



Location, Location, Location:

Filing a UCC-1 Financing Statement in the Wrong State Leaves a Creditor Unsecured

CREDITORS LOOKING TO PROTECT AGAINST COLLECTION RISK CAN SEEK A SECURITY INTEREST IN THEIR CUSTOMER'S PERSONAL PROPERTY. HOWEVER, THE GRANT OF A SECURITY INTEREST ALONE ISN'T ENOUGH WHEN IT COMES TO THE DEBTOR'S PERSONAL PROPERTY—THE CREDITOR MUST ALSO PERFECT ITS SECURITY INTEREST BY FILING A UCC-1 FINANCING STATEMENT. ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE ("UCC"), PRESCRIBES THE FORM AND MANNER—AND PLACE—FOR FILING A UCC-1 FINANCING STATEMENT.

As illustrated by the Ninth Circuit Bankruptcy Appellate Panel's recent decision in *Global One Media, Inc.*, location is key when it comes to filing UCC-1 financing statements. A creditor seeking to perfect its security interest in a debtor's assets located in two different states filed UCC-1 financing statements in those states, instead of in the debtor's state of incorporation. The result? The Ninth Circuit Bankruptcy Appellate Panel held that the creditor's security interest in the debtors' personal property was unperfected and, therefore, unenforceable. The *Global One Media, Inc.* decision highlights how important it is for a creditor seeking secured status to strictly adhere to the requirements of UCC Article 9 and file its UCC-1 financing statement in the right place.

BACKGROUND REGARDING THE UCC'S FILING REQUIREMENTS

Article 9 of the UCC provides a comprehensive statutory scheme governing security interests in personal property, the methods of creating and perfecting security interests and the priorities in collateral among secured parties. All of the states have adopted UCC Article 9. As such, a trade creditor seeking a valid, perfected and enforceable security interest in its customer's personal property must comply with UCC Article 9, as adopted by the applicable state.

First, a creditor seeking secured status must satisfy the requirements for the creation or attachment of a security interest in its customer's personal property. A security interest is created by the customer's execution



of a security agreement that adequately describes the creditor's collateral by category or type. A collateral description such as "all of a debtor's present and future accounts, inventory, equipment, and general intangibles and all cash and non-cash proceeds thereof" will suffice. A collateral description, such as "all of a debtor's assets," is not sufficient to create a security interest.

Second, the security interest must be perfected according to UCC Article 9's requirements. Generally, a creditor perfects a security interest in personal property by filing a UCC-1 financing statement in the appropriate filing office. UCC § 9-301 governs where a UCC-1 financing statement must be filed to perfect a security interest and the applicable state law for determining the effect of such perfection. UCC § 9-301(1) prescribes the impact of where the debtor entity is located, and UCC § 9-301(3)(C) sets forth the impact of where the debtor's assets are located.

- UCC § 9-301(1) states, "Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral"; and
- UCC § 9-301(3)(C) states "[W]hile negotiable tangible documents, goods, instruments, or tangible money is located in a jurisdiction, the local law of that jurisdiction governs ... (C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral."

In *Global One Media, Inc.*, the Ninth Circuit Bankruptcy Appellate Panel analyzed and applied these two sections of UCC Article 9 (as adopted by Delaware) and held that where the debtor is a legal entity (e.g., a corporation), a UCC-1 financing statement must be filed in the debtor's state of incorporation.

BACKGROUND REGARDING THE GLOBAL ONE MEDIA, INC. DECISION

Global One Media, Inc. (GOM) was incorporated in Delaware in January 2022 to purchase two radio broadcast companies—one in Nevada and the other in New Mexico. GOM obtained a series of loans totaling approximately \$2.75 million between May and October 2022 from Newtek Small Business Finance, LLC to finance the purchase and operation of the broadcast companies. The parties agreed the loans would be secured by GOM's real property and personal property located in Nevada and New Mexico. Newtek filed UCC-1 financing statements with the Secretaries of State in Nevada and New Mexico. Notably, Newtek did not file a UCC-1 in Delaware, the state of GOM's incorporation.

