

836 P.2d 1051

Colorado Court of Appeals,
Div. III.

MORGAN COUNTY FEEDERS, INC., a
Colorado corporation, Plaintiff-Appellee,

v.

James L. McCORMICK, Jr.,
Interested Third-Party-Appellant.

No. 91CA0790.

|

July 30, 1992.

Synopsis

Interested third party claimed interest in proceeds of cattle garnished and sold by secured creditor pursuant to after-acquired property clause in security agreement. The District Court, Morgan County, Douglas R. Vannoy, J., entered judgment for secured creditor. Interested third party appealed. The Court of Appeals, Rothenberg, J., held that: (1) longhorn cattle were classified as “equipment,” rather than “inventory,” under Uniform Commercial Code (UCC), and (2) secured creditor did not authorize sale of longhorn cattle, and thus did not waive its security interest in cattle.

Affirmed.

West Headnotes (7)

[1] SECURED TRANSACTIONS

🔑 Equipment

SECURED TRANSACTIONS

🔑 Inventory

- 349A SECURED TRANSACTIONS
- 349AI Nature, Requisites, and Validity
- 349AI(A) Nature and Essentials
- 349Ak14 Classification of Goods
- 349Ak16 Equipment
- 349A SECURED TRANSACTIONS
- 349AI Nature, Requisites, and Validity
- 349AI(A) Nature and Essentials
- 349Ak14 Classification of Goods
- 349Ak18 Inventory

Colo.App. July 30, 1992

Longhorn cattle were classified as “equipment,” rather than “inventory,” under Uniform Commercial Code (UCC) where cattle were to be used principally by owner for recreational cattle drives, not for purpose of immediate or ultimate sale or lease. [West's C.R.S.A. § 4-9-109\(2, 4\)](#).

Colo.App. July 30, 1992

Longhorn cattle were classified as “equipment,” rather than “inventory,” under Uniform Commercial Code (UCC) where cattle were to be used principally by owner for recreational cattle drives, not for purpose of immediate or ultimate sale or lease. [West's C.R.S.A. § 4-9-109\(2, 4\)](#).

[2] SECURED TRANSACTIONS

🔑 Equipment

- 349A SECURED TRANSACTIONS
- 349AI Nature, Requisites, and Validity
- 349AI(A) Nature and Essentials
- 349Ak14 Classification of Goods
- 349Ak16 Equipment

Colo.App. July 30, 1992

Goods used in a business are “equipment” under Uniform Commercial Code (UCC) when they are fixed assets or have, as identifiable units, a relatively long period of use. [West's C.R.S.A. §§ 4-9-105\(1\)\(h\), 4-9-109\(2\)](#).

[2 Cases that cite this headnote](#)

[3] SECURED TRANSACTIONS

🔑 Inventory

- 349A SECURED TRANSACTIONS
- 349AI Nature, Requisites, and Validity
- 349AI(A) Nature and Essentials
- 349Ak14 Classification of Goods
- 349Ak18 Inventory

Colo.App. July 30, 1992

Goods are “inventory,” even though not held for sale, under Uniform Commercial Code (UCC) if they are used up or consumed in a short period of time in production of some end product. [West's C.R.S.A. §§ 4-9-105\(1\)\(h\), 4-9-109\(4\)](#).

[1 Cases that cite this headnote](#)

[4] **SECURED TRANSACTIONS**

🔑 Questions for jury

349A SECURED TRANSACTIONS
349AI Nature, Requisites, and Validity
349AI(A) Nature and Essentials
349Ak26 Questions for jury
Colo.App. July 30, 1992

The classification of “goods” under Uniform Commercial Code (UCC) is a question of fact, and therefore, trial court's classification must be upheld if there is support in the record for that determination. [West's C.R.S.A. § 4-9-105\(1\)\(h\)](#).

[1 Cases that cite this headnote](#)

[5] **SECURED TRANSACTIONS**

🔑 Alienability of rights of debtor

349A SECURED TRANSACTIONS
349AIV Rights and Liabilities of Parties
349Ak164 Use and Disposition of Collateral or Proceeds
349Ak166 Alienability of rights of debtor
Colo.App. July 30, 1992

Secured creditor did not waive its security interest on 45 longhorn cattle by authorizing their sale; secured creditor did not give written consent for sale, and testimony indicated that it was standard practice in business to notify secured creditor prior to sale of collateral and to obtain secured creditor's consent prior to sales, and there was no evidence presented that secured creditor would have authorized sale of cattle without assurance of its receipt of net proceeds. [West's C.R.S.A. § 4-9-306\(2\)](#).

