1978

Eben Blomquist v. J. Dal Peterson And Karl D. Blomquist, And Minerals Recovery Company, Aka Mineral Recovery Corporation, A Utah Corporation : Brief of Plaintiff-Appellant

Utah Supreme Court

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

EBEN BLOMQUIST, Plaintiff-Appellant,	)	Case No.
vs.	)	15496
J. DAL PETERSON and KARL D. BLOMQUIST, and MINERALS RECOVERY COMPANY, aka MINERAL RECOVERY CORPORATION, a Utah corporation, Defendant-Respondent,	)	

BRIEF OF PLAINTIFF-APPELLANT

APPEAL FROM THE JUDGMENT OF THE THIRD
JUDICIAL DISTRICT COURT FOR SALT LAKE
COUNTY, STATE OF UTAH
HONORABLE DAVID B. DEE, JUDGE

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STATEMENT OF NATURE OF CASE

By his amended complaint, filed October 15, 1976 (R. 15-18), Plaintiff seeks to recover the sum of $10,222.00 with interest and attorney's fees on a note (R. 75) executed by Defendants J. Dal Peterson and Karl W. Blomquist in favor of plaintiff. Plaintiff seeks an adjudication by the Court that the promissory note is secured by a certain piece of mining equipment known as a "belt tank". Title to the belt tank was assigned to Defendant Minerals Recovery Corporation by Defendant Peterson.

By the terms of the promissory note, Defendants Peterson

and Blomquist were jointly and severally liable. On February 9, 1977, a default judgment on the promissory note was entered against Defendant Peterson with interest and attorney's fees (R. 41). On October 13, 1976, Plaintiff and Defendant Blomquist stipulated that the belt tank could be sold pursuant to the established procedures of the District Court, and that the proceeds from the sale could be use to pay the promissory note plus interest and cost of the action (R. 69-70).

In Defendant Mineral Recovery Corporation's answer to the plaintiff's complaint (R. 20-23) filed November 8, 1976, Mineral Recovery Corporation denied that the promissory note had been secured by the belt tank. Specifically, Mineral Recovery alleged that there existed no security interest in the belt tank in favor of the Plaintiff because the Plaintiff and the Defendants Peterson and Blomquist had not executed a security agreement, pursuant to UCA § 70A-9-203.

On June 7, 1977, Plaintiff moved the District Court for summary judgment (R. 67) based upon the following documents:

1. Default judgment against Defendant Peterson (R. 41)
2. Stipulation of Defendant Blomquist and the Plaintiff (R. 69-70)
3. The affidavit of the Plaintiff (R. 71-75)

4. The affidavit of Defendant Blomquist

5. The affidavit of Sidney Horman (R. 76-77)

On July 11, 1977, Defendant Mineral Recovery Corporation also moved for summary judgment (R. 86-87).

DISPOSITION IN THE LOWER COURT

The motions for summary judgment were heard before the District Court, Honorable David B. Dee presiding, on July 14, 1977. At the hearing, the Court considered the question of whether there existed a valid security agreement between the Plaintiff and the Defendants Peterson and Blomquist. The court denied the Plaintiff's motion for summary judgment and entered judgment in favor of the Defendant Minerals Recovery Corporation (R. 112-113). The District Court, in its memorandum decision, held that UCA § 70A-9-203 "...does not allow the creation of a security agreement under the facts in this case taking the promissory note and financing statement together and reading them in a light most favorable to the plaintiff..."(R.124).

RELIEF SOUGHT ON APPEAL

Plaintiff seeks the following relief on appeal:

1. A determination that a valid security agreement pursuant to UCA § 70A-9-203 was entered into by the Plaintiff and the Defendants Peterson and Blomquist, securing the

promissory note by the belt tank.

2. A determination that the Plaintiff is entitled to an order by the District Court providing for the sale of the belt tank in accordance with the rules and practices of the District Court, to satisfy the Plaintiff's judgment on the note.

STATEMENT OF FACTS

1. On June 11, 1974, Defendants J. Dal Peterson and Karl W. Blomquist executed a promissory note (R. 75) for $10,222.00 in favor of Plaintiff, Eben J. Blomquist. The note was due and payble in one installment on September 1, 1974. At the bottom of the note the following notion appears: "This note is secured by a Security Agreement of even date."

