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Annual Review of Agricultural Law: Commercial Law Developments

by

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ANNUAL REVIEW OF AGRICULTURAL LAW: COMMERCIAL LAW DEVELOPMENTS

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This summary of recent cases, decided between September 20, 1995 and September 19, 1996, deals with issues of interest to agricultural lenders and borrowers. The majority of the cases covered in this paper deal with security interests created, perfected, and enforced pursuant to Article 9 of the Uniform Commercial Code (U.C.C.). However, cases summarized also involve decisions about scope and classification issues (U.C.C. Article 1) and sales and warranty issues (U.C.C. Article 2). The Article 9 case summaries begin with validity and attachment (Parts 1 and 2), then cover perfection (Part 4), priorities (Part 3), and remedies (Part 5). Also included are non-U.C.C. cases on mortgage foreclosures, federal preemption, the Perishable Agricultural Commodities Act (PACA), bankruptcy issues, and state statutes.[1]

In each topical section below, federal cases precede state cases, with decisions of higher courts appearing before lower court decisions. The state cases are listed alphabetically by state. Because several of the highlighted cases address more than one issue relevant to the U.C.C., these decisions appear more than once below.

1. The included cases were identified using WESTLAW® searches done in the "ALLCASES" and "UCC-CS" databases. For those who would like to update this survey or review other U.C.C. cases that fall outside the scope of this article, the search terms are "*ranch farm orchard crop timber livestock aquaculture & security mortgage*" "*deed of trust*" & "*commercial code,*" except that "*commercial code*" was omitted from the UCC-CS search. Cases addressing agricultural issues or the Uniform Commercial Code in only a peripheral way have been omitted.

I. ARTICLE 2 ISSUES

A. Glenshaw Glass Co. v. Ontario Grape Growers' Marketing Board[2]

Grapes delivered by a grower to a farm cooperative processor pursuant to a "Processing and Storage Agreement" and related "Purchase Agreement" are not consigned goods under Pennsylvania's version of U.C.C. § 2-326.[3] A grape processor entered into agreements with a grower to store and process grapes according to the grower's directions.[4] Although the processor held an option to purchase grapes under a Purchase Agreement, the processor had no authority to sell the grapes and was merely temporarily entrusted with possession.[5] The processor filed a voluntary Chapter 11 petition in bankruptcy, and without informing its creditors or the bankruptcy court, the grower removed and sold the processor's grape product.[6] The court held that both the contract terms and the course of dealing between the parties established a bailment, not a consignment, and that U.C.C. § 2-326 does not apply to bailments.[7] Therefore, the grapes delivered by the grower to the processor, never became part of the debtor-processor's bankruptcy estate and were not subject to creditors' claims.[8] In this case it seems self help prevailed, albeit at the appellate court level. The grower neither converted the processor's property nor violated the automatic stay when it took and sold the grape products.[9]

B. Hubbard v. Utz Quality Foods, Inc.[10]

Under Article 2 of the U.C.C., a potato processor-buyer properly rejected the grower-seller's potato crop under an installment contract with the grower where the crop failed to meet the required color standards upon the buyer's visual inspection.[11] Because quality standards were specifically enumerated contract requirements, the seller's failure to meet these standards constituted a "substantial impairment" for purposes of U.C.C. § 2-612(2) & (3).[12] Utz, a potato processor, and Hubbard, a potato farmer, entered into a buy-sell installment contract for Hubbard's potato crop.[13] The contract contained detailed and specific color quality standards as a condition for Utz's acceptance of each shipment of potatoes.[14] Hubbard argued that Utz should be required to evaluate Hubbard's potatoes by Agtron testing.[15] However, the court held that because the contract

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2. Glenshaw Glass Co. v. Ontario Grape Growers' Mktg. Bd., 67 F.3d 470 (3d Cir. 1995).
3. *See id.* at 472-75.
4. *See id.* at 472-73.
5. *See id.* at 473.
6. *See id.* at 473-74.
7. *See id.* at 475-76.
8. *See id.* at 477.
9. *See id.*
10. Hubbard v. Utz Quality Foods, Inc., 903 F. Supp. 444 (W.D.N.Y. 1995).
11. *See id.* at 451.
12. *See id.*
13. *See id.* at 446.
14. *See id.*
15. *See id.* at 447.

did not specify the required testing method and Utz demonstrated that it was the potato-processing industry standard to visually inspect for color quality, Utz did not breach its contract to buy Hubbard's potatoes.[16]

C. Sanders v. Barton[17]

Emu birds are "goods" for purposes of U.C.C. § 2-105.[18] The purchasers contracted to purchase ten emu chicks in installments from the sellers.[19] When the purchasers received a crippled emu chick, they sued the sellers for breach of contract.[20] The court found that U.C.C. § 2-105 defines "goods" broadly.[21] Thus, the court held that the contract for the purchase and sale of emu birds is governed by the U.C.C.[22]

D. Prenger v. Baker[23]

Ostrich buyers demonstrated by substantial evidence that they were "buyers in the ordinary course of business" who entrusted goods to a merchant and, consequently, acquired ostriches free of the outstanding title of the true owner under U.C.C. § 2-403.[24] Gene Baker, a livestock farmer, began purchasing exotic birds as an investment.[25] Baker purchased two adult breeding ostrich pairs from Rasmus, an exotic bird farmer, and arranged to board the ostriches at Rasmus' farm in exchange for a share of breeding sales profits and monthly fees.[26] Subsequently, the Missouri Ratite Center (MRC) purchased the two breeding pairs from Rasmus.[27] MRC then sold one of the pairs to Prenger.[28] Prenger and MRC also exchanged two adult emus for two juvenile ostrich pairs.[29] Prenger and MRC continued to board the birds with Rasmus.[30] Shortly thereafter, Baker removed the ostriches, including the MRC pair, the Prenger pair, and the juveniles, to his farm.[31] While the birds were in Baker's care, the Prenger female died, the MRC female was lost, and the juveniles were unable to be positively identified.[32] In Prenger's and MRC's actions in replevin against Baker, the court held that under Iowa's version of U.C.C. § 2-403, the birds were "entrusted" to the seller, Rasmus.[33] The Iowa Supreme Court found: (1) Rasmus, an ostrich

16. *See id.* at 448-49.
17. Sanders v. Barton, 670 So. 2d 880 (Ala. 1995).
18. *See id.* at 881.
19. *See id.*
20. *See id.*
21. *See id.* at 882.
22. *See id.*
23. Prenger v. Baker, 542 N.W.2d 805 (Iowa 1995).
24. *See id.* at 810.
25. *See id.* at 806.
26. *See id.*
27. *See id.* at 806-07.
28. *See id.* at 807.
29. *See id.*
30. *See id.*
31. *See id.*
32. *See id.*
33. *See id.*

farmer, was a merchant;[34] (2) Rasmus dealt in this kind of goods because Rasmus was an exotic bird farmer;[35] (3) there was a sale of goods to MRC;[36] (4) the sale was to a buyer in the ordinary course of Rasmus's business;[37] (5) MRC acted in good faith and without knowledge of Baker's true ownership interest; and thus, the goods were "entrusted" to Rasmus, the merchant, when Baker and MRC delivered the ostriches to be boarded at Rasmus' farm.[38] Thus, MRC and Prenger acquired title to the male birds as "buyers in the ordinary course of business" free of Baker's ownership claims.[39] However, because neither Prenger nor MRC could prove the identity of the females and juveniles removed to Baker's farm, they could not establish ownership in these birds.[40]

