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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 99-57776
ROBERT WOO, Chapter 13
Debtor.

_____ /

ORDER SUSTAINING OBJECTION TO CONFIRMATION

I. INTRODUCTION

During a trial on an objection to confirmation of the debtor's Chapter 13 plan held on August 1, 2000, the Court was presented with the issue of whether a security interest in "all ... inventory" of a retail business includes inventory acquired after execution of the security agreement or is limited to inventory in existence at the time the security agreement was created. As discussed below, the Court follows the position taken by the Ninth Circuit Court of Appeals in Paulman v. Gateway Venture Partners III, L.P. (In re Filtercorp, Inc.), 163 F.3d 570, 578-82 (9th Cir. 1998), *cert denied* 510 U.S. 867, 114 S.Ct. 190 (1993) that a security interest in "inventory" includes after-acquired inventory. Consequently, the objection to confirmation is sustained.

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1 **II. BACKGROUND**

2 Ronald McGee and James Del Biaggio ("objecting creditors")
3 owned and operated a retail religious goods store ("the business")
4 located in San Jose, California. On May 29, 1998, the objecting
5 creditors entered into a written agreement to sell the business to
6 Robert Woo ("debtor") and his wife, Janice, for \$93,240.00. The
7 parties orchestrated the sale as a purchase money transaction
8 whereby the debtor paid no money down and the objecting creditors
9 financed the entire sales price through an interest-free loan to
10 the debtor.

11 A promissory note executed in conjunction with the sale
12 contains the repayment terms of the loan; the debtor and his wife
13 were to pay for the business in 36 monthly installments of
14 \$2,590.00 to the objecting creditors, commencing August 1, 1998 and
15 concluding July 1, 2001. Further, if the debtor defaulted on any
16 installment payment the balance of the loan would become due
17 immediately.

18 The objecting creditors obtained security for this loan by
19 taking a security interest in the business's assets, including "all
20 furniture, fixtures, equipment, trade name, goodwill, lease,
21 leasehold improvements, **inventory** and all assets of the
22 business...." (emphasis added). Objecting creditors perfected this
23 security interest by filing a financing statement with the
24 California Secretary of State on July 14, 1998.¹

25
26 ¹ Objecting creditors actually executed two financing statements. The first financing
27 statement was filed with the Secretary of State on July 14, 1998, while the second was filed
28 on February 16, 2000. However, the only difference between the two is that the second provides
"Products of Collateral are also covered," while the first financing statement does not
contain this language.

1 On December 7, 1999, approximately a year and a half into the
2 repayment schedule, the debtor filed an individual Chapter 13
3 bankruptcy petition. One month later, in January 2000, debtor and
4 his wife defaulted on payment of the note.

5 The objecting creditors, in turn, filed an objection to
6 confirmation of the debtor's Chapter 13 plan, based on the plan's
7 treatment of the objecting creditors' lien on the business's
8 assets. Specifically, the objecting creditors contend that the
9 language in the security agreement covering "all ... inventory"
10 necessarily includes after-acquired inventory, i.e., inventory
11 acquired subsequent to execution of the security agreement.

12 The debtor, however, claims that since the security agreement
13 contains no explicit after-acquired property clause, any inventory
14 covered by the security agreement is limited to the business's
15 inventory in existence at the time the security agreement was
16 executed; any inventory acquired subsequent to execution of the
17 security agreement is free from the objecting creditors' security
18 interest.

19 **III. DISCUSSION**

20
21 **A. Under the Ninth Circuit's decision in *Filtercorp*, a**
22 **security agreement covering "inventory" creates a**
23 **rebuttable presumption that the agreement also includes**
24 **after-acquired inventory.**

25 The Ninth Circuit Court of Appeals addressed whether, under
26 Washington State law, the term "inventory" in a security agreement
27 includes after-acquired inventory in *Filtercorp, Inc. v. Gateway*
28 *Venture Partners III, L.P., supra* at 578-82, concluding that there
is a presumption that after-acquired inventory is included. During
its in-depth discussion of this issue, the Court reasoned that

1 while "[a] minority of jurisdictions require express language
2 evidencing the parties' intent to cover after-acquired
3 inventory..." the more persuasive position is that "adopted by the
4 majority of jurisdictions, that a security interest in inventory
5 ... presumptively includes an interest in after-acquired
6 inventory." Id. at 578-79.

