

1993

West One Bank, Utah v. Life Insurance Company of Virginia : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Russell C. Fericks; Gerald J. Lallatin; Richards, Brandt, Miller & Nelson.

Carolyn Montgomery; James H. Woodall; Parsons, Behle & Latimer.

Recommended Citation

Brief of Appellee, *West One Bank v. Life Insurance Company of Virginia*, No. 930476 (Utah Court of Appeals, 1993).
https://digitalcommons.law.byu.edu/byu_ca1/5398

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH COURT OF APPEALS

FILE

100

100

KFD

50

.A10

DOCKET NO.

930476

IN THE UTAH COURT OF APPEALS

WEST ONE BANK, UTAH,
Plaintiff/Appellee,

vs.

LIFE INSURANCE COMPANY
OR VIRGINIA,
Defendant/Appellant.

Case No. 930476-CA

Priority No. 15

BRIEF OF APPELLEE

On Appeal from Summary Judgment
Entered in the Third Judicial District Court
of Salt Lake County, Utah
Judge Glenn K. Iwasaki

CAROLYN MONTGOMERY (2297)
JAMES H. WOODALL (5361)
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone No. (801) 532-1234

Russell C. Fericks
Gerald J. Lallatin
RICHARDS, BRANDT, MILLER & NELSON
50 South Main Street, Suite 700
Salt Lake City, Utah 84144

FILED

Utah Court of Appeals

OCT 21 1993

Mary T. Noonan
Mary T. Noonan
Clerk of the Court

WEST ONE BANK, UTAH,
Plaintiff/Appellee,
vs.
LIFE INSURANCE COMPANY
OR VIRGINIA,
Defendant/Appellant.

Case No. 930476-CA
Priority No. 15

On Appeal from Summary Judgment
Entered in the Third Judicial District Court
of Salt Lake County, Utah
Judge Glenn K. Iwasaki

CAROLYN MONTGOMERY (2297)
JAMES H. WOODALL (5361)
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone No. (801) 532-1234

Russell C. Fericks
Gerald J. Lallatin
RICHARDS, BRANDT, MILLER & NELSON
50 South Main Street, Suite 700
Salt Lake City, Utah 84144

TABLE OF CONTENTS

	<u>Page</u>
JURISDICTION	a
STATEMENT OF ISSUES	1
STATUTORY PROVISIONS	1
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENTS	2
1. Appellant unlawfully interfered with West One's prior, perfected security interest in UII's accounts receivable. . . .	2
2. Appellant's Statement of Issues is misleading and incorrect, and the matters being raised for the first time should not be considered on appeal . . .	3
a. Appellant's right of set off did not accrue before it received the notice of assignment from West One . . .	3
b. West One will not receive a "double payment"	4
c. West One's rights as a secured creditor were perfected upon filing; they were not "exercisable only on default of UII," and the "failure to establish the date of default by UII" is irrelevant	4
d. Appellant's argument should be limited to matters presented to the trial court	5
ARGUMENT	5
1. <u>LIFE OF VIRGINIA UNLAWFULLY INTERFERED WITH WEST ONE'S SECURITY INTEREST IN UII'S ACCOUNTS RECEIVABLE</u>	5
2. <u>APPELLANT'S STATEMENT OF ISSUES IS MISLEADING AND INCORRECT, AND THE MATTERS RAISED FOR THE FIRST TIME SHOULD NOT BE CONSIDERED ON APPEAL.</u>	10

