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Delaware Supreme Court Rules on UCC Termination Statements

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In an important recent ruling, the Delaware Supreme Court confirmed what many practitioners long suspected: that a secured creditor that mistakenly authorizes the filing of a "termination statement" will lose the lien covered by the termination statement, even though the creditor did not intend to release the lien.

In *Official Committee of Unsecured Creditors of Motors Liquidation Company v. JPMorgan Chase Bank, N.A.*, the Court ruled that, if a secured party authorizes the act of filing of the termination statement, "the financing statement to which the termination statement relates ceases to be effective" regardless of whether the authorizing party subjectively intended the legal consequences of the statement's

filing. In other words, according to the Court, "it [is] enough that the secured lender review and knowingly approve for filing a UCC-3 purporting to extinguish the perfected security interest." *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A.*, No. 325, 2014, 2014 Del. LEXIS 491, 2014 WL 5305937 (Del. Oct. 17, 2014), slip op. at 1 (quoting 6 *Del. C.* § 9-513(d)). The secured lender need not have intended or understood the termination statement's effect for it to extinguish the perfected status of the subject security interest.

The Court's ruling came in response to a certified question of Delaware law posed by the United States Court of Appeals for the Second Circuit. The dispute before the Second Circuit involved a UCC-3 termination statement filed with the Delaware Secretary of State on behalf of JPMorgan Chase Bank, N.A. ("JPMorgan"), the secured party of record. The termination statement referred to a security interest that JPMorgan claimed it had not intended to release. *Id.* at 2. The Second Circuit found that the answer to whether the termination statement was effective depended, among other things, on whether the review and knowing approval of it for filing by a secured lender was sufficient for effectiveness under Delaware law, or more was required. The Second Circuit therefore certified the following question to the Delaware Supreme Court:

> Under UCC Article 9, as adopted into Delaware law by Del. Code Ann. tit. 6, art. 9, for a UCC-3 termination statement to effectively extinguish the perfected nature of a UCC-1 financing statement, is it enough that the secured lender review and knowingly approve for filing a UCC-3 purporting to extinguish the perfected security interest, or must the secured lender intend to terminate the particular security interest that is listed on the UCC-3? *Id.* at 1.

The Delaware Supreme Court recognized the question's "precise" nature and noted that the question in effect asked the Court to assume "the secured party of record has itself reviewed and knowingly approved the termination statement for filing." *Id.* at 5. The Court rejected what it viewed as JPMorgan's attempt to "reframe the certified question by asking" the Court to "consider . . . issues of agency law[.]" *Id.* For the Court, the certified question removed from the equation the issue of *whether* the UCC-3 in this particular case was authorized by the secured party, and instead focused on *what* must be authorized: either (1) the filing of the termination statement itself, or (2) the filing plus the legal consequences of the filing.

The Supreme Court's analysis began with Section 9-513 of Delaware's UCC, which states that "'upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective.'" *Id.* at 6 (quoting 6 *Del. C.* § 9-513(d)). The Court then turned to Section 9-510, which it found to plainly state that a termination statement is effective if the statement was "'filed by a person that may file it under Section 9-509.'" *Id.* (quoting 6 *Del. C.* § 9-510(a)). Finally, the Court turned to Section 9-509(d)(1), which states that a person may file a termination statement if the "'secured party of record authorizes the filing[.]'" *Id.* (quoting 6 *Del. C.* § 9-509(d)(1)).

The Court found that Section 9-509(d)(1) unambiguously states that, "for a termination statement to have the effect specified under § 9-513 of the Delaware UCC, it is enough that the secured party authorizes the filing." *Id.* at 7. To reach its result, the Court applied standard principles of statutory construction. The Court found that the UCC's relevant provisions are unambiguous and therefore "'not subject to judicial interpretation.'" *Id.* at 6 (quoting *Leatherbury v. Greenspun, D.O.*, 939 A.2d 1284, 1288 (Del. 2007)). The Court explained that, had the General Assembly wished to condition a UCC-3's effectiveness on the authorizing party's subjective intent, it could have written the statute to include an intent requirement. The Court also stated that its decision was supported by sound policy, observing, "If parties could be relieved from the legal consequences of their mistaken filings, they would have little incentive to ensure the accuracy of the information contained in their UCC filings." *Id.* at 9-10. In addition, the Court further explained, if an inquiry into intent were necessary every time a creditor sought to rely on a UCC-3 statement, then "no creditor could ever be sure that a UCC-3 filing is truly effective . . . unless a court determined after costly litigation that the filing was in fact subjectively intended." *Id.* at 11.

The Court concluded that "for the reasons we have articulated, for a termination statement to become effective under § 9-509 and thus to have the effect specified in § 9-513 of the Delaware UCC, it is enough that the secured party authorizes the filing to be made, which is all that § 9-510 requires." *Id.* at 12. "The Delaware UCC contains no requirement[,]" the Court explained, "that a secured party that authorizes a filing subjectively intends or otherwise understands the effect of the plain terms of its own filing." *Id.* In so ruling, the Court did not express a view on the factual question that the Second Circuit had reserved for itself: whether, in the particular case before it, the secured lender indeed had reviewed and knowingly approved the filing.

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This decision continues a long line of cases recognizing the effectiveness of authorized, but erroneous, UCC filings.

To be clear, secured parties are not bound by the effects of *unauthorized* UCC-3 filings, and those reviewing a UCC filing search report cannot assume that any indicated UCC-3 filing was authorized and, thus, effective. Rather, weighing a variety of factors, they must continue to choose whether or not to inquire further. But the focus of any such inquiry is the filing of the UCC-3, not any subjective understanding of its legal consequence.

***Note*: The appellant was represented in the Delaware proceeding by Young Conaway Stargatt & Taylor, LLP and Dickstein Shapiro LLP. This article was prepared solely by Young Conaway Stargatt & Taylor, LLP and is intended to provide a summary of the Court's holding. The views expressed are not necessarily those of either firm or its clients.**

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