

Legal Alert

May 16, 2018

Michael R. King
mking@gblaw.com
602-256-4405

QUESTION: WHAT COLOSSAL MISCUE CAUSED A CREDITOR TO LOSE ABOUT \$78,000 WORTH OF COLLATERAL?

ANSWER: INADVERTENTLY OMITTING THE LETTER “T” FROM THE DEBTOR’S MIDDLE NAME INVALIDATED THE UCC-1 FINANCING STATEMENT!

What’s in a name?

Ronald Markt Nay bought two Terex Dump Wagons with loans from LEAF Capital Funding, LLC (“LEAF”). One loan was for \$41,000 and the other loan was for \$36,950. LEAF filed UCC-1 financing statements with the Indiana Secretary of State’s Office to perfect its liens against the two dump wagons. Each of the UCC-1 financing statements stated the Debtor’s name as “Ronald Mark Nay.” The debtor’s name listed on his unexpired Indiana driver’s license was “Ronald Markt Nay.”

Mr. Nay and his wife, filed a chapter 11 bankruptcy case and another creditor challenged LEAF’s security interests. MainSource Bank (“MainSource”) had loaned Mr. and Mrs. Nay \$1,200,000. MainSource secured its agricultural loan with a lien against all of the Debtors’ personal property including “equipment,” and “farm equipment.” Apparently, MainSource included the letter “t” in Mr. Nay’s middle name because the court stated that its security agreements were properly perfected by the UCC-1 financing statement it filed with the Indiana Secretary of State. *In re Nay*, 563 B.R. 535 (2017).

Before worrying about crossing your “t” make sure you include it in the first place!

MainSource claimed to have found a LEAF-blower! It argued that LEAF’s inadvertent omission of the letter “t” from Mr. Nay’s middle name made the filing “seriously misleading.”

LEAF argued that the Indiana version of Uniform Commercial Code § 9-506 made its financing statement effective because it “substantially” satisfied the statute. The UCC-1 would be “effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.”

MainSource said that LEAF’s financing statement failed to “sufficiently” give the name of Mr. Nay and was “seriously misleading.”

Scattering LEAF’s “safe harbor.”

LEAF branched into the “safe harbor provision” of Indiana’s version of UCC § 9-

506(c). A financing statement would be okay if it was discoverable by searching under the debtor's correct name using the standard search logic used by the Indiana Secretary of State. In Indiana: "Search results are created by applying standardized search logic to the name presented to the filing officer by the person requesting the search." Indiana law also said: "A search request may be submitted with no middle name or initial." So presumably MainSource *could have* found LEAF's UCC-1 using the rules of the search logic.

LEAF gets defoliated!

The court said, however, that the only correct name for Mr. Nay was the name on his valid Indiana driver's license. As is the case in Arizona, in Indiana the statute "now provides that if the debtor is an individual to whom a driver's license has been issued, a financing statement sufficiently provides the name of the debtor *only if* it 'provides the name of the individual which is indicated on the driver's license.'" UCC § 9-503.A.4.

The court stated that because LEAF had not used the name "Ronald Markt Nay" as stated on the Indiana driver's license, the financing statement was misleading and invalid. LEAF's collateral blew away in the breeze from the bankruptcy court. The court stated: "While the result in this case seems harsh, the Court is constrained to interpret the statute in a manner consistent with legislative intent, which is 'to simplify formal requisites and filing requirements.'"

Worry about the "small stuff!"

"Don't sweat the small stuff" may often be good advice. With due respect to Richard Carlson, when working with legal documents, attention to the detailed "small stuff" can make or break you, however.

Just proofreading may not save the validity of your filing. After all, if I were proofreading the name "Ronald Markt Nay," I would probably delete the "t" as an obvious typographical error. Obviously, I would have been wrong in this case.

When the debtor is an individual, you better check the valid driver's license for the debtor for the state where you are filing the financing statement. Proofread your UCC-1 against the name stated on the driver's license.

Also be aware of the search logic for the agency where you are making the filing. You need to know that your UCC-1 financing statement can actually be found. Always run a test search using the site's search logic immediately after you file. Did your filing show up? If not, you got something wrong. Try again after you fix it.

Let me know if you need help scaring your people into being meticulously careful with your loan documents.