II. Care of Collateral - In re Krug[41]

The duty of reasonable care in the custody and preservation of collateral under U.C.C. § 9-207 includes animal husbandry practices and proscribes indiscriminate breeding where purebred and registered cattle are collateral under a security agreement.[42] The bank foreclosed on its loan to a cattle rancher and repossessed 265 head of cattle without prior notice to the rancher.[43] The bank then contracted for the care of the cattle by experienced commercial herd ranchers.[44] Under the herd ranchers' care, cattle died, bred indiscriminately, and lost considerable weight, substantially reducing the value of the cattle.[45] The court held that although the bank acted in good faith when it repossessed its collateral,[46] and although the security agreement did not delineate standards for performance of reasonable care of the cattle, the bank was negligent in the care and maintenance of the cattle as required by U.C.C. § 9-207.[47] The secured party bears the risk that its collateral may depreciate or become injured.[48] Therefore, the bank was responsible for preserving the cattle's value, which included maintaining the rancher's forty-year breeding practices while the cattle were in the secured party's possession.[49]

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34. *See id.* at 809.
35. *See id.*
36. *See id.*
37. *See id.* at 810.
38. *See id.*
39. *See id.*
40. *See id.*
41. *In re* Krug, 189 B.R. 948 (Bankr. D. Kan. 1995).
42. *See id.* at 961.
43. *See id.* at 952.
44. *See id.* at 953.
45. *See id.* at 953-54.
46. *See id.* at 957.
47. *See id.* at 960-61.
48. *See id.* at 961.
49. *See id.*

III. VALIDITY/ATTACHMENT OF SECURITY INTEREST

A. Kunkel v. Sprague National Bank[50]

The security interest of a cattle buyer's non-seller creditor bank, in a Chapter 11, debtor's cattle-collateral did not attach in this case, because the debtor never physically possessed the collateral or obtained other rights in the cattle sufficient for bank's security interest in the debtor's property to attach.[51] After making $1.9 million in loans to the debtor, the bank filed a financial statement perfecting its security interest in all present and after-acquired inventory of the debtor.[52] Subsequently, a cattle seller sold an interest in 1900 head of cattle to the debtor in a series of sales transactions involving a "loan agreement" and a "feedlot agreement," whereby the cattle seller obligated itself to feed and care for the cattle.[53] The cattle seller, a purchase money security interest (PMSI) creditor, did not file a financial statement to perfect its security interest, but instead retained continuous possession of the cattle while the sales contract with the debtor remained executory.[54] The debtor filed Chapter 11 bankruptcy, and the cattle seller sold the cattle to a third-party purchaser.[55] From the sale proceeds, the cattle seller deducted the monies due from the debtor and distributed the remaining proceeds to the bankruptcy trustee.[56] The trustee filed the action to determine the priority between the bank and the PMSI creditor for the sale proceeds.[57] Finding the cattle seller's interest superior to the bank's interest, the court ruled that because the cattle remained in the continuous possession of the cattle seller, the debtor never obtained sufficient rights in the cattle for a security interest to attach.[58]

B. Meyer v. Norwest Bank Iowa, National Ass'n[59]

Where a bank lacks good faith in exercising its setoff rights, the bank's security interest does not attach, and the lowest intermediate balance rule will not be applied to an action for conversion brought against the bank by a cattle seller claiming an interest in the cattle buyer's bank account.[60] A cattle buyer issued two checks to a cattle seller which were dishonored by the buyer's bank.[61] The cattle seller sued the bank for conversion when the bank setoff the account funds against a debt the cattle buyer owed to the bank.[62] A jury returned a verdict in favor of the cattle seller, and, on appeal, the district court held that: (1) the lowest

50. Kunkel v. Sprague Nat'l Bank, 198 B.R. 734 (Bankr. D. Minn. 1996).
51. *See id.* at 736-40.
52. *See id.* at 735.
53. *See id.* at 736.
54. *See id.*
55. *See id.*
56. *See id.*
57. *See id.*
58. *See id.* at 737-40.
59. Meyer v. Norwest Bank Iowa, Nat'l Ass'n, 924 F. Supp. 964 (D.S.D. 1996).
60. *See id.* at 968-72.
61. *See id.* at 966.
62. *See id.*

intermediate balance rule is inconsistent with South Dakota law regarding liability and damages for conversion; and (2) even if South Dakota did accept the lowest intermediate balance rule, it would not be applied here.[63] Although the lowest intermediate balance rule applies to tracing commingled funds in secured transactions, the jury's determination that the bank lacked good faith prevented attachment of the bank's security interest in the buyer's account proceeds.[64] The court held that the rule could not apply here where the bank's interest did not attach for want of good faith.[65]

C. Janitell v. State Bank of Wiley[66]

Where debtor-lessor has no contractual right to or interest in crops grown on property, alleged security interest of assignee of debtor's judgment does not attach, and assignee holds no security interest in the crop.[67] The grain grower-lessees planted a wheat crop on leased property that was the subject of foreclosure proceedings by the bank.[68] The property owner-lessor failed to make payments on a promissory note secured by the bank's junior deed of trust.[69] The involved parties entered a settlement agreement, which gave the owner an option to purchase the property.[70] The owners did not exercise the option, and both the owner and grower were evicted by the bank.[71] Before the grower planted the crop in question, a judgment was entered against the owner for monies owed under a prior promissory note with a different bank.[72] This second bank did not enforce the judgment and instead assigned the judgment.[73] The assignee of the second bank's judgment intervened in the foreclosure action between the first bank, the owner, and the grower, asserting a security interest in the wheat crop.[74] The court held that although the owner had a contractual right to the rent proceeds from the property, the owner had no right to the crops grown on the property.[75] Thus, second bank's assignee's interest did not attach and the assignee did not hold a security interest in the grower's wheat crop.

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63. *See id.* at 966-67.
64. *See id.* at 971.
65. *See id.*
66. Janitell v. State Bank of Wiley, 919 P.2d 921 (Colo. Ct. App. 1996).
67. *See id.* at 924.
68. *See id.* 922.
69. *See id.*
70. *See id.* at 923.
71. *See id.*
72. *See id.*
73. *See id.*
74. *See id.*
75. *See id.* at 924.

