

Chapman Client Alert

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Current Issues Relevant to Our Clients

Beyond the Four Corners: Seventh Circuit Holds That a UCC Financing Statement May Incorporate a Collateral Description by Reference to Sufficiently “Indicate” the Collateral for Purposes of Perfection

In a case of first impression, the U.S. Court of Appeals for the Seventh Circuit recently held that a UCC financing statement that incorporates a description of collateral by reference to an unattached security agreement sufficiently “indicates” the collateral, such that a separate and additional description of the collateral is not required to properly perfect a lender’s security interest.

In *In re 180 Equip., LLC*,¹ the Debtor executed a security agreement granting the Lender a security interest in substantially all of its assets to secure a Loan (the “*Security Agreement*”). The agreement described 26 listed categories of collateral, including accounts, cash, equipment, instruments, goods, inventory, and all proceeds of any assets. To perfect its security interest, the Lender timely filed a financing statement with the Illinois Secretary of State (the “*Financing Statement*”) that purported to cover all Collateral described in” the Security Agreement, but that did not attach the Security Agreement.

The Debtor subsequently defaulted on the Loan and filed a Chapter 7 bankruptcy petition. The Lender commenced an adversary proceeding against the bankruptcy trustee seeking among other things a declaration that its security interest was properly perfected and senior to the interests of all other claimants, including the trustee. The trustee countered that the Lender’s security interest was not properly perfected because the Financing Statement did not “independently” describe the underlying collateral, but instead incorporated the list of assets by reference to the unattached Security Agreement.

The bankruptcy court held that “[a] financing statement that fails to contain any description of collateral fails to give the particularized kind of notice” required by Article 9 of the UCC. As a result, the trustee sold the estate’s assets for approximately \$1.9 million and held the funds in trust.

On appeal, the Seventh Circuit ultimately held that the failure to describe the collateral in the Financing Statement and attach the Security Agreement was not fatal. The court

first analyzed the plain and ordinary meaning of the Illinois version of the UCC, observing that the 2001 amendment to Section 9-502 of the Illinois UCC removed the requirement that a financing statement “contain” a description of the collateral, such that the statute now only requires that a financing statement “indicate” the collateral covered by the financing statement. In accordance with Section 9-504, a financing statement sufficiently indicates the collateral that it covers “if the financing statement provides ... a description of the collateral pursuant to Section 9-108.” That section states that a description of the secured property does not need to be specific but must “reasonably identifi[y]” what is described—which accords with goal of the “notice function” of Article 9 to indicate to third-parties that a person has a security interest in the collateral. Policy considerations further dictated a more relaxed standard as to the “notice function” in order to ensure that Article 9 does not “create a windfall for the bankruptcy estate or a minefield for lenders.”

The court concluded that the plain language of Section 9-502 of the Illinois UCC permits a party to indicate collateral in a financing statement by directing third parties to the security agreement, because it is the security agreement—not the financing statement—that creates and specifically defines the collateral. This interpretation reflects how courts have employed the UCC’s “notice function” —that a financing statement is intended only to put third parties on notice of an existing security interest and further inquiry may be necessary.

The Seventh Circuit’s decision *In re 180 Equip., LLC* follows the growing trend that courts may be willing to elevate “function” over “form” with regard to UCC financing

statements.² The financing statement need only provide minimal notice to the world that a secured creditor has a security interest and reference therein to another agreement's collateral description is sufficient—even if that agreement is not specifically attached.³

For More Information

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- 1 2019 WL 4296751 (7th Cir. Sept. 11, 2019).
 - 2 See, e.g., *In re 8760 Service Group*, 2018 WL 2138282 (Bankr. W.D. Mo. 2018); *Winfield Solutions, LLC v. Success Grain, Inc.*, 2018 WL 1595871 (E.D. Ark. Apr. 2, 2018).
 - 3 See also our prior Client Alert "[Second Times a Charm: First Circuit Finds That Financing Statement Amendments Saved Defective Collateral Description](#)," Chapman Client Alert (February 12, 2019).

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