

MINN. STAT.

§ 336.9-402

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BETHEL MARINE, INC.,
Debtor. FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER FOR JUDGMENT

ITT COMMERCIAL FINANCE CORPORATION,
Plaintiff,

v. BKY 3-87-3247

BETHEL MARINE, INC., TCF BANKING ADV 3-88-38
& SAVINGS, F.A., GEORGE ZACHAU
AND MERCHANTS NATIONAL BANK OF
WINONA,

Defendants.

At St. Paul, Minnesota, this 20th day of April, 1989.

This adversary proceeding comes on before the Court in chambers. The parties agreed to dispense with oral argument, have stipulated to facts and have submitted argument on brief. James H. Levy appears for Bethel Marine, Inc. ("Debtor"). Carrie A. Hefte appears for George and B. Frances Zachau ("Zachaus").

FINDINGS OF FACT

Debtor is a Minnesota corporation which operated retail boat dealerships in East Bethel and Hopkins, Minnesota. Before February 7, 1984, B. Frances Zachau and George Zachau, and their sons, Mark and Richard, operated the business. The Zachau family owned 100 percent of Debtor's stock, George and B.

NOTICE OF ENTRY AND FILING ORDER OR JUDGMENT

Filed and Docket Entry made on APR 20 1989

Timothy R. Walbridge, Clerk By [Signature]

Frances Zachau owning 75 percent and their sons owning 25 percent.

On or about February 7, 1984, the Zachau family sold their shares of stock in Debtor to Reanjoza, Inc., a Minnesota corporation. Reanjoza, Inc. executed a single promissory note in favor of the four individual members of the Zachau family in the amount of \$396,096.55. As divided to reflect their proportional stock ownership, the original principal amount due George Zachau was \$147,347.92, that due B. Frances Zachau was \$146,159.63, and the balance was due Mark and Richard Zachau.

The promissory note is payable in monthly installments of \$6,782.15, plus interest accruing at the rate of 11 percent per annum. The Zachaus historically have applied each monthly payment on a pro rata basis to the amounts due each of them. As security for Reanjoza, Inc.'s promise to pay pursuant to the Promissory Note, Debtor granted security interests in all of Debtor's inventory, accounts, contract rights, and equipment to the four Zachaus, in two security agreements. The security agreement involving the equipment recited that, if the equipment had been attached to real estate, the record owner of the real estate was B. Frances Zachau. Mark G. Zachau, as Debtor's president, signed both agreements and their attachments.

As of February 7, 1984, the officers of Reanjoza, Inc. were Laurence A. Anderson, Mark G. Zachau, Robert J. Johnson and Robert M. Reuss. These same individuals became the officers of Bethel Marine, Inc.

A financing statement was filed with the Minnesota Secretary of State on February 9, 1984. "George J. Zachau" is the only name listed on the financing statement as the secured party; Debtor is listed as the debtor. There is no other filed financing statement listing any of the parties to this transaction. The financing statement lists and describes security interests in all current and after-acquired equipment, inventory, accounts and contract rights of Debtor.

From February, 1984 through October, 1986, Debtor made monthly payments on the Promissory Note. The last payment, received in October, 1986, was a partial payment of \$279.92 principal and \$981.56 interest to George Zachau, and \$277.66 principal and \$973.65 interest to B. Frances Zachau.

Debtor filed for relief under Chapter 11 on November 2, 1987. As of that date, George Zachau had a claim in the amount of \$119,591.94 without offset or counterclaim; B. Frances Zachau had a claim in the amount of \$118,627.50 without offset or counterclaim.

CONCLUSIONS OF LAW

The sole issue before the Court is whether B. Frances Zachau's security interest in Debtor's equipment, inventory, accounts and contract rights was perfected by the financing statement filed February 9, 1984, listing George Zachau as the secured party.¹

¹ Debtor and the Zachaus have resolved all issues raised in Debtor's response to the Zachaus' cross-claim. In addition, the original parties to this adversary

MINN. STAT. §336.9-402 provides that a financing statement perfecting a security interest in collateral owned by a debtor must contain the following:

1. The names of the debtor and the secured party;
2. The signature of the debtor;
3. An address of the secured party from which information concerning the security interests may be obtained;
4. The mailing address of the debtor;
5. A statement indicating the types of, or describing the items of, collateral.

