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**Filer Beware: A Lesson on Debtor Name****Legal Update**

12.01.2017

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There are many things in life where “close enough” will work, but when it comes to filing a financing statement in a secured loan transaction, getting the name of the debtor “close enough” just won’t do. A secured party in Wisconsin recently found this out the hard way.

In *United States SEC v. ISC, Inc.*, the debtor, ISC, Inc. (ISC), granted a security interest in certain of its assets to Double Bubble, LTD (Double Bubble). Double Bubble filed a UCC financing statement against ISC with the Wisconsin Department of Financial Institutions (WDFI), which is the UCC filing office in Wisconsin. Unfortunately, the financing statement listed the debtor’s name as “ISC, Inc .” with a space between the “c” in “Inc” and the period at the end. The debtor’s name as it appeared in its article of incorporation on file with the State of Wisconsin was “ISC, Inc.” with no space between the “c” in “Inc” and the period at the end. The court noted that the extra space was certainly inadvertent, but still needed to consider whether the error made the UCC financing statement filed by Double Bubble ineffective (in which case, Double Bubble would not have a perfected security interest in ISC’s assets).

ISC faced some financial troubles and a receiver was appointed to sell ISC’s assets and distribute the proceeds from the sale to ISC’s secured creditors. Unsecured creditors would receive no proceeds from the sale. After the sale, the receiver asserted that Double Bubble was an unsecured creditor because the error on the financing statement rendered it ineffective. This is because when a search of the WDFI’s UCC financing statement index using the exact legal name of ISC (without the extra space) was performed, Double Bubble’s financing statement was not found. Double Bubble objected, saying that a search performed using the phrase “ISC” would have returned the financing statement and as such, a searcher could have found the financing statement on file with the WDFI.

The court considered these arguments and examined the UCC as in effect in Wisconsin (which is similar to the UCC as in effect in most other states). Under the UCC, a financing statement is effective even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading. A financing statement that fails sufficiently to provide the name of the debtor is

seriously misleading. In this case, failing to use the legal name of ISC rendered Double Bubble's financing statement seriously misleading. However, there is a "safe harbor" that a financing statement will not be seriously misleading if the financing statement can still be found by a searcher in the ordinary course of a search against the debtor.

The court considered whether the safe harbor was available to Double Bubble. Here, the search logic used by the WDFI did not return the financing statement filed by Double Bubble when the legal name ("ISC, Inc.") was searched rather than the name on the financing statement ("ISC, Inc ."). It didn't matter to the court that had the searcher searched only "ISC", the Double Bubble financing statement would have been returned. That's not what was searched by the searcher in this case in the ordinary course, and Wisconsin law does not impose on the searcher a requirement that the searcher search anything other than the debtor's legal name.

The takeaway from this case is that harsh consequences can result from what seems like a relatively minor error. Banks and other secured parties must be very careful that financing statements are filled out correctly and must be sure that the debtor's name on the financing statement matches what is on its filed organizational documents. It's worth ordering a certified copy of the debtor articles of incorporation (or equivalent organizational documents) in order to confirm the debtor's legal name—a small expense to avoid a potentially very costly error down the road.