

### **Uniform Trust Receipt Act--Security Interest--Liberty of Sale--Buyer in the Ordinary Course of Business (Premium Commercial Corporation v. Kasprzycki et al., 129 Conn. 446 (1942))**

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now well-settled distinction between duties of care and protection<sup>19</sup> emanating from an employer-employee relationship and the usual duties of care flowing between individuals not so related.<sup>20</sup>

B. B. L.

UNIFORM TRUST RECEIPT ACT—SECURITY INTEREST—LIBERTY OF SALE—BUYER IN THE ORDINARY COURSE OF BUSINESS.—On March 5, 1940, Carl Florio borrowed \$2,500 from plaintiff, giving therefor his promissory note, secured by a trust receipt. By the terms of the receipt, Florio agreed to hold two trucks just received from the manufacturer in trust for the plaintiff. Florio was to have the privilege of exhibiting the trucks and could sell them only with the written consent of the plaintiff. If they were sold, he was to hold the proceeds of the sale for the plaintiff. Three days later, Florio sold the trucks to Louis Neveloff, who was unaware of the existence of the trust receipt, pursuant to a conditional sales contract which provided that title should remain in the seller, named as Carl Florio in the conditional sales agreement, until the agreed price was paid, and that the seller could repossess the trucks upon default in payments, or if they were attached by creditors. Within the next two weeks, the conditional sales contract was assigned for new value to the plaintiff, and duly filed. The purchaser defaulted in making payments under the conditional sales contract, but before plaintiff could repossess the trucks, they were attached by defendants, who are a deputy sheriff and creditors of the conditional vendee. This action is brought to replevin the trucks, and is resisted on the ground that the conditional sales contract is invalid as against the defendants because it failed to comply with a statute requiring all the conditions of a conditional sales agreement to be incorporated in the filed contract.<sup>1</sup> It is claimed that the filed contract is defective in that it failed to mention the trust receipt transaction, and falsely described Florio as the seller and holder of title, whereas in truth he had no authority to sell, and title was in the entruster, by virtue of the trust receipt. *Held*, the conditional sales contract was validly filed as against defendants; failure to mention the trust receipt was not material and its description of the vendor as the seller and holder of title was accurate, since

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<sup>19</sup> See Mr. Justice Brandeis, dissenting in *New York Cent. R. R. v. Winfield*, 244 U. S. 147, 165 (1917).

<sup>20</sup> See Schoene and Watson, *Workmen's Compensation on Interstate Railways* (1934) 47 HARV. L. REV. 389; Richberg, *Advantages of a Federal Compensation Act for Railway Employees* (1931) 21 AM. LAB. LEG. REV. 401.

<sup>1</sup> CONN. GEN. STATUTES OF 1930, § 4697 in substance requires that a conditional bill of sale must be recorded to protect the vendor against innocent purchasers from the conditional vendee, and further provides that it must set forth "all conditions of such sale."

the entruster acquired merely a lien, and Florio had both title and liberty of sale. Under the Uniform Trust Receipts Act, the entruster need not get title as security, but may obtain a lien instead. *Premium Commercial Corporation v. Kasprzycki et al.*, 129 Conn. 446, 29 A. (2d) 610 (1942).

At common law, a trust receipt transaction was necessarily a three-party affair,<sup>2</sup> in which the borrower never obtained title, but the title always<sup>3</sup> was conveyed directly from the original owner to the lender as security.<sup>4</sup> Attempts to execute trust receipts to a lender by a borrower who had title were generally construed as creating chattel mortgages,<sup>5</sup> and thus had to be filed,<sup>6</sup> although true common law trust receipts required no filing.<sup>7</sup> The Uniform Trust Receipts Act,<sup>8</sup> adopted by New York in 1934,<sup>9</sup> and by Connecticut in 1934,<sup>10</sup> broadened the trust receipt concept so as to permit the borrower-titleholder to execute the receipt.<sup>11</sup> It also provided that the security interest need not be title, but might alternatively be derived by way of pledge or otherwise.<sup>12</sup> Filing or taking possession is now required in order to protect the entruster.<sup>13</sup> The purpose of the Connecticut statute requiring all conditions of a conditional sales contract as filed to be set forth therein is to inform the person doing business with the conditional vendee just what interest the latter has.<sup>14</sup> Here the interest of the conditional vendee was unaffected by the existence of the trust receipt, since the vendee was unaware of its execution. The conditional vendee as a buyer in the ordinary course of business took free and clear of the entruster's interest,<sup>15</sup> and the trust receipt trans-

<sup>2</sup> (1922) 22 COL. L. REV. 546, 560: "The only situation in which trust receipts can be properly used is one in which the title of property by way of security is conveyed to the creditor by the owner, who is not the person responsible for the satisfaction of the obligation which the property secures"; *In re Cullen*, 282 Fed. 902 (1922).

