University of Dayton Law Review

Volume 3 | Number 1 Article 11

1-1-1978

Secured Transactions: Financing Statement Signature Requirements

Garry W. O'Donnell
University of Dayton

SECURED TRANSACTIONS: Financing Statement Signature Requirements—*In re Save-On-Carpets of Arizona, Inc.*, 545 F.2d 1239 (9th Cir. 1976).

I. INTRODUCTION

Two key terms pervade the law of chattel security: attachment[1] and perfection.[2] The attachment of a security interest[3] between the secured party and the debtor must be perfected if the secured party is to be protected against third parties.[4] There are three ways in which a security interest may be perfected under Article 9 of the Uniform Commercial Code.[5] The perfection of a security interest may be accomplished through filing a financing statement,[6] possession of the collateral by the secured party,[7] or, in some cases, merely by attachment.[8] Most security interests may be perfected either by filing or possession depending on the type of collateral involved.[9]

When a security interest is perfected by filing notice, the document placed on record is referred to as a financing statement.[10] Filing a financing statement under Article 9[11] is the more common and perhaps the most important method of perfecting a security interest.[12] The filing requirements set forth in section 9-402(1) of the

---

1. Attachment is a technical term indicating the creation of a security interest between the secured party and the debtor. The official comment to § 9-203 of the Code sets out the basic prerequisites for the attachment of an enforceable security interest through the execution of a security agreement. The basic prerequisites to an enforceable nonpossessory security interest in cases not involving land include: "(a) a writing; (b) the debtor's signature; and (c) a description of the collateral or kinds of collateral." U.C.C. § 9-203, Comment 3. All citations are to the 1962 version of the Code and official comments unless otherwise noted.

2. *See* L. DENONN, SECURITY TRANSACTIONS UNDER THE ORIGINAL AND THE REVISED U.C.C. 38-39 (6th ed. 1974).

3. A security interest is "an interest in personal property or fixtures which secures performance of an obligation." U.C.C. § 1-201(37).

4. The judgment creditor, trustee in bankruptcy, and subsequent secured parties are three common examples of third party claimants.

5. L. DENONN, *supra* at 38.

6. U.C.C. § 9-402.

7. U.C.C. § 9-305.

8. U.C.C. § 9-302.

9. 2 W. HAWKLAND, A TRANSACTIONAL GUIDE TO THE UNIFORM COMMERCIAL CODE 605 (1964). "The first step in perfecting a security interest is to characterize the collateral so as to determine which options, if any, exist." *Id.*

10. U.C.C. § 9-402(4). G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY 346 (1965).

11. U.C.C. § 9-402.

12. J. WHITE & R. SUMMERS, UNIFORM COMMERCIAL CODE § 23-5, at 796 (1972). *See* note 53 and accompanying text *infra*.

Code are to a large extent technical and often escape critical notice as simply matters of accessory detail.[13] Such issues of technical formality are frequently the essence of chattel security law, however, and they are ignored at one's peril.[14]

Under the 1972 revision of Article 9 of the Code,[15] the financing statement must include: the names of the debtor and secured party, the signature of the debtor, the address of the secured party, and a description of the items of collateral.[16] Prior to the 1972 revision, the signature of the secured party was also required,[17] although there is no clear reason why.[18] One of the principal draftsmen of Article 9, Grant Gilmore, admits that there is no substantial reason why the creditor must sign.[19] The 1972 revision of Article 9 adopted this view, requiring the signature of only the debtor for both the security agreement and the financing statement.

In re Save-On-Carpets of Arizona, Inc.[20] is a recent decision focusing on the issue of what constitutes a "signing" under section 9-402(1) of the Code as adopted by Arizona.[21] The controversy over what constitutes a "signing" under section 9-402(1) has given rise

---

13. Ayer, *New Article 9 and the California Commercial Code*, 21 U.C.L.A. L. REV. 937, 981 (1974).

14. *Id.*

15. The revision of Article 9 is the result of several years' work by the Article 9 Review Committee and the Permanent Editorial Board for the Uniform Commercial Code. The study that produced the revised version of Article 9 was initiated by the Permanent Editorial Board after consideration of a report showing that more than 300 non-uniform, non-official amendments had been made to various sections of Article 9 in the adopting jurisdictions. The Board regarded this as a "distressing situation." The Board also took note of suggestions in articles and textbooks for improvements in Article 9. A "restudy in depth of Article 9" was recommended, and the Article 9 Review Committee was appointed to undertake it.

