[Cite as *Union Bank Co. v. Heban*, 2012-Ohio-30.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

The Union Bank Company	Court of Appeals No. S-11-005
Appellant	Trial Court No. 20091030A
v.	
Kevin Heban, et al.	**DECISION AND JUDGMENT**
Appellee	Decided: January 6, 2012

* * * * *

Howard B. Hershman, for appellant.

Alan R. McKean and Martin D. Carrigan, for appellee The National Bank of Oak Harbor.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, The Union Bank Co. ("Union Bank"), appeals from a decision entered by the Sandusky County Court of Common Pleas, Probate Division, determining the priority of security interests of various creditors seeking proceeds obtained from the liquidation of certain equipment sold by defendant Kevin Heban, Administrator of the

Estate of Thomas J. Tille, deceased. For the reasons that follow, we reverse the judgment of the trial court.

{¶ 2} Decedent, Thomas Tille, operated an equipment rental business known as M.A.T.T. Equipment Company. Over the years, Tille secured loans from various financial institutions in order to purchase equipment to operate the business. Among the financial institutions from which Tille received loans were Union Bank and appellee, The National Bank of Oak Harbor ("NBOH").

{¶ 3} After Tille passed away, the administrator of his estate realized that some of the equipment Tille had purchased involved competing and conflicting security interests. The administrator sold the equipment at public auction and, rather than disbursing the proceeds (which amounted to approximately $44,483.07), sought direction from the trial court as to how the proceeds ought to be disbursed. Union Bank filed the instant action, asserting a claim against the proceeds based upon its numerous security interests.

{¶ 4} The evidence, which is undisputed, relevantly demonstrates the following:

{¶ 5} (1) June 27, 2003, Union Bank filed a financing statement covering all of Tille's equipment, including any after-acquired property.

{¶ 6} (2) On March 14, 2006, Tille executed a promissory note and commercial security agreement with Union Bank ("PN1"). The commercial security agreement expressly mentions the June 27, 2003 financing statement in the section of the document titled "COLLATERAL DESCRIPTION." The balance due on PN1 is approximately $851.19.

{¶ 7} (3) On February 2, 2007, Tille executed a second promissory note with Union Bank ("PN2"). The "collateral" section of PN2 clearly states that "[t]his loan is unsecured." The balance due on PN2 is approximately $19,287.13.

{¶ 8} (4) On October 25, 2007, Union Bank filed a financing statement covering a certain truck crane belonging to Tille, "whether * * * owned now or acquired later."

{¶ 9} (5) On December 21, 2007, Tille executed a promissory note and commercial security agreement with NBOH ("PN3"). Although the current balance of the loan is not contained in the record, the initial amount of the loan was $40,212.00.

{¶ 10} (6) On December 24, 2007, NBOH filed a financing statement covering all of Tille's equipment, including any after-acquired property.

{¶ 11} (7) On May 9, 2008, Tille executed another promissory note and commercial security agreement with Union Bank ("PN4"). The commercial security agreement expressly mentions a certain Bobcat mini excavator in the section of the document titled "COLLATERAL DESCRIPTION." The balance due on PN4 is approximately $9,137.00.

{¶ 12} (8) On May 9, 2008, Union Bank filed a financing statement covering a certain Bobcat mini excavator belonging to Tille.

{¶ 13} (9) On October 16, 2008, Tille executed a final promissory note and commercial security agreement with Union Bank ("PN5"). The commercial security agreement expressly mentions, in the section entitled "COLLATERAL DESCRIPTION,"

the truck crane and the attendant financing statement filed on October 25, 2007. The balance due on PN5 is approximately $14,947.42.

{¶ 14} The trial court, in its January 11, 2011 judgment entry relevantly concluded as follows:

{¶ 15} (1) Rejecting Union Bank's claim that the PN1 was perfected by the June 27, 2003 financing statement, the trial court held that because Union Bank failed to show that the June 27, 2003 financing statement perfected an interest "in any associated loan or promissory note," said financing statement "cannot" perfect Union Bank's security interest in PN1.

{¶ 16} (2) Regarding PN2, the trial court relied on language contained in the promissory note stating that "[t]his loan is unsecured," to determine that PN2 was not a secured transaction.

