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UCC Article 9

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UCC Article 9: 1994 Survey of Florida Law

Robert L. Young*

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I. INTRODUCTION

Florida's version of the Uniform Commercial Code is found in chapters 670-680 of the *Florida Statutes*. This survey covers the substantive changes in Florida's Uniform Commercial Code ("UCC" or "Code") and the cases interpreting the Code during the period of July 1, 1993 to July 15, 1994. During the past year, there were only a few cases with written opinions that

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dealt with substantive Code issues. This survey presents the few cases that warrant discussion.

II. LEGISLATIVE ENACTMENTS

The only substantive change to the UCC during the survey period was the repeal of chapter 676 of the *Florida Statutes*, relating to bulk transfers.¹ At least two events prompted the formation of a subcommittee to review the status of chapter 676. First, the National Conference of Commissioners on Uniform State Laws and the American Law Institute had recommended repeal, or at least significant revision, of the UCC article on bulk transfers.² Second, many members of the Florida Bar had expressed concern that chapter 676 was serving no useful purpose in its present form.³

The subcommittee, formed by both the Financial Institutions and the Bankruptcy/UCC Committees to study and report on the status of chapter 676, recommended the chapter's repeal and advised against any further bulk sales legislation.⁴ The subcommittee found that compliance with chapter 676 substantially decreased due to the cost and delay involved when the provision was followed.⁵ The subcommittee also reported that chapter 676 often gave little relief to aggrieved creditors and that the chapter's remedy, nullifying the transfer, was not practical in today's transactions.⁶ The Florida Legislature followed the subcommittee's recommendation and the repeal of chapter 676 of the *Florida Statutes* became effective on July 1, 1993.⁷

III. CASES INTERPRETING FLORIDA'S UNIFORM COMMERCIAL CODE

A. *Lease as a Security Interest*

In *In re Howell*,⁸ the Bankruptcy Court for the Northern District of Florida determined to what extent a particular lease constituted a financing

1. Act of Apr. 23, 1993, ch. 93-77, § 3, 1993 Fla. Laws 436, 436.

2. STAFF OF FLA. SENATE COMM. ON UCC, SB 710 (1993) STAFF ANALYSIS 2 (Feb. 22, 1993).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Ch. 93-77, §§ 3-4, 1993 Fla. Laws at 436.

8. 161 B.R. 285 (Bankr. N.D. Fla. 1993).

arrangement making any security interest created by the lease avoidable by the trustee in bankruptcy pursuant to 11 U.S.C. § 544.⁹ In *Howell*, the debtor entered into an agreement with the defendant to purchase the good will and parts inventory of the defendant's auto repair business.¹⁰ In a separate agreement, the debtor agreed to lease from the defendant all the furniture, equipment, and tools for use in the business.¹¹ The debtor operated the auto repair business until he filed a Chapter 7 bankruptcy petition.¹² The plaintiff, who was the bankruptcy trustee, sought a declaratory judgment that the lease was really a financing arrangement rather than a true lease, making any interest avoidable by the trustee due to the defendant's failure to file a UCC-1 financing statement.¹³

To determine the character of the agreement, the court looked to section 671.201(37) of the *Florida Statutes* for the definition of "security interest," and noted that subsection (a) of the statute would require a finding that there was a security interest if the lease contained a nontermination clause along with one of the other enumerated items.¹⁴ Because the lease in question did not have a nontermination clause, the court then looked to subsection (b) of the statute, which states that a transaction does not create a security interest merely because one of the listed items is present.¹⁵

The court held that any relevant factor or circumstance may be considered when determining whether the transaction created a security interest or a true lease.¹⁶ The court explained that the statute merely precluded the finding of a security interest based on any single factor listed in subsection (b).¹⁷ After reviewing the circumstances surrounding the lease, the court listed nine factors that indicated that the lease created a security interest.¹⁸ The court concluded that it was left with "an unmistak-

9. *Id.* at 287.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Howell*, 161 B.R. at 287.

14. *Id.* at 287-88.

15. *Id.* at 288.

16. *Id.* at 289.

17. *Id.* at 288.

