

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Newport News Division**

In re: Michael D. Vick,  
  
Debtor.

Case Number 08-50775-FJS  
Chapter 11

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Official Committee of Unsecured Creditors,

Plaintiff,

v.

APN \_\_\_\_\_

Michael D. Vick,  
MV7, LLC,  
and  
Old Point Financial Corporation, t/a  
The Old Point National Bank,

Defendants.

**COMPLAINT**

NOW COMES the Official Committee of Unsecured Creditors (the “Committee”), by counsel, and files this Complaint against Michael D. Vick (the “Debtor”), MV7, LLC (“MV7”), and Old Point Financial Corporation, t/a The Old Point National Bank (“Old Point”), seeking to obtain declaratory judgment as to the Debtor’s interest in certain escrowed assets. And for its Complaint, the Committee respectfully states as follows:

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### **THE PARTIES**

1. The Committee is the Committee of Unsecured Creditors formed on or about July 15, 2008, by the local office of the United States Trustee.

2. The Debtor is an individual resident of Virginia, currently incarcerated in the federal system.

3. MV7 is a Virginia limited liability company. Upon information and belief, MV7 is wholly owned by the Debtor. *See* Schedule B (as amended on November 25, 2008, “Amended Schedule B”), docket entry #285 (describing the Debtor’s 100% ownership interest in MV7, LLC).

4. Old Point is a financial institution based in Hampton Roads, Virginia. Old Point is a creditor of MV7. In particular, Old Point’s claim arises from certain loans secured by four (4) cars titled solely in the name of MV7 (collectively, the “MV7 Car Loans”):<sup>1</sup> (1) a gray 2007 Land Rover, VIN # SALMF13427A253175; (2) a 2007 Cadillac Escalade, VIN # 1IYFK63847R277940; (3) a 2006 Cadillac DTS, VIN # 1G6KD57936U234877; and (4) a white 2007 Land Rover, VIN # SALMF15447A239825. *See* Limited Objection to Motion to Approve Sale of Vehicle Free and Clear of Liens and Interests (the “Old Point Objection”), docket entry #358, pp. 1-2. According to Old Point, each of the MV7 Car Loans is in default, and the value of the cars may be less than the amounts outstanding on the loans. *Id.* at 2-3.

### **JURISDICTION AND VENUE**

5. This proceeding is an adversary proceeding brought pursuant to Rules 7001(2) and (9) of the Federal Rules of Bankruptcy Procedure.

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<sup>1</sup> Old Point claims that the Debtor is jointly and severally liable to Old Point in connection with the MV7 Car Loans. *See* Old Point Objection, p. 1. However, the Debtor has not scheduled Old Point as a creditor in connection with the MV7 Car Loans, and Old Point did not file a proof of claim in the Debtor’s bankruptcy proceeding.

6. The Bankruptcy Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157. This adversary proceeding is a core proceeding brought pursuant to 28 U.S.C. § 157(b)(2)(K).

7. Venue for this adversary proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### **FACTS**

8. On July 7, 2008 (the “Petition Date”), the Debtor filed, in United States Bankruptcy Court for the Eastern District of Virginia, Newport News Division, a petition for relief under chapter 11 of title 11 of the United States Code. No trustee has been appointed and the Debtor remains in possession and control of his assets and affairs pursuant to 11 U.S.C. § 1107.

9. Upon information and belief, on or about November 19, 2007, MV7 purchased a 2008 Mercedes Benz S550, VIN #WDDNG71X98A163876 (the “Mercedes”), using the Debtor’s own personal funds. *See* Footnote 28 to Amended Schedule B (“At the § 341 meeting, the Debtor discussed [under oath] several cars which are owned by MV7, LLC but for which the Debtor paid out of his personal funds: ... 2008 Mercedes Benz, transferred to David Talbot ...”).

10. Upon information and belief, the Debtor met David Talbot (“Mr. Talbot”) in or around April 2008. Mr. Talbot acted as the Debtor’s personal and/or financial advisor through the Petition Date. *See* Debtor’s Motion to Appoint David Talbot as Financial Advisor to the Debtor (the “Talbot Motion”), docket entry #23, p. 5 (“Mr. Talbot has represented the Debtor since April 2008 and estimates that he has spent approximately an average of 8-10 hours per day assisting the Debtor in connection with his financial affairs.”).

