

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 30, 2019

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2018AP1596

Cir. Ct. No. 2018CV49

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

NORTHSIDE ELEVATOR, INC.,

PLAINTIFF-APPELLANT,

v.

JEFFREY ALAN OSSMANN,

DEFENDANT,

BREMER BANK, N.A.,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Clark County:
LYNDSEY BRUNETTE, Judge. *Affirmed.*

Before Sherman, Blanchard and Fitzpatrick, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Northside Elevator, Inc. contends that the circuit court erred in denying its motion for summary judgment as to its claim that Northside’s security interest in certain collateral belonging to Jeffrey Ossmann has priority over Bremer Bank’s security interest in the same collateral. Northside argues that Bremer Bank’s filed financing statement for the collateral is “seriously misleading,” and thus not effective to secure its interest, because the statement did not state the name that was on Ossmann’s current, unexpired operator’s license and a search of the full name on Ossmann’s current, unexpired operator’s license does not reveal Bremer Bank’s financing statement. For the reasons discussed below, based on an implied concession by Northside and our plain language interpretation of statutory and administrative code language, we conclude that the circuit court did not err in denying Northside’s motion for summary judgment and later dismissing Northside’s priority of security interest claim against Bremer Bank.

BACKGROUND

¶2 This case concerns the priority of two security interests in collateral belonging to Ossmann that was obtained by Ossmann after January 9, 2017. The facts are not in dispute.¹

¹ The statutory framework of establishing priority between security interests in personal property is provided in WIS. STAT. ch. 409, as discussed beginning in ¶10, below.

¶3 On April 30, 2014, Ossmann, a farmer, obtained two loans from Bremer Bank. As collateral for the loans, Ossmann granted Bremer Bank a security interest in various collateral, including equipment and future crops. On April 30, 2014, Bremer Bank filed a Uniform Commercial Code (U.C.C.) financing statement with the Department of Financial Institutions (DFI) describing all of the collateral in which Bremer Bank has a security interest. The name of the individual debtor specified on Bremer Bank’s financing statement is “Jeffrey A. Ossmann,” which was the name on Ossmann’s unexpired operator’s license on April 30, 2014.

¶4 After Bremer Bank filed its financing statement, Ossmann’s operator’s license expired. On May 2, 2016, Ossmann was issued a new operator’s license under the name “Jeffrey Alan Ossmann.”

¶5 Northside sold Ossmann seed and fertilizer on credit. Ossmann was unable to pay the balance owed and, on December 21, 2016, Ossmann executed a note in favor of Northside, and Ossmann granted Northside a security interest in, among other things, future farm products, including crops. On January 9, 2017, Northside filed a financing statement with the DFI describing the collateral. The name of the debtor specified on Northside’s financing statement is “Jeffrey Alan Ossmann,” which was the name on Ossmann’s unexpired operator’s license on January 9, 2017.

¶6 In March 2018, Northside sued Bremer Bank.² Northside alleged that Bremer Bank’s April 2014 financing statement did not specify, as the

² Northside also sued Ossmann, alleging that Ossmann defaulted on the December 2016 note and that, pursuant to the terms of the security agreement, Northside is entitled to possession of the pledged collateral, subject to any competing security agreements. Ossmann failed to file an
(continued)

individual debtor, the name on Ossmann’s most recently issued operator’s license and that the name specified on Bremer Bank’s April 2014 financing statement made the statement “seriously misleading.” Northside further alleged that because Bremer Bank’s April 2014 financing statement was “seriously misleading,” it became ineffective four months after May 2, 2016, when Ossmann’s most recently issued operator’s license was issued. Northside alleged that as a result, Northside’s January 2017 security interest has priority over Bremer Bank’s security interest as to any collateral acquired by Ossmann after January 9, 2017, including any proceeds from crops harvested after January 9, 2017.

¶7 Northside moved the circuit court for summary judgment against Bremer Bank. The court denied Northside’s motion and, thereafter, entered a final order dismissing the priority of security interest claims of Northside against Bremer Bank. Northside appeals.

