Michigan Law Review

Volume 32 | Issue 5

1934

SALES - SECTION 14, UNIFORM CONDITIONAL SALES ACT - REMOVAL TO OTHER STATE WITHOUT REFILING

SALES — SECTION 14, UNIFORM CONDITIONAL SALES ACT — REMOVAL TO OTHER STATE WITHOUT REFILING — The plaintiff, vendor in a conditional sale contract, received notice of the removal of the goods by the vendee to another State, but failed to refile the contract in the other State as required by its statute. A creditor of the vendee attached the goods without notice of the conditional sale contract, but was given actual notice of it by the plaintiff during the prescribed filing period. In this action, the plaintiff sought to recover the goods from the attaching creditor. *Held*, the conditional sale contract was void as to the creditor in the absence of a refiling, notwithstanding the actual notice given him during the refiling period. *Universal Credit Co. v. Finn*, (Wis. 1933) 250 N. W. 391.

The Wisconsin court in the principal case was confronted with the construc-

tion of section 14[1] of the Uniform Conditional Sales Act,[2] providing in substance that the vendor, upon receiving notice of the removal of the goods to another State, should refile the contract there within ten days to protect himself from bona fide purchasers or creditors of the vendee. In framing this section of the uniform act an existing conflict [3] as to the necessity of a refiling in such a case was sought to be removed.[4] However, the difficult problem raised in this case, as to whether actual notice given to a creditor within the period for refiling was the equivalent of a refiling under section 14, illustrates that all possible confusion was not erased. Only two courts had previously faced this problem, and they had reached opposite conclusions.[5] With these decisions presented by the opposing counsel, the Wisconsin court inclined to the view that actual notice was not the equivalent of a refiling under section 14.[6] In view of the obvious purpose of the recordation to give notice to purchasers and creditors, it would seem at first blush that actual notice should be the equivalent of refiling, and it has been so held in kindred situations.[7] The explicit language of section 14, however, required a refiling and failed to provide for an exception where actual notice was given, and the court based its decision on a literal construction thereof.[8]

[1] "When, prior to the performance of the condition, the goods are removed by the buyer from a county in this state to another county in this state in which such contract or a copy thereof is not filed, or are removed from another state into a county in this state where such contract or copy is not filed, the reservation of the property in the seller shall be void as to the purchasers and creditors described in section 122.05, unless the conditional sale contract or a copy thereof shall be filed in the county to which the goods are removed, within ten days after the seller has received notice of the county to which the goods have been removed." Wis. Stat. (1931), sec. 122.14. Section 122.05 describes such purchasers and creditors as, "any purchaser from or creditor of the buyer, who, without notice of such provision, purchases the goods or acquires by attachment or levy a lien upon them, before the contract or a copy shall be filed." Wis. Stat. (1931), sec. 122.05.

[2] This act has been adopted in substance in Alaska, Arizona, Delaware, New Jersey, New York, Pennsylvania, South Dakota, West Virginia, and Wisconsin.

[3] 28 COL. L. REV. 111 (1928); Ann. Cas. 1916-A 880 n.; and 25 A. L. R. 1153 n. at 1157 (1923).

[4] The comments upon the discussion by the commissioners on uniform state laws in 2 A., UNIFORM LAWS ANN. 129, 135 (1924) evidence this purpose. That the desired result has been accomplished seems apparent from the cases, arising under the act, which have held this section paramount as to the rights of resident creditors and debtors against foreign vendors. Bradshaw v. Kleiber Truck Co., 29 Ariz. 293, 241 Pac. 305 (1925); and Thayer Mercantile Co. v. Bank, 98 N. J. L. 29, 119 Atl. 94 (1922).

[5] The dearth of authority is doubtless due to the recency and limited adoption of the uniform act. Banks-Miller Supply Co. v. Bank, 106 W. Va. 583, 146 S. E. 521 (1929), held that actual notice was the equivalent of filing, contrary to the earlier decision of Thayer Mercantile Co. v. Bank, 98 N. J. L. 29, 119 Atl. 94 (1922). An early case in Georgia, Rowe v. Spencer, 132 Ga. 426, 64 S. E. 468 (1909), held actual notice not the equivalent of filing in a parallel situation.

[6] The court discusses both of the earlier cases in the course of its opinion.

[7] Diamond Rubber Co. v. Fourth Nat. Bank, 171 Ala. 420, 55 So. 100 (1911); First Nat. Bank v. Tufts, 53 Kan. 710, 37 Pac. 127 (1894); Toledo Computing Scale Co. v. Aubuchon, 187 Mo. App. 687, 173 S. W. 85 (1915); and Tompkins v. Fonda Glove Co., 188 N. Y. 261, 80 N. E. 933 (1907).

[8] In the course of its consideration the court said, "There is nothing in the act which provides that, if the purchaser or attaching creditor without notice, thereafter and during the ten-day period in which the seller is required to file his contract, receives

It would seem that a decision based upon the purpose of the recording act, which should always be given great weight,[9] would have been more desirable despite the express words of the statute. Our courts have read exceptions into statutes on the basis of their purpose,[10] although as a general rule the wording clearly should be followed.

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notice of the provision of the contract reserving property in the seller, his purchase or attachment thereby becomes invalid as against the seller. Had the commissioners who drafted the act intended so to provide, it would have been a simple matter to have inserted such exception in the law." Universal Credit Co. v. Finn, (Wis. 1933) 250 N. W. 391 at 393.

[9] 81 UNIV. PA. L. REV. 628 (1933); Benner v. Bank, 73 Wash. 488, 131 Pac. 1149 (1913); and General Motors Acceptance Corp. v. Mayberry, 195 N. C. 508, 142 S. E. 767 (1928).

[10] In United States v. Kirby, 74 U. S. 482, 19 L. ed. 278 (1869), the Court read a public officer out of the express words of a penal statute, saying, "it will always be presumed that the legislature intended exceptions to its language which would avoid results of this character." United States v. Katz, 271 U. S. 354, 70 L. ed. 986 (1926); and United States v. Chem. Foundation, 272 U. S. 1, 47 Sup. Ct. 1 (1926).