Florida Law Review

Volume 29 | Issue 5 Article 6

October 1977

U.C.C. Section 9-310: Priority Conflicts Between Article 9 Security Interest and Florida's Statutory Liens

Jeffrey D. Segal

U.C.C. SECTION 9-310: PRIORITY CONFLICTS BETWEEN ARTICLE 9 SECURITY INTERESTS AND FLORIDA'S STATUTORY LIENS

INTRODUCTION

Priority contests between conflicting liens in a chattel generally result in one or more of the lien holders seeing the claim secured by his lien go unsatisfied. Each lien holder has given some type of value from which his lien has arisen, yet if proceeds from the sale of the chattel are insufficient to cover the amounts secured by all of the liens, those lien holders without priority will not be compensated. Thus, to the holder of a lien, the priority of his lien can be as important as its validity.

Consider the following example. Desiring a certain automobile, Consumer arranges an agreement with Bank under which Bank will loan Consumer the money to make the purchase and Bank will retain a perfected security interest[1] in the automobile as collateral. After obtaining possession of the automobile, Consumer takes it to Repairman who performs certain repairs. State law creates a lien on the automobile in favor of mechanics performing such work.[2] While Repairman remains in possession of the automobile, Consumer defaults and Repairman seeks to foreclose his lien and apply the proceeds from the sale of the car to the debt owed him by Consumer. Bank, however, asserts that its earlier security interest entitles it, not Repairman, to those proceeds. Who should have priority as to those proceeds, Bank or Repairman? Bank's interest arose first, but Repairman has gone uncompensated for his services. Section 9-310 of the Uniform Commercial Code (U.C.C.) addresses precisely this type of situation.

A lien in favor of a creditor or seller of goods may arise in any of three ways. First, it may be created by consent. The parties to a transaction expressly agree through the use of a contract, such as a chattel mortgage, that one party shall have a lien on some property of the other until certain conditions of the agreement are met.[3] Second, a lien may arise by operation of statutory or common law. In these cases, the law, rather than the parties' agreement, creates a lien in favor of one of the parties due to the nature of the service or material being provided.[4] Finally anyone with a monetary claim against another who goes to court to collect on that claim may procure a judicial lien upon the property of his debtor to secure payment of his claim.[5]

---

1. "'Security interest' means an interest in personal property or fixtures which secures payment or performance of an obligation." FLA. STAT. §671.201(37) (1975); U.C.C. §1-201(37).

2. *See, e.g.*, FLA. STAT. §713.56 (1975) (creating a lien for labor on or with machines).

3. These will hereinafter be called "security interests"; see note 1 *supra*. An example of the type of condition referred to is payment of the purchase price in the case of a sale.

4. *See, e.g.*, FLA. STAT. ch. 713, pt. II (1975), in which Florida's seventeen miscellaneous statutory liens are created; these liens will be discussed in detail in text accompanying notes 86-158 *infra*.

5. These liens are outside the scope of this note. See FLA. STAT. §679.301 (1975) and U.C.C. §9-301 for their treatment *vis-à-vis* the security interests covered by article 9 of the Code.

The first of these, the consensual lien, is dealt with by article 9[6] of the Uniform Commercial Code.[7] Generally conceded to be the most important provision of the Code,[8] article 9 sets forth a comprehensive scheme for regulating transactions "intended to create security interests in personal property or fixtures."[9]

Since article 9 is intended to cover only those interests arising from the express agreement of the parties to a secured transaction, it would appear that liens created by statute or common law would be excluded from its scope. Such provision is expressly made in sections 9-102(c)[10] and 9-104(c)[11] of the Code. Both of these sections, however, acknowledge the exception stated in section 9-310,[12] which determines priority when liens arising by operation of law conflict with consensual liens. This note will examine the effect of section 9-310 on article 9 security interests and Florida's statutory liens.

PRE-CODE LAW IN FLORIDA

Prior to the enactment of the Code, when two or more creditors had conflicting liens in a chattel, Florida courts followed the general rule[13] that "first in time was first in right."[14] Yet, this rule was not absolute. For example, the

6. FLA. STAT. ch. 679 (1975). *See generally* Project, *California Chattel Security and Article Nine of the Uniform Commercial Code*, 8 U.C.L.A. L. REV. 812 (1961).

7. *See* FLA. STAT. chs. 671-681 (1975). These eleven chapters of the Florida Statutes correspond to the eleven articles of the Code; *e.g.*, FLA. STAT. ch. 671 corresponds to article 1 of the Code, FLA. STAT. ch. 672 to article 2, and so on up to FLA. STAT. ch. 681 and article 11. Furthermore, the individual statute sections correspond numerically with the sections of the Code; thus FLA. STAT. §679.310 corresponds with §9-310 of the Code.

Florida, along with most states, has retained the 1962 version of the Code, despite the extensive revisions of 1972, particularly to article 9. The sections of the Code relevant to this note have generally remained unchanged, and thus discussion will be limited to the 1962 version as adopted by Florida, unless the 1972 revisions would effect a substantial change in the law.

8. Introductory Comments to FLA. STAT. ch. 679, 19C FLA. STAT. ANN. 146 (Harrison 1966).

9. FLA. STAT. §679.102(1)(a) (1975); U.C.C. §9-102(1)(a). The Code governs only transactions dealing with personal property and fixtures. Real property transactions are not within its scope. *See, e.g.*, Acme Elec. Contractors, Inc. v. Duffey, 243 So. 2d 459 (Fla. 4th D.C.A. 1971). For a discussion of secured transactions with regard to real property, *see generally* G. OSBORNE, MORTGAGES (2d ed. 1970).

10. FLA. STAT. §679.102(2) (1975). Section 679.102 deals with the scope of article 9, but it provides that "this chapter does not apply to statutory liens except as provided in §679.310." *Id.*

11. FLA. STAT. §679.104(3) (1975). Section 679.104 deals with transactions excluded from article 9. Among the exclusions is "a lien given by statute or other rule of law for services or materials except as provided in §679.310 on priority of such liens." *Id.*

12. FLA. STAT. §679.310 (1975). See text accompanying note 23 *infra*.

13. *See, e.g.*, Metzger v. Columbia Terminals Co., 227 Mo. App. 135, 50 S.W.2d 680 (1932). *But see* Texas Bank & Trust Co. v. Smith, 108 Tex. 265, 192 S.W. 533 (1917). *See generally* 2 G. GILMORE, SECURITY INTEREST IN PERSONAL PROPERTY 875-84 (1st ed. 1965); Note, *Nonconsensual Liens Under Article 9*, 76 YALE L.J. 1649 (1967).

14. Thus, in the simple example given at the outset of this note, the Bank would have had priority under the pre-Code common law since its security interests arose prior to the statutory lien held by the Repairman. Richardson Tractor Co. v. Square Deal Mach. & Supply

prior creditor would be deemed to have waived his priority if he had expressly or impliedly permitted a subsequent lien holder to acquire a lien.[15] Alternatively, some states granted the statutory lien holder priority under a fictional theory of agency;[16] the mortgagor or conditional vendee of types of property generally requiring periodic maintenance or repairs was considered the agent of his creditor or vendor. This enabled the lien holder to consent to such repairs and thereby relinquish the priority that he as principal would have had.[17] The pre-Code Florida courts recognized the consent theories[18] but expressly rejected the fictional agency theory.[19]

Another exception to the "first in time" rule arose when a statute specifically required the recording of a particular kind of security interest[20] and its holder failed to record. In such cases, a creditor whose statutory lien arose subsequent to the consensual lien would take priority over that unperfected security interest, assuming the satutory lien holder had no knowledge of its existence.[21] Such occurrences were rare, however, since security interests normally

---

Co., 149 So. 2d 388 (Fla. 2d D.C.A. 1963); Colonial Fin., Inc. v. All Miami Ford, Inc., 112 So. 2d 857 (Fla. 3d D.C.A. 1959); Guaranty Title & Trust Co. v. Thompson, 93 Fla. 983, 113 So. 117 (1927).

15. Under "implied consent" theory, the holder of the security interest was deemed by legal fiction to have consented to the making of repairs and thus waived the priority to which he would otherwise have been entitled. *See* Personal Fin. Co. v. Flecknor, 216 Ind. 330, 24 N.E.2d 694 (1940) (Consent could be implied by a chattel mortgagee when repairs would constitute real benefit to the mortgagee by preserving the chattel covered by the mortgage, when the mortgagee had a beneficial interest in the continued use of the mortgaged chattel and repairs were necessary to such use, or when the mortgagee had actual knowledge of the repairs or circumstances existed from which such knowledge could have been presumed. The court held, however, that the facts of the case did not support a finding of implied consent.) Mere possession of the chattel by the vendee or mortgagor cannot imply consent. Richardson Tractor Co. v. Square Deal Mach. & Supply Co., 149 So. 2d 388, 391 (Fla. 2d D.C.A. 1963). *See also* G. GILMORE, *supra* note 13, at 879.

16. *See, e.g.*, Watts v. Sweeney, 127 Ind. 116, 26 N.E. 680 (1891) (principle applied to give a repairman priority over the mortgagee of a locomotive).

17. *See* G. GILMORE, *supra* note 13, at 879.