2. At the time the promissory note was executed, a financing statement (R.74) was signed by Defendants Blomquist and Peterson (R. 71-72). It was understood at this time that these two Defendants were to give a certain belt tank as security for the promissory note (R. 71-72). The financing statement was filed August 7, 1974 in the office of the Secretary of State (R. 73-74). The financing statement (R. 74) contains the following information:

A. The names of the Defendants Carl W. Blomquist and J. Dal Peterson and the address of J. Dal Peterson.

B. The name of the Plaintiff, including the Plaintiff's address.

C. A detailed description of the belt tank: "Mining Equipment - specifically 1-90' Belt Tank including electric motors, hoppers, Belt, and other attached equipment now located at Notum, Utah".

D. Signatures of Defendants, Carl W. Blomquist and J. Dal Peterson.

E. Signature of the Plaintiff, Eben J. Blomquist.

F. The date of the filing of the financing statement.

G. "maturity date" specified as September 1, 1974, referring to the maturity date of promissory note.

3. At the time the promissory note was signed by the Defendants, Defendant Peterson had title to and was in rightful possession of the belt tank (R. 76-77; 72). Also, at the time the financing statement was filed, Defendant Peterson still had title to and was in possession of the belt tank. Subsequent to the filing of the financing statement, Defendant Peterson assigned the belt tank to Mineral Recovery Corporation (R. 65).

ARGUMENT

POINT I.

UNDER ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, A WRITING SIGNED BY THE DEBTOR IS REQUIRED BEFORE A SECURITY INTEREST CAN BE CREATED IN FAVOR OF THE SECURED PARTY

UCA § 70A-9-203(1)(b) provides that "...a security interest is not enforceable against the debtor or third parties unless the debtor has signed a security agreement which contains a description of the collateral." The description "...is sufficient whether or not it is specific if it reasonably identifies what is described." UCA § 70A-9-110. "Security Agreement" is defined as "...an agreement which creates or provides for a security interest..." UCA § 70A-9-105(h). The foregoing language from Article 9 is the only language that can be found in the Uniform Commercial Code in reference to determining the question of whether a valid security agreement exists between the debtor and the secured party. Obviously, because of the lack of statutory definition and language, the question of what constitutes a valid "security agreement" is open to a wide range of judicial interpretation. The question before the instant court is whether the financing statement (R. 74) and promissory note (R.75) constitute a valid security agreement under UCA § 70A-9-203(1)(b

POINT II.

THE FINANCING STATEMENT AND THE PROMISSORY NOTE OF THE INSTANT CASE CONSTITUTE A VALID SECURITY AGREEMENT WITHIN THE MEANING OF UCA § 70A-9-203(1)(b)

The established rule in American Jurisprudence in regard to the "security agreement" requirement of § 9-203(1)(b) is that the "security agreement" need not be confined to only one document formally designated as "Security Agreement". Multiple documents can serve to establish the prerequisites of § 9-203 (1)(b). In re Amex-Protein Development Corp., 504 F2d 1056 (9th Cir. 1974) (promissory note, invoices, and financing statement were evidence of a valid security agreement); In re Numeric Corporation, 485 F2d 1328 (1st Cir. 1973); In re Penn Housing Corp., 367 F.Supp 661 (WD pa. 1973) (financing statement promissory notes and letters constituted valid security agreements); In re Martronics, 2 UCC Rep 364 (D Conn., Ref., aff'd by Dist. Ct. 1964)(loan agreement, promissory note and financing statement constituted security agreement); In re Fibre Glass Boat Corp., 324 F. Supp 1054 (DCSD Fla., 1971), aff'd w/o opinion 448 F2d 781 (5th Cir., 1971)(letter and financing statement constituted valid security agreement); Clark v. Vaughn, 504 SW 2d 550 (Tex. Civ. App. 1973 (motor vehicle title certificate constituted valid security agreement); In In re Numeric Corp.,

supra at 1331, the court gave the following rationale for the above rule:

> ...we have little difficulty concluding that a separate formal document entitled "Security Agreement" is not always necessary to satisfy a signed-writing requirement of § 9-203(1)(b). The draftsmen of the UCC ascribed two purposes to that requirement. One purpose was evidentiary, to prevent disputes as to precisely which items of property are covered by a security interest.(citations omitted) The second purpose of the signed-writing requirement is to serve as a Statute of Frauds, preventing the enforcement of claims based on wholly oral representations. (citation omitted).
>
> Given these two limited purposes of § 9-203(1)(b) and the flexible definitions of "security agreement" found elsewhere in the Code, there seems to be no need to insist upon a separate document entitled "security agreement" as a prerequisite for enforcement for an otherwise valid security interest. A writing or writings, regardless of lable, which adequately describes the collateral, carries the signature of the debtor, and establishes that in fact a security interest was agreed upon would satisfy both the formal requirements of the statute and the policies behind it. (citations omitted)

