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NOTES

UCC—SECURED TRANSACTIONS—JUDICIAL SALES —Purchaser at Judicial Sale Takes Property Subject to Unperfected Security Interest of Which He Has Knowledge

In two recent cases, courts have considered the question whether or not a purchaser at a judicial sale takes property free of an unperfected security interest of which he has knowledge. Although they used different theories, both courts concluded that the holder of the unperfected security interest had priority over the purchaser with knowledge. *Bloom v. Hilty*¹ (*Bloom*) was an action to replevy a quantity of pipe which the plaintiff, Bloom, had sold to Hilty pursuant to a title-retention contract. Bloom's security interest, obtained by virtue of his retention of title,² was unperfected. After the sale by Bloom, Cardwell Drilling Co. (Cardwell) sold Hilty a drilling rig and equipment, taking a chattel mortgage on the pipe as well as on the drilling equipment. Cardwell filed financing statements in order to perfect its security interest.³ Pursuant to a judgment for a third party, Hilty's drilling equipment and pipe were levied upon and sold at an execution sale. Cardwell purchased the goods at the sale, and Bloom brought suit against both Cardwell and Hilty. The trial court gave judgment for Bloom but the superior court reversed.⁴ The Supreme Court of Pennsylvania vacated both judgments and remanded the case to the trial court.⁵ The court held that Cardwell prevailed over Bloom to the extent of its perfected security interest by reason of section 9-312(5)(b) of the Uniform Commercial Code (UCC), which provides that "priority between conflicting security interests in the same collateral shall be determined . . . in the order of perfection." However, according to

1. 427 Pa. 463, 234 A.2d 860 (1967), *rev'g* 210 Pa. Super. 255 (1967), *rev'g* 48 WEST-MORELAND COUNTY L.J. 251 (C.P. 1966) (en banc).

2. Under UNIFORM COMMERCIAL CODE § 2-401 [hereinafter UCC], a reservation by the seller of title to goods delivered to the buyer is limited in effect to a reservation of a security interest.

3. Pennsylvania requires filing in the office of the Secretary of the Commonwealth and, if the debtor has a place of business in only one county in the state, in the office of the prothonotary of the county where his business is located. PA. STAT. ANN. tit. 12A, § 9-401(1)(c) (1954), UCC § 9-401(1)(c) [third alternative subsection (1)].

4. The trial court treated Cardwell not as a secured party but as a lien creditor with knowledge of Bloom's unperfected security interest. Since UCC § 9-301(1)(b) subordinates unperfected security interests only to lien creditors without knowledge, the court held that Cardwell took subject to Bloom's interest. 427 Pa. at 466, 234 A.2d at 861. The superior court did not dispute the trial court's finding that Cardwell was a lien creditor but reversed on the ground that there was no evidence to show that Cardwell had knowledge of Bloom's security interest. 427 Pa. at 467, 234 A.2d at 861.

5. The supreme court held that Cardwell was not a lien creditor. 427 Pa. at 470, 234 A.2d at 863.

the court, if the value of the equipment should be found to exceed Cardwell's perfected security interest, the priority of interests in the excess as between Bloom's unperfected security interest and Cardwell's interest as a purchaser at the sale would turn on whether or not Cardwell had actual knowledge of Bloom's interest at the time of the execution sale.⁶ The court stated that if Cardwell purchased without actual knowledge, it took free of Bloom's interest by reason of section 9-301(1)(c) of the UCC,⁷ which provides that "a person who is not a secured party and who is a . . . buyer not in the ordinary course of business" takes free of an unperfected security interest "to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected"⁸ Although the opinion does not specify what the result was to be if Cardwell had knowledge of Bloom's interest, the court apparently felt that in such a situation the negative implication of section 9-301(1)(c) would require that Bloom, the holder of the unperfected security interest, prevail.⁹

*In re Dennis Mitchell Industries, Inc.*¹⁰ (*Mitchell*) was a proceeding in bankruptcy in which Herman Schwabe, Inc. (Schwabe), sought to reclaim two hydraulic cutting machines that it had sold to Dennis Mitchell Industries, Inc. (Mitchell), pursuant to a conditional sales contract. More than a year before the bankruptcy proceeding, Schwabe, relying on a contract provision requiring that the machines be kept in Philadelphia, and apparently unaware that they had never been in Pennsylvania,¹¹ had filed financing

