

## UCC Filings In Kentucky: Another Surprise



It is amazing how many column inches of prior issues of The Arrow have been devoted to the pitfalls of extending credit in the jurisdiction of Kentucky. We turn yet again to another potential hazard, in the hope that none of our readers will be stunned by another peculiarity of Kentucky law.

Suppose Friendly Manufacturers wishes to take a purchase money security interest in the inventory it is shipping to River City Sales and Service in Kentucky. River City naturally has its principal and only place of business in River City, Kentucky. All the books and records are kept there, and all the inventory is stored in one central warehouse located behind River City's executive offices.

The credit manager of Friendly Manufacturers, in his usual careful way, obtains a security agreement signed by River City's president and CEO. He has the president

and CEO at the same time put his signature on a financing statement (popularly called a "UCC-1"). Both documents cover the inventory to be shipped by Friendly Manufacturers and any proceeds thereof.

Friendly's credit manager, because he read a previous article in the February issue of The Arrow titled "PMSI—The Golden Priority," has already completed a search of the public records in the Office of the County Clerk in Jefferson County, the county in which River City is located, and has identified all creditors already claiming liens on River City's inventory. Ten days prior to shipping any goods to River City, Friendly's credit manager sends notice to these prior lien creditors of his intention to take a purchase money security interest in the inventory which he ships, thereby leapfrogging over these prior lienholders in priority. Friendly Manufacturers simultaneously files its financing statement with the Jefferson County Clerk since Kentucky does not have central filing with the Secretary of State.

At this point you should be wondering what Friendly's credit manager has done wrong. Should he not be able to now ship goods to River City with the calm assurance of a creditor who has done his homework and assured his priority in the event of River City's insolvency?

Unfortunately, Friendly Manufacturers has made the mistake of filing in the county which would appear to be the logical place to file, rather than the county which is required by statute. Friendly's Manufactur-

ers' completely logical assumption that, absent central filing, one should file in the county in which the debtor's principal place of business is located (as well as where the inventory is located) is incorrect because River City's agent for service of process, its corporate lawyer, has his office in the next county. The lawyer's office is therefore River City's officially registered office with the Kentucky Secretary of State.

How can this be? With certain narrow exceptions, the proper place to file in Kentucky is the county of the debtor's residence. In the case of a domestic corporation, however, the corporation is deemed to be a resident of the county in which its registered office is located, as set forth in the most recent corporate filing with the Secretary of State. See KRS 355.9-401(5) (e). Thus, in the event of River City filing a bankruptcy petition, the trustee in bankruptcy could avoid the security interest of Friendly Manufacturers, despite all the efforts of its credit manager to make it a properly perfected secured creditor.

As a final note, let us suppose that River City Sales & Service was a Kentucky partnership, that is, "John Doe and Jane Doe d/b/a River City Sales and Service," rather than a domestic corporation. In that case, the proper place to file would be the county in which the principal place of business in the state is located, and Friendly Manufacturers would indeed have a properly perfected purchase money security interest in the inventory it shipped and proceeds thereof. See KRS 355.9-401(5) (b). □

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