

FILE

*Arden Industries, Inc. v.
Freight Forwarders, Inc.*

Swann, Rubin & Chanturia LLP
Attorneys at Law
One Belden Place
Taverly, Franklin 33056
(555) 965-3100

OFFICE MEMORANDUM

To: Applicant
From: Lara Chanturia
Date: February 27, 2003
Subject: *Arden Industries, Inc. v. Freight Forwarders, Inc.*

We represent Arden Industries, Inc. (Arden) in a suit we filed for declaratory and injunctive relief against Freight Forwarders, Inc. (FFI). The dispute is over whether FFI has a security interest and a carrier's lien on a printing press shipped by Arden through FFI. We succeeded in getting a temporary injunction preventing FFI from selling the printing press during the pendency of our suit. Because the material facts are not in dispute, the parties have agreed to file cross motions for summary judgment. To expedite matters, we have entered into a Stipulated Statement of Facts, which you will find in the File.

I would like you to draft our brief in support of Arden's position that FFI has neither a security interest nor a carrier's lien in the printing press. In addition to making the affirmative arguments as to why FFI does not have a security interest or carrier's lien, be sure to refute the points made in the November 25, 2002, letter from FFI's attorneys.

Follow the guidelines set forth in our office memo on persuasive briefs. However, aside from a very short introduction describing the dispute, do not write a separate Statement of Facts or a statement of Jurisdictional Basis inasmuch as the Stipulated Statement of Facts will be attached to the brief. You will, of course, need to incorporate the relevant facts into your legal arguments to make those arguments persuasive.

Swann, Rubin & Chanturia LLP

Attorneys at Law

MEMORANDUM

To: All Attorneys
From: Leslie Rubin
Subject: Persuasive Briefs

September 8, 1995

All persuasive briefs, including Briefs in Support of Motions, whether directed to an appellate court, trial court, or administrative officer, shall conform to the following guidelines.

All briefs shall include a concise statement of the Jurisdictional Basis for the case and Statement of Facts, emphasizing facts that favor our client's position.

The Argument section of the brief follows the Statement of Facts. Each distinct point in the Argument should be preceded by a carefully crafted subject heading that encapsulates the argument it covers and succinctly summarizes the reasons the tribunal should take the position you are advocating. A heading should be a specific application of a rule of law to the facts of the case and not a bare legal or factual statement of an abstract principle. For example, improper: THE DEFENDANT DID NOT PROPERLY PERFECT HIS SECURITY INTEREST. Proper: THE DEFENDANT DID NOT HAVE A PERFECTED SECURITY INTEREST BECAUSE HE FAILED TO FILE A PROPERLY EXECUTED FINANCING STATEMENT IN THE OFFICE OF THE SECRETARY OF STATE.

The argument under each heading should analyze applicable legal authority and state persuasively how the facts and the law support our client's position on the proposition stated in the heading. Authority supporting our client's position should be emphasized, but contrary authority should also be generally cited, addressed, and explained or distinguished. Do not reserve arguments for reply or supplemental briefs.

There is no need for the lawyer to prepare a table of contents, a summary of the argument, or the index. These will be prepared, where required, after the draft is approved.

Marshall, Danbury & Markowitz LLP
Attorneys at Law
12895 Clearwater Way
Markleeville, Franklin 33058
(555) 442-1280

November 25, 2002

Albert Ripple, President
Arden Industries, Inc.
6400 Adams Highway
Taverly, Franklin 33056

Certified Return
Requested

Re: *Freight Forwarders/Arden Industries*

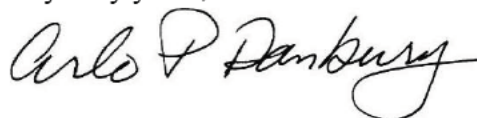
Dear Mr. Ripple:

I write on behalf of our client, Freight Forwarders, Inc. (FFI). Arden Industries, Inc. (Arden) is in arrears on five unpaid past invoices rendered by FFI totaling \$122,725. FFI has in its possession the printing press it shipped for Arden last week. We believe that press has a value of \$200,000.

We have advised FFI that it has a valid security interest and carrier's lien in the printing press in its possession. Thus FFI is entitled to sell the press and apply the proceeds to the amount Arden owes it. FFI's carrier's lien arises under § 7-307 of the Franklin Commercial Code. Its security interest arises from the language in Section 15 on the back of FFI's invoices. That is the same language that has appeared on the invoices since Arden and FFI began doing business together some five years ago. Therefore, the "course of dealing" between Arden and FFI includes the agreement that Arden's goods shipped through FFI constitute collateral for amounts owing on the invoices. Actually, we have litigated this question successfully before, and we refer you and your attorneys to *Freight Forwarders, Inc. v. Wendover Mfg. Co.*, U.S.D.C. (D. Olympia 1997).

If Arden does not bring its account current within 10 days, FFI will sell the printing press and apply the proceeds to the arrearages.