18. Richardson Tractor Co. v. Square Deal Mach. & Supply Co., 149 So. 2d 388 (Fla. 2d D.C.A. 1963). The court upheld the priority of a conditional sales contract over a subsequent statutory lien, however, stating: "There is nothing in the record here to show that the conditional vendor either expressly or impliedly consented to the repair work." *Id.* at 391. See note 15 *supra.*

19. *Id. See also* Solomon, *Creditor's Rights*, 18 U. MIAMI L. REV. 940, 944 (1964). But see note 21 *infra.* The agency theory remains noteworthy in that, like the fiction of implied consent, it was apparently devised to achieve a particular result, to allow the repairman to recover for work done. This result served as the basis for the rule of priority set forth by Code §9-310. In promulgating the agency theory, some courts early recognized the same policy reasons that the drafters of article 9 were later to embody in wording §9-310 to give priority to the statutory lien holder.

20. *See, e.g.*, FLA. STAT. §319.151 (1975) (liens on motor vehicles).

21. G.F.C. Corp. v. Spradlin, 38 So. 2d 679 (Fla. 1949). This case is also noteworthy because the vendee of an automobile under a conditional sales contract was deemed to have ownership sufficient to consent to the laborer's work and securing of the statutory lien. The theory here is suspiciously similar to the fictional agency relationship between the vendee and vendor which was rejected in Florida. See text accompanying notes 16 & 19 *supra.*

did not have to be recorded under pre-Code Florida law.[22] Consequently, before the adoption of the Code in Florida, a statutory lien in a chattel was generally subordinate to a security interest that had been previously created in that chattel.

SECTION 9-310 OF THE U.C.C.

The Policy Behind the Rule

Section 9-310 of the Code provides that:

> When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.[23]

There are several valid policy reasons underlying this rule of priority which abrogates the common law rule of "first in time, first in right." To provide otherwise would work a hardship on the lien holder who has furnished services, materials, or both with respect to the goods and rightfully should have some security for his work. He should particularly take priority over a secured party[24] since the latter receives the benefit of the services performed or material furnished for the collateral and should not be allowed to reap an unjustifiable windfall at the expense of the uncompensated lien holder.[25] Furthermore, section 9-310 enables the debtor to preserve the value of goods by allowing him to obtain the necessary services or materials. If the repairman or artisan did not receive a priority, he might not provide the desired services, fearing subordination of his claim to some prior security interest. And finally, since such services might be required to maintain the goods' condition, it is reasonable to imply the secured party's consent to the work performed, and that consent would waive his priority.[26]

22. In numerous cases Florida courts held that unrecorded conditional sales contracts had priority over subsequent statutory liens. *See, e.g.*, Ipec, Inc. v. International Printing, Mach., Inc., 251 So. 2d 911 (Fla. 3d D.C.A. 1971) (carrier's lien); Dade Nat'l Bank v. University Transfer & Storage, Inc., 151 So. 2d 868 (Fla. 3d D.C.A. 1963) (warehouseman's lien); Richardson Tractor Co. v. Square Deal Mach. & Supply Co., 149 So. 2d 388 (Fla. 2d D.C.A. 1963) (repairman's lien). *But see* Wooton v. Carrollton Acceptance Co., 103 Fla. 237, 137 So. 390 (1931) (when owner consigns personalty to dealer for sale but with title reserved, lien of warehouseman for labor and storage, obtained without notice, held superior to owner's right under conditional sale).

23. FLA. STAT. §679.310 (1975); U.C.C. §9-310.

24. "'Secured party' means a lender, seller, or other person in whose favor there is a security interest . . . ." FLA. STAT. §679.105(1)(i) (1975); U.C.C. §9-105(1)(i).

25. Earthmovers, Inc. v. Clarence L. Boyd Co., 554 P.2d 877 (Ct. App. Okla. 1976); First Nat'l Bank v. Vargo Motor Co., 43 Pa. D. & C.2d 698 (Ct. Com. Pl. Pa. 1966). *See also* G. GILMORE, *supra* note 13, at 878.

26. Note, *Priorities Between Article Nine Security Interests and Statutory Liens in Iowa*, 23 DRAKE L.J. 169, 171 (1973). This writer's analysis seems to incorporate parts of both the "implied consent" and "agency" theories discussed earlier. See text accompanying notes 18-23 *supra*.

While these examples may not exhaust the possible arguments in support of section 9-310, they illustrate the practical effects that the provision is intended to have upon priority conflicts occurring within the coverage of the section.

THE RULE IN OPERATION

Despite the apparent simplicity and specificity of the rule set forth in section 9-310, its provisions are not always easily applied. It is therefore necessary to consider its specific provisions in greater detail to ascertain the manner in which the courts have dealt with the statutory language.

Requirements as to the Services or Materials Provided

Section 9-310 requires that the statutory lien arise from the furnishing of "services or materials with respect to goods" if it is to be entitled to priority over earlier security interests.[27] This statutory language creates significant interpretive problems as to the scope of the section. The Official Comment to section 9-310 states that the purpose of the section is to give priority to liens "arising from work intended to enhance or preserve the value of the collateral."[28] Nonetheless, refusing to recognize an "enhancement" requirement as being implied in section 9-310, many courts have required only that services or materials actually be furnished.[29] In *Philadelphia National Bank v. K. & G. Speed Associates,*[30] the court called "immaterial" the fact that the work performed may not have increased the value of the automobile involved in that case. Since the court found no such requirement in section 9-310, and the state statute creating the artisan's lien had no enhancement requirement, the lien holder was given section 9-310 priority over an earlier security interest solely because he had performed certain services and should have some security for his labor.[31]

An Indiana case carries this view a bit further. In *Nicholson's Mobile Home Sales, Inc. v. Schramm,*[32] a statutory innkeeper's lien held by the owner of a mobile home park was given priority under section 9-310 for rent or storage charges due from the owner of a mobile home over a prior security interest assigned to a bank by the vendor of the home. The court viewed the provision of a plot for the home to be a service within the requirements of section 9-310. This service did not enhance the value of the mobile home,[33]

---

27. See text accompanying note 23 *supra.*

28. Official Comment 1 to U.C.C. §9-310.

29. *See* Comment, *Priority Between Security Interests and Liens Arising by Operation of Law in Oregon,* 12 WILLAMETTE L.J. 173 176 (1975). "It thus appears that the enhancement requirement suggested by the framers of the Code has not gained wide juidicial acceptance. . . ." *Id.*

30. 43 Pa. D. & C.2d 241 (Ct. Com. Pl. Pa. 1967).

31. *Id.* at 244.

32. 330 N.E.2d 785 (Ct. App. Ind. 1975). *See also In re* Einhorn Bros., Inc., 171 F. Supp. 655 (E.D. Pa. 1959) (dealing with a landlord's lien; see text accompanying notes 130-138 *infra*).

33. It could be argued that a mobile home is worth more when it is in a desirable loca-

and it can be considered to have preserved the value only in a most indirect sense.[34] Nonetheless, the court ruled that section 9-310 was applicable, and the statutory lien took priority.

When, as in *Nicholson*, the service provided is storage of goods, several issues arise with regard to the applicability of section 9-310. The first issue is whether storage is in fact a service within the meaning of the section. Although the Code nowhere defines service, the clear implication of cases such as *Nicholson* is that the term does include storage.[35] Storage differs from other services, such as repairs, in that no work is actually performed on the goods directly to affect their physical condition. Section 9-310 requires only that the service be performed "with respect to" goods, and thus storage would appear to fit within its intended scope.

A similar consideration is whether storage serves to enhance or preserve the value of the goods. Although it is doubtful that storage could in any way enhance the value of goods, it seems clear that storage does preserve their value. Indeed, preservation is perhaps the primary purpose of storage. Preservation of value benefits the debtor and the secured party in a manner similar to enhancement since the services provided prevent a decrease in the value of the property. Consequently, the policy behind section 9-310[36] justifies the granting of priority over an earlier security interest to the holder of a lien arising from the provision of storage services.[37]

Beyond requiring the mere furnishing of "services or materials," section 9-310 requires that the services or materials provided must have been furnished

---

tion, such as a mobile home park, as opposed to a run-down lot. Yet the value of the home as an entity in and of itself remains the same regardless of the location and regardless of whether this "service" is provided.

34. The "service" here may be deemed to have indirectly preserved the value of the mobile home in the sense that it provided a safe place to keep the home. If the owner of the home were forced to keep it elsewhere, such as in some empty lot, it might have been subject to vandalism or some other harm.

35. *See, e.g.*, Charlie Eidson's Paint & Body Shop, Inc. v. Commercial Credit Plan, Inc., 146 Ind. App. 209, 253 N.E.2d 717 (1969). The "titled owners" of an automobile brought the automobile to the body shop for repairs that were completed on November 11, 1966. Due to the failure of the owners to pay the repair bill and take possession of the automobile, the body shop was required to store it for approximately three and one-half months, for which the reasonable charge was $106. Commercial Credit asserted priority over the body shop's statutory storage lien by virtue of an earlier perfected security interest. The court, however, held that §9-310 was applicable, thus subordinating the security interest to the body shop's lien. *Id.* at 215, 253 N.E.2d at 721.

