



Georgia, 30427. Glennville, Georgia is in Tattnall County. The Debtor's actual place of residence, however, is several miles outside of Glennville in Long County, not Tattnall County;

- 2) On September 8, 1978, First Citizens Bank filed a financing statement in Tattnall County which covered "one (1) complete irrigation system consisting of 1 4" 5814-3 DYL. Diesel & trailer Mtd. w/clutch and pump #42214 model #3029C, motor #5184472. 3000 feet 6" pipe and 4000 feet 4" pipe and various plugs, sprinklers and any and all other parts with said system.";
- 3) On December 29, 1978, pursuant to the Debtor's request First Citizens Bank sent FmHA a list of debts owed by the Debtor to First Citizens Bank and a description of the collateral for such debts. First Citizens Bank described the collateral as "livestock, irrigation system including 1 4" Diesel & Trailer w/clutch & Pump & 700 Pipe, 1970 Ford Tractor with all equipment & attachments." Nothing on the form indicated whether a financing statement had been taken or filed;
- 4) After searching the records of Long County, FmHA filed a financing statement in Long County on April 27, 1979, which included among other collateral all farm and other equipment of the Debtor.

Under O.C.G.A. Section 11-9-401(1)(b) the proper place for First Citizens Bank to file in order to perfect its security interest is in the county where the Debtor resides - Long County, not Tattnall County. Notwithstanding First Citizens Bank's improper filing in Tattnall County, it may prevail in its priority contest with FmHA if it falls within the protections afforded to it under O.C.G.A. Section 11-9-401(2). This section provides that:

"A filing which is made in good faith in an improper place or not in all places required by this Code Section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement."

The issue which is at the heart of the instant priority contest is whether FmHA had "knowledge of the contents of such financing statement". As one commentator has aptly predicted, the issue before me is one which has deviled the courts for some time. See White & Summers Handbook of the Law Under the Uniform Commercial Code, §23-15 (1972). The phrase "knowledge of the contents of such financing statement" is ambiguous at best. At one extreme it suggests that "knowledge of a creditor's prior security interest [is] 'knowledge of the contents of such financing statement'." In re Mistura, Inc., 705 F.2d 1496, 1498 (9th Cir. 1983). Also see: In re Davidoff, 351 F.Supp. 440 (S.D.N.Y. 1972); In re Komfo Products, 247 F.Supp. 229 (E.D.Pa. 1965); In re Enark Industries, Inc., 86 Misc.2d 985, 383 NYS.2d 796 (1976). At the other extreme, is an interpretation which would require that "a searcher actually lay his eyes on the maverick financing statement." White & Summers, supra. Also see, U.S. v. Waterford No.2 Office Center, 246 Ga. 475, 271 SE 2d 790 (1980); In re Trivett Jahn v. North American Van Lines, 12 B.R. 373 (Bankr. E.D.Tenn. 1981); In re Country Green, Ltd.

Partnership, 438 F.Supp. 693 (W.D.Va. 1977); In re Advertising Distributors of America, Inc., 2 UCC Rep. 548 (E.D.Oh.), aff'd, 3 UCC Rep. 225 (N.D.Oh. 1965). The Georgia Supreme Court has begun to unravel the meaning of this ambiguous phrase which has deviled the courts for some time and which is presented in the instant case. In United States of America v. Waterford No. 2 Office Center, 246 Ga. 475 (1980), the Georgia Supreme Court was faced with the issue whether the holder of a first in time security interest in property who had filed in good faith in an improper place but had orally informed a competing lienholder that it was claiming a security interest in the property prevailed over the competing lienholder who had filed second in time with the knowledge of the security interest claimed by the creditor who had filed first in time. In rejecting the claim of the first in time holder of the security interest, the Georgia Supreme Court held that "knowledge of the claim of security interest is not equivalent to knowledge of the contents of the financing statement." Id. at 476. This result would decidedly place Georgia toward the end of the spectrum which would require a searcher to actually lay his eyes on the maverick financing statement. For a number of reasons, I am persuaded that an interpretation of the phrase "knowledge of the contents of such financing statement" is more properly at that end of the spectrum. First, neither knowledge of the contents of the security agreement nor knowledge of the collateral in which a

security interest is claimed is the test under O.C.G.A. Section 11-9-401(2). The test under that section is knowledge of the contents of the improperly filed financing statement. In re County Green Ltd. Partnership, 483 F.Supp. 693, 697 (W.D.Va. 1977). This test presupposes that an actual financing statement exists and that it has been improperly filed. It escapes me how a creditor who stands in the shoes of FmHA could ever be certain that a financing statement actually existed or was improperly filed if, in fact, it had not seen it or otherwise was made expressly aware of its existence. The Bank could easily have availed itself of the protections afforded to it under O.C.G.A. Section 11-9-401(2) if it had simply attached a copy of the improperly filed financing statement to the request for statement of debts and collateral which it sent to FmHA. It did not do so. The Bank simply listed the debts owed by the Debtor to it, described the collateral given for such debts, and answered three questions regarding its financial arrangements with the Debtor.<sup>1</sup> Nowhere on the request for statement of debts and collateral does any indication appear that the Bank had taken a financing statement from the Debtor, or that if it had that a

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<sup>1</sup> The request for statement of debts and collateral is a simple form which requests the answers to 5 questions. Questions 3 and 4 simply ask whether the security agreements contain a future advance clause or an after acquired property clause. Question 5 asks if the lender is going to extend, renew or reduce the debts.

financing statement had been filed so as to attempt to perfect its claimed security interest. Although the section does not require an examination of the financing statement itself, it escapes me how it could be said that a creditor has knowledge of the contents of a misfiled financing statement without ever having knowledge that a financing statement existed.

Moreover, O.C.G.A. Section 11-1-201(25) defines "a person 'knows' or has 'knowledge' of a fact when he has actual knowledge of it." Again, it would appear that for FmHA to have actual as opposed to constructive knowledge of the contents of the financing statement it presupposes that at the very least there must be sufficient facts and information from which it could reasonably know or discover that one exists. In the absence of any indication that a financing statement actually existed, FmHA did the prudent thing and searched the county records of Long County to determine if the Bank had filed a financing statement to perfect its claimed security interest in the Debtor's property. The search revealed that no financing statements had been filed by the Bank. FmHA then proceeded to file its financing statement in Long County to perfect its security interest.

Moreover, as a matter of statutory construction a broad interpretation of O.C.G.A. 11-9-401(2) would conflict

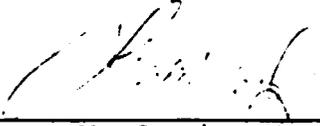
with the underlying pure race policy of O.C.G.A. 11-9-312(5). White & Summers, supra. In light of the pure race policy it appears that as a threshold matter there must be sufficient facts to place a second in time creditor on notice that an improperly filed financing statement in fact exists and has been filed before the protections under O.C.G.A. 11-9-401(2) are triggered. Even if this initial threshold is met, the burden is on the party seeking the protection of this section to prove that the second in time party had actual knowledge of the contents of the improperly filed financing statement. To read the section any more broadly would result in turning the pure race aspect of O.C.G.A. 11-9-312(5) topsy turvy.

Accordingly, I hold that FmHA's June 11, 1980 financing statement has priority over First Citizens Bank's September 8, 1978 financing statement.

O R D E R

Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that the Farmers Home Administration has a perfected security interest in the Debtor's property which takes priority

over that claimed by the First Citizens Bank.

  
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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 17th day of August, 1988.