

Motion for Partial Summary Judgment
Fed. R. Civ. P. 52(a)
Fed. R. Bankr. P. 7052

LT Builders Group, LLC v. Blue Sky AvGroup, LLC, et al.,
Adversary No. 10-3246-rld
In re Aircraft Investor Resources, LLC, Case No. 09-38458-rld11

06/08/2011 RLD

Unpublished

The debtor, Aircraft Investor Resources, LLC ("AIR, LLC"), designed, manufactured and sold various models of aircraft and aircraft kits under the brand, "Epic." AIR, LLC also provided construction assistance to amateur aircraft kit builders. AIR, LLC operated out of a leased facility in Bend, Oregon ("facility"). AIR, LLC filed its chapter 11 petition on September 10, 2009 (09-38458-rld11).

During the bankruptcy case, China Aviation Industry General Aircraft Co., Ltd. ("China Aviation") and plaintiff LT Builders Group, LLC ("LTB"), as designated assignee, purchased substantially all of AIR, LLC's assets under 11 U.S.C. § 363(f) ("Sale"). As part of the Sale, China Aviation, LTB and the chapter 11 trustee entered into an asset purchase agreement ("Purchase Agreement").

On April 9, 2010, the bankruptcy court entered an amended order approving the Sale ("Amended Sale Order"); the Amended Sale Order provided that AIR, LLC's assets did not include any partially-completed aircraft or any parts inventory owned by amateur builders that were AIR, LLC's customers. The Amended Sale Order further provided that any sale of the assets by the chapter 11 trustee excluded all partially-completed aircraft and any parts inventory owned by amateur builders.

The bankruptcy court also entered on April 30, 2010, a stipulated order regarding the inventory of AIR, LLC's personal property assets located at the facility ("Stipulated Inventory Order"). The Stipulated Inventory Order provided that LTB and the chapter 11 trustee would conduct a complete inventory of all the personal property located in the facility, consistent with the terms and procedures set forth in the Purchase Agreement and the Amended Sale Order. The Stipulated Inventory Order further provided that LTB and the chapter 11 trustee would allow amateur builders to enter the facility, at prearranged times, to identify any property in which they claimed an ownership interest.

After completing the inventory, the chapter 11 trustee filed a motion for an order confirming the inventory results ("Inventory Confirmation Motion"). He also filed two status reports, one of which he filed on August 14, 2010 ("Supplemental Status Report") (main case docket no. 507). In his status reports, the chapter 11 trustee noted that Blue Sky Avgroup, LLC ("BSA") and Johan Charl Brink ("Brink") (collectively,

"Defendants") asserted claims to additional items of inventory ("additional inventory items") in which LTB and certain amateur builders claimed an interest. Defendants filed objections to the Inventory Confirmation Motion. After a hearing on August 11, 2010, the bankruptcy court granted the Inventory Confirmation Motion, entering an order on August 26, 2010.

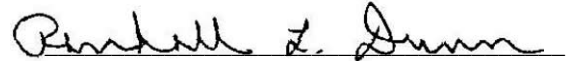
LTB subsequently filed a complaint (10-3246-rld) (adv. proc. docket no. 1) against Defendants, seeking declaratory relief under F.R.B.P. 7001(2) and (9). Specifically, LTB sought a declaratory judgment that Defendants' alleged ownership claims to the additional inventory items were untimely, barred and/or waived under the Stipulated Inventory Order ("Count 1"). LTB also sought a declaratory judgment that Defendants had no right, title, claim or interest to any of the additional inventory items or any other personal property items ("Count 2").

BSA and Brink each filed an answer to LTB's complaint (adv. proc. docket nos. 10 and 13, respectively), asserting various affirmative defenses and counterclaims. Specifically, with respect to their counterclaims, Defendants sought: (1) a declaratory judgment that the Supplemental Status Report was the operative inventory report ("Counterclaim 1"); (2) an injunction requiring LTB to provide them with a copy of the facility inventory ("Counterclaim 2"); (3) a declaratory judgment allowing Defendants to identify all assets in the facility that they are "entitled to" or have an ownership interest in ("Counterclaim 3"); and (4) an injunction requiring LTB to allow them to participate in the dispute resolution process established by the Stipulated Inventory Order ("Counterclaim 4"). LTB filed an answer to Defendants' counterclaims, asserting its own counterclaim against Defendants.

LTB filed a motion for partial summary judgment ("Partial SJ Motion") (adv. proc. docket no. 41) on all claims for relief asserted by LTB in its complaint and all counterclaims asserted by BSA and Brink in their answers. LTB did not seek summary judgment on its counterclaim against Defendants in the Partial SJ Motion, however. Following oral argument at the April 28, 2011 hearing on the Partial SJ Motion, the bankruptcy court took the matter under advisement.

After considering the pleadings, the parties' legal memoranda and declarations, as well as applicable legal authorities, the bankruptcy court concluded that LTB was entitled to summary judgment on Count 1 and partial summary judgment on Count 2 of the claims stated in its complaint, with the balance of Count 2 to be dismissed. The bankruptcy court further concluded that LTB was entitled to summary judgment on Counterclaims 1, 3 and 4 stated in Defendants' answers. The parties agreed that the issues between them in Counterclaim 2 have been resolved and were to be dismissed as moot.

Below is an Opinion of the Court.



RANDALL L. DUNN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

11	In Re:)	
12	AIRCRAFT INVESTOR RESOURCES, LLC,)	Bankruptcy Case
13)	No. 09-38458-rld11
14	Debtor.)	
15	_____)	
16	LT BUILDERS GROUP, LLC,)	
17)	Adv. Proc. No. 10-03246-rld
18	Plaintiff,)	
19	v.)	
20	BLUE SKY AVGROUP, LLC, et al.,)	MEMORANDUM OPINION
21)	
22	Defendants.)	
23	_____)	

On April 28, 2011, I heard argument at the hearing ("Hearing") on plaintiff LT Builders Group, LLC's ("LTB") Motion for Partial Summary Judgment ("Motion") on 1) all claims for relief asserted by LTB in its Complaint ("Complaint"), Docket No. 1 in this adversary proceeding ("Adversary Proceeding"); 2) all counterclaims asserted by defendant Blue Sky AvGroup, LLC ("BSA") in its Answer (Docket No. 10); and 3) all counterclaims asserted by defendant Johan Charl Brink ("Brink") in his

1 Answer (Docket No. 13). In the Complaint, LTB asserts two mirror image
2 claims for declaratory relief against BSA and Brink respectively in
3 Counts 1 and 2 for each claim. Hereafter, the counts in each claim of
4 the Complaint will be referred to collectively as "Count 1" and "Count
5 2." Again, with respect to the counterclaims asserted by BSA and Brink
6 in their respective Answers, Counterclaims 1 through 4 in each Answer
7 request the same relief with regard to LTB. Accordingly, hereafter, the
8 counterclaims in each Answer will be referred to collectively as
9 "Counterclaims 1 through 4." LTB filed an Answer to the defendants'
10 counterclaims, asserting its own counterclaim against BSA and Brink for
11 intentional interference with economic relations. LTB does not seek
12 summary judgment on its counterclaim in the Motion. At the conclusion of
13 the Hearing, I took the Motion under advisement.

14 Following the Hearing I have carefully considered the
15 pleadings, memoranda of arguments and declarations filed by the parties,
16 in light of the arguments presented, and applicable legal authorities.
17 Based on my consideration of the record before me, I conclude that LTB is
18 entitled to summary judgment on Count 1 and partial summary judgment on
19 Count 2 of the claims stated in its Complaint, with the balance of Count
20 2 to be dismissed. I further conclude that LTB is entitled to summary
21 judgment on Counterclaims 1, 3 and 4 stated in the defendants' Answers.
22 The parties are agreed that the issues between them in Counterclaim 2
23 have been resolved and will be dismissed as moot.

