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CREDITORS' RIGHTS AND SECURITY TRANSACTIONS— 1959 TENNESSEE SURVEY

FORREST W. LACEY*

I. CASE LAW

1. *Bankruptcy*
2. *Uniform Trusts Receipts Act*
3. *Fraudulent Conveyances*

II. LEGISLATION

* * *

I. CASE LAW

1. *Bankruptcy*.—There were few cases of interest in the period under survey. *Rone Jewelry Company v. Conley*¹ presented the question of what constitutes “willful and malicious injuries to the . . . property of another” within the meaning of section 17 of the Bankruptcy Act.² A debt of this character is not released by a discharge in bankruptcy.

In the instant case the defendant had purchased silverware and a ring from plaintiff under a title retention contract. Defendant then sent the property to his mother in New Jersey. Following a discharge in bankruptcy granted to the purchaser, the seller brought action against the purchaser. In order to overcome the effect of the discharge, it was alleged that sending the property out of the state was a “willful and malicious” injury to the property of the seller. Under a Tennessee statute it is a misdemeanor for a purchaser under a conditional sales contract to give away or dispose of property so purchased with the intention of depriving the seller of such property.³ It is a felony for any person without the consent of the seller to remove from the state any property subject to a conditional sales contract;⁴ and it has been held that the good faith of the person removing the property is no defense to the felony charge.⁵

Referring only to the misdemeanor statute, the Tennessee Supreme Court upheld a judgment for the defendant. Conceding that sending the property out of the state was a conversion of plaintiff's property, it was held that such conduct, though willful, was not malicious.

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1. 319 S.W.2d 245 (Tenn. 1958).
2. 52 Stat. 851 (1938), 11 U.S.C. § 35 (1958).
3. TENN. CODE ANN. § 47-1308 (1956).
4. TENN. CODE ANN. § 47-1310 (1956).
5. *Pappas v. State*, 135 Tenn. 499, 188 S.W. 52 (1916).

Although conversion of property by one lawfully in possession of it may be willful and malicious so as to deny the protection of a discharge in bankruptcy,⁶ not every conversion is of such a character: "There may be a conversion which is innocent or technical, an unauthorized assumption of dominion without willfulness or malice The discharge will prevail as against a showing of conversion without aggravated features."⁷

The *Conley* case also seems consistent with an earlier Tennessee decision⁸ to the effect that noncompliance with provisions of a chattel mortgage as to advertisement and public sale does not render the debt exempt from the effect of a discharge in bankruptcy. It does seem anomalous, however, that removal of property subject to a conditional sales contract is not serious enough to bar the effect of a discharge in bankruptcy while at the same time such conduct so offends the policy of Tennessee that even good faith removal is punishable as a felony.

2. *Uniform Trust Receipts Act.*—Another decision added to the case law interpreting the Uniform Trust Receipts Act.⁹ In *Commerce Union National Bank v. Alexander*¹⁰ it was held that the priority given the entruster by section 10 of the act¹¹ upon a demand for an accounting for the proceeds of the entrusted goods was a lien on the assets of the trustee's insolvent estate. In this case the bank, having loaned money secured by trust receipts upon automobiles, made demand upon the automobile dealer-trustee for an accounting for proceeds of the sales of entrusted automobiles. The dealer-trustee died later in the same day following the demand for an accounting. The bank filed a claim for a lien in the amount of the proceeds of sales of the entrusted automobiles. The lower court allowed the claim even though the proceeds were not identifiable, and this decision was upheld by the court of appeals.

Section 10 of the act provides that the entruster shall be entitled to:

Any proceeds or the value of any proceeds (whether such proceeds are identifiable or not) of the goods, documents or instruments, if said proceeds were received by the trustee within ten days prior to either application for appointment of a receiver of the trustee, or the filing of a petition in bankruptcy or judicial insolvency proceedings by or against

6. *E.g.*, *Fruchter v. Martin*, 350 Mich. 12, 85 N.W.2d 125 (1957), and cases cited 1 COLLIER, BANKRUPTCY § 17.17 (14th ed. Moore & Mulder 1940).

7. *Davis v. Aetna Acceptance Company*, 293 U.S. 328, 332-33 (1934).

8. *Woelfe v. Giles*, 182 Tenn. 88, 184 S.W.2d 177 (1945).

9. TENN. CODE ANN. §§ 47-1001 through 47-1019 (1956). For a general discussion of the act, see Comment, *Principle Security Devices in Tennessee*, 22 TENN. L. REV. 392, 394 (1952).

10. 312 S.W.2d 611 (Tenn. App. M.S. 1957).

11. TENN. CODE ANN. § 47-1010 (1956).

the trustee, or demand made by the entruster for prompt accounting, and to a priority to the amount of such proceeds or value¹²

The decision in the *Alexander* case relies upon the decision in *In re Harpeth Motors*,¹³ in which section 10 was construed to create a lien, good against a trustee in bankruptcy, on unidentifiable proceeds from the sale of entrusted goods. The administrator of *Alexander's* estate contended that the principle of the *Harpeth* case was not applicable in a proceeding for winding up a decedent's insolvent estate. In answer to this contention the court stated that the lien under section 10 was fixed in the trustee's lifetime and was not affected by his death or the insolvency of his estate. The decision, apparently the first to pass upon this problem under the Uniform Act, seems a logical corollary of the interpretation of the act made in the *Harpeth* case.

