

266 Cal.App.2d 384
California Court of Appeal,
Second District, Division 5

JAMES TALCOTT, INC.,
Plaintiff and Appellant,
v.
Robert E. GEE, Jr., et al.,
Defendants and Respondents.

Civ. 31802.

|

Oct. 4, 1968.

Synopsis

Action for deficiency under equipment lease agreement. The Superior Court, Los Angeles County, Emmett E. Doherty, J., found that the agreement was, in fact, a conditional sales contract and gave judgment for the buyer from which the seller appealed. The Court of Appeal, Stephens, J., held that Unruh Act, which prohibits deficiency judgments after repossession and resale and gives buyers absolute right to prepay balance due on installment sales contracts, was not applicable to sale of printing press for use in business.

Reversed.

West Headnotes (5)

[1] SALES

🔑 Recovery of price after retaking property

343 SALES

343IX Conditional Sales

343k478 Remedies of Seller

343k479.2 Recovery of Goods or

Proceeds Thereof; Actions for Conversion

343k479.2(11) Recovery of price after retaking property

Formerly 343k479(11)

Cal.App. 2 Dist. Oct. 4, 1968

Statutory provision prohibiting deficiency judgments after repossession and resale is applicable only to conditional sales of consumer goods and not to commercial

transactions. [West's Ann.Civ.Code, § 1812.5.](#)

[2] SALES

🔑 Recovery of price after retaking property

343 SALES

343IX Conditional Sales

343k478 Remedies of Seller

343k479.2 Recovery of Goods or

Proceeds Thereof; Actions for Conversion

343k479.2(11) Recovery of price after retaking property

Formerly 343k479(11)

Cal.App. 2 Dist. Oct. 4, 1968

Sale of printing press to be used in business was not for “personal purpose” within provision of statute prohibiting deficiency judgments on conditional sales after repossession and resale. [West's Ann.Civ.Code, § 1802.1.](#)

[3] SALES

🔑 Recovery of price after retaking property

343 SALES

343IX Conditional Sales

343k478 Remedies of Seller

343k479.2 Recovery of Goods or

Proceeds Thereof; Actions for Conversion

343k479.2(11) Recovery of price after retaking property

Formerly 343k479(11)

Cal.App. 2 Dist. Oct. 4, 1968

Purpose of statute prohibiting deficiency judgments on conditional sales of consumer goods after repossession and resale was to protect consumer from abusive credit practices. [West's Ann.Civ.Code, §§ 1801 et seq., 1812.5.](#)

[4] SECURED TRANSACTIONS

🔑 Deficiency and personal liability

349A SECURED TRANSACTIONS

349AVII Default and Enforcement

349Ak240 Deficiency and personal liability

Cal.App. 2 Dist. Oct. 4, 1968
Conditional sale of printing press was governed by Commercial Code provisions which authorized deficiency judgment after repossession and resale, and not by Unruh Act which prohibited deficiency judgments. West's Ann.U.C.C. § 9504; West's Ann.Civ.Code, § 1812.5.

[1 Cases that cite this headnote](#)

[5] **SECURED TRANSACTIONS**

🔑 Payment of debt

349A SECURED TRANSACTIONS

349AVI Discharge and Satisfaction

349Ak201 Payment of debt

Cal.App. 2 Dist. Oct. 4, 1968

Generally, premature offer of performance is not valid tender, and buyer under installment contract calling for payments at specified intervals cannot put seller in default by tendering unpaid balance, since seller is not required to accept such payment prematurely, but parties may provide in contract for right of prepayment.

Callaghan & Company's Headnote and Classification

P9504, P10101, P10102Pre-Code transaction-law applicable.

Cal.App. 2 Dist. Oct. 4, 1968

In an action for a deficiency under a purported equipment lease agreement executed prior to the effective date of California Commercial Code, secured party's right to a deficiency arising from sale of collateral after repossession was governed by California Civil Code § 1780 and not by UCC § 9-504, although the repossession and sale took place after the effective date of the California Commercial Code.

Callaghan & Company's Headnote and Classification

P9102, P9109, P9206Principles governing consumer transactions and transactions between businessmen.

Cal.App. 2 Dist. Oct. 4, 1968

The UCC is replete with evidence that the legislature intended consumer transactions to be governed by different principles than those which govern transactions among businessmen.

Callaghan & Company's Headnote and Classification

P9109, P9504Right to deficiency resulting from resale of business equipment.