24 This Memorandum Opinion sets forth my conclusions of law in
25 light of the record before me under Civil Rule 52(a), applicable in this
26

1 adversary proceeding under Federal Rule of Bankruptcy Procedure 7052.¹ I
2 have jurisdiction to decide this matter under 28 U.S.C. §§ 1334 and
3 157(b)(2)(K), (N) and (O).

4 Background

5 A. Events in the main bankruptcy case

6
7 1. Events triggering the debtor's bankruptcy

8 From 2003 to 2009, the debtor, Aircraft Investor Resources, LLC
9 ("AIR, LLC"), designed, manufactured and sold various models of aircraft
10 and aircraft kits under the brand "Epic." See Second Amended Disclosure
11 Statement at 4 (main case docket no. 610). AIR, LLC also provided
12 construction assistance to amateur aircraft kit builders ("amateur
13 builders"). Id. AIR, LLC operated out of a leased facility in Bend,
14 Oregon ("facility"). Id.

15 AIR, LLC experienced significant financial problems, ultimately
16 becoming unable to comply with its obligations to individual amateur
17 builders, its landlord, ER1, LLC ("ER1"), and other creditors. Id.
18 Several creditors commenced litigation against AIR, LLC, its officers and
19 directors, and ER1. Id.

20 ER1 locked AIR, LLC out of the facility on July 27, 2009. Id.
21 at 5. At that point, AIR, LLC ceased its operations. Id.

22
23
24
25 ¹ Unless otherwise specified, all chapter and section references are
26 to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Rule" references
are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
Federal Rules of Civil Procedure are referred to as "Civil Rules."

1 AIR, LLC filed its chapter 11 petition on September 10, 2009.²
2 The chapter 11 trustee ("trustee") was appointed on October 27, 2009.

3
4 2. Sale of the debtor's assets under § 363

5 Following his appointment, the trustee began efforts to sell
6 AIR, LLC's assets, fielding inquiries from various prospective buyers,
7 including Merlin Partners, LLC ("Merlin"). Id. During negotiations with
8 Merlin, Harlow Aerostructures, LLC ("Harlow"), expressed interest in
9 purchasing AIR, LLC's assets. Id. Harlow soon entered into an asset
10 purchase agreement with the trustee ("Harlow APA"). Id. at 6. Under the
11 Harlow APA, Harlow became the stalking horse bidder with a \$2 million
12 purchase offer for substantially all of AIR, LLC's assets. Id.

13 The trustee filed a motion for an order to establish bidding
14 procedures for the purchase of AIR, LLC's assets and to approve the
15 proposed sale of substantially all of AIR, LLC's assets to Harlow
16 pursuant to § 363(f)³ ("Sale Motion")(main case docket no. 256). After

17
18 ² AIR, LLC originally filed its chapter 11 petition in the United
19 States Bankruptcy Court for the District of Nevada. AIR, LLC's
20 bankruptcy case was transferred to the United States Bankruptcy Court for
21 the District of Oregon ("bankruptcy court") on October 15, 2009.

22 AIR, LLC's wholly-owned subsidiaries, Aircraft Completion Services,
23 LLC ("ACS"), and Epic Air, LLC ("Epic Air"), each filed chapter 7
24 petitions on October 16, 2009, and October 23, 2009, respectively. See
25 Second Amended Disclosure Statement at 5. Epic Air filed its chapter 7
26 petition in Nevada, whereas ACS filed its chapter 7 petition in the
United States Bankruptcy Court for the District of Delaware. Id. Both
bankruptcy cases soon were transferred to the bankruptcy court and
substantively consolidated with AIR, LLC's bankruptcy case. Id.

³ Section 363(f) provides: The trustee may sell property under
subsection (b) or (c) of this section free and clear of any interest in
(continued...)

1 holding two hearings, the bankruptcy court entered an order ("Sale
2 Procedures Order")(main case docket no. 283) granting the trustee's sale
3 motion. Id.

4 Not long before the bid deadline, China Aviation Industry
5 General Aircraft Co., Ltd. ("China Aviation"), expressed interest in
6 purchasing AIR, LLC's assets. Id. China Aviation made a bid on
7 March 23, 2010. Id.

8 On March 26, 2010, the trustee conducted an auction of AIR,
9 LLC's assets; China Aviation, Harlow and LTB made competing bids. Id.
10 The trustee selected China Aviation's final bid of \$4.3 million as the
11 prevailing bid. Id. China Aviation consequently entered into an asset
12 purchase agreement with the trustee ("China Aviation APA"). LTB was
13 designated assignee under the China Aviation APA. See Amended Order (I)
14 Authorizing and Approving Asset Purchase Agreement by and between China
15 Aviation Industry General Aircraft Co., Ltd. and Trustee; (II)
16 Authorizing and Approving Sale of Substantially All Assets of
17 Substantively Consolidated Debtor Free and Clear of Interests; and (III)
18 Granting Certain Related Relief ("Amended Sale Order")(main case docket
19

20 ³(...continued)

21 such property of an entity other than the estate, only if -
22 (1) applicable nonbankruptcy law permits sale of such
23 property free and clear of such interest;
24 (2) such entity consents;
25 (3) such interest is a lien and the price at which such
26 property is to be sold is greater than the aggregate
value of all liens on such property;
(4) such interest is in bona fide dispute; or
(5) such entity could be compelled, in a legal or
equitable proceeding, to accept a money satisfaction of
such interest.

1 no. 397), at 6, 17.

2 Under Section 1.1 of the China Aviation APA, China Aviation
3 purchased AIR, LLC's assets listed on Schedule 1.1, attached to the China
4 Aviation APA. See Amended Sale Order at 4, 22. In particular, under
5 Section 1.1(a), these assets included "all equipment, machinery,
6 furniture, trade fixtures, improvements, tooling, molds, plugs, hand
7 tools and other tangible personal property owned by [AIR, LLC], wherever
8 located, including without limitation all of such property located at the
9 [facility] other than WIP [work in progress]" See Amended Sale
10 Order, Exh. A at 22. Under Section 1.1(b), these assets also included
11 "all inventories of supplies, raw materials, parts, and finished goods
12 inventory owned by [AIR, LLC], including without limitation all of such
13 property located at the [facility] other than WIP" Id.

14 Sections 2.4 and 7.6(b) of the China Aviation APA provided,
15 however, that AIR, LLC's assets did not include
16 any partially-completed aircraft or any parts inventory that are owned by
17 amateur builders that [were AIR, LLC's] customers. For this purpose,
18 parts that are attached to aircraft, parts that are located in the . . .
19 facility and specifically listed in the aircraft log for each partially-
20 completed aircraft, and parts specially manufactured for aircraft located
21 in the . . . facility shall be deemed excluded from the Assets.

22 Id. at 8.

23 Section 10.3(a) of the China Aviation APA required that, prior
24 to the closing of the sale, the trustee give the amateur builders access
25 to the facility to allow each amateur builder to
26 (i) remove its partially-completed aircraft from the facility at its sole
cost and expense and (ii) identify and segregate any parts and other
inventory such [amateur builder] believes it owns. In no event shall any
[amateur builder] be permitted to remove any assets from the . . .
facility other than its partially-completed aircraft.

1
2 Id. at 12.

3 Section 10.3(b) of the China Aviation APA also provided that
4 LTB would employ
5 a third-party to conduct and complete a detailed inventory of all assets
6 and property . . . located in the . . . facility as of the Closing Date,
7 including without limitation, any remaining partially-completed aircraft
8 and any parts or other inventory that are owned by the [amateur
9 builders]. . . . Upon completion and delivery of the inventory of assets
to [China Aviation, or its assignee, LTB] will provide a copy of the
inventory of assets to the [trustee] and each of the [amateur builders]
(the date on which [China Aviation or LTB] delivers a copy of such
inventory of assets, the "Inventory Delivery Date").

10 Id.

11 3. Inventory of the AIR, LLC's assets

12 Before the April 2, 2010 hearing on the Sale Motion,⁴ BSA filed
13 a motion to conduct an inventory of the assets ("BSA Inventory
14 Motion")(main case docket no. 306). BSA asked that the bankruptcy court
15 direct the trustee to allow BSA to conduct an inventory of the personal
16 property and, after determining which personal property belonged to it,
17 remove such personal property before approving and closing the sale to
18 China Aviation.

