

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:)
MICHAEL HAT, dba MICHAEL HAT) Case No. 04-32497-B-11
FARMING COMPANY,)
Debtor(s).)
_____)
JOHN VAN CUREN, CHAPTER 11)
TRUSTEE,)
Plaintiff,) Adv. No. 05-2506-B
vs.)
D.C. No. JND-1
THE BANK OF THE WEST, as) GSMD-1
successor in interest to) GSMD-2
United California Bank,)
formerly known as Sanwa Bank)
California, a California) Submitted June 19, 2007
Corporation,)
Respondent(s).)
_____)
AND RELATED COUNTERCLAIM)
_____)

After this matter was taken under submission on the date set forth above, the court issued the following ruling. The official record of the ruling is filed in the adversary proceeding docket.

Because the ruling constitutes a "reasoned explanation" of the court's decision under the E-Government Act of 2002 (the "Act"), a copy of the ruling is hereby posted on the court's Internet site, www.caeb.uscourts.gov, in a text-searchable format, as required by the Act. However, this posting does not constitute the official record, which is always the ruling appended to the minutes of the hearing or that is filed as a memorandum decision in the docket.

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1 Request is denied.

2 On January 18, 2007, Bank filed the Bank Motion to
3 Reconsider. On February 7, 2007, Trustee filed opposition to the
4 Bank Motion to Reconsider and also filed the present
5 countermotion, the Second Trustee SJ Request. After three
6 continued hearings, the submission of a stipulated statement of
7 facts (Adv. Dkt. 194) (the "Stipulated Facts"), and supplemental
8 briefing, the court held final hearings in Sacramento, California
9 on June 19, 2007. Appearances were noted on the record. At the
10 conclusion of the hearings, the Bank Motion to Reconsider and the
11 Second Trustee SJ Request were taken under submission.

12 The Bank Motion to Reconsider, the First Bank SJ Request
13 and the Second Trustee SJ Request are core proceedings, and the
14 court has jurisdiction all matters. 28 U.S.C. §§ 1334 and 157.
15 Venue is proper in this court under 28 U.S.C. § 1409. There is
16 no dispute concerning jurisdiction, venue or core status.

17 The following constitutes the court's findings of fact and
18 conclusions of law pursuant to Fed. R. Bankr. P. 7052.

19 20 **PROCEDURAL HISTORY**

21 On July 20, 2001 (the "Petition Date"), Michael Hat, dba
22 Michael Hat Farming Company ("Debtor") commenced the above-
23 captioned voluntary Chapter 11 case. Debtor acted as debtor-in-
24 possession until April 11, 2003, when Trustee was appointed.
25 Trustee obtained confirmation of his second amended plan of
26 liquidation on August 24, 2005.

1 On December 12, 2005, the Trustee filed the instant
2 adversary proceeding. An amended complaint was filed on December
3 29, 2005, setting forth two claims for relief. The first claim
4 for relief seeks to avoid Bank's interest in 118 sets of farm
5 trailers using the "strong-arm" powers of 11 U.S.C. § 544. The
6 second claim for relief objects to Bank's claim as authorized by
7 Section 5.4.3.3 of the confirmed chapter 11 plan. Bank answered
8 the amended complaint and filed a counterclaim on January 11,
9 2006. The answer admitted this court's jurisdiction, that this
10 court was the proper venue, and that this matter was a core
11 proceeding. It denied a sufficient portion of the amended
12 complaint to keep the matter at issue. The counterclaim set
13 forth one claim for relief alleging unjust enrichment. Trustee
14 answered the counterclaim on January 24, 2006.

15 Trustee filed his first motion for partial summary judgment
16 (D.C. No. GSMD-1) ("First Trustee SJ Request") on August 15, 2006
17 (Adv. Dkt. 20). On September 12, 2006, Bank filed timely
18 opposition to the First Trustee SJ Request and, by countermotion,
19 the First Bank SJ Request. After several continuances, the First
20 Trustee SJ Request and the First Bank SJ Request came on for
21 final hearings on November 7, 2006 at which time the matters were
22 taken under submission. By orders entered December 29, 2006, the
23 court denied both the First Trustee SJ Request and the First Bank
24 SJ Request. As to the First Trustee SJ Request, the court
25 concluded that Bank's evidentiary objections eliminated any
26 evidence identifying the property that was the subject of the
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1 amended complaint. As to the First Bank SJ Request, the court
2 concluded that Bank had failed to provide sufficient independent
3 evidence identifying the property at issue and showing that Bank
4 was entitled to summary judgment.

5 On January 18, 2007, Bank filed the Bank Motion to
6 Reconsider. On February 7, 2007, Trustee filed opposition to the
7 Bank Motion to Reconsider and also filed a countermotion, (D.C.
8 No. GSMD-2), again seeking partial summary adjudication ("Second
9 Trustee SJ Request") (Adv. Dkt. 144). At a hearing on April 3,
10 2007, the court urged the parties to attempt to generate a
11 stipulated statement of facts on which the court could rely in
12 rendering a decision on the merits. The parties filed the
13 Stipulated Facts on May 31, 2007. After one additional
14 continuance for the parties to submit supplemental briefs
15 addressing the effect of the Stipulated Facts, the Second Trustee
16 SJ Request and the Bank Motion to Reconsider came on for a final
17 hearing on June 19, 2007, at which time the matters were taken
18 under submission.

19 20 **FACTS**

21 AS noted above, on May 31, 2007, the parties filed the
22 Stipulated Facts, which incorporate the contents of Schedules A
23 and B attached as exhibits to the Stipulated Facts. The facts
24 alleged in the Stipulated Facts are fully incorporated herein.

25 Prior to the Petition Date, Debtor and two related companies
26 conducted an agricultural enterprise in the Central Valley of
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1 California. Grapeco, Inc., one of the related companies, filed
2 its own chapter 11 petition on the Petition Date in the above-
3 referenced Bankruptcy Court, commencing case no. 01-92889-A-7
4 (now designated case no. 04-32498-B-7). Capello, Inc., the other
5 related company, also filed a chapter 11 petition on the Petition
6 Date in said Bankruptcy Court, commencing case no. 01-92890-A-7
7 (now designated case no. 04-32499-B-7). The bankruptcy cases of
8 Grapeco, Inc. and Capello, Inc. have since been converted to
9 chapter 7 of the Bankruptcy Code, and chapter 7 trustees have
10 been appointed.

11 As of the Petition Date, Bank asserted a perfected security
12 interest in all of Debtor's personal property, including
13 equipment and vehicles, pursuant to a UCC-1 financing statement
14 filed in the California Secretary of State's office on April 9,
15 1992, and a UCC-2 continuation statement filed on November 19,
16 1996.

