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Conditional Sales - Refilling of Contract on Removal of Goods

Richard J. Ash

In the circumstances above-mentioned, where compliance with the decree was recognized as impossible unless defendant-appellant either trespassed upon the lands of another or obtained a license-consent to enter the same, such peculiarity of language is understandable. But it seems to suggest that the injunctional decree is itself a rather pointless appendage, sandwiched between the normal procedures of legal relief.

The same point is emphasized by the second circumstance. While the principal case was pending on appeal, another action was brought to abate the identical dump, but was brought against the City of Milwaukee, which had also contributed to the "erection" of the nuisance. The lower court had, prior to the decision on appeal, granted judgment in abatement, and had authorized issuance of a warrant to the sheriff under the provisions of Sec. 280.04, under which, presumably, the nuisance was in the process of actual abatement. Nothing resembling an injunctional order in equity attended these proceedings. Granting that such later-arising circumstances could not properly control the propriety of the present appeal, the fact does tend to argue rather strongly against the theory, on the question whether or not the legal remedy of abatement is an adequate one under the circumstances.

To summarize: If there is a legal remedy in Wisconsin which is adequate to abate nuisances, and there is every indication that one exists, then equity should not intervene in such cases. The defendant has ceased all dumping and has given no cause to fear that he will create any new nuisance or a recurrence of the old, there is no threat of interminable litigation or a multiplicity of actions; therefore, the remedy at law is adequate, and equity should not have assumed jurisdiction over appellant in the instant case.

JAMES WILLIAMSON

Conditional Sales—Refiling of Contract on Removal of Goods— Plaintiff, a corporation in Oklahoma, brought a replevin action to recover possession of an automobile. Plaintiff had sold a new automobile employing a conditional sales contract. In the event of any default in payments, the whole balance became due and payable, and the plaintiff would be entitled to immediate possession. This contract was recorded in Oklahoma as required by their law. The buyer made no payments, and took the car to Texas and subsequently to Cali-

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of compulsion and coercion which the common law, like most other legal systems, has wholly rejected; for when a person is complained of to a court of equity, the court first ascertains and decides what, if anything, the person complained of ought to do or refrain from doing; then, by its order or decree, it commands him to do or refrain from doing what it has decided he ought to do or refrain from doing; and finally, if he refuses or neglects to obey the order or decree, it punishes him by imprisonment for his disobedience." Langdell, *A Brief Survey of Equity Jurisdiction,* 1 HARV. L. REV. 111, 116-118.

fornia. After two month's delinquency in payments, the plaintiff hired an agent to locate and repossess the car. The agent found the chattel in the possession of the defendant in Arizona. The defendant had acquired the car from an apparent sub-purchaser of the conditional vendee. Within two days the agent demanded possession of the car after exhibiting an executed copy of the original reservation of title. Plaintiff failed to file or record a copy of the conditional sales contract as provided in the Uniform Conditional Sales Act, adopted in Arizona. *Held*: Where a chattel sold under a conditional sales contract is removed to another filing district or state requiring refiling, the conditional vendor's reservation of title is protected as against the creditors or purchasers of the conditional vendee who have actual notice of the contract within ten days after the conditional vendor learns of the removal of the chattel, even though the conditional vendor fails to refile the agreement in the filing district to which the chattel was removed. *Frontier Motors, Inc. v. Chick Norton Buick Co., 78 Ariz. 341, 279 P. 2d 1032 (1955).*

As a general rule, a contract valid where made is valid everywhere.[1] Likewise, the law of the place where the contract was made governs as to the necessity of refiling, *unless* contrary to the public policy of the state to which the property has been removed.[2] Those states which have adopted the Uniform Conditional Sales Act have thereby expressed a defined public policy. Section 14[3] of the Uniform Conditional Sales Act basically provides that unless a conditional seller refiles his reservation of title in the filing district to which the chattel has been removed within ten days, he shall lose his priority over the creditors or purchasers of his conditional vendee. Judicial construction has dispelled the confusion as to when goods are "removed" by the buyer, and refiling becomes a necessity for the vendor if he is to retain his security interest in the chattel.[4] In *Forgan* v. *Smedal*[5] the court indicates that the statute does not contemplate the type of situation where the buyer temporarily moves the chattel. On the contrary, the refiling requirement operates only where it is established that there was an intention to change the permanent situs of the property, and that the vendor has received notice of the filing district to which the goods have been removed.[6]

[1] Varnum v. Camp, 13 N.J.L. 326, 25 Am. Dec. 476 (1833); Bentley v. Whittemore, 19 N.J.Eq. 462, 97 Am. Dec. 671 (1868); Moore v. Bonnell, 31 N.J.L. 90 (1864).

[2] Bradshaw v. Kleiber Motor Truck Co., 29 Ariz. 293, 241 Pac. 305 (1925); Thayer Mercantile Co. v. First National Bank of Milltown, 97 N.J. L. 907, 119 Atl. 94 (1922); Goetschius v. Brightman, 214 App. Div. 158, 211 N.Y.Supp. 763 (1925), *aff'd*, 245 N.Y. 186, 56 N.E. 660 (1927).

