

# PUBLICATION

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## Florida Supreme Court: No Safe Harbor for UCC Errors

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**On August 25, 2022, the Florida Supreme Court issued an opinion in *1944 Beach Boulevard, LLC v. Live Oak Banking Company*, No. SC21-1717 holding that Article 9 of the Florida Uniform Commercial Code (the UCC) is unforgiving with respect to any error in the debtor's name contained in a UCC-1 financing statement filed with the Florida Secured Transaction Registry (the Registry).**

In Florida, perfection of a security interest in personal property occurs when a sufficient UCC-1 financing statement (a UCC-1) is filed with the Registry. The Registry provides an online database that can be searched using a debtor's name, and the results display an alphabetical name list with 20 entries and the exact or nearest match at the top of the search results screen. The commands "Previous" and "Next" appear on the results screen, allowing the user to navigate forward and backward through all the names and all financing statements in the Registry.

To be deemed sufficient to perfect a security interest in personal property, a UCC-1 must contain the name of the debtor, the name of the secured party, and description of the collateral. (Fla. Stat. § 679.5021(1)). It can be effective "even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading." (Fla. Stat. § 679.5061(1)). A financing statement is deemed to be "seriously misleading" with respect to the debtor's name if it fails sufficiently to provide the name of the debtor in accordance with Fla. Stat. § 679.5031(1), and thus ineffective to perfect a creditor's security interest in the collateral described therein.

The Registry search function and corresponding results are important because the UCC contains a *conditional* statutory safe harbor tied to the search logic utilized. Specifically, if a search using a debtor's correct name in a UCC filing office using that office's "standard search logic, if any," would disclose the existence of the financing statement containing the error, the error in the name does not make that financing statement seriously misleading. (Fla. Stat. § 679.5061).

In the *1944 Beach Boulevard* case, Live Oak Banking Company (Live Oak) made a secured loan to 1944 Beach Boulevard, LLC (1944) and filed two UCC-1s with the Registry in an attempt to perfect its security interests in its collateral. However, the UCC-1s recited 1944's name as "1944 Beach Blvd., LLC" instead of the correct name, "1944 Beach Boulevard, LLC." Within a bankruptcy case filed by 1944, it filed an adversary proceeding under 11 U.S.C. § 544 to determine that Live Oak's UCC-1s did not provide Live Oak with a perfected security interest in its collateral based on this seemingly minor error. 1944 argued that the error in the name rendered the UCC-1s seriously misleading and thus ineffective to perfect Live Oak's security interest. The Bankruptcy Court disagreed and concluded that the financing statements fell within the statutory safe harbor because they appeared on the page immediately preceding the initial page on the Registry. On appeal, the District Court, sitting in its appellate capacity, affirmed the Bankruptcy Court.

On further appeal to the Eleventh Circuit, three questions were certified to the Florida Supreme Court. However, that Court did not address any of the certified questions posed by the Eleventh Circuit. Instead, it focused entirely on the definition of "standard search logic." The Florida Supreme Court adopted the definition of "standard search logic" accepted in the secured transactions industry, which requires the search to identify

specific hits, if any, and held that under this definition, the search mechanism utilized by the Registry, which returns the entire index, does not constitute "standard search logic." Therefore, it determined that the safe harbor provisions of Florida Statute 679.5061(1) do not apply, and the "zero-tolerance rule" of Florida Statute 679.5061(3) applies without exception.

The ramifications of the ruling are significant. Because the Registry's purported "standard search logic" does not conform to the search standard utilized in the secured transactions industry, the Florida Supreme Court has eliminated the safe harbor under the UCC for any minor mistake in a debtor's name on a UCC-1. The rule would seem to apply even if a misspelled debtor's name would appear on the first page of a Registry's search results, which would be an especially harsh result.

A logical response to this ruling would be for the Registry to change its search standards to conform to the accepted definition of "standard search logic." However, until that time, lenders and their attorneys need to be hypervigilant when spelling debtor's names on UCC-1s. Even if the Registry changes its search procedures to reflect "standard search logic," the retroactive application of the change could be the subject of debate.

Should you have any questions regarding this opinion, please contact the authors [Zachary J. Bancroft](#) or [Aaron C. Garnett](#).