NORTH DAKOTA BANKERS ASSOCIATION

LEGAL UPDATE

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BANKRUPTCY

Wrong Address Leads to Annulment of Bankruptcy Stay [BKR MD ILL]

The debtor filed for Chapter 13 bankruptcy after defaulting on his mortgage the previous year. However, the bank had already obtained a judgment of foreclosure against the debtor's house before that filing, and the foreclosure sale occurred just after the debtor filed for bankruptcy. After the sale, the debtor's attorney filed a proof of claim for the bank for $62,965, listing the bank's address in Pawnee, Illinois. By that time, however, the debtor's house had been sold, and the sheriffs deed had been recorded. The bank's attorney later amended the claim with a different address in Springfield, Illinois, after the bank had failed to receive initial notice of the debtor's bankruptcy filing and the resulting automatic stay. After several docketing issues and other procedural problems, the bank moved to annul the automatic stay and dismiss the bankruptcy case on the grounds of the debtor's bad faith and failure to give timely notice of his filing for bankruptcy to the bank. The bank had not received notice of the debtor's bankruptcy because the debtor's attorney had used an incorrect address for the bank, allegedly provided in the debtor's credit report. The debtor's attorney had relied on this address even though the bank's correct address was available on the bank's website. As a result of the debtor's failure to provide proper notice of the bankruptcy filing, both the bank and the purchaser of the house had incurred substantial expenses.

In **In re Long,** 2025 WL 1596785, 2025 Bankr. LEXIS 136074 (Bankr. M.D. Ill. Jun. 5, 2025) (opinion not yet released for publication), the court granted the bank's motion to annul the bankruptcy stay, thereby validating the foreclosure sale, but refused to dismiss the bankruptcy case in its entirety. Under 11 U.S.C. §362(d) and case law within the Seventh Circuit, a bankruptcy court may annul a stay if a creditor did not willfully violate the stay and if the stay would be prejudicial to the creditor. First, the court that the debtor's reason to file for bankruptcy was to prevent the foreclosure on his house, making the actions of the debtor's attorneys' course of action all the more puzzling. The court also determined that failing to annul the stay would have prejudiced the bank as well as the buyer, because the purchaser had incurred substantial legal fees due to the unexpected litigation triggered by the bankruptcy stay. The court refused, however, to dismiss the debtor's bankruptcy case outright despite the bank arguing that the debtor appeared to have acted in bad faith by filing the case just to prevent the foreclosure sale. The court reasoned that this fact alone, coupled with the constant delays by the debtor's attorney, was not enough to show that the debtor's actions were intentional or malevolent. The debtor's prepetition conduct, while a factor in the court's decision, was outweighed by the debtor's present timeliness in making his payments in accordance with his bankruptcy plan.

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FDCPA

Eleventh Circuit Reaffirms an Exception to the Fair Debt Collection Practices Act [11TH CIR]

The mortgagor and his sister inherited his mother's property, which was subject to a mortgage, interest after her death in 2020. The refinanced mortgage took effect in the month before her death. A year later, the mortgagor requested and received confirmation of his interest in the property. In early 2022, the mortgagor requested the servicer validate the debt. The mortgagee's reply stated that the loan qualified for forbearance and that there were five overdue monthly payments. In late 2022, after another request to validate the debt, the mortgagee claimed it had attached the note, security deed, verification of mortgage, and payment history required by the Fair Debt Collection

Practices Act. In 2023, the collector sent a correspondence addressed to the mortgagor's mother, who had died almost three years before the correspondence had been sent. The collector then proceeded with a nonjudicial foreclosure sale on the mortgage. The mortgagor then filed a complaint against the servicer and the collector claiming violations of U.S.C. §§ 1692(d), 1692(e), and 1692(f) The mortgagor's complaint contained four counts: (1) the notice of foreclosure contained "misleading representations likely to lead to confusion" violating §§ 1692(d) and 1692(e), (2) the initial correspondence failed to identify the collector as a debt collector violating § 1692(e), (3) the notice of foreclosure "offered to discuss 'foreclosure alternatives.'" which also risked confusion violating§ 1692(e), and (4) the notice of sale misconstrued the rights of the servicer and collector as related to their interest in the property, violating § 1692(f)(6). The magistrate recommended dismissal on all counts. The magistrate also determined that granting leave to amend would be "futile" because "[the mortgagor] had already tried and failed to sue the same defendants under the Act for similar allegations." The district court adopted the recommendation in full, which led to an appeal.

