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**Foreign Lienor Cannot Prevail in Ohio Against  
Subsequent Good Faith Purchaser Who  
Holds Ohio Certificate of Title—  
*Commercial Credit Corp. v. Pottmeyer\****

Williams purchased an automobile in West Virginia from plaintiff's assignor on a conditional sales contract. The security interest was duly recorded in West Virginia and noted on the certificate of title. Before paying any of the purchase price, Williams fraudulently procured another West Virginia certificate of title free of notice of liens. Relying on the fraudulent certificate, the

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\* 176 Ohio St. 1, 197 N.E.2d 343 (1964).

defendant bought the car from Williams at an Ohio automobile auction and obtained an Ohio certificate of title. The plaintiff brought suit in Ohio to recover the vehicle and obtained a favorable judgment, which was affirmed by an Ohio court of appeals. On appeal to the Ohio Supreme Court, *held*, reversed. Under the Ohio Certificate of Title Act, one whose claim is not noted upon an Ohio certificate of title cannot prevail in replevin against a bona fide purchaser without notice who holds an apparently valid Ohio certificate.

Although many certificate of title acts are designed as recording systems to help prevent fraudulent sales,<sup>1</sup> there is presently no method of nationally publicizing interests in motor vehicles.<sup>2</sup> It is generally recognized that the validity of a transaction involving a movable chattel is to be determined by the law of the state where the chattel was situated when the transaction occurred;<sup>3</sup> but that rule is not helpful in a situation where a chattel is involved in two transactions, each in a different state. Whether the out-of-state claimant or the resident good faith purchaser will prevail depends on the policy adopted by the forum state. Many jurisdictions, faced with the situation in *Pottmeyer*, would have invoked the principle of judicial comity<sup>4</sup> and upheld the prior foreign security interest.<sup>5</sup>

Having rejected judicial comity in this situation,<sup>6</sup> however, the

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1. *E.g.*, OHIO REV. CODE ANN. §§ 4505.01-.99 (Page 1965). For a discussion of various types of certificate of title acts, see Comment, 47 CALIF. L. REV. 543 (1959).

2. It has been suggested that a single nationwide recording system for automobiles could be enacted. See Raphael, *Extra-territoriality of a Chattel Security Interest*, 28 FORDHAM L. REV. 419, 433-34 (1959).

3. See *Green v. Van Buskirk*, 74 U.S. (7 Wall.) 139 (1868); *Pruitt Truck & Implement Co. v. Ferguson*, 216 Ark. 848, 849, 227 S.W.2d 944, 945 (1950); *Hart v. Oliver Farm Equip. Sales Co.*, 37 N.M. 267, 270, 21 P.2d 96, 98 (1933); RESTATEMENT, CONFLICT OF LAWS § 254(a) (Tent. Draft No. 5, 1959); Vernon, *Recorded Chattel Security Interests in the Conflict of Laws*, 47 IOWA L. REV. 346, 355-57 (1962).

4. "Comity" is a voluntary application of the laws of a foreign jurisdiction. The Supreme Court has described it as follows: "Comity is not a rule of law, but one of practice, convenience and expediency. It is something more than mere courtesy, which implies only deference to the opinion of others, since it has substantial value in securing uniformity of decision, and discouraging repeated litigation of the same question. But its obligation is not imperative. . . . Comity persuades; but it does not command." *Mast, Foss & Co. v. Stover Mfg. Co.*, 177 U.S. 485, 488 (1900).

5. See, *e.g.*, *Ragner v. General Motors Acceptance Corp.*, 66 Ariz. 157, 185 P.2d 525 (1947); *Pruitt Truck & Implement Co. v. Ferguson*, 216 Ark. 848, 227 S.W.2d 944 (1950); *Boscho, Inc. v. Knowles*, 147 Me. 8, 83 A.2d 122 (1951). Application of comity in these circumstances could be justified on several grounds: protecting the creditor is desirable to encourage use of conditional sales contracts and other security arrangements which have become a virtual economic necessity; favoring the domestic purchaser may cause retaliation by other states in the form of nonrecognition of the forum state's certificates; since it is general knowledge that most automobiles are purchased on credit the buyer should have checked for a foreign lien; and the forum court would become an accessory to wrongdoing if it upheld the title acquired through a wrongdoer.

6. See principal case at 3-4, 197 N.E.2d at 345.

Ohio court's interpretation of the Certificate of Title Act is not without some basis. A substantial body of law now favors the bona fide purchaser over a prior lienor. For example, if the creditor consents to the debtor's removal of the property to another state,<sup>7</sup> or if removal was originally contemplated,<sup>8</sup> the creditor's interest is unprotected in the second state unless recorded there. Under the Uniform Sales Act a holder of a voidable title can pass good title to a bona fide purchaser for value,<sup>9</sup> as can one who sells goods but physically retains them and then resells them to a bona fide purchaser for value.<sup>10</sup> The Uniform Commercial Code, recently adopted by Ohio,<sup>11</sup> permits a purchaser of goods who acquired possession by fraud to transfer a valid title to a bona fide purchaser;<sup>12</sup> and a merchant, entrusted with goods of the kind constituting his inventory, can transfer all the rights of the entruster.<sup>13</sup> The Code also suggests that under certain circumstances, a buyer in the ordinary course of business may obtain a good title even if the prior interest was recorded.<sup>14</sup> Furthermore, the Ohio General Assembly, when it amended the Certificate of Title Act without significant change, appears to have approved tacitly the court's earlier holding in *Kelley Kar v. Finkler*<sup>15</sup> that possession of an Ohio certificate of title by a bona fide purchaser defeats the claim of anyone whose interest is not noted on the certificate.<sup>16</sup>