The financing statement filed February 9, 1984 fulfills these requirements. The document clearly indicates that Bethel Marine, Inc., at its East Bethel and Hopkins addresses, is the debtor. In addition, it shows George J. Zachau at his address in Wyoming, Minnesota as a secured party. It cursorily notes equipment, inventory, accounts, and contract rights of the debtor as the collateral. A schedule attached to and filed with the UCC-1 exhaustively describes the varieties of inventory, equipment, accounts, and general intangibles covered under the financing statement. The financing statement is signed by Mark G. Zachau, as President of Debtor. Although the financing statement does not list B. Frances Zachau, Mark G. Zachau, or

proceeding settled the controversy surrounding their competing interests in certain funds originally held by Plaintiff, by a stipulation approved by this Court's order of December 29, 1988.

Richard R. Zachau as secured parties, their names are clearly included on the underlying security agreements.

MINN. STAT. §336.9-402(8) provides:

A financing statement, amendment, continuation, assignment, release or termination substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

The "notice filing" system incorporated into the Uniform Commercial Code, as enacted in Minnesota requires that a secured party provide enough information to alert interested parties that there may be a prior security interest. The official comment to MINN. STAT. §336.9-402 states:

The notice itself indicates merely that the secured party who has filed may have a security interest in the collateral described. Further inquiry from the parties concerned will be necessary to disclose the complete state of affairs.

(Emphasis added.) Accordingly, the cases decided under §9-402 have made clear that a financing statement is intended merely to "put a searcher on notice that an underlying security agreement may be outstanding. A properly filed financing statement would thus serve its intended purpose if a subsequent party would have been put on notice of an outstanding security agreement." In re Cushman Bakery, 16 UCC REP. 897, 903 (D. Me., 1975) (quoting Bramble Transportation, Inc. v. Sam Senter Sales, Inc., 294 A.2d 97, 103 (Del. 1971)). See also, In re King-Porter Co., 446 F.2d 722, 729 (5th Cir. 1971); Wolf v. Aero Factors Corp., 126 F. Supp. 872, 876 (S.D. N.Y. 1954), aff'd per curiam, 221 F.2d 291

(2d Cir. 1955); John Deere Co. v. William C. Pahl Constr. Co., 300 N.Y.S.2d 701, 703 (Sup. 1969), aff'd, 310 N.Y.S.2d 945 (App. Div. 1970); Nat'l Cash Register Co. v. Firestone & Co. Inc., 346 Mass. 255, 191 N.E.2d 471, 474 (1963).

The caselaw shows that the courts have allowed financing statements substantially complying with the filing requirements to be effective for perfection even though they contain minor errors which are not misleading. For example, in a 1977 case, the mistaken omission of the word "credit" from the name of the creditor was found not to be seriously misleading.

By virtue of the certificate of title issued . . ., appellant had constructive notice that [the debtor's] title in the truck was encumbered by a security interest and that the secured party's address, correctly noted, was (listed on the certificate of title). Upon reasonable inquiry, appellant could have discovered the true, complete state of affairs.

Roberts v. Int'l Harvester Credit Corp., 143 Ga. App. 206, 237 S.E.2d 697 (1977). See also, Cummins Engine Co. v. General Motors Corp., 299 F. Supp. 59 (D. Md. 1969) aff'd, 424 F.2d 1368 (4th Cir. 1970) (for security agreement executed by debtor and O.M. Scott & Sons, Co., financing statement identifying the secured party as "O.M. Scott Credit Corp.," was not seriously misleading); Industrial Nat'l Bank of Rhode Island v. Quinn, 29 UCC REP. 1700 (D.R.I. 1980) (use of the name "Industrial Nat'l Bank," rather than the complete name, "Industrial Nat'l Bank of Rhode Island," not seriously misleading.); Clarke Floor Machine Division of Studebaker Corp. v. Gordon, 7 UCC REP. 363 (Md.

Super. Ct. 1970) (listing secured party as "Clark Floor Machine Company of Muskegon, Michigan," rather than as "Clark Floor Machine Division of Studebaker Corporation," not seriously misleading); Brown v. Boulder Services, Inc., 39 UCC REP. 1519 (Bankr. D. Colo. 1984) (where security agreement sets forth names of parties, their mailing addresses, and contains description of collateral upon which defendant claimed a security interest as an exhibit to the agreement, the financing statement is not misleading).

