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UNIFORM COMMERCIAL CODE COMMENTARY

SECURITY INTERESTS IN AIRCRAFT

The Uniform Commercial Code¹ provides 49 states² with a comprehensive system for the perfection of security interests and the determination of priorities among conflicting security interests. With the composition of Article 9 the drafters of the Code have attempted "to provide a simple and unified structure within which the immense variety of present-day secured financing transactions can go forward with less cost and with greater certainty."³ To achieve this end the Code sets forth the steps necessary for the perfection of a security interest. The first step is attachment. A security interest "attaches" under the Code when an agreement has been made, when value has been given and when the debtor acquires a property right in the collateral.⁴ This interest is valid only between the parties themselves and against those third parties who have actual notice of the outstanding interest;⁵ the additional step of "perfection" is necessary for protection against third parties not on actual notice. Perfection of an interest may be accomplished under the Code by three different methods, depending upon the type of collateral being pledged.⁶ Thus, possession by the secured party of certain types of collateral will perfect a security interest in that collateral,⁷ while attachment is enough to perfect another type of interest.⁸ However, a third method, filing, is the most important means for perfection of a security interest under the Code.⁹ This practice calls for the filing of a financing statement or some other suitable document in a specified central location or locations.¹⁰ The underlying assumption is that the filed instrument is sufficiently available to third parties so that they may fairly be regarded as being on notice of the interest.¹¹ Thus the effect of filing has been characterized as raising a duty

¹ All Uniform Commercial Code citations are to the 1962 Official Text.

² For a table of states which have adopted the Code, and the effective date of adoption, see 1 P. Coogan, W. Hogan & D. Vagts, *Secured Transactions Under the Uniform Commercial Code* vii (1967).

³ U.C.C. § 9-101, Comment.

⁴ U.C.C. § 9-204(1).

⁵ See U.C.C. § 9-204; U.C.C. § 9-204, Comment 1; and U.C.C. § 9-301(3).

⁶ U.C.C. § 9-302, and see generally Ruud, *The Perfection of Security Interests Under Article 9 of the Uniform Commercial Code—How? When? Where? How Often?* 44 *Texas L. Rev.* 724 (1966).

⁷ This is the exclusive means for perfecting security interests in instruments other than instruments which constitute part of chattel paper. U.C.C. § 9-304(1).

⁸ For example, attachment will perfect a purchase money security interest in farm equipment having a value of less than \$2,500, U.C.C. § 9-302(1)(c); and a purchase money security interest in consumer goods, U.C.C. § 9-302(1)(d).

⁹ With few exceptions, see notes 7 & 8 *supra*, filing is required for perfection of security interests under the Code. U.C.C. § 9-302.

¹⁰ The provisions governing filing are to be found in Article 9, Part 4.

¹¹ U.C.C. § 9-302, Comment 1 states that "[s]ubsection (3) further sets out certain

in security holders to check the central file before entering into a financing transaction.¹² In contrast, security interests in those types of collateral which may be perfected without filing are of such a nature that "notice" of the interest is of little importance or is already given.¹³

The effectiveness of perfection by filing is greatly hampered when the collateral in which an interest is held is highly mobile. A highly mobile self-propelling chattel such as a ship or airplane may be moved easily from state to state and used in widely separate geographic areas. It is, therefore, less reasonable to presume an out-of-state party to be on notice of an outstanding security interest when that interest is recorded in some remote place. This problem has long been recognized by the federal government, which has responded by enactment of positive legislation providing for federal recording systems for specified types of collateral.¹⁴ In the area of aircraft security interests, the Federal Aviation Act¹⁵ provides for the recording of all security interests and conveyances in aircraft.¹⁶ With the enactment of the Federal Aviation Act, state law provisions for filing are superseded. Section 9-104 of the Code recognizes this preemption,¹⁷ and courts have almost unanimously held that the federal recording provisions supersede state law.¹⁸ Comment 1 to section 9-104 acknowledges that recording under the federal statute is the equivalent to filing under Article 9, but it then asserts that "to the extent that the Civil Aeronautics Act does not regulate the rights of parties to and third parties affected by such transactions, security interests in aircraft remain subject to this Article, pending passage of federal legislation."¹⁹ According to the Comment, the federal statute determines the validity of an interest, but the Code determines the priority of any valid interest. The federal law is deemed not to have superseded the entire area of aircraft conveyancing. The courts have not always agreed with this view, but it appears