[6] **SECURED TRANSACTIONS**

🔑 Alienability of rights of debtor

349A SECURED TRANSACTIONS
349AIV Rights and Liabilities of Parties
349Ak164 Use and Disposition of Collateral or Proceeds

349Ak166 Alienability of rights of debtor
Colo.App. July 30, 1992
Whether a sale of secured collateral has been impliedly authorized is a factual determination based upon the circumstances of the parties, the nature of the collateral, the course of dealing of the parties, and the usage of trade.

[1 Cases that cite this headnote](#)

[7] **SECURED TRANSACTIONS**

🔑 Actions

349A SECURED TRANSACTIONS
349AIV Rights and Liabilities of Parties
349Ak171 Actions
Colo.App. July 30, 1992

Evidence of course of performance, for purpose of showing that secured creditor waived its security interest in collateral by authorizing its sale, is admissible if it does not directly contradict the terms of a written security agreement, but merely explains or supplements it.

[2 Cases that cite this headnote](#)

Callaghan & Company's Headnote and Classification

P9109.1, P9109.21, P9307.1(3)Significance of classification of goods.
Colo.App. July 30, 1992

The classification of goods as either “equipment” or “inventory” is significant because buyers of inventory in the ordinary course of business take free of perfected security interests.

Callaghan & Company's Headnote and Classification

P9109.21Distinction between “equipment” and “inventory.”
Colo.App. July 30, 1992

In ascertaining whether goods are “inventory” or “equipment,” the principal use of the property is determinative. Factors to be considered include whether the goods are for immediate or ultimate sale and whether they have a relatively long or short period

of use. Goods are “equipment” when they are fixed assets or have, as identifiable units, a relatively long period of use. They are “inventory,” even though not held for sale, if they are used up or consumed in a short period of time in the production of some end product.

Callaghan & Company's Headnote and Classification

P9109.1 Classification of “goods” is question of fact. Colo.App. July 30, 1992

The classification of “goods” under § 9-109 is a question of fact.

Callaghan & Company's Headnote and Classification

P9109.20, P9109.21, P9109.25(4) Longhorn cattle as “equipment.”

Colo.App. July 30, 1992

Trial court correctly determined that longhorn cattle (subject to a perfected security interest) were “equipment” and not “inventory” where debtor had purchased and used the cattle primarily for recreational cattle drives. Cows used in such a manner have a relatively long period of use in comparison with rodeo calves and feeder cattle. (The parties had agreed that the cattle were not “farm products.”)

Callaghan & Company's Headnote and Classification

P9306.2(4) Authorized disposition of collateral—implied from conduct of parties—question of fact.

Colo.App. July 30, 1992

Implied authorization of a sale of collateral is a factual determination based upon the circumstances of the parties, the nature of the collateral, the parties' course of dealing, and the usage of trade.

Callaghan & Company's Headnote and Classification

P9306.1(1), P9306.1(2), P9306.2(4), P9306.2(9), P9306.20(4), P9307.1(1) Secured party did not waive security interest by authorizing sale of collateral.

Colo.App. July 30, 1992

The contention that secured party had waived its security interest in cattle by authorizing a sale of the cattle to a third party is rejected. It was uncontroverted

that secured party never gave written consent for the sale. While there was conflicting evidence as to whether authorization could have been implied from the conduct of the parties, there was evidence to support the trial court's finding that secured party did not authorize the sale. Inasmuch as third party had designated debtor as his agent in the transaction, debtor's knowledge of the facts and circumstances was imputed to third party, so third party was not a good faith purchaser. Accordingly, secured party had priority in the proceeds from the subsequent court-approved sale of the collateral.

UCC Sections Cited: § 1-201(9), § 1-205 and Official Comment 2, § 2-208, § 9-105(1)(f), § 9-109(2), (4) and Official Comments 2 and 3, § 9-306(2), § 9-307(1)(a).

Attorneys and Law Firms

*1052 Berryhill, Cage & North, P.C., Jack W. Berryhill, Gary C. Moschetti, Magdalena C. Bowen, Denver, for plaintiff-appellee.

Johnson & McLachlan, George McLachlan, Michael P. Strait, Lamar, for interested third-party-appellant.

Opinion by Judge ROTHENBERG.

Interested Third-Party, James L. McCormick, appeals the judgment entered in favor of plaintiff, Morgan County Feeders, Inc. (Morgan County Feeders) and garnishee, Roy Creamer d/b/a XY Farm and Ranch Company. We affirm.

In 1990, Morgan County Feeders, as a secured creditor, obtained a default judgment against Neil Allen for \$1,461,019. Morgan County Feeders attempted to garnish 45 longhorn cows and one bull that were in the possession of Roy Creamer. Creamer contested the garnishment, and Morgan County Feeders filed a post-judgment motion for issuance of a writ of garnishment and to join third-persons who also claimed an interest in the cattle. The court granted Morgan County Feeders' motion. The parties then stipulated to the sale of *1053 the cattle, and the proceeds were placed in the registry of the court pending a hearing.