IV. PERFECTION OF SECURITY INTERESTS

A. Kunkel v. Sprague National Bank[76]

In a dispute over the proceeds from the sale of cattle secured by competing creditors' security interests, the court held: (1) the notice requirements under Kansas's version of U.C.C. § 9-312 are not applicable to instances where perfection is achieved by possession, but are applicable only where perfection occurs by filing;[77] and (2) delivery is accomplished under Kansas law although the cattle remain in the seller's possession, and the seller's solicitation of a Chapter 11 buyer's approval prior to sale does not affect the seller's perfection of its interest in the cattle by continuous, physical possession.[78] The bank filed a financial statement "perfect[ing] its security interest in all present and after-acquired inventory of [the debtor]" as part of loaning the debtor $1.9 million.[79] Subsequently, a cattle seller sold an interest in 1900 head of cattle to the debtor in a series of sales transactions involving a loan agreement and a feedlot agreement.[80] The cattle seller-creditor did not file a financial statement to perfect its security interest, but instead retained continuous possession of the cattle while the sales contract with the debtor remained executory.[81] The debtor filed Chapter 11 bankruptcy, and the cattle seller sold the cattle to a third-party purchaser.[82] From the sale proceeds, the cattle seller deducted the monies due from the debtor and distributed the remaining proceeds to the bankruptcy trustee.[83] The trustee filed the action to determine the priority between the bank and the PMSI creditor for the sale proceeds.[84]

Finding the selling creditor's security interest superior to the interests asserted by the bank, the court held that under Kansas's version of U.C.C. § 9-312, the possessor-creditor was not required to provide notice to the bank of its security interest.[85] Rather, the statute's notice requirements apply only to the seller-creditor who perfects a security interest by filing.[86] The court also held that the seller-creditor's perfection was not diminished by the fact that it solicited the debtor's approval prior to the sale of the cattle where there was no evidence that the debtor had the authority to dispose of the cattle on his own initiative, and the seller-creditor's PMSI was undisputed.[87]

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76. Kunkel v. Sprague Nat'l Bank, 198 B.R. 734 (Bankr. D. Minn. 1996).
77. *See id.* at 737.
78. *See id.* at 739.
79. *See id.* at 736.
80. *See id.*
81. *See id.*
82. *See id.*
83. *See id.*
84. *See id.*
85. *See id.* at 738.
86. *See id.*
87. *See id.* at 739.

B. Wright v. Consolidated Farm Service Agency[88]

A bank's purchase money security interest is not perfected merely by mailing a signed financing statement and filing fee to the county Register of Deeds; proof of actual delivery is necessary to satisfy the presentation for filing requirement for perfection under Wisconsin's version of U.C.C. § 9-403.[89] Consolidated Farm Services Agency (CFSA) held a first priority perfected security interest in all of the debtor-farmer's farm equipment and machinery.[90] Nevertheless, a bank loaned the debtor funds to purchase a tractor.[91] The debtor executed a security agreement and financing statement in favor of the bank, which the bank mailed with the necessary filing fee to the county Register of Deeds.[92] However, the documents were never filed, and the check for the filing fee was not cashed by the Register of Deeds.[93] The debtor filed a Chapter 7 bankruptcy, and the tractor was auctioned.[94] The bank claimed it was entitled to priority in a portion of the auction proceeds equal to the outstanding loan balance.[95] The court held that under Wisconsin law, the bank's security interest was not timely perfected.[96] Rather, it was essential that the bank show proof of receipt of the U.C.C. Financing Statement by the Register of Deeds.[97] Because the bank was unable to prove receipt--the bank did not send the letter via certified mail, did not monitor its checks, or undertake other readily available methods to prove receipt--its super priority purchase money security interest was not perfected and, thus, was subordinate to CFSA's interest in the auction proceeds.[98]

C. Bayou Pierre Farms v. Bat Farms Partners, III[99]

The lessor did not perfect its security interest in the lessee's cotton crop proceeds because: (1) it failed to execute its own security agreement with the lessee after purchasing the property;[100] and (2) the contract of sale did not assign the prior owner's security agreement on the crops to the new lessor.[101] Partners, III (Bat Farms - the lessee) grew cotton on land it leased from T.L. James Company.[102] T.L. James perfected an agricultural security interest in the lessee's crops.[103] T.L. James subsequently sold the leased property to Melrose Planting

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88. Wright v. Consolidated Farm Serv. Agency, 192 B.R. 946 (Bankr. W.D. Wis. 1996).
89. *See id.* at 948.
90. *See id.* at 947.
91. *See id.*
92. *See id.*
93. *See id.*
94. *See id.*
95. *See id.*
96. *See id.* at 947-48.
97. *See id.* at 948.
98. *See id.*
99. Bayou Pierre Farms v. Bat Farms Partners, III, 676 So. 2d 643 (La. App. 1996).
100. *See id.* at 648.
101. *See id.* at 649.
102. *See id.* at 645.
103. *See id.*

Company.[104] Melrose filed a U.C.C.-1F form pursuant to the sale.[105] Although Melrose and T.L. James agreed to a pro-rata distribution of the rental proceeds, the sale contract did not assign T.L. James' security interest in the lessee's crops to Melrose.[106] Melrose did not independently execute a security agreement with the lessee.[107]

In the priority dispute between T.L. James, Melrose, a crop lender, and the cotton picker, the court ranked Melrose's interest in the crop proceeds last among the creditors.[108] The court found that Melrose did not perfect its security interest in the crops and was not entitled to rely upon the security agreement between T.L. James and the lessee.[109] Although the transfer of the lease between T.L. James and Melrose included the security agreement between T.L. James and the lessee, this security interest applied only to the rights of T.L. James and Melrose as between each other.[110] Additionally, Louisiana law requires that an assignment of a financing statement contain the original file number and be filed with the same filing officer as the original.[111] Melrose did not comply with these requirements.[112] Thus, the court found that third parties were not on notice that there was an assignment of T.L. James's financing statement to Melrose.[113] Finally, Melrose's own financing statement was ineffective because the debtor-lessee did not sign the statement.[114] Therefore, Melrose did not have a perfected security interest in the lessee's crops.[115]

V. WAIVER OF SECURITY INTEREST

In *Janitell v. State Bank of Wiley,*[116] the grower-lessee waived any right or interest in its crop where the property owner failed to timely exercise an option to purchase foreclosed property pursuant to a foreclosure stipulation among the debtor-owner, the grower, and the bank.[117] In this case, grain grower planted a wheat crop on leased property that was the subject of foreclosure proceedings by the bank.[118] The bank, the owner-lessor, and the grower entered a stipulation, which gave the owner-lessor an option to purchase the property.[119] However, the owner did not exercise the option, and both the owner-lessor and the grower-lessee were evicted by the bank.[120] The court held that although the foreclosure proceeding did not expressly provide for disposition of the grower's crop, "the

104. *See id.*
105. *See id.*
106. *See id.*
107. *See id.* at 648.
108. *See id.* at 649.
109. *See id.*
110. *See id.*
111. *See id.* at 648.
112. *See id.* at 649.
113. *See id.*
114. *See id.*
115. *See id.*
116. Janitell v. State Bank of Wiley, 919 P.2d 921 (Colo. App. 1996).
117. *See id.* at 924.
118. *See id.* at 922.
119. *See id.* at 922-23.
120. *See id.* at 923.

only reasonable construction of the stipulation is that [the grower is not] entitled" to its crop unless the owner exercises the purchase option.[121] Thus, the wheat grower surrendered any and all rights to the crop through entering the stipulation.

