IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

IN RE:	§	
	§	
YOUR PUMP OF TEXAS, INC.	§	Case No. 03-61540
	§	
	§	
Debtor	§	Chapter 11

MEMORANDUM OF DECISION[1]

This matter is before the Court upon hearing of the First Amended Objection to the Secured Lien Claim of LaGloria Oil and Gas Co., Inc. filed by the Debtor and Debtor-in-Possession, Your Pump of Texas, Inc. ("Your Pump" or "Debtor"), pertaining to the amended proof of claim (#24) filed by LaGloria Oil and Gas Company ("LaGloria" or "Claimant") on June 3, 2004, in the amount of $1,263,248.61, of which $764,477.01 is claimed as secured. The Debtor objects to the allowance of the secured portion of the claim upon the assertion that the Debtor's debt to LaGloria was not properly secured. At the conclusion of the hearing, the parties were given additional time to submit briefs to the Court. Upon receipt of the submissions of the parties, the Court took the matter under advisement. This memorandum of decision disposes of all issues pending before the Court.[2]

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[1] This Memorandum of Decision is not designated for publication and shall not be considered as precedent, except under the respective doctrines of claim preclusion, issue preclusion, the law of the case or as to other evidentiary doctrines applicable to the specific parties in this proceeding.

[2] This Court has jurisdiction to consider the confirmation of the Debtor's proposed plan and his claim objection pursuant to 28 U.S.C. §1334(b) and 28 U.S.C. §157(a). The Court has the authority to enter a final order in this contested matter since it constitutes a core proceeding as contemplated by 28

Background

The Debtor is in the business of providing retail customers with gasoline, diesel, and other petroleum products. LaGloria is a wholesale provider of such products. On or about October 11, 1991, the parties executed four documents: a Revolving Loan Agreement, a Security Agreement, a UCC-1 financing statement, and a Tri-Party Subordination Agreement whereby the security interest of another lender was subordinated to that held by LaGloria. The Revolving Loan Agreement provided that the Debtor would purchase from LaGloria all gasoline, diesel, and other petroleum products to be utilized by Your Pump for resale, and that, in consideration for such purchases LaGloria would provide favorable payment terms to the Debtor, including credit terms up to 45 days on its purchases. While the Revolving Loan Agreement contemplated a "continuing and ongoing" relationship between the parties, it was expressly limited to a six-month term. The Security Agreement granted to LaGloria a security interest in "[a]ll accounts receivable, rights to payment and claims, and all inventory, wherever located, all proceeds generated therefrom, together with all substitutions and replacements." The agreement also included a future advances or "dragnet" clause which provided:

> The security interest granted herein secures the payment and performance of all indebtedness, liabilities and obligations of Debtor to Secured Party (hereinafter collectively called the "Obligations"), whether joint or several, direct or indirect, absolute or contingent, due or to become due, now existing or hereinafter arising, and all modifications, renewals, extensions,

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U.S.C. §157(b)(2)(A), (B), and (O).

> rearrangements, substitutions and replacements of the Obligations, and any of the same, including without limitation, the indebtedness evidenced by a **Revolving Loan Agreement** of even date herewith . . . [3]

The Debtor thereafter purchased petroleum products from LaGloria over the next eleven years and those transactions were almost exclusively based on the terms reflected in the original six-month Revolving Loan Agreement, including the favorable 45-day payment term.[4] The Debtor's trucks would pick up product virtually on a daily basis from LaGloria, who would subsequently send invoices to the Debtor's address, occasionally addressed to "Your Pump of Texas, Inc." (the proper name of the Debtor), but more commonly, but erroneously, addressed to "Your Pump, Inc." (actually the name of the Debtor's parent company).[5] However, it was always the Debtor who tendered payment for such invoices.

The parties enjoyed a relatively good relationship during that extended period, despite an increasing frequency of late payments from the Debtor. Ten years into the relationship it was actually the Debtor who notified LaGloria that its original UCC-1 financing statement had not been filed and the Debtor thereafter signed a new UCC-1 to allow the proper perfection of LaGloria's security interest in order that its access to

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[3] See Exhibit D.

[4] In October of 2002 the Debtor executed another agreement with LaGloria for the purchase of motor fuel on basically the same terms as the 1991 agreement but which added certain volume-based rebates to the Debtor. That contract included a merger clause stating that "[t]his agreement contains the entire agreement between the parties and there are no other understandings, written or oral."