In **Taylor v. Freedom Mortg. Corp.**, No. 24-12771, 2025 WL 2814524, 2025 U.S. App. LEXIS 25733 (11th Cir. Oct. 3, 2025) (opinion not yet released for publication), the Eleventh Circuit affirmed the district court's dismissal on all counts. Given the similarity of the first three counts, the circuit court affirmed the district court's determination that under the definition of a "debt collector" in § 1692(a)(6), the first three counts did not trigger the statute or any of its violations. To qualify as a debt collector under the statute, a person must "... [be] in any business the principal purpose of which is the collection of any debts." See 15 U.S.C. § 1696(a)(6). However, an exception exists for attempting to collect on a debt not in default at the time it was acquired by the servicer, and others who service outstanding debts for the collectors. Because there were only five outstanding monthly payments at the time the servicer acquired the debt, the servicer qualified for the exception. Similarly, the court held that because a nonjudicial foreclosure was not a default, the collector also qualified for the exception. In count four, the collector met one of the triggering conditions of § 1692(f)—having a present right to possession of the property—when the servicer showed it had authority to enforce the mortgage's interest. Therefore, the final claim did not misrepresent the rights of the servicer and collector. Accordingly, the Eleventh Circuit affirmed the lower court's dismissal of all counts.

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FRAUD

Bank Owed No Duty to Protect Depositor from Scammers [5TH CIR]

The depositor was scammed into depositing approximately $94,000 into various accounts at the bank. He sued the bank, alleging harm caused by the bank's fraud and negligence. The bank filed a motion to dismiss, and the district court granted the motion with leave to amend the complaint. The depositor then filed an amended complaint alleging negligence, negligent enablement of fraud, breach of contract, violations of state and federal banking laws, and violations of Texas consumer protection laws. The bank again moved to dismiss, and the court granted the motion with prejudice. The depositor appealed. On appeal, the depositor raised three arguments challenging the lower court's ruling: (1) the bank did owe him a duty, and there was a fiduciary relationship between him and the bank; (2) the depositor had complied with the F.R.C.P. 9(b) pleading standard, and he was a "customer" under the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"); and (3) the court improperly dismissed his complaint with prejudice without allowing him to further amend his complaint given that he was a pro se plaintiff.

In **Venkatraman v. Bank of Am., N.A.,** No. 25-10969, 2026 WL 1008501, 2026 U.S. App. LEXIS 10616, (5th Cir. Apr. 14, 2026) (opinion not yet released for publication), the Fifth Circuit affirmed the judgment of the district court. The court found none of the depositor's arguments to be persuasive. First, the bank owed no duty of care to the depositor because banks do not owe duties to non-customers under Texas law. Midwestern Cattle Mktg., L.L.C. v. Legend Bank, N.A., 800 F. App'x 239, 247-48 (5th Cir. 2020) (unpublished). The bank owed no duty of care to the depositor "to prevent third parties from carrying out fraudulent transactions using their own accounts." See Taya Agric. Feed Mill Co. v. Byishimo, No. 22-20239, 2022 WL 17716383, 2022 U.S. App. LEXIS 34735 at *2 (5th Cir. Dec. 14, 2022). Furthermore, "an ordinary bank-customer relationship does not give rise to fiduciary duties without 'specific facts showing a special or fiduciary duty.'" Berry v. First Nat'l Bank of Olney, 894 S.W.2d 558, 560 (Tex. App.-Fort Worth 1995, no pet.). Additionally, because the depositor did not allege the existence of a breach of contract, the depositor's breach of contract claim similarly failed. The court held that the depositor's argument, that he was a longtime customer and received guidance from the bank after he deposited money into the scammer's account, was unavailing. The depositor did not succeed in the claim that he was a consumer for purposes of the DTPA because he never bought "goods" or "services" as defined by the statute. Tex. Bus. & Com. Code § 17.45(1), (2), and (4). Furthermore, the court held that even if the depositor were a consumer, he ultimately failed to comply with Rule 9(b)'s heightened pleading requirements. Finally, the Fifth Circuit held that the district court properly dismissed the depositor's complaint with prejudice. Even if the court construed the depositor's "amended complaint liberally, none of his claims stated a plausible claim for relief." See Jones v. Alfred, 353 F. App'x 949, 952 (5th Cir. 2009) (unpublished). The court additionally held that the treatment of the pro se depositor was proper, "[o] ur responsibility to construe pro se filings liberally does not mean that we will invent, out of the whole cloth, novel argument on behalf of a prose plaintiff." Id. Therefore, the Fifth Circuit affirmed the district court's dismissal with prejudice.

