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Delaware Supreme Court: Termination Statements Are Effective, Regardless of Secured Party's Intent

In the GM bankruptcy case, the United States Court of Appeals for the Second Circuit (*In re: Motors Liquidation Co.*, 755 F.3d 78 (2d. Cir. 2014)), asked the Delaware Supreme Court to determine if under Delaware law the filing of a UCC-3 termination statement that has been reviewed and knowingly approved by a secured party has the effect of terminating the secured party's prior financing statement, even if the secured party did not intend the financing statement in question to be terminated.

The Delaware Supreme Court held in the affirmative, stating that “under the Delaware UCC, parties in commerce are entitled to rely upon a filing authorized by a secured lender and assume that the secured lender intends the plain consequences of its filing.” The Delaware Supreme Court noted that, based upon the “unambiguous language” of the applicable provisions of Delaware’s Uniform Commercial Code, when a termination statement is reviewed and knowingly approved for filing by a secured party, “the financing statement to which the termination statement relates ceases to be effective” without regard to what the secured party may have intended.

At issue in *Motors Liquidation Co.* was a UCC-3 termination statement filed on behalf of GM that purported to terminate a security interest on the assets of GM held by a syndicate of lenders (Secured Parties), including JPMorgan Chase Bank, N.A. (JPMorgan). The lien secured a term loan in which the Secured Parties were the lenders (Term Loan Security Interest). The parties, including GM, had intended only to terminate a financing statement related to a separate “synthetic lease” transaction to which GM and JPMorgan were parties; however, the UCC-3 prepared by GM’s counsel erroneously included the Term Loan Security Interest. The termination statement was reviewed and knowingly approved by JPMorgan and its counsel for the synthetic lease transaction and then filed by GM’s counsel.

When GM later filed for reorganization under Chapter 11 of the Bankruptcy Code, JPMorgan recognized the error and informed the creditors’ committee in the Chapter 11 case that the termination statement against the Term Loan Security Interest had been erroneously filed. The creditors’ committee then requested that the United States Bankruptcy Court determine that the Term Loan Security Interest had been effectively terminated, rendering JPMorgan an unsecured creditor with respect to that debt. The Bankruptcy Court, however, ruled in favor of JPMorgan, holding in part that, because neither GM nor JPMorgan intended the legal consequences of the termination statement, the filing was not authorized and therefore not effective to terminate the Term Loan Security Interest. The creditors’ committee appealed to the Second Circuit, arguing among other things that it did not matter what was intended by the parties—the only issue was whether JPMorgan had *authorized* the filing. The Court of Appeals then certified this precise question to the Delaware Supreme Court. Thus, the holding by the Delaware Supreme Court does not consider various other arguments posited by JPMorgan, including whether GM’s counsel was authorized to act as JPMorgan’s agent in filing the termination statement.

The Delaware Supreme Court's ruling was based upon the "plain language" of the provisions of the UCC in question: sections 9-513(d), 9-510(a), and 9-509(d)(1), which, according to the court, are "unambiguous and ... not subject to judicial interpretation." The Court summed up the provisions of these statutes as stating the following: "[F]or a termination statement to have the effect specified under [section] 9-513... it is enough that the secured party authorizes the filing."

In support of its decision, the court went on to state that the unambiguous language of these sections of the UCC, and the result to which they lead, "promotes sound policy," requiring of sophisticated parties only that they "bear the burden of ensuring that a termination statement is accurate when filed." Holding that a termination statement not be effective unless the secured party "subjectively understood the terms of its own filing" would be, in the court's mind, both "strange and inefficient," running contrary to the "efficient procession of commerce" that is an important role of the UCC and that is accomplished, in part, by "permitting parties to rely in good faith on the plain terms of authorized filings." Thus, the court further noted that it would be reluctant to embrace JPMorgan's approach even if the statute were ambiguous, as it would mean that secured parties would have "little incentive to ensure the accuracy of information contained in their UCC filings."

This ruling by the Delaware Supreme Court illustrates the importance of a thorough review of the accuracy of any termination statement by the secured party prior to its filing. Errors in filings can lead to unintended consequences, such as the secured party's loss of a first claim upon available collateral.

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