[5] Your Pump, Inc. and Your Pump of Texas, Inc. utilized the same post office address.

LaGloria's petroleum products might not be interrupted. Over the course of the relationship the Debtor's purchases from LaGloria exceeded $71 million. It was only when the Debtor was unable to tender a significant payment of the accumulated indebtedness on July 2, 2003 that LaGloria ceased to allow the Debtor access to its refinery pumps and the Debtor secured a new petroleum supplier. Twenty-three days later, the Debtor filed its voluntary petition for relief under Chapter 11 in this Court.

Discussion

The Debtor asserts that LaGloria's security interest is invalid for three reasons. First, it claims that the scope of the Security Agreement was limited by the brief term of the Revolving Loan Agreement, and therefore expired with the loan agreement at the expiration of six months. Secondly, the Debtor claims that LaGloria's error in billing "Your Pump, Inc." rather than "Your Pump of Texas, Inc." somehow vitiates the security interest. Finally, the Debtor claims LaGloria forfeited its security interest by failing to file a financing statement until more than ten years had passed from the time of the original agreement. Each of these arguments is without merit.

Texas has adopted Article 9 of the Uniform Commercial Code ("UCC"). In setting forth the requirements for an enforceable security interest, section 9.203(b) requires three things: (1) value must be given to the debtor; (2) the debtor must have rights in the collateral; and (3) the debtor must authenticate a valid security agreement. TEX. BUS. &

COM. CODE ANN. §9.203(b)(1)-(3) (Vernon 2002). All three of these elements were fulfilled in the transaction between these two parties. LaGloria gave value to the Debtor by supplying it with motor fuel for resale. The Debtor had rights in the accounts receivable and inventory which it offered to LaGloria as collateral, and the parties entered into a valid, written security agreement which was duly signed by the Debtor's president. There can be no serious dispute that a valid security interest was created in favor of LaGloria, limited only by the terms of the agreement.

Having determined that the parties created a valid security interest, the Court must next determine the scope of that interest. There is no doubt that the Security Agreement included a future advances clause, defining the scope of the Debtor's obligations secured to include all debts between the Debtor and the Claimant, whether then existing or arising in the future. The Debtor has quoted case law noting that, "Texas courts only recognize the application of a future advance clause if the future advances to be secured are 'reasonably within the contemplation of the parties to the agreement at the time that it was made.'" *In re Trinity Meadows Raceway, Inc.*, 252 B.R. 660, 666 (Bankr. N.D.Tex 2000) (citations omitted). Debtor's reliance on this language is misplaced.

The *Trinity Meadows* case involved a future advances clause remarkably similar to the one at hand, covering "any and all other liability of Debtor to Secured Party, now existing or later incurred . . . " *Id.* at 663. In deciding what future advances were "reasonably within the contemplation of the parties to the agreement at the time it was

made," the *Trinity Meadows* court stated, "[u]nless it is ambiguous, courts look to the language of the written contract to determine the intention of the parties." *Id.* at 666. The court then noted that there was no allegation of mutual mistake in the drafting of the agreement, and that because the security agreement was unambiguous and included a future advance clause, the parties must have intended that all future advances be included in the agreement. *Id.* [6]

The Security Agreement in the present case is equally unambiguous. It clearly states that the obligations to be secured included "all indebtedness, liabilities and obligations of Debtor to Secured Party . . . now existing or hereinafter arising, . . . including without limitation, the indebtedness evidenced by a Revolving Loan Agreement of even date. . . ."[7] There is no allegation that the future advances clause was the result of mutual mistake. Absent such allegation or ambiguity, there is no reason to look beyond the document to find the intent of the parties to the contract.

The Debtor argues that the term of the Security Agreement was coterminous with the Revolving Loan Agreement. However, by simply referencing the Revolving Loan Agreement, the Security Agreement did not become limited by it. In fact, such a finding

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[6] *See also In re Conte*, 206 F.3d 536, 538 (5th Cir. 2000) (holding that a future advance clause in an automobile lien was sufficient to secure payment of future credit card debt) ["We look to the language of the contract, unless ambiguous, to determine the intention of the parties. Consistent with the parol evidence rule, it is this written objective evidence of intent, not the parties' subjective understandings, that controls our analysis."].

[7] See Exhibit D at pg. 1.

would contradict the express language of the Security Agreement, which states that it is to be understood in accordance with the terms of the Revolving Loan Agreement *and* the Security Agreement.

