

Article 9 Round Table

Donald J. Rapson

Edwin E. Smith

Robert A. Zadek

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Organization of Presentation

- Scope
- Attachment
- Perfection
- Priority
- Third party rights
- Enforcement

Scope

- SP has taken a security interest in Debtor's accounts perfected by filing. Debtor enters into an agreement to sell to Buyer a real estate lease on which Debtor is the lessee. Is the right to payment from Buyer an account? Is it an interest in real estate excluded from Article 9?
- *In re Tops Appliance City, Inc.*, 372 F3d 510 (3rd Cir. 2004)

Scope

- Debtor enters into a “master lease” with Finance Company by which Finance Company purchases the equipment and licenses the software from Manufacturer and Debtor “accepts” the equipment and software in exchange for rental payments to Finance Company.
- Is the “master lease” transaction governed by Article 9? By Article 2A?
- *In re CNB International, Inc.*, ____ B.R. ____ (Bkrcty. W.D.N.Y. 2004)

Scope

- Is a sale of a lease and the lessor's residual interest in the leased goods governed by Article 9 if the seller is obligated to repurchase the goods upon the lessee's failure to purchase the goods at the end of the lease term?
- *Stillwater National Bank and Trust Company v. CIT Group/Equipment Financing, Inc.*, ___ F3d ___ (10th Cir. 2004)

Scope

- When is a transaction a “consignment” under Article 9, a “consignment” not under Article 9 but under the common law or a “sale or return” transaction?
- *In re Morgansen’s Ltd.*, 302 B.R. 784 (Bkrtcy. E.D.N.Y. 2003)
- *Ganz v. Southeby’s Financial Services, Inc.*, ___ N.Y. ___ (2004)

Scope

- Is the characterization of a lease of goods by a lessee which files for bankruptcy governed by federal law or state law (i.e., UCC Article 1)?
- *HSBC Bank USA v. United Air Lines, Inc.*, 317 B.R. 335 (N. D. Ill. 2004)

Attachment

- Does the “relatedness test” limit dragnet clauses?
- Does the requirement of “good faith” limit dragnet clauses?
- *Pride Hyundai, Inc. v. Chrysler Financial Co.*, 369 F.3d 603 (1st Cir. 2004)

Attachment

- Does the revised Article 9 definition of “proceeds” change the result of former Article 9 “attenuated proceeds” cases?
- *U.S. Bank Trust National Association v. Venice MD LLC*, ___ F.3d ___ (4th Cir. 2004)

Perfection

- Is a financing statement which indicates collateral as “all assets described in the security agreement between secured party and debtor” effective?
- *In re Corey A. Lynch*, 313 B.R. 798 (Bkrtcy. W.D.Wis. 2004)(“general business security agreement”)
- DE 9-504A

Perfection

- Debtor's name is Rodger House. SP's financing statement provides Debtor's name as "Roger House". Is the financing statement effective?
- *Pankratz Investment Company v. Citizens National Bank*, ___ KS ___ (KS Court of Appeals 2004)

Perfection

- Is a sale of a participation in rentals due under a lease of goods a sale of an interest in chattel paper, for which perfection steps are required, or a sale of a payment intangible, which is automatically perfected?
- *In re Commercial Money Center, Inc.*, (Bkrtcy. S. D. CA 2005)(unpublished)

Perfection

- Report on ABA Business Law Section's Deposit Account Control Agreement Task Force

Priority

- SP1 lends money to Consumer to purchase an automobile, takes a security interest in the automobile and perfects by having its name noted on the certificate of title
- Consumer trades in the automobile to Dealer without notifying SP1
- SP2 has a security interest in all of Dealer's inventory perfected by filing.
- Who has a priority security interest in the automobile – SP1 or SP2?
- *First National Bank of the North v. Automotive Finance Corporation*, 661 N.W.2d 668 (Minn. App. 2003)

Priority

- SP lends money to Debtor, a manufacturer, takes a security interest in Debtor's inventory and perfects by filing
- Buyer orders goods from Debtor and makes partial payment
- Debtor defaults on its loan from SP. At that time the goods are at Debtor's plant.
- Who has a superior right to the goods – SP or Buyer?
- *In re Havens Steel Company*, ____ B.R. ____ (Bkrctcy. W.D.Mo. 2004)

Third Party Rights

- To what extent does 9-408 permit a security interest to be granted in a non-assignable license or permit?
- *In re Chris-Don, Inc.* ___ B.R. ___ (D.N.J. 2004)(liquor license)
- Cf. *In re Media Properties, Inc.*, 311 B.R. 244 (Bkrtcy. W.D.Wis. 2004)(FCC license)

Third Party Rights

- SP has a security interest in D's rights as licensee under a license of federally registered intellectual property?
- Is 9-408 preempted by federal intellectual property law?
- *SuperBrace, Inc. v. Tidwell*, ___ F3d ___ (4th Cir. 2004)

Enforcement

- SP has a preferred ship mortgage over an ocean liner wracked by successive outbreaks of viruses scarring off passengers.
- SP forecloses on the ocean liner in a commercially reasonable manner and buys for \$1 at the foreclosure sale.
- Debtor contests the amount of the deficiency.
- *Zadek Credit Union v. Rapson Cruise Lines, Inc.*, Guam Superior Court (2005)(unpublished)