

In the United States Bankruptcy Court

for the Northern District of Iowa

NEIL G. BROMM and SUSAN BROMM
d/b/a Bromm Mink Ranch
Debtors.

Bankruptcy No. X90-01787F

Chapter 7
Contested No. 2195

ORDER RE: MOTION TO COMPEL ABANDONMENT

Farmers National Bank of Webster City (BANK) moves for an order compelling the trustee, David Sergeant, to abandon mink animals and farming equipment. The trustee resists. Trial was held February 14, 1991 in Fort Dodge. The court issues this ruling including findings and conclusions pursuant to Fed.R.Bankr.P. 7052. This is a core proceeding under 28 U.S.C. 157(b)(2)(A), (K) and (O).

I.

Bank claims a perfected security interest in the mink and machinery which were owned by debtors at the time of filing. It argues that the debt owed exceeds the value of the property and thus the collateral is of no value to the estate.

The trustee claims that perfection of Bank's security interest lapsed because of a tardily filed continuation statement. Trustee argues also that even if an amendment filed after the lapse could be treated as a new financing statement--establishing a new date of perfection--its description of collateral did not include the mink.

II.

On October 13, 1966, the Bank filed a financing statement (G640) with the Hamilton County Recorder describing the following property owned by Neil and Susan Bromm.

All equipment, all farm products, including but not limited to crops, livestock, fur bearing animals, mink, pelts, supplies used or produced in farming operations of crops and mink farming contract rights and accounts and all proceeds. Also including all contracts for the sale of pelts and live mink in or out of the State of Iowa,

Bank sought to extend the statement's period of effectiveness for another five years by its filing of a "continuation statement" (G5766) with the Hamilton County Recorder on July 1, 1971.

In 1974, the Iowa legislature amended its version of the Uniform Commercial Code to institute centralized filing of financing statements for perfection of security interests in many types of goods. Iowa Code 554.9401 (as amended by Acts 1974 (65 G.A. Ch. 1249 55, 56)).

On April 22, 1976, Bank filed a financing statement with the secretary of state (SECRETARY) in order to continue, by virtue of the transitional rules of Article 11, the perfection of its security interest in Bromms'

property. The financing statement was identified by the secretary as Number G226697. The description of collateral in the financing statement was identical to the description in Bank's original county filing in 1966. In filling out the statement, Bank employed box 07 which was imprinted upon the form for use in Article 11 transition filings. The Bank checked the first box to describe its situation: "Prior county filing(s) with respect to the described transitional farm related collateral (two copies) (sic) of which are attached) were properly made and are still effective."

The Bank filed a continuation statement with the secretary on August 13, 1981. It was identified by the secretary as filing G706681. The statement included this reference: "This statement refers to original Financing Statement No. G226697 Orig 10/13/71 Dated filed: Apr. 22, 1976 Filed with Sec'y of State." The August 13 statement contained no description of collateral.

On August 7, 1986, the Bank sought further extension of its claimed perfection by filing a continuation statement identified by the secretary as document No. H470860. The reference information provided on the form was identical to the continuation statement filed in August, 1981.

Bank filed a statement with the secretary on December 18, 1986 to amend its prior description of collateral.⁽¹⁾

The reference contained in the Statement was as follows: "This Statement refers to original Financing Statement No. G226697 Date Filed April 22, 1976 Filed with Sec. of State." Below this information, Bank checked the "AMENDMENT" box which was followed by this statement: "The Financing Statement bearing the above number is changed to show . . . X as indicated below,"

CHANGES:

All equipment and fixtures, including, but not limited to, all machinery, tools, vehicles, sheds and storage facilities used or acquired for use in farming operations, whether now owned or existing or hereafter existing or acquired, all farm products, including but not limited to all crops, livestock and supplies used or produced in farming operations, whether now owned or existing or hereafter existing or acquired, all accounts, chattel paper, documents, instruments, contract rights and general intangibles, entitlements and payments from all state or federal farm programs, whether now owned or existing or hereafter existing or acquired, and all proceeds or products of any of the above and the proceeds from any government farm program. By claiming proceeds, the secured party does not consent to the sale, transfer or any other disposal of the collateral without written consent of the parties.