17 On February 11, 2007, the court approved a stipulation
18 between Bank and Trustee for relief from the automatic stay. The
19 stipulation allowed Bank to foreclose on equipment collateral,
20 including "94 sets of good trailers and 24 sets of junk
21 trailers."

22 On March 3, 2004, Bank foreclosed on its equipment
23 collateral by private sale to Jennifer Hat, formerly known as
24 Jennifer Horan ("Horan") pursuant to an Asset Purchase Agreement
25 ("APA") dated March 3, 2004. The APA identified the purchased
26 assets, including "94 sets good trailers and 24 sets good [sic]
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1 trailers." Bank sold to Horan, and she took physical possession
2 of, 216 individual trailers pursuant to the APA. Two hundred
3 sixteen (216) individuals trailers (the "Trailers") are
4 identified in Schedule A attached to the Stipulated Facts. (Adv.
5 Dkt. 194 at 6). The registration status of each Trailer, i.e.
6 the date on which the last registration expired for each Trailer
7 prior to the Petition Date or the date on which Debtor last
8 obtained a certificate of planned non-operation prior to the
9 Petition Date, is set forth on Schedule B to the Stipulated
10 Facts. (Adv. Dkt. 194 at 16).

11 Each "set" of Trailers consists of two Trailers: a semi
12 trailer with a single axle, to be attached to a truck, and a pull
13 trailer with two axles, to be attached to the semi trailer. Each
14 Trailer has a flat bed to which open tanks that hold harvested
15 crops of grapes may be affixed. No Trailer is equipped with
16 rollers on its bed. The manufacturer and model years of the
17 Trailers vary. Each Trailer, without load, weighs at least three
18 tons. Each Trailer is capable of hauling, and, when properly
19 registered, did haul approximately 12 tons of grapes. Therefore,
20 each of the Trailers, considering its own weight and its typical
21 load, would generally weigh in excess of 30,000 pounds when
22 loaded. Each Trailer has a gross weight vehicle rating (meaning,
23 the maximum weight, with load, legally allowable for that vehicle
24 on public roads) in an amount in excess of 30,000 pounds. The
25 Trailers are not capable of moving on their own, as they do not
26 contain motors, and are instead pulled by a truck.

1 The Trailers were used as part of the process of harvesting
2 grapes in the following manner. Mechanical grape harvesters
3 picked the grapes from the vines. The grape harvesters
4 transferred the picked grapes by conveyor belt to grape gondolas,
5 which had been brought into the fields. When the gondolas were
6 filled, tractors would pull the gondolas to the Trailers, which
7 were located at either end of the field. The Trailers would be
8 filled and were then moved on public roads to remote processing
9 facilities. These processing facilities included the Grapeco
10 processing facility in Madera, California, and the Capello winery
11 in McFarland, California. In some cases the Trailers were moved
12 for more than one hundred miles on public highways.

13 Debtor's harvest season generally included the months of
14 August, September, and October. Debtor's general practice was to
15 register those trailers that the Debtor intended to use during
16 the harvest season with the California Department of Motor
17 Vehicles (the "DMV") on a partial-year basis. Once the harvest
18 season was over and the hauling of Debtor's crops was complete,
19 Debtor would file certificates of planned non-operation for each
20 trailer pursuant to California Vehicle Code Section 4604(a). The
21 DMV issued permanent trailer identification cards or registration
22 cards for each Trailer after March 3, 2004, the date Bank and
23 Horan entered into the APA.

24 Debtor did not file certificates of planned non-operation
25 for the Trailers after the 1999 harvest. Prior to the Petition
26 Date, the DMV issued a certificate of ownership entitled
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1 "Certificate of Title" for each Trailer, containing the vehicle
2 identification number, make and model year of the trailer, and
3 the name and address of the registered owner and any legal owner.
4 At no time was Bank ever listed as the legal owner or lienholder
5 on any of the certificates of ownership for any of the Trailers.

6 7 8 9 **ANALYSIS**

10 **JND-1: Issues**

11 As to JND-1, the analysis first addresses whether
12 reconsideration of the First Bank SJ Request is appropriate.
13 Second, the analysis addresses whether and if so, to what extent
14 the First Bank SJ Request should be granted.

15 **GSMD-2: Issues**

16 As to GSMD-2, the analysis first addresses whether Trustee
17 may seek partial summary judgment in this adversary proceeding a
18 second time, the court having denied his first motion for partial
19 summary judgment. Second, the analysis addresses whether Trustee
20 may bring an independent motion for partial summary adjudication
21 on the issues of perfection of Bank's security interest, and the
22 avoidance of Bank's security interest, without addressing Bank's
23 affirmative defenses. Third, the analysis addresses the merits
24 of the issues of perfection and avoidance of Bank's security
25 interest.

26 **JND-1: Reconsideration**

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1 Bank seeks reconsideration of the SJ Order which denied the
2 First Bank SJ Request based on finding that the First Bank SJ
3 Request lacked independent admissible evidence identifying the
4 property at issue in this adversary proceeding. The Bank Motion
5 to Reconsider requests that the court exercise its inherent
6 equitable power to modify or vacate its own interlocutory order
7 in the interest of justice. Smith v. Massachusetts, 543 U.S.
8 462, 125 S.Ct. 1129 (2005); A&A Sign Company, Inc. v. Maughan,
9 419 F.2d 1152, 1155 (9th Cir. 1969). Such reconsideration is
10 appropriate where (1) there is newly discovered evidence, (2) the
11 court committed clear error, (3) the decision was manifestly
12 unjust, or (4) there is an intervening change in controlling law.
13 School District No. 1J, Multnomah County, Oregon v. A C and S,
14 Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). Bank argues that this
15 court committed clear error in finding that, because it sustained
16 Bank's objections to Trustee's evidence, no admissible evidence
17 of the identity of the property at issue was presented, and
18 neither the First Trustee SJ Request nor the First Bank SJ
19 Request could be granted. The court agrees with Bank's
20 contention and therefore grants the request to reconsider the
21 First Bank SJ Request.

22 Bank correctly points out that a short excerpt from the
23 deposition of Horan contained in the voluminous exhibits to the
24 First Bank SJ Request properly authenticated Exhibit 9 to the
25 Horan deposition which consisted of the permanent trailer
26 registration cards for approximately 210 trailers. The
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1 deposition was itself properly authenticated by inclusion of the
2 reporter's certification. Orr v. Bank of America, N.T & S.A.,
3 285 F.3d 764, 774 (9th Cir 2002). Bank also provided a summary
4 prepared by counsel of the information contained in Exhibit 9.
5 The summary was attached to the notice of hearing on the First
6 Bank SJ Request. The court did not see the summary during the
7 initial resolution of the First Bank SJ Request, primarily
8 because the court did not look at the notice of hearing for
9 evidence in support of the motion. See Local Bankruptcy Rule
10 9014-1(d) (1) and the Revised Guidelines for Preparation of
11 Documents, ¶ (6) (a).

