UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CHAPTER 7
	)	
HARTZLER FEED & SEED, INC.,	)	CASE NO. 01-63815
	)	
Debtor.	)	ADV. NO. 02-6072
	)	
	)	JUDGE RUSS KENDIG
LISA AFARIN, TRUSTEE,	)	
	)	
Plaintiff,	)	
	)	**MEMORANDUM OF DECISION**
v.	)	
	)	
UNITED NATIONAL BANK & CO., et al.,	)	
	)	
	)	
Defendants.	)	
	)	

Trustee Lisa Afarin, (hereinafter "Trustee"), commenced this adversary proceeding to determine the validity and priority of liens, claims and encumbrances against the proceeds of property sold at auction. In its answer, defendant Lyon Financial Services, Inc., dba Synergy Resources (hereinafter "Lyon"), asserted that this court had no jurisdiction over the proceeds because they were not property of the estate pursuant to 11 U.S.C. § 541. Lyon claimed an interest in the full amount of the proceeds based upon lease agreements with debtor, Hartzler Feed & Seed Co., (hereinafter "Debtor"), pursuant to which UCC-1 Financing Statements were filed. Defendant, United National Bank & Trust Co., (hereinafter "United"), answered the complaint also asserting an interest in the proceeds due to a blanket security interest in all of the Debtor's property. United asserted that the proceeds were not property of the bankruptcy estate or Lyon.

Now before the court is a joint motion for summary judgment by Trustee and United (hereinafter "Movants"). Lyon filed a responsive pleading. Movants brought their motion pursuant to Fed. R. Civ. P. 56 as incorporated into bankruptcy practice at Fed. R. Bankr. P. 7056.

The court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334 and the general order of reference entered in this district on July 16, 1984. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(K).

I. Standard of Review

Motions for summary judgment are governed by Fed. R. Civ. P. 56, as adopted by Fed. R. Bankr. P. 7056. The rule provides that a motion for summary judgment should be granted "forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In reviewing a motion for summary judgment, "'the inferences to be drawn from the underlying facts contained in the [moving party's] materials must be viewed in the light most favorable to the party opposing the motion.'" *Adickes v. S. H. Kress and Co.*, 398 U.S. 144, 158-59 (1970) (quoting *U.S. v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)). If the evidence as presented "could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citing *First Nat'l Bank of Ariz. v. Cities Serv. Co*, 391 U.S. 253, 288-89 (1968)).

The moving party "bears the initial responsibility of informing the . . . court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Thereafter, the nonmoving party must come forward and demonstrate the existence of genuine issues of material fact. The nonmoving party cannot merely rely on the pleadings or a mere scintilla of evidence to demonstrate the existence of such facts, but instead must specifically set forth evidence sufficient to demonstrate the existence of disputed material facts. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Celotex*, 477 U.S. at 324; *Cities Serv.*, 391 U.S. at 288. Only facts which could conceivably impact the outcome of the litigation are material. *See Liberty Lobby*, 477 U.S. at 248.

II. Facts

Debtor and United entered into what is labeled a Master Lease Agreement (hereinafter "Lease"), dated September 12, 2000. The same parties also entered into a Supplemental Lease Agreement (hereinafter "Supplemental Lease"), dated October 30, 2000. The Lease contains the legal terms of the agreement, and language stating that such terms apply to all supplemental leases. The Lease and the Supplemental Lease (hereinafter "Lease Documents"), were separately assigned to Lyon by United one day after each was executed by Debtor and United. The Lease was for a term of sixty months at payments of $771.89 per month with a security deposit of $1,543.78. The Supplemental Lease was also for a term of sixty months at payments of $1,021.97 with a security deposit of $2,043.94. Several pieces of equipment fell under the Lease Documents. This equipment was used in the operation of Debtor's business. See Movants' Exhibit 1 for a listing of the specific equipment.

Prior to the assignment of the Lease Documents, United and Lyon entered into a Program Agreement dated May 12, 2002. This agreement provided that United would sell and/or refer lease contracts to Lyon for a 4% commission. Paragraph 4 of the agreement characterizes the

relationship between the parties to be one of agency, with Lyon acting as agent on behalf of United. The Lease Documents were assigned to Lyon pursuant to this Program Agreement, and United was paid a 4% commission.

