

Secured Transactions—Financing Statement—Priority of Creditors as to After-Acquired Collateral—Under UCC—National Cash Register Co. v. Firestone & Co.¹—On June 15, 1960, plaintiff (hereinafter "National") and Carroll, a restaurateur, entered into a conditional sales contract with respect to a cash register. Subsequently, Carroll obtained a loan from the defendant (hereinafter "Firestone") and delivered to it a security agreement covering

All contents of luncheonette including equipment such as: booths and tables, . . . milk dispenser, . . . 1957 Ford A57R107215 *together with all property and articles now, and which may hereafter be, used or mixed with, added or attached to, and/or substituted for, any of the foregoing described property.*

The description of collateral in the properly filed financing statement of this security agreement was a copy of the security agreement omitting the reference to after-acquired collateral (italicized portion above). National subsequently delivered the cash register to Carroll and they executed a second conditional sales contract which superceded the original. Firestone did not perfect its interest until three weeks after the consummation of the sale. When Carroll later defaulted on his obligations to both parties, Firestone took possession of the cash register and, although it had been notified of National's claim thereto, sold it at public auction. National brought an action of tort for the conversion of the cash register. The Massachusetts Supreme Judicial Court reversed a finding for National by the Appellate Division of the Municipal Court of Boston and entered judgment for Firestone. HELD: The financing statement filed by Firestone was adequate under Section 9-402(1) of the Uniform Commercial Code,² and it served to notify any subsequent creditor of defendant's security interest including that in collateral acquired after the transaction.

An objective of Article 9 of the Uniform Commercial Code is to eliminate the confusion which had permeated the area of chattel mortgages³ in after-acquired collateral.⁴ At common law, a chattel mortgage which purported to cover the mortgagor's property and any or all property he might acquire in the future was void at law⁵ as to property not in existence and belonging to him⁶ at the time of his giving the mortgage. This rule was generally followed by most states with deviations which ranged from fully allowing such

¹ — Mass. —, 191 N.E.2d 471 (1963).

² Mass. Gen. Laws Ann., ch. 106, § 9-402(1) (1959). The sections of the Uniform Commercial Code hereinafter utilized are unchanged from the Official Text and will be cited as "UCC § —."

³ The term adopted by the UCC is "security interest." UCC § 1-201(37).

⁴ Official comment, UCC § 9-101.

⁵ Titusville Iron Co. v. City of New York, 207 N.Y. 203, 100 N.E. 806 (1912). (Such interests were enforceable at equity against purchasers with notice but not creditors.)

⁶ Riverview State Bank v. Ernest, 198 F.2d 876, 882 (10th Cir. 1952), cert. denied, 344 U.S. 892 (1952) (Kansas common law rule); Jones v. Richardson, 51 Mass. (10 Met.) 481 (1845). Titusville Iron Co. v. City of New York, supra note 5, 207 N.Y. at 209; and 1 Jones, Chattel Mortgages and Conditional Sales § 138 (6th ed. 1933).

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mortgages,⁷ to permitting them in special instances⁸ or even to declaring them wholly void.⁹

A relaxation of the stringent common law rule occurred with the allowance of the intervening act rule. This permitted a mortgage on property to be acquired upon the doing of some affirmative act by the mortgagee after the mortgagor's acquisition of the property.¹⁰ Such an act was usually the mortgagee's seizure of the property after its acquisition by the mortgagor.¹¹ The increasing complexity of the commercial structure made it apparent that such a policy would strangle the growth of commerce. This resulted in the National Conference of Commissioners on Uniform State Laws and the American Bar Association approving the Uniform Trust Receipts Act (UTRA)¹² which introduced the concept of "notice filing."¹³ In accepting, without question, the validity of a security interest in after-acquired chattels, the UTRA permitted the filing of only enough information to put any subsequent creditor of the debtor on notice of the existence of prior security interests in the debtor's holdings. Rather than requiring him to file the actual agreement, which in a given case may well have been a lengthy document, the Act made a simple form effective.¹⁴

The Uniform Commercial Code, in keeping with its basic policy "to simplify, clarify and modernize the law governing commercial transactions . . ."¹⁵ and "to permit the continued expansion of commercial practices . . .,"¹⁶ retained the notice filing concept.¹⁷ The drafters of the Code indicated that the use of such a "notice financing statement is permissive rather than mandatory."¹⁸ Should such a method be employed, the Code sets up machinery whereby disclosure of all of the secured collateral *may* be obtained from the secured party at the debtor's request.¹⁹ The only sanction arising out of the creditor's refusal to make such disclosure is possible liability to the debtor but not to the injured creditor.²⁰ The permissive nature of this section is far from satisfactory for should the prior creditor refuse to comply with

⁷ *Pearson v. Rapstina*, 203 F.2d 313, 314 (5th Cir. 1953). (If parties intend a security interest to attach to after-acquired property, it is valid.)