Two Preliminary Drafts prepared by the Review Committee in 1968 and 1970 were discussed at meetings of the American Law Institute, at meetings of interested sections of the American Bar Association, and at other sessions. The final draft was approved in 1971 and has been published as "1972 Official Text and Comments of Article 9—Secured Transactions." In addition to the revision of Article 9, minor amendments were also made in 1-105, 1-201(9) and (37), 2-107 and 5-116.

UCC REP. SERV. (Art. 9 Introductory Note, 1972 version). *See* notes 27 & 54 *infra*.

16. U.C.C. § 9-402(1) (1972 version).

17. The requirement that the secured party sign the financing statement under § 9-402(1) was confusingly in conflict with § 9-203(1) requiring only the signature of the debtor appear on the security agreement. *See* Gilmore, *supra* note 10 at 346.

18. "Commentators unanimously maintain that the creditor's signature is an unnecessary technicality, adds nothing to the veracity of the statement,and is unlikely to assist the researcher in uncovering information." White & Summers, *supra* note 12, at 835-36.

19. Gilmore, *supra* note 10 at 347.

20. 545 F.2d 1239 (9th Cir. 1976).

21. ARIZ. REV. STAT. § 44-3141 (Supp. 1976-77).

to a substantial amount of litigation deserving extended attention. The decision reached and the rationale applied by the Ninth Circuit in *Save-On-Carpets* will be analyzed in light of the principles and underlying policies of the Code and the development of the case law on point.

II. FACTS

Trend Mills, the creditor appellant, attempted to perfect a valid security interest in the property of Save-On-Carpets of Arizona, Inc.[22] The interest of the appellant was evidenced by a financing statement which was filed with the Arizona Secretary of State.[23] On March 6, 1974, Save-On-Carpets of Arizona, the debtor, was adjudged bankrupt.[24]

On March 19, 1974, the trustee for the bankrupt debtor filed a complaint and petition for authority to sell certain assets free of liens.[25] Three creditors appeared in the proceedings and asserted secured claims. It was during these proceedings that the perfection of the security interest of Trend Mills was initially challenged.[26] The perfection of the security interest was attacked on the ground that in the space provided for the signature of the secured party, there appeared no hand written name but only the typed name of the agent for Trend Mills.[27]

The bankruptcy court entered its judgment on April 18, 1975, allowing two of the creditors' claims as secured while rejecting the contention of Trend Mills that it had a perfected security interest in the property of Save-On-Carpets of Arizona, Inc.[28] The bank-

22. "In the original petition, the debtor listed Trend Mills as a creditor holding security with the collateral being inventory and stock in trade." Brief for Appellant at 2, *In re* Save-On-Carpets of Arizona, Inc., 545 F.2d 1239 (9th Cir. 1976) (citing the Record at 14).

23. The financing statement was filed with the Arizona Secretary of State on December 28, 1972. Brief for Appellant at 13, *Id.*

24. Brief for Appellee at 3, *Id.* (citing the Record at 35).

25. Brief for Appellant at 2-3, *Id.* (citing the Record at 36-37).

26. No issue was taken with the place of filing, as the financing statement was duly filed with the Arizona Secretary of State. Brief for Appellant at 13, *Id.*

27. It is interesting to note that Arizona has amended its Code, effective January 1, 1976, to conform with the 1972 revision of § 9-402(1), requiring only the signature of the debtor on the financing statement. ARIZ. REV. STAT. §] 44-3141(A)(Supp. 1976-77). The law in Arizona at the time the controversy arose and was heard, however, required that the signatures of both the creditor and the debtor appear on the financing statement. Nonetheless, the controversy over what constitutes a valid signature within the construction of § 9-402 remains. The 1972 revision of Article 9 has not yet been adopted by a majority of the states. Furthermore, the issue is a current one with respect to what constitutes a valid signature by the debtor.

28. Brief for Appellant at 6, *In re* Save-On-Carpets of Arizona, Inc., 545 F.2d 1239 (9th Cir. 1976) (citing the Record at 75).

ruptcy court ruled that Trend Mills had only an unsecured claim because of its failure to comply with section 44-3141 of the Arizona Code.[29] This conclusion was reached largely upon the finding by the bankruptcy judge that "the security agreement asserted by Trend Mills in support of its secured claim was acknowledged not to be signed by the secured creditor, Trend Mills."[30]

The United States District Court for the district of Arizona denied the motion for rehearing made by Trend Mills and, affirming the bankruptcy court, held that the creditor appellant did not have a perfected security interest in the assets of the bankrupt[31] under Article 9 of the Code as adopted by Arizona.[32] Trend Mills then appealed to the Ninth Circuit Court of Appeals.

