

First Supplement to Memorandum 83-53

Subject: Study D-302 - Creditors' Remedies (Priorities Between Judgment Lien on Personal Property and Security Interest)

The attached letter from Professor Lloyd Tevis comments on the staff draft attached to Memorandum 83-53 relating to improvement of the statute governing priorities between judgment liens on personal property and security interests.

Professor Tevis has forwarded a comment by a member of the UCC Committee of the State Bar relating to the wording of subdivision (f) of draft Section 697.590. The staff proposes to revise the second sentence of this subdivision in response to this comment as follows:

For the purpose of this subdivision, a secured party shall be deemed not to have knowledge of a judgment lien on personal property until the time the judgment creditor serves a copy of the notice of judgment lien on the secured party, notwithstanding actual knowledge on the part of the secured party.

This revision does not change the intent of this provision, but makes the section a bit clearer. The suggestion to substitute "unless and until the time" for "until the time" in this sentence is not an improvement and the staff proposes not to accept this suggestion.

Professor Tevis also suggests that the textual material discussing the proposed amendment be revised to provide an example of the situation where the revised section would make a difference. The staff would add the following discussion to footnote 5 on page 2 of Exhibit 1 to Memorandum 83-53:

This situation is illustrated in the following example involving a debtor who has equipment:

First, a secured party files a financing statement before the security interest is created, as permitted by Commercial Code Section 9402(1). Two days later the judgment creditor files a judgment lien on personal property of the judgment debtor. Then two days later the debtor executes a security agreement granting a security interest in equipment to the secured party. If the first-to-file rule is not followed in this situation, the secured party who filed first will not with any confidence be able to rely on information in the filing system when the security agreement is finally executed since the intervening judgment lien on personal property would have priority, even though an intervening security interest would not.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel



LOYOLA LAW SCHOOL

August 6, 1983

Mr. Stan G. Ulrich, Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94306

Re: CCP 697.590

Dear Stan:

Thank you for your letter of July 8, 1983 enclosing an advance copy of your initial draft of a revised CCP §697.590.

I have studied your draft and its contents. As written, I think it does the job and thus have no suggestions of my own to make. The changes you have made do not change the meaning of my suggested language, and in several instances have made it more readable.

As I mentioned to you in our recent telephone conversation, one member of the UCC Committee suggested somewhat different wording for subsection (f) which deals with priority as to future advances. He proposes that the subsection make clear that the secured party will have priority "unless and until" the notice is served and that it be stated that this is the rule "notwithstanding actual knowledge on the part of the secured party". My opinion is that the present language accomplishes that purpose, but you may wish to consider this suggestion to avoid one of the "quibbles" mentioned in your letter. Perhaps some language along this line in the Comment might prove useful.

As to your draft report, I do not think that footnote 6 (which is the heart of the matter) might be expanded by giving an example, such as Example "E" in my letter of April 19, 1983. This might make more clear the objective of preservation of the integrity of the filing system.

In the second paragraph of your letter you were wondering why I had made some changes in the wording of the subsection dealing with circular priorities, now found in draft §697.590(e). I have no recollection as to why I made these changes, but in comparing the draft with present §697.590(c) these thoughts occur to me:

1. The present section reads in part: "If a perfected purchase money security interest has priority over a judgment lien on after-acquired inventory pursuant to subdivision (b) ..." I eliminated the words "perfected" and "after-acquired" in my draft. I must have done so simply because they are unnecessary. Under subsection (b), a purchase money security interest will only have priority over a conflicting judgment lien if it is perfected. Further, the only case where subsection (b) would apply is in the case of after-acquired property.

2. The words "on the inventory subject to the purchase money security interest" were substituted for the words "on after-acquired inventory." I think that this makes it clear that the judgment lien is subordinate only as to that after-acquired inventory which is also subject to the purchase money security interest and not subordinate as to all after-acquired inventory.

I noted a couple of typographical errors which could be easily overlooked, so I will mention them: (1) In footnote 6 on page 3, in the next to last line, the word "to" should, I think, be "no". (2) In the second paragraph of the Comment on page 7, in the third line the reference to "Subdivision (b)ia" should be "(b)(1)".

I am taking the liberty of sending copies of your letter and the enclosed draft to the Chairman of the UCC Committee along with a copy of this letter. I am doing so because I have to deal by mail with my secretary at the Law School and this can cause delay. This way you can get an earlier response from the Committee. I will not be attending the next Committee meeting, but I would expect to get word as to the Committee response to your draft so that I can pass it along to you.

Sincerely,



Lloyd Tevis
Professor of Law

LT/eaf
Enclosure
cc: Ronald M. Bayer, Esq.

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