Maryland Law Review

Volume 13 | Issue 2 Article 5

Conditional Sales Contract - Conflict of Laws - Extraterritorial Effect - Third National Bank in Nashville v. Handy Janey

CONDITIONAL SALES CONTRACT — CONFLICT OF LAWS — EXTRATERRITORIAL EFFECT

Third National Bank in Nashville v. Handy Janey[1]

In a recent lower court case the following set of facts confronted the court. One England had purchased an automobile under a conditional sales contract from an automobile dealer in Nashville, Tennessee. The conditional sales contract was subsequently assigned to the plaintiff bank. Without the plaintiff's permission, England drove the car to Baltimore where he applied to the Commissioner of Motor Vehicles for a title certificate and as evidence of his right he presented a bill of sale. The certificate was issued showing no liens or encumbrances. England thereupon sold the car to Bankart, a bona fide purchaser for value and without notice of the prior conditional sales contract. Bankart in turn sold the car to Back, who in turn sold the car to Martin Brothers, Inc., who sold it to the defendant. The conditional sales contract being in default the plaintiff brought an action of replevin against the defendant. Tennessee, where the conditional sale was executed, has no recording provisions for conditional sales.[2] The Court was called upon to decide whose rights were superior, those of the conditional vendor or a bona fide purchaser for value without notice who had purchased the car in a direct chain from the original vendee. The court held that the valid title of the conditional vendor in Tennessee should be recognized in Maryland as superior to the rights of a subsequent innocent purchaser. Under our Maryland statutes[3] the condi-

[1] Superior Court of Baltimore City, Daily Record, Jan. 17, 1951.

[2] Michie's Tennessee Code of 1938, Sec. 7286, merely requires evidence of a writing in order to retain title in the conditional vendor.

[3] Md. Code (1951), Art. 21, Sec. 71.

tional sale unless recorded would not have been valid as to innocent purchasers.

In the earlier Superior Court case of *Commercial Credit Co. v. Foy*,[4] a truck was purchased under a conditional sales contract in North Carolina, which was there recorded. The purchaser subsequently brought the truck into Maryland where it was seized by a creditor of the purchaser under a non-resident attachment. The question then arose as to priority between the conditional vendor and the attaching creditor of the purchaser. The Court held the title of the conditional vendor to be superior to the attaching creditor's rights and that, under the doctrine of comity, Maryland courts were bound to recognize conditional sales retaining title in the vendor which were validly executed in North Carolina.

A case directly in point with the principal case is *Goetschius v. Brightman*,[5] in which case an automobile purchased in California under a conditional sales contract was brought to New York in violation of the contract and without the knowledge of the vendor. The law of California did not require such sales to be recorded in order to preserve title in the vendor as against creditors of, or innocent purchasers from, the vendee. The court was of the opinion that the law of California should govern the transaction, because the doctrine of comity should require the enforcement of a title valid in the state where it was created, unless contrary to the policy of New York. This view, that a conditional sales contract valid where executed is valid everywhere, has been adopted by the Restatement of Conflict of Laws[6] and is the overwhelming weight of authority in this country.

In the Maryland case of *Universal Credit Company v. Marks*,[7] a car was purchased under a conditional sales contract in New York where it was recorded. The conditional vendee defaulted in his payments and shortly thereafter drove the car into Maryland. An accident occurred in Baltimore City seriously damaging the car. The buyer brought the car to the defendants who were in the automobile repair business. The defendants were ignorant of the recording of the conditional sales contract in New York. The buyer never returned for the car, which was subse-

---

[4] Baltimore City Court, Daily Record, Dec. 28, 1935.
[5] 245 N. Y. 186, 156 N. E. 660 (1927).
[6] Secs. 272, 273.
[7] 164 Md. 130, 163 A. 810 (1933). See Arnold, *Conditional Sales of Chattels in Maryland*, 1 Md. L. Rev. 187, 193 (1937).

