

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	In Proceedings
)	Under Chapter 7
RAMSEY LUMBER COMPANY,)	
)	No. BK 87-30547
Debtor.)	
RAMSEY NATIONAL BANK,)	
)	
Plaintiff,)	
)	
v.)	
)	
RAMSEY LUMBER COMPANY and)	
DON HOAGLAND, Trustee,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on Ramsey National's Bank ("Bank") Motion for Relief from Automatic Stay and for Abandonment of Property. On December 15, 1985, the parties executed a Security Agreement pursuant to which the Bank obtained a security interest in certain inventory, furniture, fixtures, machinery, equipment and vehicles of Ramsey Lumber Company. The Agreement was signed by James A. Reiss, individually; James A. Reiss, President of Ramsey Lumber Company; and James A. Reiss, President of Reiss Construction Company. James Reiss also executed a financing statement, which listed the debtor as follows:

Reiss, James A., d/b/a James A. Reiss
Const. Co., Inc., d/b/a Ramsey Lumber
Co. Ramsey, Ill. 62080

The financing statement, which was filed with the Illinois Secretary of State on December 18, 1985, was signed by "James A.

Reiss" with no indication that he was signing as an officer of Ramsey Lumber Company.

The Trustee contends that the financing statement is insufficient under section 9-402(1) of the Uniform Commercial Code, and that the Bank's security interest was therefore not properly perfected. More specifically, the Trustee contends that 1) the financing statement does not contain the name of the debtor, Ramsey Lumber Company, but instead refers to "James A. Reiss, d/b/a Ramsey Lumber Company;" and 2) the debtor failed to sign the financing statement (in light of the fact that James Reiss signed the statement with no indication of corporate capacity).

Section 9-402(1) of the Uniform Commercial Code provides that "[a] financing statement is sufficient if it gives the names of the debtor and the secured party [and] is signed by the debtor..." Ill.Rev.Stat., ch. 26, para. 9-402(1). The Code further provides:

A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or names of partners...

A financing statement substantially complying with the requirements of this Section is effective even though it contains minor errors which are not seriously misleading.

Ill.Rev.Stat., ch. 26, para. 9-402(7) and (8).

A review of the case law indicates that certain basic principles apply in determining whether financing statements sufficiently comply with the requirements of the Uniform Commercial Code. As stated in Matter of Glasco, Inc., 642 F.2d 793 (5th Cir. 1981):

The purpose of the [UCC] filing system is to give notice to creditors and other interested parties that a security interest exists in property of the debtor. Perfect accuracy, however, is not required as long as the financing statement contains sufficient information to "put any searcher on inquiry." The emphasis of the Uniform Commercial Code is thus on commercial realities rather than on corporate technicalities.

Id. at 795 (citations omitted). "When the name of the debtor has been erroneously listed on the financial statement, the dispositive question is usually whether or not a reasonable search under the debtor's true name would uncover the filing." In re Darling Lumber, Inc., 56 B.R. 669, 673 (Bankr. E.D. Mich. 1986). "If so, it is assumed that the searcher is on notice to inquire further to discover the correct identity of the debtor." Id. "Thus, filing under a debtor's trade name is not per se insufficient to perfect a security interest where the trade name is substantially similar or sufficiently related to the actual name of the debtor so as to give notice of a possible prior existing security interest to anyone searching the records." In re Swati, Inc., 54 B.R. 498, 501 (Bankr. N.D. Ill. 1985). See also, Matter of Maples, 33 B.R. 14 (Bankr. W.D. Mo. 1983).

In Matter of Sounds Distributing Corp., 42 B.R. 274 (Bankr. W.D. 1984), some of the financing statements in question listed the debtor as "Norton L. Kalinsky d/b/a Sounds Dist. Corp.," while in fact the debtor was actually "Sounds Distributing Corporation." The court found that the financing statements were not seriously misleading to those creditors in search of encumbrances of "Sounds Distributing Corporation." Id. at 276.

Likewise, in the present case, the Court does not believe that the financing statements are seriously misleading within the meaning of Section 9-402(8) of the Uniform Commercial Code. The name "James A. Reiss, d/b/a Ramsey Lumber Company" is substantially similar to "Ramsey Lumber Company" so that any searcher would be "on notice to inquire further to discover the correct identity of the debtor." In re Darling, 56 B.R. at 673. Furthermore, the financing statement contains the following language, which clearly identifies the debtor as Ramsey Lumber Company: "All inventory of every kind and nature used in the operation of Ramsey Lumber Company . . . All accounts receivable now owned or hereafter acquired in the operation of Ramsey Lumber Company and James A. Reiss Construction Co., Inc." (emphasis added). In addition, the Bank submitted a search request to the Illinois Secretary of State, seeking any financing statements filed under the name of Ramsey Lumber Company. Pursuant to this request, the Bank received a copy of the December 18, 1985 financing statement that is at issue in this case. The result of this search request clearly indicates that the statement on file provides reasonable notice of the existence of the security interest and the identity of the debtor.

The Trustee also contends that the debtor failed to sign the financing statement since there is no indication that James A. Reiss signed in a representative capacity, i.e., as an officer of Ramsey Lumber Company. The Uniform Commercial Code defines "signed" as "any symbol executed or adopted by a party with present intention to authenticate a writing." Ill.Rev.Stat., ch. 26, para. 1-201(39). James Reiss executed the financing statement in conjunction with the

Security Agreement, which he did sign as President of Ramsey Lumber Company. In light of this fact, it appears that it was Mr. Reiss' intention to also sign the financial statement on behalf of Ramsey Lumber Company. Furthermore, "case law holds that if a diligent creditor who checked the Financing Statement would have been put on notice of the existence of a claimed lien by the corporate creditor, a defect in the debtor's signature is not fatal." Matter of Door Supply Center, Inc., 3 B.R. 103, 106 (Bankr. D. Idaho 1980). See also, In re Air Vermont, Inc., 45 B.R. 817, 818 (D. Vt. 1984).

The parties indicated at the hearing that the only disputed issue with regard to the Motion for Relief from Automatic Stay was the sufficiency of the financing statement. For the reasons set forth above, the Court finds that the financing statement complies with the requirements of the Uniform Commercial Code. If the parties believe that it is necessary for the Court to resolve further matters with regard to the Motion for Relief from Automatic Stay, the parties shall so notify the Court within ten (10) days from the date of this Order. If the parties fail to do so, the Court will order that the Bank's Motion for Relief from Automatic Stay be granted.

_____/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: September 10, 1987