

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 11
)	
Conseco Finance Corp.,¹)	
)	Case No. 02 B49675
Debtor.)	Honorable Carol A. Doyle
)	(Jointly Administered)
)	Hearing Date: October 12, 2005

**CFC ESTATE'S STATEMENT OF UNDISPUTED FACTS
PURSUANT TO BANKRUPTCY COURT LOCAL RULE 7056-1**

Pursuant to Bankruptcy Court Local Rule 7056-1, the CFC Estate submits this statement of facts as to which there is no genuine issue in support of its motion for summary judgment:

JURISDICTION AND PROCEDURE

1. The Court has jurisdiction to entertain this matter pursuant to 28 U.S.C. § 1334 and General Rule 2.33(A) of the United States District Court for the Northern District of Illinois.
2. This matter involves resolution of a disputed claim.

BACKGROUND

I. The Parties

3. The CFC Estate is the liquidating trust that holds the assets of the Finance Company Debtors in trust for distribution to creditor pursuant to the *Finance Company Debtors' Sixth Amended Joint Liquidating Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code*, confirmed by this Court on September 9, 2003.
4. Calvary Mobile Homes, Inc. ("Calvary") is a corporation with a principal business address located in Pitt County, North Carolina.

¹ The post consummation estate for Conseco Finance Corp. (the "CFC Estate") is the liquidating trust that holds the assets of the Finance Company Debtors in trust for distribution to creditors.

II. The Amended Finance Agreement.

5. On or about November 10, 1997, CFSC and Calvary entered into an Inventory Financing Agreement (the “Finance Agreement”).

6. The parties subsequently amended the Finance Agreement by entering into: (i) a Stock Addendum to Inventory Financing and Security Agreement (the “Stock Addendum”); (ii) a Pre-Sold Addendum to Inventory Financing and Security Agreement; (iii) a First Addendum to Inventory Finance and Security Agreement; and (iv) a Reserve Account Agreement (the amendments, collectively with the Finance Agreement, the “Amended Finance Agreement”).²

7. Pursuant to the Amended Finance Agreement, which was a “floorplan - financing” arrangement, CFSC agreed to pay various mobile home manufacturers on behalf of Calvary for Calvary’s purchase of mobile homes inventory for consumer resales. *Calvary Mobile Homes, Inc.’s Response to Conseco, Inc. et al’s Second Objection to Claims* (“Calvary’s Response”), at ¶ 1.

8. Pursuant to the Amended Finance Agreement, CFSC was generally not obligated to advance any funds directly to Calvary. *Id.* at fn 2.

9. Instead, CFSC received invoices from various manufacturers from which Calvary was purchasing its inventory. *Id.*

10. CFSC directed a disbursement to the manufacturer in satisfaction of each such invoice. *Id.*

11. During this period, Calvary received monthly statements from CFSC stating all interest charged on each separate loan. *See Exhibit A* to Affidavit of Eric Glassman, attached hereto as Exhibit 2.

12. The Inventory Financing and Security Agreement states in relevant part that:

² Copies of the relevant documents are attached as exhibits to the Adversary Proceeding Complaint (as defined herein), a copy of which is attached as Exhibit 1 to the *CFC Estate’s Memorandum of Law Supporting Its Motion For Summary Judgment Disallowing Claim No. 49676-0282*.

If Dealer does not agree with the schedule(s) or billing statement(s), it must notify Green Tree in writing of any objections within seven (7) days from the date of the schedule(s) or billing statement(s) and ***any waiver of objections*** or claims thereto and such schedule(s) and billing statement(s) ***shall become part of this agreement***.

Id.

III. Calvary's Chapter 11 Case.

13. On July 30, 2001, Calvary filed a voluntary chapter 11 petition. Calvary Response at ¶ 2.

14. On June 10, 2002, Calvary commenced an adversary proceeding against CFSC seeking to recover damages from CFSC (the complaint being the “Adversary Proceeding Complaint”).

15. The Adversary Proceeding Complaint, dated June 10, 2002, alleged four causes of action.

16. In particular, Calvary alleged that CFSC's practice of charging Calvary interest from the date of manufacturers' invoices: (i) breached the express terms of the Amended Finance Agreement; (ii) violated N.C.G.S. § 24-1 *et seq.*, which governs usurious loans; (iii) constituted an unfair and deceptive trade practice N.C.G.S. §75-1 *et seq.*; and (vi) unjustly enriched CFSC. *See* Adversary Proceeding Complaint.

17. In the Adversary Proceeding Complaint, Calvary alleged the following facts in support of its alleged claims:

- Calvary entered into an Inventory Financing and Security Agreement with CFSC on November 10, 1997. Pursuant to the terms of the agreement, CFSC agreed to advance funds for the acquisition of Calvary's inventory. Adversary Proceeding Complaint at ¶ 6
- Pursuant to the agreement, Calvary agreed to pay CFSC finance and servicing charges “according to and upon receipt of the schedules and billing statements which [CFSC] delivers to [Calvary] and with the time specified by [CFSC].” Adversary Proceeding Complaint at ¶ 7

- On February 2, 1998, the parties entered into the Stock Addendum amending the finance agreement. The amendment provided that Calvary agreed to pay CFSC interest “from the date of receipt by [CFSC] of the Invoice.” Adversary Proceeding Complaint at ¶ 8
- To support its allegations in of the Adversary Proceeding Complaint, Calvary attached a copy of one of the monthly billing statements Calvary received from CFSC as an example of similar statements it received on a monthly basis. Exhibit A to Affidavit of E. Glassman.

18. Prior to filing the Adversary Complaint, Calvary did not object to any of the billing practices in any of the monthly billing statements. Adversary Proceeding Complaint at ¶ 15.

IV. **The CFC Chapter 11 Cases and the Calvary Claim.**

19. On December 17, 2002, these chapter 11 cases commenced.

20. Calvary timely filed Claim No. 49676-0282 (the “Claim”), which alleges damages as set forth in its Adversary Proceeding Complaint.

21. On May 12, 2003, CFC objected to the Claim based upon a lack of documentation. *Finance Company Debtors’ First Omnibus Objection to Claims Asserted Against the Finance Company Debtors* (docket 3182).

22. On May 28, 2003, CFC filed a subsequent objection to the claim on the basis that the Debtors had no liability for the damages asserted therein. *Finance Company Debtors’ Second Omnibus Objection to Claims Asserted Against the Finance Company Debtors* (docket 3257).

23. On August 3, 2005, this Court entered an order disallowing the Calvary Claim to the extent that it sought relief pursuant to North Carolina usury law and/or under a theory of unjust enrichment.

24. On August 11, 2005, that Order was appealed.

Dated: Chicago, Illinois
September 12, 2005

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