Buffalo Law Review

Volume 13 | Number 1 Article 42

10-1-1963

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Erratum
On page 249 which read: "baled", "lein" should have read: "bailed", "lien"

limitation is not as onerous as may appear. The town board is limited to the issuance of relatively short-term obligations, and in the case of spending from current funds, the amounts must of necessity be within reason.

Courtland R. LaVallee

ORDER OF PREFERENCE BETWEEN ARTISAN'S STATUTORY LIEN AND CLAIM OF CONDITIONAL VENDOR

The plaintiff, assignee of a conditional sales contract, brought an action for conversion, based on the alleged wrongful sale by defendant-repairman of an automobile baled to him for necessary repairs by the conditional buyer. It was contended by plaintiff that since the conditional buyer had defaulted in his payments prior to the bailment, absolute title to the automobile was in plaintiff as the conditional seller's assignee; therefore, defendant's rights under its artisan's lien were subordinate to plaintiff's. The defendant pleaded a valid and prior lien under section 184 of the N.Y. Lien Law. From a judgment against the defendant-repairman and an affirmance thereof by the Appellate Division[1] the defendant appealed. *Held*, reversed. By ordering repairs on an automobile, a conditional buyer, in default, but in possession, could and did create a valid and prior lien in favor of the repairman. *Motor Discount Corp. v. Scappy & Peck Auto Body, Inc.*, 12 N.Y.2d 227, 188 N.E.2d 907, 238 N.Y.S.2d 670 (1963).

The common law uniformly confers a lien in favor of the artisan who, by his labor, skill or materials, adds value to the chattel of another at the direct or implied request of the owner.[2] In attempting to apply this principle to the currently popular installment plan purchase of automobiles, disagreement has often resulted from a question which seems inevitably to follow: does the lien of a repairman who has made repairs at the order of the conditional buyer take precedence over the conditional seller's claim to the property in question? The general rule established by the common law is that a lein prior in time to another claim is entitled to prior satisfaction out of the security unless it is intrinsically defective or is destroyed by some act of the holder.[3] This stems from the fact that a lien is a qualified property right which can under common law principles be created only by consent of the general owner of the property in question.[4] Since the conditional seller of a chattel who reserves title in himself until the price is paid is regarded as the owner at common law,[5] it follows that his right would prevail over a subsequent lien claimant. Despite the common law rule,

1. Motor Discount Corp. v. Scappy & Peck Auto Body, Inc., 14 A.D.2d 847 (1st Dep't 1961) (without opinion).
2. Brown, Personal Property 516 (1955); 37 Mich. L. Rev. 273 (1938).
3. A frequently cited leading case to this effect is: Rankin v. Scott, 25 U.S. (12 Wheat.) 175 (1827). See also Restatement, Security § 76 (1941); Annot., 36 A.L.R.2d 201 (1954).
4. Hollingsworth v. Dow, 19 Pick. (Mass.) 228 (1837); Restatement, Security § 75(2) (1941).
5. Brown, *op. cit. supra* note 2, at 534.

decisions of the various justifications differ, primarily because the rights of the conditional seller of a chattel have almost universally been affected by statutes.[6] But even where statutes have not altered the common law rule, some courts, in seeking to protect the repairman have evaded the general rule and subordinated the claim of the conditional seller on the ground that the seller of a chattel by impliedly authorizing the person in possession to make repairs has consented to subsequent artisan's liens.[7]

In a number of jurisdictions the common law rule giving priority to a conditional seller's claim over that of a repairman for work done at the order of the conditional buyer in possession has been expressly preserved by statute.[8] Another common form of statute confers a lien in favor of the repairman for work done at the request of the owner or person legally in possession of the chattel being repaired.[9] New York's statute is even more explicit in giving the repairman's claim priority.[10] Section 184 of the N.Y. Lien Law states that:

> A person keeping a garage . . . or a place for . . . repair of motor vehicles . . . and who in connection therewith . . . repairs any motor vehicle . . . at the request or with the consent of the owner, whether such owner be a conditional vendee or a mortgagor remaining in possession or otherwise, has a lien upon such motor vehicle . . . and may detain such motor vehicle . . . until such sum is paid.[11]

