

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MOBILIZATION FUNDING, LLC, a
South Carolina limited liability company,

Plaintiff,

v.

HALVORSON CONSTRUCTION
GROUP, LLC; a Washington limited
liability company; and CEC
ELECTRICAL CONTRACTING, LLC, a
Washington limited liability company,

Defendants.

Case No. 2:18-cv-01412-RAJ

**ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

HALVORSON CONSTRUCTION
GROUP, LLC; a Washington limited
liability company,

Third Party Plaintiff,

v.

JOHN and JANE DOE CHASE,
individually and the marital community
comprised thereof,

Third Party Defendants.

1 This matter comes before the Court on Plaintiff Mobilization Funding’s Motion for
2 Partial Summary Judgment (Dkt. #10). For the reasons stated below, the Court **DENIES**
3 the Motion.

4 **I. BACKGROUND**

5 Plaintiff Mobilization Funding (“Plaintiff” or “Mobilization Funding”) is a South
6 Carolina-based company that provides startup financing to construction subcontractors.
7 Dkt. # 10 at 2. Defendant CEC Electrical Contracting, LLC (“CEC”) is a Washington-
8 based electrical subcontractor that was retained by Defendant Halvorson Construction
9 Group, LLC (“Halvorson”) to perform electrical work for three of Halvorson’s
10 construction projects (the “Halvorson projects”). Dkt. # 1 at ¶¶ 8-10.

11 In May 2017, Mobilization Funding agreed to advance CEC funds in connection
12 with its work on the three Halvorson projects. Dkt. # 10 at 2. On May 10, 2017, CEC
13 executed a promissory note in favor of Mobilization Funding in the amount of
14 \$1,904,761.91. Dkt. # 1 at ¶ 21; Dkt. # 11, Ex. D. As security for the loan, CEC also
15 executed a security agreement, granting Mobilization Funding a security interest in all of
16 CEC’s personal property and accounts. Dkt. # 11, Ex. E. The security agreement
17 specifically identifies CEC’s “contracts receivable” for the three Halvorson contracts as
18 part of the collateral. *Id.* CEC and Mobilization Funding also notified Halvorson of
19 Mobilization Funding’s security interest and on May 15, 2017, the three parties executed
20 a “Directive of Funds for CEC Electrical Contracting, Inc.” (the “Directive of Funds”), in
21 which Halvorson agreed to pay CEC’s receivables from the Halvorson projects directly to
22 Mobilization Funding. Dkt. # 11, Ex. G. On October 17, 2017, Mobilization Funding
23 also filed a UCC-1 financing statement with the Washington Department of Licensing
24 identifying CEC as the debtor and describing the aforementioned collateral. Dkt. # 11,
25 Ex. F.

26 As work on the projects progressed, Halvorson became aware that CEC was not

1 paying its vendors, suppliers, and employees. Dkt. #17 at ¶ 6. As a result, in February
2 2018, Halvorson advanced \$65,000 to CEC to allow it to pay its employees. *Id.* During
3 the course of CEC’s contract, Halvorson also made other “advances to CEC to allow
4 CEC to meet its payroll obligations.” Dkt. # 17 at ¶¶ 22-23. Around the same time,
5 Mobilization Funding agreed to advance CEC additional funds and on March 27, 2018,
6 CEC executed a second promissory note in the amount of \$908,705.47 in exchange for
7 the loan. Dkt. # 11, Ex. H. CEC again executed a security agreement granting
8 Mobilization Funding a security interest in CEC’s “contract receivables” for the three
9 Halvorson projects. Dkt. # 11, Ex. I.

10 In March 2018, the parties also modified the Directive of Funds, authorizing
11 Halvorson to divert \$130,000 of Mobilization Funding’s collateral to Halvorson for the
12 “payroll Halvorson funded to CEC” Dkt. # 11, Ex. J. According to Mobilization
13 Funding, Halvorson “did not stop” with the initial \$130,000 and continued to divert
14 “significant amounts (likely hundreds of thousands of dollars) of CEC’s receivables” to
15 repay its “own unsecured loans.” Dkt. # 10 at 5; Dkt. 11 at ¶ 11. On June 20, 2018,
16 Halvorson terminated its contract with CEC because of CEC’s ongoing default. Dkt. #
17 11 at ¶ 11; Dkt. # 17 at ¶ 20. Halvorson informed Mobilization Funding of its decision
18 and engaged new electrical subcontractors to complete the work CEC was originally
19 contracted to perform. Dkt. # 17 at ¶¶ 20-21.