{¶ 17} (3) The trial court found that PN3, executed on December 21, 2007, was properly perfected by the financing statement that was filed by NBOH on December 24, 2007, and has priority over all other claims in this matter.

{¶ 18} (4) The trial court found that PN4, executed on May 9, 2008, was properly perfected by the financing statement that was filed by Union Bank on the same day and would be the second to be paid, should there be funds remaining after payment of PN3.

{¶ 19} (5) Finally, rejecting Union Bank's claim that PN5 was perfected by the October 25, 2007 financing statement, the trial court held that because Union Bank failed to show that the October 25, 2007 financing statement perfected an interest "in any

associated loan or promissory note," said financing statement "cannot" perfect Union Bank's security interest in PN5.

{¶ 20} In light of the foregoing findings, the trial court ordered that the balance due on PN3 would be paid first and in full, and, in the event of any remaining funds, payment should be made on the balance due on PN4. The trial court further ordered that the balances due on PN1, PN2 and PN5 would be added to the balance of the remainder of the unsecured creditors, and that if funds remained available after payment of PN3 and PN4, the remaining notes would be on equal footing with the remainder of the unsecured creditors.

{¶ 21} Union Bank appealed the trial court's January 11, 2011 judgment entry, raising the following sole assignment of error:

{¶ 22} I. "The trial court erred in its determination of the priority of the lien claimants against the fund of money held by Kevin Heban as Administrator of the Estate of Thomas J. Tille, deceased."

{¶ 23} The purpose of a security agreement is to specify the necessary terms and conditions of an agreement between parties as to the existence of a security interest in collateral. *Saba v. Fifth Third Bank of NW Ohio*, 6th Dist. No. L-01-1284, 2002-Ohio-4658, ¶ 39. Pursuant to R.C. 1309.201(A), a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors. A security agreement is enforceable against all third parties once it is perfected.

{¶ 24} Unless an agreement expressly postpones the time of attachment, a security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral. R.C. 1309.203(A). The security agreement is enforceable against the debtor and third parties with respect to the collateral if: (1) value has been given; (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and (3) the debtor has authenticated a security agreement that provides a description of the collateral. R.C. 1309.203(B).

{¶ 25} A security interest is perfected if it has attached and all of the applicable requirements for perfection have been satisfied. R.C. 1309.308(A). A security interest can be perfected at the time it attaches if the applicable requirements for perfection are satisfied before the security interest attaches. See id.

{¶ 26} In general, a financing statement must be filed in order to perfect a security interest. See R.C. 1309.310. The filing of a financing statement provides "notice to interested third parties that the person filing it may have a security interest in the property of the debtor named therein." *Natl. Bank of Fulton Cty. v. Haupricht Bros., Inc.* (1988), 55 Ohio App.3d 249, 255. In fact, perfection of a security interest by the filing of a financing statement is "relevant only to disputes among secured creditors as to the relative priorities of their security interests in the securities as collateral," and is not relevant to the validity of the security interest as between the parties to a security agreement. *Lojek v. Pedler* (1986), 22 Ohio St.3d 71, paragraph two of the syllabus. Id.; see, also, *Saba*, supra, at ¶ 39.

{¶ 27} To be sufficient, a financing statement must provide the name of the debtor and the name of the secured party or a representative of the secured party, and must indicate the collateral covered by the financing statement. R.C. 1309.502(A). Further, regarding the indication of covered collateral, a financing statement need only contain a description "'that would put a reasonably prudent prospective lender or buyer on notice that the collateral sought to be purchased or encumbered might be the subject of a preexisting security interest.'" *Key Bank Natl. Assoc. v. Huntington Natl. Bank*, 9th Dist. No. 20725, 2002-Ohio-1977, quoting *Farm Credit Serv. of Mid-America, ACA v. Rudy, Inc.* (1996), 113 Ohio App.3d 93, 99-100.

{¶ 28} In addition, "'[s]ince the financing statement is designed only to provide general notice or warning that certain collateral might already be encumbered,' the financing statement 'need not provide interested parties with all of the information he needs to understand the secured transaction, but only with the information that such a transaction has taken place and that the particulars thereof may be obtained from the named secured party at the address shown.'" Id.

{¶ 29} R.C. 1309.322 governs priorities among conflicting security interests in the same collateral. R.C. 1309.322(A)(1) provides:

{¶ 30} "Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural

lien is first perfected, if there is no period thereafter when there is neither filing nor perfection."

