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SECURITY—CHATTEL MORTGAGES—MORTGAGE RECORDED UNDER FEDERAL AVIATION ACT OF 1958 AS AFFECTED BY STATE LAWS—Defendant, a Michigan corporation, ordered a new airplane from Air-O-Fleet, a retailer. Air-O-Fleet financed its purchase from the manufacturer through a loan from plaintiff, a Texas corporation, who took a chattel mortgage on the airplane. One day after Air-O-Fleet had made delivery to defendant and received full payment, plaintiff recorded the chattel mortgage with the Federal Aviation Authority in accordance with the Federal Aviation Act of 1958, section 1403, which provides that “no conveyance or instrument . . . shall be valid . . . against any person other than the person by whom the conveyance or other instrument is made or given, . . . or any person having actual notice thereof, until such conveyance is filed for recordation in the office of the Administrator.”¹ Air-O-Fleet became bankrupt, and plaintiff filed suit against the defendant to recover the airplane or, in the alternative, the amount owing on the mortgage. On a motion by the plaintiff for summary judgment,² *held*, denied. Since the conveyance to defendant preceded recordation of the mortgage, defendant took absolute title to the airplane unless he had actual notice of the mortgage. Even upon a trial determination that the defendant had actual notice, if the mortgage were otherwise void as to defendant under state law, federal recording would not save it.³ *Aircraft Investment Corp. v. Pezzani & Reid Equipment Co.*, 205 F. Supp. 80 (E.D. Mich. 1962).

¹ 72 Stat. 806 (1958), 49 U.S.C. § 1403(c) (Supp. III, 1961). Section 1403(d) of the act provides that “each conveyance or other instrument recorded by means of or under the system provided for in subsection (a) or (b) of this section shall from the time of its filing for recordation be valid as to all persons without further or other recordation.” The effect of this section is to make constructive notice effective at the time of filing, thereby removing the possibility of a bona fide purchase between filing and recordation, as occurred in *Anderson v. Triair Associates, Inc.*, 1949 U.S. Av. 440 (Wis. Cir. Ct. 1947). See *Kerley Chem. Corp. v. Colboch*, 145 Cal. App. 2d 509, 302 P.2d 621 (1956).

² Plaintiff's motion for summary judgment without an offering of proof of actual notice appears to have been made in the belief that defendant's failure to record, or plaintiff's prior recording, precluded all other considerations. This involves a characterization of § 1403 as a “race” statute—a notion which seems erroneous on the face of the statute and is unsupported by authority. See *Bishop v. R. S. Evans, East Point Inc.*, 80 Ga. App. 324, 56 S.E.2d 134 (1949).

³ The court referred to the possibility that defendant's reliance on the conduct of plaintiff created a waiver of the mortgage lien. See *Fidelity Corp. v. Associates Discount Corp.*, 340 Mich. 610, 66 N.W.2d 235 (1954); *Coleman Prod. Credit Ass'n v. Mahan*, 168 S.W.2d 903 (Tex. Civ. App. 1943) (mortgage stated that Texas law would govern all rights under the instrument). The court also mentioned the possible application of a Texas statute [TEX. REV. CIV. STAT. art. 4000 (1948)], which makes void a chattel

The significance of this decision is in its rejection of the view that compliance with section 1403 of the federal act is the sole criterion for the validity of an aircraft mortgage. The court specifically stated that the federal enactment did not pre-empt the field of aircraft conveyancing, holding that the plaintiff must also contend with state law relating to conveyances, *e.g.*, waiver of lien, estoppel to assert prior mortgage, which might protect the defendant from a claim under the mortgage, as well as the defense available under section 1403 that he had no actual notice of the prior interest. The apparent conflict of this decision with dicta in *In re Veterans' Air Express Co.*⁴ poses the difficult problem of defining the scope of federal regulation of aircraft conveyancing and determining if, and to what extent, state law remains applicable.

The court in *Veterans' Air Express* was primarily concerned with the question whether the recording provisions of the Federal Aviation Act could be made applicable to a Government mortgage on an aircraft operated solely in intrastate commerce. In upholding the constitutionality of such an application,⁵ the court thereby held the Government's federally recorded lien senior to a mechanic's lien for repairs accomplished after the recording,⁶ and in dictum observed that Congress had "pre-empted" the entire field of aircraft conveyancing. This concept of "pre-emption" is subject to several interpretations. One possible meaning could be that Congress had nullified the effect of state law upon interests in aircraft by providing exclusive procedures in relation to such conveyances.⁷ A more reasonable interpretation of *Veterans' Air Express*, however, would appear to be that the term "pre-empt," as there used, refers to the conclusive seniority of Government liens,⁸ an interpretation more in keeping with the court's emphasis upon the power of Congress to accord seniority to federal liens. This concept of "pre-emption" found strong support in the congressional hearings on the original Civil Aeronautics Act of 1938.⁹ There it was stressed that, because of the increasing use of federal loans for

mortgage on goods "daily exposed for sale" regardless of actual notice to the purchaser. See *City Bank v. Phillips*, 190 F.2d 97 (5th Cir. 1951); see also *Donahue Inv. Co. v. H. E. McMasters Co.*, 301 S.W.2d 330 (Tex. Civ. App. 1957).