19 At the April 2, 2010 hearing, the bankruptcy court approved the
20 Sale Motion. See Record of Proceeding of April 2, 2010 Hearing (main
21 case docket no. 362). The bankruptcy court entered the Amended Sale
22 Order on April 9, 2010. The Amended Sale Order provided that AIR, LLC's
23 assets did not include "any partially-completed aircraft or any parts
24

25 ⁴ The bankruptcy court conducted a preliminary hearing on the Sale
26 Motion prior to the April 2, 2010 hearing. See Record of Proceeding of
March 30, 2010 Hearing (main case docket no. 362).

1 inventory that are owned by amateur builders that [were AIR, LLC's]
2 customers" Amended Sale Order at 11, ¶ 3. The Amended Sale
3 Order further provided that "[a]ny sale of Assets by the Trustee shall
4 specifically exclude all partially completed aircraft and any parts
5 inventory owned by amateur builders." Amended Sale Order at 17, ¶ 26.

6 As for the BSA Inventory Motion, the bankruptcy court entered a
7 stipulated order regarding the inventory of AIR, LLC's personal property
8 assets ("Stipulated Inventory Order")(main case docket no. 416) on
9 April 30, 2010.

10 Paragraph 2 of the Stipulated Inventory Order provided that LTB
11 and the trustee would conduct a complete inventory of all the personal
12 property located in the facility ("facility inventory"), consistent with
13 the terms and procedures set forth in the China Aviation APA and the
14 Stipulated Inventory Order. Stipulated Inventory Order at 2. The
15 facility inventory was to be completed by June 7, 2010, provided that if
16 any party interfered with, delayed or failed to cooperate with the
17 performance of the facility inventory at any time, the trustee or LTB
18 could seek further instructions and/or relief from the bankruptcy court.
19 Id. at 3.

20 Paragraph 2 of the Stipulated Inventory Order further provided
21 that the trustee and LTB "may establish further detailed procedures in
22 their sole discretion to accomplish the Facility Inventory and its
23 purposes in an orderly and expeditious manner." Id. (Emphasis added.)

24 Paragraph 4 of the Stipulated Inventory Order authorized the
25 trustee and LTB to implement certain procedures to complete the facility
26 inventory. Under paragraph 4(b) of the Stipulated Inventory Order:

1 The Trustee and/or [LTB] will provide notice to known persons and
2 entities claiming ownership of personal property within or affixed to the
3 Facility of an opportunity to enter the Facility and identify, at
4 prearranged times and under further procedures to be established by the
5 Trustee and [LTB], any property in which they claim an ownership
6 interest, other than the partially completed kit aircraft listed in
7 Subsection 4c (below),⁵ as to which ownership is stipulated. The persons
8 and entities to be notified under this Section include: (i) all known
9 owners of LT Aircraft [collectively, the "Notice Parties"].
10 Notice Parties who are unavailable to visit the Facility may designate
11 proxies, in writing and in a form acceptable to the Trustee and [LTB], to
12 make such identifications on their behalf. Unless alternative
13 arrangements have been consented to by both the Trustee and [LTB], the
14 failure of any Notice Party to appear at the designated dates in person
15 or by way of a proxy, or otherwise identify its property (other than kit
16 aircraft identified in Subsection 4(d) by those designated dates, shall
17 constitute a waiver of the right to claim specific personal property
18 within the Facility. (Emphasis added.)

19 Id. at 4.

20 Paragraph 4(d) of the Stipulated Inventory Order provided:

21 The Trustee and/or [LTB] shall catalog, by description and location
22 within the Facility, all items of personal property located in the
23 Facility as to which any of the Notice Parties assert ownership
24 interests, and shall identify, using an appropriate system, each such
25 item of personal property and the party or parties claiming ownership of
26 such item. In connection with the Notice Party's opportunity to enter
27 the Facility as provided in Subsection 3b [sic], the Trustee or [LTB]
28 will permit, in accordance with procedures developed by the Trustee and
29 [LTB], each Notice Party asserting ownership of an item of personal
30 property to tag its asserted ownership interest. No items of personal
31 property may be moved or removed by any Notice Party from their existing
32 locations without the specific consent of the Trustee and [LTB].
33 (Emphasis added.)

34 Id. at 5-6.

35 Paragraph 6 of the Stipulated Inventory Order provided that the
36 "Facility Inventory, including the results of the dispute resolution
37 processes described [herein] (including any adversary proceedings that
38 _____

39 ⁵ Paragraph 4(c) of the Stipulated Inventory Order addressed the
40 release of the hulls of certain aircraft owned by particular amateur
41 builders. Brink and BSA were among those amateur builders allowed to
42 remove their hulls under paragraph 4(c).

1 may be filed), shall be the exclusive and final method of establishing
2 the ownership of the personal property in the Facility.” Id. (Emphasis
3 added.)

4 The trustee filed a motion for an order confirming the
5 inventory results on June 29, 2010. See Trustee’s Motion for an Order
6 (1) Confirming the Inventory Results, (2) Releasing Undisputed Third-
7 Party Property from Facility, and (3) Requiring Pick-Up or Bailment of
8 the Property (“Inventory Confirmation Motion”)(main case docket no. 470).
9 He also filed two status reports, reporting that he completed the
10 facility inventory but noting that BSA and Brink asserted claims in
11 personal property claimed by LTB and certain amateur builders. See
12 Chapter 11 Trustee’s Fourth Status Report Regarding the Inventory Order
13 (“Inventory Status Report”)(main case docket no. 469); Trustee’s
14 Supplemental Report re: Inventory (August 14, 2010)(“Supplemental Status
15 Report”)(main case docket no. 507). The trustee attached as exhibits to
16 the Inventory Status Report lists of personal property that LTB and other
17 creditors claimed as their own. The trustee attached as exhibits to the
18 Supplemental Status Report lists of additional items of inventory claimed
19 by BSA and Brink (“Additional Items Lists”).

20 BSA and Brink objected to the Inventory Confirmation Motion.
21 See BSA’s Objection to Trustee’s Motion for an Order (1) Confirming the
22 Inventory Results, (2) Releasing Undisputed Third-Party Property from
23 Facility, and (3) Requiring Pick-Up or Bailment of Property (“BSA
24 Objection”)(main case docket no. 496); Brink’s Joinder in BSA’s Objection
25 to [Inventory Confirmation Order] (“Brink’s Joinder”)(main case docket
26 no. 497)(collectively, “BSA/Brink Objection”). BSA and Brink attached

1 the Additional Items List to the BSA/Brink Objection.

2 BSA and Brink argued that the Stipulated Inventory Order
3 established a two-step procedure for identifying and tagging items of
4 personal property in the facility. BSA Objection at 2. Amateur builders
5 first would identify and tag items of personal property in which they
6 claimed a specific identifiable ownership interest as "the initial step
7 in determining ownership rights with each [amateur] builder." Id. The
8 trustee and LTB then would prepare a facility inventory, which would
9 describe all items in the facility, including items in which each amateur
10 builder claimed an ownership interest - essentially, a comprehensive,
11 all-encompassing inventory. Id. Once the trustee and LTB completed the
12 facility inventory, the amateur builders would have the opportunity to
13 identify items listed in the facility inventory that were described
14 either as general inventory or as being owned by another amateur builder.
15 Id. If two or more amateur builders claimed an ownership interest in any
16 item, they would go through the dispute resolution process set forth in
17 the Stipulated Inventory Order to resolve their competing claims. Id. at
18 3.