transactions to which the filing provisions of this Article do not apply: these are cases where *alternative systems for giving public notice of a security interest are available.*" (Emphasis added.)

¹² See *In Re Veterans' Air Express*, 76 F. Supp. 684, 688 (D.N.J. 1948), a pre-Code case.

¹³ For instance security interests in letters of credit may be perfected when the secured party takes possession of them. U.C.C. § 9-305. See note 11 *supra*.

¹⁴ See the Federal Ship Mortgage Act, 46 U.S.C. § 911-84 (1964), which provides for filing in a ship's home port.

¹⁵ 49 U.S.C. § 1301 (1964).

¹⁶ 49 U.S.C. § 1403 (1964).

¹⁷ U.C.C. § 9-104 reads in part:

This Article does not apply (a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property. . . .

¹⁸ See *In Re Veterans' Air Express*, 76 F. Supp. 684 (D.N.J. 1948); *Blalock v. Brown*, 78 Ga. App. 537, 51 S.E.2d 610 (1949). Present federal law, the Federal Aviation Act, does not substantially alter the provisions of the Civil Aeronautics Act (C.A.A.).

¹⁹ This Comment, therefore, presumably applies to present law as well as to the C.A.A. But see *Aviation Credit Corp. v. Gardner*, 174 Misc. 798, 22 N.Y.S.2d 37 (Sup. Ct. 1940), which held that when planes are used only in intrastate commerce the federal law did not preempt at all. The holding of this case is unique.

that any questions have now been settled in favor of the Code position as explained in Comment 1 to section 9-104.²⁰

The purpose of this comment is to compare the relevant section of the Federal Aviation Act with analogous provisions of the Code in order to describe the "interaction"²¹ between the Code and the Federal Aviation Act, to determine to what extent the courts have held the Act to preempt the Code, and to suggest a scheme of priorities in aircraft for the future.

I. THE FEDERAL AVIATION ACT

In 1938, the Congress promulgated the Civil Aeronautics Act.²² One of the provisions of this Act established the first federal recording system for aircraft.²³ This provision was continued with minor changes in Section 503 of the Federal Aviation Act. Two subsections of section 503 are especially concerned with recording. The first of these, section 503(c) reads:

No conveyance or instrument the recording of which is provided for by subsection (a) of this section, shall be valid in respect of such aircraft, aircraft engine or engines, propellers, appliances, or spare parts against any person other than the person by whom the conveyance or other instrument is made or given, his heir or devisee, or any person having actual notice thereof, until such conveyance or other instrument is filed for recordation in the office of the Administrator. . . .²⁴

That "[n]o conveyance . . . shall be valid . . . until such conveyance is filed for recordation in the office of the Administrator" has been interpreted to mean that *all* unrecorded interests in aircraft are invalid against third parties without notice,²⁵ and, therefore, will fail when opposed by a recorded interest.

²⁰ There was some resistance to the claim that federal law preempted *only* in the area of recording. In *Re Veterans' Air Express*, 76 F. Supp. 684, 686 (D.N.J. 1948), in dicta, declared that the F.A.A. preempted the entire area of aircraft conveyancing. This concept found some support in *Blalock v. Brown*, 78 Ga. App. 537, 541, 51 S.E.2d 610, 613 (1949), but it is generally agreed that the F.A.A. preempts only state filing statutes as to their formal requirements and their effect on perfection. See *State Sec. Co. v. Aviation Enterprises, Inc.*, 351 F.2d 225, 229 (10th Cir. 1966); *Aircraft Inv. Corp. v. Pezzani & Reid Equip. Co.*, 205 F. Supp. 80, 83 (E.D. Mich. 1962).

