

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

JOEL S. BLAIR, DBA
BLAIR'S AUTO PARTS

No. 02-14859
Chapter 7

Debtor

SCOTT N. BROWN, JR., TRUSTEE

Plaintiff

v.

Adversary Proceeding
No. 02-1197

GENERAL PARTS, INC., and
TENNESSEE DEPARTMENT OF REVENUE

Defendants

In re:

PHILLIP S. BLAIR, DBA
BLAIR'S AUTO PARTS

No. 02-14860
Chapter 7

Debtor

SCOTT N. BROWN, JR., TRUSTEE

Plaintiff

v.

Adversary Proceeding
No. 02-1198

GENERAL PARTS, INC., and
TENNESSEE DEPARTMENT OF REVENUE

Defendants

MEMORANDUM

Appearances: Thomas S. Kale, Spears, Moore, Rebman & Williams, Chattanooga, Tennessee,
Attorneys for Plaintiff

Nelwyn Inman, Baker, Donelson, Bearman & Caldwell, Chattanooga, Tennessee,
Attorneys for Defendant General Parts, Inc.

Marvin E. Clements, Jr., Assistant Attorney General, Nashville, Tennessee,
Attorney for Defendant Tennessee Department of Revenue

HONORABLE R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

The plaintiff is the bankruptcy trustee in the cases of Joel S. Blair and Phillip S. Blair (the Debtors). The Debtors are brothers who operated an automobile parts business before they simultaneously filed their bankruptcy cases. In each bankruptcy case, the trustee filed a complaint against General Parts, Inc. (GP) with regard to its alleged security interest in the parts inventory that was on hand when the Debtors filed bankruptcy. The complaint alleges that GP did not have a security interest in the inventory or the trustee can avoid the security interest because it was not perfected when the Debtors filed bankruptcy. Though the inventory has been sold, the court will decide this dispute over the proceeds as if the inventory had not been sold. This memorandum deals with GP's motion to dismiss. The motion asserts two grounds for dismissal: lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. Fed. R. Bankr. P. 7012(b); Fed. R. Civ. P. 12(b)(1), (6).

To decide a motion to dismiss for failure to state a claim, the court accepts as true the facts alleged in the complaint and the inferences fairly drawn from the alleged facts. The court then decides whether, based on those facts, the law provides the plaintiff with any enforceable claim against the defendant. *United Food and Commercial Workers International Union Local 199 v. United Food and Commercial Workers International Union*, 301 F.3d 468 (6th Cir. 2002). A motion under Rule 12(b)(1) to dismiss for lack of subject matter jurisdiction can also be based on the allegations of the complaint. This is the approach taken by GP.

The complaint focuses on the administrative dissolution of the corporation that the Debtors formed to operate the parts business. GP and the corporation executed the security agreement under which GP claims a security interest. The financing statement and continuation statement that GP filed to perfect the security interest identify the corporation as the debtor. The complaint alleges

that GP did not have a security interest in the inventory on hand when the Debtors filed bankruptcy because the corporation's dissolution meant that the inventory did not belong to the corporation. The complaint goes on to allege that even if GP had a security interest in the inventory, it was unperfected.

GP disagrees with the trustee's interpretation of the law as to the effect of the administrative dissolution of the corporation. GP contends that when the law is correctly interpreted and applied to the alleged facts, the complaint reveals that the inventory still belonged to the dissolved corporation, and the Debtors had no interest in the inventory when they filed bankruptcy. It follows, according to GP, that the court lacks subject matter jurisdiction, and the complaint fails to state a claim upon which relief can be granted. 28 U.S.C. § 1334(b); 11 U.S.C. §§ 541(a), 544(a) & 547 (b) (property of the estate; "property of the debtor"; "an interest of the debtor in property"); *Romar International Georgia, Inc. v. Southtrust Bank (In re Romar International Georgia, Inc.)*, 198 B.R. 401 (Bankr. M. D. Ga. 1996); *Shepard v. United States (In re Potomac Systems Engineering, Inc.)*, 202 B.R. 632 (Bankr. N. D. Ala. 1996). In the alternative, GP contends that even if the inventory did not belong to the dissolved corporation, the complaint fails to allege any means by which either Debtor acquired an interest in the inventory.