The foregoing appears to have been printed as part of the form. Typed in immediately after the last line of printing was the following sentence:

"Livestock refers to all cattle, & hogs; crops consist of corn (sic), soybeans, oats and hay and includes crops during the years 1986, 1987, 1988, 1989 & 1990."

The amendment was identified by the secretary as document No. H595402.

On August 25, 1989, the Bromms executed a security agreement and an "Extension of Security Agreement" in favor of the Bank. The security agreement granted the Bank a security interest in property of the Bromms including equipment and farm products. "Farm products" was defined in the form as "including, but not limited to: (a) all poultry and livestock and their young, along with products and produce; (b) all crops, annual or perennial, and all products of the crops; and (c) all feed, seed, fertilizer, medicines, and other supplies used or

produced in my farming operations." The "Extension of Security Agreement" granted the Bank a security interest in specific items of equipment used in the Bromms' mink ranching operation.

On October 27, 1990, the Bromms filed their voluntary petition under chapter 7. David Sergeant was appointed trustee.

III.

Bank asks that the trustee be compelled to abandon farm equipment and mink.⁽²⁾

For reasons which will be hereafter stated, the court concludes that Bank has a perfected security interest in farm equipment prior to any rights the trustee may have under 11 U.S.C. 544(a). The debt secured by Bank's interest in the equipment exceeds the value of the collateral. The court concludes also that Bank has an unperfected security interest in the mink and that Bank's interest is thus inferior to the trustee's rights under 11 U.S.C. 544(a). The farm equipment should, therefore, be abandoned but not the mink.

Bank maintains that its security interest in the mink and equipment has been continuously perfected since 1966 by filings with the county recorder and the secretary of state. Trustee argues that if Bank's interest had been perfected, perfection lapsed on April 22, 1981 and that an untimely continuation statement filed August 13, 1981 was ineffective to continue it. Trustee argues that it was an untimely statement because the transitional financing statement filed with the secretary on April 22, 1976 established a new benchmark date for the five-year period of perfection. If the trustee is correct, the new five-year period of perfection would have begun on April 22, 1976 and lapsed April 22, 1981. Iowa Code S 554.9403(2) and (3).

Bank argues that the financing statement filed with the secretary of state was effectively a continuation statement which preserved the original five-year periods begun on October 13, 1966 when the Bank filed its initial financing statement with the county. If this is so, the statement filed with the Secretary on April 22, 1976 would have continued Bank's period of perfection to October 13, 1981. The August 13, 1981 statement would have continued perfection to October 13, 1986. The continuation statement filed August 7, 1986 would have continued the period of perfection to October, 1991.

Determination of this issue involves interpretation of Iowa Code S 554.11105 dealing with the transition from a county to a centralized filing system. Pertinent subparts of this section, as they existed on April 22, 1976,⁽³⁾ were as follows:

3. The effectiveness of any financing statement or continuation statement filed prior to January 1, 1975, may be continued by a continuation statement as permitted by this chapter as amended, except that if this chapter as amended requires a filing in an office where there was no previous financing statement, a new financing statement conforming to either section 554.9402 or subsection 7 shall be filed in that office.

* * *

5. If collateral consists of equipment used in farming operations, or farm products, or accounts, contract rights, or general intangibles arising from or relating to the sale of farm products by a farmer, the place of effective filing is as follows:
 - a. filings in the office of a county recorder which have not lapsed or been terminated prior to January 1, 1975, retain their effectiveness unless subsequently lapsed or terminated until January 1, 1980; however, on or after January 1, 1975, continuation

statements are not to be filed in the office of a county recorder, and effectiveness can be continued only through the filing in the office of the secretary of state of a financing statement which complies with section 554.9402 or, if filed before January 1, 1980, with subsection 7;

- b. on or after January 1, 1975, initial financing statements must be filed in the office of the secretary of state; and must conform to section 554.9402; and
- c. on or after January 1, 1980, all filings must be in the office of the secretary of state and must conform to either section 554.9402 or subsection 7.

