Mercer Law Review

Volume 28
Number 3 *Symposium: Secured Transactions*

Article 3

5-1977

The Description of Collateral in Security Agreements and Financing Statements

Joseph J. Beard

The Description of Collateral in Security Agreements and Financing Statements

By Joseph J. Beard*

"What's in a name? That which we call a rose
By any other name would smell as sweet."
WILLIAM SHAKESPEARE, *Romeo and Juliet*

Perhaps the Bard of Avon was correct in his assertion that misdescription of a rose dims its fragrance not one whit; but a misdescription in a security agreement or financing statement may have the most profound consequences, mostly unpleasant, for the "secured" party. The purpose of this article is to explore what constitutes an adequate description of collateral under the Uniform Commercial Code and the judicial decisions interpreting the description requirements of the Code. The discussion is organized by type of collateral as defined in Article 9: inventory, accounts receivable, equipment and consumer goods, as well as an all-encompassing discussion of "serial-number" cases.[1]

U.C.C. §9-203 provides that, unless a pledge is involved, the debtor must sign a security agreement "which contains a description of the collateral," and if perfection is to be by way of filing, §9-402 states that the financing statement must contain "a statement indicating the types, or describing the items, of collateral." There arises the question of how detailed or precise the description of collateral must be in security agreements or financing statements. In answer, the drafters of the Code provided in §9-110 that "[f]or purposes of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described." In the official comment to § 9-110, the drafters said that "the test of sufficiency of a description . . . is that the description do the job assigned it—that it make possible the identification of the thing

* Professor of Law, New England School of Law. Tufts University (B.S., 1956); Suffolk University (J.D., 1969); Babson College (M.B.A., 1971); Boston University (LL.M. 1974). Member of the Massachusetts Bar.

1. Chattel paper, instruments, contract rights (where the 1972 revision has not been adopted), general intangibles and accessions do not appear to have engendered significant, if any, litigation under the Code on the question of description, and therefore will not be considered here.

described." They went on to urge the courts to "refuse to follow the holdings, often found in the older chattel mortgage cases, that descriptions are insufficient unless they are of the most exact and detailed nature, the so-called 'serial number' test."

To what extent have courts heeded the exhortations of the drafters? The decisions discussed in the following paragraphs should provide some insight to the answer.

INVENTORY

The description—or misdescription—of inventory has been the subject of a significant amount of litigation. One question that has arisen is whether the word "inventory" in a security agreement or financing statement is sufficient or whether it is necessary to describe the items comprising the inventory. A second question is whether the word "inventory" describes only the inventory on hand at the moment the agreement is executed or whether it encompasses items of inventory subsequently acquired. With respect to the question of whether the word "inventory" was too vague to be an adequate description in a security agreement, an early Pennsylvania Code decision held that "to require enumeration of all types of articles handled would be unreasonably burdensome and neither within the letter nor the spirit of the Code."[2] In *Security Tire & Rubber Co. v. Hlass*,[3] the court, while holding that the trial court erred in holding as a *matter of law* that "inventory" was inadequate as a description, appeared to suggest that the "better practice" was to describe the collateral by types or items.

In *Donald v. Madison Industries, Inc.*,[4] the court, in upholding the sufficiency of the word "inventory" as a description, said that "it is readily apparent that the U.C.C. does not require but instead rejects the degree of specificity which the government suggests is necessary."[5]

In *Biggins v. Southwest Bank*,[6] the phrase "sales and service of new and used automobiles" was found to be the equivalent of the word "inventory" and was held to be a sufficient description in a financing statement. And in *Borg-Warner Acceptance Corp. v. First National Bank*,[7] it was held that the word "inventory" in a security agreement was sufficient to include not only the inventory financed by the secured party but other inventory as

2. Thomson v. O.M. Scott Credit Corp., 1 UCC REP. SERV. 555, 559, 10 Ches. Co. L. Rep. 405, 28 Pa. D&C2d 85 (1962). Other decisions holding the word "inventory" as sufficient include *In re* Little Brick Shirt House, 347 F. Supp. 827, 10 UCC REP. SERV. 1360 (N.D. Ill. 1972); *In re* Goodfriend, 2 UCC REP. SERV. 160 (E.D. Pa. 1964).

3. 441 S.W.2d 91, 6 UCC REP. SERV. 736 (Ark. 1969).

4. 483 F.2d 837, 13 UCC REP. SERV. 918 (10th Cir. 1973).

