The U.C.C. and Franchise Act Remedies: Coast to Coast Stores, Inc. v. Gruschus

I. INTRODUCTION

Coast to Coast Stores, Inc. v. Gruschus\(^1\) was the first Washington case to deal with the potential conflict between the Uniform Commercial Code (U.C.C.) and the Franchise Investment Protection Act (FIPA), arising when a franchisor repossesses goods after a franchisee defaults under a security agreement.\(^2\) The Washington Supreme Court avoided the conflict, however, by holding that because the franchisor never terminated the franchise, the FIPA protections were not triggered. The U.C.C.

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1. 100 Wash. 2d 147, 667 P.2d 619 (1983). The Author extends her sincere thanks to Professor Thomas J. Holdych, Professor of Law at the University of Puget Sound School of Law, and to Professor Jean Braucher, Associate Professor of Law at the University of Puget Sound School of Law, without whose invaluable guidance this Note would not have been possible.


(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing . . . . The proceeds of disposition shall be applied in the order following to:

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys’ fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(2) If the security interest incurs an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. Wash. Rev. Code § 62A.9-504 (1985). By contrast, under FIPA, upon termination for good cause, the franchisor shall purchase from the franchisee at a fair market value at the time of termination, the franchisee’s inventory and supplies, exclusive of (i) personalized materials which have no value to the franchisor; (ii) inventory and supplies not reasonably required in the conduct of the franchise business; and (iii) if the franchisee is to retain control of the premises of the franchise business, any inventory and supplies not purchased from the franchisor or on his express requirement: Provided, that a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor. Wash. Rev. Code §19.100.180(2)(j) (1985).
remedies therefore applied: the franchisor could collect the proceeds of a liquidation sale of the secured goods—in this case the franchisee's inventory and supplies—in reduction of the franchisee's indebtedness; and the franchisor was relieved of the FIPA burden of purchasing all of the franchisee's inventory and supplies at fair market value.\(^3\) Washington franchisors breathed a sigh of relief, no longer fearing that they would be forced to buy out franchisees who fail in business: to avoid the FIPA purchase provision, the franchisor need only repossess its security without explicitly terminating the franchise contract.

In correctly choosing not to apply FIPA, the Washington Supreme Court found basis for its decision in a technical construction of the terms "franchise" and "termination" as they appear within the Act.\(^4\) This technical construction, however, need not determine the result, for even when the franchisor terminates, the U.C.C. remedies should apply if the franchisee has defaulted on a secured obligation to the franchisor. As the Coast dissent argued,\(^5\) a strict construction of the law probably mandated application of the FIPA purchase provision in lieu of the U.C.C. default sections. That same constructionist interpretation, however, unreasonably burdens the franchisor and exceeds the remedy necessary to implement the protectionist policy that inspired FIPA. The logical interpretation of the franchisor's duty to purchase the franchisee's inventory and supplies denotes their fair market value as the actual proceeds realized at a wholesale level sale.

This Note explains the difference between the U.C.C. and FIPA remedies and why their respective valuations should be interpreted as more similar than different. The Note then examines the Coast court's reasoning and offers additional support for preserving the U.C.C. remedies even if a franchise is terminated when a franchisor repossesses franchised goods after a franchisee defaults on a secured obligation owed to a franchisor.

II. EVALUATION OF THE FRANCHISOR'S DUTY TO PAY "FAIR MARKET VALUE" FOR THE FRANCHISEE'S INVENTORY AND SUPPLIES

Coast-to-Coast Stores (Coast), a franchisor, possessed secur-

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3. *Coast*, 100 Wash. 2d at 154, 667 P.2d at 624.
4. *Id.* at 152-53, 667 P.2d at 622-23.
5. *Id.* at 158-66, 667 P.2d at 625-30.
ity interests in the fixtures, equipment, inventory, and accounts receivable of the franchisee Gruschus' hardware store. Within five months of the execution of security agreements, the Gruschus became delinquent in their account. Less than two and one-half years after the creation of the franchise relationship, Coast locked the hardware store and repossessed all secured goods. The superior court held that the franchisor Coast terminated the franchise when it repossessed the collateral given pursuant to the parties' security agreements. Applying FIPA, the trial court ordered Coast to pay the Gruschus the fair market value of those very items that Coast sought to repossess.7

Coast appealed the decision, urging the Washington Supreme Court to apply the U.C.C.8 Under the U.C.C., Coast could collect the proceeds from a forced sale of the secured goods,9 while under FIPA Coast would have to pay fair market value for all of the inventory and supplies in the Gruschus' store.10 In dicta, the court stated that the FIPA and U.C.C. remedies are identical because both ensure that the franchisee is not left with franchised inventory but without a license or effective means to sell it.11 However, although the two remedies are identical with regard to the possession of inventory, the Coast parties chose to litigate because they assumed that the remedies differed with regard to financial results.

Under the U.C.C., when a debtor defaults, the secured creditor usually chooses to repossess the goods, sell them in a commercially reasonable sale, apply the proceeds (less costs of sale) to the debt owed, and sue for a deficiency judgment for the difference between the indebtedness and sale amount.12 Courts

6. Id. at 148-49, 667 P.2d at 620-21.
7. Id. at 149, 667 P.2d at 621.
8. Id. at 149, 151, 667 P.2d at 621, 622.
9. See supra note 2.
10. Id. Moreover, had Coast been found to have terminated the franchise without notice, they would have been liable for a per se breach of the Consumer Protection Act. Wash. Rev. Code § 19.100.190(1) (1985). See infra notes 54-58 and accompanying text for other liabilities of a franchisor.
11. [T]he U.C.C. achieves the same result as that sought by RCW 19.100.180(2)(j) [FIPA]. The franchisor is required by subsection (2)(j) to purchase the inventory following termination to protect the franchisee from being left without a franchise, but with a substantial investment in inventory which he cannot sell. If the franchisor exercises his right (under the U.C.C.) to repossess that inventory, the same objective is achieved.
Coast, 100 Wash. 2d at 153-54, 667 P.2d at 623.
12. Wash. Rev. Code §§ 62A.9-503 to -504 (1985). This route is the most commonly taken because a suit on the underlying debt usually yields less than reposition and
uphold sales conducted in a reasonable manner and will hold debtors liable for deficiencies between the amounts owed and the proceeds of the sales. A low selling price is usually attributed to low market demand.\(^\text{13}\) As a consequence, a court may uphold a commercially reasonable sale even though the net proceeds amount to less than ten percent of the goods’ optimal retail market value.\(^\text{14}\)

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resale. J. White & R. Summers, *Uniform Commercial Code* § 26-9 (2d ed. 1980). Other choices include the following:

1. reaching a compromise with the debtor, an alternative neither forbidden nor named by the U.C.C., id. at § 26-4;
2. repossessing the goods in full satisfaction of the debt, *Wash. Rev. Code* § 62A.9-505(2) (1985); or

