

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re)	
)	
GENEVA STEEL LLC,)	
)	
Debtor,)	Bankruptcy Case No. 02-21455 GEC
)	
)	Chapter 11
)	
TEXAS IRON & METALS CO.,)	Adversary Proceeding No. 04 - 02803
)	
Plaintiffs,)	
)	
v.)	
)	ORDER DENYING MOTION
GENEVA STEEL, LLC, AND UNIVERSAL)	FOR SUMMARY JUDGMENT AND
SCRAP METALS, INC.,)	DENYING MOTION TO DISMISS
)	
)	
Defendants.)	

The motion of the Debtor, Geneva Steel, LLC (“Geneva”), to dismiss adversary proceeding and the motion of Texas Iron & Metals Co. (“Texas Iron”) for summary judgment came before the Court on November 30, 2004. Stephen E. Garcia of Kaye Scholer LLC and Adelaide Maudsley of Leboeuf, Lamb, Greene & Macrae LLP appeared in behalf of Geneva, Annette W. Jarvis and Douglas Monson of Ray Quinney & Nebeker, P.C. appeared in behalf of Texas Iron. Because the motions were heard jointly with Geneva’s motion to dismiss adversary proceeding No. 04-02804, appearances were also made by Barry N. Johnson and Shane L. Keppner of Bennett, Tueller, Johnson

& Deere appearing in behalf of Olsen Properties, LLC ("Olsen"). Having heard the argument of counsel and after considering the pleadings, the court rules as follows:

UNDISPUTED FACTS

1. On January 25, 2002, Geneva commenced a voluntary case under Chapter 11 of the Bankruptcy Code.
2. During the pendency of its Chapter 11 case, Geneva has undertaken, with court approval, an orderly, self-managed liquidation which employs a demolition and remediation strategy for the idle Geneva steel mill.
3. This liquidation strategy, and the environmental remediation and asbestos abatement that accompany it, is to be funded in part through the scrap sales of ferrous and non-ferrous materials and other personal property recovered from the demolition of the facility.
4. On January 26, 2004, Geneva and Grant Mackay Company, Inc. entered into a demolition agreement with respect the facility.
5. The demolition agreement specifies that demolition work for the Geneva Mill site ("Mill Site") will be conducted in various zones.
6. On March 16, 2004, Geneva and Universal Scrap Metals, Inc. ("USM") entered into a demolition and salvaged materials sale agreement (the "Universal Agreement") which replaced Grant Mackay Company, Inc. as the contractor under the demolition agreement and authorized the sale to USM of scrap metal recovered during the demolition process pursuant to the terms of the USM Agreement.

7. The Universal Agreement incorporated the terms of the Grant Mackay demolition agreement, and the demolition agreement was attached as Exhibit A to the Universal Agreement.
8. On April 6, 2004, the Court entered its "Order Authorizing the Debtor to Enter Into a Postpetition Agreement with Universal Scrap Metals, Inc. to Perform Demolition Contract that Includes the Sale (Subject to Higher and Better Offers) of Certain Assets (Salvaged Scrap Metal Materials) Outside the Ordinary Course of Business and Free and Clear of All Interests, Liens, Claims, and Encumbrances, Pursuant to 11 U.S.C. § 363" (the "Sale Order").
9. The Sale Order authorized Geneva to enter into the Universal Agreement with USM as the buyer.
10. After entry of the Sale Order, Geneva and USM entered into an Amended and Restated Promissory Note dated as of April 23, 2004 (the "Note"), and a Security Agreement dated April 23, 2004 (the "Security Agreement").
11. On May 21, 2004, Geneva filed a UCC-1 financing statement which perfected its security interest in the scrap metal under the Security Agreement.
12. Among other things, the Sale Order provided that transfer of the salvaged materials to USM would be a legal, valid and effective transfer of the salvaged materials, and the transfer would vest in USM all rights, title and interest of Geneva in the salvaged materials free and clear of all interests.
13. Paragraph 26 of the Sale Order provides that the Universal Agreement may be modified, amended or supplemented by the parties, provided that any such modification does not have a material adverse effect on Geneva's estate.