[3] Uniform Conditional Sales Act §14. (Refiling on Removal.)

[4] *In re* Frank Bowman, 36 F.2d 721 (2nd Cir. 1929); Hare & Chase v. Tomkinson (N.J. Supp.) 129 Atl. 396 (1925); Endler v. Commercial Credit Corp., 105 N.J.L. 474, 144 Atl. 582 (1929).

[5] 203 Wis. 564, 234 N.W. 896 (1931).

[6] *Ibid.* Also see CIT Corp. v. Guy, 170 Va. 16, 195 S.E. 659 (1938).

Commenting on the last requirement, the court stated in *Confidential Loan & Mortgage Co.* v. *Hardgrove*[7] that:

> Under the Uniform Conditional Sales Act, the assignee of the vendor of the machine is not required to follow the daily traveling of the one using the machine and file notice wherever and whenever it happens to stop.

However, it would seem that notice to the seller of the removal of the property, primarily an evidentiary issue, is sufficient if it apprises the seller of the removal of the property, whether it be written or not.[8]

By way of contrast to the requirement of refiling expressed in the Uniform Conditional Sales Act, it is interesting to note that in a recent Wisconsin decision[9] it was held that refiling of a chattel mortgage is not necessary when the goods are removed from the county in which they were located when the chattel mortgage was first recorded.

The *Frontier Motors* case, now under consideration, brings to light another problem which has evolved from the operation of section 14. Simply stated, the issue is whether personal notice to the creditors or purchasers of the conditional vendee eliminates the necessity of refiling the reservation of title within ten days after the conditional vendor learns of the removal of the property. Although section 14 is intended to be uniform throughout the jurisdictions which adopt it, judicial construction of the effect and purpose of the refiling requirement has driven a wedge into the desired effect of uniformity.

The *Frontier Motors* decision leaves no room for doubt that Arizona adopts the position held by West Virginia and New York, that personal or actual notice to the creditors or purchasers of the buyer within the ten day period dispenses with the refiling requirement when goods are removed to another filing district. In *Banks-Miller Supply Co. v. Bank of Marlinton,*[10] the plaintiff sold certain machinery under a conditional sales contract, which was regularly recorded in the county where the sale occurred. The buyer subsequently removed the goods to another county, payments still being incomplete under the contract. The buyer became indebted to the defendant, who instituted suit against the buyer, in which suit the machinery was attached, sold, and purchased by the defendant. The plaintiff seller notified the defendant by letter dated only one day after the plaintiff learned of the removal. In a suit to recover the machinery, the court held that the mere removal of the goods to another county does not in itself affect the seller's reservation of title, but that the seller mentioned in section 14 can lose his priorities only by his own indifference to the provisions

[7] 259 Wis. 346, 48 N.W.2d 466 (1951).
[8] *In re* Frank Bowman, 36 F.2d 721 (2nd Cir. 1929).
[9] Peterson Cutting Dye Co. v. Bach Sales Co., 269 Wis. 113, 68 N.W.2d 804 (1955). Also see Bailey v. Costello, 94 Wis. 87, 68 N.W. 663 (1896).
[10] 106 W.Va. 583, 146 S.E. 521 (1929).

of the statute, and not by the act of the buyer or the buyer's creditors. The primary reasoning of the West Virginia court is:[11]

> Recordation of such a contract is designed to give notice, constructive or actual. If the party to be affected has actual notice, the very purpose of recordation is served. (Cites cases.) Where the claims of creditors to removed property attach prior to the notice to the seller required by section 14 . . . or where creditors have actual notice of the seller's rights . . . subsequent recordation would be futile . . . . The statute does not require of the seller the performance of a vain act.

The *Banks-Miller* case indicates that recordation as provided for in section 14 may not be necessary in certain cases. Closely allied to this spirit of interpretation, the state of New York in *Hartford Acceptance Corp. v. Kirchheimer*[12] held that where the conditional seller succeeded in retaking possession of the chattel within the ten day period after learning of the removal of the goods, there would seem to be no reason for the filing prescribed in section 14, since possession and title of the chattel are in the same person—recordation being intended to inform the public that title is in one person while possession is in another.

Although the reasoning of West Virginia and New York seems to rest on a firm, logical foundation, section 14 has been construed by other jurisdictions emphatically to require filing. In a Wisconsin decision, *Universal Credit Co. v. Finn*,[13] where a truck sold in Illinois under a conditional sales contract was removed to Wisconsin and attached by a creditor of the buyer, the court held that even though the attaching creditor had received actual notice within ten days after the seller first learned of the removal, since the seller did not file a copy of the contract in the county in which the truck was located, the vendor's reservation of title was void as against the attaching creditor. In construing section 122.14 of the Wisconsin Statutes,[14] which is the same as section 14, the court states:[15]

> 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 notice of the provision of the contract reserving property in the seller, that 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.

