



Legal Alert

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QUESTION: HOW DID AN ACCIDENTAL ELECTRONIC FILING COST THE BANK \$146,793.11?

ANSWER: FARMERS BANK & TRUST COMPANY'S LOAN PROCESSOR INADVERTENTLY TERMINATED THE LIEN FILING ELECTRONICALLY!

Down on the farm. . . .

Kevin Wheeler farmed 2,500 acres in Kentucky for many years. *In re Wheeler*, 580 B.R. 719 (Bankr.W.D. Ky. 2017). Over the years, Mr. Wheeler would secure his crop input financing with his crops and other farm-related collateral.

Mr. Wheeler's main agricultural lender was Farmers Bank & Trust of Marion, Kentucky. In July 2005, Mr. Wheeler granted Farmers Bank & Trust a lien against "all crops growing or to be grown in fields or produce thereof. . . ." The Bank perfected its security interest by filing a UCC-1 Financing Statement with the Kentucky Secretary of State and filed a timely continuation of the UCC-1 Financing Statement five years later.

Apparently, farming went well until 2015. The bills couldn't be paid and a Chapter 7 liquidating bankruptcy was filed on June 15, 2015.

Wait! Don't click send!

Farmers Bank & Trust was the first-priority secured lender with a security interest in all crops. But less than a month after the bankruptcy was filed, the Bank filed a termination statement terminating its own lien!

Someone apparently quickly noticed the mistake. About 10 minutes later, the Bank filed an amendment to the UCC-1 attempting to add itself as a secured party.

About nine months later in April, 2016 the Bank filed a UCC-5 Correction Statement asserting that the termination on July 10, 2015 was accidental. On April 27, 2016 the Bank filed a new UCC-1 Financing Statement identical to the initial UCC-1 filed in 2005.

Moving on up!

Farmers Bank & Trust was not the only lender for Mr. Wheeler's farm. Crop Production Services, Inc. also sold agricultural products to Mr. Wheeler on credit. Mr. Wheeler had a credit limit up to \$600,000 from Crop Production Services. On May 20, 2011 Crop Production Services perfected its lien by filing a UCC-1 Financing Statement covering

“[a]ll crops growing or to be grown, inventory, and proceeds thereof.” Crop Production Services did not get paid for the products sold on credit for the 2015 crops, however.

Both Farmers Bank & Trust and Crop Production Services had liens that had properly attached and been perfected. “If two creditors have perfected security interests in the same collateral, the first party to file or perfect will gain priority.”

So, as soon as Farmers Bank & Trust clicked “send” and filed its Termination Statement, Crop Production Services moved to first priority ahead of the terminated UCC-1 Financing Statement of Farmers Bank & Trust.

No take backs!

Even though Farmers Bank & Trust’s lien was valid and properly perfected, it became unperfected and the collateral was released when the termination statement was filed in July 2015. The Court stated: “It is immaterial that 10 minutes later [the Bank] attempted to amend the termination because upon termination the initial financing statement became ineffective.” The attempt to fix the problem by amending to add Farmers Bank & Trust as a secured party didn’t work because “it defies logic that [the Bank] can add itself to a statement that is no longer effective.”

A termination statement’s “effect on a security interest is dramatic and final.” Farmers Bank & Trust could not take back the bad move!

The Bank argued that the termination statement was unauthorized. The Court said that even though the filing of the termination statement may have been inadvertent or accidental, it was filed by a loan processor of Farmers Bank & Trust who handles financing statements. “Authorization relates to the act of filing, not necessarily to the effect of that act.” Therefore: “as long as the usual person handling such statements filed it, authorization exists.”

So be careful and get an extra opinion before filing that UCC document!

The Court scolded Farmers Bank & Trust for not being careful. “Before a secured party authorizes the filing of a termination statement, it ought to review the statement carefully and understand which security interests it is releasing and why. . . . If parties could be relieved from the legal consequences of their mistaken filings, they would have little incentive to insure the accuracy of the information contained in their UCC filings.”

If you need assistance or have questions with regard to proper documentation, attachment or perfection of security interests, please call me.