14. Geneva and USM amended the Universal Agreement. The third amendment to the Universal Agreement dated April 5, 2004, provided that the Contract Price was to be paid on or before April 23, 2004.
15. The Universal Agreement provided that USM shall remove salvaged materials from the Mill Site within a commercially reasonable period, such period not to exceed, in any event, sixty (60) days after the date such materials are generated and stockpiled on Geneva's property and that USM shall not unreasonably encumber the Mill Site with salvaged materials, equipment or other facilities.
16. In the fourth amendment to the Universal Agreement, Geneva agreed to accept a \$12,500,000.00 promissory note secured by a first position in the salvaged materials. The promissory note was taken in satisfaction of the remaining balance of the contract price. Performance on USM's part to demolish was also required under the contract.
17. On or about April 23, 2004, USM signed a security agreement granting to Geneva a security interest in the salvaged materials.
18. On April 27, 2004, Geneva filed a motion for entry of an order authorizing Geneva to enter into a fourth amendment to the Universal Agreement. The motion disclosed that USM was unable to pay the balance of the contract price as contemplated by the Sale Order.
19. On June 1, 2004, the Court entered an order authorizing Geneva to enter into the fourth amendment with USM.

20. On or about July 12, 2004, USM entered into an agreement with Texas Iron for the sale of 3,900 tons of specifically identified steel ("Steel") and 3,000 tons of specifically identified iron ("Iron") from the Mill Site.
21. As of July 12, 2004, Geneva knew that USM was removing loose scrap from the Mill Site and selling such loose scrap to customers of USM. Geneva did not object to this process until August 4, 2004.
22. The following procedure for the sale of movable scrap was established between Geneva and USM: (i) Movable Scrap would be specifically identified; (ii) Geneva's consent must be obtained for the release of the movable scrap by issuing a pre-demolition release form to USM; (iii) Geneva would inspect the movable scrap to ensure that it was the material identified in the pre-demolition release form; and (iv) Geneva would issue a materials release form which authorized USM to purchase the scrap metal and remove it from the Mill Site. It is unclear whether or not this procedure was always observed by the parties.
23. USM is a scrap metal dealer that engages in scrap metal disposal and sells steel and iron in the ordinary course of its business affairs.
24. Texas Iron purchases steel and iron in the ordinary course of its business.
25. When Max Reichenthal, President of Texas Iron, visited the Mill Site in July of 2004, Sonny Nguyen, the President of USM, told Reichenthal that USM owned all of the loose scrap located above the ground on the Mill Site, which included the Steel and Iron purchased by Texas Iron, and that USM had authority to sell the loose scrap pursuant to a court order.

26. On July 12, 2004, Texas Iron entered into an agreement with USM for the purchase of the Steel and Iron.
27. On July 13, 2004, pursuant to the terms of the July 12, 2004 agreement, Texas Iron wire transferred a \$500,000.00 payment to USM's Wells Fargo bank account.
28. On July 28, 2004, USM forwarded a payment of \$1,000,000.00 to Geneva.
29. On August 4, 2004, Geneva sent notice to USM that it was declaring a default under the USM Agreement.
30. On August 4, 2004, Geneva began denying USM access to the Mill Site.
31. Geneva has not permitted Texas Iron to remove the purchased Steel and Iron from the Mill Site.
32. USM was prepared to and intended to deliver the Steel and Iron to Texas Iron.
33. USM would presently deliver the Steel and Iron to Texas Iron if it was allowed access by Geneva to the Mill Site to do so.
34. Texas Iron has tendered payment of the balance of the contract price under the July 12, 2004 agreement upon removal, weighing, and delivery of the Steel and Iron, less costs, attorneys' fees, and other damages as specified under the July 12, 2004 agreement.

