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## Financing Statements: Close Enough Only Counts in Horseshoes



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Five letters can mean the difference between the proper perfection of a lien and a finding that a financing statement is defective because it is "seriously misleading." Indeed, the mere abbreviation of "Boulevard" to "Blvd." was enough to render a financing statement seriously misleading under Florida law, according to the Florida Supreme Court's response to questions certified by the Eleventh Circuit in *NRP Lease Holdings LLC*.<sup>1</sup>

Because Florida's Uniform Commercial Code (UCC) filing system has no "standard search logic," the Florida Supreme Court concluded that the safe harbor from debtor name errors did not apply.<sup>2</sup> Thus, under Florida law, a financing statement is considered "seriously misleading" if the name for the debtor or identified is not the debtor's "legal" name.<sup>3</sup>

While this might seem like an issue germane only to Florida practitioners, particularly given the unique features of the Florida Secured Transaction Registry (FSTR),<sup>4</sup> the rulings in *NRP Lease Holdings* contribute to the ever-growing body of jurisprudence concerning naming conventions in UCC filings and search logic. Since the UCC's adoption, courts have faced an endless barrage of questions about proper naming conventions in UCC filings and search logic.<sup>5</sup> As acknowledged by the Eleventh Circuit, "[t]he rules governing secured transactions form an integral part of our modern commercial system, and uniformity in their application promotes predictability and stability in economic relationships."<sup>6</sup>

### 1944 Beach Blvd.... I Mean Boulevard

As such, 1944 Beach Boulevard LLC and affiliated entities, operators of a family entertainment center in Jacksonville, Fla., sought relief under chapter 11.<sup>7</sup> The debtors were jointly and severally liable to Live Oak Banking Co. on account of two loans in the approximate amount of \$3 million.<sup>8</sup>

Live Oak contended that the loans were secured by a blanket lien on Beach Boulevard's assets.<sup>9</sup>

Under § 679.5011 of the Florida Statutes, to properly perfect a security interest, a creditor must file a financing statement with the FSTR.<sup>10</sup> The financing statement must include (1) the name of the debtor; (2) the name of the secured party; and (3) a description of the collateral covered by the financing statement.<sup>11</sup>

Notwithstanding these seemingly simple and straightforward requirements, under § 679.5061 of the Florida Statutes, a financing statement that substantially complies with these requirements "is effective, even it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading."<sup>12</sup> Section 679.5061(3) of the Florida Statutes provides another safe harbor: "[I]f the search 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 [the statute], the name provided does not make the financing statement seriously misleading."<sup>13</sup>

The financing statement filed by Live Oak with the registry correctly set forth two of the three pieces of information required by § 679.5021(1) of the Florida Statutes, but it identified the debtor as "1944 Beach Blvd. LLC" instead of "1944 Beach Boulevard LLC" — the debtor's "legal" name provided in the articles of organization filed with the Florida Secretary of State.<sup>14</sup> There was no dispute that Live Oak's financing statement did not contain the debtor's "legal" name — but was Live Oak's financing statement seriously misleading because of the abbreviation?

Beach Boulevard filed a complaint to avoid Live Oak's lien under § 544 of the Bankruptcy Code, arguing that the financing statement was "seriously misleading." Specifically, Beach Boulevard argued that the filing was deficient because the debtor's "legal" name was not identified in the UCC-1 financing state-

1 1944 Beach Blvd. LLC v. Live Oak Banking Co. (In re NRP Lease Holdings LLC), 20 F.4th 746, 758 (11th Cir. 2021).

2 1944 Beach Boulevard LLC v. Live Oak Banking Co., 346 So. 3d 587, 588-89 (Fla. 2022) (provided by § 9-506(c) of UCC, which is codified by § 679.5061, Florida Statutes).

3 *Id.* at 589 (citing Fla. Stat. § 679.5061(2)).