⁴ 76 F. Supp. 684 (D.N.J. 1948).

⁵ In reaching this decision, the court recognized the practical necessity of regulating intrastate aircraft interests in order to effectuate interstate policy. This view is supported by *United States v. Darby Lumber Co.*, 312 U.S. 100 (1941); *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937). *Accord*, *Dawson v. General Discount Corp.*, 82 Ga. App. 29, 60 S.E.2d 653 (1950); *Blalock v. Brown*, 78 Ga. App. 537, 51 S.E.2d 610 (1949). *Contra*, *Aviation Credit Corp. v. Gardner*, 174 Misc. 798, 22 N.Y.S.2d 37 (Sup. Ct. 1940); 48 COLUM. L. REV. 1248 (1948); 10 U. PITT. L. REV. 79 (1948).

⁶ When the different sequences of recording and lien accrual are considered, the cases are easily distinguishable on their facts; therefore, the conflict does not go beyond the dicta in *Veterans' Air Express*.

⁷ See *Dawson v. General Discount Corp.*, 82 Ga. App. 29, 60 S.E.2d 653 (1950).

⁸ See Scott, *Liens in Aircraft: Priorities*, 25 J. AIR L. & COM. 193, 203 (1958).

⁹ See *Hearings on H.R. 9738 Before the House Committee on Interstate and Foreign Commerce*, 75th Cong., 3d Sess. 406 (1938) (hereinafter cited as *Hearings*).

aircraft financing under the Reconstruction Finance Act, it was necessary to protect Government mortgage liens by means of a central recording system. Furthermore, in the later case of *United States v. United Aircraft Corp.*,¹⁰ the court mentioned in dicta that the only basis for federal lien supremacy appeared to be the need for protection of Government property from the crippling effect of private liens; hence, where the Government is a mere security holder, it should be subject to the same rules of validity and priority applicable to any other party. This language not only qualifies the broad assertion of federal pre-emption in *Veterans' Air Express*, but apparently recognizes the vitality of state law regarding the validity of security interests as well as the relative priority of various interests in the presence of federal recordation.¹¹

Another interpretation of *Veterans' Air Express*, one which serves to reconcile it with the principal case, would be that Congress has only substituted a federally-determined set of priorities for the order presently in force according to state law, nevertheless leaving intact all of the related doctrines which affect the priority structure. The purpose of federal recordation was to provide prospective purchasers with nationwide notice of asserted claims against aircraft.¹² This notice provision was responsive to the fact that the extreme mobility of aircraft had made recording in the state of purchase insufficient to inform adequately, rather than to a desire for uniform rules of conveyancing or priority.¹³ To require, as does the principal case, that a conveyance or security interest be valid under the related state doctrines of estoppel or waiver before it can be protected by federal recording does not defeat the purpose of providing notice; it merely gives the purchaser who has such constructive notice a right to claim the invalidity of the prior interest by virtue of these related doctrines. Nor is this a departure from the philosophy of state recording systems, which deny validity to a mortgage which fails to meet other substantive requirements.¹⁴ Therefore, apart from the possibility of a legislative intent to protect Government liens, it seems clear that the federal act was meant only to provide notice on a nationwide scale, leaving the states free to enforce additional requirements for the validity of conveyances or the priority of certain types of liens.

It is conceded that Congress, under its power to regulate interstate commerce, could exclusively regulate every phase of aviation.¹⁵ In the regulation of passenger and freight airline competition, and the enforcement

¹⁰ 80 F. Supp. 52 (D. Conn. 1948).

¹¹ See Scott, *supra* note 8, at 203-04.

¹² See *Marshall v. Bardin*, 169 Kan. 534, 220 P.2d 187 (1950).

¹³ *Hearings* 407.

¹⁴ See BROWN, *PERSONAL PROPERTY* § 112 (2d ed. 1936). It is clear that state recordation systems were made inapplicable to interests in aircraft by the establishment of a centralized federal system.

