

Insights

Recently Reported Court Cases Affecting Secured Lenders

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In furtherance of Krieg DeVault's continuing commitment to provide timely information and developments affecting secured lenders, set forth below are brief summaries of recently reported court cases providing guidance to secured lenders:

- **Security Interests in Patents.** Debtor granted a security interest to secured party in certain of its patents, together with the associated rights to pursue patent infringement claims regarding those patents. Debtor later sued a third party for patent infringement regarding the patents previously pledged to secured party and third party claimed that debtor was prevented from pursuing the patent infringement claims because the security agreement granted to secured party the rights to the patents and related patent infringement claims. The court held that secured party's rights in the patents and associated infringement claims were conditional and only exercisable following a debtor default and accordingly, debtor was able to pursue the patent infringement claims against the third party. *Vericool World LLC v. TemperPack Technologies, Inc.*, 2024 WL 3594709 (E.D. Va. 2024).
- **Anti-Assignment Provisions.** Recall that Section 9-406(d) of the Uniform Commercial Code invalidates any prohibition (subject to certain exceptions) on the assignment of accounts and certain other receivables contained in a contract between the assignor/debtor and the account debtor. Consequently, debtor is permitted to pledge accounts even though the contract provisions may forbid such collateral assignment (which expands the scope of collateral available to a secured party to secure indebtedness). In this case, the court correctly construed this UCC provision and upheld the validity of the security interest granted by debtor in accounts arising from a contract which expressly prohibited the assignment of accounts. *Lendr Finance, LLC v. Medefits, Inc.*, 114 U.C.C. Rep. Serv. 2d 612 (N.D. Ill. 2024).
- **What Constitutes a Default?** Section 9-601(a) of the Uniform Commercial Code (UCC) provides for a secured party's rights and remedies following a default by a debtor. However, the UCC does not stipulate what constitutes a default but instead, as provided in Comment 3 to UCC Section 9-601, "leaves to the agreement of the parties the circumstances giving rise to [or constituting] a default". As a result, it is imperative that the

parties are specific in the credit and collateral documents as to what will constitute a "default". As most are aware, many secured parties include rather subjective events within the definition of a default such as when a materially adverse effect occurs with respect to the debtor or collateral or if the secured party becomes insecure in the repayment or performance of the secured obligations of the debtor. Years ago, secured parties became hesitant to declare a default based primarily or wholly on these "subjective" events due to claims by debtors of lender liability. However, recently a secured party declared an event of default based upon an occurrence "that significantly affects the value of the property or [the secured party's] security interest in it". The debtor's deposit account which had been pledged to the secured party as collateral was the subject of a search warrant based upon the allegation that stolen funds had been deposited into the account. The secured party declared a default and the court held that the secured party's declaration of a default was justified based upon its interpretation of the default clause. *City Life Live, LLC v. Post Office Employees Fed. Credit Union*, 385 So. 3d 1175 (La. Ct. App. 2d Cir. 2024).

Please contact any member of the Commercial and Real Estate Lending Practice if you have any questions about these cases and resulting implications on the provisions to be included in credit and collateral documentation.

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