At the hearing, Morgan County Feeders claimed a priority in the proceeds based on its perfected security interest arising from a security agreement with Allen, which, in part, contained an after-acquired property

clause. McCormick claimed an interest in the proceeds based on an oral agreement with Allen to buy the cattle.

After making extensive findings of fact and conclusions of law, the trial court entered judgment in favor of Morgan County Feeders, finding that the 45 longhorn cattle were “equipment” and not “inventory” under the Uniform Commercial Code and that Allen had no authority to dispose of the longhorn cattle free of Morgan County Feeders' perfected security interest. Accordingly, the court awarded Morgan County Feeders the sale proceeds minus certain costs owed to Creamer. McCormick is the only party that has appealed the judgment.

I.

[1] McCormick first contends that the trial court erred in determining that the cattle purchased by Allen were equipment, rather than inventory. We disagree.

Under the Uniform Commercial Code, “goods” are defined as, “all things which are moveable at the time the security interest attaches....” [Section 4-9-105\(1\)\(h\)](#) <<UCC § 9-105>>, C.R.S. (1991 Cum.Supp.). Goods are classified under four major types which are mutually exclusive. These include: consumer goods; equipment; farm products; and inventory. *See* § 4-9-109 <<UCC § 9-109>>, C.R.S.

Here, the parties agree that the cattle constitute “goods” under the Uniform Commercial Code. They further agree that the cattle are not “farm products.” Thus, the remaining issue surrounding the cattle is whether they should be designated as inventory or equipment. The distinction is important because buyers of inventory in the ordinary course of business take free of perfected security interests. *See* § 4-9-307(1)(a) <<UCC § 9-307>>, C.R.S. (1991 Cum.Supp.); § 4-1-201(9) <<UCC § 1-201>>, C.R.S.

[Section 4-9-109\(2\)](#) <<UCC § 9-109>>, C.R.S., provides that goods are equipment:

if they are used or bought for use primarily in business (including farming or a profession) ... or if the goods are not included in the definitions of inventory, farm products, or consumer goods.

In contrast, [§ 4-9-109\(4\)](#) <<UCC § 9-109>>, C.R.S., provides that goods are inventory:

if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are ... materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

In ascertaining whether goods are inventory or equipment, the principal use of the property is determinative. [Section 4-9-109](#) <<UCC § 9-109>>, C.R.S. (Official Comment 2). The factors to be considered in determining principal use include whether the goods are for immediate or ultimate sale and whether they have a relatively long or short period of use in the business. [Section 4-9-109](#) <<UCC § 9-109>>, C.R.S. (Official Comment 3); *First Colorado Bank & Trust v. Plantation Inn, Ltd.*, 767 P.2d 812 (Colo.App.1988).

[2, 3] Goods used in a business are equipment when they are fixed assets or have, as identifiable units, a relatively long period of use. They are inventory, even though not held for sale, if they are used up or consumed in a short period of time in the production of some end product. *First Colorado Bank & Trust v. Plantation Inn, Ltd.*, *supra*.

[4] The classification of “goods” under [§ 4-9-109](#) <<UCC § 9-109>> is a question of fact, and therefore, the trial court's classification must be upheld if there is support in the record for that determination. *See First Colorado Bank & Trust v. Plantation Inn, Ltd.*, *supra*.

At trial, the court determined that the longhorn cattle were “equipment” and not “inventory” because:

Allen did not acquire or hold them for the principal purpose of immediate or ultimate sale or lease.... Instead, the cattle were to be used principally for *1054 recreational cattle drives.... While Allen might have occasionally leased the cattle to other entrepreneurs, it was his intention to utilize the cattle principally in his own recreational business....

Thus, the court concluded that McCormick bought the cattle subject to Morgan County Feeders' security interest.

Although we recognize that the classification of cattle as “equipment,” rather than “inventory,” is highly unusual, we also recognize that the evidence presented to the trial court disclosed unusual circumstances, and we conclude that the record supports the court's classification.

Allen testified that his purpose for purchasing the longhorn cows was to use them on cattle drives and that these cows have a relatively long period of use in comparison to rodeo calves and feeder cattle. Several other witnesses also testified that Allen had stated his intent to use the longhorn cows for recreational cattle drives. Thus, the trial court was justified in rejecting McCormick's contention that the cattle were purchased only for rodeos. And, it did not err in finding that, under these unique circumstances, the cattle should be classified as “equipment.”

In light of this conclusion, we need not address McCormick's additional contention that the trial court erred in finding that McCormick was not a buyer in the ordinary course of business.