The same conclusion was reached in *Thayer Mercantile Co. v. First*

[11] 146 S.E. at p. 522.
[12] 166 Misc. 219, 2 N.Y.S.2d 224 (1938).
[13] 212 Wis. 601, 250 N.W. 391 (1935). Also see Bradshaw v. Kleiber Motor Truck Co., 29 Ariz. 293, 241 Pac. 305 (1925).
[14] Wis. Stats. (1953) §122.14.
[15] *Supra*, note 13, 212 Wis. at p. 607, 250 N.W. at p. 393.

National Bank of Milltown[16] in New Jersey in 1922. It was held that even though the common law of New York, in this instance the law of the forum, provides that the rights of the conditional vendor are superior to an attaching creditor of the buyer, when the chattel is removed to New Jersey the seller loses his superiority if he fails to file a copy of the contract, since section 14 clearly defines the policy of the state of the *rei sitae*.

The above case illustrations indicate that the uniformity of section 14 has been broken down among the states that have adopted the Uniform Conditional Sales Act. In the face of the current upsurge of sales transactions employing the conditional sales contract as a security device, the split of interpretation, highlighted by the *Frontier Motors* decision of Arizona, becomes an important issue in the law of sales. In the *Universal Credit Co.*[17] case, Wisconsin rests its decision on their interpretation of the purpose of section 14 as it existed in the minds of those who drafted it, that is, to clarify the field of decisions and the resulting conflicts among the states by placing upon the seller the slight burden of refiling the contract in the place where the removed chattel is located.[18] Unfortunately, the use of the recording device to achieve this end was destined to meet with various constructions. For instance, Wisconsin has stated that the purpose of requiring recording or filing of a conditional sales contract is to furnish information as to title and to protect bona fide purchasers—in other words, to protect those dealing with the possessor of personal property against secret trusts or claims of others having no connection with possession and no apparent connection with title.[19] It is difficult to see how an extension of this principle would not lead to the conclusion reached in *Banks-Miller Supply Co. v. Bank of Marlinton*[20] that recordation is a vain thing when the person to be protected already knows of the lien or claim of the other party.

In the opinion of the writer, however, the position maintained by Wisconsin in the *Universal Credit Co.*[21] decision correctly considers the type of purchaser and creditor contemplated by section 14, and in so doing, achieves the desired construction of the statute. By express reference to section 5,[22] the statute in effect prescribes the refiling of

[16] 98 N.J.L. 907, 119 Atl. 94 (1922).
[17] *Supra*, note 13.
[18] See 2 Uniform Laws Annotated, Conditional Sales 24. "If a uniform law with respect to conditional sales were adopted, and this law provided for the refiling of the contract upon removal of the goods, the difficulties illustrated by these cases would be avoided. A slight extra burden would be placed upon the seller in refiling the contract, but much litigation and loss on the part of the innocent public would be prevented."
[19] New Dells Lumber Co. v. Pfiffner, 216 Wis. 638, 258 N.W. 375 (1935).
[20] *Supra*, note 10.
[21] *Supra*, note 13.
[22] Uniform Conditional Sales Act §5; Wis. Stats. (1953) §122.05(1). Every

the reservation of title within ten days after the seller learns of the removal, or else such reservation is void as against "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 . . . ." (italics added).[23] It seems clear therefore that as against one who does have actual notice prior to the purchase or attachment, the refiling of the contract is not necessary. If, on the other hand, actual notice is received after the attachment or purchase, then refiling within ten days is essential to preserve the seller's security interest.[24] To hold otherwise, as in the *Frontier Motors* case, that actual or personal notice is sufficient, ignores the clear distinction contained in section 5 between creditors and purchasers who have notice before the purchase or attachment, and those who do not. It is also important to note that a conditional vendor has a decided advantage even in the case where the creditor or purchaser did not have notice when he made the attachment or the purchase. Section 14 gives the seller ten days after he first learns of the removal in which merely by filing the reservation of title, he may secure a priority over the innocent creditor or purchaser. Thus, bearing in mind that the Uniform Conditional Sales Act purports to protect the bona fide purchaser and others from secret liens and hidden claims,[25] it seems essential to limit the means available to the conditional vendor to retain his superior security interest as against purchasers or creditors who did not have notice when they acted, by strictly construing the statute to require filing or recording of the seller's reservation of title.

RICHARD J. ASH

Admissibility of Patients' Statement of Past Pain and Suffering Made to a Physician for the Purpose of Securing Treatment—Plaintiff brought an action for personal injuries arising out of an intersection collision. Prior to any contemplated suit, plaintiff sought and received the professional services of a physician. The trial court

provision in a conditional sale reserving property in the seller shall be void as to 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 thereof shall be filed as hereinafter provided, unless such contract or copy is so filed within ten days after the making of the conditional sale.

[23] *Ibid.*

[24] An interesting issue is raised in the case where the seller does prevail under section 14 and seeks damages instead of recovery of possession. Although the issue is an important one as far as the parties go, few courts have discussed the problem. In the *Frontier Motors* case, however, the court pointed out that the correct measure of damages is that the vendor is entitled to recover the amount of his special interest, i.e., the unpaid balance under the contract plus incidental expenses, or the value of the chattel at the time of trial, whichever of the two is the lesser amount.

[25] *Supra,* note 19.