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IN THE
Supreme Court Of Florida
Case No. SC21-1717
Eleventh Circuit Court of Appeals Case No. 21-11742

1944 BEACH BOULEVARD, LLC,
Plaintiff/Appellant,

v.

LIVE OAK BANKING COMPANY,
Defendant/Appellee.

**ON CERTIFIED QUESTIONS FROM THE UNITED
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

INITIAL BRIEF OF APPELLANT, 1944 BEACH BOULEVARD, LLC

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STATEMENT OF THE CASE AND FACTS

Appellant is a limited liability company organized and existing under the laws of the State of Florida. Appellant's legal name, as listed on the "public organic record most recently filed with the State of Florida," is **1944 Beach Boulevard, LLC**, a name that has remained unchanged since its formation in 2004.

Appellant is the operator of a family entertainment center located at 1944 Beach Boulevard, Jacksonville, Florida, which operates under the tradename "Adventure Landing." Amenities at the park include miniature golf, laser tag, arcade games, batting cages, go-carts, miniature roller coasters, waterslides and snack bars.

On December 5, 2019, Appellant and its affiliates filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code ("Petition Date").

On the Petition Date, Appellant was jointly and severally indebted to Appellee, Live Oak Banking Company ("Appellee"),

in the approximate amount of \$3,000,000 on account of two loans, each in the original principal amount of \$2,500,000. The loans are guaranteed by the U.S. Small Business Administration and are identified as SBA Loan Nos. 81146450-00 and 81145550-08. The two loans purport to be secured by a blanket security interest in all of Appellant's assets.

In an attempt to perfect its claimed security interests and liens, Appellee filed two UCC-1 Financing Statements with the Florida Secured Transaction Registry, the first being filed on January 5, 2016 under File No. 2016061146252, and the second being filed on or about January 25, 2016 under File No. 201606327524 ("Financing Statements"). (A 1).

The Financing Statements filed by Appellee are defective, however, as they improperly identify the debtor as "1944 Beach Blvd., LLC" instead of "1944 Beach Boulevard, LLC," the actual name of the corporation as stated in the Articles of Organization filed with the Florida Department of State.

As a result, a search of the Florida Secured Transaction Registry website using Appellant's "name that is stated to be the

registered organization's name on the public organic record" will not reveal the existence of the Financing Statements on the list of 20 financing statements shown on the results page. (A 5). A searcher would instead have to search variations of the Appellant's name on prior or successive pages on the website to find the defective Financing Statements. Appellant therefore contends that Appellee's Financing Statements are "seriously misleading," rendering the claimed security interests unperfected and unenforceable against a subsequent lender or purchaser with no knowledge of the claimed security interest.

On June 2, 2020, Appellant filed a complaint in the Bankruptcy Court for the Middle District of Florida, to avoid Appellee's unperfected lien on Appellant's assets as a result of the defective Financing Statements. (A 1).

On November 23, 2020, the bankruptcy court entered its memorandum decision and judgment finding that, although Appellee's Financing Statements were defective because they did not utilize Appellant's correct name as required by § 679.5031(1)(a), Fla. Stat., the liens were nonetheless perfected

because a searcher of the Florida Secured Transaction Registry's website would only have to go back one page from the results page to find the defective Financing Statements. (A 7).

In reaching its conclusion, the bankruptcy court applied the subjective "reasonable search" standard historically employed by the courts to determine whether a financing statement that did not use the borrower's correct legal name was "seriously misleading" and therefore unperfected. (A 7). The reasonable search standard has, however, been eliminated by Florida's adoption of the Revised Uniform Commercial Code in 2001 which set forth an explicit test for determining when an error in a financing statement will be excused. From Appellant's perspective, the bankruptcy court's failure to apply the statutory test resulted in reversible error.

Appellant therefore appealed the bankruptcy court's decision and, on May 19, 2021, the U.S. District Court for the Middle District of Florida entered its order affirming the bankruptcy court. (A 8). The order did not make any specific findings regarding the issues on appeal, instead simply finding

that, “for the reasons stated in the bankruptcy court’s opinion, the Court concludes the bankruptcy court committed no errors of law and made no clearly erroneous factual findings.” (A 8).

