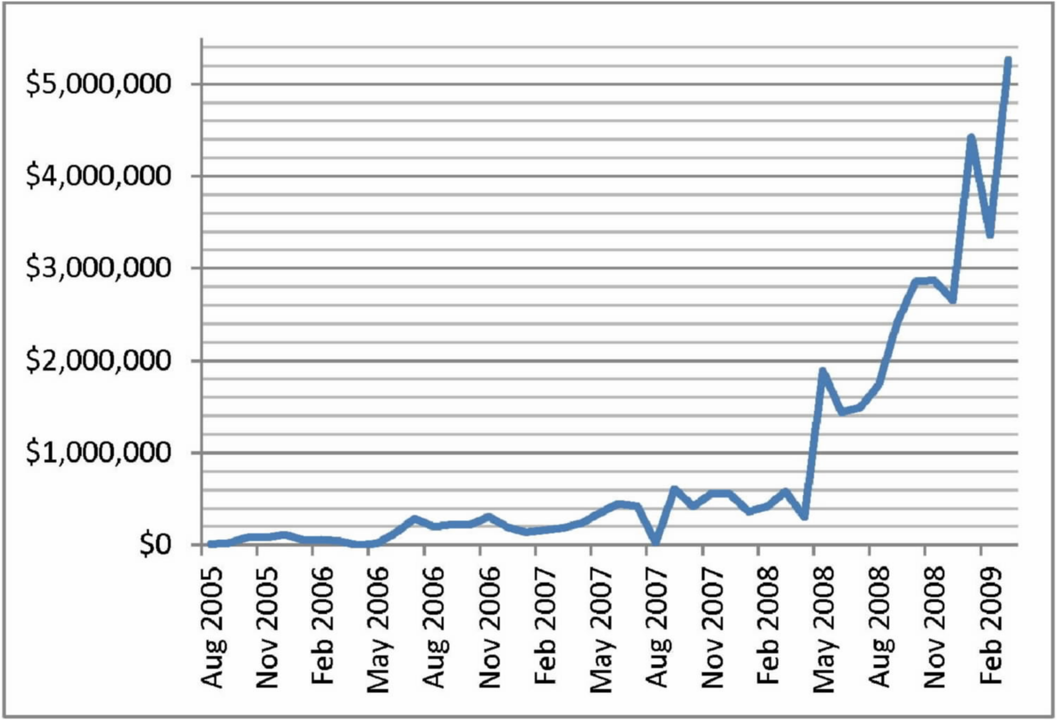
$5,000,000
$4,000,000
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$2,000,000
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Aug 2005
Nov 2005
Feb 2006
May 2006
Aug 2006
Nov 2006
Feb 2007
May 2007
Aug 2007
Nov 2007
Feb 2008
May 2008
Aug 2008
Nov 2008
Feb 2009

> [A]ppellant was so closely connected with the entire transaction or with the deal that it can not be heard to say that it, in good faith, was an innocent purchaser of the instrument for value before maturity. It financed the deal, prepared the instrument, and on the day it was executed took an assignment of it from the Arkansas Motors, Inc. Even before it was executed it prepared the writen assignment thereon to itself. Rather than being a purchaser of the instrument after its execution it was to all intents and purposes a party to the agreement and instrument from the beginning.

Commercial Credit Co. v. Childs, 199 Ark. 1073, 137 S.W.2d 260, 262 (Ark.1940).

Importantly, *Martin's* analysis did not require any inference of collusion or dishonesty. Even if the assignor-dealer had equally deceived both the buyer and the assignee, a closely-connected assignee was still "beter able to bear the risk of the dealer's insolvency than the buyer and in a far beter position to protect his interests against unscrupulous and insolvent dealers." *Martin,* 63 So.2d at 653. So the *Martin* court imputed the dealer's knowledge to the finance company and then found that the finance company had "notice of any infirmity" under the statute.

