

ORS 79.4020 (7)

ORS 79.4020 (8)

Westinghouse Electric Supply co. v Mitchell Civ. No. 92-10-MA
Adv. No. 90-3457

In re Hanna Case No 390-33990-S11

3/24/92 J. Marsh aff'g DDS oral ruling.

A financing statement which identified the debtor under one of his assumed business names, Hanna Industries, was seriously misleading when the true debtor was Daniel C. Hanna. As a result, the creditor did not have a properly perfected security interest, and its claim was treated as unsecured.

P92-8(6)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re)	
DANIEL C. HANNA, et al.)	Bankruptcy No. 390-33990-S11;
)	390-34210-S11; and 390-34211-
<u>Debtor.</u>)	S11 (Administratively Consolidated)
WESTINGHOUSE ELECTRIC)	
SUPPLY COMPANY,)	
Plaintiff,)	Adversary No. 90-3457
v.)	Civil No. 92-10-MA
JOHN MITCHELL, INC.,)	
Trustee,)	
Defendant,)	ORDER

Michael D. Williams
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1 - ORDER

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9 MARSH, Judge.

10 On August 21, 1991, the United States Bankruptcy Court for the
11 District of Oregon entered a final judgment in plaintiff
12 Westinghouse Electric Supply Company's ("Wesco") adversary
13 proceeding against the bankruptcy trustee, John Mitchell, Inc.
14 ("Trustee"). The judgment was for the Trustee and dismissed
15 Wesco's complaint with prejudice. Wesco appeals this judgment on
16 the ground that the Bankruptcy Court erred in granting the
17 Trustee's motion for summary judgment and in denying Wesco's
18 cross-motion for summary judgment. For the reasons stated below,
19 the judgment of the Bankruptcy Court is AFFIRMED.

20 BACKGROUND

21 In October 1985, the bankruptcy debtor, Daniel C. Hanna,
22 entered into a security agreement with Wesco. Though Mr. Hanna
23 executed the agreement as an individual, the financing statement
24 Wesco filed with the Oregon Secretary of State listed the debtor
25 as "Hanna Industries."¹

26 On July 27, 1990, Daniel C. Hanna filed a voluntary petition
of chapter 11 bankruptcy. Thereafter, Wesco filed a proof of

¹ The parties do not dispute that the filing of a financing statement was required under ORS 79.3020(1) to perfect Wesco's security interest under the Security Agreement.

1 claim in the bankruptcy proceeding for \$303,756.15. The proof of
2 claim alleged that Wesco was a secured creditor. After the
3 Trustee disputed its status as a secured creditor, Wesco filed an
4 adversary proceeding seeking a declaration that Wesco be treated
5 as a secured creditor in the bankruptcy proceeding.

6 The Trustee moved for summary judgment in the adversary
7 proceeding on the ground that Wesco's security interest was
8 invalid as a matter of law because Wesco's financing statement
9 referenced the debtor as "Hanna Industries" instead of Daniel C.
10 Hanna. Wesco cross-moved for summary judgment on the ground that
11 the financing statement was sufficient as a matter of law to
12 create a security interest in favor of Wesco.

13 The bankruptcy court judge granted the Trustee's motion for
14 summary judgment, and denied Wesco's cross-motion for summary
15 judgment. In so doing, the bankruptcy court judge determined that
16 the error in the financing statement was "seriously misleading" so
17 as to render it invalid under the provisions of ORS 79.4020.
18 Accordingly, the bankruptcy judge found that Wesco failed to
19 perfect its security interest.

20 STANDARD

21 A district court's review of a bankruptcy court's conclusions
22 of law is de novo. In re American Mariner Industries, Inc., 734
23 F.2d 426, 429 (9th Cir. 1984).

