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As in most years, there were only a few cases in this area decided in 1964. Three involved bankruptcy. *In re Leeds Homes, Inc.*[1] presented the question of the allowance, in a reorganization proceeding under Chapter X of the Bankruptcy Act, of a claim filed by a Delaware corporation doing business in Tennessee without qualifying as a foreign corporation as required by Tennessee law.[2] Several Tennessee decisions have held that such corporations cannot enforce contracts in the Tennessee courts.[3] In some of these decisions it is stated that such contracts are void.[4] In others they are said to be not void, but unenforceable.[5]

In allowing the claim the district court relied on two alternative grounds:

> (1) that under Tennessee law a contract of a non-qualifying corporation is not void but merely unenforceable in state courts, and that failure of the offending corporation to domesticate is not a good defense against it in a case where jurisdiction is based, not on diversity, but on federal bankruptcy law; and (2) that, in any event, the particular loan in question was an interstate transaction and therefore T.C.A. § 48-908 was not applicable, since by its terms it applies only to intrastate business.[6]

The court of appeals affirmed the district court decision solely on the first ground, and expressly refrained from passing on the second ground.[7]

It is now well established that federal, and not state law will be applied in determining the allowability of claims in bankruptcy proceedings.[8] The court noted, however, that the preliminary question of whether or not a claim exists, to which federal law is then applied,

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1. 332 F.2d 648 (6th Cir. 1964).
2. TENN. CODE ANN. §§ 48-901 to -1804 (1956).
3. See, *e.g.*, Peck-Williamson Heating & Ventilating Co. v. McKnight & Merz, 140 Tenn. 563, 205 S.W. 419 (1918).
4. *Ibid.*
5. See, *e.g.*, Swope v. Jordan, 107 Tenn. 166, 64 S.W. 52 (1901).
6. *In re* Leeds Homes, Inc., *supra* note 1, at 649.
7. As to this ground, see Lloyd Thomas Co. v. Grosvenor, 144 Tenn. 347, 233 S.W. 669 (1920).
8. See cases cited in *In re* Leeds Homes, Inc., *supra* note 1, at 649.

must be determined with reference to state law.

On the question of the existence of a claim under state law, the court concluded that in Tennessee contracts and transactions of non-qualifying foreign corporations are not void, but are unenforceable. Therefore, the court held that a claim existed which should be allowed in a bankruptcy proceeding, although it would not have been enforceable in the courts of Tennessee.

In re Crosson,[9] another bankruptcy case, involved a determination of Tennessee law as to encumbrances on automobiles. The bankrupt, five weeks before bankruptcy, bought a used car. The purchase was financed by a conditional sales contract and promissory note which the seller negotiated to a finance company. The bill of sale furnished the buyer showed on its face the lien of the finance company. The buyer did not apply for or obtain a new certificate of title, although required by state law to do so.[10] The finance company filed a claim in the bankruptcy proceeding asserting a valid lien. But the court held the company's lien to be inferior to the trustee's status as a lien creditor.

The Bankruptcy Act gives the trustee, as of the date of bankruptcy, the rights of a lien creditor whether or not such creditors actually exist.[11] Yet, the rights of such a lien creditor and his status relative to other conflicting interests are determined by state law. Under Tennessee law encumbrances on automobiles, other than liens dependent on possession, must be noted on the certificate of title to be valid against creditors, purchasers or encumbrancers in the absence of actual knowledge.[12] In the instant case, although the encumbrance was noted on the bill of sale, it was not noted on the title since the buyer never applied for a new title. Therefore, the court held that the lien was not valid against the trustee as a lien creditor.

The opinion does not indicate whether or not the finance company had filed a request for notation of the lien. If not, the decision seems correct because the failure of the buyer to apply for title would then have no significant effect. But if the lien holder complied with the law by attempting a proper perfecting of his security interest and was defeated by the failure of the buyer to perform a mandatory duty under the statute, the result seems anomolous. In actual practice most dealers in fact apply for the new title on behalf of the buyer. Where this is done the problem of the instant case cannot arise. But, as the statute imposes the duty of such application solely on the buyer, what would happen if the buyer refused to allow the dealer to apply

9. 226 F. Supp. 944 (E.D. Tenn. 1963).
10. TENN. CODE ANN. §§ 59-301 to -1504 (1956).
11. 66 STAT. 429 (1952), 11 U.S.C. § 110 (1958).
12. TENN. CODE ANN. §§ 59-326, -327 (1956).

for the title. Presumably, if discovered, the buyer could be compelled to apply for the title, but during the time prior to such application the lien holder apparently could not obtain a perfected security interest. It should be noted that this situation will continue under the new Uniform Commercial Code,[13] for the Code continues the old method of perfecting a security interest in an automobile classified as consumer goods.[14] Possibly, the vehicle registration act should be amended so as to allow dealers or encumbrancers to apply for title so that they can be sure their lien is properly registered.