***26** Since *Martin,* the close-connection doctrine under Florida law has evolved in three major ways. First, although *Martin* used the doctrine in the context of a negotiable instrument, Florida courts have also used it to assess the enforceability of a waiver-ofdefenses clause. Because the governing statutes in both contexts require holders in due course to meet essentially the same requirements—specifically, to have acquired the instrument or contract (1) in good faith and (2) without notice of the underlying infirmity—the close connection doctrine is equally applicable to both. *Compare Martin* (promissory note) *with Rehurek v. Chrysler Credit Corp.,* 262 So.2d 452 (Fla. 2d DCA 1972) (automotive retail installment contract). [30]

Second, because courts use the doctrine as an evidentiary tool for applying the statute, it has evolved following each amendment to the statute. In 1953, *Martin* used it to assess whether the holder had "notice" under the Uniform Negotiable Instruments Act's subjective standard. Since then, Florida courts have increasingly connected the doctrine to the UCC's requirement of good faith. For example, in *Ramadan v. Equico Lessors, Inc.,* 448 So.2d 60 (Fla. 1st DCA 1984), the assignee of a commercial lease initially won summary judgment because there was no genuine issue of material fact as to its subjective good faith. The appellate court reversed because there was evidence of a close connection, and "if the financing company is closely connected with the transaction, it cannot be heard to say that it, in good faith, was an innocent purchaser." *Id.* at 61; *see also Rehurek,* 262 So.2d at 453 (assignor and assignee were too closely connected for the assignee to have taken the assignment in good faith). Since the most recent amendment to the definition of good faith, only one case has used it under Florida law. *See Cunningham v. LeGrand,* No. 2:11–CV–0142, 2012 WL 2054112 (S.D.W.Va. June 5, 2012) (using a close connection as evidence of a failure to follow reasonable commercial standards).

Finally, because the close-connection doctrine arose primarily to protect consumers, Florida courts expanded it in commercial cases to create a close-connectionplus doctrine. *See Equico Lessors, Inc. v. Ramadan,* 493 So.2d 516, 519 (Fla. 1st DCA 1986). [31] But contrary to NCMIC's contention, a close connection plus has never required that the assignor and assignee be "so closely linked that the entities were indistinguishable." [*See* DE–541 at 3.] This phrase appears only in *Leasing Service Corp. v. River City Const., Inc.,* 743 F.2d 871 (11th Cir.1984). There, it referred to cases that denied holder-in-due-course status not under the close-connection doctrine but for a different reason: because the assignee was so involved in the original transaction that it could be held *affirmati ely liable for damages* as well as unable to enforce the assigned instrument or contract. [32] *Id.* at 876 (citing *Massey–Ferguson Credit Corp. v. Brown,* 173 Mont. 253, 567 P.2d 440, 444–45 (Mo.1977) (assignee's participation in the original transaction was such that the obligor could recover damages from the assignee "over and above being absolved from making any payment on the contract") and *Massey–Ferguson, Inc. v. Utley,* 439 S.W.2d 57, 60 (Ky.1969) (an assignee "should not be accorded the protection of an assignee against defenses that derived from its actions as a seller")).

NCMIC's Characterizations of the Close–Connection Doctrine

***27** NCMIC also contends that, at least in a commercial secured transaction, an assignee need not prove that it meets the four-prong test set out in section 679.4031(2). Rather, it asserts that the assignee's *opponent* must prove that the "assignor and assignee were so closely linked that the entities were indistinguishable and that the assignee had knowledge of the assignor's fraudulent acts or significantly participated in the original transaction." [DE–541 at 2 (quotation marks omited).] [33]

NCMIC has made two different arguments in support of this position. Before trial, NCMIC conceded its burden to establish each statutory element but argued that, because this is a commercial case, it was entitled to a presumption of good faith which Plaintiffs could rebut only by proving a close-connection-plus. [DE–541 at 2.] NCMIC's post-trial motion for reconsideration, however, takes a different tack. It argues that the statutory test does not apply at all because Florida's close-connection-plus doctrine is "law other than this chapter which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee" under section 679.4031(6), which the statute says the four-prong test "does not displace." [DE–571 at 10.]