* * *

- 7. Where indicated by this section, a financing statement which otherwise complies with section 554.9402 may be signed by the secured party instead of the debtor provided that the financing statement is accompanied by a carbon, photocopy, or other suitable reproduction of an effective prior filing, and evidence of proper prior filing, and states that the prior filing is still effective.

The statute does not state whether the transitional financing statement required under subsection 5(a) effects a change in the beginning and ending dates of the period of perfection established by the initial financing statement filed with the count Y. Were this a case of first impression, the undersigned might construe the statute to mean that transitional financing statements did not establish a new benchmark date for periods of perfection. Such a construction would give weight to the phrase "effectiveness can be continued" in subsection 5a and would recognize that the purpose of using a transitional financing statement, as opposed to a continuation statement, would be to provide notice to others of more extensive information regarding the secured transaction.

This, however, is not a case of first impression. This issue has been decided by this court in the case of In re Todd, 70 B.R. 204 (Bankr. N.D. Iowa 1986). In Todd, the court concluded that a transitional financing statement was a "new financing statement from which the five year continuation period is calculated." Id. at 209.

Bank asks the undersigned to overrule that decision and conclude instead that transitional financing statements serve only to continue the effectiveness of the original statement for five years after the last date to which the previous filing was effective. Iowa Code 554.9403(3). Bank argues merely that the Todd decision was wrongly decided.

That the undersigned could reasonably construe 554.11105(5a) in Bank's favor cannot be the only factor affecting its decision in the present case. Courts must have due respect for precedent. "Judges of the same . . . court customarily follow a previous decision of a brother judge upon the same question except in unusual or exceptional circumstances." Buna v. Pacific Far East Line, Inc., 441 F.Supp. 1360, 1365 (N.D. Cal. 1977). Although this court is not absolutely bound by the prior decision, it should give it considerable weight.

The importance of respect for precedent was discussed by Justice Thurgood Marshall in Vasquez v. Hillery, 474 U.S. 254 (1986):

Today's decision is supported, though not compelled, by the important doctrine of *stare decisis*, the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion. That doctrine permits society to presume that bedrock

principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact. While *stare decisis* is not an inexorable command, the careful observer will discern that any detours from the straight path of *stare decisis* in our past have occurred for articulable reasons, and only when the Court has felt obliged "to bring its opinions into agreement with experience and with facts newly ascertained." Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 412 (1932) (Brandeis, J., dissenting).

Id. at 265-266. The court recognizes that the precedent before it is not a line of cases but a single case. However, the judge's construction of the statute in Todd, in the undersigned's view, was not unreasonable. It is a published decision, nearly five years old. There are no other cases, either state or federal, which interpret the same Commercial Code sections in a contrary manner. Bank has presented no new facts in this case which would prevent the application of Todd. There has been no argument of exceptional circumstances.

The court must also consider that this is a commercial law case. In the commercial arena, people plan their actions based on the known law. Predictability is important. Bank has not said and has not shown that there would not be prejudice to third parties if this court would overrule the Todd decision. Sometimes it is more important that a rule be known and stable than undoubtedly correct. This is no doubt more true in the area of commercial transactions than it would be in the area of civil rights. Having considered these factors, the court declines to overrule the holding in Todd.

As a result, the court must conclude that Bank's transitional financing statement filed April 22, 1976 established a new five-year period of perfection which lapsed April 22, 1981. The continuation statement filed with the Secretary on August 13, 1981 was ineffective to continue Bank's period of perfection, if any. Its August 7, 1986 continuation statement was ineffective as well. Bank's financing statement thus lapsed on April 22, 1976, and upon lapse, its security interest became unperfected. Iowa Code 554.9403(2). Nor could the continuation statements filed August 13, 1981 and August 7, 1986 constitute financing statements to begin new periods of perfection. They fail to satisfy the requisites of financing statements inasmuch as they do not describe collateral.

