UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Scott Lee Bendickson, 473-78-7037, d/b/a S&L General Contracting and Maintenance Services, d/b/a S&L Modulars, asf ASF/S & L Modulars, Inc.,	Chapter 7 BKY No. 95-3-4380
Debtor.	
Farmers and Merchants State Bank of Blooming Prairie, Minnesota,	ADV No. 96-3-049
Plaintiff,	
v.	
Scott L. Bendickson, d/b/a S&L Contracting, and Charles W. Ries, Trustee for Bankruptcy Estate of Scott L. Bendickson, d/b/a S&L Contracting,	ORDER
Defendants.	

This matter came before the Court on May 16, 1996, on cross-motions for summary judgment. Appearances were noted on the record. The Court, having reviewed and considered the moving papers, the arguments of counsel, exhibits and supporting material, hereby makes this ORDER in accordance with the Federal and Local Rules of Bankruptcy Procedure.

I.
FACTS

Scott Bendickson individually, and Lori Bendickson, as a principal of S & L Construction, executed a series of promissory notes with Farmers and Merchants State Bank of Blooming Prairie (Bank), starting on December 1, 1993. The first note, executed on December 1, 1993, was in the amount of $15,000, for operating funds in connection with their business. The second note was executed on December 6, 1993 in the amount of $4,060, presumably also for business purposes. A third note was executed on December 9, 1993, in the amount of $15,000, again for operating funds. All three notes were executed on short form printed documents that provided these references: "This note is secured;" and, "This note is unsecured;" with boxes next to the references. On each note, the box next to

the secured reference was checked. No collateral was described in the two $15,000 notes; a Cadillac was described as collateral in the $4060 note. The three notes were short term notes that were subsequently paid through the issuance of a fourth note on February 28, 1994, in the amount of $34,060.

In the meantime, in December of 1993, the Bank obtained from the Debtor, and filed with the Minnesota Department of Public Safety, Notification of Assignment, Release or Grant of Secured Interest for five vehicles. On February 28, 1994, Scott Bendickson executed a renewal promissory note #65238, for $34,060. The note was referenced as secured, and listed as collateral: the five vehicles mentioned above; plus, two additional vehicles.(FN1) Certificates of title for all seven vehicles list the Bank as the first secured lien holder.

By July, 1994, the February note was paid down to $20,000, and, on July 5, the Debtor executed the first in a series of short term renewal notes for that amount. The last note was executed on June 22, 1995. Each of the renewal notes referenced that it was secured, but none listed the collateral, including the last June 22, 1995, note.

The Debtor filed his Chapter 7 bankruptcy petition on September 11, 1995. This adversary proceeding was commenced by the Bank against the Debtor and the Trustee, Charles W. Reis, on March 7, 1996, seeking determination of secured status of the $20,000 obligation, now based on the June 22, 1995, note. The parties filed cross-motions for summary judgment.

II.
ANALYSIS

In Minnesota, a valid and enforceable security interest is created pursuant to Minn. Stat. Section 336.9-203, which provides in pertinent part:

> (1) . . . a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:
>
> > (a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral . . .

The issue here is whether the Bank obtained a signed security agreement from the Debtor. The Bank did not.

Although a formal separate security agreement was never executed in connection with the loans, the Bank contends the Court must look to other documents involved in the transaction to determine if a security agreement exists. As evidence of a security agreement, the Bank offers the promissory notes from 1993 through 1995. The Bank argues that characteristics of the notes indicate a security agreement, specifically that; the notes state that they are secured; and, in the case of the February 28, 1994, note, the note listed the seven vehicles as collateral. Additionally, the Bank points to the title certificates issued by the Department of Motor Vehicles, which show the Bank as the first secured lienholder, as evidence of a security agreement. Finally, the bank offers the Notification of Assignment, Release or Grant of Secured

Interest from the Department of Public Safety, as evidence.

The Bank's arguments are not persuasive. The Bank did not obtain a signed security agreement from the Debtor; none can be appropriately fashioned from the documents that the Bank refers to; and, accordingly, the Bank is unsecured.

Although the Uniform Commercial Code does not require a separate formal security agreement; or even precise words in an agreement creating a security interest; there must be some language in an agreement that actually conveys a security interest. Shelton v. Erwin, 472 F.2d. 1118, 1120 (8th Cir. 1973).

The parties agree that the Bank and the Debtor did not enter into a separate security agreement, in connection with the execution of the promissory notes. The Bank's documents do not present a security agreement. The promissory notes reference that the notes are secured, and two earlier ones list vehicles as collateral. But, the earlier notes were satisfied, and the later ones, including the last one of June 22, 1995, did not describe any collateral. Furthermore, none of the notes, including the last one, contained specific words of a grant.(FN2)

The Bank argues that the Notifications each satisfy the statutory requisites for the creation of a security interest in at least five of the vehicles at issue. The Notifications specifically provide, in pertinent part:

> " [x]GRANT The owner[s] have granted to the secured party named in Section A a security interest in the vehicle described above.
>
> Date of the security agreement _____ ."

The Bank contends that the Notifications, signed by the Debtor, contain the necessary grant and description of collateral regarding each of the five vehicles to which they pertain. However, the Notifications are informative only; they make reference on their faces to security agreements purportedly created elsewhere;(FN3) and, they are in the nature of financing statements that are necessary to obtain perfection of security interests, otherwise created. The Notifications are not security agreements, since they do not contain the necessary grant of security interests. Shelton v. Erwin, 472 F.2d 1118, 1120, (8th Cir.1973).

The Bank cannot show that it has a security interest in the vehicles. Accordingly, the Trustee is entitled to summary judgment that the Bank has no right, title or interest in the vehicles; but, that the Bank is unsecured.

III.
DISPOSITION

IT IS ORDERED: That Farmers and Merchants State Bank has no interest in the following vehicles:

1970 White Semi-truck	VIN 736313
1985 Cadillac	VIN 1G6CD6986F4295476
1959 Dodge Truck	VIN M8D5H06549
1986 Mitsubishi	VIN JA7FP24D7GP004351
1978 Ford Van	VIN E22HHCG9386

1974 Dakota Truck VIN 2478774
1976 Mack Truck VIN U686ST1935.

Said vehicles are unencumbered property of the estate.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 29, 1996. By The Court:

Dennis D. O'Brien
Chief U.S. Bankruptcy Judge

(FN1) These are the vehicles that were listed, and which are at issue in this proceeding:

1970 White Semi-truck VIN 736313
1985 Cadillac VIN 1G6CD6986F4295476
1959 Dodge Truck VIN M8D5H06549
1986 Mitsubishi* VIN JA7FP24D7GP004351
1978 Ford Van* VIN E22HHCG9386
1974 Dakota Truck VIN 2478774
1976 Mack Truck VIN U686ST1935.

* The Mitsubishi and Ford Van were the two vehicles listed on the February 28, 1994, note, for which "Notifications" had not been filed by the Bank in December of 1993.

(FN2) The Bank does not argue that the June 22, 1995, note is a securityy agreement. the Bank does argue that the notes, along with other documents and the course of dealing between the parties, all evidence the parties' intent to create a security agreement. Intent, however, is insufficient where the statuatory requisites are not met. See: Shelton, supra, 1120.

(FN3) The Notifications disclose either December 1, December 6, or December 9, 1993, as the "Date of the security agreement."