5. *Id.* at 843, 13 UCC REP. SERV. at 924-25.

6. 332 F. Supp. 62, 8 UCC REP. SERV. 1319 (S.D. Cal. 1971), *aff'd*, 490 F.2d 1304, 13 UCC REP. SERV. 928 (9th Cir. 1973).

7. 238 N.W.2d 612, 18 UCC REP. SERV. 526 (Minn. 1976).

well. Thus, *Security Tire* notwithstanding, it appears there is general agreement that the word "inventory," without more, is a sufficient description of collateral both in security agreements and financing statements. At least it is a sufficient description of inventory existing at the time the documents are executed. There remains the question whether the word "inventory" is sufficient to include not only inventory on hand at the time the agreements and financing statements are signed but subsequently acquired inventory as well.

Two schools of judicial thought can be found on the concept embodied in the word "inventory." By way of analogy, the two schools might be described as the still picture, or photograph, theory on the one hand, and the motion picture theory on the other. Under the still picture concept, inventory is only that which is present when the security agreement is signed, *i.e.* inventory that would be photographed at a given time. Under what I call the motion picture theory, inventory encompasses all items that come into the possession of the debtor; whether on hand on the day the agreement is signed or subsequently acquired. This concept embodies the changing identity, or makeup, of what a debtor holds for resale as shelf items are sold and replaced.

In *In re Taylored Products Co.*,[8] the court said that the phrase "after-acquired property" was not necessary in a *financing statement*, "[s]ince it was contemplated that security interest might be created after the filing of the financing statement, any addition of the words 'after acquired property' would be redundant,"[9] but the court went on to hold that the failure to include an after-acquired-property clause in the *security agreement* limited an interest in "inventory" to that inventory on hand at the time the security agreement was executed. In *In re Fiberglass Boat Corp.*,[10] however, the court took a different and, I believe, correct view of what the word "inventory" encompasses. The court held, despite the absence of an after-acquired-property clause, that a security agreement describing the collateral as "inventory" created a lien on inventory acquired *after* the agreement was made:

> However, the property secured in this case is inventory, goods held for sale and goods consumed in the business. Inventory by its nature and definition changes from day to day. . . . Surely the creditor would not enter into a financing arrangement secured by collateral fixed on a particular date, when the collateral by its nature would be constantly changing. It would be straining the normal meaning of the word to find that inventory meant only that on hand on the particular day the contract was

8. 5 UCC REP. SERV. 286 (W.D. Mich. 1968).

9. *Id.* at 288-89. *See also In re* Wilson, 13 UCC REP. SERV. 1195 (E.D. Tenn. 1973); Evans Prods. Co. v. Jorgensen, 421 P.2d 978, 3 UCC REP. SERV. 1099 (Ore. 1966).

10. 324 F. Supp. 1054, 9 UCC REP. SERV. 118 (S.D. Fla.), *aff'd*, 448 F.2d 781 (5th Cir. 1971).

> executed, and if a can of paint or the like were used, the collateral would be diminished to that extent. Certainly the parties contemplated that the inventory would be sold or used and replaced; that is what inventory means.[11]

In *In re Page*,[12] the court said:

> The bankrupt was engaged in a mercantile business selling these inventory items at retail. Needless to say, any reasonable secured party would be fully aware that this type of business presupposes a constant change in the inventory. Therefore, it is obviously unreasonable to assume that anyone would have received or acquired or intended to acquire a security interest in an inventory with the rigid limitation that it should be limited to the same items which made up the inventory on the date the document was executed.[13]

Declaiming that "[i]nventory is like a river, the water in which constantly flows, rises and falls, but which always constitutes a river," the court in *In re Nickerson & Nickerson, Inc.*[14] held that when a security agreement describes collateral as "inventory," the agreement automatically covers after-acquired inventory unless it clearly sets out that only certain items of inventory are to be covered.

There does not appear to be any disagreement that the use of the word "inventory" in *financing statements* is sufficient to give notice that after-acquired inventory may be included. Even though the weight of opinion may be that "inventory" in a *security agreement* is sufficient to encompass after-acquired inventory, and even though as a semantic argument "inventory" should be a fluid and not static concept, the wise draftsman should include an after-acquired-property clause along with "inventory" to avoid the necessity of convincing a given court of its ever-changing nature.