VI. PRIORITIES AMONG ARTICLE 9 SECURITY INTERESTS

A. Kunkel v. Sprague National Bank[122]

The prior security interest of a bank is junior to the purchase money security interest (PMSI) of a cattle seller-creditor, at least where the creditor has perfected its interest by continuously possessing the cattle-collateral under agreement terms between the debtor and the creditor, despite the fact that the seller-creditor does not file a financing statement.[123] After loaning $1.9 million to the debtor, the bank filed a financial statement perfecting its security interest in all present and after-acquired inventory of the debtor.[124] Subsequently, a cattle seller sold an interest in 1900 head of cattle to the debtor in a series of sales transactions involving two agreements: (1) a loan agreement; and (2) a feedlot agreement, whereby the cattle seller obligated itself to feed and care for the cattle.[125] The cattle seller-creditor did not file a financial statement to perfect its security interest, but instead retained continuous possession of the cattle while the sales contract with the debtor remained executory.[126] The debtor filed Chapter 11 bankruptcy, and the cattle seller sold the cattle to a third-party purchaser.[127] From the sale proceeds, the cattle seller deducted the monies due from the debtor and distributed the remaining proceeds to the Bankruptcy Trustee.[128] Finding the creditor's security interest superior to the interests asserted by the bank, the court held that under Kansas's version of U.C.C. § 9-312, PMSI creditors receive "superpriority" over other creditors.[129] Furthermore, although Kansas's § 9-312 delineates notice requirements for PMSI creditor priority, this notice requirement is not applicable to creditors who perfect their interests through possession.[130] A possessory seller is unable to comply with the § 9-312 notice requirement because the debtor never receives the subject while the seller's interest is perfected by possession.[131] Thus, the notice requirement applies only to those PMSI creditors who secure by filing.[132]

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121. *See id.* at 924.
122. Kunkel v. Sprague Nat'l Bank, 198 B.R. 734 (Bankr. D. Minn. 1996).
123. *See id.* at 736.
124. *See id.* at 735-36.
125. *See id.* at 736.
126. *See id.*
127. *See id.*
128. *See id.*
129. *See id.* at 737.
130. *See id.* at 738.
131. *See id.*
132. *See id.*

B. Wright v. Consolidated Farm Service Agency[133]

Under Wisconsin's version of U.C.C. § 9-403, (1) the bank's unperfected purchase money security interest in proceeds from auction sale of Chapter 7 debtor-farmer's tractor is subordinate to Consolidated Farm Services Agency's (CFSA) perfected first priority general security interest in all of debtor's farm equipment and machinery; and (2) the bank cannot gain priority over CFSA through the doctrines of unjust enrichment or equitable subordination.[134] Dairy State Bank loaned debtor funds to purchase a tractor.[135] The debtor executed a security agreement and financing statement in favor of the bank, which the bank mailed with the necessary filing fee to the county Register of Deeds.[136] However, the documents were never filed and the check for the filing fee was not cashed by the Register of Deeds.[137] The debtor filed Chapter 7 bankruptcy, and the tractor was auctioned.[138] The bank claimed it was entitled to priority over CFSA in a portion of the auction proceeds equal to the outstanding loan balance.[139] The bankruptcy court held that under Wisconsin law, the bank's security interest was not timely perfected.[140] On appeal, the U.S. District Court for the Western District of Wisconsin held that because the bank was unable to prove receipt by the Register of Deeds, its purchase money security interest was not perfected and, thus, was subordinate to CFSA's interest in the auction proceeds.[141] Finally, the court found that permitting the bank to prevail on equitable grounds would frustrate the simplicity of the filing system outlined in Article 9 of the U.C.C.[142]

C. Continental Grain Co. v. Heritage Bank[143]

Because genuine issues of material fact existed regarding the priority of security interests between a feedlot company, a cattle seller, and a bank, summary judgment was inappropriate.[144] Bud Brandenberg, a cattle order buyer, purchased 650 head of cattle from Shasta Livestock Auction Yard (Shasta).[145] The cattle were purchased with two checks, one from Western Cattle, Inc., Bud's wife's cattle buying corporation, and one from Louis Welte's Heritage Bank (Welte) account.[146] After the sale, Bud had the cattle delivered to Continental Grain (Continental), a feedlot company.[147] Margery Brandenberg and Western Cattle had an arrangement with Continental whereby Continental would advance funds

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133. Wright v. Consolidated Farm Serv. Agency, 192 B.R. 946 (Bankr. W.D. Wis. 1996).
134. *See id.* at 948-49.
135. *See id.* at 947.
136. *See id.*
137. *See id.*
138. *See id.*
139. *See id.*
140. *See id.*
141. *See id.* at 948.
142. *See id.* at 948-49.
143. Continental Grain Co. v. Heritage Bank, 548 N.W.2d 507 (S.D. 1996).
144. *See id.* at 511.
145. *See id.* at 509.
146. *See id.* at 509-10.
147. *See id.* at 510.

to Margery to purchase cattle, which were then delivered to Continental's feedlot and eventually sold to a packer.[148] Upon sale, Continental would deduct Margery's advance, interest, and the expenses associated with caring for the cattle.[149] Any remaining proceeds were issued to Margery in a check.[150] This arrangement was secured by a security agreement with an after-acquired property clause.[151]

Upon delivery of Bud's cattle to the feedlot, Continental sorted the cattle and sent a promissory note to Western Cattle, as Bud told Continental that the cattle were Margery's.[152] Margery did not sign the note.[153] Subsequently, the Western Cattle check was returned for insufficient funds, and the bank placed a stop payment on the check issued by Bud from Welte's account.[154] Continental sold the cattle and credited Margery's account after the sale.[155] Continental, Shasta, and the bank filed motions for summary judgment.[156] The South Dakota Supreme Court denied the motions, holding that genuine issues of material facts existed regarding whether Margery had an interest in the cattle, who owned or had other interests in cattle held at the feedlot, and whether Continental's attorney's fees were allowable and reasonable.[157] In a special concurring opinion, two justices argued that the priority dispute between Continental and Shasta should be remanded for trial to determine whether Continental acted in good faith; "if the trial court found Continental acted in good faith, its perfected [after-acquired property] security agreement [with Margery] takes priority over Shasta's unperfected interest."[158]

D. Bayou Pierre Farms v. Bat Farms Partners, III[159]

In determining the priority ranking of claims between two lessors, one lender, and one picker of a cotton crop, the court held: (1) Louisiana's laborer's privilege, under Louisiana Civil Code art. 3217 and Louisiana Revised Statutes 9:4521, was intended to protect the persons actually performing the labor, not the contractor who is merely hired by the farmer to harvest the crop; and (2) lessors lost their lessor's privileges over lessee's cotton crop where they failed to exercise their privilege over the crop within fifteen days of the cotton's removal from the premises for ginning.[160] Partners, III (Bat Farms) leased land from T.L. James to grow corn and cotton.[161] The lease was secured by an agricultural security

148. *See id.* at 509.
149. *See id.*
150. *See id.*
151. *See id.*
152. *See id.* at 510.
153. *See id.*
154. *See id.* at 509-10.
155. *See id.* at 510.
156. *See id.*
157. *See id.* at 511.
158. *See id.* at 513.
159. Bayou Pierre Farms v. Bat Farms Partners, III, 676 So. 2d 643 (La. App. 1996).
160. *See id.* at 646-50.
161. *See id.* at 645.

agreement between T.L. James and Bat Farms.[162] Subsequent to the perfection of the agreement with T.L. James, Bat Farms took out a crop loan from Ag Services of America, which was also secured by an agricultural security agreement listing the Bat Farms' crops as collateral.[163] T.L. James then sold the land to Melrose Planting Company (Melrose) subject to Bat Farms' lease.[164] Melrose and T.L. James agreed to a pro-rata distribution of the rental proceeds due under the lease. Melrose filed a U.C.C.-1F form pursuant to the sale and agreement.[165] Then, Bat Farms contracted with Bayou Pierre Farms (Bayou) to pick its cotton crops.[166] Bayou Pierre held a perfected security interest in the crop proceeds by a virtue of a crop pledge from Bat Farms.[167] The cotton crop was sold, but the proceeds of the sale were insufficient to satisfy the claims of Bat Farms' creditors.[168]