The district court’s decision was appealed to the Eleventh Circuit Court of Appeals on May 20, 2021. Following briefing by both parties, on December 10, 2021, the Eleventh Circuit issued its opinion acknowledging a split of authority among Florida bankruptcy courts – and an absence of controlling Florida precedence – on the issue of whether the “reasonable search” standard survived the 2001 revisions to the Florida Uniform Commercial Code. (A 9). It therefore certified the following questions to the Supreme Court of Florida:

- (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 twenty 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?

(A 9).

As set forth below, the answers to these certified questions will have wide-ranging implications for commercial financing and sale transactions within the State of Florida.

SUMMARY OF ARGUMENT

A lender perfects its liens on a borrower's assets in Florida by filing a UCC-1 Financing Statement with the Florida Secured Transaction Registry, Florida's official filing office. Fla. Stat. § 679.5011. The financing statement identifies the borrower, the lender and the pledged collateral. That financing statement in turn alerts other lenders and potential purchasers of claimed security interests in the borrower's assets, the priority of which

is generally established by the date the UCC-1 financing statement is recorded in the Florida Secured Transaction Registry.

In today's world, lenders routinely rely on state online UCC-1 filing websites to locate potential liens prior to extending credit to potential borrowers. Buyers similarly rely on state online search results when purchasing assets from willing sellers to ensure clear title. Those parties are placed at significant risk if an erroneously completed and filed UCC-1 financing statement is deemed to have lien priority over their interests. It is important, therefore, that lien search results be accurate to prevent injury to innocent parties. To ensure that accuracy, Article 9 of the Florida Uniform Code requires UCC-1 filers to properly identify the borrower/debtor, the secured party and the collateral pledged to the secured party. With respect to a debtor that is a registered organization, a filer is required to utilize the entity's exact legal name as it appears on the Florida Department of State's website.

Mistakes in financing statements do happen, however, and historically courts addressed errors by imposing a “reasonable search” requirement on the subsequent lender or purchaser which required the searcher of the public records to imagine potential variations of the debtor’s legal name and include those variations in its search in order to discover erroneous financing statements. As one can imagine, the application of the “reasonable search” requirement led to uncertain, inconsistent and costly results, with lien priority disputes often turning on a judge’s sense of fair play. The Florida Legislature and the drafters of the revised Uniform Commercial Code therefore sought to eliminate that uncertainty by imposing bright line rules for recording financing statements and putting the risk of error on the party who can best control and monitor the recording process – the UCC-1 filer – rather than on innocent lenders or purchasers who are unaware of the existing lien as a result of the errors.

The legislature was not, however, unmindful that filing mistakes do happen and sought to mitigate against the

harshness of erroneous financing statement filings by enacting a statutory safe harbor embodied in § 679.5061(3), Fla. Stat., which tolerates some errors, but not others. Under this safe harbor, a financing statement which does not properly identify the debtor will still be considered valid if the erroneous financing statement nonetheless appears on the search results obtained using the borrower's correct legal name and the database's standard search logic.

Despite this clear statutory framework for determining whether an error in a financing statement will be excused, the bankruptcy court and the district court below upheld the validity of Appellee's lien by continuing to employ the "reasonable search" requirement which the drafters of the revised Uniform Commercial Code intended to eliminate. In so doing, the lower courts ignored the plain language of the UCC as adopted in Florida, wholly emasculated the safe harbor of § 679.5061(3), Fla. Stat., and re-injected uncertainty and inconsistency into a business environment which can tolerate none. For these reasons, the questions certified by the Eleventh

Circuit Court of Appeals should all be resolved in Appellant's favor.

ARGUMENT

I. Under the Uniform Commercial Code, as adopted in Florida, a lender must identify the debtor by its correct legal name on its UCC-1 financing statement in order to perfect its lien.

