Boston College Law Review

Volume 3 | Issue 3 Article 7

4-1-1962

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

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the warranties stated in this section but no issuer may require an indorsement guarantee as a condition to registration or transfer of a security."]

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.

(3) . . . If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months. . . .

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

General Motors Acceptance Corp. v. Mannhiem Auto Auction, 25 D.&C. 2d 179 (Pa. 1961).

An action of replevin was brought to recover a Chevrolet, which had been purchased by one Robert Lorna in New York under a conditional sales contract, which was assigned to the plaintiff. Plaintiff filed within ten days in order to perfect his security interest according to New York law (Uniform Conditional Sales Act). However, prior to this filing, Lorna brought the automobile to Pennsylvania, secured an unencumbered certificate of title as required by Pennsylvania law, and sold the car to an innocent purchaser. Ultimately the car came into the hands of the defendant, also an innocent purchaser for value.

The court held that plaintiff could not recover the car, basing its decision on two grounds. First, it declared that under Section 9-303(1) a security interest is not perfected until all of the applicable steps required for perfection have been taken. Since all the required steps had not been completed according to New York law until the contract was filed, the security interest in the Chevrolet had not been perfected when the Chevrolet was brought into Pennsylvania. Therefore, Section 9-103(3) in regard to continuance of foreign perfection for four months would not apply. Second, subsection (4), quoted above, clearly provides that the law of the certificate of title state must govern as to manner of perfection.

[Annotator's Comment: Although in the Pennsylvania-New York situation presented here the decision can clearly be based upon sub-

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section (4), the views expressed by the court in its secondary holding are of importance in a Code state which does not have a certificate of title law, e.g., Massachusetts. In this regard, the decision is contrary to the result reached by the Pennsylvania Superior Court in *Casterline v. General Motors Acceptance Company,* 171 A.2d 813 (Pa. 1961). In that case, in an identical situation, the Superior Court of Pennsylvania pointed out that, under New York law, filing within ten days after the attachment of the security interest "relates back" and protects the secured party even against purchasers prior to the filing. From this, the court concluded that the security interest was "perfected" immediately upon execution of the security agreement, but subject to losing its perfected status if the contract was not filed within the proper time.

Thus, it would seem that the decision in the Mannheim case is incorrect in that, by its technical approach, it reads the ten day grace period out of the Uniform Conditional Sales Act.]

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

(1) "Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected, or otherwise disposed of. . . .

(2) Except where this Article otherwise provides, a security interest continues notwithstanding sale, exchange or other disposition . . . and also continues in any identifiable proceeds including collections received by the debtor. . . .

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest

(a) in identifiable non-cash proceeds . . .

(d) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings. . . .

Girard Trust Corn Exchange Bank v. Warren Lepley Ford, Inc. (No. 3), 25 D.&C.2d 395 (Pa. 1961).

The Girard Bank financed cars sold by Lepley Ford and had filed a financing statement, according to Section 9-302, to perfect its security interest in the cars sold and the proceeds therefrom. Lepley failed to turn over the proceeds from some of the car sales to Girard, as agreed, but rather deposited the proceeds, along with the proceeds

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from the sale of used cars which were turned in by the buyers in such sales, in its bank accounts, one of which was in the Girard bank. Subsequently, Lepley, drawing on its bank accounts, purchased twenty-eight cars directly from Ford Motor Company. Upon discovery of Lepley's conduct, Girard seized Lepley's account in the Girard bank and petitioned for the appointment of receivers for Lepley.

In this petition, Girard attempted to establish a preference to the proceeds from the sale by the receivers of the twenty-eight cars purchased by Lepley. The court held that (provided there was satisfactory proof) Girard could properly trace the proceeds from the sale of the financed cars into the bank accounts and then into the twenty-eight cars purchased by Lepley. The Code subsection pertaining to rights to commingled cash upon insolvency would have no application because the cars here were identifiable non-cash proceeds when they came into the hands of the receiver.

The court also held that, where Lepley had exchanged motor vehicles with another car dealer, Girard could trace his security interest into the car received by Lepley. Although, in effecting this exchange, Lepley and the other car dealer had given each other a check for the full value of the car received (as was customary among car dealers), the transaction was essentially an exchange of cars.

