

Navigating Jurisdictional Pitfalls: Lessons From *Global One Media, Inc. v. Newtek Small Business Finance, LLC* on Lien Filing Errors

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The Ninth Circuit Bankruptcy Appellate panel recently reaffirmed the longstanding principle that a UCC-1 financing statement securing personal property must be filed at the debtor's location. In a recent case^[1], the lender did not file the UCC-1 statement in the correct location, leading the court to rule that the lender's security interest was not properly perfected. Consequently, the lender's claim was considered unsecured.

Background

In 2022, Newtek Small Business Finance, LLC loaned \$2.7 million to Global One Media, Inc., a Delaware corporation, to help purchase and operate radio broadcast companies. These loans were secured by Global One's personal property. Newtek tried to perfect its security interest in the collateral by filing UCC-1 financing statements with the Secretary of States of New Mexico and Nevada, where the collateral was located.

Two years later, Global One filed for Chapter 11 bankruptcy in Nevada. Newtek claimed \$2.8 million, partially secured by Global One's personal property, but the trustee for Global One objected. The trustee argued that Newtek should have filed the financing statements in Delaware, Global One's state of incorporation, not Mexico and Nevada. Although the bankruptcy court initially sided with Newtek, the trustee appealed.

On appeal, the Appellate Panel reversed the decision. They emphasized that since 2001, Revised Article 9 of the Uniform Commercial Code (UCC) requires filing financing statements at the debtor's location, not where the collateral is located.

Analysis

In 2001, all states adopted revisions to Article 9 of the UCC, to make the process of perfecting security interests easier. According to UCC § 9-301(1), the location of the debtor determines where a UCC-1 financing statement should be filed for non-possessory security interests. Accordingly, financing statements are typically filed in the debtor's state of organization, which simplifies the process and reduces the risk of losing perfection if the collateral moves between jurisdictions.

UCC § 9-301(3)(C) specifies that the legal effects of whether a security interest is perfected are governed by the jurisdiction where the collateral is located. This determines the priority of the secured party's interest compared to

other creditors or the debtor.

Newtek made a mistake by filing UCC-1 forms in Nevada and New Mexico, where Global One's personal property was located, instead of Delaware, where Global One is incorporated. This mistake was due to Newtek's misunderstanding of UCC § 9-301(3)(C). As a result, Newtek's security interest was not perfected, leaving them with only an unsecured claim on Global One's personal property, except possibly for bank accounts. This situation underscores the importance of filing based on the debtor's location.

Takeaways – Where to File

Determining the correct location to file a UCC-1 is governed by UCC § 9-301(1), which specifies that the debtor's location dictates the jurisdiction for filing.

- **Individual Debtor:** For individuals, the debtor's location is their principal residence (UCC § 9-307(b)(1)).
- **Registered Organization:** For U.S.-based registered organizations, the state of organization is the debtor's location (UCC § 9-307(e)).
- **Unregistered Organization With One Place of Business:** For unregistered organizations (*e.g.*, trusts or general partnerships) with a single place of business, it is that place of business (UCC § 9-307(b)(2)).
- **Unregistered Organization With Multiple Places of Business:** For unregistered organizations with multiple places of business, it is the chief executive office (UCC § 9-307(b)(3)).

For foreign debtors, filing rules depend on the organization's structure and location (UCC § 9-307(b)).

- **Individual Foreign Debtor:** If the foreign debtor is an individual, they are located at their principal residence.
- **Organizational Foreign Debtor With One Place of Business:** If the foreign debtor is an organization with only one place of business, it is located at that place of business.
- **Organizational Foreign Debtor With Multiple Places of Business:** If the foreign debtor is an organization with more than one place of business, it is located at its chief executive office.
- **Jurisdictional Considerations:** If the debtor's residence, place of business, or chief executive office is in a foreign jurisdiction that requires public filing or registration of nonpossessory security interests in the foreign jurisdiction's security interest filing system, such as Canada's Personal Property Security Act (PPSA) for priority over lien creditors, filing is in such system.
- **Other Jurisdictional Considerations:** If no such system exists, the foreign debtor is located in the District of Columbia and District of Columbia serves as the default filing location. Creditors may also file in District of Columbia as a precautionary measure.

UCC § 9-301(3)(C) specifies that the law of the jurisdiction where collateral is located determines the legal effects of whether a security interest is perfected, as well as the priority of the secured party's interest compared to other creditors or the debtor.

Creditors should carefully distinguish between these legal concepts to avoid costly errors.

[1] In re Global One Media Inc., BAP No. 24-1130, 2025 WL 1009412 (B.A.P. 9th Cir. Apr. 2, 2025)).

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