Florida law does not support either argument. First, the statute applies. Florida law has never suggested that the close-connection doctrine relieves an assignee of its statutory burden to prove holder-in-due-course status. Every court that has applied it, whether in a commercial secured transaction or anywhere else, has used it as an evidentiary tool for applying the statutory tests for 'good faith' or 'without notice' under the applicable statute—either the Uniform Negotiable Instruments Act, *see Martin,* 63 So.2d at 652, or the UCC, *see Ramadan,* 448 So.2d at 60. NCMIC has not pointed to a single case or commentator, in any jurisdiction, that treats the closeconnection doctrine as allowing a party to enforce a waiver-of-defenses clause even if it fails to meet the statutory requirements. [34] *Leasing Service* was clear that it used the doctrine to assess the holder's good faith under the Uniform Commercial Code. 743 F.2d at 875 (applying Ala.Code § 7–9–206(1), Ga.Code Ann. § 109A–9–206(1), and N.Y.U.C.C. § 9–206(1)). [35] Similarly, *Ramadan* applied section 679.206(1), which is the precursor to today's section 679.4031. *See Ramadan,* 448 So.2d at 60. And even the few close-connection cases that contain no explicit reference to a governing statute never characterize the doctrine as the exclusive determinant of holder-in-due-course status. *See, e.g., Schneberger v. Wheeler,* 859 F.2d 1477, 1482 (11th Cir.1988) (describing "bad faith" and "close connection" as distinct grounds for denying holder-in-due-course status under Florida law). As such, the close-connection-plus doctrine is an evidentiary tool used to apply section 679.4031 (and its precursor, former section 679.206), *see Ramadan,* 493 So.2d at 518, not "other law" to which section 679.4031(6) could defer.

***28** Moreover, under the statute, there is no presumption of good faith. Florida repealed the presumption when it adopted the UCC in 1965. *Compare Antonacci v. Denner,* 149 So.2d 52, 53 (Fla. 3d DCA 1963) ("Every holder is deemed prima facie to be a holder in due course." (quoting Fla. Stat. § 674.61 (1963))) *with* Fla. Stat. § 674.61 (2014).

c. *Application to the Facts*

In this case, the statute required NCMIC to prove that it (1) observed reasonable commercial standards of fair dealing and (2) had no reason to know, when it took any given assignment, that Brican Inc. had fraudulently induced the Plaintiff into entering that Financing Agreement. If the Court uses the close-connection-plus doctrine as an evidentiary tool in applying the statute, NCMIC's close connection with Brican Inc. (1) gave NCMIC reason to know of Brican Inc.'s fraud and (2) underscored its failure to follow reasonable commercial standards of fair dealing. *See Cunningham,* 2012 WL 2054112 at *11–12.

Evidence of a Close Connection

Courts have recognized various indicia of a close connection, including: (1) the assignee's approval of the assignor's underwriting and credit-approval procedures, (2) an independent credit check on the obligor by the assignee, (3) the assignor's reliance on the assignee to accept transfer of a substantial part of the assignee's portfolio, and (4) common ownership between assignor and assignee. *See Arcanum Nat. Bank v. Hessler,* 69 Ohio St.2d 549, 433 N.E.2d 204, 210 (Ohio 1982) (citing White & Summers, Uniform Commercial Code (1972)); *see also Unico,* 232 A.2d at 417 (assignee who "approved the standards established by the dealer, and has agreed to take all or a predetermined or substantial quantity of the negotiable paper which is backed by such standards" is closely connected). [36]

The record evidence in this case shows that Brican Inc. performed none of the usual functions of a lessor—instead, it relied on NCMIC to perform these functions on its behalf. In terms of the indicia:

- NCMIC did more than approve Brican Inc.'s procedures: it performed those procedures on Brican Inc.'s behalf. Brican Inc. would not execute a Financing Agreement until after NCMIC had already agreed to take the assignment.

- Similarly, NCMIC did more than run an independent credit check on each obligor before taking an assignment: it effectively ran credit checks on Brican Inc.'s behalf. Because Brican Inc. would not execute a Financing Agreement until after NCMIC had already agreed to take the assignment, Brican Inc. had no need to perform its own credit checks and never did so.

- As soon as Brican Inc. started using a "blind lease," it relied on NCMIC to accept transfer of not just a "substantial portion" but the *vast majority* of its portfolio. This was simply a continuation of their previous practice of NCMIC financing the vast majority of Brican Inc.'s sales. [37] As a result of this reliance, NCMIC ended up financing the vast majority of Exhibeo sales from 2005 until NCMIC terminated the relationship in April 2009.

Evidence of NCMIC's Notice of Brican's Fraud and Lack of Good Faith

***29** Turning to the "plus" component of the doctrine, the evidence was substantial that NCMIC had notice and lacked good faith. By October 2008, NCMIC had received notice on numerous occasions that (1) Brican was violating the GVA by using side agreements without sending them to NCMIC and (2) these side agreements promised customers that the Exhibeo would be effectively "free" because the advertising fees would offset the lease payments and that they could cancel their lease obligation if the payments ceased. [38] In response to these "disturbing" (PX 92 at 1) circumstances that called for investigation, NCMIC took no action constituting the observance of reasonable commercial standards of fair dealing, which it easily could have done given its close connection with Brican Inc.