²¹ The "interaction" takes place when the instrument is validated under federal law and then submitted to the conditions of the state law for perfection or priority.

²² 49 U.S.C. § 401 (1964).

²³ 49 U.S.C. § 523 (1964).

²⁴ 49 U.S.C. § 1403(c) (1964).

²⁵ See *In Re Veterans' Air Express*, 76 F. Supp. 684, 688 (D.N.J. 1948).

[I]t is clear that the Congress has prescribed the only way in which aircraft may be transferred and in which liens upon aircraft may be duly recorded. In this manner, all persons dealing with aircraft are upon full legal notice concerning possible liens and are charged with the duty of inquiry at the central recording office of the Civil Aeronautics Administration with respect to any aircraft in which they might be concerned.

This statement, although correct when made, has been superseded with regard to buyers in the ordinary course by U.C.C. § 9-307(1). See the discussion at pp. 978-80 *infra*.

Both *Veterans'* and *Blalock v. Brown*, 78 Ga. App. 537, 51 S.E.2d 610 (1949), held that the necessity for recordation extended to aircraft used only a intrastate commerce.

Similarly, under the Code an interest which must be filed to be perfected will fail if not properly recorded and if opposed by a superior interest.²⁶ Under the Federal Aviation Act, notice of an outstanding interest, whether it be actual notice or public notice, will validate that instrument through recordation. Under the Code, a party knowing of the security interest must treat that interest as being perfected.²⁷ Thus, the effect of recording under Section 503 of the Federal Aviation Act is analogous to the effect of filing under the Code. The same status is achieved by the recording of the interest and the same peril is risked by the failure to record.

The requirement that the federal recording be made at one central office responds to the problems raised by highly mobile collateral such as aircraft. This response reflects the Code's classification of the methods of perfection according to the type of collateral. Section 503(c), therefore, presents a synthesis of the essential provisions of the Code in filing for perfection, and, by so doing, it has established the need for recording, by warning that no unrecorded conveyance or instrument shall be valid. Because it sufficiently provides for the recording of all conveyances and interests in aircraft, section 503(c) has preempted the filing provision embodied in the Code.²⁸

Section 503(d) provides that every properly recorded conveyance "shall from the time of its filing for recordation be valid as to all persons without further or other recordation. . . ."²⁹ If one has recorded properly under Section 503(c) of the Federal Aviation Act, the instrument is valid under section 503(d) and all parties are considered to be on notice.³⁰ Since the state filing provisions have been nullified by federal preemption, the compliance or non-compliance with them cannot add to or detract from this validity.

One recording is sufficient to meet the requirements of section 503 and, thus, one single recordation will validate an instrument for all time, state law and the Code provisions notwithstanding.³¹ Federal validation, then, is in every respect analogous to Code perfection: actual notice or recordation in the proper central file protects the recorded instrument against third-party claimants. But, under the Code, even a perfected interest is not unassailable.³² Therefore, to determine the effect of perfection through filing under the

And so, *all* aircraft are covered by the F.A.A. recording provisions. See *United States v. United Aircraft Corp.*, 80 F. Supp. 52, 54 (D. Conn. 1948). "The statute [F.A.A.], by its recordation requirement, voids as to third parties, without actual notice, conveyances not recorded."

²⁶ See U.C.C. § 9-301.

²⁷ See note 5 *supra*. But see the "race aspects" in U.C.C. § 9-312.

