

MAXUS LEASING GROUP, INC. V. KOBELCO AMERICA, INC.
63 U.C.C. Rep. Serv. 2d 140 (N.D.N.Y. 2007)

SCULLIN, Senior Judge.

I. INTRODUCTION

On May 10, 2004, Plaintiff Maxus Leasing Group, Inc. (“Maxus”) filed its complaint alleging seven causes of action: (1) conversion against Defendant Wells Fargo Equipment Finance, Inc. (“Wells Fargo”); (2) recovery of chattel against Defendants Wells Fargo and Brownell Steel, Inc. (“Brownell”)

Currently before the Court are Defendants Wells Fargo and Brownell’s motion for summary judgment, Defendant Kobelco’s motion for summary judgment, and Plaintiff Maxus’ cross-motion for summary judgment

II. BACKGROUND

The present dispute arises from a series of transactions involving two Kobelco cranes. In October 2000, Defendant Kobelco sold and delivered two Model CK 1000 crawler cranes¹ to Defendant Syracuse Equipment Leasing Co., Inc. (“SELC”) for \$588,920.18 per crane.²

On approximately May 10, 2001, Defendant Kobelco, claiming difficulty collecting payments from SELC, entered into another transaction regarding the same cranes. In this transaction, Plaintiff Maxus remitted \$715,000 per crane to Defendant Kobelco. Defendant Kobelco applied Plaintiff Maxus’ \$1,430,000 payment to Defendant SELC’s account, crediting entries for the two cranes and another piece of equipment.

By late 2001 and early 2002, Defendant SELC’s financial situation was deteriorating, and it defaulted on all of its obligations concerning the two cranes. Defendant SELC filed for bankruptcy on April 22, 2002.

The nature of the transaction entered into between Defendant Kobelco and Plaintiff Maxus in May 2001 is the crux of this dispute. Plaintiff Maxus claims that it did not have knowledge of Defendant Kobelco’s prior sale of the cranes to Defendant SELC and that it intended to purchase the cranes new from Defendant Kobelco in order that they could then lease them to Defendant SELC.

¹ The cranes had serial numbers GD0201061 (“61 crane”) and GD0201063 (“63 crane”).

² It is unclear how much Defendant SELC actually paid Defendant Kobelco on the cranes. An internal Kobelco memorandum suggests that nothing was paid on these cranes.

Defendant Kobelco sees the May 2001 transaction differently. Defendant Kobelco claims that it told Plaintiff Maxus that it had already sold the cranes to Defendant SELC and that Plaintiff Maxus, as a result of some business arrangement with Defendant SELC, had agreed to re-finance the cranes for Defendant SELC.

III. DISCUSSION

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C. Plaintiff Maxus' conversion claim against Defendant Wells Fargo and recovery of chattel claim against Defendants Wells Fargo and Brownell

Plaintiff Maxus argues that, because it had a superior security interest in the 61 crane, Defendant Wells Fargo wrongfully repossessed the crane and sold it to Defendant Brownell.

In the time between the two transactions at issue in this case, Defendant SELC obtained a \$2,540,000 loan from Defendant Wells Fargo on November 22, 2000. As collateral, Defendant SELC pledged the 61 crane and other equipment. Therefore, on November 22, 2000, Defendant Wells Fargo filed a UCC-1 financing statement attempting to designate the crane and other items as collateral. However, Defendant Wells Fargo omitted a zero in its filing, so that the serial number for the 61 crane incorrectly read GD02-0161 rather than the correct serial number GD0201061.

Following the May 2001 transaction between Plaintiff Maxus and Defendant Kobelco, and without conducting a UCC search, Plaintiff Maxus also attempted to create a security interest in the 61 crane. On May 29, 2001, Plaintiff Maxus filed a UCC-1 financing statement listing the 61 and 63 cranes along with their correct serial numbers.

As noted above, Defendant SELC defaulted on all obligations regarding the cranes including its loan obligations to Defendant Wells Fargo and its lease obligations to Plaintiff Maxus. In March 2002, Defendant Wells Fargo repossessed the 61 crane and sold it to Defendant Brownell for \$480,000 net.