First, by October 3, 2008, NCMIC had received multiple notices that Brican was using side agreements and paying advertising fees calculated to offset customers' lease obligations:

- The Scot Leter notified NCMIC as early as 2006 that Brican had a "return policy" that, contrary to the terms of the lease, allowed customers to return the equipment and cancel the lease.

- Between February 2007 and October 2008, ten lessees told NCMIC that Brican had promised to pay enough advertising to offset the lease payments and to take over the lease if the reimbursement payments stopped. Cook told one such lessee that he would look into the advertising claim but never did so.

- In July 2008, NCMIC knew from DelCastillo's email that (1) Vincens had been accused in the past of operating a Ponzi scheme involving promises of advertising fees that would offset customers' lease obligations and (2) Brican was entering into side agreements that promised to pay advertising fees that would offset customers' lease obligations.

- By October 2008, NCMIC had received at least one copy of a Marketing Agreement with a Buyback Provision in which Brican promised to buy back the customer's lease if the advertising payments stopped. If NCMIC had exercised due diligence, it would have been brought to Cook's or Cole's atention. Because NCMIC presented no evidence of such due diligence, it had notice as a mater of law of the Marketing Agreement and its Buyback Provision. [39]

Second, NCMIC's response to this notice did not observe the reasonable commercial standards of fair dealing that it set for itself in the GVA. For example:

- By July 2008, NCMIC knew definitively from DelCastillo's email that Brican had side agreements with customers that it was not sending to NCMIC along with the purchase orders, in violation of the GVA. But NCMIC made no effort to enforce this requirement of the GVA. It did not even ask DelCastillo, or any other lessee who had told NCMIC about the advertising fee arrangement, to send their copies of their own agreements.

- By July 2008, Cook knew from Brican's sales Powerpoint that Brican was marketing the Exhibeos to customers as "free." Two months earlier, Exhibeo sales per month began increasing rapidly-May 2008 *tripled* the previous monthly record-creating a strong likelihood of cause and effect between the promise of free Exhibeos and the increase in Exhibeo sales. But NCMIC responded not by asking Brican if its use of Marketing Agreements had increased similarly quickly, but by increasing its lending to such an extent that, only a month later, it began to worry about the concentration of Brican leases in its portfolio.

***30** • Cook knew from DelCastillo's July 2008 email that some of Brican's principals had been involved in Recomm, which went bankrupt after promising to pay lessees enough in advertising payments to offset their lease obligations. Cook was also familiar with leases that had defaulted for the same reason from his time at Frontier Leasing. Nevertheless, NCMIC did not ask Brican or Viso Lasik about their business plan or how they planned to continue making advertising payments.

- Although NCMIC had established procedures for investigating fraud, it did not use them.

Third, even in November 2008, after it had started taking assignments of onecolumn Financing Agreements, NCMIC blithely continued increasing its lending while ignoring suspicious circumstances when diligence demanded an investigation. [40] The facts show:

- Cook recognized that Brican Inc.'s and Brican LLC's names and logos on the form were confusingly similar, which could leave customers with the impression that Brican LLC, the Vendor, was the agent of Brican Inc., the lessor. But he never followed up to address this.

  - Cook suggested edits to a Marketing Agreement with a Buyback Provision that he testified could be interpreted as allowing customers to cancel the lease. However, he never followed up to ensure that his edits were made or even to learn what Buyback Provision Brican ended up using.

  - When NCMIC visited Brican's offices in Miami and the Viso Lasik clinic in Wellington, Florida, at least one NCMIC employee understood Viso Lasik to be a "branch" of Brican. Nevertheless, NCMIC never inquired into Viso Lasik's ability to meet its commitment to buy advertising, such as by asking for Viso Lasik's or Brican's financial records.

  - NCMIC knew that Viso Lasik only had three locations. If Brican had only been using Marketing Agreements near those three locations, as Cook testified that he assumed, then Exhibeo sales would likely have been much higher in those areas than elsewhere. Nevertheless, NCMIC did not ask where Brican had been entering into Marketing Agreements.