In determining the priority between the creditors for the crop proceeds, the court first examined Louisiana's statutory privileges for ranking perfected security interests.[169] Under the statute, a laborer is entitled to the privilege of priority ranking.[170] However, because Bayou Pierre was merely a contractor who hired the hands that performed the labor, the court found that Bayou Pierre is not a laborer for purposes of the statute.[171] Second, the court found that T.L. James and Melrose lost their lessor's privilege because they did not exercise the privilege in a timely manner as required by statute.[172] Rather, no action was taken by either lessor until the cotton picker filed its suit against Bat Farms over three months after the cotton crop had been removed from the farm for ginning.[173] Finding that no creditors were entitled to statutory privileges, the court ranked the creditors in the order of the perfection of their security interest over the crops.[174] Thus, T.L. James was ranked first, followed by the lender, Ag Services of America; the picker, Bayou Pierre Farms; and the second lessor, Melrose.[175] The lessor Melrose was ranked last because the court found that Melrose did not perfect its security interest in Bat Farms' cotton crop. [176] Thus, Melrose occupied the last position among the creditors entitled to the crop proceeds because it was the last remaining creditor, not by virtue of Louisiana's priority ranking statute.[177]

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162. *See id.*
163. *See id.*
164. *See id.*
165. *See id.*
166. *See id.*
167. *See id.*
168. *See id.*
169. *See id.* at 646-47.
170. *See id.* at 646.
171. *See id.* at 647.
172. *See id.* at 647-48.
173. *See id.*
174. *See id.* at 648-49.
175. *See id.* at 650.
176. *See id.* at 649.
177. *See id.*

VII. BETWEEN AN ARTICLE 9 SECURITY INTEREST AND OTHER CLAIMANTS

A. In re Lott[178]

A mechanic's common law and statutory artisan's lien over a tractor owned by a Chapter 13 debtor is superior to the perfected security interests of other secured creditors.[179] A mechanic made engine repairs to the debtor's tractor, which was subject to a valid, first priority security interest by the bank.[180] Although the mechanic was not paid for the services, the mechanic voluntarily and unconditionally returned the tractor to the debtor.[181] The mechanic did not claim a lien on the unpaid invoice.[182] The mechanic subsequently made warranty repairs to the debtor's tractor.[183] Upon completing the repairs, the mechanic submitted a lien claim on the initial repairs to the tractor's engine and refused to return the tractor to the debtor until the first invoice was paid.[184] The court held that the mechanic held a valid artisan's lien in common and statutory law on the second warranty repairs.[185] Under U.C.C. § 9-310, a valid artisan's lien takes priority over the security interests of other creditors.[186] Thus, the bank's security interest in the tractor was subordinate to the mechanic's lien for the warranty repairs.[187] Although the mechanic held a valid artisan's lien on the second repairs, the mechanic lost any artisan's lien claimed on the initial engine repairs because the mechanic did not retain continuous possession of the tractor.[188]

B. First National Bank v. Maus[189]

A perfected security interest defeats the claims of a land owner lessor to crops grown on the land because the landlord failed to file the lien in the time called for under the statute.[190] The Minnesota Landlord's Lien would have defeated the U.C.C. security interest if it had been properly filed.[191] The fact that the U.C.C. financing statement did not state which years were covered by the security agreement was not a fatal flaw because at the time of the filing such a statement was not required.[192]

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178. *In re* Lott, 196 B.R. 768 (Bankr. W.D. Mich. 1996).
179. *See id.* at 777.
180. *See id.* at 771.
181. *See id.*
182. *See id.*
183. *See id.*
184. *See id.* at 771-72.
185. *See id.* at 772-76.
186. *See id.* at 776.
187. *See id.* at 772-77.
188. *See id.*
189. First Nat'l Bank v. Maus, No. C8-95-476, 1995 WL 747936 (Minn. Ct. App. Dec. 19, 1995).
190. *See id.* at *2.
191. *See id.*
192. *See id.*

VIII. REPOSSESSION AND FORECLOSURE

A. Gorden v. Kreul[193]

Grievances against federal agencies for the wrongful collection of debts must be addressed through statutes, regulations, and contracts; the agency-creditor is answerable under the U.C.C. in the Federal Claims Court or Bankruptcy Court, not a Federal District Court on constitutional grounds.[194] The debtor-farmer borrowed from the United States under a price-support program.[195] The loan was secured by the farmer's corn by a security agreement taken under Article 9 of the U.C.C.[196] When the debtor-farmer failed to abide by the contract terms, the Department of Agriculture hired a firm to repossess the farmer's corn.[197] The farmer sued the firm's employees exclusively under the Fourth and Fifth Amendments to the U.S. Constitution, citing *Bivens v. Six Unknown Named Agents*.[198] The court found that *Bivens* provides a cause of action only where no other remedies are available.[199] Here, the debtor-farmer failed to pursue his grievance in the available administrative remedial system.[200] Thus, it would disrupt the existing remedial system to permit *Bivens* suits in conjunction with claims alleging that the government has exceeded the U.C.C.'s authorization.[201]

B. In re Krug[202]

Where a bank repossesses purebred and registered cattle, U.C.C. § 9-207 imposes a duty of reasonable care in the custody and preservation of the value of collateral although the security agreement does not delineate standards for performance of reasonable care.[203] The bank foreclosed on its loan to a cattle rancher and repossessed 235 head of cattle without prior notice to the rancher.[204] The bank then contracted for the care of the cattle with experienced commercial herd ranchers, under whose care cattle died, bred indiscriminately, and lost considerable weight, substantially reducing the value of the cattle as a breeding herd.[205] The court held that although the bank acted in good faith when it repossessed its collateral, the bank was negligent in its care and maintenance of the cattle as required by U.C.C. § 9-207.[206] The secured party bears the risk that its collateral may depreciate or become injured.[207] Consequently, the bank was

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193. Gorden v. Kreul, 77 F.3d 152 (7th Cir. 1996).
194. *See id.* at 155-56.
195. *See id.* at 153.
196. *See id.*
197. *See id.* at 154.
198. *See id.* (citing *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971)).
199. *See id.* at 155.
200. *See id.*
201. *See id.* at 155-56.
202. *In re* Krug, 189 B.R. 948 (Bankr. D. Kan. 1995).
203. *See id.* at 957, 960.
204. *See id.* at 952.
205. *See id.* at 953-54.
206. *See id.* at 960-61.
207. *See id.*

responsible for preserving the repossessed cattle's value, which encompassed maintaining the rancher's forty-year breeding practices while in the bank's possession.[208]

