



**ENTERED**  
TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
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**The following constitutes the ruling of the court and has the force and effect therein described.**

**Signed February 11, 2010**

**United States Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

IN RE	§	
	§	CASE NO. 08-45522-DML-13
	§	
KENNETH MICHAEL BRUNGARDT,	§	
	§	
DEBTOR.	§	

**MEMORANDUM ORDER**

Before the court is the *Objection to the Proof of Claim Filed by T.S. Perk, Inc.* (the “Claim Objection”) filed by Kenneth Brungardt (“Debtor”). This matter is subject to the court’s core jurisdiction. 28 U.S.C. §§ 1334 and 157(b)(2)(B), (K) and (O). This memorandum order embodies the court’s findings of fact and conclusions of law. FED. R. BANKR. P. 7052 and 9014.

**I. Issue**

The sole issue before the court is whether a creditor may perfect a security interest in a debtor's accounts receivable by filing an abstract of judgment, which purports to incorporate all the collateral listed in a security agreement, with the County Clerk.

**II. Facts**

On October 21, 2002, Debtor and T.S. Perk, Inc. ("Claimant") entered into a security agreement (the "Security Agreement") whereby Debtor granted Claimant a security interest in all of Debtor's interest in all equipment listed in Exhibit A, which was attached to the Security Agreement, and all after-acquired collateral of the same classification, all accounts receivable, and the business name Ventpeople. Claimant never filed a financing statement respecting the security interest with the Secretary of State.

Debtor subsequently missed several payments to Claimant, and on November 10, 2006, Claimant obtained a judgment (the "Judgment") in County Court at Law No. 5 in Dallas County, Texas against Debtor in the principal amount of \$27,071.51; \$165.00 for court costs; and interest at the rate of 10% per year on the total judgment from the date of judgment until paid. The Judgment provided that Claimant's security interest in the property listed in the Security Agreement was foreclosed, and could be executed upon to satisfy the Judgment.<sup>1</sup> On August 22, 2008, Claimant filed an Abstract of Judgment in the Dallas County Clerk's Office.

Debtor filed for relief under chapter 13 of the Bankruptcy Code<sup>2</sup> on November 21, 2008. On March 27, 2009, Claimant filed a proof of claim in the amount of \$13,905.87,

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<sup>1</sup> To the extent the Judgment effected a change in ownership of Claimant's collateral through foreclosure, it could only have changed ownership of then-existing accounts receivable.

<sup>2</sup> 11 U.S.C. §§ 101 *et seq.*

showing the debt as secured on the basis of the Judgment and the Security Agreement (the “Claim”).<sup>3</sup> On September 21, 2009, Debtor filed the Claim Objection, objecting on the following grounds:

- (1) The [Claim] lacks any supporting documentation, such as abstract of judgment, note, security interest, etc.
- (2) The [Claim] contends [it] is secured, unsecured and priority all at the same time. Debtor asserts, as a matter of law, [the Claim] cannot be categorized as a priority claim.
- (3) Claimant’s judgment lien, if any, as of the petition date, did not attach to Debtor’s accounts receivable which were the only non-exempt assets of the estate.
- (4) Debtor . . . asserts that [the Claim] should be disallowed as a secured claim but allowed as an unsecured claim.

(Claim Objection at 2.)

On October 27, 2009, Claimant filed its *Response to Objection Filed by Debtor to Proof of Claim Filed by T.S. Perk, Inc.* (the “Response”). In the Response, Claimant contends that (1) the Claim was filed with supporting documentation; (2) the chapter 13 standing trustee treated the Claim as a secured claim; and (3) “the judgment lien, which foreclosed the security interest of the Claimant, attached to all property of the Debtor as stated in the Security Agreement . . . .”

### **III. Discussion**

The court must look to state law to determine whether Claimant had a perfected security interest in Debtor’s accounts receivable. *See Clark Contracting Services, Inc. v. Wells Fargo Equip. Fin., Inc. (In re Clark Contracting Services, Inc.)*, 399 B.R. 789, 796 (Bankr. W.D. Tex. 2008). Chapter 9 of the Texas Business and Commerce Code (the

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<sup>3</sup> Claimant listed the judgment lien as the basis for perfection on the Claim. In the Response (as defined below), however, Claimant asserted that the basis of its secured claim included “a judgment lien, secured interest in assets of Debtor, and abstract of judgment.” (Response at 2.)

