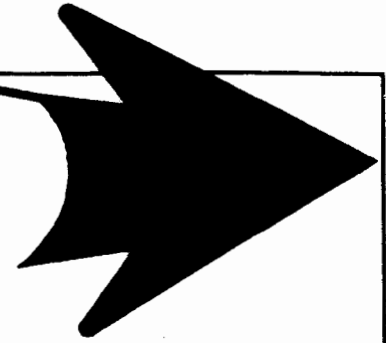


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SECURITY INTEREST BEATS MECHANIC'S LIEN

A new decision from the Kentucky Court of Appeals goes a long way toward clarifying Kentucky law as to when a purchase money security interest takes priority over a nonpossessory statutory lien. The case is ITT Commercial Finance Corporation v. Watson Brothers Industries, Ky., 793 S.W.2d 849 (1990).

We will simplify the facts of the case in this article because we are only concerned with one of the issues decided. Watson Brothers Industries had provided services and parts for repairs and tires on a Michigan loader in the amount of \$10,260.62. Because of the size of the loader, the repairs were performed at the mining site of its customer in Webster County. When no payment was forthcoming, Watson Brothers asserted a mechanic's lien against the owner of the loader, which subsequently filed bankruptcy.

ITT had financed the loader for the bankrupt and claimed a purchase money security interest in the equipment. ITT therefore had the

bankruptcy stay terminated in order to allow it to enforce its lien rights to the loader, and filed a state court action in which Watson Brothers was named as a defendant due to its competing lien. The trial court held that the mechanic's lien of Watson Brothers took priority over ITT's security interest despite the fact that the equipment was never in the possession of Watson Brothers.

Upon appeal, the Court of Appeals first looked at part of Kentucky's adoption of the Uniform Commercial Code, KRS 355.9-310, for direction:

When a person in the ordinary course of his business furnishes services and materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise. [Emphasis added by *The Arrow*]

The trial court had relied on a case which has given secured lenders many a nightmare in the past - - Corbin Deposit Bank v. King, Ky., 384 S.W.2d 302 (1964), in concluding that the nonpossessory mechanic's lien of Watson Brothers prevailed over the



purchase money security interest of ITT. The Court of Appeals in Watson Brothers distinguished the Corbin Deposit case from the facts of the case before it on the basis that the repairman in Corbin Deposit had relinquished possession of the repaired vehicle only under order of the court. (One could hardly have expected him to resist the sheriff's seizure.)

Watson Brothers attempted to argue that possession should not be required for priority in cases where the machinery repaired was so

large that repair on the owner's premises was necessary. Watson Brothers reasoned that repairmen of large mining or construction equipment do not have the same protection as others under KRS 355.9-310 if possession is required for priority of a mechanic's lien over a purchase money security interest.

The Court of Appeals, although it may have recognized some appeal in this argument of the holder of the mechanic's lien, nevertheless ruled that it could not ignore the plain language of KRS 355.9-310.

The Court of Appeals therefore reversed the trial court insofar as it had held that a perfected security interest lost to a mechanic's lien under these circumstances, but sent the case back down to the trial court since no proof had been taken on the sufficiency of the claimed security interest of ITT. Presumably, the secured lender was able to establish the validity of the security interest and its proper perfection upon remand.

This new decision should be welcomed by both claimants of mechanic's liens and equipment financiers alike because it follows what the statute has always said. The law had long been confused by mistaken readings of Corbin Deposit Bank, and confusion as to priorities in the commercial world only leads to increased, unnecessary litigation among creditors. □

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