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Priority of Claims Between Holders of Unrecorded Chattel Mortgages - Plaza Corp. v. Alban

Daniel W. Moylan

Priority Of Claims Between Holders Of Unrecorded Chattel Mortgages

Plaza Corp. v. Alban[1]

After deciding that the Alban Tractor Co., Inc. (Alban), had "waived" its rights under a recorded conditional sales contract by subsequently taking a chattel mortgage on the same property, the Court of Appeals had to determine the priority between that mortgage and a mortgage on the property to the Plaza Corporation (Plaza), executed after the conditional sale to Alban but before the chattel mortgage to it. Plaza had promptly mailed its mortgage for recording to the Circuit Court of Baltimore County, where the mortgagor's principal place of business was situated. The mortgage was set out in its entirety in the Baltimore County Land Records, but the clerk failed to list a notation of this mortgage in the Chattel Record index, as is required for all mortgages which cover both real and personal property.[2] On the other hand, Alban's chattel mortgage was recorded in Baltimore City, where Alban believed the mortgagor's principal place of business to be situated.[3] The Court of Appeals, in reversing and entering judgment for Plaza, held that, both mortgages being in legal effect unrecorded, the prior mortgage to Plaza had priority under the chattel mortgage recordation statutes.

The impact of the instant case cannot fully be appreciated without first exploring the wilderness that had heretofore existed in this area prior to the 1949 amendment to one of Maryland's chattel mortgage recordation statutes.

Generally, at common law, the only chattel mortgages that were valid against subsequent purchasers or creditors

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[1] 219 Md. 570, 151 A. 2d 170 (1959). [Editor's Note: This note was withheld from publication until now, pending further litigation involving the parties. See Wethered v. Alban Tractor Co., ... Md. ..., 168 A. 2d 358 (1961)].

[2] 2 MD. CODE (1957) Art. 17, §§ 50, 54; see also BALTIMORE COUNTY CODE (Everstine, 1955) §§ 26, 27.

[3] 2 MD. CODE (1957) Art. 21, §§ 45, 46, require a chattel mortgage to be recorded where the mortgagor "resides." A corporation "resides," for this purpose, in that place where its articles of incorporation state its principal office to be. O'Toole Tire Co. v. Gaither, Inc., 216 Md. 54, 139 A. 2d 252 (1958).

without notice were those accompanied by delivery of possession.[4] Maryland, in addition, upheld the validity of certain secret conveyances against such persons even though the debtor retained possession.[5] The Legislature, in 1729, wishing to prevent all secret liens,[6] enacted a statute which provided that:

> ". . . no goods or chattels, whereof the . . . mortgagor . . . shall remain in possession, shall pass, alter or change, or any property therein be transferred to any . . . mortgagee . . . unless the same be in writing, and acknowledged. . . ."
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> "PROVIDED ALWAYS, That nothing in this act shall extend, or be construed to extend, to make void any such . . . mortgage . . . against such mortgagor . . . or any claiming under him. . . ."[7]

Even in the absence of delivery or recording, however, the holder of an unrecorded mortgage still prevailed as against the mortgagor, parties claiming under the mortgagor, parties with notice of the mortgage, and antecedent creditors who failed to perfect their liens prior to the execution of the unrecorded mortgage.[8] Delivery of possession to the mortgagee charged third parties with actual notice of the lien, whereas recording as prescribed by the statute gave them constructive notice.

In 1856, the Legislature enacted a statute which required the acknowledgment and recording of a chattel mortgage whether or not delivery of possession was made to the mortgagee:

> "Mortgages of personal property shall be valid and take effect, except as between parties thereto, only from the time of recording; and in case of more than one mortgage, the one first recorded shall have preference."[9]

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[4] *Supra*, n. 1, 585; 1 JONES, CHATTEL MORTGAGES AND CONDITIONAL SALES (6th ed. 1933) § 176.

[5] *Supra*, n. 1, 586; Hambleton v. Hayward, 4 H. & J. 443 (Md. 1819) (retention of possession said to be not *per se* fraudulent before Act of 1729, although it presented grounds for suspicion).

[6] MD. LAWS 1729, Ch. 8, § 5.

[7] MD. LAWS 1729, Ch. 8, §§ 5, 6.

[8] Clagett et al. v. Salmon, 5 G. & J. 314, 346 (Md. 1833) (unrecorded chattel mortgage legally operative against the mortgagor and all claiming under him).