11. At some point prior to the Petition Date, Mr. Talbot took possession of the Mercedes, and the Florida Division of Motor Vehicles transferred title to the Mercedes to Mr. Talbot on July 8, 2008.

12. On July 10, 2008, the Debtor filed an application in this Court seeking to appoint Mr. Talbot as his financial advisor. The Talbot Motion described Mr. Talbot's pre-petition compensation as follows: "[T]he only consideration received by Mr. Talbot during the pre-petition period, as payment for prior services rendered, is a 2008 Mercedes Benz S500 that was physically transferred to Mr. Talbot approximately six weeks ago." Talbot Motion, p. 5. The Talbot Motion requested compensation for Mr. Talbot's ongoing services to the Debtor, and stated: "Mr. Talbot will retain the [Mercedes] to secure the payment of fees due to him for post-petition services rendered to the Debtor." Talbot Motion, pp. 5-6.

13. Upon learning additional information about Mr. Talbot, the Debtor moved to withdraw the Talbot Motion on August 8, 2008. By Order dated August 29, 2008, the Court directed the Committee to take possession of the Mercedes, and authorized its sale by public auction. *See* docket entry #137. The Committee thereafter secured possession of the Mercedes, and marketed it for sale.

14. By Order dated December 29, 2008, the Court approved the sale of the Mercedes, free and clear of liens and interests, for \$65,000, less certain expenses (the "Mercedes Proceeds"). *See* docket entry #382. The Committee is holding the Mercedes Proceeds in escrow pending a decision by this Court as to the proper distribution of the funds.<sup>2</sup>

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<sup>2</sup> As noted above, Old Point filed a Limited Objection to the Sale of the Mercedes, asserting its alleged interest in the Mercedes Proceeds and requesting an escrow of the funds.

**COUNT I:**  
**REQUEST FOR DECLARATORY JUDGMENT**

15. The Committee hereby incorporates paragraphs 1 through 14 as if fully set forth herein.

16. The Debtor's estate and Old Point have competing claims to the Mercedes Proceeds, creating an actual controversy.

17. At all times relevant hereto, the Debtor exercised full dominion and control over the Mercedes and used it as his own. As noted above, prior to the Petition Date, the Debtor transferred the Mercedes to Mr. Talbot as compensation for Mr. Talbot's services as a personal and/or financial consultant to the Debtor. *See supra* ¶¶ 10 and 12 (describing the transfer of the Mercedes *by the Debtor* to Mr. Talbot as compensation for Mr. Talbot's past services *to the Debtor* and as security for compensation for future services *to the Debtor*). Moreover, the Debtor has testified that he used his personal funds to purchase the Mercedes. *See supra* ¶ 9.

18. By his actions prior to the Petition Date, the Debtor, as the sole controlling equity owner of MV7, elected to transfer the Mercedes out of MV7 to himself and for his own use and benefit. Accordingly, the Debtor's estate had at the Petition Date, and has at this time, the sole equitable and legal title to the Mercedes and the Mercedes Proceeds. From the time of the transfer of possession of the Mercedes to Mr. Talbot, Old Point's debtor, MV7, was divested of all interest in the Mercedes and the Mercedes Proceeds. *See generally* Grupo Mexicano De Desarrollo v. Allied Bond Fund, Inc., 527 U.S. 308, 320-21 (1999) (finding that an unsecured creditor has no interest in property of its debtor in the absence of a lien).

19. Because MV7 had record title to the Mercedes prior to the transfer to Mr. Talbot, Old Point claims an interest in the Mercedes Proceeds to cover any deficiency claim it may have against MV7 after the sale of some or all of the collateral securing the MV7 Car Loans.

20. To the extent the Mercedes was ever property of MV7, Old Point has, at most, a claim that the Debtor converted MV7's property pre-petition. Notwithstanding Old Point's claims to the contrary, an unsecured claim against the Debtor simply cannot defeat the Debtor's direct interest in the Mercedes Proceeds.

WHEREFORE the Official Committee of Unsecured Creditors respectfully requests that this Honorable Court enter an Order: (i) deeming the Mercedes and Mercedes Proceeds to be property of the Debtor's estate, free and clear of any interest of Old Point; (ii) directing the Committee to distribute the Mercedes Proceeds to the Debtor's estate; and (iii) granting such further relief as it deems equitable, just and proper.

Respectfully submitted,

OFFICIAL COMMITTEE OF UNSECURED CREDITORS

By:                     /s/ Laura C. Pyle                      
Of Counsel

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