CONCLUSION	12
ADDENDUM	18

TABLE OF AUTHORITIES

Page

Cases

<u>Continental American Life Insurance Co. v. Griffin</u> , 306 S.E.2d 285 (Ga. 1983)	6, 7
<u>First National Bank and Trust Co. of Oklahoma v. Iowa Beef Processors, Inc.</u> , 626 F.2d 764 (10th Cir. 1980)	6
<u>Griffin v. Continental American Life Insurance Co.</u> , 722 F.2d 671 (11th Cir. 1984)	6, 7
<u>Haas v. Metro-Goldwyn-Mayer Inc.</u> , 617 F.2d 1136 (5th Cir. 1980)	11, 12
<u>In re Apex Oil Company</u> , 975 F.2d 1365 (8th Cir. 1992)	6
<u>Insley Manufacturing Corp. v. Draper Bank & Trust</u> , 717 P.2d 1341 (Utah 1986)	3, 5, 6, 7, 10, 13
<u>Lane v. Messer</u> , 731 P.2d 488 (Utah 1986)	11
<u>National Acceptance Company of America v. Virginia National Bank</u> , 498 Fed. Supp. 1078 (E.D. Va. 1980)	8
<u>Pioneer Commercial Funding Corp. v. United Airlines, Inc.</u> , 122 Bankr. 871 (Bankr. S.D.N.Y. 1991)	6, 9
<u>Uckerman v. Lincoln Nat'l Life Ins. Co.</u> , 588 P.2d 142 (Utah 1978)	10

Statutes

§ 70A-9-201, Utah Code Ann.	1, 7
§ 70A-9-318(3), Utah Code Ann.	1, 4, 9, 11, 12
§ 70A-9-311, Utah Code Ann.	12

Reference Materials

3 A.L.R. 4th 998 (1978)	6
4 <u>Corbin on Contracts</u> (West 1960)	13
Calimari & Perillo, <u>Contracts</u> (West 2d Ed.1977)	12
White & Summers, <u>Uniform Commercial Code</u> (West 2d Ed. 1980) .	6

JURISDICTION

The Court of Appeals has jurisdiction pursuant to Utah Code Annotated § 78-2a-3(2)(j) (1992), and the Order of the Supreme Court of Utah, dated July 26, 1993, pouring-over this case.

STATEMENT OF ISSUES

Pursuant to Rule 24(b) of the Utah Rules of Appellate Procedure, West One submits the following Statement of Issues as more properly framing the issues that are before the Court:

1. May a creditor rely on § 70A-9-318(3), Utah Code Ann. to subordinate the rights of another creditor with a prior perfected security interest?

2. Did West One's Notice of Assignment to Life of Virginia contractually obligate West One to notify Life of Virginia of United Underwriters, Inc.'s default in order to establish West One's priority as a secured creditor?

STATUTORY PROVISIONS

1. Section 70A-9-201, Utah Code Ann.:

Except as otherwise provided by this act a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this chapter validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

2. Section 70A-9-318(3), Utah Code Ann.:

The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable

proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

STATEMENT OF THE CASE

West One is a secured creditor of United Underwriters, Inc. ("UUI"), with a valid, perfected first lien on all of UUI's accounts receivable, insurance commissions and bonuses that are due and payable to UUI from a number of insurance companies, including appellant Life of Virginia. West One's security interest was perfected in 1988 to secure the repayment of a \$1.5 million loan. Life of Virginia is both an account debtor and a creditor of UUI, owing UUI commissions under a brokerage agreement and having loaned UUI \$100,000 in 1989. When UUI defaulted on its obligations to Life of Virginia, Life of Virginia set off UUI's obligation to it with approximately \$123,000 in funds that it owed UUI. The funds retained by Life of Virginia constituted an account receivable that was subject to West One's perfected security interest.

This matter was submitted to the trial court on cross motions for summary judgment. Judge Iwasaki entered an order granting summary judgment in favor of West One on May 28, 1993.

SUMMARY OF ARGUMENTS

1. Appellant unlawfully interfered with West One's prior, perfected security interest in UUI's accounts receivable. The law in Utah is clear: An Article Nine secured creditor with a prior perfected security interest has priority over "anyone,

anywhere, anyhow." Insley Manufacturing Corp. v. Draper Bank & Trust, 717 P.2d 1341 (Utah 1986). When Life of Virginia set off UUI's obligation with funds it owed UUI, it was acting as a creditor of UUI in derogation of West One's rights. The fact that appellant was also an account debtor of UUI does not alter the rules of priority as between two creditors. As an account debtor, Life of Virginia was authorized to pay UUI until it was instructed to pay West One directly. Life of Virginia was not authorized to apply West One's collateral to satisfy a debt owed by UUI to itself.

2. Appellant's Statement of Issues is misleading and incorrect, and the matters being raised by appellant for the first time should not be considered on appeal.

a. Appellant's right of set off did not accrue before it received the notice of assignment from West One.

