

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:)	
)	
MICHAEL A. ERWIN,)	Case No. 02-10227
)	Chapter 7
)	
Debtors.)	
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)	
EDWARD J. NAZAR, Trustee,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 02-5176
)	
BUCKLIN NATIONAL BANK,)	
)	
)	
Defendant.)	
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MEMORANDUM OPINION

This adversary proceeding presents a question of first impression interpreting certain recent revisions to Article Nine of the Kansas Uniform Commercial Code dealing with the sufficiency of an individual debtor’s name on a financing statement and whether the financing statement is seriously misleading. *See* KAN. STAT. ANN. §§ 84-9-503(a) and 84-9-506 (2002 Supp.). At issue is whether the use of “Mike Erwin” as debtor’s name on the 1999 financing statement, rather than his full legal name of “Michael A. Erwin” as listed on debtor’s bankruptcy petition in 2002, is seriously misleading, thereby rendering perfection ineffective and the security interest avoidable. The Court answers this question in the negative and rules in favor of the defendant-creditor Bucklin National Bank.

Introduction

The provisions of revised Article Nine, effective July 1, 2001, govern this matter.¹ Under the transitional rules of revised Article Nine, a security interest that was properly perfected before revised Article Nine took effect, continues to be perfected without further action, if it also meets the perfection requirements of revised Article Nine.² However, if the pre-enactment security interest did not satisfy the perfection requirements of revised Article Nine, the creditor had one year from enactment, or until July 1, 2002, to satisfy the perfection requirements of revised Article Nine.³ There is nothing in the record before this Court to indicate that the Bank made any further attempt to comply with the perfection requirements of revised Article Nine during this one year window. Accordingly, the Court must decide whether the Bank's 1999 financing statement satisfies revised Article Nine's perfection requirements.⁴ If so, the Bank's lien has been continuously perfected and the trustee cannot avoid the Bank's lien.

The trustee relies on the search logic provisions of revised Article Nine to invalidate the Bank's UCC-1 financing statement. The trustee's argument is that the debtor's name on the UCC-1 financing statement is seriously misleading under KAN. STAT. ANN. (2002 Supp.) § 84-9-506 because the trustee's electronic UCC search by the debtor name of "Michael A. Erwin" did not reveal the

¹ Debtor filed for chapter 7 bankruptcy relief on January 22, 2002, after the effective date of revised Article 9. *See* KAN. STAT. ANN. (2002 Supp.) § 84-9-701 Revisor's Note, and § 84-9-702(c).

² KAN. STAT. ANN. (2002 Supp.) § 84-9-703(a).

³ KAN. STAT. ANN. (2002 Supp.) § 84-9-703(b)(3). After lapse of the one-year period the security interest becomes unperfected. Under the trustee's view then, the Bank's security interest would have become unperfected on July 1, 2002.

⁴ The trustee makes no contention that the Bank's security interest was seriously misleading and unperfected under the former provisions of Article Nine.

Bank's financing statement filed under the debtor name "Mike Erwin." The trustee's argument is premised on the notion that an individual's full legal name is an individual debtor's "correct name."

The Bank counters that the scope of the trustee's UCC search query was faulty in that it was unreasonably narrow. The Bank argues that a reasonably diligent searcher would not have limited his search to the exact proper name of the debtor as shown on his bankruptcy petition, but would have expanded the search to include common derivations of debtor's formal or proper name.

Statement of Facts

This matter comes before the Court on defendant Bucklin National Bank's ("Bank") motion for summary judgment on the trustee's adversary complaint.⁵ The parties have entered into a stipulation of facts with attached exhibits for purposes of this adversary proceeding.⁶ The following facts, paraphrased from the parties' stipulation, and apparent from the record before the Court, are uncontroverted.

On June 15, 1999, the Bank filed a UCC-1 financing statement showing "Mike Erwin" as the debtor.⁷ The financing statement covered the Bank's security interest in machinery and equipment. All of the documents in the Bank's loan file showed debtor's name as "Mike Erwin," including a W-9 tax form request for taxpayer identification number and certification.⁸ The debtor has always been known to the Bank as "Mike Erwin."

On July 1, 2001, revised Article Nine became effective. On January 22, 2002, the debtor filed

⁵ Dkt. 20 and 21.

⁶ See Dkt. 23, Stipulated Statement of Facts filed March 12, 2003 with attached exhibits.