⁸ *Davis v. Smith-Springfield Body Corp.*, 250 Mass. 278, 283, 145 N.E. 434 (1924). (A mortgage on after-acquired property creates no lien on the property.)

⁹ *Supra*, note 5.

¹⁰ *Cunningham v. Sizer Steel Corp.*, 1 F.2d 337, 338 (W.D.N.Y. 1924).

¹¹ *Ibid.*

¹² The first state to enact the UTRA was New York in 1934. *McKinney's Pers. Prop. Law* §§ 50-58m (1934). New York was followed by 38 other states and Puerto Rico.

¹³ UTRA § 13 required the filing statement to contain only a general description of the goods to be covered.

¹⁴ *Ibid.*

¹⁵ UCC § 1-102(2)(a).

¹⁶ UCC § 1-102(2)(b).

¹⁷ Official Comment 2, UCC § 9-402.

¹⁸ *Ibid.*

¹⁹ UCC § 9-208 provides in part:

(1) . . . When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral

²⁰ UCC § 9-208(2).

the request for information, one who wants to become a secured creditor finds himself in the situation of taking a chance on his security or not making the loan.

Although in the instant case, National had a purchase money security interest²¹ and consequently could have perfected its interest by filing within the ten-day grace period provided for such an interest,²² it did not take advantage of this protection. If this had been done, National's security interest in the cash register would have had priority over that of Firestone.²³ This protection which was available to National, but which it overlooked, appears to have had a salving influence on the court.²⁴ Had National been simply a prospective secured creditor, and not the holder of a purchase money security interest, it would not have had such protection available.²⁵ In such a situation the first creditor could tie up all assets of the debtor, both present and future, as well as the potential of the debtor to expand his commercial activities through secured loans. A subsequent creditor would not take the chance of having his supposed secured loan become unsecured due to the prior creditor's security interest in after-acquired collateral of the debtor and his refusal to state the scope of his security interest. In this situation the drafters of the Code recommend—perhaps somewhat naively—that the former creditor should use the alternative method of filing the financing statement.²⁶

Had the court in the instant case held that it is unnecessary to include in the financing statement notice of a security interest in after-acquired collateral, the above-stated problem might well have been more troublesome than it was. It did not so hold, but merely followed the dictate of the Code²⁷ in finding that the description utilized by National in the financing statement was sufficient to indicate "the types . . . of collateral."²⁸ This sufficiency of description requisite for the adequacy of a filed statement of secured goods was the rule in Massachusetts prior to the enactment of the Code²⁹ and should impose no real difficulties for the practitioner. It is an illustration of an area where the Code has codified existing contract law.³⁰

ARNOLD W. PROSKIN

²¹ UCC § 9-107.

²² UCC § 9-312(4).

²³ UCC § 9-312(3).

²⁴ *Supra* note 1, 191 N.E.2d at 473 and 475.

²⁵ UCC § 9-312(5).

²⁶ Official Comment 2, UCC § 9-402.

²⁷ UCC § 9-402(1) and Official Comment 1.

²⁸ *Ibid.*

²⁹ The Supreme Judicial Court, in *E. M. Blunt Inc. v. Giles*, 228 Mass. 515, 516, 193 N.E. 43, 44 (1934), held that:

... a general description of personal property in a mortgage is sufficient to include articles which can be identified and which were intended to be covered by it. The test in such case is that, where the property can be readily identified after rejecting false or inaccurate recitals, effect may be given to the mortgage.

Also see *supra* note 12.

³⁰ See Hart, In Defense of Certain Provisions of The Uniform Commercial Code Relating to Formation of Sales Contracts: A Partial Reply to Professor Babb, 15 Maine L. Rev. 21 (1963). Cf. Babb, The Proposed Uniform Commercial Code, 7 Portland U.L. Rev. 16 (1961), 14 Maine L. Rev. 1 (1962).