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SECURITY INTERESTS

Every Character Counts: Claim Avoidance Granted in Bankruptcy Due to Incorrect Debtor Name in Financing Statement [ED TX]

The debtor entered into a loan with the creditor, secured by a promissory note and security agreement. The creditor filed a UCC-1 financing statement (the financing statement) to perfect its interest. The financing statement listed the debtor as "East Texas Machine & Manufacturing, LLC." After the debtor filed for Chapter 11 bankruptcy, the creditor filed a proof of claim with respect to the promissory note and security agreement. The debtor moved for summary judgment on the grounds that the creditor had failed to perfect its security interest, making it "'unenforceable,' and therefore avoidable pursuant to 11 U.S.C. § 544(a)." The debtor attributed the invalidity to the name on the financing statement not being the same as the name on file with the Texas Secretary of State in the debtor's certificate of formation: "East Texas Machining. & Manufacturing, LLC." Additionally, the debtor asserted that the financing statement did not appear when searching the online database because of the inconsistent name. The creditor responded to the debtor's motion, claiming that the debtor could not avoid its obligation because the error in the UCC-1 statement was not "seriously misleading." Based on these arguments, the courts thus considered whether the creditor's security interest was avoidable.

In **E. Tex. Machining & Mfg., LLC v. STV Engine 001, LLC (In re E. Tex. Machining & Mfg., LLC),** No. 23-60629, 2026 WL 248614, 2026 Bankr. LEXIS 220 (E.D. Tex. Jan. 29, 2026) (opinion not yet released for publication), the court granted the motion for partial summary judgement. The court looked to state law to decide this issue, which governs substantive rulings on security interests in bankruptcy. See Ford Motor Credit Co., LLC v. Dale (In re Dale), 582 F.3d 568 (5th Cir. 2009). Under Texas law, financing statements regarding registered organizations must match the "most recent public organic record stating or changing its name." See Tex. Bus. & Com. Code § 9.503(a)(l). Further, errors in a financing statement render the statement ineffective if the errors make the statement "seriously misleading." See Tex. Bus. & Com. Code § 9.506. Under Section 9.506, the court concluded that noncompliance with Section 9.503(a)(l) would render the financing statement seriously misleading unless a public records search with the debtor's correct name reveals the creditor's financing statement. The debtor's evidence showed that a search of the Secretary of State's records using the debtor's name as recorded in its most recent filing (its certificate of formation) did not lead to the creditor's financing statement. The court accordingly ruled the statement seriously misleading and the creditor's claim unsecured and avoidable. Because the court found no genuine dispute of material fact, it granted the debtor's motion for- summary judgment.