⁷ See Ex. 11. The UCC-1 financing statement form utilized by the Bank was an approved form by the Kansas Secretary of State and bears a form date of 9/14/94.

⁸ See Ex. 1.

his bankruptcy case. The debtor's name was shown on the bankruptcy petition as "Michael A. Erwin."⁹ In the line or box immediately below debtor's name on the bankruptcy petition regarding other names used by debtor in the past six years, no other names of debtor were listed. The Bank was listed as a secured creditor on debtor's bankruptcy Schedule D.

The trustee ran an electronic UCC search of the Kansas Secretary of State's office using only the name "Michael A. Erwin."¹⁰ This search did not reveal the Bank's financing statement filed under the debtor name of Mike Erwin. The trustee's search revealed two (2) "hits," financing statements filed under the debtor names of Michael A Erwin and Michael A. Erwin. The trustee's lien avoidance action followed.¹¹

The parties stipulated to the computer screens and search results using variations of debtor's name. A search using "Michael Erwin" as the debtor's name also uncovered two (2) hits – Michael A Erwin and Michael A. Erwin.¹² This search query did not reveal any UCC-1 filings under the name of Mike Erwin and therefore did not show the Bank's financing statement.

A search using "Mike Erwin" resulted in ten (10) hits, all revealing financing statements under the name of Mike Erwin.¹³ This search query would have revealed the Bank's financing statement.

A search using the debtor's surname and the first letter of his first name "M. Erwin" resulted

⁹ See Ex. 10. The debtor's street address was listed as R.R. 1, Haviland, Kansas 67059 and his mailing address was listed as P.O. Box 8, Haviland, Kansas 67059.

¹⁰ The search query was shown as 'ERWINMICHAELA.' See Ex. 6, the screen for the search results.

¹¹ This adversary proceeding was commenced July 3, 2002.

¹² See Ex. 5, the search results screen for the search query 'ERWINMICHAEL.'

¹³ See Ex. 7, the search results screen for the search query 'ERWINMIKE.'

in sixteen (16) hits, and revealed *inter alia* financing statements under the names of Michael A Erwin, Michael A. Erwin, and Mike Erwin.¹⁴ This search query would have revealed the Bank's financing statement.

Finally, a search using only the debtor surname of "Erwin" resulted in thirty-seven (37) hits, and revealed *inter alia* financing statements under the names of Michael A Erwin, Michael A. Erwin, and Mike Erwin.¹⁵ This search query would have also revealed the Bank's financing statement.

In summary, a search query using the debtor name of Erwin, M. Erwin, or Mike Erwin would have revealed the Bank's UCC-1 financing statement and security interest. All of the "hits" under the various search queries showed debtor's address as Haviland, Kansas, save one.¹⁶ It is also apparent from the number of hits under the name of Mike Erwin, that the Bank was not the only secured creditor that used "Mike Erwin" as debtor's name on the UCC-1 financing statement.¹⁷ Finally, it can be logically concluded that had a search been made by debtor's last name alone, it would have become apparent to the trustee that the debtor used both Mike and Michael as first names and the existence of all filed security interests granted by the debtor would have been revealed.

Analysis

This matter comes before the Court on the Bank's motion for summary judgment and the parties' stipulated facts. There are no genuine issues of material fact and the Court is required to determine whether the Bank is entitled to judgment as a matter of law on the trustee's complaint.

¹⁴ See Ex. 8, the search results screen for the search query 'ERWINM.'

¹⁵ See Ex. 9, the search results screen for the search query 'ERWIN.'

¹⁶ In one instance under each of the search queries "Mike Erwin," "M. Erwin," and "Erwin," the debtor's address was shown as Bucklin, Kansas. See Ex. 7, 8 and 9.

¹⁷ See Ex. 2.

This adversary proceeding requires the Court to interpret the provisions of revised Article Nine concerning financing statements. Specifically, the Court is faced with interpreting KAN. STAT. ANN. (2002 Supp.) § 84-9-506 and determining whether the Bank’s financing statement was seriously misleading because it failed to use the debtor’s full legal name.¹⁸ As the trustee points out, the cases from other jurisdictions applying other state law and interpreting “seriously misleading” financing statements are not controlling nor particularly helpful in the absence of showing the other state’s law is identical to Kansas law. Nor are the cases predating the effective date of revised Article 9 (July 1, 2001) and determining whether a financing statement is “seriously misleading” under the former UCC provisions necessarily persuasive. Rather, this Court is left to examine pertinent UCC code provisions and statutory language, without the benefit of any Kansas state court decisions, in determining whether the Bank’s financing statement is “seriously misleading” under revised Article Nine.¹⁹