6. The supreme court directed the trial court to determine whether or not the value of the equipment exceeded Cardwell's interest, and, if so, whether or not Cardwell had actual knowledge of Bloom's interest. 427 Pa. at 469, 234 A.2d at 863. It further found some evidence from which Cardwell's knowledge at the time of the sale might have been inferred although the trial court had not made a specific finding on the issue of knowledge. 427 Pa. at 468-69, 234 A.2d at 862.

7. 427 Pa. at 468 n.1, 234 A.2d at 863 n.1.

8. § 9-301(1):

[A]n unperfected security interest is subordinate to the rights of

. . . .

(c) in the case of goods . . . a person who is not a secured party and who is a . . . 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

9. Although the court did not deal with this possibility specifically, it felt that section 9-301(1)(c) was the crucial provision; and a lack of knowledge of the security interest is one of the conditions necessary for the operation of that provision. Thus, if there is knowledge, it is reasonable to assume that the result would be the opposite from that provided for in 9-301(1)(c).

10. 280 F. Supp. 433 (E.D. Pa. 1968), *aff'g* 4 UCC REP. SERV. 1084 (Ref. E.D. Pa. 1967). But on June 19, 1969, while this Note was in the final stages of printing, the Court of Appeals for the Third Circuit reversed the district court. *In re Dennis Mitchell Indus., Inc.*, No. 17,240 (3d Cir., filed June 19, 1969).

11. Mitchell took delivery of the machines in New York and transported them on its own truck to its plant in New Jersey where they were permanently installed. Brief for Appellant, at 23a, *In re Dennis Mitchell Indus., Inc.*, *rev'd*, No. 17,240 (3d Cir.,

statements there in accordance with the Pennsylvania UCC.¹² When Mitchell was adjudicated bankrupt, Schwabe filed its petition for reclamation. While action on this petition was pending, the referee authorized the receivers to sell the bankrupt's unliquidated assets to a nominee of A. J. Armstrong Co. (Armstrong).¹³ The nominee contested the reclamation petition, arguing that Schwabe's security interest was unperfected since Schwabe had not filed in the state where the machines were located,¹⁴ and that Armstrong had succeeded to the trustee's priority over unperfected security interests by virtue of the "shelter provision" in section 2-403(1) of the UCC. That provision grants a purchaser of goods "all title which his transferor had or had power to transfer."¹⁵ The referee rejected this argument and granted Schwabe's petition; the district court affirmed. Despite the fact that Schwabe had not filed in the state where the machines were located, the court held that Schwabe's security interest was perfected.¹⁶ An alternative holding was that

filed June 19, 1969). Schwabe contends that it did not receive notice that the machinery had been installed in New Jersey rather than in Pennsylvania until the receiver-trustee filed his answer to the petition for reclamation. Brief for Appellee, at 3, *In re Dennis Mitchell Indus., Inc.*, appeal docketed, No. 17,240, 3d Cir., June 10, 1968.

12. See note 3, *supra*.

13. A bankruptcy court may sell whatever interest the bankrupt estate has, leaving the purchaser and the claimant to contest their rights to the property elsewhere [Schmidt v. Ryon, 281 F. 790, 793 (3d Cir. 1922)], or it may sell the assets free of liens, leaving the claimant to contest the distribution of the proceeds [4A W. COLLIER, BANKRUPTCY ¶ 70.99, at 1214, 1217-19 (14th ed. 1967)]. In *Mitchell*, the court sold the assets subject to liens and claims, but also decided the rights of the claimants in the assets. 280 F. Supp. at 435.

14. According to UCC section 9-102, comment 3, filing in the state in which the collateral is located is necessary to perfect a security interest. See note 22 *infra*.