19 BSA and Brink claimed that, when their representative, Ashley
20 Emerson, visited the facility on April 30, 2010, he had received a
21 catalog of personal property items compiled by Christa Thornton-Smith of
22 CAZ Consulting, LLC ("CAZ"), whom the trustee and LTB retained to conduct
23 and prepare the facility inventory. Id. The catalog listed categories
24 of items pre-designated as belonging to certain amateur builders and
25 items identified as inventory. Id. Emerson believed he was to confirm
26 and tag only those items in the catalog specifically identifiable as

1 those belonging to BSA and Brink. Id. In fact, in his Declaration,
2 Emerson stated that,

3 My visit to the facility was the first visit of all
4 [amateur] builders who were being asked to identify
5 personal property belonging to them. . . . When I
6 began the inspection on April 30, 2010, I was
7 specifically advised by Ms. Smith and Doug King, a
8 principal of [LTB], that I was only to identify or
tag, the items that belonged to either [BSA] or Brink.
I did not identify any items from general inventory
other than items painted the custom colors of the
[BSA] or Brink Airplane or specifically identified by
serial number for either plane.

9 He did not believe that he was going to tag items designated as belonging
10 to other amateur builders or identified as general inventory. Id.
11 Emerson was given access to the entire facility to claim and tag personal
12 property items owned by BSA and Brink. However, had they known that the
13 inventory process consisted of one step, BSA and Brink argued, they would
14 have marked every single item in which they had a possible ownership
15 interest or needed to complete their aircraft. Id. at 5.

16 LTB filed a response (main case docket no. 501), arguing that
17 BSA and Brink were attempting to circumvent the express terms of the
18 Stipulated Inventory Order by asserting late claims to personal property
19 items after the facility inventory was completed. LTB further argued
20 that it purchased all general inventory items under the China Aviation
21 APA. Accordingly, BSA and Brink could not assert claims to general
22 inventory items.

23 Following the hearing on August 11, 2010, the bankruptcy court
24 granted the Inventory Confirmation Motion, entering an order ("Inventory
25 Confirmation Order")(main case docket no. 515) on August 26, 2010. The
26 Inventory Confirmation Order provided in paragraph 1 that any item of

1 personal property claimed by any third-party would be released if it was
2 not subject to the competing claims of Brink and BSA. Inventory
3 Confirmation Order at 2. The Inventory Confirmation Order included as an
4 exhibit the Additional Items List.

5 With respect to the BSA/Brink Objection, the bankruptcy court
6 stated that it would set the BSA/Brink Objection for evidentiary hearing
7 if not resolved. Id.

8
9 B. Events in the adversary proceeding

10 1. LTB's complaint

11 Nine days after the hearing on the Inventory Confirmation
12 Motion, LTB filed a complaint against BSA and Brink for declaratory
13 relief under Rule 7001(2) and (9) to determine the validity and extent of
14 their interests in certain general inventory items. LTB sought a
15 judgment declaring that: (1) BSA's and Brink's claims to such general
16 inventory items or any other personal property items were untimely,
17 barred and/or waived (Count 1), and (2) BSA and Brink had no ownership
18 interest in the general inventory items or any other personal property
19 items (Count 2).

20 BSA and Brink each filed answers to the complaint and asserted
21 counterclaims against LTB. In their answers, BSA and Brink set forth the
22 same arguments they made in the Brink/BSA Objection. BSA and Brink
23 further contended that the catalog provided to Emerson on April 30, 2010
24 did not include many essential items.

25 As to their counterclaims, Brink and BSA sought (1) a
26 declaratory judgment that the Supplemental Status Report was the

1 operative inventory report (Counterclaim 1); (2) an injunction requiring
2 LTB to provide them with a copy of the facility inventory (Counterclaim
3 2); (3) a declaratory judgment allowing BSA and Brink to identify all
4 assets in the facility inventory that they are "entitled to" or have an
5 ownership interest in (Counterclaim 3); (4) an injunction requiring LTB
6 to allow them to participate in the dispute resolution process
7 established by the Stipulated Inventory Order (Counterclaim 4).

8 LTB filed an answer to the counterclaims, asserting various
9 affirmative defenses. It also asserted a compulsory counterclaim for
10 intentional interference with economic relations. Specifically, LTB
11 contended that the allegations and injunctive claims made by BSA and
12 Brink in their answers substantially interfered with LTB's ownership of
13 the AIR, LLC assets it purchased and with its business and economic
14 relationships. LTB sought not less than \$50,000 in damages against BSA
15 and Brink on its compulsory counterclaim, along with an injunction
16 against further interference with LTB's business and economic
17 relationships.

18
19 2. LTB's motion for partial summary judgment

20 Five months after the initial pre-trial conference, LTB filed
21 the Motion. LTB argued that it was entitled to summary judgment that the
22 claims of BSA and Brink were waived under the terms of the Stipulated
23 Inventory Order. LTB contended that paragraph 4(b) of the Stipulated
24 Inventory Order provided that all claims of third parties to personal
25 property within the facility were waived unless asserted at the time of
26 each claimant's scheduled appointment during the inventory procedure.

1 Contrary to the assertions of BSA and Brink, the Stipulated Inventory
2 Order did not provide a two-step process; it provided for each party "to
3 have one visit to the facility to identify all property without
4 limitation." LTB's Memorandum of Law in Support of Motion for Partial
5 Summary Judgment at 8 ("LTB Memo")(adv. proc. docket no. 42).

6 LTB further argued that it was entitled to summary judgment
7 that it owned all inventory and other personal property in the facility,
8 free and clear of the claims of BSA and Brink, as LTB had purchased all
9 of the debtor's assets under § 363. BSA and Brink never provided any
10 evidence to show that they owned any personal property in the facility.
11 The additional items claimed by BSA and Brink were general inventory
12 items purchased by LTB under § 363. LTB Memo at 15.

13 LTB also sought dismissal of all of the counterclaims of BSA
14 and Brink.⁶ With respect to Counterclaim 1 that the Supplemental Status
15 Report be declared as the operative inventory report, LTB contended that
16 it did not state a claim upon which relief could be granted - the
17 trustee's status reports spoke for themselves.

18 LTB further claimed that the third and fourth counterclaims
19 were moot. With respect to Counterclaim 3 seeking a declaratory judgment
20 that BSA and Brink each was entitled to identify all assets in the
21 facility inventory it believed it was entitled to or had an ownership
22

23
24 ⁶ With respect to the second counterclaim requiring LTB to provide
25 them a copy of the master inventory list, BSA and Brink conceded that
26 this counterclaim was moot and may be dismissed, as they and LTB resolved
it through discovery and a settlement conference. Defendants' Opposition
to Plaintiff's Motion for Partial Summary Judgment at 23 ("BSA/Brink
Opposition")(adv. proc. docket no. 83).

1 interest in, LTB claimed that BSA and Brink already had made those
2 identifications. Moreover, neither BSA nor Brink provided any evidence
3 showing such alleged ownership.

4 As to the Counterclaim 4 seeking to require LTB to participate
5 in the dispute resolution process contemplated by the Stipulated
6 Inventory Order, LTB asserted that BSA, Brink and LTB already had
7 participated in informal and formal dispute resolution procedures to no
8 avail.

9 BSA and Brink opposed the Motion, advancing several arguments.
10 BSA and Brink first contended that paragraph 4(b) of the Stipulated
11 Inventory Order required LTB and the trustee to create additional
12 procedures to carry out the facility inventory. BSA/Brink Opposition
13 at 3.

14 Specifically, the Stipulated Inventory Order provided for a
15 two-step process, the first of which required the amateur builders to
16 identify and tag their own personal property located within the facility.
17 BSA/Brink Opposition at 8. The second step involved the creation of a
18 comprehensive list that included personal property items in which each
19 amateur builder claimed an ownership interest and general inventory items
20 (e.g., parts, inventory and manuals). Id. Once completed, the amateur
21 builders should have the opportunity to identify items listed in the
22 facility inventory that were described either as general inventory or as
23 being owned by another amateur builder.

24 BSA and Brink claimed that when their proxy, Emerson, visited
25 the facility, Thornton-Smith instructed him to tag only those personal
26 property items belonging to BSA and Brink. Id. at 9. Emerson did not

1 identify any general inventory items. Id. According to Emerson,
2 Thornton-Smith never instructed him to tag any personal property items
3 necessary to complete the aircraft of BSA and Brink. Id.

