



Court Holds “Legal Name” of Individual Debtor Not Required on UCC-1

By Paul Hodnefield, Associate General Counsel for Corporation Service Company

Since Revised Article 9 took effect in 2001, the courts have generally required that a sufficient financing statement must provide the “legal name” of an individual debtor. What constitutes an individual’s “legal name,” however, is not altogether clear. The courts have frequently looked to an individual’s birth certificate as the source of the individual debtor’s “legal name” for purposes of the financing statement. Recently, a court analyzed the “legal name” issue and offered more insight into what Article 9 requires for a sufficient individual debtor name. The case is *In re: Miller*, 2012 U.S. Dist. LEXIS 116275 (C.D. Ill. Aug. 17, 2012).

In 1999, Bennie Miller (“the Debtor”) borrowed money from the State Bank of Arthur (the “Bank”) to purchase Power Plus, a lawn equipment business. In exchange for the loan, the Debtor granted the Bank a security interest in most of his business assets. The bank promptly filed a financing statement to perfect its security interest. The bank continued the financing statement in 2003 and again in 2008.

The Bank’s financing statement provided the individual name of the Debtor as “Bennie A. Miller.” This was the logical name to provide from the Bank’s perspective. The Debtor had gone by the name “Bennie Miller” for much of his adult life and was generally known by that name in the community. It was also the name listed on the Debtor’s driver’s license, Social Security card and deed to his home. Furthermore, all the Debtor’s loan documents, other business activities and tax returns were all in the name of “Bennie Miller.”

The Debtor’s birth certificate, however, listed his name as “Ben Miller.” That name was also listed on one of his credit card accounts and in some correspondence with other creditors.

The Debtor and his wife filed for Chapter 13 bankruptcy in late 2010. A few months later, the Debtor brought an adversary proceeding against the Bank to avoid the Bank’s security interest. The Debtor claimed that the Bank failed to perfect its security interest because the financing statement incorrectly identified the Debtor by providing the name “Bennie Miller.” The Debtor claimed the correct name was “Ben Miller,” the name indicated on his birth certificate.

The bankruptcy court ruled in favor of the Debtor. The bankruptcy court reasoned that a UCC-1 financing statement must provide the legal name of the debtor; that a debtor’s legal name is the one indicated on the person’s birth certificate; that the Debtor’s birth certificate listed his name as “Ben Miller”; Debtor had not legally changed his name to “Bennie Miller”; and, finally, that a search for the legal name of “Ben Miller” did not disclose the financing statement. Therefore, the court held that the financing statement was insufficient to perfect the security interest.

The Bank appealed the bankruptcy court decision to the U.S. District Court for the Central District of Illinois (the “Court”). The Court reversed, based on its finding that neither Illinois law nor the UCC requires a financing statement to provide the “legal name” of the debtor to perfect a security interest. The applicable law does not even use the term “legal name.” Instead, the UCC requires that a financing statement provide the “correct name.” Consequently, the bankruptcy court had created an additional requirement where none existed in the law. The Court, therefore, held that Illinois law did



Court Holds “Legal Name” of Individual Debtor Not Required on UCC-1

not require financing statements to provide the individual debtor’s “legal name.”

To reach that conclusion, the Court had to address use of the phrase “legal name” in several cases cited by the Debtor and as set forth in the instructions for the UCC § 9-521 forms. The debtor name fields on the forms, for example, carry the title “DEBTOR’S EXACT FULL LEGAL NAME.”

The Court determined that the phrase “legal name,” as used in both the cited cases and in the form instructions, meant a name that was not insufficient due to excessive informality or misspelling. Thus, Article 9 does not require a debtor’s “legal name” on the financing statement, only a name that is not seriously misleading. The Court concluded that the name listed on the Debtor’s driver’s license and Social Security card was sufficient for effectiveness of the financing statement.

Even if Article 9 did require a “legal name” for the debtor, the Court explained, prior cases do not specifically require that a legal name be determined only by a birth certificate. A debtor’s driver’s license and Social Security card also provide evidence of the person’s “legal name.” Furthermore, other Illinois law defined “legal name” to mean “the full given name of the individual as recorded at birth, recorded at marriage, or deemed the correct legal name for use in reporting income by the Social Security administration or the name otherwise established through legal action that appears on the associated official document presented to the Secretary of State.” The name on a driver’s license or Social Security card would satisfy these requirements.

The important thing to take away from this case is that more than one source may provide a legally sufficient name of an individual under current law. As a result, one or more name variations that appear on the various sources may be sufficient as the individual debtor name for purposes of the financing statement. Filers, however, should not assume Miller means any name variation will be sufficient. The best practice remains to provide potentially correct individual name variations as separate debtors on the financing statement.

It is important to note that the 2010 Amendments to UCC Article 9 will change the rules for sufficiency of individual debtor names when the law takes effect in most states on July 1, 2013. The 2010 Amendments offer states two options for individual debtor name sufficiency. Under both alternatives, the name on the individual’s driver’s license is sufficient as the name of the debtor for purposes of the financing statement. Therefore, it is a good idea for UCC filers to already include the name indicated on the debtor’s driver’s license as a separate debtor on all financing statements. That will ensure compliance with whatever legislative alternative a state adopts and avoid potential transition costs later.

From a search perspective, Miller also emphasizes the importance of using search logic that returns name variations. An individual may have more than one legally sufficient name under Article 9. As a result, those who search the UCC records must be careful to review all records that provide potentially correct variations of an individual debtor name.

Paul Hodnefield is Associate General Counsel for Corporation Service Company and a frequent speaker/writer on UCC search and filing issues. Please feel free to contact him with questions or comments at phodnefi@cscinfo.com, or 800-927-9801, ext. 2375.