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Use of DBA in Addition to Debtor's Correct Legal Name Renders UCC Financing Statement Ineffective

A recent bankruptcy court decision held that a UCC-1 financing statement may be ineffective if, in addition to the correct name of the debtor, other clarifying language is used on the "organizations name" line of the UCC financing statement.

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On August 6, 2007, a memorandum opinion issued by the United States Bankruptcy Court for the Southern District of Texas demonstrates why one must be wary when preparing UCC financing statements. A filed financing statement naming "Jim Ross Tires, Inc. dba HTC Tires & Automotive Centers" was held to be ineffective because a search of the Texas Secretary of State's uniform commercial code records under the debtor's legal name "Jim Ross Tires, Inc." did not produce the financing statement. Additionally, the financing statement of another creditor in the case did not perfect a security interest where the name of the debtor was incorrectly stated as "Jim Ross Tire, Inc." (no "s" on "Tire").

Section 9.503 of the Texas Uniform Commercial Code states that for a registered organization [organized under Texas law], the name on the financing statement must "provide the name of the debtor indicated on the public record of the debtor's jurisdiction of organization that shows the debtor to have been organized." For an individual debtor, the correct name is the individual's name shown on his/her drivers license or identification certificate issued by his/her state of residence. Recognizing the possibility of errors in the statement of the debtor's name, the Texas legislature enacted a safe harbor provision in Section 9.506. It states that if a search of the records of the applicable filing office under the correct name of the debtor would disclose a UCC financing statement that did not properly disclose the correct name of the debtor, then the incorrect name provided in the financing statement does not make the financing statement ineffective. In the Jim Ross case, neither financing statement was disclosed from a search of the Texas Secretary of State records under the correct name of "Jim Ross Tires, Inc."

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What is interesting about the Jim Ross Tires financing statement is that the debtor's correct name was in the financing statement, but additional information (the dba name) was added, presumably to provide more identifying information about the debtor. Unfortunately, this additional information in that line caused the filing to be missed under the search logic used by the Texas Secretary of State. The court held that the inclusion of the dba name thus rendered the financing statement ineffective since the financing statement was not found using the Texas Secretary of State's standard search logic.

In addition to the Jim Ross case, several other cases addressing the use of "debtor's correct name" have surfaced. In one case, leaving a space in the name "Net work Solutions, Inc." rendered the filing ineffective where the name should have been "Network Solutions, Inc.". In another, a filing identifying "Global Environmental Group, LLC" was ineffective because the correct name of the debtor was actually "Global Environmental Services Group, LLC".

These cases, while frightening to lenders and their counsel, serve as a reminder that only the exact legal name of the debtor as set forth on the debtor's properly filed organizational documents (or governmentally issued identification in the case of individuals) should be used on UCC financing statements. Also, the cases suggest that, in an abundance of caution, lenders might consider whether to obtain a UCC financing statement search based on the filing office's search logic, in addition to the debtor's correct legal name, for any significant credits or potentially confusing names.

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