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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>In re:</p>	:	Chapter 11 Case
<p>MOTORS LIQUIDATION COMPANY, <i>et al.</i>,</p>	:	Case No. 09-50026 (MG)
<p>Debtors.</p>	:	(Jointly Administered)
<p>MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST, by and through the Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee,</p>	:	Adversary Proceeding
<p>Plaintiff,</p>	:	Case No. 09-00504 (MG)
<p>vs.</p>	:	
<p>JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for Various Lenders Party to the Term Loan Agreement described herein, <i>et al.</i>,</p>	:	
<p>Defendants.</p>	:	

**RULE 7056-1(b) STATEMENT OF UNDISPUTED MATERIAL FACTS
OF TERM LENDERS IN SUPPORT OF THEIR MOTION FOR PARTIAL
SUMMARY JUDGMENT REGARDING FIXTURES AT SHREVEPORT ASSEMBLY**

Pursuant to Local Bankruptcy Rule 7056-1(b), Defendant JPMorgan Chase Bank N.A. (“JPMorgan”) and the other signatory defendants (collectively, the “Term Lenders”) respectfully submit this statement of material facts as to which there is no genuine issue to be tried, in support of their motion for partial summary judgment in this adversary proceeding.¹

A. The Term Loan to Old GM

1. General Motors Corporation (“Old GM”) was the borrower under a \$1.5 billion term loan facility (the “Term Loan”) among Old GM, JPMorgan, as administrative agent, and a syndicate of lenders. Duker Aff. ¶¶ 9–10;² *id.* Ex. G at JPMCB-CSM-0000004–0000111 [Adv. Pro. Docket Nos. 36-2, 36-3, 36-4]; *see also* Decision at 342–43.³ The Term Loan was secured by Old GM’s and Saturn Corporation’s “equipment and fixtures,” as well as certain other assets. Duker Aff. ¶¶ 11–12; *id.* Ex. H [Adv. Pro. Docket No. 37]; *see also* Decision at 343.

2. Specifically, among other collateral, the Collateral Agreement expressly stated that Old GM’s obligation to repay the Term Loan was secured by “all Equipment and all Fixtures” at “GM Assembly Shreveport.” Duker Aff. ¶¶ 11–12; *id.* Ex. H at JPMCB-CSM-0000116–0000118, 0000133 [Adv. Pro. Docket No. 37 at 6–8, 23].

¹ References to “Docket No.” are to the main chapter 11 case [No. 09-50026]. References to “Adv. Pro. Docket No.” are to this adversary proceeding [No. 09-00504].

² References to the “Duker Aff.” are to the *Affidavit of Richard W. Duker in Support of Defendant JPMorgan Chase Bank, N.A.’s Motion for Summary Judgment* [Adv. Pro. Docket No. 31] and the exhibits annexed thereto.

³ References to the “Decision” are to *Motors Liquidation Co. Avoidance Action Tr. v. JPMorgan Chase Bank, N.A. (In re Motors Liquidation Co.)*, 576 B.R. 325 (Bankr. S.D.N.Y. 2017) (Glenn, J.).

3. The Term Lenders' security interests were perfected by (1) a Delaware UCC-1 filing covering GM "equipment and fixtures" at 42 GM plants (the "Delaware UCC-1"); (2) a Delaware UCC-1 filing covering Saturn Corporation "equipment and fixtures" at 42 GM plants; and (3) 26 state fixture filings. Duker Aff. ¶¶ 13, 13 nn.5–6; *see also* Decision at 343.

4. One of these state fixture filings was a UCC-1 financing statement that covered "ALL FIXTURES" at GM's Shreveport Assembly plant (the "Shreveport Fixture Filing"). Duker Aff. ¶¶ 13, 13 n.6; *id.* Ex. J, Pt. 1 at 74–75 [Adv. Pro. Docket No. 37-2 at 74–75] (capitalization in original).

5. The Shreveport Fixture Filing contained a metes and bounds description of the Shreveport Assembly real estate. Duker Aff. ¶ 13 n.6; *id.* Ex. J, Pt. 2 at 1 [Adv. Pro. Docket No. 37-3 at 1].