quently sold to enforce the liens for repairs and storage.[8] At public auction the car was sold to the defendant garageman and a certificate of title to the car was issued. Several weeks later the plaintiff, who was the assignee of the conditional sales contract, brought an action of replevin claiming superior title to the car. The court, applying Maryland law, held that the lien of a Maryland garageman for repairs is superior to the rights of one claiming the automobile as vendor under a conditional sales contract executed and recorded in another state. The Court in construing the Maryland garageman's lien statute said:

> "The Maryland statute creating the lien was designed to assure to those operating foreign automobiles, in the transitory use of the public ways of the state, the obtention of prompt repair, replacements, accessories, and storage without delay or question, and to make certain that the garageman would be paid or have the means of securing payment for the necessities furnished. The statute was the expression of a public policy."[9]

Reasons offered for protecting the garageman's lien in addition to public policy, are that the buyer has ostensible ownership of the car and the fact that repairs will tend to benefit the car. As to the conflict of laws problem the court speaking through Judge Parke said:

> "In a contract of conditional sale, the law of where it was made and where it is to be performed, as a rule, governs its construction and operation in all states, but the validity of the contract will not be sustained in another state should it contravene the settled policy of the foreign state."[10]

This statement recognizing the lex loci contractus rule would seem to put Maryland squarely in line with the majority view.

It is upon the ground of public policy that we find exceptions to the general rule, which recognizes the law of the place where the contract was made as controlling. The leading case is *Turnbull v. Cole*,[11] in which the Colorado Supreme Court refused to uphold the rights of a conditional vendor on a conditional sales contract executed in Utah

---

[8] Md. Code (1951), Art. 63, Sec. 41.
[9] *Supra*, n. 7, 143.
[10] *Supra*, n. 7, 141.
[11] 70 Colo. 364, 201 Pac. 887, 25 A. L. R. 1149 (1921).

as against an innocent purchaser without notice in Colorado. The court in its opinion said:

> "It is settled in this jurisdiction that (conditional sale) contracts . . . reserving a secret lien to the vendor, will not be recognized as leaving title in the vendor, as against interested parties without notice."[12]

As to the rule of comity the court said:

> "Judicial comity does not require us to enforce any clause of the instrument, which, even if valid under the lex domicili, conflicts with the policy of our state relating to property within its borders, or impairs the rights or remedies of domestic creditors."[13]

The minority view steadfastly contends that conditional sales are constructively fraudulent as to creditors and other third persons.[14] In Louisiana conditional sales are not recognized; however, under the doctrine of comity the conditional vendor in another state will be protected over a bona fide purchaser from the conditional vendee in Louisiana.[15] The majority view which recognizes a conditional sales contract if valid where executed as being valid everywhere seems to be clearly the better view.[16] A large volume of commercial selling carried on in the United States involves the use of conditional sales contracts. The financing of automobiles and home appliances are outstanding examples. If the protection the courts have given to the conditional vendor were to be withdrawn the use of the conditional sale method of financing would greatly decline thereby directly curtailing consumer buying power.

A problem arising under conditional sales recording statutes is whether the conditional vendor in one state will prevail over a bona fide purchaser in another state, when the conditional sales contract was not recorded in the state where it was made as prescribed by statute. Most courts have taken the view that a failure to record the sale in the state where it was made will defeat the conditional seller, if the buyer subsequently sells to an innocent purchaser in

[12] *Ibid*, 887. Parenthetical material added.

[13] *Ibid*, 888.

[14] Castle v. Commercial Investment Trust Corporation, 100 Colo. 191, 66 P. 2d 804 (1937); Rice Street Motors v. Smith, et al., 167 Pa. Super. 159, 74 A. 2d 535 (1950); Willys Overland Co. v. Chapman, 206 S. W. 978 (Tex. Civ. Ap., 1918).

[15] Overland Texarkana Co. v. Cickly, 152 La. 662, 94 So. 138 (1922); Securities Sales Co. v. Blackwell, 167 La. 667, 120 So. 45 (1929).