24 DISCUSSION

25 ORS 79.4020 (1991) provides, in pertinent part:

26 (1) A financing statement is sufficient if it gives
the names of the debtor and the secured party

3 - ORDER

* * *

1 (7) A financing statement sufficiently shows the name
2 of the debtor if it gives the individual, partnership or
3 corporate name of the debtor, whether or not it adds
4 other trade names or the names of partners....

5 (8) A financing statement substantially complying with
6 the requirements of this section is effective even though
7 it contains minor errors which are not seriously
8 misleading.

9 The parties do not cite, nor do I find, any Oregon cases
10 interpreting the relevant sections of ORS 79.4020. However, the
11 Oregon Supreme Court has recently indicated that a court may look
12 to the Official Comments to the U.C.C. and decisions from other
13 courts as instructive in interpreting the Oregon U.C.C. See
14 United States Nat'l Bank v. Boge, 311 Or. 550, 563 (1991)
15 ("Although the Official Comments lack the force of law, they are
16 instructive, because the legislature took note of them at the time
17 of adoption, because they are consistent with the structure of the
18 U.C.C., ... and because the purpose of the Official Comments is to
19 promote uniform construction of the U.C.C.); Security Bank v.
20 Chiapuzio, 304 Or. 438, 445 n. 6 (1987) ("The legislative intent
21 behind [Oregon's] UCC can ... be derived from the language of the
22 statute itself and the language of the comments. In addition, the
23 legislative intent to make [Oregon's] UCC a uniform code makes
24 relevant the decisions of other courts that have examined these
25 questions").

26 ORS 79.4020 was modeled after U.C.C. § 9-402. The Official
Comment to U.C.C. § 9-402(7) provides, in pertinent part:

In the case of individuals, [this section] contemplates
filing only in the individual name, not in a trade
name.... Trade names are deemed to be too uncertain and
too unlikely to be known to the secured party or persons

1 searching the record, to form the basis for a filing
system.

2 Uniform Commercial Code § 9-402(7), Official Comment 7 (1972).

3 Ninth Circuit authority also supports the conclusion that
4 filing under a trade name, rather than the individual name, is
5 seriously misleading. In In re Thomas, 466 F.2d 51, 52 (9th Cir.
6 1972), the court held that, under California's version of U.C.C.
7 § 9-402, a financing statement which listed the debtor's trade
8 name, but omitted his real name, was fatally defective. The court
9 stated: "An ideal hypothetical creditor would not have discovered
10 [the creditor's] lien by examining the notice index under the
11 debtor's real name. Therefore, the trustee is entitled to
12 challenge the validity of [the creditor's] asserted security
13 interest." Id. at 53.

14 Furthermore, in In re McCauley's Reprographics, Inc., 638 F.2d
15 117, 118-19 (9th Cir. 1981), the court held, under Alaska's
16 version of U.C.C. § 9-402, that a financing statement which
17 erroneously identified the debtor corporation as the partnership
18 which preceded the debtor corporation was seriously misleading.
19 In so doing, the court stated: "When the name of the debtor has
20 been erroneously listed on the financing statement, the
21 dispositive question is usually whether or not a reasonable search
22 under the debtor's true name would uncover the filing." Id. at
23 119 (emphasis added).

24 In the present case, the parties agree that a search of the
25 Secretary of State's index of financing statements under "Daniel
26 C. Hanna" would not reveal Wesco's filing. Accordingly, I find,

5 - ORDER

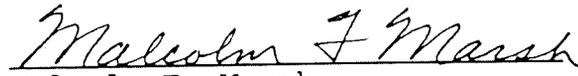
1 consistent with the above-cited authority, that Wesco's filing of
2 a financing statement under "Hanna Industries" rather than under
3 "Daniel C. Hanna," or a reasonable approximation thereof, was not
4 a minor error, but was seriously misleading.

5 CONCLUSION

6 Based on the foregoing, the bankruptcy court's judgment is
7 AFFIRMED.

8 IT IS SO ORDERED.

9 DATED this 23 day of March, 1992.

10 
11 Malcolm F. Marsh
United States District Judge