6. The Shreveport Fixture Filing was filed with the Caddo Parish Clerk of Court on February 16, 2007 and was indexed in both the Caddo Parish Clerk's Real Estate Records and the UCC Records. Celentino Decl. Ex. 1;⁴ Celentino Decl. Ex. 2.

7. A search of the Caddo Parish Clerk of Court's historical database reflects that the Shreveport Fixture Filing was still in effect on June 1, 2009, when the Old GM bankruptcy was filed. *See* Celentino Decl. Ex. 1; Celentino Decl. Ex. 2.

8. After Old GM filed for bankruptcy, JPMorgan's counsel discovered that a UCC-3 termination statement that released the Delaware UCC-1 had erroneously been filed on October 30, 2008 by Mayer Brown, Old GM's counsel. Duker Aff. ¶¶ 19, 29.

⁴ References to the "Celentino Decl." are to the *Declaration of Joseph C. Celentino in Support of Term Lenders' Motion for Partial Summary Judgment Regarding the Fixtures at Shreveport Assembly* and the exhibits annexed thereto.

9. The Second Circuit ultimately determined that the filing of the erroneous UCC-3 was effective to terminate the Delaware UCC-1 as to JPMorgan. *Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JP Morgan Chase Bank, N.A. (In re Motors Liquidation Co.)*, 777 F.3d 100, 105 (2d Cir. 2015); *see also* Decision at 346.

10. “The security interest[s] in fixtures covered by the twenty-six [state] Fixture Filings were unaffected by the UCC-3 Termination Statement filed in Delaware.” Decision at 346.

B. The AAT’s Complaint

11. This adversary proceeding was initiated by the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the “Creditors Committee”) on July 31, 2009. Original Compl.;⁵ *see also* Decision at 346.

12. The Original Complaint’s “only asserted claim . . . was one to avoid liens based on the termination of the Delaware UCC-1 Statement.” Decision at 346. “The Original Complaint did not challenge the validity, extent, or priority of any security interest arising from fixture filings.” *Id.*

13. The Motors Liquidation Company Avoidance Action Trust (the “AAT”) filed an amended complaint on May 20, 2015. Amend. Compl.;⁶ *see also* Decision at 347.

⁵ References to the “Original Complaint” or “Original Compl.” are to the *Adversary Complaint for (1) Avoidance of Unperfected Lien, (2) Avoidance and Recovery of Postpetition Transfers, (3) Avoidance and Recovery of Preferential Payments, and (4) Disallowance of Claims by Defendants* [Adv. Pro. Docket No. 1].

⁶ References to the “Amended Complaint” or “Amend. Compl.” are to the *First Amended Adversary Complaint for (1) Avoidance of Unperfected Lien, (2) Avoidance and Recovery of Postpetition Transfers, (3) Avoidance and Recovery of Preferential Payments, and (4) Disallowance of Claims by Defendants* [Adv. Pro. Docket No. 91].

14. In the Amended Complaint, the AAT again challenged only the perfection of the Term Lenders' lien on collateral covered by *the Delaware UCC-1 financing statement*. Amend. Compl. ¶¶ 580–85 (“The Committee commenced this action challenging the Lien securing the Term Loan Agreement because the pertinent UCC filings demonstrated that the Lien was not perfected with respect to the Collateral covered by the [Delaware UCC-1] Financing Statement”); *see also* Decision at 347.

15. In paragraph 601 of the Amended Complaint, the AAT alleged:

To the extent that some portion of the Collateral was secured and perfected by filings other than the [Delaware UCC–1] Statement (the “Surviving Collateral”), the value of the Surviving Collateral was less than the amount of the Term Loan Lenders’ claim under the Term Loan Agreement, and Defendants were not entitled to receive the Postpetition Transfers to the extent that the amount of such transfers exceeded the value of the Surviving Collateral. The Surviving Collateral is of inconsequential value.

Amend. Compl. ¶ 601.

16. Thus, “[l]ike the Original Complaint, the Amended Complaint only asserts a section 544 claim regarding the termination of the [Delaware] UCC-1 . . . , as the term ‘financing statement’ in paragraph 601 refers to the ‘Delaware UCC-1.’” Decision at 347.

17. “[P]aragraph 601 is not an attack on the priority of allegedly unperfected security interests; it is an assertion that assets actually covered by fixture filings are of ‘inconsequential value.’” Decision at 347.