Because of the trustee’s status as a hypothetical lien creditor under 11 U.S.C. § 544(a), the trustee may avoid an unperfected lien on property belonging to the bankruptcy estate. The determination of whether a security interest is unperfected, and therefore avoidable under § 544(a), is controlled by state law.²⁰ Where neither the Kansas Supreme Court nor the Kansas Court of Appeals has addressed the perfection issue raised by the adversary proceeding, this Court must

¹⁸ All statutory references are to revised Article Nine of the Uniform Commercial Code as adopted in Kansas, KAN. STAT. ANN. (2002 Supp.) § 84-9-101 *et seq.* unless otherwise specified.

¹⁹ The parties have not cited to this Court any Kansas appellate decisions that have interpreted revised Article Nine’s financing statement requirements and this Court’s independent research revealed no Kansas decisions.

²⁰ See *Morris v. The CIT Group (In re Charles)*, 323 F.3d 841, 842-43 (10th Cir. 2003), citing *Pearson v. Salina Coffee House, Inc.*, 831 F.2d 1531 (10th Cir. 1987).

attempt to predict how the Kansas Supreme Court would rule.²¹

A recitation and review of pertinent rules of statutory construction focuses this Court's task at hand.

The goal in statutory interpretation is to determine and give effect to the intent of the legislature. . . . To ascertain that intent, it is presumed that a just and reasonable result is intended . . . and statutory terms are given their plain and ordinary meaning.²²

When interpreting a statute, we first examine the statutory language itself. *Goheen v. Yellow Freight Sys.*, 32 F.3d 1450, 1453 (10th Cir. 1994). If unambiguous statutory language is not defined, we give the language its common meaning, provided that the result is not absurd or contrary to the legislative purpose. *Turner v Davis, Gillenwater & Lynch (In re Investment Bankers, Inc.)*, 4 F.3d 1556, 1564 (10th Cir. 1993), *cert. denied*, ___ U.S. ___, 114 S.Ct. 1061, 127 L.Ed. 2d 381 (1994). Thus, we look not only to a single sentence or member of a sentence, but to the provisions of the whole law, as to its object and policy.²³

[R]esort to legislative history is unnecessary and inappropriate when a statute is clear and unambiguous on its face . . .²⁴

Overview of Revised Article Nine

In order to understand the changes made by revised Article Nine to the requirements of a financing statement, it is helpful to examine the former provisions and compare them to the current provisions.

The former code provision that dealt with the required contents of a financing statement were found at KAN. STAT. ANN. (1996) § 84-9-402(1). It provided, in relevant part:

A financing statement may be in a form prescribed by the secretary of state and shall

²¹ *Id.* at 843.

²² *In re Western Pacific Airlines, Inc.*, 273 F.3d 1288, 1292 (10th Cir. 2001).

²³ *Dalton v. Internal Revenue Service*, 77 F.3d 1297, 1299 (10th Cir. 1996).

²⁴ *Kenan v. Fort Worth Pipe Company (In re George Rodman, Inc.)*, 792 F.2d 125, 128 (10th Cir. 1986).

give the *names of the debtor* and the secured party, shall be signed by the debtor, shall give an address of the secured party from which information concerning the security interest may be obtained, shall give a mailing address of the debtor and shall contain a statement indicating the types, or describing the items, of collateral. . . . [Emphasis added.]

The revised counterpart is now found in § 9-502(a):

Subject to subsection (b), a financing statement is sufficient only if it:

- (1) *Provides the name of the debtor;*
- (2) provides the name of the secured party or a representative of the secured party; and
- (3) indicates the collateral covered by the financing statement. [Emphasis supplied].²⁵

The rules governing the sufficiency of the debtor's name were previously contained in KAN.

STAT. ANN. (1996) § 84-9-402(7), which provided:

A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where married debtors are jointly engaged in business and it is unclear whether a partnership exists, the financing statement may be filed in the names of the individual debtors. Where the debtor so changes the debtor's name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement is filed before the expiration of that time. . . . [Emphasis added.]