[9] MD. LAWS 1856, Ch. 154, § 143.

This statute apparently was intended to render all unrecorded mortgages absolutely void except as between the parties thereto. However, the Maryland Court of Appeals refused to read the statute literally and consistently stated the rule that:

> "Defectively executed or unrecorded chattel mortgages have been held to be preferred in the state [Maryland] as to prior existing creditors, equal to general subsequent creditors, but subject to later lien creditors whose liens were duly executed and recorded or secured."[10]

Under the above-stated rule, which remained the Maryland law until 1949, the Court seemingly allowed the holder of an unrecorded chattel mortgage to prevail over a prior existing creditor for two reasons (1) The prior creditor who extended credit before the execution of the chattel mortgage could not have been deceived by the mortgagee's failure to record. (2) The prior general creditor did not secure his claim in any way.[11]

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[10] Motor Car Co. v. First Nat. Bank, 154 Md. 77, 83, 140 A. 34 (1928) (*dictum*). The Court of Appeals in Plaza Corp. v. Alban, 219 Md. 570, 588, 151 A. 2d 170 (1959), quoted this sentence. See also Tyler Co. v. O'Ferrall, 153 Md. 353, 356, 138 A. 249 (1927) (holder of an invalidly executed chattel mortgage preferred over all prior existing unsecured creditors); Davis v. Harlow, 130 Md. 165, 100 A. 102 (1917) (trustee in bankruptcy has the status of a lien creditor); Praeger v. Implement Co., 122 Md. 303, 308, 89 A. 501 (1914); Textor v. Orr, 86 Md. 392, 398, 38 A. 939 (1897) (equitable lien enforceable against the mortgagor and the assignee of the mortgagor for the benefit of creditors); Stanhope v. Dodge, 52 Md. 483 (1879).

The Legislature in 1916 enacted a statute, MD. LAWS 1916, Ch. 355, § 53B, requiring conditional sales contracts to be recorded in order to be valid against third parties without notice. The Court of Appeals construed the protection to third parties to be the same under this statute as it did under the ones pertaining to chattel mortgages, despite dissimilarities in the wordings. Roberts & Co. v. Robinson, 141 Md. 37, 43, 118 A. 198 (1922), in discussing the rights of a subsequent general creditor as against the holder of a prior unrecorded conditional sales contract, said:

> "As between the immediate parties, the contract is valid, but 'as to third persons without notice' it is declared to be void until placed upon the public records in the manner prescribed. . . . If it [conditional sales recordation statute] had been intended to protect only purchasers and lienors, that purpose would have been expressed. The general terms employed indicate that the statute was designed to safeguard the interest of all persons, acting without notice of the unrecorded contract, who would be injuriously affected if it were permitted to be enforced."

See Arnold, *Conditional Sales of Chattels in Maryland*, 1 Md. L. Rev. 187, 198 *et seq.* (1937).

[11] Compare language of Gunby v. Motor Truck Corp., 156 Md. 19, 25, 142 A. 596 (1928), with cases cited *supra*, n. 10.

In *Gunby v. Motor Truck Corp.*,[12] a party who extended credit prior to the execution of an unrecorded conditional sale and then subsequent thereto obtained a lien was not afforded protection as against the holder of an unrecorded conditional sale. Despite the diligence exercised by the antecedent creditor, the Court held against him, reasoning that he, a prior party, could not have been deceived by the conditional vendor's failure to record. A close reading of the *Gunby* case seems to indicate that the holder of an unrecorded chattel mortgage would have been similarly protected under the same circumstances.

In 1949, the Legislature amended the Act of 1729 (which had been re-enacted without substantial change in 1856), with the obvious purpose of limiting protection to the specified groups of third persons named therein:

> "No personal property . . . whereof the . . . mortgagor . . . shall remain in possession, shall pass, alter, or change, or any property therein shall be transferred to any . . . mortgagee . . . as against *subsequent purchasers, mortgagees, incumbrancers, landlords with liens, pledgees, receivers, and creditors who acquired a lien by judicial proceedings on such personal property,* unless by . . . mortgage acknowledged and recorded as herein provided; but nothing herein shall be construed to extend to any sale or gift, where the same is accompanied by delivery, nor to invalidate such transfer as between the parties thereto."[13]

Although subsequent purchasers and lienors were still among those protected, the statute eliminated the protection that had been previously afforded to subsequent general creditors who failed to obtain liens before recordation of the mortgage.[14]

A question is raised under this statute as to whom the Legislature intended to be included in the protected classification of "subsequent" parties.

