

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
TSAWD HOLDINGS, INC., et al.)	Case No. 16-10527 (MFW)
)	
Debtors.)	Jointly Administered
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)	
TSA STORES, INC.; TSA PONCE, INC.,)	
and TSA CARIBE, INC.,)	
)	
Plaintiffs,)	
)	
and WILMINGTON SAVINGS FUND)	
SOCIETY, FSB, AS SUCCESSOR)	
ADMINISTRATIVE AND COLLATERAL)	
AGENT,)	
)	
Plaintiff-Intervenor)	
Counterclaim)	
Defendant,)	
)	
v.)	Adv. No. 16-50317 (MFW)
)	
PERFORMANCE APPAREL CORP. a/k/a)	
HOT CHILLY'S, INC.,)	
)	
)	
Defendant/)	
Counterclaim)	
Plaintiff)	
)	
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MEMORANDUM OPINION¹

Before the Court is a Motion for Partial Judgment on the Pleadings filed by Wilmington Savings Fund Society, FSB ("WSFS") in an adversary proceeding against Performance Apparel Corp. (the

¹ The Court is not required to state findings of fact or conclusions of law, pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure. Accordingly, the facts recited are as averred in the Complaints and Counterclaims, which must be presumed as true for the purposes of this Motion for Partial Judgment on the Pleadings. See Roberson v. Cityscape Corp. (In re Roberson), 262 B.R. 312, 318 (Bankr. E.D. Pa. 2001).

"Defendant"). Because there are disputed facts precluding partial judgment on the pleadings, the Court will deny the Motion.

I. BACKGROUND

A. Procedural Background

On March 2, 2016, Sports Authority Holdings, Inc., and its affiliates (the "Debtors") filed voluntary chapter 11 petitions. Early in the case, an issue arose as to the Debtors' authority to pledge or sell consigned goods in their possession. Pending the filing of and decision in an adversary proceeding to determine respective rights to the consigned goods, the Court entered interim and final orders permitting the Debtors to sell the consigned goods so long as they complied with the terms of the consignment agreements, including making payments to the consignors. The final order preserved WSFS's right, inter alia, to recoup any payments made to the consignors from the sale of the consigned goods if it is determined that WSFS has a superior security interest in them.

On March 15, 2016, the Debtors filed a complaint against the Defendant seeking, inter alia, a declaratory judgment that the Defendant does not have a perfected security interest or ownership interest in the consigned goods. WSFS filed a motion to intervene and a complaint asserting that it has a first

priority lien in the consigned goods. The motion to intervene was granted, and the Defendant has filed answers to both complaints.

On July 19, 2016, WSFS filed a Motion for Partial Judgment on the Pleadings seeking a determination that WSFS has an interest superior to the Defendant's interest in the consigned goods. Briefing is complete on the Motion, and the matter is now ripe for consideration.

B. Factual History

The Debtors were in the sporting goods and active apparel retail business with store locations across the United States and Puerto Rico. Each debtor obtained its merchandise from various vendors pursuant to different contractual arrangements. One such vendor was the Defendant: on or about August 18, 2015, the Debtors and the Defendant executed a Pay by Scan Agreement (the "Agreement").

In 2006, the Debtors borrowed, or guaranteed, approximately \$300 million from Bank of America, N.A. ("BOA") under a Term Loan Agreement. The Term Loan Agreement was secured by, inter alia, a security interest in the Debtors' inventory, pursuant to a security agreement. On or about May 2, 2006, BOA filed a UCC-1 financing statement. WSFS became the successor to BOA on November 16, 2010. As of the petition date, the principal amount outstanding under the Term Loan Agreement was \$276.7 million.

II. JURISDICTION

The Court has subject matter jurisdiction over this adversary proceeding which seeks a determination of the validity, priority, and extent of liens on property of the estate. 28 U.S.C. §§ 1334(b) and 157(b). Although the Defendant in a preliminary statement suggested that the adversary should be dismissed by the Debtors or “removed” to state court, it has consented to entry of final orders by the Court. (Adv. D.I. 14 at ¶ 3.) Thus, the Court may enter a final order on the Motion for Partial Judgment on the Pleadings. Wellness Int’l Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1949 (2015) (holding that, with consent of the parties, bankruptcy courts may rule on issues that normally require adjudication by an Article III court).

