

Real Property--Fixtures--Reservation of Title under Unrecorded Conditional Sale (Cohen v. 1165 Fulton Ave. Corporation, 251 N.Y. 24 (1929))

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becoming the separate property of the wife free from the claims of creditors.⁶ The right of the wife does not, therefore, rest in contract but upon the legislative grant.⁷ It was found, however, that these provisions operated as a limitation upon the wife's right to an insurance fund created by her husband, in that a stranger who was named as beneficiary could take the entire insurance fund free from claims of creditors. Section 55-a of the Insurance Law⁸ was enacted to remedy this situation and properly applies to the proceeds of all policies which are effected by any person on his own life, or another life in favor of a person other than himself, including policies effected by a husband in favor of his wife. Under this legislation the rights of creditors to the proceeds of such policies are properly confined to the amount of premium which may have been paid by the decedent in fraud of creditors.

E. J. D.

REAL PROPERTY—FIXTURES—RESERVATION OF TITLE UNDER UNRECORDED CONDITIONAL SALE.—Defendant, owner of an apartment house, purchased a quantity of gas ranges under a conditional sale contract which reserved title therein to the seller. The ranges were placed in the several apartments of the building and attached by couplings to the gas service pipe which distributed gas to the various apartments. Thereafter defendant executed and delivered to plaintiff a mortgage upon the apartment house premises, "together with all fixtures and articles of personalty now or hereafter attached to or used in connection with the premises." The mortgage was given to secure the repayment of a sum of money borrowed from plaintiff and was taken by her without knowledge of the provision of the conditional sale reserving title; it was recorded prior to the time when the contract had been filed in the appropriate public office. In an action by plaintiff

⁶ *Wagner v. Thieriot*, 203 App. Div. 757, 197 N. Y. Supp. 560, *aff'd* 236 N. Y. 588, 142 N. E. 295 (1922).

⁷ *Kittel v. Domeyer*, 175 N. Y. 205, 67 N. E. 433 (1903).

⁸ L. 1927, ch. 468. "If a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life, in favor of a person other than himself, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance, or his executors or administrators, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same, whether or not the right to change the beneficiary is reserved or permitted, and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person; provided, that, subject to the statute of limitations, the amount of any premiums for said insurance paid with intent to defraud creditors, with interest thereon, shall enure to their benefit from the proceeds of the policy."

to foreclose the mortgage, *held*, as to plaintiff the condition reserving title was void and the mortgage upon chattels given to her created a lien upon the ranges in the possession of the mortgagor, as fully as would have been the case had an absolute title thereto been acquired by it. *Cohen v. 1165 Fulton Ave. Corporation*, 251 N. Y. 24, 166 N. E. 792 (1929).

Prior to the enactment of the Uniform Conditional Sales Act,¹ gas ranges were regarded as personal property and, even if attached, did not become part of the realty.² This law was designed for a double purpose: To protect buyers of real estate upon which some types of property are attached in such a manner as to render uncertain their character as realty or personalty; and to protect the conditional vendor of a fixture.³ Under the present statute, the question as to whether chattels affixed to realty become a part thereof is no longer to be determined by the intent of the parties, but the intention which the law deduces from all the circumstances of the annexation.⁴ The inclusion of goods affixed to the realty and severable without material injury to the freehold, discloses an intention to protect a purchaser or mortgagee of real estate with respect to articles which might not be strictly chattels real, but which, none the less, in the common understanding of interested parties, are fairly regarded as part of the freehold. The Act provides a fair method for protection to all.

In *Madfes v. Beverly Development Corporation*,⁵ decided on the same day as the *Cohen* case, a similar state of facts was presented, except that the record did not disclose a personal property clause in the mortgage. Hence, the question of whether gas ranges were now to be regarded as personalty or realty, was squarely before the Court. It was held that gas ranges were still to be regarded as personalty⁶ and judgment was rendered for the defendant, *Crane, J.*, dissenting.

R. L.

REAL PROPERTY—STATUTE OF FRAUDS—CONSTRUCTIVE TRUST AFFECTING INTEREST IN LAND ARISING FROM CONFIDENTIAL RELATION.—For business reasons, husband requested wife to take deed to real property in her name on the promise to reconvey upon demand. Husband paid purchase price of land, managed and improved it, and continually exercised the dominion that goes with ownership. Wife

¹ Personal Property Law, Sec. 67; added by L. 1922, ch. 642, Sec. 2.

² *Central Union Gas Co. v. Browning*, 210 N. Y. 10, 103 N. E. 822 (1913); *Davis v. Bliss*, 187 N. Y. 77, 79 N. E. 851 (1907).

³ *Kohler Co., Inc. v. Brasun*, 249 N. Y. 224, 227, 164 N. E. 31 (1928).

⁴ *Metropolitan Stone Works, Inc. v. Probel Holding Corp.*, 131 Misc. 519, 227 N. Y. S. 414 (1928).

⁵ 251 N. Y. 12, 166 N. E. 787 (1929).

⁶ *Supra* Note 2.