ACCOUNTS

"Accounts" have provided a source of litigation in which the issues are quite similar to those discussed when "inventory" was involved. One issue litigated was whether the use of the phrase "accounts receivable" was sufficient to secure an interest in an isolated account unrelated to the

---

11. *Id.* at 1056, 9 UCC REP. SERV. at 120. *See also In re* Platt, 257 F. Supp. 478, 3 UCC REP. SERV. 719 (E.D. Pa. 1966); Bank of Utica v. Smith Richfield Springs, Inc., 58 Misc.2d 113, 294 N.Y.S.2d 797, 5 UCC REP. SERV. 1197 (1968); *In re* Goodfriend, 2 UCC REP. SERV. 160 (E.D. Pa. 1964).

12. 16 UCC REP. SERV. 501 (M.D. Fla. 1974).

13. *Id.* at 504. For similar language see Owen v. McKesson & Robbins Drug Co., 349 F. Supp. 1327, 11 UCC REP. SERV. 455 (N.D. Fla. 1972).

14. 329 F. Supp. 93, 96, 9 UCC REP. SERV. 886, 890 (D. Neb.), *aff'd*, 452 F.2d 56, 9 UCC REP. SERV. 1266 (8th Cir. 1971). *See also* Manchester Nat'l Bank v. Roche, 186 F.2d 827 (1st Cir. 1951).

normal business transactions of the debtor. The district court in *In re Varney Wood Products, Inc.*[15] held that the phrase "accounts receivable" was narrower than the term "accounts," which it said encompassed "accounts receivable" as a sub-species. Accordingly, the court found that a financing statement describing collateral as "accounts receivable" was inadequate to capture an isolated transaction wholly outside of the debtor's normal business dealings. On appeal, however, the reviewing court, reversing the findings of the lower court, held that "accounts receivable" in a financing statement was sufficient to put an interested party on inquiry and adequately covered the isolated account.[16]

A fairly recent New York decision came to a different conclusion. It held that the phrase "accounts receivable" did not cover an isolated transaction wholly outside normal business dealings.[17] But this decision cited with favor the lower-court decision of *Varney Wood Products,* which had already been reversed. It appears, although the decisions under the Code are not numerous, that the term "account" and the phrase "accounts receivable" are interchangeable.

With respect to inventory, the question was whether the word encompassed after-acquired inventory; the same question has been asked with respect to accounts receivable. The Pennsylvania Supreme Court decided that a description in a financing statement of collateral as "all present and future accounts receivable" was sufficient to cover future accounts receivable.[18] The court concluded: "It is difficult under the circumstances to imagine how the description could be more complete without filing new and amended descriptions each time a new account receivable falls within the purview of the financing statement. Nowhere in the Uniform Commercial Code is such requirement set forth."[19] While this decision did not go so far as to suggest that the term "accounts receivable" encompassed future accounts, it did establish a foundation on which to build.

The court in *In re Platt,*[20] moving a step further, held that the absence of the word "future" before the words "accounts receivable" did not preclude a financing statement from giving effective warning that after-acquired accounts were subject to the security agreement. The court said:

---

15. 327 F. Supp. 425, 9 UCC REP. SERV. 172 (W.D. Va. 1971).

16. 458 F.2d 435, 10 UCC REP. SERV. 513 (4th Cir. 1972). To the same effect see Bramble Transp., Inc. v. Sam Senter Sales, Inc., 294 A.2d 104, 10 UCC REP. SERV. 939 (Del. 1972); Walker Bank & Trust Co. v. Smith, 501 P.2d 639, 11 UCC REP. SERV. 647 (Nev. 1972). For a discussion of the definition of "account" see Matthews v. Arctic Tire, Inc., 262 A.2d 831, 7 UCC REP. SERV. 369 (R.I. 1970).

17. *In re* Empire Metal Cap Co., 17 UCC REP. SERV. 1108 (N.Y. Sup. Ct., Kings County 1975).

18. Industrial Packaging Prods. Co. v. Fort Pitt Packaging Int'l, Inc., 161 A.2d 19, 1 UCC REP. SERV. 634 (Pa. 1960).

19. *Id.* at 21, 1 UCC REP. SERV. at 638.

20. 257 F. Supp. 478, 3 UCC REP. SERV. 719 (E.D. Pa. 1966).

