

**IN THE SUPREME COURT
OF THE STATE OF FLORIDA**

CASE NO. SC21-1717

U.S. 11th Circuit Court of Appeals Case No. 21-11742

1944 BEACH BOULEVARD, LLC,

Appellant,

v.

LIVE OAK BANKING COMPANY,

Appellee.

ANSWER BRIEF OF APPELLEE

Respectfully Submitted,

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PRELIMINARY STATEMENT

In this brief, Appellee, LIVE OAK BANKING COMPANY, will use the following shorthand references:

“Appellant” shall refer to the Appellant, 1944 BEACH BOULEVARD, LLC.

“Appellee” shall refer to the Appellee, LIVE OAK BANKING COMPANY.

The symbol (App. X) will be used. “X” cites to the letter of Tab in the Appellee’s Appendix. ALL REFERENCES TO THE APPENDIX HEREIN SHALL BE TO THE APPENDIX FILED BY THE APPELLEE IN THIS MATTER.

STATEMENT OF THE CASE

The issue presented in this appeal is whether the Appellee's UCC-1 Financing Statements are not seriously misleading and are effective to perfect Appellee's security interest in all of the Appellant's assets under §679.5061, Fla. Stat., notwithstanding the fact that the Financing Statements identified Appellant as "1944 Beach Blvd., LLC" instead of "1944 Beach Boulevard, LLC", where a search under "1944 Beach Boulevard, LLC" in the Florida Secured Transaction Registry using the standard search logic discloses the UCC-1 Financing Statements on the first (1st) page immediately preceding the initial search results page by the searcher only having to hit the "<<PREVIOUS" command tab once.

The Bankruptcy Court for the Middle District of Florida found that that Appellee's UCC-1 Financing Statements were not seriously misleading and were effective to perfect Appellee's security interest in all of the Appellant's assets. Likewise, the U.S. District Court for the Middle District of Florida, sitting in its appellate capacity, affirmed the decision of the Bankruptcy Court.

On appeal, the U.S. 11th Circuit Court of Appeals in turn certified the following questions to this Court:

- 1) Is the "search of 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 twenty (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?

For the reasons set forth in this Answer Brief, Appellee contends that the decisions of the bankruptcy court and district court (sitting in its appellate capacity) should be affirmed.

STATEMENT OF FACTS

The Appellant is a borrower under two (2) SBA Notes owned by Appellee, which are secured by Security Agreements and UCC-1 Financing Statements collateralizing all of the personal property and assets of Appellant as described in the Security Agreements and UCC-1 Financing Statements. [Please see App. A and B, which contains true and correct copies of the two (2) Proof of Claims filed by Appellee in the underlying Ch. 11 bankruptcy case with the Notes, Security Agreements, and UCC-1 Financing Statements attached thereto]. Appellant and 18 of its affiliates are jointly and severally liable to Appellee under the SBA loans. [App. A and B]

On December 5, 2019, Appellant and 15 of its affiliates filed the underlying Bankruptcy case in the Middle District of Florida, wherein the Appellant sought reorganization under Chapter 11 of the United States Bankruptcy Code. On June 2, 2020, Appellant initiated the underlying adversarial proceedings against Appellee in the Bankruptcy case seeking to avoid the lien provided for by Appellee's UCC-1 Financing Statements by arguing that the Financing Statements were seriously misleading, defective, and therefore unperfected. [App. C] The sole basis for Appellant's claim that the Financing Statements were seriously misleading and defective was that the Appellant was identified in the statements as "1944 Beach Blvd., LLC"

instead of “1944 Beach Boulevard, LLC”, which is the actual name of the Appellant as stated in their Articles of Organization filed with the Florida Secretary of State. According to Appellant, a search under “1944 Beach Blvd., LLC” in the Florida Secured Transaction Registry using the standard search logic does not disclose the UCC-1 Financing Statements on the “first” search results page that comes up, thereby rendering the Financing Statements “seriously misleading” under §679.5061, Fla. Stat. In essence, Appellant argues that the Financing Statements failed to sufficiently “provide the name of the debtor” under §679.5061(2), Fla. Stat., and were “seriously misleading” due to the use of the abbreviation for “Boulevard” (ie., “Blvd.”).