In defining the phrase "...an agreement which creates or provides for a security interest...," Courts have generally agreed that formal or technical granting language is not required to create a valid security agreement within the meaning of this statutory language (UCA § 70A-9-105(h). Generally, courts have held that a security interest will be deemed to

have been created if the court can ascertain from the four corners of the various documents the requisite intent on the part of the parties to create such a security interest. In re Nottingham, 6 UCC Rep 1197 (DCED Tenn., Ref., 1969); Evans v. Everett, 279 NC 352, 183 SE 2d 109 (1971); In re Barney, 344 F.Supp 694 (DC Ida., 1972); Clark v. Vaughn, supra. The Court in Nottingham, supra at 1199 stated this rule in the following language:

> There are no magic words that create a security interest. There must be language, however, in the instrument which when read and construed leads to the logical conclusion that it was the intention of the parties that a security interest be created... The requirements of the code for creating a security interest are simple - an intention to create a security interest is all that need be shown - a dozen words or less are sufficient...

As the Court stated in Barney, supra at 697:

> "Clearly, a security interest can be created or come into existance without using the magic words "security interest."

In Clark v. Vaughn, supra, the court found that an automobile title certificate constituted a valid security agreement. The court in reaching this conclusion held that specific granting language was not required to create a valid security interest:

> The record does not include a written agreement signed by Clark stating specifically that Vaughn shall have a lien on or security interest in the automobile, but it does contain the title certificate, which as the trial court found, was signed by Clark and delivered to Vaughn. It contained a description of the collateral, and was undoubtedly intended by both parties to be written evidence of Vaughn's interest in the vehicle, and, while the question is not free from doubt, we hold that it was sufficient to constitute a signed security agreement within the meaning of section 9-203. (Clark v. Vaughn, supra at 553)

It is apparent from the foregoing case law that specific, technical granting language is not a prerequisite to the creation of a security interest and that a court in ascertaining whether or not a valid security agreement exists, can rely upon language within the various related documents evidencing an intent on the part of the parties to create a security interest.

There is one case on point. In In re Center Auto Parts, 6 UCC Rep 398 (CD Calif. 1968), the debtor made a promissory note which stated: "This note is secured by a certain financing statement." The debtor and the secured party also signed a financing statement and filed it. The court found that the promissory note "created and provided for a security interest", pursuant to 9-203(1)(b). The court also found that the financing statement adequately identified the collateral based on the test

of § 70A-9-110. The court also took note of the fact that the financing statement was the only one on file between the parties. Thus, it was held that the promissory note and the financing statement together constituted a valid security agreement. The following is the analysis used by the court in reaching its decision:

> Section 9203 of the Commercial Code provides in pertinent part that a security interest is not enforceable against the debtor or third parties unless the debtor has signed a security agreement which contains a description of the collateral. Thus, the following three questions must be answered in the affirmative in order to allow respondent to stand as a secured creditor:
>
> (1) Has the Agreement Been Signed by the Debtor? Clearly both the note and the Financing Statement have been signed by the debtor.
>
> (2) Is it a "Security Agreement"? A "security agreement" is defined in Section 9-105(1)(h) of the Commercial Code as an "agreement which creates or provides for a security interest." As did the court in the case of American Card Company v. H.M.H. CO., 196 A2d 150 (1 UCC Rep 447) (RI 1963), this court concludes that the Financing Statement, though it is signed by the debtors and contains a description of the property, does not standing alone allow a priority for a valid security interest since the financing statement filed in the office of the Secretary of State did not contain the debtor's grant of security interest. However, the note does in fact "create and provide for a security interest." Its language is clear that a sec-

urity interest was to be granted by the execution of the note for it states, "This note is secured by a certain financing statement." It has been stipulated that the financing statement in evidence is the only one between the parties. Thus, by looking to the financing statement, the property provided by the debtors as security for the loan made by respondent is identified.

(3) Does it Contain a Description of the Collateral? Section 9-110 of the Commercial Code states, "Sufficiency of Description. For purposes of this division (this Article) any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described." The note describes the collateral by reference to the Financing Statement. The Financing Statement lists as the collateral the inventory of auto parts and office furnishings. The address of the chief place of business of Center Auto Parts is provided in the Financing Statement. "It is not essential that the description be so specific that the property may be identified by it alone, if such description suggests inquiries or means of identification which, if pursued, will disclose the property covered. This rule is based upon the maxim, that is certain which is capable of being made certain." (Citation omitted) (In re Center Auto Parts, supra at 399-400)

It should be noted that the opinion in In re Center Auto Parts has been reviewed by many jurisdictions and has become a respected precedent in American Jurisprudence for defining the UCC Article 9 provision dealing with "security agreement." The following jurisdictions expressly approve of or at least favorably cite the opinion: In Re Penn Housing Corp., supra;

In re Amex-Protein, supra; In re Harmon, 6 UCC Rep 1280 (DCD Conn., Ref., 1969); In re Numeric, supra; In re Nottingham, supra; Evans v. Everett, supra.

