

10-1-1960

Article 9: Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper

Scott R. Foster

Richard P. Delaney

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/bclr>



Part of the [Secured Transactions Commons](#)

Recommended Citation

Scott R. Foster and Richard P. Delaney, *Article 9: Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper*, 2 B.C.L. Rev. 111 (1960), <http://lawdigitalcommons.bc.edu/bclr/vol2/iss1/9>

This Uniform Commercial Code Commentary is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Law Review by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

Marks v. Lehigh Brickface, Inc., 19 Pa. D. & C. 2d 666 (1960)

In an action by home owners for the return of the purchase price of artificial stone which defendant applied to the cinder block wall of their house, their out-of-pocket expenses, and punitive damages for the fraud of defendant in knowingly misrepresenting the quality and colorfastness of the product, plaintiffs need not return or offer to return the stone which had been applied to the house since, under Section 2-711, they had a lien on the stone until the purchase price had been refunded.

N.B. This case was decided under the 1953 draft of the Code in which Section 2-711 read: "(3) On rightful rejection or justifiable revocation of acceptance a buyer who has paid all or a part of the price has a security interest in goods in his possession or control for the amount paid plus any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may on notifying the seller of his intention to do so, hold such goods and resell them in like manner as an aggrieved seller."

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

SECTION 9-103. **Accounts, Contract Rights, General Intangibles and
Equipment Relating to Another Jurisdiction; and
Incoming Goods Already Subject to a Security
Interest**

(1) If the office where the assignor . . . keeps his records . . . is in this state, the validity and perfection of a security interest . . . is governed by this Article.

Industrial Packaging Products Co. v. Fort Pitt Packaging International Inc., 399 Pa. 643, 161 A.2d 19 (1960)

Although a contract, whereby Pennsylvania borrower's interest in a government contract was assigned to a lender, provided that agreement and performance thereof should be governed by the laws of New York, the laws of Pennsylvania governed the proceedings dealing with the rights of creditors of the borrower who had been placed in receivership.

SECTION 9-108. **Where After-Acquired Collateral Not Security for
Antecedent Debt**

Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value

(Where a cited case interprets only a portion of a Code section only that portion is set out)

and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

Erb v. Stover, 19 Pa. D. & C. 2d 25 (1959)

Where plaintiff made installment sale of cattle to debtor subject to security agreements providing seller with a security interest in any cattle subsequently acquired by the debtor as replacements or additions, and where the debtor while in default in his installment payments sold to a dealer the cattle covered by the agreements as well as cattle subsequently acquired and not specifically included in the security agreements, the dealer who sold all the cattle for a sum in excess of the amount due the plaintiff with the knowledge of the plaintiff's security interest and claim in the additional cattle, is liable to pay installment creditor the full amount of the latter's claim by reason of the after-acquired property provisions in the security agreements. In the absence of any conflicting purchase money security, Section 9-108 is not in conflict with Section 9-204.

N.B. This case was decided under the 1953 draft of the Code which provided in Section 9-108: "(2) Where a secured party makes an advance, incurs an obligation or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for such new value and not as security for a pre-existing claim if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made within a reasonable time after the making of the security agreement and pursuant thereto."

SECTION 9-109. Classification of Goods: "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory"

Goods are

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes.

Top Cleaners, Inc., (No. 2) 20 Pa. D. & C. 2d 264 (1960)

A cash register used in the business of a corporation is not a consumer item used or bought for use for personal, family or household purposes within Section 9-109.

SECTION 9-110. Sufficiency of Description

For the purposes of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

(Where a cited case interprets only a portion of a Code section only that portion is set out)

Industrial Packaging Products Co. v. Fort Pitt Packaging International, Inc., 399 Pa. 643, 161 A.2d 19 (1960)

A financing statement, which was filed by the agent of the lender and which covered all present and future accounts receivable submitted, reasonably identified the collateral security under Section 9-110.

The National-Dime Bank of Shamokin v. Cleveland Brothers Equipment Co., Inc., 20 Pa. D. & C. 2d 511 (1960)

A description of a backhoe or shovel in security agreement and financing statement giving serial number and detailed description reasonably identified the item within the requirements of Section 9-110.

SECTION 9-203. Enforceability of Security Interest; Proceeds, Formal Requisites

(1) Subject to the provisions of Section 4-208 on the security interest of a collecting bank and Section 9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties unless . . .