13. Foster v. Knutson, 84 Wash. 2d 538, 549, 527 P.2d 1108, 1114-15 (1974) (court awarded $115,000 deficiency judgment when low price was obtained because there was no recognized market for the secured stock); International Paper Credit Corp. v. Columbia Wax Prods. Co., Inc., 79 A.D.2d 700, 700, 434 N.Y.S.2d 270, 271 (1980) (low price obtained “was not the result of a commercially unreasonable sale, but reflective of the lack of demand for the product”). If the creditor sells the goods in a recognized market and provides notice to prospective bidders, then courts generally find that the manner of sale was reasonable. First Nat’l Bank & Trust Co. of Enid v. Holston, 559 P.2d 440, 444-45 (Okla. 1977) (all courts hold manner of sale as controlling); Bankers Trust Co. v. J.V. Dowler & Co., 47 N.Y.2d 128, 135-36, 390 N.E.2d 766, 769-70, 417 N.Y.S.2d 47, 51 (1970) (failure of notified prospective buyers to bid at sale is an indication of the low market value of the items offered); Mt. Vernon Dodge, Inc., v. Seattle-First National Bank, 18 Wash. App. 569, 585-87, 570 P.2d 702, 711-12 (1977) (where collateral had a recognized market and debtor was notified of private sale, collateral consisting of assets of car dealership was disposed of in a commercially reasonable manner when it was sold in accordance with the creditor’s customary way of doing business). However, a price substantially lower than fair market value alerts the court to the possibility of an unreasonable manner of sale. Mercantile Financial Corp. v. Miller, 292 F. Supp. 797, 841 (E.D. Pa. 1968) (where price received at liquidation sale was $19,000 and the purchaser subsequently received $57,000 on resale, then lower price received at liquidation sale indicates that manner may have been unreasonable); Levers v. Rio King Land & Inv. Co., 93 Nev. 95, 99, 560 P.2d 917, 920 (1977) (where price received at liquidation sale was $100 and the purchaser subsequently received $10,000 on resale, then lower price received at liquidation sale indicates that manner may have been unreasonable). See generally Hudak and Turnbull, *The Standard of Commercial Reasonableness in the Sale of Repossessed Collateral under the U.C.C.*, 4 W. State U. L. Rev. 22, 28 (1976).

14. *In re Zsa Zsa Ltd.*, 352 F. Supp. 665, 671 (S.D.N.Y. 1972) ($300,000 received at liquidation sale for inventory with $3.5 million retail value is commercially reasonable when conditions of the sale conform to commercially accepted standards), *aff’d*, 475 F.2d 393 (2d Cir. 1973). See also Louis Zahn Drug Co. v. Bank of Oak Brook Terrace, 95 Ill. App. 3d 435, 442-44, 420 N.E.2d 276, 281 (1981) (although junior creditor received offer of $100,000 for collateral sold for $70,000 by senior creditor without notice to junior creditor, court will not invalidate sale for inadequate price in absence of fraud or illegal or mistaken practice); cf. Mt. Vernon Dodge, Inc. v. Seattle-First Nat’l Bank, 18 Wash. App. 569, 585, 570 P.2d 702, 711 (1977):

The purpose of the Uniform Commercial Code is the protection of both the
FIPA, on the other hand, requires that the franchisor pay fair market value for the franchisee's inventory and supplies upon termination of the franchise relationship.\textsuperscript{15} Washington is unique in that this obligation to purchase inventory and supplies prevails even when the franchisor has terminated because the franchisee breached statutory and contractual obligations or filed for bankruptcy, or for some other enumerated "good cause."\textsuperscript{16}

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(footnote omitted) (quoting Vic Hansen & Sons, Inc. v. Crowley, 57 Wis. 2d 106, 111-12, 203 N.W.2d 728, 731 (1973)).

15. Wash. Rev. Code § 19.100.180(2)(j) (1985). The Coast parties estimated the "fair market value" of inventory and supplies based upon expert testimony. Coast, 100 Wash. 2d at 149, 667 P.2d at 621. Where expert testimony is the basis for valuation, the expert should give his reasons for adopting a particular formula or final amount, including component factors and assumptions. Standard Oil Co. of Cal. v. Moore, 251 F.2d 188, 221 (9th Cir. 1958) (valuing the going concern of a business allegedly destroyed by a conspiracy), cert. denied, 356 U.S. 975 (1957). Other effective means of demonstrating fair market value include valuation according to a standard price handbook, standard price list, or trade journals. 22 Am. Jur. 2d DAMAGES § 324 (1965); e.g., Cron & Dehn v. Chelan Packing Co., 158 Wash. 167, 174, 290 P. 999, 1002 (1930) (trade journal admissible to prove market value for future delivery of dehydrated apple rings).

The original act required "fair and reasonable compensation for the value of the franchisee's inventory, supplies, equipment, and furnishings . . . ." Franchise Investment Protection Act, ch. 252 § 18(2)(j) (codified as amended at Wash. Rev. Code § 19.100.180(2)(j)), Wash. Laws, 1st Ex. Sess. 1971. These terms more clearly approach a commercially reasonable sale valuation, which is more dependent upon actual market supply and demand than is a hypothetical fair market valuation arrived at by expert opinion. See infra notes 25-28 and accompanying text. FIPA does not indicate whether the proper market is wholesale or retail.

16. Wash. Rev. Code §19.100.180(2)(j) (1985). The franchisor may terminate for the following reasons:

(1) failure to comport with the franchise agreement and to cure within 30 days after written notice of default;

(2) after three wilful and material breaches of the same term in an agreement, occurring within a 12-month period for which notice and opportunity to cure has been given to the franchisee, upon the fourth wilful and material breach of the same term within the same 12-month period;

(3) the franchisee is adjudicated bankrupt or insolvent;

(4) the franchisee makes an assignment for the benefit of creditors or similar disposition of the assets of the franchise business;

(5) abandonment of the franchise business; and

(6) violation of a law relating to the franchise business. Id.

Other statutes allow suit for damages if the franchisor terminates without good cause. E.g., Ark. Stat. Ann. §§70-810-816 (Bobbs-Merrill 1979) ("It shall be a violation of this Act . . . for a franchisor to . . . terminate or cancel a franchise without good
The franchisor is relieved of this duty to purchase only with respect to goods "which have no value to the franchisor" and to the extent that the franchisor may offset amounts owed by the franchisee.\textsuperscript{17} Courts have defined fair market value as the price placed on a product by a willing buyer and seller, neither of whom is compelled to purchase or sell—that is, the price paid for goods in an optimal setting.\textsuperscript{18} In the context of FIPA, the more accurate definition, however, is the amount recoverable by a sale in an established market.\textsuperscript{19} 

At first glance, the U.C.C. and FIPA appear to prescribe dif-
ferent financial outcomes because the focus of commercially reasonable sale is the manner of sale while the focus of fair market value is often quoted as the price paid for goods in an optimal setting. The U.C.C. sale value need not, however, be interpreted as theoretically different from the FIPA fair market value. Both should be interpreted as actual wholesale value.