Generally, the mere fact that a majority of jurisdictions follow a certain precedent is not persuasive with a court of law. A court of law is more concerned with the underlying rationale and soundness of the rule. However, in the case of UCC statutory interpretation, the mere fact of precedent is a factor properly to be weighed by the Court. UCA § 70A-102(2) provides that an underlying purpose and policy of the UCC is "...to make uniform the law among the various jurisdictions."

It should be apparent that the instant promissory note and financing statement together constitute a valid security agreement under the foregoing case law. The promissory note clearly specifies the terms of the agreement, the debtors' signatures appear on the note, and the note states: "This note is secured by a Security Agreement of even date." The financing statement on file between the parties clearly identifies the collateral, all parties involved signed the statement, and the "maturity date" specified on the financing statement is the identical date specified on the note as the date the note is due.

Obviously, the language, "This note is secured by a certain Security Agreement of even date", in conjunction with the other items of information contained in the two documents, clearly "creates or provides for a security interest". Based upon the test of Nottingham, supra, it is apparent that when these two documents are read and construed together, it must be logically concluded that the parties intended a security interest. According to the Nottingham test, the intent of the parties is all that need be shown. It should also be noted that the facts of the instant case and the facts of In re Center Auto Parts, supra are substantially identical. There is no substantial difference between the phrase of the instant note, "This note is secured by a certain Security Agreement of even date," and the phrase of the note in In re Center Auto Parts, "This note is secured by a certain financing statement." Both phrases clearly evidence the requisite intent. However, it should also be noted that the phrase of the instant note unequivocally states that the requisite security agreement exists between the parties, whereas the phrase in the note of In re Center Auto Parts, supra only implies that such an agreement exists. Thus, the requisite intent is more easily found in the instant case than in In re

Center Auto Parts, supra.

POINT III.

THE RULE OF LAW THAT MULTIPLE DOCUMENTS CAN SERVE AS A VALID SECURITY AGREEMENT IS IN HARMONY WITH THE UNDERLYING PURPOSES AND POLICIES OF THE UNIFORM COMMERCIAL CODE

Under Article 9 of the UCC, the requirements of a valid security agreement have been greatly simplified. The pre-code complexities and technical forms and distinctions have been abolished. Comment to 9-101. The only specific requirements in the Code are those found in §§ 70A-9-203(1)(b). The purpose of §§ 70A-9-203(1)(b) is to serve as a statute of frauds, preventing claims based wholly upon oral representation. The section also has an evidentiary purpose to prevent disputes as to which items of property are subject to the security interest. Comment 3 and 5 to 9-203; In re Numeric, supra. The Code does not specify that a piece of paper designated as "security agreement" be used in fulfilling these purposes, nor does it forbid the use of a financing statement or other types of documents or even a combination of documents. The Code is completely silent as to methods by which the purposes of §§ 70A-9-203(1)(b) should be fulfilled.

The Code, however, does provide some guidelines as to how

its provisions should be construed. In § 70A-1-102(1), the Code states that "this act should be liberally construed and applied to promote its underlying purposes and policies." The underlying purposes and policies of the UCC are "... to simplify, clarify and modernize the law governing commercial practices; (and) to make uniform the law among the various jurisdictions." § 70A-9-102(2).

In the instant case, a promissory note and a financing statement which are, without question, part of the same transaction, clearly fulfill the purposes of § 70A-9-203(1)(b). The two documents together constitute a complete and integrated written security agreement. Thus, the evidentiary and statute of frauds purposes of § 70A-9-203(1)(b) are fulfilled.

CONCLUSION

Any combination of documents can satisfy the requirements of a signed security agreement, pursuant to UCA § 70A-9-203. The documents together must show: (1) the signature of the debtor, (2) an adequate description of the collateral and (3) intent to create a security interest. The promissory note and financing statement together satisfy these three requirements. Thus, a valid security agreement exists between the Plaintiff and the Defendants Blomquist and Peterson.

The foregoing is respectfully submitted.

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