The current provision addressing the rules for the debtor's name is found at § 9-503 and is significantly more detailed. Section 9-503 states:

(a) ***Sufficiency of debtor's name.*** *A financing statement sufficiently provides the name of the debtor:*

- (1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;
- (2) if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;
- (3) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement: (A) Provides the name specified for the trust in its organic

²⁵ Revised Article Nine dropped the requirement of debtor's signature on the financing statement.

documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and (B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) if the debtors are married debtors jointly engaged in business and it is unclear whether a partnership exists, the financing statement may be filed in the names of the individual debtors;

(5) *in other cases*: (A) *If the debtor has a name, only if it provides the individual or organizational name of the debtor*; and (B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor. [Emphasis supplied].

(b) **Additional debtor-related information.** A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) unless required under subsection (a)(4)(B) [(a)(5)(B)], names of partners, members, associates, or other persons comprising the debtor.

(c) **Debtor's trade name insufficient.** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) **Representative capacity.** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) **Multiple debtors and secured parties.** A financing statement may provide the name of more than one debtor and the name of more than one secured party.

While section 9-503(a) prescribes specific rules for the names of certain types of debtors (*i.e.* corporations, trusts, and estates) in order to be "sufficient," no specific elaboration or guidance is given for names of debtors who are individuals. The statute continues merely to require the debtor's "name" where the debtor is an individual.

Former KAN. STAT. ANN. (1996) § 84-9-402(8) contained the minor error and seriously misleading standard for evaluating the sufficiency of the financing statement:

A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

The revised code provision retains and expounds upon the seriously misleading test. Section 9-506 provides:

(a) **Minor errors and omissions.** A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) **Financing statement seriously misleading.** Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with K.S.A. 2002 Supp. 84-9-503(a) and amendments thereto, is seriously misleading.

(c) **Financing statement not seriously misleading.** If a search of the records of the filing office under the debtor's *correct name*, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with K.S.A. 2002 Supp. 84-9-508(a) [sic]²⁶ and amendments thereto, the name provided does not make the financing statement seriously misleading.

(d) **"Debtor's correct name."** For purposes of K.S.A. 2002 Supp. 84-9-508(b) and amendments thereto, the "debtor's correct name" in subsection (c) means the correct name of the new debtor. [Emphasis supplied].

Thus, the revision retains the substantial compliance and seriously misleading tests, but additionally specifies in subsection (b) that in the case of errors in debtor names, if the name of the debtor does not comply with § 9-503(a), the financing statement is deemed to be seriously misleading. Subsection (c) contains an exception to this rule. If a search under the debtor's correct name using standard search logic would reveal the financing statement, it is not seriously misleading. The revision does not, however, define "correct name."

As is apparent from a reading of the above Uniform Commercial Code ("UCC") provisions, some basic rules and underlying legal principles concerning the sufficiency of a financing statement

²⁶ The Court believes the reference to § 9-508(a) to be in error. According to the official text of Uniform Commercial Code provision § 9-506(c), as reprinted in Uniform Laws Annotated, the reference *should* be to § 9-503(a). Further, the Court's examination and comparison of the official text of revised Article Nine with that adopted in Kansas indicate that Kansas adopted revised Article Nine virtually unchanged. Any differences are not relevant here.

have not changed and are pertinent here. One, the purpose of a financing statement is to give notice to third parties of the existence of a security interest.²⁷ Two, the name of the debtor is still required for an effective financing statement.²⁸ The debtor's name is important because filed financing statements continue to be indexed and retrieved by debtor name in the filing office.²⁹ Three, in the case of an *individual debtor*, no specific rule or guidance is given concerning what constitutes a sufficient debtor "name."³⁰ The term "name", "name of debtor," "debtor's name," or "correct name" is not defined in Article Nine.³¹ Four, revised Article Nine retains the concepts of substantial compliance, minor errors, and seriously misleading financing statements.³²

Some new concepts and rules have been injected by revised Article Nine, particularly § 9-503(a) and § 9-506, that give further guidance concerning the debtor name requirement and the seriously misleading standard. Subsections (1) through (3) of §9-503(a) give specific rules for determining the sufficiency of a debtor's name, but only for certain types of debtor organizations and entities: corporations, estates, and trusts. In the case of debtor corporations or registered organizations, the name of the debtor is the name on file in the state of organization.³³ However, § 9-

²⁷ See *United Cooperatives v. Libel Oil Co.*, 10 Kan. App. 2d 427, 428-29, 699 P.2d 1040 (1985); KAN. STAT. ANN. (2002 Supp.) § 84-9-502 Official UCC Comment 2.