Tatelbaum v. Nat'l Store Etc. Co.[15] indicated in *dictum* that Maryland seems to have abandoned its peculiar principle of protecting subsequent purchasers, lienors, and

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[12] 156 Md. 19, 25, 142 A. 596 (1928).

[13] 2 MD. CODE (1957) Art. 21, § 41. This conditional sales recordation statute, discussed *supra*, n. 10, was similarly amended in 1949. 2 MD. CODE (1957) Art. 21, § 66.

[14] Tatelbaum v. Natl. Store Etc. Co., 196 Md. 599, 78 A. 2d 228 (1951) (*dictum*).

[15] *Ibid.*

general creditors without notice, and to have adopted a race of diligence — in which any creditor, antecedent or subsequent, who obtains a lien would be preferred to the holder of an unrecorded chattel mortgage.

In the *Plaza* case,[16] the specific issue was whether a subsequent mortgagee had to have his mortgage recorded in order to have a claim superior to that of the holder of a prior unrecorded mortgage on the same property. The Court answered this question in the affirmative despite the language of the 1949 amended statute, since codified as Article 21, Section 41, which provides that "[n]o personal property . . . whereof the mortgagor . . . shall remain in possession, shall pass . . . to any . . . mortgagee . . . as against subsequent . . . mortgagees . . . unless by . . . mortgage acknowledged and recorded as herein provided. . . ."[17] When read alone, Section 41 seems to indicate the opposite result should have been reached. The Court of Appeals, however, in reading Section 41 together with the Act of 1856, now codified as Article 21, Section 48,[18] reasoned that a party does not gain the status of "subsequent . . . mortgagee" within the meaning of the statute until his mortgage has been acknowledged and recorded.[19] Otherwise, Section 48 would be in direct conflict with Section 41, and it can be assumed that if the Legislature intended such a result it would have repealed Section 48 in 1949. Thus, so long as two chattel mortgages remain unrecorded, the one that was executed prior in time takes precedence because the holder of the latter is nothing more than a subsequent general creditor until he records.[20]

The Court's construction of Sections 41 and 48 seems to be the proper one. By requiring a "subsequent" mortgagee to record, the Court seems to be following the legislative intent of withdrawing the protection previously given to subsequent general creditors and limiting it to the group specified in the 1949 amendment. Also, such a construction is in accord with the common law rule, generally followed

[16] Plaza Corp. v. Alban, 219 Md. 570, 151 A. 2d 170 (1959).
[17] 2 MD. CODE (1957) Art. 21, § 41.
[18] 2 MD. CODE (1957) Art. 21, § 48.
[19] *Supra*, n. 15, 590.
[20] *Ibid.* For a case in apparent opposition but reconciliable due to statutory difference, see Stem v. Crawford, 133 Md. 579, 105 A. 780 (1919). There the Court had to determine the rights between two successive purchasers of the same wheat crop. Neither purchaser had taken possession nor recorded a bill of sale. The Court held in favor of the subsequent purchaser, saying that his failure to have a bill of sale recorded could only be important if there were a purchaser subsequent to him.

in this country, of determining the rights between the two holders of unrecorded chattel mortgages according to the priority in their execution.[21]

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[21] 4 AMERICAN LAW OF PROPERTY (1952) § 17.5, 545; 1 JONES, CHATTEL MORTGAGES AND CONDITIONAL SALES (6th ed. 1933) § 176; 45 Am. Jur. 504, Records & Recording Laws, § 143; 59 C.J.S. 337, Mortgages, § 274.

The above rule does not apply if there is a statute which makes an unrecorded conveyance absolutely void after a certain specified time has elapsed. Notwithstanding the statutory requirements in 2 MD. CODE (1957) Art. 21, § 46, which provides that "[a] mortgage of personal property shall be executed, acknowledged and recorded as bills of sale," and § 45, which provides that "[b]ills of sale shall be recorded . . . within twenty days from the date thereof," the Court of Appeals in Balto. Credit Union v. Thorne, 214 Md. 200, 134 A. 2d 84 (1957), held that a chattel mortgage was valid and gave constructive notice from the date recorded whether within twenty days or not.