4 The FSTR is a privatized statewide repository of UCC filings, which some commentators have described as "unorthodox." See Prof. Lynn M. LoPucki, "The Florida-UCC Filing System Disaster," *Florida Law Review* (forthcoming 2023).

5 See Jeffrey S. Pohl & John K. Pearson, "If the Name Is Bubba, You'd Better Spell It Right," *XXV ABI Journal* 5, p. 24, February 2006, available at [abi.org/abi-journal](http://abi.org/abi-journal).

6 *In re NRP Lease Holdings LLC*, 20 F.4th at 757.

7 *Id.* at 750.

8 *Id.*

9 *Id.*

10 Fla. Stat. § 679.5011 (2023).

11 Fla. Stat. § 679.5021(1).

12 Fla. Stat. § 679.5061(1).

13 Prior to Florida's adoption of revised Article 9 in 2002, courts applied a "reasonably diligent searcher" standard to evaluate whether an error in the debtor's name was seriously misleading, as the prior version of the statute did not provide a definition of "seriously misleading." However, the "reasonably diligent searcher" standard was abrogated by the adoption of revised Article 9 and enactment of § 679.5061 of the Florida Statutes.

14 *In re NRP Lease Holdings LLC*, 20 F.4th at 750-51.

ment, and Live Oak's financing statement was not revealed on the first page of 20 names generated by a search of the registry using Beach Boulevard's correct "legal" name.<sup>15</sup> In response, Live Oak alleged that the error in identifying the debtor's "legal" name was a minor omission and that its financing statement was not seriously misleading because the UCC-1 could be found on the FSTR within one page of the initial search results by simply clicking the "Previous" tab on the webpage.<sup>16</sup>

Two bankruptcy courts previously had analyzed whether a financing statement was "seriously misleading" under the FSTR. In *In re Summit Staffing Polk County Inc.*, the U.S. Bankruptcy Court for the Middle District of Florida held that a financing statement was not "seriously misleading" because a search of the debtor's correct name revealed the defective financing statement on the page preceding the initial search results, thereby obligating parties to search the results immediately preceding and just after the initial search results.<sup>17</sup> However, in *John's Bean Farm of Homestead Inc.*, the U.S. Bankruptcy Court for the Southern District of Florida found that a financing statement was "seriously misleading" and fell outside of the safe-harbor provision where a search of the debtor's correct legal name did not produce the financing statement on the initial page of search results.<sup>18</sup>

Relying on the decisions in *Summit Staffing* and *John's Bean Farm*, the bankruptcy court denied Beach Boulevard's summary judgment motion, granted Live Oak's cross-motion for summary judgment and entered judgment for the creditor.<sup>19</sup> Following the rationale of *Summit Staffing*, the bankruptcy court concluded that even though the creditor's financing statement did not use "the debtor's correct name" as required under Florida law, the financing statement was not seriously misleading and was thereby sufficient to perfect the creditor's security interest because the financing statement fell within one of the Florida safe harbors.<sup>20</sup>

The district court affirmed the bankruptcy court's ruling, and Beach Boulevard appealed.<sup>21</sup> Given the importance of the issues to parties located in or doing business in Florida, the Eleventh Circuit certified to the Florida Supreme Court these three questions:

- (1) Is the "search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic," as provided for by Florida Statute § 679.5061(3), limited to or otherwise satisfied by the initial page of [20] names displayed to the user of the Registry's search function?
- (2) If not, does that search consist of all names in the filing office's database, which the user can browse to using the command tabs displayed on the initial page?
- (3) If the search consists of all names in the filing office's database, are there any limitations on a user's obligation to review the names[,] and[] if so, what factors should courts consider when determining whether a user has satisfied those obligations?<sup>22</sup>

The Florida Supreme Court declined to answer any of the questions certified by the Eleventh Circuit, based on a dispositive threshold question identified by the Florida Supreme Court: Is the filing office's use of "standard search logic" necessary to trigger the safe-harbor protection of § 679.5061(3) of the Florida Statutes?<sup>23</sup> It answered this question in the affirmative.<sup>24</sup>

