

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT  
BUSINESS LITIGATION SESSION  
CIVIL ACTION NO. 13-4428

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LLOYDS BANK PLC, f/k/a Lloyds TSB Bank plc,  
In its capacity as Facility Agent,

Plaintiff,

v.

SERVICE POINT USA, INC.,

Defendant, and

CITIZENS BANK OF MASSACHUSETTS,

Trustee Process Defendant.

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**RECEIVER’S OPPOSITION TO LLOYDS BANK PLC’S MOTION FOR AN ORDER  
AUTHORIZING AND DIRECTING TURNOVER OF CERTAIN COLLATERAL PROCEEDS  
AND REQUEST FOR HEARING**

Francis C. Morrissey, the duly appointed receiver (the “Receiver”) in the above-captioned action hereby opposes Plaintiff Lloyds Bank PLC’s Motion for an Order Authorizing and Directing Turnover by the Special Receiver of Certain Collateral Proceeds. (the “Turnover Motion”)

**PROCEDURAL AND FACTUAL BACKGROUND**

1. This civil action arises from: (1) a loan facility agreement between Plaintiff Lloyds Bank PLC as Agent for certain lenders (“Lloyds”) and Defendant Service Point USA, Inc. (“SPU”) (and certain of its affiliates) as obligor in the aggregate principal amount of € 75,926,281 Euro (approximately \$99 million USD), and (2) a collateral agreement between the parties pursuant to which SPU apparently granted Lloyds a security interest in substantially all of SPU’s assets.

Complaint ¶¶ 1, 5-9

2. Prior to the commencement of this litigation, SPU operated a business which provided managed printing services, also known as reprographics, to engineering, architecture, planning and construction firms on the East Coast of the United States. Complaint, ¶ 3. SPU employed approximately 100 individuals and operated from location in Philadelphia, New York, New Haven, Providence, Boston, Cambridge, and Woburn. And according to the Boston Business Journal SPU had revenue of about \$14.2 million through the first nine months of 2013. A core component of SPU's business was providing copiers and other reprographic equipment to its customers. Some of SPU's equipment was owned outright while other equipment was leased from third parties or subject to security interests in favor of third parties.

3. Since October 23, 2013, GGP Capital PLC, SPU's penultimate parent, has been in an administration proceeding under the insolvency laws of England and Wales. Complaint, ¶ 11

4. Shortly thereafter, on November 8, 2013, SPU stopped all business operations and terminated all of its employees. Complaint, ¶ 12

5. Lloyds claims a first priority security interest in substantially all of SPU's assets, based on among other things, a UCC Financing Statement filed with the Massachusetts Secretary of State on March 22, 2011. Lloyd's financing statement covers "All assets of the Debtor now owned or at any time hereafter acquired or in which the Debtor now has or at any time in the future may acquire an interest and all proceeds thereof."

6. While Lloyd's claims there are no other prior financing statements covering SPU's accounts as original collateral, these are more than three dozen prior financing statements filed by various equipment lessors, financiers, and dealers covering certain of SPU's equipment.

7. In the wake of SPU's sudden shut down, Lloyd's initially enforced its security interest against SPU's accounts. To assist with its enforcement of security interest against this collateral, Lloyd's engaged J & P Associates limited ("J & P Associates") of Leicestershire, England as its "collection agent." As of January 29, 2014, J & P Associates had collected \$185,164.46 from SPU's

account debtors. These funds are on deposit in a bank account in the United Kingdom under the control of J & P Associates.

8. In response to the abrupt shut down of SPU's business, Lloyds also foreclosed its interest in SPU's equipment, inventory, general intangibles (but not payment intangibles) and intellectual property and assigned those assets to The Color Company I, Inc. ("The Color Company"). Complaint, ¶ 13 This sale was memorialized by an Agreement for the Purchase and Sale of Assets dated as of December 24, 2013 (the "APA") and, on information and belief, was closed on January 13, 2014.

9. SPU's (a) accounts, cash, and cash equivalents, chattel paper, commercial tort claims, deposit accounts, instruments, investment property and letter of creditor rights, (b) un-assignable and un-assumed third party leases, instruments, contracts and agreements, (c) leased assets, and other assets identified in the APA (collectively, the "Excluded Assets"), however, were excluded from Lloyds's sale to The Color Company and were not assigned that entity. Id.

10. With respect to SPU's remaining assets, on December 17, 2013, Lloyds commenced the above-captioned civil action seeking, among other things, the appointment of "a special receiver over the Excluded Assets to protect and preserve the same from waste or loss, and to liquidate the Excluded Assets for the benefit of [Lloyds] and SPU's other creditors."

11. On December 30, 2013, the Court allowed Lloyd's request and entered an order (the "Appointment Order") appointing Francis C. Morrissey (the "Receiver") as receiver for SPU's remaining assets.