36. See text accompanying notes 23-26 *supra*.

37. *See also In re* Big Boy Mobile Homes of Knoxville, Inc., 10 U.C.C. Rep. 1307 (E.D. Tenn. 1972). This case provides a useful summary of the considerations involved in the storage issue. A garageman provided towing and storage services for a car that had broken down. In giving priority to the garageman's statutory lien for such services over prior security interests in the car, the court determined that storage undoubtedly preserved the value of the car and, in light of the Official Comments to §9-310 mandating that preservation was a service, entitling the statutory lien arising therefrom to §9-310 priority. The court went about its analysis in an unorthodox manner. Instead of first finding that storage was a service and then determining whether it preserved the automobile's value, the court relied upon its finding that the storage preserved the value of the car to determine that storage was in fact a service. *Id.* at 1310.

in the ordinary course of the lien holder's business.[38] The Code defines "ordinary course of business" only with respect to buyers,[39] but the courts have given the phrase meaning with respect to sellers as well in the application of section 9-310. First, the phrase seems to impose an obligation of acting in good faith.[40] Consequently, the priority given a holder of a statutory lien is good only to the extent that the charges for his services are reasonable.[41] Any charges in excess of this amount are not deemed to have arisen in the "ordinary course of business" and thus are not accorded preference by section 9-310.[42] Second, it appears that the courts have interpreted section 9-310 rather literally with regard to the relationship it requires between the debtor and the statutory lien holder. Thus, one court has ruled that services voluntarily provided with respect to goods will not give rise to a lien that will subordinate a prior security interest.[43] Although the court did not state what part of section 9-310 it relied upon in reaching this conclusion, it can be argued that the furnishing of free services is not the purpose for which a business normally exists and therefore is not within the "ordinary course of business."

The Requirement of Possession by the Lien Holder

Section 9-310 provides that for the statutory lien to be given priority over previously perfected security interests it must be "upon goods in the possession" of the person holding the lien.[44] This requirement appears relatively straightforward, but there are significant legal and policy issues that merit discussion.

Section 9-310 requires that the lien for materials or services must be on goods[45] if it is to be entitled to priority over earlier security interests. Furthermore, under section 9-310 a lien holder must retain possession of the goods after performing his services and be in possession of them when asserting his

38. See text accompanying note 23 *supra*.

39. FLA. STAT. §671.201(a) (1975); U.C.C. §1-201(9) (" 'Buyer in ordinary course of business' means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker.")

40. *See* Comment, *supra* note 29, at 176. *See also* FLA. STAT. §671.203 (1975); U.C.C. §1-203 ("Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.")

41. Mousel v. Daringer, 190 Neb. 77, 206 N.W.2d 579 (1973).

42. *Id. Cf.* Checkered Flag Motor Car Co. v. Grulke, 209 Va. 427, 164 S.E.2d 660 (1968) (amount to which statutory lien holder was entitled due to priority over earlier security interests was limited to $75).

43. Fedders Fin. Corp. v. American Bank & Trust Co., 9 U.C.C. Rep. 894 (Ct. Com. Pl. Pa. 1971).

44. See text accompanying note 27 *supra*.

45. " 'Goods' includes all things which are movable at the time the security interest attaches or which are fixtures (§679.313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. 'Goods' also includes the unborn young of animals, and growing crops. . . ." FLA. STAT. §679.105(1)(f) (1975); U.C.C. §9-105(1)(f) (1962 version). *See, e.g.*, National Bank v. Eames & Brown, 50 Mich. App. 442, 213 N.W.2d 573, *rev'd on other grounds*, 396 Mich. 611, 242 N.W.2d 573 (1974) (lien on a trust fund not entitled to §9-310 priority).

claim if he is to have priority.[46] If the lien holder gives up possession of the goods, he loses only his priority, not the lien, unless the statute creating the lien requires possession[47] or the lien arises by common law.[48] This is so because section 9-310 deals only with priority of liens and not with their validity.[49] Loss of possession must be voluntary, however, and if the lien holder loses the property without his consent — by fraud, force, or replevin, for example — the possessory lien and its priority granted by section 9-310 are not necessarily relinquished.[50]

In view of the purpose of section 9-310 to protect those furnishing materials and services for goods subject to prior security interests,[51] it seems inconsistent to allow the requirement of uninterrupted possession to undercut the rule. Several reasons for this requirement have been suggested. It may serve to negate earlier decisions that often based priority of conflicting interests on whether the secured creditor held title to the goods or whether he merely had a lien on them.[52] This hardly seems necessary, however, in light of the explicit language in section 9-202 of the Code which collapses the distinctions previously based on title theory and lien theory.[53] Another suggested reason is that possession puts the secured party on notice of the lienor's interest.[54] This rationale appears faulty, however, in at least two respects. First, it is doubtful whether possession alone would in fact serve notice to the secured party.[55] Second, filing

46. *See, e.g.*, Balzer Mach. Co. v. Klineline Sand & Gravel Co., 271 Ore. 596, 533 P.2d 321 (1975) (Plaintiff brought suit to foreclose a nonpossessory artisan's lien. The lien arose by statute out of repairs made to certain equipment in which defendant held a prior perfected security interest. The Oregon supreme court held that the defendant had priority since plaintiff did not have possession of the equipment as required by §9-310.)

47. FLA. STAT. §713.74 (1975). See note 112 *infra*.

48. Jones v. Carpenter, 90 Fla. 407, 413-14, 106 So. 127, 129 (1925). (In dictum, the court said that a common law lien is "the mere right to retain possession of some chattel until a debt or demand due the person thus retaining it is satisfied; possession being such a necessary element that if it is voluntarily surrendered by the creditor the lien is at once extinguished.")

49. Forrest Cate Ford v. Fryar, 62 Tenn. App. 572, 465 S.W.2d 882 (1970).

50. Finch v. Miller, 271 Ore. 596, 531 P.2d 892 (1975) (possessory lien is not lost if the chattel is taken from the lienor without the lienor's consent). *See also* General Motors Acceptance Corp. v. Colwell Diesel Serv. & Garage, Inc., 302 A.2d 595 (Me. 1973) (possessory lien not relinquished when loss of possession was due to a replevin action).

51. See text accompanying notes 23-26 *supra*.

52. Under a conditional sales contract the seller retains title to the goods until the buyer has made full payment. Under a chattel mortgage, the buyer holds title to the goods subject to the seller's lien. *See* Official Comment 2 to U.C.C. §9-310 ("Under chattel mortgage or conditional sales law many decisions made the priority of such liens turn on whether the secured party did or did not have 'title'. This Section changes such rules and makes the lien for services or materials prior in all cases where they are furnished in the ordinary course of the lienor's business and the goods involved are in the lienor's possession.")

53. FLA. STAT. §679.202 (1975): "Each provision of this chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor."

54. Comment, *supra* note 29, at 186.

55. For example, it is unlikely that a bank having a security interest in a car would ever know that the buyer of the car took it to a mechanic for repairs. Most likely the bank would learn of the mechanic's possession from inquiry of the buyer. Indeed, if direct inquiry were made, the bank would not need to obtain other notice of the lien holder's possession.

or recording the lien would probably be at least as effective a means as possession to give notice.[56] A contrary view would emphasize that the possession requirement is justified because it enhances a more simplistic priority system among competing liens whereas filing and recording rules create unnecessary complexity.[57] It would seem, however, that any adverse effects from added complexity due to the procedure for recording statutory liens would be outweighed by the increased protection afforded the lien holder who would have alternative methods of perfecting his lien.

The final and most persuasive rationale for the rule of possession is that the requirement preserves the secured party's interest.[58] Since any number of liens may be asserted against a particular chattel,[59] a secured party who extended credit in reliance upon his having the senior interest could find his security exhausted by numerous subsequent nonpossessory lien holders, all of whom would attain priority over his security interest were it not for the possession requirement.[60] The possession requirement thus serves to limit the subordination of the security interest to no more than one subsequent statutory lien.[61] This objective seems fair despite the general policy of section 9-310. Even though nonpossessory lien holders may innocently be deprived of payment for their services, the secured party would suffer even greater loss if all of the subsequent lien holders were allowed to collect ahead of him.[62]

Statutory Exceptions

Like the common law rule of "first in time, first in right" that it replaced,[63] the rule of section 9-310 is not absolute. The section includes the qualifying language "unless the lien is statutory and the statute expressly provides otherwise."[64] Thus, even if the lien holder has met all of the other requirements of

56. It may even be easier for the bank to check a public record than to make the inquiry suggested in note 55 *supra*. To require filing, however, would put an additional burden on the statutory lien holder and work against the objective of §9-310. Nonetheless, this burden may be substantially smaller than the one imposed by the possession requirement, especially when possession by the lien holder is not feasible, such as in the case of a yacht in need of repairs.

57. Comment, *supra* note 29, at 177.

58. *Id.* at 187.

59. Suppose, for example, the buyer of a car takes it to one repair shop for repairs and later to another shop for further work. He pays neither repair shop for the work done. Both shops may claim statutory liens on the car if the statute does not require possession. *See, e.g.*, FLA. STAT. §713.56 (1975).

60. Comment, *supra* note 29, at 187.

61. Section 9-310 requires possession by the statutory lien holder if he is to be given priority over a prior security interest. Thus, only one lien holder, the one having actual possession, can assert the priority granted by the section.

62. The secured party has often financed the entire cost of acquisition of the chattel by the debtor. Consequently, the magnitude of his possible loss due to nonpayment by the debtor is usually greatly in excess of that which might be suffered by a repairman, whose charges are generally only a fraction of the chattel's value.