> The addition of the words "future" to "accounts receivable and inventory" would not seem to help an interested party in determining the status of a debtor. . . . No reasonable searcher of the records would conclude that the secured party had a lien on only the past accounts and inventory of the debtor, especially where the debtor is in an active retailing business.[21]

The court in *South County Sand & Gravel Co. v. Bituminous Pavers Co.*[22] also held that a financing statement describing collateral as "accounts receivable" was sufficient to include future accounts receivable. The security agreement in that case, however, expressly included accounts receivable arising later.

The question remained whether a security agreement would be adequate to cover after-acquired accounts if the agreement merely referred to "accounts." The court in *In re Middle Atlantic Stud Welding Co.*[23] held that the failure to include an after-acquired property clause in a security agreement precludes a security interest in subsequent accounts. The court said:

> [I]t is neither onerous nor unreasonable to require a security agreement to make clear its intended collateral. . . . The general prohibition in pre-Code law on including after-acquired property as collateral heightens the sense of such a rule because, commercial practice of including after-acquired property notwithstanding, a subsequent lender might expect the parties to make explicit an intention to include this kind of property, both for precision and because the law's historic hostility to such arrangements.[24]

In a strong dissent, Chief Judge Seitz said:

> Financing of inventories and of accounts receivable has for years been the particular province of the "floating lien." Fluid financing arrangements in these areas are obviously necessary because the nature of specific inventory items or accounts is likely to vary daily, although the total value of a business inventory or accounts may remain reasonably stable for long periods. It would, thus, be commercially reasonable to anticipate, unless the financing statement indicated otherwise,[25] that security interests in inventory or accounts would include after-acquired property, even though the presumption would be reversed for other property.[26]

While I agree with the reasoning of the dissent in *Middle Atlantic*, cau-

21. *Id.* at 481, 3 UCC REP. SERV. at 722.
22. 256 A.2d 514, 6 UCC REP. SERV. 901 (R.I. 1969).
23. 503 F.2d 1133, 14 UCC REP. SERV. 1233 (3rd Cir. 1974).
24. *Id.* at 1136, 14 UCC REP. SERV. 1236.
25. *See In re* Nickerson & Nickerson, Inc., 329 F. Supp. 93, 96 (1971).
26. 503 F.2d at 1137, 14 UCC REP. SERV. at 1237.

tion dictates that the security agreement include an after-acquired property clause if an interest in subsequently acquired accounts is desired. With respect to financing statements, the weight of opinion seems to find the after-acquired property clause unnecessary. *Heights v. Citizens National Bank*[27] considered the other side of the coin—whether a financing statement filed in 1967 could be held to describe pre-1967 accounts. The court held that it did.

EQUIPMENT

How detailed a description of "goods used in a business" must be was addressed by the court in *National Cash Register Co. v. Firestone & Co.*[28] The court held that a security agreement that provided an interest in "all contents of a luncheonette including equipment such as . . ." was sufficient to cover a cash register even though "cash register" was not one of the items in the illustrations following the words "such as."[29] The court also held that a financing statement need not mention after-acquired property, since only "notice filing" is required by the Code.[30]

A *financing statement* that described collateral as "equipment" was sufficient to put creditors on notice as to a truck used in the debtor's business.[31] However, a description of collateral as "equipment" in a *security agreement* was held not to cover automobiles; in fact, the court in *In re Laminated Veneers, Inc.*[32] held that even the generic term "automobile" might not be an adequate description. But *Galleon Industries, Inc. v. Lewyn Machinery Co.*[33] held that the term "equipment" in a security agreement was sufficient to include a machine used by the debtor in its business.

The holding in *Laminated Veneers* might have been interpreted as negating the use of the word "equipment" as an effective description in security agreements, at least in the Second Circuit, but in *In re Sarex*

27. 342 A.2d 738, 17 UCC REP. SERV. 337 (Pa. 1975).

28. 191 N.E.2d 471, 1 UCC REP. SERV. 460 (Mass. 1963).

29. *Id.* at 473, 1 UCC REP. SERV. at 463. *Accord,* Security Bank & Trust Co. v. Blaze Oil Co., 463 P.2d 495, 7 UCC REP. SERV. 126 (Wyo. 1970); Hillman's Equipment, Inc. v. Central Realty, Inc., 242 N.E.2d 522, 5 UCC REP. SERV. 1160 (Ind. 1968). *But see* Mammoth Cave Prod. Cred. Ass'n v. York, 429 S.W.2d 26, 5 UCC REP. SERV 11 (Ky. 1968).