Based on the evidence, NCMIC failed to satisfy its burden to prove that it took assignment of the one-column Financing Agreements "in good faith" and "without notice" of Brican's fraudulent inducement. Therefore it is not a holder in due course. NCMIC and Brican Inc. had a standing arrangement under which Brican Inc. assigned the vast majority of its Financing Agreements to NCMIC as a mater of course. As NCMIC heard more and more about Brican's sales pitch and the promises it was making in the Marketing Agreements, NCMIC responded not by investigating but by doubling down on that standing arrangement, taking more and more assignments every month. An assignee, particularly a closely-connected one, cannot become "an easy, safe harbor for the dishonest," *Talcott,* 830 So.2d at 168, and then claim to be a holder in due course.

E. *CONCLUSION*

Plaintiffs who signed a one-column Financing Agreement and version 4, 5, 7, or 8 of the Marketing Agreement have established every element of fraudulent inducement, with the exception of proving the individualized facts necessary to establish reliance. By separate order, the Court will require the parties to confer as to the best procedure for addressing these individualized issues. As to all one-column Plaintiffs who signed version 4, 5, 7, or 8 of the Marketing Agreement and who have or will prove reliance, NCMIC has failed to prove that it is a holder in due course of their Financing Agreements that it took by assignment from Brican Inc. As to all one-column Plaintiffs who signed version 6, they have not met their burden to prove fraudulent inducement by Brican Inc. Final Judgment will be entered separately.

***31** DONE and ORDERED.

Footnotes

1 Before October 3, 2008, Plaintiffs who financed through NCMIC signed agreements ("Financing Agreements") formated in a three-column style directly with NCMIC. After that date, Plaintiffs signed Financing Agreements formated in a onecolumn style with Brican America, Inc., who then assigned them to NCMIC.

2 Despite their label, the Court will refer to these clauses as "Buyback Provisions" because they reflect not a promise that the Financing Agreements could be cancelled but a promise that Brican would buy them back and assume responsibility for the remaining payments.

3 The Court retains jurisdiction under 28 U.S.C. § 1332(d) because, when this case was filed, the putative class included more than 1,500 Plaintiffs, some of whom were diverse from Defendants and whose claims together were for more than $5 million. "[P]ost-removal events (including non-certification, de-certification, or severance) do not deprive federal courts of subject mater jurisdiction." *Vega v. T–Mobile USA, Inc.,* 564 F.3d 1256, 1268 n. 12 (11th Cir.2009).

4 All claims arising out of version 1 of the Marketing Agreement have been setled. [*See* DE–502; DE–508.]

5 Trial transcripts are docketed under entries 564–69. Citations to the transcript use the format: (TT[day of trial] ([Witness Name]) [pincite].) Plaintiffs' Exhibits are prefaced with "PX" and Defendants' Exhibits with "DX."

6 The claims of the more than 300 Plaintiffs who signed version 4 with a *threecolumn* Financing Agreement were resolved by summary judgment. [DE–509.]

7 The Exhibeo was sometimes described as the "Brican Information Center" or the "MediaDoc" (the name of its software package).

8 Baytree Leasing Company, LLC and De Lage Landen Financial Services, Inc. also financed a small number of Exhibeo sales. (DX 34, 37.)

9 Richman continued to show the leter to potential customers even after he realized that Viso Lasik did not plan to build a center in Connecticut.

10 There is no evidence that NCMIC ever provided such writen consent; in fact, NCMIC alleged in its lawsuit against Brican that there was no privity of contract between NCMIC and Brican LLC. (*See* NCMIC's Answer to Counterclaim [DE–13] in *NCMIC Fin. Corp. v. Brican Am., Inc.,* No. 09–21192 (S.D. Fla. June 18, 2009).)

11 The Vendor and lessor had to be separate entities because potential assignees generally refuse to take assignments directly from vendors, fearing being held liable for the vendor's warranties.

12 In an atempt to mitigate this risk, these Financing Agreements contained a "no agent" clause. (*See, e.g.,* PX 39 at 5; *see also* PX 72.)

13 The text obligates "Brican America, Inc." to purchase advertising. The rest of the document refers to "Brican," which it does not define. owever, Brican LLC is not mentioned anywhere in the text, so the references to "Brican" can only mean Brican Inc.

14 There are also a few contracts titled "Advertising Agreement Addendum" in which the signature block is for Brican LLC but the text itself obligates Brican Inc. to buy advertising. (*See, e.g.,* PX 37 at 2.)

15 The price varied over time. (*See* PX 44 at 6 ($22,089); PX 34 at 3 ($22,049); PX 10, 11, 56 ($24,115); Vincens Dep. [DE–226–22] 244:7–10.)