On July 1, 2020, Appellee filed its Answer and Affirmative Defenses to Appellant’s Complaint. [App. D] In their Affirmative Defenses, Appellee asserted the Financing Statements substantially complied with the requirements of Chapter 679 of the Florida Statutes and that the mere abbreviation of the word “Boulevard” is a “minor” error or omission within meaning of §679.5061(1), Fla. Stat., that does not render the Financing Statements defective or “seriously misleading”. Additionally, under §679.5061(3), Fla. Stat., the abbreviation of the word “Boulevard” in Appellant’s name does not render the Financing Statements “seriously misleading”, since a search under “1944 Beach Boulevard, LLC” in the

Florida Secured Transaction Registry using the standard search logic discloses the UCC-1 Financing Statements identifying Appellant as “1944 Beach Blvd., LLC” on the page immediately preceding the initial search results page by the searcher only having to hit the “<<PREVIOUS” command tab once.

On August 10, 2020, Appellant filed a Motion for Summary Judgment on the issue of whether Appellee’s UCC-1 Financing Statements were “seriously misleading” and defective. [App E] On August 25, 2020, Appellee filed its Response to Appellant’s Motion for Summary Judgment and a Cross-Motion for Summary Judgment on the issue. [App. F]

On November 20, 2020, after having taken the matter under review and advisement, the bankruptcy court entered its Order denying Appellant’s Motion for Summary Judgment and granting Appellee’s Cross-Motion for Summary Judgment [App. G] In reaching its decision, the bankruptcy court relied upon *In re Summit Staffing Polk County, Inc.*, 305 B.R. 347 (M.D. Fla., 2003) and *In re John’s Bean Farm of Homestead, Inc.*, 378 B.R. 385 (S.D. Fla., 2007), and found that the Appellee’s UCC-1 Financing Statements “fall within the Safe Harbor provision of Fla. Stat. Section 679.5061(1) because the Registry’s standard search logic discloses the Financing Statements on the page immediately preceding the initial page on the Registry’s website”.

Accordingly, the bankruptcy court concluded that the Financing Statements “are not seriously misleading and are effective to perfect the security interest in all of the [Appellant’s] assets”. [App. G]

On November 23, 2020, the bankruptcy court entered Judgment in favor of Appellee on Appellant’s Complaint, which found that Appellee’s UCC-1 Financing Statements “are effective to perfect the [Appellee’s] security interest in all of the [Appellant’s] assets”. [App. H]

On November 24, 2020, Appellant filed its original notice of appeal with the district court seeking review of the Order denying Appellant’s Motion for Summary Judgment and granting Appellee’s Cross-Motion for Summary Judgment [App. G] and the resulting Judgment [App. H].

On May 19, 2021, the district court, sitting in its appellate capacity, entered an Order [App. I.] affirming the bankruptcy court’s Order denying Appellant’s Motion for Summary Judgment and granting Appellee’s Cross-Motion for Summary Judgment [App. G] and the resulting Judgment [App. H].

On May 20, 2021, Appellant filed their notice of appeal with the U.S. 11th Circuit Court of Appeals seeking review of the of the Order of the district

court for the Middle District of Florida, sitting in its appellate capacity, affirming the decision of the bankruptcy court.

On or about December 10, 2021, the U.S. 11th Circuit Court of Appeals issued its Opinion [App. J], wherein the Court certified the following questions to this Court:

- 1) Is the “search of 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 twenty (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?

STANDARD OF REVIEW

As with any matter involving an issue of statutory interpretation, courts must first look to the actual language of the statute and "examine the statute's plain meaning." *Lopez v. Hall*, 233 So. 3d 451, 453 (Fla. 2018). "When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules statutory interpretation and construction; the statute must be given its plain and obvious meaning." *A.R. Douglass, Inc. v. McRaney*, 102 Fla. 1141, 137 So. 157, 159 (Fla. 1931). This Court has long recognized that the "plain language" approach

is subject to the qualification that if a part of a statute appears to have a clear meaning if considered alone but when given that meaning is inconsistent with other parts of the same statute or others in *pari materia*, the Court will examine the entire act and those in *pari materia* in order to ascertain the overall legislative intent.

When construing a particular part of a statute it is only when the language being construed in and of itself is of doubtful meaning or doubt as to its meaning is engendered by apparent inconsistency with other parts of the same or a closely related statute that any matter extrinsic the statute may be considered by the Court in arriving at the meaning of the language employed by the Legislature.

Fla. State Racing Comm'n v. McLaughlin, 102 So. 2d 574, 575-76 (Fla. 1958); *Bank of N.Y. Mellon v. Glenville*, 252 So.3d 1120, 1127-1128 (Fla.

