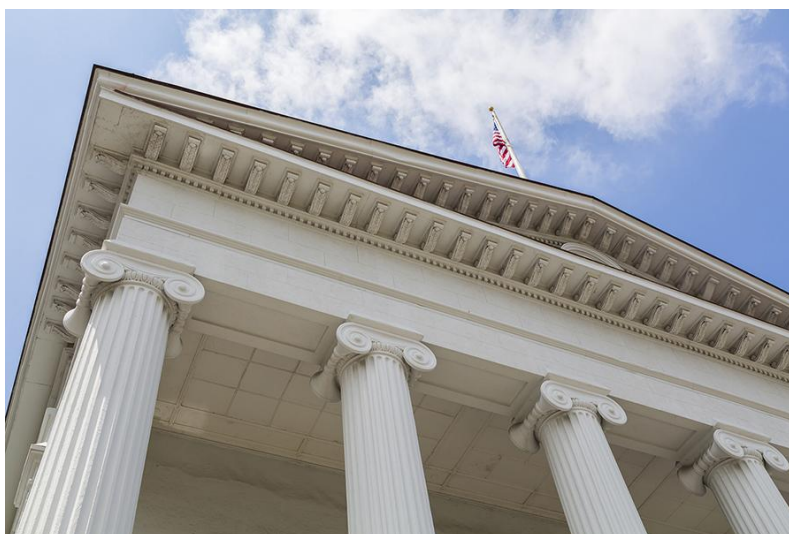




At the intersection of commercial finance, technology, and the law, this bi-monthly newsletter explores the emerging legal topics impacting the secured lending and equipment finance industry. Thought-leading attorneys from **Moritt Hock & Hamroff's Secured Lending and Equipment Finance (SL&EF)** practice share their legal insight, experience, and best practices on this rapidly evolving area of law and invite your thoughts and questions.



The Courts' View of UCC Article 9 Sales in The COVID-19 Environment Is Clearly Changing

By Marc L. Hamroff and Danielle J. Marlow

While the world may be in a state of semi-paralysis waiting for a COVID-19 vaccine, the legal environment involving creditors' rights has changed significantly during the past several months.

In the beginning of the pandemic, we reported that courts viewed Article 9 sales with a more critical eye. For example, we previously reported that Justice Masley of the New York Supreme Court, New York County Commercial Division, issued a decision on June 23, 2020 in *D2 Mark LLC v. OREI VI Investments, LLC*, holding that a UCC Article 9 sale on thirty-six (36) days' notice, which required the winning bidder to make a non-refundable deposit of 10% of the purchase price, pay the remaining balance within 24 hours, and precluded the borrower from submitting a bid, was commercially unreasonable because of the dire implications of COVID-19. [MHH Blog: Lender Stayed From Proceeding With UCC Article 9 Sale](#)

Similarly, on August 3, 2020, Justice Schecter of the New York State Supreme Court, New York County Commercial Division, issued a decision in *Shelbourne BRF LLC et al. v. SR 677 Bway LLC* enjoining a

lender from conducting a UCC Article 9 sale of collateral because of depressed asset values caused by the pandemic. In her decision, Justice Schechter held that: “Severe turmoil in the real estate market due to the pandemic makes the notion of a sale resulting in payment of fair market value highly uncertain” and “[b]ids will likely be discounted due to uncertainty about the continued length and severity of the pandemic.” Justice Schechter specifically referred to Paragraph 7 of the Administrative Order of the Chief Administrative Judge of the Courts dated July 23, 2020 (AO/157/20) which provided that “no auction or sale of property in any residential or commercial foreclosure matter shall be scheduled to occur prior to October 15, 2020” and held that “[t]hrough AO/157/20, by its terms, does not apply here, the same logic does. After all, valuation of an equity interest in a company that owns real estate is based on the value of the real estate itself.”

