

collateral description
crops
doctrine of the last antecedent
financing statement
reasonable identification
security agreement
ORS 79.0108
ORS 79.0203
ORS 79.0315
ORS 79.0502
ORS 79.0504

Grogan v. Harvest Capital Co. et. al (In re Grogan) BAP # OR-12-1483-JuTaPa
10/15/13 BAP (aff'g TMR) 2013 WL 5630627 (Not for Publication)

Plaintiffs, the Chapter 11 debtors, operated a Christmas tree farm. In the context of cross-motions for summary judgment, Plaintiffs claimed Defendants' security interests in the trees were not effective and/or were avoidable because the descriptions of the trees in the respective security agreements and financing statements were deficient. The main controversy involved whether the verbiage "[a]ll trees, bushes, vines and other permanent plantings now or hereafter located on the real property (the 'Plantings')," covered the Christmas trees within the context of the documents as a whole. After the bankruptcy court held the descriptions sufficient, Grogan v. Harvest Capital Co. (In re Grogan), 476 B.R. 270 (Bankr. D. Or. 2012), Plaintiffs appealed to the Bankruptcy Appellate Panel (BAP).

The BAP affirmed. It examined Oregon law relating to the standards for describing collateral in security agreements and financing statements, concluding that a description is sufficient if it reasonably identifies what is described, or alternatively, for financing statements, if it indicates that it covers all assets or all personal property. The BAP held the reasonable identification standard is met if the description provides enough information to enable third parties to identify the collateral upon reasonable inquiry. It noted the UCC's broad policy of leniency for collateral descriptions. The BAP also examined contract construction principles, including the "doctrine of the last antecedent" and other textual and contextual aids in construing the language in the security agreements and financing statements. Viewing that language in context and in relation to the documents as a whole, the BAP found it sufficient to meet the "reasonable identification" standard. It found the financing statements were also sufficient because they covered all personal property within the meaning of ORS 79.0504. It thus held the security interests in the trees and their proceeds were properly perfected and thus unavoidable.

E13-17(22)

OCT 15 2013

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No. OR-12-1483-JuTaPa
)	
6	CHARLES A. GROGAN, d/b/a)	Bk. No. 11-65409-TMR
	Silver Bells Tree Farm and)	
7	SARAH A. GROGAN,)	Adv. No. 11-06276-TMR
)	
8	Debtors.)	
)	
9	CHARLES A. GROGAN;)	
	SARAH A. GROGAN,)	
10)	
	Appellants,)	
11)	
12	v.)	M E M O R A N D U M *
)	
13	HARVEST CAPITAL COMPANY;)	
	DEMETER AG, LLC,)	
14)	
	Appellees.)	
)	

Argued and Submitted on July 25, 2013
at Butte, Montana

Filed - October 15, 2013

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Thomas M. Renn, Bankruptcy Judge, Presiding

Appearances: Laura J. Walker, Esq., of Cable Huston Benedict Haagensen & Lloyd LLP, argued for appellants, Charges A. Grogan and Sarah A. Grogan; Todd L. Friedman, Esq., of Stoel Rives LLP, argued for appellee Harvest Capital Company; Aaron J. Bell, Esq., of Bell Law Firm, PC appeared for appellee Demeter Ag, LLC.

* This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

1 Before: JURY, TAYLOR, and PAPPAS, Bankruptcy Judges.

2 Chapter 11¹ debtors, Charles A. Grogan and Sarah A. Grogan,
3 own and operate a Christmas tree farm. Debtors commenced an
4 adversary proceeding against appellees, Harvest Capital Company
5 (Harvest) and Demeter Ag, LLC (Demeter) (collectively, Harvest
6 and Demeter are referred to as Defendants), asserting that:

7 (1) the collateral description in Defendants' security
8 agreements did not include Christmas trees or, if they did,
9 (2) the collateral description in Defendants' financing
10 statements did not include Christmas trees and, therefore, their
11 liens were not perfected and avoidable under § 544. Debtors
12 filed a motion for summary judgment (MSJ) on these issues, and
13 Defendants filed cross-motions for summary judgment.

14 The bankruptcy court denied debtors' MSJ and granted
15 Defendants' cross-motions finding that, as a matter of law, the
16 collateral description reasonably identified the Christmas trees
17 as Defendants' collateral under Oregon's version of the Uniform
18 Commercial Code (UCC). As a result, the court concluded that
19 Defendants' notes were secured by properly perfected unavoidable
20 security interests in debtors' Christmas trees and their
21 proceeds. This appeal followed. We AFFIRM.

