

they reached the wrong result in determining who was entitled to the asset in question.

The case of the refunded cash bond. In *Charlotte Development Partners, LLC v. Tricom Pictures & Productions, Inc.*, 2009 WL 4282939 (Fla. Dist. Ct. App. 2009), the court had to resolve a priority dispute between a putative secured party and a garnishor. The debtor, Tricom Pictures, was an apparently defunct corporation that had been the plaintiff in a state court proceeding. Tricom had posted a \$10,000 cash bond in connection with the case. In late 2007, after the case was dismissed, the court clerk returned the “money” to Tricom’s attorney. Two creditors came forward to claim the funds. Charlotte Development Partners, LLC claimed a security interest in all of Tricom’s “accounts, chattel paper, contract rights, inventory, equipment, general intangibles, deposit accounts, documents, instruments, investment property and financial assets.” That security interest was perfected by a properly filed financing statement. GE Capital Corporation, which had a judgment against Tricom, had initiated garnishment proceedings against Tricom’s attorney.

The trial court ruled in favor of GE Capital and the appellate court affirmed. It concluded that the collateral description in the security agreement was insufficient to create a security interest in the cash bond because, the court concluded, the cash bond was “money.” It stated that the cash bond was not an “account” because that term does not include a right to payment for funds advanced, it was not a “general intangible” because that term excludes money, and it was not a “deposit account” because it was not maintained with a bank. It also concluded that the cash bond was not a financial asset because it was neither a “security” nor used as a medium for investment.

The court was simply wrong. Perhaps it was confused by the term “cash bond” and thought that the attorney was holding greenbacks in an envelope in her office. Of course that would be fanciful. Indeed, a call to the attorney confirmed that what she received was a check from the court clerk drawn on the court’s registry, and that she had deposited the check into her client’s trust fund account.

So, what was Tricom’s asset? Well, if we accept the position that Tricom owned what was in the attorney’s hands – in other words, that the attorney was Tricom’s agent and that Tricom did not have merely a receivable due from the attorney – then the returned cash bond was first an instrument (the check) and then a deposit account. If we were to regard Tricom’s asset as a right to payment from the attorney, then it was a general intangible. In either case, Charlotte Development Partners had an attached and perfected security interest in the asset. Although control is needed to perfect a security interest in a deposit account as original collateral (§ 9-312(b)(1)), it is not needed to perfect a security interest in a deposit account that is proceeds of other collateral, such as a check. See §§ 9-312(b), 9-315(d)(2).

Show Me the Money

In “The Princess Bride,” Wally Shawn repeatedly refers to Cary Elwes’ feats as “inconceivable.” Mandy Patinkin responds by saying: “You keep using that word. I do not think it means what you think it means.” That line comes in handy when teaching a law school course on the UCC. Students often fail to appreciate that even common words may be defined sometimes in ways that are . . . non-intuitive. Two recent Article 9 cases show us that courts too need to be careful. In particular, they have made the common mistake of totally misunderstanding what qualifies as “money.”

“Money” is defined in § 1-201(b)(24) as a “medium of exchange” adopted by a domestic or foreign government. The dollar bills in your wallet are money. So too are the coins in your pocket or purse. But that’s about it. A deposit account is not money. A check is not money. A right to receive payment is not money. Yet the courts in the two cases discussed below treated these things as if they were money, and because of this

Even if the court had been correct in concluding that the returned bond was money, it still would have been wrong in awarding the funds to GE Capital, the garnishor. That is because the money would have been proceeds of Charlotte Development Partners' other collateral. Before the bond was returned, Tricom retained an interest in the bond that it had provided to the court. In other words, Tricom had a contingent right to return of the funds. That right was a general intangible, a type of property described in the security agreement. The check issued and delivered to Tricom's attorney was proceeds of that general intangible. The lawyer's client trust fund deposit account then became, at least in part, proceeds of the check. The security interest would therefore have attached automatically both to the check and then to the deposit account under § 9-315(a)(2), and would have remained perfected under § 9-315(d)(2). Charlotte Development Partners should therefore have had priority under § 9-317(a).

The case of "all sums recovered." *Goldberg & Connolly v. New York Community Bancorp, Inc.*, 565 F.3d 66 (2d Cir. 2009), involved competing claims to funds that the debtor recovered from the United States Post Office. The debtor, Abcon, had contracted to do construction for the Post Office in Queens, N.Y. After the Post Office terminated the contract, Abcon sued. In 2001, Abcon obtained a judgment. Several years later, the amount of the judgment was fixed at about \$2.4 million. Before the Post Office paid, it received notice of various claims against Abcon, so the Post Office deposited the funds with the federal District Court and interpleaded the various claimants.

Two principal claimants emerged. In 2002, Roslyn Savings Bank loaned Abcon \$2 million. In connection with that transaction, Abcon executed a security agreement granting Roslyn Bank a security interest in "all sums recovered" by Abcon from the Post Office in connection with the terminated contract. In 2001, Goldberg & Connolly obtain a judgment against Abcon for \$200,000. The firm delivered a writ of execution to the sheriff in 2005 and claimed priority to the interpleaded funds by asserting that Roslyn Bank did not have a perfected security interest in them. The District Court ruled for Roslyn Bank, but the Second Circuit reversed.

The Circuit Court concluded that the security agreement's reference to "all sums recovered" expressed a clear and unambiguous intent to transfer "money," not the existing "judgment." In other words, the security agreement pledged only "future money received or recoverable" from the Post

Office, not the then-existing right to payment based upon the judgment.

The court's conclusion seems questionable, although in fairness there were other contemporaneous documents that supported this conclusion and the collateral description in the security agreement was very poorly phrased. Nevertheless, the fact remains that at no time was money involved or likely to be involved. The Post Office certainly did not send armed guards to deliver \$2 million dollars in currency to the District Court. More to the point, it would be "inconceivable" to conclude that anyone ever thought that would occur. From the outset all parties understood that when the Post Office finally paid, it would do so by check or funds transfer. The court may have been correct to interpret the security agreement as including a temporal restriction on the collateral — in other words, that it covered the funds once they were received, not the right to receive them — but "all sums recovered" could not possibly have referred to "money" simply because money was never going to be involved. Given this reality, the court's interpretation of the security agreement seems a bit strained.

Some concluding thoughts. In UCC parlance, "money" is a very narrow term. Laypersons and lawyers may refer to "money in a deposit account," but the fact remains that under the Code those two terms are mutually exclusive. Beyond that, the preposition "in" implies a wholly incorrect nature of a deposit account. A deposit account is not vault cash or a bailment of any kind. It is merely the unsecured promise of the bank to repay the deposit. Checks, certificates of deposit, stored value cards, and every right to payment are also not money. Mandy Patinkin was right: the word does not mean what many people think it means. Maybe after reading this, a few more will know better.

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