Promoting negotiability of certificates of title is desirable because negotiability adds certainty to automobile resales.<sup>17</sup> Moreover, placing the loss on the out-of-state creditor may encourage him to be careful in selecting debtors;<sup>18</sup> and often a creditor can best absorb the loss or avoid it altogether.<sup>19</sup> Nevertheless, the absolute protection given Ohio bona fide purchasers by *Pottmeyer* may be short-lived. The Uniform Commercial Code, which became effective after the facts of *Pottmeyer* occurred,<sup>20</sup> specifically treats security interests

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7. See, e.g., *Shanahan v. George B. Landers Constr. Co.*, 266 F.2d 400 (1st Cir. 1959); *Jones v. North Pac. Fish & Oil Co.*, 42 Wash. 332, 119 Pac. 94 (1906). See also Beale, *Jurisdiction Over Title of Absent Owner in a Chattel*, 40 HARV. L. REV. 305 (1927).

8. See, e.g., *Robbins v. Bostian*, 138 F.2d 622 (8th Cir. 1943); *Hutchison v. Ross*, 262 N.Y. 381, 187 N.E. 65 (1933); UNIFORM COMMERCIAL CODE § 9-103.

9. UNIFORM SALES ACT § 24.

10. UNIFORM SALES ACT § 25.

11. OHIO REV. CODE ANN. tit. 13 (Page 1962) (effective July 1, 1962).

12. UNIFORM COMMERCIAL CODE § 2-403(1)(d).

13. UNIFORM COMMERCIAL CODE § 2-403(2).

14. UNIFORM COMMERCIAL CODE § 9-307.

15. 155 Ohio St. 541, 99 N.E.2d 665 (1951).

16. See principal case at 5, 197 N.E.2d at 346.

17. See Stumberg, *Chattel Security Transactions and the Conflict of Laws*, 27 IOWA L. REV. 528, 544 (1942).

18. See Vernon, *supra* note 3, at 366.

19. *Ibid*; Leary, *Horse and Buggy Lien Law and Migratory Automobiles*, 96 U. PA. L. REV. 455, 466 (1948).

20. See note 11 *supra*.

which attach in one state to property that is subsequently brought into another state. Section 9-103(3) provides for the validity of the security interest generally to be determined by the law (including the conflict of laws rules) of the state where it attached.<sup>21</sup> It further provides that if the security interest was perfected under the law of the state where it attached, then it automatically continues perfected in the U.C.C. forum state for four months after the property is brought in.<sup>22</sup> Section 9-103(4) provides that perfection of a security interest in property covered by a certificate of title statute that requires notation on the certificate as a condition of perfection is governed by the law of the jurisdiction which issued the certificate.<sup>23</sup> If a case similar to *Pottmeyer* arose today, then, the U.C.C. would seem to require some recognition by Ohio of the foreign lien.<sup>24</sup> At least, it would be difficult for the court to espouse the unqualified rule of the principal case and still give significant meaning to 9-103(3) and (4).

Perhaps the most serious shortcoming of *Pottmeyer* is the opportunity it presents for abuse. The court went further than necessary to the decision to overrule *Atlantic Fin. Co. v. Fisher*,<sup>25</sup> which had held that a thief could not transfer better title than he possessed, even though his ownership was evidenced by an Ohio certificate.<sup>26</sup> In analogizing the certificate to traditional documents of title, the majority pointed out that the Uniform Sales Act, U.C.C., and other uniform acts permit one who has stolen a negotiable document of title to pass title to the goods it represents.<sup>27</sup> But it failed to note that ordinarily a thief cannot pass title if he stole the goods and then used them to obtain the document.<sup>28</sup> In overruling *Atlantic Finance*, the court gives more protection to a bona fide purchaser under the Certificate of Title Act than was permitted by any previous negotiability theory. Thus the decision could well encourage the organized selling of stolen cars in Ohio, a practice the act was designed to inhibit.<sup>29</sup>

Neither absolute protection of the foreign lienholder nor of the domestic purchaser is satisfactory since each may cause arbitrary loss to an innocent party. If the protection incidentally undermines

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21. OHIO REV. CODE ANN. § 1309.03(C) (Page 1962).

22. Perfection continues after the four-month period if the creditor actually files in the U.C.C. state. *Ibid.*

23. OHIO REV. CODE ANN. § 1309.03(D) (Page 1962).

24. See *Churchill Motors, Inc. v. A. C. Lohman, Inc.*, 16 App. Div. 2d 560, 229 N.Y.S.2d 570 (1962); *Casterline v. General Motors Acceptance Corp.*, 195 Pa. Super. 344 (C.P. 1961); Comment, 70 YALE L.J. 995, 1021 (1961).

25. 173 Ohio St. 387, 183 N.E.2d 135 (1962).

26. See principal case at 4, 10, 197 N.E.2d at 346, 348-49.

27. *Id.* at 10, 197 N.E.2d at 349.

28. See OHIO REV. CODE ANN. § 1307.31 & comment 1 (Page 1962).

29. The act is entitled: "To prevent the importation of stolen motor vehicles and thefts and frauds in the transfer of title to motor vehicles . . ."

the purpose of the legislation upon which it is based, its wisdom is questionable at best. It is to be hoped that Ohio will utilize the Uniform Commercial Code to retreat from its position and effect a more practical solution to the problem of dealing with out-of-state interests.

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