The following paragraphs summarize the complaint's allegations.

The Debtors operated an automobile parts store. The business was incorporated as Blair Auto Parts, Inc., or Blair's Auto Parts, Inc. To secure its debts to GP, the corporation executed a security agreement granting GP a security interest in the business's personal property, including property to be acquired in the future, such as inventory and accounts receivable. The security agreement was executed in February 1996.

In March 1996 GP filed a financing statement to perfect its security interest in the corporation's property. The financing statement lists the debtor as Blair Auto Parts, Inc., and describes the collateral as "All of Debtors' presently owned and hereafter acquired personal property and fixtures, including . . . all Equipment, . . . Inventory, . . . Accounts"

The corporation was dissolved by the Tennessee Secretary of State in September 1998. After its dissolution, the corporation no longer had the

authority to acquire property for the business. It was limited to the acts necessary for winding up the business.

After the corporation's dissolution, however, the Debtors operated the business as an informal partnership. Any inventory acquired by the business after dissolution of the corporation could not have belonged to the corporation because it did not have the legal authority to acquire the new inventory. To have a security interest in the new inventory, GP needed a new security agreement with the new operator of the business.

Since GP did not obtain a new security agreement within four months after dissolution of the corporation, the inventory subsequently acquired by the business was not subject to GP's security interest.

Even if GP did not need a new security agreement to continue its security interest, the security interest became unperfected after four months. It became unperfected because the filed financing statement became seriously misleading. It became seriously misleading because it identified the corporation as the debtor, but the corporation did not have an interest in the inventory acquired after its dissolution.

The continuation statement was ineffective for another reason. It was not signed by GP. "General Parts, Inc." is typed in, followed by a "By" line with "Tom Kress" typed underneath, but no individual signed. Since the continuation statement was ineffective, perfection of the security interest ended when the financing statement expired.

The Debtors subsequently filed chapter 7 bankruptcy cases on August 8, 2002. The plaintiff was appointed bankruptcy trustee in both cases. When the Debtors filed their bankruptcy petitions, the trustee acquired the rights under Tennessee law of the holder of judgment lien that immediately attached to the Debtors' property and was perfected.

The trustee's rights as a judgment lien creditor are superior to GP's rights because, when the Debtors filed bankruptcy, GP did not have a security interest in the inventory or the security interest was not perfected.

The court allowed GP to sell the inventory after the Debtors filed bankruptcy, and this dispute concerns the proceeds. The proceeds should be paid to the trustee since his claim to the inventory has priority over GP's security interest or it does not have a security interest.

For convenience, the inventory can be put into two categories, the old inventory and the new inventory. The old inventory means the inventory owned by the corporation at the time it was administratively dissolved. The new inventory means the inventory acquired by the business after the

corporation was dissolved. The time of the dissolution may not be the best point for dividing the inventory, as explained later, but it will serve as a good point for beginning the discussion of the parties' arguments.

The complaint alleges that the continued operation of the business, after the corporation's dissolution, caused the inventory to turn over so that when the Debtors filed bankruptcy none of the inventory was old inventory; it was all new inventory acquired after dissolution of the corporation. The complaint then alleges that the new inventory could not have been the dissolved corporation's property because it lacked the legal authority to continue in business.

GP's argument has two distinct points, as stated earlier. First, the alleged facts reveal that the Debtors had no interest in the old or new inventory because it belonged to the dissolved corporation. Second, even if the dissolved corporation was not the owner of the new inventory, the complaint does not allege facts to show that the Debtors acquired any interest in the new inventory. The court will consider the second point first.

The Debtors' Interest in the New Inventory

For the purpose of argument, the court assumes the corporation's dissolution prevented it from being the owner of the new inventory. The question, then, is who owned the new inventory. The complaint alleges the business continued as an informal partnership between the Debtors. An informal partnership could mean a partnership between the Debtors, no partnership between the Debtors, joint ownership by the Debtors, sole ownership by one or the other, or possibly some other form of ownership. Thus, the complaint states more than one theory for the Debtors' alleged interest in the new inventory. GP has not made a motion for summary judgment with supporting evidence to eliminate all the theories under which both the Debtors or one of them may have had an interest in the new inventory. In summary, the complaint states plausible legal and factual bases for the Debtors to have

had an interest in the new inventory.¹ Some vagueness in the complaint is tolerated at this stage of the adversary proceeding.

