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Commercial Law: Secured Transactions: Address as a Formal Requisite of the Financing Statement

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method, neither a secondary school teacher, nor a college instructor can be suspended or discharged for his choice of subject matter or his use of a particular method without prior notice of its proscription.

With regard to the substantive aspect of academic freedom as applied to higher education, *Mailloux* is less clear. The very fact that the court distinguished between secondary and higher education lends support for a broader substantive freedom at the college or university level. But the substantive freedom at the college or university level is not without restriction. Whether, as the court suggested, the instructor's freedom is to be limited to choosing "among options for which there is any substantial support"²⁴ or whether some other standard may be more appropriate is a question that was beyond the scope of *Mailloux*, and remains unanswered.

BRADLEY J. KEITH

Secured Transactions: Address as a Formal Requisite of the Financing Statement—The Uniform Commercial Code adopted the notice filing system, calling simply for a notice indicating that the secured party who has filed may have a security interest.¹ The document filed, however, must satisfy the information requisites of section 9-402(1).² But how strictly are its provisions construed?

In *Burlington National Bank v. Strauss*,³ the Wisconsin Supreme Court was asked to determine whether a purchase money lender, Strauss, had perfected his security interest so as to enable his interest to take priority over the bank's standard form security

24. *Id.* at 1391.

1. UNIFORM COMMERCIAL CODE § 9-402, Comment 2.

2. UNIFORM COMMERCIAL CODE § 9-402(1):

A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. . . . A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

3. 50 Wis. 2d 270, 184 N.W.2d 122 (1971).

agreement containing an after-acquired property clause.⁴ The court, in striking down Strauss' security interest, stated that the purposes of information and notice contemplated by section 9-402(1) of the Code were not satisfied when his name alone appeared on the document. The court supported its position by citing *Strevell-Paterson Finance Co. v. May*,⁵ wherein a filed chattel mortgage was ruled defective as a perfected security interest because the seller's address did not appear on the instrument.

Since the purpose of section 9-402(1) is to put parties on notice to the effect that the secured party may have a security interest in the collateral and further inquiry from the parties concerned will be necessary to disclose the complete state of affairs,⁶ the court's protection in *Strauss* may have been misplaced when it stated: "It is immaterial that the bank may have, in fact, known of Strauss, his identity and residence and was not misled."⁷ A more liberal result obtained in *Rooney v. Mason*.⁸ Despite a total lack of address on the filed security agreement, the court held the instrument valid, stating that the addresses were "readily available and known by virtually all creditors."⁹ In *Silver v. Gulf City Body and Trailer Works*,¹⁰ an address on the financing statement appeared as "Box 2146, Fort Worth, Texas." The court ruled the address to be in substantial compliance with the Code requirements:

Post office boxes do not have to possess the occult quality of engaging in oral communication with inquirers to meet the requirements of the Alabama Uniform Commercial Code that a financing statement show the address of the secured party.. To paraphrase—the Code helps those who help themselves.¹¹

Substantial compliance was also found in *In re Bennet*,¹² wherein

4. UNIFORM COMMERCIAL CODE § 9-312(4):

A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

5. 77 N.M. 331, 422 P.2d 366 (1967).

6. UNIFORM COMMERCIAL CODE § 9-402, Comment 2.

7. 50 Wis. 2d at 279, 184 N.W.2d at 126-27.

8. 394 F.2d 250 (10th Cir. 1968).

9. *Id.* at 253.

10. 432 F.2d 992 (5th Cir. 1970).

11. *Id.* at 992.

12. 6 UCC REP. SERV. 551 (W.D. Mich. 1969).

the seller's address did not appear on the security instrument filed and the assignment executed on the back contained an outdated address of the seller. The court held the instrument to be effective "because any inquiry at the old address would have been referred to the secured party."¹³ While an address of the secured party as "Coca-Cola Bottling Co., East Hartford, Conn." was held to meet the Code requirements in *In re Bengtson*,¹⁴ an address given for a bank as "Dallas, Texas" was considered insufficient by the Maryland Attorney General because there was "no telling how many branches or divisions this bank has."¹⁵

Erroneous and misspelled names have also led up to varying constructions of section 9-402(1). A conditional sales contract was filed with an erroneous name in *In re Excel Stores, Inc.*¹⁶ The name appeared as "Excel Department Stores" rather than Excel Stores, Inc., and, although the business was conducted under the same roof as Excel Enterprises, Inc., the court concluded there was substantial compliance. Emphasis was placed on the fact that anyone making a search would be put on notice of an outstanding security interest.¹⁷ Where the evidence established that a misspelled name misled a party, the filed security interest has been held invalid.¹⁸

The court in *In re Nara Non Food Distributing, Inc.*,¹⁹ endorsed a liberal interpretation of the filing requirements in the Code:

The purpose of the adoption of the Uniform Commercial Code, insofar as this feature of it is concerned, was to eliminate and avoid technical requirements and pitfalls and the court should not by an illiberal construction, where no prejudice is

13. *Id.* at 554.

14. 3 UCC REP. SERV. 283 (D. Conn. 1965).

15. Opinion of the Attorney General of Maryland, 2 UCC REP. SERV. 108, 110 (1964).

16. 341 F.2d 961 (2d Cir. 1965).