63. See text accompanying notes 13-22 *supra*.

64. U.C.C. §9-310. See text accompanying note 23 *supra*. The drafters created this limited exception to allow for some flexibility in the rules of priority so that local needs and desires, as determined by the state legislatures, could be met. Although total uniformity among the

the section, he may still find his claim subordinated to a prior security interest if this exception applies.[65]

That section 9-310 requires exceptions to its rule of priority to be expressly provided for in the statute creating the lien is significant for several reasons. First, this precludes the subordination of common law liens to prior security interests since such liens are not created by statute.[66] Furthermore, even if a statutory lien has been previously interpreted by the courts to be subordinate to earlier security interests, it is nonetheless entitled to the preference granted by section 9-310 unless the statute provides to the contrary.[67] Finally, exceptions cannot be implied or read into the statutes. In *General Motors Acceptance Corp. v. Colwell Diesel Service & Garage, Inc.*,[68] the holder of a perfected security interest in a tractor truck argued that he should have priority over the holder of a subsequent statutory mechanics' lien because he had not consented to the performance of the repairs. Under the common law such consent would have been required to subordinate the secured creditor's claim.[69] Yet the court refused to read this requirement into section 9-310 since to do so would subvert the express policy of the Code.[70]

The final and perhaps most troublesome question with regard to the "unless" clause is that of its intended scope.[71] In essence the issue becomes whether express language in statutes creating liens can subordinate only liens which otherwise would have a section 9-310 priority or whether such language can grant priority to a lien which would not otherwise qualify for the section's

---

laws of the states was the drafters' ideal, they recognized that this would not be the case. The clause does not, however, express an affirmative policy that some liens should in fact be deprived of the preference accorded by §9-310. G. GILMORE, *supra* note 13, at 887. "[I]t merely recognizes the fact that some lien statutes were drafted that way and attempts to avoid further confusion in a highly confused area by allowing the 'express' statutory provision to prevail." *Id.*

65. *Compare* COLO. REV. STAT. §4-9-310 (Supp. 1976) *with* U.C.C. §9-310. The version of §9-310 adopted in Colorado grants priority to the holder of the *security interest* unless the statute expressly provides otherwise.

66. Nickell v. Lambrecht, 29 Mich. App. 191, 185 N.W.2d 155 (1970). Plaintiff owned a tractor and leased it to Robinson. While in Robinson's possession, the tractor was damaged in a collision. The defendant, a garageman, repaired the tractor but Robinson, who also defaulted on his rental agreement with the plaintiff, failed to pay defendant's bill of $531. When plaintiff learned that the tractor was in defendant's garage, he sued to recover possession. Defendant claimed his common law artisan's lien subordinated plaintiff's claim. The appellate court agreed and applied §9-310, stating: "The common-law lien is a lien given by 'rule of law.' It is not a statutory lien and, accordingly, the 'unless' clause is inapplicable." *Id.* at 198, 185 N.W.2d at 159.

67. Mousel v. Daringer, 190 Neb. 77, 206 N.W.2d 579 (1973). *See also* Official Comment 2 to U.C.C. §9-310.

68. 302 A.2d 595 (Me. 1973).

69. Bath Motor Mart v. Miller, 122 Me. 29, 30, 118 A. 715, 716 (1922). See text accompanying note 15 *supra*.

70. 302 A.2d at 600. *See also* Nickell v. Lambrecht, 29 Mich. App. 191, 199, 185 N.W.2d 155, 159-60 (1970) ("In subordinating the lien of the holder of a perfected security interest to the possessory lien . . ., the framers of the Uniform Commercial Code clearly chose to dispense with the consent of the holder of the security interest.")

71. G. GILMORE, *supra* note 13, at 887-88.

perferential treatment.[72] If the first interpretation is accepted, a possessory lien would merely lose its priority if it was statutorily created and the statute subordinated it to security interests. This is probably the most obvious[73] and literal[74] construction of the clause.

The second interpretation may be equally if not more persuasive in light of some of the section's general policies[75] and the problems inherent in the possession requirement. As one writer has noted:

> Under this interpretation the section [9-310] is deemed to lay down a general rule which the state may overturn by express language to the contrary. Thus, where a state desires to create a statutory lien by filing instead of by possession and also give it priority, it can do so by express language to that effect. . . . In this situation the lienor would take priority or not by the express terms of the statute and not under section [9-310].[76]

This view allows for greater recognition of the lien holder's interest in being compensated for his services, the primary function of section 9-310. It also makes this interest more easily satisfied by eliminating possession as an absolute requirement for use of section 9-310 by the lien holder. This expanded protection is especially significant when the property is not easily taken into the lienor's possession,[77] as when repairs are made to an item such as a yacht or airplane.[78] The repairman should not be denied recovery merely because of the size of the goods. In fact, it is in this type of situation that his losses may be greatest and he is most in need of the priority of his claim. Since section 9-310 would not allow this priority due to the repairman's lack of possession and courts would be reluctant to ignore this specific requirement, it seems only fair that the legislature should be able to grant this priority and hence further the policies behind section 9-310.[79]

As yet the judiciary has not been so persuaded. In an Oregon case,[80] plain-

---

72. *See generally id.* at 887-88; Note, *supra* note 13, at 1656-61.

73. G. GILMORE, *supra* note 13, at 888. See also text accompanying notes 80-85 *infra*.

74. Note, *supra* note 26, at 175.

75. See text accompanying notes 23-26 *supra*.

76. Note, *supra* note 26, at 175.

77. *Id.*

78. See note 56 *supra*. Another example is that in which a large or heavy piece of machinery in a factory is in need of repair. This equipment cannot be brought to the repairman's shop, so he must go to the site of the machine to perform the work. In such cases, like those of the airplane or yacht, continued possession after the repairs by the repairman is impossible.

Some form of "constructive possession" would seem to be a possible solution to this problem. However, constructive possession must relate to and rest upon legal title; consequently, it would be of no value to a lienor. *See* Richbourg v. Rose, 53 Fla. 173, 44 So. 69 (1907); 73 C.J.S. *Property* §14 (1951).

79. This particular problem could be eliminated by removing the possession requirement from §9-310, but this could have a substantial adverse effect on the secured party. See text accompanying notes 58-62 *supra*.

80. Balzer Mach. Co. v. Klineline Sand & Gravel Co., 271 Ore. 596, 533 P.2d 321 (1975).

tiff brought suit to foreclose a nonpossessory statutory lien[81] arising out of repairs made to certain rock crushing equipment. Defendant held a prior perfected security interest in that same equipment. Section 87.100 of the Oregon Statutes provided that regardless of whether the artisan lien holder retained possession, a properly filed[82] artisan's lien was superior to all other interests except the prior recorded lien of a chattel mortgagee.[83] Defendant argued that section 9-310 was enacted subsequent to that statute and by implication repealed any inconsistent provisions. The court agreed, and in granting priority to the security interest added that the most logical interpretation of the "unless" clause is that it refers only to possessory lien statutes, not to statutes such as section 87.100.[84] The decision accords with a literal reading of section 9-310, which expressly requires possession of the goods by the statutory lien holder. In this type of case, however, where possession may not be practical, the alternative interpretation seems the more equitable.[85]

It thus appears that the exception clause can only take away priority from statutory lien holders who would otherwise have priority under section 9-310. It has not been used to give priority to nonpossessory liens that would not otherwise be entitled to priority under the section, since the courts apparently consider possession to be an indispensable requirement of section 9-310.

---

81. ORE. REV. STAT. §87.085 (1975) provided for a nonpossessory lien for labor or materials expended upon equipment.

82. *See* ORE. REV. STAT. §87.090 (1975).

83. ORE. REV. STAT. §87.100 (1975) (repealed 1975): "The lien of every person as provided in ORS 87.085 shall be superior to the rights of the person holding their title to the chattel or any lien thereon antedating the time of the expenditure provided ORS 87.085 by such lien claimant. However, the lien filed under the provisions of ORS 87.090 shall only have such priority over a chattel mortgage duly recorded prior to the date of the expenditure claimed under the lien during the period the lien claimant retains possession of the chattel. . . ." Defendant's interest was assumed not to be that of a chattel mortgagee. 271 Ore. at 601 n.1, 533 P.2d at 324 n.1.

This statute was later amended to bring it into conformity with §9-310; *i.e.*,.an artisan lien holder has priority over a perfected security interest only if he retains possession. ORE. REV. STAT. §87.100 (1975).

84. 271 Ore. at 601, 533 P.2d at 324. *Accord,* Comment, *supra* note 29, at 179. The writer believed that Official Comment 1 to §9-310 implies that the "unless" language was "intended to defer the priority rule of this section only to a statute expressly subordinating possessory liens, and not to a statute granting priorities denied under the general rule of §9-310." *Id.* Official Comment 2 to the section states in part: "Some of the statutes creating such liens expressly make the lien subordinate to a prior security interest. This Section does not repeal such statutory provisions." The Official Comments, however, are not law and thus are not binding on the courts. Consequently, even assuming the writer is correct in his inference, the courts could still adopt the alternate approach. This is especially true in light of §1-102(1) of the U.C.C., which provides that the Code "shall be liberally construed and applied to promote its underlying purposes and policies." FLA. STAT. §671.102(1) (1975).

85. See text accompanying notes 75-79 *supra.* This result is in direct conflict with the policy behind §9-310, see text accompanying notes 23-26 *supra,* and illustrates the need for the filing or recording of statutory liens, especially when the size of the goods makes possession impossible.