12 Considering the evidence detailed in the Bank Motion to
13 Reconsider, the court agrees that there was independent
14 admissible evidence filed with the First Bank SJ Request and that
15 the court's prior ruling concluding differently was clear error.
16 Based on this finding, the court holds that reconsideration is
17 appropriate in this circumstance and the Bank Motion to
18 Reconsider is granted to that extent.

19 **GSMD-1: Reconsideration of the First Bank SJ Request**

20 On reconsideration, the First Bank SJ Request is granted in
21 part and denied in part on the merits. Bank is not entitled to
22 summary judgment because the court concludes that Bank has failed
23 to show that its security interest was perfected on the Petition
24 Date. Instead, the law and facts show that Bank was not
25 perfected on the Petition Date. The court declines in this
26 ruling to grant summary judgment to the Trustee on the first
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1 claim for relief as the other elements of that claim are not at
2 issue in the First Bank SJ Request. See Portsmouth Square, Inc.,
3 v. Shareholders Protective Committee, 770 F.2d 866, 869 (9th Cir.
4 1995) ("[S]ua sponte summary judgment is appropriate where one
5 party moves for summary judgment and, after the hearing, it
6 appears from all the evidence presented that there is no genuine
7 issue of material fact and a non-moving party is entitled to
8 judgment as a matter of law."). However, pursuant to
9 Fed.R.Civ.P. 56(d), incorporated by Fed.R.Bankr.P. 7056, the
10 court concludes that the undisputed material facts show that
11 Trustee is entitled to "partial summary judgment," i.e. summary
12 adjudication, on the issue of perfection as of the Petition Date.
13 11 MOORE'S FEDERAL PRACTICE, § 56.40[2] (Matthew Bender 3d ed.
14 2007) ("Because of the particular nature of the claims raised, a
15 court may also make a partial summary judgment ruling that
16 resolves issues of both law and fact.") citing Gillette v.
17 Delmore, 886 F.2d 1194, 1197-1199 (9th Cir. 1989).

18 Fed.R.Civ.P. 56, incorporated by Fed.R.Bankr.P. 7056,
19 provides that summary judgment is appropriate if the pleadings,
20 depositions, answers to interrogatories, admissions on file, and
21 declarations, if any, show that there is "no genuine issue of
22 fact and that the moving party is entitled to judgment as a
23 matter of law."

24 Bank filed the First Bank SJ Request on the first amended
25 complaint filed by Trustee on December 29, 2005 (Dkt. No. 8).
26 The first claim for relief in the first amended complaint seeks
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1 to avoid an allegedly unperfected security interest in the
2 Trailers pursuant to the strong arm powers of 11 U.S.C. §§
3 544(a)(1) and (a)(2) and to recover the Trailers or their value.
4 The second claim for relief objects to Bank's claim under Section
5 5.4.3.3 of the confirmed chapter 11 plan.

6 Through the First Bank SJ Request, Bank seeks summary
7 judgment on the first claim for relief arguing that the security
8 interest in the Trailers was properly perfected as of the
9 Petition Date and is therefore unavoidable. Were Bank to prevail
10 on the first claim for relief, the second claim for relief would
11 become moot. Bank argues that summary judgment is appropriate
12 because the undisputed facts before the court entitle Bank to
13 judgment as a matter of law. Although the court agrees that
14 there are no disputes of material fact on this issue,
15 particularly so after submission of the Stipulated Facts, Bank
16 has not shown that it is entitled to judgment as a matter of law.
17 Therefore, summary judgment in favor of Bank on the First Bank SJ
18 Request is denied.

19 The First Bank SJ Request did not seek to prove that Bank is
20 entitled to judgment on each and every element of the first claim
21 for relief. Bank is not required to make such a showing.
22 Instead, if Bank can show that the Trustee cannot meet his burden
23 of proving a single necessary element of the first claim for
24 relief, then Bank will prevail. Adickes v. S.H. Kress & Co., 398
25 U.S. 144, 158-60 (1970). In the First Bank SJ Request, Bank has
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1 chosen to focus solely on the issue of perfection of its security
2 interest in the Trailers. That issue is addressed below.

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4 **GSMD-2: Trustee May Bring A Second Motion**
5 **for Partial Summary Adjudication**

6 In its opposition to the Second Trustee SJ Request, Bank
7 argues that Trustee may not bring a second motion for a partial
8 summary adjudication on the same grounds asserted in Trustee's
9 first motion for a partial summary adjudication. Bank asserts
10 that the Second Trustee SJ Request must be judged under the
11 standards for a motion for reconsideration. Bank contends that
12 such reconsideration is only appropriate where (1) there is newly
13 discovered evidence, (2) the court committed clear error, (3) the
14 decision was manifestly unjust, or (4) there is an intervening
15 change in controlling law. School District No. 1J, Multnomah
16 County, Oregon v. A C and S, Inc., 5 F.3d 1255, 1263 (9th Cir.
17 1993). Bank argues that Trustee has not satisfied this standard.

18 Without explicitly stating that the court's prior order
19 denying Trustee summary judgment is the "law of the case," Bank's
20 recitation of the standard for reconsideration nonetheless
21 impliedly asserts that the law of the case doctrine applies here.
22 To the extent that the law of the case doctrine is applicable,
23 however, it simply expresses a common judicial practice and does
24 not limit the court's power. See Castro v. United States, 540
25 U.S. 375, 124 S. Ct. 786, 793 (2003). Application of the law of
26 the case doctrine is discretionary and does not limit a court's

1 power to reconsider its own decisions prior to final judgment.
2 Arizona v. California, 460 U.S. 605, 103 S. Ct. 1382,
3 (1983) ("Law of the case directs a court's discretion, it does not
4 limit the tribunal's power."). The law of the case doctrine is
5 not discretionary only when the mandate of a higher court is
6 involved. See City of Los Angeles v. Santa Monica BayKeeper, 254
7 F.3d 882, 888-89 (9th Cir. 2001) (law of the case doctrine does
8 not impinge on district court's power to reconsider its own
9 interlocutory order so long as that court has not been divested
10 of jurisdiction over order by commencement of appeal).