However, it has been expressly stated that section 184 is in derogation of the common law and should therefore be strictly construed.[12] Thus, where a repairman rendered services at the order of one who had seized the automobile from the conditional buyer because of default in payments for tires subsequently purchased, it was held that the conditional seller's interest was paramount, since the person ordering the repairs was not the owner of the automobile.[13] Similarly, where a conditional buyer had defaulted, the right of the plaintiff-seller to possession was held superior to that of the sheriff under a levy of execution.[14]

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6. *Ibid.*

7. Guarantee Security Corp. v. Brophy, 243 Mass. 597, 137 N.E. 751 (1923). See generally Whiteside, *Priorities Between Chattel Mortgagee or Conditional Seller and Subsequent Lienors,* 10 Cornell L.Q. 331 (1925).

8. See, *e.g.,* Ariz. Rev. Stat. Ann. § 33-1022 (1956); N.J. Rev. Stat. § 2A: 44-21 (1951); Okla. Stat. Ann. tit. 42, § 131 (1951). See generally Annot., 36 A.L.R.2d 198 (1954).

9. See, *e.g.,* Cal. Civil Code § 3051; Ore. Rev. Stat. § 87-080 (1960).

10. New York Yellow Cab Co. Sales Agency v. West Manhattan Garage Corp., 245 N.Y. 612, 157 N.E. 879 (1927); Courtlandt Garage & Realty Corp. v. New York Yellow Cab Co. Sales Agency, 217 App. Div. 4, 215 N.Y. Supp. 789 (1st Dep't 1926) (dictum); Terminal Town Taxi Co. v. O'Rourke, 117 Misc. 761, 193 N.Y. Supp. 238 (N.Y. City Ct. 1922).

11. N.Y. Lien Law § 184.

12. Rapp v. Mabbett Motor Car Co., 201 App. Div. 283, 287, 194 N.Y. Supp. 200, 203 (4th Dep't 1922); *cf.,* De La Uz v. Car Val Motors Co., 24 Misc. 2d 168, 198 N.Y.S.2d 476 (Munic. Ct. N.Y. City 1960).

13. General Motors Acceptance Corp. v. Baker, 161 Misc. 238, 291 N.Y. Supp. 1015 (1936).

14. Cohocton Valley Garage v. Kelly, 136 Misc. 283, 240 N.Y. Supp. 642 (Sup. Ct. 1930).

It was plantiff's contention in the instant case that the conditional buyer, having defaulted in his payments prior to requesting the repairman's services, lost any ownership rights he may have acquired, with the result that absolute title vested in plaintiff as the conditional seller's assignee. Failure to meet the statutory requirements of section 184 could only mean, plaintiff concluded, that any lien which defendant-repairman may have acquired was subordinate to plaintiff's claim. Referring to earlier New York decisions which had construed section 184 as granting the repairman a basic priority interest for work or services authorized by a conditional buyer,[15] the Court of Appeals refused to accept plaintiff's theory ". . . that the artisan's lien somehow disappears or is defeated because the conditional buyer in possession is behind in his payments. . . ."[16] To hold otherwise, the court reasoned, ". . . would be inconsistent with the language and spirit of section 184. . . ."[17] From this it is clear that the Court addressed itself to the particular end which the statute was designed to achieve, protection for the artisan. Plaintiff's construction, on the other hand, focused on the word "owner" within the statute. It was plaintiff's contention that "legal possession" is implicit in the word "owner" as used in the statute, and that absent such "lawful possession" a conditional buyer lacks the requisite authority to subordinate the conditional seller's claim to a third party. Important in this regard, however, is the fact that the conditional buyer had been in default for two months at the time he ordered defendant to make repairs. Hence, the buyer's ostensible ownership continued and in relying on that apparent ownership the defendant acquired a valid lien for repairs. In effect the Court's construction of section 184 places the burden upon the conditional seller so that if he fails to re-claim the automobile upon default of the conditional buyer he runs the risk of the buyer creating a superior lien in favor of a repairman.[18]

