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**LIEN ON ME? NOT IF YOU CAN'T SPELL**

By Erich Paetsch

Revised Article 9 of the Uniform Commercial Code recently celebrated its fifth anniversary. Despite its age, courts are just beginning to resolve legal questions about how to interpret it. Because Revised Article 9 impacts most transactions that use personal property to secure a debt obligation, recent court decisions can have vast implications.

Naming Conventions

To perfect a security interest under Revised Article 9, a creditor must usually file a financing statement, referred to as a "UCC-1," with the Oregon Secretary of State. Although the drafters of Revised Article 9 took great care in specifying clear rules to guarantee that a filing properly identifies the debtor, these naming conventions are now the cause of a number of disputes.

In a startling reminder of the importance of the naming conventions, improper use of the letter "d" caused the Kansas Supreme Court to set aside a blanket security interest. In *Pankratz Implement Co. v. Citizens National Bank*, decided on March 17, 2006, the Kansas Court found that listing the debtor's name as "Rodger" instead of "Roger" was seriously misleading. According to the Court, a search of the Kansas Secretary of State's records using their search logic would not have located the filing under Rodger. As a result, the creditor lacked a perfected security interest and the bank's interest took priority over the liquidated proceeds. A similar decision was also reached by the Georgia Court of Appeals in June of this year.

These decisions are important reminders to carefully check the spelling of the debtor's name when filing a financing statement or evaluating lien priority in insolvency situations. While these decisions do not bind Oregon courts, they are useful because no other courts have weighed in on these issues. It is also helpful to use the organizational identification number assigned to state registered entities when identifying the debtor. However, if the debtor is an individual or an entity not registered with the state, confirming the correct spelling of a name will be difficult. As in Kansas, lack of perfection could make the difference between partial or complete recovery in an insolvency situation or a total loss. A careful review of perfection and priority of a security interest at the outset can help avoid unnecessary litigation and attorney fees and costs.

Reliance on Financing Statements

Another important development in this area relates to the information made publicly available online by the Oregon Secretary of State. In a response to the problem of identify theft, actual images of financing statements are no longer directly accessible. This change has highlighted the risky practice of using the online financing statements to make decisions about whether collateral exists to secure repayment of debt obligations or to decide if litigation is justified. It is important to understand that reliance on a financing statement alone is insufficient under Revised Article 9.

Using the summary now provided online by the Secretary of State or the financing statements filed after adoption of Revised Article 9 could lead to lost opportunities or recovery.

Under Revised Article 9, the security agreement is the controlling document defining what collateral is encumbered by a lien, not the financing statement. Many businesses routinely file a blanket financing statement, even though the collateral specified in the security agreement is much less than what is specified in the filed financing statement. Consequently, a creditor relying upon a financing statement alone might overlook an asset that has significant value or unnecessarily pursue litigation with the associated costs that might be avoided with a properly structured workout agreement.

As with any new law, the perfection and priority of security interests under Revised Article 9 is rapidly evolving. A thorough analysis of these developments and a carefully written security agreement and financing statement will help avoid unpleasant surprises. When a debtor begins to struggle with payment or insolvency arises, it is prudent to conduct a thorough analysis of the facts and options to ensure that no opportunity is missed in recovering a debt. If you have questions or would like more information relating to this topic, please contact Erich Paetsch in our office.