

Corporate Update

SECURED TRANSACTIONS

The Mancini Case—Commercial Reasonableness and the UCC’s Ten-Day Safe Harbor

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Part 6 of Article 9 of the Uniform Commercial Code (UCC) governs a secured creditor’s right to foreclose on personal-property collateral and the debtor’s attendant protections. Although UCC §9-610 requires every aspect of a post-default disposition to be “commercially reasonable,” the statute deliberately leaves that standard flexible, oftentimes the result being litigation over what notice and sale process will statutorily suffice.

The recent Southern District of New York decision in *Mancini v. UBS AG, N.Y. Branch*, 2026 WL 865704; (S.D.N.Y. Mar. 30, 2026) tested those boundaries, holding that (i) a notice period shorter than ten days can still be reasonable under UCC §9-612(b)’s safe harbor, and (ii) a sale price equal to 78 percent of fair market value, standing alone, does not render a disposition commercially unreasonable.



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However, it also found plausible allegations that the notice of sale was not, in fact, given in a commercially reasonable manner.

This article distills the court’s reasoning and draws practical lessons for both debtors and secured creditors.

Case Background

Mancini, then a partner at the Carlyle Group, was eligible to participate in certain private equity investments known as Carlyle Co-investment Entities (CCEs). His investments were financed through an arrangement between UBS and Carlyle under which Carlyle made loans available to eligible participants such as Mancini. On Sept. 15, 2011, Mancini entered into a credit agreement (the Credit Agreement) with UBS pursuant to which Mancini's limited-partner interests in the CCEs were held in UBS custody and pledged as collateral.

The Credit Agreement—governed by New York law, including the NY UCC—provided that following a default by Mancini, UBS could liquidate the collateral in its sole discretion. It also required that UBS provide notice to Mancini of any collateral disposition within a “reasonable” time in accordance with the NY UCC.

Mancini resigned from Carlyle in December 2018. UBS in February 2019 notified Mancini that such resignation was a “Final Event,” and required payment of its loan by the loan's maturity date of March 15, 2019, but ultimately extended the maturity date to March 1, 2020.

Mancini alleged that his pledged portfolio at year-end 2019 was worth roughly \$4,000,000. However, at the start of 2020, the COVID-19 pandemic began spreading across the United States, and the fair market value of Mancini's CCEs March 2020 purportedly “sustain[ed] a loss from approximately \$3,500,000 from their year-end 2019 values to \$3,162,614 according to the quarterly market prices made available by Carlyle.”

Mancini claimed, however, that by June 30, 2020, the holdings had regained approximately 14% of their value, and by Sept. 30, 2020, approximately 18% of their value, to \$3,727,602. Mancini further alleged that “[i]n or about March 2020, a senior executive of... UBS assured Mancini that, in

view of the pandemic-related market declines, UBS did not intend at that time to liquidate the collateral consisting of the CCEs and cash.”

On Aug. 26, 2020, UBS sent Mancini a notice stating it would sell the collateral by private sale on or after Sept. 10, 2020. During the week of August 30 Mancini contacted UBS saying he wanted to repay the loan and redeem the collateral. According to Mancini, UBS responded that liquidation had already begun and repayment and redemption was “too late.”

UBS completed the sale effective Oct. 1, 2020. Mancini later learned that UBS had marketed the portfolio using Carlyle's March 2020 valuations, producing proceeds equal to about 78 percent of Carlyle's September 2020 valuations.

Mancini filed suit against UBS on Nov. 6, 2023 in U.S. Federal District Court, S.D.N.Y., asserting (1) breach of express notice provisions, (2) breach of the UCC duty of commercial reasonableness in the sale process and (3) breach of the implied covenant of good faith and fair dealing.

In March 2026, in response a Federal Rule 12(c) motion by UBS for judgment on the pleadings, Judge Edgardo Ramos granted such motion in part, dismissing all claims but the one alleging a failure to provide commercially reasonable notice, based on credible assertions that UBS began liquidating collateral before the Sept. 10 date specified in its notice.

Analysis/Discussion

A. Breach of Express Contractual Duties

Mancini alleged that UBS breached express contractual duties by failing to provide at least ten days' written notice before disposing of the collateral. However, the court noted the Credit Agreement states that ten calendar days' notice “will be deemed reasonable” notice of the time and place of a public sale or the time after which any private sale may occur.

The court held that this language does not make ten days a contractual minimum. Instead, it tracks NY UCC §9-612(b)'s safe harbor, which deems ten days' notice to be "within a reasonable time" in non-consumer transactions. Accordingly, the Court rejected the claim that UBS had an express contractual duty to provide at least ten days' notice but simply a contractual duty to provide "reasonable" notice.

