

IN RE BARNES

United States District Court, D Maine, September 15, 1972
 Bankruptcy No. BK 72-129ND, No. BK 72-130ND

[¶ 9109] **Consumer goods—automobile for transportation to and from work.**
 The use of a vehicle by its owner for purposes of traveling to and from his employment is a personal, as opposed to a business use, as that term is used in UCC § 9-109(1), and the vehicle will be classified as consumer goods rather than equipment. The phraseology of § 9-109(2) defining equipment as goods used or bought for use primarily in business seems to contemplate a distinction between the use of collateral "in business" and the mere use of the collateral for some commercial, economic or income-producing purpose by one not engaged "in business."

[¶ 9109, ¶ 9401] **Classification of goods—effect of changed use of collateral after security interest attached.**

Where a debtor buys goods primarily for a personal use, but thereafter actually uses the goods primarily "in business," UCC § 9-109(1) and (2) would seem to require a dual classification of the collateral, if not an inconsistent one, as both consumer goods and equipment. **Upon such classification turn important commercial and legal decisions,** such as the necessity and place for filing a financing statement to perfect a security interest in the collateral. **The more appropriate juncture at which to test the actual use to which the collateral is put** is at or as near as may be to the time when the security interest attached. Approached in this fashion, subsections (1) and (2) of § 9-109 do not result in dual or inconsistent classifications of the collateral. This is in accordance with § 9-401(3) regarding the duration of an effective filing even though the use of the collateral is changed after the original filing. Thus, where a debtor had purchased a truck originally for transportation to and from work, which was therefore "consumer goods" at the time the security interest attached, even though he later used it in his business so it would have qualified as "equipment," for filing purposes, the equipment remained consumer goods and a financing statement filed in the local filing office designated by Maine § 9-401(1)(a) was effective to perfect the creditor's security interest.

UCC Sections Cited: § 9-109(1), (2), § 9-401(1)(a), (3).

CONRAD K. CYR, Referee in Bankruptcy. The Aroostook Trust Company seeks to reclaim two vehicles on the strength of its purchase money security interests. Financing statements were filed by the bank with the office of the clerk of the Town of Mars Hill, the municipality of the bankrupts' residence. The trustee in bankruptcy opposes the reclamation of one of the vehicles, a 1970 Ford ½ ton pick-up truck, on the ground that the purchase money security interest is unperfected for failure to file a financing statement in the office of the Secretary of State.¹

¹ See 11 MRSA § 9-401(1)(c). See also In re Morton, 9 UCC Rep 1147 (D Me 1971).

The appropriate filing place turns upon the classification of the collateral as consumer goods or equipment. The Uniform Commercial Code classifies goods as consumer goods ". . . if they are used or bought for use primarily for personal, family or household purposes. . . ." ²

The thrust of the bankrupt's testimony was that the pick-up truck was used "50% anyway" for "business purposes," primarily for transporting machinery and equipment to and from nearby cemeteries which he was responsible for maintaining. He was reimbursed for his fuel costs by the Town of Mars Hill. In addition, the bankrupt used this vehicle to deliver inventory from wholesalers to the retail ski shop which he operated during the winter months immediately preceding his adjudication in bankruptcy. Despite its imprecision the bankrupt's testimony tends to substantiate the contention of the trustee in bankruptcy that the primary use to which this vehicle was put was not in the nature of a personal, family or household purpose. But the rights of the parties here do not appear to turn upon the actual use to which the vehicle was devoted. Collateral is to be classified as "consumer goods" if it is "used or bought for use" primarily for personal, family or household purposes.

The bankrupt testified unequivocally that he bought this vehicle to provide himself with a means of travel to and from his work as an employee of the Town of Mars Hill, prior to the time he undertook the additional responsibility of cemetery maintenance. It is the court's opinion that the use of a vehicle by its owner for purposes of traveling to and from his employment is a "personal," as opposed to a business use, as that term is used in UCC § 9-109(1). The phraseology of UCC § 9-109(2), defining "equipment" as goods used or bought for use primarily "in business" seems to contemplate a distinction between the use of collateral "in business," and the mere use of the collateral for some commercial, economic or income-producing purpose by one not engaged "in business."

The problem is not so easily resolved, however. Section 9-109(2) defines "equipment" as goods ". . . used or bought for use primarily in business . . ." Where the debtor buys goods primarily for a personal use, but thereafter actually uses the goods primarily "in business," subsections (1) and (2) of § 9-109 would seem to require a dual classification of the collateral, if not an inconsistent one. Upon such classification turn important commercial and legal decisions, such as the necessity and place for filing a financing statement to perfect a security interest in the collateral.

² 11 MRSA § 9-109(1).