

THE CROSS-BORDER PERSPECTIVE: NAME CHANGES AND OTHER POST-FILING OR REGISTRATION EVENTS UNDER THE UCC AND THE PPSA

Smarter Way to Cross Blog Archives
February 27, 2014

We are U.S. lawyers and don't practice Canadian law. But we seize every occasion that we have to deepen our understanding of the differences between U.S. and Canadian law. Why? Because understanding the differences allows us to better customize the advice that we give to Canadian businesses and law firms. That's why I was interested to learn in a recent conversation with a Canadian lawyer of one such difference affecting personal property security interests of which I had previously not been aware.

In the United States, personal property security interests are governed by Article 9 of the Uniform Commercial Code (UCC) and, in Canada, other than Quebec, by the Personal Property Security Act (PPSA). (Note, all specific citations in this blog entry to the UCC or the PPSA are to the New York Commercial Code and the Ontario Personal Property Security Act, respectively.) The PPSA and the UCC are very similar, but there are material differences. Because they are so similar, it's easy to be blindsided by their differences. I have written with my colleague, Joseph McKernan, on the topic before. See "[Convert Security Agreements With Care.](#)" See also my article "[Cross-Border Security Interests May Appear Simpler Than They Are.](#)"

The UCC and the PPSA both generally require the secured party to file or register a financing statement against the debtor to perfect a security interest in collateral. A financing statement is what puts the world on notice of the security interest granted by the debtor to the secured party and makes the security interest good against third parties. Canadian finance lawyers are generally aware that the rules for determining in which jurisdiction the secured party must file a financing statement are very different in the United States and Canada as a result of changes made to the UCC in 2001.

But what if after the secured party properly files or registers its financing statement naming the debtor, the debtor changes its name or merges or amalgamates with another entity such that a search under the current entity name would not reveal a financing statement correctly filed under the prior name? What I recently learned is that the UCC and the PPSA take very different approaches to this type of changed circumstance.

Under UCC § 9-507, if a debtor so changes its name that a filed financing statement is misleading, the secured party has four months to file an amendment to the financing statement to amend the debtor's name. If the secured party doesn't file the amendment, the existing filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement that renders the financing statement not seriously misleading is filed within four months after the change. This is very significant with assets that turnover, such as receivables and inventory. The secured party's filing ceases to be effective with respect to all collateral, including receivables and inventory arising or acquired more than four months after the change.

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The official comment to UCC § 9-507 provides “Secured parties with a security interest in after acquired property, including inventory, should be certain that practices implemented ... will ... detect name changes so steps can be taken to file under the new name within the four month time frame,” placing a monitoring duty on secured parties.

The PPSA doesn’t put this same monitoring burden on secured parties in the case of name changes. It only requires that that the secured party file a financing change statement or take possession of the collateral within a specified number of days (30 days in Ontario) of when the secured party learns of the change (PPSA §48(3)). If the secured party doesn’t learn of the change, its original financing statement against the prior name remains effective. Under the PPSA (as adopted in Ontario), a corporate secured party learns of information, when such “information has come to the attention of a senior employee of the corporation with responsibility for matters to which the information relates under circumstances in which a reasonable person would take cognizance of it.” (PPSA §69 (c)). Thus under the PPSA, the secured party can’t put its head completely in the sand. The secured party must pay attention to information that might signal to a reasonable person that there had been a name change (such as letterhead with the new name). But it is clear that the secured party doesn’t have the monitoring duty that is imposed on the secured party under the UCC with respect to after-acquired collateral. The PPSA approach leaves open the possibility of argument among competing secured parties as to whether a party has learned of a name change. By contrast, the UCC rule does not allow knowledge to play a role (which is consistent with the UCC’s general approach to resolving conflicting interests), and offers more certainty. The UCC, however, may be harsh on an innocent secured party who may be completely unaware of a name change or from whom a debtor may have taken affirmative steps to hide a name change.

This difference in approach to name changes may explain a difference in practice between U.S. and Canadian lawyers. Though searches against prior names are most often necessary under both the UCC and PPSA, Canadian lawyers, in my experience, search more routinely under prior names because they understand clearly the continued effectiveness of a financing statement filed against a prior name unless the prior secured party has learned of the change in name. This practice is facilitated by the availability of “corporate profile” reports in Canada, which summarize the corporate history of the debtor, including name changes, for which there is no clear parallel in the United States.

Other post-filing or registration events such a mergers, amalgamations, change of debtor location and transfers of collateral also are treated differently under the UCC and the PPSA. Though I will not discuss them here, I hope that this blog entry will make readers more sensitive to the potential differences.