²⁸ U.C.C. § 9-302, Comment 9 states: "Perfection of a security interest under a state or federal statute of the type referred to in subsection (3) has all the consequences of perfection under the provisions of this Article." Subsection (3) says that "the filing provisions of this Article do not apply to a security interest in property subject to a statute (a) of the United States which provides for a national registration or filing of all security interests in such property. . . ." See also U.C.C. § 9-302, Comment 8.

²⁹ 49 U.S.C. § 1403(d) (1964).

³⁰ See *In Re Veterans' Air Express*, 76 F. Supp. 684, 688 (D.N.J. 1948), and see note 25 *supra*.

³¹ U.C.C. § 9-403(2) provides that filing will not perfect an interest for more than five years. U.C.C. § 9-403(3) provides for refiling.

³² Priorities among perfected security interests are determined by U.C.C. § 9-312.

Federal Aviation Act on an interest one must turn to the courts for interpretation.³³

II. APPLICATION OF FEDERAL RECORDATION TO STATE LAW

Under the Code a perfected security interest has priority depending upon the type of that interest and upon the type of interest challenging it. The Federal Aviation Act provides no such comprehensive system of priorities, and, on its face, any recorded conveyance will prevail over any unrecorded conveyance. Such a restricted reading of the statute could lead to inequitable results in many cases by failure to recognize claims of superior interest not dependent upon any instrument. Two such claims, those of the good faith purchaser and of the buyer in the ordinary course, provide useful examples of the actual interaction of state and federal law.

A. *The Good Faith Purchaser*³⁴

*American Aviation, Inc. v. Aviation Ins. Managers, Inc.*³⁵ provides an illustration involving the good faith purchaser. The concept of a good faith purchaser has long been used by the courts; and, under the Code, "[a] person with voidable title has power to transfer a good title to a good faith purchaser for value."³⁶ In *American Aviation* a registered title holder, whose title was properly recorded, sold his aircraft to Aviation Insurance as part of a settlement. Aviation Insurance did not record its newly acquired ownership, and had not done so when it sold the plane to a third party, retaining the bill of sale from the registered owner until payment was made. Aviation Insurance never received full payment from the third party, and so continued to hold the bill of sale from the original, recorded owner. The aircraft changed hands twice more before finally coming to rest with American Aviation. American Aviation was undisputedly a good faith purchaser.³⁷

Application of the Federal Aviation Act recording provisions revealed that neither party had a validly recorded instrument on which to base a claim of ownership: Aviation Insurance because it *did not* record its title,³⁸ and

³³ Failure to record need not be fatal to one's interest in an aircraft, if that interest has some basis upon which a claim may be made which is independent of an instrument affecting title, but it is obviously risky to postpone recordation or to acquire instruments which cannot be recorded. In general, see Scott, *Liens in Aircraft: Priorities*, 25 *J. Air L. & Com.* 193 (1958).

³⁴ The Code does not define "good faith purchaser" but U.C.C. § 1-201(19) defines "good faith" as "honesty in fact in the conduct or transaction concerned"; U.C.C. § 1-201(33) defines a purchaser as one "who takes by purchase," with purchase defined in U.C.C. § 1-201(32) as including "taking by sale, discount, negotiations, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property." Read in conjunction, the two terms would appear to mean a person who acquires an interest in a chattel honestly believing that there is no reason why he should not acquire such interest. When the purchaser himself is a merchant the Code imposes a higher duty. See U.C.C. § 2-103(1)(b). Article 2 applies to secured transactions which involve a sale. See U.C.C. § 2-102.

³⁵ 244 Ark. 829, 427 S.W.2d 544 (1968).

³⁶ U.C.C. § 2-403(1).

³⁷ 244 Ark. at —, 427 S.W.2d at 547.