In order to be valid as a properly recorded security interest, a UCC financing statement must provide a description of the collateral that "reasonably identifies what is described." N.Y.U.C.C. §§ 9-504, 9-108. Collateral is reasonably identified if its identity is "objectively determinable." N.Y.U.C.C. § 9-108(b)(6). Even with minor errors, a financing statement is effective unless the errors make it "seriously misleading." N.Y.U.C.C. § 9-506(a) & cmt. 2; *see also In re The Bennett Funding Group*, 255 B.R. 616, 636 (N.D.N.Y. 2000) (holding that a financing statement's description must allow distinction between the collateral and other, similar goods that the debtor owns) (quotation omitted); *John Deere Co. of Baltimore, Inc. v. William C. Pahl Construction Co.*, 34 A.D.2d 85, 88 (1970) (holding that a UCC filing is meant to provide mere inquiry notice to serve as starting point for further investigation).

The weight of authority supports the validity of a financing statement with a "one digit" error. *See* N.Y.U.C.C. § 9-108 cmt. 2 (rejecting a serial number test); *In re Sarex Corp.*, 509 F.2d 689, 691 (2d Cir. 1975) (same); *In re Esquire Produce Co.*, No. 66-B-1052, 1968 WL 9183

(Bankr. E.D.N.Y. Feb. 27, 1968) (finding a one digit typographical error “harmless”); *Marine Midland Bank, N.A. v. Smith Boys, Inc.*, 129 Misc.2d 37, 40 (N.Y. Sup. Ct. 1985) (rejecting a serial number test) (citations omitted).⁶

Here, Defendant Wells Fargo filed a UCC financing statement on November 22, 2000, describing the collateral as “One (1) New 2000 Kobelco Crane, Model CK 1000, s/n GD02-0161” and including an extensive list of the crane’s attachments. As stated, the actual serial number of the 61 crane was GD0201061.⁷

The completeness of the financing statement’s description and the totality of the circumstances in this case lead the Court to conclude that the one-digit error was not seriously misleading. Defendant Wells Fargo’s financing statement contained the proper debtor along with an accurate description of the year, make, and model of the crane. It also had an extensive list of attachments associated with the 61 crane. A UCC search would have provided inquiry notice regarding Defendant Wells Fargo’s security interest in a new 2000 Kobelco Model CK 1000 crane owned by Defendant SELC with an extensive list of attachments and a very similar serial number. The Court finds that this information provided at least a starting point for further investigation and provided enough information to distinguish this collateral from other similar equipment.⁸ Moreover, pursuant to N.Y.U.C.C. § 9-617(a) & (b), Defendant Wells Fargo’s transfer of the 61 crane to Defendant Brownell precludes any claim of Plaintiff Maxus against Defendant Brownell.

Accordingly, the Court **GRANTS** Defendants Wells Fargo and Brownell’s motion for summary judgment on Plaintiff Maxus’ conversion and recovery of chattel claims relating to the 61 crane (Causes of Action 1 and 2); and the Court further **DENIES** Plaintiff Maxus’ cross-motion for summary judgment on these claims.

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⁶ White & Summers include an analogous example in their treatise, stating that a description of a “1998 Mack Truck with serial number AB7777” would be adequate even if the serial number actually read “AB7888” because it is objectively determinable that the debtor owned only one such truck and the parties intended to create a security interest therein. 4 JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE § 3103(b) (5th ed. 2006) (citations omitted).

⁷ Plaintiff Maxus made similar serial number errors while renting the 63 crane following SELC’s default.

⁸ The cases that Plaintiff Maxus cites are readily distinguishable. In *John Deere Co. v. Richards*, the serial numbers used “[were] not even close,” and the accompanying collateral description was inaccurate. 136 Misc.2d 923, 924 (N.Y. Sup. Ct. 1987). Although *In re Aragon Industries, Inc.* states that parties who use serial numbers in multiple item transactions run the risk of subjecting their security interest to attack, that case “was not simply a question of the number being off a digit or being otherwise garbled;” rather, serial numbers were completely omitted. No. 73-263-BK-CF-Y, 1973 WL 21377 (Bankr. S.D. Fla. Nov. 21, 1973). Similarly, *In re The Bennett Funding Group* involved “comparatively extreme example[s],” some of which were “incomprehensible and provide[d] no way ... to ascertain the identity” of the collateral. 255 B.R. at 636 n.16. Furthermore, the court explicitly limited its holding to use of the serial number test only when “there is no other way to identify a piece of collateral” and then as part of a multi-factor inquiry. *Id.* at 636-37.