

Can We Expect Courts to be Reasonable in Applying Laws?

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Legal Alert

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QUESTION: CAN'T WE EXPECT COURTS TO BE REASONABLE IN APPLYING LAWS?

ANSWER: IF THAT IS WHAT YOU EXPECT, THE RULES FOR UCC FILINGS WILL BURST YOUR BUBBLE!

Double Bubble, Ltd. had its secured claim deflated in *U.S. Securities & Exchange Commission v. ISC, Inc.*, 2017WL 3736796 (U.S.D.Ct., W.D.Wisc., 2017).

ISC, Inc., doing business as Insurance Service Center was in receivership. Double Bubble claimed to be a secured creditor with a security interest perfected by the filing of a Uniform Commercial Code financing statement with the Wisconsin Department of Financial Institutions.

If Double Bubble were a secured creditor it would receive 100 percent of its claim. If Double Bubble were ruled to be an unsecured creditor, it would receive 66 percent of its claim. The District Court popped the hopes of Double Bubble for a full payment!

The court said a little extra space at the end of a name made the name “seriously misleading!”

“Double Bubble filed its financing statement listing “ISC, Inc .” as the debtor, with a space between the final ‘c’ and the ‘.’” The court noted: “The extra space was surely inadvertent, but it prevented the Double Bubble financing statement from showing up on a search of the accurate legal name of ISC, Inc.”

The extra space – no more than a fleeting hint of effervescence – cost Double Bubble its secured claim! But the statute says that a UCC-1 financing statement is effective “even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.” Surely the space between the final “c” and the “.” must be a minor error or omission. How could that extra tap on the spacebar of the keyboard be “seriously misleading?”

Computer “logic” explodes the gurgle and burble of human reasonableness!

Failing to properly provide the name of the debtor is “seriously misleading,” but the name was accurate. The statute provides a slippery safety valve: “If a search of the records of the filing office under the debtor’s correct name, using the filing office’s standard search logic . . . would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with [statute], the name provided does not make the financing statement seriously misleading.”

So there is a “safe harbor” if a searcher can find the financing statement in the ordinary course of a search despite the name mistake. But the extra space prevented the UCC-1 financing statement from showing up on a search of the Wisconsin database using the site’s search logic to search for the correct name of the debtor.

The court said it had sympathy for Double Bubble. The extra space would be easy to overlook no matter how carefully one proofreads.

Common sense and reason don’t always matter in the simmer and moil of court decisions!

The filing office in Wisconsin actually provides search “tips” and “hints” to show easy ways in which a searcher might get the correct result. But if some airhead chooses not to think and use simple tips to get the correct result, the court will say that the filing was “seriously misleading” if the inflexible computer can’t find the name.

The court noted that:

Double Bubble is correct that the receiver could have found its financing statement if he had used a different search, say a search simply for “ISC” with no punctuation or corporate designation. Double Bubble contends that such a search would have been “reasonably diligent” but reasonable diligence is not the current standard.

Instead, the former “reasonableness standard” has been replaced with a standard based upon the computerized search logic used by the office where the UCC-1 is filed.

Supposedly the computerized search logic test is “a clearer standard.” Apparently this is true even when that clearer standard yields a vacuous result!

The court noted that: “Seriously misleading” is a term of art with a statutorily defined meaning: a search “under the debtor’s correct name” must find the financing statement, otherwise it is seriously misleading.

Shimmering chimera of a lesson?

Don’t expect reasonableness and common sense to enter the picture if your statutory filing has a slight typographical error. If the computer can’t find the name with its “logic” your secured claim will be burst.

Let me know if we can help guide you through senseless legal rules.

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