18. *Howell*, 161 B.R. at 289. The nine factors set out by the court are:

- 1) Lessee is responsible for insuring the leased property;
- 2) Lessee bears the risk of loss or damage to the subject property, and bore risk of any liability arising from its use;
- 3) Lessee is responsible for the payment of all taxes associated the [sic] leased property;

able impression that the lease was entered to effectuate a security interest in the leased property.”¹⁹

B. Florida’s Blood Shield Statute

In *Walls v. Armour Pharmaceutical Co.*,²⁰ a personal representative of the estate of a hemophiliac brought a products liability wrongful death action against the manufacturer of plasma products which allegedly led to the hemophiliac’s death from Acquired Immune Deficiency Syndrome (“AIDS”).²¹ One of the issues decided in *Walls* by the United States District Court for the Middle District of Florida was whether Florida’s “blood-shield” statute²² precluded failure-to-warn products liability claims against a seller of blood or blood products.²³ This issue was raised when the defendant argued that the plaintiff’s claim was time-barred because the applicable statute of limitations was Florida’s four year negligence statute of limitations rather than the limitations on products liability actions.²⁴

The defendant relied on *Silva v. Southwest Florida Blood Bank, Inc.*,²⁵ a recent decision by the Supreme Court of Florida, in support of its argument that Florida’s “blood-shield” statute essentially turned the plaintiff’s claim into a pure negligence action.²⁶ The defendant contended

-
- 4) Lessee is responsible for all maintenance and repairs of the leased property;
 - 5) Default provisions of the lease are similar to those found in a typical financing arrangement;
 - 6) The lease contains a remedy provision which is similar to those found in financing arrangements;
 - 7) The lease specifically excluded any warranties;
 - 8) The term of the lease is equal to or greater than the remaining economic life of the leased property; and
 - 9) The lessee has the right to purchase the leased property at the end of the lease term for nominal additional consideration.

Id. (footnotes omitted).

19. *Id.* at 290.

20. 832 F. Supp. 1467 (M.D. Fla. 1993).

21. *Id.* at 1469.

22. FLA. STAT. § 672.316(5) (1993).

23. *Walls*, 832 F. Supp. at 1472-74.

24. *Id.* at 1471.

25. 601 So. 2d 1184 (Fla. 1992).

26. *Walls*, 832 F. Supp. at 1472.

that the statute precluded a products liability claim against it.²⁷ Upon careful review of *Silva*, the *Walls* court held that *Silva* did not support the defendant's position.²⁸ The court noted that the *Silva* court stated that Florida's "blood-shield" statute "was enacted to eliminate actions for strict liability against blood banks and to limit U.C.C. warranties in the context of the sale of blood by blood banks."²⁹ The *Walls* court pointed out that section 672.316(5),³⁰ by its own terms, only applies to allegations of breach of the implied warranties of merchantability and fitness for a particular purpose.³¹

The court stated that the plaintiff's claim was "not a claim for breach of an implied warranty of fitness or merchantability" and refused to extend the statute's reach to failure-to-warn actions.³² The court concluded that the statute did not limit the plaintiff's ability to bring a failure-to-warn action against a manufacturer of blood products or convert the claim into a pure negligence action.³³ Consequently, the court held that the products liability statute of limitation applied to the instant case.³⁴

C. Negotiable Instruments

The only decision rendered by the Supreme Court of Florida relating to the UCC during the last year is *State v. Family Bank of Hallandale*.³⁵ The issue before the court was whether state warrants were negotiable instruments under the UCC.³⁶ The comptroller had placed a stop payment order on a warrant when it was discovered that the original warrant had been mailed to the wrong company.³⁷ Several months after the Federal Reserve Bank of Miami returned the original warrant to the respondent due to the stop payment order, the respondent filed suit against the State of Florida.³⁸ The respondent argued that it was a "holder in due course"

27. *Id.*

28. *Id.* at 1472-73.

29. *Id.* at 1473.

30. FLA. STAT. § 672.316(5) (1993).

31. *Walls*, 832 F. Supp. at 1473.

32. *Id.* at 1474.

33. *Id.*

34. *Id.*

35. 623 So. 2d 474 (Fla. 1993).

36. *Id.* at 475.