(b) the debtor has signed a security agreement which contains a description of the collateral . . .

The National-Dime Bank of Shamokin v. Cleveland Brothers Equipment Co., Inc., 20 Pa. D. & C. 2d 511 (1960)

Under Section 9-203 a security agreement, as distinguished from a financing statement, is valid even though signed only by the debtor and not by the creditor or lending party as well.

N.B. This case was decided under the 1953 draft of the Code in which Section 9-203 provided: "(1) A security interest is not enforceable against the debtor or third parties unless . . . (b) the debtor has signed a security agreement which contains a description of the collateral . . ."

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

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

Industrial Packaging Products Co. v. Fort Pitt Packaging International Inc., 399 Pa. 643, 161 A.2d 19 (1960)

In a proceeding by receiver of borrower to set aside an assignment to lender, held: under Section 9-204(3) any description of collateral is sufficient whether or not it is specific if it reasonably identifies the

(Where a cited case interprets only a portion of a Code section only that portion is set out)

thing described. A security agreement may provide that collateral, whenever acquired, shall secure any value given at any time.

Erb v. Stover, 19 Pa. D. & C. 2d 25 (1959)

Where plaintiff made installment sale of cattle to debtor subject to security agreements providing seller with a security interest in any cattle subsequently acquired by the debtor as replacements, or additions, and where the debtor while in default on his installment payments sold to a dealer the cattle covered by the agreements as well as cattle subsequently acquired and not specifically included in the security agreements, the dealer who sold all the cattle for a sum in excess of the amount due the plaintiff with a knowledge of the prior security interest and claim in the additional cattle, is liable to pay installment creditor the full amount of the latter's claim by reason of the after-acquired property provisions in the security agreement under Section 9-204(3). In the absence of any conflicting purchase money security, Section 9-108 is not in conflict with Section 9-204.

N.B. These cases were decided under the 1953 draft of the Code in which Section 9-204 provided: "(3) . . . except as provided in subsection (4) (which deals with crops and consumer goods) a security agreement may provide that collateral, whenever acquired, shall secure any advances made or other value given at any time pursuant to the security agreement."

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

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of filing of the petition

In re Kravitz 278 F.2d 820 (3d Cir. 1960)

Section 9-301 recognizes the right given to a trustee in bankruptcy by the federal law of bankruptcy which law also makes such trustee a lien creditor.

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:

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under Section 9-313 or for a motor vehicle required to be licensed

(Where a cited case interprets only a portion of a Code section only that portion is set out)

UNIFORM COMMERCIAL CODE ANNOTATIONS

U. G. I. v. McFalls, 18 Pa. D. & C. 2d 713 (1959)

Under Section 9-302, the security interest of the seller of a household laundry dryer delivered to the purchaser for the latter's use, subject to a security agreement lease providing for payment in installments, with title to remain in the seller until payments were completed, was perfected without the filing of a financial statement.

SECTION 9-307. Protection of Buyers of Goods

(2) In the case of consumer goods . . . , a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes . . . unless prior to the purchase the secured party has filed a financing statement covering such goods.

U. G. I. v. McFalls, 18 Pa. D. & C. 2d 713 (1959)

In a trespass action the plaintiff averred that it entered into a security agreement lease by which it sold to a purchaser a household laundry dryer, the lease providing that title should not pass until payment was made. The plaintiff further averred that while the purchaser defaulted thus entitling the plaintiff to possession, the purchaser sold and delivered it to defendant dealer who purchased it for purposes of resale. The defendant's objections that the plaintiff failed to file a financing statement were dismissed, since Section 9-307 protects a buyer of consumer goods only if he buys for his own personal, family or household use.

SECTION 9-505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of the Obligation

(1) If the debtor has paid sixty per cent of the cash price in the case of a purchase money security interest in consumer goods. . . , and has not signed after default a statement renouncing or modifying his rights under this Part a secured party who has taken possession of collateral must dispose of it under Section 9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under Section 9-507(1) on secured party's liability.

¹*Tops Cleaners, Inc. (No. 2)* 20 Pa. D. & C. 2d 264 (1960)

A claim by a cash register company for the final two payments on a register under a bailment lease was allowed even though it did not sell the register within 90 days, since such an item is not a consumer item within the meaning of the Code.

(Where a cited case interprets only a portion of a Code section only that portion is set out)