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Secured Transactions

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SECURED TRANSACTIONS

In 1962, the Rhode Island state legislature enacted a statute which appears to be quite unique in that it created a lien in favor of a motor vehicle repairer upon any payment due an automobile owner under a collision insurance policy.¹ This statute makes no mention of priorities with respect to any other existing or subsequent security interests created in the automobile, and therefore poses several questions as to the effect of this lien upon secured transactions in a state governed by the Uniform Commercial Code.²

The first question to be considered is exactly what type of lien was created by the statute. At common law an automobile repairer was given an "artisan's lien" upon an automobile which he had repaired. The lien thus created was founded upon possession of the automobile.³ However, in the Rhode Island statute no mention is made of the requirement of possession and the statute explicitly refers to "any payment due the owner of said vehicle, his representative or assignee." Thus, this lien is upon the insurance proceeds and not upon the automobile, and does not require possession of the automobile. Furthermore, this lien, unlike an artisan's lien, does not require possession for its perfection. It is apparently a separate lien upon insurance proceeds due the owner, distinct from the possessory lien upon the automobile itself which the repairer was entitled to under the common law.

The requirement of possession and the nature of the lien has a greater importance when one considers the possible conflict between a financing agency and the repairer over the insurance monies. Assuming that the financing agency has a perfected security interest under the provisions of the Uniform Commercial Code, what rights, if any, does this secured party have to the insurance moneys?⁴ The above question could become crucial

¹ R.I. Gen. Laws Ann. §§ 9-3-9 & -10 (1962), effective July 1, 1962.

Motor Vehicle repairer's lien: Every motor vehicle repairer who shall furnish material and labor, or either, in the repair of a motor vehicle, shall, if the owner of said vehicle has insured said automobile against damage or loss by collision, have a lien upon any payment due the owner of said vehicle, his representative or assignee, on account of such insurance, to the amount of the reasonable and necessary charges of such repairer up to the date of payment of such amount, provided, however, that nothing herein contained shall be construed to give the lien herein created precedence over the lien of an attorney.

Notice of repairer's lien: The lien provided in section 9-3-9 shall be effective only if a written notice containing the name and address of the owner, the date of the accident, and the name and address of the repairer shall be mailed, postage prepaid, to the insurance carrier insuring against damage or loss by collision prior to the payment of any moneys to the owner, his representative or assignee in compensation for such damage or loss.

² R.I. Gen. Laws Ann. §§ 6A-1-101 to -9-507 (1962) contain the entire UCC as adopted in Rhode Island. The UCC became effective in Rhode Island on January 2, 1962.

³ *North End Auto Park, Inc. v. Petringa Trucking Co.*, 337 Mass. 618, 150 N.E.2d 735 (1958); *Mortgage Sec. Co. v. Pfaffmann*, 177 Cal. 109, 169 Pac. 1033 (1917).

⁴ Before the enactment of the UCC and at the present time, some courts hold that the chattel mortgagee or conditional vendor has a superior right to the automobile with respect to the repairer, while others consider the rights of the auto repairer superior to that of the secured party. As to the basis of these theories and the courts so holding, see generally Annots., 36 A.L.R.2d 198, 229 (1954).

CURRENT LEGISLATION

if there existed in the terms of the financing contract a provision that the debtor would maintain insurance for the benefit of the secured party or "as his interest may appear." Under applicable insurance law and equitable concepts, the secured party would have at least an equitable lien upon the insurance proceeds in the absence of the debtor's having taken out the contract of insurance for the benefit of the secured party.⁵ Also, if the debtor had taken out the insurance for the secured party, the contract right to the insurance would exist in the secured party and the lien could still be said to attach to the proceeds on the basis of the secured party being in reality the owner of the automobile.⁶ Therefore, the conflict would be between an equitable lien or a contract right to the proceeds on the part of the secured party and the statutory lien of the automobile repairer upon the insurance money.