37. *Id.*

38. *Id.*

under the theory that state warrants were negotiable instruments, and thus it was entitled to reimbursement by the State.³⁹

In a unanimous decision, overruling the First District Court of Appeal, the court held that state warrants were not negotiable instruments.⁴⁰ In support of its conclusion, the court noted that the Florida Legislature amended section 673.1041 of the *Florida Statutes* as a direct response to the trial court's decision in the case.⁴¹ The substance of this amendment is now found at section 673.1041(11) of the *Florida Statutes* and provides that "[a] warrant of this state is not a negotiable instrument governed by this chapter."⁴² Consequently, the court held that the respondent was not a holder in due course and that it took the warrant subject to the State's defense that it had issued a valid stop payment order.⁴³

D. Bank Deposits and Collections

The Fifth District Court of Appeal determined in *Sun Bank, N.A. v. Merrill Lynch, Pierce, Fenner, & Smith, Inc.*⁴⁴ whether a bank may charge back a customer's account for a check with a forged or unauthorized signature once the account had received final settlement and payment.⁴⁵ In *Sun Bank*, a check drawn on an account at Citizens and Southern National Bank ("C & S Bank") payable to Physician's Computer Systems ("PCS") was endorsed by a PCS employee as PCS's chief operating officer.⁴⁶ The check was then delivered to Cosmopolitan Lady Spa, Inc./Cosmopolitan Fitness Corporation ("Cosmopolitan") where it was endorsed and deposited into its account at Merrill Lynch.⁴⁷ Merrill Lynch in turn deposited the check into its account with Sun Bank and later received final settlement and payment.⁴⁸

39. *Id.* at 475-76.

40. *Family Bank*, 623 So. 2d at 477-78.

41. *Id.* at 478-79. The court referred to chapter 91-216, section 1, 1991 Florida Laws 2065, which added subsection (4) to section 673.1041 of the *Florida Statutes*.

42. FLA. STAT. § 673.1041(11) (1993).

43. *Family Bank*, 623 So. 2d at 479.

44. 637 So. 2d 279 (Fla. 5th Dist. Ct. App. 1994).

45. *Id.* at 280.

46. *Id.*

47. *Id.*

48. *Id.*

More than one year later, C & S Bank notified Sun Bank that the endorsement by the PCS employee was unauthorized.⁴⁹ An affidavit from PCS's president stated that the person who endorsed the check was no longer employed by PCS at the time the check was signed.⁵⁰ Even though Merrill Lynch denied liability, Sun Bank debited the amount of the check from Merrill Lynch's account without notifying it.⁵¹ Consequently, Merrill Lynch filed suit against Sun Bank for wrongfully debiting its account.⁵²

The appellate court affirmed the trial court's decision to grant Merrill Lynch's motion for summary judgment and held that "Sun Bank's right to charge back Merrill Lynch's account was limited to the midnight deadline or within a longer reasonable time *prior to final settlement*" as specified by section 674.212 of the *Florida Statutes*.⁵³ The court refused to recognize an exception to the final settlement deadline just because an unauthorized endorsement was involved.⁵⁴ The court also rejected the argument that section 674.406 of the *Florida Statutes*, relating to the customer's duty to discover and report an unauthorized signature or alteration, authorized Sun Bank's actions.⁵⁵ The court reasoned that section 674.406 allows a claim to be made upon a drawee bank, but it does not authorize the collecting bank to remove funds unilaterally from a customer's account.⁵⁶

The court pointed out that even though Sun Bank was precluded from charging back, it could still assert a breach of transfer warranty claim under section 674.207 of the *Florida Statutes*.⁵⁷ Concluding that summary judgment was properly granted, the court stated that "while questions regarding the unauthorized endorsement may be material to a suit on a warranty claim, they are not material to the issue of whether Sun Bank could, unilaterally and without notice, charge back Merrill Lynch's account."⁵⁸

49. *Sun Bank*, 637 So. 2d at 280.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* at 281 (emphasis added).

54. *Sun Bank*, 637 So. 2d at 282.

55. *Id.* at 283.

56. *Id.*

57. *Id.* at 282-83.

58. *Id.* at 283.

E. *Letters of Credit*

The First District Court of Appeal held that although a creditor can perfect a security interest in a letter of credit by possession, the creditor may not have a right to draw directly against proceeds from the letter of credit.⁵⁹ Furthermore, the creditor's security interest may be diminished by set-offs against the letter of credit beneficiary by the person for whom the letter of credit was issued.⁶⁰ In *Futch*, a bank loaned a borrower monies secured by the proceeds of a \$110,000 letter of credit which was issued to secure a judgment in favor of the borrower.⁶¹ Subsequent to the bank's accepting assignments of the expected letter of credit proceeds as collateral for the loans, the borrower and the judgment debtor agreed that the judgment debtor would offset approximately \$68,000 against the judgment amount as settlement for another lawsuit.⁶² When the borrower filed a petition in bankruptcy, the creditor sought an adjudication as to its priority to proceeds from the letter of credit.

