

10-1-1963

Article 9: Secured Transactions

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Recommended Citation

Robert I. Deutsch, Burton M. Harris, and Stuart L. Potter, *Article 9: Secured Transactions*, 5 B.C.L. Rev. 170 (1963), <http://lawdigitalcommons.bc.edu/bclr/vol5/iss1/14>

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render of the policies. When both policies had matured, the United States sought to obtain their face value as partial payment of the delinquent taxes owed by the insured taxpayer. The taxpayer could not be found in the district and service was by publication. The policies were in Florida.

Among its other defenses, the insurer argued that the policies were analogous to investment securities and the United States could not validly levy on them unless they could actually be physically attached. The court entered summary judgment for the United States, holding that the policies, being non-negotiable, were not analogous to investment securities which require, under Section 8-317, physical seizure for attachment. Since the interests in a non-negotiable insurance policy were similar to interests in any contract, the court had the power to deal effectively with the obligation by jurisdiction over the obligor.

B.M.H.

ARTICLE 9: SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

SECTION 9-102. Policy and Scope of Article

(1) Except as otherwise provided in Section 9-103 on multiple state transactions and in Section 9-104 on excluded transactions, this Article applies so far as concerns any personal property and fixtures within the jurisdiction of this state

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in Section 9-310.

(3) The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

CASES ANNOTATED UNDER OTHER SECTIONS

SPURLINE V. SLOANE

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

See the Annotation to Section 1-201(37), *supra*.

UNITED RENTAL EQUIP. CO. V. POTTS & CALLAHAN CONTRACTING CO.

— Md. —, 191 A.2d 570 (1963)

See the Annotation to Section 1-201(37), *supra*.

**SECTION 9-106. Definitions: "Account"; "Contract Right";
"General Intangibles"**

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments.

ANNOTATION

*McLAUGHLIN v. NEW ENGLAND TEL. & TEL. CO.

— Mass. —, 188 N.E.2d 552 (1963)

In each of five construction contracts between a contractor and the telephone company there appeared a specific clause prohibiting the contractor's assignment of monies due or to become due under the contracts without the prior written consent of the telephone company. Without consent, the contractor assigned to a bank amounts due or becoming due under the different contracts with the telephone company using the bank's accounts receivable forms for each of several assignments and "scheduling" such amounts with inexactitude on the reverse of the forms. The telephone company was notified of the assignments but it refused to recognize their validity and continued to make its payments directly to the contractor. When the contractor went bankrupt, the telephone company, by consent, paid into court the money due under the contracts, which money was claimed by both the trustee in bankruptcy and the bank. The lower court found that at the time of the assignments and the bankruptcy petition the debts of the telephone company were contemplated rather than existing and were therefore not "accounts" as defined by the then controlling statute. Since the contractor purported to assign accounts, and accounts only, the court held that the bank was not entitled to any part of the fund paid into court by the telephone company.

Upon appeal, the court concurred with the finding below that future accounts had not been assigned, but it modified the decision on the basis that some of the amounts due from telephone company consisted of fixed fees which were owing at the time of the assignments. Such fees were properly accounts, and as to them, the assignments were valid, subject, however, to the right of the telephone company to enforce the prohibition clauses, which, by payment into court, it failed to do. The prohibition clauses, said the court, were not invalid "in the absence of a clear statement to that effect as is found in § 9-318(4) of the Uniform Commercial Code. . . ."

COMMENT

Section 9-106, which distinguishes accounts from contract rights, would not have required a different holding had the case been controlled by the UCC. The dispositive fact in the present case was not that contract rights (future accounts) could not be assigned but that the assignment of such rights was not established by the assignee-bank. This was probably not, however, the

* Code construed but did not govern the case.

result the bank had anticipated. Under the Code, an assignee would avoid such a literal reading of its assignment agreement by providing that the assignment covered *all* present and future contract rights *and* accounts of the assignor, either under a broad standing agreement or under separate assignments which referred to the specific contract rather than to specific items or amounts due under it. Schedules of such amounts should be separate from the agreement and for the purpose of bookkeeping, identification, and enforcement only. The definitions of "contract right" and "account" in Section 9-106 make the inclusion of both almost essential in such an assignment to avoid possible misconstruction under the after-acquired collateral and attachment provisions of Section 9-204.

The court suggested by way of dicta that a clause prohibiting the assignment of accounts would be invalid under the Code, Section 9-318(4). This would seem to mean that such a clause will in the future be read out of the contract entirely.

S.L.P.

CASES ANNOTATED UNDER OTHER SECTIONS

SPURLIN V. SLOANE

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

See the Annotation to Section 1-201(37), *supra*.

SECTION 9-204. When Security Interest Attaches; After-Acquired Property; Future Advances

(1) A security interest cannot attach until there is agreement (subsection (3) of Section 1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

CASES ANNOTATED UNDER OTHER SECTIONS

*McLAUGHLIN V. NEW ENGLAND TEL. & TEL. CO.

— Mass. —, 188 N.E.2d 552 (1963)

See the Annotation to Section 9-106(1), *supra*.

SECTION 9-301. Persons Who Take Priority Over Unperfected Security Interests; "Lien Creditor"

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;

CASES ANNOTATED UNDER OTHER SECTIONS

SPURLIN V. SLOANE

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

See the Annotation to Section 1-201(37), *supra*.

* Code construed but did not govern the case.

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

See the Annotation to Section 1-201(37), *supra*.

SECTION 9-302. When Filing Is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Article Do Not Apply

(1) A financing statement must be filed to perfect all security interests except the following:

- (e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

CASES ANNOTATED UNDER OTHER SECTIONS

SPURLIN v. SLOANE

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

See the Annotation to Section 1-201(37), *supra*.

SECTION 9-318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective.

CASES ANNOTATED UNDER OTHER SECTIONS

*MCLAUGHLIN v. NEW ENGLAND TEL. & TEL. CO.

— Mass. —, 188 N.E.2d 552 (1963)

See the Annotation to Section 9-106(1), *supra*.

SECTION 9-402. Formal Requisites of Financing Statement; Amendments

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

* Code construed but did not govern the case.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in

- (a) collateral already subject to a security interest in another jurisdiction when it is brought into this state under such circumstances.
- (b) proceeds under Section 9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

CASES ANNOTATED UNDER OTHER SECTIONS

NATIONAL CASH REGISTER CO. v. FIRESTONE & CO.

— Mass. —, 191 N.E.2d 471 (1963)

See case note, *infra*, for a summary and full discussion of this case.