2018). “[A] literal interpretation of the language of a statute need not be given when to do so would lead to an unreasonable or ridiculous conclusion.” *Holly v. Auld*, 450 So.2d 217, 219 (Fla. 1984). See also, *Maddox v. State*, 923 So.2d 442, 446 (Fla. 2006).

SUMMARY OF ARGUMENT

The UCC-1 Financing Statements filed by Appellee substantially complied with the requirements of Chapter 679 of the Florida Statutes, and the mere abbreviation of the word “Boulevard” is a “minor” error or omission within meaning of §679.5061(1), Fla. Stat., that does not render the Financing Statements defective or “seriously misleading”. Additionally, under §679.5061(3), Fla. Stat., the abbreviation of the word “Boulevard” in Appellant’s name does not render the Financing Statements “seriously misleading”, since a search under “1944 Beach Boulevard, LLC” in the Florida Secured Transaction Registry using the standard search logic discloses the UCC-1 Financing Statements identifying Appellant as “1944 Beach Blvd., LLC” on the page immediately preceding the initial search results page by the searcher only having to hit the “<<PREVIOUS” command tab one (1) time. In fact, it is the first entry on the page.

Even though revised Article 9 and §679.5061, Fla. Stat., may not impose a specific “reasonable search requirement” on a searcher to attempt and search variations of a debtor’s name, a searcher is still required to use reasonable diligence and common-sense in examining the **results** produced by searching under the debtor’s name listed in the Financing Statement. While Appellant’s brief completely ignores and disregards this fact, a

searcher must still use reasonable care and diligence in actually reviewing the search **results**, especially when the State's Registry system restricts results to a mere twenty (20) results per page (a fact acknowledged in Appellant's own brief) and instructs the searcher to utilize the forward and previous buttons to display more results as in Florida.

Appellant's reliance on decisions from other States addressing revised Article 9 is misplaced and misleading, as the facts of those cases are distinguishable from the facts of the subject case, and the Florida Secured Transaction Registry search system is completely different than the search systems utilized in other States, including but not limited to the amount of results displayed per screen and ability to utilize search options that are not available to users of Florida's Registry system.

As such, Appellee's UCC-1 Financing Statements were not seriously misleading and were effective to perfect Appellee's security interest in all of the Appellant's assets, and the decisions of the bankruptcy court and district court (sitting in its appellate capacity) should be affirmed.

ARGUMENT

- I. **The UCC-1 Financing Statements filed by Appellee are not “seriously misleading” and are effective to perfect Appellee’s security interest in all of the Appellant’s assets.**

In the subject case, Appellee filed two (2) UCC-1 Financing Statements with the Florida Secured Transaction Registry pursuant to the two (2) SBA Security Agreements executed by Appellant. In the UCC-1 Financing Statements, Appellant’s name was listed as “1944 Beach Blvd., LLC”. Additionally, Appellant was also listed as “1944 Beach Blvd., LLC” in the underlying Note and Security Agreement. [App. A and B] The main issue for the Court to decide is whether the identification of Appellant on the UCC Financing Statements as “1944 Beach Blvd., LLC” instead of “1944 Beach Boulevard, LLC” render the filings “seriously misleading”, thereby making Appellee’s lien unperfected and subordinate to the hypothetical lien held by Appellant as a debtor in possession. As explained below, the UCC Financing Statements filed by Appellee are not “seriously misleading” and are effective to perfect Appellee’s security interest in the collateral of Appellant secured thereby.

Pursuant to §679.5021(1), Fla. Stat., a financing statement must provide the “name of the debtor”. Under §679.5031(1)(a), Fla. Stat., where

the debtor is a “registered organization”, the financing statement must provide “the name as is stated to be the registered organization’s name on the public organic record most recently filed with...the registered organization’s jurisdiction”. However, under §679.5061(1), Fla. Stat., “[a] financing statement substantially complying with the requirements of this part [ie., Chapter 679] is effective even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading”. §679.5061(3), Fla. Stat., further provides that “[i]f 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 s. 679.5031(1), the name provided does not make the financing statement seriously misleading.”

The UCC Financing Statements filed by Appellee substantially comply with the requirements of Chapter 679 of the Florida Statutes. Identifying Appellant as “1944 Beach Blvd., LLC” instead of “1944 Beach Boulevard, LLC” in the Financing Statements does not render them “seriously misleading”. At worst, the mere abbreviation of the word “Boulevard” may be considered a “minor” error or omission within meaning of §679.5061(1), which does not render the UCC Financing Statements defective or

“seriously misleading”. The fact that “Blvd.” is an abbreviation of the word “Boulevard” is common knowledge and commonly accepted, and to state otherwise is disingenuous.