22 ///

23 ///

24 ///

25
26 ¹ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure and "Civil Rule" references are to the Federal Rules of
Civil Procedure.

1 I. FACTS²

2 Debtors own and operate, as a sole proprietorship, Silver
3 Bells Tree Farm, located in Marion County, Oregon, where they
4 plant and grow Christmas trees. Approximately twelve years
5 after being planted, the Christmas trees are harvested for sale.
6 At various times, debtors took out secured loans with
7 Defendants.

8 A. The Harvest Loans

9 In September 2006, debtors borrowed \$7 million from Harvest
10 as evidenced by two promissory notes: one for \$5,500,000
11 (Note A) and the other for \$1,500,000 (Note B). Both notes were
12 secured by a combined mortgage/security agreement (Harvest
13 Security Agreement), which was recorded in the Marion County
14 real property records.

15 The Harvest Security Agreement provides in relevant part:

16 To secure payment of the Indebtedness and performance
17 of all obligations of mortgagor under this Mortgage,
18 mortgagor mortgages and conveys to Lender the
19 following:

20 . . .

21 (4) All trees, bushes, vines and other permanent
22 plantings now or hereafter located on the real
23 property (the "Plantings");

24 (5) All intellectual property rights now or hereafter
25 held by Mortgagor with respect to Plantings now or
26 hereafter growing on the Real Property, including,
27 without limitation, the SILVER BELLS BLUE™ NOBLE FIR
28 trademark and other labels, logos, patents or patent
licenses and trademark rights (the "Intellectual
Property Rights");

29

27 ² Many of the facts are taken from the bankruptcy court's
28 published opinion at 476 B.R. 270 (Bankr. D. Or. 2012).

1 Mortgagor presently assigns to Lender all of
2 Mortgagor's right, title and interest in and to all
3 rents, revenues, income, issues and profits (the
"Income") from the Real Property, the Plantings, the
Personal Property . . . , whether now or hereafter due.

4 Mortgagor grants Lender a security interest in the
5 Income, Plantings, the Water Rights, the Personal
Property,

6 Section 8 of the agreement, entitled "Security Agreement,
7 Security Interest" further provides:

8 8.1 Security Agreement. This instrument shall
9 constitute a security agreement with respect to the
Income, Plantings, Water Rights, Personal property,
10

11 On September 20, 2006, and September 2, 2009, respectively,
12 Harvest filed an original and amended UCC financing statement
13 with the Oregon Secretary of State (Harvest Financing
14 Statements). Exhibit B to each of the Harvest Financing
15 Statements stated that the collateral included, among other
16 things:

17 2. All improvements, fixtures, equipment, construction
18 materials, and other articles of personal property now
19 owned or hereafter acquired by the Debtor that now or
20 hereafter are located on, affixed or attached to, or
incorporated in the Land, including all irrigation
pumps, motors, pipes, sprinklers and other irrigation
equipment.

21 3. All trees, bushes, vines and other permanent
22 plantings now or hereafter located on the Land.³

23 4. All intellectual property rights of Debtor with
24 respect to Christmas trees, vines or other permanent
plantings now or hereafter growing on the Land,

25 ³ As discussed below, debtors placed at issue in their MSJ
26 the description of collateral contained in § 4 of the security
27 agreement and § 3 of the financing statement which were virtually
28 identical; i.e., "[a]ll trees, bushes, vines and other permanent
plantings" Debtors maintained that this description
could not include Christmas trees.

1 including, without limitation, the SILVER BELLS BLUE™
2 NOBLE FIR trademark and all patents, trademarks and
patent licenses and trademark rights.

3 The Harvest Financing Statements were timely continued by a
4 continuation statement filed on August 4, 2011.

5 **B. The Demeter Loan**

6 In March 2008, the Grogans borrowed \$225,000 from Demeter
7 evidenced by a promissory note and secured by a combined
8 mortgage, assignment of rents and security agreement and fixture
9 filing. In February 2010, the original note was replaced by a
10 \$400,000 note (Demeter Note). The original mortgage/security
11 agreement was also replaced by an amended and restated agreement
12 (Demeter Security Agreement). The Demeter Security Agreement
13 stated that to secure payment of the indebtedness, debtors
14 conveyed a security interest to Lender in, among other things,
15 "(4) All Christmas trees, trees, and timber now or hereafter
16 grown, growing or to be grown on the Real Property (the
17 "Trees")."⁴ The Demeter Security Agreement was duly recorded in
18 the Marion County real property records on February 19, 2010.⁵

19 Demeter filed a UCC financing statement with the Oregon
20 Secretary of State on March 18, 2008 (Demeter Financing
21 Statement). Exhibit B to the Demeter Financing Statement stated
22 that the collateral covered included, among other things:

24 ⁴ The Demeter Security Agreement also contained another
25 paragraph similar to that in the Harvest Security Agreement:
26 "(5) All trees, bushes, vines and other permanent plantings now
or hereafter located on the Real Property (the "Plantings")."