Under Florida's Uniform Commercial Code, a creditor with a perfected lien takes priority over the rights of a holder of any unperfected lien. Fla. Stat. § 679.3171(1)(b)(1) ("A security interest or agricultural lien is subordinate to the rights of: . . . a person who becomes a lien creditor before the earlier of the time: The security interest or agricultural lien is perfected"). To perfect a non-possessory lien on personal property in Florida, a financing statement evidencing the claimed security interest must be filed with the Florida Secured Transaction Registry. *In re John's Bean Farm of Homestead, Inc.*, 378 B.R. 385, 387 (Bankr. S.D. Fla. 2007) ("[P]erfection of a security interest in Florida occurs only when a financing statement is filed in the

appropriate place. Fla. Stat. § 679.5011. All financing statements must be filed with Florida's official filing office, the Florida Secured Transaction Registry”).

A financing statement filed with the Florida Secured Transaction Registry is valid only if it (i) *provides the name of the debtor*, (ii) provides the name of the secured party or a representative of the secured party, and (iii) describes the collateral covered by the financing statement. Fla. Stat. § 679.5021(1) (“[A] financing statement is sufficient only if it: (a) Provides the name of the debtor; (b) Provides the name of the secured party or a representative of the secured party; and (c) Indicates the collateral covered by the financing statement”).

In order for a financing statement to sufficiently “provide the name” of a registered organization, the financing statement must contain the legal name of the entity as *listed with the Florida Department of State*:

- (1) A financing statement sufficiently provides the name of the debtor:

(a) Except as otherwise provided in paragraph (c), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, *only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization that purports to state, amend, or restate the registered organization's name;*

§ 679.5031(1)(a) Fla. Stat.
(emphasis added).

A financing statement which fails to provide the correct legal name of the debtor as listed with the Florida Department of State is, by statute, deemed “seriously misleading”:

(2) Except as otherwise provided in subsection (3), a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 679.5031(1) is *seriously misleading*.

§ 679.5061(2), Fla. Stat.
(emphasis added).

A financing statement which is seriously misleading is insufficient to place others on notice of the claimed security

interests, rendering the filing ineffective. § 679.5061(1), Fla. Stat.

a. How it works.

The Florida Department of State, Division of Corporations, provides an index of the legal names of all entities authorized to transact business in Florida which can be found at www.sunbiz.org. A party wishing to file a UCC-1 financing statement to reflect a lien on an organization's assets would therefore first go to www.sunbiz.org to search for the debtor's legal name, then complete a UCC-1 financing statement using that name in conformity with the requirements of § 679.5021(1), Fla. Stat.

Creditors are reminded of the statute's strict naming requirements each time they file a financing statement, utilizing the standard UCC Financing Statement Form approved by the Department of State, State of Florida, which provides in bold and all caps above the debtor's name, "**DEBTOR'S EXACT**

FULL LEGAL NAME . . . Do Not *Abbreviate* or Combine Names.”
(italics added). (A 17).

Filers are provided with this admonishment and warning because, again, a financing statement which fails to provide the correct legal name of the debtor in accordance with § 679.5031(1), is deemed “seriously misleading” and is unenforceable against third-parties. § 679.5061(2), Fla. Stat. If it were otherwise, innocent lenders or purchasers of property without knowledge of the claimed security interest as a result of the erroneously filed financing statement could suffer significant financial injury through no fault of their own.

The Florida Secured Transaction Registry website in turn provides an online database to search for financing statements and potential liens. The website provides two search options – an “actual” debtor name search and a “compact” name search. The website’s “Terms of Use” states:

The search function for this website utilizes a standard search logic that was provided by the Florida Department of State. The search feature called a

“Compact Name” has been designated by the Florida Department of State as the standard search logic for searching the records in the Registry. The rules pertaining to that search logic can be found on the search screen. Those rules govern a user’s ability to locate filed records, so please refer to those rules when conducting a search of the records on this website.

(A 15).

The website’s “standard search logic” produces a results page which displays a list of 20 UCC-1 financing statements indexed alphabetically or numerically by the debtor’s names. If a financing statement does not provide the correct legal name of the debtor, there is a significant chance that the search results page will not disclose the existence of the claimed security interest. See Fla. Stat. § 679.5031 Cmt. 2. (“The requirement that a financing statement provide the debtor's name is particularly important. Financing statements are indexed under the name of the debtor and those who wish to find financing statements search for them under the debtor's name”).

b. Application to the facts.