III. DISCUSSION

A. Legal Standard

Rule 7012 of the Federal Rules of Bankruptcy Procedure incorporates Rule 12(c) of the Federal Rules of Civil Procedure 12(c), which allows a party to move for judgment on the pleadings once the pleadings are closed. Fed. R. Bankr. P. 7012(c); Fed. R. Civ. P. 12(c). A motion for judgment on the pleadings allows a court to consider factual allegations in the complaint and answer. Federal Sign v. Fultz (In re Fultz), 232 B.R. 709, 718 (Bankr. N.D. Ill. 1999). Well-pleaded factual allegations in the

non-movant's pleadings (and inferences derived therefrom) are taken as true. Bayer Chems. Corp. v. Albermarle Corp., 171 F. App'x 392, 397 (3d Cir. 2006). Contractual provisions incorporated by reference in (and exhibits attached to) pleadings may also be considered. Fultz, 232 B.R. at 718.

The movant bears the burden of establishing that there are no material issues of fact to be resolved and that it is entitled to judgment on the pleadings as a matter of law. Bayer Chems., 171 F. App'x at 397.

B. Parties' Arguments

WSFS asserts that there are no factual issues in dispute and that its lien is superior to the Defendant's interest in the consigned goods. The Defendant disagrees and contends that there are several factual issues in dispute that are relevant to the parties' relative interests in the goods.

1. May the Defendant Assert the Agreement Is Not an Article 9 Consignment?

a. UCC Definitions

WSFS argues that Article 9 governs the competing interests in the consigned goods because the Agreement between the Debtors and the Defendant states that the arrangement is a consignment as defined under section 9-102 of the Delaware and Colorado Uniform Commercial Code (the "UCC"). Therefore, WSFS contends that the Defendant cannot dispute that the statutory elements for an Article 9 "consignment" are not met.

The Agreement's provision upon which WSFS relies states as follows:

TSA and Vendor agree that the arrangement contemplated by this agreement shall be a consignment as defined in Section 9-102 of the Colorado and Delaware Uniform Commercial Codes. Vendor shall retain title to all goods subject to this agreement until the date of sale at which time title shall pass from Vendor to the purchaser of such goods. Vendor shall be entitled to file UCC-1 Financing Statements to reflect this consignment.

(Adv. D.I. 1, Ex. A at 3).

The Defendant asserts that, despite the Agreement's language, there is a factual dispute as to whether the arrangement is in fact a consignment under Article 9. Specifically, the Defendant contends that the arrangement does not meet the Article 9 definition of a consignment.

The Court agrees with the Defendant that parties are not permitted to vary the meaning of definitional terms in the UCC. See Del. Code Ann. tit. 6, § 1-302 cmt. 1 ("The meaning of the statute itself must be found in its text, including its definitions, and in appropriate extrinsic aids; it cannot be varied by agreement. . . ."). For instance, a party may not contractually agree that an instrument is negotiable unless that instrument actually meets the "negotiable instrument" definition found in section 3-104. Id. ("[P]rivate parties cannot make an instrument negotiable within the meaning of Article 3 except as provided in Section 3-104"); id. § 3-104 cmt. 1 ("The

definition of 'negotiable instrument' defines the scope of Article 3 since Section 3-102 states: 'This Article applies to negotiable instruments.'"). See also, id. § 1-302 cmt. 1 (stating that parties to a contract cannot "change the meaning of such terms as 'bona fide purchaser,' 'holder in due course,' or 'due negotiation,' as used in the [UCC]").

The Court concludes that the same is true for Article 9 consignments. "Consignment" (like "negotiable instrument") is a defined term under section 9-102, which the parties cannot modify by agreement. Id. § 9-102(a)(20). Therefore, whether the Agreement is an Article 9 consignment under the UCC depends on if it meets the consignment definition in section 9-102(a)(20). Simply calling the Agreement an Article 9 consignment does not make it one. See id. § 9-109 cmt. 6 (indicating that it is inconsequential for Article 9 purposes whether the contracting parties deem the agreement to be a consignment).²

² The UCC's drafters acknowledged that not every consignment agreement will be subject to Article 9. Del. Code Ann. tit. 6, § 9-102(a)(20) cmt. 14 (stating that a consignment excluded from Article 9 based on one of the subparagraphs may still be a consignment that is subject to other applicable law). However, the priority rules in Article 9 will govern only those arrangements that meet section 9-102(a)(20)'s consignment definition. Id. § 9-109 cmt. 6 (explaining that not all true consignments, like "sale or returns," will be Article 9 "consignments" and that "this Article does not apply to bailments for sale that fall outside the definition of 'consignment' in Section 9-102 and that do not create a security interest that secures an obligation").