4 BSA and Brink also contended that CAZ was to create a master
5 list of the assets in the facility so that the amateur builders could
6 identify the assets they owned before the assets were released from the
7 facility. Thornton-Smith of CAZ did not provide BSA and Brink with a
8 comprehensive inventory list, they asserted, but with "inventory
9 spreadsheets" (i.e., catalog). The catalog she provided BSA and Brink
10 did not include all of the items that were listed in other inventory
11 spreadsheets provided to other amateur builders, who were affiliated with
12 LTB. According to BSA and Brink, the catalog contained categories of
13 items pre-designated as belonging to certain amateur builders and items
14 identified as inventory. Those items categorized as inventory, BSA and
15 Brink claimed, were not described with sufficient specificity to allow
16 for identification.

17 BSA and Brink asserted that Thornton-Smith moreover allowed
18 other amateur builders to make multiple visits to the facility, whereas
19 BSA and Brink's representative only visited the facility once to identify
20 personal property belonging to BSA and Brink.

21 BSA and Brink also argued that LTB was not entitled to summary
22 judgment on its ownership claim because there is no actual controversy
23 between LTB and BSA concerning the disputed personal property. Any
24 controversy over ownership of the personal property in dispute, BSA and
25 Brink contend, lies between BSA and Brink and other individual amateur
26 builders who also claimed an ownership interest in that same personal

1 property.

2 Even if LTB had a valid claim, BSA and Brink argued that LTB
3 still was not entitled to summary judgment because there was sufficient
4 evidence that BSA and Brink had valid ownership claims to the disputed
5 personal property. BSA fully paid for its aircraft prepetition. Brink's
6 aircraft was the next in line to be completed, with BSA's aircraft to
7 follow immediately.

8 BSA and Brink further argued that LTB was not entitled to
9 summary judgment on their counterclaims. As to their first counterclaim,
10 BSA and Brink asserted that the Supplemental Inventory Report was the
11 operative report; because it was incorporated into the Inventory
12 Confirmation Order, the Supplemental Inventory Report was the law of the
13 case. BSA/Brink Opposition at 22.

14 With respect to their third counterclaim, BSA and Brink
15 contended that they did not identify personal property items already, as
16 LTB asserted. BSA and Brink stated that their third counterclaim would
17 be moot only if LTB conceded that the Supplemental Inventory Report was
18 the operative report, which it did not. BSA/Brink Opposition at 23.

19 As to their fourth counterclaim, BSA and Brink argued that LTB
20 misled them regarding the process for identifying the personal property
21 assets in the facility. BSA and Brink contended that LTB interfered with
22 their rights at every step of the way. Id. at 24. BSA and Brink
23 requested that the bankruptcy court determine that they had a right to
24 assert an interest in the personal property items described in the
25 Additional Items List incorporated in the Inventory Confirmation Order.
26 Id. at 24.

1
2 Discussion

3
4 A. Summary judgment standards

5 Under Civil Rule 56(c), applicable under Rule 7056, summary
6 judgment is appropriate only when "the pleadings, the discovery and
7 disclosure materials on file, and any affidavits show that there is no
8 genuine issue as to any material fact and that the movant is entitled to
9 judgment as a matter of law." Summary judgment should not be entered
10 when there are disputes over facts that may affect the outcome of the
11 suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S.
12 242, 249 (1986). Irrelevant or unnecessary factual disputes will not be
13 counted. Id. A material fact is genuine if the evidence is such that
14 the fact-finder could return a verdict for the nonmoving party. Id. All
15 justifiable inferences from the evidence presented must be considered in
16 favor of the nonmoving party. Id. at 255.

17 The movant initially bears the burden of showing that there are
18 no genuine issues of material fact. Bhan v. NME Hospitals, Inc., 929
19 F.2d 1404, 1409 (9th Cir. 1991). If the movant satisfies this burden,
20 then the opposing party must produce sufficient evidence, through
21 affidavits or admissible discovery material, to demonstrate that genuine
22 material factual disputes exist. Id. The nonmoving party cannot rely on
23 the allegations in its pleadings to meet that burden. Nelson v. Pima
24 Cnty. College, 83 F.3d 1075, 1081-82 (9th Cir. 1996)("[M]ere allegations
25 and speculation do not create a factual dispute for the purpose of
26 summary judgment.").

1 B. Analysis

2 I have reviewed LTB's complaint, BSA's and Brink's answers and
3 counterclaims, LTB's answer to their counterclaims, the various
4 declarations and affidavits submitted by LTB, BSA and Brink. I also have
5 taken judicial notice of various documents filed in the main case and the
6 adversary proceeding relevant to the matters before me. See Federal Rule
7 of Evidence 201; In re Butts, 350 B.R. 12, 14 n.1 (Bankr. E.D. Pa. 2006).
8 Of these documents, I particularly focused on the China Aviation APA, the
9 Amended Sale Order and the Stipulated Inventory Order.

10 Having reviewed and considered the parties' submissions, and
11 all of these relevant documents, as well as relevant legal authorities, I
12 have reached conclusions as stated above. My reasons follow.

13
14 1. Overarching Considerations

15 Underlying this bitterly fought litigation is an unfortunate,
16 but fundamental misunderstanding by defendants of what a sale under § 363
17 accomplishes. Under § 363(b)(1), "The trustee, after notice and a
18 hearing, may use, sell, or lease, other than in the ordinary course of
19 business, property of the estate. . . ." § 363(f) allows the trustee to
20 sell property of the estate free and clear of competing liens and
21 interests under specific circumstances, as identified in n.3 above.
22 § 363 advisedly allows for such "cleansed title" sales in order to give
23 comfort to buyers from the estate that they will receive what they pay
24 for and allow the recovery to the estate to be maximized. The sale of
25 AIR, LLC's assets in the main case was approved under §§ 363(b) and (f),
26 and the sale was beneficial to the estate.

1 However, what could not be sold in such a sale were assets,
2 comingled with the AIR, LLC assets, that AIR, LLC did not own. See Popp
3 v. Zimmerman (In re Popp), 323 B.R. 260, 266 (9th Cir. BAP 2005).
4 Because of cost considerations, the sale of AIR, LLC assets preceded the
5 inventory process required to separate out the assets at the facility
6 that were owned by the amateur builders. However, the process developed
7 through the Stipulated Inventory Order ultimately was essential to
8 provide for that separation.

9 The terms of the relevant orders and the evidence submitted by
10 the parties through declarations and authenticated exhibits establish
11 that there is no genuine issue of material fact that the authorized
12 representative of BSA and Brink was given complete access to the facility
13 to claim and identify any personal property items that BSA and Brink
14 claimed they owned, consistent with the terms of the Stipulated Inventory
15 Order. I understand that both BSA and Brink paid a lot of money for
16 their aircraft, and they both have very substantial claims in the AIR,
17 LLC case on which they will receive distributions, based on present
18 estimates, that will be substantially less than twenty cents on the
19 dollar. They have submitted evidence that their aircraft were the next
20 two in line to be completed when AIR, LLC's operations at the facility
21 were shut down. They also have presented evidence that their partially
22 completed aircraft may have been cannibalized by representatives of AIR,
23 LLC, with parts having been transferred to other amateur builders'
24 aircraft. Accordingly, part of their argument in opposition to the
25 Complaint initially and to the Motion is the inventory process, as
26 conducted under the Stipulated Inventory Order, did not give them an

1 appropriate opportunity to identify not only the personal property they
2 owned, but personal property inventory and equipment items to which they
3 were entitled because they needed such items to complete their aircraft.
4 Outside of bankruptcy, their claims may be compelling, and they may have
5 independent avenues to pursue them. However, that argument is simply
6 incompatible with the sale and inventory processes that were authorized
7 in the AIR, LLC case. All assets that AIR, LLC owned were sold free and
8 clear of the defendants' claims. BSA and Brink were given a clear and
9 adequate opportunity to claim what they owned at the facility, and the
10 assets they claimed ownership in have been turned over to them. My
11 specific dispositions as to each of the claims at issue in the Motion is
12 as follows:

13
14 2. Summary judgment on Count 1

15 BSA and Brink advance several arguments as to why LTB is not
16 entitled to summary judgment on Count 1. Their arguments essentially
17 boil down to a challenge to the Stipulated Inventory Order's terms and
18 the facility inventory process as applied when Emerson visited the
19 facility to identify and assert claims to BSA and Brink's personal
20 property.