In this case, it is undisputed that Appellee did not utilize the exact legal name of the debtor, 1944 Beach Boulevard, LLC, as reflected on the Florida Department of State's website, but instead used an abbreviation of the debtor's name, "1944 Beach Blvd., LLC." (A 1, 5-7). As a result, a searcher of the Florida Secured Transaction Registry's website would not find Appellee's UCC-1 Financing Statement on the initial search results promulgated by the website's search logic using the debtor's correct legal name. (A 5).

Under the "reasonable search" standard employed by the bankruptcy court, a searcher would instead be tasked with going back or forward one or more pages on the entire website to locate the Financing Statements, or to input variations of the debtor's name into the search criteria to ensure the absence of a prior lien. If either of those methods were employed, a searcher would, as Judge Funk determined, likely find the

erroneous Financing Statements, thus rendering the Financing Statements perfected. (A 6 and 7).

If, however, the searcher was only required to examine the initial search result page to find potential liens, then Appellee's lien would be deemed unperfected because it is not on the initial search results.

Thus, the true issue in this appeal is whether the "reasonable search" requirement survived the 2001 revisions to the Florida Uniform Commercial Code. For the reasons set forth below, Appellant contends that it did not.

II. The reasonable search requirement was abrogated through enactment of the safe harbor of § 679.5061(3), Fla. Stat.

Prior to the 2001 revisions to the Uniform Commercial Code, a lender or purchaser of property was required not only to search the actual name of the debtor to ascertain the existence of potential liens, but to conduct a reasonable search of the public records to locate financing statements which may include variations of the debtor's legal name:

Just as the filer has a burden to make sufficient inquiries to ascertain correct information to include on a financing statement, a prospective lender making use of the notice filing system has a duty to conduct a reasonable search. The fact that an electronic database requires a new method of searching different from a card filing system does not mean that such a search is unreasonable. Employing searches using broad roots of a debtor's name is simple and when used effectively will supply a searcher with entries similar to those of a card system.

In re Thriftway Auto Supply, Inc., 156 B.R. 300, 302 (Bankr. W.D. Okla. 1993).

The reasonableness of the search conducted is fact specific, determined on a case-by-case basis. *In re Admor's Office World, Inc.*, Bankr. Case No. 91B10773, 1992 WL 350577 *3 (Bankr. S.D. N.Y. Nov. 12, 1992) (“This inquiry is essentially a question of fact which must be decided on a case-by-case basis”).

Obviously, application of the reasonable search standard often led to uncertain and inconsistent results, with serious consequences.

Recognizing the potential harm which may befall innocent parties without knowledge of UCC-1 financing statements filed under incorrect names, the drafters of the revised Uniform Commercial Code decided to shift the risk of errors in the name of the debtor to the party in the best position to avert the error – the UCC-1 filer – by requiring the secured party to utilize the debtor’s *exact* legal name as listed on the registered organization's most recently filed public organic record.

Thus, if a lien search under the debtor’s correct legal name does not disclose the financing statement on the initial search results page, the financing statement is deemed seriously misleading and ineffective. *In re John’s Bean Farm of Homestead, Inc.*, 378 B.R. 385 (Bankr. S.D. Fla. 2007). *See also Pankratz Implement Co. v. Citizens Nat’l Bank*, 281 Kan. 209, 130 P.3d 57, 68 (2006) (“[T]he primary purpose of the revision of the name requirement is to lessen the amount of fact-

intensive, case-by-case determinations that plagued earlier versions of the UCC, and to simplify the filing system as a whole.”); and *In re Kinderknecht*, 308 B.R. 71, 75 (10th Cir. BAP 2004)(“The intent to clarify when a debtor's name is sufficient shows a desire to foreclose fact-intensive tests, such as those that existed under the former Article 9 of the UCC, inquiring into whether a person conducting a search would discover a filing under any given name. Requiring a financing statement to provide a debtor's legal name is a clear cut test that is in accord with that intent”).

