

N.D.A.G. Letter to Meier (Oct. 19, 1987)

October 19, 1987

Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, ND 58505

Dear Secretary Meier:

You have recently inquired whether you should comply with Ernest Lang's request that you remove the central filing notice in favor of the Bank of Steele. Mr. Lang's position is apparently based upon a judgment dated February 3, 1986, in Bank of Steele v. Lang, South Central Judicial District, Civil No. 36266, February 3, 1986, (copy attached) which inter alia, provided:

That the security interest of the Plaintiff in all Defendant's farm equipment, machinery, livestock, crops, supplies and the proceeds and products is hereby foreclosed.

After this judgment, a sale conducted by the sheriff was held but the sale proceeds were insufficient to satisfy the judgment of \$122,794.07, plus accrued interest. The bank continues to claim a security interest in any cattle sold by Mr. Lang.

Apparently, Mr. Lang's position is that the court's reference to foreclosure in the judgment extinguished the security agreement and therefore the after-acquired property clause of the agreement would have no further force and effect.

As stated in my letter of July 1, 1987 to you, the duties of the Secretary of State are ministerial. The applicable statute sets specific duties on the Secretary of State if a termination statement or signed statement releasing collateral is presented to him or if a financing statement lapses. N.D.C.C. §§ 41-09-43, 41-09-44, and 41-09-45.

The judgment presented by Mr. Lang does not state the security agreement is terminated or extinguished. In addition, on September 8, 1987, in the case of Lang v. Steele, Kidder County Small Claims Court, Case No. 87-7, Judge Donavin Grenz issued an opinion in which he stated that the security interest of the Bank of Steele was still in effect. A copy of that decision (with commentary by Mr. Lang) is attached for your information.

Therefore, it is my opinion that you should not remove the financing statement of the Bank of Steele, unless a court orders you to do otherwise or a proper termination statement is presented to you.

Sincerely,

Nicholas J. Spaeth

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Enclosures