III. DECISION

The Ninth Circuit found that the sole issue on appeal was "whether the district court erred in holding that the financing statement was not 'signed' as required by the Arizona statute."[33]

The examination of the record by the court of appeals resulted in a finding contrary to that of the bankruptcy court and district court. The crucial finding by the bankruptcy court, accepted by the district court, was that Trend Mills acknowledged it had not signed the financing statement.[34] Not only did the court of appeals determine that Trend Mills made no such acknowledgement, the court also found that the position of Trend Mills had "always been to the contrary."[35] Thus, the court determined the finding made by the bankruptcy court was clearly erroneous.

The court went on to hold that the typewritten name of the

---

29. "A. *A financing statement is sufficient if it is signed by the debtor and the secured party,* designated by typing or printing the names and addresses of both the debtor and the secured party and contains a statement indicating the types, or describing the items, of collateral." ARIZ. REV. STAT. § 44-3141(A) (1967) (emphasis added).

Section 402 of the Code's 1972 revision specifies that only the address of the secured party appear on the financing statement. *See* note 16 and accompanying text *supra.* The only apparent reason for the Arizona Code's additional requirement that the debtor's address also appear on the financing statement is to provide an additional source from which information concerning the security interest may be obtained.

30. Brief for Appellant at 5, *In re* Save-On-Carpets of Arizona, Inc., 545 F.2d 1239 (9th Cir. 1976) (citing the Record at 72-74).

31. *Id.* at 7 (citing the Record at 139).

32. ARIZ. REV. STAT. § 44-3101-53 (1967 & Supp. 1976-77).

33. 545 F. 2d at 1240.

34. *Id.*

35. *Id.* "It's our position that there, in fact, is a signature, a typewritten signature on the financing statement." *Id.* at 1240 n.4.

agent for Trend Mills was within the construction of the Arizona Code, defining "signed" as "includ[ing] any symbol executed or adopted by a party with present intention to authenticate a writing."[36] The court also noted the official comment to section 44-2208(39) recognizes that "no catalog of possible authentications can be complete and the court must use common sense and commercial experience in passing upon these matters."[37] Accordingly, the court found that the intent of Trend Mills to authenticate the financing statement was "objectively manifested by the direction that its corporate name and its credit manager's name be typed in the appropriate spaces, and by the submission of the financing statement to the Arizona Secretary of State for filing."[38] Under Article 9 as adopted by Arizona, the Ninth Circuit took the position that a "person or corporation" may effectively "sign a financing statement by a typewritten signature."[39]

A tripartite rationale was utilized to buttress the decision reached in *Save-On-Carpets*. First, the court theorized that the Arizona Supreme Court would clearly have reached the same conclusion.[40] Second, the court cited section 44-2202 of the Arizona Code, providing that "the Code shall be liberally construed and applied to promote its underlying purposes and policies."[41] Finally, the court reasoned that the financing statement as filed by Trend Mills "could in no way have misled potential creditors of the debtor or in any other way have detracted from the principles and policies of the Code."[42]

---

36. ARIZ. REV. STAT. § 44-2208(39) (1967 & Supp. 1976-77). U.C.C. § 1-201(39).

37. U.C.C. § 1-201, Comment 39.

38. 545 F.2d at 1240. "Any other interpretation would be contrary to commercial experience and our knowledge of business practices." *Id.*

39. *Id.* at 1241.

40. The court cited three cases in support of its contention that the Arizona Supreme Court would have reached the same conclusion. Maricopa County v. Osborn, 60 Ariz. 290, 136 P.2d 270 (1943); Benedict v. Lebowitz, 346 F.2d 120 (2d Cir. 1965); *In re* Sports Shack, 383 F. Supp. 37 (N.D. Cal. 1974).

41. ARIZ. REV. STAT. § 44-2202(A). U.C.C. § 1-102(1); ARIZ. REV. STAT. § 44-2202(B) and the U.C.C. § 1-102(2) enumerate those purposes and policies as:

1. To simplify, clarify, and modernize the law governing commercial transactions.
2. To permit the continued expansion of commercial practices through custom, usage and agreement of the parties.
3. To make uniform the law among the various jurisdictions.

