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BANKRUPTCY PREFERENCES—SECURED TRANSACTIONS—Security Interest in After-Acquired Property Is Voidable Preference if Received Within Four Months of Bankruptcy—*In re Portland Newspaper Publishing Co.**

In an effort to provide employment for several hundred workers who had lost their jobs in an unsuccessful strike against Portland's two largest newspapers, the local printers' unions and several civic leaders organized the Portland Reporter Publishing Co. (Reporter) to publish a rival newspaper. The unions also formed the Rose City Development Co. (Rose City), which leased facilities and equipment to Reporter and subsequently made several emergency operating loans to it. These loans were secured by an agreement designating as collateral all of Reporter's previously unsecured accounts receivable, both present and after-accruing. This type of agreement —securing after-acquired property of the debtor—is provided for in section 9-204(3) of the Uniform Commercial Code (Code).[1] Shortly after the execution of the agreement, Rose City filed the financing statement required by section 9-302 of the Code for the perfecting of the security interest.[2] Two years later, when Reporter (which in the interim had merged with the Portland Newspaper Publishing Co.) was adjudicated bankrupt, Rose City attempted to establish its priority, as a secured creditor, to all of the accounts receivable of the insolvent newspaper which were covered by the security agreement. The trustee in bankruptcy objected, maintaining that the accounts receivable accruing within four months before bankruptcy were voidable preferences under section 60a of the Bankruptcy Act,[3] so that only those receivables accruing prior to the four month period were subject to Rose City's security interest.[4] *Held,* a trustee in bankruptcy may void security interests in after-acquired accounts receivable accruing within four months of bankruptcy because such interests constitute transfers for an ante-

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* 2 BANKR. L. REP. (4th ed.) ¶ 61722 (D. Ore. 1966) [hereinafter referred to as principal case].

1. ORE. REV. STAT. § 79.2040(3) (1965). The Code's general definition of an account is found in § 9-106, ORE. REV. STAT. § 79.1060 (1965). All references to the Code are to the 1962 Official Text. "After-acquired" clauses in security agreements have been used in varying forms and with various degrees of success for many years. For the pre-Code history of this security device, see Cohen & Gerber, *The After-Acquired Property Clause,* 87 U. PA. L. REV. 635 (1939).

2. U.C.C. § 9-302, ORE. REV. STAT. § 79.3020 (1965), requires the filing of such statements unless only an insignificant percentage of the accounts is covered by the security agreement.

3. 30 Stat. 544 (1898), 11 U.S.C. § 96 (1964).

4. The great majority of receivables which accrued before the four-month period were no longer outstanding at the time of suit. Thus, the more recent accounts represented about 95% of Portland's receivables.

cedent debt and thus are preferences within the meaning of section 60 of the Bankruptcy Act.[5]

The Uniform Commercial Code has attempted to facilitate current asset financing by sanctioning the use of "floating liens"—security agreements which cover both present and after-acquired collateral without further negotiation between the parties. Particularly relevant are three interrelated sections of article 9: section 9-204(3) allows the use of after-acquired property as collateral;[6] section 9-110 deems sufficient a description of collateral that reasonably identifies it;[7] and section 9-205 enables the debtor to retain possession and full control of property which is subject to a security agreement.[8] The question in the principal case was whether the Code's approach, outlined briefly above, conflicted with section 60 of the Bankruptcy Act, which attempts to prevent a debtor facing imminent bankruptcy from "transferring" his property to selected general creditors "for or on account of an antecedent debt,"[9] and if so, how the two statutes were to be reconciled. The court found that the Code's position was inconsistent with the Bankruptcy Act since the use of an after-acquired clause to secure property in which the debtor first obtained rights during the relevant four-month period is a transfer to the creditor at the time such rights were obtained, for value given on the execution of the original agreement (an antecedent debt) and therefore proscribed by section 60.[10] To

5. Section 60 mentions eight requirements, all of which must be fulfilled for a transaction to be adjudged a voidable preference: (1) the transferred property must be the debtor's; (2) the transfer must be to a creditor; (3) the transfer must be voluntary; (4) it must be for the benefit of the creditor; (5) it must be within four months of bankruptcy; (6) it must be for or on account of an antecedent debt; (7) the transfer must result in that particular creditor acquiring a greater percentage of the debtor's assets than do other creditors; and (8) the creditor must have known or had reason to know that the debtor was insolvent. Requirements 1 through 4, 7, and 8 were found to have been satisfied in the principal case and will not be discussed further in this note.