Very truly yours,



Arlo P. Danbury

FRANKLIN DISTRICT COURT

Arden Industries, Inc.,)	
Plaintiff,)	
)	
v.)	Case Number 02-CV-4081
)	Stipulated Statement of Facts
)	
Freight Forwarders, Inc.,)	
Defendant)	
_____)	

Defendant, Freight Forwarders, Inc. (FFI), asserts that under the Franklin Commercial Code it has a perfected security interest and/or carrier's lien in the Model Z Swift-Print printing press (Model Z) manufactured by plaintiff, Arden Industries, Inc. (Arden). FFI has retained possession of the Model Z it shipped on behalf of Arden, which owes FFI arrearages on earlier FFI shipping invoices. To support FFI's position that it has a perfected security interest in the Model Z and is thus entitled to sell the press to satisfy Arden's arrearages, FFI argues: (1) the effect of Section 15 of its shipping invoices; (2) the long course of dealing between the parties; (3) the fact that it has possession of the Model Z; and (4) otherwise by operation of law. Arden denies that FFI has a security interest or carrier's lien under the Franklin Commercial Code. In anticipation of filing cross motions for summary judgment, the parties stipulate that the following undisputed facts are the only material facts necessary to resolve the summary judgment motions.

1. The court has jurisdiction over this action, in which the parties seek a declaration of their respective rights, i.e., whether FFI has a valid security interest and/or carrier's lien in certain goods of Arden.

2. Arden and FFI are both duly formed and existing corporations of the State of Franklin.

3. Arden is a manufacturer of printing presses.

4. FFI is a common carrier that transports goods in interstate commerce.

5. Starting in 1998, Arden began using FFI's services to transport Arden's finished printing presses from Arden's manufacturing plant in Taverly, Franklin, to purchasers of the presses throughout the United States and overseas. In all cases, Arden retained title to the goods until delivery to the customer.

6. Each shipment of goods was initiated by a telephone call from Arden's shipping manager to FFI's offices. The shipping manager would inform FFI's dispatcher that a press was ready for shipment and give the dispatcher the name, address, other necessary destination information, and a description of the items being shipped.

7. FFI's dispatcher would prepare an invoice on an FFI form, describing the goods along with origination and destination information. FFI's driver would pick up the goods at Arden's dock and leave a copy of the invoice with Arden's shipping manager.

8. Facts numbered 6 and 7, above, describe the full extent of the steps the parties took to arrange each shipment.

9. There were never any negotiations or discussions between the parties regarding the terms of shipment. Arden understood that it would be charged and would pay the invoice price, which conformed to FFI's published transportation rates, net 30 days.

10. There were no writings or contractual undertakings, other than the invoices FFI presented to Arden for each shipment. Arden never signed any documents related to the parties' shipping transactions.

11. During the first year of the business relationship, FFI presented Arden with a form long-term shipping services contract that contained terms and conditions that would govern the relationship, including language identical to the language quoted below from Section 15 of FFI's form invoice (see Fact No. 13). Arden declined to enter into that contract.

12. During the five years in which the parties transacted business with each other, FFI provided shipping services for Arden on 137 separate occasions, always carrying printing presses to Arden customers. On each occasion, FFI presented Arden with an invoice covering the shipment.

13. Each FFI form invoice contained the following language in small print on the reverse side:

Section 15: General Lien on Any Property. The Company shall have a general lien on any and all property (and documents relating thereto) of the Customer in the Company's possession, custody, or control or en route, for all claims for charges, expenses, or advances incurred by the Company in connection with any shipments of the Customer.

If such claim remains unsatisfied for thirty (30) days after demand for its payment is made, the Company may sell at public auction or private sale, upon ten (10) days written notice, sent certified or registered mail with return receipt requested to the Customer, the goods, wares, and/or merchandise, or so much thereof as may be necessary to satisfy such lien. The Company shall apply the net proceeds of such sale to the payment of the amount due the Company. Any surplus from such sale shall be transmitted to the Customer. The Customer shall be liable for any deficiency in the sale.

14. By inserting the Section 15 language in the invoice form, FFI intended to create a security interest in its customers' goods to secure payment of its freight charges.

15. Arden never intended to grant FFI a security interest in the goods it shipped via FFI.
16. Arden never signed any security agreements or UCC financing statements explicitly granting FFI a security interest in any property.
17. FFI never filed any documents with the Secretary of State's Office evidencing its claim to a security interest.
18. Although no Arden employee remembers ever having read the language of Section 15 of the invoices, Arden at all times had constructive knowledge thereof.
19. No FFI employee ever explicitly directed the attention of anyone at Arden to the language of Section 15 of the invoices.
20. Until this dispute arose, there never have been any discussions between Arden and FFI regarding the meaning and effect of Section 15 of the invoices.
21. Arden never objected to or otherwise expressed any intent not to be bound by the provisions of Section 15 of the invoices.
22. Arden owes arrearages to FFI on five unpaid invoices in an amount totaling \$122,725. FFI made demand for payment thereof more than 30 days ago and the amount remains unpaid.
23. FFI is in possession of the Model Z printing press manufactured by Arden and shipped via FFI on November 18, 2002, which press has a market value of approximately \$200,000.
24. Arden owes arrearages on five invoices covering earlier shipments, not including the invoice for shipment of the Model Z in FFI's possession.
25. The goods covered by the invoices that are in arrears were delivered by FFI in the ordinary course of business to the destinations designated in those invoices and those goods are no longer in FFI's possession.
26. Despite several earlier payment delinquencies by Arden, FFI has never before claimed or attempted to enforce a security interest or carrier's lien in Arden's property.
27. This is the first and only occasion on which a dispute has arisen between the parties on the meaning and effect of Section 15 of the invoices.

Date: January 27, 2003

Swann, Rubin & Chanturia LLP

By Lara Chanturia
Lara Chanturia
Attorneys for
Arden Industries

Marshall, Danbury & Markowitz LLP

By Arlo P. Danbury
Arlo P. Danbury
Attorneys for
Freight Forwarders, Inc.