Appellant's statement that "[appellant's] right ... to retain commissions ... accrued before [it] received notice of assignment" is wholly incorrect and unsupported by the record. The undisputed evidence is directly contrary to this assertion: Appellant received West One's Notice of Assignment in December 1987. Brief of Appellant, p. 3. Appellant loaned funds to UUI in March 1989 and later that year set off UUI's obligation by retaining commissions it owed UUI. Id. at p. 4. West One's rights as a secured creditor

were perfected in 1988, prior to the time appellant became a creditor of UUI and therefor prior to the time appellant's right of set off accrued.

b. West One will not receive a "double payment."

There is simply no evidence to support appellant's assertion that West One will reap a double benefit if appellant is required to turn over to West One the funds it set off. Appellant "presumes" that UUI used the funds it borrowed from appellant to make payments to West One. There is absolutely no evidence regarding UUI's use of the borrowed funds and appellant's "double payment" theory is meritless and irrelevant.

c. West One's rights as a secured creditor were perfected upon filing; they were not "exercisable only on default of UUI," and the "failure to establish the date of default by UUI" is irrelevant. Appellant is attempting to inject immaterial issues of fact into this appeal. It has never been disputed that West One perfected its security interest in UUI's receivables long before appellant used the funds it owed UUI to set off UUI's obligations.

d. Appellant's argument should be limited to the matters presented to the trial court. Appellant's argument to the trial court was that § 70A-9-318(3), Utah Code Ann. allows an account debtor to subordinate

an assignee's prior perfected security interest unless the account debtor is specifically instructed to pay the assignee. Alternatively, appellant argued, because West One gave appellant notice of its assignment, West One became "contractually obligated" to notify appellant of UUI's default. See generally Memorandum in Support of Defendant's Motion for Summary Judgment, filed January 8, 1993. These are the only questions of law that are properly before the Court.

ARGUMENT

1. LIFE OF VIRGINIA UNLAWFULLY INTERFERED
WITH WEST ONE'S SECURITY INTEREST IN
UUI'S ACCOUNTS RECEIVABLE

Life of Virginia has apparently confused its rights as an account debtor with its rights as a creditor. As an account debtor, Life of Virginia had the right, indeed the obligation, to pay UUI the commissions and bonuses that it owed UUI unless and until it received notice from West One to pay West One directly. As a creditor, however, Life of Virginia's right to set off UUI's debt with amounts that it owed UUI was subordinate to West One's prior, perfected security interest.

The law in Utah, as well as the overwhelming majority of other jurisdictions, is that a creditor's perfected security interest in collateral has priority over any subsequent right of setoff. See, e.g., Insley Manufacturing Corp. v. Draper Bank &

Trust, 717 P.2d 1341 (Utah 1986). See also Pioneer Commercial Funding Corp. v. United Airlines, Inc., 122 Bankr. 871 (Bankr. S.D.N.Y. 1991), In re Apex Oil Company, 975 F.2d 1365 (8th Cir. 1992), First National Bank and Trust Co. of Oklahoma v. Iowa Beef Processors, Inc., 626 F.2d 764 (10th Cir. 1980), Griffin v. Continental American Life Insurance Co., 722 F.2d 671 (11th Cir. 1984). See also Annotation, Effect of UCC Article 9 Upon Conflict as to Funds in Debtor's Bank Account Between Secured Creditor and Bank Claiming Right of Setoff, 3 A.L.R. 4th 998 (1978). This position reflects the general rule that the rights of a secured creditor in collateral are greater than those of any other creditor, except as otherwise set forth in Article 9 of the Uniform Commercial Code. White & Summers, Uniform Commercial Code § 25-2 (1980).

The Utah Supreme Court's decision in Insley Manufacturing is controlling in this case. There, Insley sold a backhoe to Schneider Machinery Sales, receiving a security interest in the backhoe and its proceeds, which it properly perfected. Schneider sold the backhoe to a third party and deposited the proceeds in its account at Draper Bank & Trust ("Draper"). Because Schneider was in default on an obligation to Draper, Draper used the proceeds to set off the unsecured obligation of Schneider to the bank, rendering Schneider unable to pay Insley for the backhoe.