THE APPLICABILITY OF SECTION 9-310 TO STATUTORY LIENS IN FLORIDA

Statutory Liens in Florida

Florida has nineteen statutory liens.[86] Seventeen of these liens are found in chapter 713 of the Florida Statutes and were created in favor of a wide variety of persons, such as repairmen,[87] innkeepers,[88] and manufacturers.[89] The other two liens – one in favor of warehousemen,[90] the other in favor of carriers[91] – were created as part of article 7[92] of the U.C.C. None of the statutes creating the liens of chapter 713 require possession of the encumbered property in order for the lien to be valid. Two other statutes in the chapter do impose a possession requirement for the lien to be good against other creditors and purchasers without notice.[93] Thus, possession of the goods is not required in Florida for the statutory lien holder to have a valid lien against the debtor-owner, but it is required if the lien holder is going to assert priority of his claim against other creditors of the debtor.[94]

---

86. Florida has no common law liens, so the provision in §9-310 giving priority to liens arising by statute or rule of law applies only to statutes here. *See* FLA. STAT. §§713.50-.78 (1975) (regarding Florida's statutory liens).

87. FLA. STAT. §713.58 (1975). See text accompanying note 99 *infra*.

88. FLA. STAT. §§713.67-.68 (1975). See note 126 *infra*.

89. FLA. STAT. §§713.61-.62 (1975). See notes 123 & 152 *infra*.

90. FLA. STAT. §677.209 (1975); U.C.C. §7-209. See note 160 *infra*.

91. FLA. STAT. §677.307 (1975); U.C.C. §7-307. See note 159 *infra*.

92. FLA. STAT. ch. 677 (1975). Article 7 governs documents of title.

93. FLA. STAT. §713.74 (1975). See note 112 *infra*. *See* FLA. STAT. §713.75 (1975): "A person entitled to acquire a lien not in privity with the owner of the personal property shall acquire a lien upon the owner's personal property as against the owner and persons claiming through him by delivery to the owner of a written notice that the person for whom the labor has been performed or the material furnished is indebted to the person performing the labor or furnishing the material in the sum stated in the notice . . . . There shall be no lien upon personal property as against creditors and purchasers without notice except under the circumstances and for the time prescribed in s. 713.74 and for the amount of the debt due to the lienor at the time of the service of the notice provided in this section." *See also* FLA. STAT. §85.011 (1975), which allows but does not require possession as a method of enforcing a statutory lien.

Whether the statutes creating the liens require possession may be immaterial. If possession is not required by the statute, the lien will be valid without it. If there is no possession, however, such a lien, although valid between the debtor and the lien holder, will not be entitled to priority over security interests since §9-310 expressly requires possession. Forrest Cate Ford, Inc. v. Fryar, 62 Tenn. App. 572, 465 S.W.2d 882 (1970) (statutory liens not requiring possession held valid but subordinate to perfected security interest when lien holder did not retain possession of the vehicles repaired).

94. Generally, there is a three-month limit on the right to possession by the lien holder, but if actual possession continues beyond this limit, the lien remains good and entitled to priority. Eastern Airlines Employees Fed. Credit Union v. Lauderdale Yacht Basin, Inc., 334 So. 2d 175 (Fla. 4th D.C.A. 1976). An interesting issue may be raised here. Suppose that after three months expired, the lienor were forced to relinquish possession. If the statute creating the lien did not require possession for validity, it seems that the lien would still be entitled to priority by virtue of §9-310 since the loss of possession would be involuntary or without the lienor's consent. See text accompanying note 52 *supra*. Of course, it could be argued that such a loss of possession was through an implied consent of the lien holder (having

The Florida Experience to Date

The Florida courts' experience with the interpretation of section 9-310 has been rather limited. On only three occasions have the Florida district courts been asked to deal with section 9-310,[95] and all three cases dealt with the same type of lien.[96] Nonetheless, the results have been in accord with the decisions of other states,[97] and the courts have shown a tendency to uphold the policy underlying the section by granting priority to the statutory lien holder in each case that his claim conflicted with a prior security interest.

In *Gables Lincoln-Mercury, Inc. v. First Bank & Trust Co.*,[98] the court was confronted with a conflict between a statutory lien held by a garageman and a prior security interest retained by the bank that had financed the purchase of the automobile. The lien was created "[i]n favor of persons performing labor or services for any other person, upon the personal property of the latter upon which the labor or services is performed."[99] The court held this lien to be properly within the scope of section 9-310.[100] The court added that the introductory paragraph to the chapter creating Florida's statutory liens[101] did not create an express exception to the application of section 9-310.[102] It properly construed that paragraph as relating to other statutory liens and not to security interests.[103] Consequently, the repairman's lien was given priority over the earlier security interest.

The plenary and exclusive scope of section 9-310 was further emphasized in *Carolina Aircraft Corp. v. Commerce Trust Co.*[104] In that case the same type of lien held by the garageman in *Gables* arose in favor of an airplane mechanic

---

allowed three months to elapse without seeking a foreclosure of his lien) such that he should not be entitled to the §9-310 preference.

95. Eastern Airlines Employees Fed. Credit Union v. Lauderdale Yacht Basin, Inc., 334 So. 2d 175 (Fla. 4th D.C.A. 1976); Carolina Aircraft Corp. v. Commerce Trust Co., 289 So. 2d 37 (Fla. 4th D.C.A. 1974); Gables Lincoln-Mercury, Inc. v. First Bank & Trust Co., 219 So. 2d 90 (Fla. 3d D.C.A. 1969). *See also* W.S. Badcock Corp. v. Roberts, 42 Fla. Supp. 72 (St. Lucie County Cir. Ct. 1975).

96. FLA. STAT. §713.58 (1975). See text accompanying note 99 *infra*.

97. *See, e.g.*, Westlake Fin. Co. v. Spearmon, 64 Ill. App. 2d 342, 213 N.E.2d 80 (1965); Corbin Deposit Bank v. King, 384 S.W.2d 302 (Ky. 1964); Commerce Acceptance of Oklahoma City, Inc. v. Press, 428 P.2d 213 (Okla. 1967); Manufacturers Acceptance Corp. v. Gibson, 220 Tenn. 654, 422 S.W.2d 435 (1967) (all granting statutory liens priority over security interests).

98. 219 So. 2d 90 (Fla. 3d D.C.A. 1969).

99. FLA. STAT. §713.58 (1975).

100. 219 So. 2d at 92.

101. *See* FLA. STAT. §713.50 (1975): "Liens prior in dignity to all others accruing thereafter shall exist in favor of the following persons, upon the following described personal property under the circumstances, hereinafter mentioned in part II of this chapter."

102. 219 So. 2d at 93.

103. *Id.* Similarly, the court decided that §713.73, providing that "[l]iens . . . provided for by [statute] shall take priority among themselves according to the times that the notices required to create such liens respectively were given," had no bearing on the case, since that section dealt only with the priority of conflicting statutory liens, and the bank's interest was not statutory but contractual. 219 So. 2d at 92.

104. 289 So. 2d 37 (Fla. 4th D.C.A. 1974).

for repairs made on a plane.[105] The trust company held a prior perfected security interest in the plane, recorded pursuant to federal law.[106] The trust company contended that the federal and Florida recording statutes[107] established the exclusive means of determining the validity and priority of liens against aircraft. The court rejected that argument and held that the priority granted repairmen's liens in section 9-310 was unaffected by the recording statutes.[108] Thus the security interest was subordinate to the lien subsequently arising in favor of the repairman.[109]

The Florida courts have demonstrated that they will go quite far to protect the priority granted statutory liens under section 9-310. In *Eastern Airlines Employees Federal Credit Union v. Lauderdale Yacht Basin, Inc.*,[110] a yacht club became entitled to a lien[111] by virtue of repairs performed on a boat in which a credit union held a security interest. Florida Statutes section 713.74 states that such liens shall continue as long as the lien holder is in possession, "not to exceed 3 months after performance of the labor or furnishing the material."[112] In that case suit was not brought until approximately five months after the repairs were performed. The credit union thus contended that the decisions in *Gables* and *Carolina Aircraft* did not apply because the lien had expired after three months.[113] The court rejected that argument, however, hold-

105. The statutory lien involved was the same as the one in *Gables*, FLA. STAT. §713.58 (1975). See text accompanying note 99 *supra*.

106. Federal Aviation Act, 49 U.S.C. §1403(a) (1971). This Act requires the national recording of ownership of and security interests in any civil aircraft in the United States.

This type of federal recording statute makes it unnecessary to file a financing statement pursuant to the Code to perfect the security interest. FLA. STAT. §679.302(3)(a) (1975); U.C.C. §9-302(3)(a). *See also* FLA. STAT. §679.104(1) (1975); U.C.C. §9-104(a).

107. FLA. STAT. §329.01 (1975): "No instrument which affects the title to or interest in any civil aircraft of the United States, shall be valid in respect to such aircraft or portion thereof, against any person other than the person by whom the instrument is made or given and any person having actual notice thereof, until such instrument is recorded in the office of the Civil Aeronautics Administrator of the United States, or such other office as is designated by the laws of the United States. Every such instrument so recorded in such office shall be valid as to all persons without further recordation in any office of this state." This statute in effect restates the combined effects of the Federal Aviation Act, 49 U.S.C. §1403(a) (1970), and FLA. STAT. §679.302(3)(a) (1975).