Although the legislature failed to characterize the FIPA value as wholesale or retail, the logical market is wholesale. The wholesale level precludes a windfall to the franchisee and undue hardship to the franchisor: the franchisee is reimbursed at the market level at which he or she originally purchased, and the franchisor is able to resell the goods to other franchisees without forfeiting his or her legitimate expectations of profit at the time of the original sale to the franchisee. Also, purchase at the wholesale level does not undercut the judicial desire to not leave the franchisee with unsaleable inventory.

Moreover, wholesale level sales for franchised goods are more likely to yield a greater net profit, to the benefit of both the franchisor and the franchisee, even though retail sales after

20. See supra note 13.
21. See supra note 18. Authors examining other areas of law recognize the dilemma in construing the terms fair market, replacement, liquidation, and distress sale value, and recognize that these values differ. E.g., Goldberg, Fair Market Value in Tax Law: Replacement Value or Liquidation Value, 60 Tex. L. Rev. 833, 835 (1982) (whether, in construing taxation statutes, "fair market value" constitutes replacement value, the amount a taxpayer would realize on sale of property, or the lower liquidation value, the price actually received for goods at an auction); Pachulaki, The Cram Down and Valuation Under Chapter 11 of the Bankruptcy Code, 58 N.C.L. Rev. 925, 951 (1980) (liquidation value "may be less than would be the case if one assumes that the property is to be sold at arms' length between a willing buyer and seller, neither being required to sell or buy (often referred to as 'fair market value')" when valuing a secured party's collateral in bankruptcy (footnote omitted)). But see U.C.C. § 9-504, 1972 Official Comment No. (1) (sale provisions are designed to obtain a high realization on the secured goods by allowing the repossessing secured party substantial flexibility as to the method chosen to dispose of the collateral).

Even if an efficient manner is used and a high price is obtained, the proceeds of a liquidation sale still may not approach the value assigned to the traditional meaning of fair market value because (1) the liquidation purchases of inventory and supplies are at the wholesale level, whereas fair market value purchases are retail (although FIPA is silent as to this issue, and could be interpreted otherwise), and (2) commercially reasonable sale is wholly dependent upon market demand, while fair market value contemplates an optimal high demand-high supply setting.

The Coast parties presented the court with two expert valuations of the inventory and supplies remaining in the Gruschus' store: $232,913.75 and $165,353.10. Coast, 100 Wash. 2d at 149, 667 P.2d at 621. These numbers represented mere "hypothetical" estimations of "value." Id.
22. See supra note 11.
default may provide a higher gross amount for the franchised goods. Retail sales entail significant costs that do not exist at the wholesale level, in the form of retail facilities, personnel with expertise, and other essentials that the franchisor may lack. These costs, although chargeable to the debtor, lower the net sale proceeds. The franchisor will realize greater value by directly selling or by purchasing the goods himself and reselling them to other franchisees in the wholesale level market to which he or she is accustomed.

In addition to denoting the proper level of valuation as wholesale, the price placed on inventory and supplies to be purchased by the franchisor should be measured by actual market demand at the time of the franchisee’s default. To otherwise value goods according to the price paid when originally sold to the franchisee by the franchisor, rather than according to actual sale at the time of default, creates an inequitable windfall for the franchisee at the expense of the franchisor and other franchisees. The franchisee, by retaining the goods, accepts the risk

23. WASH. REV. CODE § 62A.9-503(1) (1985). FIPA is silent as to allocation of costs of sale or other disposition upon franchisee default and franchise termination.


25. The Coast court noted that valuation according to actual sale proceeds is preferable to hypothetical estimations of value. Coast, 100 Wash. 2d at 154, 667 P.2d at 623-24. Commenting on the U.C.C. and FIPA remedies, the court stated:

The price obtained for the inventory at an actual sale, conducted in accordance with all the safeguards of the “commercially reasonable” requirement of RCW 62A.9-504, is a better basis for valuation than the hypothetical “fair market price.” As the present case illustrates, expert opinions of fair market price may vary widely. The actual price obtained at a commercially reasonable sale is a considerably more reliable indication of the true value of the inventory.

Id.

26. The franchisor will be forced to pass on to the remaining and future franchisees the burden of paying any sums for which he is liable to the terminated franchisee, in the form of higher wholesale costs of franchised goods and services. Also, the terminated franchisee has probably eroded the goodwill of the franchise chain, causing loss to both the franchisor and other franchisees. Epstein, Unconscionability: A Critical Reappraisal, 18 J.L. & Econ. 293, 314-15 (1975) (pointing out that it is in the franchisee’s best interests to insist upon a “termination-at-will” clause:

If the franchise could be terminated only “with cause,” his settlement costs on termination are apt to be high no matter what the circumstances, for the franchisee always could litigate the matter. If those costs deter the franchisor from termination, he loses the benefits of a substitute franchisee, while being forced to suffer from the continued erosion of his goodwill . . .

. . . Indeed, the good franchisee may well want a termination-at-will clause to be included in all franchise agreements, because he may rightly perceive that the franchisor acts in his interest when he terminates a weak fran-
of declining market value and depreciation.27 Also, as a matter of economic efficiency, the value of goods should be determined according to objective market demand, not the franchisee's subjective valuation.28

Thus, by denoting the FIPA "fair" market as wholesale and measuring the "value" from actual resale, the franchisee recoups loss according to the actual market demand sale price for inventory and supplies, and the franchisor is afforded no more or less than his reasonable expectations when he sold those goods to the franchisee. To otherwise denote the FIPA fair market value purchase price as a hypothetical optimal retail value burdens the franchisor and other franchisees with the risk of loss to the extent that the optimal retail value exceeds the actual sale proceeds.

III. THE COAST COURT CORRECTLY CHOSE TO APPLY THE U.C.C.

The Washington Supreme Court reasoned that because the franchisor did not terminate the franchise agreement, the FIPA purchase remedy did not apply.29 The court's reasoning is well-supported. Writing for the majority, Justice Pearson correctly distinguished a franchise from a security agreement. A franchise is an agreement to market a tradename,30 not an agreement for the bona fide purchase and sale of goods.31 Hence, when Coast

chisee whose conduct erodes the goodwill of the entire enterprise, including his own.)

27. See Priest, Breach and Remedy for the Tender of Nonconforming Goods Under the Uniform Commercial Code: An Economic Approach, 91 HARV. L. REV. 960, 977-79 (1978) (arguing that the buyer should bear the burden of devaluation upon revocation of acceptance).

28. Cf. id. at 994-95 (noting that courts reject subjective valuation in U.C.C. § 2-608 and adhere to actual market valuation).