The *Futch* court held that the creditor had properly perfected its interest in the letter of credit by taking possession as required by section 679.305 of the *Florida Statutes*.⁶³ However, since the letter of credit was not expressly assignable, the creditor did not have a right to draw directly against the proceeds of the letter of credit because only the borrower or the trustee in bankruptcy maintained the right to execute a draw.⁶⁴ Moreover, the judgment debtor's set-off was held permissible and the amount of proceeds available to the creditor under the letter of credit was effectively reduced.⁶⁵ Thus, creditors should be careful when lending monies secured by proceeds in letters of credit that are not expressly assignable since they will not have the right to make direct draws on such letters of credit. Additionally, such creditors should be aware that the value of their security interest may be reduced by subsequent agreement between the borrower and the person for whom the letter of credit was issued.

59. *Citizens & Peoples Nat'l Bank of Pensacola v. Futch*, 19 Fla. L. Weekly D693, D696 (1st Dist. Ct. App. Mar. 30, 1994).

60. *Id.*

61. *Id.* at D693.

62. *Id.*

63. *Id.* at D696.

64. *Futch*, 19 Fla. L. Weekly at D696.

65. *Id.* at D695.

F. *Investment Securities*

In *First Bank of Immokalee v. Rogers NK Seed Co.*,⁶⁶ the Second District Court of Appeal addressed whether the appellant's security interest in stock owned by Precision Agricultural Products, Inc. ("Precision") was superior to appellee's judgment lien.⁶⁷ Precision had signed a security agreement listing several shares of stock as collateral for a loan from the appellant.⁶⁸ "Because the stock was in the possession of Precision's broker," the appellant notified the broker by mail that Precision had assigned the stock as collateral for a loan.⁶⁹ The broker responded by refusing to "hold the securities in trust for anyone other than our client," but offering to assist in a physical transfer of stock certification if that was the desire of Precision.⁷⁰ However, the appellant took no further action at that time.⁷¹

About a year and a half later, the appellee obtained a judgment against Precision.⁷² Subsequently, the appellee discovered the existence of the stocks and attempted to sell them to satisfy the judgment.⁷³ This action prompted the appellant to intervene "to establish the priority of its security interest."⁷⁴ In reversing the trial court's decision, the court held that the appellant's security interest had priority over the appellee's judgment lien.⁷⁵ First, the *Immokalee* court pointed out that according to section 678.321(1) of the *Florida Statutes*, a security interest in stock is perfected when it "is 'transferred' to the secured party or its designee pursuant to a provision of section 678.313(1)."⁷⁶ Next, the court stated that Precision's broker was a "financial intermediary" as defined in section 678.313(4) and that according to section 678.313(1)(h), a transfer occurred when written notification was received by the "financial intermediary on whose books the interest of the transferor in the security appears"⁷⁷ Finally, the court concluded that the letter received by Precision's broker, notifying it that Precision had assigned the stock to appellant, constituted a "transfer" of the

66. 637 So. 2d 11 (Fla. 2d Dist. Ct. App. 1994).

67. *Id.*

68. *Id.* at 12.

69. *Id.*

70. *Id.*

71. *Immokalee*, 637 So. 2d at 12.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.* at 13.

76. *Immokalee*, 637 So. 2d at 12.

77. *Id.*

stock pursuant to these provisions.⁷⁸ The court noted that Precision's broker "had no ability to decline or prevent the transfer that resulted from its receipt of the notification."⁷⁹

G. Secured Transactions

1. Chattel Paper

In *Blazer Financial Services, Inc. v. Harbor Federal Savings & Loan Ass'n*,⁸⁰ the Fourth District Court of Appeal addressed the issue of whether a purchaser of chattel paper was entitled to take the paper free and clear of a prior security interest to the full extent of the paper's face value.⁸¹ In *Blazer*, the appellee held a perfected security interest in a jewelry company's "existing or acquired collateral, including its accounts and chattel paper, at three of its retail locations."⁸² Later, the appellant agreed to purchase from the retail jewelry company 1100 sales contracts which consisted of retail installment sales contracts, security agreements, and accounts receivable.⁸³ Over half of these contracts were subject to the security interest held by the appellee and were purchased by the appellant at a discounted price.⁸⁴ Later the same year, the jewelry company filed for bankruptcy.⁸⁵ Subsequently, the appellee filed suit alleging that the appellant converted its collateral. The appellant claimed that it had priority over the appellee's security interest under section 679.308 of the *Florida Statutes*.⁸⁶

78. *Id.*

79. *Id.*

80. 623 So. 2d 580 (Fla. 4th Dist. Ct. App. 1993).

