CARLTON FIELDS

Imperfect Perfection: Florida Has Zero Tolerance for Creditors Who Misname Debtors in UCC-1 Financing Statements

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"What's in a name? That which we call a rose by any other name would smell just as sweet." Not so fast, Juliet. While this sweet sentiment may have fared well in William Shakespeare's, Romeo and Juliet, it does not in Florida. In Florida, identifying a debtor by a name other than its legal name on Uniform Commercial Code (UCC) financing statements can be detrimental for creditors seeking to enforce their security interests in a debtor's assets. The correct names of debtors on UCC-1 financing statements actually do matter, and there is no safe harbor protection for failing to do so, even for minor mistakes. For creditors, getting your debtor's name right on UCC-1 financing statements is critical in properly perfecting and protecting your security interests in a debtor's assets.

On September 29, 2022, the Eleventh Circuit Court of Appeals issued a twelve-page published opinion addressing the conflict among some of the bankruptcy courts regarding Florida's safe-harbor protection for erroneously-named debtors in UCC-1 financing statements. The court focused on the importance of verifying the accuracy of a debtor's name on UCC-1 financing statements as a crucial step in achieving proper perfection of a security interest.

Background

In *1944 Beach Boulevard, LLC v. Live Oak Banking Co.*, Live Oak filed two UCC-1 financing statements with the Florida Secured Transaction Registry (the "Registry") that identified the debtor as "1944 Beach Blvd., LLC" instead of its legal name "1944 Beach Boulevard, LLC." Debtor, 1944 Beach Boulevard, LLC (Beach Boulevard), challenged Live Oak's UCC-1 financing statements as "seriously misleading" because of the erroneous name and "ineffective to perfect Live Oak's security

interest" under Florida Statute § 679.5061(2). Live Oak argued that its financing statements "fell under the 'safe harbor' of Florida Statute § 679.5061(3)" despite the erroneous name.

The bankruptcy court held that Live Oak's UCC-1 financing statements were "not seriously misleading and [were] effective to perfect [Live Oak's] security interest in all of [Beach Boulevard's] assets." Beach Boulevard then appealed to the district court, which then affirmed the bankruptcy court's order. Beach Boulevard further appealed to the Eleventh Circuit.

Florida's Zero Tolerance Rule for "Seriously Misleading" UCC-1 Financing Statements

Under Florida Statute § 679.5061(2), "a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 679.5031(1) [procedure for correctly naming a debtor that is a registered organization] is seriously misleading." This subsection of the statute creates a "zero tolerance rule" for financing statements that fail to correctly name a debtor.

This means that Live Oak's error in abbreviating Beach Boulevard as "1944 Beach Blvd., LLC" in its UCC-1 financing statements triggered the zero tolerance rule. Although this seems like a minor mistake, or even a common abbreviation that is accepted in written communications and documents, in Florida, any alteration to a debtor's correct name could render a financing statement "seriously misleading."

Florida's Safe-Harbor Protection for Errors in UCC-1 Financing Statements

You may be wondering, "What is this 'safe harbor' protection that Live Oak sought, and obtained in the lower court, for erroneously naming Beach Boulevard as '1944 Beach Blvd., LLC' on its UCC-1 financing statements?" Under Florida Statute § 679.5061(3), "a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 679.5031(1) . . . does not make the financing statement seriously misleading." This safe harbor, however, requires "a search of the records of the filing office under the *debtor's correct name*" and "using the filing office's *standard search logic*, if any" for it to apply.

In other words, if a search of the Registry's database, using the debtor's correct name and the Registry's standard search logic, discloses the financing statement with the erroneously-named debtor, then the erroneous name does not make the financing statement seriously misleading and the creditor is likely protected under the safe harbor. This "standard search logic" requirement is key for the safe harbor provision to apply. It is also key to the Eleventh Circuit's reversal of the district court's affirmance of the bankruptcy court's order.

Registry's Lack of "Standard Search Logic" Essentially Eliminates Safe Harbor Protection for UCC-1 Financing Statement Errors

The Eleventh Circuit focused its attention on the Florida Supreme Court's recent adoption of the "standard search logic" definition. The Florida Supreme Court adopted the "standard search logic" definition as "well understood within the industry" and "reasonably accepted to mean a procedure that identif[ies] the set of financing statements on file that constitute hits for the search'" or "produces an [u]nambiguous identification of hits."

Applying this newly adopted definition, the Eleventh Circuit held that the Registry does not have a standard search logic option because "the search option offered by the Registry, which returns the entire index, is not a 'standard search logic'" and "cannot rationally be treated" as such when it "returns as hits, for any search string, all financing statements in the filing office's database." A proper "standard search logic" option, in conformance with industry standards, "requires the search to identify specific hits, if any[.]"

To illustrate, a search for Live Oak's UCC-1 financing statements under Beach Boulevard's correct legal name, "1944 Beach Boulevard, LLC" returned an initial list of twenty search hits that match or closely match the name entered. Notably, the initial list of search hits did not disclose Live Oak's financing statements erroneously naming "1944 Beach Blvd., LLC" as the debtor. The initial list also includes navigation arrows to "navigate forward and backward through all of the names indexed in the Registry." While the initial list of search hits did not disclose Live Oak's financing statements, if a user were to navigate backwards from the initial list of search hits, Live Oak's UCC-1 financing statements erroneously naming "1944 Beach Blvd., LLC" would "appear on an immediately preceding page." As the Florida Supreme Court and the Eleventh Circuit held, this navigation function of the Registry's database is fatal to the safe harbor provision.

The Eleventh Circuit held that the Registry's lack of a "standard search logic" rendered Live Oak's financing statements "seriously misleading" since it improperly named Beach Boulevard, and the financing statements were "therefore ineffective to perfect a security interest in Beach Boulevard's assets under Florida law."

Recommendations for Creditors Filing UCC-1 Financing Statements in Florida

The Eleventh Circuit and Florida Supreme Court have made it clear that it is unforgiving towards creditors who, like Juliet, call a debtor by any other name than its legal name. Until the Registry implements a "standard search logic" that returns a list of "unambiguous identification of hits" or similar procedure that is in line with industry standards, creditors should not rely on safe harbor protection for erroneously-named debtors in UCC-1 financing statements. Creditors should be vigilant in properly naming debtors, otherwise risk losing secured lien status for even the slightest mistake in a debtor's legal name. It is imperative that creditors ensure the accuracy of a debtor's name in each UCC-1 financing statement that is filed with the Registry. Creditors should verify a debtor's name by reviewing its articles of organization filed with the Florida Secretary of State. For

those creditors who have active financing statements that may have improperly named a debtor, you should immediately file a UCC-3 Amendment Form that correctly identifies the debtor by its legal name in order to preserve your perfected lien status.

If you are interested in reading the Eleventh Circuit's full opinion on this case, please click here: *1944 Beach Blvd v. Live Oak Banking.*

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