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International Harvester Credit Corp. v. American National Bank, 296 So. 2d 32 (Fla. 1974)

Joseph E. Issac, III

might reasonably be assumed that the Municipal Home Rule Powers Act gives municipal ordinances a strong presumption of validity, the battery of tests applied by the court suggest otherwise. If the court chooses, it may limit the Act by attacking its flanks, using the methods outlined above on a case-by-case basis. In the course of defining the Act's outer boundaries, *Forte Towers* will be cited and analyzed again and again by courts and litigants. The initiative now clearly lies with the cities. They may take heart in the fact that a previously unsympathetic court at least did not expressly discourage municipalities from flexing their new muscles.

DAVID K. MILLER

Uniform Commercial Code—SECURED TRANSACTIONS—PRIORITY OF PERFECTED SECURITY INTEREST IN AFTER-ACQUIRED PROPERTY OVER CONFLICTING PURCHASE MONEY SECURITY INTEREST NOT TIMELY FILED IS LIMITED TO DEBTOR'S EQUITY IN COLLATERAL.—*International Harvester Credit Corp. v. American National Bank,* 296 So. 2d 32 (Fla. 1974).

On April 8, 1969, Machek Farms, Inc. executed an installment note and security agreement with the American National Bank. The agreement encumbered all property thereafter acquired by Machek. Two days later the bank filed a financing statement concerning the agreement. Under a retail installment contract dated April 25, 1969, Machek purchased and received from the Florida Truck and Tractor Company (FTT) two items of farm equipment, each having a purchase price of slightly less than $2,000. FTT filed no financing statement concerning this transaction. On August 8, 1969, under a similar contract with the same company, Machek purchased and received seven more items of farm equipment. Four of those items had a purchase price below $2,500; three had a price in excess of that figure. FTT assigned the August 8 contract to the International Harvester Credit Corporation (IHCC), which filed a financing statement on September 3, 1969. Machek subsequently defaulted on payment of the installment note and on both contracts made with FTT. After Machek voluntarily returned the equipment purchased under both

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reversing them; if future cases follow the pattern of *Forte Towers,* municipalities will have less difficulty establishing new powers under the Act than defending the means chosen to exercise those powers.

contracts to FTT, the bank brought a replevin suit against FTT and IHCC in the Circuit Court of Putnam County seeking possession of all the equipment.[1]

For guidance as to the relative priority of the litigants' interest in the equipment, two questions were certified to the First District Court of Appeal,[2] and ultimately to the Florida Supreme Court.[3] Both questions involved construction of the Uniform Commercial Code (UCC) as adopted in chapter 679, Florida Statutes.

The first question concerned section 679.302(1)(c), Florida Statutes, which provides that a purchase money financier is not required to file a financing statement to perfect his interest "in farm equipment having a purchase price" under $2,500.[4] The courts were asked to determine whether "purchase price" referred to the total purchase price of several items sold under a single contract, or the purchase price of each individual item of equipment included in that contract.

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1. American Nat'l Bank v. International Harvester Credit Corp., 269 So. 2d 726, 727 (Fla. 1st Dist. Ct. App. 1972).

2. *Id.* The certified questions were:

> [I.] Under Florida Statute 679.302(1)(c), must a seller of farm equipment file a financing statement to perfect his security interest in farm equipment sold under one contract when the purchase price of each item is less than $2,500.00, but the total amount of the contract for all items exceeds $2,500.00?
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> . . . .
>
> [II.] Under Florida Statute 679.312(4) and (5), does a party with a security interest in after acquired property take priority over a party with a purchase money security interest which was not perfected within ten days after the debtor took possession of the collateral?

Id. at 727, 729. UNIFORM COMMERCIAL CODE § 9-302 (1962 version) (codified at FLA. STAT. § 679.302 (1973)) and UNIFORM COMMERCIAL CODE §§ 9-312(4), (5) (1962 version) (codified at FLA. STAT. §§ 679.312(4), (5) (1973)) were before the court as matters of first impression. FLA. STAT. § 679.302 provides in pertinent part:

> (1) A financing statement must be filed to perfect all security interests except the following:
>
> . . . .
>
> (c) A purchase money security interest in farm equipment having a purchase price not in excess of $2,500; but filing is required for a fixture under § 679.313.

