

Denver Law Review

Volume 66
Issue 4 *Tenth Circuit Surveys*

Article 34

February 2021

Secured Transactions

Denver University Law Review

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Denver University Law Review, Secured Transactions, 66 Denv. U. L. Rev. 795 (1989).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

SECURED TRANSACTIONS

First National Bank of Amarillo v. Southwestern Livestock, Inc., 859 F.2d 847

Appellant Southwestern Livestock appeals the district court's judgment in favor of the plaintiff bank. The issues before the court included: (1) whether an auction house acting as the livestock owners's agent, is liable in conversion to a secured creditor of the owner, whose agreement denied authority to sell the livestock as it served as collateral; and if so (2) whether the fact that the buyers of the auctioned cattle took free of the security interest, or that the creditors failed to perfect its security interest in Kansas, should relieve the auction house of liability. Affirmed.

The bank loaned money to the Newmans of Oklahoma, to help finance their cattle operation. The plaintiff took a security interest in the cattle which was perfected in Oklahoma. The Newmans sold the cattle in violation of the security agreement through the defendant's auction barn in Kansas. The defendant auctioned the cattle in good faith and without actual knowledge of the bank's security interest, but was held liable for conversion as commission agent. Because the Uniform Commercial Code does not address the conversion liability of commission agents, the district court relied on the common law of Kansas which states that commission agents are liable for conversion despite an assertion of good faith or ignorance of the principal's want of title. The district court determined that liability is based exclusively on the authority of the agent's principal to sell the collateral. Whether the buyer would take free of the security interest is irrelevant in that determination. The bank's failure to perfect its security interest in Kansas does not serve to relieve the defendant of liability.