DISCUSSION

¶8 Northside contends that the circuit court erred in denying its motion for summary judgment on its claim that its security interest in collateral obtained by Ossmann after January 9, 2017, including the proceeds from any crops harvested by Ossmann in 2017 and 2018, has priority over Bremer Bank’s April 2014 security interest in the same collateral.

¶9 We review the grant or denial of summary judgment de novo. *Hardy v. Hoefflerle*, 2007 WI App 264, ¶6, 306 Wis. 2d 513, 743 N.W.2d 843. A

answer or any responsive pleadings and default judgment was entered against him. Northside’s claims against Ossmann are not at issue in this appeal.

party is entitled to summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no material fact in dispute and the movant is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (2017-18).³

¶10 To determine whether Northside’s security interest has priority over Bremer Bank’s security interest, we look to WIS. STAT. ch. 409, which is Wisconsin’s adoption of Article 9 of the U.C.C. and which governs the creation and perfection of security interests in personal property. Chapter 409 “establishes a priority system for determining the rights of parties who claim competing interests in secured property.” *Daniel v. Bank of Hayward*, 144 Wis. 2d 931, 936, 425 N.W.2d 416 (1988). Generally, the holder of a perfected security interest has an interest in the secured property superior to non-perfected security interests and, where there is a conflict between perfected security interests, priority is based on who filed and perfected their interest first. *See id.*; WIS. STAT. § 409.322.

¶11 To perfect a security interest, a creditor must file a financing statement with the DFI. Among the items that must be set forth in the financing statement is the name of the debtor. *See* WIS. STAT. § 409.502(1)(a). WISCONSIN STAT. § 409.503(1) explains what is sufficient to constitute the debtor’s name. As to individual debtors, it provides: “A financing statement sufficiently provides the name of the debtor ... (dm) ... if the debtor is an individual to whom this state has issued an operator’s license ... that has not expired, only if the financing statement provides the name of the individual which is indicated on the operator’s license.”

³ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

¶12 There is no dispute on summary judgment that, at the time Bremer Bank filed its April 2014 financing statement, the statement specified the name on Ossmann’s then unexpired operator’s license, “Jeffrey A. Ossmann.” However, after Bremer Bank filed its financing statement, but before Northside filed its financing statement, Ossmann’s previously issued operator’s license expired and Ossmann was issued a new operator’s license, under the name “Jeffrey Alan Ossmann.”

¶13 Where there has been a change in the debtor’s name after a financing statement is filed, WIS. STAT. § 409.507(3) provides that, “[i]f the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under [WIS. STAT. §] 409.503(1) so that the financing statement becomes seriously misleading,” the creditor has a four month grace period in which to refile its financing statement after the name change. *Id.* If the financing statement is not refiled, the creditor’s financing statement “is not effective to perfect a security interest in collateral acquired ... more than 4 months after the filed financing statement becomes seriously misleading.” Sec. 409.507(3)(b); *see First Agri Servs., Inc. v. Kahl*, 129 Wis. 2d 464, 470, 385 N.W.2d 191 (1986). Here, Bremer Bank did not refile its financing statement. Thus, if the name specified on its April 2014 financing statement was insufficient such that “the statement became seriously misleading,” that statement was not effective to perfect Bremer Bank’s security interest four months after Ossmann was issued his new operator’s license.

¶14 WISCONSIN STAT. § 409.506, which addresses the “[e]ffect of errors or omissions,” provides guidance on when a financing statement is seriously misleading, and includes a “safe harbor” provision. That section provides in relevant part:

(1) MINOR ERRORS AND OMISSIONS. A financing statement substantially satisfying the requirements of this subchapter is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement *seriously misleading*.

(2) FINANCING STATEMENT SERIOUSLY MISLEADING. Except as otherwise provided in sub. (3), a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 409.503(1) is seriously misleading.

