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Article 9: Secured Transactions

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commodation maker. This may be done by oral proof except as against a holder in due course who does not have notice of the accommodation.

C.J.L.

SECTION 3-606. Impairment of Recourse or of Collateral

ROSE v. HOMSEY
— Mass. —, 197 N.E.2d 603 (1964)
Annotated under Section 3-415, supra.

ARTICLE 9: SECURED TRANSACTIONS

SECTION 9-105. Definition and Index of Definitions

VAN NORDEN v. AUTO CREDIT CO.
109 Ga. App. 208, 135 S.E.2d 477 (1964)
Annotated under Section 3-407, supra.

SECTION 9-110. Sufficiency of Description

YANCEY BROS. CO. v. DEHCO, INC.
108 Ga. App. 875, 134 S.E.2d 828 (1964)

The defendent sold a caterpiller scraper to the plaintiff but identified it in the bill of sale by an incorrect serial number. The plaintiff resold the scraper to Gross, the bill of sale again identifying it by the incorrect serial number. The Cobb Exchange Bank financed Gross' purchase, with the plaintiff acting as Gross' guarantor. When Gross defaulted, the bill of sale was assigned back to the plaintiff who recorded it. Gross, who had retained possession of the scraper, sold it; and the defendant eventually re-acquired it for value under a bill of sale identifying the scraper by its correct serial number. The plaintiff sued in trover and received a judgment awarding him the scraper. On appeal, the court granted the defendant's motion for a new trial on the ground that there was no proof that the defendant had either constructive or actual notice of the plaintiff's interest. In its discussion the court noted that despite the incorrect serial number, the recorded bill of sale might still have served as constructive notice, had the description of the scraper appearing on the record provided a key to the identity of the property. But under Georgia decisions, the court concluded, no such key existed in the present case. The court further noted that an insufficient description would not have vitiated the plaintiff's interest as against the defendant if the defendant had had actual knowledge of the plaintiff's interest or sufficient information to put him on notice. However, in the present case there was no fact indicating that the defendant knew at the time of re-acquisition that the scraper was the same one that had been earlier sold under the misdescription.

COMMENT

Under the controlling pre-Code Georgia law, the mere statement of an incorrect serial number did not prevent the recorded instrument from giving

constructive notice if the key to the identity of the property was there. In footnote treatment, the court noted that Sections 9-110, 9-203(1), and 9-402 do not appear to produce any change in this rule.

The court also speculated that, under the Code, actual knowledge or knowledge of facts which could reasonably put a buyer on inquiry may be taken into consideration in determining whether the buyer is to be legally charged with notice of an unperfected security interest. In fact, the Code does take into consideration actual knowledge under Section 9-301(1)(c). That section provides that a buyer shall prevail over the holder of an unperfected security interest "to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected." However, since Section 9-301(1)(c) uses the term "knowledge" and not "notice," as those terms are defined in Section 1-201(25), a buyer who does not have actual knowledge but is only in possession of facts sufficient to put him on inquiry does not take subject to the unperfected interest.

Of course, if the collateral is purchased by a "buyer in ordinary course of business," as that term is defined in Section 1-201(9), he is entitled to prevail under Section 9-307(1) even if the plaintiff has filed a financing statement without misdescription and even if the buyer has knowledge of the plaintiff's security interest.

In a second footnote the court stated that since a debtor in possession of his own collateral can obtain the correct identification of the collateral from the secured party under Section 9-208, a prudent purchaser could require the debtor to produce such a statement before buying the collateral. But this is a precaution of limited efficacy. When there is a misdescription in the records, a purchaser would be at the mercy of the debtor who could fraudulently refuse to admit that an outstanding security interest existed. Also, there is the possibility that the secured party would merely incorporate the same misdescription appearing on record into its statement listing the collateral, unaware that it was in fact a misdescription.

J.F.R.

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

YANCEY BROS. CO. v. DEHCO, INC.
108 Ga. App. 875, 134 S.E.2d 828 (1964)
Annotated under Section 9-110, supra.

SECTION 9-208. Request for Statement of Account or List of Collateral

YANCEY BROS. CO. v. DEHCO, INC.
108 Ga. App. 875, 134 S.E.2d 828 (1964)
Annotated under Section 9-110, supra.