6. ORE. REV. STAT. § 79.2040(3) (1965).

7. ORE REV. STAT. § 79.1100 (1965). Thus the necessity of describing each single piece of inventory or individual account is eliminated.

8. ORE. REV. STAT. § 79.2050 (1965). This provision is especially important, since it rejects the "dominion" doctrine of Benedict v. Ratner, 268 U.S. 353 (1925), where the United States Supreme Court held that retention of too much "dominion" by the debtor over the collateral would void the entire security interest. For sources pointing out some of the problems created by *Benedict*, see Cohen & Gerber, *Mortgages of Accounts Receivable*, 29 GEO. L.J. 555 (1941); Comment, 39 COLUM. L. REV. 1338 (1939).

9. Section 60, as pointed out by the court, is only one in a series of provisions aimed at protecting unsecured creditors. See principal case at 71137.

10. It should be noted that the court is not alone in its conclusion; many distinguished writers have found the same conflict to exist. See, *e.g.*, Gordon, *The Security Interest in Inventory Under Article 9 of the Uniform Commercial Code and the Preference Problem*, 62 COLUM. L. REV. 49 (1962); Kennedy, *The Trustee in Bankruptcy Under the Uniform Commercial Code: Some Problems Suggested by Articles 2 and 9*, 14 RUTGERS L. REV. 518 (1960); Riemer, *The After-Acquired Property Clause Revisited*, 70 COM. L.J. 334 (1965).

reach this conclusion, the court necessarily had to decide two separate issues (although it did not articulate them as such): (1) was there a "transfer" within the meaning of section 60 during the four month period; and (2) if there was a transfer, was it "for or on account of an antecedent debt"?

In answering the first question, the court found that the language of the Code itself required a finding that a "transfer" within the meaning of section 60 had been made during the relevant period. Section 60(a)(2) provides that a transfer will be deemed to have been made when a security interest becomes sufficiently "perfected" under state law (represented by the Code in this, and most, cases) that it would be given priority over a subsequent lien obtained by legal or equitable proceedings.[11] The court noted that section 9-303(1) of the Code requires that a security interest "attach" before it can be "perfected,"[12] and that, under section 9-204, such an interest cannot "attach" until the debtor "has rights in the collateral."[13] Since section 9-204(2)(d) states that the debtor can have no rights in accounts until they come into existence,[14] the court concluded that attachment, and therefore perfection, of the security interest in each individual account occurred when that account accrued. Consequently, those accounts which accrued within the four month period were "transferred" within the meaning of section 60(a)(2) during the relevant time period.

Accepting the court's atomistic definition of the term "collateral" in section 9-204, this logic is irrefutable. However, the creditor argued that, in the context of security agreements, specific accounts or items of inventory should not be considered individually when "accounts" or "inventory" were designated generally as collateral. Rather, such terms should be viewed in a generic sense, referring to a *quantity* which remains sufficiently identifiable, although its particular parts might change. If this "mass" theory were accepted, the debtor, for the purposes of the security agreement, would be

11. 64 Stat. 24 (1950), 11 U.S.C. § 96a(2) (1964). Viewing article 9 in light of this rule, one might initially conclude that the Code placed all security arrangements in jeopardy by giving holders of purchase money security interests, ORE. REV. STAT. § 79.1070 (1965) (U.C.C. § 9-107), priority over previous lien creditors. ORE. REV. STAT. § 79.3120(3)(4) (1965) (U.C.C. § 9-312). This has never been seriously argued, however, undoubtedly because a purchase money security interest is most correctly viewed as a prior claim on the property, accruing before the debtor acquires his rights. See Friedman, *The Bankruptcy Preference Challenge to After-Acquired Property Clauses Under the Code*, 108 U. PA. L. REV. 194, 217 n.107, 218 (1959).