The third case involved the effect of a discharge in bankruptcy, or more specifically, the extent to which a court will go outside the record to determine whether or not a particular debt is dischargeable. In *Universal C.I.T. Credit Corp. v. Woodmansee*,[15] a judgment on a note had been scheduled in a bankruptcy proceeding in which a discharge was granted. Subsequent to this discharge C.I.T., the judgment creditor, caused an execution to be issued on its judgment, and had garnishment served on the bankrupt's employer. A plea of discharge was entered, but C.I.T. replied that the judgment was not dischargeable because the note on which it was based had been given to evidence a liability created by fraud while acting in a fiduciary capacity.[16] The reply alleged that the note was given in settlement of a controversy which arose while C.I.T. was financing Woodmansee as a car dealer in purchasing automobiles upon trust receipts. The chancellor upheld the plea of discharge on the ground that he could not go behind the record of the judgment to determine the nature of the liability, and that the record did not show that the judgment was non-dischargeable.

The supreme court affirmed the decision of the chancellor. In the opinion the court distinguished going behind the note and going behind the judgment on the note. In the latter case, the court said that even though the cause of action is not merged in the judgment, extrinsic evidence is not admissible to show that a judgment is not affected by a discharge in bankruptcy. The opinion relied on and quoted from another opinion,[17] as follows:

> 'In the case at bar there is nothing in the record to show any nondischargeable feature of the obligation. It is a money judgment on the note so far as the record shows. We believe the better view is as announced in the note, supra, that the judgment creditor should not be permitted to go

13. TENN. CODE ANN. §§ 47-1-101 to -9-507 (1956).
14. TENN. CODE ANN. § 47-9-302 (1956).
15. 374 S.W.2d 386 (Tenn. 1964).
16. Such a debt would be excepted from discharge under § 17 of the Bankruptcy Act. 52 STAT. 851 (1938), 11 U.S.C. § 35 (1958).
17. Lawrence v. Wischnowsky, 344 Ill. App. 346, 352, 100 N.E.2d 816, 818-19 (1951).

> behind the judgment to show the nondischargeable feature of the obligation. For these reasons the obligation being dischargeable in bankruptcy as shown by the record of the judgment, it is conclusive on the judgment creditor and he is not permitted to go behind the judgment.'[18]

The only non-bankruptcy case is *Atlas Finance Co. v. Wilkerson.*[19] It presents interesting questions relative to federal tax liens and security interests in automobiles.

Finance Co. made a loan to one Dallosta on May 17, 1960, secured by a chattel mortgage on Dallosta's automobile. This lien was properly recorded on the certificate of title to the automobile. In December 1960 the United States government seized the auto to be sold in satisfaction of the government's lien for taxes. Wilkerson purchased at the tax sale. Finance Co. then attempted to replevy the auto from Wilkerson. Replevin was denied and on appeal this decision was affirmed.

Section 6321 of the Internal Revenue Code[20] imposes a lien in favor of the United States for all unpaid taxes on all property of the delinquent taxpayer. Section 6323(a) provides that this lien will not be valid against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been properly filed. The state may designate the proper place of filing, and Tennessee has so designated the office of the Register of Deeds in the county in which the property is located.[21]

The tax liens involved in this case had been filed in the proper office prior to 1960. The Tennessee Motor Vehicle Act,[22] however, requires that encumbranees or liens on automobiles be noted on the certificate of title. It further provides that except for liens dependent on possession, notation on the title shall be the exclusive method of constructive notice of a lien,[23] and that no lien not so noted shall be valid against subsequent purchasers or encumbrancers.[24] Thus, there is clearly a conflict between the Motor Vehicle Act and the federal tax lien statute.

In affirming the denial of replevin the Tennessee Supreme Court relied upon a recent decision of the United States Supreme Court.[25] That decision was believed to require the holding that the federal tax lien was valid despite the provisions of the Motor Vehicle Act.

18. 374 S.W.2d 390-91.
19. 382 S.W.2d 529 (Tenn. 1964).
20. INT. REV. CODE OF 1954, § 6321.
21. TENN. CODE ANN. § 64-2110 (1956).
22. TENN. CODE ANN. §§ 59-101 to -1504 (1956).
23. TENN. CODE ANN. § 59-327 (1956).
24. TENN. CODE ANN. § 59-326 (1956).
25. United States v. Union Central Life Ins. Co., 368 U.S. 291 (1961).

Therefore, as the federal tax liens were prior in time they were held to have priority over the security interest of the Finance Co.

The impact of this decision will be lessened by a 1964 amendment to section 6323,[26] although the amendment was held inapplicable to the instant case on the ground that it should not be given retroactive application. The amendment makes an exception in case of motor vehicles, and provides that even though a federal tax lien under section 6321 has been filed in the manner prescribed by 6323, it shall not be valid with respect to motor vehicles:

> [A]s against any purchaser of such motor vehicle for an adequate and full consideration in money or money's worth if—(A) at the time of the purchase the purchaser is without notice or knowledge of the existence of such lien, and (B) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.[27]

It should be noted, however, that this exception is applicable only in favor of purchasers who take and keep possession of the motor vehicle. In view of the strict interpretation the courts have given the word "purchasers" as used in section 6323, it is doubtful if the amendment wonld ever be applicable in favor of an encumbrancer. Almost certainly it would not be unless the encumbrancer had obtained possession of the vehicle before the United States attempted to enforce its lien.

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26. INT. REV. CODE OF 1954, § 6323(d).
27. *Ibid.*