11 Furthermore, in the Ninth Circuit "[i]t is well-settled that
12 a denial of summary judgment does not establish law of the case
13 and does not preclude a second motion for summary judgment."
14 Hydranautics v. FilmTec Corp., 306 F. Supp. 2d 258, 968 (S.D.
15 Cal. 2003) (citing Shouse v. Ljungren, 792 F.2d 902, 904 (9th
16 Cir. 1986); Preaseau v. Prudential Ins. Co. of America, 591 F.2d
17 74, 79-80 (9th Cir.1979); Dessar v. Bank of America Nat. Trust
18 and Sav. Ass'n, 353 F.2d 468, 470 (9th Cir.1965); Beedy v.
19 Washington Water Power Co., 238 F.2d 123, 127 (9th Cir.1956);
20 Breeland v. Southern Pac. Co., 231 F.2d 576, 579 (9th Cir.1955);
21 Curran v. Kwon, 153 F.3d 481, 487 (7th Cir.1998)). The court's
22 prior order denying the First Trustee SJ Request does not bind
23 this court's subsequent determinations. Bank has cited no
24 authority, other than the general standard that governs motions
25 for reconsideration, that prohibits Trustee from bringing a
26 second motion.

1 In this instance the court finds that it is appropriate to
2 decide the merits of the Second Trustee SJ Request. The court
3 previously felt unable to reach the merits of the First Trustee
4 SJ Request because of the perceived absence of admissible
5 evidence identifying the property at issue. Now that the parties
6 have stipulated to facts and have developed the record more
7 fully, it is appropriate to reach the previously unaddressed
8 merits of the underlying legal issue.

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10 **GSMD-2: Partial Summary Adjudication by Independent Motion**

11 Bank also argues that Trustee cannot properly request
12 partial summary judgment subject to remaining affirmative
13 defenses that Bank may assert. Bank construes the trustee's
14 request as "seeking a determination of a single issue encompassed
15 within a claim for relief or defense." (Adv. Dkt. 170 at 13)
16 (emphasis in original). Bank asserts that Trustee is only
17 seeking the partial summary adjudication of a single discrete
18 issue that is contained within his first claim for relief. That
19 issue, Bank asserts, is "the proper method by which one perfects
20 a security interest in hauling trailers." (Adv. Dkt. 170 at 14).
21 Bank argues that Trustee cannot obtain a partial summary
22 adjudication on that issue by filing a motion that requests a
23 determination as to that issue alone while reserving other issues
24 related to liability or defenses for a later proceeding. Bank
25 argues that the Second Trustee SJ Request should be denied
26 because it is procedurally improper.

1 The court disagrees with Bank's assertion that the Second
2 Trustee SJ Request should be denied because it chiefly asks for
3 resolution of one issue affecting the first claim for relief.¹
4 Furthermore, the court concludes that Trustee may seek partial
5 summary adjudication by independent motion. Rule 56(a) provides
6 that a party seeking to recover upon a claim, counterclaim, or
7 cross-claim may after the expiration of twenty days after the
8 commencement of the case, "move . . . for a summary judgment in
9 the party's favor upon all or any part thereof." Fed.R.Civ.P.
10 56(a) (emphasis added). Whether the phrase "any part thereof"
11 permits adjudication of individual issues within a claim or
12 defense is unclear. Schwarzer, Tashima, and Wagstaffe in FEDERAL
13 CIVIL PROCEDURE BEFORE TRIAL ¶ 14:40 (2007) collect cases that have
14 allowed piecemeal disposition of issues. See Barker v. Norman,
15 651 F.2d 1107, 1123 (5th Cir. 1981) (noting that summary judgment
16 may be proper as to some issues but not as to others); Robi v.
17 Five Platters, Inc., 918 F.2d 1439 (9th Cir. 1990) (permitting
18 summary adjudication of issues based on collateral estoppel
19 effect of prior proceeding). They have also collected cases that
20 disapprove piecemeal disposition of issues. See Arado v. General
21 Fire Extinguisher Corp., 626 F.Supp 506, 509 (N.D. Ill.
22 1985) ("[D]espite Rule 56(a)'s reference to 'all or any part' of a
23 claim, the Rule authorizes only the granting of appealable
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25 ¹ The court notes that Trustee also seeks a determination as
26 to a second issue: whether he may avoid Bank's security interest.
27 For reasons discussed below, that request is denied without
28 prejudice.

1 'judgments' disposing of entire claims."); SEC v. Thrasher, 152
2 F.Supp.2d 291, 295 (S.D.N.Y. 2001) (holding that "summary judgment
3 is not a vehicle for fragmented adjudication of non-determinative
4 issues"). To the extent that Rule 56(a) is read as permitting
5 only the granting of a "judgment" as that term is used to stand
6 for a final, appealable decision of the court, the court agrees
7 with Bank. Trustee cannot obtain a judgment on the first claim
8 for relief without addressing Bank's affirmative defenses.

9 The nature of Trustee's request also prevents him from
10 obtaining the interlocutory summary judgment described in Rule
11 56(c). Rule 56(c) provides that a summary judgment,
12 "interlocutory in character, may be rendered on the issue of
13 liability alone although there is a genuine issue as to the
14 amount of damages." Fed.R.Civ.P. 56(c). As a mechanism for
15 granting "partial summary judgment on [Trustee's] first claim for
16 relief, subject to" Bank's remaining affirmative defenses, Rule
17 56(c) is unavailable. Bank has asserted affirmative defenses
18 that are directed at the issue of Bank's liability, including
19 waiver, estoppel, unclean hands, and consent. Trustee cannot
20 obtain an interlocutory summary judgment under Rule 56(c) without
21 addressing these affirmative defenses.

22 However, Rule 56 does provide a mechanism by which Trustee
23 may obtain a determination in the form of an order of the court
24 which resolves a single issue that is part of the first claim for
25 relief. Rule 56(d) provides that if a court does not render
26 judgment upon the whole case or for all relief requested, the
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1 court shall if practicable ascertain what material facts are
2 disputed and undisputed and "make an order specifying the facts
3 that appear without substantial controversy, including the extent
4 to which the amount of damages or other relief is not in
5 controversy." Fed.R.Civ.P. 56(d) (emphasis added). "In rendering
6 a partial summary judgment ruling in favor of a movant, a court
7 need not provide relief completely dispositive of individual
8 claims that are part of a larger action. A partial summary
9 judgment ruling may dispose of only a single issue relevant to a
10 claim." 11 James Wm. Moore, et al., MOORE'S FEDERAL PRACTICE §
11 56.40[2] (3rd Ed. 2007). Rule 56(d) allows a court to salvage
12 some of the effort involved in ruling on a failed motion for
13 summary judgment by resolving issues of law and fact for which a
14 trial would not be necessary. By issuing orders that resolve
15 significant questions, the court can focus on the true matters in
16 controversy. Id. (collecting cases). Although Professor Moore
17 refers to the relief allowed by Rule 56(d) as "partial summary
18 judgment," noting that it is now well-established that a court
19 may "grant" partial summary "judgment," this court prefers the
20 term "partial summary adjudication" as a means of distinguishing
21 the relief permitted by Rule 56(d) from a final, appealable
22 judgment. See Id. at § 56.40[1]. Rule 56(d) permits the court
23 to enter relief in the nature of what Trustee seeks: a
24 determination as to a single issue of law based on the undisputed
25 facts contained in the Stipulated Facts, without reaching the
26 question of whether affirmative defenses apply.