12. This section, ORE. REV. STAT. § 79.303(1) (1965), outlines the steps necessary to "perfect" an interest and thus the way to insure that it will be given "priority" over unsecured claims.

13. "A security interest cannot attach until there is agreement that it attach and value is given and the debtor has rights in the collateral." ORE. REV. STAT. § 79.204(1) (1965).

14. ORE. REV. STAT. § 79.204(2)(d) (1965).

deemed to have rights in later acquired collateral at the time the agreement is executed, the creditor's interest would attach to the collateral upon execution of the agreement, and the creditor's security interest in the collateral would be perfected upon the filing of a financing statement. Thus, where, as in the principal case, the statement is filed prior to four months preceding bankruptcy, the transfer could not be deemed a voidable preference under section 60. Such an approach is based upon two theories proffered by writers in order to defend article 9 floating liens from an attack by section 60(a)(2): the "unitary" theory[15] and the "automatic perfection" theory.[16] The two theories involve different analyses[17] but are equally dependent upon acceptance of the "mass" interpretation of collateral in section 9-204, since both view rights in future property as being perfected at the time of the original security agreement. However, as the court in the principal case correctly noted, such a view is hopelessly inconsistent with section 9-204(2)(d), which states that a party can have no rights in "*an account* until *it* comes into existence" (emphasis added). Moreover, the comment on that section[18] clearly reveals that the Code's drafters intended that accounts,[19] as collateral, are to be viewed separately and not as a "mass."[20]

15. The generally recognized source of this theory is Judge MacGruder's opinion in Manchester Nat'l Bank v. Roche, 186 F.2d 827 (1st Cir. 1951), where, in dictum, he stated: "By analogy it might be possible to treat a merchant's accounts receivable as a unit presently and continuously in existence, the component elements of which [the particular accounts] may be constantly changing without affecting the identity of the *res.*" *Id.* at 831. The leading article in support of this theory is Henson, *"Proceeds" Under the Uniform Commercial Code,* 65 COLUM. L. REV. 232 (1965). See also Henson, *The Uniform Commercial Code and the Bankruptcy Act Reconciled,* 11 BUS. LAW. 371 (1966).

16. See Friedman, *supra* note 11.

17. The "unitary" view would simply call "accounts" the collateral and thus have all rights to the mass pass at the execution of the original agreement. The theory can best be illustrated by an analogy used by its proponents: the current asset is a river, whose parts are ever changing; yet the whole is, for all practical purposes, constant. Henson, *"Proceeds" Under the Uniform Commercial Code,* 65 COLUM. L. REV. 232, 233-34 (1965).

The "automatic perfection" theory, on the other hand, does not view the original agreement as passing a *present interest* in all collateral, but rather regards the after-acquired clause as passing present rights in a future interest. Thus when the debtor later acquires an interest in each single piece, it will be deemed to have been automatically perfected at the time of original perfection.

18. U.C.C. § 9-204, comment 4, notes: "[A] security agreement may be executed and value given before the debtor acquires rights; the security interest will then attach *when he does.*" (Emphasis added.)

19. It is interesting to note that although this explicit exception exists for accounts, there is no comparable provision applicable to inventory. Therefore § 9-204(1) would apply, and that section is in no way irreconcilable with the "mass" idea. Thus, although theoretically the "mass" concept would be equally applicable either to accounts or to inventory, the language of § 9-204 may produce a difference in results in cases involving these two types of assets.

20. This discussion has not mentioned the most viable theory presented by the creditor—the "substituted collateral" theory. See GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 45.6, at 1315-16 (1965); Coogan & Bok, *The Impact of the Uniform*

Assuming that the court was correct in concluding that a transfer took place within the four months preceding bankruptcy, it nevertheless had to consider the second question of whether the transfer was made for or on account of an antecedent debt, since this too is a *sine qua non* of a voidable preference. It would appear that the court was unwarranted in concluding that this requirement was satisfied in the principal case. Section 9-108 of the Code explicitly states that any interest in after-acquired property will be deemed to have been taken for new value if the interest was received in the ordinary course of business or under a contract of purchase.[21] Since section 60 of the Bankruptcy Act makes no attempt to define the phrase "for or on account of an antecedent debt," section 9-108 of the Code will in effect remove floating liens from the scope of the voidable preference provisions unless the judicial interpretation or legislative history of those provisions, or policy reasons, dictate to the contrary.