WSFS nonetheless argues that the Agreement does not have to meet the strict definition of consignment under Article 9 because section 1-302 allows the effect of the UCC to be varied by agreement.

The Court finds that this argument is misguided. The UCC's comments explain exactly how parties may vary the UCC's effect:

An agreement that varies the effect of provisions of the [UCC] may do so by stating the rules that will govern in lieu of the provisions varied . . . [or] by stating that their relationship will be governed by recognized bodies of rules or principles applicable to commercial transactions. Such bodies of rules or principles may include . . . UNCITRAL

Id. § 1-302 cmt. 2. Section 9-102(a)(20) must first apply to the relationship in order for the effect of the UCC to be varied.

Further, the Court finds that the Agreement does not attempt to vary the effect of Article 9 by stating that another rule or body of law applies. It merely states that the arrangement is an Article 9 consignment. The contention that meeting the UCC's definition is an effect of the UCC that can be changed runs afoul of the proscription in the UCC that definitions cannot be modified. See id. § 1-302, cmt. 1 (drawing a distinction between the plain language of the UCC and the effect that the UCC's language has pursuant to the parties' contractual agreements).

Consequently, the Court concludes that, notwithstanding the Agreement's statement that it is an Article 9 consignment, the Defendant may argue that the Agreement does not meet the UCC's

definition of consignment. Therefore, partial judgment on the pleadings based on the language found in the Agreement is not warranted.

b. Contract Interpretation Principles

WSFS asserts that the Agreement's provision that it is an Article 9 consignment should be enforced based on contract interpretation principles, citing cases where courts have enforced a forum selection clause or a shortened statute of limitations provision. The Debtors argue that the Defendant's interpretation renders the clause superfluous.

The Court rejects these arguments. In this case, giving effect to the Agreement's statement that it is an Article 9 consignment runs counter to the UCC's express provisions. Again, simply calling an agreement a consignment under Article 9 does not make it one.

c. Equitable Estoppel Principles

Alternatively, WSFS argues that the Defendant is estopped from asserting that the Agreement is not an Article 9 consignment because it accepted the benefits of the Agreement. WSFS argues that the doctrine of quasi-estoppel precludes a party from asserting "a position inconsistent with one to which he has acquiesced, or from which he accepted a benefit." Pers. Decisions, Inc. v. Bus. Planning Sys., Inc., C.A. No. 3213-VCS, 2008 WL 1932404, at *1, *6 (Del. Ch. May 5, 2008) (explaining

that a defendant who invoked an arbitration statute in a notice to a plaintiff concerning an alleged breach of contract is estopped from later arguing that the arbitration statute was inapplicable under the contract). See also Aluminum Co. of Am. v. Essex Grp., Inc., 499 F. Supp. 53, 57, 84-85 (W.D. Pa. 1980) (finding that a party that entered into an agreement with a clause characterizing it as a contract to provide services is estopped from arguing that the contract was for the sale of goods).

The Court rejects this argument because the Court cannot enforce a contractual term that the UCC prohibits based on equitable principles. See Dave Greytak Enters., Inc. v. Mazda Motors of Am., Inc., 622 A.2d 14, 22 (Del. Ch. 1992), aff'd, 609 A.2d 668 (Del. 1992) (noting that the court's equitable power to fashion appropriate remedies presupposes the existence of an enforceable right). Moreover, the cases where quasi-estoppel applied on which WSFS relies involved disputes between the parties to the contract. Here, WSFS is not a party to the Agreement and, therefore, provided no benefit to the Defendant under that Agreement.

2. Is the Agreement an Article 9 Consignment?

Section 9-102 dictates whether a consignment arrangement is a "consignment" for Article 9 purposes.

