

## Sufficiency Of Description In a Chattel Mortgage - Phillips v. J. F. Johnson Lumber Company

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**Sufficiency Of Description In A  
Chattel Mortgage**

*Phillips v. J. F. Johnson Lumber Company*<sup>1</sup>

In August 1955, one Glover executed and recorded a chattel mortgage to the appellee, Johnson, covering several passenger motor vehicles and motor trucks, as well as sundry equipment, including the subject of the present suit, "1-Terratrac Bulldozer loader — Model 30", the only such piece of equipment which Glover owned. All of the

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<sup>1</sup> 218 Md. 531, 147 A. 2d 843 (1959).

vehicles except the loader were described by year and serial number, as well as by make and type. In May, 1956, Glover bought an International Crawler Tractor under a conditional sales contract and gave Edward P. Phillips, the vendor, his Terratractor loader, Model 30, in part payment. Phillips made no examination of the chattel records to determine whether there was a lien upon the loader. Johnson Lumber Company sued the appellants, trading as Phillips Machinery and Tractor Company, for conversion of the loader in the Circuit Court for Anne Arundel County and obtained a verdict and judgment of \$1,200.00. Upon stipulation by the parties, the sole question to be decided was whether the loader was sufficiently identified by the description in the recorded chattel mortgage to charge a subsequent bona fide purchaser for value with constructive notice of the mortgagee's lien.

Phillips contended that the description of a piece of mass-produced machinery must contain the serial number. The Court of Appeals, in affirming the lower court, held that the description as given was sufficient to enable a third party to identify the loader, where it was the only one of its kind owned by the mortgagor.

The pertinent sections of the Annotated Code of Maryland are not particularly helpful in dealing with the problem of sufficiency of description. Under Article 21, Section 46 thereof,<sup>2</sup> a mortgage of personal property shall be executed in the same manner as bills of sale; and under Section 42 "any bill of sale of personal property shall be sufficient in form if it contains the names of the parties, the consideration, a *description* of the property conveyed, and be signed and sealed by the vendor and dated."<sup>3</sup>

A somewhat more explicit Code section is Article 21, Section 5 dealing with requirements of a valid deed conveying real estate, one of which is that it should contain "a description of the real estate sufficient to identify the same with reasonable certainty."<sup>4</sup> The most detailed description required, however, is to be found in a statute (not a recording statute),<sup>5</sup> which requires the serial number of a motor vehicle to be stated in an application for a certificate of title thereon or for registration thereof.<sup>6</sup>

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<sup>2</sup> 2 MD. CODE (1957).

<sup>3</sup> *Ibid.* § 42.

<sup>4</sup> 2 MD. CODE (1957).

<sup>5</sup> 6 MD. CODE (1957) Art. 66½, § 24(a) (2).

<sup>6</sup> This section does not appear applicable to the kind of equipment here involved. See Art. 66½, §§ 2(55) and 23. Perhaps the reason for the more detailed description of motor vehicles than of the bulldozer in

The prevalent rule as to sufficiency of description laid down by text writers, and apparently by judicial authority, is that a mortgage conveying chattels, when recorded, in constructive notice of a lien to third persons if the description in the instrument is such as will enable them to identify the property together with inquiries which the mortgage itself suggests and directs. A less certain description would appear adequate as between the mortgagor and mortgagee, alone.<sup>7</sup>

The description should be certain enough that the chattel can be distinguished from other like property. In short, as the legal maxim advises: "That is certain, which is capable of being made certain."<sup>8</sup> If the description is made specific by extrinsic facts, it will be satisfactory to give notice.

In *State for Use of Horsey v. Maryland Casualty Company*<sup>9</sup> it was held that a description of sundry chattels<sup>10</sup> in a bill of sale was insufficient as to pass title even between the immediate parties thereto because it was general in nature. The Maryland Court held in *Fersner v. Bradley*<sup>11</sup> a bill of sale conveying a "one-half interest in 8 horses, one-half interest in five single buggies, one-half interest in six double rigs, one-half interest in 3 sets double harness. . . ."<sup>12</sup> was insufficient to pass title against a judgment creditor of the vendor, noting that no description was given which would enable other interested persons to form an

Johnson's mortgage may have been the ready availability of such description on the registration cards pertaining to those vehicles. See the instant case, *supra*, n. 1, 540. See also 2 Md. CODE (1957) Art. 21, § 66 relating to conditional sales contracts.

<sup>7</sup> *First National Bank v. Maxwell*, 200 N.W. 401, 198 Iowa 813 (1924); *United States v. Christensen*, 50 F. Supp. 30 (D.C. Ill. 1943); *Security State Bank v. Jones*, 247 P. 862, 121 Kan. 396 (1926); *In re Oliver C. Putney Granite Corp.*, 14 F. Supp. 31 (D.C. Md. 1936); *Salabes v. Castalberg*, 98 Md. 645, 57 A. 20 (1904); *U. S. Fire Insurance Co. v. Merrick*, 171 Md. 476, 190 A. 355 (1937); *Jackson City Bank and Trust Co.* 53 N.W. 2d 493, 333 Mich. 399, 32 A.L.R. 2d 920 (1952); *Tilton v. Wade*, 2 F. 2d 358 (4th Cir. 1924); *Elgin v. Dehart*, 144 Va. 311, 132 S.E. 323 (1926); 10 AM. JUR., *Chattel Mortgages*, § 55; JONES, *CHATTEL MORTGAGES AND CONDITIONAL SALES*, (1933 ed. and 1956 Supplement) §§ 54, 55.

<sup>8</sup> 14 C.J.S. 57, *Chattel Mortgages*. See also 10 Am. Jur., *Chattel Mortgages*, §§. 53, 55; *Farmers and Merchants National Bank of Kaufman v. Howell*, 268 S.W. 776 (Tex. Civ. App. 1925).

