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

Richard B. Slosberg

Charles K. Bergin Jr.

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6-108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (Section 6-107).

CASES ANNOTATED UNDER OTHER SECTIONS

*CHATTANOOGA DISCOUNT CORP. V. WEST
219 F. Supp. 140 (N.D. Ala. 1963)

See the Annotation to Section 9-103, *infra*.

**ARTICLE 9: SECURED TRANSACTIONS; SALES OF
ACCOUNTS, CONTRACT RIGHTS AND
CHATTEL PAPER**

SECTION 9-102. Policy and Scope of Article

(1) Except as otherwise provided in Section 9-103 on multiple state transactions and in Section 9-104 on excluded transactions, this Article applies so far as concerns any personal property and fixtures within the jurisdiction of this state

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in Section 9-310.

CASES ANNOTATED UNDER OTHER SECTIONS

*CHATTANOOGA DISCOUNT CORP. V. WEST
219 F. Supp. 140 (N.D. Ala. 1963)

See the Annotation to Section 9-103, *infra*.

**SECTION 9-103. Accounts, Contract Rights, General Intangibles
and Equipment Relating to Another Jurisdiction;
and Incoming Goods Already Subject to
a Security Interest**

(1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this Article; otherwise by the law (in-

* Code construed but did not govern the case.

cluding the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in this state, this Article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state.

(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 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 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 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.

ANNOTATION

*CHATTANOOGA DISCOUNT CORP. v. WEST
219 F. Supp. 140 (N.D. Ala. 1963)

An auto dealer in Georgia executed trust receipts covering seventeen

* Code construed but did not govern the case.

automobiles to the plaintiff finance company in Tennessee in return for a loan with which the dealer paid for the cars. Pursuant to the Uniform Trust Receipts Act (UTRA) of Tennessee, the plaintiff filed with the Secretary of State of Tennessee a statement of trust receipt financing, but he did not record either the receipts or the statement in Georgia. The automobiles were at all times in Georgia.

From an inventory of twenty-five or thirty automobiles, the dealer sold twenty-three (including those covered by the trust receipts) to the defendant, a dealer in Alabama, who did not comply with the Georgia Bulk Sales Act and the dealer-seller did not satisfy the loan from the proceeds of the sale. Plaintiff brought an action for the proceeds based on his rights as an entruster under the UTRA and as a defrauded creditor under the Georgia Bulk Sales Act.

The court, applying Georgia law because the transfer of the automobiles occurred there, stated that the UTRA had not been adopted in Georgia and it was not required to give effect to the filing provisions of the Tennessee Act which the court deemed merely procedural. Thus, the trust receipts were, in effect, chattel mortgages, each of which should have been recorded in Georgia to afford the plaintiff protection from good faith purchasers for value there. However, the court held that the sale of the automobiles to the Alabama dealer was "out of the ordinary course of business" and in violation of the Georgia Bulk Sales Act. Since the defendant did not comply with the provisions of *that* act, the plaintiff could recover as a creditor of the bulk transferor regardless of the status of his security interest.

COMMENT

Although the Code was not effective in Georgia at the time of the transactions involved, the court in a footnote cited Section 9-103 indicating, presumably, that its application would support the conclusion that the statement of trust receipt financing filed by the plaintiff in Tennessee would be ineffective. Section 9-103 would not be applicable to the facts of this case. Under the Code, the classification of the automobiles would be "inventory." Section 9-109(4). Section 9-103(2) applies only to inventory to be leased by the debtor to others, and the automobiles in this case were not of this type. Section 9-103(3) deals with property brought into the state and would not apply to the automobiles which the court found were at all times in Georgia. The sections which would be applicable are 9-102 and the perfecting provisions of 9-303(1) and 9-401(1), even though the trust receipts were executed in Tennessee. These sections, however, *would* support the court's conclusion that the filing in Tennessee did not perfect the plaintiff's security interest because the required filing in Georgia to perfect the security interest had not been done. Therefore, the plaintiff's security interest would have been subordinate to the interest of a transferee in bulk to the extent the transferee, without knowledge of the security interest, had given value and received the goods. Section 9-301(1)(c).

The problems arising from the validity or invalidity of a bulk transfer

are distinct from those of the secured transaction and are solely governed by the provisions of Article 6. From the facts reported, it is apparent that plaintiff should have been able to recover from the defendant the amount of the transferor's prior debt to him since the transfer was ineffective against him as a creditor. Section 6-105.

R.B.S.

SECTION 9-104. Transactions Excluded From Article

This Article does not apply

- (d) to a transfer of a claim for wages, salary or other compensation of an employee.

CASES ANNOTATED UNDER OTHER SECTIONS

DEPARTMENT OF LABOR AND INDUS. V. ASBURY METROPOLITAN HOTEL CO.
80 N.J. Super. 486, 194 A.2d 244 (1963)

See the Annotation to Section 9-318(3), *infra*.