27 ⁵ Demeter was also assigned rights under loans made to the
28 Grogans by Heinze Investments, LLC. Demeter's rights under those
loans are not at issue in this appeal.

1 2. All improvements, fixtures, equipment,
2 construction material, and other articles of personal
3 property now owned and hereafter acquired by the
4 Debtor that now or hereafter are located on, affixed
or attached to, or incorporated in the Land, including
all irrigation pumps, motors, pipes, sprinklers and
other irrigation equipment.

5 3. All trees, bushes, vines and other permanent
6 plantings now or hereafter located on the Land;

7 4. All intellectual property rights of Debtor with
8 respect to Christmas trees, vines or other permanent
9 plantings now or hereafter growing on the Land,
including, without limitation, the SILVER BELLS BLUE™
NOBLE FIR trademark and all patents, trademarks and
patent licenses and trademark rights.

10 **C. Bankruptcy Proceedings**

11 On October 31, 2011, debtors filed a voluntary chapter 11
12 petition.

13 On December 15, 2011, debtors commenced an adversary
14 proceeding against Defendants, seeking a declaration that
15 Defendants did not have an enforceable and perfected security
16 interest in the Christmas trees because the collateral
17 description in Defendants' security agreements and financing
18 statements was inadequate. Debtors also sought attorneys' fees
19 and costs.

20 On January 17, 2012, Harvest filed an answer, counterclaim
21 and third-party complaint. Harvest's counterclaim was for
22 attorneys' fees and costs. The third-party complaint asserted a
23 claim for conversion against the law firm which had received
24 \$180,000 from debtors as a retainer for legal services. Harvest
25 alleged that this amount was subject to its security interest in
26 the proceeds from the sale of Christmas trees. In a stipulated
27 order filed February 15, 2012, the parties agreed to bifurcate
28 and abate the third-party complaint until the bankruptcy court

1 entered a judgment in the adversary proceeding.⁶

2 On March 29, 2012, debtors filed their MSJ, seeking a
3 declaration that Defendants did not have a valid, perfected lien
4 on the Christmas trees or other crops, or their proceeds.
5 Debtors asserted that the phrase "[a]ll trees, bushes, vines and
6 other permanent plantings . . ." did not reasonably identify
7 Christmas trees because the term "trees" was modified by the
8 word "permanent," and Christmas trees are "crops" and "crops" by
9 definition are not "permanent" under the holding of Rainier
10 Nat'l Bank v. Sec. State Bank, 796 P.2d 443, 445 (Wash. 1990).

11 On April 3, 2012, debtors filed their second amended
12 complaint (SAC). The SAC contained two claims: the first was
13 again for a declaration that Defendants did not have enforceable
14 and perfected security interests in debtors' Christmas trees and
15 other crops or their proceeds; alternatively, assuming such
16 liens exist, the second claim sought to avoid the liens under
17 § 544⁷ because they were not properly perfected liens in the
18 Christmas trees due to the inadequate collateral description in
19 Defendants' financing statements.

20 On April 17, 2012, Demeter answered the SAC and
21 counterclaimed for its attorneys' fees and costs.

22 On April 20, 2012, Harvest filed its amended answer,
23 counterclaim, and third-party complaint.

24
25 ⁶ This matter was later reinstated after the bankruptcy
26 court entered judgment on the cross motions for summary judgment.

27 ⁷ Generally, under § 544(a), a debtor in possession can
28 avoid prepetition security interests that have not been properly
perfected. See NetBank, FSB v. Kipperman (In re Commercial Money
Ctr., Inc.), 350 B.R. 465, 474 (9th Cir. BAP 2006).

1 On April 23, 2012, Harvest filed its cross-MSJ and response
2 to debtors' MSJ. On the same date, Demeter filed its cross-MSJ
3 and response to debtors' MSJ.

4 On June 21, 2012, the bankruptcy court heard the matter and
5 took it under advisement.

6 On July 26, 2012, the bankruptcy court issued its
7 Memorandum Opinion concluding that, as a matter of law,
8 Defendants' security agreements and financing statements
9 reasonably identified Christmas trees as collateral subject to
10 their security interests. In reaching this conclusion, the
11 bankruptcy court examined the relevant sections of Oregon's
12 version of the revised UCC for collateral descriptions,
13 considered whether the doctrine of the last antecedent (DOTLA)
14 applied, found debtors' reliance on Rainier unpersuasive, and
15 used common law contract principles to objectively determine
16 whether Christmas trees were included in the collateral
17 description.

