

What's in a Name? UCC Financing Statement Mistakes Can Be Fatal



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A creditor obtains a security interest in its customer's property in order to increase the likelihood of payment of its claim. To obtain a valid and perfected security interest in its customer's personal property, a creditor must file a financing statement in accordance with Article 9 of the Uniform Commercial Code (UCC), as adopted in the applicable state in which the creditor is filing the financing statement.

UCC Article 9 provides strict requirements regarding the form and manner in which a financing statement must be filed. These requirements are intended to ensure that the financing statement sufficiently identifies the debtor and the pledged collateral so as to put other potential creditors on notice of the existence of the security interest.

As illustrated by a June 2021 decision from the United States Bankruptcy Court for the Middle District of Georgia in the bankruptcy case of *In re Bryant*, even the slightest deviation from the UCC's filing requirements—such as omitting the debtor's full middle name in a financing statement—may jeopardize a creditor's ability to enforce a security interest in collateral that would have otherwise been available to pay the creditor's claim. The *Bryant* decision provides a valuable lesson for creditors dealing with "mom and pop" small

customers that are sole proprietors, where the UCC rules for identifying individual debtors apply!

Background Regarding the UCC's Filing Requirements

A trade creditor seeking to obtain a valid, perfected and enforceable security interest in its customer's personal property must comply with UCC Article 9. First, a creditor must satisfy the requirements for the creation or attachment of a security interest in its customer's property that will serve as collateral securing payment of the creditor's claim.

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A security interest is created by the customer's execution of a security agreement, which adequately describes the creditor's collateral by category or type. A collateral description, such as all of a debtor's present and future accounts, inventory, equipment, and general intangibles and all cash and non-cash proceeds thereof should suffice. A collateral description such as "all of a debtor's assets" will not pass muster.

Second, a creditor's security interest in personal property collateral must be perfected according to UCC Article 9's requirements. A creditor obtaining a valid and perfected security interest in its customer's (or other debtor's) personal property will withstand a challenge by a junior secured creditor, judgment lien creditor, debtor, bankruptcy trustee, or creditors' committee. A creditor perfects a security interest in personal property by filing a UCC-1 financing statement in the appropriate filing office. A UCC-1 financing statement must, among other things, describe the collateral in a manner that is consistent with the collateral described in the security agreement and identify the debtor by its correct legal name and address. Determining an individual debtor's correct name for a UCC-1 financing statement was at issue in *Bryant*.

The public filing of a UCC-1 financing statement serves two main purposes: It confirms a secured creditor's priority rights in the collateral identified in the financing statement, and provides notice to third parties that a secured creditor is claiming an interest in the assets identified in the financing statement.

Properly identifying the debtor in a financing statement is paramount to achieving these purposes. The comments to UCC Section 9-503 state that properly identifying the debtor's name "is particularly important" since "those who wish to find financing statements search for them under the debtor's name."

UCC Section 9-503(d) and its comments provide two alternative approaches that a state can adopt, Alternative A and Alternative B, to establish the manner in which a creditor must identify an individual debtor in a UCC-1 financing statement. Under Alternative A, if the debtor holds an unexpired driver's license issued by the state in which the financing statement is filed, the creditor must identify the debtor in the financing statement by the name indicated on the license (even if the debtor's name on the license contains an error) to obtain a perfected security interest. If the debtor does not hold an unexpired driver's license issued by the relevant state, the creditor must identify the debtor by his or her "individual name" or surname and

first personal name to obtain a perfected security interest.

In states that have adopted Alternative B, it does not matter whether the debtor holds a valid driver's license. The creditor can identify the debtor by: (i) the debtor's "individual name," (ii) the debtor's surname and first personal name, or (iii) if the debtor holds an unexpired driver's license issued by the relevant state, the name indicated on the driver's license.

Most states have adopted Alternative A, including Georgia. Therefore, if a creditor is filing a financing statement with respect to an individual debtor in Georgia and the debtor holds an unexpired Georgia driver's license, as was the case in *Bryant*, the creditor seeking to comply with UCC Section 9-503 and get a perfected security interest in its collateral must identify the debtor by his or her name set forth on the driver's license.

