

The Time of Filing Conditional Sale Contracts

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declare the public policy of the state in unmistakable terms and so place such unions in the list of marriages the state will not recognize,²³ in the absence of this type of legislation, the fundamental desire of the state to validate a marriage once created,²⁴ especially if followed by cohabitation,²⁵ will be so strong as to leave no alternative but to give effect to the marriage.

LOUIS G. IASILLI.

THE TIME OF FILING CONDITIONAL SALE CONTRACTS.—Following the turn of the century, increased industrial production resulted in widespread installment buying. Nation-wide commercial relationships caused litigation directing attention to the existing disparity of laws¹ governing conditional sales contracts.² In order to settle the confusion and simplify the law, Professor Bogert³ compiled a Uniform Conditional Sale Law⁴ in 1921. It was adopted with changes by New York State in 1922 and incorporated into the Personal Property Law, Sections 61-80g.⁵

²³ States that have enacted such evasion statutes, known as the Uniform Marriage Evasion Act, are Vermont, Wisconsin, Illinois, Louisiana, West Virginia and Massachusetts. An example of this type of legislation follows: "Any person residing and intending to continue to reside in this state who is disabled or prohibited from contracting marriage under laws of this state [who] shall go into another state or country and there contract a marriage prohibited and declared void by laws of this state, such marriage shall be null and void for all purposes in this state with the same force and effect as though such prohibited marriage had been entered into in this state."

²⁴ *Lyannes v. Lyannes*, 171 Wis. 381, 177 N. W. 683 (1920). (For facts, see note 1, *supra*. The desire of the court to validate the marriage was so strong as to hold the marriage valid even though there was an evasion statute in force in Wisconsin at the time).

²⁵ *Medway v. Needham*, 16 Mass. 157 (1819) ("The doctrine in favor of marriage so contracted is founded on principles of policy to prevent the great inconvenience and cruelty of bastardizing the issue of such marriage and to avoid the public mischief which result from the loose states in which people so situated would live."); STORY, *CONFLICT OF LAWS* (3d ed. 1846) §§ 123b, 124.

¹ *Ensley Lumber Co. v. Lewis*, 121 Ala. 94, 25 So. 729 (1898); *Lane v. Roach's Banda Mexicana Co.*, 78 N. J. Eq. 439, 79 Atl. 365 (1911); *Studebaker Bros. Co. v. Man*, 13 Wyo. 358, 80 Pac. 151 (1905).

² For definition of conditional sale, see N. Y. PER. PROP. LAW § 61; for discussion, see WHITNEY, *SALES* (2d ed. 1934) § 22; WILLISTON, *SALES* (2d ed. 1924) § 324.

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⁴ MARIASH, *SALES* (1930) Appendix C.

⁵ N. Y. Laws 1897, c. 418, § 116 was amended by N. Y. Laws 1900, c. 762, § 1, which was repealed as amended by N. Y. Laws 1922, c. 642, §§ 1, 2; see Whitney, *Conditional Vendors and Prior Realty Mortgagees* (1938) 13 ST. JOHN'S L. REV. 1.

A filing of the conditional sale agreement was not necessary at common law to protect the conditional vendor from the possibility of having the conditional vendee effectively sell the property to an innocent purchaser for value. The *bona fide* purchaser for value was regarded as relying on possession in the vendee and since that was not apparent authority to sell nor indicia of ownership, the purchaser acquired no rights as against the conditional vendor who had reserved title.⁶ Section 65 modified the common law rule in that it had provisions for filing the conditional sale contract, and had the effect of relieving a purchaser who dealt with the conditional vendee from the hardship of forfeiture, in the event that the conditional vendee had failed to comply with the conditions precedent to vesting of title in him from the conditional vendor.⁷ Concerning a third party who was a *bona fide* purchaser for value or a lien creditor, the title reserved in the conditional seller was rendered void unless the contract was filed before or at the time the conditional buyer mortgaged or otherwise disposed of the subject matter of the contract.⁸ The statutory enactment of 1922 was consistent with the modern trend of restricting application of the doctrine of *caveat emptor* in order to protect the buying public.⁹

Chapter 625 of the Laws of 1938 alters Section 65 of the Personal Property Law in relation to the time of filing conditional sales contracts by adding a provision to it, originally embodied in the Uniform Conditional Sales Act, Section 5.¹⁰ The amendment provides, in substance, that a conditional sale of personal property reserving title in the seller shall be void as to purchasers and creditors of the buyer who, without notice of such contract, purchase the goods or acquire by levy or attachment, a lien thereon, unless such contract or copy shall be filed *within ten days after the making of the conditional sale*. During the ten-day period subsequent to the consummation of the conditional sale contract, the common law rule as to purchasers for value is restored since the seller is protected, although there has been no filing.

Section 73 of the Personal Property Law required the buyer to give the seller due notice before exercising his privilege, express or implied, to sell, mortgage, or pledge the conditionally bought property. In the event that the conditional buyer neglected to communicate the proper information, and disposed of the property to a *bona fide*

⁶ *Ballard v. Burgett*, 40 N. Y. 314 (1869); *Austin v. Dye*, 46 N. Y. 500 (1871); see *WHITNEY, op. cit. supra* note 2, at 25.