On September 10, 2001, an involuntary chapter 7 proceeding was filed against Debtor. The equipment under the Lease Documents was sold at auction September 12, 2001 pursuant to an order of the Common Pleas Court of Wayne County in a case styled *United National Bank & Trust Company v. Hartzler Feed & Seed, Inc.*, Case No. 01-CV-0174. The proceeds of the sale, totaling $34,253.00 plus interest, are being held by Trustee pending a decision by this court.

III. Arguments Presented

It is Movants' position that the Lease Documents between United and Debtor, which were assigned to Lyon, do not create true leases, but rather a security agreements. Movants argue that Lyon did not properly perfect its security interest in the equipment sold. Movants claim that the financing statements are not valid because they do not comply with O.R.C. § 1309.39(A)'s requirement that a financing statement be signed by the debtor. They also claim that the Supplemental Lease is invalid on additional grounds of non-compliance with Ohio's dual filing requirement pursuant to O.R.C. § 1309.38 (A)(4). United asserts that it has a valid blanket security interest in all of debtor's property, including the equipment in question, and is therefore entitled to the proceeds therefrom. United agreed to accept $24,235.00 of the proceeds and allow the remaining $10,000.00 to go to Trustee pursuant to a compromise between United and Trustee. See Movants' Motion for Summary Judgment, pg.2, ¶ 4, n. 1.

Lyon argues that the agreements were true leases and they are entitled to the proceeds. Alternatively, Lyon argues that even if the court finds that the agreements are security interests it did properly perfect the security interests. Lyon asserts the Lease Documents granted it authority to sign the UCC-1 Financing Statements on behalf of Debtor and that its signature pursuant to the Lease Documents is valid. It also argues that the financing statement filed pursuant to the Supplemental Lease does not need to comply with Article 9 because it relates back to the filing under the Lease.

IV. Discussion

A. The Lease Documents created a security agreement, not a true lease.

The first issue is whether the agreements were true leases. While Lyon asserts, "A lease is a lease transaction unless proven otherwise," Lyon's Brief in Opposition to Trustee and United's Joint Motion for Summary Judgment, pg. 7 citing *In re Elder-Beerman Corp*., 201 B.R. 759 (Bankr. S.D. Ohio 1996), merely labeling an agreement a lease is not dispositive of the question whether the underlying agreements actually created a true lease. *In re Fox*, 229 B.R. 160, 164 (Bankr. N.D. Ohio 1998); *In re Beavis Co.*, 201 B.R. 923, 925 (Bankr. S.D. Ohio 1996). The court must evaluate the underlying transactions to determine whether they created a true lease.

Lyon bears the burden of proving that the Lease Documents created true leases by a preponderance of the evidence standard. *In re Vital Products Co.*, 210 B.R. 109, 111 (Bankr. N.D. Ohio 1997), ("the burden of proof is upon the party seeking the recovery as a true lease who must meet its burden of proof by a preponderance of the evidence standard"). Lyon contends that the transactions between Debtor and United were at all times intended to create true leases. Movants contend that the Lease Documents are security agreements as opposed to true leases, thereby requiring compliance with U.C.C. Article 9 filing standards.

"Property rights in bankruptcy proceedings are determined by reference to the applicable state law." *Fox*, 229 B.R. at 164, citing *Butner v. United States*, 440 U.S. 48, (1979); *In re DWE Screw Products*, 157 B.R. 326, 330 (Bankr. N.D. Ohio 1993); *In re Victoria Hardwood Lumber*, 95 B.R. 947, 952 (Bankr. S.D. Ohio 1988) (citing H.R. No. 95-595, 95th Cong., 1st Sess. at 314 (1977), U.S. Code Cong. & Admin.News 1978, p. 5787). Uniform Commercial Code § 1-207(37) provides the applicable law in this case. Ohio has adopted U.C.C. § 1-207(37), with modifications, as O.R.C. § 1301.01(KK)(2)[1]. This section indicates that the facts of each case will be determinative in finding whether a transaction creates a lease or a security agreement. But, the code also definitively states that a security interest is created, irrespective of the facts, where the obligation of payment by the lessee to the lessor for the right of possession and use of the goods lasts for the entire term of the lease and is not subject to termination by the lessee, and any one of the four following apply:

> (a) The original term of the lease is equal to or greater than the remaining economic life of the goods.
>
> (b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods.
>
> (c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.
>
> (d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

O.R.C. § 1303.01(KK)(2)(a)-(d) (2000).

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[1] Because Debtor's transactions with Lyon and United occurred prior to Ohio's adoption of Revised Article 9 on July 1, 2001, old Article 9 of the Uniform Commercial Code as enacted by Ohio controls.

