

PROBLEM: Filing Follies

The Saga of Perfect Tommy

Utopia is the 51st state of the United States. It has adopted the Uniform Commercial Code without amendment. Unfortunately, all is not well in the Utopia filing office; the following problems have surfaced.

Big Bank uses the prestige firm of Ashworth & Palmer for all its secured lending transactions. The relationship partner serving Big Bank is Perfect Tommy. Perfect Tommy, while not much of a conversationalist, has two signature qualities: he dresses perfectly (often appearing in the pages of GQ) and he files perfect financing statements, always in the correct location, with the correct filing fee. Thus, Big Bank was mightily distressed when several of its large borrowers filed for bankruptcy and it appeared that Big Bank was unperfected for failure to file a financing statement or a continuation statement.

Case 1

Dunwich Distributors, a Utopia corporation, borrowed \$10 million from Big Bank on March 1, 200\_. An appropriate security agreement was signed by the president of Dunwich at that time. Perfect Tommy filed a perfect UCC-1 in the Utopia filing office on March 4, 200\_. The filing was made by Perfect Tommy, in person, by submitting a paper copy of the UCC-1 and tendering an appropriate filing fee by certified check.

Stanley Slothful, filing clerk, accepted the filing. However, the sight of Perfect Tommy --everything that Stanley was not--worked mischief in Stanley's unconscious. Stanley spilled his lunch on Tommy's perfect filing, rendering parts unreadable and ruining the check. Too ashamed to make amends through official channels (like reporting the incident to his supervisor), Stanley tossed the mixture of spilled luncheon and UCC filing in a dumpster behind a Taco Bell.

On June 1, 200\_, Tiny Finance received the results of a UCC search against Dunwich Distributors that did not reveal any security interest of Big Bank. Tiny Finance promptly loaned Dunwich \$5 million, an appropriate security agreement was signed by the president of Dunwich and a UCC-1 was filed by the end of the day.

Case 2

H.P. Sailcraft, a Utopia corporation, borrowed \$5 million from Big Bank on June 1, 200\_. An appropriate security agreement was signed by the president of H.P. Sailcraft

## PROBLEM: Filing Follies

at that time. Perfect Tommy filed a perfect UCC-1 in the Utopia filing office on June 4, 200\_. The filing was made by Perfect Tommy, in person, by submitting a paper copy of the UCC-1 and tendering an appropriate filing fee by certified check. Penny Priddy, another filing clerk, properly indexes Perfect Tommy's filing. The filing number assigned is 676767UT.

In an unrelated transaction, Tiny Finance receives repayment of a secured loan made to Gothic Designs, a Utopia corporation. The filing number assigned to Tiny Finance's security interest filing against Gothic Designs was 676757UT.

Unfortunately, Tiny Finance's counsel files a termination statement that incorrectly references 676767UT (replacing the numeral "5" with the numeral "6"). The Utopia filing office deletes Big Bank's UCC-1 filing against H.P. Sailcraft from its records on October 15, 200\_.

As luck would have it, after the mistaken termination, on November 1, 200\_, Snob Hill Bank received the results of a UCC search against H.P. Sailcraft that did not reveal any security interest of Big Bank. Snob Hill Bank promptly loaned H.P. Sailcraft \$3 million, an appropriate security agreement was signed by the president of H.P. Sailcraft and a UCC-1 was filed by the end of the day.

### Tommy Attempts Continuation Statement Filings

When Perfect Tommy attempts to continue the financing statement against Dunwich Distributors by making a continuation statement filing 4 years, 11 months and 10 days after the March 4, 200\_, submission, Tommy breaks a sweat. He realizes that he has no filing number to reference in the continuation statement submission so he tries to file without such a reference--simply mentioning the date of March 4, 200\_ instead. Penny Priddy rejects the continuation statement filing. Perfect Tommy returns to his office, stunned--no Perfect Tommy filing has ever been rejected before. Tommy comes up with a plan. Tommy will create a new, perfect UCC-1 filing and, in the description of collateral, mention the filing office mistake. Before Tommy can file the new UCC-1, Dunwich Distributors files for bankruptcy. After the bankruptcy filing, perfect Tommy files the new UCC-1.