20 On September 25, 2018, Plaintiff brought suit against CEC and Halvorson alleging,
21 among other things, conversion, replevin, and fraud and requesting a declaratory
22 judgment regarding Mobilization Funding’s priority over CEC’s contract receivables.
23 Dkt. #1. On January 24, 2019, Plaintiff moved for partial summary judgment on the
24 discrete issue as to whether its perfected security interest has priority over any claim
25 Halvorson may make to CEC’s account receivables. Dkt. # 10.

1 **II. LEGAL STANDARD**

2 Summary judgment is appropriate if there is no genuine dispute as to any material
3 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.
4 56(a). The moving party bears the initial burden of demonstrating the absence of a
5 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
6 Where the moving party will have the burden of proof at trial, it must affirmatively
7 demonstrate that no reasonable trier of fact could find other than for the moving party.
8 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). On an issue where
9 the nonmoving party will bear the burden of proof at trial, the moving party can prevail
10 merely by pointing out to the district court that there is an absence of evidence to support
11 the non-moving party’s case. *Celotex Corp.*, 477 U.S. at 325. If the moving party meets
12 the initial burden, the opposing party must set forth specific facts showing that there is a
13 genuine issue of fact for trial in order to defeat the motion. *Anderson v. Liberty Lobby,*
14 *Inc.*, 477 U.S. 242, 250 (1986). The court must view the evidence in the light most
15 favorable to the nonmoving party and draw all reasonable inferences in that party’s favor.
16 *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150-51 (2000).

17 However, the court need not, and will not, “scour the record in search of a genuine
18 issue of triable fact.” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996); *see also*
19 *White v. McDonnell-Douglas Corp.*, 904 F.2d 456, 458 (8th Cir. 1990) (the court need
20 not “speculate on which portion of the record the nonmoving party relies, nor is it obliged
21 to wade through and search the entire record for some specific facts that might support
22 the nonmoving party’s claim”). The opposing party must present significant and
23 probative evidence to support its claim or defense. *Intel Corp. v. Hartford Accident &*
24 *Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991).

25 **III. DISCUSSION**

26 In its motion for summary judgment, Plaintiff argues that there is no genuine issue

1 of material fact as to Plaintiff's priority over CEC's receivables. Dkt. #10 at 3.
2 Specifically, Plaintiff contends that it has a perfected security interest and because it is
3 the only party with a perfected security interest, it has priority over any claim Halvorson
4 may make as to CEC's receivables from the Halvorson contracts. *Id.*

5 The Court must first consider whether Mobilization Funding has a perfected
6 security interest.¹ Under the Washington Uniform Commercial Code, "a security interest
7 attaches to collateral when it becomes enforceable against the debtor with respect to the
8 collateral" RCW 62A.9A-203. A security interest is enforceable if: (1) value is
9 given, (2) the debtor has a right in the collateral or power to transfer rights in the
10 collateral to a secured party, and (3) the security agreement is authenticated. RCW
11 62A.9A-203.

12 Here, it appears clear that Mobilization Funding's security interest attached to
13 CEC's receivables from the Halvorson projects. In May 2017, Mobilization Funding
14 agreed to finance CEC's mobilization expenses for the three Halvorson projects and CEC
15 executed a Secured Promissory Note for \$1,904,761.91. Dkt. # 11, Ex. D. This is
16 sufficient to establish value given under RCW 62A.9A-203. CEC had the right to assign
17 its rights in the receivables from the Halvorson contracts, subject to the terms of the
18 subcontracts. Finally, CEC executed a security agreement granting Mobilization Funding
19 a security interest in CEC's personal property, including receivables on the three
20 Halvorson projects. Dkt. # 11, Ex. E.

21 To perfect a security interest, Washington requires the secured party to file a
22 financing statement identifying the debtor, secured party, and describing the collateral.

23 _____
24 ¹ In the absence of a federal statute or treaty, a federal court sitting in diversity generally
25 applies the law of recognition of the state in which it sits. *Erie R. R. Co. v. Tompkins*,
26 304 U.S. 64 (1938). Under Washington law, the law of the jurisdiction in which the
debtor is located governs questions of perfection and priority. RCW 62A.9A-301.
Because CEC is a Washington limited liability company, Washington law applies.