30. Terry v. International Dairy Queen, Inc., 554 F. Supp. 1088, 1089-90 (N.D. Ind. 1983) (franchise is "the right to engage in the dispensing of goods or services under a marketing plan"); Laurence J. Gordon, Inc. v. Brandt, Inc., 554 F. Supp. 1144, 1159 (W.D. Wash. 1983) (a franchise fee is a special fee paid for the right of the franchisee to distribute the franchisor's equipment, goods, and services to third parties); H & R Block, Inc. v. Lovelace, 208 Kan. 538, 545, 493 P.2d 205, 211-12 (1972) (A franchise is a license permitting another to sell under a tradename. Broadly, a franchise is an elaborate agreement under which the franchisee conducts business according to methods and procedures prescribed by the franchisor and the franchisor gives advice and promotional assistance.); Mobil Oil Corp. v. Rubenfeld, 72 Misc. 2d 392, 397, 339 N.Y.S.2d 623, 630 (1972) (franchisee must have a right to market the franchisor's goods under the franchisor's tradename); Huebner v. Sales Promotion, Inc., 38 Wash. App. 66, 69, 684 P.2d 752, 755 (1984) ("'License' in the context of the statute means the right to use as if one's own").

31. The Washington Legislature and courts interpreting FIPA distinguish a
repossessed the Gruschus' inventory and supplies it acted pursuant to the financing agreement for the bona fide purchase and sale of goods, and not in accordance with termination of the "franchise."³²

The court also correctly concluded that only a franchisor-initiated termination can trigger the FIPA purchase protections.³³ The franchisor's duty to purchase goods at fair market value is designed to prevent the franchisor from leaving the franchisee with goods that he cannot sell after the franchisor validly decides to cancel the franchise agreement.³⁴ Although no FIPA language states that the duty to purchase the franchisee's goods is triggered only if the franchisor unilaterally decides to terminate the franchise, the purchase section should be construed as doing no more than protecting the franchisee from franchise from a sale of goods in the definition of franchise fee:

"Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement, including . . . any payment for the mandatory purchase of goods or services or any payment for goods or services available only from the franchisor . . . . [H]owever, the following shall not be considered payment of a franchise fee: (a) the purchase or agreement to purchase goods at a bona fide wholesale price . . . . ; (c) a bona fide loan . . . .

WASH. REV. CODE § 19.100.010(11) (1985) (emphasis added); American Oil Co. v. Columbia Oil Co., 88 Wash. 2d 835, 841, 567 P.2d 637, 641 (1977) (a franchise fee is not money paid to buy supplies from the distributor).

32. However, the franchise contract could provide for automatic termination upon default under the security agreement, which precludes the franchisor from acting solely with respect to the security agreement. In such a case, the franchisee has at least one U.C.C. protection in the right of redemption and subsequent reinstatement of the franchise contract upon cure of default. WASH. REV. CODE § 62A.9-506 (1985).

33. Coast, 100 Wash. 2d at 153, 667 P.2d at 623 ("This language suggests that not even the bankruptcy or insolvency of the franchisee, or the abandonment of the business by the franchisee will terminate the franchise. Even in those events, termination must be accomplished by the franchisor. . . . "). The Coast dissent implicitly agreed that a termination that triggers the protections of WASH. REV. CODE § 19.100.180(2)(j) (1985) can only be effected by the franchisor, by arguing that the franchise was not mutually but was unilaterally terminated. Coast at 160-62, 667 P.2d at 627-28 (Dore, J., dissenting).

Other courts have reached a similar result when interpreting statutes explicitly allowing a remedy only upon franchisor termination. E.g., Scheele v. Mobil Oil Corp., 510 F. Supp. 633, 636 (D. Mass. 1981) (interpreting a statute stating that "it shall be deemed a violation . . . for a supplier to terminate . . . a new marketing agreement without due cause . . . "); Mazda Motors of America, Inc., v. Southwestern Motors, Inc., 296 N.C. 357, 361-62, 250 S.E.2d 250, 253 (1979) (interpreting a statute stating that a franchisor cannot terminate without good cause and without notice).

34. See supra note 11; Comment, Adjusting the Equities in Franchise Termination: A Sui Generis Approach, 30 CLEV. ST. L. REV. 523, 545 (1981) (characterizing Washington's fair market purchase requirement as a rescissionary remedy because the franchisor purchases and the franchisee sells the very goods they had originally sold and purchased from each other, respectively).
arbitrary termination by the franchisor.\textsuperscript{35} This section of FIPA was intended to protect the franchisee from unfair loss caused by franchisor-initiated termination, and the franchisee should not be allowed to exploit an ambiguity in drafting and be reimbursed for tiring of or failing in business.

With \textit{Coast} as fair warning, an informed franchisor will never make himself vulnerable by terminating a failing franchise when the franchisor is also a secured party and the franchisee is a debtor in default. Rather, the informed franchisor will repossess the collateral, leaving the franchise agreement intact. The \textit{Coast} precedent financially protects the franchisor by allowing sale of the franchisee's inventory and supplies at a distress sale in lieu of incurring costs to purchase those same items.

Notwithstanding the court's correct construction of "franchise" and "termination," the \textit{Coast} dissent argued that by locking the store and repossessing the inventory and supplies, Coast terminated the Gruschus' franchise license.\textsuperscript{36} From a practical standpoint, the dissent is correct: since the Gruschus' could not use the franchise without the inventory and supplies of the business, Coast arguably terminated the franchise through repossession.\textsuperscript{37} Nonetheless, additional considerations favor

\begin{footnotesize}
35. The purchase requirement is embodied in \textit{Wash. Rev. Code} § 19.100.180 (1985), a section of FIPA often referred to as the "Franchisee's Bill of Rights." See, e.g., Chisum, \textit{State Regulation of Franchising: The Washington Experience}, 48 \textit{Wash. L. Rev.} 291, 369 (1973); Comment, supra note 34, at 545. This nickname implies an attempt to achieve equality in the franchise relationship, and carries no connotation of granting the franchisee the power to invoke remedies for his own breach of contract or statutory obligations. However, some jurisdictions view the franchisee who has given security to his franchisor for equipment and inventory as possessing neither more nor fewer remedies than other debtors. E.g., Taylor Rental Corp. v. Ted Godwin Leasing, Inc., 681 P.2d 691, 698 (Mont. 1984) (court allows franchisor to pursue \textit{U.C.C.} remedy of repossession, without regard to unequal bargaining power between the parties).

36. \textit{Coast}, 100 Wash. 2d at 162, 667 P.2d at 628 (Dore, J., dissenting).

