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Bankruptcy—Quaker City Doctrine—Pennsylvania Uniform Commercial Code: — Matter of Einhorn Bros., Inc.

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CASE NOTES

Bankruptcy—Quaker City Doctrine—Pennsylvania Uniform Commercial Code.—In the *Matter of Einhorn Bros., Inc.*,[1] a creditor loaned money to Einhorn Bros., Inc., and obtained a perfected security interest in its merchandise inventories under UCC of Pennsylvania § 9-302 in January 1957. Ten months later in November 1957 the landlord levied a distraint for rent against Einhorn's property. Subsequently the debtor went into bankruptcy. The referee ordered the landlord's lien satisfied ahead of that of the secured creditor. The secured creditor appealed to the District Court maintaining that under the UCC of Pennsylvania, its perfected security interest was superior to that of the landlord and therefore it was improperly subordinated to the landlord's lien. The Court affirmed the referee's Order for Final Distribution. The doctrine of *In re Quaker City Uniform Co., Inc.*,[2] requires that priorities under state law as between a chattel mortgage and a landlord's lien be observed in a bankruptcy proceeding.[3] The Pennsylvania law existing before adoption of the UCC provided that on any sale following a distraint for rent the landlord's lien should be satisfied first.[4] The UCC § 9-104(b) had excluded the landlord's lien from the purview of the article on secured transactions. The "rational conclusion" was that the previous Pennsylvania law was left undisturbed by the enactment of the Code.

In affirming the referee the Court appears correct. It is plain from the language of UCC § 9-104 and the comment thereto that the Code expressly intended to place the landlord's lien outside the coverage of the article. This being so, the existing state law must govern. It is interesting, however, that the Court took occasion to disapprove a construction of the Pennsylvania UCC § 9-310.[5] This construction argued[6] that a landlord was one who in the ordinary course of his business furnishes services to goods kept on the rented premises. Since the landlord had a lien for rent in Pennsylvania by settled rule of law, having furnished services, he met the requirement of § 9-310, and therefore took priority, under the Code, over other perfected security interests. The Court relied on the comment

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1 171 F. Supp. 655 (E.D. Pa. 1959).

2 238 F.2d 155 (3d Cir. 1956).

3 § 67c(1), 11 U.S.C.A. § 107c(1).

4 Pa. Stats. Ann. Tit. 68, § 322 (Purdon Supp. 1958); In re Quaker City Uniform Co., supra note 2; Reinhart v. Gerhardt, 152 Pa. Super. 229, 31 A.2d 737 (1943); National Cash Register Co. v. Ansell, 125 Pa. Super. 309, 189 Atl. 738 (1937).

5 § 9-310 of the Pennsylvania UCC states: When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

6 Pa. Bar Association Notes to UCC § 9-310; Schwartz, Pennsylvania Chattel Security & the Commercial Code, 98 U. Pa. L. Rev. 530, 540-41 (1950).

to this section stating that § 9-310 meant to provide liens for work done to enhance or preserve the value of collateral. The act of leasing the premises could hardly be thought to bear this relation to the value of the goods situated thereon.

In so construing § 9-310 the Court may have been influenced by the revised text of this section as it appears in the enacted laws of the four other states having adopted the UCC at this time.[7] Under this, it is specifically provided that the goods for which services and materials are furnished must be in the *possession* of such person before his lien interest will take priority over a Code security interest. It is quite clear, therefore, that the service rendered by the landlord in leasing the premises could not be covered by this section in any state having enacted the revised text. The Court properly gave to the language of § 9-310 its natural construction and refused to give to it a strained meaning.

J. LAURENCE MCCARTY

Breach of Warranty—Recovery Allowed by Third Party in the Absence of Privity—Scope of Liability Extended by Uniform Commercial Code. —***B. F. Goodrich Co. v. Hammond.***[1]—Decedent husband and wife were killed in their automobile as a result of a "blow-out" of a "blow-out proof" tire purchased by the husband from defendant manufacturer's retail outlet. Suit for wrongful death[2] predicated upon claims of breach of express warranty, implied warranty, and negligence in manufacture was brought by the administratrix of both decedents in the U. S. District Court for the District of Kansas. Judgment was rendered for the plaintiff on the basis of breach of an express warranty. Affirmed by the U. S. Court of Appeals for the Tenth Circuit. HELD: Although breach of express warranty was a proper ground of decision on the claim of the decedent purchaser, that of the wife should have been based upon breach of implied warranty of fitness, which arises in Kansas by operation of law despite the lack of privity of contract.

The decision is not only in accord with recent Kansas cases,[3] but also with those of other common law states which have not enacted the USA.[4] The theory of the case is that when a manufacturer advertises and intro-

[7] § 9-310 of the UCC as enacted in Massachusetts, Kentucky, Connecticut and New Hampshire states: When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods *in the possession of such person* given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

[1] 269 F.2d 501 (10th Cir. 1959).

[2] Kan. Gen. Stat. Ann. § 60-3203.

[3] Graham v. Bottenfield's, Inc., 176 Kan. 68, 269 P.2d 413 (1954); Nichols v. Nold, 174 Kan. 613, 258 P.2d 317 (1953); Swengel v. F.&E. Wholesale Grocery Co., 147 Kan. 555, 77 P.2d 930 (1938).

[4] Worley v. Procter & Gamble Mfg. Co., 241 Mo. App. 1114, 253 S.W.2d 532 (1952), and cases cited therein; Baxter v. Ford Motor Co., 168 Wash. 456, 12 P.2d 409 (1932).