II.

[5] McCormick next contends that Morgan County Feeders authorized the sale of the 45 longhorn cows, and thereby waived its security interest in them, by allowing Allen to purchase them from his own checking account without remitting the proceeds to Morgan County Feeders. We disagree.

[Section 4-9-306\(2\) <<UCC § 9-306>>](#), C.R.S. (1991 Cum.Supp.) provides:

Except where this article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange, or other disposition thereof *unless the disposition was authorized by the secured party in the security agreement or otherwise*, and also continues in any identifiable proceeds including collections received by the debtor. (emphasis added)

The security agreement between Allen and Morgan County Feeders provided:

Cattle shall be released from Secured Party's security interest from time-to-time in conjunction with the sale of such cattle provided that Secured Party receives concurrently with such release, an amount equal to the entire net proceeds to Debtor from such sale until the entire outstanding principal balance of the Loans and all accrued interest is due and payable in full.

....

Debtor shall be in default under this Agreement upon the happening of any of the following events or conditions (Events of Default):

....

(e) the sale, lease, assignment, transfer or other disposition of a substantial amount of the assets of the Debtor except for cattle disposed of in the ordinary course of business ...

(f) ... sale or encumbrance of the Cattle (except as specifically allowed herein)....

Here, it is uncontroverted that Morgan County Feeders did not give written consent for the sale of the cattle to McCormick. Thus, any authorization must be implied from the conduct of the parties. We conclude there is record support for the trial court's conclusion that Morgan County Feeders did not impliedly waive its security interest.

[6] Implied authorization is a factual determination based upon the circumstances of the parties, the nature of the collateral, the course of dealing of the parties, and the usage of trade. [Mid-States Sales Co. v. Mountain Empire Dairymen's Ass'n](#), 741 P.2d 342 (Colo.App.1987).

[7] In certain circumstances, course of performance, which looks to repeated occasions or performance by the parties after or under the contract, is relevant to show a ***1055** waiver or modification of the agreement. Section 4-2-208 <<UCC § 2-208>>, C.R.S.; § 4-1-205 <<UCC § 1-205>>, C.R.S. (Official Comment 2). And, evidence of course of performance is admissible if it does not directly contradict the terms of a written agreement but merely explains or supplements it. [Great Western Sugar Co. v. Northern](#)

Natural Gas Co., 661 P.2d 684 (Colo.App.1982). See generally Annot., 37 A.L.R. 4th 787 (1985).

At trial, Allen testified that, “in most cases,” he paid for cattle from his checking account and then reimbursed the account with drafts drawn from Morgan County Feeders and made payable to himself. He also testified that he then either reimbursed Morgan County Feeders at a later date, or bought additional cattle. Finally, he testified that he did not recall ever having to obtain Morgan County Feeders' consent before purchasing cattle.

In contrast, Morgan County Feeders' cattle inspector testified that he did not know how Allen's business was run but that “everyone else” was required to notify Morgan County Feeders of sales of collateral and to obtain Morgan County Feeders' consent prior to the sales. Moreover, there was no evidence presented that Morgan County Feeders would have authorized Allen's sale of the cattle to McCormick without assurance of its receipt of the net proceeds.

Thus, there is evidence, albeit conflicting, to support the trial court's finding that Morgan County Feeders did not authorize the sale of the cattle to McCormick. See *U.S. v. Winter Livestock Commission*, 924 F.2d 986 (10th Cir.1991). See also *Western National Bank v. ABC Drilling Co.*, 42 Colo.App. 407, 599 P.2d 942 (1979); *Colorado Bank & Trust Co. v. Western Slope Investments, Inc.*, 36 Colo.App. 149, 539 P.2d 501 (1975) (auction company liable in the absence of clear unequivocal and decisive act by lender consenting to or ratifying sale).

Nor do we view *Moffat County State Bank v. Producers Livestock Marketing Ass'n*, 598 F.Supp. 1562 (D.Colo.1984) or *First National Bank & Trust v. Iowa Beef Processors, Inc.*, 626 F.2d 764 (10th Cir.1980) as requiring a different result. In *Moffat County*, the parties stipulated that the vice-president of the bank which held the security interest advised the debtor that he could sell his collateral, provided the debtor promptly brought the proceeds from the sales to the bank. Accordingly, the court found that the bank had expressly consented to the debtor's sale of the cattle and, as such, had waived its security interest in those cattle.

Similarly, in *First National Bank & Trust*, a case construing Oklahoma's version of the Uniform Commercial Code, the court noted that the bank holding the debtor's security interest acknowledged it would not have made a complaint if the proceeds from the sale of the collateral had been applied against the note as required in the security agreement. Thus, the court concluded that the bank gave the debtor actual authority to sell the collateral and held that the bank had waived its security interest.