1 RCW 62A.9A-310; RCW 62A.9A-502. Mobilization Funding has provided evidence
2 that it filed a UCC-1 financing statement with the Washington Department of Licensing
3 on June 20, 2017, identifying itself as the secured party and describing the collateral
4 outlined in the security agreement, including the receivables from the Halvorson projects.
5 Dkt. # 11, Ex. F. The Court finds this is sufficient to establish that Mobilization
6 Funding's security interest in CEC's contract receivables was perfected.

7 Thus, the only question remaining before the Court is whether Mobilization
8 Funding's security interest has priority over any claim Halvorson may make to CEC's
9 receivables. Dkt. # 10 at 7. Mobilization Funding argues that its security interest has
10 priority because Mobilization Funding is the only party to have perfected its security
11 interest. Dkt. # 10 at 8. But even if a party properly and promptly perfects its security
12 interest, this protection is not absolute.

13 Under RCW 62A.9A-404(a)(1), an assignee's rights under a contract are subject to
14 all the "terms of the agreement between the account debtor and assignor and any defense
15 or claim in recoupment arising from the transaction that gave rise to the contract." Here,
16 Mobilization Funding's security interest in CEC's contract receivables is subject to the
17 terms of CEC's subcontracts with Halvorson. The terms of the subcontracts provide that
18 "[a]ny Assignee taking an assignment of payment otherwise due under [the Subcontract]
19 shall be bound to the terms and limitations regarding payment contained in [the]
20 Subcontract Agreement" and any assignee taking an interest in the subcontract "shall
21 have no right to payment unless and until all sub-contractors, suppliers, employees, union
22 trust funds, and taxing authorities have been paid and any claims of Contractor have been
23 satisfied." Dkt. # 11, Ex. A at 11, Ex. B at 32, Ex. C at 71.

24 Halvorson argues that it is entitled to set off any amount owed to CEC (or its
25 assignee Mobilization Funding) to cover CEC's existing obligations, pursuant to the
26 terms of the subcontracts. Dkt. # 16 at 10. For example, Halvorson has presented

1 evidence that following CEC's default and termination, Halvorson engaged a new
2 subcontractor to finish the work that CEC was contracted to perform. Dkt. # 17 at ¶ 21.
3 Halvorson may be entitled to offset the costs of this work from any receivables it may
4 owe to CEC. Dkt. # 11, Ex. A at 14. Given Halvorson's potential set-off claim, the
5 Court finds there is still a genuine issue of material fact as to whether Mobilization
6 Funding has priority over any claim to CEC's receivables from the Halvorson contracts.

7 The Court also cannot conclude as a matter of law that Halvorson waived its right to
8 assert a set-off defense under the subcontracts, as Mobilization Funding contends. Dkt. #
9 18 at 3. Mobilization Funding cites two out-of-circuit state court cases where the courts
10 held that an account debtor that erroneously pays the assignor after receiving notice of
11 assignment waives any claim to a set-off, if the claim is raised for the first time after the
12 assigned debt was paid. *Id.* (emphasis added) (citing *Nat. Trade Trust, Inc. v. Merrimac*
13 *Const.*, 524 N.W.2d 14, 16-17 (Minn. Ct. App. 1994); *Reading Co-Op. Bank v. Suffolk*
14 *Constr. Co., Inc.*, 984 N.E.2d 776, 784-85 (Mass. 2013)).

15 But the evidence does not support Mobilization Funding's position. Here, it does
16 not appear that Halvorson erroneously paid the assignor (CEC) the receivables. Instead,
17 Mobilization Funding argues that Halvorson withheld funds due to CEC (and by
18 assignment, Mobilization Funding) to cover its own "unsecured loans" to CEC. Dkt. #
19 10 at 5; Dkt. 11 at ¶ 11. Mobilization Funding does not provide any evidence that
20 Halvorson erroneously paid the contract receivables to CEC without raising a set-off
21 claim. To the extent that Mobilization Funding is arguing that Halvorson improperly
22 withheld (or set off) funds from CEC's receivables to cover the funds it advanced to CEC
23 for payroll expenses, that is not the discrete issue raised by this Motion.

24 Because there is still a material question of fact as to what Halvorson owes CEC
25 under the subcontracts and the scope of any potential set-off claim under RCW 62A.9A-
26 404, the Court finds this issue is inappropriate for summary judgment.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiff's Motion for Partial Summary Judgment (Dkt. #
3 10) is **DENIED**.

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5 DATED this 25th day of September, 2019.

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9 The Honorable Richard A. Jones
10 United States District Judge