Tennessee law does not provide that dissolution of the corporation automatically made the Debtors, as the corporation's shareholders, the owners of the corporation's property. Dissolution of the corporation did not (1) end its existence, (2) terminate its ownership of property, or (3) transfer ownership of its property to another person. Tenn. Code Ann. §§ 48-24-202(c) & 48-24-105(b)(1). The often cited case of *Jesse A. Bland Co. v. Knox Concrete Products, Inc.*, is not consistent with these statutory rules. *Jesse A. Bland Co. v. Knox Concrete Products, Inc.*, 338 S.W.2d 605 (Tenn. 1960). The Tennessee Supreme Court's decision in *Bland* expressly depended on the lack of a Tennessee statute continuing the existence of the corporation after its charter was revoked. The court assumes that charter revocation under the old law was essentially the same thing as administrative dissolution under current law. The Tennessee statutes now provide for continuation of a corporation's legal existence after administrative dissolution. This overturns the basis of the *Bland* decision. Thus, the dissolution of the corporation did not automatically give either Debtor any personal interest in the old inventory. This does not necessarily mean the Debtors had no interest in the new inventory, however, as explained above. In the next section of this opinion, the court deals with the question of whether the corporation's continued existence, despite the administrative dissolution, means that the corporation owned the inventory subsequently acquired by the business.

The court will not dismiss the complaint on the ground that it fails to allege any facts to support the Debtors' interest in the new inventory. This conclusion brings the court back to the first

¹ A partnership's property is not property of the bankruptcy estate in one partner's case, but when all partners are in bankruptcy, the trustee in one partner's case can file an involuntary petition against the partnership. *McGahren v. First Citizens Bank & Trust Co. (In re Weiss)*, 111 F.3d 1159 (4th Cir. 1997); *E. A. Martin Machinery Co. v. Williams (In re Newman)*, 875 F.2d 668 (8th Cir. 1989); *Waldschmidt v. Dudley (In re Henderson)*, 127 B.R. 168 (M. D. Tenn. 1991); 11 U.S.C. § 303(b)(3)(B).

question. Did the administrative dissolution of the corporation prevent it from having an interest in new inventory?

Administrative Dissolution & the Corporation's Right to Acquire the New inventory

The bankruptcy trustee relies on § 9-402(7) of Article 9 of the Uniform Commercial Code (UCC). Tenn. Code Ann. § 47-9-402(7) (2000). This statute is part of old Article 9 that was the law in Tennessee until revised Article 9 took effect on July 1, 2001. Tenn. Code Ann. § 47-9-701 – 709. Revised Article 9 actually applies, but its transition provisions require the court to refer to old Article 9. The court must first determine whether GP's security interest was perfected or unperfected under old Article 9 on June 30, 2001, when § 9-402(7) was still in effect. Tenn. Code Ann. §§ 47-9-701, 47-9-703(b) & 47-9-704.

Section 9-402(7) provides:

A financing statement sufficiently shows the name of the debtor if it gives the individual, limited liability company, partnership or corporate name of the debtor, whether or not it adds other trade names or names of partners. If a secured party has knowledge that a debtor has so changed his name, or in the case of an organization, its name, identity or organizational structure, that a financing statement becomes seriously misleading and if no notice of such change has been filed and indexed with the financing statements as required or permitted by other provisions of law, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the secured party acquires knowledge of such change, unless a new appropriate financing statement is filed before expiration of that time. A financing statement shall not be deemed seriously misleading for purposes of this section by the merger, consolidation, share exchange or conversion of a debtor from one type of entity (e.g., corporation, partnership, limited partnership, limited liability company) into another and a corresponding change in the debtor's name, providing the debtor's name changes only to the extent of adding or changing the designation of the debtor's form of organization. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

Tenn. Code Ann. § 47-9-402(7) (2000).