³⁸ Aviation Insurance could have recorded its title, but it is arguable that upon

American Aviation because it *could not* record it.³⁹ Nevertheless, Aviation Insurance argued that it stood in the shoes of the prior owner, and that since it retained the recorded bill of sale from that owner it had a claim superior to that of American Aviation. This argument proceeded by two steps: first, since Aviation Insurance stood in the shoes of the prior, recorded owner, it could proffer his recorded instrument as valid proof of its own claim; and second, title had never passed to the third party so that it could not have been transferred by him to later purchasers, good faith or otherwise. This second argument depended upon the assumption that Section 503(c) of the Aviation Act provided the only method for conveyancing aircraft, and that, therefore, a third party who did not receive a recorded bill of sale, so that he himself could record, had not received title to the aircraft.

The court concluded differently. Recognizing that state law applied to all areas not preempted by the recording provisions of the Aviation Act,⁴⁰ the court found in favor of American Aviation. Aviation Insurance was required to stand on the strength of its own title, and could not exploit the weakness of American Aviation's. But Aviation Insurance had conveyed its title to the third party who purchased the aircraft within the meaning of that term under the applicable state law,⁴¹ and American Aviation had subsequently acquired rights in the aircraft as a good faith purchaser. The bill of sale from the recorded owner, which Aviation Insurance had retained, was an attempt by Aviation Insurance to create a security interest in the aircraft—an unsuccessful attempt because of Aviation Insurance's failure to record the instrument. As a result, Aviation Insurance had no valid claim to title, because state law declared that title had passed, and because the federal recording provisions had voided Aviation's unrecorded security interest.⁴²

Clearly a good faith purchaser will prevail over an unrecorded security interest. But this result raises the question whether Aviation Insurance could have prevailed over American Aviation if it had recorded its security interest. *American* suggests that recordation would protect an interest against a good faith purchaser.⁴³ Clearly the good faith purchaser would take "good title,"⁴⁴

sale of the aircraft Aviation Insurance would be compelled to record its retainer of the recorded bill of sale as a security interest.

³⁹ American could not record because it did not have a bill of sale from the recorded owner. 244 Ark. at —, 427 S.W.2d at 545.

⁴⁰ Id. at —, 427 S.W.2d at 547.

⁴¹ The court relied on U.C.C. § 2-106(1), which states in part, "A 'sale' consists in the passing of title from the seller to the buyer for a price." The court relied further on U.C.C. § 2-401(2) providing that

[u]nless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading . . .

244 Ark. at —, 427 S.W.2d at 547.

⁴² Id. at —, 427 S.W.2d at 547.

⁴³ The recordation of a security interest provides public notice of an outstanding interest. See note 5 supra. But, on the theory that the secured party had contributed to a fraud by allowing the secured item to be put in the market place, the secured party in the past was estopped from raising this argument. See discussion in Bordman

*title good against all persons except the recorded owner.*⁴⁵ Aviation Insurance, therefore, would have been victorious, if it had recorded its retention of the bill of sale from the recorded owner as a security interest.

The good faith purchaser is not substantially affected by the Federal Aviation Act recording provision. Under the Code he will take "good title" to the collateral even if the proper filing procedures have been followed by a prior secured party. Recordation under the Aviation Act is analogous to Code filing, and the good faith purchaser takes "good title" in aircraft under the federal law just as he would under the Code. Primarily, this result follows because the status of a good faith purchaser is not affected by filing provisions. But, although he takes "good title," he will take subject to any properly recorded interest. It is certain, then, that a good faith purchaser will not prevail against a recorded interest; another claim, that of the buyer in the ordinary course, is stronger and may be more successful.

