

Seventh Circuit Reaffirms Notice Principle of UCC Financing Statements

by Steven T. Waterman

Last year, the U.S. Bankruptcy Court for the Central District of Illinois determined in *In re I80 Equipment, LLC* that a financing statement which referenced a description of the collateral, but did not contain or attach the description did not include a sufficient description of collateral, making the financing statement ineffective, and the security interest unperfected.¹ This was a departure from the principle of simple notice filing, which earlier courts had determined only required a financing statement to contain a description that would allow a potential lender could “reasonably identify” the collateral after further inquiry.

On September 11, 2019 the United States Court of Appeals for the Seventh Circuit reversed the ruling of the Bankruptcy Court. The Seventh Circuit echoed earlier courts, stating that the purpose of a financing statement is to put potential creditors on notice that a person may have a security interest in the collateral indicated.² The court looked at the text of Illinois UCC §9-502(a)(3), which requires that a financing statement “indicate the collateral covered by the financing statement”. While the Bankruptcy Court interpreted that requirement to mean that a specific description of the collateral must be included within the four corners of the financing statement, the Seventh Circuit opined that the word “indicate” simply means “pointing or directing attention to a description of that collateral” in another agreement, or otherwise, as long as the identity of the collateral is objectively determinable. Accordingly, the underlying financing statement in question (which described the collateral as “All collateral described in the [Security Agreement] dated March 9, 2015 between the debtor and the secured party”) was held to contain a sufficient description of collateral because an inquiring potential creditor could discover the identity of the collateral by reading the Security Agreement.

The reversal of the Bankruptcy Court’s decision in *I80 Equipment* reaffirms the purpose of the financing statement, which is to put potential creditors on notice that there may be a prior security interest in a debtor’s property, and that a prudent creditor will inquire further as to what that security interest covers. While heightened attention should always be paid to the drafting of a financing statement, the *I80 Equipment* reversal furthers the

Related People

- Steven T. Waterman

Related Capabilities

- Banking & Financial Institutions
- Bankruptcy & Financial Restructuring
- Corporate Governance & Compliance

goal of avoiding “a windfall for a bankruptcy estate [and] a minefield for lenders.”
However, a more specific listing of types or of all assets will save time and litigation expenses.

¹ In re I80 Equipment, LLC, 591 B.R. 353 (Bankr. C.D. Ill 2018).

² First Midwest Bank v. Reinbold (In re I80 Equip., LLC), 938 F.3d 866 (7th Cir. 2019).