The trustee contends the administrative dissolution of the corporation caused a change in the corporate debtor's name and organizational structure within the meaning of § 9-402(7). GP contends that administrative dissolution is not the kind of change that should be dealt with under § 9-402(7). GP points out that administrative dissolution does not end a corporation's legal existence, and the shareholders may not actually wind up the corporation's business. Tenn. Code Ann. §§ 48-24-105 – 107 & 48-24-202(c). Also, the state does not step in and force the corporation to wind up. The owners may continue using the corporate name and doing business as if nothing happened. Administrative dissolution imposes an invisible limit on the corporation's legal authority to continue in business. This invisible limit on the corporation's authority may be imposed for reasons having to do with state regulation of corporations, such as failure to file reports. Tenn. Code Ann. § 48-24-201. According to GP, this kind of regulatory dispute with the state should not cause a secured creditor to lose its security interest or cause the security interest to become unperfected. Finally, GP asserts that maintaining a security interest and its perfection should not require the secured creditor to monitor the state's records to be sure the corporate debtor has not been administratively dissolved. For these reasons, GP believes that administrative dissolution should not be viewed as a change in organizational structure for the purposes of § 9-402(7).

The court disagrees. Dissolution of a corporation comes within the literal meaning of a change in organizational structure. GP's argument also asks the court to ignore the Tennessee statute that limits the authority of a dissolved corporation to continue in business. A dissolved corporation continues to exist but only for the purpose of winding up its business. Tenn. Code Ann. § 48-24-202(c). Of course, winding up the corporation's business does not necessarily require a complete shut down of the business. It means the corporation must cease conducting the business. It must pay its debts and distribute its remaining assets to shareholders, but it may be possible to do that without stopping the business. Tenn. Code Ann. §§ 48-24-105 – 107. Even if the statutory procedure for winding up is not followed, the shareholders still have a legal duty to wind up the

dissolved corporation's business. Tenn. Code Ann. § 48-24-105 – 107. Once the corporation was dissolved, it lost the legal authority to continue in business, including the authority to continue acquiring inventory. *KHB Holdings, Inc. v. Duncan*, No. E2002-2062-COA-R3CV, 2003 WL 21488268 (Tenn. Ct. App. Jun. 25, 2003); *Abrams v. Porter*, 920 P.2d 386 (Idaho 1996); *Keybank N. A. v. Michael*, 737 N.E.2d 834 (Ind. Ct. App. 2000).

The court can not easily ignore this law on the ground that it will unduly penalize secured creditors of an administratively dissolved corporation. In this regard, GP's argument does not include any obvious limits on the authority of a dissolved corporation to continue in business. A dissolved corporation apparently could continue forever acquiring new inventory. The court does not think the law on dissolution was intended to allow that result.

The court also disagrees with the argument that applying § 9-402(7) to an administrative dissolution of a corporation will impose too much of a burden on secured creditors. A debtor can make many kinds of changes in its name or organizational structure without any notice directed to its secured creditor. Such changes may deprive the creditor of its security interest or render the security interest unperfected as provided in § 9-402(7). Thus, the possibility that the secured creditor will not get timely notice of the administrative dissolution of a corporate debtor does not distinguish it from other kinds of changes that come under § 9-402(7). Furthermore, § 9-402(7) requires a secured creditor to act only after it has knowledge of the change in the debtor's organizational structure. The supposedly hidden nature of administrative dissolution does not justify a refusal to apply § 9-402(7).

GP's arguments do not convince the court that administrative dissolution of a corporate debtor is one kind of change in the debtor's organizational structure that should not be dealt with under § 9-402(7). Thus, the allegations of the complaint and Tennessee law support the trustee's claim that the new inventory was not exclusively the property of the dissolved corporation.

This leaves the possibility that some or all of the new inventory still belonged to the dissolved corporation because it was acquired in the process of winding up. A dissolved corporation may not immediately lose the authority to continue in business, including the authority to acquire new inventory. Winding up may involve continuing the business for a period of time during which the dissolved corporation can acquire new inventory. 16A William M. Fletcher, *Cyclopedia of the Law of Private Corporations* § 8134. This rule is the reason for the court's earlier statement that the time of dissolution may not be the best time for dividing the inventory into old (corporate) inventory and new inventory. The dividing point could have come later – at the time when the corporation's business should have been wound up. The court need not deal with this problem, however, for purposes of ruling on the motion to dismiss. The facts alleged in the complaint do not require the conclusion that all the new inventory was acquired by the corporation while it had temporary authority to continue in business for the purpose of winding up. The complaint adequately alleges that dissolved corporation could not have acquired all the new inventory as its property.