¹⁵ See note 5 *supra*.

of safety requirements, it has exercised this power.¹⁶ However, in view of the purpose of central recording, and the limited provisions enacted to effectuate it, a similar pre-emption does not appear to have been intended with respect to the law relating generally to all aspects of aircraft conveyancing. To allow such a pre-emption would be to abrogate the great volume of state statutory and common-law doctrines which relate to conveyancing of aircraft in favor of the simple rule that conveyances or instruments eligible for recordation under section 1403(a) and duly recorded under section 1403(c) are inviolable.¹⁷ Although individual state recording procedures would seem inconsistent with, and hence pre-empted by, the nationwide notice provisions of section 1403, it would appear that Congress could not have intended such circumscribed regulatory provisions to operate as the exclusive means of determining rights under aircraft conveyances. Also, hearings incident to the enactment of the Civil Aeronautics Act and the regulations promulgated under it support the conclusion that Congress intended to provide an additional requirement, not an exclusive procedure, for conveyancing of interests in aircraft.¹⁸

The problem of reconciling state law with federal recordation requirements, as seen regarding the *validity* of security interests in the principal case, has also arisen as to the question of *priorities* among interests preferred under state statute or common law and antecedent federally-recorded interests. At one extreme is the view of strict pre-emption proposed by *Veterans' Air Express*, whereby a federally-recorded lien is given priority over all other security interests;¹⁹ at the other are decisions which subordinate a federally-recorded interest by applying related common-law doctrines which prefer repairmen's liens²⁰ or equitable titles.²¹ Several states continue to enforce statutes granting priority to municipal airport or repairmen's liens over all other interests, presumably including those recorded under the Federal Aviation Act.²² The absence of uniformity in theory and application reflected by the cases would seem to be attributable not to a judicial distaste for federal regulation but rather to a substantial lack of guidance from the provisions of the federal recordation statute. No different is the problem of the validity of conveyances en-

¹⁶ See Federal Aviation Act of 1958, §§ 1381, 1421, 72 Stat. 769, 54 Stat. 1235 (1940), 49 U.S.C. §§ 1381, 1421 (Supp. III, 1961).

¹⁷ Federal Aviation Act of 1958, §§ 1403(a), (c), 72 Stat. 806, 49 U.S.C. §§ 1403(a), (c) (Supp. III, 1961).

¹⁸ *Hearings* 407. 14 C.F.R. § 503.1 n.1 (1962) (recordation of aircraft ownership) provides that "recordation of an instrument does not mean the instrument does, in fact, affect title to, or any interest in, an aircraft." See also *United States v. United Aircraft Corp.*, 80 F. Supp. 52 (D. Conn. 1948).

¹⁹ See also *United States v. All Am. Airways, Inc.*, 180 F.2d 592 (9th Cir. 1950); *Dawson v. General Discount Corp.*, 82 Ga. App. 29, 60 S.E.2d 653 (1950).

²⁰ See *United States v. United Aircraft Corp.*, 80 F. Supp. 52 (D. Conn. 1948).

²¹ See *Marshall v. Bardin*, 169 Kan. 534, 220 P.2d 187 (1950); see also *Anderson v. Triair Associates, Inc.*, 1949 U.S. Av. 440 (Wis. Cir. Ct. 1947).

²² Scott, *supra* note 8, at 207. See ALA. CODE tit. 4, § 29 (1958); ME. REV. STAT. ANN. ch. 178, § 62 (1954).

countered in the principal case; in each setting it would appear that, if state law were made irrelevant to such determinations, there would remain a body of law quite inadequate to deal with the entirety of conveyancing problems. Noting the express provision for certain priorities in the Ship Mortgage Act of 1920,²³ a plausible analogical argument could be made that, by the absence of similar provision in the Federal Aviation Act, congressional intent not to modify existing priority rules was indicated.

If the theory of absolute "pre-emption" is rejected, as it should be, the question remains as to the proper relationship between section 1403 and state law affecting priorities of interests in aircraft. The best solution, from the standpoint of national uniformity, would be an amendment to section 1403 whereby definite and detailed provision would be made concerning priorities;²⁴ such legislation would necessarily preclude the application of any state law whatsoever to priority questions. It would also produce the incidental advantage of certainty by obviating the need for recourse to divergent conflict of laws rules. Until such federal legislative action is forthcoming, however, it would seem reasonable to characterize section 1403 as a notice provision to be invoked for the protection of bona fide purchasers of interests in aircraft, rather than as establishing a preference in complete abrogation of established state law.²⁵ Although the principal case is concerned only with the implications of constructive notice under federal recording as it affects validity of a mortgage interest, the theory of concurrent state and federal authority which it proposes should be a basic consideration of the courts, in cases where competing interests in aircraft are asserted, in arriving at some reasonable priority structure.

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²³ 41 Stat. 1000, 46 U.S.C. §§ 911-84 (1958). See also GILMORE & BLACK, *THE LAW OF ADMIRALTY* § 9-68 (1957).

²⁴ It is suggested by Scott, *supra* note 8, at 210, that a provision similar to UNIFORM COMMERCIAL CODE § 9-310 would achieve the most acceptable priority structure.

²⁵ The only instance in which the federal recording statute essentially determines priority is where a security holder has failed to record his interest before a bona fide conveyance is made. As in the principal case, the security interest would be extinguished. See Scott, *supra* note 8, at 204.