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# THE SALES CONTRACT—CREDITOR'S REMEDIES\*

PAUL M. BARNES\*\*

## *Creditors of the Buyer*

The buyer's creditors (other than the seller) normally have no rights in goods before the buyer receives them, regardless of passage of title, because the seller has a possessory lien to secure the price of such goods and also, if the buyer is insolvent, the price of all goods theretofore delivered under the contract.<sup>1</sup>

The seller also may reserve a security interest in the sold goods<sup>2</sup> which will be recognized, even though not perfected by filing, so long as the buyer does not obtain possession of the goods.<sup>3</sup>

The buyer's creditors normally can acquire rights in delivered goods by attachment and the like, inasmuch as the seller who has lost possession has lost his lien, unless he has taken a security interest under the Secured Transactions chapter.<sup>4</sup>

An exception to the foregoing statement is the provision which permits a seller to reclaim goods sold on credit to an insolvent buyer,<sup>5</sup> but such right of reclamation is inferior to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor (which may include a trustee in bankruptcy).

## *Creditors of the Seller*

Section 402.402 of the Wisconsin Statutes summarizes the rights of seller's creditors against sold goods. In general, the rights of the seller's unsecured creditors to levy on goods identified to the contract are subordinated to the buyer's rights to recover them under sections 402.502 and 402.716.

If retention of sold goods by the seller is fraudulent under the law of the state where the goods are located, a creditor of the seller may treat the sales as void, except that a merchant-seller's good faith retention in current course of trade for a commercially reasonable time after sale is not fraudulent.<sup>6</sup>

Rights of secured creditors under chapter 409 of the Wisconsin

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\* This article is substantially the same as that contained in a chapter of the same title and by the same author appearing in the *Wisconsin Uniform Commercial Code Handbook*, a joint activity of the state bar of Wisconsin, Marquette University, and the University of Wisconsin.

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<sup>1</sup> WIS. STAT. §§402.702, 402.703 and 402.705.

<sup>2</sup> WIS. STAT. §§402.401(1) and 402.505.

<sup>3</sup> WIS. STAT. §409.113.

<sup>4</sup> See WIS. STAT. §409.113.

<sup>5</sup> WIS. STAT. §402.702.

<sup>6</sup> WIS. STAT. §402.402(2).

Statutes and rights with respect to fraudulent transfers or voidable preferences are not affected by chapter 402.<sup>7</sup>

As to the rights of persons in the position of a seller, see the next section of this article.

Seller's creditors have no rights in the goods after delivery to the buyer except in the cases of secured creditors under chapter 409 of the Wisconsin Statutes, or fraudulent transfers, or voidable preferences, or bulk transfers under chapter 406.

*Persons in the Position of a Seller*

A "person in the position of a seller" includes an agent who has paid for goods for his principal or a bank or other financing agency which has acquired documents by honoring a letter of credit for the buyer<sup>8</sup> or by discounting a draft for the seller.<sup>9</sup>

Such a person may exercise the seller's rights to withhold or stop delivery and to resell and recover incidental damages,<sup>10</sup> but he must account for any excess or resale over his security interest.<sup>11</sup>

It is not clear whether a "person in the position of a seller" may exercise the seller's right to reclaim goods from an insolvent buyer under section 402.702 of the Wisconsin Statutes. Note that section 402.707 refers to the right of such person to stop delivery, but not to the right of reclamation.

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<sup>7</sup> See WIS. STAT. §402.402(3).

<sup>8</sup> WIS. STAT. §405.115.

<sup>9</sup> WIS. STAT. §§402.506, 404.504 and 402.707.

<sup>10</sup> WIS. STAT. §402.707.

<sup>11</sup> WIS. STAT. §402.706(6).