16 Brican told NCMIC that $7,645 was for hardware and $16,470 for software. (PX 10.) However, Brican's hardware costs varied over time. (*See* PX 41 at 14 ($2,098.86); PX 38 at 6 ($2,261.98); PX 44 at 5 ($3,072.33); PX 34 at 6 ($5,508.55 for two televisions).)

17 Initially, Brican Inc. had paid this consultation fee directly to its owners. After Brican LLC became the Vendor, because Vincens' visa required that he be employed by Brican Inc., Brican LLC would pay Brican Inc., which would then pay the fee to its owners. Therefore, at some times, Vincens, Lemacon, and Briscoe each received 3%, but at other times, Vincens and Lemacon each received 4 .5%.

18 Some of this money was first loaned to Brican Inc., which then loaned it to Viso Lasik. *See infra* at ¶ 68.

19 This estimate is based on the following equation: $24,000 (purchase price)

20 In 1986, Vincens founded JVF Sales, which sold electronic billboards to Canadian pharmacists with whom it entered into advertising agreements. In the early 1990s, he founded Recomm, which sold electronic bulletin boards to pharmacists, optometrists, and veterinarians but went bankrupt in 1996. Later in the 1990s, he was involved in Axaris, which sold display systems to French dentists and veterinarians, with whom it entered into advertising agreements. (TT2 (Vincens) 173:2–185:19.)

21 Cook likely read *In re Optical Tech.,* 246 F.3d 1332 (11th Cir.2001).

22 The one-column Financing Agreements are secured transactions because they allow the customer to purchase the equipment for a nominal price (one dollar) at the end of the term. *See* Fla. Stat. § 671.201(38)(a) (codifying U.C.C. § 1–203(b)). Plaintiffs are therefore "account debtors" under section 679.1021 (which codifies section 9–102(a)(3) of the UCC) and can assert against NCMIC "any defense or claim in recoupment arising from the transaction that gave rise to the contract" unless NCMIC can prove that Plaintiffs

waived such defense or claim. Fla. Stat. § 679.4041 (codifying U.C.C. § 9–404(a)). owever, these Findings use the terms "lease" and "lessor" because the parties have consistently used them in their interactions and throughout this litigation.

23 Similarly, claims for fraudulent inducement are not subject to the parol evidence rule and are not barred by a merger and integration clause in the underlying contract. *Lower Fees, Inc. v. Bankrate, Inc.,* 74 So.3d 517, 519 (Fla. 4th DCA 2011). Moreover, if Plaintiffs relied on the alleged misrepresentations, such reliance was not unreasonable as a mater of law because the misrepresentations were not "directly and fully rebuted by express evidence in a governing writen contract." *Hobirn, Inc. v. Aerotek, Inc.,* 787 F.Supp.2d 1298, 1304 (S.D.Fla.2011).

24 Version 6's Buyback Provision did not promise to buy back the lease agreement. Instead, it only stated that "the Client *may request* that Brican repurchase the Client's lease agreement" (emphasis added).

Plaintiffs' fraud theory in this case has focused solely on the writen promises in the agreements they signed, which satisfied the pleading requirements for fraud and also enabled the parties and the Court to address the issue of fraudulent inducement for similarly-situated groups of Plaintiffs. owever, without a writen promise to buy back the lease as the basis for fraudulent inducement, the nine one-column, version 6 Plaintiffs lack the threshold misrepresentation underlying Plaintiffs' theory of fraud and so cannot prevail on this theory.

25 "Fraud can occur by omission, and one who undertakes to disclose material information has a duty to disclose that information fully." *Philip Morris USA, Inc. v. Naugle,* 103 So.3d 944, 946 (Fla. 4th DCA 2012), *review denied,* 135 So.3d 289 (Fla.2014). This principle applies even in arms-length transactions. *Guter v. unker,* 631 So.2d 1117, 1118–19 (Fla. 4th DCA 1994) (claim based on venture promoter's failure to inform investors of its previous failed venture); *see also Re it v. Terrell,* 572 So.2d 996, 998 (Fla. 3d DCA 1990) ("[W]here there is no duty on the seller to divulge material facts, once a seller makes representations regarding a condition, he is under a duty to disclose the complete truth.").

26 Cases before 2002 refer to Florida Statutes, section 679.206 or Uniform Commercial Code, section 9–206, which contained essentially the same requirements.