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

CHEYENNE NAT'L BANK v. CITIZENS SAV. BANK
—— Wyo. ——, 391 P.2d 933 (1964)

O'Dell owned two trucks. Bryan, an accommodation maker, gave O'Dell a note and a purported chattel mortgage covering the two trucks. O'Dell assigned the mortgage and note to the defendant-bank which filed the mortgage but failed to have the encumbrance endorsed on the certificates of title as required by local law. Later, O'Dell obtained a loan from the plaintiff-bank which was secured by a chattel mortgage in his own name on the same two trucks. The plaintiff filed the mortgage and caused the encumbrance to be endorsed on the certificates of title. From a declaratory judgment awarding priority to the plaintiff's mortgage, the defendant appealed, arguing that the statute did not expressly provide that the encumbrance must be noted on certificates of title in order for constructive notice to be effective. The court affirmed the judgment, holding that full compliance with the recording statutes causes constructive notice to be effective and that the defendant had not fully complied. Also, the defendant's mortgage was invalid as against the plaintiff since Bryan, the "mortgagor," had no interest in or title to the trucks. In an opinion concurring in the result, one justice pointed out that Section 9-302(4) of the Code, as enacted in Wyoming subsequent to the transaction, provided for the first time that an encumbrance on a motor vehicle is not perfected as against subsequent bona fide lienholders unless notation appears on the certificate of title. This, the justice argued, showed that the legislature itself had construed the former law as not requiring a notation on the certificate of title as a prerequisite to perfecting an encumbrance on a motor vehicle.

COMMENT

Wyoming has rejected both alternatives to Section 9-302(3)(b) offered by the official Code and has also rewritten Section 9-302(4). Instead of referring the reader to particular local filing statutes which would substitute for those of the Code, as the official version contemplates, Wyoming has incorporated these local filing procedures into Section 9-302(4). This deviation lends support to the concurring opinion, but it is just as plausible that the legislature, in enacting Section 9-302(4), believed this section to be merely a restatement of the filing requirements under prior law.

J.F.R.

SECTION 9-306. "Proceeds"; Secured Party's Rights on Disposition of Collateral

O. M. SCOTT CREDIT CORP. v. APEX INC.
— R.I. —, 198 A.2d 673 (1964)
Annotated under Section 9-307, infra.

SECTION 9-307. Protection of Buyers of Goods

O. M. SCOTT CREDIT CORP. v. APEX INC.
— R.I. —, 198 A.2d 673 (1964)

The plaintiff sold garden supplies to Mass. Hardware pursuant to a trust receipt which provided that Mass. Hardware was to sell the supplies only to ultimate consumers. A financing statement was properly filed in Massachusetts. When the defendant, a discount house, purchased the plaintiff's products from Mass. Hardware, the plaintiff brought the present action in replevin, contending that the sale was unauthorized and that its security interest continued in the collateral under Section 9-306(2). The defendant argued that it was a "buyer in ordinary course of business" as defined by Section 1-201(9) and thus took clear of the plaintiff's security interest under Section 9-307(1), or that it was alternatively a good faith purchaser under the Factor's Act [Mass. Gen. Laws Ann. ch. 104, § 1 (1958)], and thus entitled to prevail. In affirming a judgment for the plaintiff, the court found that the defendant's manager had actual knowledge that the sale to his company was in violation of the security agreement. It therefore held that the defendant was neither a "buyer in ordinary course of business" under the Code nor a good faith purchaser under the Factor's Act, and that it thus took the goods subject to the security agreement.

COMMENT

1. Section 9-201 provides that security agreements are, on the whole, effective as against third parties. However, Section 9-307(1) qualifies Section 9-201 by providing that "buyers in ordinary course of business" take free of security interests. Such "buyers" are totally unaffected by the security agreement even if a financing statement is filed, as it was in this case, and even if the buyer knows of the existence of a security interest in the goods he is buying. The only thing a buyer cannot know and still be a "buyer in ordinary course of business" is that the sale to him *violates* some term in the security agreement.

2. As the Official Comments to Sections 2-326 and 2-403 make clear, the drafters of the Code did not intend that local factor's acts be repealed. In the present case there was no conflict between the statutes. However, if there had been a conflict, the Rhode Island court could have held that the Code takes precedence even though Massachusetts has not enacted the General Repealer provision, Section 10-103. See *Lincoln Bank & Trust Co. v. Queenan,* 344 S.W.2d 383 (Ky. 1961).

J.F.R.

MAIN INVESTMENT CO. v. GISOLFI
203 Pa. Super. 244, 199 A.2d 535 (1964)

The defendant, a consumer, purchased a used car from Casterline, a non-franchised automobile dealer. The defendant received delivery of the car together with an executed bill of sale on October 28, but did not receive a certificate of title. On November 8, Casterline financed his inventory through the plaintiff-finance company by executing and delivering a trust receipt

security agreement which covered nine autos including the one previously delivered to the defendant. A certificate of title for the car in question was delivered to the plaintiff, containing the car dealer's name as owner and a notation of the plaintiff's security interest. Subsequently, the finance company brought the present action to replevy the car, relying on *Sterling Acceptance Co. v. Grimes*, 194 Pa. Super. 503, 168 A.2d 600 (1961), for the proposition that, since the automobile in question was not new, the defendant was on notice that a certificate of title had been issued for it and should have demanded the certificate before accepting delivery. The defendant counterclaimed, demanding the certificate of title. On appeal from a judgment for the defendant, the court affirmed, holding that the defendant was a "buyer in ordinary course of business" as defined by Section 1-201(9) and that he therefore took free of any security interest under Section 9-307(1). The court added that even if the proposition advanced by the plaintiff was correct, that is, that the buyer of a used car is on notice of any encumbrance noted on the certificate of title, such proposition was not applicable in the present case where title and possession had passed to the defendant prior to the execution of the trust receipt security agreement.

