The Scope of § 9-506(a)

During the last class (held on Friday, Jan. 27), we considered – not once, but twice (I brought it up first; then Mr. MacArthur brought it up again) – the question of the “scope” of § 9-506(a). We noted three possibilities: that the “requirements of this part” referred to therein (1) might be limited to the requirements to which the rest of § 9-506 (i.e., ¶¶ (b), (c), and (d)) is directed, i.e., those that pertain solely to the naming of the debtor; (2) might be limited to the requirements for perfection that are set out in § 9-502(a), i.e., not only those that pertain to the naming of the debtor, but also to those that pertain to the naming of the secured party and to the indication of the collateral; (3) might extend even beyond the requirements for perfection to include the additional requirements for filing that are set out in § 516(b)(4) & (5). In our discussion, I noted that, though there’s no authority for possibility #1, there is some authority for the other two possibilities, and further, that as between these other two possibilities, I found it hard to choose.

I write to you now to inform you that I’ve changed my mind in part. I’ve not changed my opinion that possibility #1 should be rejected; no, I stand by that opinion. But I have changed my opinion that one “can’t say”, as between the other two possibilities, whether one is better than the other. Having looked at §506(a) and the Comments to §506 once again and having thought about the question some more, I’m now comfortable saying that, of these two possibilities, #2 is the better choice.

What are the implications of this choice? I’d state them this way. First, if the only “error or omission” on the FS concerns the secured party’s address (e.g., the address is wrong or is not given at all)\(^1\), then, as a matter of law, the security interest is perfected and enjoys its proper priority. This would be true in all cases and as to all creditors, no matter how “seriously misleading” the error or omission might be and no matter whether (if this is even possible in the real world) some future prospective creditor might have given value in reasonable reliance on the wrong information. Second, if the only “error or omission” on the FS concerns the debtor’s address (the address is wrong or is not given at all), his juridical personality (whether the debtor is a natural or a juridical person), etc.\(^2\), then, as a matter of law, the security interest is perfected and enjoys its proper priority, at least generally speaking. To this generalization, there are two and only two exceptions, both of which are

\(^1\) The only “additional” information regarding the secured party that’s required by §516(b) (required only for filing, not for perfection) is limited to the secured party’s address. It is not necessary to indicate the secured party’s juridical personality (natural person v. juridical person) or, if it’s a juridical person, the type of organization, its jurisdiction, etc. See §516(b)(4).

\(^2\) The “additional” information regarding the debtor that’s required by §516(b) (required only for filing, not for perfection) is not limited to the debtor’s address. In addition, one must indicate the secured party’s juridical personality (natural person v. juridical person) and, if it’s a juridical person, the type of organization, its jurisdiction, etc. See §516(b)(5)(B) & (C).
set out in §338, but only one of which we are responsible for – that delineated in ¶ 1: the security interest is not perfected as to (to speak more precisely, “is subordinated to”, i.e, does not have priority over) any perfected security interest taken by a creditor who has given value in reasonable reliance on the wrong information.3

Having now arrived at these conclusions, I’d approach Problem 18.2(a) and (b) a bit differently than I did in class.4 As to part (a), I’d now say that the trustee doesn’t have a prayer of avoiding the security interest. Recall the defect in the FS that’s in question here in part (a) – the complete absence of the secured party’s address. This kind of error, as I just noted in the previous paragraph of this memorandum, has no effect on the perfection / priority of the security interest, not even vis-à-vis other secured parties who’ve given value in reasonable reliance on the absence of the address (if such reliance is even conceivable). As to part (b), I’d now say that the trustee doesn’t have a prayer of avoiding the security interest. Recall the defect in the FS that’s in question here in part (b) – an erroneous address for the debtor. This kind of error, as I’ve just noted in the previous paragraph of this memorandum, has no effect on the perfection / priority of the security interest, save in one case: where some other creditor with a perfected security interest in the collateral has given value in reliance on the erroneous address. Is it possible that one or more of the debtor’s other creditors might fit this description? Sure. But that won’t help the trustee. Why not? Because, as I explained class, this exception is not available to the trustee.5

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3 I find it interesting that §9-338 speaks only of “incorrect” information, saying nothing, at least not expressly, about “missing” information. And so, I’m led to wonder whether the exception applies to cases in which the defect is of the latter kind. But perhaps one can say that “no” information is a form of “incorrect” information. Even if that’s so, I wonder whether it makes any sense, at least in this context, to speak of someone “relying” on an “absence” of information?

4 My approach to the other parts of Problem 18.2, i.e., (c)-(f), is unchanged.

5 See Lopucki & Warren, p. 310, 1st paragraph (5th ed.).