B. *The Buyer in the Ordinary Course*⁴⁶

Section 9-307(1) provides that "[a] buyer in the ordinary course of business . . . takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence." In *Northern Illinois Corp. v. Bishop Distrib. Co.*,⁴⁷ a dealer in aircraft had executed a security agreement with a bank, and then had sold the aircraft to a buyer in the ordinary course of business. It was argued

Inv. Co. v. Peoples Bank, 320 S.W.2d 72, 77 (Mo. 1959). With the advent of filing systems this estoppel principle became less important. Since filing was deemed to be public notice, and a duty had been raised in the purchaser to check the central files, the courts would not allow a remiss purchaser to raise the defense of estoppel. But public notice does not disqualify persons as good faith purchasers, since only by having actual knowledge may a person be so disqualified, the test for good faith in the case of a non-merchant being "honesty in fact." See U.C.C. § 1-201(19). But see note 34 supra. Under the Code, then, all non-merchant purchasers without actual knowledge of an outstanding interest are good faith purchasers who take "good title" to the secured and perfected item. See U.C.C. § 2-403(1). *American Aviation* relies on language from *State Sec. Co. v. Aviation Enterprises, Inc.*, 355 F.2d 225, 230 (10th Cir. 1966).

Further, under § 1403(c), supra, [referring to § 503(c) of the F.A.A.] Securities' mortgage is *invalid* as to good faith purchasers, *since it did not register its mortgage with the Federal Aviation Agency*. And the failure of Owens [the purchaser] to register his title does not benefit Securities, since Securities must stand on the strength of its own title and cannot recover on the weakness of Owens' title.

244 Ark. at —, 427 S.W.2d at 548 (emphasis added). It should be noted that *State Securities* turned on Owens' status as a buyer in the ordinary course, and not on his status as a good faith purchaser.

⁴⁴ See U.C.C. § 2-403(1).

⁴⁵ Compare U.C.C. § 2-403(1), providing that good faith purchasers take "good title," with U.C.C. § 9-307(1), stating that a buyer in the ordinary course of business "takes free of a security interest created by his seller." From this language it is clear that the drafters have been explicit wherever they desire to have a party take title free of any security interests.

⁴⁶ U.C.C. § 1-201(9) provides that a "buyer in the 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. . . ."

⁴⁷ 284 F. Supp. 121 (W.D. Mich. 1968).

that the Aviation Act preempted the entire field of conveyancing of aircraft and that, since the bank had recorded its interest and, therefore, had a valid claim, the Act operated to give priority to the bank. The court rejected this argument and held that the Act preempted only state law in the area of recording, and that other state provisions dealing with the priority of a valid instrument against other valid claims were controlled by state law. Since the buyer in the ordinary course had recorded his ownership properly under the federal statute and therefore had a valid instrument on which to make his claim, his status under the Code gave him title unencumbered by the security interest created by his seller, the dealer.

The bank could not protect itself in this situation even by recording.⁴⁸ Of course, by properly recording its interest in the aircraft, the bank had served notice on the world of the outstanding interest. That notice would effectively destroy the claim of a good faith purchaser by subjecting him to the recorded interest,⁴⁹ but a buyer in the ordinary course takes title even though he has knowledge of the outstanding interest created by his seller. The fact that constructive notice has been given by recordation is, therefore, immaterial to him: he must have knowledge of the fact that the secured party has restricted sale of the chattel until the interest has been removed. Since the Code regards knowledge as actual knowledge,⁵⁰ constructive notice of an outstanding restriction on a merchant who has created a security interest will not protect the secured party. The buyer in the ordinary course is clearly unaffected by the compliance or non-compliance with the recording provisions of the Aviation Act.

The buyer in the ordinary course enjoys the same protections as under the Code when the federal recording provisions are applied. He will take title free of outstanding interests so long as he does not have actual knowledge that the sale is in violation of the rights of the secured party. The Aviation Act recording provisions do not affect his position, essentially because constructive notice given by filing is deemed by the Code to have no effect on his status. The cases involving the good faith purchaser and buyer in the ordinary course demonstrate the interaction of the Code and the Federal Aviation Act: an instrument made valid by recordation occupies the same relative position as an instrument filed under the Code.⁵¹ Such an interest is not unassailable merely because it is valid, and may be successfully attacked by a claim given priority under the Code. The cases discussed, therefore, reached the same result as cases decided under the Code filing provisions.

