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Article 1: General Provisions

Robert I. Deutsch

Burton M. Harris

Stuart L. Potter

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UNIFORM COMMERCIAL CODE ANNOTATIONS

This section contains a digest of all reported decisions from jurisdictions interpreting provisions of the Uniform Commercial Code published from March 1, 1963 through August 21, 1963, in the National Reporter System. Case citations preceded by a dagger (†) indicate decisions which are based upon language contained in the 1953 Official Version of the Code; those preceded by a double dagger (‡), the 1962 Official Version from which Code extracts herein used are taken. Case citations preceded by an asterisk (*) indicate decisions construing or interpreting provisions of the Code even though the Code did not govern the decision. All other decisions are based upon the 1958 Official Version.

ROBERT I. DEUTSCH
BURTON M. HARRIS
STUART L. POTTER

ARTICLE 1: GENERAL PROVISIONS

SECTION 1-103. Supplementary General Principles of Law Applicable

Unless displaced by the particular provisions of this Act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

CASES ANNOTATED UNDER OTHER SECTIONS

COMMONWEALTH BANK & TRUST CO. v. KEECH
— Pa. Super. —, 192 A.2d 133 (1963)
See the Annotation to Section 2-602(1), *infra*.

SECTION 1-201. General Definitions

Subject to additional definitions contained in the subsequent Articles of this Act which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act:

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to Article 9. The special property interest of a buyer of goods on identification

of such goods to a contract for sale under Section 2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (Section 2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) 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.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collection (Sections 3-303, 4-208 and 4-209) a person gives "value" for rights if he acquires them

- (a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or
- (b) as security for or in total or partial satisfaction of a pre-existing claim; or
- (c) by accepting delivery pursuant to a pre-existing contract for purchase; or
- (d) generally, in return for any consideration sufficient to support a simple contract.

ANNOTATION

SPURLIN V. SLOANE

368 S.W.2d 314 (Ky. 1963)

During the course of their work under a road contract with the state, Burchett became indebted to his partners. When the road was completed, he assigned his share of the contract money due from the state to his partners and, according to the terms of the assignment, the state agreed to mail the amount due to a creditor-bank of the partners. Before it did so, the contract money was attached by plaintiff, a judgment creditor of Burchett. In an action to establish the priority of his lien, the plaintiff contended that the assignment was of a significant part of Burchett's contract rights which had not been perfected as required by Section 9-302(1)(e), and that, as a result, the rights of the partners were inferior to those of the plaintiff, a lien creditor, under Section 9-301(1)(b). The trial court rejected the argument and awarded judgment to the assignees.

Upon appeal, the judgment was affirmed, the court holding first that the assignment was not of a "contract right" but of an "account" as defined in Section 9-106, and second, that the assignment was not a security transaction as defined in Section 1-207(37) of the Code. No part of the Uniform Commercial Code, the court concluded, ". . . applies to a written assignment of

funds presently due and owing for the purpose of liquidation or satisfying a prior existing obligation."

COMMENT

1. The court properly decided that Burchett had assigned an account, not a contract right, because the money was due for services already performed at the time of assignment. The distinction has little bearing on the issue since either an account or a contract right may serve as collateral in a secured transaction as provided in Section 9-102. The assignment of either is subject to the same rules for perfection under Section 9-302 and Section 9-102 provides that either may be the subject of sale.

2. Both Section 9-302(1)(e), which requires filing to perfect security interests, and Section 9-301(1)(b), which provides that an unperfected security interest is subordinate to the rights of a lien creditor without knowledge of the security interest, presuppose the existence of a security interest which, by the principal definition of Section 1-201(37), must *secure* payment of an obligation. An "... assignment ... to pay off a loan ..." could not have been intended merely to secure payment of the loan.

3. The plaintiff failed to use the argument that the satisfaction of an existing debt by an assignment of an account (or contract right) constitutes a sale of that account, which is also included in the definition of "security interest" and within the purview of Article 9. The word "sale," as used in Article 9, is undefined; therefore, it may not be improper to say that the account in the instant case was *sold* for the release from indebtedness. A sale of goods does not require a price in money and Section 2-304(1), although applying to sales of goods, courts may well use by analogy for the meaning of the word "sale" as it applies to accounts or contract rights.

Such a result, it is arguable, is commercially desirable since Article 9 is designed to protect innocent creditors from a secret transfer of substantial intangible assets upon which they relied.

S.L.P.

ANNOTATION

UNITED RENTAL EQUIP. CO. V. POTTS & CALLAHAN CONTRACTING CO.
— Md. —, 191 A.2d 570 (1963)

In 1960, United leased an air compressor to lessee at \$800 per month for a minimum period of one month under a writing which also provided that the lessee would continue to pay the \$800 per month until the compressor was returned to United and that 85% of the rental was to be applied toward the purchase price of \$14,500. United had the right to terminate at any time. The lease, which was neither recorded nor filed, was executed in New Jersey and the compressor was to be used in Pennsylvania.

While in possession of the compressor, the lessee gave a judgment note for \$24,000 to Mayers and subsequently mortgaged the compressor to Standard for \$6,600. Approximately four months after the last transaction took place, Mayers obtained judgment against the lessee and caused the compressor to be attached and sold at a judicial sale to Potts for \$5,900. Shortly after the sale, United advised Potts that it claimed title to the compressor. Prior to this

time Potts, Mayers and Standard had had no knowledge of the lease agreement. Standard petitioned the court to have its mortgage claim paid from the proceeds of the sale. Potts intervened as plaintiff and joined United, Mayers and Standard as defendants. The lower court held that Potts' title to the compressor was unassailable, and United appealed.

In affirming, the court first determined that because the compressor was to be used in Pennsylvania, the law of that state applied. It then held that under Section 1-201(37) the lease created a security interest since the application of 85% of the rental to the purchase price was sufficient to show the lease was intended to be a secured transaction. Since the lease was within the scope of Article 9 by Section 9-102(2), perfection under Section 9-301(1)(b) was required to protect United's security interest from a subsequent lien creditor of the lessee.

COMMENT

The court in effect found that the lease contained not a mere option to purchase which, alone, would be insufficient to establish a secured transaction, but rather an agreement whereby the "lessee" would become or have the option to become the owner upon compliance with the lease and for no additional or only nominal consideration. The 85% application to the agreed price apparently met the last requirement. Even though the lessor had the right to terminate the lease at any time and the lessee was under no obligation beyond one month, the court impliedly found that the lessee had an option to purchase by which the lessor was bound whenever and for whatever reason the lease arrangement terminated. This is no doubt a correct result under Section 1-201(37).

B.M.H.

CASES ANNOTATED UNDER OTHER SECTIONS

UNITED REFRIGERATOR CO. V. APPLEBAUM
410 Pa. 210, 189 A.2d 253 (1963)
See the Annotation to Section 3-415(5), *infra*.

SECTION 1-207. Performance or Acceptance Under Reservation of Rights

A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

CASES ANNOTATED UNDER OTHER SECTIONS

COMMONWEALTH BANK & TRUST CO. V. KEECH
— Pa. Super. —, 192 A.2d 133 (1963)
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