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Article 1: General Provisions (Comment) of Uniform Commercial Code Annotations

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UNIFORM COMMERCIAL CODE ANNOTATIONS

This section contains a digest of all reported decisions interpreting provisions of the Uniform Commercial Code published from the first week in March, 1965, through the first week in July, 1965, in the National Reporter System.

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ARTICLE 1: GENERAL PROVISIONS

SECTION 1-104. Construction Against Implicit Repeal

IN RE KING FURNITURE CITY, INC.
240 F. Supp. 453 (E.D. Ark. 1965)
Annotated under Section 9-104, *infra*.

SECTION 1-108. Severability

ROCK ISLAND AUCTION SALES, INC. v. EMPIRE PACKING CO.
204 N.E.2d 721 (Ill. 1965)
Annotated under Section 4-302, *infra*.

SECTION 1-201. General Definitions

AL MAROONE FORD, INC. v. MANHEIM AUTO AUCTION, INC.
208 A.2d 290 (Pa. 1965) [Section 1-201(9)]

On April 6, 1961, Brown bought a new automobile in New York from Maroone Ford under an installment sales contract which Maroone immediately assigned to the plaintiff bank. On the same day, Brown drove the car to Pennsylvania, executed a New York certificate of sale and delivered the car to the defendant. The certificate of sale designated "Kirby's Used Cars" as the dealer and indicated that "Kirby's Used Cars" was the owner of the car. Subsequently, on April 12, 1961, the plaintiff recorded the contract. The plaintiff brought a replevin action to recover the car. At the trial it was established that Brown traded as "Kirby's Used Cars," but that he had signed the certificate of sale in his own name without indicating that he was trading as "Kirby's Used Cars." The lower court found for the defendant on the ground that under Section 1-201(9) of the Code he was a "buyer in ordinary course of business" and that he therefore took the car free of the plaintiff's security interest under Section 9-307(1).

In reversing the lower court and entering judgment for the plaintiff, the superior court first held that the defendant could not prevail under Section 9-307(1) since it was not a "buyer in ordinary course" as defined in Section 1-201(9). Under this section, the defendant had to purchase the car from a "person in the business of selling goods of that kind." The evidence, however, was insufficient to show that Brown, from whom the defendant had purchased the car, was a dealer in automobiles. Furthermore, according to Comment 2 to Section 9-307, a sale in ordinary course normally means a sale from inventory, and there was no indication that the sale in the present case was from inventory. The court then held that the defendant could not prevail under Section 9-301(1)(c), even though he had given value and received delivery, because the plaintiff's interest was perfected in New York, under Section 9-103(3), when the defendant purchased the car from Brown.

The defendant also contended that the plaintiff had lost its perfected security interest by failing to file in accordance with Section 9-103(3) within four months after the car had been brought into Pennsylvania. The court held that the plaintiff's failure to file did not help the defendant since the plaintiff's interest was perfected at the time the defendant bought the car.

COMMENT

The court correctly held that even though the plaintiff did not file until April 12, 1961, his security interest was perfected on April 7, 1961, the day the defendant had purchased the car from Brown. Section 9-103(3) of the Pennsylvania Code provides that the validity of the plaintiff's security interest was to be determined by New York law, and under the New York Conditional Sales Act, the "security interest was perfected at once when the contract took effect, subject to losing its priority if the contract was not filed in time [within ten days of the execution of the contract]." See *Casterline v. General Motors Acceptance Corp.*, 195 Pa. Super. 344, 171 A.2d 813 (1961).

The court, however, was incorrect in implying that the relevant time of perfection was the time at which the defendant had purchased the car. Under Section 9-103(3), if the security interest is to continue "perfected in this state for four months," the security interest must be perfected before the goods are "brought into this state." See *Casterline v. General Motors Acceptance Corp.*, supra. This, of course, would not require a different result in the present case since the plaintiff's security interest was perfected under New York law before the car was brought into Pennsylvania. It would have called for a different result, however, had the plaintiff filed his interest eleven days after the sale and had the defendant purchased the car twelve days after the sale. In this fact situation, under the rule in the present case, the plaintiff would still have prevailed since its interest would have been perfected "when the appellee [the defendant] bought the car." However, since the plaintiff's interest would not have been perfected before the car was brought into Pennsylvania, under Section 9-103(3) his interest would not have been perfected in Pennsylvania. Therefore, under Section 9-301(1)(c) the defendant should have prevailed.

S.L.B.

KORESKA V. UNITED CARGO CORP.

258 N.Y.S.2d 432 (App. Div. 1965) [Section 1-201(20)]
Annotated under Section 7-303, *infra*.

GREATER LOUISVILLE AUTO AUCTION, INC. V. OGLE BUICK, INC.

