

Memorandum 77-73

Subject: Study 39.160 - Attachment (Property Subject to Security Interest)

We had hoped to be in a position to approve the Tentative Recommendation Relating to Property Subject to a Security Interest for printing as an appendix to the Annual Report and for introduction into the Legislature next session. This does not now appear possible.

You will recall that, at the October meeting, the Commission adopted the suggestion of the UCC Section of the State Bar Business Law Committee to the effect that, if an account debtor is making payments to a secured party, he should continue to do so after being served with a notice of attachment regardless of whether the security interest is perfected. In this situation, the burden would be on the attaching plaintiff to initiate proceedings to determine whether the security interest was perfected and, hence, to determine whether the plaintiff or the secured party has priority. Where the account debtor is making payments to the attachment defendant, however, the UCC Section concurred with the tentative recommendation which would require the account debtor to make payments to the levying officer. In this situation, the burden would be on the secured party to show the priority of the security interest through the third-party claims procedure.

At their meeting on October 12, the UCC Section generally expressed concern over any disruption of the flow of funds from an account debtor or other obligor, whether the money is flowing to the secured party or to the defendant where the secured party has left the liberty of collection with the defendant. The UCC Section would like more time to develop their proposals and to present them to the Commission. Professor Riesenfeld has also indicated that he would like more time to consider the suggestions of the UCC Section.

Consequently, the staff suggests that we postpone consideration of this subject until it appears that we will be able to work out some accommodation of the divergent views thus far expressed. We may want to follow Harold Marsh's suggestion that a new tentative recommendation be

prepared and distributed for comment after the views of our consultant and various groups have been given further consideration. Accordingly, we will not be able to publish this recommendation in the Annual Report and will not have legislation ready for introduction at the beginning of the 1978 legislative session. We may be able to introduce recommended legislation later in 1978, but we do not now know whether this will be possible.

Respectfully submitted,

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