DISPUTED FACTS

1. Texas Iron argues that Geneva explicitly authorized the sale of the Steel and Iron to Texas Iron, and that Geneva entrusted possession of the Steel and Iron to USM.
2. Geneva disputes that it ever explicitly authorized the sale of Steel and Iron.

3. Geneva disputes that it entrusted possession of the Steel and Iron to USM and asserts that it maintained control and possession of the Steel and Iron at all times.
4. Geneva asserts that prior to removal of material from the Mill Site, Geneva, on each and every occasion, issued a Materials Release Form which authorized the release of the scrap specified in the Materials Request Form and allowed removal of scrap from the Mill Site.
5. Geneva asserts that only after completion of the pre-demolition release procedures, could USM take possession of scrap and sell it to third parties.
6. Texas Iron asserts that a portion of the \$1,000,000.00 payment forwarded from USM to Geneva on July 28, 2004 was derived from, and is traceable to the \$500,000.00 paid to USM by Texas Iron on July 13, 2004.
7. Geneva argues that neither USM nor any other party has produced any document or other information suggesting that the funds paid by Texas Iron are traceable to the \$1,000,000.00 paid by USM to Geneva on July 28, 2004.

ANALYSIS

Geneva's Motion to Dismiss: Granting a motion to dismiss is a harsh remedy which must be cautiously studied, not only to effectuate the spirit of the liberal rules of pleading but also to protect the interests of justice. Duran v. Carris, 238 F.3d 1268 (10th Cir. 2001). The court's function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted. Well pled allegations in a complaint are accepted as true and construed in the

light most favorable to the plaintiff. Ford v. West, 222 F.3d 767 (10th Cir. 2000). A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of its claim which would entitle it to relief. Disposition under rule 7012(b) is inappropriate when the court examines matters outside the pleadings, rather, the court must proceed under Federal Rule of Bankruptcy Procedure 7056 which incorporates the summary judgment standard. Edmonds v. Edmonds, 924 F.2d 176 (10th Cir. 1991).

Geneva argues that Texas Iron's complaint should be dismissed because: 1) USM did not have sufficient title or ownership to convey the Steel and Iron to Texas Iron, 2) Geneva's security interest is superior to Texas Iron's rights to the Steel and Iron, 3) The equitable title doctrine argued by Texas Iron is inapplicable to the sale of personal property, 4) Olsen is not entitled to declaratory judgment because the harm has already occurred, 5) Olsen is not entitled to specific performance because no contract exists, 6) Olsen is not entitled to replevin because Olsen is not entitled to possession of the materials, 7) Olsen is not entitled to breach of contract or unjust enrichment relief because no contract exists, 8) Olsen is not entitled to recovery for injury to goods because Olsen does not hold title to the goods, and 9) Olsen is not entitled to an award of attorney fees because there is no contractual or statutory basis for an award of attorney fees.

Ownership - With respect to Geneva's assertion that USM was not the owner of the Steel and Iron, Texas Iron argues that because Geneva ceded control or possession of the scrap metal or entrusted the scrap metal to USM, ownership of the Steel and Iron passed from Geneva to USM upon court approval of the Universal Agreement and the execution and delivery of the \$12.5 million promissory note and security interest in favor of Geneva. Texas Iron's argument that ownership

passed to USM succeeds if Geneva entrusted or failed to maintain control and possession of the scrap metal at all times, or permitted USM to sell scrap metal to third parties without interference from Geneva. Texas Iron has stated a cause of action for which relief may be granted. A factual dispute over ownership of the scrap metal exists and the Court must deny this portion of Geneva's motion to dismiss.