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Good Faith, Bad Title: Purchaser Obtained Truck Subject to a Perfected Security Interest [TX APP]

The borrower executed a retail installment contract to finance the purchase of a truck. The bank perfected a purchase-money security interest on the vehicle. After the borrower defaulted on the loan, the borrower sold the truck to the purchaser without satisfying the outstanding indebtedness or transferring title to the vehicle. The purchaser later attempted to obtain title from the Texas Department of Motor Vehicles (DMV), but the DMV notified the purchaser that the bank's security interest remained on file and rejected the attempt. Later, the bank demanded surrender of the collateral and filed suit for declaratory judgment and conversion after the purchaser refused to surrender the vehicle. In response, the purchaser argued that he: (1) qualified as a good-faith purchaser, (2) lacked knowledge of the bank's security interest, (3) possessed no contractual relationship with the bank, and (4) had invested substantial resources in repairing the vehicle. The purchaser also asserted counterclaims seeking either release of the security interest and the issuance of a title or compensation for the vehicle's fair market value. The trial court granted summary judgment to the bank and dismissed the purchaser's counterclaims. The purchaser appealed.

In **Woolen v. Truist Bank**, No. 06-25-00031-CV, 2025 WL 3139803, 2025 Tex. App. LEXIS 8636 (Tex. App.-Texarkana Nov. 10, 2025, no pet.) (opinion not yet released for publication), the Texarkana Court of Appeals affirmed summary judgment in favor of the bank seeking possession of collateral encumbered by a perfected purchase-money security interest ("PMSI"). The court held that the bank conclusively established the existence and continued validity of its priority purchase-money security interest through undisputed summary judgment evidence. Applying Texas Business and Commerce Code §§ 2.403(a), 9.324, and 9.609, the court explained that: (1) a transferee acquires no greater interest in collateral than that which the transferor possessed, (2) the bank's PMSI retained priority after perfection, and (3) that the bank possessed the statutory right to repossess the collateral following default.

Consequently, the purchaser acquired the vehicle subject to the bank's perfected security interest and corresponding superior right to possession. The court further concluded that the bank had established each element of conversion as a matter of law by demonstrating: (1) the bank possessed a stronger right to immediate possession of the collateral; (2) the purchaser exercised "dominion and control over the [vehicle]" in a manner inconsistent with the bank's rights; (3) the bank had issued a demand for surrender of the collateral; and (4) the purchaser had "refused to return the [vehicle.]" Rejecting the purchaser's good-faith purchaser defense, the court held that conversion under Texas law does not require proof of wrongful intent, and that good-faith possession does not defeat a secured creditor's superior possessory interest in the collateral. Accordingly, the court affirmed the trial court's award of possession of the collateral, damages, and fees in favor of the bank.

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Fraudulent Financing Statements Constitute Defamation [SD CA]

A claimant filed UCC-1 financial statements alleging that a corporation owed damages pursuant to a Self-Executing Security Agreement (the agreement), which granted the claimant a security interest in "all property" if the corporation ever used the claimant's copyright without permission. The corporation claimed it never entered into an agreement with the claimant and was unaware of its existence. The corporation proceeded to sue the claimant seeking "declaratory and injunctive relief, violation of California Commercial Code § 9509 and Business and Professions Code § 17200, and defamation." The corporation then sought summary judgment on both claims; the court first reviewed whether the agreement entitled the claimant to damages and second, whether the financing statements constituted defamation.

