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TIME FOR RECORDING CHATTEL MORTGAGES IN MARYLAND

*Baltimore Bankers Corp. v. Peters Auto Body & Spring Works*¹

Appellant, in consideration of the execution of a chattel mortgage on a truck, loaned the Mortgagor \$528.00 on October 3, 1947. This mortgage was not recorded until October 14, 1947. The Appellee, a garageman, had been in possession of the truck for purposes of making repairs at the time of sale and mortgage on October 3rd. On the day of the making of the mortgage, the Mortgagor took the truck from the garage to the place of business of the Appellant loan company where it was inspected preparatory to the execution of the mortgage. Upon this surrender, the loan company based its contention that the lien for repairs was waived under the wording of Section 41, Article 63, of the Maryland Code. The Court, however, found that the repairs on the truck were not begun until October 6, 1947 — three days after the mortgagor displayed the truck to the mortgagee, and that these repairs were substantially completed at the time of the recording of the mortgage on October 14th. Therefore, since the lien did not attach until the repairs began, there could be no waiver or extinguishment of the garage's claim as no lien had attached on October 3rd—the date of the garage's temporary surrender, but attached on October 6th when the garage again had possession and work was begun. There is no indication that the garage had actual knowledge of the mortgage; also, it cannot be said that the loan company relied upon the work of the garage in granting the mortgage since no repairs had been made at the time of the mortgage. From the time the repairs began until the sale by a trustee appointed by the court, the possession of the truck remained in the hands of the

¹ 69 A. 2d 491 (Md. 1949).

garage. On the question of priority as between the mortgage and the garageman's lien, the lower court held that the garageman's lien was superior to that of the mortgage. This was affirmed by the Court of Appeals of Maryland.²

The factual situation in this case was ripe for discussion of whether or not a mortgagee has a twenty-day period of grace in which to record his chattel mortgage. This problem involves the following sections of Article 21 of the Maryland Code:

"49. Bills of sale shall be recorded in the county or city where the vendor or donor resides within twenty days from the date thereof. If the vendor or donor resides out of the State, and the personal property conveyed by such bill of sale is located in this State, then such bill of sale shall be recorded in the county where such property is located, or in Baltimore City, if it be located in said city, within twenty days from the date of such bill of sale."

"50. A mortgage of personal property shall be executed, acknowledged and recorded as bills of sale."

"52. Mortgages of personal property shall be valid and take effect, except as between parties thereto, only from the time of recording; and in case of more than one mortgage, the one first recorded shall have preference."

Section 49, in effect, says that a bill of sale, if recorded within a twenty-day period is effective from the date of its execution, and Section 50 seems to say that a chattel mortgage will be treated in the same way. In construing Section 50, however, we must consider whether the legislature meant that the interpretation that has been attached to Section 49 (*i.e.*, that bills of sale must be recorded within twenty days to be effective and that recording within twenty days is effective as from the date of execution)³ should also be applied to chattel mortgages, or whether Section 50 merely means that chattel mortgages should be recorded the same way mechanically, *i.e.*, where and how it should be entered in the record.

Section 52 leads us to believe that the law makers meant the latter, for Section 52 seems to be diametrically opposed to the first interpretation. In the instant case, recourse to the brief filed by the appellant shows that the loan com-

² *Ibid.*

³ *Byer v. Etnyre et al.*, 2 Gill 150 (1844).

pany in its appeal puts this question directly to the Court by quoting part of Section 41, Article 63, which grants garages a statutory lien:

“Said lien shall be superior to rights of the holders of conditional sale contracts, bills of sale, chattel mortgages, or other liens or claims . . . not theretofore executed and recorded or filed for record as required by law, but shall be subordinate thereto where the same have been theretofore executed and recorded as required by law”,

and then stating that its chattel mortgage was executed and recorded as required by Section 50, Article 21, *i.e.*, within twenty days, and was, therefore, executed and recorded as required by law.

In further support of this proposition, the loan company asserts in its brief that Section 52 does not intend to establish a priority between a chattel mortgage and a garage-man's lien but only between two or more chattel mortgages and therefore does not contradict the loan company's construction of Sections 49 and 50. That this is a possible construction cannot be denied, and if the reasoning were correct, then the loan company's rights under its chattel mortgage should have prevailed, but this was not the case, and though the Court did not specifically comment on the above contention by the loan company, it must be assumed (particularly as the point was made in Appellant's brief) that it was considered and rejected. The Court did say:

“Moreover, in Maryland at least, a chattel mortgage, unlike a mortgage of real estate, takes effect, except as between the parties, only from the time of recording. Code, Article 21, Section 52.”⁴

Hence the court seems to be of the opinion that the twenty days referred to in Section 49 does not apply to chattel mortgages in spite of Section 50, and that Section 52 establishes the method for determining priority between mortgages and liens as well as between mortgages alone. The Court has precedent in this holding in *In re Cook*,⁵ which, in a proceeding in bankruptcy, held that the purchase price of a Vendor (where the bill of sale was used as a mortgage on farm crops) would not be secured by his bill of sale as against persons who gave credit to the Vendee between the time of execution of the bill of sale and its recording. This,

⁴ *Supra*, n. 1, 492.

⁵ 9 Fed. Supp. 764 (D. Md. 1935).

of course, was a bill of sale used as a chattel mortgage and Maryland has frequently held that a bill of sale, absolute on its face, if taken as security, is only a chattel mortgage.⁶

The above case and the instant case seem to bear out the conclusion that Section 50 does not mean that the law, as developed in regard to the time of recording of bills of sale, is also meant to apply to chattel mortgages; for, the holding⁷ in regard to bills of sale in a Vendor-Vendee relationship is that, if recorded within a twenty-day period, they are effective as from the date of execution.⁸

There is some indication that the twenty days referred to in Section 49, as referred to by Section 50, may mean that chattel mortgages, like bills of sale, must be recorded within a twenty-day period. In *Gill, et al. v. Griffith et al.*,⁹ the Court, in construing Section 5, Chapter 8 of the Session Laws of 1729,¹⁰ which is very nearly identical to Sections 45 and 49 of Article 21 as they were when the instant case was decided, said:

“The possession of such property, (*personal property*) as is known, carries with it much more forcible evidence of title, than the possession of real estate. It passes by delivery, and its rapid transfer from hand to hand, is indispensable to the operation of commerce. Hence the time for recording deeds of personal estate is limited to twenty days.”¹¹

Although the above was a bill of sale case, it was a bill of sale that was used as a vehicle for a mortgage. While this case was decided some hundred years ago and has never been cited in a case involving personal property, it stands uncontradicted and probably represents the law of Maryland.

The conclusion from the above cases would seem to be that there is no grace period for recording of a chattel mortgage as against claims of third persons, and there is at least some evidence that the law requires a chattel mortgage to be recorded within twenty days of its execution.

⁶ *Laeber v. Langhor*, 45 Md. 477 (1877).

⁷ *Kreuzer v. Cooney*, 45 Md. 582 (1877).

⁸ The enactment of the Uniform Sales Act, Md. Code (1939), Article 3, Section 19, *et seq.*, particularly Section 43, would seem to cast doubt on whether or not the language in the Kreuzer case can still be relied on.

⁹ 2 Md. Ch. 270 (1848).

¹⁰ “. . . no goods or chattels, whereof the vendor, . . . etc., shall remain in possession, shall pass, alter or change, or any part thereof be transferred to any purchaser, etc., unless the same be by writing, and acknowledged before one provincial justice, or one justice of the county where such seller, etc. shall reside, and be within twenty days recorded in the records of the same county.”

¹¹ *Supra*, n. 9, 286. Italics supplied.