UCC Section 9-506(a) further states that a financing statement that "substantially" complies with UCC Article 9's requirements is effective even if it contains minor errors or omissions, unless they make the financing statement "seriously misleading." UCC Section 9-506(b) further states that a financing statement is "seriously misleading" if it fails to sufficiently provide the debtor's name in accordance with UCC Section 9-503. However, UCC Section 9-506(c) provides an exception to this rule: "[I]f a search of the records of the filing office under the debtor's correct name ... would disclose a financing statement that fails to sufficiently provide the name of the debtor in accordance with Section 9-503(a), the name provided does not make the financing statement seriously misleading."

Background Regarding the Bryant Decision

Darren Bryant (Debtor) filed a chapter 12 bankruptcy petition on October 7, 2020 (Petition Date). The Debtor's secured lender, Regions Bank (Secured Lender), filed a proof of claim in the bankruptcy case for \$2,515,673.21, including a secured claim in the amount of \$177,356.20, arising from notes the Debtor had executed prior to the Petition Date. The Debtor also executed security agreements in favor of the Secured Lender that granted the Secured Lender a

first priority lien in all of the Debtor's farm equipment, with respect to which the Secured Lender had filed financing statements in Coweta County, Georgia identifying the Debtor as *Darren E. Bryant* (with a period after the "E.") or *Darren E Bryant* (without a period after the "E"). However, the Debtor held an unexpired Georgia driver's license on which his name was stated as *Darren Eugene Bryant*.

On December 29, 2020, the Secured Lender filed a motion for adequate protection or, alternatively, for relief from the automatic stay to enforce its security interest. The Chapter 12 Trustee (Trustee) appointed in the bankruptcy case opposed the Secured Lender's motion, challenging the Secured Lender's security interest as unperfected. The Trustee asserted the Secured Lender's financing statements were "seriously misleading" because they had abbreviated the Debtor's middle name. The Trustee also argued that UCC Section 9-506(c)'s exception to a UCC-1 financing statement being "seriously misleading" was inapplicable. The Secured Lender's financing statements did not appear in a search according to the standard search logic used by the Georgia Superior Court Clerks' Cooperative Authority's (GSCCCA) when searching by the Debtor's full name as it appeared on the Debtor's driver's license: Darren Eugene Bryant.

The Bankruptcy Court Sustains the Trustee's Objection

The court denied the Secured Lender's motion, in part because the Secured Lender could not prove that it held a valid, perfected security interest. The court held that the Secured Lender had failed to properly identify the Debtor's name in its UCC-1 financing statement. In so doing, the court rejected the Secured Lender's argument that Georgia's UCC Section 9-503(a)(4) merely requires the debtor to be identified by the name "indicated on the [Debtor's] driver's license" and does not explicitly require the financing statement to state the debtor's full name. The court relied on the instructions on Georgia's form UCC-1 financing statement that the filer should "use [the] exact, full name [of the Debtor] ... [and] not omit, modify, or abbreviate any part of the Debtor's name." Here, the financing statements did not comply with the Georgia's UCC Section

9-503(a)'s debtor identification requirements because the Secured Lender had abbreviated the Debtor's middle name.

The court also rejected the Secured Lender's argument that its financing statements were not "seriously misleading" because they would have been disclosed in a search that did not include the Debtor's middle name. The court relied on the GSCCCA's guidelines for third parties searching for potential security interests, which state that a search may include a debtor's middle name. In the event that such a third party had searched the Debtor by including his full unabbreviated middle name (as stated on the Debtor's driver's license), the search would not have disclosed the Secured Lender's financing statements. Accordingly, the court held that the Secured Lender's financing statements were seriously misleading and its security interest was unperfected under Georgia's UCC.

Conclusion

The *Bryant* decision serves as a cautionary tale for creditors seeking to perfect their security interests by filing UCC-1 financing statements (even though the court's holding was in the context of denying the Secured Lender's motion for adequate protection or stay relief, and was not a final judgment on the validity or perfection of the Secured Lender's security interest). Creditors should always be sure to identify a Debtor by the Debtor's correct legal name and be familiar with the UCC Article 9 provisions adopted by the state in which the creditor files a UCC-1 financing statement.

For individual debtors, regardless of whether the state has adopted Alternative A or Alternative B, creditors should conduct proper diligence to determine if an individual debtor has a valid driver's license in the applicable state and, if so, identify the debtor in any financing statements based on the debtor's name on that license—as

this approach would be sufficient regardless of the alternative adopted by the applicable state.

As the *Bryant* decision illustrates, even the slightest discrepancies in a UCC-1 financing statement create a risk that a court may find the security interest to be unperfected, which would be fatal to a creditor's ability to enforce its security interest and realize upon its collateral to pay its claim. ■■■■■

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