21
22 a. Stipulated Inventory Order governed facility inventory
23 process

24 BSA and Brink first contend that the Stipulated Inventory Order
25 did not control the facility inventory process because Thornton-Smith
26 developed her own procedures without reference to the Stipulated

1 Inventory Order. They rely on Thornton-Smith's statement at her
2 March 24, 2011 deposition that she never received a copy of the
3 Stipulated Inventory Order. Declaration of Lisa Schiller in Support of
4 Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment
5 ("Schiller Declaration")(adv. proc. docket no. 88), Exhibit 2 at 8,
6 Deposition of Christa A. Thornton-Smith ("Thornton-Smith Deposition"),
7 34:18-22. Accordingly, BSA and Brink argue, the facility inventory
8 procedures set forth in the Stipulated Inventory Order are irrelevant.

9 Paragraphs 4(b) and 4(d) of the Stipulated Inventory Order
10 required the trustee and/or LTB to grant amateur builders access to the
11 facility "at prearranged times" to identify and tag personal property
12 items in which they claimed an ownership interest. The trustee and LTB
13 were given discretion to fashion and implement additional procedures to
14 facilitate this process under paragraph 2 of the Stipulated Inventory
15 Order.

16 Although she did not receive a copy of the Stipulated Inventory
17 Order, Thornton-Smith discussed her proposed procedures with both the
18 trustee and Douglas King, managing member of LTB. Thornton-Smith
19 Deposition, 35:2-3, 37:18-19, 38:4-5; Declaration of Christa A. Thornton-
20 Smith at 5 ("Thornton-Smith Declaration")(adv. proc. docket no. 45);
21 Supplemental Declaration of Christa A. Thornton-Smith at 2 ("Supplemental
22 Thornton-Smith Declaration")(adv. proc. docket no. 101). Both the
23 trustee and King confirmed this, further asserting that they approved her
24 proposed procedures for the facility inventory. Declaration of Kenneth
25 S. Eiler at 2-3 ("Eiler Declaration")(adv. proc. docket no. 100);
26 Declaration of Douglas King at 3 ("King Declaration")(adv. proc. docket

1 no. 44); Supplemental Declaration of Douglas King at 2 ("Supplemental
2 King Declaration")(adv. proc. docket no. 102).

3 Thornton-Smith recommended to the trustee and King a multi-step
4 process for the facility inventory. Supplemental Thornton-Smith
5 Declaration at 2. She first would go through the facility to organize
6 the personal property items therein in bulk or piles (for safety
7 purposes), then tag bulk and specific personal property items. Thornton-
8 Smith Deposition, 35:24-25, 36:1-5, 37:20-25, 38-1; Supplemental
9 Thornton-Smith Declaration at 2. As Thornton-Smith organized the
10 facility, she pulled out personal property items she believed belonged to
11 each amateur builder and grouped those items next to that amateur
12 builder's aircraft. Supplemental Thornton-Smith Declaration at 2;
13 Thornton-Smith Deposition, 37:22-25, 41:5-6, 42:8-11.

14 Thornton-Smith next scheduled an appointment with each amateur
15 builder or its proxy. Supplemental Thornton-Smith Declaration at 2. At
16 the start of the appointment, Thornton-Smith provided the amateur builder
17 or its proxy a list of airplane parts within the facility (i.e.,
18 "inventory spreadsheet") to help amateur builders identify their personal
19 property items. Id. at 3. Thornton-Smith then accompanied amateur
20 builders during their appointments, giving them unrestricted access to
21 the facility. Id. She noted all personal property items claimed by the
22 amateur builder listed on the inventory spreadsheet and had the amateur
23 builder add personal property items not listed on the inventory
24 spreadsheet. Id.

25 Regardless of whether or not Thornton-Smith received a copy of
26 the Stipulated Inventory Order, the evidence before me indicates that the

1 Stipulated Inventory Order informed and guided the facility inventory
2 process. Thornton-Smith explained in her declarations and at her
3 deposition her proposed facility inventory procedures, which are
4 consistent with those set forth in the Stipulated Inventory Order. The
5 trustee and LTB moreover exercised their discretion, as provided under
6 paragraph 2 of the Stipulated Inventory Order, by allowing Thornton-Smith
7 to propose further procedures for the facility inventory and by approving
8 them. BSA and Brink have not provided any evidence showing how Thornton-
9 Smith's non-receipt of the Stipulated Inventory Order rendered her
10 proposed facility inventory procedures inappropriate or inconsistent with
11 the terms of the Stipulated Inventory Order. BSA's and Brink's argument
12 thus lacks merit.

13
14 b. No "master" facility inventory required

15 BSA and Brink next maintain that the facility inventory process
16 involved a two-step process, the second step of which required the
17 trustee and/or LTB to prepare a "master" facility inventory. This master
18 facility inventory, BSA and Brink claim, was to include all personal
19 property items within the facility, not merely those personal property
20 items in which each amateur builder claimed an ownership interest.

21 A plain reading of the relevant provisions in the China
22 Aviation APA and Paragraph 4(d) of the Stipulated Inventory Order
23 invalidates this argument. Section 10.3(b) of the China Aviation APA
24 states that "[u]pon completion and delivery of the inventory of assets to
25 [China Aviation, the third-party] will provide a copy of the inventory of
26 assets to . . . each of the [amateur builders]." Paragraph 4(d) of the

1 Stipulated Inventory Order provides that the trustee and/or LTB "shall
2 catalog, by description and location within the Facility, all items of
3 personal property located in the Facility as to which any of the Notice
4 Parties assert ownership interests, and shall identify . . . each such
5 item of personal property and the party or parties claiming ownership of
6 such item."

7 Nothing in either section 10.3(a) of the China Aviation APA or
8 paragraph 4(d) of the Stipulated Inventory Order indicates that the
9 trustee and/or LTB had to list in the facility inventory each and every
10 single item of personal property in the facility. The trustee's
11 Inventory Status Report and Supplemental Status Report carried out the
12 objective of paragraph 4(d). Both the Inventory Status Report and the
13 Supplemental Status Report describe the disputes between the various
14 claimants and include as exhibits lists of the disputed personal property
15 items.

16 Moreover, as set forth in paragraph 2 of the Stipulated
17 Inventory Order, the trustee and LTB were authorized to establish
18 additional procedures, in their discretion, to accomplish the facility
19 inventory.⁷ As the declarations submitted by LTB show, the trustee and
20 LTB, in their discretion, decided to list only those personal property
21 items in which amateur builders had claimed an ownership interest.

22 The trustee acknowledged in his declaration that the facility
23 inventory procedures included providing lists of parts to amateur

24
25 ⁷ Paragraph 4(b) of the Stipulated Inventory Order indicates that
26 the amateur builders would be subject to further procedures when they
visited the facility to identify and claim the personal property they
owned therein.

1 builders. Eiler Declaration at 3. He determined, however, that such
2 lists were not material to the claiming process. Id.

3 King explained in his declaration that he believed that
4 "creating a running list of every single nut and bolt within the Facility
5 would have been onerous, impractical, and pointless." King Declaration
6 at 3. He opined that it "would have been physically impossible to
7 complete a detailed packing list-type inventory of every single item of
8 personal property within the Facility before BSA and Brink and other
9 . . . builders entered to begin the identification process." Id. Such a
10 requirement, King maintained, "would have been impossible to meet within
11 the time constraints of the [Stipulated Inventory] Order and was
12 unnecessary to allow persons to claim personal property." Supplemental
13 King Declaration at 2.

