

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

FILED	
DISTRICT OF NEBRASKA	
AT	MAR 25 1986
William L. Olson, Clerk	
By	Deputy

IN THE MATTER OF:

DUANE HANSEN and LOIS
HANSEN,

Debtors.

CV. 85-0-536

BK. 84-1677

ORDER

This matter is before the Court on appeal from a final order of the bankruptcy court evidenced by a journal entry dated May 2, 1985. During a hearing on the same date, the United States Bankruptcy Judge for the District of Nebraska, David L. Crawford, held the First National Bank of Stanton (Bank) has a secured claim for confirmation purposes in the amount of \$64,696.66 and an unsecured claim for the balance of the debt owed. On appeal, the debtors assert Judge Crawford erroneously held that the financing statements filed by First National Bank of Stanton, including an amendment, were sufficient to perfect a security interest in the personal property of Lois Hansen. After careful consideration of the briefs submitted by the parties and the record on appeal, the Court finds Judge Crawford's order should be affirmed.

The pertinent facts are these. On April 16, 1971, a financing statement and security agreement was filed with the Stanton County Clerk listing Duane Hansen as debtor and the Bank as secured party. Thereafter, the life of the financing statement was extended through continuation statements filed on

January 15, 1976, and January 9, 1981. Each continuation statement identified Mr. Hansen as debtor and the Bank as secured party.

On June 9, 1983, a document purporting to be an amendment to the 1971 financing statement was filed by the Bank. The document again identified the debtor as Mr. Hansen and the secured party as the Bank. Additionally, the document refers to the original financing statement filed in 1971 and the two continuation statements. Box 8 of the document, designated "amendment," has an "x" marked through it. Box 10, which is used to show how the previously filed financing statement is to be amended, contains "Hansen, Lois." Lois Hansen signed the statement as debtor and the Bank president signed as secured party.

Mr. and Mrs. Hansen, as Chapter XIII debtors-in-possession, argue the June 9, 1983, filing was insufficient to perfect a security interest in the personal property of Lois Hansen listed in the financing statement filed April 16, 1971. In support of their argument, they assert the former document cannot be viewed as an amendment to a financing statement because it failed to meet the formal requirements of Nebraska Uniform Commercial Code, § 9-402(4). Subsection 4 allows financing statement amendments through the filing of a writing signed by both the debtor and the secured party. Duane Hansen, the debtor listed in the financing and continuation statements, did not sign the document purporting to be an amendment.

Next, even if Mr. Hansen was not required to sign the amendment, the appellant contends the document is seriously misleading and, therefore, an ineffective attempt to perfect a security interest in the portion of the collateral owned by Lois Hansen.

Before this Court addresses the merits of the appeal, it is prudent to state the general standard of review that guides the Court in matters such as this. On appeal, a district court is not bound by the bankruptcy judge's conclusions of law; however, the bankruptcy judge's findings of fact are entitled to stand unless clearly erroneous. In re American Beef Packers, Inc., 457 F.Supp. 313, 314 (D.Neb. 1978); see also Bankruptcy Rule of Procedure 8013.

With this standard in mind, this Court must now determine whether the bankruptcy court erred in finding the Bank held a perfected security interest in Lois Hansen's property. At the conclusion of the May 2, 1985, evidentiary hearing, the bankruptcy court entered its decision on the record:

It is true that the only financing statement which the bank can point to is an attempt at amendment accomplished by a filing of June 9 of 1983, which is in evidence before me, which lists Duane Hansen as the debtor, and then at paragraph eight there is a check mark noting an amendment and at paragraph ten, the name Lois Hansen is inserted. Lois Hansen did, in fact, sign that as debtor at the bottom.

It seems to me that, although unusual, the amendment as here attempted was effective to perfect a security interest by the bank in Lois Hansen's interest in this personal property. I conclude that the requirement of the Uniform Commercial

Code that an amendment be signed by the debtor and the secured creditor is inapplicable here with regard to the requirement that Duane Hansen signed for the reason that Duane Hansen's underlying obligation to the bank was unaffected. I agree that if Duane Hansen's rights under the financing statement had been adversely affected, his signature to that financing statement would have been required but here his rights were not so affected. All that happened was that Lois Hansen became an additional debtor, and I conclude therefore that her signature as debtor was sufficient to constitute an amendment, at least as here attempted. And I agree also with the debtors that this is an unusual way of perfecting a security interest in Lois Hansen's interest in the property but I conclude that it is effective for I believe the requirements of Nebraska's Uniform Commercial Code to be one of giving notice to the world, and that that notice was sufficiently accomplished as to effectuate substantial compliance with the notice provisions of the Uniform Commercial Code. In fact, Lois Hansen's obligations under that financing statement were noted by the County Clerk of Stanton County, and index cards in her name were set up which gave notice additionally thereafter to the world of her financing statement and her obligations.

Judge Crawford's finding that Duane Hansen was not required to sign the financing statement was clearly a conclusion of law. He as interpreting U.C.C. § 9-402. While not bound by his conclusion, this Court finds it to be correct. The underlying purpose of the signature requirement found at Section 9-402(4) is to preclude either party to the transaction from adversely affecting the other's interest. Official Comment 4 to Section 9-402. Here, the only interest adversely affected by the amendment was Lois Hansen's rights to the collateral listed in

the financing statement filed April 16, 1971. The amendment had no discernible effect on Duane Hansen's interest in the collateral. Any signature requirements with regard to Mr. Hansen were satisfied when he signed the April 16, 1971, financing statement.

Judge Crawford's factual determination that the amendment was not seriously misleading should also be upheld. He found the amendment sufficient to meet the Nebraska Uniform Commercial Code requirement of notice to the world. While the filing was somewhat misleading, the Court does not find the bankruptcy judge's finding of fact to be clearly erroneous. In reaching his decision, Judge Crawford had before him a copy of all the pertinent Uniform Commercial Code filings, a copy of the Stanton County Clerk's index card indicating the original financing statement was amended to include Lois Hansen as debtor, and a registered abstractor's certificate indicating his findings after a search of Lois Hansen's Uniform Commercial Code filings was made. See Tr. Exhibits 1, 3 and 4, respectively.

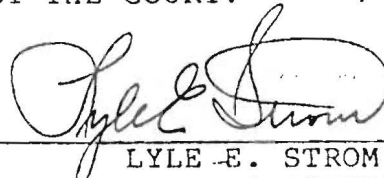
In making his findings, the bankruptcy judge failed to indicate the effective date of the Bank's perfected security interest in Lois Hansen's property. The Court finds, as is the case when collateral is added through amendment, the Bank's security interest in Lois Hansen's property is effective only from the amendment's filing date. See section 9-402. The perfected security interest does not relate back to the date of the original financing statement. Therefore, the Bank's perfected security interest in Lois Hansen's property became

effective June 9, 1983. As a result, this matter will be remanded to the bankruptcy court for its determination of what effect, if any, this Court's decision has on the relative rights of Mrs. Hansen's creditors. Accordingly.

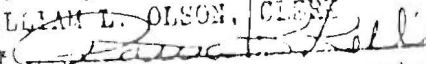
IT IS HEREBY ORDERED that the Bankruptcy Court order should be and is affirmed and this matter should be and is remanded to the Bankruptcy Court for further findings consistent with this order.

DATED this 25th day of March, 1986.

BY THE COURT:



LYLE E. STROM
UNITED STATES DISTRICT JUDGE

I certify this to be a true copy of
the original record in my custody.
WILLIAM L. OLSON, CLERK
By 
Deputy Clerk