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Possession And Recording Under Conditional Sales Contracts

*Mohr v. Sands*¹

Plaintiff, Mrs. A, a resident of Baltimore City, entered into an agreement to purchase a new 1955 Nash automobile from B Corporation, located in Baltimore County, on June 6, 1955, under a conditional sales contract. The contract was assigned for value to plaintiff, C Credit Corporation, and recorded among the Chattel Records of Baltimore City on June 9, 1955. C Credit Corporation was unaware that Mrs. A was not buying the car for herself, but had permitted her ex-husband to use her credit in the purchase of the automobile, which was to be used by him as a demonstrator during his employment as a salesman for B Corporation. He was to make the down payment and monthly installments, upon completion of which Mrs. A was to transfer title to him, and Mrs. A testified that she never contemplated taking possession of the car, and knew it was to be used as a demonstrator. The Department of Motor Vehicles issued a certificate of title for the car in Mrs. A's name on July 27, 1955.

On July 19th, Mr. D, one of the defendants, purchased the same automobile, which was still on display in B's showroom, from a salesman other than Mr. A. Mr. D's conditional sales contract was assigned for value to defendant E Credit Corporation and duly recorded. On August 10th the Commissioner of Motor Vehicles, acting upon a forged application for a duplicate title and a forged assignment from Mrs. A to D, and an application for a new title, purportedly signed by D, but also stated to be forged, issued a new title to D, showing a lien in favor of E Credit Corporation.

¹ 213 Md. 206, 131 A. 2d 732 (1957).

Upon discovery of the fraud, Mrs. A and C Credit Corporation, contending that their recording of the conditional sales agreement had put the defendants on constructive notice, sought a declaratory judgment to validate their claims to the car. The trial court ruled for the defendants, accepting the defendants' contention that under Article 83, Section 43² the recording, though in compliance with Article 21, Section 66,³ was ineffective to give notice of Mrs. A's rights thereunder as against a bona fide purchaser for value. The Court of Appeals confirmed the trial court's ruling that the recording was ineffective and accordingly affirmed, reasoning that under Article 83, Section 43, the defendants, being bona fide purchasers for value, were entitled to retain their ownership and lien upon the automobile.⁴

The importance of this case is in the holding that the recording statute for conditional contracts of sale is inapplicable where the vendor remains in possession, even though all requirements of the statute had been complied with. The Court pointed out that the recording act contemplated an actual delivery of the chattel, the subject of the conditional sale, to the vendee and was enacted to protect the interests of the conditional vendor from sales by the conditional vendee as the latter, having ostensible ownership, was therefore able to transfer good title to a bona fide purchaser for value.⁵

In reaching its decision, the Court was called upon to review the problem of ostensible ownership as affected by the Maryland recording statutes. Recording of bills of sale had been required for many years, and the present form of the statute, applicable to both bills of sale and chattel mortgages, is found in Article 21, Section 41.⁶ However, *Dinsmore v. Maag-Wahmann Co.*⁷ held that the recording act for bills of sale had no application to a conditional sale where possession was in the vendee, in contrast to the bill of sale transaction where possession remains in the vendor.

² 7 MD. CODE (1957) being §25, of the Uniform Sales Act:

"Where a person having sold goods continues in possession of the goods, . . . , the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same."

³ 2 MD. CODE (1957) (formerly Art. 21 §74 of the 1951 Code).

⁴ Cf. *Cottman v. Wagner*, 213 Md. 73, 130 A. 2d 749 (1957).

⁵ See *Praeger v. Implement Company*, 122 Md. 303, 89 A. 501 (1914).

⁶ 2 MD. CODE (1957).

⁷ 122 Md. 177, 89 A. 399 (1914).

Two years after the *Dinsmore*⁸ case, the first recording statute for conditional contracts of sale was passed,⁹ for the express purpose of protecting third persons who dealt with the conditional vendee without knowledge of the reservation of title in the vendor.¹⁰ Where the requirements of the statute were complied with by recording at the residence of the conditional vendee and possession had been delivered to the conditional vendee, *Finance Etc. Co. v. Truck Co.*¹¹ upheld the reserved title of the vendor against the claims of a finance company which had lent money to a purchaser from the conditional vendee. It thus remained for the present case to determine what law controlled where the conditional vendor remained in possession after the execution of a conditional contract of sale which was recorded as provided for in the recording statute for conditional sales.

Having adopted the view that the purpose of the conditional sales recording statute is the protection of the interests of purchasers from the vendee, by providing constructive notice through recording in the county (or city) of the vendee's residence or place of business, the court reached the normal conclusion that, absent some other security device that could be recorded at the residence or place of business of the vendor (such as a bill of sale or chattel mortgage where the vendor or mortgagor normally remains in possession), the only applicable law was the general rule of the Uniform Sales Act, or of common law estoppel, both of which protect the bona fide purchaser from the person left in possession. The Court rested its decision flatly on the Uniform Sales Act; but, even in its absence, the result would have been the same for the opinion states that the Court would "have little difficulty in finding her [Mrs. A] estopped to assert her claim to the car"¹²

Quite suggestively, the Court points out: "Whether, in the case of chattels so readily movable as motor vehicles, a centralized place for the recordation of liens of all kinds thereon should be established is a matter for legislative

⁸ *Ibid.*

⁹ Its present form, somewhat changed from that originally enacted in 1916 is found in 2 MD. CODE (1957) Art. 21, §66.

¹⁰ *Roberts & Co. v. Robinson*, 141 Md. 37, 118 A. 198 (1922). Prior to the recording act, it was held that a conditional sale was valid against all but bona fide purchasers for value from the conditional vendee. See *Praeger v. Implement Company*, 122 Md. 303, 89 A. 501 (1914).

¹¹ 145 Md. 94, 125 A. 585 (1924).

¹² 213 Md. 206, 214, 131 A. 2d 732 (1957).

determination."¹³ Certainly, the difficulties inherent in the instant case, which could arise in other similar cases, would suggest the desirability of prompt legislative attention to this practical solution of the problem.¹⁴

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¹³ *Ibid.*, 214.

¹⁴ For example, Virginia has exempted liens upon motor vehicles from the normal requirements of recording and provides for recordation of such liens with the Department of Motor Vehicles. The liens as then noted upon the certificate of title to the particular automobile thereby give notice throughout the entire State. See 7 VA. CODE (1958) §46.1-69, *et seq.*