fu **Am. Heritage Rys., Inc. v. Hirou**, No. 3:24-cv-1802-CAB-JLB, 2025 WL 3124340, 2025 U.S. Dist. LEXIS 220306 (S.D. Cal. Nov. 7, 2025) (opinion not yet released for publication), the court granted summary judgment to the corporation and allowed the corporation to recover on its defamation claim. First, the court held that the claimant could not hold a copyright as to his business or personal name as a matter of law. See Gannon v. Tucknott Miller, No. 1:05-CV-00168 TS, 2006 WL 1793581, 2006 U.S. Dist. LEXIS 44585 at *2 (N.D. Ind. 2006). Next, the court found that the claimant presented no evidence that the corporation had entered into any agreement. Furthermore, the court held that a self-executing security agreement that was unilateral was invalid as a matter of law for lack of mutual assent. First Nat. Mortg. Co. v. Fed. Realty Inv. Tr., 631 F.3d 1058, 1065 (9th Cir. 2011); see also United States v. Rodriguez Ramirez, 291 F. Supp. 2d 266, 269 (S.D.N.Y. 2003). Therefore, the court found there was no agreement and no valid financing statement. For the defamation claim, the court held that defamation requires: "(1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or that causes special damage." Taus v. Loftus, 151 P.3d 1185, 1209 (Cal. 2007). Regarding the first two prongs, the court found that the invalid financing statement constituted a false publication. The financing statement also satisfied the third prong because the court found the financing statements falsely alleged outstanding debts and copyright violations, which would harm the corporation's reputation. ZL Techs., Inc. v. Does 1-7, 13 Cal. App. 5th 603, 623 (Cal. App. 2017) ("A corporation can be libeled by statements which injure its business reputation[.]"). Under the fourth prong, the claimant alleged the filings qualified as privileged under Cal. Civil Code § 47(c); however, the court dismissed this argument because the corporation never had entered into a security agreement, thus the parties did not have a relationship. Lastly, the court found that the financing statements satisfied the fifth prong because the statements alleged millions in debts, which constituted a "natural tendency to injure." See Taus, 151 P.3d at 1209. The claimant also argued that the First Amendment protected his filings. However, the court held that he made his filings with actual malice or reckless disregard for the truth which is classified as defamation. Thus, the First Amendment could not protect defamation. See USA Techs., Inc. v. Doe, 713 F. Supp. 2d 901, 906 (N.D..Cal. 2010). Accordingly, the court awarded the corporation presumed general damages, or damages assumed to exist because of the defamation, because the claimant displayed a reckless disregard for the truth. Although the claimant filed a motion to strike the corporation's reply brief, the court dismissed the motion because the corporation had timely filed its papers.

Therefore, the district court granted the corporation's summary judgment motion and awarded it presumed general damages.

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Perfected Security Interest in Settlement Funds Maintains Priority Over Unperfected Judgement Liens [D NJ]

The payer held settlement funds from prior litigation that had concluded in a "Release and Settlement Agreement" (the agreement). The agreement granted the grantee a perfected first lien based on a security interest in the funds after payment of legal fees to counsel. The grantee had filed UCC-1 financing statements asserting his interest in the funds. The adverse claimants also asserted an interest in the same settlement funds. These claimants had not filed UCC-1 financing statements to perfect their security interests. The payer then filed a motion for interpleader to relieve itself from liability and deposit the contested funds into the court, allowing the parties with conflicting claims to resolve the conflict. The counsel filed a motion for summary judgment claiming it held a superior right to some of the funds and was entitled to its portion of the funds in question. The adverse claimants opposed the motion, one asserting that it held prior recorded judgments that gave them a superior right to the funds and another that it held at least an equitable right to a pro rata share of the funds. The court considered whether interpleader was proper and, if so, whether the grantee was entitled to receive the disputed funds.

In **NRK of N.J., Inc. v. Cole Scholtz, P.C.**, No. 25-2781, 2025 WL 3240892, 2025 LX 520805 (D.N.J. Nov. 20, 2025) (unpublished opinion), the court granted interpleader deposit in favor of the payer and summary judgment in favor of the grantee. First, the court determined that the funds could be interpleaded under 28 U.S.C. § 1335 because: (1) the amount in controversy exceeded $500, (2) there were more than two claimants with diverse citizenship, and (3) the funds at issue were deposited into the court's registry. The court then addressed whether the grantee was legally entitled to the funds. The court found that the grantee's security interest attached because the grantee held rights to the funds described in the authenticated security agreement. The court held that the grantee had perfected its security interest by filing the UCC-1 financing statements in the appropriate jurisdictions. The court reasoned that, although the adverse claimants had recorded judgments, the record contained no evidence they had a perfected security interest in the specific settlement funds. Furthermore, under the Uniform Commercial Code, adopted in New Jersey, a perfected security interest has priority over a conflicting unperfected security interest. Therefore, the court held that the grantee was entitled to the funds in dispute.