42. 545 F.2d at 1241. *See* ARIZ. REV. STAT. § 44-3141(E) (1967). U.C.C. § 9-402(5).

IV. ANALYSIS

A. *Congruence with the Principles and Underlying Policies of the Code*

The Ninth Circuit's determination in *Save-On-Carpets* that the typewritten name of Trend Mills conformed to the Code's financing statement signature requirements rests largely upon the court's reliance on the text and official comments to section 1-201 of the Code.[43] In the official comment to that section, specific reference is made to the Code's recognition that "no catalog of possible authentications can be complete" and that the "question is always whether the symbol was executed or adopted by the party with present intention to authenticate the writing."[44] This approach to the issues surrounding Article 9 signature requirements is consistent with the Code's statement of "purposes and policies."[45] An examination of a particular symbol adopted by a party attempting to execute a valid signature based on a "present intention to authenticate" criterion is perhaps the most direct way to foster "the continued expansion of business practices through custom, usage, and agreement," while striving for modernization and uniformity "among the various jurisdictions."[46]

The 300 non-uniform and non-official amendments to the various sections of Article 9 were the primary catalyzing forces which led to the 1972 revision.[47] With respect to compliance with the Code's signature requirements, the "present intention to authenti-

---

43. "'Signed' includes any symbol executed or adopted by a party with present intention to authenticate a writing." ARIZ. REV. STAT. § 44-2208(39) (1967). U.C.C. § 1-201(39).

> The inclusion of authentication in the definition of "signed" is to make clear that as the term is used in this Act a complete signature is not necessary. Authentication may be printed, stamped, or written; it may be by initials or by thumbprint. It may be on any part of the document and in appropriate cases may be found in a billhead or letterhead. No catalog of possible authentications can be complete and the Court must use common sense and commercial experience in passing upon these matters. The question always is whether the symbol was executed or adopted by the party with present intention to authenticate the writing.

U.C.C. § 1-201, Comment 39.

44. Since the security interest and financing statement guidelines provided for in §§ 9-203 and 9-402 of the Code both list § 1-201 as a definitional cross reference for the term "signed," the same argument can also be made that the "present intention to authenticate" approach is applicable to the security agreement signature requirement contained in § 9-203(1)(b).

45. *See* note 41 *supra*.

46. *Id.*

47. *See* note 15 *supra*.

cate"[48] approach is one way to mitigate this "distressing situation"[49] and instill some degree of certainty and uniformity among the various adopting jurisdictions. An approach focusing on the intent of a party to authenticate, as opposed to a fanatical preoccupation with specific modes of effectuating a signature,[50] is one which more adequately accommodates and promotes the "continued expansion of commercial practices."[51]

The "present intention to authenticate" approach, spelled out by the Code and applied in the *Save-On-Carpets* decision, is also consonant with the system of "notice filing" as adopted by the Code's financing statement provisions.[52] Notice filing is said to serve a dual purpose. Filing a financing statement affords protection to third parties who might be misguided had they not known of the security interest. It also provides a method for the secured party to perfect a security interest which is more convenient to both the secured party and the debtor than placing the collateral in possession of the secured party.[53]

Filing a financing statement to perfect a security interest "indicates merely that the secured party who has filed may have a [valid] security interest in the collateral described."[54] The actual

---

48. *See* note 43 *supra.*

49. *See* note 15 *supra.*

50. *See* U.C.C. § 9-402, Comment 5: "[T]he policy of this Article [is] to simplify formal requisites and filing requirements and is designed to discourage the fanatical and impossibly refined reading of such statutory requirements in which courts have occasionally indulged themselves." *Id. See* notes 67-68 and accompanying text *infra.*

51. *See* note 41 *supra.*

52. Section 9-402 of the Code "adopts the system of 'notice filing.' " U.C.C. § 9-402, Comment 2. Further reference is made to the Code's adoption of "notice filing" in § 9-312(5)(a). In the case of conflicting security interests in the same collateral, priority is determined on the basis of "the order of filing if both are perfected by filing, regardless of which security interest attached first under Section 9-204(1) and whether it attached before or after filing." U.C.C. § 9-312(5)(a).

53. Haydock, *Certainty and Convenience—Criteria For The Place Of Filing Under The Uniform Commercial Code*, 3 B.C. INDUS. L. REV. 179 (1961-62).