108. 289 So. 2d at 38.

109. *Accord*, Southern Jersey Airways, Inc. v. National Bank of Secaucus, 108 N.J. Super. 369, 261 A.2d 399 (1970).

110. 334 So. 2d 175 (Fla. 4th D.C.A. 1976).

111. FLA. STAT. §713.58(1) (1975); FLA. STAT. §713.60 (1975) (creating a lien "[i]n favor of any person performing for himself or others, any labor, or furnishing any materials or supplies for use in the construction of any vessel or watercraft . . . or for the use or benefit of a vessel or water craft, including masters, mates and members of the crew and persons loading or unloading the vessel or putting in or taking out ballast; upon such vessel or watercraft, whether partially or completely constructed and whether launched or on land, her tackle, apparel and furniture").

112. FLA. STAT. §713.74 (1975): "As against the owner of personal property upon which a lien is claimed under this part II, the lien shall be acquired by any person in privity with the owner by the performance of the labor or the furnishing of the materials. There shall be no lien upon personal property as against purchasers and creditors without notice unless the person claiming the lien is in possession of the property upon which the lien is claimed."

113. 334 So. 2d at 177.

ing that section 713.74 only limited the lien holder's right to claim possession but did not limit the time during which the lien itself could be asserted.[114] Since the lienor still had actual possession of the boat, the validity and priority of the lien under section 9-310 survived.[115] The policy of section 9-310 was thus given full force by the court through its restrictive reading of section 713.74.

Application of Section 9-310 to Florida's Other Statutory Liens

The Liens of Florida Statute Chapter 713. Since the courts have dealt with only two of Florida's statutory liens in connection with section 9-310,[116] the liens for labor and services on personal property[117] and for labor on vessels or watercraft,[118] questions remain as to which of the other liens will fall within the scope of section 9-310 so as to be granted priority over earlier security interests. Certain inferences with regard to Florida's other liens can be made from those decisions. The lien for furnishing materials for vessels[119] would likely be accorded priority since the rule extends to statutory liens arising from both the furnishing of services and materials.[120] The lien arising from the performance of labor upon machines and certain other property[121] should fall within the scope of the section as well, assuming the lien holder complied with the other requirements of the section.[122] Finally, the lien upon any article of value that is altered or repaired,[123] assuming the item is not real property, would obviously be accorded the priority granted in section 9-310. Each of these liens arises from the furnishing of services or materials with respect to some goods and thus should be entitled to priority in the same manner as the similar liens involved in Florida cases to date.

Although most of the Florida liens have not yet been before the courts in

---

114. *Id. See also* Ocala Foundry & Mach. Works v. Lester, 49 Fla. 199, 38 So. 51 (1905).

115. *Id.*

116. *Gables, Carolina Aircraft,* and *Eastern Airlines* all dealt with FLA. STAT. §713.58 (1975). See text accompanying note 99 *supra. Eastern Airlines* also involved the lien created by FLA. STAT. §713.60 (1975). See note 111 *supra.*

117. FLA. STAT. §713.58 (1975). See text accompanying note 99 *supra.*

118. FLA. STAT. §713.60 (1975). See note 111 *supra.*

119. FLA. STAT. §713.64 (1975) creates a lien "[i]n favor of any ship chandler, storekeeper or dealer furnishing stores, provisions, rigging or other material to or for the use of any ship, vessel, steamboat or other watercraft; on such ship, vessel, steamboat or other watercraft."

120. FLA. STAT. §679.310 (1975); U.C.C. §9-310. See text accompanying note 23 *supra.*

121. FLA. STAT. §713.56 (1975) creates a lien "[i]n favor of any person by himself or others performing any labor upon or with any engine, machine, apparatus, fixture, implement, newspaper or printing material or other property, or doing work in any hotel; upon such engine, machine, material, apparatus, fixture, implement, newspaper or printing material, or other property, and upon the furniture, furnishings and belongings of said hotel."

122. This assumption will be made throughout the rest of this discussion. The only issue under consideration is whether the statutory lien itself is one within the scope of §9-310 (for example, whether it is a lien upon goods; whether it arises by virtue of the furnishing of services or materials with respect to goods).

123. FLA. STAT. §713.61 (1975) creates a lien "[i]n favor of any person who shall manufacture, alter or repair any article or thing of value; upon such article or thing." The "manufacture" aspect of this statute will be discussed later. See text accompanying notes 153-155 *infra.*

cases involving section 9-310, their treatment may be foreshadowed by decisions in other states. One example is the lien for towing and storage of motor vehicles,[124] which other jurisdictions have generally considered to be within the purview of section 9-310.[125]

Another example is the landlord's liens.[126] Article 9 expressly excludes landlord's liens from its coverage,[127] but then article 9 does not generally apply to statutory liens except as provided in section 9-310.[128] The issue thus arises as to whether landlord's liens created by statute are within the scope of section 9-310. Case law suggests not.[129] In *In re Einhorn Brothers, Inc.*,[130] a federal district court applying Pennsylvania law held that statutory landlord's liens are not covered by section 9-310. First, the court took note of the distinction drawn in U.C.C. sections 9-310(b) and (c),[131] excluding landlord's liens and statutory liens from the coverage of article 9. The court thus deemed it "highly questionable" that a landlord's lien would come within section 9-310 as a lien for "services and materials."[132] Second, the court stated that section 9-310 was in-

124. FLA. STAT. §713.78(1) (Supp. 1976): "Whenever a person regularly engaged in the business of towing motor vehicles removes a vehicle upon instructions from the owner or lessor, or a person authorized by the owner or lessor, of the property from which such vehicle is towed, the person removing such vehicle shall have a lien on such motor vehicle for a reasonable towing and storage fee."

125. *See, e.g., In re* Big Boy Mobile Homes of Knoxville, Inc., 10 U.C.C. Rep. 1307 (E.D. Tenn. 1972). See text accompanying notes 35-37 *supra*.

126. FLA. STAT. §713.691(1) (1975) provides that "[w]ith regard to a residential tenancy, the landlord has a lien on all personal property of the tenant located on the premises for accrued rent due to the landlord under the rental agreement."

FLA. STAT. §713.77 (1975) provides that "[l]iens prior in dignity to all others except liens for unpaid purchase price shall exist in favor of owners, operators, or keepers of tourist camps or trailer camps for rent owing by and for money or other property advanced to any occupant thereof upon the goods, chattels or other personal property of the occupant of such camp."

Two other landlord and innkeeper liens were created in FLA. STAT. §§713.67-.68 (1975). However, those two statutes have been declared unconstitutional as violative of federal due process rights, since they authorized ejectment and confiscation without notice or hearing. Johnson v. Riverside Hotel, Inc., 399 F. Supp. 1138 (S.D. Fla. 1975); Barber v. Rader, 350 F. Supp. 183 (S.D. Fla. 1972); McQueen v. Lambert, 348 F. Supp. 1334 (M.D. Fla. 1972).

127. FLA. STAT. §679.104(2) (1975); U.C.C. §9-104(b). This is consistent with the Code's general policy of excluding real property transactions from its coverage. *See* Official Comment 2 to U.C.C. §9-104; Note, *supra* note 13, at 1649.

128. FLA. STAT. §§679.102(2), .104(3) (1975); U.C.C. §§9-102(2), 9-104(c).

129. *See, e.g., In re* Einhorn Bros., Inc., 171 F. Supp. 655 (E.D. Pa. 1959); Bates & Springer of Arizona, Inc. v. Friermood, 109 Ariz. 203, 507 P.2d 668 (1973); Peterson v. Siegler, 39 Ill. App. 2d 379, 350 N.E.2d 356 (1976). *But see* Nicholson's Mobile Home Sales, Inc. v. Schramm, 330 N.E.2d 785 (Ct. App. Ind. 1975) (see text accompanying notes 32-35 *supra* and note 138 *infra*).

130. 171 F. Supp. 655 (E.D. Pa. 1959). A secured creditor had a security interest in a bankrupt's inventory. The landlord of the bankrupt levied a distress for rent against the property of the bankrupt, including the inventory, by virtue of a statutory landlord's lien. The ultimate issue in the case was who had priority as to the proceeds from the sale of the inventory, which were inadequate to satisfy the claims of both the secured creditor and the landlord.

131. See text accompanying notes 127-128 *supra*.

132. 171 F. Supp. at 660.

tended to cover liens arising from work that enhances or preserves the value of the property and that the "act of leasing the premises could hardly be thought to bear this relation to the value of the goods situated thereon."[133]

The court's interpretation appears sound. It accords with the language of the relevant Code provisions,[134] with the exclusion of real property transactions from the scope of the Code[135] and with the philosophy underlying section 9-310.[136] Unlike a repairman, the landlord furnishes no services or materials with respect to goods. His relationship is merely one with the tenant who then chooses to use the leased premises in a particular manner. It might be argued that the landlord's position is similar to that of one who provides storage for goods, who has generally been entitled to section 9-310 priority,[137] but the person providing storage ordinarily does so with the specific intent of preserving goods and thus should be granted priority to the benefit of the secured creditor. In contrast, a landlord is concerned primarily with the leasing of his premises and not so much with what effect, if any, this has on the tenant's goods. Any benefit accuring to the secured party only indirectly benefits the landlord, and thus the landlord's lien should not be granted priority over a prior security interest. If Florida courts follow the precedent of other states, they will likely deny such liens priority.[138]

---

133. *Id.* at 660. *See also* Universal C.I.T. Credit Corp. v. Congressional Motors, Inc., 246 Md. 380, 228 A.2d 463 (1967). *Cf. In re* King Furniture City, Inc., 240 F. Supp. 453 (E.D. Ark. 1965) (The exclusion of landlord's liens from the coverage of article 9 applied only to statutorily created landlord's liens, and those created by contract, *i.e.*, the lease, were subject to the rules of the article.) This does not accord with a literal reading of the Code, which excludes "a landlord's lien" without regard to how it is created. FLA. STAT. §679.104(2) (1975); U.C.C. §9-104(b).

