

10-1-1961

Creditors' Rights—Statutory Protection of Conditional Vendee of Goods for Resale

Edward Heller

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Commercial Law Commons](#)

Recommended Citation

Edward Heller, *Creditors' Rights—Statutory Protection of Conditional Vendee of Goods for Resale*, 11 Buff. L. Rev. 137 (1961).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol11/iss1/46>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

to provide that the trust created by it could be enforced by a civil action.¹¹ However, subsequent decisions of the courts had stated that the trust thus created was not a trust in the ordinary sense, where the trustee holds only bare legal title for the benefit of the cestui.¹²

The Court of Appeals stated that although it once may have been possible for the contractor to divert funds from the trust to his own purposes, since the amendment of 1942, trust funds must be used for trust purposes. That is, they are to be paid first to the statutory beneficiaries to the amount of their claims and any amount still remaining will then, and only then inure to the benefit of the trustee. This is so even though the contractor is not required to hold the fund intact until the work is completed, and he may also assign his rights, commingle his funds and trust funds. The remedy against him is a class action. By contrast, the normal trustee is required to hold the fund intact, separate from other funds and this may be enforced by an individual cestui. These differences from the ordinary trustee-cestui relationship are an inherent necessity of the type of trust created and even though it is true that they weaken the cestui's position, they do not correspondingly increase the interests of the trustee.

It should be noted that Section 36-a of the Lien Law was repealed and its provisions, with modifications, incorporated in Sections 70-79, Article 3-A of the Lien Law.¹³ "Their purpose is to integrate, clarify, and strengthen the provisions of the Lien Law declaring that certain funds are trust funds for payment of claims arising in an improvement of real property or arising in the performance of a contract or subcontract for an improvement of real property or a public improvement."¹⁴

In the case of *American Blower Corporation v. James Talcott, Inc.*,¹⁵ the Court of Appeals applied the foregoing trust theory to competing claims of an assignee under a construction contract and a sub-subcontractor. The Court held that, although the statutory trustee is empowered to make assignments of payments due to him, it is necessary for the assignee to record the assignment as required by the statute or the subcontractor will prevail.

D. G. M.

STATUTORY PROTECTION OF CONDITIONAL VENDEE OF GOODS FOR RESALE

In *Rand's Discount Co. v. Universal C.I.T. Credit Corp.*,¹⁶ the Court of Appeals withdrew from the field of speculation an interesting argument in the

11. L. 1942, ch. 808, § 4: Such trust must be enforced by Civil action . . . by any person entitled to share in the fund, whether or not he shall have filed or had the right to file, a notice of lien. . . .

12. *Gramatan-Sullivan v. Koslow*, 240 F.2d 533 (2d Cir. 1957); *United States v. Kings County Iron Works, Inc.*, 224 F.2d 232 (2d Cir. 1955).

13. *Supra* note 9.

14. 1959 Report, Recommendation and Studies, N.Y. Law Rev. Comm. pp. —. Quoted in Lien Law (McKinney's 1961 Supp. 99).

15. 10 N.Y.2d 282, 219 N.Y.S.2d 263 (1961).

16. 9 N.Y.2d 454, 214 N.Y.S.2d 721 (1961).

field of creditor priorities. The controversy, submitted to the Appellate Division on an agreed statement of facts,¹⁷ was centered on the ownership of the proceeds from the sale of ten automobiles. Lazzaro Sales, Inc., a used car dealer, had an agreement with C.I.T., whereby the latter agreed to take assignments of Lazzaro's conditional sales contracts. In the event of a repossession by C.I.T., Lazzaro agreed to "repurchase" and sell, title to remain in C.I.T. until Lazzaro paid the balance of the purchase price. If Lazzaro defaulted, C.I.T. could retake possession. The ten cars mentioned were conditionally sold by Lazzaro. The contracts were assigned to C.I.T., *but were not recorded*. C.I.T. repossessed and the cars were placed on Lazzaro's lot, along with a "bill of sale" from C.I.T. and a Motor Vehicle Form showing title in Lazzaro. Rand, after inspecting these indicia of ownership, gave Lazzaro chattel mortgages, *duly filed*, on the ten cars. Lazzaro defaulted, C.I.T. retook possession *and sold the cars*.