²⁸ See KAN. STAT. ANN. (2002 Supp.) § 84-9-502(a).

²⁹ See KAN. STAT. ANN. (2002 Supp.) § 84-9-519.

³⁰ See KAN. STAT. ANN. (2002 Supp.) § 84-9-503(a)(5).

³¹ See KAN. STAT. ANN. (2002 Supp.) § 84-9-102.

³² See KAN. STAT. ANN. (2002 Supp.) § 84-9-506(a).

³³ In the Court's view, this is akin to a corporation's "legal name." The legislature has discouraged the use of trade names for the debtor by expressly providing that a debtor's trade name alone, is an insufficient debtor name. See § 9-503(c).

503(a)(5) does not give any specific criteria for the sufficiency of an individual's name.³⁴ The drafters clearly understood how to give specific rules for debtor names, even requiring a debtor corporation's "legal name." No similar provision was made for individual debtor names and no provision expressly declaring nicknames to be insufficient was included. Accordingly, the Court concludes that the full legal name of an individual debtor is not necessarily required on a financing statement in order to be sufficient under § 9-503(a).

Revised Article Nine also gives statutory guidance concerning the circumstances under which a debtor's name is seriously misleading.³⁵ Prior to the enactment of § 9-506(b) and (c), whether a debtor name was seriously misleading was determined on a case-by-case basis.³⁶ Now, § 9-506 deems a financing statement seriously misleading if the debtor's name does not comply with § 9-503(a), *unless* a search under the debtor's correct name, using the filing office's "standard search logic," would reveal the financing statement.³⁷

This is the crux of the instant case. The trustee contends that debtor's "correct name" is his full legal name and since the search logic under the debtor's full legal name did not reveal the Bank's financing statement, it is seriously misleading. The Bank, of course, argues that Mike Erwin is

³⁴ Section 9-503(a)(5); G. Ray Warner, *Using the Strong-Arm Power to Attack Name Errors Under Revised Article 9*, AM. BANKR. INST. J., Oct. 2001, at 22.

³⁵ It appears to the Court that § 9-506(a) retains the seriously misleading standard and a case-by-case determination for those financing statements that do not involve errors in debtor names. (*i.e.* errors in collateral). *See* § 9-506 Official UCC Comment 2. Section 9-506(a) is not applicable here.

³⁶ *See Turnbull Oil, Inc. v. N-B Co., Inc.*, 24 Kan. App. 2d 266, 271, 943 P.2d 511 (1997) (applying former § 84-9-402(8)). The commentators suggest that the "reasonably diligent searcher" test formerly used to determine whether an error was seriously misleading, has been replaced by a precise test based upon computerized search logic used by the filing office. *See* Warner, *supra* note 34.

³⁷ *See* § 9-506(b) and (c), Official UCC Comment 2; Warner, *supra* note 34.

debtor's "correct name," and a search under this name, using the Secretary of State Office's search logic, would have revealed the Bank's financing statement and thus, is not seriously misleading. The Court must therefore determine the meaning of "correct name."

At least one commentator has stated that the issue of correct names for individuals has not been addressed by Article Nine. In his article discussing financing statement name errors, Professor G. Ray Warner states--

*While these rules make it very easy to determine the correct name for registered organizations, revised Article 9 makes no attempt to resolve the many issues that can arise with respect to human names. For example, the revision does not indicate whether the full legal name is required or whether a nickname or widely used alias is sufficient. While the old manual search systems could accommodate some variation in human names, the modern computerized search logic used by the filing offices has little tolerance for variations. Thus, courts interpreting the revision will be forced to resolve these issues in light of the limitations of computerized filing systems. [Emphasis supplied].*³⁸

As Professor Warner suggests, this Court must look to the regulations governing UCC filings in Kansas. Under the revised UCC, the Secretary of State's Office is required to adopt "filing-office" rules to implement revised Article Nine.³⁹ These new regulations contain the search logic standards employed by the Secretary of State's office.⁴⁰ The search logic regulation, KAN. ADMIN. REG. § 7-17-22, provides in part –

(a) Search results shall be produced by applying only standardized search logic *to each name presented to the filing officer*. Human judgment shall not play a role in determining the results of the search, *except with respect to supplemental responses regarding individual debtor names that are not automated*. [Emphasis supplied.]

Although the search logic standards generally purport to eliminate human judgment in

³⁸ Warner, *supra* note 34.