81. *Id.* at 582.

82. *Id.* at 581.

83. *Id.*

84. *Id.*

85. *Blazer*, 623 So. 2d at 581.

86. *Id.* Section 679.308 of the *Florida Statutes* provides:

A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument:

- (1) Which is perfected under s. 679.304 . . . or under 679.306 . . . if he acts without knowledge that the specific paper or instrument is subject to a security interest; or
- (2) Which is claimed merely as proceeds of inventory subject to a security interest (s. 679.306) even though he knows that the specific paper or instrument is subject to the security interest.

FLA. STAT. § 679.308 (1993).

The Fourth District Court of Appeal agreed with the trial court's finding that the appellant had purchased the chattel paper in its ordinary course of business and without knowledge of the prior security interest according to section 679.308.⁸⁷ However, reversing the decision of the trial court, the appellate court held that the protection provided by section 679.308 extended to the full face value of the paper, irrespective of the amount paid by the purchaser of the paper.⁸⁸ The court reasoned that "[m]odern commercial practices make it impracticable for a retail lender purchasing chattel paper in the ordinary course of its business to inquire into the factual circumstances surrounding the transactions on which the paper is based[.]" while a money lender is in a better position to protect itself against the borrower's actions.⁸⁹ The court also pointed out that its holding was consistent with the UCC's official comment to section 679.308 of the *Florida Statutes*.⁹⁰

2. Security Agreements

Reversing the trial court, the Fifth District Court of Appeal held in *Cook v. Theme Park Ventures, Inc.*,⁹¹ that there was a genuine issue of material fact as to whether certain documents constituted a written security agreement.⁹² In *Cook*, the debtor brought an action for declaratory judgment against a storage company to enjoin the company from selling a certain painting stored by the debtor to cover storage fees.⁹³ An assignee of the creditor intervened, claiming that he had a security interest in the painting, and because the debtor had defaulted on its loan, the assignee was entitled to possession of the painting.⁹⁴ The court stated two or more documents together may evidence a security agreement.⁹⁵ The court noted that whether a security agreement existed was important due to section 679.203 of the *Florida Statutes* which provides: a "security interest is not enforceable against the debtor and does not attach to the property unless the

87. *Blazer*, 623 So. 2d at 582.

88. *Id.* at 583.

89. *Id.* (quoting *Borg-Warner Acceptance Corp. v. Massey-Ferguson, Inc.*, 713 S.W.2d 351 (Tex. Ct. App. 1985)).

90. *Id.*

91. 633 So. 2d 468 (Fla. 5th Dist. Ct. App. 1994).

92. *Id.* at 471.

93. *Id.* at 469.

94. *Id.*

95. *Id.* at 470.

collateral is in the possession of the secured party pursuant to an agreement or the debtor has signed a security agreement”⁹⁶

The court reviewed documents sent from debtor’s predecessor in interest to the creditor regarding the use of the painting as collateral for a new loan. The documents included a security agreement, a UCC financing statement, and a letter, signed by debtor’s predecessor, specifically referencing the security agreement covering the painting and the UCC financing statement.⁹⁷ The letter stated that “if the documents appear to be in order, then the funds could be sent by check or wire”⁹⁸ It was undisputed that debtor’s predecessor wired the funds a few days later.⁹⁹ The *Cook* court concluded that the documents, taken together, were “sufficient to create an issue of fact regarding the existence of a security agreement covering the painting.”¹⁰⁰ The court pointed out that the comment to section 679.203 states that the writing requirement of the section is in the nature of that required for the statute of frauds.¹⁰¹ Under this standard, only one of the documents being considered to satisfy the writing requirement must be signed by the debtor, provided that the signed writing refers to the other necessary documents.¹⁰² Thus, the court concluded that the letter signed by the debtor’s predecessor along with the security agreement and UCC financing statement were enough to create an issue of fact even though the other documents were unsigned.¹⁰³

3. Certificates of Deposits

In *Bank of Winter Park v. Resolution Trust Corp.*,¹⁰⁴ the Fifth District Court of Appeal determined the respective rights of two parties who had competing interests in a certificate of deposit (“CD”).¹⁰⁵ Specifically, the court addressed the issue of whether a bank was prevented from asserting its set-off rights against a party who had a perfected security interest under article 9.¹⁰⁶ The appellant, Winter Park, had loaned \$300,000 to three

96. *Cook*, 633 So. 2d at 470 (citing FLA. STAT. §§ 679.203(1)-203(1)(a) (1993)).

