

257 Ark. 273
Supreme Court of Arkansas.

C. J. HENSON, Appellant,
v.
GOVERNMENT EMPLOYEES
FINANCE & INDUSTRIAL LOAN
CORPORATION, Appellee.

No. 74-190.

|
Dec. 2, 1974.

Synopsis

Action in replevin brought by finance company against owner of garage involving rival claims to automobile. The Circuit Court, Benton County, W. H. Enfield, J., entered money judgment against garage owner and he appealed. The Supreme Court, George Rose Smith, J., held where finance company did not file, either in Virginia or Arkansas, pursuant to Uniform Commercial Code, an automobile chattel mortgage executed in Virginia, finance company's security interest had not been perfected and its claim to automobile was not prior to claim of Arkansas garage with which the automobile had been left as security for debt incurred on credit sale by garage owner of another automobile.

Reversed and remanded for new trial.

349Ak139 Unperfected Security Interests,
Priority Over

349Ak140 Lien creditors

Ark. Dec. 2, 1974

Where finance company did not file, either in Virginia or Arkansas, pursuant to Uniform Commercial Code, an automobile chattel mortgage executed in Virginia, finance company's security interest had not been perfected and its claim to automobile was not prior to claim of Arkansas garage with which the automobile had been left as security for debt incurred on credit sale by garage owner of another automobile. Ark.Stats. §§ 75-160, 85-9-105, 85-9-302(4), 85-9-305.

Ark. Dec. 2, 1974

Where finance company did not file, either in Virginia or Arkansas, pursuant to Uniform Commercial Code, an automobile chattel mortgage executed in Virginia, finance company's security interest had not been perfected and its claim to automobile was not prior to claim of Arkansas garage with which the automobile had been left as security for debt incurred on credit sale by garage owner of another automobile. Ark.Stats. §§ 75-160, 85-9-105, 85-9-302(4), 85-9-305.

West Headnotes (2)

[1] SECURED TRANSACTIONS

🔑 Motor vehicles

SECURED TRANSACTIONS

🔑 Lien creditors

349A SECURED TRANSACTIONS

349AII Perfection of Security Interest

349Ak82 Necessity of Filing

349Ak86 Motor vehicles

349A SECURED TRANSACTIONS

349AIII Construction and Operation

349AIII(B) Rights as to Third Parties and
Priorities

[2] SECURED TRANSACTIONS

🔑 Evidence

349A SECURED TRANSACTIONS

349AIII Construction and Operation

349AIII(B) Rights as to Third Parties and
Priorities

349Ak148 Actions to Determine and
Establish Rights

349Ak149 Evidence

Ark. Dec. 2, 1974

Finance company, as plaintiff in replevin action, had burden of proving its priority by showing that it had filed its automobile chattel mortgage before garage owner came into possession of the mortgaged automobile. Ark.Stats. § 85-9-302.

would be determined by Virginia law, if the vehicle was in fact registered in Virginia.

Callaghan & Company's Headnote and Classification

P9103, P9301, P9302 Showing that security interest is perfected.

Ark. Dec. 2, 1974

Finance company's security interest under a Virginia chattel mortgage on an automobile could not be held to be prior to the interest of a person in possession of the automobile, which had been taken to Arkansas, where there was no showing that the finance company's security interest had been perfected by filing either in Virginia or in Arkansas. The burden was on the finance company to prove that the security interest had been perfected.

Callaghan & Company's Headnote and Classification

P9305 Perfection of security interest by possession.

Ark. Dec. 2, 1974

UCC § 9-305 provides that a security interest in goods may be perfected by the secured party's taking possession of the collateral. The common-law validity of a possessory lien is carried forward in the Code.

Callaghan & Company's Headnote and Classification

P9105 Definition of goods.

Ark. Dec. 2, 1974

The definition of "goods" includes an automobile.

UCC Sections Cited: § 9-105, § 9-302, § 9-305.