[16] Clyde Iron Works v. Frerichs, 203 F. 637 (5th Cir., 1913); Harrison v. Broadway Motor Co., 128 Miss. 766, 91 So. 453, 25 A. L. R. 1148 (1922); Cleveland Machine Works v. Lang, 67 N. H. 348, 31 A. 20 (1893).

another state. Thus if a chattel is purchased under a conditional sales contract in Maine, and there is a failure on the part of the conditional vendor to record it in Maine, subsequent creditors of the conditional vendee attaching the property in New Hampshire will prevail over the conditional vendor.[17] The Restatement of Conflict of Laws says:

> "Whether a conditional sale is effective to enable the vendor to retain title is determined by the law of the state where the chattel is at the time of sale."[18]

Quite often in conditional sales contracts it is contemplated or understood by the parties at the time the sale is made that the goods or chattels covered by the sale are to be used in another state. The question then arising is the law of which state shall govern. In situations of this type, where the parties intended at the time of the sale that the goods were to be used in another state, the majority of courts regard the law of the state in which the contract is to be carried out and where the goods are to be held under the conditional sale as governing.[19] In determining who will be protected, the conditional seller or the purchasers and attaching creditors of the buyer, it becomes necessary to ascertain whether the buyer has removed the goods with or without the seller's consent. If the goods have been removed wrongfully without the seller's consent either express or implied it clearly is the better rule to protect the conditional seller's reserved title.[20] The reasoning behind this is not so much that the purchasers and attaching creditors are not innocent, but that they will not be able to claim title through the conditional buyer who is a wrongdoer in removing the goods without the seller's consent. On the other hand, if the goods have been removed with the express or implied consent of the conditional seller, purchasers and attaching creditors in the state to which the goods have been removed will be given priority over the conditional seller. In these cases the courts reason that it was the conditional seller's consent that enabled the buyer to remove the goods which were subsequently disposed of.[21] Thus it is possible to say from these cases that the rights of

---

[17] Davis v. Osgood, 69 N. H. 427, 44 A. 432 (1899).

[18] Sec. 272.

[19] Hervey v. Rhode Island Locomotive Works, 93 U. S. 664 (1876); Beggs v. Baretls, 73 Conn. 132, 46 A. 874 (1900); RESTATEMENT OF CONFLICT OF LAWS, Sec. 276.

[20] C. I. T. Corporation v. Guy, 170 Va. 16, 195 S. E. 659 (1938); United Construction Co. v. Milam, 124 F. 2d 670 (6th Cir., 1942).

[21] STUMBERG, CONFLICT OF LAWS, (2nd Ed., 1951), p. 397.

the parties will be determined by whether the removal was wrongful or not.

The Uniform Conditional Sales Act,[22] which has not been enacted in Maryland, contains provisions which attempt to reconcile some of the conflict of laws problems. Article 14 of the act provides that if the goods held under a conditional sales contract are removed to a new filing district, the conditional seller has ten days *after notice* that the goods are in a foreign state to file such record in the state in which the goods are located. Failure to register within ten days *after notice* would render the property attachable by creditors of the buyer and would also protect innocent purchasers.

The proposed Uniform Commercial Code, which has not been adopted by any state legislature at the time of this writing, has a section dealing with secured transactions and the conflicts problem.[23] This section says:

> "If the security interest was already perfected under the law of the jurisdiction where the property was kept before being brought into this state, the security interest continues perfected here for four months and also thereafter if within the four month period it is perfected here. The security interest may also be perfected here after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was kept before being brought into this state it may be perfected here, in such case perfection dates from the time of perfection in this state."

This section seems to give the conditional vendor a four month period of grace within which to ascertain that the chattel has been removed to another jurisdiction and to perfect his title in the new jurisdiction by appropriate filing. Attaching creditors and purchasers in good faith from the conditional buyer will not prevail over the vendor if the conditional vendor records before the expiration of the four month period. The recording would no doubt relate back and have priority over their claims.

The holding in the principal case seems clearly correct. The conditional vendor in Tennessee in the absence of any recording laws in that state has not failed in any duty to third persons. He could not record because there was no statute requiring recording of conditional sales contracts.