The Appellate Division experienced no difficulty in stating that: "In such circumstances [the agency created by C.I.T. in Lazzaro by supplying him with the indicia of ownership] the defendant is chargeable with creating the conditions which constitute an estoppel to assert title as against the plaintiff. *Zendman v. Harry Winston, Inc.*, 305 N.Y. 180, 111 N.E.2d 871, 36 ALR2d 1355; *McNeil v. Tenth National Bank*, 46 N.Y. 325. . . ."¹⁸ They further cited *Island Trading Co. v. Berg Bros., Inc.*, for the familiar proposition that "As between two innocent victims of the fraud, the one who made possible the fraud on the other should suffer."¹⁹

The Appellate Division declined to decide the "interesting argument" referred to at the beginning of this note, on the ground that there was no authority from the Court of Appeals and further, that its resolution could have no effect on the outcome of the case. While agreeing with the lower court that the case was easily resolved in favor of Rand on the basis of common law estoppel, the Court of Appeals felt impelled to decide the "interesting argument" which had been discussed previously, but never disposed of.²⁰

C.I.T. argued that its unrecorded conditional sales contract was superior to Rand's filed chattel mortgage by virtue of New York Personal Property Law,²¹ Sections 65 and 69, which read, in pertinent part, as follows:

Section 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,

17. N.Y. Civ. Prac. Act §§ 546-548.

18. *Rand's Discount Co. v. Universal C.I.T. Credit Corp.*, 10 A.D.2d 240, 242, 198 N.Y.S.2d 341, 343 (1st Dep't 1960).

19. 239 N.Y. 229, 233, 146 N.E. 345, 346 (1924).

20. See *Tchlenoff v. Jacobs*, 257 App. Div. 908, 46 N.Y.S.2d 875 (2d Dep't 1944), *aff'd* without opinion, 203 N.Y. 904, 60 N.E.2d 32 (1944). Here the Appellate Division also discussed the "interesting argument" and as in the noted case, based its decision on the common law estoppel.

21. The New York version of the Uniform Conditional Sales Act is contained in N.Y. Per. Prop. Law §§ 60-81.

without notice of such provision, purchases the goods . . . before the contract or copy thereof shall be filed as hereinafter provided, unless such contract or copy is so filed within ten days after the making of the conditional sale. This section shall not apply to conditional sales of goods for resale.

And as to conditional sales of goods for resale, Section 69 states:

the reservation of property shall be void against purchasers . . . for value in the ordinary course of business . . . even though the contract or a copy thereof shall be filed. . . .

From the language of the statute, the argument made by C.I.T. runs as follows:

1. Section 65 does not apply when the goods in question are sold conditionally for resale. Since Lazzaro is to be considered a conditional buyer for the purposes of this determination, and since the cars were conditionally sold for resale, the protection of Section 65 is not available to Rand.
2. Section 69 applies only to purchasers in the ordinary course of business. Rand, a chattel mortgagee, cannot therefore avail itself of this section.
3. Even though the conditional sales contracts were unrecorded, as between Rand and C.I.T., the latter's title is superior.

The Court, in deciding for Rand, followed this line of reasoning:

1. Section 65's limitation is not designed to deprive that section of its efficacy. Its purpose is to segregate a special class of purchasers and, by the mechanics of Section 69, give them superior protection (their rights are preserved even when the conditional sales contract is recorded).
2. ". . . [S]ection 65's exclusion of 'sales of goods for resale' is designed to provide anyone who comes within its compass with the greater protections of Section 69, but it is not designed to provide less protection than section 65 itself does."²²
3. Since that is the purpose of the limitation, Rand's right to the cars is established under Section 65, because C.I.T. failed to record the contract.

It would seem that student applause is superfluous in the face of such a logical and salutary result.

E. H.

CRIMINAL LAW

CREATION OF A FICTIONAL CITIZEN'S ARREST

Police officers and private citizens may make an arrest without a warrant in the instance of a misdemeanor which is committed or attempted in their

22. *Rand's Discount Co. v. Universal C.I.T. Credit Corp.*, supra note 16 at 459, 214 N.Y.S.2d at 724.