37. Id. (citing, as a good example of this concept, Cromer v. Henry, 203 Ark. 497, 157 S.W.2d 507 (1942)). In Cromer, a contracting party failed to fulfill his bargain to haul logs because the sawmill owner with whom he contracted refused to return the hauling teams. The court held that since the party could not haul logs without the teams, the sawmill owner terminated the contract. Id. at 498, 157 S.W.2d at 508.

Other courts have pinpointed the franchisor's acts of frustrating the franchisee's business as indirect termination and have held the franchisor liable for termination without notice or good cause. See, e.g., Carlos v. Philips Business Sys. Inc., 556 F. Supp. 769, 776 (E.D.N.Y. 1983) (clear intent behind new dealer arrangement was to eliminate exclusive distributors, and "[a]ny argument that the new agreement merely works a 'change' is, in the court's opinion, nothing more than a poorly disguised euphemism for what is essentially a termination or failure to renew this distributorship agreement."); Executive Business Sys., Inc. v. Philips Business Sys., Inc., 539 F. Supp. 76, 83, 85 (E.D.N.Y. 1982) (new dealership agreement that eliminated territorial exclusivity, cut the distributor's dis-
application of the U.C.C. remedy even when the franchisor terminates the franchise.

IV. THE U.C.C. REMEDIES SHOULD APPLY EVEN WHEN THE FRANCHISOR TERMINATES THE FRANCHISE

The Coast majority avoided a statutory conflict, but left unanswered the question of whether the FIPA or U.C.C. remedy applies when a franchisor-secured creditor both terminates the franchise and repossesses the collateral. The dissent argued that Coast terminated the franchise by repossessing the Gruschus' business and by the terms of the franchise contract.

count, and changed payment terms could be an attempt to circumvent franchise termination requirements). But see Hunter v. Wenatchee Land Co., 50 Wash. 438, 443, 97 P. 494, 496 (1908) (where one party is no longer able to perform under a contract, the second party may sue for breach without waiting for the contract to expire). In light of the Hunter decision, perhaps the franchisee Gruschus' actually breached the franchise agreement first by failing in business—a possibility that the Washington Supreme Court never specifically addressed because of their focus on the acts of the franchisor Coast and its resulting liability to purchase.

Because actions on individual contracts substantially affect the outcome of other connected or dependent contracts, courts sometimes include all of the parties' dealings in the definition of "franchise contract." See, e.g., Bethesda Ford, Inc. v. Ford Motor Co., 572 F. Supp. 623, 630 (D. Md. 1983) (court held that both the original Sales & Service Agreement of Dealer & Distributor and a contract entered into 10 years later that pertained to the purchase of real property for a new retail outlet of the franchised business were a part of the franchise contract); Shell Oil Co. v. Marinello, 63 N.J. 402, 407, 307 A.2d 598, 601 (1973) (lease to gas station is not independent of dealer agreement, and termination of lease therefore also terminated the dealer agreement), cert. denied, 415 U.S. 920 (1974).


39. The court had good reason to avoid a conflict, because FIPA is more specific and therefore would have applied and prevailed over conflicting portions of the U.C.C., contrary to the court's ultimate result. "When there is a conflict between one statutory provision which treats a subject in a general way and another which treats the same subject in a specific manner, the specific statute will prevail." Pannell v. Thompson, 91 Wash. 2d 591, 597, 589 P.2d 1235, 1239 (1979) (citations omitted) (emphasis in original) (specific limitation on expenditures of assistance program prevails over general authorization to spend DSHS funds).

40. Coast, 100 Wash. 2d at 161, 667 P.2d at 627 (Dore, J., dissenting). The dissent argued that

It is clear . . . that there was a termination, that it was caused by Coast, and that RCW 19.100.180(2)(j) applies . . . .
Nonetheless, the policy behind the U.C.C. and FIPA and other considerations favor application of the U.C.C. remedies even if a franchisor makes the costly technical "mistake" of unilaterally terminating the franchise and triggering the fair market value purchase requirement.

The policy behind FIPA is twofold: to foster informed franchisees, and to bolster franchisees' weak bargaining power. Neither policy is furthered by substituting a fair market value remedy in place of a commercially reasonable sale remedy when the franchisee has defaulted on its secured debt owed to the franchisor.

The Washington Legislature addressed the problem of the uninformed franchisee by enacting franchisor disclosure requirements. To comply with FIPA, the franchisor must register a

Additionally, paragraph 7 of the agreement reads:

(C) In the event that . . . any other proceedings for the benefit of creditors . . . are instituted by or against STORE OWNER, . . . this franchise agreement . . . shall automatically and simultaneously terminate.

Id. (court's emphasis). See supra text accompanying notes 36-37. The dissent would have held Coast liable under FIPA to purchase the Gruschus' inventory and supplies at fair market value as well as in violation of the Consumer Protection Act for termination without notice. Coast, 100 Wash. 2d at 164-65, 667 P.2d at 629 (Dore, J., dissenting).

41. "Mistake" is used in the sense of incurring a financial burden to purchase inventory and supplies because of termination of the franchise for good cause. See supra text following note 35.

42. Lobdell v. Sugar 'N Spice, 33 Wash. App. 881, 888, 656 P.2d 1267, 1271 (1983) (The court recognized that these two policies embodied in FIPA are an attempt to rectify two problems in the franchise relationship: "Franchising has disadvantages for franchisees, however, who suffer a lack of material information before purchasing their franchise and of bargaining power after purchasing . . . . See generally C. Rosenfield, Franchising, Ch. 1 (1970) (history of franchising and its regulation).") (citation omitted); accord Westfield Centre Serv. Inc. v. Cities Serv. Oil Co., 86 N.J. 453, 461-62, 432 A.2d 48, 52-53 (1981) (although economic advantages exist for both parties in the franchise relationship, New Jersey Legislature enacted the Franchise Practices Act to protect against the parties' disparity in bargaining power); see infra notes 44, 47.

43. Any construction given to the U.C.C. and FIPA should further the policies underlying those statutes because the primary objective in interpreting a statute is to give effect to legislative purpose. Miller Cas. Ins. Co. of Texas v. Briggs, 100 Wash. 2d 1, 6-8, 655 P.2d 891, 894-95 (1983) (although specific exceptions to underinsured motorist coverage did not encompass case at bar, legislative purpose of providing compensation to victims did not require dual coverage and victim could not abuse the statute to provide himself with it); State v. Keller, 98 Wash. 2d 725, 728, 657 P.2d 1384, 1386-87 (1983) (court may depart from literal reading of statute to avoid absurd consequences and to give effect to legislative intent); Strenge v. Clark, 89 Wash. 2d 23, 29, 569 P.2d 60, 63 (1977) (in light of legislative intent to afford broad relief under the Consumer Protection Act, statute does not limit jurisdiction but provides for concurrent jurisdiction of superior and justice courts).