When Perfect Tommy attempts to continue the financing statement against H.P. Sailcraft by making a continuation statement filing 4 years, 11 months and 28 days after the June 4, 200\_, submission, Tommy is relaxed because he has a filing number. He sends a paralegal to make the filing and leaves work early to go to the Hamptons for a long weekend. Penny Priddy rejects the continuation statement filing because the filing number does not refer to a current filing on record. Perfect Tommy returns

## PROBLEM: Filing Follies

to his office, stunned—the five year period on the original filing has expired and Tommy's client is not on record. Tommy comes up with a plan. Tommy will create a new, perfect UCC-1 filing and, in the description of collateral, mention the filing office mistake. Before Tommy can file the new UCC-1, Vampire Finance loans H.P. Sailcraft \$1 million on a fully secured basis. Vampire files a financing statement. Tommy files his new UCC-1 and, 2 days later, H.P. Sailcraft files for bankruptcy.

### Creditors and Bankruptcy Trustees Get Mad at Big Bank and Perfect Tommy

Tiny Finance tells Big Bank that Perfect Tommy's procedures against Dunwich were not, in fact, perfect. A post-closing search should have been conducted to see that the filing was properly indexed. Further, should not Perfect Tommy or Big Bank have noticed that the certified check had not been cashed? Was this not a clue that all was not well in the Utopia filing office? Tiny Finance claims that, as a secured creditor, it is a "purchaser for value" and it was harmed by the failure of Big Bank's security interest to be properly perfected against Dunwich.

The bankruptcy trustee for Dunwich claims that Tommy violated the automatic stay by filing a UCC-1 after the date of the bankruptcy petition.

Snob Hill and Vampire Finance both claim that they are "purchasers for value" against H.P. Sailcraft and tell Big Bank to get lost. Snob Hill was harmed by the failure of the financing statement to appear on record initially. Vampire Finance claims that Big Bank failed to properly continue its financing statement and that Big Bank is unperfected for that reason.

The bankruptcy trustee for H.P. Sailcraft claims that, even if Perfect Tommy succeeded in creating a perfected security interest in favor of Big Bank with the filing immediately prior to bankruptcy, that filing is a voidable preference--in effect a transfer of debtor property in respect of antecedent debt.

### Questions

Explain which filings made by Perfect Tommy are effective and which are not. Address the claims made by the bankruptcy trustees. Did Perfect Tommy violate the automatic stay or create a voidable preference?

### The Saga of Local Bank and Allemonde

Utopia is the 51st state of the United States. It has adopted the Uniform Commercial Code without amendment. Allemonde is a small country located in Eurasia. Allemonde is in the process of updating its internal commercial laws to enhance economic development, though no changes have been enacted by the Allemonde National Assembly as of March 1, 200\_. The Allemonde National Assembly is considering adopting laws very similar to the Utopia UCC that would permit the perfection of a security interest in personal property by the filing of a "Notice of Lien" in a central registry. Under current Allemonde law, perfection of a security interest in personal property is only possible by possession of the collateral, or in the case of payment intangibles, notice to the obligor. Local Bank's chief executive office is located in Aipotu, the capital of Utopia. In addition to financing various Utopia businesses, Local Bank provides financing to various manufacturing companies organized under the laws of Allemonde. Local Bank's two biggest foreign borrower's are Elvish Shoes, AL, an Allemonde corporation, and Rad Tshirt, AL trust, an Allemonde business trust. The chief executive office of Elvish Shoes is located in Allemonde. The chief executive office of Rad T-Shirt is located in Aipotu. Both companies conduct all manufacturing operations in Allemonde and ship their inventory to wholesalers located in Utopia.

On April 1, 200\_, Local Bank made loans to Elvish Shoes and to Rad T-Shirt, in two separate transactions, in each case secured by all inventory and accounts receivable owned by the applicable company. Local Bank filed two UCC-1 financing statements naming Local Bank as secured party and, in one, naming Elvish Shoes and, in the other, Rad Tshirt, respectively, as debtors, in the District of Columbia on April 15, 200\_. Assume appropriate security agreements were signed by the debtors and that all collateral descriptions are adequate for their purposes.

On May 15, 200\_, the Allemonde National Assembly adopted its much anticipated new commercial law. The law, effective immediately, is published in Latin, the official legal language of Allemonde. Typically, an English language version of Allemonde's laws appears on the internet within 9 months after any change. On September 1, 200\_, Local Bank hires you as counsel to review its international financial transactions from a Utopia law perspective. You complete your review of the closing files by October 1, 200\_. What do you tell Local Bank about the state of its UCC filings against its two biggest Allemonde business clients when you meet with Local Bank later in October? Did you consult with any third parties to arrive at your

PROBLEM: Filing Follies

conclusions? If so, who did you clear the consultation with and who pays the fee for consultation? If Local Bank asks you to put your advice in writing, what qualifications, if any, would you place in your legal opinion?