For the complete article by Marc and Danielle, go to: [The Courts' View of UCC Article 9 Sales In The COVID-19 Environment Is Clearly Changing](#)

MH&H Rolls Out COVID Litigation Task Force



In response to the COVID-19 pandemic, MH&H has mobilized its resources and expertise to provide guidance to its clients and the broader business community by establishing a multidisciplinary COVID-19 Resources Page. In conjunction with that effort, MH&H has also assembled a premier team of 10 seasoned, highly skilled litigators and trial attorneys focusing specifically on litigation matters relating to COVID-19.

Chaired by litigation partners James Chou and Stephen Ginsberg, [MH&H's COVID Litigation Task Force](#) provides thought leadership on a wide array of evolving issues arising from the pandemic, serving as the firm's primary resource for clients considering or facing potential litigation arising from COVID-related issues. Our litigators have the talent, drive, sophistication, and creativity to handle complex legal disputes, bringing to bear decades of experience litigating matters at large national and international law firms.

For more information about how MH&H's COVID Litigation Task Force can help assess your situation, develop and customize a strategy that meets your business objectives, and zealously advocate on your behalf, contact either of the task force chairs directly: James P. Chou (jchou@moritthock.com) or Stephen J. Ginsberg (sginsberg@moritthock.com).

Who We Are: Meet Some of Our Secured Lending and Equipment Finance Attorneys



Marc Hamroff

[Read Bio](#)



Bob Cohen

[Read Bio](#)



Brett Garver

[Read Bio](#)



Theresa Driscoll

[Read Bio](#)



Julia Gavrilov

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Brian Boland

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What We're Doing: Events and Postings

How the COVID-19 Pandemic Is Accelerating the Move Toward Electronic Signatures

The screenshot shows a webinar slide with three columns of text. The left column has a blue header 'Creating an Enforceable Digital Contract' and a small diagram. The middle column is titled 'Electronic Signature' and the right column is titled 'Electronic Record'. Both columns contain definitions and key points.

Electronic Signature

- an electronic sound, symbol, or process
- logically associated with an electronic record
- adopted with the intent to sign the record

Attribution, Authority and Intent are key:

- Use context of the record or circumstances
- Applies usual rules governing authority or intent

Electronic Record

- information on a tangible, electronic or other medium
- is retrievable in perceivable form

"Electronic Record" is virtually any stored record that is not on paper

Record retention system is critical:

- Enforce legal obligations
- Meet State or Federal "writing" and "retention" requirements
- Obtain admissions into evidence in the event of a dispute
- ESIGN/UFIA focus on accurate preservation and access to information in the record.

Some of the few and faint benefits of the ongoing COVID-19 pandemic might be that it is encouraging the transition toward electronically signed documents for lessors and lenders. That's one of the conclusions from a panel discussion presented by the Equipment Leasing and Finance Association (ELFA) during its recent "Wednesday Webinars at 1:00" session, held on Dec. 2, and featuring partner and member of the SL&EF practice area Bob Cohen.

The ELFA session, entitled "E-signing and E-leasing in the COVID-19 World: Taking It to the Next Level," was moderated by Steve Bisbee, president and founder of eOriginal, and featured panelist Dominic Libertore, deputy general counsel for DLL, along with Bob.

According to the panelists, the pandemic has been "a digital adoption accelerator" that has significantly jump-started the adoption of digital technologies—including e-signatures and e-documentation for leases and loans. In the pre-pandemic marketplace, the movement toward adoption of e-documentation was driven primarily by the customer's experience. There was little urgency, however; most were content to wait for the technology to present itself and then come on board with it when they saw a clear benefit.

All that changed a year ago, when the COVID-19 pandemic forced almost all companies—including banks and equipment finance companies involved in the documentation and signing of leases, loans, and other financial agreements—to strongly consider conducting their business virtually, using entirely digital tools.



For a complete transcript of this webinar, visit the ELFA online library at: [eSigning and eLeasing in the Covid-19 World- Taking it to the Next Level \(elfaonline.org\)](#).

Recommended Reading

[Commercial Finance Disclosure Legislation in New York State Signed by Cuomo, Takes Effect in June](#)

[Secured Lending Blog](#)

[The Top 5 Legal Issues Lenders Should Look Out For In 2021](#)

[Representative Bankruptcy, Restructuring & Financial Services Transactions](#)

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