

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**
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SEF SIM2018, LLC,
an ARIZONA limited liability company,

CASE NO.: _____

Plaintiff,
vs.

**UNITED STATES SMALL BUSINESS
ADMINISTRATION, and ISABELLA
CASILLAS GUZMAN, in her official
capacity as Administrator of the UNITED
STATES SMALL BUSINESS
ADMINISTRATION,**

Defendants.

_____/

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, **SEF SIM2018, LLC** (“Plaintiff SEF”) hereby files this Complaint against Defendants **UNITED STATES SMALL BUSINESS ADMINISTRATION** and its Administrator **ISABELLA CASILLAS GUZMAN** (“Administrator Guzman” and, collectively with Defendant United States Small Business Administration, “SBA”), and for its claims alleges as follows:

PARTIES

1. Plaintiff SEF is an Arizona LLC authorized to do business in the state of Florida and has an office at 1320 S. Priest Drive, Suite 101, Tempe, AZ 85281.

2. The SBA is a federal agency of the United States of America and has an office at 409 3rd Street, S.W., Washington, DC 20416.

3. Isabella Casillas Guzman is the Administrator of the United States Small Business Administration. Administrator Guzman is named a party to this action in her official capacity.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action and the authority to issue declaratory and injunction relief under 28 U.S.C. § 2201 and § 2202.

5. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(e)(1).

6. This Court has authority to issue declaratory and injunction relief under 28 U.S.C. § 2201 and § 2202.

FACTUAL BACKGROUND

7. Plaintiff SEF holds title to certain property consisting of a B737 aircraft flight simulator manufactured by CAE serial number 2NB4 and its related equipment (collectively, the “Equipment”) pursuant the attached certificate of sale dated January 2, 2019 (the “COS”). A copy of the COS is attached hereto as Exhibit 1 and is incorporated herein by reference.

8. Plaintiff SEF, as owner, leases the Equipment to its lessee Aerostar Training Services, LLC (“Aerostar”), which is located at 3954 Merlin Drive Kissimmee, Florida 34741, in accordance with Aircraft Flight Simulator Master

Lease Agreement dated June 4, 2018, and the Second Amended Equipment Schedule No. 1 (collectively, the “Lease”). A copy of the Lease is attached hereto as Exhibit 2 and is incorporated herein by reference.

9. On January 4, 2019, Plaintiff SEF filed a UCC-1 financing statement with the Secretary of State of Florida which reasonably identified the Equipment and put third parties on notice of the Lease and the intent of the parties (the “State UCC-1”). A copy of the State UCC-1 is attached hereto as Exhibit 3 and is incorporated herein by reference.

10. On January 22, 2019, Plaintiff SEF filed a UCC-1 financing statement in Osceola County, Florida where the Equipment is located (the “County UCC-1”). The County UCC-1 reasonably identifies the Equipment and puts third parties on notice of the Lease and the intent of the parties. A copy of the County UCC-1 is attached hereto as Exhibit 4 and is incorporated herein by reference.

11. On May 5, 2020, Aerostar, the lessee, received an SBA Economic Injury Disaster Loan (EIDL) (SBA reference #200) in the amount of four hundred and ninety-ninety thousand dollars (\$499,000) (the “SBA Loan”).

12. On May 5, 2020, pursuant to the SBA Loan, the SBA filed a UCC-1 financing statement with the Secretary of State of Florida which described the collateral, in part, as “[a]ll tangible and intangible personal property, including, but not limited to: (a) inventory, (b) equipment ... The security interest Borrower grants

includes all accessions, attachments, accessories, parts, supplies and replacements for the Collateral” located at 3954 Merlin Drive, Kissimmee, Florida (the “SBA UCC-1”). Even though the State UCC-1 and County UCC-1 clearly identify the Equipment as the property of Plaintiff SEF, the blanket lien language contained in the SBA UCC-1 could be interpreted to grant the SBA a lien on the Equipment. A copy of the SBA UCC-1 is attached hereto as Exhibit 5 and is incorporated herein by reference.

13. Upon learning of the SBA UCC-1 and the potential lien claim against the Equipment, Plaintiff SEF demanded Aerostar obtain a UCC release of lien from Defendant SBA. Thereupon, Aerostar submitted an application to the SBA for a modification of the language identifying the SBA’s lien to specifically except out the Equipment and Lease from the SBA UCC-1.

14. On June 6, 2022, Aerostar notified Plaintiff SEF that Defendant SBA denied Aerostar’s request to approve the modification and specifically excise the Equipment and Lease from the SBA UCC-1. According to the SBA, “[t]he SBA forms are approved by the Office of General Counsel, and they dictate what can or cannot be added to the agreements. Unfortunately we are unable to modify those forms.” A copy of the notice of denial by the SBA is attached hereto as Exhibit 6 and is incorporated herein by reference.

COUNT I.
DECLARATORY JUDGMENT

15. Plaintiff SEF realleges and reiterates paragraphs 1-14.

16. Plaintiff SEF requests declaratory relief confirming: (i) the Equipment is the property of Plaintiff SEF; and (ii) the SBA does not have a lien on the Equipment.

17. There is currently doubt as to the existence or nonexistence of a lien in favor of the SBA on the Equipment.

18. A declaratory judgment relief is proper where litigation seems unavoidable.

19. This request for the declaratory judgment is not being used to satisfy idle curiosity or to answer abstract questions.

20. There is a bona fide, actual, present, and practical need for the declaration sought. The existence of the SBA UCC-1 creates a cloud on SEF's title to its Equipment and Lease as lessor and prevents its ability to finance or otherwise sell and transfer these assets. This makes the rights of SEF and the SBA adverse, justiciable, and ripe for review.

WHEREFORE, Plaintiff SEF requests that this Court enter a declaratory judgment: (i) determining the Equipment is the property of SEF; (ii) determining SBA does not have a lien on the Equipment and Lease; (iii) ordering SBA execute

and record a UCC-3 financing that releases the Equipment from its lien; and (iv) for such other and further relief as this Court deems just and proper.

DATED this 17th day of June 2022.

/s/ R. Scott Shuker
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