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not be encouraged to join the corporation's counsel as a party defendant. Corporate counsel would not be forced to reveal confidential information. In fact, had the court of appeals affirmed the lower court's decision, attorneys in Goldberg's position would not be allowed to disclose these confidences and secrets. This reaffirmation of the confidentiality between attorney and client would allay any fear on the part of the corporate client that its counsel would be forced to reveal confidential information. This in turn would result in greater disclosure of information to the investing public since corporate counsel would have better access to and a greater knowledge of the facts relevant to the issuance of the corporation's securities.

Although, the actual effect of the *Meyerhofer* decision is not yet known, it has been shown that it is likely to be inconsistent with the policy that the court was attempting to promote. It is submitted that at the very least the court of appeals in its opinion should have addressed itself to these potential consequences of its holding.

HOWARD B. POSSICK

PURCHASE MONEY SECURITY INTEREST PRIORITY UNDER
§ 9-312(4) OF THE U.C.C.: FLORIDA SUPREME COURT
REWRITES THE CODE*

American National Bank of Jacksonville on April 8, 1969, executed a loan agreement with Machek Farms and took back a security interest which encumbered all equipment thereafter acquired by Machek Farms.¹ The bank filed a financing statement on April 10, 1969.² Subsequently, Machek Farms purchased farm equipment from Florida Truck on August 8, 1969, and executed a credit sales agreement to cover the entire purchase price of the equipment. Florida Truck assigned this credit sales contract to International Harvester Credit Corporation, which filed a financing statement on September 3, 1969.³ After Machek Farms defaulted in payments owed to both creditors, *i.e.*, American National Bank and International Harvester, Florida Truck repossessed the farm equipment. American National

* Florida adopted the Uniform Commercial Code (1962 version) effective Jan., 1, 1967. FLA. STAT. chs. 671-80 (1973). [The Uniform Commercial Code will hereinafter be cited as U.C.C. or the Code.]

1. U.C.C. section 9-204 validates after-acquired property as collateral for a loan. Section 9-204(3) states in pertinent part, "a security agreement may provide that collateral whenever acquired shall secure all obligations covered by the security agreement." Section 9-204(4) limits the application of an after-acquired clause.

2. U.C.C. section 9-302 requires a financing statement to be filed to perfect all security interests with some exceptions stated in subsection (1).

3. By not filing until September 3, 1969, International Harvester did not take advantage of a special exception to the "first to file, first in right" rule in U.C.C. section 9-312(4), regarding purchase money security interests in collateral other than inventory. U.C.C. § 9-312(4).

Bank filed an action in replevin against Florida Truck and International Harvester to recover the farm equipment. The trial court, seeking a construction of the applicable Code provisions, certified the question of priority between the conflicting perfected security interests to the District Court of Appeal, First District.⁴ The First District held that since the vendor, Florida Truck, and its assignee, International Harvester, failed to perfect the purchase money security interest within the ten-day grace period specified in U.C.C. section 9-312(4), the purchase money security interest should be treated as any other security interest, and therefore, under the "first to file" rule, American National Bank had priority rights to the farm equipment.⁵ The District Court of Appeal then certified the question of priority between the conflicting perfected security interests for review by the Supreme Court of Florida. The Supreme Court of Florida *held*, affirmed in part, reversed in part: The security interest in after-acquired property has priority over the delinquent-perfected purchase money security interest only to the extent of the debtor's equity in the after-acquired farm equipment. *International Harvester Credit Corp. v. American Nat'l Bank*, 296 So. 2d 32 (Fla. 1974).

The Florida Legislature, in adopting section 9-312 of the U.C.C., has set forth rules governing priority with regard to conflicting perfected security interests in the same collateral. Generally, the first secured party to perfect his interest by filing a financing statement gains priority.⁶ The U.C.C. makes a specific exception to this general rule of priority, however, by giving priority to a purchase money security interest over other security interests in the same collateral; yet, this priority exists only if this purchase money interest in collateral other than inventory is perfected by filing within 10 days after the debtor takes possession of the goods sold.⁷ Thus the priority of the

4. The circuit court, in addition, certified another question:

(1) 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?

The district court answered in the affirmative. *American Nat'l Bank v. International Harvester Credit Corp.*, 269 So.2d 726, 731 (Fla. 1st Dist. 1972). The court claimed that the Code provision, which provides that a financing statement need not be filed to perfect "a purchase money security interest in farm equipment having a purchase price not in excess of \$2500," required a filing when the total value of the transaction exceeds \$2500. On review, the Supreme Court of Florida reversed the district court as to this question and required filing only when the price of the specific item itself exceeded \$2500. *International Harvester Credit Corp. v. American Nat'l Bank*, 296 So. 2d 32 (Fla. 1974). The supreme court's holding is questionable, but since the question may become moot if Florida adopts the 1972 version of the U.C.C. section 9-302, which omits any value requirement, no further discussion will be made.