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Prepetition Surrender and Nonpayment Constitute Cause for Stay Relief [BAP 9TH CIR]

The debtor and creditor entered into a contract for the purchase and financing of a vehicle, granting the creditor a security interest in the collateral. The debtor defaulted on the loan and surrendered the vehicle to the creditor. Subsequently, the debtor filed for Chapter 7 bankruptcy, listing no vehicle on their Schedule C and claiming no exemption. However, the debtor disclosed that the creditor repossessed the vehicle and stated that the debtor's intent was to surrender the vehicle. The creditor sought relief from the automatic stay to continue with the sale of the vehicle. The debtor opposed stay relief, arguing that the creditor held no interest in the contract or collateral because a third party had begun servicing the loan prepetition. The bankruptcy court granted stay relief, and the debtor appealed.

In **Vora v. Mechanics Bank (In re Vora)**, No. NC-25-1180-BGP, 2026 WL 905481, 2026 Bankr. LEXIS 805 (B.A.P. 9th Cir. Apr. 2, 2026) (unpublished opinion), the Bankruptcy Appellate Panel of the Ninth Circuit considered whether the bankruptcy court abused its discretion in granting relief from the automatic stay for "cause." The panel reasoned that the debtor maintained legal and equitable interests in the vehicle at the time of the petition and those interests became part of the bankruptcy estate under § 541(a). In re Fitch, 217 B.R. 286, 290 (S.D. Cal. 1998); In re Ochoa, No. 10-55950 CN, 2010 WL 3909496, at *2 (Bankr. N.D. Cal. Oct. 1, 2010). Under § 362 (d)(l), which allows a creditor to seek relief from an automatic stay, the court determined the relief had been for "cause." In re Kronemyer, 405 B.R. 915, 921 (9th Cir. BAP 2009). The court found that: (1) the creditor lawfully gained possession of the vehicle prepetition, (2) the debtor had not made payments for several months, and (3) the debtor's intent was to surrender the vehicle. The court rejected the debtor's argument on appeal that seeking stay relief was an impermissible collection action and concluded that the record supported a finding of "cause" to terminate the stay. Therefore, the Bankruptcy Appellate Panel of the Ninth Circuit affirmed the lower bankruptcy court's order.

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Sale of Snowmobile Ends in Judgement Against Buyer [ME]

The borrower entered into a loan agreement with the lender. The lender then lent funds to the borrower to enable the borrower to purchase a snowmobile. The lender took a security interest in the snowmobile, and it filed a financing statement with the Maine Secretary of State perfecting its security interest. One year later, the borrower sold the snowmobile to a buyer. The borrower did not notify the lender of this sale and told the buyer there were no liens on the snowmobile. The buyer did not conduct any independent investigation to check if there was a security interest. The borrower then defaulted on the loan, and the lender issued a notice of right to cure, but the borrower failed to cure the default. The lender finally discovered that the buyer had possession of the snowmobile. The lender then filed for recovery of property under 14 M.R.S. § 7071 (2025) and named the borrower and the buyer as defendants. The borrower filed for bankruptcy and received a discharge. The district court entered judgment in favor of the lender and ordered the buyer to turn over the snowmobile to the lender. The buyer appealed, claiming that the lender did not hold an enforceable security interest in the snowmobile and that the buyer's lack of notice of the security interest rendered the buyer free of that interest.