FLA. STAT. §§ 679.312(4), (5) provide in pertinent part:

> (4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.
>
> (5) In all cases not governed by the rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section) priority between conflicting security interests in the same collateral shall be determined as follows:
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> (a) In the order of filing if both are perfected by filing . . . .

3. International Harvester Credit Corp. v. American Nat'l Bank, 296 So. 2d 32, 33 (Fla. 1974).

4. *See* note 2 *supra.*

The second question involved the system, set out in sections 679.312(4) and (5), Florida Statutes, for determining priorities among conflicting security interests. The general rule of section 679.312(5) is that where there are two or more conflicting security interests in the same collateral, priority goes to the financier who first files or perfects his security interest. Section 679.312(4), an exception to this rule, enables a purchase money financier to obtain priority over a previously perfected security interest in the debtor's after-acquired property by filing his financing statement within 10 days after the debtor receives possession of the collateral.[5] The courts were asked to determine the relative priority of an interest held by a purchase money financier who had failed to file within the 10-day grace period of section 679.312(4), and a previously perfected security interest in after-acquired property.

The supreme court's answer to Question I broadened the scope of the farm equipment exception to the "file to perfect" rule, an exception that has been narrowed by many state legislatures and deleted by the framers of the UCC in the 1972 revision.[6] The supreme court's response to Question II seems to contradict the unambiguous wording of the UCC and stands alone against the unanimous construction of identical statutes in other jurisdictions.[7]

QUESTION I

Noting that a purchase money security interest can be taken in all the collateral described in a contract and need not be discharged as to any item of collateral until the entire debt is paid, the district court reasoned that the "purchase price" in section 679.302(1)(c) referred to the total contract price.[8] The district court held that if the total contract price exceeded $2,500, a financing statement had to be filed in order to perfect a security interest in farm equipment.[9] The supreme court, however, decided that the purchase price of each individual item controlled, and that as long as each item cost less than $2,500, recordation was not required for perfection regardless of the combined price of the items sold under a contract. The court based its holding on the "consistently . . . singular"[10] syntax of the section and

5. *Id.*

6. *See* notes 14-15 and accompanying text *infra.*

7. *See* note 26 *infra.*

8. 269 So. 2d at 728-29.

9. *Id.* at 729.

10. 296 So. 2d at 33. The court cited the phrases "a purchase price" and "a fixture" as examples of the singular context of § 679.302(1)(c).

on a presumption that the legislature intended to require filing only in the case of farm items "substantial enough to cost $2,500."[11]

Although "purchase price" in section 679.302(1)(c) can be reasonably interpreted to refer to the price of one item or to the total price of all items under a single contract, the supreme court's interpretation seems inconsistent with other sections of the UCC. Section 671.102(5)(a) states that for purposes of the Code, "words in the singular number include the plural . . . ." Definitional section 679.109 declares that "[g]oods are . . . equipment if *they* are used. . . ." (emphasis added). These sections suggest that the word "equipment" in section 679.302 (1)(c) refers to one item or many,[12] and therefore recordation is required for perfection of a purchase money security interest in several items of farm equipment sold for a collective purchase price in excess of $2,500. Unfortunately, nothing in the official or Florida comments to the UCC clarifies the meaning of the subsection or serves as a clue to the intentions of the framers of the Code or the Florida legislature, and the issue apparently has not been considered by courts in other jurisdictions.[13]

The supreme court disposed of Question I in a brief two paragraph discussion. This summary treatment may prove regrettable, since the court neither considered the effect of its negative answer upon Florida's farmers, nor took notice of the overall disrepute into which section 679.302(1)(c) has fallen. The 1972 version of the UCC, which Florida has not adopted, does not include the farm equipment exception because the drafters found that the exception had caused many lenders to refuse to accept farm equipment as collateral.[14] Many states, in

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11. 296 So. 2d at 34.

12. *See also* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 768 (1971), which defines the noun "equipment" as "physical resources . . . implements . . . assets . . . supplies" and as "a piece of such equipment."

13. *See* American Nat'l Bank v. International Harvester Credit Corp., 269 So. 2d 726, 728 (1st Dist. Ct. App. 1972).

14. AMERICAN LAW INSTITUTE, NAT'L CONF. OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM COMMERCIAL CODE: 1972 OFFICIAL TEXT WITH COMMENTS AND APPENDIX SHOWING 1972 CHANGES 727. Henson states that the exception has inhibited credit to farmers because

> a lender, such as a local bank, cannot be assured that an item of equipment proposed as collateral is free of liens or has not been put together by a number of components all of which are subject to automatically perfected purchase money security interests.