EDITORS' NOTE

The court's statement that "filing" was essential to perfection of the finance company's security interest is inaccurate. Under the Virginia UCC as it read at the time of the transactions involved in the case, perfection of a security interest in an automobile subject to registration was effected by notation on the certificate of title. See § 9-302(3)(b). The same was true under the Arkansas UCC. Under § 9-103(4), perfection of the security interest

Attorneys and Law Firms

*274 **1 Jeff Duty, Rogers, for appellant.

Dobbs, Pryor & Hubbard, Ft. Smith, for appellee.

Opinion

GEORGE ROSE SMITH, Justice.

This is an action in replevin brought by the appellee, a finance company engaged in business at Arlington, Virginia. The appellant is the owner of a garage at Bentonville, Arkansas. The parties assert rival claims to a Rover sedan that had been owned by Sam R. Laws. The issue, upon facts that do not seem to have yet been fully developed, is that of priority between the finance company's security interest in the Rover and the appellant's possessory claim to the vehicle. The trial judge, sitting as a jury, upheld the finance company's priority and entered a monty judgment **2 against Henson, on the ground that the vehicle had unaccountably disappeared while it was in Henson's possession.

We state the facts most favorably to the appellee. In the latter part of August, 1972, Laws brought a disabled Rover to Henson's garage at Bentonville. Efforts to repair it were not successful. Henson sold Laws a 1964 Lincoln car, on credit, for \$595. Laws promised to have the money within a week and left the Rover as security for the debt. Some two months later Laws brought back the Lincoln, which, according to Henson, had 'busted rings' and would not start. Apparently Laws had obtained a license for the Lincoln by registering it in Colorado. Upon Henson's refusal to rescind the sale without having been paid, Laws departed, leaving both cars.

On November 2, 1972, which was apparently a few days *275 later, an employee of the appellee finance company telephoned Henson and asserted a first lien against the Rover under a chattel mortgage that had been executed by Laws in Virginia more than a year earlier. Henson informed the caller that he planned to sell the Rover on November 4 to satisfy his claim.

On November 3, the day after that telephone call, Robert Blaylock, an employee of Arkansas Automobile Recovery, acting for the finance company, went to Henson's place of business to take possession of the Rover. Blaylock offered to pay any repair bills that were owed on the Rover, but Henson refused to accept the offer or to surrender the vehicle, which was then on the premises.

On November 7 the finance company filed this action in replevin to recover the Rover. That afternoon one of the company's attorneys accompanied a deputy sheriff to Henson's garage to serve the writ of replevin. Henson stated that he did not know where the Rover was, though he said he had not sold it. At the trial Henson again disclaimed any knowledge of the Rover's whereabouts.

The trial judge found that Henson 'wrongfully held possession of the (Rover) owned by the plaintiff on November 2, 1972, and that the plaintiff was entitled to possession at that time.' The court awarded the appellee a judgment against Henson for \$1,750.63, which was the unpaid balance upon the plaintiff's mortgage and also the agreed value of the Rover.

[1,2] We cannot sustain the court's finding that upon the facts shown the appellee's claim is prior to that of the appellant. All that the finance company relies upon is a chattel mortgage that is not shown to have been filed, pursuant to the Uniform Commercial Code, either in Virginia or in Arkansas. Without such a filing the appellee's security interest has not been perfected. Ark.Stat. Ann. s 85-9-302 <<UCC § 9-302>> (Supp.1973). The appellee argues that the record contains no proof that its chattel mortgage was not duly filed, but it is elementary that the appellee, as the plaintiff, had the burden of proving its right to prevail.

On the other hand, Henson had possession of the Rover *276 when, as found by the circuit court, he 'wrongfully' refused to surrender it. The Code, recognizing the validity of a common-law pledge, provides that a security interest in goods may be perfected by the secured party's taking possession of the collateral. Ark.Stat. Ann. s 85-9-305 <<UCC § 9-305>>. Goods, as far as this case is concerned, are defined to include all things that are movable at the time the security interest attaches. s 85-9-105 <<UCC § 9-105>>. Thus the common-law validity of a possessory lien is carried forward in the Code. See Anderson, Uniform Commercial Code, ss 9-302:10 and 9-305:4 (2d ed., 1971); Ruud, Secured Transactions: Article IX, 16 Ark.L.Rev. 108, 125 (1961).

