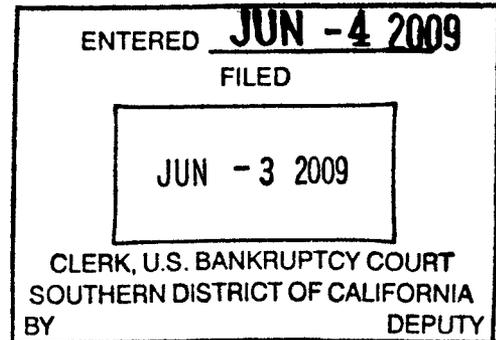


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

11 In re) Case No. 02-09721-B7
12) Adv. No. 04-90235
13 COMMERCIAL MONEY CENTER,)
14 INC.,) AMENDED MEMORANDUM DECISION
15 Debtor.)
16)
17 RICHARD M. KIPPERMAN, Chapter)
18 7 Trustee for the Bankruptcy)
19 Estates of Commercial Money)
20 Center, Inc. and Commercial)
21 Servicing Corporation,)
22 Plaintiff,)
23)
24 v.)
25)
26 ANTHONY & MORGAN SURETY and)
INSURANCE SERVICES, INC., a)
California Corp., MICHAEL)
T. ANTHONY, an individual,)
and SCOTT MORGAN, an)
individual,)
Defendants.)

In January, 2008, Judge Hargrove, now retired, ruled on plaintiff's motion for summary judgment, resolving some issues,

1 but denying plaintiff's motion as to defendants' good faith
2 defense. Judge Hargrove concluded that defendants had put forth
3 sufficient "competing evidence" that the issue of good faith was
4 a "classic triable" one.

5 Plaintiff did not give up. Rather, after pursuing
6 alternative avenues of resolution, plaintiff moved again for
7 summary judgment on defendants' good faith defense. After
8 extensive briefing and oral argument the Court took the matter
9 under submission. Since then, the Court has returned time and
10 again to the deposition transcripts and other documents submitted
11 by the parties. Moreover, the Court has in mind that there
12 probably is no additional information which would be brought out
13 at trial. Nevertheless, the Court concludes that it cannot grant
14 summary judgment on the present record.

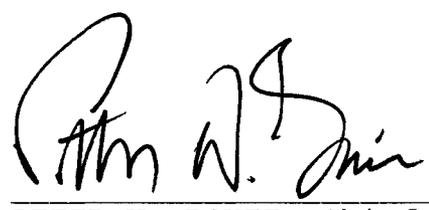
15 In the Court's view, it is a very close question, made so by
16 defendants' relative inaction about the Whitfield allegations
17 even though those allegations revealed Whitfield's knowledge of
18 the side deal defendants had with the debtor which was not
19 generally know. To simply accept representations that Whitfield
20 was a disgruntled former employee when Whitfield revealed his
21 level of knowledge about the dealings between defendants and CMC
22 is very troublesome to the Court. But, as Judge Hargrove noted,
23 good faith is an inherently factually intensive determination,
24 and the Court is unwilling to find its absence based upon the
25 disputed facts of the present record, in effect, as a matter of
26 law.

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Accordingly, plaintiff's pending motion for summary judgment must be, and hereby is denied.

IT IS SO ORDERED.

DATED: ~~JUN - 3 - 2009~~



PETER W. BOWIE, Chief Judge
United States Bankruptcy Court