Initially, we note that the vitality of both decisions has been substantially eroded by *U.S. v. Winter Livestock Commission, supra*, announced in 1991. Furthermore, even assuming the continued precedential value of *Moffat County* and *First National Bank*, we agree with the trial court that the facts here are distinguishable from those cases in several important respects: (1) Morgan County Feeders did not give Allen either actual or express authority to sell the cattle; (2) McCormick was not a good faith purchaser because he expressly designated Allen as his agent in the transaction with the result that Allen's knowledge of the facts and circumstances were imputed to McCormick; (3) the goods were sold privately rather than through an established marketing entity such as an auction barn or slaughterhouse and no effort was made to comply with applicable brand inspection laws; (4) the goods were not “farm products” and the seller (Allen) was not engaged in farming operations; (5) on December 14, 1989, Allen signed an agreement for repossession because he was in default and Morgan County Feeders became *1056 entitled to immediate possession of the cattle; and (6) after notice of the default, Allen nevertheless sold the cattle to McCormick on April 2, 1990, knowing that he lacked authority to do so.

In summary, while the courts in *Moffat County* and *First National Bank* analyzed the competing interests between two innocent parties, the trial court here faced no such dilemma. Therefore, we do not view *Moffat County* or *First National Bank* as dispositive.

The judgment is affirmed.

CRISWELL and RULAND, JJ., concur.

All Citations

836 P.2d 1051, 18 UCC Rep.Serv.2d 632

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Citing References (40)

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	1. Cooperative Finance Ass'n, Inc. v. B & J Cattle Co. 937 P.2d 915, 918 , Colo.App. COMMERCIAL LAW - After-Acquired Property. Perfected security interest that creditor obtained, pursuant to after-acquired property clause, had priority over retained interest of...	Apr. 17, 1997	Case		—
Cited by	2. Rich Floors, LLC v. Jaylon, Inc. 2010 WL 1332944, *5 , D.Colo. REAL PROPERTY - Landlord and Tenant. A shopping center landlord did not constructively evict a tenant by turning off the tenant's power service.	Apr. 05, 2010	Case		7 UCC Rep.Serv.2d
Cited by	3. In re Aluminum Extrusions, Inc. 2019 WL 5677572, *3+ , Bkrcty.N.D.Miss. This adversary proceeding is before the Court on the Motion for Summary Judgment (A.P. Dkt. # 67) filed by the Defendant/Counter-Plaintiff, Triumph Bank ("Triumph"), and the Motion...	Oct. 31, 2019	Case		2 3 UCC Rep.Serv.2d
Cited by	4. Pledger v. C.B. Form Co. 871 S.W.2d 333, 338 , Ark. Department of Finance and Administration appealed from order of the Chancery Court, Columbia County, Edward P. Jones, Chancellor, which found that taxpayer's forms were exempt from...	Feb. 21, 1994	Case		2 UCC Rep.Serv.2d
Cited by	5. RFC Capital Corp. v. EarthLink, Inc. " 2004 WL 2980402, *10 , Ohio App. 10 Dist. COMMERCIAL LAW - Secured Transactions. Finance company could bring action for impairment of security interest in internet service provider's dial-up customer base.	Dec. 23, 2004	Case		6 UCC Rep.Serv.2d
Cited by	6. Davenport v. Bates 2006 WL 3627875, *11 , Tenn.Ct.App. This case involves the repossession of two vehicles-a car and a truck. The buyer sued the seller claiming that he had repossessed the vehicles in violation of the sales contracts...	Dec. 12, 2006	Case		4 UCC Rep.Serv.2d
Cited by	7. DEBRA M. DELONG, EMPLOYEE, APPLICANT v. FAIRBANKS NORTH STAR BOROUGH, SELF INSURED EMPLOYER, DEFENDANT 2009 WL 5841322 (Alaska Work.Comp.Bd.), *26 The Alaska Workers' Compensation Board (Board) heard the employee's claim on June 26, 2008, at Fairbanks, Alaska. Attorney Robert M. Beconovich represented the employee. Attorney...	May 08, 2009	Administrative Decision		—
Mentioned by	8. McClamrock v. DISH Network LLC 2011 WL 7430006, *5 , N.D.Ga. This case is currently before the court on DISH's motion for summary judgment [Doc. No. 15] and McClamrock's motion to certify class [Doc. No. 8]. DISH distributes satellite...	Sep. 15, 2011	Case		7 UCC Rep.Serv.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
—	9. What constitutes secured party's authorization to transfer collateral free of lien under UCC sec. 9-306(2) 37 A.L.R.4th 787 This annotation collects and analyzes the state and federal cases in which the courts have discussed or decided what constitutes a secured party's authorization to transfer...	1985	ALR	—	5 UCC Rep.Serv.2d
—	10. Secured transactions: what constitutes "inventory" under UCC sec. 9-109(4) 77 A.L.R.3d 1266 This annotation collects and discusses those cases in which the courts have dealt with the specific question of what constitutes "inventory" under UCC § 9-109(4). Any local...	1977	ALR	—	1 UCC Rep.Serv.2d
—	11. Anderson on the Uniform Commercial Code s 1-205:4, § 1-205:4. Applicability Although usage of trade is relevant in interpreting a contract, it cannot be used to show that there was a contract. Consequently, the fact that persons in the trade ordinarily...	2019	Other Secondary Source	—	6 UCC Rep.Serv.2d
—	12. Anderson on the Uniform Commercial Code s 9-306:9, § 9-306:9. When is a sale authorized Authorization to a sale or other disposition can be express or implied. It can be shown by acts that constitute waiver or estoppel. It can occur through custom or course of...	2019	Other Secondary Source	—	6 7 UCC Rep.Serv.2d
—	13. Anderson on the Uniform Commercial Code s 1-205:64, § 1-205:64. Secured transactions Whether the secured creditor authorized the sale of the collateral is a fact question to be determined on the basis of the circumstances, the nature of the collateral, the parties'...	2019	Other Secondary Source	—	5 6 7 UCC Rep.Serv.2d
—	14. Anderson on the Uniform Commercial Code s 1-205:77, § 1-205:77. Secured transactions Whether the secured creditor authorizes a sale of the collateral is a fact question to be determined on the basis of the circumstances, the nature of the collateral, the course of...	2019	Other Secondary Source	—	5 6 7 UCC Rep.Serv.2d
—	15. Anderson on the Uniform Commercial Code s 9-109:11, § 9-109:11. Questions of law or fact The classification of goods is a question of fact. The classification of goods as consumer goods is a question of fact. However, it has also been held that the classification of...	2019	Other Secondary Source	—	4 UCC Rep.Serv.2d
—	16. Anderson on the Uniform Commercial Code s 9-109:12, § 9-109:12. Generally The classification of tangible collateral is determined by the principal use to which the collateral is put. The principal or predominant use to which the goods are actually put by...	2019	Other Secondary Source	—	2 4 UCC Rep.Serv.2d