⁷ *Realty Associates v. Conrad Construction Corp.*, 185 App. Div. 464, 173 N. Y. Supp. 25 (2d Dept. 1918).

⁸ *In re Lake's Laundry*, 79 F. (2d) 326 (C. C. A. 2d, 1935); *In re Tona-wanda Brewing Corp.*, 13 F. Supp. 345 (D. C. N. Y. 1936); *N. Y. Title v. Crossman Properties, Inc.*, 142 Misc. 274, 253 N. Y. Supp. 533 (1931).

⁹ *Otis Elevator Co. v. Rochester Friendly Home*, 103 Misc. 76, 169 N. Y. Supp. 389 (1918); *General Motors Acceptance Corp. v. Raz Delivery, Inc.*, 238 App. Div. 277, 264 N. Y. Supp. 412 (4th Dept. 1933).

¹⁰ *MARIASH, loc. cit. supra* note 4.

purchaser immediately after he received possession and before the vendor had filed, the latter would not be entitled to the property as against the *bona fide* purchaser. Such conduct on the part of the vendee gave the seller the right to retake possession of the goods and deal with them as if there had been a default in payment.¹¹ However, since the property was no longer in the vendee's possession but in that of a third person purchaser for value without notice, the conditional vendor under the former rule normally found himself with an inadequate remedy, that of suing the conditional vendee in tort for deceit¹² if knowledge of impending bankruptcy and malice could be proved. The situation is more fully realized when it is noted that common law deceit is a most difficult thing to prove.¹³

A more striking hardship occurred where the third party was a trustee in bankruptcy.¹⁴ Federal law bestows the status of a lien creditor upon a trustee in bankruptcy as to all property in the custody of the bankrupt. In an important case, *General Motors Acceptance Corp. v. Raz Delivery, Inc.*,¹⁵ the conditional sale contract was filed two days after the trucks had been delivered to the conditional buyer. On the intervening day, the conditional vendee became a bankrupt and his trustee in bankruptcy attached the trucks which were later reacquired by the conditional vendee as a remote transferee of the trustee. The county court held that there must be read into the statute¹⁶ a provision that the title of the conditional vendor is superior to the rights of the lien creditor without notice, *if the conditional sale contract is filed within a reasonable time*, even if the filing postdates the lien creditor's right. On appeal, it was held there was no warrant in the statute for the interpolation of such a clause. After the case was decided it became apparent that Section 65 had created as keen a problem as it had solved. The recent amendment to it was intended to grant a fair extension of filing time to the conditional vendor. During the ten-day period the equities unquestionably tend to favor him, especially as against a possible trustee in bankruptcy.

The new clause is a practical measure in that it simplifies filing and, in cases where all the installments may be paid within ten days, it eliminates filing expense entirely.

The law gives third parties who anticipate obtaining title to personality a reason for pursuing suspicions and doubts based on slight proof or rumor insufficient to amount to actual notice of a conditional

¹¹ N. Y. PERS. PROP. LAW § 73.

¹² *Dwelle-Kaiser Co. v. Aetna Co.*, 211 App. Div. 369, 207 N. Y. Supp. 287 (4th Dept. 1925) (one who does business intending not to pay is guilty of deceit).

¹³ *Russ Soda Fountain Co. v. Desind*, 150 Misc. 568, 268 N. Y. Supp. 452 (1934); EDGAR, LAW OF TORTS (3d ed. 1936) § 183.

¹⁴ BANKR. ACT § 47a (2), 11 U. S. C. A. § 75, subd. A-2; *In re Master Knitting Corp.*, 7 F. (2d) 11 (C. C. A. 2d, 1925) (interpreting the law).

¹⁵ 238 App. Div. 277, 264 N. Y. Supp. 412 (4th Dept. 1933).

¹⁶ N. Y. PERS. PROP. LAW § 65.

sale contract, whereas under the old rule such lack of confidence could be ignored safely if no conditional sale contract had been filed.¹⁷ The ten-day clause will operate to make pledgees and mortgagees more alert to avenues of investigating those with whom they deal.¹⁸

The one manifest difficulty raised by the amendment is the confusion it may foster. Formerly, unless a buyer had notice of a reservation of title in one other than the proposed vendor, he could buy the property without apprehension, if there was no conditional sale contract on file.¹⁹ Chapter 625 replaces full assurance with uncertainty. Lack of confidence delays business, reduces volume, and was definitely not among the objectives desired by the legislature. However, these dire predictions may be more theoretical than real since a large portion of installment bought goods is acquired not for resale but for personal use, and is unlikely to be sold or mortgaged during the first ten days after it has come into the possession of the conditional vendee. In instances where goods are bought with the secret purpose of reselling the same, the ten-day period is not an unusually long time to be allowed to elapse between negotiations for a sale or mortgage and its culmination. At the termination of this period, a *bona fide* purchaser may deal with the property in safety if there is no contract filed concerning it. Moreover, a conditional sale contract for resale does not come within the scope of Section 65 but is exclusively provided for in Section 69, wherein the buyer of such resold goods is protected in any event, unless he has actual notice of the conditions of the original contract.²⁰ To whatever extent Chapter 625 of the Laws of 1938 restores *caveat emptor*, it may be deplored as an unavoidable corollary to essentially useful legislation. There is a recent tendency on the part of the legislature to provide "free filing" time in filing statutes as shown by the Uniform Trust Receipt Act which provides that in some instances, the title of the trust