Although Bank's security interest in Bromms' mink and equipment became unperfected on April 22, 1981, the court will consider whether perfection was obtained anew when Bank, on December 18, 1986, filed an amendment statement with the secretary. This amendment did meet the requirements of a valid financing statement. It included the names and address of the debtors and the name and address of the secured party. It also indicated the types of collateral covered or described items of collateral. It is signed by the debtors, although such a signing would not have been necessary as to previously covered collateral. Iowa Code 554.9402(2)(c). A statement intended to be an amendment, if it contains all the information required for a financing statement, is sufficient to perfect an interest in collateral. Griswold State Bank v. Rieber (Matter of Rieber), 740 F.2d 10, 12 (8th Cir. 1984). Bank's filing of the amendment was a step in the perfection of a security interest in property of the debtors. Trustee argues that even if the amendment did create a perfected security interest in property of the debtors, it did not adequately describe mink and therefore mink are not covered by a perfected interest. The court agrees. The amendment statement put creditors on notice that Bank claimed a security interest in farm products including "livestock." Exhibit 2, page 3. But the printed description of livestock was followed immediately by the typed statement: "Livestock refers to all cattle, & hogs.

The issue is whether the description as a whole "reasonably identifies" mink as collateral. Iowa Code 554.9110. A minor defect in the description will not prevent the statement's effectiveness so long as the defect is not seriously misleading. Iowa Code 554.9402(8). "The purpose of the Code's description requirements for financing statements is to give notice to purchasers and third-party creditors and allow them to identify what property is secured." First National Bank in Creston v. Francis, 342 N.W.2d 468, 471 (Iowa 1984). The court

must determine, from the viewpoint of third parties, whether the reference to cattle and hogs was "so specific that it. could only reasonably be read to secure" only cattle and hogs. See *Id.* at 470.

Rules of contract construction, although not controlling as to the sufficiency of financing statements, are of some help in analyzing the description in this case. One such rule is that written or typed portions of an instrument control printed portions. Low v. Young, Mullarky & Long, 158 Iowa 15, 138 N.W. 828, 829 (1912); Deutschle v. Wilson, 39 F. 2d 406, 407 (8th Cir. 1930). Another helpful rule of construction is that "a general word or phrase, followed by other words of specific or particular description, is ordinarily held to include no more than the things thus specifically mentioned." Verbeck v. Petera, 170 Iowa 610, 153 N.W. 215, 216 (1915). Yet the latter rule in construing contracts between parties is not always controlling:

[I]f the writing, when taken altogether, fairly demonstrates that such was not the intention of the parties, or if the application of the rule will necessitate an absurd or unreasonable result, it will not be applied.

Moreover, it has no proper application where both the general expression and the particular description or enumeration can be allowed to stand without repugnance or inconsistency. In other words, if reasonable effect can be given to both, each is to have effect according to the usual and approved usage of our language.

Id. at 216. The exception to the rule brings one back to the formulation of the Iowa Supreme Court: can the description "only reasonably be read" one way? First National Bank in Creston v. Francis, 342 N.W.2d at 470.

The culprit in the description is "refers." Can the amendment statement only reasonably be read to limit livestock to "cattle and hogs" or can it also reasonably be read to state that cattle and hogs are "included" in the description but that the description includes other livestock?

Use of the term "all livestock" without any qualifying phrase would have been sufficient to cover cattle, hogs and mink. Employment of the phrase "livestock refers to all cattle& hogs" is most reasonably read to limit the term "livestock" to those two types of animals. As the trustee argues, had Bank wished to give a partial description of the livestock taken, words such as "including" or "including but not limited to" would have been more prudent. To read "refers" as meaning "includes" would be seriously misleading to third parties.