The Effect of § 9-402(7)

The next step is to apply § 9-402(7). Section 9-402(7) apparently distinguishes between a transfer of collateral to a different organization and a change in the original debtor's organizational structure. *Sovran Bank/Central South v. Transamerica Commercial Finance Corp.*, No. 01-A-01-9110-CH00382, 1992 WL 81436 (Tenn. Ct. App. Apr. 24, 1992) (Koch, concurring in part, dissenting in part).

When there is a change in the debtor's organizational structure, the changed organization is treated as a successor to the original debtor. The successor organization is bound by the security agreement. If the security agreement covered the original debtor's after-acquired property, it will cover the same kind of property subsequently acquired by the successor organization. Under § 9-402(7), the security interest may become unperfected. That will occur when (1) the

organizational change made the creditor's filed financing statement seriously misleading, (2) the creditor learned of the change, and (3) the creditor failed to file a new financing statement within four months after learning of the change.

On the other hand, when collateral is transferred to a different organization, the security interest remains attached *and* perfected but only as to the collateral *actually* transferred. This is true even though the creditor's financing statement – filed in the name of the original debtor – will not give notice of the security interest to the transferee's creditors. The creditor's security interest in the transferred collateral will also continue in proceeds to the extent allowed by Article 9. Tenn. Code Ann. § 9-306(1) (2000). The rules as to proceeds may cut off the creditor's security interest at some point, but § 9-402(7) does not.

Of course, the transfer of the collateral to a different organization does not create a security agreement between the secured creditor and the transferee. The creditor's security agreement with the original debtor will not give the creditor a security interest in the transferee's after-acquired property. The creditor may still have a perfected security interest in some of the transferee's after-acquired property as proceeds of the collateral actually transferred.

If the facts involved a transfer of the old inventory to a different organization – instead of a successor organization – the results would be: (1) General Part's security interest continued in the old inventory and was perfected; (2) the security interest continued and was perfected in the proceeds of the old inventory as provided in Article 9's rules as to proceeds; (3) GP did not otherwise have a security interest in inventory subsequently acquired by the transferee.

The complaint alleges that GP needed a new security agreement to give it a security interest in the new inventory because the new inventory was acquired by some entity other than the corporation. Under the court's interpretation of § 9-402(7), that is not necessarily true. It depends on whether the events involved a transfer of the old inventory to a different organization or a change in

the debtor's organizational structure. If there was a change in organizational structure, then the security agreement was binding on the successor organization, and the question is whether the security interest became unperfected. The complaint is somewhat vague, but it was apparently intended to allege both theories – a transfer or a change in organizational structure.

The transfer theory allows GP to argue that it had a perfected security interest in the new inventory as proceeds of the old inventory. The court assumes the corporation could have legally transferred the old inventory to the alleged informal partnership. *But see* Tenn. Code Ann. §§ 48-24-202(c) & 48-24-105(a). The transfer apparently would not have freed the old inventory from GP's perfected security interest. Tenn. Code Ann. § 47-9-402(7). This leads to the argument that all the new inventory is proceeds of the old inventory, and as a result, it is subject to GP's perfected security interest. Tenn. Code Ann. § 9-306(1) (2000). The transfer theory also allows what appears to be an obviously wrong argument that the new inventory belonged to the dissolved corporation because it was derived from the dissolved corporation's property, the old inventory. This is essentially a tracing argument outside the scope of Article 9.² The court thinks the proceeds rules of Article 9 should control. In any event, the court need not make a definite ruling on either argument. GP can obtain complete dismissal of the complaint, based on these arguments, only if the complaint's other theory also fails. In other words, GP can obtain dismissal based on the transfer theory only if it convinces the court that the alleged facts necessarily show a transfer and not a change in organizational structure.