30. *Accord,* American Nat'l Bank & Trust Co. v. National Cash Register Co., 473 P.2d 234, 7 UCC REP. SERV. 1097 (Okla. 1970).

31. *In re* Bloomingdale Milling Co., 4 UCC REP. SERV. 256 (W.D. Mich. 1966). *Accord,* Goodall Rubber Co. v. Mews Ready Mix Corp., 7 UCC REP. SERV. 1358 (Wis. Cir. Ct., 1970); Stephens v. Bank of Camilla, 133 Ga. App. 210, 210 S.E.2d 358, 16 UCC REP. SERV. 265 (1974). *But cf.* Ray v. City Bank & Trust Co., 358 F. Supp. 630, 13 UCC REP. SERV. 355. (S.D. Ohio 1973).

32. 8 UCC REP. SERV. 602 (E.D. N.Y. 1970), *aff'd,* 471 F.2d 1124, 11 UCC REP. SERV. 911 (2d Cir. 1973). *Accord,* Long Island Trust Co. v. Porta Aluminum Corp., 14 UCC REP. SERV. 833 (N.Y. App. Div. 1974).

33. 279 So. 2d 137, 12 UCC REP. SERV. 1224 (Ala. App. 1973).

Corp.,[34] the Second Circuit held that "machinery and equipment" was sufficient in a security agreement to encompass non-enumerated items of machinery and equipment. The court appears to have limited *Laminated Veneer* to its facts, *i.e.* automobiles.

The limits of vagueness seem to have been reached in *In re Lockwood Industrial Leasing Corp. v. Sabetta.*[35] The court held that a description of "all tangible personal property" was too general to be an effective description of collateral in a security agreement (though the court concluded that the document in issue was in fact a true lease rather than a lease intended for security). The sufficiency of the term "equipment" in financing statements does not appear to be seriously challenged. Its use in security agreements without further amplification, at least by way of illustration, is a matter of some risk. Language such as "all equipment including *but not limited to*" may provide the best of both worlds: specificity about identifiable items and sufficient generality about items not then *specifically* in the minds of the parties.

CONSUMER GOODS

Security interests in consumer goods create special problems because of the superior bargaining power of the commercial creditor and the lack of business sophistication on the part of the consumer debtor. Without the watchfulness of the judiciary, the unwary consumer might find the chattel mortgage extending to personal property that he never intended to be encumbered. "Equipment," although a generic term, was held to be sufficient in a financing statement if not in a security agreement (a point in dispute). What of the generic term "consumer goods," as defined in U.C.C. §9-109? If items have been enumerated, the courts appear to have little difficulty in finding adequacy of description: "2 pc living room suite, wine; 5 pc chrome dinette set, yellow; 3 pc panel bedroom suite, lime oak, matt & spgs;"[36] and "household goods, furnishings, electrical appliances, radio and television receiving sets."[37] However, if the only description is "consumer goods," issue is joined.

The court in *In re Trumble*[38] held that, against a trustee in bankruptcy, "consumer goods" as a description of collateral in a financing statement was sufficient to perfect an interest in unenumerated items held for personal use. Yet in *In re Bell*,[39] against the trustee in bankruptcy, "consumer goods" was held to be an inadequate description in a financing statement:

34. 509 F.2d 689, 16 UCC REP. SERV. 497 (2d Cir. 1975).

35. 16 UCC REP. SERV. 195 (D. Conn. 1974). *But see* James Talcott, Inc. v. Franklin Nat'l Bank, 194 N.W.2d 775, 10 UCC REP. SERV. 11 (Minn. 1972), in which "all goods" was sufficient to create a security interest in equipment.

36. *In re* Drane, 202 F. Supp. 221, 1 UCC REP. SERV. 436 (W.D. Ky. 1962).

37. *In re* Wilson, 13 UCC REP. SERV. 1195 (E.D. Tenn. 1973).

38. 5 UCC REP. SERV. 543 (W.D. Mich. 1968).

39. 6 UCC REP. SERV. 740 (D. Colo. 1969).

> [T]he words "consumer goods" used as descriptive in a financing statement do not serve to indicate types or items of property. . . . It necessarily follows that a financing statement which recites that the types or items of property to be covered are "consumer goods" is without any certain meaning and actually conveys no meaning so far as identifying types or items is concerned.[40]

If the interest competing with the secured party is that of the trustee in bankruptcy, the courts seem divided over the adequacy of "consumer goods" as a description. If the contrast is between the debtor and the secured party, one would expect agreements and financing statements to be construed, if doubt exits, in favor of the consumer.[41]

FARM PRODUCTS

Security interests in farming operation have created their own brand of problems. For ease of discussion, this section includes farm products, farm equipment, and livestock (an inclusion which I hope will not initiate a dispute between farmers and cattlemen).