44. Disclosure is made by submitting to the franchisee a statement pursuant to
statement containing information on his or her financial status and lines of business, the fees, royalties, and goods that the franchisee must purchase, termination and renewal conditions, and other business restrictions. 45

The U.C.C. remedies are in harmony with the FIPA full disclosure requirements. Debtor ignorance is not a significant concern in security agreements covering inventory and supplies. The franchisee enters into secured financing with the same information that other debtors possess with regard to price paid, terms of credit, and liability upon failure to repay the amount owed in a timely manner. The franchisor thus need not be stripped of U.C.C. creditors' rights, because the policy of full disclosure to the franchisee is not compromised by a U.C.C. security agreement and subsequent commercially reasonable sale. 46

The second concern that inspired FIPA focuses on the fran-

WASH. REV. CODE § 19.100.080 (1985), the contents of which contain all of the information required by the provisions of WASH. REV. CODE § 19.100.030(4)(a) (1985), or the franchisor must register a statement containing all the elements of WASH. REV. CODE § 19.100.040 (1985).

Accord CAL. CORP. CODE § 31001 (West 1977) ("The legislature hereby finds and declares that . . . California franchisees have suffered substantial losses where the franchisor . . . has not provided full and complete information regarding the franchisor-franchisee relationship, the details of the contract between franchisor and franchisee, and the prior business experience of the franchisor."); HAWAII REV. STAT. § 482E-1 (1976) (purpose of statute is to "minimize losses to the franchisee in cases where the franchisor . . . has not provided full and complete information."); R. I. GEN. LAWS § 19-28-2 (Michie 1956) (distributor investment regulations act enacted to ameliorate the deficit of information that a franchisee is often subject to in a franchise relationship). But cf. Principe v. McDonald's Corp. 463 F. Supp. 1149, 1151-52 (E.D. Va. 1979) (the Virginia statute gives no cause of action to the franchisee for the franchisor's failure to disclose).

45. See supra note 44; see also WASH. ADMIN. CODE R. 460-80-315 (1983) (listing specific information required to be in offering circulars that must be distributed to the franchisee). Disclosure is first made in the circular accompanying the offer of a franchise to a potential franchisee. WASH. REV. CODE § 19.100.020 (1985) reads as follows: "It is unlawful for any franchisor or subfranchisor to sell or offer to sell any franchise in this state unless the offer of the franchise has been registered under this chapter or exempted under RCW § 19.100.030." (exemption permitted only if the franchisor has given the franchisee a disclosure statement).

46. FIPA puts the franchisor in a subordinate position to other creditors by forcing him to pay the franchisee for the secured inventory and supplies. Other creditors are then free to execute upon the very funds that the franchisor paid to the franchisee, to the extent that the fair market value paid for the franchisee's inventory and supplies exceeds the debt owed to the franchisor. See WASH. REV. CODE § 19.100.180(2)(j) (1985) (the franchisor may offset the amount owed under the duty to purchase by amounts owed by the franchisee to the franchisor).
chisee's supposed lack of bargaining power.47 Franchise agreements sometimes create a continuing buyer-seller relationship, requiring the franchisee to purchase goods from the franchisor or approved suppliers at a fixed price, quantity, or quality and to follow prescribed business planning and retail practices.48 Contractual provisions allowing termination at will or for failure to comply with even unreasonable conditions can coerce the franchisee to stay open late or comply with other franchisor business demands.49 Moreover, the terminated franchisee may be

47. Lobdell v. Sugar 'n Spice, 33 Wash. App. 881, 888, 658 P.2d 1267, 1271 (1983) (purposes of FIPA are to compensate for the franchisee's lack of material information and lack of bargaining power); accord Turner v. Subaru of America, Inc., 566 F. Supp. 143, 148 (W.D. Va. 1983) (the purpose of the Virginia franchise law is to curtail the franchisor's superior bargaining power); see also Note, Dealer Franchises—Termination of Franchise Without Good Cause is Void as Against Public Policy, 45 Miss. L. J. 252, 256 (1974) (unilateral contract provisions that result from grossly disproportionate bargaining power are void); Note, Court Restricts Right of Franchisor to Terminate Franchise—A Prelude to the Franchise Practices Act? 4 Seton Hall 683, 686 (1973) (lack of bargaining power in light of economic imbalance between the franchisor and the franchisee justifies remedy of reformation); Annot., 67 A.L.R. 3d 1299, 1302 (1975) (basic purpose of state franchise statutes is to protect the franchisee). Critics call for specialized doctrinal approaches in construing franchise agreements to protect franchisees against informational ignorance and lack of bargaining power. See, e.g., Gelhorn, Limitations on Contract Termination Rights—Franchise Cancellations, 1967 Duke L.J. 465, 505 (1967) (unconscionability); Comment, supra note 34, at 534 (joint venture); Note, A Sui Generis Approach to Franchise Terminations, 50 Notre Dame Law. 545, 556-57 (1975) (fiduciary relationship); Braun, Policy Issues of Franchising, 14 Sw. 155, 194-95 (1984) (securities laws).

48. Before adding an additional basis for good cause termination through an amendment to the predecessor of Wash. Rev. Code § 19.100.180(2) (1985), a senator asserted that "the [franchisor] seek[s] contracts to keep certain inventory . . . within certain levels. And this . . . part of the contract is frequently breached." Senate Journal, 46th Legislature, Reg. Sess. at 500 (1980). See, e.g., Kentucky Fried Chicken Corp. v. Diversified Packaging Corp., 549 F.2d 368, 373 (5th Cir. 1977) (contract requiring that all purchases be made from the franchisor or from approved sources that measure up to the franchisor's standards); H. Brown, FRANCHISING: REALITIES AND REMEDIES 26-27 (2d Ed. 1978) (typical franchise agreement limits available suppliers and may restrict marketing techniques); 4 A.M. Jur. Legal Forms 2d, Business Franchises § 50:14 (1971) (listing provisions restraining a franchisee's source of supplies, ability to assign, right to terminate, covenants not to compete with franchisor, etc.). But see 15 G. Glickman, BUSINESS ORGANIZATIONS, FRANCHISING §§ 4.02, 10.03 (1985) (restrictions in franchise contracts must not violate Federal Trade Commission antitrust and state laws which require that the franchisee retain an independent status).

