

**SENTRY SELECT INSURANCE CO. V. LBL SKYSYSTEMS (U.S.A.), INC.**  
**486 F. Supp. 2d 496 (E.D. Pa. 2007)**

DUBOIS, District Judge.

**I. INTRODUCTION**

Plaintiff Sentry Select Insurance Company (“Sentry Select”) is a judgment debtor under a judgment .... in favor of plaintiff LBL Skysystems (U.S.A.), Inc. (“LBL”) and against Sentry Select and APG-America, Inc., in the sum of \$1,566,381.00 (the “LBL Judgment”)....

Plaintiff[] initiated the instant action ... by interpleader complaint .... [seeking] a judicial determination of entitlement to the proceeds of the LBL Judgment.

Presently before the Court are a Motion for ... Summary Judgment ... filed by St. Paul, and the Cross-Motion of Solera/DCM Seeking ... Summary Judgment ....

**II. BACKGROUND**

**A. LBL Judgment**

On July 25, 2002, LBL filed a Complaint against APG-America, Inc. ... seeking damages relating to APG’s alleged breach of a contract between APG and LBL. On August 29, 2002, LBL filed an Amended Complaint against APG and Sentry Select, APG’s surety on the contract. Following a bench trial, ... the Court entered judgment in favor of LBL and against APG and Sentry Select in the total amount of \$1,566,381, plus interest ....

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**C. Pleadings of the Interested Defendants**

*1. St. Paul*

.... St. Paul claims priority to the proceeds of the LBL Judgment based upon an alleged prior perfected security interest in LBL’s assets. St. Paul argues that (1) LBL and St. Paul’s predecessor, London Guarantee, entered into a security agreement granting St. Paul a security interest in, *inter alia*, “all of LBL’s property, assets, rights and undertakings of any kind, at any time, wherever situated”; (2) pursuant to that agreement St. Paul issued bonds guaranteeing the completion of LBL’s work under its construction contracts; (3) St. Paul perfected the security interest in LBL’s assets by filing a UCC-1 Financing Statement with the New York Secretary of State on November 4, 2002; and (4) LBL is currently indebted to St. Paul for “approximately \$13 million in connection with bonds that [St. Paul] issued to guarantee LBL’s work on various construction projects.”

....

### 3. Solera/DCM

.... Solera/DCM’s claim to the proceeds of the LBL Judgment arises from a default judgment entered against LBL and in favor of Solera/DCM in the Eastern District of New York on May 30, 2006 ... [for] \$4,092,237.07, with costs and disbursements, plus interest. Solera/DCM further alleges that “LBL has failed to pay Solera/DCM the amount owing pursuant to the Default Judgment Order.” Accordingly, Solera/DCM alleges that they are entitled to the proceeds of the LBL Judgment “as a result of the debt owed by LBL pursuant to the Default Judgment Order, which debt exceeds the amount of the Interpleaded Funds.”

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## VIII. MOTIONS FOR SUMMARY JUDGMENT

Both St. Paul and Solera/DCM have filed motions for summary judgment in which they assert priority to the proceeds of the LBL Judgment....

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### **B. Legal Standard: Priority of Interests**

#### *1. Choice of Law*

As a threshold matter, the Court must determine what state’s law governs the determination of lien priority in this case. Both St. Paul and Solera/DCM argue that priority to the proceeds of the LBL Judgment is governed by Article 9 of the Uniform Commercial Code (“UCC”) as adopted in New York.

Under the Uniform Commercial Code..., the local law of the jurisdiction in which a debtor is “located” governs “perfection, the effect of perfect or nonperfection, and the priority of a security interest in collateral.” [U.C.C. § 9-301(a)]. For a “registered organization organized under state law,” the U.C.C. specifies that a debtor’s location is the state under the law of which it is organized. [U.C.C. § 9-307(e)]. In this case, LBL was organized as a New York corporation; therefore LBL is “located” in New York for the purpose of Article 9, and New York law governs priority to the proceeds of the LBL Judgment.