Treatment	Title	Date	Type	Depth	Headnote(s)
—	17. Anderson on the Uniform Commercial Code s 9-109:41, § 9-109:41. Inventory Article 9 defines inventory in terms of use for resale or use for further production. Goods are inventory "if they are held by a person who holds them for sale or lease or to be...	2019	Other Secondary Source	—	3 UCC Rep.Serv.2d
—	18. Anderson on the Uniform Commercial Code s 9-109:51, § 9-109:51. Goods consumed in production Although the ordinary definition of inventory is stated in terms of goods held for resale, goods are also classified as inventory under Article 9 even though not held for resale if...	2019	Other Secondary Source	—	3 UCC Rep.Serv.2d
—	19. Anderson on the Uniform Commercial Code s 9-109:57, § 9-109:57. Equipment When goods are equipment they are not inventory. Furniture and other personal property used in a motel, restaurant, lounge, and guest rooms constitute equipment and not inventory....	2019	Other Secondary Source	—	1 UCC Rep.Serv.2d
—	20. Anderson on the Uniform Commercial Code s 9-109:64, § 9-109:64. Recreational goods Cattle that were used in recreational cattle drives constituted equipment and not inventory.	2019	Other Secondary Source	—	1 UCC Rep.Serv.2d
—	21. Anderson on the Uniform Commercial Code s 9-306:38, § 9-306:38. Questions of law or fact Non-Code law determines whether questions arising under UCC § 9-306 are questions of law or fact. The following issues, among others, involve questions of fact: whether the secured...	2019	Other Secondary Source	—	5 7 UCC Rep.Serv.2d
—	22. Anderson on the Uniform Commercial Code s 1-205:111, § 1-205:111. Secured transactions The "otherwise" provision of U.C.C. § 9-306 "includes authorization resulting from an implied waiver of the security interest and ... such an implied waiver may result from the...	2019	Other Secondary Source	—	5 6 7 UCC Rep.Serv.2d
—	23. Anderson on the Uniform Commercial Code s 1-303:78 [Rev], § 1-303:78 [Rev]. Secured transactions Whether the creditor authorizes a sale of the collateral is a fact question to be determined on the basis of the circumstances, the nature of the collateral, the course of dealing...	2019	Other Secondary Source	—	5 6 UCC Rep.Serv.2d
—	24. Anderson on the Uniform Commercial Code s 1-303:108 [Rev], § 1-303:108 [Rev]. Secured transactions A course of dealing between the creditor and the debtor's marketing agency may establish the creditor's consent to the application of the proceeds from the sale of collateral to...	2019	Other Secondary Source	—	5 6 UCC Rep.Serv.2d
—	25. Commercial Asset-Based Financing s 3:17, § 3:17. Written consent requirement Commercial Asset-Based Financing One common format for restricting a debtor's right to sell collateral is to prohibit sale of the collateral without prior written consent of the creditor. This language typically...	2019	Other Secondary Source	—	5 UCC Rep.Serv.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
—	26. Commercial Asset-Based Financing s 24:10, § 24:10. Livestock issues Commercial Asset-Based Financing Scope and perfection issues can be broadly distinguished in terms of issues involving livestock collateral and issues relating to the use of crops as collateral. The following...	2019	Other Secondary Source	—	1 5 UCC Rep.Serv.2d
—	27. Hawklnd Uniform Commercial Codes Series s 9–109:1, § 9-109:1. In general The Code drafters recognized that various forms of personal property might serve as collateral in a secured transaction. Broadly, the types of collateral fall either within the...	2019	Other Secondary Source	—	1 3 UCC Rep.Serv.2d
—	28. Hawklnd Uniform Commercial Codes Series s 9–109:3, § 9-109:3. Equipment Just as classification of collateral as consumer goods will control such important questions as whether filing is required, where filing must occur and the rights and...	2019	Other Secondary Source	—	1 3 UCC Rep.Serv.2d
