

Can a Creditor Obtain a Lien on Cash Proceeds?

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Scenario: In order to perfect its security interest and to obtain a lien on property belonging to a debtor, a creditor files a UCC-1 Financing Statement, specifically identifying that the creditor's security interest covers the following collateral of the debtor: inventory, equipment, goods, accounts, intangibles and instruments (collectively referred to as "collateral"). If the debtor sells the collateral or the collateral is later converted into identifiable cash proceeds, does the creditor have a perfected security interest in those proceeds, despite the fact that the UCC-1 makes no mention of cash, money or proceeds?

Generally speaking, in Florida, in order for a creditor to become a secured creditor and to obtain a lien on property, the debtor, as the borrower, executes a security agreement in favor of the creditor, as the lender, and the creditor files a UCC-1 Financing Statement with the Florida Department of State, specifically the Florida Secured Transaction Registry, identifying the specific collateral of the debtor covered by the UCC-1. Thereafter, should the debtor default, the creditor has a perfected security interest in the collateral listed in the UCC-1.

With respect to "proceeds," the Uniform Commercial Code ("UCC") provides that a security interest continues in collateral, notwithstanding sale, exchange, or other disposition thereof and also attaches to any identifiable proceeds of collateral. *See*, Fla. Stat. §§ 679.306(2)-(3) (2000); and 679.3151(1)(a)-(b) and (3) (2007). According to the applicable case law, "proceeds" do not have to be listed as a specific item of collateral in a UCC-1 and security agreement in order for a creditor to perfect a security interest in such proceeds. The drafters of the UCC assumed that it was reasonable to expect that "a secured creditor would want a security interest in whatever was given in exchange for its primary collateral and decided to require only a proper filing covering the underlying collateral in order to perfect and interest in the proceeds of that collateral as well." *In re Quaker Distributors, Inc.*, 189 B.R. 63, 70 (Bankr. E.D. Pa. 1995).

Similarly, it is sufficient for the UCC-1 and security agreement to refer to general types of collateral such as "accounts" without specifically listing every type of account, such as accounts receivable. *See*, *In re Dillard Ford, Inc.*, 940 F.2d 1507, 1512 (11th Cir. 1991). Upon the debtor's default, if what the creditor seeks possession of is "accounts receivable," the original UCC-1 filed by the creditor sufficiently perfected a security interest in the accounts receivable by using the term "accounts." Thus, there is no need to engage in a "proceeds" analysis because the security interest is already perfected and continues without interruption.

Furthermore, upon the debtor's default, if the creditor seeks possession of a "deposit account," or money that is not previously accounts receivable, then the creditor needs to engage in a "proceeds" analysis. If the money is identifiable or traceable "cash proceeds" of the collateral the creditor already has a perfected security interest in, such as "accounts," or "inventory," or "goods," or "equipment," then the creditor has a perfected security interest in those proceeds. *See*, Fla. Stat. §§ 679.3121(2) (2007); 679.3151(3)-(4) (2007); and 679.1021(i) (2007). For instance, in *H.B. London & Co. v. Wiles*, 695 So. 2d 876, 878-9 (Fla. 2d DCA 1997), the court held that a creditor could have a security interest in money in a bank account if

the creditor could prove that the money was identifiable cash proceeds from the sale of the collateral in which the creditor already had a perfected security interest.

Therefore, if the collateral that the creditor has a perfected security interest in is sold or otherwise converted into identifiable or traceable “cash proceeds,” then the creditor has a continuing perfected security interest in those proceeds. This makes sense because otherwise a debtor could simply sell the collateral for cash and claim that it unilaterally eliminated the creditor’s security interest. *See, In re Delco Oil, Inc.*, 365 B.R. 246 (Bankr. M.D. Fla. 2007).

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