Thus, because the FSTR does not use "standard search logic," the safe harbor provided by § 679.5061(3) of the Florida Statutes is not triggered, and any financing statement that fails to correctly name the debtor is "seriously misleading" and ineffective.<sup>25</sup> The Florida Supreme Court distinguished the FSTR's record search feature from the phrase "standard search logic," agreeing with Columbia Law School Prof. Kenneth C. Kettering that a "search procedure that returns as hits, for any search string, all financing statements in the filing office's database cannot rationally be treated as a 'standard search logic.'"<sup>26</sup> Under the definition of "standard search logic" as adopted by the secured-transaction industry, a search must generate specific hits, rather than an index, like the one resulting from a search of the FSTR.<sup>27</sup>

## Conclusion

While the *NRP Lease Holdings* decision may cause anxiety and sleepless nights for creditors' counsel, the outcome is not surprising given the trends in the revisions to Article 9 over the past 25 years. Before 1998, a financing statement was merely required to identify a debtor's name, but neither the statute nor the comments offered much additional guidance.<sup>28</sup> Among other things, the 1998 revisions clarified that the name of a domestic corporation or other "registered organization" is the name listed in the public records of its jurisdiction of organization.<sup>29</sup> The 2010 amendments to Article 9 built on these concepts, clarifying that the publicly filed articles of incorporation conclusively determine the name of a domestic corporation.<sup>30</sup>

In the wake of *NRP Lease Holdings*, it is essential (at least in Florida or in connection with any transaction applying Florida law) to ensure that the debtor's name identified on the financing statement is identical to the legal name provided in the articles of organization filed with the Florida Secretary of State. The ruling in *NRP Lease Holdings* creates a bright-line rule and leaves no room for even creative arguments from counsel for creditors, such as comparing the results using the search logics of other states that may produce a more generous result.<sup>31</sup> **abi**

23 1944 *Beach Boulevard LLC*, 346 So. 3d at 588.

24 *Id.* at 589.

25 *Id.*

26 *Id.* (citing Prof. Kenneth C. Kettering, "Standard Search Logic Under Article 9 and the Florida Debacle," 66 *U. Miami L. Rev.* 907, 913 (2012)).

27 *Id.* at 593. Query whether a better system would prevent disputes regarding debtor name and search issues. In the U.K., the debtor's entity record maintained by the state is linked to the secured transaction registry. See LoPucki, *supra* n.4. This allows filers to provide real-time feedback to avoid debtor name errors, and searchers to locate a financing statement by simply navigating to the entity record. *Id.*

28 U.C.C. § 9-402(1), (7) (1972).

29 U.C.C. § 9-503(a)(4)(A) (1998).

30 U.C.C. §§ 9-503 and 9-102(a)(68) (2010).

31 The Eleventh Circuit indicated that the bankruptcy court erred when it analyzed whether the search logics used by other states' registries would produce more results and were more creditor-friendly. It noted that "[t]he UCC, however, contemplates that states will use different search logics, and the Florida Legislature specifically directed that the 'seriously misleading' inquiry should be based on the Florida Registry's own search logic. That decision lies wholly within the Florida Legislature's prerogative." *In re NRP Lease Holdings LLC*, 20 F.4th at 757, n.2.

15 *Id.*

16 *Id.* at 751.

17 *In re Summit Staffing Polk Cnty. Inc.*, 305 B.R. 347, 355 (Bankr. M.D. Fla. 2003).

18 *In re John's Bean Farm of Homestead Inc.*, 378 B.R. 385, 395 (Bankr. S.D. Fla. 2007).

19 *In re NRP Lease Holdings LLC*, 20 F.4th at 751.

20 *Id.*

21 *Id.* at 751-52.

22 *Id.* at 757-58.