<sup>3</sup> See *Hamilton Nat. Bank v. McCallum*, 58 F. (2d) 912, 913 (1932).

<sup>4</sup> WHITNEY, LAW OF SALES (2d ed. 1941); *Arena v. Bank of Italy*, 194 Cal. 195, 228 Pac. 441 (1924).

<sup>5</sup> *McLeon Nash-Motors v. Commercial Credit Trust*, 187 Minn. 462, 246 N. W. 17 (1932); *In re Fountain*, 282 Fed. 816 (1922).

<sup>6</sup> Cf. N. Y. LIEN LAW § 230.

<sup>7</sup> *In re James*, 30 F. (2d) 555 (1929).

<sup>8</sup> This Act has been adopted by thirteen states at the present writing. These are California, Connecticut, Illinois, Indiana, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, and Tennessee.

<sup>9</sup> New York was the first state to adopt this Act. L. 1934, c. 574, N. Y. PERS. PROP. LAW §§ 50-58L, in effect July 1, 1934.

<sup>10</sup> CONN. L. 1937, c. 230a; CONN. GEN. STATUTES SUPP. (1939) § 1274-e.

<sup>11</sup> UNIFORM TRUST RECEIPTS ACT § 2, subd. 1; N. Y. PERS. PROP. LAW § 52, subd. 1.

<sup>12</sup> UNIFORM TRUST RECEIPTS ACT § 2; N. Y. PERS. PROP. LAW § 52.

<sup>13</sup> UNIFORM TRUST RECEIPTS ACT §§ 7, 8, 9; N. Y. PERS. PROP. LAW §§ 57, 58, 58e; *Mason v. Wyde*, 308 Mass. 268, 32 N. E. (2d) 615 (1941).

<sup>14</sup> See *Commercial Credit Corp. v. Carlson*, 114 Conn. 514, 516, 159 Atl. 352, 353 (1932).

<sup>15</sup> UNIFORM TRUST RECEIPTS ACT § 9, subd. 2(c); N. Y. PERS. PROP. LAW

action therefore in no way modified the conditional sales contract, insofar as Neveloff was concerned, and could not affect the rights of anyone who acquired an interest through him. The trustee having the right to exhibit the trucks, any sale he made was valid as against the entruster, despite any limitation on his authority which was unknown to the vendee;<sup>16</sup> hence Florio was truly the "seller", as he described himself in the conditional sales agreement. Moreover, Florio retained title to the trucks when he executed the trust receipt; in an appropriate case, under the Uniform Trust Receipts Act, the entruster obtains merely a lien as his security interest, and not title.<sup>17</sup> The conditional sales contract as filed was therefore the true contract entered into by the parties, and not incomplete or false. A trust receipt transaction under the Uniform Trust Receipts Act, while characteristically different in legal effect than it was at common law, must yet be classified in a separate category among the security forms which we recognize today.<sup>18</sup> Thus it is still regarded as being distinct from chattel mortgage arrangements.<sup>19</sup> Whether title, pledge, or other lien constitutes the security interest must be judged in each case in accordance with the intent of the parties.

H. L.

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§ 58-a, subd. 2A(ii); *Bank of America Nat. Trust and Savings Ass'n v. National Funding Corp.*, 45 Cal. App. (2d) 320, 114 P. (2d) 49 (1941).

<sup>16</sup> UNIFORM TRUST RECEIPTS ACT § 9, subd. 2(c); N. Y. PERS. PROF. LAW § 58a, subd. 2(c).

<sup>17</sup> California courts have gone so far as to state that title is never conveyed as security, but that the security interest is always a lien. *See Bank of America Nat. Trust and Savings Ass'n v. National Funding Corp.*, 45 Cal. App. (2) 323, 114 P. (2d) 52 (1941), cited *supra* note 15.

<sup>18</sup> *Chichester v. Commercial Credit Co.*, 37 Cal. App. (2d) 439, 99 P. (2d) 1083 (1940).

<sup>19</sup> *Commercial Discount Co. v. Los Angeles County et al.*, 16 Cal. (2d) 158, 105 P. (2d) 115 (1940).