'Consignment' means a transaction, regardless of its form, in which a person delivers goods to a merchant

for the purpose of sale and:

- (A) the merchant:
 - (i) deals in goods of that kind under a name other than the name of the person making delivery;
 - (ii) is not an auctioneer; and
 - (iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;
- (B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;
- (C) the goods are not consumer goods immediately before delivery; and
- (D) the transaction does not create a security interest that secures an obligation.

Del. Code Ann. tit. 6, § 9-102(a) (20).

The Defendant contends that the Debtors are not, in fact, "merchant[s]" because they fail to meet the requirements of section 9-102(a) (20) (A) (iii).

a. Creditors' General Knowledge of the Debtors Substantially Engaging in Selling Consigned Goods

First, the Defendant alleges that there is a factual dispute as to whether the Debtors' creditors generally knew that the Debtors were substantially engaged in selling consigned goods. Section 9-102(a) (20) will not apply if a consignor can show that (1) the consignee's creditors generally knew that the consignee sold goods belonging to others and (2) the consignee substantially engaged in selling consigned goods. See In re Valley Media, Inc., 279 B.R. 105, 123-24 (Bankr. D. Del. 2002).

General knowledge is established when a majority of the consignee's creditors know that the consignee sold consigned

goods. Id. at 125. It is the number of creditors rather than the aggregate amount of the creditors' claims that determines whether the majority threshold is satisfied. Id.

In addition, to meet the criteria of section 9-102(a)(20)(iii), it must be established that a consignee is substantially engaged in the sale of consigned goods. That threshold is met if consigned goods make up 20% or more of the value of the consignee's inventory. Id. (citing Multibank Nat'l of W. Mass. v. State St. Auto Sales, Inc. (In re State St. Auto Sales), 81 B.R. 215, 216, 218 (Bankr. D. Mass. 1988)).

In this case, the Defendant alleges that the Debtors are substantially engaged in selling goods on consignment. According to the Defendant, the Debtors have about 170 vendors that provide goods on consignment.

The Court is unable to determine from the pleadings, however, whether the majority of the Debtors' creditors knew the Debtors were selling goods on consignment and whether the Debtors were substantially engaged in selling consigned goods. Therefore, the Court finds that there are unresolved issues of fact as to whether the Debtor is a merchant. The Motion for Partial Judgment on the Pleadings will accordingly be denied.

b. WSFS's Actual Knowledge

The Defendant also alleges that there is a factual dispute about whether WSFS had actual knowledge of the Defendant's

Agreement with the Debtors, which precludes WSFS from benefitting from the priority rules under Article 9.

Some courts have read an additional requirement into Article 9's "merchant" definition: a creditor's actual knowledge. This requirement precludes a creditor from taking advantage of Article 9's priority rules if that creditor had actual knowledge that the goods were held on consignment. See, e.g., Eurpac Serv., Inc. v. Republic Acceptance Corp., 37 P.3d 447 (Colo. App. 2000) (holding that a creditor who has actual knowledge of a debtor selling goods belonging to others satisfies the generally known and substantial engagement exception); In re Key Book Serv., Inc., 103 B.R. 39, 43 (Bankr. D. Conn. 1989) (finding that the policy consideration for the actual knowledge exception was satisfied because the secured creditor's loan with the debtor was made after the debtor entered into the agreement with the third party and the secured creditor received a copy of that agreement while negotiating the loan with the debtor). But see Russell v. Mountain Nat'l Bank (In re Russell), 254 B.R. 138, 141 (Bankr. W.D. Va. 2000) (reasoning that a bank's knowledge of a consignment does not preclude it from asserting rights against the consignor when the bank did not engage "in any affirmative conduct to promote those arrangements or lull the consignors to fail to protect themselves" or make representations to the consignors that they relied on when deciding whether to protect

their interests); State St. Auto Sales, 81 B.R. at 220 (determining that a secured creditor was not equitably estopped from asserting its interest in consigned goods based on its actual knowledge of the debtor's consignment arrangements).