15. Brief for A.J. Armstrong at 4, *In re Dennis Mitchell Indus., Inc.*, 4 UCC REP. SERV. 1084 (Ref. E.D. Pa. 1967); Brief for Appellant at 3 *In re Dennis Mitchell Indus., Inc.*, 280 F. Supp. 433 (E.D. Pa. 1968).

16. 280 F. Supp. at 436. This holding is clearly erroneous. Under the UCC, applicable in all jurisdictions involved, the proper place to file financing statements is the state in which collateral is located. See UCC § 9-102, comment 3. Since the goods here were never in Pennsylvania, filing there was ineffective to perfect Schwabe's security interest. See UCC § 9-102(1), comment 3. The court reached the opposite result by treating the cutting machines as "mobile goods"—"goods normally used in more than one jurisdiction"—in which a security interest is perfected by filing in the state in which the debtor has his principal place of business. UCC § 9-103(2). This exception assumes that the transitional nature of goods such as automotive equipment, rolling stock, and airplanes [UCC § 9-103(2)] will put third parties on notice that different filing rules apply and will thus justify relieving the secured party of an otherwise onerous filing burden. Factory equipment such as that involved in *Mitchell* would not fulfill this notice function, and the exception should therefore not apply.

The court of appeals, in reversing the district court, held that Schwabe's security interest was unperfected and that the trustee's status as a lien creditor enabled him to sell the machines free of that unperfected interest. *In re Dennis Mitchell Indus., Inc.*, No. 17,240 (3d Cir., filed June 19, 1969), at 17.

The referee has based his conclusion that the interest was perfected on the relation-back provision of section 9-103(3). 4 UCC REP. SERV. 1084, 1086 (Ref. E.D. Pa. 1967). This ground is likewise insufficient. First, the draftsmen clearly intended to cut off

Armstrong would take subject to Schwabe's security interest even if it was unperfected because it had knowledge of that interest.¹⁷ Although the court concluded that Armstrong's rights were governed by article 9, which deals with secured transactions, rather than by section 2-403(1),¹⁸ as Armstrong had urged, it did not base its holding on any specific provision in article 9.¹⁹ Instead, it seemed to rely upon the law relating to judicial sales, which it interpreted as protecting a purchaser from only those outstanding interests of which he had no actual or constructive notice.²⁰

The first question for consideration is the applicability of the "shelter provision" of section 2-403(1)²¹ to these cases. This section may be relied upon by different parties depending upon the nature of the sale. When a bankruptcy sale is involved, the buyer may claim, as Armstrong did in *Mitchell*, that the section allows him to succeed to the trustee's priority over unperfected security interests.²²

relation back after four months. UCC § 9-103, comment 7. More fundamentally, the relation-back provision presupposes that the security interest was perfected in the state in which the collateral was located when the security interest attached. UCC § 9-103(3). Since a security interest attaches when there is agreement, giving of value, and passage of rights in the collateral to the debtor [UCC § 9-204(1)], the state of attachment here was New York, not Pennsylvania.

17. 280 F. Supp. at 435. The court of appeals, however, held that Armstrong, as a purchaser from the trustee, took title to the machines free of Schwabe's unperfected security interest, whether or not he could be charged with knowledge or notice of such security interest. *In re Dennis Mitchell Indus., Inc.*, No. 17,240 (3d Cir., filed June 19, 1969), at 17.

18. 280 F. Supp. at 436.

19. It may be that the court referred to article 9 only to dispose of section 2-403.

20. 280 F. Supp. at 436. However, the court should have applied bankruptcy law under which Armstrong would succeed to the trustee's priority over unperfected security interests. See notes 22 and 36 *infra*. Indeed, the court of appeals, in reversing the district court, did apply bankruptcy law and so held. *In re Dennis Mitchell Indus., Inc.*, No. 17,240 (3d Cir., filed June 19, 1969), at 17.