Even if the Court were to look beyond the plain language of the Security Agreement to interpret the scope of the security interest, the circumstances extant in this case support a finding that the parties intended the broad scope of transactions to which the future advance clause alludes. This type of retail venture precludes any realistic assertion that the parties were contemplating a six-month relationship. It could very well be that LaGloria wished to reassess its lenient repayment terms at that juncture. However, the long-term course of dealing between the parties, the language of the Revolving Loan Agreement which contemplates a continuing and ongoing relationship, and the fact that the Debtor's president did not hesitate after the passage of many years to reaffirm the existence of the secured indebtedness through the execution of a replacement financing statement all militate in favor of a finding that the parties intended for the relationship to exceed six months and further intended that the created security interest would apply to secure the payment of all obligations owed by the Debtor to LaGloria.

The slight misnomer on the monthly invoices involving a technical misidentification of the Debtor entity has no effect on the validity of the security interest held by LaGloria. The Debtor does not challenge the legitimacy of the indebtedness itself. However, it somehow believes, without citation of authority, that the slight

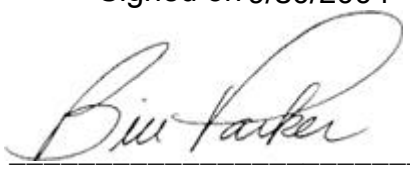
identification error arising on the invoices through the term of this relationship precludes the Security Agreement from applying to such indebtedness, even though the Debtor admits the existence of such indebtedness. Such self-declared emancipation simply has no basis in law. The Debtor admits that it procured the motor fuel provided by LaGloria on almost a daily basis. The Debtor admits that it routinely paid thousands of dollars to LaGloria for its products over the series of years without reference or worry regarding any discrepancy as to the name on the monthly invoice. The Debtor admits that the indebtedness reflected in LaGloria's claim remains due and unpaid. In circumstances in which the debt is admittedly valid and the security interest attached to all debts arising between the parties, the security interest attached to the Debtor's ongoing inventory and accounts receivable to secure the payment of the then outstanding indebtedness, notwithstanding the omission of "of Texas" from the face of the monthly invoices.

Finally, Debtor claims that LaGloria's failure to properly perfect its security interest in a timely manner somehow affects attachment of the interest. Attachment and perfection of security interests are independent events under the Uniform Commercial Code. *Cf.* TEX. BUS. & COM. CODE ANN. §9.203 (Vernon 2002) (defining how a security interest attaches), *and* TEX. BUS. & COM. CODE ANN. §9.310 (Vernon 2002) (defining how a security interest is perfected). Attachment is sufficient to define the relationship between a debtor and a creditor, *see* TEX. BUS. & COM. CODE ANN. §9.201 (Vernon 2002), whereas perfection is relevant only to the inquiry of prioritizing the interests of

competing creditors, *see Austin Area Teachers' Fed. Credit Union v. First City Bank–Northwest Hills*, 825 S.W.2d 795, 800 (Tex. App.– Austin 1992, writ denied) [perfection of a security interest is only relevant when examining the priority of one creditor over another]. Because LaGloria properly perfected its security interest prior to the order for relief in this case and before its rights vis-a-vis any third party creditor were challenged, the time of perfection is irrelevant to the discussion of whether LaGloria possessed a valid security interest against the Debtor's property pursuant to the Security Agreement sufficient to support LaGloria's presentation of a secured claim in this case.

For the foregoing reasons, there is no basis upon which to sustain the Debtor's objection to proof of claim #24 filed by LaGloria. Accordingly, the Court concludes that the Debtor's First Amended Objection to the Secured Lien Claim of LaGloria Oil and Gas Co., Inc. must be denied and such proof of claim is allowed as filed. This memorandum of decision constitutes the Court's findings of fact and conclusions of law[8] pursuant to FED. R. CIV. P. 52, as incorporated into contested matters in bankruptcy cases by FED. R. BANKR. P. 7052 and 9014. A separate order will be entered which is consistent with this opinion.

Signed on 9/30/2004



BILL PARKER
CHIEF UNITED STATES BANKRUPTCY JUDGE

[8] To the extent that any finding of fact is construed to be a conclusion of law, it is hereby adopted as such. To the extent any conclusion of law is construed to be a finding of fact, it is hereby adopted as such. The Court reserves the right to make additional findings and conclusions as necessary or as may be requested by any party.