The court has considered as an argument that the term "farm products", as it relates to animals, is broader than the term "livestock." If this were so, the limitation of the term "livestock" by Bank's reference to cattle and hogs would not affect the inclusiveness of the broader term. In other words, if mink are farm products but not livestock, the limiting description would not affect Bank's perfection in the mink. "Livestock" is often defined as "domestic animals." Webster's II New Riverside University Dictionary, 699 (1984) ; see also, Bowlin v. Deschutes County, 91 Or.App. 155, 754 P.2d 30, 31 (1988); Tuftee v. County of Kane, 76 Ill. App.3d 128, 394 N.E.2d 896, 899 (1979). Courts in certain situations make distinctions between wild and domestic animals. See Coakley v. Dairy Cattle Congress, 228 Iowa 1130, 293 N.W. 457, 459 (1940). However, the Uniform Commercial Code, as adopted in Iowa, does not appear to make such a distinction. In Iowa, "Goods are . . . 'farm products' if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states. . . ." Iowa Code 554.9109(3). This definition is restrictive. The Code does not say goods are "farm products" including livestock. It says goods are "farm products" if they are livestock. The Code does not appear to differentiate between wild and domestic animals so long as they are "in the possession of a debtor engaged in raising, fattening, grazing or other farming operations." Iowa Code 554.9109(3). That Bromms are such debtors is not disputed. Nor does Bank argue that the mink are inventory. Such an argument would not avail Bank as "inventory" is not listed in the amendment statement.

From the foregoing considerations, the court concludes that although as of December 18, 1986 Bank had filed a valid financing statement describing its collateral, the description did not include Bromms' mink.

Although much of the evidence and argument presented to the court related to the perfection of Bank's security interest, perfection can only occur when the required steps for perfection have been taken, and the security interest has attached. Iowa Code 554.903(l). While there appears to be no dispute regarding whether Bromms had rights in the collateral or the Bank had given value on December 18, 1986, without creditor possession of the collateral, about which there is no evidence, a written security agreement would still be necessary. Iowa Code 554.9203(1)(a). The only security agreements in evidence were those provided by Bromms to Bank on August 25, 1989. Based on these security agreements and the amendment statement filed with the Secretary of State on December 18, 1986, the court concludes that Bank had perfected security interest in the equipment of the debtors as of August 25, 1989. The bankruptcy case having been filed October 27, 1990, Bank's security interest in the equipment is superior to any rights of the trustee. However, as Bank's security interest in the mink was unperfected, trustee's rights under 11 U.S.C. 544(a) took precedence over the unperfected interest of the Bank in the mink. Iowa Code 554.9301(1)(b).

IV.

CONCLUSIONS OF LAW

Bank has a perfected security interest prior to the interest of the trustee in farm machinery and equipment. Trustee's rights in the mink by virtue of 11 U.S.C. 544(a) are superior to Bromms' unperfected security interest in them.

ORDER

IT IS ORDERED that the motion to compel abandonment of the estate's farm machinery and equipment is granted. Trustee shall abandon this equipment from the estate pursuant to 11 U.S.C. 554(b).

IT IS FURTHER ORDERED that Bank's motion to compel abandonment of the mink is denied. Judgment shall enter accordingly.

SO ORDERED ON THIS 24th DAY OF MAY, 1991.

William L. Edmonds
Bankruptcy Judge

1. The copy of the December 18, 1986 amendment admitted at trial as page 3 of exhibit 2 was extremely difficult to read. During the hearing, the court requested a more legible copy. On February 18, 1991, counsel for the Bank submitted one somewhat more legible. On February 21, 1991, the court entered an order admitting the substituted page of the exhibit. Trustee subsequently filed a brief which attached a much more legible copy of the amendment. It is this later copy which was used by the court in its deliberations. The court will remove a copy of it from a duplicate of the brief for inclusion as exhibit 2, page 3. Earlier versions will also remain as part of the record.

2. The motion seeks abandonment of property described on debtors' B-2-h and -i schedules. These schedules describe 3,034 mink having a value of \$97,000.00 (schedule B-2-h) and farming equipment, supplies and implements having a value of \$16,360.00 (schedule B-2-i).

3. On January 23, 1976, the legislature amended 554.11105. Additional language was added to subsection 5(a) and to subsection 7. Subsection 7 was renumbered as subsection 8. Acts 1976 (66 G.A.) ch. 1107 14 and 15. The changes became effective July 1, 1976. Iowa Code 3.7(l). The changes are not relevant to the dispute.