17. See also *In re Colorado Mercantile Co.*, 299 F. Supp. 55 (D. Colo. 1969) ("O.M. Scott Credit Corp." instead of "O.M. Scott and Sons Co."); *National Cash Register Co. v. Firestone & Co.*, 346 Mass. 255, 191 N.E.2d 471 (1963) ("Cozy Kitchen" instead of "Kozy Kitchen"); *In re Nara Non Food Distrib., Inc.*, 66 Misc. 2d 779, 322 N.Y.S.2d 194 (Sup. Ct. 1970) ("Nara Dist., Inc." instead of "Nara Non Food Distributing, Inc."); *Beneficial Fin. Co. v. Kurland Cadillac-Oldsmobile, Inc.*, 57 Misc. 2d 806, 293 N.Y.S.2d 647 (Sup. Ct. 1968) ("Shiela" instead of "Sheila"); and *Gen. Motors Acceptance Corp. v. Terra Contractors Corp.*, 6 UCC REP. SERV. 544 (Civ. Ct., N.Y. County, 1969) ("Terra Contractors, Inc." instead of "Terra Contractors Corporation").

18. *John Deere Co. v. William C. Pahl Constr. Co.*, 59 Misc. 2d 872, 300 N.Y.S.2d 701 (Sup. Ct. 1969) ("Ranalli" was misspelled "Ranelli," however a number of security interests with the correct spelling were in existence).

19. 66 Misc. 2d 779, 322 N.Y.S.2d 194 (Sup. Ct. 1970).

shown, deprive the holder of a security interest of his property.²⁰

Those courts liberally construing section 9-402(1) hold that if the quality of information contained in the financing statement is such that it is reasonably possible for a subsequent creditor to locate the secured party, the financing statement will not fail. Perhaps the rule should be to disregard the formal defect in the financing statement if no one has been misled, with the burden of proof thereof on the party responsible for the defect.

In light of the factual context of *Strauss* was a strict construction of the Code requirements justified? The Burlington bank lent money to Fleming, a farmer, and secured its loan with a standard farm security agreement containing an after-acquired property clause. Later, Strauss sold cattle to Fleming on conditional sales notes, filed in lieu of a financing statement. Upon Fleming's default, Strauss took possession of the cattle, causing the bank to bring an action in conversion against Strauss. The bank prevailed in the lower court and Strauss appealed on the ground that the property was repossessed by virtue of his superior security interest. Although the conditional sales notes would have been effective against Fleming,²¹ and Strauss' filing would have given his interest priority over the bank's,²² the supreme court nevertheless struck down the security interest because it deemed Strauss' address to be insufficient. Although the notes were dated in Harvard, Illinois, and the word "Harvard" appeared after Strauss' name, the court held the address was not "sufficiently complete to enable a prudent man using reasonable care to locate the secured party."²³

Had the bank been a subsequent creditor, a rigid interpretation of section 9-402(1) might have been in order, but it need not have been to the letter. The court in *Silver* stated: "The overall thrust of *Rooney* and other cases in this area is to uphold validity if sufficient information can reasonably be gleaned from the filing to enable those desiring to reach the secured party to do so."²⁴ The filing of the conditional sales notes in *Strauss* fulfilled the basic notice requirement of section 9-402, but was the address "Harvard, Illinois," sufficient to enable a subsequent creditor to reach the

20. *Id.* at 780, 322 N.Y.S.2d at 194.

21. UNIFORM COMMERCIAL CODE § 9-203(2).

22. UNIFORM COMMERCIAL CODE § 9-312(4).

23. 50 Wis. 2d at 279, 184 N.W.2d at 126.

24. 432 F.2d at 993.

secured party?²⁵ The court determined that the address was insufficient because a nonlocal creditor would have difficulty locating Strauss "unless Harvard, Illinois, is sufficiently small or Strauss is sufficiently well known, two points not covered by the record."²⁶ Would the decision have been different had this information been contained in the record? Since judicial notice is discretionary in Wisconsin, the court may have been remiss in not taking notice that Harvard, Illinois, is approximately eight miles south of the Wisconsin border and twenty-eight miles from Burlington, has a population of 5,019, and has only one Jules Strauss listed in the phone book as of this writing. The court in *Bengtson* took notice of the fact that there was only one Coca-Cola Bottling Company in East Hartford or in the telephone directory of greater Hartford, and, thus, deemed the information sufficient.²⁷

In resolving conflicting security interests, in the final analysis, it should be determined whether a party was misled by inadequate or erroneous information. The court in *Strauss*, in its fastidious attempt to protect subsequent creditors, ignored the fact that subsequent creditors were not involved. Comment 1 of section 1-102 states: "The proper construction of the Act requires that its interpretation and application be limited to its reason." The reason for the filing requirement of section 9-402(1) is to protect subsequent creditors. Those requirements were used in *Strauss*, not for the protection of subsequent creditors, but to defeat an otherwise valid and good faith purchase money security interest.

WILLIAM C. NEIMANN

25. This writer pondered the various ways one could locate the secured party. Throwing caution to the winds, a letter was addressed merely to Jules Strauss, Harvard, Illinois, and duly dispatched with an 8¢ investment to help defray the postmaster's trouble. The chronological sequence was as follows: 1) letter sent evening of day 1; 2) letter received by Strauss morning of day 3; 3) reply sent by Strauss on day 4; 4) reply received by this writer on day 5. Total time elapsed was less than 96 hours, and all this without a zip code. One can envision the return for a somewhat larger investment in a long distance telephone call (28¢ plus tax for three minutes Milwaukee to Harvard—figures courtesy of Betty, Wisconsin Bell System).

26. 50 Wis. 2d at 278, 184 N.W.2d at 126.

27. 3 UCC REP. SERV. at 287.