A description of collateral in a security agreement and financing statement as "seven acres of cotton to be produced on the lands of S.E. Karnes" was held to be inadequate because it did not clearly indicate whether the debtor grew only seven acres or whether anyone else was growing cotton on Karnes' land.[42] When "all the crops" grown on described land were included in the description, the financing statement was held adequate in *United States v. Big Z Warehouse.*[43] In *Chanute Production Credit Ass'n v. Weir Grain Supply, Inc.*,[44] although "all the crops" was included in the financing statement, a description of the real estate as "land owned or leased by the debtor in Cherokee County, Kansas" was insufficient to perfect a security interest in the crops. When a financing statement and security agreement described in detail three parcels of land on which crops were grown but omitted any description of three other parcels of land, the

40. *Id.* at 742. *Accord, In re* Lehner, 303 F. Supp. 317, 6 UCC REP. SERV. 1023 (D. Colo. 1969) (stating that the term "consumer goods" failed to reveal the *types* of collateral), *aff'd*, 427 F.2d 357, 7 UCC REP. SERV. 1055 (10th Cir. 1970); *In re* Woods, 9 UCC REP. SERV. 116 (D. Kan. 1971). "All of the consumer goods, including but not limited to furniture, appliances and other household goods and personal property of all kinds and description now or hereafter located at debtor's address shown above" was held sufficient in *In re* Turnage, 493 F.2d 505, 14 UCC REP. SERV. 1051 (5th Cir. 1974).

41. Tinsman v. Moline Beneficial Fin. Co., 531 F.2d 815, 18 UCC REP. SERV. 1056 (7th Cir. 1976). "All of the consumer goods of every kind now owned or hereafter located in or about the place of residence of the Debtors" was held to be misleading to the consumer debtor.

42. Piggott State Bank v. Pollard Gin Co., 419 S.W.2d 120, 4 UCC REP. SERV. 785 (Ark. 1967).

43. 311 F. Supp. 283, 7 UCC REP. SERV. 1061 (S.D. Ga. 1970).

44. 499 P.2d 517, 10 UCC REP. SERV. 1351 (Kan. 1972).

security interest was unenforceable against crops on the undescribed parcels, despite language that all crops grown anywhere in certain counties were to be the subject of the security interest.[45] An Oklahoma lower-court decision[46] that "all crops for the 1967 Season" was sufficient and that omission of the description of the real estate was a "minor error" was quickly reversed in *First National Bank v. Calvin Pickle Co.*[47]

Farm equipment is not distinguished in §9-109 from other equipment, so one might suspect similar judicial treatment. A description in a security agreement and a financing statement of collateral as "all farm equipment" and "all property similar to that listed above" was held to be too indefinite in *Mammoth Cave Production Credit Ass'n v. York.*[48] When a financing statement described collateral as "all farm machinery and equipment, including but not limited to tractors, tanks, tilling and harvesting tools," it was held adequate to describe a tractor but, curiously enough, it was not adequate to describe a fertilizer distributor, disc tillers, or spray rig.[49] Delaware took a most liberal view and held that a financing statement was adequate to cover specific farm equipment even though the description read "equipment of all kinds, including equipment now owned by Debtor and equipment hereafter acquired by debtor."[50] The Court of Appeals for the Eighth Circuit,[51] took a similar view. It held that "all farm and other equipment . . . now owned or hereafter acquired by the Debtor" was a sufficient description in a security agreement.

Livestock can be farm products under some circumstances and inventory in others depending on who holds it; but regardless of its classification under §9-109, there still remains the question of how detailed the description of livestock must be in security agreements and financing statements. A description as vague as "all personal property" is clearly an inadequate description to encompass livestock.[52] But a security agreement describing collateral as "twenty-four (24) head of Holstein heifers" was held not to render a security agreement defective but did place a burden on the secured party to identify the particular heifers.[53] In *United States v. Pirnie*,[54] a description of collateral in a security agreement as "all livestock now

45. People's Bank v. Pioneer Food Indus., Inc., 486 S.W.2d 24, 11 UCC REP. SERV. 651 (Ark. 1972).

46. First Nat'l Bank v. Calvin Pickle Co., 11 UCC REP. SERV. 1245 (Okla. App. 1973).

47. 516 P.2d 265, 12 UCC REP. SERV. 943 (Okla. 1973).