1. Debtor did not have the option to terminate the lease prior to the stated expiration term.

The Lease was for a term of sixty months at payments of $771.89 per month with a security deposit of $1,543.78. The Supplemental Lease was also for a term of sixty months at payments of $1,021.97 with a security deposit of $2,043.94. There are no provisions in the Lease Documents that explicitly state Debtor had the right to terminate the agreement early. Even if early termination could somehow be construed, ¶12 of the Lease, headed "DEFAULT AND REMEDIES," does not allow the debtor to terminate the Lease before the end of the stated term without: (1) paying the balance of the agreement discounted at a mere 6%; (2) paying the amount of the purchase option; and (3) returning the equipment. Because Debtor could not terminate the Lease without incurring an obligation to pay all but 6% of the agreement, Debtor did not have a valid right to terminate the agreement. *See Fox,* 229 B.R. at 165 (holding "the threshold requirement of O.R.C. § 1303.01(KK)(2) is met as the Debtor could not cancel the 'lease agreement' without simultaneously incurring an immediate obligation for the total cost of the air-conditioning equipment"); *In re PISNet, Inc.*, 271 B.R. 1, 44 (Bankr. S.D.N.Y. 2001) (holding that while there was a provision allowing for early termination, no such right actually existed because the terms required the lessee to pay off the entire cost of the equipment if such right was exercised).

2. Both subsections (b) and (d) of O.R.C. § 1303.01(KK)(2) have been met.

Subsection (b) of O.R.C. § 1303.01(KK)(2) requires that Debtor be bound to become the owner of the goods under the lease term. In this case, Debtor had no reasonable alternative. Both the Lease and the Supplemental Lease contain the following language:

> End of Lease Options
>
> Lessee shall have the following options at the end of the stated term, provided the lease has not terminated early and is continuing. THE EQUIPMENT SHALL [*sic*] SOLD ON AN AS IS, WHERE-IS BASIS.
>
> 1. Purchase of the equipment for $1.00.
> 2. Return the equipment as provided in the Lease Agreement.

See Lease Schedule of Master Lease and Lease Schedule of Supplemental Lease, Movant's Exhibits 2 and 3 respectively. At the end of the stated lease term Debtor had only the two options listed above. There was no option to renew the lease. "Leases with $1.00 purchase option will not be renewed," Master Lease Agreement ¶ 1. No reasonable person would forego paying $1.00 to purchase the equipment, to return it to the lessor. Therefore, Debtor was bound to become the owner of the equipment under the terms of the agreements.

Subsection (d) of O.R.C. § 1303.01(KK)(2) requires the option purchase price to be for either nominal or no additional consideration. The $1.00 purchase option is nominal consideration. Many courts have held that an option price of a dollar is nominal within the meaning of U.C.C. § 1-201(37). *See Fox,* 229 B.R. at 165 (holding that an option to purchase the equipment in question for $1.00 was nominal consideration); *In re Eagle Enterprises,* 237 B.R. 269, 272 (Bankr. E.D. Pa. 1999) (holding that a $1.00 purchase price option is nominal consideration under UCC §1-201(37)); *In re Macklin,* 236 B.R 403, 407 (Bankr. E.D. Ark. 1999) (finding that subsection (d) is met where the debtor had the option to buy the equipment for $1.00 at the end of the lease term).

Debtor did not have the option to terminate the lease prior to the expiration of its stated term, thereby satisfying the threshold requirement under § 1303.01(KK)(2). Two of the four factors have been met by the fact that debtor was bound to become the owner of the equipment at the end of the lease for the nominal consideration of $1.00. Therefore, the Lease Documents did not create true leases, but rather security agreements.

B. Lyon did perfect its security interest in the equipment under the Lease but did not perfect its interest under the Supplemental Lease.

Because this court found that the Lease and Supplemental Lease constitute security agreements, Lyon, through assignment of the Lease Documents by United, was required to properly file a UCC-1 Financing Statement to hold a perfected security interest in the equipment.