54. U.C.C. § 9-402, Comment 2. "Further inquiry from the parties concerned will be necessary to disclose the complete state of affairs." *Id.*

There are many instances under the Code where a security agreement may double as a financing statement. "A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor." U.C.C. § 9-402(1). This was one of the primary reasons why the 1972 version of Article 9 dropped the requirement that the secured party also sign the financing statement to conform with the security agreement provision that only the debtor must sign.

> Subsection (1) has been changed to require only the signature of the debtor rather than that of the secured party. The requirement of signatures of secured parties has sometimes misled secured parties, who are accustomed to pre-Code practice and real estate practice under which only the debtor, not the secured party, need sign such

attachment of an enforceable security interest turns on the issue whether the interested parties have complied with the prerequisites set out in the Code for the execution of a security agreement.[55] Given the attachment of an enforceable security interest, the financing statement provides the filer with a method convenient to both the secured party and the debtor to perfect the security interest. Furthermore, "notice filing" provides the third party searcher with a vehicle to protect himself from being misled about the extent to which a potential debtor's collateral may already be encumbered.

The synergistic effect of the liberal construction of "signed"[56] and the dual purpose of "notice filing"[57] supports the decision rendered in *Save-On-Carpets* that the typed name of a corporation or person appearing on a financing statement may constitute a valid signature within the construction of the Code. The threshold determinant then becomes whether the party attempting to effectuate a signing has demonstrated the "present intention to authenticate."[58] A typed name is certainly within the scope of "possible authentications"[59] and it is hard to conceive of any manner in which it would detract from the dual purpose of "notice filing." So long as the correct names of the secured party and the debtor, the address of the secured party,[60] and a description of the collateral involved appear on the financing statement, the symbol adopted to effectuate a signature will be of no consequence to the ability of a third party searcher to locate the information he seeks. Furthermore, the "present intention to authenticate" approach places the financing statement signature requirement in congruence with the particular commercial practices of both the debtor and secured party.[61] Thus, the convenience of notice filing is enhanced and the underlying purposes and policies of the Code are promoted.

---

instruments as chattel mortgages and real estate mortgages. Thus, when the security agreement was used as the financing statement, it might have been defective under the 1962 Code for failure to have the signature of the secured party.

U.C.C. § 9-402 (Appendix) (Reasons for 1972 Change).

55. U.C.C. § 9-203. *See* note 1 *supra.*

56. *See* note 43 *supra.*

57. *See* notes 52-53 and accompanying text *supra.*

58. *See* notes 43-44 and accompanying text *supra.*

59. U.C.C. § 1-201, Comment 39. *See* note 43 *supra.*

60. The Arizona Code requires that the address of the debtor also appear on the financing statement. *See* note 29 *supra.*

61. The signature of the secured party is still required in those jurisdictions that have not yet adopted the 1972 revision of Article 9. U.C.C. § 9-402(1).

B. *Precedential Support and Countervailing Case Law*

Save-On-Carpets draws precedential support from the three cases cited in that opinion and other case law on point.[62] In *Maricopa County v. Osborn*[63] the Supreme Court of Arizona held that a "signature may be written by hand, or printed, or stamped, or typewritten, or engraved, or photographed, or cut from one instrument and attached to another."[64]

Benedict v. Lebowitz[65] is a Second Circuit case on point with the issues presented in *Save-On-Carpets.* In *Benedict* the creditor prepared a financing statement and attempted to sign the instrument by typing his name in the appropriate box. As in *Save-On-Carpets,* the *Benedict* court construed sections 1-201(39) and 9-402 as permitting a typewritten signature to effectuate a vaid signing where there is demonstrated an "intention to authenticate the writing."[66] Again, as in *Save-On-Carpets,* the *Benedict* court interpreted the direction by the creditor that his name appear on the financing statement and his subsequent act of filing the statement as clearly establishing the intent to authenticate that document.[67] Another similarity is that both the *Save-On-Carpets* and *Benedict* decisions applied the "seriously misleading" standard in deciding the issue of compliance with the financing statement signature requirement.[68]

---

62. In addition to the three cases cited by the court in support of its decision, there exists other case law on point and consistent with its interpretation of "signed." Joseph Denunzio Fruit Co. v. Crane, 79 F. Supp. 117 (D.C. Cal. 1948) (a pre-Code case holding the term signature includes any mark or sign written or placed on a document with the intent to execute or authenticate a writing); *In re* State Discount Furniture Co., Inc., 2 UCC REP. SERV. 20 (Ref. Dec. D. Conn. 1964) (debtor's name printed on a financing statement constitutes a signing); *In re* Horvath, 1 UCC REP. SERV. 624 (Ref. Dec. D. Conn. 1963) (typed name of creditor corporation on a financing statement constitutes a sufficient signing).

