
SECURED TRANSACTIONS – ASSIGNMENT OF ACCOUNTS RECEIVABLE

The Court of Appeals of New York held that, under UCC § 9-406, an “assignee” includes the holder of a security interest in an account debtor’s receivables and that such a holder can oblige an account debtor to remit payments directly to the secured party, even before a default. *Worthy Lending LLC v. New Style Contractors, Inc.*, 201 N.E.3d 783 (N.Y. 2022).

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In *Worthy Lending LLC v. New Style Contractors, Inc.*, the Court of Appeals of New York addressed whether, under the language of U.C.C. § 9-406 and U.C.C. § 9-607, a secured party may enforce collection of a debtor’s receivables directly from the account debtor and whether language found in U.C.C. § 9-406 regarding assignments also pertains to secured lending parties. Upon review, the Court of Appeals ruled that “[u]nder [U.C.C.] § 9-406, a security interest is an assignment, and the [U.C.C.] is purposely structured to permit a debtor to grant creditors security interests in a debtor’s receivables so that the secured creditor can direct account debtors to pay it directly.”¹

On October 11, 2019, Checkmate Communications LLC (“Checkmate”) entered into a Promissory Note and Security Agreement (the “Agreement”) with Worthy Lending LLC (“Worthy”) to borrow up to \$3 million from Worthy, an amount that could be increased. As part of the Agreement, Checkmate granted Worthy a security interest in which virtually all of Checkmate’s assets would serve as collateral for the Agreement. Among these assets were the balances of Checkmate’s customer receivables accounts, including those owned by New Style Contractors (“New Style”), a company that Checkmate served as a subcontractor. The Agreement also permitted Worthy, per U.C.C. § 9-406, to notify account debtors such as New Style of the arrangement and to enforce remittance of account payments to Worthy, even before a default. Checkmate was not to interfere with the collection process.²

Worthy filed a U.C.C.-1 Financing Statement with New Jersey’s Secretary of State to perfect its security in Checkmate’s assets and notified New Style of its security interest in the accounts per the Agreement terms on October 2, 2019, stating that all subsequent payments should be made to Worthy. The notice did not excuse New Style from liability to Worthy if New Style remitted payments to any party other than Worthy.

Checkmate subsequently defaulted on the note and, following an acceleration of all obligations and payments by Worthy, filed for

¹ *Worthy Lending LLC v. New Style Contractors, Inc.*, 201 N.E.3d 783, 784 (N.Y. 2022).

² *Worthy Lending LLC*, 201 N.E.3d at 785.

bankruptcy while still owing more than \$3 million on the Promissory Note. Worthy then sued New Style for the balance of the receivables owed to Checkmate. Notably, Worthy accused New Style of remitting payments to Checkmate, which was expressly forbidden in Worthy's notice to New Style.³

At trial, New Style moved to dismiss Worthy's complaint, and the Supreme Court granted the motion, citing that section § 9-607 of New York's U.C.C. (which is identical to standard U.C.C. language)⁴ "does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party."⁵ Additionally, the Supreme Court determined that U.C.C. § 9-607's application to assignments rather than security interests prevented Worthy, a secured interest holder, from utilizing the section's language to pursue remittances from New Style. The Appellate Division affirmed the dismissal, holding that Worthy, as a secured party rather than an assignee, possessed no actionable claim against New Style under U.C.C. § 9-607(e) despite Worthy's direction to New Style to pay them instead of Checkmate.⁶

On appeal, the New York Court of Appeals recognized the U.C.C. statutory language and accompanying U.C.C. Permanent Editorial Board ("PEB") commentary as contradicting the lower courts' holdings and found that Worthy was within its rights to demand remittance from New Style. The court first addressed whether U.C.C. § 9-607(e) limited Worthy's rights to enforce New Style's obligations as to Checkmate's receivables.⁷ The court rejected the lower courts' claim that the language stating the section "does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party" precluded Worthy from using U.C.C. § 9-607.⁸ This language serves merely as a disclaimer that the subsection "does not itself" determine such rights. Secured parties can contract for the right to pursue an account debtor for a debtor's obligations before a default, which Worthy did.⁹ The PEB's commentary accordingly expresses that section § 9-607 "permits a secured party to collect and enforce obligations included in its capacity as a secured party."¹⁰

Next, the court rejected New Style's argument that actions under U.C.C. § 9-607 are only available to assignors, given U.C.C. § 9-406's use

³ *Id.*

⁴ *Id.* at 786.