“Business Code”) governs secured transactions in Texas. *In re Dale*, No. 07-32451, 2008 WL 4287058, at \*3 (Bankr. S.D. Tex. Aug. 14, 2008) (quoting *Franklin Nat’l Bank v. Boser*, 972 S.W.2d 98, 101 (Tex.App.—Texarkana 1998, pet. denied)). “[A] security interest is perfected if it has attached and all of the applicable requirements for perfection in 9.310 through 9.316 have been satisfied.” TEX. BUS. & COM. CODE ANN. § 9.308(a) (Vernon 2009). Claimant’s security interest clearly attached to the collateral listed in the security agreement, including accounts receivable, pursuant to section 9.203(a)-(b)<sup>4</sup> of the Business Code when Debtor signed the security agreement and Claimant extended the loan to Debtor. Thus, the only issue before the court is whether Claimant’s security interest in Debtor’s accounts receivable was properly perfected.

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<sup>4</sup> “A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral . . . .” *Id.* § 9.203(a).

Subsection (b) provides that a security interest is enforceable against the debtor only if:

- (1) value has been given;
- (2) the debtor has rights in the collateral . . . and;
- (3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is a not a certificated security interest and is in the possession of the secured party under Section 9.313 pursuant to the debtor’s security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8.301 pursuant to the debtor’s security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under Section 7.106, 9.104, 9.105, 9.106, or 9.107 pursuant to the debtor’s security agreement.

*Id.* § 9.203(b).

A security interest in accounts receivable is perfected by filing a financing statement in the appropriate place. *See* TEX. BUS. & COM. CODE ANN. § 9.310(a)-(b). Section 9.310(a) requires that a financing statement be filed to perfect all security interests except those expressly excepted in subsection (b). *Id.* Accounts receivable are not listed in subsection (b), and therefore a creditor must file a financing statement to perfect a security interest in accounts receivable. *See id.*<sup>5</sup> The financing statement covering accounts receivable must be filed with the Texas Secretary of State. TEX. BUS. & COM. CODE ANN. § 9.501(a)(2). Filing a financing statement with the County Clerk is insufficient to perfect a security interest in collateral that can only be perfected by filing with the Secretary of State. *Franklin Nat'l Bank*, 972 S.W.2d at 102 (creditor that filed its financing statement with the County Clerk, instead of the Secretary of State did not properly perfect its PMSI in farm products).

Claimant argues that it properly perfected its security interest in Debtor's accounts receivable by filing its Abstract of Judgment with the Dallas County Clerk. The court must reject Claimant's argument for two reasons. First, an abstract of judgment merely "constitutes a lien on and attaches to any real property of the defendant, other than real property exempt from seizure or forced sale under Chapter 41, the Texas Constitution, or any other law, that is located in the county in which the abstract is recorded and indexed . . . ." TEX. PROP. CODE ANN. § 52.001 (Vernon 2009). Thus, Claimant's Abstract of Judgment did not attach to Debtor's accounts receivable. Second, even if an abstract of judgment can serve as a financing statement, Claimant failed to file

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<sup>5</sup> The potential argument that Claimant's security interest in Debtor's accounts receivable was automatically perfected as an assignment of less than a significant part of the assignor's outstanding accounts pursuant to 9.309(2) of the Business Code is groundless here because Debtor granted a security interest in all of his accounts receivable.

it with the Secretary of State in accordance with Section 9.501 of the Business Code.

Thus, Claimant did not properly perfect its security interest in Debtor's accounts receivable by filing its Abstract of Judgment with the Dallas County Clerk, and therefore Claimant's claim is unsecured.

**IV. Conclusion**

Debtor objects to the Claim on the grounds that the Claim lacks supporting documentation, Claimant's judgment lien did not attach to Debtor's accounts receivable, which were the only non-exempt assets of the estate, and that the Claim should be disallowed as a secured claim but allowed as an unsecured claim. For the reasons stated above, the Debtor's Claim Objection is hereby SUSTAINED and the Claim is disallowed as a secured claim and allowed as an unsecured claim.

It is so ORDERED.

### END OF MEMORANDUM ORDER ###