Insley sued Draper, asserting that its security interest in the proceeds of the backhoe was superior to Draper's right of setoff, and that Draper's setoff constituted an improper conversion of funds. The Utah Supreme Court agreed. After a detailed discussion of the applicability of the Uniform Commercial Code to a right of setoff, the Court concluded that "the Code's priority rules require that Insley's interest must prevail over Draper's right of setoff.... The effect of [UCC Section 9-201] is to give the Article Nine secured party, upon a debtor's default, priority over 'anyone, anywhere, anyhow,' except as otherwise provided by the remaining Code priority rules." Insley Manufacturing, 717 P.2d at 1347 (emphasis added) (quoting Continental American Life Insurance Co. v. Griffin, 306 S.E.2d 285, 287 (Ga. 1983)).

West One's perfected security interest in commissions due from Life of Virginia to UUI is undisputed. Its UCC-1 financing statement put the world on notice of its claim to these commissions. West One took the additional precaution of giving Life of Virginia specific notice of its assignment from UUI, which Life of Virginia acknowledged in December 1987, more than a year before it loaned money to UUI. As a secured party, West One's prior perfected interest in the commissions is clearly superior to Life of Virginia's right of setoff.

Life of Virginia has attempted to make an issue of the fact that West One did not direct Life of Virginia to make

payments directly to West One. Life of Virginia again fails to recognize the critical distinction between its role as an account debtor and its role as a creditor. Although West One may have had the right to request direct payments, it had absolutely no obligation to do so, and it was fully entitled to rely on the strength of its prior perfected security interest. As an account debtor, Life of Virginia had a continuing obligation to pay UUI until it received notice from West One to make payments directly to the bank. West One's failure to make such a demand only protects appellant from a claim by West One that appellant should not have paid UUI. Appellant has mistakenly leapt to the conclusion that West One's silence somehow conferred rights of subordination. There is nothing in the case law to support such a conclusion.

It is incumbent on a creditor contemplating setoff to search the records and determine whether the property is subject to a security interest. See National Acceptance Company of America v. Virginia National Bank, 498 Fed. Supp. 1078, 1086 (E.D. Va. 1980) (because bank made no effort to search the appropriate records to determine whether any security interests or financing statements had been filed, it was precluded from exercising any right of setoff and guilty of conversion of secured party's funds). Here, appellant was not even required to search the records to determine if UUI's accounts receivable had been assigned to a creditor. Appellant had previously received

notice and acknowledged West One's existing security interest in UUI's receivables.

On the question of whether an assignee must specifically request payment from the account debtor or risk subordination, Pioneer Commercial Funding Corp. v. United Airlines, Inc., 122 Bankr. 871 (Bankr. S.D.N.Y. 1991), is directly on point. There, Presidential Airways, Inc. ("Presidential") entered a financing contract with Pioneer Commercial Funding Corporation ("Pioneer"). Presidential secured its obligation by an assignment of its accounts receivable, which was duly perfected by Pioneer. One of Presidential's major account debtors was United Airlines, Inc. ("United"). Pioneer Commercial Funding, 122 Bankr. at 875.

Prior to the financing arrangement between Presidential and Pioneer, Presidential borrowed \$3.5 million from United on an unsecured basis. When Presidential defaulted on its obligation to United, United set off the amount it owed to Presidential and applied it to Presidential's outstanding debt. Pioneer filed an action against United alleging conversion and tortious interference with contract, claiming that United knew of the assignment when it took the setoff. Id. at 876. United defended the action under a number of theories, including Pioneer's failure to specifically demand payment from United. Id. at 882.

Interpreting § 70A-9-318(3) of New York's Uniform Commercial Code, which is identical to § 70A-9-318(3), Utah Code

Ann., the Court declared United's position to be erroneous: "United then takes a drastic, and unsupported, leap to its contention that since Pioneer does not allege making such a payment demand, a fortiori, its rights are subordinated to those of United.... This view is simply erroneous." Id.

Life of Virginia is attempting to take the same drastic and unsupported leap in its logic. There is no dispute that West One did not deliver a payment demand directly to appellant as an account debtor. West One agrees that appellant never had an obligation to pay West One directly. Nevertheless, appellant had an obligation as a creditor to apprise itself of prior perfected security interests before exercising a setoff. As the holder of a valid first priority perfected security interest in commissions due from Life of Virginia, West One's rights are superior to "anyone, anywhere, anyhow," including Life of Virginia. See Insley Manufacturing, 717 P.2d at 1347.