COMMENT

In the *Grimes* case, the court held that a "buyer in ordinary course of business" of a new car took free of a lien which had been previously noted on a dealer's certificate of title. The reason was that, under local law, dealers were not required to obtain certificates of title until the new car had been sold. In the course of its discussion, however, the *Grimes* court stated by way of dicta that the buyer of a used car knows that a certificate of title has already been issued and expects to have it produced at the time of sale. In the present case the finance company apparently tried to use this dicta to prove that the failure of the used car buyer to demand the certificate at the time of sale precluded him from being a "buyer in ordinary course of business." However, it would appear that even if the dealer had mortgaged the car and noted the finance company's encumbrance on the certificate of title prior to his sale of the car to the defendant, the defendant would still have been a "buyer in ordinary course of business," for it is only when a buyer takes with knowledge that the sale to him is in violation of the security interest of a third party that he cannot be a "buyer in ordinary course of business." Since "knowledge" means actual knowledge, it would not have been enough for the finance company to prove that the notation of the encumbrance on the certificate put the defendant on notice. Notice is not the same thing as knowledge. See definitions of knowledge and notice, Section 1-201(25). Also cf. *Howarth v. Universal C.I.T. Credit Corp.*, 203 F. Supp. 279 (W.D. Pa. 1962).

As the court itself suggested, the same result could have been reached under Section 9-204(1) which provides that a security interest cannot attach unless the debtor has rights in the collateral. In the present case, at the time of financing his inventory the dealer had no rights in the collateral; title to the car had passed to the defendant when the dealer had delivered the car without retaining a security interest. Section 2-401(2).

J.F.R.

SECTION 9-310. Priority of Certain Liens Arising by Operation of Law

FIRST NAT'L BANK v. BAHAN
— Ohio C.P. —, 198 N.E.2d 272 (1964)

Prior to the effective date of the Code two banks filed chattel mortgages on the defendant's tractor. Yoder, with no notice or knowledge of the banks' liens, made repairs on the tractor after the Code became effective. In the present action, Yoder contended that under Section 9-310 his artisan's lien had priority over the banks' liens. The court noted that under the old, pre-Code law the banks' liens were superior and held that under Section 10-102 (2) they were not made subordinate by the state's adoption of the Code. The court went on to say that if Section 9-310 were applied and Yoder given priority, the value of the banks' mortgages would be diminished and that this would contravene constitutional provisions prohibiting a state from passing any law impairing the obligations of contract.

J.F.R.

SECTION 9-313. Priority of Security Interests in Fixtures

UNITED STATES v. BAPTIST GOLDEN AGE HOME
226 F. Supp. 892 (W.D. Ark. 1964)
To be casenoted in Volume 6, Issue 2.

SECTION 9-401. Place of Filing; Erroneous Filing; Removal of Collateral

IN RE MOHAMMED
327 F.2d 616 (6th Cir. 1964)

Mohammed executed a chattel mortgage on his car which was properly recorded in the county of his residence. Later, he moved to another county taking his car with him. The mortgagee, with knowledge of the move, failed to record in this other county. In a subsequent bankruptcy proceeding, the car was awarded to the trustee in bankruptcy and the lower court affirmed. On appeal, the court reversed, holding that under the governing law, after original compliance with the filing statutes the mortgagee was permitted but not required to file in the county to which the goods were removed. The court noted that the subject is of diminished importance since under the Code, subsequently adopted, the mortgage would remain valid under Section 9-401(3). The mortgagee would not have to refile.

COMMENT

Michigan has adopted the preferred Subsection (3) of Section 9-401 which does not require refiling when collateral is moved to new counties within the state. Under the alternative Subsection (3), refiling is required within four months in the county to which the collateral has been removed. This is the same time period in which a financing statement must be filed when personal property subject to a perfected security interest in one state is brought into a Code state. Section 9-103(3).

J.F.R.

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

YANCEY BROS. CO. v. DEHCO, INC.
108 Ga. App. 875, 134 S.E.2d 828 (1964)
Annotated under Section 9-110, supra.

ARTICLE 10: EFFECTIVE DATE AND REPEALER

SECTION 10-102. Specific Repealer; Provision for Transition

FIRST NAT'L BANK v. BAHAN
— Ohio C.P. —, 198 N.E.2d 272 (1964)
Annotated under Section 9-310, supra.

SECTION 10-103. General Repealer

GARDINER v. PHILADELPHIA GAS WORKS
413 Pa. 415, 197 A.2d 612 (1964)
Annotated under Section 2-725, supra.