14 BSA and Brink offer the declaration of Richard Lucibella, BSA's
15 principal and managing member, in support of their interpretation of the
16 Stipulated Inventory Order. Lucibella asserted that he always understood
17 and maintained that a comprehensive facility inventory first needed to be
18 completed in order to separate personal property belonging to LTB and the
19 amateur builders. Declaration of Richard Lucibella in Support of
20 Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment
21 at 5 ("Lucibella Declaration")(adv. proc. docket no. 85). Such
22 interpretation is contrary to the terms of the Stipulated Inventory
23 Order, that BSA's counsel signed. However, Lucibella construed the
24 Stipulated Inventory Order to provide for the following steps: (1) the
25 amateur builders first would identify and tag their personal property
26 items within the facility; (2) the trustee and LTB next would prepare a

1 full, comprehensive facility inventory; and (3) the amateur builders
2 finally would review the facility inventory and determine whether
3 competing ownership claims had been made against their personal property
4 items, which they would try to resolve. Lucibella Declaration at 5.

5 Lucibella attached to his declaration copies of various e-mails
6 between him or his counsel, counsel for the trustee and counsel for LTB
7 as evidence in support of his understanding. See Exhibits 1-4, 8-9
8 attached to Lucibella Declaration. None of the e-mails supports
9 Lucibella's interpretation of the Stipulated Inventory Order. For
10 example, the e-mail from counsel for the trustee merely states: "Don't
11 have [the facility inventory] yet, but will forward as soon as I do."
12 The trustee further informed Lucibella that he and his counsel "will have
13 the order then, but if not, we will be able to address [BSA's] issues and
14 make sure that the stipulated order reflects them."

15 Lucibella once or twice expressed in his e-mails his need for a
16 comprehensive facility inventory to help him identify his personal
17 property items and any competing claims thereto. But in most, if not all
18 of his e-mails, he mainly expressed his wishes to have a third-party
19 conduct the facility inventory. Based on the e-mail exchanges between
20 Lucibella, the trustee and LTB, it appears that the trustee and LTB
21 addressed his main concern.

22 Nothing in the evidence in the record before me indicates that
23 the Stipulated Inventory Order contemplated a two-step process for the
24 facility inventory. BSA and Brink have not provided sufficient evidence
25 in support of their interpretation of the Stipulated Inventory Order to
26 raise a genuine issue of material fact.

1 c. Emerson fully participated in facility inventory process
2 BSA and Brink claim that they were not afforded an opportunity
3 to participate fully in the facility inventory process in the following
4 ways: (1) Thornton-Smith did not give Emerson a full facility inventory
5 (i.e., inventory spreadsheet); (2) Thornton-Smith instructed Emerson only
6 to identify and/or tag personal property items that belonged to either
7 BSA or Brink; and (3) BSA and Brink had only one opportunity to visit the
8 facility, whereas other amateur builders affiliated with LTB had multiple
9 visits.

10 In his declaration, Emerson claimed that Thornton-Smith did not
11 provide him with a complete inventory spreadsheet. Declaration of Ashely
12 Emerson in Support of Defendants' Opposition to Plaintiff's Motion for
13 Partial Summary Judgment at 3 ("Emerson Declaration").

14 Thornton-Smith explained that she only created a comprehensive
15 inventory spreadsheet after the identification process was completed.
16 Supplemental Thornton-Smith Declaration at 4. Even then, she stated, the
17 inventory spreadsheet did not itemize every personal property item in the
18 facility. Id. She further explained that the differences in the
19 inventory spreadsheets provided to other amateur builders arose as claims
20 to specific personal property items were added and the inventory
21 spreadsheets became more extensive. Id. at 5. The first inventory
22 spreadsheet Thornton-Smith provided to Emerson contained mainly bulk
23 items. Id. at 4. As each amateur builder visited the facility and
24 claimed specific personal property items, Thornton-Smith added a more
25 specific description of each personal property item. Id. at 4; Thornton-
26 Smith Declaration at 5. As a result, the inventory spreadsheets became

1 lengthier. Thornton-Smith Declaration at 5. Amateur builders who
2 visited the facility later in the facility inventory process received
3 more detailed versions of the inventory spreadsheets. Thornton-Smith
4 Declaration at 5. Thornton-Smith further admitted that she may have made
5 mistakes in printing out the inventory spreadsheets because of her
6 limited computer skills. Supplemental Thornton-Smith Declaration at 5.

7 Emerson also asserted that he did not identify and/or tag
8 general inventory items because both Thornton-Smith and King advised him
9 only to identify and/or tag personal property items belonging to BSA and
10 Brink. Emerson Declaration at 3-4. There is nothing inconsistent in
11 those statements with the inventory process provided for in the
12 Stipulated Inventory Order. He claimed that Thornton-Smith never advised
13 him that he should have been identifying and/or tagging personal property
14 items necessary to complete the aircraft of BSA and Brink.⁸ Emerson
15 Declaration at 4. She would not have been doing her job if she had.

16 Thornton-Smith explained that she told Emerson "to tag anything
17

18 ⁸ Thornton-Smith noted that Emerson tagged other personal property
19 items in addition to those listed in the inventory spreadsheet as already
20 identified as belonging to BSA and Brink. Supplemental Thornton-Smith
21 Declaration at 6. According to King, Emerson tagged "general inventory
22 [items], such as intake covers, instrument panel harnesses, and cables."
23 King Declaration at 4.

24 Emerson explained that he did not tag any general inventory items.
25 Emerson Declaration at 6. He added to the inventory spreadsheet personal
26 property items previously assigned and owned by BSA; the intake covers
27 were painted with BSA's custom paint, the wiring harness was embossed
28 with BSA's serial number, and the cables already were in BSA's aircraft.
29 Id.

30 Regardless of whether Emerson did or did not tag general inventory
31 items, Emerson had the opportunity to identify and tag general inventory
32 items during his visit, as provided for under paragraph 4(b) of the
33 Stipulated Inventory Order.

1 that he felt belonged to either [BSA] or Brink." Thornton-Smith
2 Deposition, 65:15-16. She specifically told him that he could "identify
3 any property in the facility in which BSA or Brink claimed an interest,
4 without limitation." Thornton-Smith Declaration at 4. Thornton-Smith
5 also stated that Emerson was "allowed anywhere in the facility."
6 Thornton-Smith Deposition, 65:22; Thornton-Smith Declaration at 4. King
7 asserted that he never "instructed [Emerson] that he should not claim
8 anything he wanted to claim." Supplemental King Declaration at 3. King
9 averred that he "said nothing to Emerson regarding any instructions
10 regarding his appointment and in any event [King] would not have said
11 anything or done anything to interfere with CAZ and Emerson in any way."
12 Id.

13 Paragraph 4(b) of the Stipulated Inventory Order provided that
14 amateur builders were to be granted entry into the facility to identify
15 "any property in which they claim an ownership interest." As shown in
16 her declarations and at her deposition, Thornton-Smith provided
17 instructions consistent with the objectives of the Stipulated Inventory
18 Order. Neither Thornton-Smith nor King nor the Stipulated Inventory
19 Order limited or narrowed the types of personal property items in which
20 Emerson could claim an ownership interest on BSA's and Brink's behalf.

21 BSA and Brink further claimed that Thornton-Smith and/or CAZ
22 afforded other amateur builders more than one visit to the facility.
23 According to the evidence, however, aside from King and Daryle Ingalsbe
24 (another principal of LTB), no other amateur builder made multiple visits
25 to the facility.

26 Thornton-Smith explained that King and Ingalsbe made claims on

1 multiple occasions because they were continually present at the facility
2 conducting business for LTB. Supplemental Thornton-Smith Declaration at
3 4. King explained that the trustee authorized him and Ingalsbe, as
4 buyers of the debtor's assets, to be present in the facility while CAZ
5 and Thornton-Smith conducted the facility inventory. Supplemental King
6 Declaration at 3. King and Ingalsbe were at the facility to conduct
7 LTB's business. Id.