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

6. U.C.C. section 9-312(5) states in part, "priority between conflicting security interests in the same collateral shall be determined according to the following: (a) in the order of filing if both are perfected by filing"

7. U.C.C. section 9-312(4) states:

A purchase money security interest . . . has priority over a conflicting security interest

purchase money security interest is conditioned upon prompt and public notice of the existence of that interest by compliance with the ten-day filing requirement of section 9-312(4).⁸

The Supreme Court of Florida in *International Harvester* misconstrued section 9-312(4). Although the court properly held that American National Bank had priority since it was the first to file and the grace period to file the purchase money security interest had expired, the court limited the bank's priority to the extent of Machek Farm's equity in the farm equipment. To determine the debtor's equity, the court reasoned, the debt owed to International Harvester would have to be satisfied first through the proceeds from the foreclosure sale of the equipment. After International Harvester was paid, the remaining proceeds—the debtor's equity—would go to American National Bank. In essence, since International Harvester was paid first, it had priority even though it failed to perfect its purchase money interest within the time limits specified in the U.C.C. This holding, in effect, gives an absolute priority to all purchase money interests over conflicting perfected security interests regardless of the time of filing, since the determination of the debtor's equity depends on the purchase money interests' being paid first. The Supreme Court of Florida appeared to adhere to the U.C.C., but the use of the debtor's equity limitation enabled the court to avoid the Code's proper application.

The court reached its conclusion to limit the priority to the debtor's equity by incorrectly mixing title theory with the law of security interests under the U.C.C. The court reasoned that since International Harvester reserved the title to the farm equipment, the earlier security in after-acquired property could be attached only to the debtor's "interest" in the equipment under the credit sales contract. Therefore, the purchase money interest of International Harvester was entitled to priority and the earlier creditor was limited to any proceeds remaining after International Harvester was satisfied.⁹ The court's incorrect reliance on title theory for the development of the debtors equity limitation completely disregards other sections of the U.C.C.

Under the Code, contrary to the holding in *International Harvester*, the buyer of equipment under a credit sales contract does not obtain an equity interest—he acquires the property.¹⁰ The seller retains only a security interest.¹¹

. . . if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 10 days thereafter (emphasis added).

8. E.g., *Mammoth Cave Prod. Credit Ass'n v. York*, 429 S.W.2d 26 (Ky. App. 1968); Henson, *Priorities under the Uniform Commercial Code*, 41 N.D.L. REV. 425 (1966); Smith, *Article Nine: Secured Transaction—Perfection and Priorities*, 44 N.C.L. REV. 753 (1966).

9. 296 So. 2d at 34. The court held that "[t]here really are no conflicting security interests in this situation." The court found that the seller has retained an interest in the property and the earlier creditor has an interest in any equity that the debtor might have in the goods purchased.

10. U.C.C. section 2-401(1) states in part, "Any retention or reservation by the seller of the title . . . in the goods shipped or delivered to the buyer is *limited* in effect to a reservation of a security interest. . . ." (Emphasis added.)

11. *Cain v. Country Club Delicatessen, Inc.*, 25 Conn. Supp. 327, 203 A.2d 441 (Super. Ct. 1964).

The Code defines a security interest as an interest in personal property which secures payment. The Code further states that a reservation of title by the seller is limited to a security interest.¹² Therefore, International Harvester retained only a security interest in the farm equipment, notwithstanding its reservation of title. In allowing the seller a reservation of title greater than a security interest, the majority rejected the Code's explicit definition of security interest in addition to incorrectly applying the concept of title.

Further, the drafters of the Code intended that the concept of title be ignored in determining priority among conflicting security interests. The Code specifically states that the priority of security interests is in no way affected by which party holds title to the goods.¹³ The general intent of the Code, as expressed by the comments to section 9-312, clearly demands that the provisions regarding the priority between conflicting security interests should not be circumvented by manipulation of the locus of title.¹⁴ The court, by relying entirely on locus of title and thus contradicting this expressed intent of the Code, clearly misconstrued section 9-312(4).

One reason underlying the incorrect holding in *International Harvester* is a general aversion to security interests in after-acquired property.¹⁵ If this was the court's rationale, it was totally unjustified. The U.C.C. specifically recognizes the validity of security interests in after-acquired property,¹⁶ and does not limit those interests to the extent of the debtor's equity.

