

Bad Survey and Bad Name on Filed Financing Statement-Legal Issues Created

Roger McEowen (roger.mceowen@washburn.edu) – Washburn University School of Law

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Overview

The legal system interacts with farmers, ranchers and rural landowners in numerous ways. With today's post, I take a look at a few of those.

Court Sorts Out Damages Triggered by Erroneous Survey.

Simmons v. Ryder, No. 364826

2024 Mich. App. LEXIS 1181 (Mich. Ct. App. Feb. 15, 2024)

Note: What problems can occur if a survey is erroneous? In this case the defendant acted based on his survey which turned out to be erroneous. Read what happened. What wasn't part of the case is the liability of the surveyor business that made the erroneous survey. The court's opinion also provides guidance on how court's determine damages in such cases.

The plaintiffs owned a residential tract adjacent to the defendant's farmland. The defendant's survey denoted the boundary between the properties as being 31 feet onto what the plaintiff claimed was the boundary. Based on the survey, the defendant cleared trees, shrubs and topsoil in the disputed area.

The plaintiffs sued for trespass and injury to their land and sought damages to restore the property. The trial court awarded the plaintiff \$1,995 of damages, the cost of replanting 21 arrowwood viburnum trees. The trial court also ordered that another survey be completed with the cost split between the parties. The trial court allowed the defendant to complete remedial excavation work, and also ruled that the plaintiffs were not entitled to damages for the installation of a fence.

The appellate court affirmed, concluding that the plaintiffs failed to provide evidence regarding the loss in their land value and their claimed amount of restorative costs. In any event, the appellate court held that the damages awarded should not exceed the value of the property before the damage occurred. The appellate court also upheld the trial court's decision ordering the defendant to perform remediation work on the plaintiffs' property. The appellate court also upheld the trial court's decision that the parties split the cost of the second survey which established that the initial survey was erroneous, and both parties were innocent with respect to the first survey. It was the erroneous first survey that required the remedial work.



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Change in Name of Debtor Makes a UCC “Seriously Misleading”

In re Rancher’s Legacy Meat Co., 616 B.R. 532 (Bankr. D. Minn. 2020)

Note: The Uniform Commercial Code (UCC) has many intricate rules that must be followed closely. Article 9 of the UCC governs financial transactions. One rule requires that the debtor’s name on a filed financial statement must not be “seriously misleading.” The rule is there to ensure that a party checking the public record will be assured of finding a filed financial statement when using the debtor’s correct legal name. There are many cases on this issue and the case below is one of them.

The debtor, a meat packing and processing company, was founded by two individuals, one of which was the creditor, operating under the name of Unger Meat Company (UMC). The creditor leased a building to the debtor for use as a processing plant and provided startup funds via two promissory notes. The creditor perfected a security interest in all the debtor’s equipment, inventory, and accounts receivable. UMC failed to show a profit and the creditor entered into an option agreement with a holding company to purchase UMC. Upon finalization of the sale, the holding company purchased the creditor’s shares in UMC and changed the name of the company to Rancher’s Legacy Meat Company.

Fourteen months after the name change, the creditor filed a UCC-3 Continuation Statement and listed the company’s name as UMC. After another three years had passed, the creditor filed an amended UCC-3 to change the debtor’s name to “Rancher’s Legacy.” The creditor sought collection on its notes and a few months later the debtor filed for Chapter 11 bankruptcy. The debtor argued that the appropriate procedure to re-perfect the creditor’s security interest was to file a new UCC-1 Financing Statement upon the debtor’s name change. The creditor argued that his filings appropriately re-perfected his security interest and therefore, he should be entitled to adequate protection payments. The bankruptcy court noted that Minnesota law provides that a financing statement becomes seriously misleading and ineffective when it fails to provide the debtor’s correct name. Additionally, when the financing statement is ineffective because of seriously misleading information, an amendment must be made within four months to perfect a security interest. The bankruptcy court held that the creditor’s security interest lapsed when four months had passed after the creditor’s financing statement became seriously misleading. Further, the bankruptcy court held that the creditor had the ability to re-perfect the security interest by filing a new UCC-1 Financing Statement. Although the security interest had lapsed, the language of the parties’ security agreement provided the creditor with the opportunity to file a second financing statement.

The creditor argued that his multiple filings were sufficient to give proper notice to any other creditors under the UCC. The bankruptcy court disagreed and held that multiple filings can occasionally give proper notice, but not when the notice had become seriously misleading as in this case. The bankruptcy court pointed out that the validity of the financing statement depends primarily on its ability to give notice of the security interest to other creditors. Further, the bankruptcy court noted that the creditor’s argument for multiple filings failed because the original financing statement had lapsed four months after it became seriously misleading. A continuation statement cannot revive a lapsed financing statement. While the creditor argued that the subsequent filings of the continuation statements should have been enough to re-perfect the security interest, the bankruptcy court



disagreed, pointing out that the UCC specifically provided that a continuation statement cannot substitute for a financing statement. As a result, the bankruptcy court declared that the creditor became an unsecured creditor at the time the security interests became unperfected. Because the creditor failed to re-perfect the security interest before the debtor filed for Chapter 11 bankruptcy, the debtor was not required to provide the creditor with adequate protection payments.

Conclusion

Bad survey and incorrect debtor's name on a financing statement - carelessness led to legal issues. These are "foot faults" that can (and should) be avoided.

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K-State Agricultural Economics | 342 Waters Hall, Manhattan, KS 66506-4011 | 785.532.1504
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