49. Shell Oil Co. v. Marinello, 63 N.J. 400, 408-09, 307 A.2d 597, 601-02 (1973) (no real freedom to contract in a franchise contract, and provisions giving the franchisor the right to terminate without good cause, almost at will, were grossly unfair and inserted as a result of disproportionate bargaining power); Chisum, supra note 35, at 297-98, noted:

The franchisor normally occupies an overwhelmingly stronger bargaining position and drafts the franchise agreement so as to maximize his power to control the franchisee. Franchisors have used this power to terminate franchises arbi-
left with goods and no license to sell them, with no compensation for goodwill, and with little return for his investment of time and money.\(^{60}\)

On the other hand, the franchisor serving his own best interests treats his current franchisees fairly so as not to deter prospective franchisees.\(^{51}\) Also, franchisors frequently compete for prospective franchisees, and the franchisor’s bargaining power over the franchisee is therefore not absolute. In the absence of fraud, duress, or undue influence, the full disclosure requirement precludes any assertion that a term is void for lack of consent thereto.\(^{52}\) Statistics confirm that franchising is profitable for franchisees as well as for franchisors.\(^{53}\)

Notwithstanding these benefits to the franchisee, FIPA addresses the perceived inequality of bargaining power between

\(^{50}\) supra note 47, at 466-67.
\(^{51}\) In Westfield Centre Serv. Inc. v. Cities Serv. Oil Co., 86 N.J. 453, 461-62, 432 A.2d 48, 53 (1981), the court noted:

Though economic advantages to both parties exist in the franchise relationship, disparity in the bargaining power of the parties has led to some unconscionable provisions in the agreements. Franchisors have drafted contracts permitting them to terminate or to refuse renewal of franchises at will or for a wide variety of reasons including failure to comply with unreasonable conditions. Some franchisors have terminated or refused to renew viable franchises, leaving franchisees with nothing in return for their investment. Others have threatened franchisees with termination to coerce them to stay open at unreasonable hours, purchase supplies only from the franchisor and at excessive rates or unduly expand their facilities.

\(^{52}\) Gellhorn, supra note 47, at 466-67 noted:

A dealer who distributes a manufacturer’s product at retail and who may have spent sizable sums promoting the product may assert that the termination is grossly unfair because he is saddled with substantial losses or deprived of potential profits or because the manufacturer reaps an unearned windfall.

\(^{53}\) Epstein, supra note 26, at 314.

\(^{54}\) See id. at 301-05 (arguing that the doctrine of unconscionability should be applied only in a sparing manner when used to alter contracts and that persons with competency to contract acting with full capacity to refuse to contract should be liable for the terms of their bargain).

\(^{55}\) In 1981-83, franchise sales constituted 31% of total United States retail sales. Braun, supra note 47, at 156 (citing U.S. Department of Commerce, Franchising in the Economy, 1981-83 survey, at 12 Chart 3). Franchising would not be so prominent in the economy were it not economically viable for both the franchisor and the franchisee.
the franchisor and the franchisee. To compensate for the franchisee's weaker bargaining position, FIPA requires good faith dealings and permits treble damages for termination without good cause or notice. In addition, the "Franchisee's Bill of Rights" compensates the franchisee who loses the franchise for good cause, by requiring the franchisor to purchase the franchisee's inventory.

Other remedial sources available to the franchisee for unfair treatment by the franchisor can be gleaned from the Act. The requirement of good faith and fair dealing precludes termination for the sole purpose of appropriating the goodwill and other value of the franchisee's investment. Also, the statutory language of FIPA proclaiming a "community of interest" between the franchisor and franchisee provides a definitional element of the franchise relationship: loyalty and respect for the interests or legitimate expectations of the other franchise party.

If under the franchisor's duty to purchase the franchisee's inventory and supplies the "fair market value" amount is deter-

54. Wash. Rev. Code § 19.100.180(1) (1985) dictates that "[t]he parties shall deal with each other in good faith." Wash. Rev. Code § 19.100.190(2) (1985) allows for damages in law or equity, and § 19.100.190(3) allows the court to award three times the actual damages sustained, in addition to costs of litigation and reasonable attorney's fees. Wash. Rev. Code § 19.100.190(1) (1985) provides for Wash. Rev. Code Ch. 19.86 (1985) Consumer Protection Act relief. Accord Esch v. Yazzoo Mfg. Co., 510 F. Supp. 53, 55-59 (E.D. Wis. 1981) (Wisconsin has allowed damages for legal and attorney's fees and for lost profits 10 years into the future for a violation of the Wisconsin Fair Dealership Law, which should also apply to Wisconsin franchises); Va. Code Ann. §§ 13.1-571 (1985) (allowing damages caused by franchisor's termination without good cause, including costs and attorney's fees incurred in bringing suit); cf. Seegmiller v. Western Men, Inc., 20 Utah 2d 352, 354, 437 P.2d 892, 894 (1968) (faced with no provision that the franchisor may terminate without good cause, assume that both parties intended that if the contract is satisfactorily performed, the franchisor will not arbitrarily cancel); 62 Am. Jur. 2d Private Franchises § 12 (1972) (franchisee makes a substantial time and money commitment to the franchisor's business and it would therefore be unfair for the franchisor to arbitrarily terminate the franchise without good cause and thus compel the franchisee to lose the investment).

55. See supra note 35.

56. See supra note 2.

57. Wash. Rev. Code § 19.100.180(1) (1985) requires that franchising parties deal with each other in good faith; Braun, supra note 47, at 234 (good faith language in statutes provides a substantive standard of performance and course of dealing between franchisor and franchisee, precluding one party from damaging the business of the other).

58. Wash. Rev. Code § 19.100.010(4) (1985) states that a franchise is a contract granting a license in which there is a community of interest in the business of distributing goods; see Braun, supra note 47, at 234 ("A legal standard of conduct for both franchisor and franchisee is also deductible from their common interest in the success of the business venture that is the subject of the franchise.").
mined by market demand at the time of default, then the U.C.C. commercially reasonable sale poses no conflict with the franchisor's duty to purchase upon termination.\textsuperscript{59} The interpretation of the FIPA fair market value amount as the proceeds realized from an actual wholesale level sale equals the amount realized from a U.C.C. commercially reasonable sale, and under both the U.C.C. and FIPA, sale proceeds would first be applied to amounts that the franchisee owes to the franchisor, and any excess then goes to the franchisee.\textsuperscript{60} Interpreting the FIPA and U.C.C. remedies as yielding this equivalent financial result enforces what should be an implicit policy of FIPA: to place the risk of market loss upon the franchisee and the duty of resale upon the franchisor, the party more able to obtain or pay maximum value for the franchised goods.\textsuperscript{61}

Even if the FIPA and U.C.C. valuations do differ, the FIPA policies do not preclude applying the U.C.C. On the one hand, the concern underlying FIPA with unequal bargaining power appears to support the proposition that, upon franchise termination, the franchisor must pay the franchisee fair market value for his assets. Under this proposition, a security agreement violates FIPA because it requires the franchisee to release the franchisor from the duty to pay fair market value for the franchisee's secured goods.\textsuperscript{62} Paying the franchisee commercially reasonable sale value or any less than fair market value plausibly lessens the amount of compensation afforded to the franchisee for the business lost through loss of the franchise license.

However, a freely executed security agreement for the bona fide purchase of goods does not violate FIPA's prohibition of franchisor-imposed required waivers of franchisee rights.\textsuperscript{63} Moreover, statutory imposition of the fair market value amount

\textsuperscript{59} This interpretation fosters the maxim that courts are under a duty to construe legislation as without conflict. See supra note 38.