[22] UNIFORM LAWS ANNOTATED, Vol. 2.
[23] Uniform Commercial Code — Official Draft (1952), Sec. 9-103 (3).

Generally at common law such transactions were held valid, and not against public policy.[24] Not to protect the vendor under the circumstances would be giving the automobile practically some of the attributes of negotiability. On the other hand, the bona fide purchaser is not left completely without a remedy. He may still bring an action against his immediate vendor for the breach of the implied warranty of title.[25] The warranty sections of the Uniform Sales Act have been held to apply to the sale of secondhand goods.[26]

In a second suit the parties appeared in order to determine among themselves the respective damages resulting from the failure of title in the fraudulent vendor.[27] As stated above, when England, the conditional vendee in the previous suit, brought the car into Maryland he traded it to Bankart in exchange for another car. Several days later Bankart sold the car to Back for $1920. A few months thereafter Back sold the car to Martin Motors for $1995. The latter party on the very same day sold the car to the defendant Handy Janey for $2450. The defendant also purchased accessories from Martin Motors for $210. Seven months elapsed before the plaintiff learned of the whereabouts of the car and brought replevin proceedings.

The problem that presents itself is whether this series of transactions should be treated as four separate sales or whether they should be treated as one unbroken chain in which damages to successive purchasers all flow from the original warrantor (Bankart) who obtained the car from the fraudulent seller and thereby set in motion the succeeding chain of sales. The court held that each sale should be regarded as a separate transaction and not as an unbroken chain and that the judgment obtained by the last purchaser against his vendor does not fix the amount of damages owed by previous purchasers.

Under the Uniform Sales Act,[28] every sale of goods or chattels carries with it the three implied warranties of title; namely the right to sell, quiet possession, and against encumbrances. All three of these implied warranties were breached by the successive vendors because of the existence of title in the plaintiff, the original vendor. Some courts treat these implied warranties of title as running with the chattel down to the subsequent vendee so as to

---

[24] Harkness v. Russell, 118 U. S. 663 (1886).
[25] Uniform Sales Act, Sec. 13, Md. Code (1951), Art. 83, Sec. 31.
[26] Standard Brands Incorporated v. Consolidated Badger Cooperative, 89 F. Supp. 5 (E. D. Wisc., 1950).
[27] Superior Court of Baltimore City, Daily Record, Mar. 7, 1951.
[28] *Supra*, n. 25.

entitle him to recover for its breach against the original seller.[29] The great weight of authority, however, is that the benefit of a warranty either express or implied does not run with the chattel so as to give a subsequent purchaser a right of action against the original seller because of either defects in title or quality.[30] The Court of Appeals of Maryland has consistently held that in the absence of privity of contract, the benefit of the implied warranties do not inure to a subpurchaser.[31]

A leading case in point treating a series of sales of the same chattel as separate transactions is *Smith v. Williams*.[32] In that case the defendant sold some personal property to plaintiff with a warranty. The plaintiff thereupon sold the property to a third party with a similar warranty. Paramount title was asserted and the third party was forced to surrender the goods to their rightful owner. The third party thereupon sued his immediate seller (plaintiff) for breach of warranty and recovered the purchase price plus the attorney's fees of the third party expended in defending the action against the real owner, and in addition the attorney's fees necessary to bring the action against the plaintiff. Then the plaintiff sued the defendant claiming as damages the entire amount recovered by the third party and also the attorney's fees of the plaintiff in bringing the action. The defendant moved to strike out the amount of the costs and the attorney fees of the preceding action in which the plaintiff had been sued by the third party. The defendant's motion was overruled and on appeal the lower court was reversed. The court said:

> "Each sale is a separate transaction. Each vendor is liable for his own contract, and to the extent thereof. But he cannot enlarge his prior vendor's obligation beyond that fixed by law. The measure of damages is the purchase money, with interest and expenses properly incurred by the vendee in attempting to defend his title; but not for expenses incurred by others in asserting or defending rights warranted by their immediate vendor, even though they be also derived by a chain of title from the remote warrantor."[33]

---

[29] Pinney v. Geraghty, 209 App. Div. 630, 205 N. Y. S. 645 (1924); Thurston v. Spratt, 52 Maine 202 (1863).