18 In considering the phrase "[a]ll trees, bushes, vines and
19 other permanent plantings . . . ," the bankruptcy court found
20 that application of the DOTLA was inconclusive on whether
21 "permanent" modified "trees" and "bushes" as well as "vines."
22 As a result, the court concluded that "such ambiguity alone
23 would cause a reasonable party to inquire further."

24 Under a contract analysis, the court dispelled debtors'
25 theory that the collateral description "[a]ll trees, bushes,
26 vines and other permanent plantings", defined together as
27 "Plantings," could not include Christmas trees. The bankruptcy
28 court reasoned that the use of the word "Plantings" to define

1 the group of plants which are collateral "itself connotes
2 something planted as opposed to growing naturally." The court
3 examined the dictionary definition of "planting" - "an area
4 where plants are grown for commercial or decorative purposes;
5 also: the plants grown in such an area," and concluded from this
6 definition a reasonable third party examining Harvest's Security
7 Agreement would know that the only (or at least the vast
8 majority of) crops debtors planted consisted of Christmas trees.
9 Finally, the bankruptcy court noted that the phrase "permanent
10 crops" is commonly used in many statutory schemes, typically to
11 distinguish them from "annual" crops. Because of this usage,
12 the court was not convinced by debtors' reliance on Rainier for
13 their argument that the words "permanent" and "crops" were
14 mutually exclusive.

15 Moving beyond the phrase at issue, and construing
16 Harvest's Security Agreement as a whole, the bankruptcy court
17 concluded that any reasonable person's doubt as to what "all
18 permanent trees" means in § 4 of Harvest's Security Agreement
19 would be resolved by reading § 5, which granted Harvest a
20 security interest in all intellectual property . . . "with
21 respect to Plantings" and included the SILVER BELLS BLUE™ NOBLE
22 FIR trademark. The court reasoned that because the intellectual
23 property was "with respect to Plantings," the trademark on
24 Christmas trees "related to" or "refers to" "Plantings," and as
25 a consequence, "Plantings" by necessity included Christmas
26 trees.

27 Last, the bankruptcy court noted that §§ 4 and 5 of
28 Harvest's Security Agreement would at least lead a reasonable

1 inquirer to identify Christmas trees as collateral. In that
2 regard, the court observed that a reasonable person could
3 objectively determine that money was loaned to debtors, debtors
4 owned a Christmas tree farm with approximately one million
5 Christmas trees on their property, and their primary, if not
6 sole, source of income to repay the loan was generated by those
7 trees. Under these circumstances, the bankruptcy court
8 concluded that there would need to be "crystal clear"
9 exclusionary language in the collateral description to stop
10 further inquiry, which there was not.

11 The court also found that a reasonable inquirer would
12 examine Note B, which the Harvest Security Agreement referenced,
13 and which specifically referenced Christmas trees as
14 "collateral."⁸

15
16 ⁸ Exhibit A to Note B provides in relevant part:

17 (j) Borrower shall provide Lender by March 1 of each
18 year with a certified tree inventory (the "Certificate
19 of Inventory") which will include a current Christmas
20 tree count for all land described in the Mortgage,
21 categorized by land tract, year planted and tree size.
22 The Certification of Inventory shall also include a
23 two-year projected harvest and planting schedule
24 identifying number of trees, variety and location.
25 Borrower shall certify that the Certificate of
26 Inventory as being true, correct and complete to
27 Borrower's best knowledge.

24 (k) Borrower shall provide Lender complete access to
25 the property encumbered by the Mortgage within
26 reasonable time after request for such access in order
27 to permit Lender to verify the information contained in
28 the Certification of Inventory or otherwise to confirm
the collateral value of the Christmas trees (the "Tree
Collateral Value") and the total collateral value of

(continued...)

1 Although the description of the collateral used in the
2 Harvest Financing Statements was slightly different than that
3 used in Harvest's Security Agreement, the bankruptcy court
4 concluded that the financing statements' description of
5 collateral included Christmas trees for essentially the same
6 reasons as the security agreement.

7 Finally, with respect to Demeter, its security agreement
8 specifically referenced "[a]ll Christmas trees" as part of the
9 collateral. Therefore, the bankruptcy court found that it
10 clearly met the reasonable identification test under the UCC.
11 Since Demeter's Financing Statement had the exact same language
12 as Harvest's Financing Statements, the court found that it too
13 sufficiently indicated the collateral as required under the UCC.