387 S.W.2d 17 (Ky. 1965) [Section 1-201(23)]
Annotated under Section 2-507, *infra*.

IN RE KING FURNITURE CITY, INC.

240 F. Supp. 453 (E.D. Ark. 1965) [Section 1-201(25)]
Annotated under Section 9-104, *infra*.

IN THE MATTER OF WHEATLAND ELEC. PROD. CO.

237 F. Supp. 820 (W.D. Pa. 1965) [Section 1-201(37)]

On December 27, 1960, Burroughs Corporation leased to Wheatland certain machinery. The lease gave Wheatland the option to purchase the machinery during, or within thirty days after, the lease period at a list price of \$8,000 with seventy-five percent of the rentals paid prior to the purchase date to be applied to not more than seventy-five percent of the list price. On May 16, 1962, the parties entered into a new lease agreement which provided that the purchase option was to be exercised within thirty-six months of the execution of the original lease or to terminate automatically. On May 16, 1963, a lease extension rider was executed continuing the lease for one year, but omitting a purchase option provision. The option terminated automatically on December 27, 1963, pursuant to the lease of May 16, 1962.

Subsequently, Wheatland filed a petition in bankruptcy. Burroughs, in turn, filed a petition for reclamation of the machinery. The referee in bankruptcy refused Burroughs' petition on the ground that the lease was a security agreement under Section 1-201(37) of the Code, and, since this agreement had not been filed as required under Section 9-302, it was invalid as against the trustee. The district court reversed the referee's finding.

The court first held that since the lease contained an integration clause, only the language of the lease could be considered, under Section 2-202, in determining whether the lease had been intended as security within the terms of the Code. The court then found that the lease had not been intended as security and therefore held that Section 9-302 did not require Burroughs to file the agreement in order to prevail against the trustee.

In determining that the lease had not been intended as security, the court relied upon Section 1-201(37). This section provides in part that "the inclusion of an option to purchase does not of itself make the lease one intended for security." It further provides, however, that "an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security." The court found that the minimum of twenty-five percent of the list price, or \$2,000, which Wheatland was to pay to purchase the machinery, was not "nominal consideration." Thus, it was not sufficient to show that the parties intended the lease as security. Furthermore, the fact that the purchase option

was not included in the lease extension rider indicated that the parties did not intend the lease as security.

COMMENT

(1). In *United Rental Equip. Co. v. Potts & Callahan Constr. Co.*, 231 Md. 552, 191 A.2d 570 (1963), it was held that where a lessee had the right to apply eighty-five percent of a rental of \$800 a month against the purchase price of \$14,500, the owner retained nothing more than a security interest in the property by virtue of Section 1-201(37). Similarly, in *In Re Royer's Bakery, Inc.*, 56 Berks County L.J. 48 (1963), the court held that giving the lessee the right to apply eighty percent of the total rentals against the purchase price was sufficient to show that the parties intended the agreement as security.

In the instant case, however, although Wheatland had the right to apply seventy-five percent of the rental, he could only use this against seventy-five percent of the list price. While it was possible that there would be no "additional consideration" in *United Rental* and *Royer's Bakery*, twenty-five percent of the list price, or \$2,000, had to be paid if Wheatland desired to become owner of the machinery. These cases thus show that if a lease contains a purchase option which provides that *all* of the price may be paid by all or a percentage of the rental, it is intended as security under Section 1-201(37).

(2). Even though Article 2 is entitled "Sales," the court properly applied the parol evidence rule of Section 2-202 to the lease agreement. See Willier & Hart, *Forms and Procedures under the Uniform Commercial Code* ¶ 12.02 (1964).

R.J.D.

IN THE MATTER OF MERKEL, INC.

258 N.Y.S.2d 118 (Sup. Ct. 1965) [Section 1-201(37)]
 Annotated under Section 9-301, *infra*.

IN THE MATTER OF EXCEL STORES, INC.

341 F.2d 961 (2d Cir. 1965) [Section 1-201(39)]
 Annotated under Section 9-402, *infra*.

SECTION 1-205. Course of Dealing and Usage of Trade

KORESKA V. UNITED CARGO CORP.

258 N.Y.S.2d 432 (App. Div. 1965)
 Annotated under Section 7-303, *infra*.

ARTICLE 2: SALES

SECTION 2-105. Definitions: Transferability; "Goods"; "Future" Goods; "Lot"; "Commercial Unit"

STERN & CO. V. STATE LOAN & FIN. CORP.

238 F. Supp. 901 (D. Del. 1965)
 Annotated under Section 2-202, *infra*.