The court in the principal case found that the meaning of "antecedent debt" in section 60, as that section was interpreted in *Corn Exchange Bank v. Klauder*,[22] was inconsistent with the provisions of section 9-108 of the Code. In *Klauder*, the United States Supreme Court held that an assignment of existing accounts was a voidable preference even though the assignment was made for concurrent value before the four months preceding bankruptcy. However, since *Klauder* may be distinguished from the principal case, it is not

Commercial Code on the Corporate Indenture, 69 YALE L.J. 203, 249 (1959). This theory views the security arrangement in a very practical, businesslike manner—as an arrangement intended to initiate a continual flow of the original credit through the business of the debtor. The theory recognizes that, as the original collateral (the accounts) are turned into cash, into inventory, and then back into accounts, new receivables are constantly being substituted for the old. This theory could arguably be used to circumvent the attachment problems of § 9-204, since no property received during the four month period is viewed as having been passed under the original agreement. Rather, there is a recognition that new collateral has been substituted for old—a course of action always available under § 60 because the debtor's estate has not been diminished. *In re* Pusey-Mayers-Breisch Co., 37 F. Supp. 316 (E.D. Pa.), *aff'd*, 122 F.2d 606 (3d Cir. 1941). But the substituted collateral theory actually seems to go more to whether the transfer—admittedly made during the four-month period —was "for or on account of an antecedent debt"; and this is one reason why the idea was not discussed in the text.

The court did not pass on the merits of the substituted collateral theory, but rather held it inapplicable to the facts of the case. The referee found that all of Rose City's loans were given and used for the emergency purposes of meeting operating expenses rather than for providing new working capital. While this could be attacked as an extremely short-sighted view of the function of emergency operating loans, it does furnish a credible reason for ignoring the merits of the theory in this case. In general, however, the "substituted collateral" theory appears to be by far the best of the "explaining" theories, and any court which overlooked the theory's basic insight into what a secured transaction actually means to the parties involved would seem to be unnecessarily restricting its own perspective of the problem.

21. ORE. REV. STAT. § 79.1080 (1965).

22. 318 U.S. 434 (1943).

dispositive of the issue. The accounts in *Klauder* were assigned for new value, but, unlike the creditor in the principal case, the creditor in *Klauder* did not, at the time of assignment, give any notice of the security agreement to the persons whose accounts were secured. Consequently, at the time of the original agreement, the creditor's interest had not been sufficiently perfected under state law so as to render the transaction a "transfer."[23] Subsequently, upon bankruptcy of the debtor, the creditor finally gave notice of his interest to the bankrupt's obligors and therefore the "transfer" was deemed to have been made at that time—the time of perfection—for consideration passed at the time of the original agreement—an antecedent debt. Nothing in *Klauder* indicates that the original transaction, even if it had been made within the four month period, would have been voidable had the creditor perfected his interest by meeting the notice requirements of state law. Furthermore, there is nothing in *Klauder* which implies that a state would not be free to determine when new value would be deemed to have passed. Since *Klauder* is the only significant case in the area, and since it did not address itself to the particular issue of concern,[24] one must look to the legislative history of section 60 for a more definitive answer to the question whether the transfer in the principal case was in fact a voidable preference.

The legislative history of section 60, which was totally ignored by the court in the principal case, indicates that the type of transaction involved in the instant case is not the kind that the Bankruptcy Act intended to proscribe. The original act[25] did not provide any test for determining when a transfer would be deemed to have been made for an antecedent debt, and, as was subsequently

23. Under the law existing at that time, a "transfer" was made when a lien was so far perfected that no subsequent bona fide purchaser could obtain superior rights in the collateral. For a more detailed look at this provision and the problems which it caused, see notes 27-34 *infra* and accompanying text.

