

SIGNED.



Dated: August 03, 2009

Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re)	Chapter 11
)	
SCOTTSDALE AUTO SALON, LLC, an)	CASE NO. 2:09-bk-03998-RJH
Arizona limited liability company,)	CASE NO. 2:09-bk-04003-RJH
)	
Debtor.)	(Jointly Administered)
_____)	
)	
BELL BUSINESS ASSOCIATES, L.L.C.,)	MEMORANDUM DECISION GRANTING
)	LEGACY BANK PARTIAL SUMMARY
Debtor.)	JUDGMENT
_____)	

After review of the memoranda, affidavits and oral argument, the Court finds and concludes that Legacy Bank is entitled to partial summary judgment to the effect that the car wash system and the fuel system, as the defined in Legacy Bank's motion, constitute fixtures. Interim Capital has failed to demonstrate the existence of any material factual issue in the application of the three prong test. The undisputed facts demonstrate that both the car wash system and the fuel system, including the above ground gas pumps and the conveyor, pipes, electrical and control systems for the car wash, are annexed to the realty or to something appurtenant to the realty. The facts also establish that they are adapted for the use for which the real estate was improved. Finally, there are no facts sufficient to rebut the presumption that the owner of the real estate intended to make both the fuel system and the car wash system a permanent accession to the freehold. The fact that the gas pumps or even the car wash conveyor could be moved and replaced in a matter of hours or days without damaging the real estate does not alone rebut that presumption, just as it would not rebut the presumption as applied to a water heater or an air conditioner that is part of a personal residence.

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Finally, there are no facts establishing that there was any agreement with Legacy Bank that the fuel system and the car wash system would be treated as personalty.

Legacy Bank may upload an appropriate form of order.

DATED AND SIGNED ABOVE

Copy of the foregoing e-mailed this 3rd day of August, 2009, to:

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