12. As detailed in the Receiver's Initial Inventory and Annual Account the principal asset in this estate is SPU's accounts receivable. According to Lloyds's Bank, as of January 29, 2014, SPU was owed not less than €1,838,797.03 from its pre-receivership account debtors. In addition, as of January 2, 2014, SPU held the following funds in accounts at Citizens Bank:

TITLE	BALANCE
SERVICE POINT USA, INC.	\$50,039.35
SERVICE POINT USA, INC.	\$495,751.94

13. Through the Turnover Motion, Lloyds seeks to recover the funds collected by J & P Associates from SPU's account debtors but not the Citizens funds. In support of its request, Lloyds claims that it "has established the validity and priority of [its] first lien, giving it rights superior to all other potential SPU creditors."

#### OPPOSITION

14. Typically in an insolvency case, interim and final distributions to creditors are only made on notice to the debtor, other creditors and interested parties. Here, SPU has no employees and is not defending this litigation. In addition despite diligent efforts<sup>1</sup>, the Receiver has not been able to obtain a list of SPU's creditors (as well as other basic financial information) and is unable to give notice to them of the relief represented in Lloyd's Turnover Motion. At minimum, other creditors should have an opportunity to be heard on the Turnover Motion.

15. The Receiver also opposes the Turnover Motion on the grounds that Lloyds has not met its burden of establishing the priority of its security interest and the Receiver lacks sufficient information at this time to independently confirm the validity and priority of Lloyds's lien on SPU's accounts.

16. While Lloyds's claims that no other creditor has filed a prior financing statement covering SPU's accounts as *original collateral*, there are more than three dozen prior financing

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<sup>1</sup> The efforts include: engaging a forensic accounting firm Verdolino & Lowey, physically searching SPU's former headquarters in Woburn, Massachusetts, requesting a list of creditors from SPU's affiliate Service Point UK Limited and its successor The Color Company and attempting to access SPU's servers at its former Woburn headquarters. The Receiver will also be interviewing Kevin Evers, SPU's former Managing Director on Wednesday, April 9, 2014 and will seek a creditors list from him at that time.

statements filed by various equipment lessors, financiers, and dealers covering certain of SPU's equipment. These creditors may claim a senior security interest in the accounts collected by J & P Associates as *proceeds*. Under the Uniform Commercial Code ("UCC") (codified in Massachusetts at Mass Gen Law ch.106), a secured party's interest continues in the identifiable proceeds of its collateral (See, UCC § 9-315(a)(2)) and the priority of its security interest is determined by the date the secured party filed a financing statement covering the original collateral (See, UCC § 9-322(b)). As a result, to the extent that any accounts collected by J & P Associates are determined to be proceeds of equipment collateral covered by prior financing statements, other creditors may hold an interest senior to Lloyds in those accounts. Any distribution of the funds collected by J & P Associates from SPU's account debtors, accordingly, should be conditioned on notice to creditors who filed financing statements covering SPU's assets prior March 22, 2011 (the date of Lloyds's filed its financing statement) or a satisfactory showing by Lloyds that the accounts collected by J & P Associates are not proceeds of other creditors' collateral. Absent notice to competing creditors or a showing that the funds collected by J & P Associates are not proceeds of other creditors' collateral, the Turnover Motion should be denied.

17. The Receiver has discussed concerns with counsel to Lloyds and Lloyds has committed to serving the Turnover Motion on all of SPU's secured creditors who have filed financing statements prior to March 22, 2011. Lloyds also disputes that the accounts collected by J & P Associates are the proceeds of other creditors' collateral. Among other things, Lloyds contends that the accounts were generated by the sale of inventory and services provided to SPU's customers rather than the disposition of equipment of collateral. Lloyds has also agreed to provide a supplemental affidavit in support of its position.

18. Finally, the Receiver believes that a hearing on the Turnover Motion would be helpful to address any concerns the Court may have with respect to the relief sought in the Turnover Motion and respectfully requests that the Court schedule a hearing to consider the Turnover Motion.

- A. Denying the Turnover Motion; and
- B. Granting such other and further relief as this Court deems just and proper.

Dated: April 7, 2014

Respectfully submitted,  
FRANCIS C. MORRISSEY, RECEIVER



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**CERTIFICATE OF SERVICE**

I, Francis C. Morrissey, hereby certify that on April 7, 2014 I served a copy of the above Opposition on Counsel to Lloyds Bank, PLC, Michael J. Fencer, Jager Smith, P.C., Once Financial Center, Boston, Massachusetts and Mr. Kevin Evers, Registered Agent for Service Point USA, Inc., 155 Walpole Street, Dover, Massachusetts 02030.



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Francis C. Morrissey