1 The issue, then, is whether Trustee may obtain this relief
2 by filing an independent motion seeking adjudication of a
3 particular issue, rather than filing a motion for full summary
4 judgment that addresses all elements of the claim and all
5 affirmative defenses. Bank argues that Rule 56(d) does not
6 permit an independent motion. The logical extension of this
7 argument is that the court may make a determination under Rule
8 56(d) only after having been presented with a motion for full
9 summary judgment, having considered it, and having determined
10 that it cannot be granted.

11 This argument is unpersuasive for two reasons. First, the
12 United States District Court for the Eastern District of
13 California, through its Local Rules of Practice, permits
14 independent motions under Rule 56(d). Local Rule 56-260,²
15 entitled "Motions for Summary Judgment or Summary Adjudication"
16 (emphasis added), provides in subsection 56-620(f) that

17 This Rule shall apply to motions for orders specifying
18 material facts that appear without substantial
19 controversy pursuant to Fed. R. Civ. P. 56(d), except
20 that the proposed "Statement of Undisputed Facts" and
21 the "Statement of Disputed Facts" shall be limited to
the facts that the moving party asserts are without
substantial controversy and the facts the opposing
party contends are in dispute.

22 L.R. 56-620(f) (2007) (emphasis added).
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25 ² Local Rule 56-260 does not apply to this adversary
26 proceeding because it is not incorporated by Local Bankruptcy
27 Rule 1001-1(c). However, the existence of this rule in the
District Court highlights the flaw in Bank's argument.

Second, in this instance, to require Trustee to file a motion seeking complete summary judgment or explicitly request full summary judgment in his motion before the court is able to enter a partial summary adjudication pursuant to Rule 56(d) would needlessly elevate form over substance and confound the policy underlying Rule 56(d). The issue of perfection of Bank's security interest is potentially case dispositive. Both the Bank Motion to Reconsider and the Second Trustee SJ Request, and the parties' efforts in reaching the Stipulated Facts are primarily directed toward resolving this issue. Even if the adjudication of this issue were not to result in the immediate disposition of the case, significant time needed for trial would be saved. The partial summary adjudication requested by Trustee goes much further than seeking the resolution of a merely evidentiary matter en route to summary judgment, or seeking an adjudication of an issue of fact which would not be dispositive of an issue or even part of an issue. Courts have recognized distinctions in the type of issues that are to be resolved by partial summary adjudication in determining whether a request for a partial adjudication is proper. See Barker, 651 F.2d at 1123 (noting summary judgment may be proper as to some issues but not as to others). In addition, Ninth Circuit district courts have found independent requests for partial summary adjudication to be appropriate where the fact or issue to be adjudicated is potentially case dispositive. See Phase Four Industries, Inc. v. Marathon Coach, Inc., 2005 WL 2676887 N.D.Cal. at *6 (October 20,

1 2005) ("The efficacy of this approach is particularly suitable to
2 this case because the issue of priority of inventorship or
3 derivation is potentially case dispositive."); Advanced
4 Semiconductor Materials America Inc. v. Applied Materials Inc.,
5 1995 WL 419747 (N.D. Cal. July 5, 1995) (concluding that
6 claimant's motion for partial summary judgment on a significant,
7 dispositive issue was proper); Ajir v. Exxon Corporation, 1995
8 WL 261411, at *4 (N.D. Cal. May 2, 1995) (concluding that a motion
9 for partial summary judgment may properly be directed to only
10 part of a claim where summary adjudication of discrete theories
11 of liability helps focus issues and conserve judicial resources).

12 For the foregoing reasons, Trustee may seek by independent
13 motion a partial summary adjudication as to the issues of
14 perfection of Bank's security interest and avoidance of Bank's
15 security interest.

16 **GSMD-1 and GSMD-2: Perfection of Bank's Security Interest**

17 The perfection issue presented here depends on the interplay
18 between Division 9 of the California Commercial Code³ and the
19 California Vehicle Code. The court's analysis begins with the
20 Commercial Code. "Except as otherwise provided in subdivisions
21 (c) and (d), this division applies to each of the following: (1)
22 A transaction, regardless of its form, that creates a security
23 interest in personal property or fixtures by contract...." Cal.
24 Comm. Code. § 9109(a)(1) (West 2007). It is undisputed that

25
26 ³ Unless otherwise noted, all references to Division 9 of
27 the California Commercial Code are to such Division as it was
revised and effective on July 1, 2001.

Debtor granted Bank a security interest in the Trailers by contract. As noted above, the only issue is whether or not that security interest was properly perfected.

The general rule regarding perfection of security interests in personal property is set forth in Commercial Code Section 9310. "Except as otherwise provided in subdivision (b) and in subdivision (b) of Section 9312, a financing statement must be filed to perfect all security interests and agricultural liens." Cal. Comm. Code § 9310(a) (West 2005). Among the exceptions set forth in Section 9310(b) is one incorporating Section 9311. "The filing of a financing statement is not necessary to perfect a security interest that satisfies any of the following conditions: ... (3) It is a security interest in property subject to a statute, regulation or treaty described in subdivision (a) of section 9311." Cal. Comm. Code § 9310(b)(3) (West 2005). Section 9311(a)(2)(A) is implicated under the facts of this adversary proceeding.

Except as otherwise provided in subdivision (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to any of the following:

. . .

(2)(A) The provisions of the Vehicle Code which require registration of a vehicle or boat.

Cal. Comm. Code § 9311(a)(2)(A) (West 2007) (Emphasis added).

The court notes that Section 9311 contains an exception in Subsection (d), the application of which would obviate any need to proceed further.

1 (d) During any period in which collateral subject to a
2 statute specified in paragraph (2) of subdivision (a)
3 is inventory held for sale or lease by a person or
4 leased by that person as lessor and that person is in
the business of selling goods of that kind, this
section does not apply to a security interest in that
collateral created by that person.

5 Cal. Comm. Code § 9311(d) (West 2007). The court concludes that
6 subdivision (d) does not apply to the facts of this case for two
7 reasons: (1) because the Trailers are not "inventory," and (2)
8 because the Debtor was not in the business of selling trailers.