Priority of Security Interest - Geneva argues that even if ownership of the Steel and Iron passed to USM, because of Geneva's UCC-1 filing and because Geneva maintained control and possession of the Steel and Iron at all times, it's interest in the Steel and Iron is superior to Texas Iron's interest in the Steel and Iron. In response, Texas Iron argues that it's interest is superior because of three exceptions to Utah Code Ann. § 70A-9a-315(1)(a), which, if Texas Iron's allegations are accepted as true and construed in the light most favorable to Texas Iron, would operate to place Texas Iron's interests ahead of Geneva. All three exceptions relied upon by Texas Iron turn on whether or not Geneva maintained control and possession of the scrap metal at the Mill Site, and that issue of fact is disputed. Texas Iron has stated a claim for which relief may be granted, and for that reason, this portion of Geneva's motion to dismiss will be denied.

Equitable Title Doctrine - Geneva asserts that under Utah Code Ann. § 70A-2-102, the equitable title doctrine argued by Texas Iron is inapplicable to the sale of goods. Texas Iron argues that nothing found in § 70A-2-102 precludes the equitable remedy sought by Texas Iron and that § 70A-1-103 expressly provides for the application of principles of law and equity with respect to U.C.C. transactions. The Court does not find that Utah Code Ann. § 70A-2-102 precludes Texas

Iron's equitable argument and for that reason, this portion of Geneva's motion to dismiss will be denied.

The Remaining Grounds - Geneva retains possession of the specific materials purchased by Texas Iron. Geneva's retention of the specific materials combined with the allegations set forth in Texas Iron's complaint and read in a light most favorable to Texas Iron requires that this Court deny Geneva's motion to dismiss the remaining grounds for relief sought by Texas Iron.

Texas Iron's Motion for Summary Judgment: Summary judgment is appropriate if the record reveals that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. When applying this standard, the court must examine the factual record in the light most favorable to the party opposing summary judgment, extending to that party all reasonable factual inferences. While the movant bears the burden of showing the absence of a genuine issue of material fact, the movant need not negate the nonmovant's claim. If the movant carries this initial burden, the nonmovant may not rest on its pleadings, but must bring forward specific facts showing a genuine issue for trial as to those dispositive matters for which it carries the burden of proof. Jenkins v. Wood, 81 F.3d 988 (10th Cir. 1996). A "genuine" issue of fact exists if the evidence is such that the trier of fact could resolve the issue either way. An issue of fact is "material" if it is essential to the proper disposition of the claim. Bennett v. Quark, Inc., 258 F.3d 1220 (10th Cir. 2001).

Texas Iron argues that USM was the owner of the Steel and Iron purchased by Texas Iron, and that Texas Iron's interest in the Steel and Iron is superior to Geneva's because of three exceptions to Utah Code Ann. § 70A-9a-315(1)(a), which place Texas Iron ahead of Geneva's

security interest. Texas Iron's argument depends upon first establishing that USM was the owner of the Steel and Iron.

Ownership - Texas Iron argues that because Geneva ceded control or possession of the scrap metal or entrusted the scrap metal to USM, ownership of the Steel and Iron passed from Geneva to USM upon court approval of the Universal Agreement and the execution and delivery of the \$12,500,000.00 promissory note and security interest in favor of Geneva. For Texas Iron's argument with respect to ownership to succeed, the Court must find that Geneva ceded control and possession of the scrap metal or entrusted the scrap metal to USM. Because Geneva argues that it maintained control and possession of the scrap metal at all times, a factual dispute exists and the Court must deny Texas Iron's motion for summary judgment.

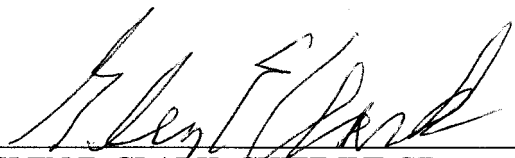
For the above reasons, it is hereby:

ORDERED that Geneva's motion to dismiss adversary proceeding is DENIED, and it is further;

ORDERED that Texas Iron's motion for summary judgment is DENIED.

DATED this 3 day of January, 2005.

BY THE COURT:



GLEN E. CLARK, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT