

# Insights

## Court Determines Debtor's Correct Name on Driver's License for UCC-1 Financing Statement

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On February 1, 2018, the US Bankruptcy Court for the Southern District of Georgia in *In re: Kenneth R. Pierce* found that the printed name on the debtor's driver's license was the name that was important for Uniform Commercial Code (UCC) security interest perfection purposes (No. 17-60154-EJC, 2018 WL 679677 (Bankr. S.D. Ga. Feb. 1, 2018)).

### Background

On June 18, 2015, Farm Bureau Bank (FBB) financed the debtor Kenneth Pierce's (Pierce) purchase of a fertilizer spreader. On June 23, 2015, FBB filed a UCC-1 financing statement (UCC-1) which listed the debtor's name as "Kenneth Pierce." Pierce's unexpired Georgia driver's license identified him as "Kenneth Ray Pierce," although the debtor signed it as "Kenneth Pierce."

On April 3, 2017, Pierce filed for bankruptcy protection under Chapter 12 of the Bankruptcy Code. On May 5, 2017, FBB timely filed a proof of claim in the amount of \$14,459.81 attaching its UCC-1. The debtor objected, arguing that FBB failed to correctly identify the debtor by his full name on the UCC-1, so the UCC-1 was seriously misleading, **FBB's security interest was unperfected, and its claim was wholly unsecured.**

### Analysis

In this case, it is undisputed that FBB's security interest attached to the fertilizer spreader for UCC purposes. However, at issue here was whether FBB's security interest was perfected.

A UCC-1 must meet certain requirements under the UCC in order to perfect a security interest in the debtor's collateral. One of these requirements includes providing the debtor's name. The court noted that this is important for searchers since financing statements are indexed under the name of the debtor.

The Georgia UCC provides that if the debtor is an individual, the financing statement is sufficient only if it provides the name of the individual which is indicated on the driver's license (O.C.G.A. § 11-9-503(a)(4)).

The debtor argued that the name on the UCC-1 did not match the name printed on the driver's license and therefore did not meet the UCC individual debtor name sufficiency requirements. FBB argued that there were two names on the driver's license, the printed name as well as the signed name, and either should meet the requirements.

The court proceeded to analyze whether the phrase "indicated on the driver's license" referred to the printed name only or if it also included the signed name on the license.

The court turned to a number of cases for guidance, including the case of *Genoa Nat'l Bank v. Southwest Implement, Inc. (In re Borden)* (353 B.R. 886 (Bankr. D. Neb. 2006)). In this case, the debtor was identified by his legal name "Michael Ray Borden" or by "Michael R. Borden" on his driver's license and on other legal documents, however he often signed legal documents by his nickname, "Mike Borden." The court held that financing statements identifying the debtor as "Mike Borden" were "seriously misleading." This case suggested to the court that the name typed on legal documents is more important than the signed name.

After the Borden case was decided, Georgia enacted the 2010 Amendments to UCC Article 9 with the Alternative A "Only If" rule for individual debtor names. The court felt that this choice showed the legislature's preference for greater certainty over the less precise Alternative B safe harbor approach. The court reasoned that allowing for both the printed name and signed name to fulfill the individual debtor name sufficiency requirement would not meet the legislature's intent. It also noted that signatures were often illegible. Using the name printed on the driver's license "ensures simplicity and predictability."

Further, the court found support for its decision in the instructions on the UCC-1 form. This form instructs the filer to use the debtor's "exact, full name" without omission, modification, or abbreviation. The court noted that if FBB had followed the form instructions, it would have provided the debtor's full name.

The court also pointed out that FBB could not rely on the UCC § 9-506(c) safe harbor provision to prove that its UCC-1 was not seriously misleading. This was because a search conducted under the name "Kenneth Ray Pierce" in the Georgia Superior Court Clerks' Cooperative Authority using standard search logic failed to disclose FBB's UCC-1.

Therefore, the court sustained the debtor's objection to the proof of claim and held that the UCC-1 was seriously misleading under the state's UCC.

### **Practical Application**

When filing a UCC-1 financing statement for an individual debtor, it is always important to use the debtor's correct name. If there is any doubt about the debtor's name, for example if there is a discrepancy between the printed name and the signed name on the debtor's driver's license, the secured party should file its UCC-1 financing statement using all name variations.

If you have any questions regarding information found in this alert, please contact one of our Commercial and Real Estate Lending or Financial Institutions professionals.