



The Impact of an Effective Notice of Assignment
Under UCC-9-406

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In a March 2018 decision, the United States Court of Appeals for the Ninth Circuit issued an opinion in United Capital Funding Corp. v. Ericsson Inc. (unpublished opinion No. 16-35442, filed March 29, 2018) that discusses the effectiveness of a Notice of Assignment (herein referred to as an “NOA”).

The case involves the factoring of accounts receivable of a staffing services company. The assignee of the accounts receivable sent an NOA to the account debtor indicating that it had been granted a security interest in all present and future accounts receivable of the staffing services company, and that the account debtor should pay the assignee directly on all invoices. Everything went along smoothly for a period of one year until the account debtor received notice of a garnishment judgment obtained by a third party (“Garnishee”) against the staffing services company impacting twenty-two of the same accounts that had been factored with the assignee. The account debtor, in accordance with the Garnishment Writ, paid the Garnishee on those invoices.

The original assignee then sued the account debtor under Washington State’s version of UCC-9-406, which reads in pertinent part as follows:

“§ 9-406. Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.

- (a) Discharge of account debtor; effect of notification. Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.”

Please note that subsection (b) of UCC-9-406 provides that a notice is ineffective if it “does not reasonably identify the rights assigned”.

The Court notes that whether the notice provided by the original assignee was effective is important for two reasons. First, if the notice was effective then pursuant to 9-406(a) the account

debtor was obligated to pay the assignee once it received effective notice. Second, the account debtor was trying to avail itself of immunity under a State law provision which protects garnishees when paying funds to a garnishor, but if the notice was effective, then the account debtor was required to apprise the Court in the garnishment proceeding of the notice.

A considerable amount of time is spent by the Court in distinguishing, and actually bringing into question, the holding in a 2016 Washington State Court case Northwest Business Finance, LLC v. Able Contractor, Inc., 383 P. 3d 1074 (Wash. Ct. App. 2016). In the end, the Federal Appeals Court does not actually decide what is effective notice under UCC-9-406, but reverses the District Court's summary judgment in favor of the account debtor and remands the case to the District Court to address the issue of the effectiveness of the notice.

In my view this case is not particularly impactful to the capital markets area of equipment finance. In most transactions, assignees obtain an NOA that identifies with specificity the Schedule or Schedules being assigned. Often the NOA goes into even greater detail confirming the amount of each rental payment and the number of rental payments remaining on the Schedule. The other interesting take away from this case is that UCC-9-406 is an effective tool for assignees against account debtors. The Official Comments to this section put an affirmative obligation on the account debtor to inform an assignee if the account debtor believes that an NOA is not effective or is ambiguous. In particular, an account debtor will be hard pressed to comply with an NOA over a period of time (as was the case here) and then suddenly raise effectiveness of the NOA as a defense, when a third party makes claim to those accounts.