

Even a Minor Error in the Name of a Debtor Will Invalidate a UCC Filing in Florida

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In a recently reported case, *1944 Beach Boulevard, LLC v. Live Oak Banking Company*, the Florida Supreme Court considered the question whether a minor error in the listed name of a debtor will render a UCC financing statement legally insufficient. In that case, the financing statement filed by the secured party listed the debtor's name as "1944 Beach Blvd., LLC," but the actual name according to the Florida Secretary of State was "1944 Beach Boulevard, LLC."

The Florida UCC provides a safe harbor, stating that a financing statement is not "seriously misleading" (and therefore sufficient) if a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose the financing statement even if the debtor's name was not correctly listed in the financing statement.

In *1944 Beach Boulevard*, the secured party argued that section applied and so, its financing statement was not legally insufficient.

The Florida Supreme Court disagreed. It ruled that the method for searching the filing records in Florida does not constitute a "standard search logic" under the statute, and so the safe harbor does not apply. The Court stated:

"Instead of returning a finite list of hits when a search is conducted, the Registry returns a list of twenty names starting with the name that most closely matches the name entered. That list of names is but a point from which the user can navigate forward and backward through all of the names indexed in the Registry. In other words, "a search" of the Registry returns an index of all of the financing statements in the Registry. The Registry's current search option also produces inconsistent results depending upon the date a search is conducted. This is true because as financing statements are filed, amended, and removed, the position of a financing statement on the Registry's index changes, which means that a financing statement included in a list of twenty today might not be on the same list tomorrow."

The Court stated that because the safe harbor does not apply in Florida, the Florida law is “intolerant of any errors or omissions in naming the debtor—no matter how minor...”

The Court’s decision illustrates the importance of determining the precise name of the debtor and making sure that it is listed exactly in the financing statement. Failure to do so will render the financing statement insufficient, and the security interest will be unenforceable against third parties who might claim an interest in the same collateral.

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