C. Sargent County Bank v. Wentworth[209]

The farmer-rancher appealed the lower court's foreclosure judgment in favor of a bank that held concurrent loan notes representing the same debt.[210] The supreme court held: (1) the concurrently held notes were not invalid because a note secured by a mortgage need not be a negotiable instrument under the U.C.C. to be enforceable between parties;[211] (2) there was consideration for the bank's loans;[212] (3) the bank could collect on either note provided there was no double recovery;[213] and (4) the bank did not commit fraud on the court where keeping the concurrent notes caused no actual damage, the bank was not financially advantaged, and the bank did not intend to injure the debtor by holding concurrent notes on the same debt.[214] Wentworth operated a farm and a ranch, which were financed by numerous loans.[215] The bank held concurrent notes representing the same debt: one note was for an operating loan (March 1984) and the other was signed under an FmHA guaranteed loan program (December 1984).[216] The two notes had the same variable rate of interest and were secured by the same collateral, including Wentworth's stock cows, bulls, and farm equipment.[217] After gaining FmHA approval to liquidate Wentworth's collateral, the bank sued to foreclose on the collateral securing the notes, sought and was granted a deficiency judgment, and was given an order to immediately possess the collateral.[218] At this time, the bank did not disclose the FmHA loan to the court.[219] Wentworth challenged the bank's foreclosure action, claiming the bank committed fraud on the court in failing to disclose the December 1984 note.[220]

IX. CONVERSION

A. Meyer v. Norwest Bank Iowa, National Ass'n[221]

The lowest intermediate balance rule is inconsistent with South Dakota law regarding liabilities and damages for conversion; it will not be applied to an action for conversion brought by the cattle seller claiming interest in the cattle

208. *See id.*
209. Sargent County Bank v. Wentworth, 547 N.W.2d 753 (N.D. 1996).
210. *See id.* at 755.
211. *See id.* at 757.
212. *See id.* at 756.
213. *See id.* at 759.
214. *See id.* at 761-62.
215. *See id.* at 755.
216. *See id.* at 756.
217. *See id.*
218. *See id.* at 757.
219. *See id.*
220. *See id.*

buyer's bank account against a bank that acted in bad faith.[222] A cattle buyer issued two checks to a cattle seller, which were dishonored by the buyer's bank.[223] The cattle seller sued the bank for conversion when the bank set off the account funds against a debt the cattle buyer owed to the bank.[224] The court held that when establishing the first element of conversion--an ownership or possessory interest or right in the item alleged to be converted--a cattle seller need not trace a cattle buyer's account proceeds according to the lowest intermediate balance rule.[225] As a procedural matter, the bank neither preserved this issue for appeal nor cited authority supporting its position.[226] However, the court noted that even if the bank properly presented its arguments, the lowest intermediate balance rule is not the law of South Dakota.[227] Furthermore, even if it were the rule, it would be inappropriate to apply it on the facts of this case because the bank's security interest did not attach to the proceeds in the cattle buyer's account.[228]

B. Nelson v. American National Bank of Gonzalez[229]

A cause of action for conversion accrues on the date that facts supporting the cause of action are discovered or upon demand and refusal, whichever occurs first.[230] Nelson purchased cattle from a cattle company, ignorant to the fact that the bank had a secured interest in the cattle company's livestock.[231] While the cattle awaited delivery to Nelson, the bank seized the cattle company's livestock because of the cattle company's default on its loan from the bank.[232] Nelson sued the bank for conversion.[233] The court held that Nelson's cause of action was barred by the Texas two-year statute of limitations on conversion claims.[234] Nelson's cause of action accrued when he discovered his cattle had been seized by the bank.[235] The court found that when unequivocal acts of conversion occur, or when there is no demand and refusal of an initially lawful possession, the statute of limitations runs from the earlier date of the discovery of the conversion or of the demand and refusal.[236] Because Nelson did not file his cause of action until three years after discovery, his conversion claim against the bank was barred.[237]

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221. Meyer v. Norwest Bank Iowa, Nat'l Ass'n, 924 F. Supp. 964 (D.S.D. 1996).
222. *See id.* at 969-72.
223. *See id.* at 966.
224. *See id.*
225. *See id.* at 970-72.
226. *See id.* at 970.
227. *See id.* at 971.
228. *See id.*
229. Nelson v. American Nat'l Bank of Gonzalez, 921 S.W.2d 411 (Tex. App. 1996).
230. *See id.* 415-16.
231. *See id.* at 413.
232. *See id.* at 413-14.
233. *See id.* at 414.
234. *See id.* at 415.
235. *See id.*
236. *See id.*
237. *See id.*

X. PERISHABLE AGRICULTURAL COMMODITIES ACT (7 U.S.C. § 499A, ET SEQ.)

A. In re United Fruit & Vegetable, Inc.[238]

Bankruptcy court does not have "core" or "related to" jurisdiction over disbursement of Chapter 7 debtor's accounts where Perishable Agricultural Commodities Act (PACA) trust property is involved because it was not part of the estate property.[239] The Bankruptcy Court decided that it lacked the power to adjudicate competing claims to PACA trust proceeds and referred the matter to the U.S. District Court, which has independent federal question jurisdiction over the competing parties on the interpretation and implementation of the provisions of PACA.[240] Here a Chapter 7 trustee filed an adversary proceeding on behalf of those claiming rights to sales proceeds under PACA against a bank to force it to turnover the contents of a debtor's bank account, which were the proceeds of the sale of produce.[241] The suppliers of the produce protected by PACA were left to pursue the proceeds in the hands of the bank without the help of the Chapter 7 trustee.[242]

B. Century 21 Products, Inc. v. Glacier Sales[243]

Where a guaranty is unconditional, a creditor's impairment of collateral by failing to timely file a PACA lien does not release a guarantor from its obligations under an absolute and unconditional guaranty agreement.[244] Century 21 Products (Century 21) sold lower grade potatoes it purchased from potato farmers to potato processors.[245] Glacier Sales (Glacier) purchased processed potatoes for retail sales.[246] Glacier Sales requested that Century 21 sell its potatoes to Sun Russett.[247] Glacier unconditionally guaranteed the sales based upon its control of Sun Russett's accounts receivable and the close business relationship it had with Sun Russett.[248] Century 21 verbally agreed to sell the potatoes to Sun Russett so long as it also had Glacier Sales' unconditional guarantee.[249] Seven potato shipments were subsequently shipped by Century 21 to Sun Russett.[250] Sun Russett paid for four of these shipments, and Century 21 sought payment for the other three shipments from Glacier Sales. However, these requests went unanswered.[251] Because Century 21 relied on Glacier Sales' guaranty, Century 21 did not file for preservation of its PACA lien within the required time period.[252] Shortly thereafter, Sun Russett filed bankruptcy and Century 21 asked Glacier Sales to honor the guaranty.[253] Glacier Sales refused, arguing that Century 21's failure to preserve its PACA lien released it of its obligations under the guaranty agreement.[254] The Washington Supreme Court held that although impairment of collateral generally releases a guarantor from obligations under a guaranty agreement, where the guaranty is absolute and unconditional, this rule does not apply.[255] Because Glacier Sales and Century 21

238. *In re* United Fruit & Vegetable, Inc., 191 B.R. 445 (Bankr. D. Kan. 1996).
239. *See id.* at 453.
240. *See id.*
241. *See id.* at 448.
242. *See id.* at 452.

stipulated that the agreement was unconditional and because there was no evidence that Glacier Sales required Century 21 to preserve a PACA lien as collateral, Glacier Sales must abide by the guaranty agreement.[256] The court also found that Glacier Sales' attempt to use PACA to defeat its guaranty obligations is inimical to the PACA's purpose: to protect produce sellers from unscrupulous agricultural commodities dealers.[257]