This notion is codified in § 679.5031(1)(a), Fla. Stat., which reads as follows:

(1) A financing statement sufficiently provides the name of the debtor:

(a) Except as otherwise provided in paragraph (c), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, *only if the financing statement provides the name that is stated to be the registered organization’s name on the public organic record most recently filed with*

or issued or enacted by the registered organization’s jurisdiction of organization that purports to state, amend, or restate the registered organization’s name;

§ 679.5031(1)(a) Fla. Stat.
(emphasis added).

The effect of the foregoing UCC provision “is to provide more certainty in the commercial world and reduce litigation to determine whether an adequate search was done.” *Pankratz*, 281 Kan. at 227, 130 P.3d at 68.

Revised Article 9 does, however, contain a safe harbor and will still consider a financing statement with an incorrect name effective *if a **search** of the records under the debtor’s **correct name**, using the filing office’s standard search logic, would disclose the creditor’s erroneous financing statement on the initial page which shows up on the search results:*

(3) 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 s. 679.5031(1), the name provided does not make the financing statement seriously misleading.

§ 679.5061(3), Fla. Stat.

Thus, minor errors are tolerated provided a search of the UCC registry using (i) *the debtor's **correct name*** and (ii) *the filing office's standard search logic*, discloses the creditor's erroneous financing statement on the list of 20 names displayed in the search results page:

A financing statement is effective if a computer search run under the debtor's correct name produces the financing statement with the incorrect name. If it does not, then the financing statement is ineffective as matter of law.

In re John's Bean Farm of Homestead, Inc., 378 B.R. 385, 390 (Bankr. S.D. Fla. 2007).

See also In re Summitt Staffing Polk County, Inc., 305 B.R. 347, 354 (Bankr. M.D. Fla. 2003) ("If the erroneous financing statement is disclosed in a search using the debtor's correct

name, then the financing statement is effective because notice of the filing has been accomplished”).

In its opinion, the Eleventh Circuit noted that, notwithstanding the enactment of the safe harbor embodied in § 679.5061(3), Fla. Stat., in 2001, there is still a split of authority among the Florida bankruptcy courts as to whether the “reasonable search” standard should still be employed.¹ (A 9). It thus certified its initial question: 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 twenty names displayed to the user of the Registry’s search function? Appellant submits that it is so limited or satisfied.

¹ Compare, *In re John’s Bean Farm of Homestead, Inc.*, 378 B.R. 385 (Bankr. S.D. Fla. 2007) (reasonable search requirement eliminated by enactment of Revised Uniform Commercial Code), with *In re Summit Staffing Polk County, Inc.*, 305 B.R. 347 (Bankr. M.D. Fla. 2003)(reasonable search requirement survived 2001 revisions).

[745323/1]

As commentators and courts have noted, the purpose of the safe harbor was to replace the subjective “reasonable search standard” with an objective “single search standard”:

[T]he revisers recognized that secured parties may be excused from some mistakes in setting forth the debtor's name if those errors do not affect a searcher's ability to find the financing statement in the official public database. Hence, the new statute provides a safe harbor that saves financing statements with errors in the debtor's name. 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 . . . , the name provided does not make the financing statement seriously misleading.” This provision might be denominated the “single search standard” in contrast to the pre-revision “reasonably diligent searcher standard.” Thus, under Revised Article 9, a third party must only search once for financing statements for any particular debtor.

This “single search” should consist of entering the debtor's “correct” name into the filing office's database and observing whether that search produces any recorded financing statements. If it does, then a searcher presumably must take the

additional step of determining whether the financing statements found pertain to the person or entity with which they are dealing. If the search does not produce any matches, then, under the “single search” standard, the searcher has finished searching and may assume that there are no filed financing statements recorded against that particular person or entity. Hence, the new law impliedly defines reasonable diligence by searchers as the undertaking of a single search under the debtor's correct name.

Margit Livingston, A Rose by Any Other Name Would Smell as Sweet (or Would it?): Filing and Searching in Article 9's Public Records, 2007 B.Y.U. L. Rev. 111, 125-26.