B. Breach of the Duty of Commercial Reasonableness

1. Through Use of the March 2020 Valuations

Mancini further alleged that UBS violated its duty to exercise commercial reasonableness by marketing collateral by relying on the March 2020 valuations rather than the June 2020 or September 2020 valuations, which were significantly higher than the March 2020 valuations.

Under NY UCC §9-610(a), "[a]fter default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing" and, pursuant to NY UCC §9-610(b), "[e]very aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable."

The court looked to several precedent cases from the Southern and Eastern Districts of New York to frame its analysis of Mancini's allegation, including cases supporting the position that commercial reasonableness is determined by "the totality of the circumstances," such as the *SNCB Corp. Fin. Ltd. v. Schuster*, 877 F. Supp. 820, 828 (S.D.N.Y. 1994), ruling that even if a "marked discrepancy between the price obtained and the value of the collateral may signal a need for closer scrutiny, such a price difference alone does not make a sale commercially unreasonable" and *Liu v. Bank*

of Am., 2010 WL 1702537, (E.D.N.Y. Apr. 28, 2010) ruling that to show "that a sale was commercially unreasonable" based solely on the sale price, "a plaintiff must allege not merely that the property's fair market value exceeded the sale price, but that it did so by an amount that 'shocks the court's conscience.'"

The court observed that the gross sale proceeds represented approximately 78% of the Carlyle September 2020 valuations. It went on to note that courts applying New York law have refused to rely on price disparity alone and cited case law stating that sales at or above 50% of fair market value are commonly upheld. It then held that, even assuming those valuations reflected fair market value, a 22% discount is not so stark as to "shock the conscience." Therefore, the sale price, standing alone, did not state a claim for commercial unreasonableness.

2. Failure to Provide Reasonable Notice

Mancini further alleged that UBS acted in a commercially unreasonable manner by providing inadequate notice of the sale. He claimed that, more than a week before the Sept. 10, 2020 notice date, [he] placed a telephone call to UBS to discuss purchasing the indebtedness and redeeming the collateral himself."

He further alleged that, on that call, and "contrary to the terms of the August 2026 notice, UBS advised him that it had already initiated the process of liquidating the collateral, that he could not repay the loan or redeem the collateral, and that it was 'too late.'" Mancini alleged that he was deprived of the ten days' notice that the parties agreed would be reasonable because UBS started the sale process before the ten-day notice period had concluded and thus deprived him of his statutory right to redeem the collateral under NY UCC §9-623.

Under NY UCC §9-610 to 612, a secured creditor may dispose of collateral after default

if it sends notice within a reasonable time and conducts the sale in a commercially reasonable manner as to time, place, manner, and terms. The notification must state the time and place of a public disposition or the time after which any other disposition is to be made and must be sent within a reasonable time period prior to such disposition. The purpose of the notice requirement is, in part, to allow the debtor an opportunity to protect its interest by exercising the right of redemption.

The court determined that the amended complaint plausibly alleged that UBS had already sold, or begun to sell, at least a portion of the collateral before Sept. 10, 2020 and that any related communication functioned as retroactive notice. As a matter of law, retroactive notice is unreasonable. The court also observed that the Aug. 26 Notice did not cure the deficiency because it identified only an open-ended window (“on or after” Sept. 10) rather than the time after which a specific disposition would be made. Accordingly, the commercially reasonable notice claim was allowed to proceed.

C. Breach of the Implied Covenant of Good Faith and Fair Dealing

Finally, Mancini alleged that the UBS’s sale of the collateral based on March 2020 valuations was not commercially reasonable and therefore violated its implied covenant of good faith and fair dealing. The court disposed of this final claim with little fanfare, holding that the assertion was simply a restatement of the claim of lack of commercial reasonableness and therefore must also be dismissed.

Conclusion

This case underscores that, absent a clear statutory violation, courts will look first to the parties’ contract. Under the NY UCC, the ten-day period in §9-612(b) is a safe harbor—not a mandatory minimum—and a commercially reasonable sale may occur with less than ten days’ notice. Contractual clauses deeming ten days “reasonable” generally do not transform the safe harbor into a contractual floor.

Debtors should consider negotiating specific procedures for collateral dispositions, including marketing steps and bidder access, if they want protections beyond the Article 9 baseline. Price alone rarely suffices to show commercial unreasonableness, as illustrated by NY UCC §9-627, which states “[t]he fact that a greater amount could have been obtained... is not of itself sufficient to preclude the secured party from establishing that the... disposition... was made in a commercially reasonable manner.” Courts assess the totality of the circumstances, industry practices, and process quality when applying NY UCC §9-610(b).

Secured creditors, in turn, should send clear, timely notices that comply with the agreement and Article 9, document marketing and valuation steps, and avoid any actions that could be construed as retroactive notice. Careful adherence to NY UCC §§9611, 9612, and 9613, along with alignment to recognized market practices under and the other guidance provided by NY UCC §9627 with respect to when conduct is commercially reasonable, reduces litigation risk.

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