

MARKS & WEINBERG, P.C.

In re Kinderknecht

51 U.C.C. Rep. Serv. 2d 1234 (D. Kan. 2003)

In a case before the US Bankruptcy Court in Kansas, a Chapter 7 trustee attempted to set aside a security interest that was listed in the individual debtor's commonly used nickname. The trustee claimed that because the interest was not in the debtor's formal legal name, the security interest was "seriously misleading" and ineffective as of the date the debtor filed for bankruptcy and that the secured party was, therefore, unperfected.

Notwithstanding the UCC's lack of clarity on the issue, the court held that Revised Article 9 does not prohibit the use of a nickname in financing statements. The court noted the new rule regarding whether an incorrect name makes a financing statement "seriously misleading" so that it is ineffective. That rule, contained in Section 9-506 of the UCC states "[I]f a search of the records of the filing office under the debtor's correct name, using the filing offices 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." In the case at bar, the relevant search logic did reveal the filing. The Court also stated that a lender should consider the possibility that a financing statement may be filed under the debtor's nickname and should therefore search under that name.



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