14 In sum, the court found Defendants' notes were secured by
15 properly perfected unavoidable security interests in debtors'
16 Christmas trees and their proceeds. The court concluded that
17 Defendants' entitlement to attorneys' fees and costs would be
18 determined at a subsequent hearing.⁹

19 On September 10, 2012, the bankruptcy court entered an
20 order denying debtors' MSJ and granting Defendants'

21
22 ⁸(...continued)
23 all property encumbered by the Mortgage (the "Total
24 Collateral Value").

25 ⁹ The Defendants' entitlement to attorneys' fees and costs
26 was to be determined in a supplemental proceeding pursuant to
27 Rule 7054 and Local Bankr. Rules 7054-1 and 9021-1(c). The
28 latter rule states that the time deadlines which related to the
filing or objecting to a cost bill also applied to filing or
objecting to a request for attorney fees in a contested matter or
adversary proceeding in which judgment is sought for the
prevailing party's attorney fees.

1 cross-motions. On the same day, the court entered a partial
2 judgment¹⁰ denying debtors' MSJ and granting Defendants'
3 cross-motions.

4 On September 20, 2012, debtors filed a timely notice of
5 appeal from the partial judgment.

6 II. JURISDICTION

7 The bankruptcy court had jurisdiction over this proceeding
8 under 28 U.S.C. §§ 1334 and 157(b)(2)(O). We have jurisdiction
9 under 28 U.S.C. § 158.

10 III. ISSUES

11 A. Whether the collateral description in Demeter's
12 Security Agreement and Financing Statement was sufficient to
13 give it a properly perfected unavoidable security interest in
14 debtors' Christmas trees; and

15 B. Whether the collateral description in Harvest's
16 Security Agreement and Financing Statements was sufficient to
17 give it a properly perfected unavoidable security interest in
18 debtors' Christmas trees.

19 IV. STANDARD OF REVIEW

20 We review de novo the bankruptcy court's ruling on
21 cross-motions for summary judgment, its interpretation of
22 security agreements, and its interpretation of state law. Trunk
23 v. City of San Diego, 629 F.3d 1099, 1105 (9th Cir. 2011)
24 (summary judgment); Conrad v. Ace Prop. & Cas. Ins. Co.,

25
26 ¹⁰ In its partial judgment, the bankruptcy court certified
27 the judgment as appealable under Civil Rule 54(b), incorporated
28 by Rule 7054, finding there was no just reason for delay. As a
result, we consider the partial judgment final for purposes of
appeal.

1 532 F.3d 1000, 1004 (9th Cir. 2008) (interpretation and meaning
2 of contracts); Salve Regina Coll. v. Russell, 499 U.S. 225, 231
3 (1991) (interpretation of state law).

4 **V. DISCUSSION**

5 On a motion for summary judgment, the moving party has the
6 burden to show that there is no genuine dispute as to any
7 material fact and that it is entitled to judgment as a matter of
8 law. Civil Rule 56(a) (made applicable by Rule 7056). Material
9 facts are such facts as may affect the outcome of the case.

10 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

11 Summary judgment is appropriate when neither party contests the
12 facts relevant to a legal determination.

13 Here, whether the collateral description contained in
14 referenced documents is legally sufficient is reviewed de novo
15 because the parties have conceded that the question can be
16 answered by referring to the law. Neither party has contested
17 any material facts that are relevant to this legal determination
18 in this appeal nor have debtors put their subjective intent to
19 grant Defendants a security interest in their Christmas trees at
20 issue.¹¹

21 **A. Collateral Descriptions: Legal Standards**

22 The parties agree that the nature and extent of Defendants'
23
24

25
26 ¹¹ Debtors did not dispute that they executed the security
27 agreements with Defendants or that they granted some security
28 interest in collateral related to their Christmas tree farm.
They also did not dispute that Defendants had properly filed
their financing statements with the Oregon Secretary of State.

1 security interests are determined under Oregon's UCC law.¹² See
2 Butner v. United States, 440 U.S. 48, 55 (1979); In re S. Cal.
3 Plastics, 165 F.3d 1243, 1248 (9th Cir. 1999) (to determine the
4 validity, nature and effect of a lien courts must look to state
5 law). Under Oregon law, "two steps are required to create an
6 enforceable security interest: attachment and perfection."
7 In re Stein, 261 B.R. 680, 688 (Bankr. D. Or. 2001). The
8 requirements for attachment and perfection are found in Oregon's
9 version of the UCC, Oregon Revised Statutes (ORS) at Chapters 71
10 through 79.¹³

11 The collateral description requirement for security
12 agreements is governed by ORS 79.0108 which sets forth a
13 reasonable identification test. Under ORS 79.0504, "[a]
14 financing statement sufficiently indicates the collateral that
15 it covers if the financing statement provides: (1) A description

17 ¹² In approximately 2001, all fifty states adopted Revised
18 Article 9. Therefore, in all material respects the law is
uniform after that date.