7 The Court adopted the majority view based on the common sense
8 notion that since "inventory ... [is] constantly turning over, 'no
9 creditor could reasonably agree to be secured by an asset that
10 would vanish in a short time in the normal course of business.'" Id.
11 at 579, quoting Stoumbos v. Kilimnik, 988 F.2d 949, 955 (9th
12 Cir. 1993). Nevertheless, the Court added the following
13 qualification:

14 The presumption that a grant of a security interest in
15 inventory ... includes after acquired property is of
16 course rebuttable. For example, the presumption would be
17 overcome where the security agreement language itself
18 manifests an intent to limit the collateral to specific
19 identified property, where a party presents clear
evidence of contemporaneous intent to limit the
collateral, or where the debtor can demonstrate that it
was engaged in a type of business where the named
collateral ... does not regularly turn over so that the
rationale for the presumption does not apply.

20 Id. at 581.

21 **B. *Filtercorp* is applicable to this case, as the relevant**
22 **portions of Washington's Article 9 are substantially**
identical to California's Article 9.

23 The issue before the Court is whether the description of a
24 particular piece of collateral, i.e., "inventory," in the parties'
25 security agreement encompasses after-acquired inventory. This
26 issue is merely a subset of the large body of case law addressing
27 when a description of collateral in a security agreement is
28 sufficient for purposes of the agreement's enforceability. See

1 generally White & Sumner, Uniform Commercial Code, Vol. 4 § 31-4
2 (Descriptions & 9-203 Security Agreement) at 107 (4th ed. 1995).

3 Uniform Commercial Code §§ 9-203 and 9-110 set the statutory
4 framework for what is a "sufficient" description of collateral in
5 a security agreement. Id. California's version of these two
6 sections is virtually identical to the original UCC language.

7 California Commercial Code § 9203(1) provides that with regard
8 to a written security agreement, a security interest is not
9 enforceable against the debtor and third parties until all three
10 of the following requirements are met: (a) "the debtor has signed
11 a security agreement which **contains a description of the**
12 **collateral**" (emphasis added); (b) value has been given; and (c)
13 the debtor has acquired "rights" in the collateral. California
14 Commercial Code § 9110, in turn, provides that "... any description
15 of ... personal property is sufficient whether or not it is
16 specific if it reasonably identifies what is described...."

17 Since Washington's versions of §§ 9-203(1) and 9-110 are
18 virtually identical to their California counterparts, cases
19 addressing sufficiency of collateral description under Washington
20 law are highly instructive when interpreting the same issue under
21 California law. See RCWA 62A.9-203(1); 62A.9-110. Therefore, in
22 the absence of any California law that addresses the issue, the
23 Court applies the Ninth Circuit's analysis of Washington law in
24 Filtercorp to this case.

25
26 **C. The debtor has failed to rebut the presumption that
"inventory" includes after-acquired inventory.**

27 The debtor presented no credible evidence, either in his
28 responsive papers or in the evidence he presented at trial, that

1 rebuts the presumption adopted in Filtercorp, i.e., that
2 "inventory" in a security agreement includes after-acquired
3 inventory. The only evidence submitted on this point is the
4 debtor's testimony that when the parties entered into the security
5 agreement they did not intend for the agreement to include after-
6 acquired inventory. The Court does not find the debtor's testimony
7 credible on this point. Consequently, the debtor has failed to
8 rebut the Filtercorp presumption.

9 **IV. CONCLUSION**

10 The Court finds that the description of "inventory" in the
11 security agreement included after-acquired inventory. The
12 objecting creditors' objection to confirmation is sustained.

13 DATED: _____
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16 JAMES R. GRUBE
17 UNITED STATES BANKRUPTCY JUDGE
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1 Case No. 99-57776

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UNITED STATES BANKRUPTCY COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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CERTIFICATE OF SERVICE

7

8 I, the undersigned, a regularly appointed and qualified
9 Judicial Assistant in the office of the Bankruptcy Judges of the
10 United States Bankruptcy Court for the Northern District of
11 California, San Jose, California hereby certify:

12

13 That I, in the performance of my duties as such Judicial
14 Assistant, served a copy of the Court's: ORDER SUSTAINING
15 OBJECTION TO CONFIRMATION by placing it in the United States Mail,
16 First Class, postage prepaid, at San Jose, California on the date
17 shown below, in a sealed envelope addressed as listed below.

18

19 I declare under penalty of perjury under the laws of the
20 United States of America that the foregoing is true and correct.

21

22 Executed on _____ at San Jose, California.

23

24

LISA OLSEN

25

26 Devin Derham-Burk
27 Chapter 13 Trustee
28 P.O. Box 50013
San Jose, CA 95150-0013

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