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Special Comment

THE CRAZY QUILT OF COMMERCIAL LAW: A STUDY IN LEGISLATIVE PATCHWORK

By TERENCE R. FITZGERALD*

INTRODUCTION TO A CRAZY QUILT

A crazy quilt is “a patchwork quilt made of irregular patches combined with little or no regard to pattern.”1 The Kentucky version of the Uniform Commercial Code2 is rapidly becoming a crazy quilt of commercial confusion.3 The latest variegation in its diffusive development was mis-stitched by the 1964 Kentucky General Assembly as an amendment to the licensing provisions of our statutes.4

The ostensible purpose of this muddled mending was to repair the damage to the security provisions of the Code5 which resulted from judicial jumbling in Lincoln Bank & Trust Co. v. Queenan.6 However, its effect was to perpetuate the problem or even to increase it.7

It has been suggested that the uncertainties of Kentucky law with respect to the title of motor vehicles can be expurgated only by enactment of a certificate-of-title law.8 The 1964 amendment9

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1 American College Dictionary (1953).
5 KRS ch. 355, art. 9.
6 344 S.W.2d 383 (Ky. 1961).
7 The 1962 General Assembly had already proliferated the patchwork by an abortive attempt to ameliorate the situation created by the Queenan case. Ky. Acts 1962, ch. 83, amending portions of KRS chs. 186, 355 and 382; see Whiteside, supra note 3.
8 Kripke, Kentucky Modernizes The Law of Chattel Security, 48 Ky. L.J. 369, 393 (1960); see also Whiteside, supra note 3, at 12.
9 As used herein, the 1964 amendment refers to H.B. 312, Ky. Acts 1964, ch. 59, § 2.
is perhaps the best evidence which could be adduced to support that position.10

THE NATURE OF THE LATEST PATCH

Subsection one of the 1964 amendment provides that financing statements relating to vehicles required to be registered shall be filed in the county of the debtor's residence or, if the debtor is a nonresident, in the county in which the vehicle is principally operated. This language conforms to existing law pertaining to the proper place to register a vehicle in Kentucky.11 However, it perpetuates the problems arising out of our Code provision that security interests in automobiles owned by a debtor are governed by Kentucky law only if the debtor has his chief place of business in Kentucky or if the state of the debtor's chief place of business does not provide for the recordation of security interests.12 The 1964 amendment seemingly requires the filing of a financing statement whenever a vehicle is required to be registered in Kentucky without regard to the chief place of business of the debtor. In the absence of authoritative interpretations, the practitioner's natural caution dictates duplicate filing.

A closely related problem arises from our Code provision that, in the case of a non-resident debtor, financing statements covering consumer goods and farm equipment shall be filed in the county where the goods are kept,13 while statements covering business vehicles shall be filed in the county of the debtor's principal place of business in Kentucky.14 In either instance, subsection one of the 1964 amendment requires filing in the county in which the vehicle is principally operated. It is clear that a vehicle may be principally operated in one county yet garaged or kept in another, and it is even more clear that it may be principally operated in a county other than the one in which the debtor has his principal Kentucky office. Such divergence demands duplicity of filing.

10 Unfortunately, the county clerks have a vested interest in opposing this position with political pressure. Whiteside, supra note 3, at 12; Whiteside & Lewis, supra note 3, at 75-76.
11 See KRS 186.020(1).
12 KRS 355.9-103(2).
13 KRS 355.9-401(a). The italicized words, in the case of motor vehicles, are probably equivalent to the words "principally garaged" as used in insurance policies.
14 KRS 355.9-401(c).
Subsection one of the 1964 amendment also perpetuates the extant ambiguity surrounding the requirement that, in the case of a resident debtor, the financing statement shall be filed in the county of the debtor's residence. Suppose a wholly domestic corporation is engaged in dissimilar operations, each carried on in a different county with separate staffs and vehicles. Which is the county of the debtor's residence? Is it the county in which its registered office is located, the county in which it transacts the most business, or the county in which the particular division which is using the vehicle is officed? The 1964 amendment fails to unveil the answer.

Subsection two of the 1964 amendment requires the secured party to obtain the owner's copy of the registration or transfer receipt and to present it to the clerk with the financing statement within ten days of its execution, whereupon the clerk is to note the lien on the owner's copy and either note it on the clerk's copy or forward information to the clerk of the county of registration for notation. In *Lincoln Bank & Trust Co. v. Queenan*, the Kentucky Court of Appeals held that the predecessor of the 1964 amendment was merely a directive to the clerk, and the failure of the secured party to comply with its provisions did not affect the perfection of the security interest although the clerk was forbidden to record it. The 1964 amendment is apparently intended to obviate the untoward effects of the *Lincoln Bank* case.

Unfortunately, its success in this regard is doubtful. In the first place, subsection three of the 1964 amendment provides that a secured party must pay a penalty of two dollars for late presentation of the required receipt. *Nothing is said about loss of the security interest.* In the second place, a section of our Code not considered in the *Lincoln Bank* case makes the mere presentation of a financing statement to the clerk and a tender of the filing fee a sufficient filing for perfection of security interests. Therefore, it is not safe to assume that the 1964 amendment has succeeded in overruling the *Lincoln Bank* case or in assuring subsequent creditors that they can rely on the registration receipt.