3. *Fraudulent Conveyances.*—*Hamilton v. Gleaves*¹⁴ was an action by a creditor to set aside an alleged fraudulent conveyance. The transaction attacked was the transfer of a lease on race track premises and a small amount of miscellaneous personal property. At the time of the transfer the lease was subject to termination and a general creditors' bill was pending against the transferor. In an effort to help an American Legion Post, which had initiated the race track project, several creditors paid in excess of \$14,000 for the transfer. All of the money obtained by the grantor except about \$750 which was not accounted for in the record was used to satisfy debts.

The case was heard by two chancellors on an original and a supplemental bill. Both hearings resulted in denial of the relief and dismissal of the bills. The court of appeals affirmed. As to the contention that the consideration for the transfer was inadequate and unfair, it was found that "the purchase price was more than the reasonable value of the assets to be transferred."¹⁵ It was also held that there was no actual fraudulent intent, and no showing of prejudice to the creditor by the conveyance. The decision is based primarily on factual determinations with no controversial legal questions as to fraudulent conveyances being presented.

A claim was also made that the assets of a corporation constitute a trust fund for the benefit of creditors upon which a lien exists which continues against bona fide purchasers for value. This claim was rejected with the citation of authority to the effect that "the law is otherwise."¹⁶

12. *Id.* § 47-1011 (b).

13. 135 F. Supp. 863 (M.D. Tenn. 1955), discussed in Hartman, *Creditors' Rights and Security Transactions—1956 Tennessee Survey*, 9 VAND. L. REV. 965, 971 (1956).

14. 316 S.W.2d 335 (Tenn. App. M.S. 1958).

15. *Id.* at 339.

16. *Id.* at 342.

II. LEGISLATION¹⁷

Several acts of the 1959 General Assembly effect changes in the field of creditors' rights and security transactions. Chapter 127¹⁸ extends the definition of artisan under the Artisans' Lien Law to include persons who clean, repair or work on shoes or boots and provides that the artisans' lien under section 64-1402 through 64-1406 may, in the alternative, be enforced by compliance with sections 64-1602 through 64-1607.

Chapter 304¹⁹ makes changes in the procedure with respect to sale of confiscated drugs or vehicles used in the transportation of such drugs but does not alter the substantive rights of persons claiming an interest in such property.

Chapter 312²⁰ amends section 64-1804, which deals with liens on merchandise, by deleting the words "thereafter arising" from line four of said section. The effect of this amendment is that the notice of lien shall be effectual from the time of filing as against all claims of creditors of the borrower instead of being effective only against such claims arising after filing.

Probably the most important legislation in the field is Chapter 114,²¹ which deals with assignment of accounts receivable.

(a) The term "account receivable" or "account" means and includes any open, running or book account which arises out of or is acquired in connection with a business or occupation of the assignor. It excludes wages; sums arising from public or private construction contracts for which the assignor has furnished a surety bond

Every assignment of an account receivable hereafter made in writing for valuable consideration shall be valid and shall be deemed and held to have been fully perfected at the time such assignment was or is made, notwithstanding that the obligor be not notified or does not assent to such assignment²²

If, however, the obligor, not knowing of an assignment and acting in good faith, pays the assignor or a subsequent transferee, the obligor is protected to the extent of such payment, and the person who receives payment is accountable to the assignee for such sums received.

The protection of the act is afforded only if a notice of assignment is filed with the Secretary of State. The form of notice authorizes filing an intent to assign as well as an assignment. A filed notice is effective for the duration of the assignment, but not in excess of three years from the date of filing.

17. In this section all references to code sections are to TENN. CODE ANN. (1956).

18. TENN. CODE ANN. § 64-1401 (Supp. 1959).

19. *Id.* § 52-1404.

20. *Id.* § 64-1804.

21. *Id.* §§ 47-1801 through 47-1804.

22. *Id.* §§ 47-1801, 47-1802.

This act will change existing law in Tennessee as to assignments of such accounts, for Tennessee has heretofore followed the minority rule that the first assignee to give notice to the obligor has priority.²³

Unfortunately, there is ambiguity in the act. For example, section 2 provides that such an assignment in writing and for a valuable consideration shall be valid and fully perfected. Later in the section appears the clause: "[A]nd in case more than one assignment of the same account or any interest therein is made by the assignor, the one prior in time shall prevail over each subsequent one, notwithstanding that such subsequent assignee shall have notified the obligor of his claim thereto."²⁴ In this clause there is no reference either to writing or to consideration. Because of such uncertainties, the act merits careful study by lawyers concerned with accounts receivable financing.

23. *Naill & Naill v. Blackwell*, 164 Tenn. 615, 51 S.W.2d 835 (1932).

24. TENN. CODE ANN. § 47-1802 (Supp. 1959).