In Alloway v. Stuart, 385 S.W.2d 41 (Ky. 1964), the court went as far as to effectively read the signature requirement out of the Code's financing statement provisions.

> In [*Alloway*], the Kentucky court finds its standard of substantiality in the statutory purpose of providing notice; since the absence of a secured party's signature would almost never deprive any would-be creditor of notice where the name otherwise appears on the financing statement, the court has effectively read the signature requirement out of the statute—at least for the purpose of judicially determining the sufficiency of a financing statement. (footnote omitted).

65 COLUM. L. REV. 922, 923 (1965).

63. 60 Ariz. 290, 136 P.2d 270 (1943). The issue of what constitutes an effective signing arose in the context of the redemption of county highway bonds.

64. *Id.* at 292, 136 P.2d at 274.

65. 346 F.2d 120 (2d Cir. 1965).

66. *Id.* at 122.

67. *Id.*

68. "A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading." U.C.C. § 9-402(5). *See* note 42 and accompanying text *supra.*

Notwithstanding the validity of an attempt to execute an effective signature, section 9-402(5) of the Code provides that an imperfect signing may adequately satisfy the financing statement signature requirement if the imperfection is a minor error which is not seriously misleading.[69] The *Benedict* court found that the typed signature of the secured party was not seriously misleading and did not render the financing statement ineffective.[70]

In re Sports Shack[71] is a more recent district court decision forwarding a similar construction of the financing statement signature requirements on the basis of section 1-201(39) of the Code, its purposes and policies, and the "seriously misleading" standard. The *Sports Shack* court held that a handwritten inscription "sufficiently indicates the necessary intent" on the part of the secured party to comply with signature requirements of a financing statement.[72] The court went on to find that there was nothing inconsistent with the purposes and policies of the Code,[73] nor seriously misleading[74] about a handwritten inscription executed as a signature.

Notwithstanding this precedential support, there exists countervailing case law militating against the decision reached by the court in *Save-On-Carpets.*[75]

The deterrent effect on the party actually signing impressed the Court in *In re Carlstrom.*[76]

> Signatures are a simple and reliable means of linking the signatories to fraud or of exposing them to liability for failure to comply with statutory and contractual duties or for damages caused by inaccurate or "greedy" filing. Because of the probative value of signatures there is some deterrent effect inherent in any requirement that signatures

69. *Id. See* note 53 and accompanying text *supra.*

70. 346 F.2d 120, 122.

71. 383 F. Supp. 37 (N.D. Cal. 1974).

72. *Id.* at 39.

73. *Id.*

74. *Id.* at 41.

75. Little v. County of Orange, 31 N.C. App. 495, 229 S.E.2d 823 (1976), is a recent decision which has been reported to stand for the proposition that the typed name of a corporation on a financing statement is insufficient to serve as a signature. More accurately, the *Little* decision turned on the fact that the security instrument was not signed by "any corporate officer in his official capacity." *Id.* at 498, 229 S.E.2d 825.

It is apparent that the *Little* court found merit in the appellee's contention that "[w]hile a typed name may arguably be sufficient to give notice to interested persons of the name of the secured party, it should not be sufficient to create the security interest and encumber the debtor's property when the debtor has nowhere else signed the security agreement." Brief for Appellee at 8, Little v. County of Orange, 31 N.C. App. 495, 229 S.E.2d 823 (1976). The court did not refer to the Code's § 1-201(39) signature guidelines.

76. 3 UCC REP. SERV. 766 (Ref. Dec. D. Me. 1966).