³⁹ § 9-526.

⁴⁰ See KAN. ADMIN. REGS. §§ 7-17-21 and 7-17-22 (2002 Supp.).

determining the search *results*, human judgment still plays a role in searches for individual debtor names “that are not automated.” Moreover, these regulations describe what the filing officer is required to do upon receipt of a search request. The party requesting the search of UCC records is the party that formulates the search request. The Kansas regulations provide:

Each search request shall contain the following information: (1) The name of the debtor to be searched, specifying whether the debtor is an individual or an organization. *Each search request shall be processed using the name in the exact form it is submitted*; (2) the name and address of the person to whom the search report is to be sent; and (3) the appropriate fee . . . [Emphasis supplied].⁴¹

The search standards do not require a search by the debtor’s “legal name,” “full name,” or “correct name.” Moreover, with knowledge of the search logic standards, the person requesting a search can formulate a narrow or broad search of the debtor’s name and fairly predict the search results. The express language of KAN. ADMIN. REG. § 7-17-22(a) contemplates that some human judgment will enter into a search for records pertaining to individuals. And, as is obvious from the number of search queries and results that have been produced in this case, the regulations permit a party to search the UCC records by nothing more than an individual debtor’s last name, the broadest of search requests. Therefore, the Court concludes that as to individuals, drafters of search requests should exercise some reasonable diligence in formulating those requests. Would a “reasonably diligent” title examiner, lender, or purchaser be satisfied with only an “exact name” search? Would a trustee preparing to sell personal property under 11 U.S.C. § 363(f) satisfy himself with such a search? This Court believes that these parties would cast a wider net in an effort to ascertain the true nature of the debtor’s title in the personal property in question. Accordingly, the Court believes that in this limited aspect, the “reasonably diligent searcher” test survives. Indeed, Kansas’ search logic rules would seem to

⁴¹ KAN. ADMIN. REGS. § 7-17-21(b) (2002 Supp.).

contemplate as much, at least with respect to individual debtors. To hold otherwise here would validate an unacceptable “gotcha.”

The Bank’s Financing Statement

This brings us to the current case. The Bank used “Mike Erwin” as the debtor’s name on the financing statement. Was the name of debtor sufficient under § 9-503(a)? The Court concludes that it was. Since § 9-503(a) does not require the use of an individual debtor’s full legal name, nor expressly prohibit nicknames or common derivations for an individual debtor’s first name, the use of Mike Erwin was a sufficient debtor name. Thus, the Court cannot conclude that the use of “Mike Erwin” on the Bank’s financing statement was seriously misleading as a matter of law under § 9-506(b).

Moreover, under § 9-506(c), if a search under debtor’s “correct name,” would have revealed the Bank’s financing statement, it was not seriously misleading. In order to prevail under subsection (c), the trustee must prove that “Mike Erwin” is not debtor’s “correct name.” It is on this legal issue that the trustee’s lien avoidance fails.

An examination of the definition of “name” is revealing.⁴² Black’s Law Dictionary defines “name” as:

A word or phrase identifying or designating a person or thing and distinguishing that person or thing from others.⁴³

Following the definition appear a number of types of names: alias, assumed name, corporate name,

⁴² *United States v. Roberts*, 88 F.3d 872, 877 (10th Cir. 1996) (A common and ordinary usage of statutory term that is not defined by Congress may be obtained by reference to a dictionary; reference was made to Black’s Law Dictionary to ascertain the meaning of “proceedings.”)

⁴³ BLACK’S LAW DICTIONARY 1043 (7th ed. 1999).

distinctive name, fictitious name, *full name*, generic name, *legal name*, *nickname*, street name, and tradename. This listing indicates that the various types of names are more specific subcategories and subsumed within the term “name.” Until the legislature specifically mandates that a “legal name” or “full name” be used in financing statements or otherwise expressly precludes the use of “nicknames,” the Court must give the term “name” its common and ordinary meaning. And in the absence of any further guidance in the type of individual debtor name required under § 9-503(a)(5)(A), the Court can only conclude that Mike Erwin, whether it is characterized as a nickname or not, is a “correct name.”⁴⁴

The trustee’s urging of a narrow interpretation of a debtor’s individual name to mean “legal name” is inconsistent with other provisions in the code. As noted previously, the purpose of financing statements is to impart notice to third parties. Financing statements continue to be indexed by the debtor’s name⁴⁵ and the filing office may refuse to file a financing statement due to the lack of “a name for the debtor.”⁴⁶ Indeed, an individual debtor’s *last* name is the critical “name” for a financing statement.⁴⁷ The ability to search and retrieve financing statements is also accomplished by the “name of the debtor” and as is apparent in this case, a search can be made by the last name of the debtor only.⁴⁸

⁴⁴ The word “correct” is defined in Webster’s dictionary as “adhering or conforming to an approved or conventional standard” and as “free from errors.” G.&C. Merriam Company, Webster’s Third New International Dictionary 511 (1976). The trustee does not contend that “Mike Erwin” is an incorrect nickname of debtor.