—	29. Hawklnd Uniform Commercial Codes Series s 9–109:4, § 9-109:4. Farm products The classification "farm products" is extremely important in jurisdictions that are heavily agriculturally based. The most difficult problem with the Code's classification of farm...	2019	Other Secondary Source	—	1 3 UCC Rep.Serv.2d
—	30. Hawklnd Uniform Commercial Codes Series s 9–109:5, § 9-109:5. Inventory The final classification under section 9-109 is that of inventory, contained in subsection 9-109(4). The Code definition of inventory as goods held by a person who holds them for...	2019	Other Secondary Source	—	1 3 UCC Rep.Serv.2d
—	31. Hawklnd Uniform Commercial Codes Series s 9–102:10 [Rev], § 9-102:10 [Rev]. Goods The definition of goods contained in revised Section 9-102(a)(44) [Rev] as all things movable is similar to the definition contained in Article 2, Section 2-105(1) (and see also...	2019	Other Secondary Source	—	1 2 3 UCC Rep.Serv.2d
—	32. The Law of Debtors and Creditors s 7:48, § 7:48. Classifying the collateral—Official classifications—Goods—Farm products Article 9 requires for goods to be classified as farm products that the debtor be engaged in a farming operation and that the goods be crops, aquatic goods, livestock, supplies, or...	2019	Other Secondary Source	—	—
—	33. Uniform Commercial Code Transaction Guide s 34:5, § 34:5. Description of farm products By definition farm products include crops, livestock, supplies used or produced in farming operations, and unmanufactured products of crops or livestock, provided that these goods...	2019	Other Secondary Source	—	1 UCC Rep.Serv.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
—	34. White & Summers UCC s 33:33, § 33:33. Buyers of goods, sections 9-317, 9-320—Farm products and beyond Prior to the enactment of the Food Security Act, a person buying farm products from a person engaged in farming operations would not take free of a security interest created by the...	2019	Other Secondary Source	—	5 7 UCC Rep.Serv.2d
—	35. Am. Jur. 2d Secured Transactions s 56, § 56. Generally Am. Jur. 2d Secured Transactions "Equipment" is a subcategory of "goods." The term "equipment" is defined in Article 9 of the Uniform Commercial Code (U.C.C.) as goods other than inventory, farm products, or...	2019	Other Secondary Source	—	1 2 3 UCC Rep.Serv.2d
—	36. U.C.C. ARTICLE 9: PERSONAL PROPERTY SECURED TRANSACTIONS 48 Bus. Law. 1659 , 1668+ Article 9 continues to generate more decisions than any other Article of the Uniform Commercial Code (U.C.C.). One of the principal purposes of Article 9 is to provide a set of...	1993	Law Review	—	1 5 UCC Rep.Serv.2d
—	37. THE CREDITOR'S GUIDE TO THE TECHNOLOGY GALAXY: THE EFFECT OF TECHNOLOGY ON ARTICLE 9 AND REMOTELY DISABLING COLLATERAL 3 Charleston L. Rev. 665 , 687+ I. INTRODUCTION. 665 II. EQUIPMENT AS DEFINED BY THE U.C.C.. 668 III. OVERVIEW OF TRADITIONAL SELF-HELP REMEDIES UNDER THE U.C.C.. 670 IV. JUDICIAL AND LEGISLATIVE RESPONSES TO...	2009	Law Review	—	1 2 5 UCC Rep.Serv.2d
—	38. RECREATIONAL USE OF AGRICULTURAL LANDS 23 Colo. Law. 529 , 536 Recreational agricultural land use would appear to benefit everyone. The landowner receives additional income from his or her property, usually in a manner which does not interfere...	1994	Law Review	—	—
—	39. 15 J. High Tech. L. 1, THE GPL MEETS THE UCC: DOES FREE SOFTWARE COME WITH A WARRANTY OF NO INFRINGEMENT? 15 J. High Tech. L. 1 , 62+ C1-2Table of Contents I. Introduction# 3 II. Where Warranty of Noninfringement Claims for GPL'd Software Could Arise# 10 III. Whether Uniform Commercial Code Article 2 Applies...	2014	Law Review	—	1 UCC Rep.Serv.2d
—	40. P 55,608 PERFECTED SECURITY INTEREST PREVAILS OVER RIGHT TO RECLAIM Secured Transactions Guide Cattle as Inventory.—Under UCC § 9-109, cattle purchased by a corporation for the express purpose of resale was considered 'inventory' and not 'farm products.' If the buyer...	1997	Other Secondary Source	—	1 UCC Rep.Serv.2d