\textsuperscript{60} See supra note 2.

\textsuperscript{61} The franchisor is better able to obtain a higher net value in reselling the repossession goods because he or she will be operating at the wholesale level and in a customary market. The franchisor is able to pay maximum wholesale value for the repossession goods because he or she has a readily available resale market: other franchisees. See supra notes 23-24 and accompanying text.

\textsuperscript{62} WASH. REV. CODE § 19.100.180(2)(g) (1985) makes it unlawful to "[r]equire [a] franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter."

\textsuperscript{63} Full disclosure precludes franchisee assertions of lack of assent to a waiver, in the absence of fraud, duress, or undue influence. See supra note 52 and accompanying text.
in lieu of contractual enforcement of the parties' bargained-for U.C.C. remedies actually stifles the franchisee's bargaining position with an oppressive legislative hand. To preclude application of the U.C.C. remedies would impose a "market" for valuing goods after default that was not intended by either the franchisor or the franchisee when they contracted under the U.C.C. to extend financing in exchange for collateral.

The legislature enacted FIPA to give the franchisee more bargaining power in business decisions; if the franchisee freely chooses to use the franchisor as his or her creditor under the U.C.C. rules, a court should refrain from negating the consequences of that decision. Had the franchisee received an exten-

64. "Oppressive" in that a franchisor would refuse to grant a franchise to a prospective franchisee who cannot finance the venture himself, for fear that if the franchisee fails, the franchisor will then be liable to pay the franchisee a higher amount for secured goods than can be recouped in a subsequent resale of those same goods; and "oppressive" in that the interpretation of FIPA that replaces the U.C.C. commercially reasonable sale with a fair market value purchase obliterates the parties' power to bargain for financing terms or other concessions. These consequences injure rather than enhance the franchisee's bargaining power.

65. When parties contract to create a security agreement, the terms of the U.C.C. apply, unless they are varied by that contract. Wash. Rev. Code § 62A.1-102(3) (1985). Hence, the parties incorporated the U.C.C. market for valuing goods into their security agreement upon default: commercially reasonable sale market.

66. "The consequences of that decision" are not as harsh as they may seem because the typical debtor in default usually does not repay his or her creditor more than the commercially reasonable sale value of the security. A debtor who defaults on payments is probably close to insolvency, and collecting pursuant to a deficiency judgment for the difference between the amount owed and the resale amount is therefore doubtful. Wash. Rev. Code § 62A.9-504(2) (1985) allows a secured creditor to sue for the money owed after the secured goods are sold and their proceeds are applied to the outstanding debt. But suit may be fruitless: in actuality, recovery of any deficiency owed is "dubious." First National Bank & Trust v. Holston, 559 P.2d 440, 444 (Okla. 1976). Because the franchisor-secured creditor's remedies are generally limited to the proceeds of the sale, the franchisor will probably use his best efforts to obtain high bids at that sale. Foster v. Knutson, 84 Wash. 2d 538, 548-50, 527 P.2d 1108, 1114-15 (1974) (fiduciary obligation of secured creditor to debtor is to use his best efforts to obtain a high price at the sale); First Nat'l Bank [of] New Bremen v. Turner, 1 Ohio App. 3d 152, 439 N.E.2d 1259, 1263 (1981) (aim of commercially reasonable requirement in statute is to obtain the highest price possible upon liquidation sale).

The decision to finance under the U.C.C. is beneficial rather than detrimental to the debtor. The debtor was able to obtain inventory because of the availability of secured financing, whereas without the security arrangement the debtor would not have had the opportunity to enter into the franchise business and attempt to make a profit. Perhaps the price of that business opportunity is execution of a security agreement and its consequences upon nonpayment. See White, Efficiency Justifications for Personal Property Security, 37 Vand. L. Rev. 473, 479-89 (1984) (lenders are more likely to lend money and grant a lower interest rate when they are secured because there is less risk of total loss upon default).
sion of credit from a third party, commercially reasonable sale value would apply without question. The fair market value approach therefore discriminates against the franchisor who extends credit to his franchisee to the extent that a hypothetical estimation of fair market value exceeds commercially reasonable sale proceeds.

Finally, the franchisee suffers no financial prejudice through actual sale under the U.C.C. Creditors attempt to maximize sale proceeds in reduction of debts because proceeds of resale are a bird in the hand, the results of litigation for a deficiency are uncertain and costly, and the franchisor risks franchisee insolvency pending delay of suit. As previously explained in part II of this Note, it is to the debtor's advantage to sell repossessed goods in a wholesale market if the debtor is liable for the costs of disposition, which increase with the creditor's lack of retail facilities and expertise. A wholesale level sale often yields greater net proceeds than a retail level sale.

Hence, neither the policy of full disclosure nor that of equalizing bargaining power precludes application of the U.C.C. when a franchisor-creditor terminates the franchise agreement and repossesses collateral after default under a security agreement. Application of the U.C.C. merely enforces the parties' bargained-for agreement to exchange collateral for security. Furthermore, goods subject to the FIPA purchase section should be valued according to their actual commercially reasonable sale price. This solution ensures an economically feasible and realistic remedy and avoids a burdensome overcompensation for the franchisee at the expense of the franchisor and other franchisees.

V. Conclusion

The Coast decision to apply the U.C.C. remedies because the franchise was never terminated is logical and sound. Nonetheless, whether the franchise is terminated or whether the franchisee is a debtor who has defaulted on a secured debt to the franchisor should not matter. FIPA has a major flaw in that,

69. See supra notes 23-24 and accompanying text.
according to one interpretation, it puts the franchisor in a position subordinate to other creditors. According to another interpretation, however, the FIPA fair market value equals the U.C.C. commercially reasonable sale value. The latter interpretation is more desirable because it precludes a windfall to the franchisee who failed in business and protects the franchisor and other franchisees from loss of goodwill and market depreciation of goods.

The U.C.C. remedy should apply when a franchisor both terminates the franchise agreement and repossesses secured goods because enforcement of the security agreement remedies enhances rather than ignores the policies of full disclosure and equalizing bargaining power. The U.C.C. remedy enforces the parties’ bargained-for exchange and provides all of the other protections of that statute. Other FIPA provisions protect the franchisee from unfair dealing by the franchisor. Franchisors should not be discouraged from doing business in Washington for fear of liability beyond their initial investment when a franchisee is terminated for good cause.

The Washington Legislature should consider a technical amendment to FIPA. Franchisor purchase of goods and equipment should be clearly designated as actual wholesale replacement value rather than as a hypothetical estimation of retail value. This would require the franchisor to reimburse the franchisee for his or her investment at a realistic price without a windfall that burdens the franchisor and other franchisees. With this simple amendment, the Washington Legislature could clarify and deliniate the proper FIPA remedy upon franchise termination.

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