For a correct application of the Code, a determination of which party held the title to the farm equipment would be immaterial. American National Bank's security interest in after-acquired property should have attached as soon as the farm equipment was delivered to Machek Farms.¹⁷ American National Bank's perfected security interest would then have been superior to any later perfected interest except a purchase money security interest perfected within the ten-day grace period.¹⁸ Since International Harvester did not perfect its pur-

12. U.C.C. § 1-201(37). The added fact that the transaction was a conditional contract sale is irrelevant. The Code specifically applies if the parties intended to create a security interest, regardless of the manner used. U.C.C. § 9-102(1)(a).

13. U.C.C. § 9-202 states, "Each provision of this Article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor." See, e.g., *Talcott, Inc. v. Franklin Nat'l Bank*, 194 N.W.2d 775 (Minn. 1972).

14. U.C.C. § 9-312, Comment 3; See also Gilmore, *The Purchase Money Priority*, 76 HARV. L. REV. 1333 (1963).

15. 296 So. 2d at 40 (Carlton, C.J., dissenting).

16. U.C.C. Section 9-204(3) validates the use of a security interest in after-acquired property; Section 9-204(4) prohibits after-acquired interest in consumer goods and crops. For pre-Code recognition, see *Rose v. Lurton Co.*, 111 Fla. 424, 149 So. 557 (1933). The restriction on such security interest to the debtor's equity is a new concept which is inconsistent with Article 9 of the U.C.C. and pre-Code law.

17. E.g., *National Cash Register Co. v. Firestone & Co., Inc.*, 191 N.E.2d 471 (Mass. 1963).

18. U.C.C. § 9-312(4); R. HENSON, SECURED TRANSACTION UNDER THE UNIFORM COMMERCIAL CODE 78 (1973); J. WHITE & R. SUMMERS, UNIFORM COMMERCIAL CODE 903-21 (1972).

chase money security interest within the ten-day period, American National Bank should have prevailed as the first to have filed. Contrary to the holding in *International Harvester*, this interpretation is the way the Code was designed to work in Florida.¹⁹

The court's decision must be viewed as one which destroys the business value of inventory and blanket equipment loan financing. Generally, a creditor, secured by an interest in the debtor's after-acquired property, would loan additional funds against the newly acquired equipment after he was satisfied that no purchase money security interest had been perfected within ten days after the debtor took possession of the new equipment. As a result of *International Harvester*, a lender in Florida will not be able to determine whether a purchase money security interest has been perfected, since the ten-day filing requirement will be ignored by the court.²⁰ If the lender decides to advance additional funds on the strength of the security interest in after-acquired property, he faces the obvious risk of being second in priority to a later-perfected purchase money security interest even though this latter interest was filed after the ten-day grace period. Since the risk outweighs any benefit to the lender, his choice will be not to finance on the basis of the after-acquired property clause.²¹ The only alternative way in Florida for the lender to protect himself would be to reperfect his interest each time an advance is made to that debtor. This result would be a disaster for modern-day inventory and equipment loan financing, which depend heavily on after-acquired property clauses.

The holding in *International Harvester* conflicts with the decisions reached by every other appellate court and legal scholar that has considered the same question.²² In each situation the priority problem was resolved by rationale similar to that suggested by Professor Henson:

If a seller . . . advancing the funds for the purchase of goods *fails* to file within ten days after the debtor [buyer] receives the goods, the purchase money priority is lost and priority will be determined according to the rules of Section 9-312(5).

19. 296 So. 2d at 42 (Carlton, C.J., dissenting).

20. Compare *North Platte State Bank v. Production Credit Ass'n*, 189 Neb. 44, 200 N.W.2d 1 (1972); see generally Meek, *Secured Transactions under the Uniform Commercial Code*, 18 ARK. L. REV. 30 (1964).

21. See *Automated Bookbinding Serv., Inc. v. Hans Mueller Corp.*, 471 F.2d 546 (4th Cir. 1972); but see *Brodie Hotel Supply, Inc. v. United States*, 431 F.2d 316 (9th Cir. 1970).

22. The cases that have decided the same issue contrary to the Florida conclusion are: *Automated Bookbinding Serv., Inc. v. Hans Mueller Corp.*, 471 F.2d 546 (4th Cir. 1972); *Mammoth Cave Prod. Credit Ass'n v. York*, 429 S.W.2d 26 (Ky. App. 1968); *National Cash Register Co. v. Firestone & Co.*, 191 N.E.2d 471 (Mass. 1963); *Talcott, Inc. v. Franklin Nat'l Bank*, 194 N.W.2d 775 (Minn. 1972); *North Platte State Bank v. Production Credit Ass'n*, 189 Neb. 44, 200 N.W.2d 1 (1972); *Recchio v. Manufacturers and Traders Trust Co.*, 55 Misc. 2d 788, 286 N.Y.S.2d 390 (Sup. Ct. 1968); *American Nat'l Bank & Trust Co. v. National Cash Register Co.*, 473 P.2d 234 (Okla. 1970).