R. HENSON, SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE § 4-33, at 69 (1973).

Another commentator observes that the exemption

> stands in the books as a foolish monument of a foolish privilege and as a trap for the unwary. What is worse it has hurt the farmer by limiting his use of equip-

adopting the 1962 version of the UCC, narrowed the farm equipment exception by reducing the $2,500 figure to $1,000 or less.[15]

The supreme court's answer to Question I defeats uniformity of the Code in that it broadens the scope of section 697.302(1)(c) in the face of widespread elimination and restriction of that clause in other states. In addition, the court's action may result in decreased availability of credit for farmers in this state. A possible remedy for this situation would be the adoption of the 1972 version of section 9-302. Such legislative action would eliminate altogether the farm equipment exception to the filing requirement. Deleting the exception would require sellers of farm equipment to file in order to perfect, thus providing notice to lenders and making farm equipment more acceptable as collateral for loans.

QUESTION II

The August 8, 1969 contract between FTT and Machek, which was subsequently assigned to IHCC, included three items of farm equipment individually priced in excess of $2,500. IHCC's interest in this equipment was a purchase money security interest. Under section 679.312(4) that interest was entitled to priority over conflicting security interests in the same collateral if perfected within 10 days after the debtor received possession of the collateral. Since IHCC did not perfect its security interest until 26 days after Machek received possession of the collateral, the district court concluded that section 679.312(4) was not applicable and therefore the relative priority of the litigants' interests was to be decided according to the instructions in section 679.312(5).[16] That section provides that, with the exception of subsection (4) and other special rules not applicable here, priority between conflicting security interests perfected by filing is determined by the order of filing.[17] Since the bank perfected its security interest in all Machek's after-acquired property by filing its financing statement five months before IHCC filed, the district court held that the bank had priority over IHCC's interest.[18]

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ment as collateral for a farm loan, because potential secured lenders are alert to the possibility of the existence of an unfiled purchase money security interest in the same piece of equipment which would have priority over them.

Hawkland, *The Proposed Amendment to Article 9 of the U.C.C.—Part 1: Financing the Farmer,* 76 COM. L.J. 416, 417 (1971).

15. Twelve states reduced the $2,500 figure to $500, one state to $1,000 and one to $250. Two states omitted the exemption altogether. *See* UNIFORM LAWS ANNOTATED, 3 UNIFORM COMMERCIAL CODE at 139-49 (1968).

16. 269 So. 2d at 730.

17. *See* note 2 *supra.*

18. 269 So. 2d at 731.

Acting Chief Judge Rawls, dissenting in part, objected to the result the majority had reached as "legal larceny"[19] of property rightfully belonging to FTT and IHCC. Judge Rawls viewed the bank's priority interest in Machek's after-acquired property as limited to the property which Machek owned free and clear of "vendor's liens"; in other words, to the debtor's equity in the property.[20]

By adopting Judge Rawls' view, the Florida Supreme Court severely qualified, if it did not totally reject, the district court's affirmative answer to Question II. The supreme court did not question section 679.312(5)'s unequivocal grant of priority to the earlier creditor's perfected security interest in after-acquired property where the subsequent creditor fails to meet section 679.312(4)'s filing requirements. Instead, the court chose to limit that priority to the debtor's equity in the collateral. The court reasoned that only the debtor's equity in the property is "after-acquired" and subject to the earlier security interest. In the court's view, the subsequent seller retains his interest in the property conditionally conveyed by him to the debtor, and the prior creditor can claim priority only as to that portion of the property already paid for by the debtor at time of default. The court concluded that no conflicting security interests exist as to portions of the property for which payment has not been made.[21]

The court supported its limitation by finding it "consistent with contractual constitutional requirements and equitable principles."[22] Basic to the majority opinion was a belief that it would be unjust and illogical to grant a "windfall" to the holder of a perfected security interest in after-acquired property by giving him priority over property subsequently sold to the debtor by a purchase money financier merely because the financier had failed to file within the 10-day grace period.[23]

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19. *Id.* at 732.

20. *Id.*

21. 296 So. 2d at 34. The majority stated:

> The debtor, while acquiring the physical property, only acquires an interest therein under a credit sales contract; it is this interest only then which is "after acquired" and thereby subject to the earlier security right. The remainder is upon credit from the new creditor who often also retains title thereto.