24. Other cases were discussed which did involve after-acquired property clauses, but as the court pointed out, in none was the § 60–article 9 conflict in issue. See Mason v. Citizens' Nat'l Trust & Sav. Bank, 71 F.2d 246 (9th Cir. 1934); *In re* Newkirk Mining Co., 54 BERKS Co. L.J. 179 (D. Pa. 1962) (referee's opinion); Joe Heuston Tractor & Implement Co. v. Clarsson, 59 N.M. 486, 287 P.2d 57 (1955).

It should be added that an even less valid reason for rejecting § 9-108 was later advanced by the court when it said that the section existed for the sole purpose of avoiding § 60. This argument is unconvincing for two reasons. First, when many of the most learned men in a field devote their time and expertise to writing a uniform state law, it would seem appropriate to assume that they were trying to work within existing federal law. Second, and more important, there is a very real purpose for § 9-108 other than evading voidable preference laws. As is pointed out by Professor Grant Gilmore, chief draftsman of article 9, § 9-108 limits the kinds of property which, when transferred under an after-acquired property clause, will be deemed to have been taken for new value—only property received in the ordinary course of business or under a contract of purchase will be so considered. GILMORE, *op. cit. supra* note 20, at 1314-15.

25. 30 Stat. 544 (1898).

noted in the committee reports of the House of Representatives,[26] this would have remained the case had it not been for several Supreme Court decisions around the turn of the century which upheld the use of the "secret" or "pocket" lien.[27] These decisions permitted creditors who had negotiated security interests on specific collateral without giving notice to future creditors by filing or by taking possession of the collateral to slink in on the eve of bankruptcy (which was sometimes years later)[28] and perfect their interest by the appropriate means. In 1938, after several unsuccessful attempts to remedy this situation,[29] Congress passed the Chandler Amendment,[30] which, as one writer stated, proved to be "the classic example of the overkill."[31] However, despite its seemingly harsh approach toward secured financing, the legislative history of the Chandler Amendment, including the section quoted by the Supreme Court in *Klauder*,[32] indicates that it was intended to eliminate only the types of fraudulent and quasi-fraudulent dealing found in the "secret" and "pocket" lien situations; it was never intended to proscribe legitimate business transactions where, as in the present case, the filing of a financing statement is a necessary element of perfection and serves as a warning to all future creditors.[33] Furthermore, in 1950, Congress retreated from the bona fide purchaser test[34] and adopted the present "lien-creditor test," but again the legislative history does not reveal an intent to disrupt normal secured business transactions when notice is given at the time the secured transaction

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26. H.R. REP. No. 1293, 81st Cong., 1st Sess. 4 (1949).

27. Carey v. Donahue, 240 U.S. 430 (1916); Sexton v. Kessler & Co., 225 U.S. 90 (1912); Humphrey v. Tatman, 198 U.S. 91 (1905); Thompson v. Fairbanks, 196 U.S. 516 (1905).

28. *E.g.*, in Thompson v. Fairbanks, *supra* note 27, the security interest was taken in 1894 and not perfected until just prior to bankruptcy in 1903.

29. Amendment attempts which failed to terminate the secret liens were 32 Stat. 799 (1903), 36 Stat. 842 (1910), and 44 Stat. 666 (1926). For a history of these provisions, see 3 COLLIER, BANKRUPTCY § 60.37 (14th rev. ed. 1964).

30. 52 Stat. 869 (1938).

31. GILMORE, *op. cit. supra* note 20, at 1302. The amendment, under which *Klauder* was decided, stated that any transfer made during the four-month period was voidable unless the security interest had been so far perfected (*i.e.*, by filing or possession) that the creditor would have rights in the collateral superior to those of a bona fide purchaser. The obvious problem created by this amendment was that no debtor wanted to mortgage his property to a degree that made it impossible for him to pass good title in the collateral, yet such an interest was necessary to a secured creditor if his interest was to stand up in the event of bankruptcy.

32. 318 U.S. at 439.

33. Professor James A. MacLachlan, author of the amendment, stated in committee hearings: "[W]e are not saying that you cannot make a mortgage on after-acquired property. What we do say is that a lien is not regarded as made for the purpose of the law of preference . . . until it is so far perfected as to be good against a bona fide purchaser." *Hearings Before the Committee on the Judiciary To Study Revision of the Bankruptcy Act*, 75th Cong., 1st Sess., ser. 9, at 123 (1937).