19 ¹³ Generally, provisions of the UCC must be "liberally
20 construed and applied to promote its underlying purposes and
21 policies, which are: (a) To simplify, clarify and modernize the
22 law governing commercial transactions; (b) To permit the
23 continued expansion of commercial practices through custom, usage
24 and agreement of the parties; and (c) To make uniform the law
25 among the various jurisdictions." ORS 71.1030(1). Although we
26 look first to Oregon law, this last directive of making uniform
27 law among the various jurisdictions "anticipates reference to
28 judicial decisions of other jurisdictions construing the common
text of the UCC." In re Walter B. Scott & Sons, Inc., 436 B.R.
582, 596 n.20 (Bankr. D. Idaho 2010) (citing Hopkins v. Lojek
(In re Scheu), 356 B.R. 751, 755 & n.11 (Bankr. D. Idaho 2006)
(citing with approval the Ninth Circuit Bankruptcy Appellate
Panel's interpretation of a provision of the California UCC
identical to Idaho's version)).

1 of the collateral pursuant to ORS 79.0108; or (2) An indication
2 that the financing statement covers all assets or all personal
3 property."

4 **1. The Reasonable Identification Test**

5 A security interest cannot be perfected until it attaches
6 and a security interest cannot attach until the requirements of
7 ORS 79.0203 are met. ORS 79.0203 provides that one of the
8 prerequisites for the creation of a valid security interest is
9 that "[t]he debtor has authenticated a security agreement that
10 provides a description of the collateral and, if the security
11 interest covers timber to be cut, a description of the land
12 concerned[.]"¹⁴ ORS 79.0203(2)(c)(A). "The primary function of
13 9-203 is that of a statute of frauds; it is designed mainly to
14 minimize disputes over whether there was an agreement and over
15 what collateral it could have covered." Nw. Acceptance Corp.,
16 841 F.2d at 921. A description of collateral in the security
17 agreement is sufficient if it "reasonably identifies what is
18 described" or is otherwise "objectively determinable."
19 ORS 79.0108(1)(a) and (2)(f).

20 Under ORS 79.0502(1)(c), a financing statement must
21 "indicate" the collateral it covers. Under ORS 79.0504(1), a
22 financing statement sufficiently "indicates" the collateral if
23 it contains a description of the collateral pursuant to
24 ORS 79.0108. As noted, ORS 79.0108 sets forth a "reasonable
25

26 ¹⁴ Even if the Christmas trees are considered standing
27 timber, they were covered under the description of collateral.
28 Because the mortgage was filed in the real property records
Harvest was properly perfected. See ORS 79.502(c)(2)(B) and (3).

1 identification test" for collateral descriptions: "[A]
2 description of personal or real property is sufficient, whether
3 or not it is specific, if it reasonably identifies what is
4 described" ORS 79.0108(1)(a). The statute gives
5 examples of reasonable identification of collateral by a
6 "[s]pecific listing . . . or . . . any other method, if the
7 identity of the collateral is objectively determinable."
8 ORS 79.0108(2)(a) and (f).

9 The Oregon Supreme Court has rejected a reasonable
10 identification test that "requires exactitude and excessive
11 detail." Cnty. Bank v. Jones, 566 P.2d 470, 481 (Or. 1977).
12 Official Comment 2 to UCC 9-108 also "rejects any requirement
13 that a description is insufficient unless it is exact and
14 detailed (the so-called 'serial number' test)." See
15 In re Commercial Money Ctr., Inc.), 350 B.R. at 475 (noting the
16 usefulness of the Official Comments in interpreting the UCC).
17 One treatise explains: UCC 9-108(a) "requires only that the
18 description 'reasonably identify' the collateral, leaving
19 considerable slack." 4 White, Summers, & Hillman, Uniform
20 Commercial Code § 31-3 (6th ed.).