Id. Such terminology, and the entire majority opinion, has a pre-UCC flavor. FLA. STAT. § 672.401 (1973) provides that any retention or reservation of title by a seller of property is limited to a reservation of a security interest. The section caption to § 679.202 states, "Title to collateral immaterial." Section 679.202 itself states that each provision applies "whether title to collateral is in the secured party or in the debtor." It is the creditor, not the debtor, who acquires only an interest in the collateral.

For further discussion of the immateriality of title under the UCC, see Evans Products Co. v. Jorgensen, 421 P.2d 978 (Ore. 1966).

22. 296 So. 2d at 34.

23. *Id.* at 35.

The court, however, did not specify what constitutional and equitable principles would be violated by such a result—beyond a general mention of "invidious preference," "arbitrary requirement" and "unjust enrichment."[24] Nor did the court offer any statutory or case law support for its conclusion.[25]

The court's failure to cite specific authority for its holding is hardly surprising. Cases in other jurisdictions have presented factual situations and issues similar to those raised in Question II. In each one the court held that under section 9-312(5) of the UCC a prior perfected security interest in after-acquired property has an absolute priority over a purchase money security interest which was not filed within the 10-day grace period of section 9-312(4).[26] No other court has limited this priority to the debtor's equity in the collateral.

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24. *Id.* at 34.

25. The court did cite statutory and case law in support of the windfall argument:

> To give the prior creditor the seller's retained interest in such property simply because of such seller's failure to record and to permit the original creditor to replevin the sold equipment would be to give to such earlier creditor a windfall not favored by the code (see § 679.108 and U.C.C. comment 19C F.S.A. 198) contrary to established principles. Compare County of Pinellas v. Clearwater Federal Savings & Loan Ass'n, 214 So. 2d 525 (Fla. App.2d 1968).

296 So. 2d at 35. Comment 1 to FLA. STAT. ANN. § 679.9-108 (1966) points out that the rule of that section "is of importance principally in insolvency proceedings under the Federal Bankruptcy Act or state statutes which make certain transfers for antecedent debt voidable as preferences." No voidable preferences were involved in *International Harvester*. The cited case states that "[p]urchase money mortgages generally take priority over any other prior or subsequent claims or liens attaching to the property through the mortgagor." 214 So. 2d at 526. The court, however, was referring to real property, which is specifically excluded from the UCC, *see* FLA. STAT. § 679.102(1) (1973), and was not involved in *International Harvester*. Furthermore, FLA. STAT. § 695.01(1) (1973) requires all mortgages of real property to be recorded to be valid, whereas *International Harvester* indicates that no filing is required to ensure priority for purchase money security interests (i.e. purchase money mortgages in personal property).

26. *See* United States v. Baptist Golden Age Home, 226 F. Supp. 892 (W.D. Ark. 1964); Galleon Indus., Inc. v. Lewyn Mach. Co., 279 So. 2d 137 (Ala. Civ. App. 1973); Cain v. Country Club Delicatessen, Inc., 203 A.2d 441 (Conn. Super. Ct. 1964); Bank of Madison v. Tri-County Livestock Auction Co., 182 S.E.2d 687 (Ga. Ct. App. 1971); Hillman's Equip., Inc. v. Central Realty, Inc., 242 N.E.2d 522 (Ind. App. Ct. 1968); National Cash Register Co. v. Firestone Co., 191 N.E.2d 471 (Mass. 1963); James Talcott, Inc. v. Franklin Nat'l Bank, 194 N.W.2d 775 (Minn. 1972); North Platte State Bank v. Production Credit Ass'n, 200 N.W.2d 1 (Neb. 1972); General Motors Acceptance Corp. v. Lumbercraft East, Inc., 1973 N.Y.L.J. July 12, 1973, p. 9 (N.Y. Civ. Ct. 1973); National Cash Register Co. v. Miskin's 125th St., Inc., 317 N.Y.S.2d 436 (Sup. Ct. 1970); Sunshine v. Sanray Floor Covering Corp., 315 N.Y.S.2d 937 (Sup. Ct. 1970); American Nat'l Bank & Trust Co. v. National Cash Register Co., 473 P.2d 234 (Okla. 1970); Wilson v. Burrows, 497 P.2d 240 (Utah 1972); Burlington Nat'l Bank v. Strauss, 184 N.W.2d 122 (Wis. 1971).