Debtor contends that because B. Frances Zachau, a secured creditor, was not individually identified on the financing statement, the financing statement does not operate to perfect her security interest. This argument is misplaced. The primary purpose of a financing statement is to clearly identify the debtor, so that an inquiring party may ascertain the possible existence of other, prior secured claims against the debtor's assets. The identification of the creditor on the financing statement is merely to provide an inquiring party with notice, and a starting point from which to more fully determine the actual state of affairs. Where a number of creditors jointly participate in a secured transaction, there is no point in requiring each to file a separate piece of paper signifying this agreement, where a single piece of paper would not be seriously misleading. See, e.g., In re Fried Furniture Corp., 293 F. Supp. 92, 93 (E.D. N.Y. 1968), aff'd, 407 F.2d 360 (2d Cir. 1969) (as long as financing statement identifies one of the parties to a

participated loan as creditor, it need not identify any of the other participants in order for it to perfect the lenders' security interest). Clearly, the financing statement listing George Zachau as the secured party, and listing Debtor as the named debtor, is sufficient to put any inquiring person on notice of a secured claim against Debtor's assets. A reasonable investigation based on the disclosure of George Zachau's name would then have revealed the four Zachaus' interests.

Debtor correctly points out that the central question when §9-402(8) is invoked to "save" an incomplete financing statement is whether the financing statement deviates so far from the requirements of §9-402 that it should not be deemed effective. However, Debtor has failed to show errors in the financing statement so serious as to justify extinguishing the security interest of B. Frances Zachau. The UCC-1 expansively describes the collateral to which the Zachaus' security interest had attached. Detail in a financing statement sufficient to put the general public on notice of the breadth of a security agreement has been found sufficient to overcome minor deviations from other content requirements of §9-402.

In In re Excel Stores, Inc., 341 F.2d 961 (2d Cir. 1965), the creditor filed a conditional sales contract was filed in place of a financing statement. The contract identified the debtor as, and was executed on behalf of, "Excel Department Stores," though the correct name of the debtor was "Excel Stores, Inc." The court stated: ". . . nor can it be doubted that any

creditor of Excel or other interested persons searching the records, will come to the Excel Department Store, at the shopping center of Pawcatuck, find Machado's name and be put on notice that a lien against Excel might be outstanding." Similarly, in Nat'l Cash Register Co. v. Firestone & Co. Inc., 346 Mass. 255, 191 N.E.2d 471 (1963), the court concluded that a one-letter deviation in the spelling of the debtor's business name did not render the financing statement "seriously misleading."

On the other hand, the courts have found errors to be seriously misleading when such errors would prevent a diligent party from ascertaining relevant information on creditors' interests. For example, the court in In re Uptown Variety, 6 UCC REP. 221 (D. Ore. 1969), held that when the names of the debtor and the secured party were reversed on a financing statement, the financing statement did not satisfy the notice requirements of Article 9. The courts have become more exacting in fixing minimum requirements so as to insure identification of the debtor from a search of the recording office's index. It is clear that the debtor's legal name must be given on a financing statement so that it can be filed and indexed in such a manner that a person searching the record under the debtor's legal name would be able to locate it. See, e.g., In re Leichter, 471 F.2d 785 (2d Cir. 1972); In re Thomas, 466 F.2d 51 (9th Cir. 1972); In re Firth, 363 F. Supp. 369 (M.D. Ga. 1973); In re Hill, 363 F. Supp. 1205 (N.D. Miss. 1973). Here, the financing statement shows Bethel Marine, Inc. as debtor. The financing agreement specifically and

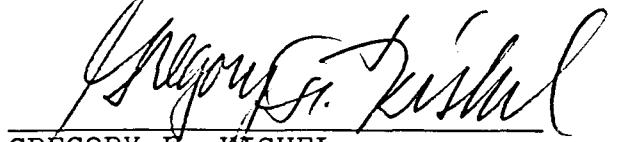
accurately identifies the debtor. As concluded above, it sufficiently identifies one of several secured creditors whose interests arose out of the same transaction and under the same instruments, so as to perfect the security interests of all of those creditors.

ORDER FOR JUDGMENT

On the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED, ADJUDGED, AND DECREED that, as of the commencement of Debtor's Chapter 11 case, B. Frances Zachau held a valid and perfected security interest in all of Debtor's equipment, inventory, accounts, and contract rights and, on account of that security interest, presently holds a valid and perfected security interest in the proceeds of all such pre-petition property of Debtor presently on deposit pursuant to prior agreement of the parties to this adversary proceeding.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:



GREGORY F. KISHEL
U.S. BANKRUPTCY JUDGE