<sup>9</sup> 164 Md. 69, 163 A. 856 (1933).

<sup>10</sup> The bill of sale merely bargained and sold "8 Lupton Steel Bins and parts; 1 Lupton steel show case, 1 desk, 2 chairs, 1 National Cash Register, 1 Ohio generator test stand, 1 Jefferson Coil tester, 1 Tunger Battery charger, 25 fenders; 7 wheels, 2 truck wheels; 3 tractors; 3 sets tractor fenders; 1 Oakland Touring Car; 1 Ford Touring car; 1 Ford coupe; 1 rolling jack." *Ibid.*, 75-76.

<sup>11</sup> 87 Md. 488, 40 A. 58 (1898).

<sup>12</sup> *Ibid.*, 489.

idea as to what particular vehicles were intended to be included.

The scarcity or plentitude of chattels of a similar kind is important to consider. The non-existence of other property to which the terms of the mortgage could apply frequently renders valid a description in a mortgage which otherwise would be too indefinite. In a number of cases the fact that an implement or vehicle was the only one of its kind owned by the mortgagor has been held to support the sufficiency of a description, even though clarification of the description was partly dependent upon extrinsic evidence.<sup>13</sup>

A poignant example is *U.S. v. Christensen*<sup>14</sup> in which a chattel mortgage describing the property as "one tractor, Moline, 10-20 Farmall, condition good, year of manufacture 1937" was held by the Illinois district court to be adequate to put third parties on inquiry where the tractor was the only implement of its kind owned by the mortgagor.<sup>15</sup> However, in *Hayes v. Wilcox*,<sup>16</sup> an earlier Iowa case, the court held the description in a chattel mortgage "one Oscillation thresher, size 6, 30 inch cylinder, and also one Chicago Pitts ten-horse power" to be too indefinite to be sustained.

Another factor of importance is the *location* of the mortgaged chattels. The rule here set out is basic and comprehensive:

"A statement of the exact situs of mortgaged property is of great service in identifying it, and it is enough that the location of the property may be determined by fair inferences drawn from the entire instrument. Although it is generally not a sufficient location to say that chattels are in a certain county, or in a certain city or town, with nothing more, in agricultural communities a statement that the mortgaged property is in the mortgagor's possession in a certain county seems to be sufficient."<sup>17</sup>

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<sup>13</sup> See 14 C.J.S. Chattel Mortgages, § 59, and cases cited.

<sup>14</sup> 50 F. Supp. 30 (D.C. Ill. 1943).

<sup>15</sup> Note the similarity of the description and result in the Christensen case and the principal case. Also see *Jackson City Bank and Trust Co. v. Blair*, 53 N.W. 2d 493, 333 Mich. 399, 32 A.L.R. 2d 920 (1952), and *Osborne v. McAllister*, 19 N.W. 510, 15 Neb. 428 (1884) in which like descriptions were upheld.

<sup>16</sup> 17 N.W. 110, 61 Iowa 732 (1883). See also *Plano Mfg. Co. v. Griffith*, 39 N.W. 213, 75 Iowa 102 (1888) in which a description: "one six ½ foot cut Plano harvester and binder" was held too indefinite.

<sup>17</sup> 6 CYCLOPEDIA OF LAW AND PROCEDURE (1903 ed.) 1024, 1025.

In *In re Oliver C. Putney Granite Corporation*<sup>18</sup> Judge Chesnut relied heavily upon the fact that the location of certain mortgaged chattels was set out,<sup>19</sup> and was able to distinguish this case from the *Horsey case*,<sup>20</sup> wherein the location of the chattels was not specifically stated.<sup>21</sup>

In general, although chattels should be specifically described, something less than the best possible description may be sufficient.<sup>22</sup> The Court of Appeals held in *Salabes v. J. Castelberg and Sons*,<sup>23</sup> that a description which referred to a diamond ring by the name of the jeweler and the number of carats was sufficient. In so holding the court said:

“ . . . in this case, as the only description that could reasonably be expected was given, and that was ample to put persons dealing with the ring on inquiry, the mortgages should not be made to suffer.”<sup>24</sup>

It seems fair to say that although a description may be meager, if it gives a fair clue to the identity of the property so that a third person by reasonable investigation may ascertain the property which the parties intended to include in the mortgage, the instrument may be regarded as creating a valid lien.

DONALD NEEDLE

<sup>18</sup> 14 F. Supp. 31 (D.C. Md. 1936).

<sup>19</sup> The description in the chattel mortgage read:

“ . . . all the tools, machinery, appliances[,] and other personal property now used by the mortgagor in the operation of its stone-cutting plant located upon the real estate hereinbefore described, including specifically one Electric Crane[,] one Electrically driven Compressor[,] one Gang Saw[,] Carborundum Saw[,] Polishing Mill[,] Surfacing machine and Pneumatic tools.” *Ibid.*, p. 33.

<sup>20</sup> 164 Md. 69, 163 A. 856 (1933).

<sup>21</sup> 14 F. Supp. 31, 34 (D.C. Md., 1936). See also *Bowman-Boyer Co. v. Burgett*, 192 N.W. 795, 195 Iowa 674 (1923) in which a description of a chattel was upheld where the mortgage not only gave the township and county and state where the property was situated, but also the location of the farm on which the property was kept. See *Elgin v. Dehart*, 144 Va. 311, 132 S.E. 323 (1937).

<sup>22</sup> See *Fire Insurance Co. v. Merrick*, 171 Md. 476, 487, 190 A. 335, 340 (1937).

<sup>23</sup> 98 Md. 645, 57 A. 20, (1904).

<sup>24</sup> *Ibid.*, 654.