It follows that the trial court was in error in giving priority to the appellee's chattel mortgage. The cause must therefore be remanded for a new trial, which may involve a re-examination of any or all issues. **3 Clark v. Ark. Democrat Co., 242 Ark. 497, 413 S.W.2d 629 (1967); Hartford Fire Ins. Co. v. Enoch, 79 Ark. 475, 96 S.W. 393 (1906). Therefore we need not discuss issues that depend upon the development of the proof, such as the appellee's standing if its mortgage was actually filed or the effect of either party's compliance with our motor vehicle title registration act. See Ark.Stat. Ann. s 85-9-302(4) <<UCC § 9-302>> and s 75-160 (Supp.1973).

Reversed and remanded for a new trial.




All Citations

257 Ark. 273, 516 S.W.2d 1, 15 UCC Rep.Serv. 1137

Citing References (7)

Treatment	Title	Date	Type	Depth	Headnote(s)
—	<p> 1. Construction and effect of UCC Art 9, dealing with secured transactions, sales of accounts, contract rights, and chattel paper 30 A.L.R.3d 9</p> <p>This annotation discusses all of the cases construing Article 9 of the Uniform Commercial Code, which deals with secured transactions and with sales of accounts, contract rights,...</p>	1970	ALR	—	<p>2 S.W.2d</p>
—	<p>2. Anderson on the Uniform Commercial Code s 9-305:6, § 9-305:6. General rule</p> <p>Depending upon the nature of the collateral, a security interest in collateral may be perfected by the secured party taking possession of the collateral. In such case, the mere...</p>	2019	Other Secondary Source	—	<p>1 S.W.2d</p>
—	<p>3. Anderson on the Uniform Commercial Code s 9-302:12, § 9-302:12. Perfection by possession</p> <p>A financing statement does not have to be filed to perfect a security interest in collateral in possession of the secured party under UCC § 9-305. With one exception, a secured...</p>	2019	Other Secondary Source	—	<p>1 S.W.2d</p>
—	<p>4. Hawklnd Uniform Commercial Codes Series s 9-305:2, § 9-305:2. Collateral in which a security interest can be perfected by possession</p> <p>Section 9-305 provides that a secured party may perfect a security interest by taking possession of the following collateral: letters of credit and advices of credit, goods,...</p>	2019	Other Secondary Source	—	—
—	<p>5. Hawklnd Uniform Commercial Codes Series s 9-313:2 [Rev], § 9-313:2 [Rev]. Collateral in which a security interest can be perfected by possession or delivery</p> <p>Section 9-313(a) [Rev] provides that a secured party may perfect a security interest by taking possession of the following collateral: goods except with respect to goods covered by...</p>	2019	Other Secondary Source	—	—
—	<p>6. Am. Jur. 2d Secured Transactions s 336, § 336. Generally Am. Jur. 2d Secured Transactions</p> <p>The Uniform Commercial Code (U.C.C.) provides that a secured party may: perfect a security interest by taking possession of the collateral where the collateral is negotiable...</p>	2019	Other Secondary Source	—	—
—	<p>7. P 52,493 FAILURE TO DEMONSTRATE UCC FILING AND PERFECTION Secured Transactions Guide</p> <p>A finance company's failure to show that its chattel mortgage had been filed pursuant to the Uniform Commercial Codes of either Virginia (place of business) or Arkansas (place of...</p>	1974	Other Secondary Source	—	—

Table of Authorities (2)

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	 1. Clark v. Arkansas Democrat Co. 413 S.W.2d 629, Ark., 1967 Action by newspaper delivery boy, age 13, against newspaper company for personal injuries sustained while working newspaper route on motorscooter. From an adverse judgment entered...	Case			2
Mentioned	2. Hartford Fire Ins. Co. v. Enoch 96 S.W. 393, Ark., 1906 Hill, C. J., dissenting. Appeal from Circuit Court, Howard County; James S. Steel, Judge. Action by S. Enoch against the Hartford Fire Insurance Company. From a judgment for...	Case			3

Negative Treatment

There are no Negative Treatment results for this citation.

History

There are no History results for this citation.

Filings

There are no Filings for this citation.