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## SALES-CORPORATE REORGANIZATION PROCEEDINGS UNDER SECTION 77B—RIGHT OF CONDITIONAL VENDORS TO RECLAIM PROPERTY

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SALES—CORPORATE REORGANIZATION PROCEEDINGS UNDER SECTION 77B—RIGHT OF CONDITIONAL VENDORS TO RECLAIM PROPERTY—The debtor, a laundry corporation, had filed a petition for reorganization under Section 77B of the Bankruptcy Act.<sup>1</sup> The petition was granted, but prior to the approval by the court of a reorganization plan several conditional vendors (whose sales agreements had been filed according to the requirement of the New York law<sup>2</sup>) moved to retake the articles sold, in accordance with said law relative to conditional sales, the debtor having defaulted in the agreed payments. *Held*, the conditional vendors were not lienors nor mortgagees, whose interests would have been covered by the reorganization petition; and since the chattels were not the "property" of the debtor, the sellers could reclaim them. *In re Lake's Laundry, Inc.*, (C. C. A. 2d, 1935) 79 F. (2d) 326.

On grounds familiarly repeated in judicial decisions, the court in the instant case meticulously differentiates the interest of the conditional seller and divorces it from the operation of congressional legislation aimed to permit corporate rehabilitation. Time and again have conditional sales been held to be different from chattel mortgages.<sup>3</sup> So the conditional seller has been regarded as *retaining* the "title," with a mere transfer of possession to the purchaser.<sup>4</sup> On the other hand, the vendor who takes a chattel mortgage is technically said to be *revested* with "title," it having momentarily been with the purchaser, or he is considered as being "clothed with a lien," depending upon whether the "conveyance theory" or the "lien theory" is followed in the jurisdiction. Resulting variant consequences have sometimes followed from the distinction. Thus, in the construction

<sup>1</sup> 11 U. S. C., § 207 (1934).

<sup>2</sup> N. Y. Personal Property Law [Birdseye Consol. Laws (Supp. 1921-1923)], §§ 60-80, an embodiment of the Uniform Conditional Sales Act, in effect in New York since 1922.

<sup>3</sup> *Bailey v. Baker Ice Machine Co.*, 239 U. S. 268, 271, 36 S. Ct. 50 (1915); *In re Master Knitting Corporation*, (C. C. A. 2d, 1925) 7 F. (2d) 11; *Quinn v. Bancroft Jones Corp.*, (C. C. A. 2d, 1927) 18 F. (2d) 727; *In re Horwitz*, (D. C. Minn. 1929) 32 F. (2d) 285; *Robinson v. Bowe*, (C. C. A. 8th, 1934) 73 F. (2d) 238; MECHEM, *THE LAW OF SALE*, § 583 (1901), and cases there cited.

<sup>4</sup> *Harkness v. Russell*, 118 U. S. 663, 7 S. Ct. 51 (1886); and see Section 23 of the Uniform Sales Act, recognizing the validity of contracts of conditional sale.

of recording statutes, those providing for the recording of chattel mortgages have not generally been deemed to cover conditional sales.<sup>5</sup> Steeped, then, in such established precedent, it is not surprising that the court in construing the provisions of Section 77B in the principal case here too should draw the oft-recognized distinction. The court goes on to find that the chattels are not the property of the conditional purchaser subject to the submitted reorganization plan, which "may deal with all or any part of the property of the debtor."<sup>6</sup> The district court,<sup>7</sup> whose decision below was affirmed by the circuit court, further thought it significant that the provision in Section 77B in regard to stays of suits referred only to suits "to enforce any lien."<sup>8</sup> It may be said that the dissenting opinion of Justice Learned Hand is not strained when viewed in the light of a frank recognition of the purpose which sellers using the devices of conditional sale and chattel mortgage intend ultimately to effectuate, namely ownership in the buyer and a divestiture of ownership on the part of the seller. The immediate purpose of each is to protect himself with some security.<sup>9</sup> The interest which the purchaser acquires might very well be recognized as one falling within the statutory language of property. When, coupled with the above considerations, the obvious purpose of the legislation (namely to prevent the dismantling of corporations in financial straits and to permit a rearrangement of their balance sheets and capital structure) is analyzed in view of the fact that a large number of corporations find much of their necessary working equipment encumbered with conditional sales agreements,<sup>10</sup> it seems clear that to permit reclamation by conditional sellers

<sup>5</sup> *The Marina*, (D. C. N. J. 1884) 19 F. 760; *Campbell Printing Press & Mfg. Co. v. Walker*, 22 Fla. 412, 1 So. 59 (1886); *Gilbert v. National Cash Register Co.*, 176 Ill. 288, 52 N. E. 22 (1898); *Campbell v. Atherton*, 92 Me. 66, 42 A. 232 (1898); *Bennett Bros. Co. v. Tam*, 24 Mont. 457, 62 P. 780 (1900); *Maxwell v. Tufts*, 8 N. M. 396, 45 P. 979, 33 L. R. A. 854 (1896); *McComb v. Donald's Admr.*, 82 Va. 903, 5 S. E. 558 (1886); *W. W. Kimball Co. v. Mellon*, 80 Wis. 133, 48 N. W. 1100 (1891).

<sup>6</sup> Bankruptcy Act, § 77B (b) (10), 11 U. S. C., § 207 (b) (10).

<sup>7</sup> *In re Lake's Laundry, Inc.*, (D. C. N. Y. 1935) 11 F. Supp. 237.

<sup>8</sup> Bankruptcy Act, § 77B (c) (10), 11 U. S. C., § 207 (c) (10), provides for stays; but see *In re Burgmeister Brewing Co.*, (D. C. Ill. 1935) 11 F. Supp. 902, which holds that conditional sellers are creditors bound under Section 77B (b) (10) and 77B (c) (6) [11 U. S. C., § 207 (b) (10) and § 207 (c) (6)] by the court's order fixing the time within which claims against the debtors must be presented.

<sup>9</sup> 2 WILLISTON, SALES, § 579 (1924); 1 *ibid.*, § 336, distinguishing conditional sales from leases, points out: "A conditional sale contemplates the ultimate ownership of the property by the buyer, together with the use of it in the meantime"; *R. C. Bartley Co. v. Lee*, 87 N. J. L. 19, 93 A. 78 (1915); BOGERT, COMMENTARIES ON CONDITIONAL SALES [2A UNIFORM LAWS ANNOTATED], § 9 (1924); and see 36 HARV. L. REV. 740 (1923), wherein it is said that the Uniform Conditional Sales Act adopts the view that in substance a conditional sale is a chattel mortgage and the remedies of the parties should coincide as nearly as possible, referring to the Uniform Conditional Sales Act, §§ 19-24, and the explanation of these sections by the draftsman, Professor George G. Bogert, in Horack, "The Uniform Conditional Sales Act," 5 IOWA L. BUL. 129 at 164 (1920).

<sup>10</sup> See *In re Ideal Laundry, Inc.*, (D. C. Cal. 1935) 10 F. Supp. 719, where Lindley, D. J., reached the result of the principal case, though recognizing that, "The

means a denial of the relief intended for debtors by the act. It is submitted that though the majority properly reached its conclusions by a logical use of the "usual" approach, the dissent of Justice Hand has much to commend it, and appears more consonant with the declared policy of modern statutes.<sup>11</sup>

J. A. R.

property in question constitutes an essential part of the debtor's estate. Indeed, without this equipment, the debtor is helpless.

<sup>11</sup> See comment in this issue on "Title-Retaining Instruments as Against Third Persons," 34 MICH. L. REV. 538 (1936).