21. See text accompanying note 15 *supra*. Under Bankruptcy Act § 70a(5), 11 U.S.C. § 110(a)(5) (1964), trustees in bankruptcy acquire by operation of law title to all nonexempt property which the bankrupt might have transferred as of the date of bankruptcy. Moreover, trustees have the status of lien creditors without knowledge under Bankruptcy Act § 70c, 11 U.S.C. § 110(c) (Supp. III, 1965-1967): The trustee shall have as of the date of bankruptcy the rights and powers of: (1) a creditor who obtained a judgment against the bankrupt upon the date of bankruptcy, whether or not such a creditor exists, (2) a creditor who upon the date of bankruptcy obtained an execution returned unsatisfied against the bankrupt, whether or not such a creditor exists, and (3) a creditor who upon the date of bankruptcy obtained a lien by legal or equitable proceedings upon all property, whether or not coming into possession or control of the court, upon which a creditor of the bankrupt upon a simple contract could have obtained such a lien, whether or not such a creditor exists. There is some early authority that when the trustee has actual knowledge of unrecorded liens, he gets no greater rights under § 70c than a lien creditor with such knowledge. *E.g., In re Golden Cruller & Doughnut Co.*, 6 F.2d 1015 (D.N.J. 1925), *American Laundry Mach. Co. v. Everybody's Laundry*, 185 Iowa 760, 171 N.W. 161 (1919). The UCC explicitly avoids this result but apparently would deprive the trustee of his innocent status at least when he and all creditors had knowledge of the security interest. See UCC § 9-301(3). The better view, however, seems to be that the trustee is without knowledge as a matter of law.

22. 4A W. COLLIER, *supra* note 13, at ¶ 70.53; 2 G. GILMORE, SECURITY INTERESTS

When an ordinary judicial sale is involved, however, there is no intermediate transferee with both title to the property and a clear claim to priority, and the secured party may rely on this section to assert that the buyer takes no greater rights than his debtor had or had power to transfer and that thus the buyer takes subject to the unperfected security interest.

In either situation it appears that the *Mitchell* court's holding that this section does not apply is correct. The draftsmen intended article 9 to be a comprehensive treatment of security interests²³ and therefore placed in that article exclusive rules for determining priority between transferees of a debtor and a secured party when the debtor makes disposition of the collateral which is unauthorized by the security agreement.²⁴ If, as the courts in both *Bloom* and *Mitchell* assumed,²⁵ the UCC applies to judicial sales,²⁶ article 9 should also control priority between secured parties and purchasers at such sales, to the exclusion of other provisions of the UCC. This conclusion is supported by the fact that section 2-403(1) speaks solely in terms of passage of title,²⁷ while section 9-202 declares that technicalities of title are immaterial to the rights of parties to secured transactions.

If section 2-403(1) is not applicable, it is important to determine what sections are controlling. Initially, both section 9-306(2) and section 9-301(1)(c)²⁸ appear relevant. Section 9-306(2) provides that "a security interest continues in collateral notwithstanding sale, exchange, or other disposition thereof . . ."; thus, it seems to allow the holder of the unperfected security interest to prevail. However, section 9-306(2) is limited by the clause "[e]xcept where this Article otherwise provides," and comment 3 to that section indicates that the provisions of section 9-301 determine when a transferee takes free of an unperfected security interest. Of the 9-301

IN PERSONAL PROPERTY § 45.3.2, at 1295-96; Kennedy, *The Impact of the Uniform Commercial Code on Insolvency*, 67 COM. L.J. 113, 115 (1962); Kennedy, *The Trustee in Bankruptcy Under the Uniform Commercial Code; Some Problems Suggested by Articles 2 and 9*, 14 RUTGERS L. REV. 518, 522-25 (1960); see *In re Horton*, 31 F. 2d 795, 799 (W.D. La. 1928).

23. UCC § 2-403: "The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9) . . ."

While comment 4 to § 2-403 seems to indicate that subsection (1), the "shelter" provision, is excepted from the operation of subsection (4), the language of subsection (4) could hardly be more clear that the rights of purchasers other than those expressly covered in § 2-403 are to be determined by articles other than article 2—in this case, article 9. Moreover, even if the "shelter" provision is excepted from subsection (4), it deals only with title, which is not relevant to rights of the parties arising from security interests. See text accompanying note 30 *infra*.