⁴⁵ See § 9-519(c).

⁴⁶ See § 9-516(b)(3)(A).

⁴⁷ See § 9-516(b)(3)(C).

⁴⁸ See § 9-519(f).

The trustee advances the following propositions and, at least implicitly, advocates the following interpretation of § 9-506: (1) a financing statement using any name other than an individual debtor's legal name is seriously misleading; (2) a debtor's "name" and "correct name" is the debtor's full legal name; and (3) there can be only one "correct name" of a debtor. The trustee makes several arguments to support these positions.

Section 9-521 and Approved Form UCC1

The trustee points to the form of financing statement provided by the drafters as requiring debtor's full legal name in order not to be seriously misleading. In § 9-521 the legislature has provided an approved form and format for a financing statement. The UCC financing statement form calls for the debtor's identity in box 1, described as "debtor's exact full legal name." As both the plain language of the statute and the official UCC comment state, a secured party using this approved form is assured that the filing office will accept the financing statement for filing.

. . . By completing one of the forms in this section, a secured party can be certain that the filing office is obligated to accept it.

The forms in this section are based upon national financing statement forms that were in use under former Article 9. . . . The formatting of those forms and of the ones in this section has been designed to reduce error by both filers and filing offices.

A filing office that accepts written communications may not reject, on grounds of form or format, a filing using these forms. *Although filers are not required to use the forms*, they are encouraged and can be expected to do so . . . Filing offices may and should encourage the use of these forms by declaring them to be the "standard" (but not exclusive) forms for each jurisdiction, albeit without in any way suggesting that alternative forms are unacceptable. (Emphasis supplied.)⁴⁹

Section 9-521(a) neither mandates the use of this form of financing statement nor requires a financing

⁴⁹ § 9-521(a), Official UCC Comment 2.

statement to provide the debtor's "exact full legal name." KAN. ADMIN. REG. § 7-17-3 (2002 Supp.) provides, however, that the forms described in § 9-521 "shall be the only forms accepted by the filing office." This regulation only became effective on October 12, 2001.⁵⁰ While it is clearly Kansas' policy to require the use of the new forms after that date, it is not at all clear that lenders were required to re-file pre-revision UCC-1's to modify names of individuals. Nor is it clear whether the Secretary of State's office will continue to accept the pre-revision UCC-1 approved form.⁵¹

Other than the § 9-521 approved form, the phrase "debtor's exact full legal name" does not appear anywhere in the code provisions dealing with perfection by filing a financing statement. Nor is there any code provision equating or defining the debtor's name as debtor's "exact full legal name." The record in this case is clear that a searcher using only "Erwin" or "ErwinM" would have found the Bank's financing statements. If § 9-506 (c) is to be accorded its plain meaning (if search logic finds debtor, name is sufficient and financing statement is not seriously misleading) and if a filing can only be refused when individual's last name is missing, § 9-516(b)(3)(C), the Court must reject the argument that the use of an individual debtor's full legal name is required and that the failure to use the full legal name in the financing statement automatically renders it seriously misleading.

The Bankruptcy Petition Name

Next, the trustee appears to claim that he is entitled to rely on the name of the debtor used in the bankruptcy petition as the debtor's "correct name," particularly where the debtor does not list any other names used by the debtor. The trustee is correct that Fed. R. Bankr. P. 1005 requires the debtor

⁵⁰ KAN. ADMIN. REGS. § 7-17-3 (2002 Supp.).

