

J. CARON GROSHON
Atty. ✓ B. B. B.
Deputy Clerk

Case No. 87-10255
Chapter 7

Debtors.

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The determining issue is whether Christmas trees are standing timber or growing crops. Standing timber is a part of the

realty, and a security interest in it is established by a deed of trust. New Home Building Supply Co. v. Nations, 259 N.C. 681, 131 S.E.2d 425 (1963); Westmoreland v. Lowe, 225 N.C. 551, 35 S.E.2d 613 (1945). By contrast, growing crops are "goods", and a security interest is established by a Uniform Commercial Code security agreement and filing. N.C. Gen. Stat. § 25-9-105(h) (1990). If Christmas trees are standing timber, then Mountain Farm Credit's deed of trust on the real property is sufficient to give them a valid first lien on the proceeds from the sale of the trees. If, however, Christmas trees are growing crops, then Mountain Farm Credit would only have a lien on the proceeds if it had a security interest in the crops and perfected that security interest by filing a financing statement sufficient to satisfy the requirements of the Uniform Commercial Code. N.C. Gen. Stat. §§ 25-9-203, 25-9-302(1) (1990).

The Christmas trees sold in this case were fir trees raised in the higher elevations of Western North Carolina. As is the customary practice in the Christmas tree industry in this area, the trees were planted for the intended purpose of harvesting for sale as Christmas trees. The trees were planted as seedlings and then tended for approximately five to eight years --- including fertilization, bed maintenance, and periodic shearing. Finally, the trees were harvested by cutting them at ground level, and sold.

The court has concluded that Christmas trees are crops because they are planted for the intended purpose of harvest and

sale within a defined and relatively short period of time. This is consistent with the reasoning of the Washington Court of Appeals which addressed this issue in Rainier National Bank v. Security State Bank, 12 UCC Rep. Serv. 2d 822, 796 P.2d 443 (1990), review denied, 815 P.2d 266 (1991). The Washington Court reasoned that growing crops are treated as "goods" for purposes of the Uniform Commercial Code because they are frequently intended for sale, and because Christmas trees are also planted and grown with the intention of a harvest and sale, Christmas trees are growing crops. Id. 12 UCC Rep. Serv. 2d at 825.

Mountain Farm Credit's argument that the Uniform Commercial Code provisions dealing with growing crops refer only to those plants harvested annually is unpersuasive. This court is more persuaded by the logic of the Washington court that "although many plants mature and are ready for harvesting annually, the speed with which a plant matures does not change its characterization as a growing crop." Id.

To have a security interest in growing crops, a creditor must have a security agreement signed by the debtor which contains a description of the crops growing and a description of the land concerned. N.C. Gen. Stat. § 25-9-203(1)(a) (1990). To perfect such a security interest a creditor must file a financing statement sufficient to satisfy the requirements of the Uniform Commercial Code. N.C. Gen. Stat. § 25-9-302 (1990).

Mountain Farm Credit has not properly perfected any security interest in the Christmas trees at issue here pursuant to Article 9 of the Uniform Commercial Code. Consequently, Mountain Farm Credit has no secured claim in the proceeds that the Trustee proposes to distribute. Therefore, Mountain Farm Credit's objection cannot be sustained and the Trustee's proposed Final Report and Account should be approved.

Based upon the foregoing Findings of Fact and Conclusions of Law, it is therefore ORDERED, ADJUDGED and DECREED that:

1. The Chapter 7 Trustee's Final Report and Account is approved, and the Trustee is authorized to make distribution of the funds pursuant thereto.

This the 8th day of December, 1994.



George R. Hodges
United States Bankruptcy Judge