134. FLA. STAT. §§679.104(2), (3), .310 (1975); U.C.C. §§9-104(b), (c), 9-310.

135. See note 127 *supra*. *But see* Note, *supra* note 13, at 1654: "The Comment to §9-104(b) suggests that the drafters excluded landlord liens from article 9 only to make explicit the Code's intent not to regulate interests in real property. To the extent that a landlord's lien falls upon a tenant's crops, mineral ore or other real property, exclusion of the lien is consistent with this intention. But when a landlord's lien falls upon personal property, such as a tenant's automobile, exclusion of the lien from article 9 would not be so justified." This view fails to realize, however, that the property interest underlying the whole transaction and giving rise to the lien remains a real property (leasehold) interest, regardless of the type of property to which the lien attaches. Note also that under the Code crops are considered to be goods, not real property. FLA. STAT. §679.105(1)(f) (1975); U.C.C. §9-105(1)(h).

136. See text accompanying notes 23-26 *supra*.

137. See text accompanying notes 32-37 *supra*.

138. *But see* Nicholson v. Schramm, 330 N.E.2d 785 (Ct. App. Ind. 1975) (see text accompanying notes 32-34 *supra*). In that case a statutory innkeeper's lien, which arose from the rental of a plot in a mobile home park, was granted priority over a perfected security interest in a mobile home. This result appears to conflict with the decisions respecting landlord's liens. The court did not seem to consider the transaction giving rise to the lien as one between landlord and tenant. On the contrary, it deemed the owner of the mobile home park as having provided storage services with respect to the mobile home. Consequently, the court held that the statutory lien was entitled to §9-310 priority.

Despite the "real property" taint of the transaction in *Nicholson*, the result is justifiable. In *Nicholson* the lien holder provided services with respect to a specific good, storage of the mobile home, thus meeting the requirements of §9-310. This was not true in *Einhorn Bros.* or the other cases involving landlord's liens, where the holder of the lien dealt only with a

Finally, decisions elsewhere may assist the Florida courts in determining the applicability of section 9-310 to statutory liens arising from the rendering of services to animals.[139] The question arising with respect to these liens is whether the animals are goods within the meaning of section 9-310. The Indiana courts think they are, and have held that statutory liens on hogs held by feeders are superior to prior security interests in the hogs by virtue of section 9-310.[140] This appears to be consistent with the intent of the draftsmen of the Code. The Code's definition of goods is broad and expressly includes the unborn young of animals.[141] Since the unborn are included, the clear implication is that live animals can be treated as goods since no reason exists to distinguish between the two in this regard. Furthermore, the decision reached in Indiana is consistent with the policies[142] underlying the rule set forth in section 9-310.[143]

With respect to the remainder of Florida's statutory liens, there is no precedent from other states to guide the Florida courts' determination of whether those liens are entitled to section 9-310 priority. Nonetheless, certain results might still be anticipated. Regarding Florida's liens arising from the

---

tenant and not directly with any goods. See note 144 *supra*. Thus the decisions may be reconciled. The decision in *Nicholson* may be particularly significant for owners of tourist and trailer camps. *See* FLA. STAT. §713.77 (1975). See note 126 *supra*.

139. FLA. STAT. §713.65 (1975) creates a lien "[i]n favor of all persons feeding or caring for the horse or other animal of another, including all keepers of livery, sale or feed or feed stables, for feeding or taking care of any horse or other animal put in their charge; upon such horse or other animal."

FLA. STAT. §713.66 (1975) creates a lien "[i]n favor of any person who shall furnish corn, oats, hay, grain or other feed or feedstuffs or straw or bedding material to or upon the order of the owner . . . of any racehorse, polo pony or race dog, for the unpaid portion of the price of such supplies upon every racehorse, polo pony, or race dog which consumes any part of such supplies. . . . Said liens shall be superior to any and all claims, liens and mortgages, whether recorded or unrecorded, including, but not limited to, any lessor's or vendor's lien, and any chattel mortgage, which theretofore may have been or thereafter may be created against such racehorse, polo pony or race dog, and to the claims of any and all purchases thereof." The last sentence of this statute grants a priority to this lien similar to the one provided for in §9-310. This sentence does not contain a possession requirement as does §9-310, but possession of the animal by the lien holder does seem to be required if the lien holder's claim is to be valid against other creditors of the debtor. FLA. STAT. §§713.74-.75 (1975). See note 93 *supra*.

FLA. STAT. §713.70 (1975) creates a lien "[i]n favor of owners of stallions, jackasses or bulls, upon the colt or calf of the get of said stallion, jackass or bull, and also upon the mare, jenny or cow served by said stallion, jackass or bull in breeding thereof for the sum stipulated to be paid for the service thereof . . . ." This section also requires filing of the lien with the county clerk for the lien to be valid. *Id.*

140. Yaeger & Sullivan, Inc. v. Farmer's Bank, 317 N.E.2d 792, 800 (Ct. App. Ind. 1974). *See also* Mousel v. Daringer, 190 Neb. 77, 206 N.W.2d 579 (1973).

141. See note 45 *supra*.

142. See text accompanying notes 23-26 *supra*.

143. FLA. STAT. §713.70 (1975), see note 139 *supra*, creates a lien upon a mare serviced by a stallion as well as upon the offspring. The question arises as to which animal, the mare or the offspring, has been the recipient of the service provided. Strong arguments could be made either way. At the time the service is actually provided there is no offspring and thus the mare would logically seem to be the "good" with respect to which the services were furnished. The owner of the mare is benefitted only by the production of the offspring, however, not by his mare being in foal.

cutting of timber[144] and the cultivation and harvesting of crops,[145] the applicability of section 9-310 may depend upon whether crops and timber are considered to be real or personal property. Under prior Florida law, both crops[146] and timber[147] were considered personal property only after being severed from the land. Consequently, the cutting of timber and the harvesting of crops would seem to be services giving rise to liens within the scope of section 9-310.[148] Furthermore, under the Code, growing crops are also considered goods[149] and thus the lien arising due to cultivation of crops should likewise be entitled to section 9-310 priority. The suggested results are consistent with the policy of the section since the services provided clearly enhance the value of the crops or timber, which are of little practical value until cut for use or sale.

Florida also provides for a lien upon crops and timber arising from the loan of money to aid the debtor's planting, farming, or timber getting.[150] The problem here is to determine whether a loan is in fact a "service provided with respect to goods" as required by section 9-310. It is doubtful that this lien is within the section's coverage. As was the case with the landlord's lien,[151] the service provided here, if a loan can be considered a service, only indirectly preserves or enhances the value of the property. Like his tenant counterpart, it is the borrower who in fact performs the services with respect to the goods. The lender deals only with the borrower and not the goods themselves. Consequently, he should not be granted section 9-310 priority.

---

144. FLA. STAT. §713.57 (1975) creates a lien "[i]n favor of any person by himself or others cutting, rafting, running, driving, or performing other labor upon logs or timber of any kind; on such logs and timber, and on any article manufactured therefrom."

145. FLA. STAT. §713.59 (1975) creates a lien "[i]n favor of any person performing any labor in, or managing or overseeing, the cultivation or harvesting of crops; upon the crops cultivated or harvested." *See generally* Commentary, *The Florida Laborer's Lien: An Unconstitutional Creditor's Remedy?*, 26 U. FLA. L. REV. 873 (1974).

146. Walters v. Sheffield, 75 Fla. 505, 78 So. 539 (1918).

147. Summerlin v. Orange Shores, Inc., 97 Fla. 996, 122 So. 508 (1929).

148. The 1972 revision of the U.C.C., not yet adopted in Florida, expressly includes within the definition of "goods" some standing timber which is to be cut: " 'Goods' also includes standing timber which is to be cut and removed under a conveyance or contract for sale . . . ." U.C.C. §9-105(h) (1972 version). This definition would not change the Florida decisions. See notes 144-147 *supra* and accompanying text.

149. FLA. STAT. §679.105(1)(f) (1975); U.C.C. §9-105(1)(h). See note 45 *supra*.

150. FLA. STAT. §713.71 (1975): "Any person who shall procure a loan or advance of money or goods and chattels, wares or merchandise or other things of value, to aid him in the business of planting, farming, timber getting or any other kind of businesses in this state, from any factor, merchant, firm or person in this state, or in the United States or in any foreign country, shall, by part II of this chapter, be held to have given to the lender . . . a statutory lien of prior dignity to all other encumbrances, saving and excepting liens for labor and liens in favor of landlords, upon all the timber-getting, all the crops, and products grown or anything else made or grown by said person, through the assistance of said loan or advances; . . . and the same shall be recorded in the office of the clerk of the circuit court of the county wherein such business of planting, farming or timber-getting is conducted." Note that this section provides its own filing and priority rules as to this lien. The section expressly subordinates this lien to certain other statutory liens, but not to any security interests. Thus it contains no provision coming within the exception clause of §9-310. See text accompanying notes 64-65 *supra*.

