

A DEBTOR BY ANY OTHER NAME IS STILL A DEBTOR

THE IMPORTANCE OF KNOWING YOUR DEBTOR'S NAME

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A recent United States Court of Appeals decision shows the importance of making careful lien searches as part of the lender's due diligence process, especially as regards federal tax liens.

Crestmark Bank was making a loan to Spearing Tool and Manufacturing Co. Crestmark documented the loan internally and searched the public records for U.C.C. financing statements and federal tax liens that could have affected its lien position in the collateral. The search reflected no liens or financing statements filed under the specific name which the Bank searched; namely, Spearing Tool and Manufacturing Co., which was the exact legal name of the debtor. The Bank then entered into a credit arrangement with Spearing, and Spearing granted the Bank a security interest in certain assets, which security interest was perfected through the filing of a U.C.C. financing statement in the name of Spearing Tool and Manufacturing Co.

Spearing subsequently filed a Chapter 11 bankruptcy proceeding. During the proceedings in the bankruptcy court, the Internal Revenue Service took the position that it had prior perfected federal tax liens on all assets of the debtor, and that the Bank was in second lien position. The Bank responded by saying that the federal tax liens were not filed under the exact legal name of the debtor as required by the state's Uniform Commercial Code, and were, therefore, ineffective. Although the correct legal name of the borrower was "Spearing Tool and Manufacturing Co.," the IRS filed its liens under "Spearing Tool & Mfg. Company Inc." The IRS position was that the notice of tax liens identified the debtor well enough under federal law. The IRS had filed its liens abbreviating certain aspects of the debtor's name but maintaining the critical "Spearing Tool" core of the name.

In the case of *Spearing Tool and Manufacturing Co. Inc., Debtor v. Crestmark Bank; Crestmark Financial Corporation, Appellees*, 4112 F.3d 653, (6th Cir. 2005), the Court ruled in favor of the IRS, applying a more liberal notice standard than that contained in the Uniform Commercial Code. **The Court noted that while a U.C.C. financing statement filed under the abbreviated and truncated name used by the IRS would ordinarily have been ineffective, under state law, the IRS is held to a lesser standard under the IRS Code and held that the IRS liens need not "perfectly identify" the taxpayer, but must only "sufficiently identify" a taxpayer so that a lender is placed on notice for further inquiry.** Here, the use of the combination of the words "Spearing Tool" was held to have placed Crestmark on reasonable notice that a tax lien may have been asserted against its customer. Crestmark had, in fact,

received a prompt in their Secretary of State search result, suggesting they search for slightly different or abbreviated names of the debtor. The IRS was determined to have a first priority security interest on all of the assets which the Bank had taken as collateral for its loan.

This case contains important lessons. When performing lien searches automatically, you “get what you ask for.” If you order a search in one name only, then the search will not include other names. **Lien searches should be broadly cast so that other possible combinations of abbreviations and truncations of a name are searched.** This is the format provided by pursuing the Texas Secretary of State “Wild Card Search” for online search and is the format provided by private companies providing search results. Although the additional names on the lien search may cost the Bank more money and effort at the beginning of the loan process, that expense is insignificant when compared to the cost of writing off a loan.

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