Having determined that the controlling intent of the legislature in creating section 184 was to protect the artisan, and that this logically and necessarily included priority of the artisan's lien over those who claim ownership rights, the Court further stated that "the statute in terms gave the repairman a lien for his work in putting the car back in usable condition for the benefit of *all* concerned."[19] Or, differently stated, since the value of the chattel is maintained or enhanced by the services of the repairman to the benefit of the conditional seller as well as the conditional buyer, the repairman should not be left uncompensated. But this reasoning presupposes authorization by the

15. New York Yellow Cab Co. Sales Agency v. West Manhattan Garage Corp., 245 N.Y. 612, 157 N.E. 879 (1927); Commercial Credit Corp. v. Moskowitz, 142 Misc. 773, 255 N.Y. Supp. 525 (N.Y. City Ct. 1932), *aff'd*, 238 App. Div. 831, 262 N.Y. Supp. 973 (1st Dep't 1933); Courtlandt Garage & Realty Corp. v. New York Yellow Cab Co. Sales Agency, 217 App. Div. 4, 215 N.Y. Supp. 789 (1st Dep't 1926).

16. Instant case at 230, 188 N.E.2d at 909, 238 N.Y.S.2d at 672.

17. *Ibid.*

18. It should be noted, however, that if the repairman knew of the default this would presumably operate to defeat his lien.

19. Instant case at 230, 188 N.E.2d at 909, 238 N.Y.S.2d at 672. (Emphasis added.)

conditional seller to the repairs. In fact, he may well oppose repairs where, as in the instant case, they might equal or exceed the sale price of the automobile. "Might it not be better to recognize openly that the claim of the subsequent mechanic or serviceman is not based on authority from the mortgagor or vendor at all, but on *quasi*-contractual principles?"[20] This realistic approach would permit the repairman to recover for services rendered or repairs made, but it would necessarily limit the conditional seller's bill for repairs to the reasonable amount by which such repairs benefited him, as opposed to the price for which the repairman had agreed to make the repairs. In view of the unquestioned intent of the legislature in enacting section 184, the decision reached in the instant case seems unavoidable. However, it is submitted for the reasons stated above, that the considerations employed by the Court to support this result are open to serious doubt.

Ronald L. Fancher

TAXATION

UNCONSTITUTIONAL LICENSE FEES RECOVERABLE IN ABSENCE OF FORMAL PROTEST

Five Boros Electrical Contractors Association brought an action against the City of New York to recover excessive amounts paid as license fees. The license fees had been held unconstitutional on the ground that they were not reasonably related to the cost of services involved in issuing the licenses.[1] Five Boros obtained judgment on the pleadings in the trial court, which judgment was affirmed by the Appellate Division.[2] On appeal by permission of the Court of Appeals, *held*, affirmed, since these unconstitutionally exorbitant payments were made under duress and compulsion (*i.e.*, to protect plaintiff's right to continue to carry on business in the city) they were involuntary payments and thus recoverable even in the absence of formal protest. *Five Boros Elec. Contractors Ass'n Inc. v. City of New York*, 12 N.Y.2d 146, 187 N.E.2d 774, 237 N.Y.S.2d 315 (1963).

A voluntary payment of a tax or fee imposed by an unconstitutional or illegally excessive law, where there is knowledge of all matters of fact but ignorance of the law's unconstitutionality or illegality, cannot be recovered.[3] This generally accepted rule of law is based on several policy considerations. That "ignorance of the law doesn't constitute a ground for relief"; that "only

20. Brown, *op. cit. supra* note 2, at 541.

1. Alderstein v. City of New York, 6 N.Y.2d 740, 158 N.E.2d 512, 185 N.Y.S.2d 821 (1959).

2. Five Boro Elec. Contractors Ass'n Inc. v. City of New York, 14 A.D.2d 679, 219 N.Y.S.2d 985 (1st Dep't 1961).

3. Adrico Realty Corp. v. City of New York, 250 N.Y. 29, 164 N.E. 732 (1928). *Contra*, Flower v. State, 143 App. Div. 871, 128 N.Y. Supp. 208 (3d Dep't 1911).