8 Based on the evidence in the record before me, I conclude that
9 Emerson had the opportunity to participate fully in the facility
10 inventory process to claim personal property owned by BSA and Brink. The
11 defendants have not provided any evidence to create a genuine issue of
12 material fact tending to establish otherwise.

13
14 d. Waiver under Stipulated Inventory Order

15 LTB contends that BSA and Brink waived their right to claim
16 additional personal property items within the facility after their
17 April 30, 2010 appointment. LTB argues that the Stipulated Inventory
18 Order clearly provided that any failure by an amateur builder to claim
19 personal property items during its appointment waived its right to claim
20 such items later.

21 Plainly reading paragraph 4(b) and paragraph 6 of the
22 Stipulated Inventory Order, I agree with LTB that BSA and Brink cannot
23 assert any further claims to additional personal property items at the
24 facility after their appointment. Paragraph 4(b) clearly states that
25 unless alternative arrangements have been made, an amateur builder waives
26 its right to claim specific personal property items in the facility if it

1 fails to assert its claim by the deadline date. Paragraph 6 further
2 bolsters the waiver in providing that the facility inventory is "the
3 exclusive and final method of establishing the ownership of personal
4 property [items] in the facility." Moreover, paragraph 2 of the
5 Stipulated Inventory Order required that the facility inventory be
6 completed by June 7, 2010, in light of the sale of the debtor's assets to
7 China Aviation and LTB, as assignee. Altogether, these provisions
8 imposed a strict deadline by which amateur builders had to claim their
9 ownership interests in specific personal property items.

10 As LTB points out, BSA and Brink had their chance on April 30,
11 2010, to claim an ownership interest in any personal property items at
12 the facility. Through their proxy, Emerson, BSA and Brink did so.
13 Emerson had unrestricted access to the facility. He identified and
14 tagged various personal property items. Emerson could have identified
15 and tagged any personal property item as belonging to BSA and Brink
16 during the appointment. Once he completed his appointment, he waived any
17 further chance to identify and tag any additional personal property items
18 as belonging to BSA and Brink.

19 BSA and Brink have not come forth with sufficient evidence to
20 raise a genuine issue of material fact that they had a right to claim
21 additional personal property items after they completed their April 30,
22 2010 appointment. Accordingly, I conclude that LTB is entitled to
23 summary judgment on Count 1.

24
25 3. Summary judgment on Count 2

26 LTB seeks summary judgment on its claim that it owns all of the

1 personal property items in which BSA and Brink now assert an ownership
2 claim in their Additional Items Lists, as LTB had purchased all of the
3 debtor's assets (with certain exceptions) under the sale. Neither BSA
4 nor Brink, LTB argues, has provided any evidence supporting their alleged
5 ownership claims.

6 BSA and Brink submitted the Additional Items Lists to the
7 trustee, who incorporated these lists as Exhibit A and Exhibit B,
8 respectively, in the Supplemental Status Report and Inventory
9 Confirmation Order. The trustee noted that the personal property items
10 on the Additional Items Lists were subject to competing claims of LTB
11 and/or other amateur builders. Supplemental Status Report at 2.

12 Count 2 is generally but not entirely congruent with Count 1.
13 While it is true that LTB purchased all of AIR, LLC's assets under
14 Section 1.1 of the China Aviation APA, I cannot determine which of the
15 personal property items in the Additional Items Lists constitute assets
16 purchased by China Aviation and LTB, and what items may have left the
17 facility with aircraft of other builders. Section 1.1(a) and Section
18 1.1(b) of the China Aviation APA provide that the purchased assets
19 include all equipment, molds, hand tools, all supply inventories, raw
20 materials, parts and finished goods inventory owned by AIR, LLC. The
21 brief descriptions of these personal property items are not sufficiently
22 specific for me to determine which personal property items constitute
23 these assets.

24 Moreover, as BSA and Brink point out, the dispute over the
25 personal property items listed in the Additional Items Lists may involve
26 other individual amateur builders, not LTB. I cannot determine from the

1 evidence in the record before me whether the personal property items in
2 the Additional Items Lists actually belong to LTB. Accordingly, I will
3 grant summary judgment in favor of LTB on Count 2 with respect to all
4 personal property items retained by LTB at the facility. However, LTB
5 has no standing as the "real party in interest" to a declaratory judgment
6 that it owns items of personal property on the Additional Items List that
7 have left the facility with the aircraft of other amateur builders. See
8 Warth v. Seldin, 422 U.S. 490, 499 (1975):

9 The plaintiff generally must assert his own legal
10 rights and interests, and cannot rest his claim to
11 relief on the legal rights or interests of third
12 parties.

13 Since such other amateur builders are not parties in this Adversary
14 Proceeding, and my jurisdiction is at best questionable with respect to
15 any claims that BSA and Brink may have against such other amateur
16 builders, to the extent I do not grant summary judgment to LTB on Count
17 2, I will dismiss it for failure to state a claim upon which relief can
18 be granted.

19 4. Summary judgment on Counterclaim 1

20 LTB moves for summary judgment on Counterclaim 1 for failure to
21 state a claim upon which relief can be granted. LTB's Motion is
22 procedurally compatible with Civil Rules 12(c) and 12(h)(2), applicable
23 under Rule 7012(b). In Counterclaim 1, defendants seek a judgment
24 "declaring the Trustee's Supplemental Report Re Inventory (August 14,
25 2010) (Docket No. 507) as the operative Inventory Report." I conclude
26 that LTB's Motion is well taken because I have no idea what the

1 defendants' request for relief in Counterclaim 1 means.

2 Factual allegations in a complaint or counterclaim "must be
3 enough to raise a right to relief above the speculative level," Bell Atl.
4 Corp. v. Twombly, 550 U.S. 544, 555 (2007), and must be adequate to
5 "state a claim to relief that is plausible on its face." Ashcroft v.
6 Iqbal, ___ U.S. ___, 129 S. Ct. 1937, 1949 (2009). I have no idea what
7 relief the defendants are requesting in terms of the potential operative
8 effect of the claim stated in Counterclaim 1, and I believe that under
9 the standards announced by the Supreme Court in Twombly and Iqbal, both
10 the bankruptcy court and LTB are entitled to know what effect defendants
11 have in mind for Counterclaim 1 if it is to proceed beyond the summary
12 judgment stage. No such illumination has been provided by defendants in
13 response to the Motion. Summary judgment is appropriate in favor of LTB
14 on Counterclaim 1.

15
16 5. Summary judgment on Counterclaim 3

17 As to the Counterclaim 3, I agree with LTB that it is moot, as
18 BSA and Brink were afforded a reasonable opportunity and already have
19 identified personal property items at the facility in which they claim an
20 ownership interest. BSA and Brink identified further claimed personal
21 property items by compiling the Additional Items Lists. Because no
22 genuine issue of material fact has been raised as to Counterclaim 3, I
23 grant summary judgment in favor of LTB.

24
25 6. Summary judgment on Counterclaim 4

26 With respect to the Counterclaim 4, I again agree with LTB that

1 it is moot, as BSA, Brink and LTB already have attempted to resolve their
2 disputes over the ownership of certain personal property items through a
3 court-sponsored mediation process with Judge Brown. Accordingly, I grant
4 summary judgment in favor of LTB, as no genuine issue of material fact
5 exists as to Counterclaim 4.

6
7 Conclusion

8 Based on the record before me and my application of applicable
9 legal authorities, I will grant the Motion as to Count 1, and
10 Counterclaims 1, 3 and 4 in its entirety; I will grant summary judgment
11 in part as to Count 2 and dismiss the balance for failure to state a
12 claim upon which relief can be granted; and I will dismiss Counterclaim 2
13 as moot, as agreed by the parties. Counsel for LTB should submit an
14 order consistent with the conclusions in this Memorandum Opinion within
15 the next ten days.

16 ###

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18 cc: Susan S. Ford
19 Timothy A. Solomon
20 Marjorie A. Elken
21 Lisa M. Schiller
22 Norman Malinski
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26