48. 429 S.W.2d, 5 UCC REP. SERV. 11 (Ky. 1968).

49. *In re* Anselm, 344 F. Supp. 544, 11 UCC REP. SERV. 397 (W.D. Ky. 1972).

50. Maryland Nat'l Bank v. Porter-Way Harvester Mfg. Co., 11 UCC REP. SERV. 843 (Del. 1972).

51. United States v. First Nat'l Bank, 470 F.2d 944, 11 UCC REP. SERV. 1048 (8th Cir. 1973).

52. *In re* Fuqua, 461 F.2d 1186, 10 UCC REP. SERV. 936 (10th Cir. 1972).

53. United States v. Mid-State Sales Co., 336 F. Supp. 1099, 10 UCC REP. SERV. 703 (D. Neb. 1971).

54. 339 F. Supp. 702, 10 UCC REP. SERV. 1264 (D. Neb. 1972).

owned or hereafter acquired by the debtor" was held sufficient.[55] Most recently, in *Peoples Bank v. Northwest Georgia Bank*,[56] the court held that a description of collateral in a financing statement as "100 head of black angus beef cattle" was sufficient to put interested parties on notice.

FIXTURES

Fixtures deserve brief mention with respect to the issue of description. However, the knottiest problem, and one not within the scope of this article, is determining whether an item is a "fixture" as opposed to a movable good or as opposed to part of the realty itself. With respect to description, the question is whether the realty to which it is attached is adequately described, as required by §9-402. In *Architectural Cabinet, Inc. v. Manley*,[57] the court said a description of the real property by metes and bounds was not necessary and that if "Crestmont Farms" was a specific farm or estate, that designation of the locale where a fixture was installed was sufficient. However, the Attorney General of Minnesota said that when Torrens property was involved, the description must be specific, unlike the situation when dealing with fixtures on abstract of title realty.[58] And in *Home Savings Ass'n v. Southern Union Gas Co.*,[59] the indication in a financing statement of the address of the debtor as such, although that was the very address where the fixtures were located, was insufficient to satisfy the identification requirements of §9-402. Not surprisingly, the total absence of a description of the realty to which the fixture attached was fatal to the perfection of a security interest in *In re Shepard*.[60] Though there is a paucity of decisions under the Code on the description of realty in fixture situations, prudence dictates that the description include at least a street, a number, a town, and a state.

SERIAL NUMBER CASES

The official comment to §9-110 urged courts to refuse to follow older decisions that held descriptions inadequate unless they met the so-called "serial number test." As has been seen, courts appear generally to have heeded this suggestion when serial numbers were in fact not involved; but what of the situation in which a serial number has been incorrectly recorded in a description of the collateral, whether in a financing statement or in a security agreement?

---

55. To the same effect see Barth Brothers v. Billings, 227 N.W.2d 673, 17 UCC REP. SERV. 237 (Wis. 1975).

56. 19 UCC REP. SERV. 953 (Ga. App. 1976).

57. 3 UCC REP. SERV. 263, 17 Ches. Co. L. Rep. 71 (1966).

58. Opinion of the Attorney General of Minnesota, 3 UCC REP. SERV. 665 (1966).

59. 11 UCC REP. SERV. 639, (Tex. Ct. of Civ. App., 8th Dist. 1972).

60. 14 UCC REP. SERV. 249 (W.D. Va. 1974).

The court in *National-Dime Bank v. Cleveland Bros. Equipment Co.*[61] held that an error in a serial number in the security agreement and financing statement did not negate the effectiveness of those two documents, since the remainder of the description was sufficient to put an interested party on notice. But when the balance of the description was insufficient, an erroneous serial number was fatal to the security interest.[62] The court in *In re Esquire Produce Co.*,[63] held that a description of a Ford Van Econoline 6-Cylinder as a "1966 Ford" in a financing statement was adequate and not misleading even though a "5" was substituted for an "8" in an 11-digit serial number. In *Beneficial Finance Co. v. Kurland Cadillac-Oldsmobile, Inc.*,[64] the court, while observing that there was no statutory requirement to include a motor vehicle serial number in a financing statement, urged that New York either adopt a certificate of title or require that financing statements include the serial number to reduce the opportunity for deception. The philosophy of the court in *Beneficial* was echoed in *Still Associates v. Murphy*[65] when the appellate division of the district courts held that a one-digit error in a ten-digit motor vehicle serial number was fatal to the description in the security agreement and financing statement. The court held that pre-Code decisions such as *Wise v. Kennedy*,[66] which held serial number errors to be fatal were still the law despite §9-110, at least when "valuable cars" were concerned. Upon review, however, the Supreme Judicial Court of Massachusetts reversed the decision of the appellate division:

