GRAY PLANT MOOTY

AGRICULTURAL FINANCE

2018 Case Law Update

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I. UCC REVISED ARTICLE 9 [SECURED TRANSACTIONS].

C. Priority.

1. Statutory Liens *(Handout Material pages 3 - 6)*

Procedural Compliance by Lien Claimant:

Nebraska agricultural input lien requires strict compliance. *In re Hill*, 2018 WL 1916172 (Bankr. D. Neb. 2018).

Tennessee producer liens; Lien statute requires the UCC-1 be filed in the correct name. *Fishback Nursery, Inc. v. PNC Bank, N.A.*, 2017 WL 6497802 (N.D. Tex. 2017).

Oregon producer lien; UCC-1 needs to be filed within 45 days. *Fishback Nursery, Inc. v. PNC Bank, N.A.*, 2017 WL 6497802 (N.D. Tex. 2017).

Oregon producer lien; Only requires constructive notice of lien. *In re Farmers Grain, LLC*, 2018 WL 2223071 (Bankr. D. Idaho 2018).

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I. UCC REVISED ARTICLE 9 [SECURED TRANSACTIONS].

C. Priority.

1. Statutory Liens *(Handout Material pages 3 - 6)*

Substantive Compliance by Lien Claimant:

North Dakota agricultural supply dealer's lien requires substantial compliance. *In re McDougall*, 572 B.R. 239 (D. N. D. 2017).

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I. UCC REVISED ARTICLE 9 [SECURED TRANSACTIONS].

C. Priority.

3. Statutory Trusts. *(Handout Material pages 8)*

Transfer of risk factors for determining enforceability of factoring agreement. *S & H Packing & Sales Co., Inc. v. Tanimura Distributing, Inc.*, 883 F.3d 797 (9th Cir. 2018).

The 9th Circuit, en banc, held the following factors for analyzing the transfer of risk:

(1) the right of the creditor to recover from the debtor any deficiency if the assets assigned are not sufficient to satisfy the debt,

(2) the effect on the creditor's right to the assets if the debtor were to pay the debt from independent funds,

(3) whether the debtor has a right to any funds recovered from the sale of assets above that necessary to satisfy the debt, and

(4) whether the assignment itself reduces the debt.

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I. UCC ARTICLE 1 [GENERAL PROVISIONS], ARTICLE 2 [LEASES], ARTICLE 3 [NEGOTIABLE INSTRUMENTS] AND ARTICLE 7 [DOCUMENTS OF TITLE].

(Handout Material pages 9 - 10)

The economic life of a dairy cow for purposes of a true lease analysis is that of the "dairy herd" not the original leased dairy cow; however, lessor unable to prove leased proceeds used to buy replacement dairy cows. *In re Purdy*, 870 F.3d 436 (6th Cir. 2017).

6th Circuit (2014). When lease requires replacement of leased goods, the economic life analysis for purposes of UCC § 1-203 is the economic life of the entire dairy herd (which would arguable be indefinite). Really bad decision. However, lessor still needs to prove lease proceeds were used to acquire later replacement dairy cows for leasehold interest to be preserved as to later dairy cows. *Sunshine Heifers, LLC v. Citizens First Bank (In re Purdy)*, 763 F.3d 513 (6th Cir. 2014).

6th Circuit (2017). Lessor was unable prove or trace the proceeds from the sale of leased dairy cows to the later acquired dairy cows. *In re Purdy, 870 F.3d 436 (6th Cir. 2017).*

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V. BANKRUPTCY.

B. Case Administration. (11 U.S.C. § 301 et seq.). *(Handout Material pages 11 – 12)*

Chapter 11 debtor entitled to use PACA trust proceeds as cash collateral; PACA trust claimant adequately protected. *In re Cherry Growers, Inc.*, 576 B.R. 569 (W.D. Mich. 2017).

The Court held that because the value of the bankruptcy estate property far exceeded the value of Grower's claim, the Grower was adequately protected for purposes of 11 U.S.C. § 363(a). The Court authorized the Debtor to continue to use its plant, property, and equipment, and the funds generated through operations, including the PACA trust proceeds

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V. BANKRUPTCY.

F. Chapter 12. (11 U.S.C. § 1201 et seq.) ***(Handout Material pages 13)***

Chapter 12 eligibility: Aggregate debts based on bankruptcy schedules. ***In re Perkins*****, 581 B.R. 822 (B.A.P. 6th Cir. 2018).**

The court held that it would not be equitable to use the proofs of claim to determine the aggregate amounts for Chapter 12 eligibility, and absent a showing of bad faith, the debt amounts in the schedules should determine Chapter 12 eligibility.

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2019 AGRICULTURAL FINANCE TRENDS:

1.Continued financial stress for grain and dairy producers.

2.Continued use of alternative supplier/vendor financing – and creditor litigation involving agricultural liens.

3.Continued litigation with "downstream" buyers (buyers of farm products, statutory trust claims).

4.Only modest increase in Chapter 11 and 12 agricultural bankruptcy filings.

5.Increased production of non-traditional crops.