The court has already decided that the administrative dissolution comes within the scope of § 9-402(7) as a change in organizational structure. An argument can be made that § 9-402(7) treats some organizational changes as transfers, especially a change from an artificial legal entity

² The unsecured creditors of a dissolved corporation may be able to collect from any remaining corporate property, from the shareholders, officers, or directors, or from the new business. Tenn. Code Ann. §§ 48-24-106, 48-24-107, 48-16-401, 48-18-304; *Swindle v. Big River Broadcasting Corp.*, 905 S.W.2d 565 (Tenn. Ct. App. 1995); *Kennedy v. Four Boys Labor Service, Inc.*, 664 N.E.2d 1088 (Ill. Ct. App. 1996); *Heather Hills Homeowners Assoc. v. Carolina Custom Development Co.*, 395 S.E.2d 154 (N. C. Ct. App. 1990).

(corporation, partnership, etc.) to individual ownership. The complaint, however, does not limit itself to alleging that either Debtor became the individual owner or that both Debtors were joint owners of the business property. The complaint alleges an informal partnership between the Debtors. The court has already explained that “informal partnership” can mean a variety of legal relationships. GP has not convinced the court that the alleged organizational change is a kind that should be treated as a transfer. GP has other arguments, however, as to why the trustee can not prevail on the organizational change theory.

In particular, GP’s motion to dismiss challenges the complaint’s allegations that GP’s security interest became unperfected. The complaint makes two arguments against the continued perfection of the security interest: (1) the financing statement and continuation statement became seriously misleading; (2) the continuation statement was ineffective because GP did not sign it.

The court has rejected GP’s argument that the dissolved corporation was necessarily the owner of all the new inventory. This preempts an argument by GP that the financing statement and continuation statement, which listed the corporation as the debtor, were not seriously misleading because the corporation was the owner of the new inventory despite the administrative dissolution.

The complaint does not allege exactly what structure or organizational form the business took after dissolution of the corporation. If the business was a legally recognized entity named Blair Auto Parts or Blair’s Auto Parts or something similar, then the financing statement and continuation statement may not have become seriously misleading. GP makes this argument based on its dealings with the Debtors after dissolution of the corporation and on tax lien notices filed by the state. GP has not filed a motion for summary judgment, however, and other facts may be relevant to this question. The motion to dismiss only challenges the allegations of the complaint. The facts alleged in the complaint imply that the owner of the new inventory was not an organization with a name almost the same as Blair Auto Parts, Inc. This is sufficient to avoid dismissal. The complaint need not attempt

to eliminate all the possible names of the successor organization that might prevent the financing statement and continuation statement from being seriously misleading.

In summary, the complaint states a claim that the security interest in the new inventory was unperfected because the financing statement and the continuation statement became seriously misleading before the Debtors filed bankruptcy.

The complaint fails to allege that GP had knowledge of the change in the corporate debtor's organizational structure. The duty to file a *new* financing statement arises under § 9-402(7) when (1) the secured creditor obtains knowledge of the change, and (2) no notice of such change has been filed and indexed with the financing statements as required or permitted by other provisions of law.

The timing of a secured creditor's knowledge is significant under § 9-402(7) and under the transition provisions of revised Article 9. The court has already mentioned that revised Article 9, including the transition provisions, govern this proceeding. The court is concerned with § 9-402(7) of old Article 9 because the transition provisions require a determination of whether the security interest was perfected immediately before July 1, 2001. Tenn. Code Ann. §§ 47-9-701, 47-9-703(b) & 47-9-704. The court will allow the trustee the opportunity to amend the complaint with regard to GP's knowledge of the change.

Going back to the earlier question of whether § 9-402(7) should even apply, the court concludes that § 9-402(7) provides commercially workable rules for dealing with the continuation of the same business after administrative dissolution of the corporate debtor. Section 9-402(7) does not automatically cut off the creditor's security interest in property acquired after the dissolution or render the security interest unperfected. It attempts to balance the practical problems for the secured creditor and the rights of parties who deal with the business after dissolution of the corporation.

The court will not dismiss the complaint on the ground that the dissolved corporation was necessarily the owner of the new inventory, or even if it was not the owner, GP's security interest in the new inventory was necessarily perfected.