**SECTION 9-109. Classification of Goods; "Consumer Goods";
"Equipment"; "Farm Products"; "Inventory"**

Goods are

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

CASES ANNOTATED UNDER OTHER SECTIONS

*CHATTANOOGA DISCOUNT CORP. V. WEST

219 F. Supp. 140 (N.D. Ala. 1963)

See the Annotation to Section 9-103, *supra*.

McCOY V. MOSELY MACHINERY, INC.

33 F.R.D. 287 (E.D. Ky. 1963)

See the Annotation to Section 9-206, *infra*.

* Code construed but did not govern the case.

SECTION 9-206. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists

(1) Subject to any statute or decision which establishes a different rule for buyers of consumer goods, an agreement by a buyer that he will not assert against an assignee any claim or defense which he may have against the seller is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on Commercial Paper (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the Article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

ANNOTATION

McCoy v. Mosely Machinery, Inc.

33 F.R.D. 287 (E.D. Ky. 1963)

The plaintiff-buyer purchased a compression baler from the seller under a conditional sales contract which was assigned on the same day to C.I.T. Corp. The terms of the conditional sales agreement provided that the buyer would pay \$1242.58 each month for 39 months in discharge of the unpaid balance of the purchase price and that any claims or defenses the buyer might have would not be asserted against anyone but the seller. Subsequently, upon discovering the baler to be defective, the buyer brought an action against the seller and assignee seeking cancellation of the contract for failure of consideration resulting from defects in the machine and non-conformity with various warranties made by the seller. In its answer, the assignee alleged that it took the assignment for value, in good faith, and without notice of any default by the seller, and as a result of the waiver clause in the conditional sales agreement, it was free from any claim by the buyer based upon the seller's breach of warranty. The buyer's reply to the answer was that the assignee did have notice of the seller's default. The court denied the assignee's motion for summary judgment, holding that under Kentucky law which was applicable, Section 9-206 provided that an agreement by the buyer not to assert such defenses against an assignee is enforceable if the allegations in the assignee's answer could be proven. However, the buyer's allegation that the assignee had notice of the defects in the machinery gave rise to a sufficient dispute of fact to require denial of the motion for summary judgment.

COMMENT

The compression baler purchased by the seller would be classified by Section 9-109 as equipment. Had the goods been consumer goods, Section 9-206 would be subject to any statute or decision which establishes a different rule with possible different results.

C.K.B. JR.

SECTION 9-301. Persons Who Take Priority Over Unperfected Security Interests; "Lien Creditor"

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected.

CASES ANNOTATED UNDER OTHER SECTIONS

*CHATTANOOGA DISCOUNT CORP. v. WEST
219 F. Supp. 140 (N.D. Ala. 1963)

See the Annotation to Section 9-103, supra.

SECTION 9-303. When Security Interest is Perfected; Continuity of Perfection

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in Sections 9-302, 9-304, 9-305 and 9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

CASES ANNOTATED UNDER OTHER SECTIONS

*CHATTANOOGA DISCOUNT CORP. v. WEST
219 F. Supp. 140 (N.D. Ala. 1963)

See the Annotation to Section 9-103, supra.

SECTION 9-318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

ANNOTATION

DEPARTMENT OF LABOR AND INDUS. v. ASBURY METROPOLITAN HOTEL CO.
80 N.J. Super. 486, 194 A.2d 244 (1963)

An action was brought to recover penalties from an employer, who had

* Code construed but did not govern the case.

deducted from wages and paid to an employment agency an amount assigned voluntarily by the employee in payment of the fee for procuring his job, for thereby allegedly violating a statute requiring full payment of wages to employees. In affirming judgment for the employer, the court held that the employer's honoring its employee's voluntary assignments was not violative of the full payment of wages statute. In its dictum, it further reasoned that the statute should be construed strictly so as not to apply to payment of voluntary assignments of wages to an employment agency because if the payments were in violation of the statute, the employer, in order to avoid such a violation could not fulfill his common law obligations as evidenced by Section 9-318(3).

COMMENT

Section 9-104(d) specifically excludes the assignment of wages from the purview of Article 9. In citing Section 9-318(3), the court was merely representing the common law obligations of a debtor of an assigned contract right toward the assignee, as evidenced by legislation. Its decision, however, was properly based upon New Jersey case law and statutes. See Section 9-104, Official Comment 4.

R.B.S.

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:

Optional paragraph (a)

- (a) when the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of thein the county of the debtor's residence or if the debtor is not a resident of this state then in the office of thein the county where the goods are kept, and in addition when the collateral is crops in the office of thein the county where the land on which the crops are growing or to be grown is located;
- (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;

CASES ANNOTATED UNDER OTHER SECTIONS

*CHATTANOOGA DISCOUNT CORP. V. WEST
219 F. Supp. 140 (N.D. Ala. 1963)

See the Annotation to Section 9-103, supra.

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