On February 2, 2025, GOM filed a "small business" bankruptcy petition under Subchapter V of Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Nevada. GOM listed Newtek as a secured creditor in its bankruptcy filings. In addition, Newtek filed a proof of claim in amount of \$2,876,427.04, including a secured claim in the amount of \$770,505.

The Subchapter V Trustee filed an objection to Newtek's claim disputing Newtek's security interest in GOM's personal property.¹ The Trustee argued that Newtek had to file a UCC-1 financing statement in Delaware—where GOM was incorporated, and, therefore, located—to perfect a security interest in GOM's personal property.

In response, Newtek asserted that it had properly filed UCC-1 financing statements in New Mexico and Nevada, where its personal property was located. Newtek acknowledged that pursuant to UCC § 9-301(1), Delaware law generally governed the perfection of its security interest since GOM is located in Delaware. However, Newtek argued that this general rule is subject to potential exceptions since UCC § 9-301(1) begins

with, "[e]xcept as otherwise provided in this section." One such exception is in UCC § 9-301(3)(C), which provides that the effect of perfection of a security interest is governed by the law where the collateral is located. As such, according to Newtek, the law of Nevada and New Mexico governed the perfection of security interests in GOM's personal property in those states.

The Bankruptcy Court agreed with Newtek and overruled the Subchapter V Trustee's objection to Newtek's claim. The Subchapter V Trustee appealed the Bankruptcy Court's ruling to the Ninth Circuit Bankruptcy Appellate Panel.

THE GLOBAL ONE MEDIA, INC. DECISION

The Ninth Circuit Bankruptcy Appellate Panel reversed the Bankruptcy Court's decision, holding that Newtek had to file a UCC-1 financing statement in Delaware to perfect its security interest in GOM's personal property. The Bankruptcy Appellate Panel rejected Newtek's argument that UCC § 9-301(1) is subject to or otherwise limited by UCC § 9-301(3)(C). The Bankruptcy Appellate Panel noted that UCC § 9-301(3)(C) provides that the law of the jurisdiction where the collateral is located does not govern perfection itself; it governs the effect of perfection or nonperfection. According to UCC § 9-301(1) perfection is governed by the law of the jurisdiction where a corporate debtor is located. Thus, the Bankruptcy Appellate Panel concluded, "Delaware law governs 'perfection' (meaning, what must be done to perfect a security interest in collateral) while Nevada or New Mexico law decides the 'effect' of perfection or nonperfection (as the case may be) and any 'priority' disputes between claimants over property located in those states."

The Bankruptcy Appellate Panel also noted that requiring all corporate debtor UCC-1 filings in the debtor's state of incorporation creates a more efficient and streamlined process for all potentially impacted creditors. A secured creditor filing a UCC-1 financing statement can simply file in the debtor's state of incorporation, even for debtors with multi-state business operations. And other creditors that are seeking to identify competing security interests against a corporate debtor only need to run a UCC search in one state (where the debtor is located), instead of searching all of the states where the debtor's personal property may be located. As such, UCC § 9-301(1)'s requirement that financing statements be filed in the debtor's state of incorporation is consistent with the UCC's primary goals.

The Bankruptcy Appellate Panel further explained why UCC § 9-301(3)(C) shifts the applicable law to the jurisdiction where the assets are located when determining the effect of perfection and the priority of

a perfected security interest. As the official legislative comments to UCC § 9-301 make clear, a choice of law issue arises if a debtor is located in one state and its assets subject to a security interest are in another state. UCC § 9-301(3)(C) addresses that choice of law issue by providing that the state where a debtor's assets are located governs the effect of perfection and the priority of a perfected security interest. This is a logical outcome since a lien creditor will likely seek to levy in the state where the debtor's assets are located.

But perfection in the first instance is governed by the state where the debtor is located. In this case, GOM was incorporated—and, therefore, located—in Delaware, and the UCC-1 financing statement must have been filed in Delaware. **BC**

- 1 The Subchapter V Trustee did not dispute that a portion of the claim, in the amount of \$340,000, was secured by the Debtor's real property in New Mexico.



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