34. Note 31 *supra* and accompanying text.

is initiated. The House Committee on the Judiciary noted that "the present language of the act [the Chandler Amendment] tends to impede and choke the flow of credit, principally to small-businessmen, and the object of the bill is to free its channels."[35] The report proceeds to cast doubt upon the wisdom of the *Klauder* decision[36] and finally states that the objectives of the new amendment were: (1) to continue the Chandler Amendment's attack on secret and pocket liens; and (2) to "provide that *no transfer made in good faith, for a new present consideration, shall constitute a preference . . . if the provisions of applicable State law governing the perfection of such transfer are complied with.*"[37] Nowhere does the Committee attempt to define "new present consideration," nor is there any indication that a state is not free to define the phrase as long as the dangers of secret liens are avoided.[38]

Thus, neither the judicial interpretation nor the legislative history of the Bankruptcy Act provides a viable justification for denying effect to section 9-108 of the Code. The enactment of that section by the legislatures of the forty-seven[39] states which have adopted the Code would seemingly represent a legitimate exercise of the power left to the states to define an antecedent debt and therefore it should be applied despite objections grounded upon "policy" considerations. Such legislatures have presumably satisfied themselves as to the merits of floating liens, and for a court to question a legislature's judgment would, in this instance, be improper. However, since the court in the principal case did attack the merits of the floating lien, and since this disenchantment apparently was a prime factor in its decision, the court's argument should be examined.

The court felt that the lack of adequate policing safeguards in after-acquired property agreements removed the "financial finger" of the creditor from the "pulse" of the debtor.[40] It also condemned

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35. H.R. REP. No. 1293, 81st Cong., 1st Sess. 4 (1949).

36. *Id.* at 5.

37. *Id.* at 6.

38. Professor MacLachlan, see note 33 *supra*, now in residence at the University of Michigan Law School, agrees that § 60 was not intended to apply to transactions like those authorized by article 9. Interview with Professor MacLachlan, in Ann Arbor, Michigan, Jan. 13, 1967. Professor MacLachlan cited the following as advice to those who felt that § 60 was intended to apply:

> The law may be resembled to a nut, which has a shell and a kernel, and as you will be no better for the nut if you make use only of the shell, so you will receive no benefit of the law, if you rely only upon the letter, and as the fruit and profit of the nut lies in the shell [sic], so the fruit of the law consists in the sense more than the letter.

2 Plowden 450, 465-67, 75 Eng. Rep. 688, 695 (1574), quoted in Schwartz v. Mills, 192 F.2d 727, 733 (2d Cir. 1951).

39. As of December 31, 1966, only Arizona, Idaho, and Louisiana had not adopted the U.C.C. Adoption is expected in the first two states during 1967.

40. This language brings back shadows of the *Benedict v. Ratner* "dominion" doctrine which was specifically rejected by the Code. See note 8 *supra*.

such agreements since they could be used by one creditor to monopolize whole areas of the debtor's current assets. Finally, it expressed regret that the "old-fashioned method of operating a business on the strength of equity capital" was giving way to these newer plans, which, the court felt, left daily suppliers and employees in precarious positions.[41]

In several respects, the court's reasoning overlooks the realities of present-day business operations. There is absolutely nothing in the Code to prevent a creditor from policing his debtor as much as he wishes—in fact, such policing is encouraged. The form used by the parties in the principal case called for financial reporting by the debtor forty-five days after each fiscal quarter and was modified by the parties so as to provide for reporting within thirty days after the end of each month.[42] The court's "monopolization" argument is equally unconvincing. The debtor is obviously quite free to mortgage as few or as many of his assets to as few or as many persons as he desires. Reporter, for example, had mortgaged several selected accounts before entering into the agreements with Rose City. The weakness of the "monopolization" argument is further demonstrated by two additional considerations: (1) the debtor can always pay off his debt and refinance with a new creditor; and (2) from a planning standpoint, borrowers are frequently better off when they deal with a single lender. Finally, the court's "equity capital" argument is completely unrealistic. Even ignoring the fact that debt financing is often considered economically sounder than equity financing,[43] it seems obvious that, in an age of big business, the emerging small competitor, especially one whose largest capital investment is in inventory or who is forced by competition to sell on open account, must be free to secure loans with these principal assets if he is to have a sufficient economic base for growth. And if the debtor is a floundering, rather than an emerging enterprise, his daily suppliers and employees should be only too happy that these assets are available for use in a revitalization program.