> be affixed on documents available for public inspection as a prerequisite to validity. It follows as a matter of course that where the probative value of a signature is lacking so also is its deterrent effect.[77]

Since the space provided on the statement for the signature of the secured party was left blank, *In re Carlstrom* is distinguishable from *Save-On-Carpets.*[78]

The court in *In re Carlstrom* went on, however, to find section 1-201(39) inconsistent with the context of section 9-402 of the Code:

> A construction more consonant with the context, language and rationale of § 9-402 is that the financing statement must bear a symbol affixed by the secured party or its authorized representative which is susceptible of evidentiary connection to the signatory. Insofar as § 1-201(39) serves to elevate "any symbol" to the status of a sufficient signature without regard to its evidentiary value it must be held to be inconsistent with the context of § 9-402 and hence inapplicable.[79]

This interpretation is somewhat of an anomaly since the official comment to section 1-201(39) does recognize that the crucial question "is whether the symbol was executed or adopted with present intention to authenticate the writing."[80] Furthermore, if it is determined that a party has indeed "executed or adopted" a particular symbol "with present intention to authenticate," then it is at least arguable that the "deterrent effect" of a signature was operative at the time of the actual signing. Nonetheless, this position was adopted by the Supreme Court of Maine in *Maine League Federal Credit Union v. Atlantic Motors.*[81]

In re Kane[82] went one step further and construed the signature provision of section 9-402 of the Code as necessitating the extraordinary requirement of a "signature manually produced by a writing instrument."[83]

---

77. *Id.* at 771.

78. Trend Mills, the secured creditor in *Save-On-Carpets*, attempted to sign the financing statement by directing that its name be typed in the appropriate space.

In re Glass, 4 Secured Transactions Guide ¶ 52,700 (N.D. Ala. Dec. 30, 1975), is a more recent case supporting the decision reached in *Carlstrom*. *Glass* similarly held that the creditor had only an unsecured claim as the space provided on the statement for the signature of the secured party was left blank. Thus, it is also distinguishable from *Save-On-Carpets*.

79. 3 UCC Rep. Serv. 766, 772-73.

80. *See* note 43 *supra.*

81. 250 A.2d 497 (Me. 1969).

82. 1 UCC Rep. Serv. 582 (Ref. Dec. E.D. Pa. 1962).

83. *Id.* at 586-87.

> Signatures in the modern world of commerce appear in many forms. There are stampings of signature facsimiles, printed facsimiles, photo-facsimiles, and other chemical and mechanical reproductions, to mention a few. As I construe the Code however, the provision "signed by the debtor and secured party" appearing in Section 9-402 of the Code means an actual signature manually produced by a writing instrument in the hand of the signer in direct contact with the document being executed.[84]

Such extraordinary interpretations of section 9-402, as the ones rendered in *In re Carlstrom* and *In re Kane,* stand in total disregard for the signature guidelines provided in section 1-201,[85] the "seriously misleading" standard found in section 9-402(8),[86] and the underlying purposes and polices of the Code.[87]

V. CONCLUSION

The extraordinary requirements set by *In re Carlstrom* and *In re Kane* manifest a judicial imposition of a "fanatical" construction of the Code which the drafters labored to purge.[88] *Alloway v. Stuart* exemplifies the other extreme of the spectrum of possible constructions given the signature requirement of section 9-402. A judicial determination, as the one reached in *Alloway,* effectively reading the signature requirement out of the financing statement provisions, is equally as "fanatical" as the decisions rendered by the *In re Carlstrom* and *In re Kane* courts.

Hopefully, future decisions in chattel security law will pursue the enlightened views of the Second Circuit in *Benedict* and the Ninth Circuit in *Save-On-Carpets,* where it was held that a typewritten name of a corporation constitutes a valid signature under Article 9 of the Code. Consideration of "the nature of any alleged defect, its impact upon others and the intention of both debtor and the secured party"[90] comports with the underlying purposes and policies of the Code, the text and official comments of both the signature guidelines provided in section 1-201(39) and the "seriously misleading" standard outlined in section 9-402(8), and the Code's

---

84. *Id.*
85. *See* note 43 *supra.*
86. *See* note 68 and accompanying text *supra.*
87. *See* notes 41, 45 and accompanying text *supra.*
88. *See* U.C.C. § 9-402(8), Comment 9; White & Summers, *supra* note 12, at 837.
89. *See* note 62 *supra.*
90. Brief for Appellant at 20, *In re* Save-On-Carpets of Arizona Inc., 545 F.2d 1239 (9th Cir. 1976) (citing Calloway v. Admiral Credit Corp., 407 F.2d 518 (4th Cir. 1969)).

system of "notice filing." *Save-On-Carpets* delivers the enlightened view of chattel security law to the Ninth Circuit.

Garry W. O'Donnell