"The Bankruptcy Code prescribes that filing procedures are to be effectuated according to the applicable state law." *Fox,* 229 B.R. at 166, citing *Maloney v. American National Bank,* 117 B.R. 47, 49 (Bankr. D. Conn. 1990). Ohio Revised Code § 1309.21 requires a secured party to file a financing statement in order to perfect a security interest in equipment. Section 1309.07 (B) defines goods to be equipment "if they are used or bought for use primarily in business . . . ." Debtor bought the equipment in question to be used in the operation of his business. Section 1309.38(A)(4) requires dual filing for a secured party to perfect such a security interest. Dual filing is required "in the office of the secretary of state and, in addition, if the debtor has a place of business in only one county of this state, also in the office of the county recorder of such county . . . ." O.R.C. § 1309.38(A)(4) (2000). Lyon filed financing statements for the Lease with the Secretary of State and with the Wayne County Recorder's Office.[2] Whether such filings were actually made is not at issue, but whether those filings were valid is being challenged by Movants. Movants claim that Lyon's signature on behalf of Debtor was not valid.

Movants do challenge whether the Supplemental Lease's financing statement was properly filed under O.R.C. § 1309.38 (A)(4). Lyon did not dually file the financing statement that covered

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[2] Lyon did not contest the allegation that Debtor only had a place of business in Wayne County.

the collateral under the Supplemental Lease. While Lyon filed the financing statement with the Ohio Secretary of State, no filing was made with the Wayne County Recorder. Lyon, citing no authority, argues that the filing under the Supplemental Lease relates back to the filing under the Lease and, therefore, did not have to comply with O.R.C. § 1309.38(A)(4).

1. Lyon did not perfect its interest in the equipment under the Supplemental Lease because it did not file a financing statement with the county recorder and the financing statement was not signed.

Lyon filed a financing statement describing the equipment under the Supplemental Lease, but only with the Ohio Secretary of State. In order to comply with the O.R.C. § 1309.38(A)(4), Lyon was additionally required to file a financing statement with the Wayne County Recorder's Office.

Lyon, citing no case law or code provision, argues that it was not required to comply with O.R.C. § 1309.38(A)(4) in the filing of the UCC-1 Financing Statement pursuant to the Supplemental Lease because it related back to the initial financing statement. The court finds this argument to be without merit. The initial financing statement indicated that it secured only the specific list of equipment covered by the lease, not subsequent leases. The priority granted to purchase money transactions requires the timely filing of appropriate financing statements describing the specific equipment. O.R.C. § 1309.31(D).

The Lease agreement, signed by Debtor on September 12, 2000, contains the following language:

> You agree to lease from us the personal property described in each lease schedule (hereinafter "Supplement") to this Master Lease from time to time signed by you and us (such property and any upgrades, replacements, repairs and additions referred to as "Equipment") for business purposes only. You agree to all of the terms and conditions contained in the Agreement and any Supplement, which together are a complete statement of our Agreement regarding the listed equipment ("Agreement") and superceded any purchase order or outstanding invoice.

See Master Lease Agreement, Movants' Exhibit 2. This document contains all of the terms of the agreement, but does not list the equipment to be leased or its payments terms. That information is listed on the Lease & Equipment Schedules. On October 26, 2000, Debtor signed what this court references as a Supplemental Lease. The actual documents are an additional Lease Schedule and Equipment Schedule. Such documents do not contain the language included in the Lease, but provide a description of the additional leased property and the payment terms. The equipment described in the financing statement under the Lease does not include any after-acquired property. The Lease Schedule lists specific equipment, and only that equipment is covered by the initial

financing statement. The additional equipment under the Supplemental Lease is not mentioned in the initial financing statement and is not covered by that filing. Therefore, a separate financing statement covering the equipment under the Supplemental Lease was required to be filed.

Additionally, the financing statement filed by Lyon with the Ohio Secretary of State was wholly unsigned. Ohio Revised Code § 1309.39(A) requires that a financing statement be signed by the debtor. Neither Debtor, nor anyone authorized to sign for debtor, signed the financing statement; therefore, it is invalid on the additional ground of non-compliance with O.R.C. § 1309.39 (A).

Lyon did not properly perfect its interest in the equipment under the Supplemental Lease and is therefore an unsecured creditor with respect to this equipment. United has a blanket security interest in all of Debtor's equipment which was perfected on July 21, 1998. Because Lyon has no security interest in the equipment under the Supplemental Lease, United is entitled to the proceeds of the equipment under the Supplemental Lease.

2. Lyon perfected its security interest in the equipment covered by the Lease, <u>but</u> was behind United in priority due to its failure to timely file the financing statements.

a. The Financing Statement filed by Lyon pursuant to the Lease complies with O.R.C. § 1309.39 (A)'s signature requirement.

