

DEBTOR/CREDITOR

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Get the Name Right

The importance of correctly stating the name of the borrower on a UCC-1 financing statement filed with the state bears repetition. If the financing statement cannot be located by a standard computer search of the state's records under the borrower's correct name, the financing statement is defective and the security interest is not perfected. A recent decision from a Houston bankruptcy judge underscores the perils of imprecise naming.

A lender loaned money to Jim Ross Tires, Inc. secured by substantially all of the borrower's assets. To perfect that security interest, the lender filed a financing statement, identifying the borrower's name as "Jim Ross Tires, Inc., dba HTC Tires & Automotive Centers". A second lender sought to perfect its security interest with a financing statement in the name of "Jim Ross Tire, Inc." Each of these variations in the borrower's name prevented the computerized search function from locating the lender's financing statement, the first because it added a "DBA", the second because it omitted the "S" on the end of "Tires".

A bankruptcy trustee was able to void the unperfected security interests, leaving the lenders with no collateral. *In re Jim Ross Tires, Inc.*, 379 B.R. 670 (Bankr. S.D. Tex. 2007).

Stock Redemption Payments Retained

Under corporate law and debtor /creditor law, a corporation whose liabilities exceed its assets may not distribute money to its shareholders, whether by dividend or stock redemption, because creditors have priority over equity holders when the assets are insufficient to pay everyone. If an insolvent corporation pays shareholders, the payments may be recovered by a trustee in a subsequent bankruptcy.

A solvent corporation redeemed the shares of a minority shareholder, paying 20 percent on tender of the stock and the balance pursuant to a note in four equal annual installments. The corporation continued to make the payments on the note after becoming insolvent. Post-bankruptcy, the trustee sought to recover the note payments, arguing that they were made by an insolvent corporation in exchange for stock.

A Michigan bankruptcy court disagreed. The stock was exchanged for the note when the corporation was solvent, and the transaction did not harm creditors. After the corporation became insolvent, the note payments retired an existing debt. The payments were no longer considered a stock redemption.

Wells v. Sleep (In re Michigan Machine Tool Control Corp.), 381 B.R. 657 (Bankr. E.D. Mich. 2008).

Forfeited Charter Stops Lawsuit

If a Maryland corporation forfeits its charter (through nonpayment of the annual fee), it becomes a legal non-entity that may not sue in court. Even if the corporation pays its back fees and reinstates the charter retroactively, any suit commenced while the charter was forfeited will be dismissed. If the time to bring the suit has expired in the meantime, the reinstated corporation will have no remedy.

Mintec Corp. v. Minton (In re Minton), 379 B.R. 569 (Bankr. D. Md. 2007).

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This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation.

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