

IN THE SUPREME COURT, STATE OF FLORIDA

CASE NO. 66,416

ITT INDUSTRIAL CREDIT COMPANY,

Petitioner,

vs.

EDWARD V. REGAN, COMPTROLLER
OF THE STATE OF NEW YORK, AS
TRUSTEE OF THE COMMON RETIREMENT
FUND,

Respondent.

FILED

S/D J. WHITE

MAR 18 1985

CLERK, SUPREME COURT

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Chief Deputy Clerk

THIS IS A REPLY BRIEF OF THE PETITIONER

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ISSUE I

The Mortgagee, Appellee, in its Answer Brief stated that Chapter 78-222, Laws of Florida, which referred to International Harvester case and "debtor's equity" concept is a clear and unambiguous repeal of that case and concept. Is this a correct statement? What, if anything, did Chapter 78-222 do?

ARGUMENT

Chapter 78-222 (a copy is contained in the Appendix) says that it is amending Section 671.201 (37). That subsection is a "general definitions" section. Subsection (37) contains the definition of "security interest". As the Appellant understands the statement in International Harvester Credit Corporation v. American National Bank of Jacksonville, 296 So2d 32 (Fla 1974) the court defined "interest" as being divided into two parts. An owner has legal interest in the entire collateral. However, financially that collateral has two separate interest. Usually, the greatest interest is the debt or lien of a purchase money security interest. The remaining interest, which is generally small in the beginning and grows during the term of the purchase money financing, is the owner's equity. What International Harvester says is that a person providing the money to buy collateral will have that interest protected from prior security interest which have after acquired property clauses. Those clauses will be allowed to attach to the equity portion of an owner's interest and will grow over time. If worst comes to pass then at some point in time the collateral will be repossessed by

the purchase money security interest and sold. The value of the property over and above the purchase money interest, the equity, would then go to any prior security interest that has an after acquired property clause and who has properly perfected. If a prior security interest seized the equipment and sold it then they would have to pay the purchase money security interest and would be entitled to keep the debtor's equity. What International Harvester has to say and what the "debtor's equity" concept is all about is consistent with Section 671.201 (37) "security interest" definition. Section 671.201 (37) was the same after the passage of Chapter 78-222 as it was before the passage of that Chapter. There was not one letter or one period or comma changed. It remained the very same. If debtor's equity concept was going to be repealed it would be in this definition section defining "interest in personal property".

Section 679.312 is changed as regards subsection (3) but that is not relevant to this law suit since (3) and its subparts and its change only relates to "inventory collateral" and this computer is equipment, not inventory.

Section 679.312 (4) relates to equipment such as the one that is in question today. However, subsection (4) simply talks about perfection of security interest and does not define or address in any way the debtor equity concept. It simply talks about failure to perfect and says that subparagraph (5) will set up a pecking order. It does not talk about the interest to which the security filing relates or anything remotely connected with debtor's equity concept.

One question that comes to mind if this amendment is so clear and unambiguous is, why did the attorneys for the Appellee-Mortgagee miss the clear and unambiguous meaning in their arguments before the trial court and in their Briefs to the First District Court? It was only after the First District Court issued two opinions upholding the International Harvester case and the debtor's equity concept that the Appellee stumbled upon the preamble contained in Chapter 78-222 and brought it to everyone's attention. Also, the Appellant never understood or interpreted Section 679.312, dealing with priorities, to have repealed the International Harvester case. And finally, the First District Court issued two lengthy opinions, well researched, issued by competent and long time judges, and they did not ascertain the alleged clear and unambiguous repeal language.

Chapter 78-222 did not bring about a revocation of International Harvester and therefore International Harvester is still the law of this state until or unless the Legislature passes a proper law, as opposed to making an editorial comment.