The Financing Statements filed by Lyon do not contain Debtor's signature. Instead, an agent of Lyon signed her name on behalf of Debtor. United argues that the signature by Lyon's agent is invalid and the financing statements are devoid of Debtor's signature as required by O.R.C. § 1309.39 (A).

Lyon argues that the financing statements contain a valid signature on behalf of Debtor. Lyon contends that both the Lease and the Program Agreement granted it a power-of-attorney to sign a UCC-1 Financing Statement on Debtor's behalf. Paragraph 13 of the Lease, headed "UCC FILINGS," states

> You grant us a security interest in the Equipment if this agreement is deemed a secured transaction and you authorize us to record a UCC-1 financing statement or similar instrument, and appoint us your attorney-in-fact to execute and deliver such instrument, in order to show our interests in the Equipment.

This language was in the Lease signed by Debtor and United. It granted United power-of- attorney to sign on Debtor's behalf. The Program Agreement was signed by representatives of Lyon and United and dated May 12, 2000. Paragraph 5 is headed "Rights and Duties of the Customer." Section (c) of ¶ 5 contains the following language:

> Customer provides by execution of this agreement power of Attorney to Synergy Resources to sign all lease documents, including assignments, sign UCC filings, obtain Credit Bureau Reports and D & B searches to allow Synergy the ability to underwrite and perfect each of the Leases authorized under this agreement with the Customer.

Program Agreement, Lyon's Exhibit A. This agreement granted Lyon power-of-attorney to sign on Debtor's behalf.

Pursuant to quoted language of the Lease and Program Agreements, a representative of Lyon signed the financing statements filed with the Ohio Secretary of State and the Wayne County Recorder by signing her name, "Sharon Thomas," after Debtor's typed name in the place where the Debtor's signature was indicated and also where the secured party was indicated to sign. Above this the following language appears: "Sharon Thomas to sign for lessee per lease # 757168." Lease 757168 is the number for the Master Lease Agreement.

At the core of this issue is whether Sharon Thomas's signature on the financing statements is a valid signature on behalf of Debtor. While this issue is governed by Ohio law, there appears to be nothing that directly addresses this issue. Ohio Revised Code § 1309.39 (A) requires that a financing statement be signed by the debtor. Signed is defined to include "any symbol executed or adopted by a party with a present intention to authenticate a writing." O.R.C. § 1301.01(MM). An unauthorized signature is defined as "one made without actual, implied or apparent authority." O.R.C. § 1301.01(QQ). Paragraph 13 of the Lease signed by Debtor, granted United the power-of-attorney to sign financing statements on behalf of Debtor. This right was assigned to Lyon. A Lyon representative signed the financing statements on behalf of Debtor pursuant to ¶ 13 of the Lease and indicated it as the authority for her capacity to sign on the financing statement.

One case addresses the signature requirement in O.R.C. § 1309.39(A), but it is not directly on point with the facts of this case. In *In re Causer's Town & Country Super Market, Inc.*, 2 UCC Rep. Serv. (CBC) (Bankr. N.D. Ohio March 3, 1965), a Referee in Bankruptcy held that a financing statement signed only by the secured party was not a validly executed financing statement. This situation did not fall into one of the expressly stated exceptions of O.R.C. § 1309.39 that permitted a financing statement to be signed only by the secured party, therefore the Referee held that the financing statement did not contain a valid debtor's signature. The Referee refused to take a liberal view of the U.C.C. as a Kentucky Court did in holding that a security agreement signed only by the debtor was valid. "Such liberality seems to the writer of this Opinion to defeat the very uniformity sought by the Uniform Commercial Code." *Id.* at * 5. While this case is factually similar in that the financing statement was only signed by the secured party, nothing in *Causer* indicates issues of contract and agency law as exist in the present case. While this court acknowledges the precedential value of *Causer*, it is factually dissimilar to the issues in the current case. Therefore, due to lack of precedent construing the law of the state of Ohio, this

Court must look to other states for guidance.

Several cases directly address the issue of whether a secured party's signature on a debtor's behalf, authorized by the debtor, is valid under U.C.C. § 9-402. These cases, while at the federal level, apply state-adopted versions of the U.C.C. Those states, Tennessee, Kentucky and North Carolina, have adopted the following version of U.C.C. § 9-402:

> A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor . . . .

See, Tenn. Code Ann. § 47-9-402(1) (2000); N.C. Gen. Stat. § 25-9-402(1) (2000); Ky. Rev. Stat. § 355.9-402(1) (2000).[3] Ohio has adopted an immaterially different version of UCC § 4-209 which contains the following language:

> A financing statement **shall state** the names of the debtor and the secured party, be signed by the debtor . . . .

O.R.C. 1309.39(A) (2000) (emphasis added). The bolded section indicates language different from the above cited versions; such change is semantical and immaterial. Because the state law at issue is substantively exact, this court will evaluate the following cases as such.

i. *In re Grieb Printing Co.*, 230 B.R. 539 (Bankr. W.D. Ken. 1999)

A bankruptcy judge, applying Kentucky law, held that where a debtor expressly granted a secured party the right to sign a financing statement on its behalf, the secured party's signature as such was valid where the secured party "used the designation 'attorney-in-fact' to disclose that it was authorized to execute the financing statement for the Debtor . . . ." *Id.* at 541. The *Grieb* case contains facts nearly exact to the ones presented in the current case. The *Grieb* facts are as follows. Debtor executed a lease agreement for equipment with Bayer. This lease was determined be a security agreement, not a true lease. The lease granted Bayer a security interest in equipment and authorized "'Lessor (Bayer) or its agents or assigns to sign and execute on its behalf any and all necessary documents to effect any such filing . . . (including the filing of any such financing or continuation statement) without further authorization of Lessee.'" *Id.* at 540, citing the Lease at ¶ 14. Thereafter, Bayer filed a financing statement which it signed on behalf of debtor. Five months later debtor filed a chapter 7 bankruptcy petition, and the Trustee sold the equipment and held the proceeds pending a determination of right. The court found that "[a]lthough there is dearth of law on the subject, we find no general requirement that debtors must grant a power of attorney to authorize the creditor to sign the financing statements on debtor's behalf. . . . The mere fact that Bayer used the designation 'attorney-in fact' to disclose that it was authorized to execute the financing statement for the Debtor did not impair the validity of the Debtor's signature." *Id.*

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[3] These code sections are versions enacted prior to the recent changes in Article 9.

at 541. The court found the signature was valid because the creditor indicated its authority and capacity to sign the financing statement on behalf of the debtor on the financing statement by the designation 'attorney-in-fact.'

The facts of the current case are very similar to those in *Grieb*. Debtor granted a power of attorney to sign financing statements on its behalf in the Lease Documents. United assigned the lease documents and all of its rights under them to Lyon. Lyon signed the financing statement on Debtor's behalf pursuant to the authority granted in the Lease Documents. Lyon also indicated its authority to sign the financing statements on Debtor's behalf by including the language "Sharon Thomas to sign for lessee per lease # 757168."

ii. *In re Lea Lumber & Plywood LLC,* 266 B.R. 342 (Bankr. E.D. N.C. 2001)

The court held that the debtor's typed name on the financing statement coupled with the creditor's signature indicating an agency relationship was a valid signature under U.C.C. § 9-402(1). Debtor, Lea Lumber & Plywood, LLC (hereinafter "debtor") executed three promissory notes payable to Lyon Credit Corporation. The security agreement for the notes was signed by Bradly Upfield who was the sole owner and president of BAU, Limited. BAU, Ltd. was debtor's designated manager, but neither BAU, Ltd., not Bradly Upfield owned any interest in debtor.

Lyon Credit Corporation filed two financing statements to perfect its interest under the security agreement. One of the financing statements intended to secure interests in debtor's general personal property and intangibles was signed for the debtor by indicating "Lea Lumber & Plywood, LLC" on the signature line, followed by Bradly Upfield's signature. There was no indication of BAU, Ltd. or the capacity in which Bradly Upfield was signing. Lyon Credit Corporation then assigned its rights under the security agreement and financing statements to Hudson. Debtor filed chapter 7 and the trustee challenged Hudson's interests asserting that the financing statement was not properly signed by the debtor pursuant to U.C.C. § 9-402(1).