> Section 9-402(5) provides in particular that "[a] financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading." If we apply the provision to the facts of this case consistently with "the broad purposes of the act" . . . we are led to conclude that the validity of the financing statement was not affected by the mistake in the last digit of the serial number. . . .
>
> 2. It is implicit in this holding that *Wise v. Kennedy, supra,* is no longer to be followed. This result is consistent with the Comment to GL c. 106, §9-110. . . .[67]

61. 1 UCC REP. SERV. 454, 74 Dauphin Co. Rep. 194, 20 Pa. D&D2d 511 (1959).

62. Yancey Bros. Co. v. Dehco, Inc., 108 Ga. App. 875, 134 S.E.2d 828, 2 UCC REP. SERV. 10 (1964). Although this case was decided under pre-Code law, the court appeared to be of the opinion that the results would have been the same even if the Code applied.

63. 5 UCC REP. SERV. 257 (E.D. N.Y. 1968). On a humorous note, the referee pointed out that the trustee himself made an error in describing the serial number in a memorandum submitted to the referee.

64. 57 Misc.2d 806, 293 N.Y.S.2d 647, 5 UCC REP. SERV. 1033 (N.Y. App. Div. 1968).

65. 7 UCC REP. SERV. 560 (Mass. App. Div. 1970).

66. 248 Mass. 83, 142 N.E. 755 (1924).

67. Still Assoc. v. Murphy, 267 N.E.2d 217, 218-19, 8 UCC REP. SERV. 929, 930-31 (Mass. 1971). *Accord,* Bank of North America v. Bank of Nutley, 227 A.2d 535, 4 UCC REP. SERV.

The omission of the serial numbers of two fork lifts, when the serial numbers of seven fork lifts had been listed in an attachment to a financing statement, was held in *In re Aragon Industries, Inc.*[68] not to give notice to interested parties of the two fork lifts. The court said:

> It is recognized that if no serial numbers had been used at all, perfection of the security agreement perhaps would not be subject to attack. . . . However, where a party does in fact make use of serial numbers in a multiple item transaction, it runs the risk of subjecting its security interest to attack if it does so incorrectly. This follows from the real possibility that the erroneous description will divert or "head off" appropriate inquiry in such cases.[69]

In a very recent decision, *Adams v. Nuffer*,[70] the court held that an error in the serial number of a boat in a financing statement did not invalidate the statement.

In summary, it appears that an error in a serial number will not render ineffective a security interest, at least when there is an additional description of the physical collateral itself. The same is true if the serial number is omitted entirely. *Aragon*, however, teaches us that if some serial numbers are listed and others are omitted, an otherwise enforceable security interest in the "omitted" items may be negated.

CONCLUSION

At the outset of this article, the question was asked whether courts had heeded the Code's admonition to test the sufficiency of description of collateral by whether it made possible *identification* rather than by imposing the "serial number test." While the reader is free to judge for himself, I have concluded that courts generally have followed the recommendations of the comments to §9-110 and have discarded the archaic and oft-unjust tests of pre-Code years. But heeding the old saw, "an ounce of prevention is worth a pound of cure," prudent counsel will draft security agreements and financing statements to leave no doubt that, to borrow from Gertrude Stein, "a rose is a rose is a rose."

---

56 (N.J. Super. 1967). Associates Capital Corp. v. Bank of Huntsville, 12 UCC REP. SERV. 186 (Ala. Ct. of Civ. App. 1973); Central National Bank & Trust Co. v. Community Bank & Trust, 528 P.2d 710, 16 UCC REP. SERV. 244 (Okla. 1974).

68. 14 UCC REP. SERV. 1218 (S.D. Fla. 1973).

69. *Id.* at 1221-22.

70. 550 P.2d 181, 19 UCC REP. SERV. 939 (Utah 1976).