Additionally, a search of the Florida Secured Transaction Registry under “1944 Beach Boulevard, LLC” does in fact reveal and disclose the subject Financing Statements that identify Appellant as “1944 Beach Blvd., LLC”. As confirmed by the three (3) Affidavits/Declarations filed by Appellee with the bankruptcy court in support of its Cross-Motion for Summary Judgment [App. F], a review of the search results from the Florida Secured Transaction Registry reveals that both of the UCC Financing Statements that identify “1944 Beach Blvd., LLC” as the debtor are easily located by merely clicking the blue “<<PREVIOUS” tab on the search results screen just one (1) time. In fact, they are the very first two entries that appear immediately before three (3) other financing statements for “1944 Beach Boulevard, LLC”, due to the fact that the search results are displayed in alphabetical order. This fact is confirmed by the Appellant’s own brief filed in this matter.

In *In re Summit Staffing Polk County, Inc.*, 305 B.R. 347 (M.D. Fla. 2003), the Court was presented with a similar issue as in this case. In *Summit Staffing*, the creditor filed a UCC Financing Statement that identified

the debtor as “Summit Staffing”, when the actual legal name of the debtor was “Summit Staffing of Polk County, Inc.” *Id.* at 349. The Trustee sought to gain priority over the creditor’s lien by arguing that the UCC Financing Statement was “seriously misleading” and was not effective to perfect the security interest of creditor in debtor’s collateral, as a search of the Florida Secured Transaction Registry under “Summit Staffing of Polk County, Inc.” did not reveal the financing statement that identified the debtor as “Summit Staffing”. *Id.* In response to the Trustee, the creditor presented evidence by way of Affidavit that showed that a search of the Registry under “Summit Staffing of Polk County, Inc.” does in fact disclose the financing statement that identified the debtor as “Summit Staffing” by clicking the “Previous” command tab on the search results screen just one (1) time. *Id.* at 349-350. Based on this fact, the creditor argued its financing statement was not “seriously misleading” and effective to perfect their security interest. The Court ultimately agreed with the creditor and found that a financing statement is not “seriously misleading” where a search under the complete corporate name of the debtor disclosed the financing statement by clicking the “Previous” command tab once, since “clearly a searcher should check the preceding names on the alphabetical list”. *Id.* at 352. In reaching its holding, the Court reasoned:

When a search is conducted in the Florida Secured Transaction Registry, a listing of debtors' names is produced. The listing is an alphabetical listing, and 20 names are displayed. If the debtor's actual name is produced, it is at the top of the list. If the debtor's name is not found, the next succeeding name on the alphabetical list is at the top of the list. To see the next preceding name on the alphabetical list, the searcher must use the "Previous" command on the screen. In fact, at the top of the list is the statement: "Use the Previous and Next buttons *to display additional search results.*" (Emphasis supplied.) *354 This statement directs the searcher to use the "Previous" command to see the immediately preceding names on the alphabetical list.

Certainly the searcher should do this. Since the name immediately following Summit Staffing of Polk County, Inc. is produced at the top of the alphabetical list, and since the filing office's directions state that the searcher should use the "Previous" command to display additional search results, clearly a searcher should check the preceding names on the alphabetical list.

Although it is clear that a searcher should check the immediately preceding names as well as the immediately succeeding names on an alphabetical list if there is not an exact match of the debtor's correct name, the issue of "reasonableness" develops at some point because the listing is an alphabetical listing. Although only three names begin with "Summit Staffing," there are several screens of debtors' names, with 20 names per screen, that begin with "Summit." Moreover, since the listing is an alphabetical listing, it is conceivable that one could use the "Previous" command to go back to the beginning of the alphabetical list.

Id. at 353-354.

