Assignment 13
Priority: Secured Party vs. Statutory Lienholders

Reference: Understanding Secured Transactions § 13.01, 13.02

Statutory Liens

- State statutes other than Article 9 give certain kinds of creditors (otherwise unsecured creditors) a statutory lien upon certain property
- Typically this lien arises in favor of suppliers of certain “favored” goods or services
- E.g., mechanics’ lien (real estate law)
  - Contractor who provides labor or materials that go into an improvement to land can file for a lien against the land to the extent owner fails to pay contracted price

Common Statutory Liens (Personalty)

- Artisan’s (Repair) Liens
- Agricultural Liens
- Storage Liens

Problem 1

- Stepford owns a Mercedes
  - Bank has perfected SI in it
- Car needed repairs, so she took it to Glaser, who fixed it at a cost of $6,000
- Stepford failed to pay, so Glaser (who still has the car) claims a statutory lien
- Priority (under Kan. Stat. § 58-201)?
§ 58-201. Lien for materials and services …
Whenever any person, at or with the owner’s request or consent shall perform work, make repairs or improvements or replace, add or install equipment on any goods, personal property, chattels, … automobiles, … equipment of all kinds, … vehicles of all kinds, and farm implements of whatsoever kind, a first and prior lien on such personal property is hereby created in favor of such person performing such work … and such lien shall amount to the full amount and reasonable value of the services performed and shall include the reasonable value of all material used in the performance of such services and the reasonable value of all equipment replaced, added or installed.

If such property shall come into the lien claimant’s possession for the purpose of having the work, repairs or improvements made or the equipment replaced, added or installed thereon, such lien shall be valid as long as the lien claimant retains possession of the property …

§ 9-333. Priority of Certain Liens Arising by Operation of Law.
(a) [“Possessory lien.”] In this section, “possessory lien” means an interest, other than a security interest or an agricultural lien:

1. which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person’s business;
2. which is created by statute or rule of law in favor of the person; and
3. whose effectiveness depends on the person’s possession of the goods.

(b) [Priority of possessory lien.] A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

Rationale for Artisan’s Lien Priority

- Unjust enrichment
  - Bank isn’t really harmed by Glaser having priority for repair work on Stepford’s car
  - If Bank had foreclosed on Stepford’s car w/out the repair, car likely would’ve sold for $6,000 less; if Bank captures benefit of repair work while Glaser isn’t paid for it, Bank is unjustly enriched
Liens for Automobiles

- Note: state statutes vary as to the extent they give priority for auto repairs
- In some states, priority is limited to repairs of a certain dollar amount
  - E.g., Wisconsin: mechanic’s priority is limited to $1,500, unless prior secured party has consented to higher repair bill
- Other states impose no dollar limit for artisan’s lien priority (e.g., MO, KS)

Problem 2

- KS § 58-201 would allow Glaser to return the car to the debtor, yet still keep his lien (by recording a notice of the lien in the local county land records)
- Under what circumstances, if any, should Glaser use this procedure?

- Glaser might use this procedure if Glaser wanted to accommodate a customer whose business Glaser wanted to retain
- But, there’s a risk!
  - First, while customer is driving the car, it may depreciate or be damaged
  - Also, if Glaser gives up possession of the car, he no longer has a “possessory lien” under § 9-333(a)
  - Thus, Glaser would no longer have the benefit of the § 9-333(b) priority rule for possessory liens
  - If so, would First Bank now have first priority?

SP v. Nonpossessory Statutory Lien

- Likely result in KS: Glaser would still have priority [KS § 58-201 calls artisan’s lien a “first and prior” lien]
- Result in Missouri is not clear, b/c Missouri statute is silent as to priority [Mo. Stat. § 430.082]
  - Article 9 § 9-201(a) “default” priority rule gives priority to secured party, but it probably does not govern due to Article 9’s scope exclusion
  - Thus, the court would have to apply a common law priority rule, such as derivative title/first-in-time (under which Glaser might lose priority)
(d) [Inapplicability of article.] This article does not apply to:

(1) a landlord’s lien, other than an agricultural lien;

(2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9-333 applies with respect to priority of the lien . . . .

§ 9-102(a)(5). “Agricultural lien” means an interest in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor’s farming operation, or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of business furnished goods or services to a debtor in connection with a debtor’s farming operation; or

(ii) leased real property to a debtor in connection with the debtor’s farming operation; and

(C) whose effectiveness does not depend on the person’s possession of the personal property.

Problem 3

- Bank has a SI in all of Jethro Bodine’s equipment and farm products (presently owned and after-acquired), perfected by a proper UCC-1 filing
- Bodine buys $100,000 of seeds and fertilizer from Russell Feed & Supply on open account
  - Bodine fails to pay Russell when payment is due
- Does Russell Feed & Supply have an agricultural lien on Bodine’s soybean crop?