⁵ *Worthy Lending LLC.*, 201 N.E.3d at 785 (quoting U.C.C. § 9-607(e)).

⁶ *Id.* at 785–86.

⁷ *Id.* at 786.

⁸ *Worthy Lending LLC.*, 201 N.E.3d at 786 (quoting U.C.C. § 9-607(e)).

⁹ See U.C.C. § 9-607(a)(3).

¹⁰ *Worthy Lending LLC.*, 201 N.E.3d at 786 (quoting U.C.C. § 9-607, cmt 6).

of terms relating to assignments as opposed to security interests. Uniform Commercial Code § 1-201(b)(35) defines a security interest, and the remainder of section § 1-201(b) “contains no separate definition for an ‘assignee’, ‘assignor’, or ‘assignment.’”¹¹ Nevertheless, as the PEB commentary describes, a security interest and an assignment are treated synonymously under the U.C.C. to encourage efficient party contracting. Therefore, the term “assignment” within Article 9 of the U.C.C. can refer to a security interest.¹²

The court plainly rejected the caselaw offered by New Style regarding the definitional issue. The cases’ arguments, particularly that of *IIG Capital LLC v. Archipelago, L.L.C.*¹³ stating that U.C.C. § 9-406’s use of assignments does not include security interests, have been directly cited by the PEB as “incorrect.” Specifically, the PEB asserts that section § 9-607 addresses collection rights against debtors, while section § 9-406 addresses collection rights against account debtors.¹⁴ Accepting such a limited definition of “assignment” would leave Article 9 without a framework for addressing account debtors’ “rights, claims, duties, and defenses” within security interest agreements.¹⁵

New Style also contended that the presence of a “dispute” between Checkmate and New Style prevents Worthy from using section § 9-607(a), which begins with “[i]f so agreed.” However, the court rejected this contention, stating that allowing debtor-claimed disputes to nullify agreements under section § 9-607 along with § 9-406 “would render those provisions meaningless by removing the ability to obtain the value of the security whenever the debtor claims a dispute exists.”¹⁶ Thus, the court concluded that the Agreement between the debtor (Checkmate) and the creditor (Worthy) is valid. As the account debtor, New Style can only discharge its duty by paying Worthy or requesting proof of debt assignment.¹⁷

Finally, the court discarded the concerns of the lower courts over how New Style, if obliged to pay Worthy, would incur a double payment,

¹¹ *Worthy Lending LLC.*, 201 N.E.3d at 787.

¹² See Permanent Editorial Board of the Uniform Commercial Code, *PEB Commentary No. 21 Use of the Term 'Assignment' in Article 9 of the Uniform Commercial Code (March 11, 2020)*, 75 Bus. Lawyer 2271 (2020) [hereinafter *PEB Commentary No. 21*].

¹³ 36 A.D.3d 401 (N.Y. App. Div. 2007),

¹⁴ *PEB Commentary No. 21*, 75 Bus. Lawyer at 2250–51.

¹⁵ *Id.* at 2251.

¹⁶ *Worthy Lending LLC.*, 201 N.E.3d at 788.

¹⁷ See U.C.C. § 9-406(a), (c).

given their previous payments to Checkmate after Worthy's notice to New Style of the Agreement. The court noted that "the statutory consequence of failing to pay a secured party who has notified the account debtor to pay the secured party directly" falls on the account debtor and that such account debtors will still be liable to an assignee for payment even if they continue to pay the assignor.

With the language of U.C.C. §9-607 and §9-406 clarified, the court reversed the dismissal order by the lower courts and remitted the case for further proceedings, ruling that Worthy was within its contractual and statutory rights to enforce payment from New Style under U.C.C. § 9-607. The court further asserted that U.C.C. § 9-406 includes security interests within the scope of "assignments."

The Court of Appeals' decision sends a clear message to account debtors: if notification has been received from a secured creditor to remit assigned receivables to the secured party, account debtors must ensure to remit all payments to the secured creditor instead of the debtor or seek legal counsel, lest the court enforce a double payment in the event of a lawsuit. For borrowers, this case underscores the importance of careful contracting. Indeed, many borrowers would do well to alert their account debtors to these types of security agreements that afford lenders such expansive collection rights in the borrowers' receivables.