See also In re Silver Dollar, LLC, 388 B.R. 317, 325 (Bankr. E.D. Tenn. 2008) (“Revised Article 9 adopts in § 9-506(c) a statutory definition of ‘seriously misleading’ that replaces the former reasonableness standard with a bright-line test of a single search under the debtor’s correct name utilizing the filing office’s standard search logic”).

Thus, this carefully thought through scheme² will excuse some minor errors, while at the same time protecting innocent purchasers or lenders from unapparent liens by placing the risk of errors in a UCC-1 financing statement on the party in the best position to avoid them in the first place:

Thus, revised Article 9 carefully balances the interests of searchers and filers. The statutes recognize that filers will make errors despite exercise of care and despite the assistance derived from well-designed new forms, so the statute does not provide an absolute requirement of perfection. At the same time, it does not burden searchers with the obligation to dream up every potential error and name variation and perform searches under all possibilities. Revised Article 9 allows a searcher to ***rely on a single search conducted under the correct name of the debtor*** and penalizes filers only for errors that result in the nondisclosure of the financing statement in a search under the correct name.

*Harry C. Sigman, The
Filing System Under
Revised Article 9, 73 Am.*

² As a Uniform Act, Article 9 of the Uniform Commercial Code should be construed consistently with the decisions of other states “[t]o make uniform the law among the various jurisdictions.” § 671.102(1)(c), Florida Statutes.

[745323/1]

Bankr.L.J. 61, 73 (1999)
(footnotes omitted)
(emphasis added).

By continuing to employ the “reasonable search” standard in lieu of the “single search” standard incorporated into § 679.5061(3), however, the bankruptcy court and district court below upset this carefully constructed balance and carried forward the very same uncertainty and inconsistency revised Article 9 was intended to eliminate. The Court should therefore answer the first certified question as follows: A searcher of the Florida Secured Transaction Registry utilizing an organizational debtor’s registered legal name may rely solely on the results shown on the initial search results (and on the subsequent page where there are more than 20 UCC-1 financing statements filed against a single debtor) appearing on the Florida Secured Transaction Registry website. If an erroneous financing statement does not appear on that page, then the prior lien is not properly perfected.

III. Florida’s UCC does not require a reasonable search of the Florida Secured Transaction Registry’s entire database.

In its second certified question, the Eleventh Circuit asked “[If the search required under § 679.5061(3) is not satisfied by the initial list of 20 UCC-1 financing statements produced by the Florida Secured Transaction Registry’s search logic], 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?”

The third certified question is tied closely to the second and asks: “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?”

Both questions are addressed similarly.

Appellee argued below that because the entirety of the Florida Secured Transaction Registry is accessible by merely

utilizing the “previous” or “next” page commands on the initial search results page, § 679.5061(3) is thus satisfied as long as the misfiled financing statement can be located somewhere within the database.

Appellee’s position is, however, squarely at odds with the intent of Revised Article 9, which was to add certainty to the recording and lien priority process by placing the responsibility for proper recording squarely on the secured creditor. *See In re John's Bean Farm of Homestead, Inc.*, 378 B.R. 385, 390 (Bankr. S.D. Fla. 2007) (“The object of the revisions [to Article 9] was to shift the responsibility to the filer by requiring the not too heavy burden of using the legal name of the debtor, thereby relieving the searcher from conducting numerous searches using every conceivable name variation of the debtor”); and *In re C.W. Min. Co.*, 488 B.R. 715, 727–28 (D. Utah 2013) (“[T]he better approach is that followed by the majority of courts that have decided this issue and found that revised Article 9 is unforgiving of even minimal errors”); and *Receivables Purchasing Co., Inc. v. R & R Directional Drilling, L.L.C.*, 588 S.E.2d 831, 833 (Ga. Ct.

App. 2003) (“Accordingly, a party filing a financing statement now acts at his peril if he files the statement under an incorrect name”).

