



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-22-00025-CV

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**AGRIFUND, LLC, APPELLANT**

**V.**

**FIRST STATE BANK OF SHALLOWATER, A TEXAS STATE FINANCIAL  
INSTITUTION, APPELLEE**

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On Appeal from the 72nd District Court  
Lubbock County, Texas  
Trial Court No. 2019-537,679, Honorable Ann-Marie Carruth, Presiding

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December 9, 2022

**DISSENTING OPINION**

Before QUINN, C.J., and PARKER and DOSS, JJ.

Here is the Bank that loaned the money to the farmer to plant a crop to repay the loan the Bank made. There is the lender that earlier loaned the money to the farmer to plant an earlier crop to repay the loan the lender made.<sup>1</sup> Who's up first? I respectfully dissent from the majority's answer and don my hat and lance to tilt at windmills.

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<sup>1</sup> Shades of "The House that Jack Built."

As the majority stated, “if the Bank’s security interest qualifies as a PMSI under Chapter 9, summary judgment in the Bank’s favor was properly granted.” I conclude that the security interest of First State Bank of Shallowater (Bank) was a “PMSI” or purchase money security interest. So, “summary judgment in the Bank’s favor was properly granted.”

Our legislature said: “A security interest in goods is a purchase-money security interest . . . to the extent that the goods are purchase-money collateral with respect to that security interest.” TEX. BUS. & COM. CODE ANN. § 9.103(b)(1). If the 2018 crop is “purchase-money collateral” with respect to the security interest of the Bank, then the Bank has a PMSI in those crops.

That leads me to the definition of “purchase-money collateral.” The same legislature said it “means goods . . . that secure[] a purchase-money obligation incurred with respect to that collateral.” *Id.* § 9.103(a)(1). Well then, if the 2018 crop is “goods” securing “a purchase-money obligation” with respect to the 2018 crop, then the crop is “purchase-money collateral.” But what are “goods”? One need not fret about that for the legislature defined it, too. Among other things, the word includes “crops grown, growing **or to be grown.**” *Id.* § 9.102(a)(44) (emphasis added). One may then ask, “How about a ‘purchase-money obligation’? What is that?” To find the answer, I return to section 9.103 and stumble upon its definition as “an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.”<sup>2</sup> *Id.* § 9.103(a)(2).

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<sup>2</sup> “Collateral” is simply the “property subject to the security interest.” TEX. BUS. & COM. CODE ANN. § 9.102(13). The property subject to the security interest of the Bank here is the 2018 crop.

Now, I'm left with the task of weaving the facts at bar into all this statutory framework. No doubt, Leslie and Jennifer Gary are the "obligors" since they owe payment or performance of the obligation, i.e., payment of the debt to the Bank. See TEX. BUS. & COM. CODE ANN. § 9.102(a)(60) (defining "obligor" as the person who, among other things, "owes payment or other performance of the obligation"). They incurred their obligation to the Bank to enable them to acquire rights in the collateral, which collateral is the 2018 crop. That is, they agreed to borrow the money to grow the crop which they would own or at least have some property interests in which interests are superior to third parties, subject, of course, to financial interests of third parties in the same crop. So, it can be said they incurred a "purchase-money obligation" in goods, i.e., the crop to be grown, which "goods" secured that obligation. In other words, the crop was "purchase-money collateral" with respect to the Bank's security interest. Being "purchase-money collateral," then the Bank had a PMSI in them. Having such a security interest then means it was superior to the security interest of Agrifund, LLC. See TEX. BUS. & COM. CODE ANN. § 9.324(a) (stating that "a perfected purchase-money security interest in goods . . . has priority over a conflicting security interest in the same goods"). That, in turn, brings me back to the majority's statement that "if the Bank's security interest qualifies as a PMSI under Chapter 9, summary judgment in the Bank's favor was properly granted."<sup>3</sup>

But, let me dispense with acting like I was the first to crawl through the rabbit hole dug by all that statutory jargon and instead refer to authority that framed the test in simpler terms. "[W]hen a creditor makes a loan enabling a debtor to acquire an interest in goods,

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<sup>3</sup> Having a PMSI in the crop, the Bank's superior interest flows to the proceeds recovered from the sale of same. See TEX. BUS. & COM. CODE ANN. § 9.315(a)(2) (stating that "a security interest attaches to any identifiable proceeds of collateral").

the creditor may obtain a purchase money security interest in the goods.” *First Nat’l Bank v. Lubbock Feeders, L.P.*, 183 S.W.3d 875, 882 (Tex. App.—Eastland 2006, pet. denied). The Bank made a loan to Leslie and Jennifer Gary to enable them to acquire an interest in (i.e., grow and own) goods (i.e., the 2018 “crop to be grown”) which goods the Bank retained a security interest to repay the loan it made to grow those very crops.

In sum—who’s up first?—I agree with the trial court and say the Bank. In all candor, though, I also acknowledge that if higher authority were to address this issue of first impression in Texas, the majority opinion would most likely find approval. It is supported by the work of learned writers, commentary, and authority from neighboring states. My dilemma concerns whether to follow those writers, that commentary, and neighboring authority or apply the plain words incorporated by the Texas Legislature into the statutes in play. Because our Supreme Court mandates that I apply the statute as written, *see Lippincott v. Whisenhunt*, 462 S.W.3d 507, 508 (Tex. 2015) (per curiam), I follow the course selected at the risk of comparison to Don Quixote.

Brian Quinn  
Chief Justice