

**ZINK v. VANMIDDLESWORTH**  
**300 B.R. 394 (N.D.N.Y. 2003)**

MORDUE, District Judge.

.... The Vanmiddlesworths, cotenants of a dairy farm, are proceeding under Chapter 12 of the Bankruptcy Code, which provides for reorganization of family farms and permits debtors to operate their farms during the proceedings.

The Zinks moved in both cases for adequate protection and lifting of the stay under 28 U.S.C. §§ 157(a), (b)(1), (b)(2)(G) and 1334(b), relative to the Zinks' purchase-money security interest in 54 head of cattle sold by the Zinks to the Vanmiddlesworths pursuant to a promissory note and security agreement. Prior to the transaction with the Zinks, Frank Vanmiddlesworth had signed a security agreement covering after-acquired livestock in favor of Marine Midland Bank, the predecessor of HSBC Bank USA ("HSBC")....

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... Judge Littlefield ... found that the Zinks have a purchase-money security interest in the 54 cows. Applying N.Y.U.C.C. § 9-324(d) and (e), he held, however, that the Zinks did not achieve "livestock purchase-money security interest priority" over HSBC .... In reaching these conclusions, Judge Littlefield made the following factual findings, based largely on the stipulation of facts filed by the parties and the bankruptcy petitions and schedules filed by the Vanmiddlesworths:

On or about April 7, 1998, Debtor Frank F. Vanmiddlesworth, Jr. signed a security agreement in favor of Marine Midland Bank ("MMB"). The security agreement states that it includes dairy cattle "now owned or hereafter owned or acquired by Debtor." That same day he also signed a second security agreement in favor of MMB, assigning to it all his accounts, general intangibles and chattel paper. On or about April 13, 1998, MMB filed a UCC-1 financing statement in the St. Lawrence County Clerk's Office. The financing statement states that it covers all cattle, equipment, supplies, accounts, general intangibles and chattel paper "now owned or hereinafter acquired, wherever located."

On or about May 7, 2001, Debtor Frank F. Vanmiddlesworth, Jr. and Debtor William G. Vanmiddlesworth, Jr., his brother, signed a document entitled "Optional Advance Time or Demand Grid Note" ("grid note 1") in favor of HSBC Bank USA ("HSBC") in the amount of \$10,000. They signed another grid note on or about August 7, 2001 ("grid note 2") .... in the amount of \$431,000.

On or about November 26, 2001, the Debtors executed a contract to purchase 54 cows from the Zinks. On that same day, they also signed a promissory note and a security agreement in favor of the Zinks. The sales contract places a unit value price of \$1,700 on 52 of the cows, \$800 for cow ...

# 492 and \$600 for cow ... # 471. The security agreement granted the Zinks a security interest in “54 head of cattle (livestock) including any additions, substitutions or replacements.”

....

The language of the Zinks’ UCC-1 form mimics the language of their security agreement....

The Zinks did not send a notice to HSBC indicating that they intended to acquire a purchase-money security interest in the Debtors’ livestock. On December 4, 2001, the Debtors received the 54 cows. Those cows are among the total of 96 head owned by the Debtors according to the parties’ stipulation of facts.

On or about December 5, 2001, William F. Reynolds, attorney for the Zinks, mailed their UCC-1 form to the New York State Secretary of State by regular, first class mail; they included a check in the amount of \$7.00. On December 6, 2001, at or about 9:00 a.m., the New York State Secretary of State physically received the form. On or about December 7, 2001, the New York State Department of State mailed a letter to Mr. Reynolds, rejecting their filing. The letter includes a section called “Reason(s) for rejection.” That section states, in part, “The form submitted is an obsolete form that does not contain sections for all information required under Revised Article 9.” It also contains paragraphs which describe how to resubmit corrected documents and how to resubmit a rejected filing.

On or about February 1, 2002, Mr. Reynolds submitted an official form adopted by the New York Secretary of State .... It included the same description of collateral that the Zinks’ rejected form had contained. On or about February 5, 2002, the New York State Department of State sent a letter to Mr. Reynolds, acknowledging the filing of the February financing statement and indicating that the statement had been assigned the following information: “Filing Number: 027424” and “Filing Date: 02/04/2002.”

Both Debtors filed Chapter 13 petitions on April 25, 2002....

Debtor William G. Vanmiddlesworth, Jr.’s Schedule B states that he owns 54 cows valued at \$54,000. Although he lists Frank as a codebtor of HSBC on his Schedule H, none of his original schedules lists HSBC as a creditor. The amended Schedule F William filed on June 26, 2002, however, lists HSBC as a general unsecured creditor for a May 7, 2001 loan in the amount of \$3,987 and an undated loan in the amount of \$399,390. These amounts match those listed on his brother’s Schedule D where the “Codebtor” box is checked.

On May 3, 2002, the Debtors filed their Chapter 13 plans. Both plans specifically address the Zinks’ financing statement by providing that, unless the

matter is settled, the Debtors will commence adversary proceedings “to avoid the unperfected lien.” The Debtors’ cases were converted to Chapter 12 on May 17, 2002, the same day the Zinks filed their motions in each case, seeking a lift stay or adequate protection.

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Judge Littlefield found that the Zinks have a purchase-money security interest in the 54 cows.... N.Y.U.C.C. § 9-324(d). Judge Littlefield construed section 9-324(d) as requiring compliance with subparagraphs (1) through (4) to establish purchase-money security interest priority over a conflicting security interest both in livestock and in their identifiable proceeds and products.

The parties stipulated that the Zinks never notified HSBC of their purchase-money security interest. Thus, Judge Littlefield determined, the Zinks failed to satisfy subparagraphs (2) through (4) of section 9-324(d). Moreover, he determined that subparagraph (1) was not satisfied, even assuming that the Zinks perfected their purchase-money security interest on December 6, 2001 (when the Department of State received and rejected their initial UCC-1 form), because the Vanmiddlesworths had already taken possession of the 54 cows on December 4, 2001. Judge Littlefield concluded that, inasmuch as the Zinks failed to satisfy the requirements of 9-324(d)(1)-(4), they failed to create a purchase-money security interest in the 54 cows which would take priority over HSBC’s interest arising from the April 7, 1998 security agreement signed by Frank Vanmiddlesworth in favor of HSBC’s predecessor.

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.... This Court agrees with Judge Littlefield’s reading of the requirements of section 9-324 as applying to purchase-money security interests in livestock as well as in their identifiable proceeds. Thus, Judge Littlefield correctly determined that the Zinks failed to satisfy the requirements of subparagraphs (1) through (4) of section 9-324(d), and that, regardless of the date they filed their financing statement relative to their purchase-money security interest, they did not obtain “livestock purchase-money security interest priority” over HSBC with respect to ... the 54 cows.

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