

DEBTOR/CREDITOR

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Perfection of Future Security Interest

The Uniform Commercial Code requires that a security interest be “perfected” if the secured party is to have priority over later secured parties with an interest in the same collateral. Perfection is usually accomplished by filing a financing statement with the appropriate state recording office.

The UCC allows a secured creditor to file a financing statement which perfects a security interest in future collateral. This permits a single filing to perfect a security interest in types of collateral which frequently turn over, such as inventory or accounts receivable. Typically, a security agreement grants a security interest in collateral acquired by the debtor in the future and the financing statement is filed shortly thereafter. A Missouri bankruptcy judge recently determined that the result is the same in an atypical situation.

Payless leased computer equipment from Winthrop in 1997. As a protective measure, Winthrop filed a financing statement at that time covering the computer equipment, lest a court later find the transaction to be other than a true lease. In 2001, Payless purchased the computer equipment on credit, and executed a security agreement and financing statement granting Winthrop a security interest in the equipment. Winthrop failed to file the financing statement for two months. Payless’s bankruptcy intervened, leaving the late-filed financing statement ineffective to perfect a security interest.

However, the bankruptcy court determined that the financing statement filed four years prior in connection with a different transaction, which had described the computer equipment, was nonetheless effective to perfect Winthrop’s subsequent security interest in the equipment.

In re Payless Cashways, Inc., 273 B.R. 789 (Bankr. W.D. Mo. 2002).

Filed Claim Traps Creditor

Before filing a claim in a bankruptcy case, every creditor must consider whether participation in the bankruptcy case will have unintended negative consequences. The following example illustrates.

Landlord sued tenant for nonpayment of rent. Tenant counterclaimed for damages from landlord’s breach of the lease and requested a jury trial. In the middle of the lawsuit, landlord filed a Chapter 11 bankruptcy petition. The bankruptcy stayed the pending lawsuit. Tenant filed a proof of claim in the bankruptcy case in the amount of its counterclaim. Landlord commenced a suit against tenant in the bankruptcy court for possession of the property and the unpaid rent. Tenant sought to dismiss the bankruptcy suit on the grounds that the case was already pending in state court.

A Pennsylvania bankruptcy judge decided that the case would go forward in bankruptcy court without a jury. The bankruptcy court reasoned that the filing of the claim in the bankruptcy case was the equivalent of tenant’s consent to have the bankruptcy court decide all matters regarding the dispute. Additionally, because the claims resolution procedure is part of the bankruptcy court’s core equitable powers, the tenant lost any right to a jury trial.

Asousa Partnership v. Pinnacle Foods, Inc. (In re Asousa Partnership), 276 B.R. 55 (E.D. Pa. 2002).

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This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation.

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