

## Sales--Conditional Sales--Assignee for Benefit of Creditors-- Section 65, Personal Property Law (In re Pellegrini, 248 App. Div. 526 (2d Dept. 1936))

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SALES—CONDITIONAL SALES—ASSIGNEE FOR BENEFIT OF CREDITORS—SECTION 65, PERSONAL PROPERTY LAW.—The predecessors of the petitioner sold a certain slicing machine to the defendant's assignor upon a conditional sales contract, providing that title to the machine should remain in the seller until the entire purchase price was paid. That contract was never filed. Two months later, the vendee made a general assignment for the benefit of his creditors to defendant, and, at the time of the assignment, the buyer was in default not having paid any of the installments provided for in the contract. The defendant, assignee, took possession of the slicer and claimed it as part of the debtor's estate. Pursuant to a stipulation between the parties, the slicer was delivered to the petitioner to be held in escrow pending the decision of the court. The petitioner moved for an order directing the assignee to deliver the machine or to pay over its value. *Held*, motion granted. An assignee for the benefit of creditors is neither a purchaser without notice, nor a creditor of a conditional vendee with a lien acquired by attachment or levy within the meaning of the Personal Property Law.<sup>1</sup> *In re Pellegrini*, 248 App. Div. 526, 290 N. Y. Supp. 774 (2d Dept. 1936).

The title of an assignee for the benefit of creditors is acquired by appointment and not by purchase, and he stands in the shoes of his assignor and takes title subject to every equity and claim that might be asserted by third parties against his assignor.<sup>2</sup>

A contract of conditional sale is valid as between the parties themselves, although it is not filed as required by the statute.<sup>3</sup> Section 65 of the Personal Property Law comes into play only where the rights of third persons, not parties to the contract, are involved. Thus, under said section, the rights of a bona fide purchaser from the buyer are superior if the purchase is made prior to the filing of the

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<sup>1</sup> N. Y. PERS. PROP. LAW § 65: "Every provision in a conditional sale reserving property in the seller shall be void as to any purchaser from or creditor of the buyer, who, without notice of such provision, purchases the goods or acquires by attachment or levy a lien upon them, before the contract or a copy thereof shall be filed as hereinafter provided."

<sup>2</sup> *John P. Kane Co. v. Kinney*, 174 N. Y. 69, 66 N. E. 619 (1903); *Law Book Co. v. Klein*, 239 App. Div. 363, 267 N. Y. Supp. 169 (1st Dept. 1933); *Synder, Inc., v. Aker*, 134 Misc. 721, 236 N. Y. Supp. 28 (1929) (A silo had been sold on conditional sale, and the contract was not filed. The conditional buyer went into bankruptcy, and it was held that the conditional vendor was entitled to the silo as against the trustee in bankruptcy); *Creamery Package Mfg. Co. v. Horton*, 178 App. Div. 467, 165 N. Y. Supp. 257 (3d Dept. 1917).

<sup>3</sup> *Rivari v. James Stewart & Co.*, 241 N. Y. 259, 149 N. E. 851 (1925), *aff'd*, 274 U. S. 614, 47 Sup. Ct. 718 (1927); *Crocker-Wheeler v. Genesee Recreation Co.*, 160 App. Div. 373, 145 N. Y. Supp. 477 (4th Dept. 1914); *Creamery Package Mfg. Co. v. Horton*, 178 App. Div. 467, 165 N. Y. Supp. 257 (3d Dept. 1917); *Rodney Hunt Machine Co. v. Stewart*, 57 Hun 545, 11 N. Y. Supp. 448 (1890); *John W. Synder, Inc., v. Aker*, 134 Misc. 721, 236 N. Y. Supp. 28 (1929). See, N. Y. PERS. PROP. LAW § 66 as to filing.

contract.<sup>4</sup> The term "purchaser" includes a pledgee and mortgagee.<sup>5</sup> A subsequent purchaser or mortgagee with knowledge of the rights of a conditional vendor in the property, can not avail himself of the fact that the contract of conditional sale was not filed.<sup>6</sup> By statute, too, the rights of a creditor may be supreme where he acquires a lien on the property by attachment or levy, without actual notice, before the contract or a copy thereof is filed.<sup>7</sup> A levy or attachment requisite to the creation of a lien under this section must arise out of judicial process at the suit of a creditor. As against the claims of ordinary creditors of the conditional vendee, the vendor's reservation of title is good even though the contract is not filed.<sup>8</sup>

A conditional sale contract does not have to be filed within any definite time, nor even within a reasonable time. A delayed filing does not prejudice the seller, if the contract is actually filed before the subsequent sale or mortgage is executed, or before a creditor acquires a lien by attachment or levy.<sup>9</sup>

In conclusion, it is apparent that Section 65 of the Personal Property Law requires the conditional vendor to file the conditional sale contract against purchasers, and lien creditors<sup>10</sup> of the conditional vendee, who have no actual notice of the conditional sale contract, in order for the reservation of title to be valid. Hence, since an assignee for the benefit of creditors is neither, the conditional vendor did not have to file the contract, and is entitled to the return of the chattel.

V. E. C.

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<sup>4</sup> *Holley v. A. W. Haile Motor Co.*, 188 App. Div. 798, 177 N. Y. Supp. 429 (4th Dept. 1919); *Bowen v. Dawley*, 116 App. Div. 568, 101 N. Y. Supp. 878 (4th Dept. 1906); *Van Leewan v. Fish*, 28 Misc. 443, 59 N. Y. Supp. 183 (1899); *Nichols v. Potts*, 35 Misc. 373, 71 N. Y. Supp. 765 (1901); *Gerber v. Mandel*, 26 Misc. 825, 56 N. Y. Supp. 1030 (1899); *Ryan v. Wollowitz*, 25 Misc. 498, 54 N. Y. Supp. 988 (1898).

<sup>5</sup> See, N. Y. PERS. PROP. LAW § 61.

<sup>6</sup> *Creamery Package Mfg. Co. v. Horton*, 178 App. Div. 467, 165 N. Y. Supp. 257 (3d Dept. 1917); *Biederman v. Edson & Co., Inc.*, 128 Misc. 455, 219 N. Y. Supp. 115 (1926); *Sisson v. Hamden First Nat'l Bank*, 233 App. Div. 506, 254 N. Y. Supp. 527 (3d Dept. 1931); *Tompkins v. Fonda Glove Lining Co.*, 188 N. Y. 261, 80 N. E. 933 (1907); *Bowen v. Dawley*, 116 App. Div. 568, 101 N. Y. Supp. 878 (4th Dept. 1906); *Spector v. Soloman*, 166 N. Y. Supp. 764 (1917).

<sup>7</sup> *Baker v. Hull*, 250 N. Y. 484, 166 N. E. 175 (1929); *In re Alvon Syrup Corp.*, 25 F. (2d) 342 (N. D. N. Y. 1928); *Morey Co. v. Schoad*, 98 N. J. L. 799, 121 Atl. 622 (1923).

<sup>8</sup> *In re Excelsior Macaroni Co.*, 55 F. (2d) 406 (E. D. N. Y. 1932).

<sup>9</sup> This is to be distinguished from a chattel mortgage. A chattel mortgage not promptly filed, is absolutely void "as against the creditors of the mortgagor," not merely as against judgment creditors having executions. *Baker v. Hull*, 250 N. Y. 484, 166 N. E. 175 (1929).

<sup>10</sup> Not all creditors, but only those creditors who have obtained a lien on the goods by levy or attachment.