

 CAPITAL

Editor: Kate Glaze

Summer 2013



When it Comes To Names And The UCC, You Need To Sweat The Small Stuff - Update

By Don Hanmer

214.855.3065 | dhanmer@ccsb.com

The Spring 2009 issue of Capital contained the article “When it Comes to Names and the UCC, You Need to Sweat the Small Stuff” (http://www.ccsb.com/pdf/Publications/RealEstate/Capital_Spring_2009_Issue.pdf) warning lenders to be very careful to get the debtor’s name absolutely correct in a financing statement. It included a few examples of mistakes that appear to be minor, but that caused financing statements to be found defective leaving lenders unsecured as to trustees in bankruptcy and other third party claimants.

Since then, the issue has continued to be a problem, as shown by cases decided by recent bankruptcy courts in Texas. Also, for most states the law changed on July 1, 2013 in ways that should make it easier to get individual names correct but probably won’t make much difference with respect to entity names.

In two recent cases decided by Texas bankruptcy courts applying Texas law, the court found financing statements were invalid because the debtors’ names were held to be incorrectly stated. In each case an “s” was omitted from the end of a word in the name. In one, the correct name was Jim Ross Tires, Inc., but the UCC-1 showed the name as Jim Ross Tire, Inc.¹ and, in the other, the correct name was Progreso Materials Ltd. and the name on the UCC-1 was Progreso Material, Ltd.²

The UCC says even if the name in a financing statement is the wrong name, if a search under the correct name of the debtor using the filing office’s standard search logic, if any, would disclose the financing statement with the incorrect name, the financing statement would be effective.³ One would have guessed that a search on the Secretary of State of Texas website would have found the debtors’ names even with the error. But, disturbingly, the courts found that the standard search logic employed by the Secretary of State of Texas would not have disclosed either of the two filings because of the minor error.

The revised version of the UCC, which became effective on July 1, 2013 in most states, requires that if the debtor is a registered organization, the correct name of the debtor is the name on the public organizational record most recently filed in the state of its organization.⁴ This means that a secured party must examine the actual documents filed with the Secretary of State and not just rely on the name reflected in the records of the Secretary of State. Of course, if there is any potential discrepancy between the name on the documents filed and the name shown in the Secretary of State’s records, it is always best to file under both names.

With respect to individuals, the law in most states currently says the legal name of the debtor is required on the financing statement.⁵ This can create problems as illustrated by the case of *In re Miller*.⁶ In this case, the court held that the UCC required the debtor’s legal name and that meant the name on the debtor’s birth certificate, which was Ben Miller, not the name Bennie Miller as shown on his driver’s license, his bank account, his social security card, the deed to his house and his tax returns. This case was reversed on appeal, but it illustrates the problem.

Before July 1, 2013, Texas law said that the name of an individual is that shown on a driver’s license issued by the debtor’s state of residence.⁷ The UCC revisions that Texas and many other states adopted now say that the correct name is the name of the debtor shown on a driver’s license or personal identification card issued by Texas or the relevant state that has not expired. If one has not been issued, then the correct name is the full name, or the last name plus the first personal name. Note that the UCC must be filed in the individual’s state of residence and the laws of that state are the ones relevant to deciding how to state the debtor’s name.

This adds some degree of certainty and if the debtor lives in Texas and has a current driver’s license issued by the State of Texas, the name on the driver’s license should be used verbatim even if the name is a nickname or is misspelled. One danger with the new rule is that if the debtor obtains a new driver’s license with the name stated differently, e.g. instead of Andy Jones the new driver’s license says S. Andrew Jones, the original filing may be misleading under the UCC, requiring an amendment to the existing filing.⁸ Again, the best course may be to file multiple UCC-1s with possible variations of the debtor’s name.

There are rules with respect to the names of estates, trusts and special entities. With respect to those, review Sections 9.503(a)(2),(4) and (5) in the version effective until July 1, 2013 and Sections 9.503(a)(1),(2),(3),(5) and (6) effective after July 1, 2013.

The name issue can create serious problems. Often very little attention is paid to completing and filing UCC-1s, yet a technical mistake here can render illusory those arduously negotiated and carefully drafted loan documents which are supposed to create a first lien security interest, much to the surprise of the secured party and its lawyers. ■

-
1. *In re Jim Ross Tires, Inc.*, 379 13 B.R. 670, 675-679 (Bankr. S.W. Tex. 2007.).
 2. *CNH Capital America LLC v. Progreso Materials Ltd.*, 2012 U.S. Dist. Texas 153464 (S.D. Texas 2012).
 3. U.C.C. § 9.506(c).
 4. U.C.C. § 9.503(a)(1) effective July 1, 2013.
 5. U.C.C. § 9.503(a)(4).
 6. *In re Miller*, 76 U.C.C. Rep. Ser. 2d 435 (Bankr. C.D. Ill. 2012); rev'd 2012 WL 3589426 CC.D. Ill. 2012.
 7. U.C.C. § 9.503(a)(4).
 8. U.C.C. § 9.507(c).