#### *[2]. Creation of a Perfected Security Interest*

Under Article 9’s comprehensive scheme regulating security interests in personal property, creditors are enabled to protect their interests in collateral held by debtors or other third parties. A security interest becomes valid and enforceable against the debtor and third parties once three events occur: (1) either the collateral has come into the possession of the secured party or the debtor has signed a security agreement that contains a description of the collateral; (2) the secured party has given value to the debtor; and (3) the debtor has acquired rights in the collateral. *Continental Coffee Prod. Co. v. Banque Lavoro S.A.*, 852 F. Supp. 1235, 1237 (S.D.N.Y. 1994) (citing N.Y. U.C.C. § 9-203). Upon the completion of these steps, the security interest is enforceable and “the interest is said to have ‘attached.’” *Id.*

In most cases, an attached security interest can then be perfected by the filing of a UCC-1 Financing Statement. *See* N.Y. U.C.C. § 9-310(a) .... This financing statement must meet the requirements of ... § 9-502(a).

Once these steps are complete, the holder of the perfected security interest will generally hold priority to the collateral described in the security agreement against all subsequent interests. *See* N.Y. U.C.C. § 9-322(a); *Continental Coffee*, 852 F. Supp. at 1237 [parenthetical omitted]. In particular, the claim of the holder of a prior perfected security interest to the collateral is superior to the claim of a judgment creditor whose claims arise subsequent to the perfection of the prior security interest. N.Y. U.C.C. § 9-[317(a)(2)] ....

## **C. Overview of Parties' Claimed Interests**

### *1. St. Paul's Claim to the Proceeds of the LBL Judgment*

St. Paul claims entitlement to the proceeds of the LBL Judgment, arguing that St. Paul has a prior perfected security interest. On or about April 16, 1998, LBL and its Canadian parent corporation, Lessard Beaucage Lemieux Inc. (now known as LBL Skysystems Corporation), signed, executed, and delivered an Indemnity and Security Agreement to and in favor of St. Paul's predecessor, London Guarantee. Pursuant to that agreement, St. Paul/London "issued, or caused to be issued" bonds that "generally guaranteed the completion of LBL's work under its construction contracts and/or the payment of claims thereunder or related thereto." Mark Knudsen, vice president of St. Paul, states that the total indebtedness of LBL to St. Paul arising from the Security Agreement is "not less than \$13,307,757.00."

On November 4, 2002 St. Paul/London perfected that security interest by filing a UCC-1 Financing Statement with the Secretary of State of the State of New York. The financing statement (1) named "LBL Skysystems (U.S.A.), Inc." as debtor, (2) named "London Guarantee Insurance Company" as the secured party, and (3) indicated that the financing statement covered "all assets" as collateral.

St. Paul's argument is as follows: "based upon the description of the Collateral in the Indemnity and Security Agreement, the granting of the Security Interest in the Collateral to secure the Indebtedness, and the perfection of this Security Interest by [St. Paul's] proper filing of UCC-1 Financing Statement, which remains effective, LBL's Pennsylvania Judgment ... and the Interpleaded Funds are all subject to [St. Paul's] perfected and superior Security Interest."

### *2. Solera/DCM's Claim to the Proceeds of the LBL Judgment*

Solera/DCM's claim to the proceeds of the LBL Judgment is based on the default judgment awarded to Solera/DCM in the Eastern District of New York on May 30, 2006 in Civil Action No. 03-1383.... [in the amount of] \$4,092,237.07, with costs and disbursements, plus interest. That order has become final. Following the entry of the Default Judgment Order, Solera/DCM took various steps to execute on the judgment, including registering the Default Judgment ... with this Court on September 5, 2006 .... On September 22, 2006, Solera/DCM filed a Praecipe for Writ of Execution against LBL.

Solera/DCM argues that the Default Judgment Order entitles [it] to the proceeds of the LBL Judgment because St. Paul does not ... have a perfected security interest in LBL's assets.

#### **D. Analysis**

... [I]f St. Paul has a prior perfected security interest in the assets of LBL, St. Paul has priority in the proceeds of the LBL Judgment. *See* N.Y. U.C.C. §§ 9-322(a); 317(a)(2). The issue before the Court, however, is whether St. Paul has any enforceable interest in the proceeds of the LBL Judgment .... As discussed above, for St. Paul to have a perfected, attached security interest in the collateral, St. Paul must demonstrate that the debtor (LBL) has signed a security agreement with St. Paul, St. Paul has given value to LBL, LBL has interest in the collateral, and that the interest was perfected by the filing of a proper financing statement.