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15 Supra note 6.
16 KRS 186.195, supra note 4
17 Of course, there are criminal penalties under KRS 186.990(1).
18 KRS 355.9-403(1).
Subsection four of the 1964 amendment provides that the assignor of a *perfected* security interest shall give a statement of the assignment to the assignee and to the debtor. The assignee shall then present the statement to the clerk of the county in which the financing statement is on file. As in subsections two and three, there is no provision that the assignment is invalid if the section is not complied with.\(^\text{19}\) Additionally, nothing is said about the assignment of *unperfected* security interests, although many dealers assign their interests to a credit company prior to recordation. The result may be that debtors will not always know the identity of the assignee or the fact of assignment immediately, and this could cause some confusion.

Subsection five of the 1964 amendment pertains to termination statements. While it provides that the secured party shall deliver the statement to the clerk of the county where the financing statement is filed *in the manner required by our Code*,\(^\text{20}\) the two statutes are not totally harmonious. For example, the existing Code provision requires the secured party to furnish the debtor with a copy of the termination statement upon demand or incur liability to the debtor,\(^\text{21}\) while the 1964 amendment is silent on this point and contains only a $2.00 penalty to the clerk for late filing.\(^\text{22}\) If the amendment is construed to take precedence over the Code, the secured party could inconvenience the debtor by failing to file the termination statement promptly.

Subsection six of the 1964 amendment requires a repossessing creditor to file a termination statement or proof of its existence within fifteen days of the sale of the repossessed vehicle provided for in our Code.\(^\text{23}\) This provision is fairly free of fault, except that it neglects to impose stringent penalties or civil liability on a neglectful secured party.\(^\text{24}\)

Subsection seven of the 1964 amendment forbids a clerk to register an out of state vehicle, concerning which the documents presented to the clerk show a security interest, unless he obtains a financing statement from the owner and notes it on the regis-

\(^{19}\) See note 17.

\(^{20}\) KRS 355.9-404.

\(^{21}\) KRS 355.9-404(1).

\(^{22}\) See note 17.

\(^{23}\) KRS 355.9-504 & 355.9-505.

\(^{24}\) See note 17.
tation receipt. This provision is directly in conflict with the chief place of business rule of our Code\textsuperscript{25} discussed previously. Nevertheless, this subsection appears to attain the objective sought without success in the other subsections, that objective being the assurance of the completeness of the lien information on the registration receipt.

Subsection eight of the 1964 amendment states that "the fees provided for in this section are in addition to any state fee provided for by law."\textsuperscript{26} This provision merely affirms the obvious.

Subsection nine of the 1964 amendment renders applicable the residual criminal sanctions of the chapter.\textsuperscript{27} Again, it but belabor the obvious.

Subsection ten of the 1964 amendment prohibits the clerk from filing a financing statement if the registration or transfer receipt has no space left for the notation of the lien. It requires the owner to obtain and file a termination statement for each discharged security interest and obtain a duplicate receipt from the clerk with space for noting the new lien. Since subsection five, as already indicated, places a duty to supply the termination statement on the secured party but seemingly fails to provide the debtor with an adequate civil remedy, it is difficult to comprehend how the owner can comply with subsection ten without the cooperation of the former secured party.

Subsection eleven of the 1964 amendment provides that security interests in vehicles owned by non-residents must be perfected in and governed by the laws of the state of the owner’s residence unless the vehicle is principally operated in Kentucky. This provision merely repeats the errors already considered in connection with subsection one.

**RIPPING THE STITCHES**

The predominant purpose of the filing provisions of our Code is to provide a reasonably reliable method for giving and receiving notice of security interests in personalty. Because motor vehicles pose special problems in notice-giving, Kentucky has repeatedly

\textsuperscript{25} KRS 355.9-103(2).

\textsuperscript{26} A discussion of the fees found in the previous subsections was omitted for want of significance.

\textsuperscript{27} KRS 186.990(1).
attempted to interweave its tailored title provisions into the fabric of the Code. The result has been pattern pandemonium.

The Code was designed to blanket the entire field of commercial transactions. It is full of subtle interrelationships. To attempt piecemeal to patch its provisions to correct particular problems is to hazard a general weakening of its whole fiber. Furthermore, any attempt to amend it by indirection is nothing more than a futile effort to fabricate perfection out of whole cloth.

The mobility of motor vehicles no doubt warrants giving special consideration to their regulation. However, legislation intended to effect improvement in this area must either remove their regulation from the Code altogether or directly amend the Code with great precision to be successful. The most effective solution would be the enactment of a certificate-of-title law. Such a law would provide maximum commercial certainty through compulsory central filing, and it could be easily harmonized with the Code.

As long as the county clerks are threading the legislative loom, a certificate-of-title law seems remote. However, direct legislation clarifying the 1964 amendment and either incorporating it into the Code or excluding motor vehicles from Code regulation altogether seems feasible and desirable. Until such legislation is enacted, the crazy quilt of commercial confusion will continue to cover the practitioner and his clients.
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