24. See UCC section 9-306(2).

25. See text accompanying notes 5-9 and 16-22 *supra*.

26. But see text accompanying notes 32-34 *infra*.

27. See text accompanying note 15 *supra*.

28. See text accompanying notes 8 and 9 *supra*.

provisions, only subsection (1)(c) speaks to the situation at hand,²⁹ for it applies to buyers who take neither as secured parties nor in the ordinary course of business,³⁰ and buyers at judicial sales meet both of these conditions. Accordingly, the *Bloom* court might seem correct in concluding that section 9-301(1)(c) required, by its negative implication, that the secured party have priority.³¹

A closer reading of the UCC and the draftsmen's commentary, however, leads to the conclusion that the priority between purchasers of goods at judicial sales and holders of unperfected security interests in those goods is not governed by section 9-301(1)(c) or any other provision of the UCC. Comment 6 to section 9-501 states that a judicial sale "is governed by other law and not by this Article . . ."³² This statement is directed specifically at the judicial sale held to satisfy a judgment obtained by a secured party.³³ A fortiori the exclusion of UCC coverage should apply when the sale satisfies a judgment obtained by an unsecured party. Section 9-306(2), which provides for the continuation of a security interest in collateral "notwithstanding sale, exchange, or other disposition thereof by the debtor . . ." is, of course, no bar to this conclusion if the usual rule is accepted that it is the court, not the debtor, that makes the disposition at a judicial sale.³⁴

Therefore, since article 9 does not apply to judicial sales, the priority between purchasers of goods at such sales and holders of unperfected security interests in those goods is determined by the pre-existing law governing judicial sales. Under the pre-existing law, it seems clear that the purchaser at a judicial sale takes free of outstanding interests not enforceable against the intervening lien

29. Subsection (1)(a) applies only to the situation in which both security interests are perfected and to that in which neither interest is perfected; subsection (1)(b) applies only to lien creditors; and subsection (1)(d) applies only to accounts, contract rights, and general intangibles. Subsection (2) provides for the relation back of perfection of a purchase-money security interest, and subsection (3) defines "lien creditor."

30. A "buyer in the ordinary course of business" is one who, besides meeting other tests, buys from a person in the business of selling goods of that kind. UCC § 1-201(9). By negative implication, all other buyers are "buyers not in the ordinary course of business." Clearly, a buyer at a judicial sale is not buying from one in the business of selling goods of that kind and, thus, is a buyer "not in the ordinary course of business."

31. See notes 8 and 9 *supra* and accompanying text.

32. UCC § 9-501, comment 6. Professor Hogan believes that UCC § 9-501(5), which provides that "the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article," indicates that the UCC does not govern judicial sales. He suggests that by freeing the secured party of the most stringent requirements of article 9, this section implies that the UCC does not apply at all to judicial sales. Hogan, *The Secured Party and Default Proceedings Under the UCC*, 47 MINN L. REV. 205, 251-52 (1962).

33. The judgment obtained is a remedy available to a secured party upon the debtor's default. It may be enforced by judicial sale pursuant to a levy of execution against the collateral. UCC §§ 9-501(1), 9-501(5).

34. See, e.g. *Calhoun v. Commercial Credit Corp.*, 151 Pa. Super. 589, 591, 30 A.2d 735, 736 (1943).

creditor at the time his lien attached.³⁵ This is also true of bankruptcy sales.³⁶ Thus, it is necessary to determine what interests are not enforceable against the lien creditor. As between lien creditors and secured parties article 9 does apply. Section 9-301(1)(b) gives priority over an unperfected security interest to "a person who becomes a lien creditor without knowledge of the security interest and before it is perfected." Again, section 9-306(2) should not bar this conclusion since that section is limited by the phrase "[e]xcept where this Article otherwise provides,"³⁷ and since the commentary indicates that one of the sections referred to by this phrase is section 9-301.³⁸ Thus, taking sections 9-301(1)(b) and 9-306(2) together, one can conclude that an unperfected security interest simply discontinues when a person without notice becomes a lien creditor. Given this conclusion and the general law of judicial sales, a subsequent purchaser—even one with knowledge of the unperfected security interest—takes free of that interest.