(3) FINANCING STATEMENT NOT SERIOUSLY MISLEADING. *If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 409.503(1), the name provided does not make the financing statement seriously misleading.*

(Emphasis added). As summarized in *In re Voboril*, 568 B.R. 797, 801 (Bankr. E.D. Wis. 2017), “[§] 409.506(3) creates a ‘safe harbor’ that will save a financing statement containing an incorrect name if a searcher can nonetheless find it in the ordinary course of a search.”

¶15 Northside asserts that the name “Jeffrey A. Ossmann” on Bremer Bank’s financing statement renders the statement seriously misleading, under WIS. STAT. § 409.506(3), because a search of DFI records using the name “Jeffrey Alan Ossmann” did not reveal Bremer Bank’s financing statement. Northside points to a printout of the results of a search, on DFI’s U.C.C. filing search database, of the individual name “Jeffrey Alan Ossmann.” That search did not show Bremer Bank’s security interest.

¶16 The application of the statutory standard of “seriously misleading” to a set of facts presents a question of law, which we review de novo. *See First Agri Servs., Inc.*, 129 Wis. 2d, at 471-72.

¶17 The search logic used by DFI is referenced in WIS. STAT. § 409.506(3) and explained in WIS. ADMIN. CODE § DFI-CCS 5.01–5.05. Section DFI-CCS 5.02 provides:

Search requests shall contain the following information:

(1) NAME SEARCHED. A search request shall set forth the full correct name of a debtor or the name variant desired to be searched and specify whether the debtor is an individual or an organization. The full name of an individual shall consist of a first name, a middle name or initial, and a last name, although a search request may be submitted with no middle name or initial and, if only a single name is presented, it shall be treated as a last name ... A search request shall be processed using the name in the exact form it is submitted.

Section DFI-CCS 5.04(1)(e) provides: “For first and middle names of individuals, initials shall be treated as the logical equivalent of all names that begin with the initials, and no middle name or initial shall be equated with all middle names and initials.” The note accompanying that paragraph provides:

Example: A search request for a “Dolly R. Parton” would cause the search to retrieve all filings against all individual debtors with “Dolly” as the first name, “Parton” as the last name, and with the initial “R” or any name beginning with “R” in the middle name field. If the search request were for “Dolly Parton”, (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with “Dolly” as the first name, “Parton” as the last name and with any name or initial or no name or initial in the middle name field.

¶18 There is no dispute that using the DFI’s search logic, a search of the name “Jeffrey Alan Ossmann” would not disclose Bremer Bank’s financing statement. However, as pointed out by Bremer Bank, under the DFI’s search logic, a search utilizing “the logical equivalent” of the middle name Alan, the initial “A,” or a search using no middle name, *would* disclose Bremer Bank’s

security interest. *See* WIS. ADMIN. CODE § DFI-CCS 5.04(1)(e). Northside has not filed a reply brief, and thus we take Bremer Bank’s assertion as true. *See Fischer v. Wisconsin Patients Comp. Fund*, 2002 WI App 192, ¶1 n.1, 256 Wis. 2d 848, 650 N.W.2d 75 (argument asserted by the appellant and not disputed by the respondent may be taken as admitted).

¶19 Further, our own review of the pertinent statutory and administrative code language supports Northside’s implied concession. Northside does not identify any reason why the name “Jeffrey A. Ossmann” makes Bremer Bank’s financing statement “seriously misleading” when the variations permitted by the DFI’s search logic of the name “Jeffrey Alan Ossmann” would disclose that name and Bremer Bank’s security interest. And, we can perceive no logical reason why it should. A searcher who fails to take advantage of the DFI’s search logic cannot later complain that a financing statement is seriously misleading if that statement would have been disclosed if the searcher had availed himself or herself of the search logic.

¶20 We conclude that, because a search of the name “Jeffrey Alan Ossmann,” using the DFI’s search logic, and any permissible name variations permitted by that logic, would have disclosed Bremer Bank’s financing statement, that statement is not seriously misleading. Accordingly, we conclude that the circuit court did not err in denying Northside’s motion for summary judgment, and affirm the court’s order dismissing Northside’s claims against Bremer Bank.

CONCLUSION

¶21 For the reasons discussed above, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5.