Appellate courts in two other jurisdictions have indicated agreement with these holdings in dicta. Mammoth Cave Prod. Credit Ass'n v. York, 429 S.W.2d 26 (Ky. 1968);

The Supreme Court of Nebraska, for instance, stressed the importance of upholding the system of priorities created by the UCC in *North Platte State Bank v. Production Credit Association*.[27] In that case, Production Credit Association (PCA) had advanced funds to the debtor on an operating loan which could be renewed annually. PCA filed a financing statement concerning the contemporaneously executed security agreement, which contained an after-acquired property clause applicable to livestock. Subsequently, the debtor contracted with a seller of livestock to take possession and title of Angus cattle on credit. After the debtor had been in possession of the cattle for over a month, he obtained the funds to pay for them by negotiating a loan from the bank. Six days later, the bank filed a financing statement concerning the security interest it had reserved in the cattle. When the debtor defaulted on the PCA note, PCA took possession of all cattle on the debtor's ranch, including the Angus. An action was brought to determine the priority of the conflicting security interests in the Angus cattle. The bank contended it had a purchase money security interest entitled to priority under section 9-312(4). The Nebraska court was of the opinion that the bank's interest was not a purchase money security interest as defined by section 9-107 of the UCC[28] because at the time it made the loan to the debtor he already had title, possession, and all possible rights to the cattle and therefore the loan was not used to "acquire rights in or the use of collateral." But the court based its holding in favor of PCA on what it considered to be a more "fundamental" reason:[29] even if the bank had a purchase money security interest, it had not perfected the interest within 10 days after the debtor had received possession of the collateral as required by section 9-312(4). The bank had filed six days after loaning the money, but more than a month after the debtor had received possession of the cattle. Therefore, the court applied the first-to-file rule of section 9-312(5)(a) and held that PCA was entitled to the proceeds generated

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Fan-Gil Corp. v. American Hosp. Supply Corp., 211 N.W.2d 561 (Mich. Ct. App. 1973). The Florida Supreme Court "acknowledged" this case law, 296 So. 2d at 35, but did not discuss it.

27. 200 N.W.2d 1 (Neb. 1972).

28. That section provides:

A security interest is a "purchase money security interest" to the extent that it is

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

UNIFORM COMMERCIAL CODE § 9-107 (1962 version).

29. 200 N.W.2d at 6.

from the sale of the cattle. The court noted two reasons for denying priority to a purchase money security interest which was not filed within the 10-day grace period:

> The purchase money priority is an exception to the first to file rule, and it should be applied only in accordance with the limitations established by the Code. . . . We point out further that the grace period, although adequate to encompass the practicalities of the ordinary financing transaction, must necessarily be brief because of the possibility the original first to file lender may make additional advances relying upon the existence and the possession of after-acquired property by the borrower.[30]

Commentators on the UCC have agreed with such a result. For example, Professor Henson states:

> If a seller or a third party advancing the funds for the purchase of goods fails to file within ten days after the debtor receives the goods, the purchase money priority is lost and priority will be determined according to the rules of Section 9-312(5). This will usually mean that priority is determined in the order of filing, so that an earlier filed financier of equipment claiming after-acquired goods would have priority over a later purchase money financier who did not file within ten days.[31]

No commentator has argued that the priority of the earlier financier should be limited to the debtor's equity in the collateral.

The Florida court's holding thus stands alone against the unanimous opinion of courts and commentators that a purchase money financier's failure to file within 10 days results in absolute priority for a previously perfected interest in after-acquired property. To completely understand the extent of the supreme court's deviation from the result normally reached under section 679.312(4) and (5), it is necessary to recognize that the court's holding did more than limit or modify the priority of the interest in after-acquired property. Chief

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30. *Id.* at 7.

31. R. HENSON, note 14 *supra*, § 5-4 at 78.

White and Summers ask, "[W]hat rule governs priority if the purchase money lender fails to comply with subsections (3) or (4) . . . ? [That case] is clearly governed by subsection (5) . . . ." J. WHITE AND R. SUMMERS, UNIFORM COMMERCIAL CODE § 25-5, at 920 (1972). Gilmore observes, "The one condition for priority under § 9-312(4) is that the purchase money interest be perfected 'at the time the debtor receives possession of the collateral or within ten days thereafter.'" G. GILMORE, 2 SECURITY INTERESTS IN PERSONAL PROPERTY § 29-5 at 799 (1965). *See also* Smith, *Article Nine: Secured Transactions—Perfection and Priorities*, 44 N.C.L. REV. 753, 803 (1966).