The Court in *Summit Staffing* also addressed Revised Article 9 and the burden it places on a searcher as compared to Former Article 9. In doing so, the Court recognized that “Former Article 9 imposed a duty on searchers to be reasonably diligent... [whereas] Revised Article 9 requires more accuracy in filings, and places less burden on the searcher to seek out erroneous filings.” *Id.* at 354. However, the Court further reasoned that:

Although Revised Article 9 does not require that a searcher exercise reasonable diligence in the selection of the names to be searched or the number of searches to conduct, the revisions to Article 9 do not entirely remove the duty imposed on a searcher to be reasonably diligent. One who searches the filings of a state must examine the results of a proper search with reasonable diligence. A searcher is not required to conduct multiple searches; **however, a searcher must reasonably examine the results** of the proper search using the debtor's correct name to determine if any financing statements relating to the debtor are disclosed by that search. [emphasis added]

In Florida, where the results of a search produce an alphabetical listing of debtors, a searcher is still required to use reasonable diligence in examining the results of the search. If a reasonably diligent searcher would find the erroneous financing statement among the results of a proper search, then notice of the financing statement has been provided. Such a financing statement meets the requirements of section 679.5061(3) and is not seriously misleading.

Id. at 355.

Just like in *Summit Staffing*, the Affidavits/Declarations filed by Appellee in support of its Cross-Motion for Summary Judgment confirm that a review of the search results from the Florida Secured Transaction Registry under “1944 Beach Boulevard, LLC” reveals that both of the UCC Financing Statements that identify “1944 Beach Blvd., LLC” as the debtor are easily located by merely clicking the blue “<<PREVIOUS” command tab on the search results screen just one (1) time. In fact, they are the very first two entries that appear immediately before three (3) other financing statements for “1944 Beach Boulevard, LLC”, due to the fact that the search results are displayed in alphabetical order. This fact was not (and cannot be) refuted by Appellant, and the Affidavits/Declarations filed by Appellant in support of its original Motion for Summary Judgment [App. E] do not even address or discuss the issue. Even though Revised Article 9 and §679.5061, Fla. Stat., may not impose a specific “reasonable search requirement” on a searcher to attempt and search variations of a debtor’s name, a searcher is still required to use reasonable diligence in examining the **results** produced by searching under the debtor’s name listed in the Financing Statement, especially when the State’s Registry system restricts results to a mere twenty (20) results per page (a fact acknowledged in Appellant’s own brief) and instructs the searcher to utilize the Next and Previous buttons to display more results.

A review of the Affidavits/Declarations filed by Appellant [App. E] show that the affiants did not “use reasonable diligence in examining the results of the search” by using the “Previous” command tab to check the immediately preceding names on the alphabetical list. Please see *Id.* at 354. Had Appellant’s affiants done so, the subject UCC Financing Statements would have been readily found with one (1) click of the “Previous” command tab. While Appellant’s brief completely ignores and disregards this fact, the Court’s well-reasoned decision in *Summit Staffing* confirms that a searcher must still use reasonable care and diligence in actually reviewing the search **results**, especially when the State’s Registry system restricts results to a mere 20 results per page and instructs the searcher to utilize “the Previous and Next buttons to display additional search results”, as is the case in Florida. [Please see search results attached to Affidavits/Declaration in App. F].

Rather than address the merits of *Summit Staffing* and the commonsense holding reached by the court, Appellant instead attempts to persuade this Court that the holding in *Summit Staffing* has been “widely rejected”. In support of their assertion, Appellant cites to *In re John’s Bean Farm of Homestead, Inc.*, 378 B.R. 385 (S.D. Fla., 2007). However, the Court’s decision in *John’s Bean Farm* actually provides support for the

Court's holding in *Summit Staffing*, as the facts of *John's Bean Farm* were clearly distinguishable from those in *Summit Staffing* and are also completely distinguishable from the facts in this case.

In *John's Bean Farm*, the creditor filed a UCC Financing Statement that identified the debtor as "John Bean Farms, Inc." instead of the actual legal name of the debtor, which was "John's Bean Farm of Homestead, Inc." *Id.* at 386. The Trustee objected to the creditor's claim as being secured and sought to avoid the creditor's lien by arguing that the UCC Financing Statement was not effective to perfect the security interest of creditor in debtor's collateral, as a search of the Florida Secured Transaction Registry under "John's Bean Farm of Homestead, Inc." did not reveal the financing statement that identified the debtor as "John Bean Farms, Inc.". *Id.* at 386-387. In support of their objection, the Trustee offered evidence of the search they personally conducted in the Florida Secured Transaction Registry for the UCC Financing Statement under "John's Bean Farm of Homestead, Inc.", and the Trustee found the UCC Financing Statement that incorrectly identified the debtor after "striking the 'previous' command **60 times**" [emphasis added]. *Id.* at 393. Interestingly, the Trustee also cited to *Summit Staffing* to support their argument that the financing statements was "seriously misleading" due to fact that requiring a searcher to hit the

“previous” command tab 60 times to find the financing statement is not reasonable. *Id.*