XI. FEDERAL FOOD SECURITY ACT (7 U.S.C. § 1631)

A. Farm Credit Services of Mid America, ACA v. Rudy, Inc.[258]

A lien notice sent pursuant to the Food Security Act (FSA) to a potential purchaser of farmer's grain was not seriously misleading because the notice need only put prospective purchasers on notice of a possible security interest in the collateral, and it is the purchaser's duty to make further inquiry.[259] A farmer took out an accelerated operating loan from Farm Credit Services (FCS).[260] In compliance with the notice requirements of the FSA, FCS prepared a notice of lien and a list of potential purchasers of the farmer's crops.[261] Rudy, a grain buyer, purchased grain from the farmer in the past and was notified in 1991 of the FCS lien on the crops.[262] The lien notice identified the crop year as 1991-1992.[263] Rudy did not receive a lien notice in 1992, and due to a clerical error by FCS, a 1992 lien against the farmer's crops did not appear in Rudy's computer database.[264] Consequently, Rudy purchased all of the farmer's crops in 1992.[265] Rudy paid the farmer directly, rather than issuing a joint check as is required by the FSA.[266] The farmer subsequently defaulted on its loan from FCS, which then

243. Century 21 Products, Inc. v. Glacier Sales, 918 P.2d 168 (Wash. 1996).
244. *See id.* at 170-72.
245. *See id.* at 169.
246. *See id.*
247. *See id.*
248. *See id.*
249. *See id.*
250. *See id.*
251. *See id.*
252. *See id.*
253. *See id.*
254. *See id.*
255. *See id.* at 172.
256. *See id.*
257. *See id.*
258. Farm Credit Services of Mid America, ACA v. Rudy, Inc., No. 95-CA-54, 1996 WL 417095 (Ohio Ct. App. July 26, 1996).
259. *See id.* at *4-6.
260. *See id.* at *1.
261. *See id.*
262. *See id.*
263. *See id.*
264. *See id.* at *3.
265. *See id.*
266. *See id.*

demanded payment from Rudy.[267] The Ohio Court of Appeals held that although the pre-1991 practice was to use single crop-year designations, the dual year designation was not so ambiguous or confusing that a party reading the notice would be misled.[268] Rather, the dual-year designation was sufficient to put the reasonably prudent prospective buyer on notice that the collateral to be purchased may be subject to a security interest.[269] Furthermore, even where a financing statement is ambiguous, it may provide adequate notice to the prospective purchaser to conduct further inquiry.[270]

B. Nelson v. American National Bank of Gonzalez[271]

A bank's priority interest in farm products is unenforceable under Texas' version of U.C.C. § 9-307(1) because it conflicts with the FSA at least where the bank does not provide written notice to buyer one year prior to the sale and where Texas does not maintain a central filing system.[272] Nelson purchased cattle from a cattle company without providing prior notice that the bank held a security interest in the cattle company's livestock.[273] While the cattle awaited delivery to Nelson, the bank seized the company's livestock.[274] Nelson eventually recovered 237 of his 273 head of cattle and sued the bank for conversion.[275] The bank cross-claimed in conversion for the 237 head of cattle.[276] The bank argued that it held priority over Nelson for possession of the cattle, because the cattle were secured by the bank prior to the sale to Nelson.[277] The Texas Court of Appeals found that the purpose of the FSA was to preempt certain state laws, including Texas's version of U.C.C. § 9.307(a).[278] Although Congress provided exceptions to the FSA, neither were met here because Nelson was not given prior notice and Texas does not keep a central filing system.[279] Furthermore, because the trial court did not consider the preemptive effect of the FSA, a question of fact remained regarding whether Nelson was a "buyer in the ordinary course of business."[280] Thus, it was improper for the trial court to direct a verdict in favor of the bank.[281]

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267. *See id.*
268. *See id.* at *6.
269. *See id.*
270. *See id.*
271. Nelson v. American Nat'l Bank of Gonzalez, 921 S.W.2d 411 (Tex. App. 1996).
272. *See id.* at 414-16.
273. *See id.* at 413.
274. *See id.* at 414.
275. *See id.*
276. *See id.*
277. *See id.*
278. *See id.* at 416.
279. *See id.* at 417.
280. *See id.*
281. *See id.*

XII. BANKRUPTCY

A. Glenshaw Glass Co. v. Ontario Grape Growers' Marketing Board[282]

Grapes delivered by a grower to Chapter 11 debtor-processor pursuant to a processing and storage agreement are not consigned goods under Pennsylvania's version of U.C.C. § 2-326.[283] A farm cooperative grape processor entered into agreements with a grape grower to store and process grapes according to the grower's directions.[284] Although the processor held an option to purchase grapes under a related purchase agreement, the processor had no authority to sell the grapes and was merely temporarily entrusted with possession.[285] The processor filed Chapter 11 bankruptcy.[286] Without informing the Bankruptcy Court or the processor's creditors, the grower removed and sold some of the processor's grape product.[287] The grower appealed the district court's decision that the grower violated the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362, and that awarded damages to Glenshaw Glass, a bottle supplier and one of the processor's creditors, for the total sale proceeds realized by the grower plus interest.[288] The U.S. Court of Appeals held that the contract terms and the course of dealing between the parties established a bailment, not a consignment, and that U.C.C. § 2-326 does not apply to bailments.[289] Therefore, grapes delivered by the grower were never part of the debtor-processor's bankruptcy estate and were not subject to creditors' claims and there was no violation of the automatic stay.[290]

B. Heinz v. Phoenix Corp.[291]

A contract provision granting lifetime breeding rights in a thoroughbred stallion does not grant the promisee property rights in the stallion or constitute ownership shares in the horse for bankruptcy purposes.[292] A farm contracted to purchase a thoroughbred stallion.[293] The contract conveyed the entire ownership interest to the farm and gave the parties to the contract the right to designate one mare each year to be bred to the stallion, without a stud fee.[294] The farm subsequently filed Chapter 11 bankruptcy and sought a declaration that the stallion could be sold free and clear of the contracted breeding rights.[295] The court held that although breeding rights are indeed property, they do not rise to

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282. Glenshaw Glass Co. v. Ontario Grape Growers' Mktg. Bd., 67 F.3d 470 (3d Cir. 1995).
283. *See id.* at 475-77.
284. *See id.* at 472.
285. *See id.* at 473.
286. *See id.*
287. *See id.* at 474.
288. *See id.* at 474-75.
289. *See id.* at 477.
290. *See id.*
291. Heinz v. Phoenix Corp., No. 94-6394, 1996 WL 125044 (6th Cir. Mar. 20, 1996).
292. *See id.* at *2.
293. *See id.* at *1.
294. *See id.*
295. *See id.*

the level of property in the horse itself.[296] Thus, breeding rights are not fractional property rights in the horse, and the recipient of lifetime breeding rights does not acquire a share of the horse for bankruptcy purposes.[297]