Justice Carlton, in a very thorough dissent, pointed out how the majority's decision completely reverses the priority of the creditors in a Question II situation:

> When the property is sold to satisfy the debts, the purchase money loan is paid off first; anything left over is the debtor's equity, and this goes to the owner of the security interest in after-acquired property. What would have happened if the owner of the purchase money security interest *had* filed it within ten days and received an *absolute* priority? *The result would be exactly the same!*[32]

The court has thus given purchase money interests absolute priority over interests in after-acquired property—whether or not the purchase money financier has complied with the 10-day filing requirement. The court's holding thereby detracts from the uniformity the UCC was designed to foster.[33]

In defense of the court's action, it could be said that a statute should not be construed to reach an inequitable result merely because other courts have so construed identical statutes.[34] Under the facts of *International Harvester,* it is arguable that to give the farm equipment to the bank, which had not changed its position in reliance on the debtor's apparently unencumbered ownership of the equipment, is to deal harshly with IHCC, whose only transgression was tardy filing. The court stressed this aspect of the case in its opinion,[35] yet failed to limit its holding to cases in which the prior creditor was not misled by the failure of the subsequent creditor to record. The holding therefore raises the possibility, in future cases, of inequitable treatment of creditors whose loans combine security interests in after-acquired property with provisions for future advances. If a debtor acquires new property on credit from a seller who fails to file a financing statement, and a prior creditor makes advances relying on

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32. 296 So. 2d at 44.

33. *See* FLA. STAT. § 671.102(2)(c) (1973).

34. However, IHCC, the assignee of the purchase money security interest, had at least constructive knowledge that it was buying a lawsuit, a junior interest, or both. As Chief Justice Carlton stated in dissent:

> Also bearing on the equitable considerations of this case is the fact that the petitioner who owns the purchase money security interest [IHCC] is not even the original seller. As previously noted, the installment contract and security agreement were commercially assigned to this creditor long after the ten day grace period for filing had passed. This creditor had constructive knowledge, from the public records of the debtor's county of residence, that there was a security interest which had priority to the one it was buying.

296 So. 2d at 43.

35. *Id.* at 34-35.

the apparent increase in unencumbered collateral, the prior creditor may suffer losses merely because the seller neglected to file.[36]

The court's decision gives the holder of a purchase money security interest less incentive to file a financing statement promptly, so that the facts necessary for intelligent credit decisions by the entire creditor community will be less likely to surface promptly, or at all. The most significant effect of the court's modification of the UCC is likely to be confusion and uncertainty among all creditors, especially those who regularly combine future advances provisions with after-acquired property clauses. A Florida creditor can no longer rely solely on the language[37] of the UCC in determining his position relative to other creditors, but must consider the equities of the situation and ponder the possibilities for judicial modification of the exact wording in the UCC. As Judge Osborne of the Kentucky Court of Appeals stated in answer to contentions that the system of priorities created by sections 9-312(4) and (5) is inequitable:

> It must be remembered that the purpose of the code is to set the rules of the road by which business decisions and practices are to be regulated. To go outside the overall scheme of the code in a situation where the code is unambiguous would lead to much confusion in the business world. Therefore, we must reject this plea. Once a vendor fails to take advantage of the special provisions set out in the code for his protection, he is placed on the same footing as any other secured party.[38]

The questions involved in *International Harvester* concern only two sections of the UCC. Although the answers supplied by the Supreme Court of Florida detract from the uniformity sought by the framers and adopting legislatures, the inconsistencies from state to state due to legislative modification and judicial construction are still minor. This situation could change, however, if other courts begin to display the willingness to alter the UCC exhibited by the Florida high court in *International Harvester.*

JOSEPH E. ISSAC, III

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36. *See* 296 So. 2d at 43 (Carlton, J., dissenting).

37. In fact, Judge Rawls felt the district court majority was "unduly emphasizing the formalistic language" of the UCC. 269 So. 2d at 731.

38. Mammoth Cave Prod. Credit Ass'n v. York, 429 S.W.2d 26, 28 (Ky. 1968).