

In re Turley

172 F.3d 671 (9th Cir. 1999)

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Thomas C. Thompson Sports ("Thompson Sports") appeals from a district court order that affirmed summary judgment in favor of Farmers and Merchants Bank of Long Beach ("Bank"). Both the district court and the bankruptcy court held that the Bank had a prior perfected security interest in certain interpleaded funds. Both the Bank and Thomson Sports lay claim to funds interpleaded by Championship Auto Racing Teams ("CART") after the termination of its association with debtor Norman Turley ("Turley"). CART organizes Indy Car auto racing events and Turley raced Indy cars as a member of CART. To race in CART events, one must be a franchise member subject to strict requirements. CART's by-laws contain limitations to stock ownership. Once accepted as a franchise member, applicants must purchase one share of CART stock. If a franchise membership terminates, the member must return the stock certificate in exchange for the share value as determined by the Board, as well as a Board determined franchise value. Soon after Turley arranged for financing arrangements from both the Bank and Thomson Sports, he filed for Chapter 11 bankruptcy protection. After the petition, CART's Board voted to redeem Turley's share of stock for \$220,000. In addition, Turley was entitled to a \$29,394 end-of-the-year payment based on his participation in CART-sanctioned races in 1993. Given the competing claims to the funds, CART filed a complaint in interpleader. The bankruptcy court entered summary judgment in favor of the Bank, and the district court affirmed. The Ninth Circuit Court of Appeals reversed and remanded the district court's decision, holding that the stock that Turley had to buy as a member of CART was not a certificated security, the stock was a general intangible, the bank's possession of stock did not have perfection consequences, and that the creditor had a priority claim to interpleaded funds.

Thompson Sports held a perfected security interest in the debtor's general intangibles and argued that it had priority to the interpleaded funds because they represent proceeds from a general intangible – a franchise agreement between the debtor and CART. The Bank asserted that it was entitled to the funds because the proceeds stemmed not from a franchise agreement, but from the redemption of the debtor's CART share certificate, which the debtor pledged to the bank.

The pivotal issue on appeal was whether Turley's share certificate was a certificated security under Article 8 of the Uniform Commercial Code. Whether Turley's CART share is a certified security turns on whether it is a type that is generally traded in markets and exchanges. The Bank argued that a CART share is nothing more than a share in a close corporation and that CART transfer restrictions, being typical for such corporations, did not remove the share from Article 8 purview. The court disagreed, holding that as a franchise member, Turley was required to purchase one share of CART stock. Upon termination of his franchise membership, CART's by-laws compelled him to return the share certificate. In order to renew his one-season franchise membership, and thus retain his CART share, the by-laws required Turley to participate in the season's racing events and remain otherwise eligible. With these requirements, the court held the CART share is not of a type commonly dealt in on securities exchanges or markets or commonly recognized as a medium for investment.

Because Turley's share in CART was not a certificated security, the question became what was Turley's interest in CART, and did the certificate matter. Since it was not an Article 8 certificate security, Turley's interest was caught by the general intangible net in article 9, and the Bank could have nothing more than an unperfected security interest in Turley's CART share.

The court held that the funds were proceeds attributable to Turley's interest in CART. The interest was a general intangible and Thompson Sports' perfected security interest in Turley's general intangibles trumps any interest that Bank may have in the proceeds. As such, the court entered judgment for Thompson Sports.