As noted by the *John’s Bean Farm* court:

A primary purpose of revised section 9–506 of the UCC, adopted in Florida as Fla. Stat. § 679.5061, was to replace the former reasonableness standard with a clearer standard based on the computerized search logic of the filing office.

John’s Bean Farm, 378
B.R. at 389.

Although the searcher in this instance would only have to go back one page from the results page produced by the website’s standard search logic to find the erroneously filed Financing Statements, where does one draw the line with regard to a “reasonable search” and how many pages before and after the results page does a searcher have to search on the website to find potential encumbrances? That question cannot be answered by a fixed number as the search results on the Florida

Secured Transaction Registry's website are influenced by the number of UCC-1 financing statements filed against the entities appearing on the list, the number of names on the list(s) which begin with or contain similar words, and so on. For example, there can be 20 UCC-1 financing statements filed against a single entity, which would mean only one entity will appear on the search results.

Similarly, in the absence of a unified single search standard, a searcher would be required to imagine and predict an infinite amount of potential variations of a debtor's name in order to discover an erroneous financing statement.

For instance, suppose the borrower's legal name was Arron's Fine Custom Clothing, Inc. If a UCC-1 financing statement was prepared and filed using the more common spelling of "Aaron," a search of the Florida Transaction Registry under the correct name "Arron" or "Arron's Fine Custom Clothing" would not reveal the existence of the erroneous financing statement on the 20 financing statements listed on the initial search results page. A searcher would instead have

to click the “previous page” button literally hundreds of times before finding a list of debtor entities whose name begins with Aaron. Very few searchers would undertake that effort. Similarly, a searcher following the reasonable search standard would arguably have to have the foresight to utilize both spellings to ensure a financing statement was not overlooked. Not everyone will possess such foresight. The same can be said with respect to the use of ampersands or, like in the circumstances of this case, abbreviations. And regardless of the methodology utilized by the searcher, the searcher’s logic still stands the chance of being second guessed by a judge in a lien priority dispute.

The foregoing example only highlights the difficulties of employing the reasonable search standard or a standard which requires a searcher to jump forward or backward a given number of pages – the very concerns that revised Article 9 was meant to address. *See, In re Alvo Grain and Feed, Inc.*, Adv. No. A08-08029-TLS, 2009 WL 5538645 *3 (Bankr. D. Neb. Nov. 20, 2009) (“[U]nder revised Article 9 of the Uniform Commercial

Code, the law no longer considers whether a reasonably diligent searcher would have found the financing statements”).

By the same token, requiring a searcher to input incorrect names to find potentially defective financing statements runs head long into the express instructions of § 679.5031(1)(a), Fla. Stat., which require the UCC-1 filer to utilize “the name that is stated to be the registered organization’s name on the public organic record most recently filed with [the Florida Department of State].” The continued imposition of the reasonable search standard would thus judicially excuse compliance with this statutory directive and wholly emasculate the need for the statutory safe harbor of § 679.5061(3).

This Court should not therefore add, as the lower courts did, an additional search requirement under the safe harbor statute by requiring a searcher to search under the debtor’s correct legal name and an infinite number of erroneous combinations of names, misspellings and abbreviations to locate potential liens:

The crux of the dispute between the Trustee and Klein is what constitutes the search result using Florida's standard search logic. If my answer to this question is something other than the initial displayed page, then I must determine whether there is a limit on how much a searcher must search past the original display page. The debate between the Trustee and Klein centers on the meaning of “a search of the records of the filing office under the Debtor's correct name, using the filing office's standard search logic. . . .” As noted, the Trustee argues this refers to the initial page result; Klein argues there is a difference between a “search result” and a “display”.

* * *

[I] disagree with Klein's assertion that the initial page displayed is *not* the result of applying Florida's standard search logic. Florida's standard search logic is set by statute. The search logic clearly leads to one result—a single page on which names appear. For those, including Klein, that argue the search result is something more, the Registry website makes clear they are wrong. The Registry's own website unambiguously describes the page displayed when the search data is input as the result of the search. *Nothing in the Registry's information page mentions the use of the “previous” or “next” page key in connection with conducting a search using the search criteria.*

In re John's Bean Farm of Homestead, Inc., 378 B.R. 385, 394-95 (Bankr. S.D. Fla. 2007) (emphasis added).