¹⁷ *Simpson v. Hinson*, 88 Ala. 527, 7 So. 264 (1889) (in the case at bar information was given of a personal liability on the part of the mortgagor of property mortgaged to another, but it was held that no rule of law makes information of such liability constructive notice of a secret unrecorded contract reserving title to it and, therefore, the mortgagee got superior rights to that of the conditional vendor who had not filed). Accord: *Cashman v. Lewis*, 26 Ariz. 95, 22 Pac. 411 (1924).

¹⁸ *In re Young's Cornell Utilities, Inc.*, 20 F. Supp. 381 (E. D. N. Y. 1937); *Werner v. Winzer*, 109 Kan. 647, 202 Pac. 80 (1921).

¹⁹ *Warsaw Elevator Co. v. Wm. J. Gucker, Inc.*, 236 App. Div. 270, 258 N. Y. Supp. 984 (4th Dept. 1932) (a judgment in favor of the conditional vendor against the mortgagee of premises was reversed on the ground that the evidence did not establish actual notice to the defendant mortgagee of the conditional sale).

²⁰ N. Y. PERS. PROP. LAW § 69 ("Conditional Sale of Goods for Resale: When goods are delivered under a conditional sale contract and the seller expressly or impliedly consents that the buyer may resell them prior to performance of the condition, the same shall be valid whether filed or not, except that the reservation of property shall be void against purchasers from the buyer in good faith for value and without actual knowledge of the condition of such contract.").

receipt holder shall be valid for a period of thirty days after delivery, without filing.²¹

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NEW YORK ANTI-LYNCHING LEGISLATION.—The Legislature of the State of New York during its last session joined an ever increasing list of states making lynching and mob violence crimes *sui generis*.¹ The words "lynching"² and "mob violence" have no technical significance as the offenses were unknown to the common law.³ The authorities unite in interpreting it as the action of a group of persons in illegally inflicting punishment on a person either convicted or suspected of a crime.⁴ In the United States lynching and riots are re-

²¹ N. Y. PERS. PROP. LAW § 58 (this section was added by N. Y. Laws 1934, c. 574).

¹ N. Y. Laws 1938, c. 397, amending N. Y. PENAL LAW §§ 1390, 1391, 1392.

Section 1390: "Any assemblage of three or more persons which shall exercise or attempt to exercise by physical violence and without authority of law any power of correction or punishment over any person shall constitute a mob within the meaning of this article."

Section 1391: "Any act or acts of violence committed by a mob on the body of a person in custody of any peace officer, or suspected of, charged with or convicted of the commission of any criminal offense, which act or acts result in the death of a person, shall constitute lynching; provided, however, that lynching shall not be deemed to include violence occurring between members or groups of law breakers such as are commonly defined as gangsters or racketeers, nor violence occurring during the course of picketing or boycotting incidental to any labor dispute, and each and every person who is a member of a mob which commits such an act or acts of violence is guilty of lynching, and is punishable by imprisonment under an indeterminate sentence, the minimum of which shall be not less than twenty years and the maximum of which shall be for the offender's natural life."

Section 1392: "Each and every person composing a mob, which mob shall commit an assault upon any person in custody of any peace officer or suspected of, charged with or convicted of the commission of any criminal offense, not resulting in the death of such person, is guilty of a felony and is punishable by imprisonment for a term not exceeding ten years."

² The word "lynch" derives its origin from a Virginia farmer named Charles Lynch, born in 1736, who lived in the vicinity of what is now Lynchburg, Virginia. Lynch was a man of considerable importance in his community and a member of the Virginia House of Burgesses. During the War of Independence the nearest trial court was some two hundred miles of frequently impassable and dangerous roads and rather than navigate this route Lynch prevailed upon his neighbors that they join him in dealing with the suspected criminals in a summary fashion. Shortly after the Civil War this method of trial was recalled and has since been in vogue throughout the country; WHITE, ROPE & FAGGOT (1929) c. V; State v. Lewis, 142 N. C. 626, 55 S. E. 600 (1906); WORDS & PHRASES, Vol. V, 4262.

³ See State v. Lewis, 142 N. C. 626, 55 S. E. 600, 611 (1906).

⁴ See Kirkland v. Allendale County, 128 S. C. 541, 123 S. E. 648, 650 (1924); State v. Aler, 29 W. Va. 549, 20 S. E. 585, 588 (1894); Bouvier's Law Dictionary, p. 287; Black's Law Dictionary, p. 742; 38 C. J. 328.