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Installment Contracts

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Installment Contracts

Section 301 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended in 1942, is designed to protect the serviceman who has purchased property on the installment plan against forfeitures. It provides that a vendor or seller (or his assignee) of real or personal property (including a lease or bailment with a view to purchase) may not terminate or rescind his contract or resume possession of the property because of nonpayment or for any other breach of contract except by an action brought in a court of competent jurisdiction. This section is applicable in all cases in which the vendor or seller or his assignor has received a payment or deposit from a serviceman or his assignor prior to his entry into military or naval service. It does not, however, cover any cases in which the serviceman or his assignor did not make any payment on contract until after his entry into the service, nor does it cover cases in which the nonpayment or breach of contract occurred after the termination of the military service or the death of the obligor or his assignee. The court, in hearing an action brought in conformity with this section, is given a very broad discretion in relation to the kind of order which it shall make. It is expressly given power to order the repayment of installments or deposits as a condition of the right to terminate the contract and resume possession of the property involved; it may on its own motion, and it is required to do so on the application of the serviceman or some person on his behalf, stay the proceedings, for a period not to exceed the period of military service and three months thereafter unless, in the opinion of the court, the ability of the defendant to comply with the terms of his contract is not materially affected by reason of such service. Moreover, the court is authorized to make the stay subject to such terms as may be just to both parties.

It is expressly provided in section 303 that the court may order an appraisal and, on the basis of such appraisal, it may require the payment to the serviceman of such sum as may be just, as a condition of resuming possession of the property or terminating the contract, if this can be done without undue hardship to the serviceman's dependents.

Section 206, added by the 1942 amendments, limits interest to six percent on all obligations incurred prior to entry into military service, during any part of the service which occurs subsequent to the date of the act, unless in the opinion of the court the ability of the serviceman to pay more is not materially affected by reason of such service.

Anyone knowingly retaking possession of property in violation of section 301 is subject to the penalty of fine or imprisonment or both.

It should also be noted that section 107, as added by the 1942 amendments, expressly reserves to the parties the right to make any disposition of their controversy that they may see fit by mutual agreement, provided only that the agreement be set forth in writing.

By section 103 persons secondarily liable on a serviceman's obligation may, in the discretion of the court, be given the same privileges and postponements as are accorded to the serviceman, and by section 306 the same rights are granted to dependents of the serviceman if, on application to a court, they can show that their ability to comply with the terms of an obligation has been impaired by reason of the military service of the one on whom they are dependent.

G. C. G.