STATE OF MICHIGAN

COURT OF APPEALS

PDM BRIDGE, a/k/a PITT DESMOINES, INC.,

Plaintiff-Appellee,

v

WWA CONTRACTING, INC., WWA, INC., and INTERNATIONAL FIDELITY INSURANCE COMPANY,

Defendants,

and

DEPARTMENT OF TREASURY,

Garnishee Defendant,

and

SAMUEL P. EDWARDS TRUST,

Intervenor-Appellant.

UNPUBLISHED
December 16, 2003

No. 239762
Livingston Circuit Court
LC No. 00-017671-CK

Before: Talbot, P.J., and Owens and Fort Hood, JJ.

PER CURIAM.

In this garnishment case, we granted intervenor Samuel P. Edwards Trust ("the Trust") leave to appeal from the trial court's order denying summary disposition on the ground that the Trust failed to perfect a security interest in the accounts receivable owned by defendant WWA Contracting, Inc., ("WWA"). We conclude that the Trust perfected its security interest and, therefore, we reverse.

I. Facts and Procedural History

In 1997, the Trust filed a financing statement to perfect a security interest against the assets of WWA pursuant to a loan agreement. The financing statement expressly excluded from the security interest WWA's accounts receivable. In May 1999, the Trust filed a document that amended the 1997 financing statement to expressly include the accounts receivable in the security interest. Three months later, on August 6, 1999, a third party from whom the Trust

borrowed money inadvertently filed a document terminating the security interest at issue. The mistake was immediately discovered and the third party prepared a new financing statement for endorsement by the Trust and WWA. The financing statement was filed the same day. However, the language in the new financing statement was identical to the language of the 1997 financial statement which expressly excluded the accounts receivable from the security interest.

Meanwhile, in 1999, plaintiff PDM Bridge filed a breach of contract suit against WWA. On March 20, 2000, while the lawsuit was proceeding, the Trust filed a financing statement that expressly included in the security interest WWA's accounts receivable. The statement explained that it related back to the original 1997 financing statement which it claimed was inadvertently terminated and the May 1999 amendment. Because WWA's name had changed, the Trust filed another financing statement on March 24, 2000, the only differences between the two statements being the change in WWA's name and that the first statement was signed by WWA's president while the second statement was signed by WWA's attorney.

On June 9, 2000, a judgment was entered in plaintiff's favor against WWA. Plaintiff then filed a garnishment action against the Michigan Department of Treasury to collect what the state owed WWA. The Trust intervened in the garnishment action, claiming a perfected security interest in WWA's accounts receivable. The Trust moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that its perfected security interest was superior to plaintiff's rights as a lien creditor. The trial court ruled that the Trust's initial security interest was terminated by the August 1999 amendment, and that the Trust failed to subsequently perfect its security interest because the March 2000 filings lacked the statutorily mandated signatures of the parties.

II. Standard of Review

We review a trial court's decision to grant a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion granted under MCR 2.116(C)(10), this Court must examine all relevant documentary evidence in the light most favorable to the nonmoving party and determine whether there exists a genuine issue of material fact on which reasonable minds could differ. *Progressive Timberlands, Inc v R & R Heavy Haulers, Inc*, 243 Mich App 404, 407; 622 NW2d 533 (2000). The nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

This case also presents questions of statutory interpretation. Statutory interpretation is a question of law that is reviewed de novo. *Liberty Mutual Ins Co v Michigan Catastrophic Claims Ass'n*, 248 Mich App 35, 40; 638 NW2d 155 (2001). "Where the language of a statute is clear and unambiguous, the courts must apply the statute as written." *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 631; 563 NW2d 683 (1997).

III. Analysis

The Trust argues that the financing statements it filed in March 2000 perfected its security interest in WWA's accounts receivable because the statements complied with the requirements of Article 9 of the Uniform Commercial Code , MCL 440.9402(1).[1] We agree.