9 Inventory is a defined term in the Commercial Code.

10 "Inventory" means goods, other than farm products,
11 which are any of the following:

12 (A) Leased by a person as a lessor.

13 (B) Held by a person for sale or lease or to be
14 furnished under a contract for service.

(C) Furnished by a person under a contract of service.

(D) Consist of raw materials, work in process, or
materials used or consumed in a business.

15 Cal. Comm. Code § 9102(48) (West 2007). None of these
16 definitions applies to the Trailers. Debtor owned the Trailers
17 for his own use to transport grapes from his various vineyards to
18 various sites for processing.

19 Additionally, the Debtor was not in the business of selling
20 farm trailers. He operated an agricultural enterprise in which
21 his sole proprietorship Michael Hat Farming Company grew grapes
22 throughout the San Joaquin Valley and elsewhere. Those grapes
23 were sold both to Debtor's wholly owned corporations Grapeco,
24 Inc., and Capello, Inc., and to third parties. Debtor used the
25 Trailers seasonally to haul grapes from his fields to the
26 processing facilities.

1 Because the Trailers were not "inventory," the holding of In
2 re Babaeian Transportation Co., 206 B.R. 536, 543 (Bankr. C.D.
3 Cal. 1997) is distinguishable. In Babaeian, the party giving the
4 security interest in the taxi cabs was leasing the vehicles to
5 the individual drivers. Thus the vehicles fell squarely within
6 the ambit of Commercial Code Section 9102(48)(A), "goods...leased
7 by a person as a lessor."

8 The court must therefore resolve the question of whether or
9 not the Trailers are property "subject to the provisions of the
10 Vehicle Code which require registration of a vehicle or boat."
11 If so, then the Vehicle Code governs perfection. If not, then
12 the terms of the Commercial Code apply. The answer to this
13 question is resolved by the express language in Sections 6300 and
14 6301 of the California Vehicle Code.

15 Bank focuses its argument on the use, or more particularly
16 the lack of use, of the Trailers on the Petition Date. It argues
17 that the Trailers were not required to be registered, and
18 therefore were not "subject to the provisions of the Vehicle Code
19 which require registration of a vehicle," because they were not
20 being driven, moved or left standing on a highway or in any off-
21 street public parking facility as of the Petition Date. Bank
22 points to language in California Vehicle Code Section 4000(a)(1)
23 which states that a vehicle must be registered to do any of the
24 foregoing. Bank's argument incorrectly assumes that Section
25 4000(a)(1) sets forth the only requirements for registration of a
26 vehicle. That is not the case. Vehicle Code Sections 6300 and
27

6301 are also, in and of themselves, "provisions of the Vehicle Code which require registration of a vehicle." Both sections are set forth fully below.

Except as provided in Sections 5905, 5907, and 5908, no security interest in any vehicle registered under this code, irrespective of whether the registration was effected prior or subsequent to the creation of the security interest, is perfected until the secured party or his or her successor or assignee has deposited, either physically or by electronic transmission pursuant to Section 1801.1, with the department, at its office in Sacramento, or at any other office as may be designated by the director, a properly endorsed certificate of ownership to the vehicle subject to the security interest showing the secured party as legal owner if the vehicle is then registered under this code, or, if the vehicle is not so registered, an application in usual form for an original registration, together with an application for registration of the secured party as legal owner, and upon payment of the fees as provided in this code.

Cal. Veh. Code § 6300 (West 2000 & Supp. 2006).

When the secured party, his or her successor, or his or her assignee, has deposited, either physically or by electronic transmission pursuant to Section 1801.1, with the department a properly endorsed certificate of ownership showing the secured party as legal owner or an application in usual form for an original registration, together with an application for registration of the secured party as legal owner, the deposit constitutes perfection of the security interest and the rights of all persons in the vehicle shall be subject to the provisions of the Uniform Commercial Code, but the vehicle subject to the security interest shall be subject to a lien for services and materials as provided in Chapter 6.5 (commencing with Section 3068) of Title 14 of Part 4 of Division 3 of the Civil Code.

Cal. Veh. Code § 6301 (West 2000 & Supp. 2006).

The statutes are not models of clarity as the language used therein does not precisely mesh with that used in the Commercial Code. This is likely so because the two schemes were drafted

1 decades apart. While the beginning of Section 6300 seems to make
2 it apply only to vehicles already registered, the Section goes on
3 to require the deposit with the DMV of a properly endorsed
4 Certificate of Ownership "showing the secured party as legal
5 owner if the vehicle is then registered..., or, if the vehicle is
6 not so registered, an application ...for an original
7 registration, together with an application for registration of
8 the secured party as legal owner,...." Vehicle Code Section 6301
9 completes the scheme by stating that the deposit of the things
10 specified in Section 6300 "constitutes perfection of the security
11 interest."

12 Thus, Vehicle Code Sections 6300 and 6301 contemplate the
13 taking of a security interest in an unregistered vehicle and
14 provide that perfection in that circumstance requires deposit
15 with the DMV of (1) a properly endorsed Certificate of Ownership,
16 (2) an application for an original registration and (3) an
17 application for registration of the secured party as legal owner
18 (not to mention the payment of all required fees).⁴

20 ⁴ The court notes that nothing in the scheme embodied in
21 Sections 6300 and 6301 requires regular renewals of registration
22 after perfection in order for the security interest to remain
23 perfected. The scheme only sets forth the method by which a
24 secured party requests that the DMV to issue a certificate of
25 title and a registration certificate showing that party as
26 lienholder. Once the secured party is listed as lienholder on
27 the certificate of title, its lien is perfected. Thereafter, a
lapse in registration or the filing of a Certificate of Non-
Operation does not affect the lienholder's perfected status
because of the creditor's appearance on the certificate of title
provides constructive notice of its lien. Babaeian
Transportation Co., 206 B.R. at 542.

1 The first reference in Vehicle Code section 6300 to
2 registered vehicles, when read in conjunction with the following
3 clause "irrespective of whether the registration was effected
4 prior or subsequent to the creation of the security interest"
5 appears simply (1) to acknowledge that registration may occur
6 only as a result of the creation of the security interest and the
7 attempt to perfect it and (2) to negate the very argument being
8 made by Bank - that section 6300 applies only to vehicles which
9 are already registered.

10 The Trailers are not "subject to the provisions of the
11 Vehicle Code which require registration of a vehicle" merely in
12 the sense that they are vehicles which must be registered
13 whenever the Vehicle Code says so. They are "subject to the
14 provisions of the Vehicle Code which require registration of a
15 vehicle" because Bank took a security interest in them and wanted
16 to perfect that security interest.