The bankruptcy court held that the requirements of U.C.C. §9-402(1) were met and the signature was valid for two specific reasons. One, the name of the debtor was typed on the signature line of the financing statement. *Lea Lumber,* 266 B.R. at 348. Second, the typed name of the debtor was followed by the signature of an authorized agent. *Id.* While the agent, Bradly Upfield, did not indicate his official capacity to sign on the debtor's behalf, its 'suggestion of agency' was sufficient to validate the signature. *Id.* The court found the fact that BAU, Ltd. was totally omitted on the financing statement and that Bradly Upfield's signature gave no indication of his capacity to sign on behalf of debtor were not fatal errors to the effectiveness of the financing statement. *Id.*

Applying this law to the case at bar, Sharon Thomas' signature next to the typed name of the debtor, Hartzler Feed and Seed Co., citing to the Lease as authority to sign on behalf of debtor, is a valid signature.

iii. ***In re Goolsby*, No. 3:02-0418, 2002 U.S. Dist. LEXIS 20257 (M.D. D.C. Tenn. Oct. 16, 2002)**

The bankruptcy court held that where a debtor grants a power-of-attorney to sign a UCC-1 Financing Statement the authorized signer must indicate the source of his/her authority to sign in such capacity on the face of the financing statement. The Goolsbys executed a lease agreement with C & J Corporation for a chipper. The lease agreement gave C & J Leasing Corporation power-of-attorney to sign and file a UCC-1 Financing Statement. The financing statement filed by C & J contained the following language where the signature of the debtor was to appear: "'*Authorized Signature* by *Kelly Seward*.'" *Goolsby*, at pg. 2. The Tennessee Secretary of State marked the financing statement "REJECTED" but filed it anyway.

The court found no authority on point from Tennessee law, but stated "the available authorities from other jurisdictions unanimously agree that an authorized signature on a financing statement must evidence the source of the signer's authority in order to fulfill § 47-9-402(1)'s signature requirement. *Id.* at pg. 4. Because Kelly Seward's signature did not describe the basis of her authority to sign the financing statement, the signature did not meet the requirements of U.C.C. § 9-402(1).

Applying the law in this case as well as others cited above, Lyon's financing statement is valid. The financing statement lists Debtor's name, cites authority granting Sharon Thomas the right to sign on behalf of Debtor, and is therefore valid and in compliance with O.R.C. 1309.39(A). Therefore, Lyon did validly perfect its security interest in the equipment under the Lease.[4]

b. Lyon lost the priority battle due to its failure to timely file the financing statements, thus losing special rights granted to purchase money security interests.

Because the court already determined that United has priority in the proceeds under the Supplemental Lease, no further discussion of that issue is necessary in this section. The following relates to the Lease because the court has found that Lyon had a valid financing statement for goods relating to the Lease.

A purchase money security interest is defined in O.R.C. § 1309.05. It states:

> A security interest is a "purchase money security interest" to the extent that it is:

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[4] While this case does not arise under the jurisdiction of Revised Article 9, this court takes judicial notice that Revised Article 9, §9-509(b) no longer requires the debtor's signature on a financing statement. Under this section a debtor who signs a security agreement automatically authorizes the creditor to file a financing statement to cover the collateral.

> (A) taken or retained by the seller of the collateral to secure all or part of its purchase price; or
>
> (B) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact used.

O.R.C. § 1309.95 (2000). The court determined that the Lease was not a true lease but a security interest. Lyon, by assignment, is not the Lessee but the seller or financier. W.G. Dairy Supply Inc. supplied the equipment covered by the Lease. See Lease Schedule, Movants' Exhibit 2. Lyon financed the purchase of the equipment. Lyon can be considered either a "seller of the collateral" under O.R.C. § 1309.05 (A), or a person who incurred an obligation by giving value that enabled the debtor to acquire rights in or use of the collateral under (B). Thus, Lyon's security interest is a purchase money security interest.

United's blanket security interest was perfected on July 21, 1998. This would normally grant United priority over any later perfected security interest, but O.R.C. § 1309.31 provides a special priority for purchase money security interests. Ohio Revised Code § 1309.31(D) provides:

> A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds *if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty days thereafter.*

O.R.C. § 1309.31 (2000) (emphasis added). Ohio Revised Code § 1309.21 requires a financing statement to be filed to perfect a security interest. Lyon perfected its security interest under the Lease on October 23, 2000. Under O.R.C. § 1309.38 (A)(4) to properly perfect a security interest in equipment a financing statement must be filed with the Secretary of State and the office of the county recorder if the debtor has a place of business in only one county. Lyon filed a financing statement with the Ohio Secretary of State on October 3, 2000 and with the Wayne County Recorder on October 23, 2000. The Lease was signed by Richard Hartzler, Debtor's president, on September 12, 2000. It was signed by United and assigned to Lyon on September 13, 2000. Neither brief indicates when the debtor received possession of the collateral, but the Lease Schedule states:

> The undersigned hereby certifies that all the equipment described above has been furnished, that delivery and installation of this equipment has been fully completed as required, with **the delivery date being the date of this certificate**, and that it has been accepted by the undersigned as satisfactory.