The Court in *John’s Bean Farm* ultimately sided with the Trustee and found that the UCC Financing Statement was “seriously misleading” and not effective to perfect the security interest of creditor in debtor’s collateral. *Id.* at 395. In reaching its decision, at no time did the Court call into question or “reject” the holding of *Summit Staffing* or the reasoning of the Judge’s decision in that case, as asserted by the Appellant in their Initial Brief. To the contrary, the Court in *John’s Bean Farm* sought to harmonize their ruling with *Summit Staffing* by holding:

Accordingly, if I am incorrect, and in fact, the Florida search result includes more than the initial page displayed, then, in order to interpret section 679.5061 so as to avoid an absurd result, I would be compelled alternatively to hold, as did Chief Judge Glenn [in *Summit Staffing*], that there is a reasonable limit to the search, which I find is no more than one page “previous” or “next” from the initial result screen. Since Klein’s financing statement appears 60 pages from the initial display, not one page, it is seriously misleading.

Id. at 396. In light of the Court’s holding, *John’s Bean Farm* actually supports Appellee’s position in the subject case that its UCC Financing Statements are not “seriously misleading”, since both of the UCC Financing Statements

that identify “1944 Beach Blvd., LLC” as the debtor are easily located by merely clicking the blue “<<PREVIOUS” tab on the search results screen just one (1) time.

In their Initial Brief, the Appellant also cites to three (3) other decisions from Utah, Georgia, and Texas, which are not binding on this Court and not even persuasive as the Secured Transaction Registry (UCC filing) search systems in those States are completely different than the search system in Florida. As confirmed by the Affidavits/Declarations filed by Appellee in support of their Cross-Motion for Summary Judgment [App. F], a UCC filing search in Georgia is done online through the Georgia Superior Court Clerk Authority’s Central Indexing System, which requires an account login to actually complete a search. However, the search system options are viewable without an account, and as shown by the Affidavits/Declarations filed by Appellee, the Georgia search system is much different than in Florida. For example, in Georgia you can conduct a “Stem Search” under a name rather than using the exact debtor name (ie., partial name search). Additionally, there is an option for the searcher to display 10, 25, 50, 75 or 100 results per page. With respect to Utah and Texas, a special user account is required to even access their UCC filing search systems, and unlike in Georgia, the search system options are not viewable without an

account. Texas also charges a fee per search. In Florida, our search system is available to the public without a required account, is free to use, there is no “Stem Search” option, and only 20 results are displayed per page. Based upon the obvious differences in the search systems of Utah, Georgia, and Texas and that of Florida, it is clear that any reliance on the cases cited by Appellant from these States is misplaced as the cases are completely distinguishable from the facts of this case.

Based upon the foregoing, the Courts’ holding in *Summit Staffing* and *John’s Bean Farm* are the most relevant and persuasive cases for purposes of this Court deciding the issue presented in this case, and the holdings of both cases support Appellee’s position in the subject case that its UCC Financing Statements are not “seriously misleading”, since both of the UCC Financing Statements that identify “1944 Beach Blvd., LLC” as the debtor are easily located by merely clicking the blue “<<PREVIOUS” tab on the search results screen just one (1) time.

II. THE SAFE HARBOR PROVISION CONTAINED IN §679.5061, FLA. STAT., SHOULD BE INTERPRETED IN A MANNER TO PREVENT AN UNREASONABLE OR ABSURD RESULT, ESPECIALLY UNDER THE FACTS OF THIS CASE.

The strict interpretation of §§679.5031 and 679.5061, Fla. Stat., as urged by Appellant in its Initial Brief would lead to an absurd result on the facts of this case, as it completely ignores the safe harbor provision contained in §679.5061 and permits a searcher to completely ignore their duty to use reasonable care and diligence in actually reviewing the search **results**, especially when the State's Registry system restricts results to a mere 20 results per page and instructs the searcher to utilize the forward and previous buttons to display more results as in Florida. It would also permit a searcher to ignore all common sense in conducting a review of search results, especially under the facts of this case, because the fact that "Blvd." is an abbreviation of the word "Boulevard" is common knowledge and commonly accepted. To say the abbreviation is "seriously misleading" is as absurd as strictly interpreting the subject Statutes in such manner. "[A] literal interpretation of the language of a statute need not be given when to do so would lead to an unreasonable or ridiculous conclusion." *Holly v. Auld*, 450 So.2d at 219 (Fla. 1984). See also, *Maddox v. State*, 923 So.2d at 446 (Fla. 2006). Since the interpretation and application of the subject Statutes, as proposed by Appellant in the subject case, would lead to an obviously unreasonable and absurd result, the Court should reject Appellant's argument and position.