Girard was also allowed by the court to recover all the cash received by Lepley within ten days prior to the institution of insolvency proceedings under subsection 4(d) (Subsection 2 of the 1953 draft). This relief was granted in spite of Girard's seizure of Lepley's bank account with it prior to the receivership. Subsection 4(d) deals only with the debtor's cash in insolvency proceedings. Since Lepley's bank account had been seized prior to such insolvency proceedings (see the wording of subsection 2 of the 1953 draft, quoted below, as to "subjected to control"), the bank account was not affected by the limitation in subsection 4(d). Rather, it would be allowed to Girard in addition to the rights under 4(d), provided Girard could prove that it held identifiable proceeds by tracing.

[N.B. This case was decided under the 1953 draft of the Code, where the pertinent provisions read as follows: "(1) When collateral is sold, exchanged, collected or otherwise disposed of by the debtor the security interest continues on any identifiable proceeds received by the debtor except as otherwise provided in subsection (2). . . .

(2) In insolvency proceedings a secured party with a perfected security interest has a right to the cash and bank accounts of the debtor equal to the amount of cash proceeds received by the debtor within ten days before the institution of such proceedings . . . but no other right to or lien on cash proceeds not subjected to his control before

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insolvency proceedings are instituted. Nothing in this subsection shall affect any right of set-off which might otherwise exist."]

[Annotator's Comment: The court in the case at bar held that the proceeds of the collateral could be traced into Lepley's bank accounts and then into other cars bought out of these bank accounts, but that the plaintiff must bring forth adequate evidence in order to trace in this manner. For this purpose, Lepley's bank accounts must be examined in order to discover what other cash had been placed in them in addition to the proceeds of the collateral. In view of the Code's preference for the "first-in, first-out" rule, as evidenced by its incorporation in Section 4-208, it would seem natural that the same rule be used in connection with "tracing" here. Thus, the first deposit in the bank accounts would be considered the first one withdrawn.]

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

(2) A filing which is made in good faith in an improper place or not in all the places required by this section is nevertheless . . . effective with regard to collateral covered by the financing statement againt any person who has knowledge of the contents of such financing statement.

In the Matter of Babcock Box Co., 200 F. Supp. 80 (D. Mass. 1961).

Petitioner sold machinery to bankrupt under conditional sales contracts, whereby petitioner retained a security interest in the property. Financing statements with respect to these transactions were filed with the Massachusetts Secretary of State and with the Registrar of Deeds for Bristol County, but not with the City Clerk of Attleboro, the sole place of business of the debtor. In the absence of such filing, the seller failed to comply with the requirements of filing set down in Section 9-401(1)(c).

The court denied the petition to establish a lien superior to the rights of the trustee in bankruptcy, although it was proved that the trustee had knowledge of the contents of petitioner's financing statement at the date of filing of bankruptcy.

The court held that Section 9-401(2) "merely makes the lien effective, despite the failure to make proper filing as to persons having actual knowledge of the contents of the financing statements." It does not make the lien perfected; and, thus, the protection afforded the secured interest must be governed by Section 9-301, which provides that a lien creditor taking without knowledge of such an unperfected security interest will receive priority over it.

Further, Section 9-301(3) provides: "A lien creditor . . . includes . . . a trustee in bankruptcy. Unless all the creditors represented had knowledge of the security interest such a representative of creditors

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is a lien creditor without knowledge even though he personally has knowledge of the security interest." Therefore, the trustee prevailed as a lien creditor without knowledge.

[Annotator's Comment: Section 9-401 makes express provisions to avoid two possible errors which were occasionally made prior to the Code. First, a partially improper filing has efficacy to the extent that it is proper. Second, if one has knowledge of the contents of a statement which has been filed in an improper place, this will constitute knowledge so that he cannot take over an unperfected security interest under 9-301. This provision avoids the fallacy reached under some "notice" statutes prior to the Code that an improperly filed notice could not possibly give notice, even if the third person had actual knowledge.]

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