17 None of the three exceptions contained in the first sentence
18 of Section 6300 applies here. Vehicle Code Section 5905
19 addresses circumstances where a security interest is satisfied,
20 cancelled or released and a new security agreement is executed
21 within 10 days thereafter between the same parties. In that
22 instance, the security interest is perfected on execution and the
23 formalities need not be performed. Vehicle Code Section 5907
24 applies to vehicles constituting inventory. As noted above, the
25 Trailers were not inventory. Vehicle Code Section 5908 applies
26 to subsequent transfers of security interests previously
27

1 perfected under Section 6300. The facts of this case fit into
2 none of the three exceptions.

3 This reading of Sections 6300 and 6301 also avoids the
4 absurdity of the logical extension of the Bank's argument. In
5 the hypothetical put to the parties on more than one occasion,
6 the court posited facts that would result in the flipping back
7 and forth in perfection requirements depending on whether a
8 vehicle at any particular instant is being driven, moved or left
9 standing in a manner described in Vehicle Code section
10 4000(a)(1). The court's conclusion is instead consistent with
11 the common understanding of perfection of security interests in
12 vehicles - that the Vehicle Code controls perfection of security
13 interests in vehicles, except for one carve-out for vehicles held
14 as inventory, typically by an automobile dealer.

15 Meraz v. Farmer Insurance Exchange, 92 Cal.App.4th 321
16 (Cal.Ct.App. 2001), does not require a different result. The
17 Meraz court considered a dispute over the proper interpretation
18 of language in an insurance policy. Nowhere in Meraz was the
19 issue of perfection implicated because no security interest
20 existed in the van/tool shed. Therefore, the state court was not
21 required to analyze the interplay between Vehicle Code Sections
22 6300 and 6301 and Commercial Code Section 9311(a)(2)(A). It
23 simply analyzed those sections of the Vehicle Code that could
24 arguably be analogized to the facts presented in that case. It
25 needed go no further than it did. Meraz is not applicable to the
26 issue facing this court.

1 This court's interpretation of Sections 6300 and 6301 is
2 also consistent with precedent from the California Supreme Court.
3 In T & O Mobilehomes v. United California Bank, 40 Cal.3d 441,
4 709 P.2d 430, 220 Cal.Rptr. 627 (1985), the California Supreme
5 Court discussed extensively the interplay between the Commercial
6 Code and the Vehicle Code on the subject of perfection. T & O
7 Mobilehomes is not dispositive here because it addressed a
8 different issue, holding that the "interest of a bona fide
9 purchaser of a vehicle subject to registration under the Vehicle
10 Code prevails over a technically perfected security interest
11 which is not disclosed on the certificate of ownership." T & O
12 Mobilehomes, 40 Cal.3d at 455. However, the discussion therein
13 is relevant to this matter because in 1979, when the transactions
14 at issue in T & O occurred, mobilehomes were subject to
15 perfection under the Vehicle Code. See T & O Mobilehomes, 40
16 Cal.3d at 447-48.

17 The following excerpt is reproduced at length to provide
18 sufficient context, both factual and temporal, for the discussion
19 in T & O Mobilehomes.

20 As previously noted, the UCC provides that a perfected
21 security interest is generally effective against a
22 purchaser of the collateral. (See §§ 9201, 9301, subd.
23 (1)(c), but see § 9307, subd. (1).) This rule is
24 premised upon the assumption that the filing of a
25 financing statement with the Secretary of State will
26 permit prospective purchasers and encumbrancers to
27 ascertain the existence of security interests in the
property by checking a centralized record system. In
other words, the UCC's perfection system, like the
title recordation systems employed for real property,
is based on constructive notice given through
recordation. (See Note, Security Interests in Motor
Vehicles Under the UCC: A New Chassis for Certificate

1 of Title Legislation (1961) 70 Yale L.J. 995, 1005
2 [hereafter Security Interests in Motor Vehicles].)

3 By contrast, the special scheme employed for the
4 registration of security interests in motor vehicles
5 relies primarily on *actual* notice to subsequent
6 purchasers through a certificate of ownership held by
7 the seller. (See Security Interests in Motor Vehicles,
8 *ibid.*; Comment, The California Used Car Dealer and the
9 Foreign Lien - A Study in the Conflict of Laws (1959)
47 Cal.L.Rev. 543, 546-547.) Because this "full title"
system requires all security interests to be listed on
the statutory certificate of ownership (see Veh. Code,
§§ 370, 4451, 4453), a purchaser may rely on the
certificate and is not expected to check a centralized
set of records to determine whether a security interest
has been recorded.[footnote]

10 California adopted the full title system decades before
11 the advent of the UCC, and the system remains
12 essentially unchanged. The buyer's right to rely on
13 the information on the certificate of ownership has
14 been emphasized by our courts both before and after the
15 enactment of the UCC. In First National Bank of Hays
16 City v. Sprigg (1962) 209 Cal.App.2d 258 [25 Cal.Rptr.
17 838], decided one year before the enactment of the UCC,
the court observed that "California is known as a 'full
title' state insofar as registration of motor vehicles
is concerned. This means that anyone transacting
business with the owner of a motor vehicle can rely
upon the title as reflected by the registration
certificate, without further inquiry." (*Id.*, at pp.
259-260.)

18 Ferraro v. Pacific Finance Corp. (1970) 8 Cal.App.3d
19 339 [87 Cal.Rptr. 226], decided seven years after
20 adoption of the UCC, reached the same conclusion. "In
21 California, as is well known to anyone engaged in the
22 business of selling or lending money on the security of
23 automobiles, a prospective purchaser of a motor vehicle
without knowledge of any defect of title may rely
exclusively on the information disclosed by the
statutory certificate of ownership." (*Id.*, at p. 346,
fn. 1.)

24 Like full title statutes in other states, Vehicle Code
25 section 6301 holds a purchaser to constructive notice
26 of a security interest from the time the secured
27 party's application for registration as legal owner is
28 deposited with the DMV. (See Veh. Code, §§ 6301, 6302;
Security Interests in Motor Vehicles, *op. cit. supra*,
at p. 1005.) However, the purpose of this provision is

1 primarily to establish priority among two or more
2 competing *lienholders* according to time of receipt of
3 the applications. (See *ibid.*) The deposit of the
4 application is deemed to impart constructive notice
5 only because it is assumed that the security interest
6 will actually be recorded in the DMV's files. (See
7 Eckhardt v. Morley (1934) 220 Cal. 229, 230-231 [30
8 P.2d 423].) In Eckhardt, this court construed the
9 predecessor to Vehicle Code section 6301 to require
10 actual registration before constructive notice would be
11 deemed to date from the time of deposit. (*Ibid.*)

12 The same reasoning applies to the requirement for
13 notation of the security interest on the certificate of
14 ownership. Upon registration, the DMV is required to
15 issue a new certificate of ownership to the legal owner
16 listing the legal owner's name and address. (See Veh.
17 Code, §§ 1800, subd. (a), 4450, 4451, 4453, 6302.)
18 Thus, it is assumed that the deposit of an application
19 for registration will result in simultaneous
20 registration of the security interest and issuance of a
21 new certificate of ownership listing the secured party
22 as the legal owner. The deposit should not be deemed to
23 impart constructive notice to a buyer unless the
24 security interest has been accurately listed on the
25 certificate of ownership.