The last point the Appellee raised was an attack on the reasonableness and fairness of the "debtor's equity" concept in general. The Appellee refers to those time honored concepts as being "vague notions of unjust enrichment or windfalls". However, those are very specific and real concepts contained in the judicial history of this state regarding the position of purchase money parties and prior lienors who simply throw into their contracts "dragnet clauses" in order to reap windfalls.

Also, the Appellee places heavy emphasis on the fact that the Uniform Commercial Code should be "uniform among the various jurisdictions". The Appellant remembers Justice Frankfurter repeatedly using the phrase that our federalism allowed for each state to be a laboratory for new ideas and laws. That each state would observe each other and copy what is good and reject what is bad given the cultural history of the state. Florida Courts looks to states like New Jersey or New York or California for certain trends and oftentimes rejects what it sees. People who believe in a strong federal government is to homogenize the people of the United States and to do away with the laboratory affect of our democracy. This concept is time honored; it is well settled in concepts of fairness and justice and the prevention of unjust enrichment; it does no harm to anyone since it protects people providing capitol; and it gives to prior lienors the debtor's equity to go towards the indebtednesses of the prior lienor.

ISSUE II

Is the place of filing a proper issue
before this court?

ARGUMENT

The Briefs on appeal state that the Mortgagee filed their security interest in the Public Records of Duval County, Florida. They are trying to claim a lien on equipment by virtue of a county filing. Section 679.401(1)(c), F.S. prescribes that a lien on equipment will be filed in the office of the Department of State. Therefore, the filings by the Mortgagee on the county level were improper and should be adjudicated as to having no lien whatsoever as regards equipment. That simple fact is certainly in the record.

CONCLUSION AND REQUEST FOR PRECISE RELIEF SOUGHT

The Legislature in the preamble to Chapter 78-222 simply made an editorial comment. They failed to carry forward into the substantive law of Florida any repeal of the "debtor's equity" concept. International Harvester simply codified for UCC purposes the long standing equitable principals of "debtor's equity" concept. This is good because it makes Florida law consistent in terms of mortgages and security interest and the respective rights of the parties in regards to purchase money security interest. If the law should be anything it should be consistent. To acquiesce to the argument that "equity concepts are vague notions" would be to undermine other branches of the law that deal with this very same concept.

The Appellee-Mortgagee has filed on the county level which was the old place for filing liens on personal property. However, filings as regards equipment is with the Secretary of State. Since the Appellee has failed to file with the Secretary of State this Court should simply reject any standing of the Appellee to attack the Appellant.

Therefore, the specific relief sought is as follows:

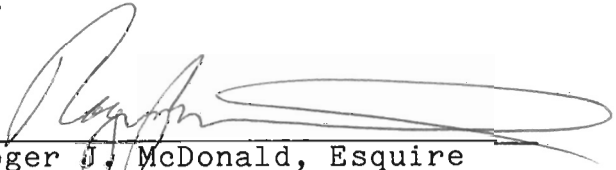
(1) Reverse the First District Court as regards its interpretation of the Security Agreement as argued in the Petitioner's Brief;

(2) Adjudicate that the Appellee does not have a prior security interest due to its county filing as opposed to a proper filing with the Secretary of State.

(3) That Chapter 78-222 did not affect the debtor's equity concept in Florida nor reverse International Harvester case.

CERTIFICATE OF SERVICE

I CERTIFY that a copy hereof has been furnished to Christine R. Milton, Attorney, and Frank Surface, Esquire, P.O. Box 4099, Jacksonville, Florida 32201; Harry Katz, Jr., Esquire, 337 E. Forsyth Street, Jacksonville, Florida 32202; Linda Lettera, Assistant Attorney General, Department of Legal Affairs, The Capitol LL04, Tallahassee, Florida 32301; Robert C. Gobelman, P.A., Jerry J. Waxman, Esquire, 1500 American Heritage Life Bldg., Jacksonville, Florida 32202 and the original and seven (7) copies of this Brief have been filed with the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301 this 14th day of March, 1985.



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