21 Finally, the reasonable identification test is satisfied if
22 the description in the security agreement or financing statement
23 provides enough information to enable third parties to identify
24 the collateral upon reasonable inquiry. See Willamette Prod.
25 Credit Ass'n v. Lovelady (In re Lovelady), 21 B.R. 182, 184
26 (Bankr. D. Or. 1982) (construing ORS 79.1100, predecessor to
27 ORS 79.0108 in connection with collateral description in
28 security agreement and financing statement); Appleway Leasing,

1 Inc. v. Wilken, 591 P.2d 382, 384 (Or. 1979) (construing former
2 ORS 79.1100 in connection with collateral description in
3 financing statement); see also In re Brown, 479 B.R. 112 (Bankr.
4 D. Kan. 2012) ("In order for collateral to be 'reasonably
5 identified' in security agreement, so as to allow security
6 interest to attach, description in security agreement must be
7 such that it allows third persons, aided by reasonable inquiries
8 which the instrument itself suggests, to identify the property;
9 if document gives clues sufficient that third persons by
10 reasonable care and diligence may ascertain the property
11 covered, then it is adequate under Kansas law."); Rice v.
12 Miller, 864 N.Y.S.2d 255, 258 (N.Y. Sup. Ct. 2008) (applying New
13 York law, UCC 9-108(b)(6)'s standard is met "if a third party
14 could determine what items of the debtor's collateral are
15 subject to the creditor's security interest").

16 **2. Rules Unique to Security Agreements**

17 Oregon courts recognize that security agreements are
18 contracts. Community Bank, 566 P.2d at 478; Matter of Hill's
19 Estate, 557 P.2d 1367, 1374 (Or. Ct. App. 1976). As such,
20 Oregon courts construe security agreements by applying common
21 law contract principles. Oregon follows an objective theory of
22 contracts which requires that contracts be construed in
23 accordance with the parties' objective manifestations of intent;
24 i.e., as a reasonable third party would understand the intent of
25 the parties. Harty v. Bye, 483 P.2d 458, 461 (Or. 1971). In
26 determining objective intent, the court examines the text and
27 context of the disputed provision, considering the contract as a
28 whole, to determine whether the disputed provision is ambiguous.

1 See ORS 42.230; Yogman v. Parrott, 937 P.2d 1019, 1021 (Or.
2 1997). Dictionary definitions may be used to determine whether
3 a provision is ambiguous. Yogman, 937 P.2d at 1021.

4 With these guidelines in mind, we consider the merits.

5 **B. Demeter's Security Agreement and Financing Statement**

6 We note that unlike Harvest's Security Agreement,
7 Demeter's Security Agreement at § 4 specifically references
8 "[a]ll Christmas trees" as part of the collateral. Therefore,
9 there is no question that this collateral description meets
10 ORS 79.0108(2)'s standard.

11 We also conclude that the Demeter Financing Statement
12 reasonably indicated that it covered the Christmas trees by
13 stating that the collateral covered, among other things:
14 "other articles of personal property that now or hereafter are
15 located on, affixed or attached to, or incorporated in the Land
16" See Exhibit B to the Demeter Financing Statement, ¶ 2.
17 This description meets the statutory requirements for collateral
18 descriptions in financing statements. See ORS 79.0504(2) ("[a]
19 financing statement sufficiently indicates the collateral that
20 it covers if the financing statement provides . . . [a]n
21 indication that the financing statement covers . . . all
22 personal property.").

23 **C. Harvest's Security Agreement and Financing Statement**

24 With respect to Harvest, debtors reiterate most of the
25 arguments made in the bankruptcy court. They again place at
26 issue the phrase in § 4 of the security agreement, "[a]ll trees,
27 bushes, vines and other permanent plantings" contending
28 this plain and simple language does not include Christmas trees.

1 Debtors seize on the word "permanent" in the clause "other
2 permanent plantings," maintaining that it is as applicable to
3 the first listed words "[a]ll trees, bushes, vines" as to the
4 last word, "plantings." Under debtors' view, the phrase should
5 be read as meaning "[a]ll permanent trees, permanent bushes,
6 permanent vines and other permanent plantings." Debtors then
7 contend that Christmas trees do not fall within the class of
8 "permanent" trees relying on the dictionary definition of
9 "permanent" and Rainier, a Washington case, which found that
10 Christmas trees were "crops" and "crops" by definition are not
11 permanent. According to this argument, § 4's collateral
12 description is unambiguous and described with such particularity
13 that no further inquiry would have been required of a third
14 party. We are not convinced.

15 First, the language in § 4 of Harvest's Security Agreement
16 "[a]ll trees, bushes, vines and other permanent plantings" is
17 broad enough to include Christmas trees as either "trees" or
18 "permanent" trees for purposes of the UCC reasonable
19 identification test.

