

1 WRITTEN DECISION - NOT FOR PUBLICATION

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6 CLERK, U.S. BANKRUPTCY COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
8 BY 112 DEPUTY

9 UNITED STATES BANKRUPTCY COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 In re) Case No. 07-04500-PB11
12 SAIF, INC.,) Adv. No. 08-90460-PB
13 Debtor.) ORDER ON MOTION TO
14) DISMISS COMPLAINT OF
15) DEBTOR SAIF, INC.
16)
17 OFFICIAL COMMITTEE OF UNSECURED)
18 CREDITORS OF SAIF, INC.,)
19 Plaintiff,)
20 v.)
21 NOBAHAR-FARID TEXTILE, INC.,)
22 dba SACRAMENTO EUROPEAN, LTD.;)
23 KMG AUTO, INC., dba THRIFTY CAR)
24 SALES and THRIFTY CAR SALES OF)
25 SACRAMENTO,)
26 Defendants.)

23 This case involves competing claims to certain vehicles
24 which were transferred postpetition from non-debtor SC Auto to
25 Defendants. Defendants contend that the vehicles had been
26 consigned to SC Auto, and were simply returned to their rightful

1 Defendants, Nobahar-Farid Textile, Inc, a corporation
2 d.b.a. Sacramento European, Ltd., was in the business of
3 buying trade-in automobiles and reselling them either from
4 its own lot or through consignees (collectively "Sacramento
5 European".)

6 **The Business Relations:**

7 So far as the Court is aware, Debtor had no dealings with
8 Defendants. However, both the Debtor and Defendants did business
9 with SC Auto, which lead to the competing claims to the vehicles
10 in question.

11 Prepetition, Debtor and SC Auto entered into a "Security and
12 Buy-Back Agreement for Wholesale Inventory" (Security Agreement),
13 the terms of which provided, rather inconsistently, that Debtor
14 would buy automobiles from SC Auto and consign them back to SC
15 Auto for sale and that Debtor would lend money to SC Auto and
16 take a security interest in the vehicles in SC Auto's inventory.
17 As it turns out, it appears clear from the record and from the
18 allegations in the Complaint, that Debtor did not purchase any
19 vehicles, but rather loaned money to SC Auto and took a security
20 interest in SC Auto's inventory of cars. Debtor filed a UCC-1
21 perfecting its interest in the vehicles owned by SC Auto. Under
22 the terms of the Security Agreement, SC Auto was required to
23 provide inventories to Debtor indicating Debtor's collateral.
24 All told, SC Auto provided 14 inventory reports (Inventory
25 Reports).

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1 Meanwhile, according to Defendants, Sacramento European had
2 consigned cars to SC Auto to be sold. Under the consignment
3 agreement Sacramento European held the titles to the cars until
4 they were sold and the proceeds remitted. When SC Auto sold one
5 of Sacramento European's cars, it would transfer the sales
6 proceeds to Sacramento European. When the funds cleared,
7 Sacramento European would provide the title. At all times,
8 according to Defendants, Sacramento European held the title until
9 the cars were sold and paid for.

10 **The Competing Claims:**

11 The conflict in this case arises from SC Auto's Inventory
12 Reports, which appear to have been incorrect. According to
13 Plaintiff, Debtor had a perfected security interest in all of the
14 vehicles listed on the Inventory Reports. SC Auto represented to
15 Debtor that it owned all of the cars on its lot, and that was
16 attested to by SC Auto's principal. Defendants, on the other
17 hand, contend that the Inventory Reports which SC Auto gave to
18 Debtor included cars which were owned by Sacramento European and
19 merely consigned to SC Auto.

20 **SC Auto's Default and the Fall-Out:**

21 SC Auto defaulted on the loan. Debtor demanded turnover of
22 all of the vehicles listed in the Inventory Reports (Collateral
23 Vehicles.) SC Auto failed to do so, so Debtor sued and obtained
24 a writ of possession covering the vehicles on the Inventory
25 Reports.

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1 Notwithstanding the writ, SC Auto transferred some of the
2 Vehicles which were on the Inventory List to Sacramento European
3 (the "Transferred Vehicles").