Courts that have adopted the actual knowledge approach have done so based on policy justifications for the former UCC section 2-326, which was intended to prevent a consignee from not disclosing to a creditor that the consignee has liens that encumber its property. See Key Book, 103 B.R. at 43 ("The purpose of [former section 2-326] is to prevent creditors from being misled by a hidden lien."); Newhall v. Haines, 10 B.R. 1019, 1021 (D. Mont. 1981) (same). Consigned goods - from a secured creditor's point of view - appear to be part of a debtor's regular inventory and, thus, subject to the secured creditor's claims. Newhall, 10 B.R. at 1021. However, when a secured creditor has actual knowledge of the consignee's interest, such policy concerns are nonexistent. See GBS Meat Indus. Pty. Ltd. v. Kress-Dobkin Co., 474 F. Supp. 1357, 1363 (W.D. Pa. 1979). But see Quaker City Iron Works, Inc. v. Ganz (In re Wicaco Mach. Corp.), 49 B.R. 340, 344 n. 4 (E.D. Pa. 1984) (noting that GBS Meat was decided on procedural grounds and its outcome with respect to the actual knowledge exception was merely dicta).

In this case, the Defendant asserts that WSFS had actual knowledge of the goods being on consignment because the Defendant filed its UCC-1 financing statement and sent notice of it to BOA in 2009. (Adv. D.I. 14 at ¶ 87.) According to the Defendant, if WSFS conducted a UCC lien search prior to assuming BOA's interest in 2010, then it had actual knowledge of the Defendant's financing statement. (Id. at ¶ 87-89.)

WSFS denies these factual allegations and claims it had no knowledge of any notice sent to BOA. Even if it did have notice, however, WSFS contends that its actual knowledge is irrelevant because the Defendant agreed that the Agreement was a consignment under Article 9.

The Court has already determined that any acknowledgment by the Defendant that the Agreement is a consignment is not effective if, in fact, the Agreement is not a consignment under Article 9's definitions. The Court finds, however, that there is a factual dispute as to whether WSFS had actual knowledge of the consignment arrangement under the Agreement between the Debtors and the Defendant. This precludes granting the Motion for Partial Judgment on the Pleadings.

2. Priority under Article 9

WSFS seeks partial judgment on the pleadings that it has a perfected security interest in the consigned goods that is superior to the Defendant's interest. The Defendant asserts that

there are factual disputes precluding partial judgment in favor of WSFS.

a. WSFS's Security Interest

First, the Defendant contends that WSFS does not have a security interest in the consigned goods.

Three things are required for a security agreement to attach to collateral and be enforceable against a debtor under section 9-203. N.Y. U.C.C. § 9-203(a)-(b) (McKinney 2014).³ First, value must have been given. Id. § 9-203(b)(1). Second, the debtor must have rights in the collateral or power to transfer rights in the collateral to the secured party. Id. § 9-203(b)(2). Third, one of four conditions must be satisfied, including that the security agreement contains the collateral's description. Id. § 9-203(b)(3). It is WSFS's position that all three elements under section 9-203 are satisfied, thus creating a valid security interest that attached to the consigned goods.

i. The Debtors' Rights in the Goods

The Defendant concedes that value was given, but it contests the Debtors' rights in the consigned goods and power to transfer a security interest in the consigned goods to WSFS.

The dispute over whether the Debtors had the ability to grant a security interest in consigned goods, thereby allowing

³ WSFS's Security Agreement is governed by New York law. (Adv. D.I. 31, Ex. F at 2.)

WSFS to have a valid security interest, arises from the parties' interpretation of section 9-319(a) and its relationship with section 9-203(b). Section 9-203 requires a debtor to have "rights in the collateral or the power to transfer rights in the collateral to a secured party." Id. § 9-203. Section 9-319(a) states that

[F]or purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

Id. § 9-319(a).

Generally, a consignment arrangement provides that the consignor retains title to the goods and the consignee has limited rights to the goods while they are in the consignee's possession. Section 9-319(a) gets around this limitation by deeming a consignee to have sufficient rights and title to the goods to grant a security interest in them to others.

Thus, the Court concludes that section 9-203(b)(2) is satisfied by the fiction of section 9-319(a) and the Debtors had the power to grant a security interest in the consigned goods to WSFS.

ii. The Security Agreement's Collateral Description

The Defendant contends nonetheless that WSFS does not have a security interest in the consigned goods. It asserts that the

collateral description under WSFS's Security Agreement was not intended to include goods on consignment because they were not specifically enumerated in the description. WSFS disputes this and argues that the language in the Security Agreement is broad enough to include goods that were in the Debtors' possession and held for sale.

