

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 99-F-13

Date issued: August 25, 1999

Requested by: Robert R. Schaible, Deputy Secretary of State

- QUESTIONS PRESENTED -

I.

Whether a purported Uniform Commercial Code financing statement listing the same person as both the debtor and the secured party qualifies to be filed under the Uniform Commercial Code.

II.

Whether a purported Uniform Commercial Code financing statement listing only nontransferable items such as birth certificates, social security numbers, drivers' licenses, or blank "sight drafts" qualifies to be filed under the Uniform Commercial Code.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that a purported Uniform Commercial Code financing statement listing the same person as both the debtor and the secured party does not qualify to be filed under the Uniform Commercial Code.

II.

It is my opinion that a purported Uniform Commercial Code financing statement listing only nontransferable items such as birth certificates, social security numbers, drivers' licenses, or blank "sight drafts" does not qualify to be filed under the Uniform Commercial Code.

- ANALYSES -

I.

The Uniform Commercial Code (UCC) was initially enacted in North Dakota in 1965 as N.D.C.C. title 41. 1965 N.D. Sess. Laws ch. 296. Subsection 1 of N.D.C.C. § 41-01-02 provides that the UCC "shall be liberally construed and applied to promote its underlying purposes and policies." Those purposes and policies are spelled out in subsection 2.

2. Underlying purposes and policies of this title are:
 - a. To simplify, clarify, and modernize the law governing commercial transactions.
 - b. To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties.
 - c. To make uniform the law among the various jurisdictions.

N.D.C.C. § 41-01-02(2) (emphasis added). Thus the entire UCC is intended to govern only commercial transactions.

Security interests and financing statements used to perfect them are governed by N.D.C.C. ch. 41-09. The scope of N.D.C.C. ch. 41-09 is found in N.D.C.C. § 41-09-02:

1. Except as otherwise provided in section 41-09-04 on excluded transactions, this chapter applies to:
 - a. Any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, or accounts.
 - b. Any sale of accounts or chattel paper.
1. This chapter applies to security interests created by contract

N.D.C.C. § 41-09-02(1), (2). Looking at the definitions in the statutes assists in understanding the proper scope of the UCC. This is a necessary step in responding to the questions presented.

A security interest is defined as "an interest in personal property or fixtures which secures payment or performance of an obligation." N.D.C.C. § 41-01-11(37)(a). The term contract is defined as "the total legal obligation which results from the parties' agreement as affected by this title and any other applicable rules of law." N.D.C.C. § 41-01-11(11) (emphasis added). This is consistent with the dictionary definition of contract as an "agreement between two or more parties." The American Heritage Dictionary 317 (2d coll. ed. 1991). Debtor is defined as "the person who owes payment or other performance of the obligation secured" N.D.C.C. § 41-09-05(1)(e). A secured party is "a lender, seller, or other person in whose favor there is a security interest" N.D.C.C. § 41-09-05(1)(m).

A security interest, therefore, is an interest in property which is given, by contract, from one person to another person to secure an obligation which the giver of the security interest (the debtor) owes to the person to whom the security interest is given (the secured party). Consequently, it is my opinion that a purported financing statement that lists the same person as both the debtor and the secured party is, as a matter of law, outside the scope of the UCC and therefore does not qualify to be filed under the UCC.

II.

A financing statement, to be sufficient under the UCC, must contain, among other things, "a statement indicating the types, or describing the items, of collateral." N.D.C.C. § 41-09-41. See N.D. Admin. Code § 72-01-02-06 (listing reasons for which a tendered financing statement must be rejected). Collateral is defined in N.D.C.C. § 41-09-05(1)(d) as "the property subject to a security interest, and includes accounts and chattel paper which have been sold." As discussed above, the UCC is meant to govern commercial transactions.

A nontransferable document such as a birth certificate, driver's license, or a social security number does not have any legitimate commercial value. Likewise, a purported interest in blank "sight drafts" would not signify a legitimate commercial interest. A "sight draft" is defined as a "draft or bill that is payable upon demand or presentation." The American Heritage Dictionary 1138 (2d coll. ed. 1991). Thus, while a completed sight draft would signify a right to

payment under certain conditions, a blank sight draft does not indicate the right to anything.¹

The definitions in N.D.C.C. §§ 41-09-05 and 41-09-06 help to identify the scope of collateral intended to be covered by security agreements. General intangibles, for instance, has a very broad meaning under N.D.C.C. § 41-09-06: "any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, rights to proceeds of written letters of credit, investment property, and money." The official comment to UCC Sec. 9-106, however, helps to put the definition in context. It states that the term includes any "personal property which is used or may become customarily used as commercial security." In re O'Neill's Shannon Village, 750 F.2d 679, 682 (8th Cir. 1984) (citing Uniform Commercial Code Sec. 9-106 (1972 Official Comment), 3 U.L.A. 181 (1981)) (emphasis added). See Bluxome Street Associates v. Fireman's Fund Insurance Co., 254 Cal. Rptr. 198, 202 (Cal. Ct. App. 1988)(describing the exclusion of tort claims from the provisions of UCC article 9 as being "because tort claims do not customarily serve as commercial collateral") (citations and quotation omitted).

Consequently, the types of collateral intended to be covered by the UCC are items that have commercial value and can be sold to obtain money to meet the debtor's obligation. Therefore, it is my opinion that nontransferable items such as birth certificates, social security numbers, drivers' licenses, or blank "sight drafts" do not constitute collateral within the scope of the UCC. Financing statements containing only such items as collateral therefore do not qualify to be filed under the UCC.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

¹ While sight drafts are recognized in North Dakota law, especially with regard to oil and gas and coal leasing transactions (see N.D.C.C. §§ 38-09-15.1 and 38-17-04), sight drafts have been misused by certain persons and groups to perpetuate a fraud. See, e.g., Federal Land Bank v. Brakke, 417 N.W.2d 380 (N.D. 1988).

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