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.* at 471.

101. *Cook*, 633 So. 2d at 471.

102. *Id.*

103. *Id.*

104. 633 So. 2d 53 (Fla. 5th Dist. Ct. App. 1994).

105. *Id.* at 54.

106. *Id.* at 54-55.

officers of American Pioneer Federal Savings Bank ("American Pioneer"). Although the loan was supposed to be unsecured, the appellant insisted that one of the officers maintain an account with the appellant bank.¹⁰⁷ As a result, one of the officers deposited \$100,000 in an account and the appellant issued a CD to him in that amount. The CD contained provisions prohibiting transfer without the appellant's consent and granting the appellant certain set-off rights.¹⁰⁸ A short time later, the officer used the CD as collateral for a loan from American Pioneer without the appellant's knowledge or consent.¹⁰⁹

About a year later, the appellant notified the officer that he was in default on the loan.¹¹⁰ The next day, American Pioneer informed the appellant that it planned to redeem the CD when the CD matured later the same month.¹¹¹ Subsequently, the appellant told American Pioneer of its intention to exercise its contractual right of set-off against the CD proceeds. The appellee, as receiver for American Pioneer, sued the appellant to recover the proceeds of the CD.¹¹²

The court began its discussion by stating that the decision in this case would be governed by the Florida Supreme Court's ruling in *Citizens National Bank of Orlando v. Bornstein*.¹¹³ Under the reasoning of *Bornstein*, the nonnegotiable CD at issue in the instant case was an "instrument" as defined in section 679.105(1)(i) of the *Florida Statutes*. Thus the officer's assignment to American Pioneer "was 'a transfer entitled to secured transaction treatment under article 9.'"¹¹⁴ However, the *Winter Park* court noted that the Florida Supreme Court, in *Bornstein*, further construed section 679.104(9) of the *Florida Statutes* to mean that a bank does not need to comply with the provisions of article 9 in order to preserve its set-off rights.¹¹⁵ Thus, the instant court concluded that the appellant had the right of set-off, as long as its right accrued prior to receiving notice of the assignment of the CD to American Pioneer.¹¹⁶

Reversing the decision of the trial court, the appellate court held that the appellant's interest in the CD was superior to the appellee's because the

107. *Id.* at 54.

108. *Id.*

109. *Winter Park*, 633 So. 2d at 54.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*; see *Citizens Nat'l Bank of Orlando v. Bornstein*, 374 So. 2d 6 (Fla. 1979).

114. *Winter Park*, 633 So. 2d at 54 (citing *Bornstein*, 374 So. 2d at 6).

115. *Id.* at 55.

116. *Id.*

appellant had declared the officer in default on the loan before it was notified of the CD's assignment to American Pioneer.¹¹⁷ Moreover, the court gave an alternative ground for reversal. The court stated that the *Bornstein* court specifically held that section 679.318(4) of the *Florida Statutes* did not invalidate the CD's restrictions on assignment.¹¹⁸ Therefore, the court concluded that the appellant should have prevailed because American Pioneer took assignment of the CD subject to its provision requiring the appellant's prior written consent.¹¹⁹

The court acknowledged that its interpretation of *Bornstein* was directly contrary to two federal court decisions.¹²⁰ *Bornstein* reached the Supreme Court of Florida upon certified questions from the United States Court of Appeals for the Fifth Circuit.¹²¹ However, applying the Florida Supreme Court's answers to the certified questions in *Bornstein*, the *Winter Park* court awarded the CD proceeds to the secured creditor.¹²² Likewise, the United States Court of Appeals for the Eleventh Circuit has interpreted *Bornstein* to mean that the priority provisions in article 9 govern even though the dispute involves a bank with set-off rights.¹²³

IV. CONCLUSION

The UCC in Florida has not undergone remarkable change in the past year. During the survey period, there was little revision of the *Florida Statutes* which constitute the UCC, other than the repeal of chapter 676, which deals with bulk transfers. Although recent case law reveals no particular trend in the courts' interpretation of the UCC in any specific area, the cases reviewed herein should help further clarify the rights of those conducting commercial transactions in Florida.

117. *Id.* at 56.

118. *Id.*

119. *Winter Park*, 633 So. 2d at 56.

120. *See id.* at 55.

121. *See Bornstein*, 374 So. 2d at 6.

122. *Winter Park*, 633 So. 2d at 54.

123. *Id.* at 55.