2. APPELLANT'S STATEMENT OF ISSUES IS MISLEADING AND INCORRECT, AND MATTERS RAISED FOR THE FIRST TIME ON APPEAL SHOULD NOT BE CONSIDERED.

Most of appellant's "issues," and a large part of its arguments, are wholly unsupported by the record and should not be considered by the Court. See Uckerman v. Lincoln Nat'l Life Ins. Co., 588 P.2d 142 (Utah 1978) (appellate court will not consider any facts not properly cited to or supported by the record).

Moreover, this matter was submitted to the trial court on joint motions for summary judgment. There are no disputed

facts. Appellant's only arguments to the trial court were that § 70A-9-318(3), Utah Code Ann. allows an account debtor to subordinate an assignee's prior perfected security interest unless it is specifically instructed to pay the assignee, and that West One's notice of assignment "contractually obligated" West One to notify appellant of UUI's default.

Appellant now claims that its right to retain commissions accrued before it received the notice of UUI's assignment to West One, that West One will reap a "double benefit" if appellant is required to disgorge the commissions, and that West One's rights were exercisable only on UUI's default. These arguments were never raised in the trial court, and they should not be considered on appeal.¹ See Lane v. Messer, 731 P.2d 488 (Utah 1986) (issue not raised by pleadings and not addressed by trial court may not be raised for first time on appeal).

Appellant relies heavily on a case from the United States Court of Appeals for the Fifth Circuit, Haas v. Metro-Goldwyn-Mayer Inc., 617 F.2d 1136 (5th Cir. 1980), for its argument that West One's notice of assignment was insufficient. Appellant neglects to mention that the account debtor in Haas

¹ Appellant vaguely suggests that its loan to UUI was "presumably" used by UUI to keep its note to West One current. It also attempts to equate its setoff with actual payment to UUI. Both of these arguments ignore the record in this case, statutory authority, and the governing case law.

actually paid the assignor, not another creditor. See Haas, 617 F.2d at 1139. If appellant had paid the assignor (UUI), West One would not have a claim against appellant. But appellant paid itself, an unsecured creditor, by retaining funds subject to West One's perfected security interest.


Finally, appellant attempts to rely on § 70A-9-311, Utah Code Ann. for the proposition that West One's perfected security interest could be "involuntarily transferred" to Life of Virginia. Appellant's reliance is misplaced. Section 70A-9-311 deals with the rights of a debtor, not an assignee. It provides: "The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment, or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default." In March 1989, when appellant took an assignment from UUI, UUI had nothing left to convey, either voluntarily or involuntarily, because its rights had already been assigned to West One. See Calimari & Perillo, Contracts (West 2d Ed. 1977), § 18-16 at p. 650 (Once assignee's rights are vested by proper notice to account debtor, assignee's rights are vested and can not be altered by the assignor or the account debtor).

CONCLUSION

Appellant's misplaced reliance on § 70A-9-318(3) does not affect the relative priorities of creditors. The fatal

weakness in appellant's case is revealed in paragraph 10 of appellant's Statement of Facts: "On or about March 1, 1989 ... UUI assigned to [appellant] all of its right, title and interest in and to any and all commissions to which UUI was entitled." In March 1989 UUI had no right, title or interest in those commissions because it had already assigned them to West One. See 4 Corbin on Contracts (West 1960) § 902 at p. 615-16 ("By the first assignment, the right became [the first assignee's], so that at the time of the second assignment, the assignor had no rights and could therefore transfer none.") Appellant knew this because it had actual notice of UUI's prior assignment to West One. The holding in Insley Manufacturing should govern the disposition of this case. Appellant asks the Court to ignore the Utah Supreme Court's holding in Insley Manufacturing and overturn the trial court's decision. The trial court properly considered applicable statutes and governing case law and concluded that the rights of a party asserting a right of setoff are subordinate to those of a secured creditor. That decision was correct, and West One respectfully requests the Court to affirm the trial court's decision.

DATED this 20 day of October 1993.