151. See text accompanying notes 126-139 *supra*.

Two Florida statutes create liens dealing with the manufacture of goods.[152] Florida Statutes section 713.61 creates a lien upon property in favor of any person who manufactures, alters, or repairs such property. As discussed previously,[153] the alteration and repair services would clearly seem to come within the scope of section 9-310 since the work performed enhances the value and quality of the goods. In the manufacture of goods, it is possible that a debtor could supply to a manufacturer component parts, subject to a security interest, for use in producing the finished product. In that situation the rule of section 9-310 would seem to apply. It is probable that the finished product would have a greater value than its component parts, primarily due to the contribution of labor.[154] Consequently, to give the secured creditor priority would be to give him a windfall at the expense of the uncompensated manufacturer. Such a result is precisely that which section 9-310 seeks to prevent.[155]

Similar reasoning indicates that Florida Statutes section 713.62,[156] which creates a lien in favor of someone furnishing raw materials to be manufactured into an article of value, would also be covered by section 9-310. This is because section 9-310 grants priority to statutory liens arising not only by virtue of the furnishing of services but also by the furnishing of materials.[157]

Finally, the lien created in favor of someone furnishing certain machinery for particular utilities and manufactories[158] would seem not to be entitled to the priority granted by section 9-310. The lien holder supplies machinery used for providing transportation or generating power but does not provide services or materials directly to any goods as required by that section.

The Liens Created by the U.C.C. In article 7, dealing with warehouse receipts and bills of lading, the Uniform Commercial Code creates two other

---

152. FLA. STAT. §713.61 (1975). See note 123 *supra*. FLA. STAT. §713.62 (1975) creates a lien "[i]n favor of any person who shall furnish any logs, lumber, clay, sand, stone or other material whatsoever, crude or partially or wholly prepared for use, to any mill or other manufactory to be manufactured into any article of value; upon all such articles furnished and upon all articles manufactured therefrom."

153. See text accompanying note 123 *supra*.

154. For example, an assembled car is worth significantly more than its individual parts.

155. See text accompanying note 25 *supra*.

156. See note 152 *supra*.

157. FLA. STAT. §679.310 (1975); U.C.C. §9-310.

158. FLA. STAT. §713.63 (1975) creates a lien "[i]n favor of any person who shall furnish any locomotive or stationary engine, water engine, windmill, car or other machine or parts of machine or instrument for any railroad, telegraph or telephone line, mill, distillery, or other manufactory; upon the articles so furnished."

159. FLA. STAT. §677.307 (1975); U.C.C. §7-307: "(1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

. . . .

"(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver."

liens, one in favor of carriers[159] and one for warehousemen.[160] Cases decided in Florida and other jurisdictions have dealt with the applicability of section 9-310 to these liens.

One Oklahoma case indicated that the carrier's lien has priority over earlier security interests by virtue of section 9-310, unless the carrier had notice that the consignor or bailor lacked authority to subject the goods to such charges and expenses.[161] Such notice is actual notice.[162] Whether carriage of goods is a service that enhances or preserves the value of the goods seems questionable,[163] and in some instances the secured party may actually be injured by the performance of such services.[164] Consequently, the policy behind section 9-310 may

160. FLA. STAT. §677.209 (1975); U.C.C. §7-209: "(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

"(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the chapter on secured transactions (chapter 679).

"(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under s.677.503.

"(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver."

161. National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889 (Okla. 1966). A trailer coach was purchased under a conditional sales contract, which was properly perfected. The contract stated that the trailer could not be removed from the state without the consent of the seller or his assigns. The trailer was moved, however, without consent, according to the instructions given the carrier by a subsequent purchaser. The purchaser defaulted on the payments due under the conditional sales contract, and the holder of the contract brought a replevin action against the carrier that held the trailer. The carrier asserted priority of its §7-307 lien, relying on §9-310. The court rejected this, however, stating that the carrier was charged with notice that the consignor lacked authority to subject the goods to such charges and expenses due to the perfection of the security interest and the fact that the certificate of title reflected the existence of the security interest. Thus, the carrier's lien was held subject to the security interest. *Id.* at 893.

162. FLA. STAT. §671.201(25) (1975); U.C.C. §1-201(25). *Accord* Note, *supra* note 26, at 180. *But see* National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889, 893 (Okla. 1966).

163. Official Comment to U.C.C. §7-307 states: "[T]he storage or transportation *often* preserves the value of the goods . . . ." (emphasis added).

164. This was the situation in National Trailer Convoy Co. v. Mount Vernon Nat'l Bank & Trust Co., 420 P.2d 889, 893 (Okla. 1966). See note 161 *supra*. The trailer was moved from

not justify its application to carrier's liens. However, a literal reading of section 9-310 does support applicability since the section requires only that the services be performed with respect to goods and not that the value of the goods actually be enhanced or preserved.[165]

The holder of a warehouseman's lien is not as fortunate as the carrier. In *W.S. Badcock Corp. v. Roberts*,[166] a Florida circuit court ruled that the warehouseman's lien is not entitled to the priority accorded by section 9-310. In that case the purchaser of furnishings, in which plaintiff held a perfected security interest, placed the furnishings in storage without consent of the plaintiff. The purchaser defaulted on her payments, and the plaintiff sued to recover the furnishings at defendant's warehouse without having to pay storage charges. The warehouseman contended that its warehouseman's lien had priority over the security interest by virtue of section 9-310 and that it was entitled to payment for its services. The court disagreed, however, holding that Florida Statutes section 677.209(3)[167] expressly subordinated the warehouseman's lien to the plaintiff's security interest, thus coming within the exception clause of section 9-310.[168] This seems consistent with a literal reading of the statutes,[169] but it conflicts with the policy of section 9-310 to prevent windfall benefits to the secured creditor at the expense of the lien holder. It also conflicts with the weight of authority granting priority to storage liens created by other states' statutes.[170]

Virginia, the residence of the secured party, to Oklahoma. Obviously, the carrier's services in no way benefitted the secured party. On the contrary, the trailer's value could only have been diminished by its transportation across country and back.

165. Only Official Comment 1 to U.C.C. §9-310 uses the language "enhance or preserve." See text accompanying notes 32-39 *supra*.

166. 42 Fla. Supp. 72 (St. Lucie County Cir. Ct. 1975).

167. See note 160 *supra*.

168. 42 Fla. Supp. at 74. *See also* Official Comment 3 to U.C.C. §7-209: "Where the third party is the holder of a security interest, the rights of the warehouseman depend on the priority given to a hypothetical bona fide pledgee by Article 9 . . . . Thus the special priority granted to statutory liens by Section 9-310 does not apply to liens under subsection (1) of this section, since subsection (3) 'expressly provides otherwise' within the meaning of Section 9-310."

169. *See also* K Furniture Co. v. Sanders Transfer & Storage Co., 532 S.W.2d 910 (Tenn. 1975).

170. See text accompanying notes 35-37 *supra*. The result in *Roberts* would have been different had Florida enacted the complete text of U.C.C. §7-209, which creates an "exception to the exception" to §9-310 if the storage involves "household goods." U.C.C. §7-209(3)(b), unadopted in Florida, states: "A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. 'Household goods' means furniture, furnishings and personal effects used by the depositor in a dwelling."

Official Comment 3 to §7-209 states that this exception in subsection (3)(b) was created "to permit the warehouseman to accept household goods for storage in sole reliance on the value of the goods themselves, especially in situations of family emergency." Thus this exception was created in the interests of the owner of the goods, not in the interests of the warehousemen holding the statutory lien. Section 9-310 seeks to protect the statutory lien holder, see text accompanying notes 23-26 *supra*, and it remains unclear why the drafters of the Code expressly took this protection away from holders of the lien created by §7-209.

CONCLUSION

It thus seems clear that not all of Florida's statutory liens will be accorded section 9-310 priority, illustrating that the section is not intended to apply to every statutory lien. For priority to be granted, the lien must not only arise by operation of law, but it must also meet with the other requirements of the section.

The policy and the rule of section 9-310 appear to be sound. Courts have generally interpreted the section in accordance with its basic purpose to grant statutory liens priority over security interests governed by article 9 of the U.C.C. For this reason, there has been surprisingly little conflict among the jurisdictions in their interpretations of this Code provision.

Nonetheless, while the courts have generally displayed great deference to the policy of section 9-310, the U.C.C. drafters themselves undercut that policy in at least three ways: one, by requiring the lien holder to retain possession of the goods upon which he asserts his claim; two, by expressly subordinating the article 7 warehouseman's lien to prior security interests; and three, by including the "unless" clause in the section. Only the last of these seems justified. A clause allowing the states to create exceptions to the rule is essential in drafting a uniform law so that local needs may be met while maintaining a high degree of national uniformity. Warehouseman's liens, however, should be accorded the same treatment as other statutory storage liens that have been granted section 9-310 priority. And the requirement of possession can seriously undermine the policy of the section, particularly when possession by the lien holder is impossible. In those cases the better solution would be either a filing requirement or no such requirement at all.

JEFFREY D. SEGAL