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.*²³

Notwithstanding the holding in *International Harvester*, it is submitted that the above approach is the correct solution for determining the priority of a delinquent-perfected purchase money security interest.

The only justifications supplied by the court to explain its reordering of security interests under the Code were unspecified "contractual constitutional requirements and equitable principles."²⁴ As the dissent artfully points out, the reasons behind the *International Harvester* decision must be found elsewhere.²⁵ The clear error of this holding can be further illustrated by an analysis of the holding in a subsequent case which involved the exact issue of purchase money priority.

In *James Talcott v. Associates Capital Co.*,²⁶ a finance company secured a loan to a businessman with a fully perfected security interest in after-acquired property; later, the borrower purchased two tractors on credit—a classic situation for the operation of section 9-312(4). Because the seller filed the purchase money security interest beyond the ten-day grace period, the court held that the finance company had first claim to the tractors. Presumably, under these facts, Florida courts would have applied the *International Harvester* rule and limited the recovery to the "debtor's equity" in the tractors. It was clear in *Talcott*, however, that the holder of the purchaser money security interest must either satisfy the filing requirements of section 9-312(4) or lose priority. Since the seller had not satisfied that section, the district court granted summary judgment in favor of the finance company, and the Court of Appeals for the Sixth Circuit affirmed. This holding is quite a contrast to that of the Supreme Court of Florida but, in the opinion of this writer, it is the correct one.

The decision in *International Harvester* is in derogation of the most important goal of the U.C.C., *i.e.*, to make commercial law uniform among the states.²⁷ Justice Carlton clearly portrayed the effect of this decision in his dissent when he stated that the majority decision "overrides the legislature . . . by interpreting statutes contrary to the expressed intent of the legislature, inconsistent with the specific language of the statutes and inconsistent with common sense."²⁸ The

23. R. HENSON, SECURED TRANSACTION UNDER THE UNIFORM COMMERCIAL CODE 78 (1973) (emphasis added).

24. 296 So. 2d at 34. However, as the dissent clearly states, there are no constitutional restrictions on the legislature's power to enact rules of priority, and therefore the majority erred by using these "restrictions" as the basis for its holding. 296 So. 2d at 40 (Carlton, C.J., dissenting).

25. 296 So. 2d at 40 (Carlton, C.J., dissenting). See note 15 *supra* and accompanying text.

26. 491 F.2d 879 (6th Cir. 1974) [hereinafter referred to as *Talcott*] (diversity action in which the court applied the Ohio U.C.C.).

27. U.C.C. § 1-102; 296 So. 2d at 35-36 (Carlton, C.J., dissenting).

28. 296 So. 2d at 37 (Carlton, C.J., dissenting).

dissent was on point when it stated that the court was simply "legislating an exception to the clear and specific provisions of the Code so as to make the Code meaningless."²⁹ The result of the court's misinterpretation of the Code is that while the Florida Uniform Commercial Code may read like the U.C.C. does in other jurisdictions, it operates quite differently where a security interest in after-acquired property is involved. This new Florida rule frustrates the U.C.C. and renders certain types of loan financing obsolete in Florida. It is urgent that this decision not be followed in the future.

DONALD FRANCIS SINEX

FEDERAL PROSECUTION OF LOCAL POLITICAL CORRUPTION: A NEW APPROACH

Should the federal government be allowed to prosecute local politicians for extorting money from local businessmen, especially if there is no evidence of force, fear, or threats? Casimir Staszczuk, a Chicago alderman, accepted three payments of \$3,000 each from a "zoning consultant" on behalf of his clients in return for Staszczuk's agreement not to oppose their applications for zoning amendments in the alderman's ward. The federal government charged Staszczuk with violation of the Hobbs Act,¹ which contains two alternative definitions of extortion: the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, *or* under color of official right. The United States District Court for the Northern District of Illinois, Eastern Division, relying solely on the "color of official right" definition of extortion, convicted Staszczuk. On appeal, the Court of Appeals for the Ninth Circuit *held*, affirmed: A local official accepting money under color of official right, which activity affects interstate commerce, may be convicted of violating the Hobbs Act. *United States v. Staszczuk*, 502 F.2d 875 (9th Cir. 1974).

Before the significance of the color of official right definition of extortion as contained in the Hobbs Act is discussed, the threshold

29. *Id.* at 39.

1. 18 U.S.C. § 1951 (1970):

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.