The absurdity of the result in the subject case is further bolstered by the fact that the Florida registry search system is restricted to a mere 20 results per page, which is why the searcher is specifically directed by the Florida Registry to utilize “the Previous and Next buttons to display additional search results”. [Please see search results attached to Affidavits/Declaration in App. F]. Interestingly, Appellant argues in its Brief that it would be reasonable for a searcher to click the Next button to search subsequent pages, but not reasonable to click the Previous button, which has no logical explanation considering the results are provided in alphabetical order, the Florida Registry search site instructions direct the searcher to utilize the Previous and Next buttons, and the Search Rules published by the Florida Department of State on the search home page [Please see Appendix K]. Appellant maintains this position even though they also acknowledge in their Brief that the Florida Secured Transaction Registry’s search logic is “somewhat limited” (Page 36 of Initial Brief). Knowing the search logic in Florida is “somewhat limited”, saying a searcher may need to (or should) click the Next button in the search results page, but not the Previous button, is absurd in light of the fact that Florida’s Secured Transaction search system restricts results to a mere twenty (20) results per page, in addition to the above-referenced reasons.

While Appellant offers a hypothetical example to support their position (page 31 of Initial Brief), the example they describe is misleading and does not mirror (or even come close to mirroring) the facts of this case. The abbreviation of “Boulevard” as “Blvd.” is completely different than misspelling the name “Arron” as “Aaron”. Additionally, having to click the Next or Previous button “hundreds of times” to find the financing statement in this hypothetical example is also completely different and distinguishable from the facts of this case. Had the Appellant in the subject case merely followed the instructions on the Florida Registry search system and utilized “the Previous and Next buttons to display additional search results”, the Appellee’s UCC-1 Financing Statements would have been easily found upon clicking the “Previous” tab just one (1) time.

Additionally, since UCC Financing Statements are filed daily in the State of Florida, the results produced on the initial search page inevitably fluctuate over time and sometimes even daily, due to the alphabetical order in which the results are displayed. Such fluctuations in search results further bolsters Appellee’s position that the strict interpretation of §§679.5031 and 679.5061, Fla. Stat., as urged by Appellant in its Initial Brief, would lead to an absurd result, especially under the facts of this case.

III. WHILE REVISED ARTICLE 9 MAY HAVE ELIMINATED THE “REASONABLE SEARCH” REQUIREMENT, A SEARCHER MUST STILL USE REASONABLE CARE AND DILIGENCE IN EXAMINING THE RESULTS PRODUCED BY A SEARCH.

As previously stated above, even though Revised Article 9 and §679.5061, Fla. Stat., may not impose a specific “reasonable search requirement” on a searcher to attempt and search variations of a debtor’s name, a searcher is still required to use reasonable diligence in examining the **results** produced by searching under the debtor’s name listed in the Financing Statement. This is especially true and necessary when the State’s Registry system restricts results to a mere twenty (20) results per page, instructs the searcher to utilize the Next and Previous buttons to display more results, and the search results fluctuate over time, if not daily. As the Court in *Summit Staffing* recognized,

Although Revised Article 9 does not require that a searcher exercise reasonable diligence in the selection of the names to be searched or the number of searches to conduct, the revisions to Article 9 do not entirely remove the duty imposed on a searcher to be reasonably diligent. One who searches the filings of a state must examine the results of a proper search with reasonable diligence. A searcher is not required to conduct multiple searches; **however, a searcher must reasonably examine the results** of the proper search using the debtor's correct name to determine if any

financing statements relating to the debtor are disclosed by that search. [emphasis added].

305 B.R. at 355.

The importance of the searcher in Florida using *reasonable diligence* in their *examination* of their search *results* is evident and cannot be ignored, especially when one considers Florida's search system and the facts of this case. While Revised Article 9 may have been intended to eliminate the "reasonable search" standard that was seen as leading to uncertain and inconsistent results, it is unreasonable and absurd to interpret the revision as permitting a searcher to now blindly conduct their search and not employ any diligence or common sense in their review of the search results, especially in Florida. Requiring a searcher to use reasonable diligence is reviewing search *results* and utilizing the Previous and Next buttons, as they are specifically instructed to do in Florida, is not the same as imposing a "reasonable search requirement" that requires a searcher to attempt and search different variations of a debtor's name.