{¶ 31} Further, "[t]he time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation." R.C. 1309.322(B)(2).

{¶ 32} At the end of R.C. 1309.322 is an official comment dealing with conflicting perfected security interests, which includes the following relevant example together with explanation and analysis of Ohio law:

{¶ 33} "On February 1, A files a financing statement covering a certain item of Debtor's equipment. On March 1, B files a financing statement covering the same equipment. On April 1, B makes a loan to Debtor and obtains a security interest in the equipment. On May 1, A makes a loan to Debtor and obtains a security interest in the same collateral. A has priority even though B's loan was made earlier and was perfected when it was made. It makes no difference when A made its advance.

{¶ 34} "The problem stated in Example 1 is peculiar to a notice-filing system under which filing may occur before the security interest attaches * * *. The justification for determining priority by order of filing lies in the necessity of protecting the filing system – that is, of allowing the first secured party who has filed to make subsequent advances without each time having to check for subsequent filings as a condition of protection. * * * "

{¶ 35} In the instant case, Union Bank argues that the trial court erred in concluding that a financing statement, in order to be effective, must relate to a particular note, loan, or indebtedness. We agree. Ohio law simply has no such requirement.

{¶ 36} Here, all of Union Bank's financing statements are sufficient under the applicable law. That is, they provide the name of the debtor (Tille), the name of the secured party (Union Bank), and they each indicate the collateral covered by the financing statement (in one case all of Tille's equipment, including after-acquired property; in another, the truck crane; and in the third the Bobcat mini excavator). See R.C. 1309.502. In addition, all of the descriptions of the covered collateral that are contained in Union Bank's financing statements are clearly sufficient to put a reasonably prudent prospective lender or buyer on notice that the collateral sought to be purchased or encumbered might be the subject of a preexisting security interest. See *Key Bank*, supra. Further, the information that was available as a result of the filed financing statements was likewise sufficient to alert NBOH that secured transactions had, or at least may have, taken place and that the particulars of those transactions could be obtained from Union Bank. See id. Accordingly, we conclude that not only PN3 and PN4, but also PN1 and PN5, are all perfected security interests, and should be treated that way when determining matters of priority.

{¶ 37} For the foregoing reasons, we find Union Bank's assignment of error to be well-taken as to PN1 and PN5.

{¶ 38} We reject, however, Union Bank's argument that PN2—which expressly states that "[t]his loan is unsecured"—is also perfected. As indicated above, the purpose of a security agreement is to specify the necessary terms and conditions of the parties' agreement. See *Saba*, supra. If, as here, a security agreement is clear and unambiguous, the court need not go beyond the plain language of the agreement to determine the parties' rights and obligations; instead, the court must give effect to the agreement's express terms. *Kemba Financial C.U. v. Griffin*, 5th Dist. No. 2007CA00054, 2007-Ohio-5518, ¶ 17. In this case, the language could not be clearer.

{¶ 39} Attempting to avoid this conclusion, Union Bank argues that language contained in all of its security agreements with Tille independently operate to secure the February 2, 2007 promissory note. The paragraph that Union Bank quotes, which is found under the heading "Cross Collateralization," relevantly provides as follows:

{¶ 40} "In addition to the Note, this Agreement secures all obligations, debts and liabilities, plus interest thereon, of either Grantor or Borrower to Lender, or any one or more of them, as well as all claims by Lender against Borrower or Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Borrower or Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party, or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations,

and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable."

{¶ 41} Assuming, without actually deciding, that such language could, under certain circumstances, act to secure an otherwise unsecured promissory note, we find that it does nothing to avail Union Bank in this case. This, because PN2 expressly and unequivocally provides that it is unsecured. The express and unequivocal language contained in PN2 stating that it is unsecured—language that was drafted by Union Bank—renders PN2, at the very least, an exception to the more generally applicable cross-collateralization provision that is contained in the various security agreements. Accordingly, we conclude that the trial court correctly determined that PN2 is unsecured.

{¶ 42} For all of the foregoing reasons, the judgment of the Sandusky County Court of Common Pleas, Probate Division, is reversed as to PN1 and PN5 and is remanded to the trial court for additional proceedings consistent with this decision. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.
CONCUR.

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JUDGE