To perfect a security interest, former MCL 440.9402(1) required a party to file a financing statement signed by the debtor. However, an amendment to the original financing statement required the signatures of both the debtor and the secured party. Former MCL 440.9402(4). The issue before the trial court was whether the 2000 statements were original financing statements governed by former MCL 440.9402(1), which required the signature of the debtor only, or amendments governed by former MCL 440.9402(4), which required the signatures of both the debtor and the secured party.

We conclude that the trial court erred when it ruled that the statements were amendments governed by former MCL 440.9402(4). As the Trust points out on appeal, the court failed to distinguish the two different forms in this case. On their face, the 2000 filings were made on the form used for original financing statements and not the form used for amending or terminating the original financing statements. This is evident by the different form used for the May, 1999 amendment and the identical form used for the August 6, 1999 termination. Further, the court erred in ruling that the 2000 filings were amendments on the ground that the filings purported to relate back to the 1997 financing statement and the May 1999 amendment. Former MCL 440.9402(8) provided that "[a] financing statement substantially complying with the requirements of this section is effective even though it contains minor errors that are not seriously misleading." A review of the pertinent language in the 2000 statements indicates that the drafter related the 2000 filings back to the 1997 financing statement and its 1999 amendment as a means to clarify the purpose for the 2000 filings. It expressly stated that the 1997 financing statement was "inadvertently terminated." We conclude that such language, while inartfully drafted, was not seriously misleading regarding the nature and purpose of the 2000 filings which provided plaintiff and others with adequate notice that the Trust had a pre-existing security interest in WWA's accounts receivable.

Contrary to plaintiff's argument that a secured party must file a termination statement before filing a new financing statement, a creditor's duty to file a termination statement does not arise "until there is no outstanding secured obligation, and no commitment to make advances, incur obligations or otherwise give value." 68A Am Jur 2d, § 398. Further, we find nothing in the UCC that prohibits the refiling of subsequent financing statements.

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[1] Article 9 of the Uniform Commercial Code has been substantially amended by 2000 PA 348, effective July 1, 2001. We note that this case was commenced prior to the effective date of the amendatory act and therefore, this case is controlled by former Article 9 of the Uniform Commercial Code. Accordingly, all statutes listed throughout this opinion are based on former Article 9 and do not relate to revised Article 9.

The trial court also erred when it ruled that the Trust failed to present evidence that the 2000 financing statements were signed by any party. Although the Trust failed to attach a signed copy of the 2000 statements to its brief for summary disposition, the record indicates that plaintiff's counsel expressly acknowledged at the hearing on the motion for summary disposition that the Trust faxed a copy of the signed statements to plaintiff before the hearing, and that the statements were signed by WWA, the debtor. The Trust's counsel explained that the copies it had attached to its brief were the carbon copies of the Secretary of State's acknowledgment forms that were returned to the debtor as proof of filing and that such copies did not include the signature because the carbon paper in the form did not extend to the signature line. The evidence establishes that the 2000 statements were signed by the debtor, WWA, in compliance with MCL 440.9402(1). Thus, the Trust perfected its security interest in the accounts receivable.

A prior perfected security interest has priority over a subsequent lien creditor. Former MCL 440.9301(1)(b); *Michigan Tractor & Machinery Co v Elsey*, 216 Mich App 94, 97; 549 NW2d 27 (1996). It is undisputed in this case that plaintiff is a lien creditor whose rights attached in September 2000 when plaintiff's writ of garnishment was served on defendant Department of Treasury. See *id*. Because the Trust's March 2000 filings were proper financing statements that perfected the Trust's security interest in the accounts receivable, the Trust's prior interest has priority over plaintiff's subsequent interest as a lien creditor. In light of the above, the trial court's denial of the Trust's motion for summary disposition was improper.

Reversed.

/s/ Michael J. Talbot
/s/ Donald S. Owens
/s/ Karen M. Fort Hood