[30] Hood v. Warren, 205 Ala. 332, 87 So. 524 (1921); Crocker v. Barron, 234 S. W. 1032 (Mo., 1921).

[31] Flaccomio v. Eysink, 129 Md. 367, 100 A. 510 (1916); Poplar v. Hochschild Kohn & Co., 180 Md. 389, 393, 24 A. 2d 783 (1942); Vaccarino v. Cozzubo, 181 Md. 614, 31 A. 2d 316 (1943).

[32] 117 Ga. 782, 45 S. E. 394 (1903).

[33] *Ibid*, 394.

The "unbroken chain" theory, on the other hand, is where the judgment against the last purchaser is passed back to the original seller who is bound to make good to the purchaser all his losses resulting from lack of title. If the purchaser or any subpurchaser is sued in replevin or trover, or any action involving the question of title and if he gives notice to his vendor of the pending action and its nature, then it has been held a judgment is conclusive evidence against such vendor.[34] The case of *Thurston v. Spratt*,[35] helps illustrate the "unbroken chain" theory. In that case the plaintiff and defendant exchanged horses. The plaintiff subsequently sold one of the horses he had received from the defendant to A who then sold the horse to B who in turn sold the horse to C. The true owner of the horse brought a replevin suit against C who immediately notified his immediate vendor B to appear and to defend the suit. B thereupon notified his immediate vendor A to appear and defend who in turn served notice on the plaintiff who in turn served notice on the defendant. The real owner was allowed to replevy the horse. The defendant had failed to defend the action whereupon C the last vendee was required to pay the costs plus his own attorney's fees. Thereafter, B repaid C and A repaid B and the plaintiff repaid A. Finally the plaintiff sued the defendant to recover the value of the horse plus the costs and attorney's fees expended by C in defending the suit.

The court held that the plaintiff could recover. The court said:

> "If the purchaser, or any subsequent vendee is sued in replevin or trover, or in any other action involving the question of title, if he gives notice to his vendor of the pendency of the action and its nature, the judgment is conclusive evidence against such vendor."[36]

Further on in the opinion, Judge Kent says:

> "It can make no difference that there are intermediate purchasers, and that the suit is against the last one, *if the question of title is the sole matter in controversy.*"[37]

---

[34] Farnham v. Chapman, 60 Vt. 338, 14 A. 690 (1888); Kelly v. Forty-Second Street, etc. R. Co., 37 App. Div. 500, 55 N. Y. S. 1096 (1899).

[35] *Supra*, n. 29.

[36] *Supra*, n. 29, 205. This rule treats warranties of title the same as covenants of title are treated in respect to realty. Marsh v. Smith, 73 Iowa 295, 34 N. W. 866 (1887); Elliot v. Saufley, 89 Ky. 52, 11 S. W. 200 (1889); Richmond v. Ames, 164 Mass. 467, 41 N. E. 671 (1895).

[37] *Supra*, n. 29, 205.

Thus under the "unbroken chain" theory the amount of the judgment in favor of the subpurchaser would also serve as the measure of damages between the original seller and the first purchaser. Hence, where there have been successive sales accompanied by implied or express warranties and a breach would arise from an outstanding title, and if costs and attorney's fees were carried forward and finally paid by the original warrantor, then it is quite likely that the final figure would be an amount greatly in excess of the original value of the chattel. Although it may appear to be an undue hardship on the original purchaser in making him sustain a loss of an amount greater than what he had originally paid for the chattel, he still has a cause of action against his fraudulent vendor. As a practical matter, it is doubtful, if any actual recovery could be realized from such a fraudulent vendor.

In the principal case the fairest possible result was reached. Each of the parties was allowed to recover back from their immediate purchaser the amount they had paid for the car. The accessories that had been added to the car were paid for by the plaintiff who replevied the car. The costs of the various parties were equally divided among them.