The Court also concludes that this dispute cannot be resolved on the pleadings, thereby precluding partial judgment on the pleadings. See generally Official Comm. of Unsecured Creditors v. UMB Bank, N.A. (In re Residential Capital, LLC), 495 B.R. 250, 261-62 (Bankr. S.D.N.Y. 2013) (deciding that the security agreement was ambiguous and a full evidentiary record was required).

b. The Defendant's Interest in the Goods

Even if Article 9 were applicable, the Defendant contends that there are disputed facts as to whether WSFS has an interest in the consigned goods superior to the Defendant's interest.

WSFS counters that the Defendant has no interest because it did not file a UCC-1 financing statement before the goods were shipped and/or delivered. (Adv. D.I. 13 at ¶ 18.) WSFS contends that, even if a UCC-1 financing statement was filed, the Defendant did not file a timely continuation statement of its financing statement. WSFS also asserts that it did not receive notice of the Defendant's interests. Thus, WSFS contends that

the Defendant's interest is unperfected under section 9-324 of the UCC.

The Defendant disagrees and asserts that it filed and served a financing statement in 2009 and sent a notice to BOA. It further contends that WSFS had notice of this when it acquired the loan.

Section 9-319(b) of the UCC states that Article 9's priority rules will not apply in a dispute between a consignor and a consignee's secured creditor if the consignor perfected its interest. Del. Code Ann. tit. 6, § 9-319(b). A consignor's interest is perfected when (1) the consignor has a UCC-1 financing statement on file at the appropriate office at the time the consignee received the consigned goods and (2) an authenticated notice was provided to other creditors with conflicting interests in the same inventory within five days before the debtor received the goods. Id. §§ 9-324(b) & 9-515. See also Russell v. Mountain Nat'l Bank (In re Russell), 254 B.R. 138, 141 (Bankr. W.D. Va. 2000) (holding that a consignor's interest was subordinated to a consignee's secured creditor because the consignor did not provide notice to the other creditor of its consignment).

A consignor is perfected for five years from the filing of its UCC-1 financing statement. Del. Code Ann. tit. 6, § 9-515(a). Prior to the end of the five-year period, a consignor

must file a continuation statement within six months in order to remain perfected. Id. § 9-515(c), (d). Failure to remain continuously perfected results in a consignor being relegated to general unsecured creditor status. Id. § 9-515(c).

In this case, there is a factual dispute as to whether the Defendant perfected and remained continuously perfected pursuant to Article 9. Consequently, the Court cannot grant the Motion for Partial Judgment on the Pleadings. In re Dwek, No. 09-1233, 2010 WL 3087474 (Bankr. D.N.J. Aug. 4, 2010).

3. Termination of Consignment Agreement

The Defendant also contends that its Agreement with the Debtors terminated pre-bankruptcy, thereby precluding the Debtors from granting rights in the goods to WSFS. See Valley Media, 279 B.R. at 140. WSFS contends that this is irrelevant because its interest arose before the Agreement's termination and, thus, is unaffected by it. The Court finds it is unable to decide this issue because it is subject to a factual dispute, namely whether (and when) the Agreement was terminated.

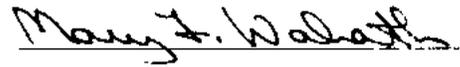
IV. CONCLUSION

For the reasons set forth above, the Court will deny the Motion for Partial Judgment on the Pleadings.

An appropriate Order follows.

Dated: March 7, 2017

BY THE COURT:

A handwritten signature in black ink, appearing to read "Mary F. Walrath". The signature is written in a cursive style with a horizontal line underneath.

Mary F. Walrath
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

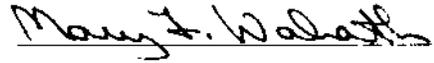
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_____)	

ORDER

AND NOW this **7th** day of **MARCH, 2017**, upon consideration the Motion for Partial Judgment on the Pleadings filed by Wilmington Savings Fund Society and for the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that the Motion for Partial Judgment on the Pleadings is **DENIED**.

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

cc: Daniel B. Butz, Esq.¹

¹ Counsel shall distribute a copy of this Order and the accompanying Memorandum Opinion to all interested parties and file a Certificate of Service with the Court.

SERVICE LIST

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