In a conflict between the secured party and the repairer the provisions of the Uniform Commercial Code are very significant. Under the Code if a person, who in the ordinary course of his business furnishes services or material with respect to goods subject to a security interest, has a lien upon the goods in his possession by statute or rule of law for such materials or services, the lien takes priority over a perfected security interest.⁷ This section, derived from the Uniform Trusts Receipts Act, is, according to the official comments, intended to cover the conflict between an artisan whose lien arises from work intended to enhance or preserve the value of the collateral and an earlier perfected security interest.⁸ This section limits the lien and priority to the goods in the possession of the artisan. The lien created by the statute in Rhode Island is upon the insurance proceeds and makes no mention of any requirement of maintaining possession. Therefore, it would appear that this section of the Code, while intended to cover liens for services and materials, does not apply to this particular statute.

Another possible section which may be of interest in this area would be Section 9-306 of the Uniform Commercial Code, which defines "proceeds" arising from the collateral. The section states: "'proceeds' includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right." Whether or not the insurance is "proceeds" upon which the secured party has a security interest is doubtful. This section is designed primarily to cover situations in which the collateral is disposed of and allows the secured party to continue his security interest in the proceeds obtained by the debtor from the disposal of the collateral.⁹ To include the insurance proceeds as "proceeds" within

⁵ *Wheeler v. Insurance Co.*, 101 U.S. 439 (1879); *Butson v. Misz*, 81 Ore. 607, 160 Pac. 530 (1916); *Swearingen v. Hartford Ins. Co.*, 52 S.C. 309, 29 S.E. 722 (1898); 4 *Appleman, Insurance Law and Practice*, § 2268 (1941).

⁶ Since the statute reads "any payment due the owner . . . , his representative, or assignee," it might be argued that the mortgagee as holder of the legal title is in reality the owner under the terms of the statute.

⁷ UCC § 9-310.

⁸ Comment 1 & 2 to UCC § 9-310.

⁹ UCC § 9-306(2); Comment 1 & 2 to UCC § 9-306.

the definition of section 9-306 would require an interpretation of this section as including any money realized from the collateral during the existence of the security interest. While the insurance proceeds upon realty are applied to the debt upon the destruction of the property by statute in some jurisdictions,¹⁰ such a holding, in the absence of complete destruction of the property and explicit statutory authority, would appear to be over-emphasizing the interest of the secured party.

The only possible application of the Uniform Commercial Code would be that this lien, while outside the Code provisions due to its particular language and subject matter, is within the intended scope and policy of sections 9-306 and 9-310. The basis of this position could be found upon the view that the insurance is money realized by the debtor upon the collateral and thus similar to the "proceeds" of section 9-306; and the lien, created by the statute is very similar to the lien described by section 9-310. This would appear to be the most logical position in view of the provisions of the Uniform Commercial Code and the proximity of the lien to the common law artisan's lien. Therefore, the secured party should not be entitled to priority over the repairer.

This would seem to be contrary to Rhode Island case law, which, prior to the enactment of the Uniform Commercial Code, has always held that the rights of the conditional vendor and chattel mortgagee are superior to the lien acquired by the artisan.¹¹ This would then raise a basic question of interpretation of the Code: whether or not its policy is to be followed in situations where a policy is decreed but, due to the particular nature of the statute, it is not explicitly covered by the Code.

In conclusion, this particular statute, while unique to Rhode Island, can be used to advantage by other states. When a state passes a statute dealing with the creation of a lien or bearing directly upon existing security interests, the provisions of the Uniform Commercial Code and the policy set out therein should be kept in mind, and direct reference either to its policy and provisions as governing the particular statute or an incorporation of its policy within the statute should be declared. In following this a twofold benefit would be derived: the basic uniformity of the provisions throughout the country would be maintained and the growth of exceptions to its basic provisions would not be encouraged. In the absence of this type of legislation, laws pertaining to security interests, which fall outside the explicit terms of the Uniform Commercial Code, could be interpreted to be governed by the various rules formulated prior to the Code. In this manner a diversity of rules regarding security interests so deplored would again be fostered.

ROBERT T. TOBIN

¹⁰ New York Lien Law § 4a.

¹¹ *Caldwell v. Boss*, 85 R.I. 178, 128 A.2d 836 (1957); *Goldstein v. Mack Motor Truck Co.*, 56 R.I. 1, 183 Atl. 136 (1936); *Arnold v. Chandler Motors*, 45 R.I. 469, 123 Atl. 85 (1924).