27 Because many of the authorities discussed arise in the context of negotiable instruments, it is noteworthy that holders in due course must meet essentially the same requirements in both contexts. *Compare* Fla. Stat. § 673.3021(1)(b) (codifying U.C.C. § 3–302) (negotiable instruments) *with* § 679.4031(2) (codifying U.C.C. § 9–403) (secured transactions).

28 For example, a "subsidiary might sell shoddy goods to a consumer and then sell the negotiable paper to the parent. Technically, the parent was a holder in due course because it gave value, had no notice, and took in good faith. Under the 'close connection' doctrine, the courts atributed the subsidiary's knowledge to the parent if the two were sufficiently closely connected." 2 James J. White, Robert S. Summers, & Robert A. Hillman, Uniform Commercial Code § 18–14 (6th ed.2013).

29 *See, e.g., Ramadan v. Equico Lessors, Inc.,* 448 So.2d 60, 62 (Fla. 1st DCA 1984); *Rehurek v. Chrysler Credit Corp.,* 262 So.2d 452, 453 (Fla. 2d DCA 1972).

30 NCMIC argues that the close connection doctrine applies only to secured transactions, and so cases assessing holder-in-due course status in the context of negotiable instruments are not relevant. [*See* DE–571 at 13.] But NCMIC overlooks the fact that *Martin,* which is still good law, applied it to negotiable instruments.

31 There are two opinions in the *Ramadan* case. The 1984 opinion reversed the trial court's grant of summary judgment and remanded for trial. *Ramadan v. Equico Lessors, Inc.,* 448 So.2d 60 (Fla. 1st DCA 1984). Upon remand, the trial court found a close connection, which the 1986 opinion reversed on grounds of insufficient evidence. *Equico Lessors, Inc. v. Ramadan,* 493 So.2d 516 (Fla. 1st DCA 1986).

32 Otherwise, the only relief available for a claim against an assignee is to "reduce the amount the account debtor owes" under the contract. Fla. Stat. § 679.4041(2).

33 Notably, under NCMIC's proposed standard, an assignee who significantly participated in the original transaction *and* took the assignment with actual knowledge of fraud would still be a holder in due course in the absence of a close connection.

34 In fact, every single case listed in NCMIC's trial brief that used the close-connection doctrine did so while applying U.C.C. § 9–206. [*See* DE–541 at 11–15.]

35 Interestingly, most commentators interpret *Leasing Service* as holding that the close connection doctrine is inapplicable in commercial contexts. *See, e.g.,* 2 James J. White, Robert S. Summers, & Robert A. Hillman, Uniform Commercial Code § 18–14 (6th ed.2013).

36 *Arcanum* also considered "the assignee's drafting of forms for the assignor." 433 N.E.2d at 210. However, even though NCMIC assisted in drafting the "blind lease" form, this is a common practice in commercial transactions, *see Leasing Serv. Corp.,* 743 F.2d at 876, so the Court disregards it here.

37 The GVA fostered this close relationship. Brican promised to use its best efforts to give NCMIC a first right of refusal for all Exhibeo sales, and NCMIC promised to accept or reject each credit applicant within one day. ((VA ¶¶ 4, 13.)

38 *Ramadan* is not to the contrary. As it recognized, the "plus" component is satisfied if the assignee had "prior knowledge of the seller's guarantee, and therefore of potential claims that might arise." *Ramadan,* 493 So.2d at 519. Unlike the lessor in *Ramadan,* NCMIC

had a standing arrangement to accept assignments of the vast majority of Brican Inc.'s Financing Agreements as well as notice of Brican Inc.'s fraudulent promises. Moreover, *Ramadan* did not consider the obligation to observe reasonable commercial standards of fair dealing because the governing statute at the time did not define “good faith” as including an objective component.

39 Under the UCC, notice “received by an organization” is effective “from the time it would have been brought to the person [conducting the transaction]'s atention if the organization had exercised due diligence.” Fla. Stat. § 671.209 (2014) (codifying U .C.C. § 1–202). “Due diligence” means maintaining “reasonable routines for communicating significant information to the person conducting the transaction and ... reasonable compliance with the routines.” *Id.*

40 Because an assignee need only meet the requirements of holder in due course at the time of assignment, knowledge acquired after the assignment does not mater. However, NCMIC's conduct after November 2008 is consistent with its earlier patern and so underscores its failure to observe reasonable commercial standards of fair dealing before then.