C. In re Krug[298]

Despite finding a bank negligent in the care of repossessed purebred and registered cattle, the bank is entitled to recover the total expenses associated with the repossession, care, and preparation for sale of cattle pursuant to 11 U.S.C. § 506(b).[299] However, the maximum allowable recovery under 11 U.S.C. § 506(b) will be reduced by the amount of damages caused by the bank's negligence.[300] A bank foreclosed on its loan to a cattle rancher and repossessed 235 head of cattle without prior notice to the rancher.[301] At the time of repossession, the bank was approximately eighty-seven percent over secured.[302] The debtor-rancher filed Chapter 12 bankruptcy because of the repossession.[303] The bank contracted for the care of the cattle, which resulted in the substantial reduction of the value of the cattle as a breeding herd.[304] In particular, the cattle bred indiscriminately, were underfed, and subjected to poor living conditions.[305] The bank sought recovery of its post-petition interest, $243,000 in attorneys' fees and expenses, and $70,000 in costs associated with the repossession and care of the cattle under 11 U.S.C. § 506(b).[306] The bank's attorneys' fees exceeded the debtor-rancher's fees by over seventy percent in the first year, and the bank did not submit detailed supporting documentation.[307] The court held that, given all the circumstances, the bank's attorneys' fees were unreasonable and reduced the bank's fee request by sixty percent.[308]

XIII. STATE STATUTES

A. In re GVF Cannery, Inc.[309]

A subordination agreement waives the senior priority position of a producer's lien under the California Food and Agriculture Code, §§ 55,631-53, but such waiver is ineffective where the waiving party is not fully informed of the effect of ceding the priority position.[310] GVF Cannery (GVF) contracted with a

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296. *See id.* at *2.
297. *See id.*
298. *In re* Krug, 189 B.R. 948 (Bankr. D. Kan. 1995).
299. *See id.* at 962-63.
300. *See id.* at 965.
301. *See id.* at 952.
302. *See id.* at 963.
303. *See id.* at 953.
304. *See id.* at 961.
305. *See id.*
306. *See id.*
307. *See id.* at 964.
308. *See id.* at 965.
309. *In re* GVF Cannery, Inc., 188 B.R. 651 (Bankr. N.D. Cal. 1995).
310. *See id.* at 671.

tomato grower to sell tomatoes for processing and resale.[311] GVF presented the grower with a written contract, although GVF representatives knew the grower was illiterate.[312] The grower signed the contract as well as a subordination agreement, which GVF explained was necessary to ensure the grower was paid for his tomatoes.[313] The grower made no further inquiry into the effect of the subordination agreement.[314] GVF was in poor financial condition and, among other debts, owed $4.8 million to the bank.[315] Consequently, GVF filed Chapter 11 bankruptcy, leaving an unpaid balance to the grower exceeding $1 million.[316] The court held that the subordination agreement between GVF and the grower constituted a waiver.[317] However, the waiver was ineffective because the agreement document did not enable the grower to fully understand the consequences of subordinating his producer's lien to the bank.[318] The court noted that this deficiency in the agreement could be overcome if the waiving party gained actual knowledge of the necessary facts from some outside source.[319] However, that was not the case here. A full disclosure was not made, and the grower did not fully understand the effect of waiving his priority position to the bank.[320] The court also held that the grower had no duty of inquiry; the burden of full disclosure rests upon the party requesting the waiver.[321] The court declined to announce a black letter rule for adequate disclosure, deferring instead to the Legislature.[322]

B. In re Lott[323]

A mechanic must retain continuous possession of a tractor on which it makes repairs to hold a valid statutory artisan's lien under Michigan Comprehensive Laws § 570.186.[324] A mechanic made engine repairs to a Chapter 13 debtor's tractor, which was subject to a valid, first priority security interest by the bank.[325] Although the mechanic was not paid for the services, the mechanic voluntarily and unconditionally returned the tractor to the debtor.[326] The mechanic did not claim a lien on the unpaid invoice.[327] The mechanic subsequently made warranty repairs to the debtor's tractor.[328] Upon completing these repairs, the mechanic submitted a lien claim on the initial repairs to the

311. *See id.* at 662.
312. *See id.*
313. *See id.*
314. *See id.*
315. *See id.* at 664.
316. *See id.* at 655.
317. *See id.* at 655.
318. *See id.*
319. *See id.*
320. *See id.* at 665-66.
321. *See id.* at 668.
322. *See id.* at 666.
323. *In re* Lott, 196 B.R. 768 (Bankr. W.D. Mich. 1996).
324. *See id.* at 772-76.
325. *See id.* at 771.
326. *See id.*
327. *See id.*
328. *See id.*

tractor's engine and refused to return the tractor to the debtor until the first invoice was paid.[329] The court held that Michigan's artisan's lien statute requires continuous possession or the lien is lost.[330] Because the mechanic relinquished the tractor to the debtor voluntarily and without condition, no lien existed as to the initial repairs.[331] Furthermore, Michigan's common law artisan's lien and the statutory artisan's lien are coterminous.[332] Thus, the mechanic lost the common and statutory law artisan's claims.[333] However, when the mechanic made the second warranty repairs to the tractor, a new and separate artisan's lien--in common and statutory law--arose.[334] As long as the mechanic retained continuous possession of the tractor since making the second repairs, the mechanic was entitled to an artisan's lien on the tractor for these repairs.[335]

C. St. Hilaire v. Food Services of America, Inc.[336]

A contract between commission merchant and fruit growers authorizing the processor to market and sell growers' fruit at commission merchant's sole discretion to anyone, including related entities, and to commingle growers' fruit for sale does not override the requirements of Washington's Commission Merchant Act, RCW 20.01 (Act). The Act states that whenever there is a sale to a related party, the sale must be at a fixed price or there must be prompt notice of each sale.[337] The net profits of resale realized by the processor's affiliates is the appropriate measure of damages for violating the Act.[338]

In this case, the apple growers contracted with a commission merchant to "process, pack, warehouse, store and sell" the growers' apples.[339] The contract authorized the processor, in its sole discretion, to market and sell the apples to its affiliates and on other markets and to commingle the crops for sale.[340] Disappointed with the returns on their apple crops, the growers sued the commission merchant for violating the Act and for negligence under the contract terms.[341] The court held that the "best efforts" language in the contract did not supersede the Act's requirement of either an agreed upon, fixed price or notice of every sale to the grower.[342] Also, the Act's notice requirement was not satisfied by a contractual provision authorizing the commission merchant to make sales to affiliates.[343] Furthermore, the court found that the merchant is not released from its obligations under the Act merely because the merchant handles the product in

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329. *See id.* at 771-72.
330. *See id.* at 776.
331. *See id.*
332. *See id.*
333. *See id.*
334. *See id.*
335. *See id.*
336. St. Hilaire v. Food Serv. of Am., Inc., 917 P.2d 1114 (Wash. App. 1996).
337. *See id.* at 1117-18.
338. *See id.* at 1119-20.
339. *See id.* at 1115.
340. *See id.*
341. *See id.* at 1115-16.
342. *See id.* at 1117.
343. *See id.*

a manner that makes it difficult to notify the growers of the sales in question.[344] The difficulty in this case arose from the practice of commingling or "pooling" all growers fruit of similar size, variety, and color.[345] Damages to the growers resulting from the processor's violation of the Act should be measured by the net profits of resales realized by the processor's affiliates, at least where processor did not violate a trust relationship with the growers.[346] The court found that awarding gross profits is not necessary to ensure statutory compliance.[347]

344. *See id.*
345. *See id.* at 1116.
346. *See id.* at 1117-19.
347. *See id.*