Table of Authorities (9)

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Mentioned	<p>1. Colorado Bank & Trust Co. v. Western Slope Investments, Inc.</p> <p>539 P.2d 501, Colo.App., 1975</p> <p>After cattle owner, who had pledged the cattle as security to bank by way of security agreement which required bank's approval before any sale of the cattle, had the cattle sold by...</p>	Case			1055
Cited	<p>2. First Colorado Bank & Trust, N.A. v. Plantation Inn, Ltd.</p> <p>767 P.2d 812, Colo.App., 1988</p> <p>Appeal was taken from order of the District Court, City and County of Denver, Clifton A. Flowers, J., which entered judgment in favor of creditor having security interest in...</p>	Case			1053+
Called into Doubt	<p> 3. First Nat. Bank and Trust Co. of Oklahoma City v. Iowa Beef Processors, Inc.</p> <p>626 F.2d 764, 10th Cir.(Okla.), 1980</p> <p>Bank, which held perfected security interest in cattle, sued cattle buyer. The United States District Court for Western District of Oklahoma, Luther B. Eubanks, J., entered...</p>	Case			1055+
Cited	<p> 4. Great Western Sugar Co. v. Northern Natural Gas Co.</p> <p>661 P.2d 684, Colo.App., 1982</p> <p>Gas customer brought action alleging breach of contract and fraud on part of natural gas pipeline company in connection with interruptions in service. The District Court, Logan...</p>	Case			1055
Cited	<p> 5. Mid-States Sales Co., Inc. v. Mountain Empire Dairymen's Ass'n, Inc.</p> <p>741 P.2d 342, Colo.App., 1987</p> <p>Creditor holding security interest in dairy farmer's cattle sued dairy farmer's marketing agent for agent's alleged conversion of creditor's collateral. The District Court, City...</p>	Case			1054
Called into Doubt	<p> 6. Moffat County State Bank v. Producers Livestock Marketing Ass'n</p> <p>598 F.Supp. 1562, D.Colo., 1984</p> <p>Bank brought action against livestock sale barn, claiming conversion of bank's property by virtue of sale at auction of cattle for the account of agricultural loan borrower, such...</p>	Case			1055+
Cited	<p>7. U.S. v. Winter Livestock Com'n</p> <p>924 F.2d 986, 10th Cir.(Colo.), 1991</p> <p>The United States brought action against a livestock broker, claiming that a conversion occurred when the broker sold borrowers' cattle and remitted the proceeds to the borrowers...</p>	Case			1055+

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	<p> 8. Western Nat. Bank of Casper v. ABC Drilling Co., Inc.</p> <p>599 P.2d 942, Colo.App., 1979</p> <p>Junior creditor brought action in replevin with respect to oil-drilling rig in which it had security interest, and senior creditor and seller of rig intervened, alleging prior...</p>	Case			1055
Cited	<p>9. What constitutes secured party's authorization to transfer collateral free of lien under UCC sec. 9-306(2)</p> <p>What constitutes secured party's authorization to transfer collateral free of lien under UCC sec. 9-306(2)</p> <p>1985 WL 287317, 1985</p> <p>This annotation collects and analyzes the state and federal cases in which the courts have discussed or decided what constitutes a secured party's authorization to transfer...</p>	Secondary Source			1055

Negative Treatment

There are no Negative Treatment results for this citation.

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Filings

There are no Filings for this citation.