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Article 9: Secured Transactions

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The court held that the Statute of Frauds which pertained to investment securities did bar plaintiff's suit. Section 8-319. Had there been delivery, payment, confirmation or an admission of the sale, the contract would have been enforceable, but under these facts, it had to be in writing to be so.

[Annotator's Comment: The Statute of Frauds in Section 8-319 is similar in content to the Statute of Frauds for sales of goods in Section 2-201. In a case which involved a contract analogous to the one in the instant case, the Federal District Court in Pennsylvania held Section 2-201 did not bar enforcement of the contract for it was an employment contract and fully performed by the aggrieved party. *Stone v. Krylon, Inc.*, 141 F. Supp. 785 (E.D. Pa. 1956). In this case, the court could have construed the contract as an employment contract with full performance by plaintiff which would place the contract outside the scope of Section 8-319, and it would be therefore enforceable. The court's other alternative would have been to find that the parties had entered into two separate contracts: the first was plaintiff's obtaining a selling agent in consideration for defendant's giving plaintiff an option to purchase stock; the option (agreement to transfer the shares) would be the second. Under this construction there would be little doubt that if plaintiff could prove his allegations, the contract would not be unenforceable because of either Section 8-319 or Section 2-201. The option itself would not be involved in the action.

From the facts it also seems that plaintiff had alleged that full payment was made to defendant in the form of services rather than money which satisfied the performance exception to the requirement of a writing under Section 8-319(b). Plaintiff would be entitled to specific performance of the contract if he could prove his allegation.]

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 personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within 30 days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the juris-

diction 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 and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or of 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.

* *Hudiberg Chevrolet Inc. v. Ponce*, 17 Wis. 2d 281, 116 N.W.2d 253 (1962).

See the Annotation to Section 2-403, *supra*.

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

† *In the Matter of Lux's Superette, Inc.*, 206 F. Supp. 368 (E.D. Pa. 1962).

See the Annotation to Section 9-401, *infra*.

SECTION 9-307. Protection of Buyers of Goods.

(1) A buyer in ordinary course of business (subsection (9) of Section 1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

* *Hudiberg Chevrolet Inc. v. Ponce*, 17 Wis. 2d 281, 116 N.W.2d 253 (1962).

See the Annotation to Section 2-403, *supra*.

SECTION 9-311. Alienability of Debtor's Rights: Judicial Process.

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

United States v. Bregman, 306 F.2d 653 (3d Cir. 1962).

The President of Rudolph Motor Service was found guilty of violating Section 7206(4) of the Internal Revenue Code of 1954, which makes it unlawful to remove or conceal property upon which levy is authorized by Section 6-331 of the Code. At a time when the firm owed back taxes, the defendant made false entries in the corporate books indicating that certain trailers in its possession had been repossessed. On appeal, Bregman urged that, while Rudolph had possession of the trailers, it did not have the unrestricted right to dispose of them. Therefore, they were not Rudolph's "property."

The court held that state law determines to what extent a person has "property." Section 9-311 gave Rudolph the right to dispose of the trailers and also sanctioned processes of garnishment, attachment and levy. Therefore, Rudolph had "property" under the statute.

[Annotator's Comment: Although the court is not explicit as to the existence of a prior security interest in the trailers, such must be assumed from the argument made by the defendant. The court's interpretation of Section 9-311 is correct. Whatever the debtor's interest, whether legal or equitable, it may be transferred or attached even though any disposition of the property may be a breach of the contract between debtor and secured party. The secured party may not restrict the alienability so as to affect rights acquired by a subsequent transferee.]

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

(1) The proper place to file in order to perfect a security interest is as follows:

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

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

† *In the Matter of Lux's Superette, Inc.*, 206 F. Supp. 368 (E.D. Pa. 1962).

Before the bankrupt was organized, its principals submitted a purchase order for fixtures and equipment to Kendall, describing the sale as made to "Lux's Superette Inc." It was signed only by the individuals without any corporate designation. Subsequent to incorporation, these principals, now shareholders, signed a conditional sales contract covering almost all the equipment in the original purchase order. This order was filed at the Office of the Prothonotary of the county in which business

was being done. Although the first payments were made by the stockholders, the remaining payments were made by the corporation. After the adjudication of bankruptcy, Kendall and the assignee of the sales contract filed a reclamation petition in which they alleged that the property belonged to these principals rather than the corporation. If the property were found to be that of the corporation, they alleged that they held a perfected security interest.

In affirming the referee's dismissal, the court found that there was sufficient evidence to indicate that the corporation was the owner of the property. Under the 1954 Code, effective as to this transaction, Section 9-401(1)(a) provided that proper filing must be completed with the Secretary of the Commonwealth and with the Prothonotary of the county in which the debtor does all his business. Admittedly, there was no filing with the Secretary. The creditors sought to excuse themselves by reason of their good faith filing under Section 9-401(2) but this was rejected because the conditions under which that section is applicable were not in existence here. Therefore, the security interest was not perfected.

[Annotator's Comment: Under the 1958 text of the Code, effective in 1960, the place of filing for security interests in fixtures, is the office where a mortgage on the real estate concerned would be filed or recorded. The relevant Section is 9-401(1)(b).]

In re Smith, 205 F. Supp. 27 (E.D. Pa. 1962).

See the Annotation to Section 9-403, *infra*.

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.

In re Smith, 205 F. Supp. 27 (E.D. Pa. 1962).

See the Annotation to Section 9-403, *infra*.

SECTION 9-403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer.

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

In re Smith, 205 F. Supp. 27 (E.D. Pa. 1962).

On December 8, 1960, the Metropolitan Equipment Co. and the bankrupt entered into a contract for the purchase of certain equipment. Metropolitan presented the contract for filing but the Secretary of the Commonwealth returned it because of the failure to include the mailing address of the debtor. However, the contract was accepted by the Prothonotary of Berks County, the debtor's place of business. Metropolitan never submitted a new statement to the Secretary. Metropolitan claimed that, by reason of Section 9-403(1), it had satisfied the filing requirement through its attempt to file. The referee dismissed plaintiff's reclamation petition because he found no perfected security interest.

In interpreting Section 9-403(1), the court held that the broad language of that section must be considered in relation to the specific requirements set forth under Section 9-402. One of these requirements is the inclusion of the debtor's mailing address in the filed statement. Therefore, no effective statement was ever "presented for filing."

The company tried to bring itself within the provisions of Section 9-401(2) but the court rejected its argument. The filing in Berks County did not contain the debtor's address either so it did not "comply with the requirements of this Article." In addition, there was no evidence that any creditor had knowledge of the filing. On reargument, it was discovered that the statement filed in Berks County had contained the debtor's address. The case was remanded.

[Annotator's Comment: The Code, in adopting a notice filing concept, imposed minimal formalities for the financing statements to be filed. One of them is the address of both debtor and secured party. This is essential (1) to identify the debtor and (2) to offer the source of further information to interested third parties. It is not a "minor error" which does not mislead and hence not invalidate the filing under Section 9-402(5). The filing officer was correct in refusing to accept the deficient statement and the court properly held there had been no presentment for filing as required by Section 9-403(1).

Even though the trustee himself knew of the contents of the locally filed statement which apparently met the minimum formalities, he is probably not a lien creditor *with* knowledge and his own knowledge is irrelevant. *In re Babcock Box Co.*, 200 F. Supp. 80 (D. Mass. 1961) (3 B.C. Ind. & Com. L. Rev. 435 (1962)).]