26 T & O Mobilehomes v. United California Bank, 40 Cal.3d 441, 448-
27 51, 709 P.2d 430, 220 Cal.Rptr. 627 (1985). The applicable
28 sections of both the Commercial Code and the Vehicle Code
referenced in T & O Mobilehomes are materially unchanged today.
T & O Mobilehomes applied pre- and post-UCC Commercial Code
Section 9302(3)(b). The pre-UCC version provided:

"(3) The filing of a financing statement otherwise
required by this division is not necessary or effective
to perfect a security interest in property subject to
... [P] (b) The provisions of the Vehicle Code which
require registration of a vehicle or boat; but during
any period in which collateral is inventory, the filing
provisions of this division (Chapter 4) apply to a
security interest in that collateral"

1 See T & O Mobilehomes, 40 Cal.3d at 447 n.6. (emphasis added)
2 (ellipsis in original). The 1981 version of the statute
3 provided:

4 3) The filing of a financing statement otherwise
5 required by this division is not necessary or effective
6 to perfect a security interest in property subject to
7 ... (b) The provisions of the Vehicle Code which
8 require registration of a vehicle or boat, or
9 provisions of the Health and Safety Code which require
10 registration of a mobilehome or commercial coach; but
11 during any period in which collateral is inventory, the
12 filing provisions of this division (Chapter 4
13 (commencing with Section 9401)) apply to a security
14 interest in that collateral.

15 Cal. Comm. Code § 9302(3)(b) (West, Westlaw through 1981
16 legislation) (emphasis added). The current version reads as
17 follows:

18 Except as otherwise provided in subdivision (d), the
19 filing of a financing statement is not necessary or
20 effective to perfect a security interest in property
21 subject to...(2)(A) The provisions of the Vehicle Code
22 which require registration of a vehicle or boat.

23 Cal. Comm. Code § 9311(a)(2)(A) (West 2007) (emphasis added).

24 There are three non-material changes in the current version.

25 First, Division 9 was renumbered and the emphasized language has
26 been moved from Section 9302(3)(b) to Section 9311(a)(2)(A).

27 Second, the reference to the Health and Safety Code provision
28 regarding mobilehome perfection has been moved to Section

9311(a)(2)(B). Third, the inventory exception has been moved to

Section 9311(d). The emphasized language in each excerpt above

is identical in all three versions of the relevant section of the
Commercial Code.

1 Vehicle Code Section 6301 has seen even less alteration
2 since T & O Mobilehome. The 1979 version of the statute read as
3 follows:

4 When the secured party, his or her successor, or his or
5 her assignee, has deposited with the department a
6 properly endorsed certificate of ownership showing the
7 secured party as legal owner or an application in usual
8 form for an original registration, together with an
9 application for registration of the secured party as
10 legal owner, the deposit constitutes perfection of the
11 security interest and the rights of all persons in the
12 vehicle shall be subject to the provisions of the
13 Uniform Commercial Code....

14 See T & O Mobilehome, 40 Cal.3d at 448. The current version of
15 the statute reads as follows:

16 When the secured party, his or her successor, or his or
17 her assignee, has deposited, either physically or by
18 electronic transmission pursuant to Section 1801.1,
19 with the department a properly endorsed certificate of
20 ownership showing the secured party as legal owner or
21 an application in usual form for an original
22 registration, together with an application for
23 registration of the secured party as legal owner, the
24 deposit constitutes perfection of the security interest
25 and the rights of all persons in the vehicle shall be
26 subject to the provisions of the Uniform Commercial
27 Code....

28 Cal. Veh. Code § 6301 (West 2000 & Supp. 2006). The only change
is the addition of a provision allowing electronic submission of
the documents required for perfection.

T & O Mobilehome's conclusion that California is a full
title jurisdiction continues to be valid. The Trailers became
"subject to the provisions of the Vehicle Code which require
registration of a vehicle" when Bank took a security interest in
them and wanted to perfect that interest. Bank's security
interest in the Trailers was therefore unperfected as of the

1 Petition Date because Bank failed to comply with the perfection
2 requirements of Vehicle Code Sections 6300 and 6301.

3 **GSMD-2: Avoidance**

4 Having determined that Bank's security interest was
5 unperfected on the Petition Date, the court now turns to
6 Trustee's request for a determination that he can avoid Bank's
7 security interest pursuant to 11 U.S.C. § 544.

8 The request for a determination of avoidability is denied.
9 The Second Trustee SJ Request asks for "summary judgment on the
10 first claim for relief, subject to any remaining affirmative
11 defenses that [Bank] can properly assert." The ruling that
12 Trustee requests would leave undecided facts and issues relating
13 to Bank's affirmative defenses. Because Trustee has not
14 established that none of Bank's affirmative defenses can bar
15 recovery on the first claim for relief, Trustee is not presently
16 entitled to a determination that he can avoid Bank's unperfected
17 security interest.

18 **CONCLUSION**

19 The Bank Motion to Reconsider is granted. The court
20 committed clear error in its initial ruling on the First Bank SJ
21 Request and therefore the First Bank SJ Order is vacated.

22 On reconsideration, the First Bank SJ Request is granted in
23 part and denied in part. The provisions of the California
24 Vehicle Code governed the perfection of Bank's security interest
25 in the Trailers. Because Bank failed to perfect its security
26 interest under the provisions of the Vehicle Code, Bank's
27

1 security interest in the Trailers was unperfected on the Petition
2 Date. Bank has failed to show in the First Bank SJ Request that
3 it is entitled to judgment as a matter of law and summary
4 judgment for Bank is therefore denied. However, Trustee as non-
5 moving party is entitled to an order setting forth the following
6 partial summary adjudication: Bank's security interest in the
7 Trailers was not perfected as of the Petition Date.

8 The Second Trustee SJ request is granted in part. Trustee
9 is entitled to an order setting forth the following partial
10 summary adjudication: Bank's security interest in the Trailers
11 was not perfected as of the Petition Date.

12 Except as set forth above, the above-captioned motions are
13 denied.

14 The court will issue separate orders.

15
16 Dated: September 4, 2007

17 _____/s/_____
18 Thomas C. Holman
19 United States Bankruptcy Judge
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