

Successful Collection Leveraging a UCC



The  **DeLaval** Story

THE DeLaval STORY...

Ric Ruiz Esparza is the Finance / Credit & Collections Manager at DeLaval Inc (DeLaval). DeLaval is an international company, located in 36 countries, that makes sustainable food production possible with the products and solutions they provide dairy farmers around the world. Ric has been with DeLaval since 2012 and in the credit profession for over 20 years.

THE CHALLENGE

DeLaval was owed \$688,694.48 for equipment it provided to Willow Creek Dairy (Willow). In addition to other legal troubles, Willow filed for Chapter 11 bankruptcy protection. How would DeLaval recover the money it was owed?

THE PRELUDE

There are two primary types of secured transactions under Article 9 of the Uniform Commercial Code (UCC): Blanket filing and Purchase Money Security Interest (PMSI) filing. UCCs were created to encourage trade creditors to sell goods on credit terms, specifically in situations of greater risk.

A Blanket filing is a security interest in all assets of your customer on a non-priority basis. A PMSI filing provides the same benefit of a blanket filing, with the addition of priority of repossession of specific identifiable goods, primarily inventory or equipment.

In this case, DeLaval filed two PMSI in Equipment UCC filings. Under Article 9 of the Uniform Commercial Code (UCC), “equipment” means goods other than inventory, farm products, or consumer goods. The equipment is used in the course of the debtor's business – it is not stocked. [See 9-102(33).] To establish priority in equipment, the UCC needs to be filed within 20 days of the debtor's receipt of the equipment.

An integral part of DeLaval's credit granting process is to ensure it is a secured creditor by properly perfecting its security interest under Article 9. To perfect its security interest, DeLaval required Willow to sign a security agreement, which granted DeLaval a security interest in the equipment.

DeLaval partnered with NCS to file its Financing Statements. NCS ensured the Financing Statements: identified Willow in compliance with Article § 9-503(a), were filed in the correct jurisdiction, properly identified the equipment as collateral, and were filed timely.



THE STORY

In August 2017, Willow defaulted on payments to DeLaval for farming equipment. DeLaval served a demand letter upon Willow in California (where Willow resided) and Oregon (where the equipment was located). The demand letter notified Willow of its default, the outstanding claim owed to DeLaval and advised if Willow failed to pay the outstanding amount by the deadline, DeLaval would proceed with the next legal action: enforcing its security interest which was properly perfected through the filing of two UCCs.

A few weeks later, DeLaval received a \$100,000 good faith payment, on Willow's behalf, from the debtor's brother who was trying to buy the dairy farm located in Oregon.

Ric: "A month after the first \$100,000 payment, we received two more payments of \$100,000. We had recovered \$300,000 of the outstanding \$688,000 and were hopeful the debtor's brother would move forward with purchasing the farm; unfortunately, he did not. In November we met with the debtor's brother to try to obtain further payments on the debt, but were unsuccessful. After discussions halted, we knew we needed help and we turned to NCS."

DeLaval submitted the collection to NCS as an attorney placement and NCS immediately began working with the attorney. Soon after, DeLaval received notification from Willow's bank regarding a private sale of the collateral secured by the bank for the dairies in California and Oregon. NCS' California attorney spoke with the bank's counsel (Willow owed its bank \$60,000,000).

The attorneys for NCS and the bank spoke about a possible sale of the Oregon property. It appeared another farmer was applying for a loan and, if approved, the farmer would loan the funds to Willow for the sale/lease of the property. Under this financial arrangement, after the first-position creditor and the bank were paid, there would be about \$8,000,000 in proceeds for secured creditors like DeLaval.

Ric said, "We were notified the loan Willow needed to maintain operations had fallen through and that a receiver had been appointed by the court. The receiver was in place to take over the operations of the California and Oregon dairies. Fortunately, we had been looking for and found buyers for our equipment at the Oregon dairy. NCS started working with its Oregon attorney on the replevin action." A replevin action is used by creditors to repossess collateral from debtors in default. "But literally the next day, Willow filed a Chapter 11 bankruptcy. It was frustrating."

Because of the bankruptcy filing, NCS did not place the matter with Oregon counsel for replevin, as it would have violated the automatic stay. NCS' attorney filed the secured proof of claim with the bankruptcy court, based on DeLaval's UCC Financing Statements.



“It felt like we couldn’t catch a break. Each time we were close to resolution, another obstacle was thrown in our path.” Ric said the defeated feeling began to fade when the attorney recommended DeLaval try to negotiate adequate protection payments, through Willow’s bankruptcy attorney, to resolve DeLaval’s secured claim. “If the negotiation failed, we could proceed with a motion to relieve the automatic stay and foreclose on our security interest in the equipment. Our UCCs afforded us this leverage and recovery.”

NCS’ attorney received a cash collateral budget from the court, acknowledging DeLaval’s security interest in their equipment and accounting for adequate protection payments of \$100,000 to be made to DeLaval. DeLaval received one \$100,000 payment in accordance with the cash collateral budget.

Then the court appointed the Chapter 11 trustee. DeLaval wanted to proceed with a relief of stay, however, the NCS attorney didn’t think the court would grant it because the trustee had just been appointed. “The trustee was instrumental in this success story. I held weekly conversations with him and made sure I was on his good side” Ric said with a smile.

DeLaval agreed to wait.

THE SUCCESS

Waiting paid off. On November 1, 2018, the bankruptcy trustee informed the NCS attorney that he was working on a sale that would include DeLaval’s equipment. If the sale were approved, DeLaval would be paid from the proceeds of the sale. After some additional negotiations, including repairs to the equipment, the sale went through.

With excitement and relief, Ric was thrilled to report, “DeLaval’s claim was paid in full, including interest and attorney’s fees! The exact amount was \$753,491.75. I don’t think this would have happened if we didn’t have the UCC filings in place!”

UCCs ARE BENEFICIAL BECAUSE...

- UCCs establish priority in the equipment for the creditor and provide the creditor an opportunity to repossess the equipment upon debtor’s default.
 - o If the debtor defaults, the creditor can declare it in default and begin repossession proceedings.
- UCCs create a public record of ownership of the assets in lease situations.
 - o If the debtor files bankruptcy, the bankruptcy trustee will search for UCC filings to determine which assets belong to whom.
 - o If the debtor defaults, other secured lenders will know not to foreclose on the equipment.
- The security interest attaches to the equipment, therefore, if the debtor were to sell the equipment without paying for it in full, the creditor will maintain priority right to the equipment.





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– Ric Ruiz, Finance/Credit & Collections
Manager at DeLaval Inc.

To Learn more:

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