

	<i>R&J Pizza Corp</i>	<i>Shoot The Moon</i>
Language and conduct	<ul style="list-style-type: none"> • Transaction documents stated the parties intended a sale; consistently referred to the transaction as “purchase”/”sale” • Financing statement described the transaction as a “sale” between “seller” and “buyer” • Course of conduct between the parties evidenced a true sale • Business terms of the transaction were consistent with that of a sale not secured loan (notably no right to interest) 	<ul style="list-style-type: none"> • Transaction documents stated the parties intended a sale • Financing statement identified Shoot The Moon as a “debtor” rather than as a “seller” • Course of conduct between the parties evidenced loans (business actors often discussed the transactions as “loans” with “balances”) • Parties “stacked” or “rolled” funds from one transaction to the next, effectively refinancing earlier transactions
Recourse to the seller	<ul style="list-style-type: none"> • No recourse provisions against the debtor for non-collection • Personal guaranty effective only upon certain limited circumstances, including misrepresentation of fact and sale of assets w/out notice 	<ul style="list-style-type: none"> • Broad personal guaranty of payment and performance • Confession of judgment • Ongoing obligations to provide financials and other “Protections Against Default” (including acceleration, enforcement of the broad security interest, authorizing the exercise of rights under an assignment of lease, etc.)
Seller’s retention of servicing/commingling	<ul style="list-style-type: none"> • No retention of servicing rights or any rights to collect receivables; to the contrary, transaction documents required use of a credit card processor 	<ul style="list-style-type: none"> • Seller/Debtor commingled funds from the underlying accounts receivables with other operating funds
Seller’s right to any excess collections	<ul style="list-style-type: none"> • Narrow grant of “backup” security interest only in receivables being “sold” 	<ul style="list-style-type: none"> • Broad grant of security interest to assets other than receivables being “sold” (all payment and general intangibles, including tax refunds, customers, licenses, intellectual property)
Purchaser’s right to unilaterally alter terms	<ul style="list-style-type: none"> • No right to unilaterally alter the terms of the receivables 	<ul style="list-style-type: none"> • No right to unilaterally alter the terms of the receivables
Seller’s retention of the right to repurchase	<ul style="list-style-type: none"> • No repurchase rights 	<ul style="list-style-type: none"> • No repurchase rights
	TRUE SALE	NOT TRUE SALE