

MARKS & WEINBERG, P.C.

In re Management By Innovation, Inc.
321 B.R. 742 (Bankr. M.D. Fla. 2005)

This adversary proceeding arose as a contest between secured creditors. In June of 1999, Orix filed a financing statement to secure a lease on a printing press. The description of the collateral in the financing statement covered the leased equipment but also referenced an attached agreement which extended to virtually all assets. In 2000, another of these leases and financing statements was executed.

Subsequently, SouthTrust acquired a security interest as well. SouthTrust did not dispute Orix's priority as to the equipment because it was plainly described in the financing statements. SouthTrust did, however, dispute the existence of a blanket lien because it argued that the financing statements were misleading and did not sufficiently describe the other collateral.

The bankruptcy judge, applying Florida law, held that the description in the financing statements was sufficient in regard to the other collateral and granted Orix's motion for summary judgment. The court found it irrelevant that the description was contained in an attached document and stated that creditors have an obligation to read the entire document.



This holding stems from the fact that Section 9-108 allows the collateral to be described by any method that allows for it to be objectively determinable and the commentary notes that "the test of sufficiency of a description under [Section 9-108], is that the description do the job assigned to it: make possible the identification of the collateral described." Some secured parties aggressively make use of the breadth of this provision by referencing documents not even attached to the financing statement but copies of which could be obtained by written request made by the searcher to the secured party. Under current law, there is clearly precedent that such an approach technically complies with Article 9 requirements. However, one would expect such practices to continue to be challenged through the courts by secured parties who find themselves in a subordinate position at the wrong time.

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