##### *1. Existence of Security Agreement*

First, the Court must address whether LBL signed a security agreement with St. Paul. St. Paul has submitted an Indemnity and Security Agreement signed by LBL....

.... [T]he Court concludes that St. Paul has met the first step under Article 9 – the Indemnity and Security Agreement submitted by St. Paul demonstrates that LBL and St. Paul entered into an effective security agreement.

##### *2. Value Given*

Second, the Court must determine whether value was given from St. Paul to LBL. St. Paul argues that value was given in the form of approximately \$13 million in bonds issued, “or caused to be issued” by St. Paul in support of LBL's construction contracts. Solera/DCM disputes that value was given arguing that “St. Paul merely vaguely alleges that LBL USA is indebted to St. Paul in the approximate amount of \$13 million ‘in connection with bonds’ that St. Paul issued. St. Paul fails to identify these ‘bonds’ in any manner or the construction projects for which they were issued.”

The Court rejects Solera/DCM's argument that no value was given; ... St. Paul issued numerous bonds to LBL. St. Paul has submitted “a true and complete copy of [St. Paul's] Summary of Claims relating to bonds issued on behalf of LBL” generated from St. Paul's automated claims system, and copies of the Bonds issued by those projects identified in the Summary. Thus, the Court concludes that St. Paul has met the second step because value was given from St. Paul to Solera/DCM in the form of bonds.

##### *3. Debtor's Rights in the Collateral*

Third, there is no dispute that LBL has acquired rights in the collateral. The collateral named by the Indemnity and Security Agreement includes, *inter alia*:

- (a) all of the claims and debts arising out of a Bonded Contract which [LBL] holds against all persons....;

\* \* \*

(d) all of the sub-contracts and supply contracts which [LBL] has granted or will grant, comprising all guarantees and warranties attached thereto, together with all materials included thereunder relating to the execution of the Bonded Contracts; and

\* \* \*

(h) all of [LBL's] property, assets, rights and undertakings of every nature, time and kind, now or at any time and from time to time, wherever situated.

The Court concludes that LBL has rights in this collateral, and therefore, St. Paul has met the third step and has an attached security interest in the collateral.

#### *4. Perfection*

Finally, the Court must determine whether St. Paul has properly perfected its attached security interest. St. Paul argues that perfection was completed when, on November 4, 2002, St. Paul filed a UCC-1 Financing Statement with the Secretary of State of the State of New York. Solera/DCM raises two challenges to St. Paul's claim of perfection which require comment. First, Solera/DCM states that the UCC-1 Financing Statement "does not reference the Alleged Security Agreement." However, such reference is not required by Article 9. *See* N.Y. U.C.C. § 9-502. Second, Solera/DCM argues that St. Paul's financing statement "was filed more than four years after the date of the Alleged Security Agreement .... rais[ing] a significant issue of material fact as to whether St. Paul properly perfected its alleged security interest." Notably, Solera/DCM cites no case law for the proposition that a delay in filing a financing statement negates perfection, and the Court rejects this argument.

The Court concludes that St. Paul has perfected its security interest. The UCC-1 Financing Statement filed on November 20, 2002 meets the requirements of § 9-502(a) in that it (1) provides the name of the debtor (LBL), (2) provides the name of the secured party (London Guarantee Insurance Company), and (3) "indicates the collateral covered by the financing statement" ("All assets"). N.Y. U.C.C. § 9-504....

Because the Court concludes that St. Paul has a perfected security interest in LBL's assets that is prior in time to any interest asserted by ... Solera/DCM, St. Paul has priority to the proceeds of the LBL Judgment. Accordingly, the Court grants St. Paul's Motion for Summary Judgment, and denies Solera/DCM's Cross Motion for Summary Judgment. Because the sum of the proceeds of the LBL Judgment is less than the amount of LBL's indebtedness to St. Paul, St. Paul is entitled to the entire proceeds of the LBL Judgment, less [Sentry Select's] reasonable attorney fees, costs and expenses ....

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