IV. WHILE REVISED ARTICLE 9 MAY HAVE BEEN INTENDED TO PREVENT INCONSISTENT RESULTS AND CREATE UNIFORMITY BY ELIMINATING THE "REASONABLE SEARCH" REQUIREMENT, THE VARYING STATE SEARCH DATABASES

AND SYSTEMS ARE NOT UNIFORM OR CONSISTENT IN THE WAY THEY FUNCTION OR THE RESULTS THEY PROVIDE.

To support their position, the Appellant also cites to three (3) other decisions from Utah, Georgia, and Texas, which are not binding on this Court and not even persuasive as the Secured Transaction Registry (UCC filing) search systems in those States are completely different than the search system in Florida. As confirmed by the Affidavits/Declarations filed by Appellee in support of their Cross-Motion for Summary Judgment [App. F], a UCC filing search in Georgia is done online through the Georgia Superior Court Clerk Authority's Central Indexing System, which requires an account login to actually complete a search. However, the search system options are viewable without an account, and as shown by the Affidavits/Declarations filed by Appellee, the Georgia search system is much different than in Florida. For example, in Georgia you can conduct a "Stem Search" under a name rather than using the exact debtor name (ie., partial name search). Additionally, there is an option for the searcher to display 10, 25, 50, 75 or 100 results per page. With respect to Utah and Texas, a special user account is required to even access their UCC filing search systems, and unlike in Georgia, the search system options are not viewable without an account. Texas also charges a fee per search.

In Florida, our search system is available to the public without a required account, is free to use, there is no “Stem Search” option, and only 20 results are displayed per page. Additionally, results produced on the initial page of 20 results can vary daily due to new UCC filings. Based upon the obvious differences in the search systems of Utah, Georgia, and Texas and that of Florida, it is clear that any reliance on the cases cited by Appellant from these States is misplaced as the cases are completely distinguishable from the facts of this case.

While Appellee is cognizant of the footnote in the Opinion of the U.S. 11th Circuit Court of Appeals, wherein the Court stated it was error for the bankruptcy court below to take into consideration the obvious differences in the search systems of Utah, Georgia, and Texas and that of Florida. However, to the extent the Appellant seeks to rely on bankruptcy court decisions from other States in support of the position being put forth in their Brief, Appellee reasonably believes that consideration of the search systems in those States is completely relevant in determining the persuasive value of those cases, since the systems are not uniform or consistent. To the extent the UCC is intended to create uniformity, the obvious differences between the search systems in the States who have adopted the UCC, specifically Revised Article 9, cannot (and should not) be ignored.

CONCLUSION

For the foregoing reasons, the decisions of the bankruptcy court and district court (sitting in its appellate capacity) should be affirmed, and the questions certified by the U.S. 11th Circuit of Appeals should be answered as follows:

- 1) Is the “search of 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 twenty (20) names displayed to the user of the Registry’s search function?

*No. Even though Revised Article 9 and §679.5061, Fla. Stat., may not impose a specific “reasonable search requirement” on a searcher to attempt and search variations of a debtor’s name, a searcher is still required to use reasonable diligence and common sense in examining the **results** produced by searching under the debtor’s name. This is especially true and necessary when the State’s Registry system restricts results to a mere twenty (20) results per page, instructs the searcher to utilize the Next and Previous buttons to display more results, and the search results fluctuate over time, if not daily.*

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?

*No, but a searcher is still required to use reasonable diligence and common sense in examining the **results** produced by searching under the debtor's name, which at a minimum should include the searcher utilizing the Previous and Next buttons at least once to confirm the existence (or non-existence) of the financing statement.*

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?

*Revised Article 9 and §679.5061, Fla. Stat., may not impose a specific "reasonable search requirement" on a searcher to attempt and search variations of a debtor's name, but a searcher is still required to use reasonable diligence and common sense in examining the **results** produced by searching under the debtor's name, which at a minimum should include the searcher utilizing the Previous and Next buttons at least once to confirm the existence (or*

non-existence) of the financing statement. This is especially true and necessary when the State's Registry system restricts results to a mere twenty (20) results per page, instructs the searcher to utilize the Next and Previous buttons to display more results, and the search results fluctuate over time, if not daily.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer Brief has been furnished this February 10, 2022, by e-mail to:

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I HEREBY CERTIFY that this brief complies with the requirements of Rules 9.045 and 9.210, Fla. R. App. P.

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