This result is not inevitable, of course; it might be argued that under such circumstances the unperfected security interest discontinues only with respect to the lien creditor, and not with respect to the purchaser at a judicial sale, especially when the purchaser

35. *Teaford v. Moss*, 235 Ala. 490, 491, 179 S. 817, 818 (1938); *Doyle v. Wade*, 23 Fla. 90, 96, 1 S. 516, 519-20 (1887); *Shay v. Security Bank*, 67 Minn. 287, 69 N.W. 920 (1897); *Black v. Mullins & Co.*, 86 N.J.L. 463, 92 A. 281 (1914); *Miners Sav. Bank v. Tracy*, 326 Pa. 367, 372, 192 A. 246, 249 (1937), *appeal dismissed sub nom. Toole v. Miners Sav. Bank*, 302 U.S. 651 (1937); *Blackwell v. Harrelson*, 99 S.C. 264, 270-71, 84 S.E. 233, 235 (1914); Note, *Execution Sales—Rights of Bona Fide Purchasers*, 24 MINN. L. REV. 805, 807, 829 (1940).

36. Unless specifically ordered to be free of liens, a bankruptcy sale is made subject to "valid" liens and encumbrances, and the interests of the lienholders are not affected by the sale. *Gotkin v. Korn*, 182 F.2d 380, 382 (D.C. Cir. 1950) (purchaser at a bankruptcy sale took subject to recorded lien); 4A W. COLLIER, *supra* note 13, ¶ 70.98 at 1199. However, the purchaser at the sale should take free of security interests which are unperfected at the time the petition in bankruptcy is filed. In *GMAC v. Raz Delivery, Inc.*, 238 App. Div. 277, 264 N.Y. Supp. 412 (1933), *noted*, 18 MINN. L. REV. 586 (1934), the plaintiff sought to assert its rights under a conditional sales contract which had not been filed prior to the vendee's bankruptcy. Since the trustee's rights as a lien creditor without knowledge (*see* note 22 *supra*) were superior to rights arising under an unfiled conditional sales contract, the court held that the intervention of the trustee's rights reduced the creditor's claim to an unsecured claim against the bankrupt estate (238 App. Div. at 279-80, 264 N.Y. Supp. at 414-15). Since an unperfected security interest is clearly subordinate to the rights of the debtor's trustee in bankruptcy [UCC §§ 9-301(1)(b), 9-301(3)], it should likewise be reduced to an unsecured claim as of the date of bankruptcy when the trustee's rights as a lien creditor without knowledge accrue [UCC § 9-301(3); Bankruptcy Act § 70c, *supra* note 22]. Consequently, a subsequent sale of the collateral should be free of the unperfected security interest; *cf.* 4A W. COLLIER, *supra* note 13, ¶ 70.98, at 1199. Thus, if the court in *Mitchell* had applied bankruptcy law, as it should have, the purchaser, Armstrong, should have been held to have succeeded to the trustee's priority and thus to take free of the unperfected security interest. *See In re Dennis Mitchell Indus., Inc.*, No. 17,240 (3d Cir., filed June 19, 1969), at 15-17.

37. *See* text preceding note 29 *supra*.

38. UCC section 9-306, comment 3.

has knowledge of that interest. Such an interpretation would not be inconsistent with a literal reading of section 9-301(1)(b), but as a practical matter it would subvert the priorities established in that section. If section 9-301(1)(c) is applied to defeat the rights of purchasers at judicial sales, the rights of lien creditors are also indirectly defeated or diminished because potential purchasers will not buy (or will not pay full value for) goods subject to a possible unperfected security interest. Even if a potential purchaser is unaware of the existence of an unperfected security interest, his enthusiasm to buy will be lessened³⁹ by the realization that one may exist and may have been perfected after the attachment of the lien, or by the realization that he may have to prove his ignorance of its existence to defeat the claims of a party who has been provident enough to advertise his unperfected security interest in local newspapers. The result would be that the lien creditor, thought to be secure under the coverage of section 9-301(1)(b), has lost at least part of the only benefit that his lien confers under the circumstances—the proceeds of the judicial sale.