Lien holders without actual notice also may make claims against holders

⁴⁸ U.C.C. § 9-307, Comment 2 explains, "[I]t results that the buyer takes free if he merely knows that there is a security interest which covers the goods but takes subject if he knows, in addition, that the sale is in violation of some term in the security agreement not waived by the words or conduct of the secured party." See also Comment, Section 9-307(1) of the U.C.C.: The Scope of the Protection Given a Buyer in Ordinary Course of Business, 9 B.C. Ind. & Com. L. Rev. 985 (1968).

⁴⁹ The good faith purchaser would take "good title" but subject to the interest. See the text at pp. 976-77 *supra*.

⁵⁰ See U.C.C. § 1-201(25).

⁵¹ U.C.C. § 9-302, Comment 9. See also note 28 *supra*.

of security interests perfected under the Code.⁵² Two recent cases, one involving mechanics liens on aircraft and the other involving accessions to aircraft illustrate the alteration made by the Aviation Act in state law and the Code in this area.

C. *Subsequent Liens*

Section 9-310 provides that

[w]hen 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.

A mechanics lien must arise from an independent state statute or from case law separate from the Code. Such a lien will have priority under the Code over earlier interests unless its is statutory and the statute creating it expressly states the contrary. It was clearly the intention of the drafters of the Code to leave to the preexisting state law the determination of the priority of mechanics liens. And, since preexisting law was to be responsible for the creation of such liens, the Code also left to the state the determination of the requisites for perfection.

In *Smith v. Eastern Airmotive Corp.*,⁵³ Smith purchased an aircraft and mortgaged it with a bank, which duly recorded its security interest. Later, the plane was damaged by a lessee who turned it over to Eastern for repairs, and who then defaulted. Eastern claimed that its mechanics lien had priority over the earlier chattel mortgage. In fact, New Jersey law granted express priority both to mechanics liens and to liens for storage expenses with no requirement for filing.⁵⁴ The Superior Court of New Jersey, however, held that Section 503(c) of the Aviation Act applied, requiring proper recordation before a claim to a mechanics lien could be valid. The proceeds of the sale of the plane were awarded to Smith since Eastern's mechanics lien was unrecorded and therefore void. In dicta, the court strongly implied that Eastern's claim would have been good had it been validated through proper recordation.⁵⁵

Eastern by no means stands alone, and in fact relies heavily on the logic of earlier cases.⁵⁶ Of these, *International Atlas Servs. v. Twentieth Cen-*

⁵² W. Willier & F. Hart, *Forms and Procedures under the U.C.C.* ¶ 91.29 (1966).

⁵³ 99 N.J. Super. 340, 240 A.2d 17 (Super. Ct. 1968).

⁵⁴ N.J. Stat. Ann. § 2A: 44-2 (1952).

⁵⁵ "Atlas could have fully protected its rights in these engines and preserved a good title throughout the world by taking advantage of this national system of recordation and recording its interest in specifically numbered aircraft engines with the Federal Aviation Agency." 99 N.J. Super. at 347, 240 A.2d at 21, quoting from *International Atlas Servs., Inc. v. Twentieth Century Aircraft Co.*, 251 Cal. App. 2d 434, 440, 59 Cal. Rptr. 495, 498, 499 (1967).

⁵⁶ In particular, *United States v. United Aircraft Corp.*, 80 F. Supp. 53 (D. Conn. 1948), and *Continental Radio Co. v. Continental Bank & Trust Co.*, 369 S.W.2d 359 (Tex. Civ. App. 1963).