18. “Paragraph 601 does not contain ‘a short and plain statement’ in which the Plaintiff challenges the priority of the fixture liens. . . . Absent from this paragraph are the words ‘priority,’ ‘fixture,’ ‘avoidance,’ and ‘LDT’ or ‘Lansing Delta Township.’” *Id.* at 393 (citation omitted).

19. Nowhere in either the Original Complaint or the Amended Complaint did the AAT mention the Shreveport Fixture Filing or Shreveport Assembly. *See* Original Compl.; Amend. Compl.

20. Under the DIP Order⁷ in Old GM's bankruptcy, the Creditors Committee was required to bring any avoidance action against the Term Lenders "not later than July 31, 2009." DIP Or. ¶ 19(d).

21. The statute of limitations applicable to an avoidance action with respect to the Shreveport Fixture Filing expired on June 29, 2011. *See* Decision at 394.

C. The Term Lenders have consistently asserted that all fixtures at Shreveport Assembly were security for the Term Loan pursuant to the Collateral Agreement and were perfected by a state fixture filing.

22. The Term Lenders have consistently asserted — since before the applicable statute of limitations expired — that all fixtures at Shreveport Assembly were security for the Term Loan pursuant to the Collateral Agreement and were perfected by a state fixture filing. Answer to Original Compl. at 81 [Adv. Pro. Docket No. 12] ("Seventh Defense: JPMCB was a secured party and had a perfected security interest on the Petition Date in certain assets of the Debtors pursuant to the Term Loan Agreement as set forth in multiple UCC-1 financing statements filed throughout the United States"); Mem. of Law in Support of Def. JPMorgan Chase Bank, N.A. Mot. for Summ. J. § II.C [Adv. Pro. Docket No. 29 at 51–54] ("[T]he Committee cannot contest that, as of the Petition Date, these twenty-six Fixture Filings perfected

⁷ References to the "DIP Order" or "DIP Or." are to the *Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting Related Liens and Super-Priority Status, (C) Authorizing the Use of Case Collateral and (D) Granting Adequate Protection to Certain Pre-Petition Secured Parties* [Docket No. 2529].

the security interest in the fixtures located at each one of those twenty-six GM and Saturn plants and facilities.”) (citing the Louisiana UCC multiple times); Hr’g Tr. at 66:2–9 (Dec. 3, 2010) [Adv. Pro. Docket No. 63 at 66] (“[T]hose twenty-six fixture filings, they’ve been on record ever since the beginning of this — ever since before the filing of the Chapter 11. . . . There’s no question about their effectiveness. There’s no question about their propriety. They’ve been in the case. They were subject to discovery to the extent that the [C]reditors [C]ommittee wanted to pursue them and they haven’t done so.”).

D. The September 26, 2017 Decision

23. This Court issued its decision regarding the issues presented at the Trial on September 26, 2017. Decision at 325.

24. The Decision rejected the AAT’s challenge to the perfection of the Term Lenders’ lien on fixtures at GM’s Lansing Delta Township facility (“LDT”) as untimely. Decision at 394.

25. Because the AAT “did not timely raise the issue and the statute of limitations for filing a new adversary proceeding ha[d] passed,” this Court held that AAT’s challenge to the Term Lenders’ lien on fixtures at LDT was time-barred. Decision at 392, 394.

E. The AAT did not challenge the Term Lenders’ lien on fixtures at Shreveport Assembly until July 31, 2018.

26. On July 31, 2018, the AAT filed a letter with the Court in which it argued for the first time that approximately 9,020 assets at Shreveport Assembly were not subject to the Term Lenders’ lien at all as a matter of Louisiana law. Adv. Pro. Docket No. 1058 at 6 (“The Avoidance Action Trust seeks a determination under Louisiana law as to what constitutes a fixture and thus what assets are secured by [the Shreveport Fixture Filing]”; the AAT “seeks a determination that approximately 9,020 assets that were already installed in the plant as of

February 16, 2007, were considered realty as a matter of Louisiana law and thus are not part of Defendants' collateral.").

27. This was the first time the AAT raised any issue with respect to the Term Lenders' lien on fixtures at Shreveport Assembly.

28. The AAT never sought to assert any such claim in a complaint in an adversary proceeding.

Dated: September 14, 2018
New York, New York

Respectfully submitted,

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