Other Arguments – Signing of the Continuation Statement

The motion to dismiss has raised a legal question as to whether GP signed the continuation statement. That question can be dealt with at this time.

Section 9-403(3) required a continuation statement to be signed by the secured party. Tenn. Code Ann. § 47-9-403(3) (2000). The form looks as if it was supposed to be signed "General Parts By _____ Mike Kress", with Mr. Kress's handwritten signature on the line. There is no handwritten signature by Mr. Kress or anyone else on behalf of the corporation. The trustee contends a handwritten signature by some individual representative of the corporation was necessary.

The leading case on this question disagrees with the trustee's argument. *Multi-Mart Branch Office v. Appliance Buyers Credit Corp. (In re Bufkin Bros., Inc.)*, 757 F.2d 1573 (5th Cir. 1985). The trustee criticizes *Bufkin* on the basis of an official comment to the UCC's definition of signed. The comment mentions printed, stamped or written authentication but not typewritten. Tenn. Code Ann. § 47-1-201(40) (2000), Official Comment 39. The UCC, however, defined "written" to include typewritten. Tenn. Code Ann. § 47-1-201(47) (2000). Moreover, the argument is too technical for good commercial practice. As a general rule, a typewritten symbol can be used by a party with the intent to authenticate a writing.

On a more basic level, the trustee's argument seems to be that since GP left a space for a handwritten signature, then GP could not have intended to authenticate the continuation statement with the typewriting by itself. The trustee would like the court to hold that the failure of an individual to sign in the space provided means, as a matter of law, that the continuation statement was not signed.

The presence of the space for a handwritten signature does not require that conclusion. GP may have regularly filed financing or continuation statements in this form without a handwritten signature. GP may still have intended to authenticate the statement without a handwritten signature.

The trustee also relies on the *Goolsby* decision. The case involved debtors who gave the secured creditor a power of attorney to execute and file a financing statement. A creditor's employee signed the financing statement for the debtors. The signature failed to show that the creditor's employee was authorized to sign for the debtors. The court held that this prevented the signature from being the debtor's signature. The court also held that the error could not be ignored as not seriously misleading. *C & J Leasing Corp. v. Waldschmidt (In re Goolsby)*, 284 B.R. 638 (M. D. Tenn. 2002).

This leads to the argument that the typewritten language in question can not be GP's signature because it does not reveal Mike Kress's authority to sign as an officer, director, employee, agent, or attorney for GP. The court disagrees. This case does not involve one party signing on behalf of the other party. Notice to others is not a concern since the name of the secured party is clearly stated. The alleged problem with GP's attempted signature could hardly have made the continuation statement seriously misleading. The question is whether the typewritten language qualifies as GP's signature – whether GP intended it to authenticate the continuation statement. The typewritten language can meet that requirement without setting out the relationship of Mike Kress to GP. In a dispute as to GP's intent, Mr. Kress's connection to GP will be a fact question. It is not something that must be revealed in the continuation statement for it to be effective. Such a requirement does not make sense as a matter of commercial practice.

The court reaches limited conclusions: (1) the lack of a handwritten signature does not prove that the continuation statement was not signed by GP; (2) the failure of the typewritten language to indicate the authority of Mike Kress to act for GP does not prove the continuation statement was

not signed by GP; (3) the facts do tend to show the continuation statement was not signed by GP. The result is that the court can not enter a declaratory ruling for the trustee or GP as to whether the continuation statement was signed. The alleged facts raise a question of intent that requires additional evidence.

Other Arguments – The Old Inventory

This brings the court to GP's motion to dismiss as to old inventory, meaning property owned by the corporation at the time of its dissolution. The complaint alleges that all the property in question was new inventory. GP has not submitted evidence and asked for summary judgment as to any old inventory among the items it sold after the Debtors' bankruptcy. Furthermore, the court's earlier reasoning raises the possibility that some other date may be the important dividing line as to perfection of GP's security interest. In this situation, the court sees no need to deal at length with the legal issues raised by GP as to old inventory.

Conclusion

The court will enter an order in accordance with this opinion. This Memorandum constitutes findings of fact and conclusions of law as required by Fed. R. Bankr. P. 7052.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

Entered 3/24/04