⁵¹ The regulation refers not only to the form prescribed in § 9-521, but also to "forms prescribed by the filing officer," thereby suggesting that prior versions of the UCC-1 form may still be accepted. *See* KAN. ADMIN. REGS. § 7-17-3.

to disclose all names he has used in the six years preceding the filing, but the failure of this debtor to do so should not govern whether the Bank's lien may be avoided. The Court believes the purpose of disclosing other names (including married, maiden and trade names) used by the debtor within the previous six years is to uncover debtors who have previously received a discharge and are not entitled to a second discharge⁵² and to alert creditors who may have done business with a debtor under a name different from his correct legal name. Furthermore, it has been the Court's experience that common derivations of proper first names like in the instant case, are rarely disclosed in this section of the bankruptcy petition. The Court concludes that the name used in an individual debtor's bankruptcy petition is not necessarily the sole "correct name" of the debtor for purposes of § 9-503 and § 9-506.

Nicknames the Equivalent of Trade Names

An additional argument urged by the trustee is that nicknames of individual debtors should be treated in the same fashion as provided for trade names under revised Article Nine.

One of the things that revised Article Nine accomplished was to eliminate the use of trade names as the debtor's name on the financing statement. Under § 9-503(c) a financing statement that contains a debtor's trade name alone is an insufficient debtor name. Nor does the lack of a debtor's trade name on the financing statement render an otherwise sufficient financing statement ineffective.⁵³

Section 9-503(a) establishes specific rules for debtor names where the debtor is a registered organization or business entity.⁵⁴ However, § 9-503(a) does not give any specific guidance or rules

⁵² See 11 U.S.C. § 727(a)(8).

⁵³ § 9-503(b)(1).

⁵⁴ In subsection (a)(1), which covers corporations and other registered business entities, the debtor's name on the financing statement must be the name "indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized." In other words, the name of the corporation on file with the secretary of state's office must be used as the

for the sufficiency of a name where the debtor is an *individual*. Section 9-503(a)(5) provides –

in other cases: (A) If the debtor has a name, only if it provides the individual or organizational name of the debtor; . . .

It is worth observing that this code provision refers only to the *name* of the individual debtor. Section 9-503(a) makes no reference to and does not expressly require an individual debtor’s full name, legal name, or exact full legal name in order for the financing statement to sufficiently provide the name of the debtor. And unlike trade names, § 9-503 does not expressly declare that a financing statement using an individual debtor’s nickname is insufficient. If the legislature had intended to eliminate the use of nicknames or common derivations of proper first names in financing statements, it could have declared nicknames insufficient for the debtor’s name. It is apparent from the treatment of trade names, that the drafters knew how to accomplish this for business or organizational debtors.

Nor is the Court convinced that trade names and nicknames are one and the same. Nicknames refer to and are used for individuals.⁵⁵ Individuals can have proprietorship businesses with trade names, but there is no indication here that “Mike Erwin” is debtor’s trade name. Accordingly, the use of a nickname as an individual debtor’s first name on the financing statement is not insufficient as a matter of law under § 9-503(c).

Conclusion

Section 9-503(a) does not require an individual’s full legal name for a sufficient debtor name on a financing statement. A financing statement where the name of the individual debtor complies with

debtor’s name.

⁵⁵ See BLACK’S LAW DICTIONARY 1066 (7th ed. 1999) where a nickname is described as “[a] shortened version of a person’s name.” Cf. BLACK’S LAW DICTIONARY 1501 (7th ed. 1999) where a tradename is defined as “[a] name . . . used to distinguish a company, partnership, or business . . . the name under which a business operates.” It is “a means of identifying a business.”

§ 9-503(a) is not, as a matter of law, seriously misleading under § 9-506(b). A financing statement that contains a nickname for the debtor's first name may be a "correct name," and using the search logic standards, is not seriously misleading under § 9-506(c). Because Kansas' search logic rules make it clear that some aspect of human judgment remains in requesting searches for financing statements made by individual debtors, a vestige of the reasonably diligent searcher rule survives the enactment of revised Article Nine, at least as to individual debtors. The Court concludes that a reasonably diligent searcher would have requested searches not only for "Michael A. Erwin," but also for "Erwin" or "Erwin, M." As the record shows, these latter two requests would have yielded the Bank's financing statement.

The Bank's 1999 financing statement satisfied the provisions of revised Article Nine and the Bank has been continuously perfected since 1999. The Bank is entitled to summary judgment on the trustee's lien avoidance action and its motion is GRANTED. A Judgment on Decision will issue this day.

Dated this 27th day of June, 2003.

ROBERT E. NUGENT
CHIEF BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the **Memorandum Opinion** were deposited in the United States mail, postage prepaid on this 27th day of June, 2003, to the following:

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