

Constitutional Law: Impairment of Contract Obligation: Police Power: Mortgage Moratorium

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CONDITIONAL SALES CONTRACTS—FILING—NOTICE TO ATTACHING CREDITORS OF VENDEE.—The plaintiff, a Delaware corporation, licensed to do business in Illinois and Wisconsin held a conditional sales agreement covering a truck sold in Illinois. The vendee, contrary to a provision of the agreement, removed its truck permanently into Wisconsin. A Wisconsin creditor of the vendee caused the truck to be seized on attachment in Wisconsin. The conditional sales agreement was not recorded in any Wisconsin filing district. The plaintiff did not know where the truck was until the day before the creditor seized it. Two days after seizure the plaintiff notified the creditor of its claim; but the plaintiff did not file its conditional sales agreement. The creditor would not release the truck. The plaintiff brought an action to recover possession. *Held*, by failing to file a copy of the conditional sales agreement as prescribed by statute, the plaintiff had lost protection against the attaching creditor. *Universal Credit Co. v. Finn*, (Wis., 1933) 250 N.W. 391.

Section 14 of the Uniform Conditional Sales Act, sec. 122.14, Wis. Stats., gives protection to the foreign vendor against subsequent local purchasers or attaching local creditors of the vendee, providing the vendor files a copy of his agreement within ten days after discovering the whereabouts of the chattel. The particular situation presented in the instant case has seldom arisen since the passage of the Uniform Act. The Wisconsin court purported to follow *Thayer Mercantile Co. v. First National Bank*, 98 N.J.L. 29, 119 Atl. 94 (1922). In that case, too, the vendor had failed to file a copy of his sales agreement, although he had given the attaching creditor notice of his claim within the ten day period. Perhaps a literal interpretation of the statute requires the construction which the court has given it. However, the Wisconsin court has seen fit to protect the foreign vendor who has not filed a copy of his contract, but who has given notice to the local attaching creditor, where the vendee has brought the car into the state on a pleasure trip, without intending permanently to change the situs of the chattel. *Forgan v. Smedal*, 203 Wis. 564, 234 N.W. 896 (1931). And the West Virginia court has upheld the foreign vendor against a purchaser from the vendee who had already purchased before the vendor notified him, where the vendor gave actual notice but never "recorded" a copy of the contract within ten days after discovering the whereabouts of the chattel. *Banks-Miller Supply Co. v. Bank of Marlinton*, 106 W.Va. 583, 146 S.E. 521 (1929).

Perhaps the court might suggest something to distinguish the case concerning the subsequent purchaser from that of the attaching creditor. The purchaser has acted; recording or filing after a demand upon him would be useless. The attaching creditor is claiming a potential lien which he can make effective unless the vendor complies literally with the statute.

ROSALIE A. BYER.

CONSTITUTIONAL LAW—IMPAIRMENT OF CONTRACT OBLIGATIONS—POLICE POWER—MORTGAGE MORATORIUM.—Defendants appeal from a judgment affirmed by the Minnesota Supreme Court, 249 N.W. 893 (1933), which granted the petitioners an extension of the period of redemption. This case was decided on the authority of *Blaisdell et al. v. Home Building and Loan Ass'n.*, (Minn., 1933) 249 N.W. 334; see, Recent Decisions, 18 Marq. Law Rev. 55 (1933). The latter case sustained the validity of an act of the Legislature which authorized an extension of the redemption period during the present emergency, but in no event beyond May 1, 1935, after a foreclosure sale. Under this act the court was to

determine the reasonable value of the income, or reasonable rental value, and was to direct the mortgagor to apply the determined amount toward payment of taxes, insurance, interest and mortgage indebtedness, in the manner to be determined by the court. *Held*, the Minnesota statute as applied in the instant case does not violate the contract clause of the Federal Constitution; neither does it violate the due process or equal protection of the law clauses. *Home Building and Loan Ass'n. v. Blaisdell et ux.*, 54 Sup. Ct. 231 (1934).

The Minnesota Court frankly admitted that the law impaired the obligation of contracts, but that it was justified as a reasonable exercise of the police power. The United States Supreme Court does not unqualifiedly subscribe to that view, stating that "the statute does not impair the integrity of the mortgage indebtedness," since there remains the obligation for interest, and the rental value must be paid, by reason of which the mortgagee has, so far as that value is concerned, the equivalent of possession during the extended period; he can still foreclose and obtain a deficiency judgment if the mortgagor fails to redeem within the prescribed period. "Aside from the extension of time, the other conditions of the mortgage are unaltered." The Supreme Court also takes cognizance of the economic fact that mortgagees are not concerned with obtaining property, but with obtaining reasonable protection for their investment security, and thereby concludes that the statute is designed to protect the interest of mortgagees as well as that of mortgagors. "The legislation seeks to prevent the impending ruin of both by a considerate measure of relief."

The prohibition of the contract clause is not an absolute one, and is not to be too strictly construed. " * * * to assign to contracts, universally, a literal purport, and to exact from them a rigid literal fulfillment, could not have been the intent of the constitution." *Ogden v. Saunders*, 12 Wheat. 213, 286, 6 L.Ed. 606 (1827). Thus the remedy provided in the contract may be altered without impairing the obligation of the contract. "The distinction between the obligation of a contract, and the remedy given by the legislature to enforce that obligation, has been taken at the bar, and exists in the nature of things." *Sturges v. Crowninshield*, 4 Wheat. 122, 200, 4 L.Ed. 529 (1819). " * * * it is competent for the States to change the form of the remedy, or to modify it otherwise, as they see fit, provided no substantial right secured by the contract is thereby impaired." *Von Hoffman v. City of Quincy*, 4 Wall. 535, 553, 18 L.Ed. 403 (1866). This control over remedial processes has been retained by the states, and by this, the constitution is qualified, as well as by the authority of the state to safeguard the vital interests of its people. And, it is stated by the Court, that "not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order." Thus, it may be inferred that the Court is of the opinion that the parties have no cause for complaint if the state has exercised its power to change the remedy, since the possible exercise of that power had by inference become an implied part of the contract, to which the parties were subject.

The controlling factor in the decision is that the mortgagee is to receive the benefits arising from the property, even though he is not put in immediate possession. The statute has sought to safeguard the interests of the mortgagee-purchaser, which was not done in other similar statutes that have been held invalid. See, *Bronson v. Kinzie*, 1 How. 311, 11 L.Ed. 143 (1843); *Barnitz v. Beverly*, 163 U.S. 118, 16 Sup. Ct. 1042, 41 L.Ed. 93 (1896).

For a discussion of this law as a valid exercise of the state's police power, see, Recent Decisions, 18 Marq. Law Rev. 55 (1933).

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