In **Cnty. Fed. Credit Union v. Madore,** 2025 ME 93 (Me. 2025), the Supreme Judicial Court of Maine affirmed the lower court's decision to order the buyer to turn over the snowmobile to the lender. The court analyzed the buyer's first argument: that the court had erred in finding that the lender had a valid security interest in the snowmobile. The buyer argued that because the borrower had not complied with the requirements of 11 M.R.S. § 9-1203, a section of Maine's adoption of the Uniform Commercial Code, the lender did not have a valid security interest in the property. A security interest "attaches to collateral when it becomes enforceable against the [borrower] with respect. to the collateral." § 9-1203(1). A security interest became enforceable against the borrower when: (1) "Value has been given;" (2) "The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party;" and (3) "The debtor has authenticated a security agreement that provides a description of the collateral." Elements one and two were not in dispute because value had been given, and the borrower had rights in the collateral (the snowmobile). However, the parties disagreed as to whether the borrower "authenticated a security agreement that provides a description of the collateral" as required by the statute. The loan agreement that the borrower signed consisted of five pages with his signature on the first page. But his signature was missing on the fifth page, which was described as the "Security Agreement." The buyer argued that the lack of a signature from the borrower was evidence that the lender lacked a security interest. The court held that the borrower's "signature on the first page satisfied the statute's authentication requirements." § 9-1203(2)(c)(i). Nothing in § 9-1203(2)(c)(i) required the borrower to sign the "Security Agreement." Under the statutory language, a security interest could not be enforceable unless: (1) "the debtor authenticates an agreement," (2) "that creates or provides for a security interest," and (3) "provides a description of the collateral." The court found that all elements had been met. The court held that the purpose of the security agreement was to show the borrower agreed to the creation of the security interest, and that "any writing that satisfies the minimal requirements for a security agreement, and intended to be a security agreement, is generally held to be a security agreement." See 68A Am. Jur. 2d Secured Transactions § 164 (2003). The court found this language contrary to the buyer's argument that the security agreement had not met the specificity or technicality requirements for a security agreement. Therefore, the court ruled the borrower's signature on the first page of the loan agreement, which described the collateral and expressly stated "you are giving a security interest in the property described below" had been sufficient to satisfy the statutory standard. Finally, the buyer argued that because he had lacked notice of the security interest in the snowmobile, he should own the property free of the security interest. To succeed under that argument, the buyer had to establish he had bought the property: (1) "Without knowledge of the security interest;" (2) "For value;" (3) "Primarily for the buyer's personal, family, or household purposes;" and (4) "Before the filing of a financing statement covering the goods." The court held that the buyer did not meet the fourth element because the lender had filed its financing statement more than a year before the buyer purchased the snowmobile. Therefore, the court affirmed the district court's decision to award the lender possession of the snowmobile.

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Verbal Requests Alone Do Not Amount to Breach of Peace [9TH CIR]

The debtor failed to make payments on a car loan secured by the creditor. After the debtor defaulted, the creditor hired a repossession company to retake possession of the car. When the repossession company took possession of the car in a public parking lot, the debtor made verbal requests asking them to stop. Notably, there was no profanity, screaming, or any threats of physical violence. Further, the debtor also had an opportunity to remove personal belongings from the car after the repossession. Later, the debtor sued the creditor and the repossession company alleging violations of the Fair Debt Collection Practices Act

(FDCPA), 15 U.S.C. § 1692f(6) and an Arizona self-help statute. The district court granted summary judgment in favor of the creditor and repossession company, and the debtor appealed.

In **Chavez v. Ford Motor Credit Co. LLC**, No. 25-8, 2026 WL 280787, 2026 U.S. App. Lexis 3714 (9th Cir. Feb 3, 2026) (unpublished opinion), the court upheld the summary judgment in favor of the creditor and repossession company. To determine if the creditor held a present right to possession under the FDCPA, the court analyzed A.R.S. § 47-9609, an Arizona statute which allows a secured party to exercise self-help repossession if it does not lead to a breach of the peace. While there is a split in authority as to whether mere oral protests may constitute a breach of the peace, the court declined to adhere to a bright line approach. Instead, the court adopted a totality of the circumstances approach, looking at a variety of factors such as "the use of law enforcement; violence or threats of violence; trespass; verbal confrontation; and disturbance to third parties." Rivera v. Dealer Funding, LLC, 178 F. Supp. 3d 272, 279 (E.D. Pa. 2016). When applying these factors, the court determined there was no breach of the peace because the only factor present was the debtor's verbal objection, while all other indicators of violence or disturbance were absent. Therefore, the court concluded the creditor maintained a right to possession and did not violate the FDCPA or state law.

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Role of NDBA General Counsel

NDBA's general counsel serves as the attorney for the association. Although Tracy is pleased to be able to serve as a resource for NDBA members in responding to their questions, she is providing general information, not legal advice. Banks must obtain legal advice from counsel who has been retained by the bank to represent the bank's interests in a specific matter.

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