

DESCRIBING COLLATERAL – THE EVER ELUSIVE TRACTOR

Conflicts often arise when two or more creditors claim a security interest in the same collateral. In some instances, the argument is made that a prior creditor who filed a financing statement failed to adequately describe its collateral and that certain property of the debtor is outside the scope of that creditor's financing statement or security agreement and was thus fair game for subsequent creditors.

For example, in Mammoth Cave Production Credit Association v. York, Ky., 429 S.W. 2d 26 (1968), Kentucky's highest court considered an argument by a creditor claiming an interest in the proceeds from the sale of a tractor to the effect that another creditor claiming an interest in the same proceeds had failed to adequately describe its collateral so as to include the tractor. The creditor whose security interest was challenged had filed its financing statement prior to the challenging creditor, but had described its collateral as simply "All farm equipment."

Kentucky's Uniform Commercial Code, §355.9-110 provides:

"For the purpose of this article any description of personal property is sufficient whether or not it is specific if it reasonably identifies what is described."

The Court held that the description "all farm equipment" was too vague to adequately describe the collateral, and therefore, the challenged creditor did not possess a perfected security interest in the tractor. In reaching its decision, the court stated that a description must "identify the collateral so that it can be distinguished and separated from property not covered." Just why "all farm equipment" was not considered sufficient by the court to include a tractor, however, has always puzzled your editor.

Kentucky's highest court, now the Kentucky Supreme Court, has not rendered any decision dealing with the adequacy of the description of collateral since its 1968 Mammoth Cave opinion. Other courts, however, including Federal Courts (applying Kentucky law) and Kentucky's Court of Appeals, have not strictly followed the rule laid down in the Mammoth Cave Decision. Rather, in these more recent decisions, the courts tend to emphasize the rule that:

"An adequate description need not describe the property with utmost particularity, but it is sufficient if the facts shown would enable a third party, assisted by external evidence, to identify it."

Such courts have held that the following descriptions are not unduly vague and comply with the requirements of the Uniform Commercial Code:

- (1) "All equipment, livestock and products thereof, and proceeds,"
- (2) "All saw mill equipment,"
- (3) "All farm machinery including but not limited to tractor, plow and disc," and
- (4) "All farm machinery and equipment including but not limited to tractor and all property similar thereto."

Because the Mammoth Cave decision has never been overruled, it remains a wild card. Accordingly, in providing descriptions of collateral in security agreements or financing statements, creditors should use due care to adequately describe collateral in which they intend to claim a security interest.

In light of the aforementioned more recent decisions rendered by the Federal Courts and the Kentucky Court of Appeals, however, subsequent creditors should not rely on a belief that a previously filed financing statement is overly broad or vague. If there is any question as to whether a previously filed financing statement may cover property in which the creditor is seeking to obtain a security interest, the prior secured creditor should be contacted and asked to elaborate and completely identify the collateral that it is claiming as security. □

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