See also *Pankratz Implement Co. v. Citizens Nat'l Bank*, 281 Kan. 209, 130 P.3d 57, 68 (2006) (“[T]he primary purpose of the revision of the name requirement is to lessen the amount of fact-intensive, case-by-case determinations that plagued earlier versions of the UCC, and to simplify the filing system as a whole”); and *In re Alvo Grain and Feed, Inc.*, Adv. No. A08-08029-TLS, 2009 WL 5538645 *3 (Bankr. D. Neb. Nov. 20, 2009) (“[U]nder revised Article 9 of the Uniform Commercial Code, the law no longer considers whether a reasonably diligent searcher would have found the financing statements”).

IV. The Florida Secured Transaction Registry’s search logic will likely change over time, either contracting or expanding the safe harbor of § 679.5061(3). The Registry’s current limitations do not excuse compliance with § 679.5031.

Presently, the Florida Secured Transaction Registry's search logic is somewhat limited. It does not automatically search potential variations of a debtor's name, as say a Google search might. Over time, the Registry's search logic may change, potentially expanding the safe harbor of § 679.5061(3), Fla. Stat. The limitations of the Florida Secured Transaction Registry's search logic do not, however, excuse Appellee's failure to comply with the strict naming directives of § 679.5031, Fla. Stat. – a point courts in other jurisdictions have made when facing similar issues and similar statutes:

Although sympathetic with Host America's position, the court concludes that the historical limitations of the state's filing office—though severe indeed—do not excuse Mr. Sack's failure to comply with section 70A-9a-503(1). The plain language of section 70A-9a-506(3) establishes an escape hatch to creditors who list an improper debtor name only to the extent that the state's standard search logic can compensate for that error. By necessity, the breadth of the safe haven provided by section 70A-9a-506(3) will either expand or contract as the capabilities of the state's standard search

logic change over time. The escape hatch provision is expressly tied to the state's search logic and allows no leeway for financing statements that remain undiscovered due to a creditor's failure to comply with section 70A-9a-503(1).

Host America Corp. v. Coastline Financial, Inc.,
Case No. 2:06CV5, 2006
WL 1579614 *5 (D. Utah
May 30, 2006).

And while the Florida Secured Transaction Registry's search engine is not perfect, it is not the role of the courts to create exceptions to the statutory framework to accommodate or address its limitations.

CONCLUSION

Based on the foregoing, Appellant submits that the certified questions should be answered as follows:

Question One: 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 twenty names displayed to the user of the Registry's search function? Yes. To hold otherwise would render the safe harbor of § 679.5061(3) superfluous.

Question Two: 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. Though the Financing Statements at issue in this case could be found by simply going back one page, other situations would in some instances require a searcher to tab forward or backwards literally hundreds of pages to find a misfiled financing statement (See e.g. Aaron v. Arron example). Such a requirement would inject even more uncertainty into an arena which can tolerate none.

Question Three: 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? Requiring a searcher to search all possible variations of a debtor/borrower's name injects the very same

ambiguity and inconsistency which the drafters of the Revised Article 9 sought to eliminate. The legislature has established an integrated framework for perfecting a security interest and discovering same. Judicially created exceptions threaten to undermine not only the safe harbor of § 679.5061(3), Fla. Stat., but the entire statutory scheme.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2022, a true and correct copy of the foregoing was furnished by electronic service through the Florida Court’s E-Filing Portal and that a copy has been furnished by U.S. Mail, postage prepaid and by electronic transmission on January 10, 2022 to Ezra Z. Scrivanich, Esq., McMichael Taylor & Gray, LLC, Suite 260, 3550 Engineering Drive, Peachtree Corners, Georgia 30092 (escrivanich@mtglaw.com).

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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 9.045(e) and 9.210 of the Florida Rules of Appellate Procedure, I hereby certify that the foregoing brief is submitted in 14-point Bookman Old Style font and contains 6,431 words, excluding those parts excluded by Rule 9.045(e).

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