4 **The Complaint:**

5 The OCC contends that the Security Agreement gave Debtor a
6 priority security interest in all of the vehicles on the
7 Inventory Reports, including the Transferred Vehicles.

8 Sacramento European contends that since SC Auto never owned the
9 cars, it could neither transfer them to Debtor nor grant Debtor a
10 security interest therein, and they were properly returned to
11 Sacramento European. The OCC, as successor in interest to the
12 Debtor, has sued Sacramento European seeking turnover of the
13 Transferred Vehicles and/or the proceeds therefrom.

14 **The Motions:**

15 Defendants have moved for a judgment on the pleadings under
16 Federal Rule of Bankruptcy Procedure 12(c) and separately for
17 summary judgment. In connection with this motion to dismiss,
18 both parties have proffered evidence beyond the scope of the
19 pleadings which, under Rule 12(d), the Court could consider,
20 thereby converting the motion to dismiss into a motion for
21 summary judgment. However, Defendants have also separately moved
22 for summary judgment. At the hearing on both motions, the Court
23 took the motion to dismiss under submission, and deferred the
24 motions for summary judgment until the motion to dismiss is
25 resolved. In light of that ruling, the Court will not convert
26 this motion to dismiss into a motion for summary judgment by

1 accepting the matters presented which are outside the pleadings.
2 Such proffered evidence will be excluded for the purposes of this
3 motion as allowed under Rule 12(d). Instead, the motion will be
4 resolved solely on the pleadings.

5 Having resolved to consider only the pleadings, the matter
6 is easily resolved. With respect to the motion to dismiss, the
7 Court must accept well pleaded allegations in the complaint as
8 true and the facts are to be construed in the light most
9 favorable to the nonmoving party. Wyler Summit P'ship v. Turner
10 Broad. Sys., Inc., 135 F.3d 658, 661 (9th Cir.1998).

11 In support of its motion, Sacramento European argues
12 that Debtor's security interest could not reach the
13 Transferred Vehicles, because as a matter of law, SC Auto
14 could not grant Debtor a security interest in vehicles which
15 it did not own. Further, the UCC-1 only covers cars owned
16 by SC Auto. As a matter of law, Sacramento European is
17 correct. However, the underlying factual assumption is that
18 SC Auto did not own the Transferred Vehicles, a fact which
19 the OCC does not concede.

20 In the Complaint, the OCC alleges that the Transferred
21 Vehicles "were in the inventory of vehicles securing the
22 Note and Security Agreement." Comp. at 7:13-14. The OCC
23 also alleges that the Transferred Vehicles are "property of
24 the Debtor's bankruptcy estate." Comp. at 8:5-6. Finally,
25 the OCC alleges that "the Debtor had the right to take
26 possession of the collateral, including the [Transferred

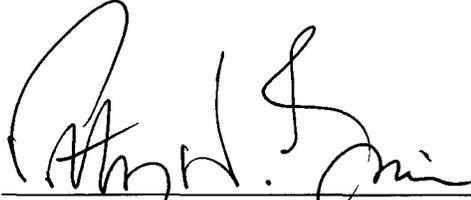
1 Vehicles] and the profits and proceeds resulting from their
2 sale." Comp. at 9:4-6.

3 It appears likely that SC Auto never had title to the
4 Transferred Vehicles, and thus Debtor neither obtained title
5 thereto nor a security interest therein. However, in the
6 Complaint the OCC does allege that the Vehicles were part of
7 SC Auto's inventory and they were secured by the Note and
8 Security Agreement and such interest was perfected under the
9 UCC-1. Since for the purposes of the motion to dismiss the
10 Court must accept this as true, the motion cannot be
11 granted. This will have to be resolved in the motion for
12 Summary Judgment.

13 The motion to dismiss is denied. Defendants may re-notice
14 their motion for summary judgment, but need not re-file nor re-
15 serve the moving papers. Naturally, neither the opposition nor
16 reply thereto need be re-filed or served. Counsel for Defendants
17 shall contact the Court's Courtroom Deputy, Marilyn Wilkinson, to
18 obtain a new hearing date.

19 IT IS SO ORDERED.

20 DATED: NOV -5 2012

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22 
23 PETER W. BOWIE, Judge
24 United States Bankruptcy Court
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