SIGNED.

Dated: September 23, 2010

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re	)	Chapter 11
	)	
LOOP 76, LLC, an Arizona limited liability company,	)	CASE NO. 2:09-bk-16799-RJH
	)	
	)	MEMORANDUM DECISION DENYING
Debtor.	)	OBJECTION TO CLAIM OF GENESEE FUNDING

The pending plan of reorganization includes a separate class for the secured claim of Genesee Funding, L.L.C., which is objected to by secured creditor Wells Fargo Bank. The debt is scheduled by the Debtor in the amount of $7,865 and is allegedly secured by a Tractel Griphoist that is in the Debtor's possession. Wells Fargo's principal objections hinge on the fact that the Debtor never specifically ordered a Griphoist from Genesee but instead had wanted to purchase a high pressure washing system; there is no document identified as a security agreement that specifically grants Genesee a secured interest in the Griphoist; and the terms and interest rate for repayment of the debt are undefined or ambiguous.

It is undisputed, however, that Genesee delivered the Griphoist to the Debtor and has never been paid for it. It is also undisputed that Debtor and Genesee signed a written agreement, a few months prior to delivery of the Griphoist, by which Debtor agreed to purchase some window washing equipment from Genesee, and agreed to give Genesee a security interest in any equipment purchased. And, finally, it is undiputed there is a U.C.C.-1 financing statement filed the day after the petition date, and signed by Genesee, describing the Griphoist as the collateral to secure a debt for $7,865.

Based on these undisputed facts, the Court must find and conclude that the preponderance of the evidence establishes that the Debtor owes Genesee some money. Because

it is undisputed that Genesee delivered the Griphoist to the Debtor and has not been paid for it, the Court must find that is more likely than not that the Debtor owes a debt to Genesee on that account.

And because the May 1, 2009 letter agreement indicates the parties' agreement that the Debtor granted Genesee a security agreement in any equipment Genesee delivered, the Court must find and conclude that the preponderance of the evidence establishes the existence of a security agreement applicable to all equipment Genesee subsequently delivered. The undisputed facts established that the Griphoist was received by the Debtor sometime after July 4, 2009, which means that the July 21 U.C.C. filing was within the grace period allowed by Arizona law for purchase money security interests. By virtue of Code §§ 362(b)(3) and 546(b)(1)(A), that postpetition perfection of the security interest was not stayed by the automatic stay.

Based on these facts, the Court must find and conclude that the preponderance of the evidence establishes that Genesee is secured by a security interest in the Griphoist.

It is certainly true that many of the business dealings between the Debtor and Genesee were sloppy at best, and some of the basic terms for repayment of the debt are entirely missing from the documentation. Genesee's response to Wells Fargo's discovery has been less than candid, its status as a Colorado corporation is not in good standing, and its principal has effectively been found guilty of fraud in another bankruptcy case determined to involve a Ponzi scheme. None of these facts, however, is sufficient to conclude that a debt does not exist or that is was not secured.

IT IS THEREFORE ORDERED that Wells Fargo's objection to confirmation based on the classification and treatment of the Genesee claim is overruled. This is not a final order, however, because it does not resolve either the confirmability of the plan or the allowance of the Genesse claim.

DATED AND SIGNED ABOVE

Copy of the foregoing mailed/e-mailed
this 23rd day of September, 2010, to:

Mark C. Hudson, Esq.
Schian Walker, P.L.C.
ecfdocket@swazlaw.com
Attorney for Debtor

Susan G. Boswell, Esq.
Quarles & Brady, LLP
sboswell@quarles.com
Attorney for Wells Fargo Bank

Barbara Caldwell, Esq.
Aiken Schenk Hawkins & Ricciardi, P.C.
blc@ashrlaw.com
Attorney for Maricopa County Treasurer

Gregory Harrington
175 Oak Drive
Pinewood, AZ 86017

Elizabeth C. Amorosi, Esq.
U.S. Trustee's Office
elizabeth.c.amorosi@usdoj.gov

Jennifer A. Giaimo, Esq.
U.S. Trustee's Office
jennifer.a.giaimo@usdoj.gov

/s/ Pat Denk
Judicial Assistant