These arguments indicate that a purchaser at a judicial sale ought to take free of all unperfected security interests, even if he has knowledge of them; and notwithstanding the *Bloom* and *Mitchell* decisions,⁴⁰ this appears to be the result reached in most cases dealing with this problem. In *Mitchell*, for example, the court relied on an earlier Pennsylvania case in which the purchaser was also the judgment creditor and appeared to have had knowledge at all relevant times of a prior assignment for the benefit of creditors under which the plaintiff claimed title.⁴¹ However, the current validity of this precedent is dubious. To the extent that the case relied upon in *Mitchell* stands for the proposition that a purchaser at a judicial sale must rest his claim to priority on ignorance of earlier interests, it has been implicitly overruled by a later Pennsylvania case.⁴² The general rule that a purchaser at a judicial sale

39. It is already true that a majority of judicial sales do not produce enough revenue to cover even the value of the debt which the goods secured. 2 G. GILMORE, *supra* note 22, § 43.2 at 1188 (1965); J. MACLAGHLAN, *BANKRUPTCY* § 295, at 348 (1956).

40. See 427 Pa. at 471, 234 A.2d at 864; and 280 F. Supp. at 436. *But see In re Dennis Mitchell Indus., Inc.*, No. 17,240 (3d Cir., filed June 19, 1969), at 15-17.

41. In *Follweiler v. Lutz*, 102 Pa. 585 (1883), the court seemed to rely on the fact that the purchaser had actual knowledge at the date of the sheriff's sale. The purchaser, however, was the lien creditor who had obtained his lien only one month before the sale. The short time between attachment and sale may have indicated that the lien creditor had actual knowledge at the time of attachment. Moreover, the purchaser-creditor appears to have been a relative of the debtor, which suggests that he had knowledge at all relevant times.

42. *Miners Sav. Bank v. Tracy*, 326 Pa. 367, 192 A. 246 (1937), *appeal dismissed sub nom.* *Toole v. Miners Sav. Bank*, 302 U.S. 651 (1937), in which a judgment creditor who purchased at an execution sale took free of an unrecorded deed of which he had no knowledge on the date the judgment lien attached despite the notice of the deed which was given at the sale.

takes free of interests not enforceable against the lien creditor at the time his lien attached⁴³ seems to encompass situations like those in *Bloom* and *Mitchell* in which the interest involved was an unperfected security interest.⁴⁴

Thus, both the *Bloom* and *Mitchell* courts should have applied the rule that the intervention of a lien creditor without knowledge subordinates unperfected security interests in the collateral. Unlike the rule apparently set out in section 9-301(1)(c), this rule will prevent a secured party from defeating the lien creditor's priority under section 9-301(1)(b) by filing after the creditor obtained his lien or by advertising his security interest at the judicial sale. By reducing the risks faced by purchasers at judicial sales, the rule will also advance the important policy of maximizing the proceeds of judicial sales.⁴⁵

43. See note 35 *supra* and accompanying text.

44. The same result is true in bankruptcy law in which the purchaser succeeds to the trustee's priority over unperfected security interests. See note 36 *supra*.

45. See text accompanying note 39 *supra*. This policy is manifest in the provisions of the Bankruptcy Act. Under § 70c, 11 U.S.C. § 110c (Supp. III, 1965-1967), the trustee acquires, as of the date of bankruptcy, the rights of a judgment creditor, an execution creditor, and a lien creditor, whether or not any of such creditors exist. See note 22, *supra*. With these rights the trustee obtains priority over lesser interests under state law. See, e.g., UCC § 9-301(1)(b). Moreover, section 70e of the Bankruptcy Act, 11 U.S.C. § 110(e) (1964), gives the trustee the power to void transfers fraudulent or voidable as against any creditor having a provable claim under the Act. Finally, Bankruptcy Act § 60, 11 U.S.C. § 96 (1964), and Bankruptcy Act § 67, 11 U.S.C. § 107 (1964), as amended, 11 U.S.C. § 107 (Supp. III, 1965-1967), give the trustee additional power to void various preferences, liens, and fraudulent transfers.