Most important, the opposition to floating liens which is evidenced by the court in the principal case completely ignores the fact that current asset financing has always been possible[44]—the

41. For a more complete view of the court's ideas, see principal case ¶¶ 71136-38.

42. The form employed was No. 1208 U.C.C. Series, entitled "Accounts Receivable Loan and Security Agreement." Principal case ¶ 71135. For an article on the frequency of such policing measures despite a lack of legal compulsion, see Greenberg, *Inventory and Accounts Receivable Financing*, 1956 ILL. L.F. 601.

It should be noted that many of the problems involved here could have been alleviated had the parties not removed the "proceeds" clause from the form. Under such a clause, the creditor automatically would have had rights in all identifiable proceeds from the accounts. ORE. REV. STAT. § 79.3060 (1965) (U.C.C. § 9-306).

43. See, *e.g.*, *Where To Look for Money*, 16 BUS. LAW. 257 (1960).

44. Cohen & Gerber, *The After-Acquired Property Clause*, 87 U. PA. L. REV. 635 (1939). See also *In re* New Haven Clock & Watch Co., 253 F.2d 377 (2d Cir. 1958); 16 LAW & CONTEMP. PROB. 27 (1951).

Code merely facilitates the process, and it does so without harming anyone. Certainly the parties can have no objection to the streamlined procedures established by the Code, for those procedures can only make life easier for them. Moreover, the Code's notice-filing requirements insure that no future creditors will be misled; they can always ascertain the exact state of the debtor's secured credit by checking the appropriate place of filing.[45] Finally, subsequent creditors would be no better off if a renegotiation were required for each transaction, since section 9-403(2) states that any filing statement remains effective for five years[46] and consequently the first statement filed by the secured creditor would cover any asset of the same type mortgaged within that five year period. Thus, it would seem that floating liens are desirable instruments of commercial financing and that therefore the decision in the principal case is incorrect even as a matter of policy.[47]

45. Section 9-401 of the Code has three alternative subsections relating to the place of filing. Oregon had adopted a modified form of the third alternative. See ORE. REV. STAT. § 79.401(1) (1965).

46. ORE. REV. STAT. § 79.403(2) (1965).

47. It must be added that, although the decision in the principal case should be reversed, those who would support the decision certainly have presented well-reasoned and acceptable arguments. See note 10 *supra.* Unless a definitive court decision appears, there is likely to be a substantial split of authority on the issue, which will result in confusion among creditors as to what they may or may not do. Thus, if such a decision does not come forth in the near future, one or both of the statutes should be amended to clarify the law. At least two proposals have been made to amend § 9-108 so as to state specifically that the transfer of after-acquired property is accomplished at the time of the original agreement. [An amendment proposed by Friedman, *supra* note 11, at 224, would simply change "shall be deemed to be taken for new value and not as security for an antecedent debt" to "shall be deemed to be a present transfer of a present expectance interest in the future property." A similar proposal to amend § 9-108 in Michigan, which was not enacted by the legislature, would have eliminated part of the problem by also deleting § 9-204(2)(d). See notes 13-14 *supra* and accompanying text.] But amending the Code would not seem to be the answer. Those who believe that the Code and the Bankruptcy Act are irreconcilable do not feel that the conflict is caused by § 9-108, the provisions of which are relatively clear, but rather by § 60. Thus the lasting solution would be to amend the Bankruptcy Act.

Help is definitely on the way. The National Bankruptcy Conference has appointed a blue-ribbon committee, including Messrs. Gilmore, Coogan, and Kennedy (see respectively, notes 20, 20, & 10 *supra*) to investigate the problem and to recommend appropriate amendments either to the Bankruptcy Act or to both it and the Code. Several proposals have been made, but no definitive action has yet been taken.