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*tury Aircraft Co.*⁵⁷ went somewhat farther than *Eastern*. Here the question was whether a recorded chattel mortgage would prevail over the unrecorded retained ownership interest of a mechanic. Atlas, the mechanic, had installed one of its own engines in the mortgaged aircraft as part of a standard repair procedure known as a Q.E.C. (quick engine change). The court recognized that California law gave explicit priority to Atlas.⁵⁸ In fact, it was pointed out that California liberalized its law to favor the mechanic.⁵⁹ Under the older law the mechanic was unable to get his engine back from the party claiming a security interest in the whole aircraft in accord with the principle that one should not separate from the whole a thing that had been integrated into it. The older law provided for reimbursement for the lost engine, but was changed to allow the mechanic to recover its interest in the Q.E.C. engine, and that interest, characterized by the court as a security interest, was void under section 503(c). Atlas' claim to *anything* in the engine was defeated by its failure to record.⁶⁰

Under the Code an unrecorded mechanics lien might very well successfully attack a prior perfected security interest. But, under the Aviation Act recording provisions, it has been held that an unrecorded lien cannot be successful.⁶¹ This difference clearly reflects the broad language of the federal provisions and raises the question whether the policy underlying the Code's treatment of mechanics liens is preferable to the federal provisions. In fact, a further question is raised: does the federal statute preempt state law in the area of subsequent lien holders? The question has been answered in the affirmative. This answer may derive some justification from the principle that federal statutes preempt only state law in conflict with the purpose of the federal enactment. The purpose of the Aviation Act recording provisions was to help protect secured parties dealing in aircraft. Obviously, the requirement that mechanics file their liens does not afford added protection to these secured parties, since the simple act of filing may give the mechanics priority. No conflict between a state policy which may not require filing and the federal purpose is apparent, since in *subsequent* lien situations there is no reliance by the prior security holder on the fact that the subsequent lien is unrecorded. It is submitted that since no conflict properly exists between Section 503(c) of the Federal Aviation Act and the Code sections dealing with subsequent liens, the decisions to the contrary are conceptually incorrect.

⁵⁷ 251 Cal. App. 2d 434, 59 Cal. Rptr. 495 (1967).

⁵⁸ "It would appear, then, that under California law Atlas at a minimum should recover the value of its engines and at a maximum should recover the engines themselves." *Id.* at 438, 59 Cal. Rptr. at 497.

⁵⁹ This was accomplished when California enacted U.C.C. § 9-314. See 251 Cal. App. 2d at 438, 59 Cal. Rptr. at 497.

⁶⁰ "As we see it, general California law on the subject of title and liens to personal property in relation to component parts has been superseded by specific federal law with respect to aircraft." 251 Cal. App. 2d at 438, 59 Cal. Rptr. at 497. The court went on to state that "under subsection 1403(a) a conveyance or instrument which could have been recorded, but was not, is until so recorded, invalid against a person without actual notice of the conveyance or instrument." *Id.* at 440, 59 Cal. Rptr. at 498.

⁶¹ *International Atlas Servs., Inc. v. Twentieth Century Aircraft Co.*, 251 Cal. App. 2d 434, 59 Cal. Rptr. 495 (1967); *Smith v. Eastern Airmotive Corp.*, 99 N.J. Super. 340, 240 A.2d 17 (Super Ct. 1968).

However, the question now seems to be academic. Cases construing the federal law clearly require that mechanics send documentation of their lien to a central filing location. This requirement does not impose too great a hardship, and may well be justified by the simplicity of the Aviation Act provisions. Any state policy failing to require filing for mechanics liens in general loses much of its validity when the lien in question is attached to an item as expensive as an airplane.

CONCLUSION

The Federal Aviation Act and the Code often interact to produce results identical to those reached by the Code alone. It is true that in the area of mechanics liens those decisions holding that the Aviation Act preempts the Code with regard to subsequent lien holders have worked different and perhaps unjust results. But the simple act of filing with the Aviation Act Administrator precludes the potential injustice of these statutory differences. In short, the filing provisions of the Federal Aviation Act have satisfied a specific need by creation of a centralized system for perfection through filing. In doing so the Act has not essentially altered the comprehensive Code systems of priorities.

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