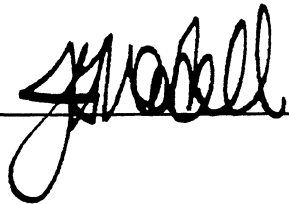


CAROLYN MONTGOMERY
JAMES H. WOODALL
PARSONS BEHLE & LATIMER
Counsel for West One Bank, Utah

CERTIFICATE OF DELIVER

I certify that I caused a true and correct copy the
foregoing **BRIEF OF APPELLEE** to be delivered to the following on
October 20, 1993:

Russell C. Fericks
Gerald J. Lallatin
RICHARDS, BRANDT, MILLER & NELSON
50 South Main Street, Suite 700
Salt Lake City, Utah 84144



A D D E N D U M

FINDINGS OF FACT

The case was submitted to the Court largely on undisputed facts which the Court accepts and adopts as its own findings, as follows:

1. Pursuant to a Brokerage Contract dated October 22, 1986 and effectively dated January 1, 1984 ("Brokerage Contract") between UUI and Life of Virginia, Life of Virginia agreed to pay UUI certain insurance commissions.

2. On or about December 22, 1987, West One loaned UUI \$1,500,000. The obligation was evidenced by a promissory note ("Note") in that amount.

3. To secure payment of the Note, UUI executed and delivered to West One a Collateral Pledge Agreement ("Pledge Agreement") whereby West One obtained a security interest in, among other things, the right to receive certain commissions payable to UUI from various insurance companies including the commissions due from Life of Virginia under the Brokerage Contract.

4. As part of the Pledge Agreement, UUI executed and delivered to West One an Assignment dated December 22, 1987 in which UUI assigned to West One all sums of money due or to become due to UUI from Life of Virginia under the Brokerage Contract.

5. The Assignment is part of an Assignment of Contracts as Collateral dated December 22, 1987 and executed by UUI and West One.

6. Paragraph 7.a. of the Assignment of Contracts as Collateral provides in part that "Assignor is further authorized to direct the companies under any contracts hereafter entered into by Assignor, on receipt of written notice from Assignee, to pay to Assignee all rents, income, issue and profits accruing under the contracts . . ."

7. In December 1987, West One sent Life of Virginia a written Notice of Assignment. The Notice of Assignment provides that "upon written notice from [West One], all monies due or to become due under the [Brokerage Contract] are to be paid to [West One] pursuant to this Assignment."

8. On December 30, 1987, Life of Virginia acknowledged receipt of the Notice of Assignment.

9. On March 2, 1988, West One perfected its security interest in the Brokerage Contract by filing a UCC-1 Financing Statement with the Utah Department of Commerce and Commercial Code.

10. On or about March 1, 1989, UUI borrowed \$100,000 from Life of Virginia and executed a promissory note in favor of Life of Virginia in that amount. To secure its obligation to Life of Virginia, UUI assigned to Life of Virginia all of its right, title and interest in and to any and all commissions to which UUI was entitled under the Brokerage Contract.

11. Life of Virginia subsequently used commissions it owed to UUI to satisfy UUI's debt on the \$100,000 loan.

12. UUI defaulted on the Note and Pledge Agreement with West One, and currently owes West One in excess of \$668,000.

13. Until shortly before the filing of this action by West One, Life of Virginia was unaware of UUI's default on its obligations to West One, and West One never directed Life of Virginia to pay West One the commissions owed under the Brokerage Contract.

CONCLUSIONS OF LAW

1. West One's prior perfected security interest in commissions due and owing to UUI gave West One priority over "anyone, anywhere, anyhow," Insley Manufacturing Corp. v. Draper Bank & Trust, 717 P.2d 1341, 1347 (Utah 1986), including Life of Virginia. Life of Virginia's argument that Section 70A-9-318(3), Utah Code Ann. and West One's Notice of Assignment required West One to give Life of Virginia notice of UUI's default are not persuasive. See Pioneer Commercial Funding Corp. v. United Airlines, Inc., 122 Bankr. 875, 882 (S.D.N.Y. 1991).

JUDGMENT

Based upon the foregoing, it is hereby ORDERED that plaintiff's Motion for Summary Judgment is granted, and defendant's Motion for Summary Judgment is denied, with prejudice. And, based upon the representations made to the Court by counsel for the parties, JUDGMENT is granted against defendant and in favor of plaintiff in the amount of \$123,316.54, with