20 Second, we cannot say that "permanent" modifies "all trees"
21 by examining the clause in isolation like debtors do. Contract
22 principles dictate that we examine the text and context of
23 Harvest's Security Agreement as a whole. Further, although the
24 missing comma between "vines" and the conjunction "and" may pose
25 a grammatical problem for some, "[p]unctuation or the absence of
26 punctuation in a contract is ineffectual to control its
27 construction. . . ." 17A Am. Jur. 2d Contracts § 366. As an
28

1 interpretative tool, the DOTLA¹⁵ is equally unreliable because
2 the rule is not an absolute and can be overcome by other indicia
3 of meaning. Barnhart v. Thomas, 540 U.S. 20, 26 (2003).

4 Indeed, the bankruptcy court found the DOTLA's application did
5 not resolve the interpretative problem before it.

6 Construing the security agreement as a whole, § 4 of the
7 Harvest Security Agreement defined "[a]ll trees, bushes, vines
8 and other permanent plantings" as the "Plantings." We agree
9 with the bankruptcy court's reasoning that the dictionary
10 definition of "Plantings," in conjunction with use of the
11 defined term "Plantings" in § 5, provides a textual clue to a
12 reasonable third party that the meaning of "[a]ll trees, bushes,
13 vines and other permanent plantings" could include Christmas
14 trees.

15 Regardless, other provisions in the security agreement
16 contain language that expressly grant Harvest a security in the
17 "Plantings" which includes trees whether they are permanent or
18 not and consistent with this assigns the rights to income from
19 the Plantings. The agreement provides under § 6: "Mortgagor
20 presently assigns to Lender all of Mortgagor's right, title and
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22 ¹⁵ Under the DOTLA, "[r]eferential and qualifying words and
23 phrases, where no contrary intention appears, refer solely to the
24 last antecedent." See 2A N. Singer, Sutherland on Statutory
25 Construction § 47.33 (7th ed. 2012). Applying the rule here
26 would mean that "and other permanent plantings" referred only to
27 "vines" and not "[a]ll trees, bushes." However, this left the
28 phrase without a coordinating conjunction which was inconsistent
with other granting provisions in the security agreement. As a
result, the bankruptcy court did not rely on the doctrine to
ascertain the meaning of § 4. Hence, debtors' assertion that the
bankruptcy court gave the DOTLA undue weight is without merit.

1 interest in and to all rents, revenues, income, issues and
2 profits (the "Income") from . . . the Plantings, the Personal
3 Property . . ., whether now or hereafter due." The agreement
4 continues "Mortgagor grants Lender a security interest in the
5 Income, Plantings, . . ., the Personal Property,"

6 Taken together, these provisions evidence the UCC's broad
7 policy of leniency for collateral descriptions. Indeed, the
8 Ninth Circuit in Biggins v. Sw. Bank, 490 F.2d 1304, 1308 (9th
9 Cir. 1974) previously rejected an argument similar to debtors'
10 because such "extensive textual analysis" is inconsistent with
11 the overall purpose of the UCC. Under the rules of construction
12 expressly provided, even those descriptions that are unclear or
13 susceptible to more than one distinct meaning may be sufficient
14 in circumstances in which the description would allow a third
15 person, aided by reasonable inquiries which the instrument
16 itself suggests, to identify the collateral.

17 In short, at minimum, a third party would have been able to
18 determine whether Harvest claimed a security interest in "trees"
19 upon further inquiry. The collateral, Christmas trees, was
20 objectively determinable: upon inquiry, a reasonable third
21 person could determine that money was loaned to debtors (the
22 security agreement says so), debtors owned a Christmas tree farm
23 with approximately 1 million Christmas trees on their property,
24 and their primary, if not sole, source of income to repay the
25 loan was generated by those trees.¹⁶

26
27 ¹⁶ Because we find Harvest's security included the Christmas
28 trees based on the provisions cited above, it is unnecessary for
(continued...)

1 Finally, if there are any lingering doubts, Harvest's UCC-1
2 perfects an interest in all personal property located on the
3 real property at issue. The Revised Article 9 in Oregon and
4 elsewhere allows perfection pursuant to a UCC-1 that states "all
5 personal property." Therefore, debtors' reliance on Matter of
6 H.L. Bennett Co., 588 F.2d 389 (3d Cir. 1988) is misplaced since
7 that case is out-dated.

8 In sum, we agree with the bankruptcy court's conclusion
9 that Defendants' notes were secured by a perfected unavoidable
10 security interest in debtors' Christmas trees. That security
11 also "attaches to any identifiable proceeds of collateral."
12 ORS 79.0315(1)(b). Therefore, Defendants have a perfected
13 security interest in the proceeds from the sale of debtors'
14 Christmas trees as well.

15 VI. CONCLUSION

16 For the reasons stated, we AFFIRM.

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¹⁶(...continued)
us to rely on the language in the Note B.