Agricultural Lien

- A nonpossessory lien on crops, created by a state statute, to secure certain farm-related debts
  - E.g., seed suppliers (for cost of seed supplied)
  - E.g., farm landlords (for cost of unpaid rent)
- E.g., KSA § 58-241 et seq. (supplier can get an “agricultural production input” lien on crops)
  - This lien secures the cost of feed, seed, fertilizer, or pesticides used in production of the crops
• Article 9 defines such a statutory lien as an “agricultural lien” [§ 9-102(a)(5)] and brings it under Article 9, but only for questions of perfection and priority
  – Attachment: ag lienor must comply w/ the state statute creating the statutory lien (i.e., there’s no need for an Article 9 “security agreement”)  
  – Agricultural lien arose as soon as Russell supplied the seed [Kan. Stat. § 58-243(a), (c)]; it attached to his growing/grown soybean crop [§ 58-243(a)]

• Article 9 governs perfection and priority of agricultural liens [§ 9-109(a)(2)]
• Agricultural lien is perfected by filing a UCC-1 financing statement [§ 9-310(a)]
  – If an ag lien is not perfected, it may lose priority to a conflicting SI [§ 9-322(a)(1)] or good faith buyer may take free of it [§ 9-317(b)]
• Priority: first-to-file-or-perfect rule governs [§ 9-322(a)(1)], unless the ag lien statute gives the ag lien priority [§ 9-322(g)]

**Question**
• Debtor wants to borrow $500,000 from Bank, to be secured by a SI in the debtor’s crops
• Where must Bank search for relevant filings (possible prior SIs and ag liens)?

**Perfecting an Agricultural Lien**
• To perfect an ag lien in farm products, the ag lienor must file a UCC-1 in the state where the farm products are located (where the crop is physically growing) [§ 9-302]
  – By contrast, an Article 9 SI in farm products is perfected by a UCC-1 filing in the state where the debtor is located [§ 9-301(1)]
  – These could be different states! [This is important when “searching” records vs. a farming debtor!]
Problem 3

- Bank has a SI in all of Jethro Bodine’s equipment and farm products (presently owned and after-acquired), perfected by a proper UCC-1 filing
- Bodine buys $100,000 of seeds and fertilizer from Russell Feed & Supply on open account
  - Bodine fails to pay Russell when payment is due
- Russell Feed & Supply has an “agricultural production input lien” on Bodine’s soybean crop [KSA § 58-241 et seq.] to secure the cost of seed and fertilizer used in production of that crop

KS Agricultural Lien Statute: Notification Requirement

- KSA § 58-242 requires Russell Feed & Supply (the ag lienor) to give a “lien-notification statement” to the Bank (which has a prior perfected SI in Bodine’s crops)
- What’s the purpose of this statement? And what’s the consequence, if Russell fails?

- Agricultural lien has to be perfected by filing a UCC-1 financing statement [§ 9-310(a)]
  - If Russell Feed and Supply does not perfect its ag lien by filing, its ag lien is subordinate to the perfected SI of Bank [§ 9-322(a)(2)]
  - If Russell Feed and Supply perfects its ag lien by filing, its priority is governed by first-to-file-or-perfect rule [§ 9-322(a)(1)], unless the ag lien statute gives the ag lien priority [§ 9-322(g)]

- If complied with, the KS ag lien statute gives ag lienor (like Russell) “superpriority” over a prior secured party (like Bank) [Kan. Stat. § 58-242(f)]
- Article 9 recognizes this superpriority, if it is granted by the ag lien statute [§ 9-322(g)]
- But to get this superpriority, Russell must comply with the statute’s notification requirement
- If not, Russell doesn’t get priority [Kan. Stat. § 58-243(a)], and Bank would instead get priority based on first-to-file-or-perfect [§ 9-322(a)(1)]
Ag Lien Superpriority: Rationale

• Analogous to notification requirement for PM priority as to inventory [§ 9-324(b)]
  – Russell is an “enabling” lender; his credit enabled Bodine to plant crop
  – Problem: Russell can’t take PMSI in crop that doesn’t exist yet, and taking a PMSI in the seeds is worthless after they’re planted
  – Giving Russell’s ag lien priority over Bank wouldn’t harm Bank as a practical matter, unless Bank was also loaning Bodine money against the same inputs

Ag Lien Scenario

• When Bodine goes to buy seed on credit, Russell will send a lien-notification statement to Bank, before it actually sells the seeds to Bodine [§ 58-242(b)]
• Bank then has three options:
  – (1) W/in 5 days, Bank can pay Russell for the seed, add that to Bodine’s debt to Bank, and keep its first-in-time priority (b/c Russell has no ag lien) [§ 58-242(c), (d)], or
  – (2) W/in 5 days, Bank can respond that it won’t advance funds to pay Russell (in which case Russell won’t sell to Bodine, except for cash payment) [§ 58-242(c), (d)], or
  – (3) If Bank does not respond w/in 5 days, Russell can proceed with the sale to Bodine, and Russell’s ag lien will take priority over Bank’s SI in the crop [§ 58-242(e)]

Landlord’s Liens

• At common law, a landlord had the right of distress (a lien by operation of law on all of the tenant’s property located on the leased premises, to secure tenant’s unpaid obligation for rent)
• Years ago, states abolished distress; some states replaced it with a statutory landlord’s lien
• Today, most states have now even abolished or limited the statutory landlord’s lien

Landlord’s Liens

• In states that recognize it today, the statutory landlord’s lien is very limited
  – E.g., MO: landlord’s lien is limited to growing crops, and it can only secure unpaid rent
  – Thus, in MO, a landlord’s lien is effectively an “agricultural lien” [§ 9-102(a)(5)]
• A non-farm landlord cannot claim a lien on the tenant’s personal property, unless the tenant enters into an Article 9 security agreement
Landlords and Security for Rent

- Theoretically, a landlord could require tenant to grant an Art. 9 SI in tenant’s property to secure payment of rent
  - Basic Article 9 priority rules would apply
- Problem: in some states, such a provision is void if included in a residential lease (URLTA)
- Problem: commercial tenants won’t agree (granting a SI to landlord would likely place the tenant in default of its existing credit agreements, or would restrict the tenant’s access to future credit)
  - Thus, landlords more customarily use security deposits (cash deposits) to protect themselves