Lease Schedule, Movants' Exhibit 3 (emphasis added). The Lease Schedule was signed by Debtor on September 12, 2000. The court accepts September 12, 2000 as the date of delivery of the equipment.

The Lease was perfected on October 23, 2000. Debtor obtained possession of the equipment under the Lease on September 12, 2000. Lyon was not perfected until forty-one days thereafter. Ohio Revised Code § 1309.31(D) requires that in order for a purchase money security interest creditor to get special priority it must perfect its security interest within twenty days from the date the debtor receives possession. Lyon is not entitled to the special priority under O.R.C. § 1309.31(D) because the Lease was not perfected within the twenty day required period.

Because Lyon did not file both financing statements within this twenty day period, O.R.C. § 1309.31(E) controls. It states:

> In all cases not governed by other rules stated in this section, including cases of purchase money security interests which do not qualify for the special priorities set forth in divisions (C) and (D) of this section, priority between conflicting security interests in the same collateral shall be determined according to the following rules:
>
> (1) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the earlier, provided that there is no period thereafter when there is neither filing nor perfection.
>
> (2) So long as conflicting security interests are unperfected, the first to attach has priority.

O.R.C. § 1309.31 (2000). United properly filed and perfected its blanket security interest on July 21, 1998. Lyon perfected its interest in the equipment in question on October 23, 2000. Therefore under O.R.C. § 1309.31(E), United is entitled to priority in the equipment described in the September 12, 2000 Lease Schedule. The fact that it is entitled to priority over the equipment also gives it priority with regards to the proceeds of the same property. Ohio Revised Code § 1309.25 (A) defines proceeds as "whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds . . . ." O.R.C. § 1309.25 (2000). It then states in subsection (B), that unless otherwise stated in the Code "a security interest continues in collateral not withstanding sale, exchange, or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor." O.R.C. § 1309.25 (2000).

United did not authorize the sale of the collateral; it was auctioned by court order. The proceeds of the particular property are identifiable. The equipment was sold at auction and the

Trustee has been holding these proceeds separately. Therefore, United is entitled to the proceeds of the equipment described under the Lease.

V. Conclusion

As a matter of law, United is entitled to the proceeds from the sale of the equipment under both the Lease and the Supplemental Lease. Therefore, Movants' Motion for Summary Judgment is granted.

An order in accordance with this decision will issue forthwith.

_____

RUSS KENDIG
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this _____ day of December, 2002, the above Order was sent via regular U.S. Mail to:

Mark Bernlohr
Christopher J. Niekamp
The Nantucket Building
23 South Main St., Suite #301
Akron, Ohio 44308

Bruce Schrader, II
Roetzel & Andress
222 South Main St.
Akron, OH 44308

John Rambacher
220 Market Ave. South
1000 United Bank Plaza
Canton, Ohio 44702

_____
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CHAPTER 7
	)	
HARTZLER FEED & SEED, INC.,	)	CASE NO. 01-63815
	)	
Debtor(s),	)	ADV. NO. 02-6072
	)	
	)	JUDGE RUSS KENDIG
LISA AFARIN, TRUSTEE,	)	
	)	
Plaintiff(s),	)	
	)	**ORDER GRANTING SUMMARY**
v.	)	**JUDGMENT IN FAVOR OF**
	)	**PLAINTIFF AND DEFENDANT**
UNITED NATIONAL BANK & CO., et al.,	)	**UNITED NATIONAL BANK & TRUST CO.**
	)	
Defendant(s).	)	

For the reasons set forth in the accompanying Memorandum of Decision, the court finds United is entitled to the proceeds from the sale of the equipment under both the Lease and the Supplemental Lease. Lyon's interest in the equipment under the Supplemental Lease was not perfected pursuant to O.R.C. § 1309.38 (A)(4), and pursuant to O.R.C. § 1309.31(D) Lyon's interest under the Lease is not entitled to priority over United's blanket security interest.

IT IS THEREFORE ORDERED that the joint motion for summary judgment of plaintiff and defendant United should be, and hereby is, **GRANTED**.

So ordered.

RUSS KENDIG
U.S. BANKRUPTCY JUDGE