Cal.App. 2 Dist. Oct. 4, 1968

Under UCC § 9-109 there is a real distinction between goods purchased for personal use and those purchased for business use. The two are mutually exclusive and the principal use to which the property is put should be considered as determinative. Accordingly, in California, a secured party's right to recover a deficiency resulting from the sale of repossessed goods purchased by the debtor for business purposes is governed by the UCC and not by the California Retail Instalment Sales Act which prohibits deficiency judgments where the collateral is consumer goods.

*****1029 UCC Sections Cited: § 9-109(1), (2), § 9-206, § 9-504, § 10-101, § 10-102.**

Attorneys and Law Firms

****169 *385** Buchalter, Nemer, Fields & Savitch, by Joseph Weissman and Stanley Imerman, Los Angeles, for plaintiff and appellant.

No appearance for defendants and respondents.

Opinion

STEPHENS, Associate Justice.

This is an appeal from a judgment in favor of defendant and award of costs to defendant in an action for deficiency under an equipment lease agreement.

The facts are that on June 15, 1964, Credit Mobilier, a California corporation, and, Robert E. Gee, Jr., doing business as Crawford Ink & Supply Co. (hereinafter referred to as Gee) entered into a written lease agreement for the lease to Gee of a certain printing press. The term of said lease was 5 years and the total rental was \$19,740, payable in 60 monthly instalments of \$329. As security for full payment of rent and performance of the provisions of the lease, a deposit of

\$1,944 was paid to Credit Mobilier. On June 27, 1964, by an instrument in writing, Credit Mobilier assigned all of its rights to the lease and the printing press to James Talcott Western, Inc., predecessor of the present plaintiff, James Talcott, Inc. (hereinafter referred to as Talcott).

Gee leased the printing press for use in his business, and began making monthly payments on the lease beginning with the July 15, 1964 instalment. After July 21, 1965, Gee stopped making payments. There was testimony indicating that thereafter Gee had offered to pay off the lease provided that Talcott would credit Gee with the original security deposit. Talcott refused to credit Gee for his security deposit, but did quote Gee a payoff figure of \$13,807.20. There is no evidence to indicate whether Gee ever attempted to pay Talcott this sum or any other sum.

On October 8, 1965, Talcott filed its complaint to recover possession of the press and for the balance of rents due under the lease. Talcott repossessed said printing press on the above date, and on June 3, 1966, sold the same at public auction.

On the basis of the above facts, the trial court concluded that the purported lease agreement was in fact a conditional sales contract; that Gee made a valid tender of the balance due under such contract, thereby vesting title in Gee; that the subsequent repossession sale of the printing press by Talcott was a conversion thereof; and that, in any event, no deficiency *386 judgment was recoverable because of the provisions of [Civil Code section 1812.5](#).

The Unruh Act Question

[1] The crucial question which we are asked to decide on this appeal is whether **170 [Civil Code section 1812.5](#),^[FN1] the anti-deficiency provision of the Unruh Act ([Civil Code sections 1801 et seq.](#)), applies to credit sales to businessmen for commercial purposes, or whether that section is limited to credit sales to consumers for non-commercial purposes. We have concluded that the code section in question applies solely to conditional sales of consumer goods, and does not embrace commercial transactions.

[2] The transaction in the present case was of a commercial nature, involving the lease and/or sale of business equipment for business purposes. [Civil Code section 1802](#) states that the definitions given in the ensuing sections are to govern the construction of the act. The first such definition is found in [section 1802.1](#), which defines goods as ‘tangible chattels bought for use primarily for personal, family or household purposes * * *.’ The trial court, in construing such language, held that since the equipment was for the lessee’s personal use in his business, the transaction fell within the terms of the act. Such a construction does not seem tenable in our opinion. Even a corporation when it buys or leases equipment can be said to have done so for its own personal use in its business. That is a semantical equivocation which in no way changes the primary character of use from that of business to personal. The lease or sale to a business entity to be used in such business is a use for commercial purposes, and not a use for personal purposes within the meaning of the Unruh Act.

In a footnote to his opinion in [Elster’s Sales v. El Bodrero Hotel, Inc.](#), 250 Cal.App.2d 258, 260, 58 Cal.Rptr. 492, 493, Justice Fleming made the following observations:

‘At the time of the contract deficiency judgments were permitted for all types of conditional sales. Since 1963 deficiency judgments on conditional sales of consumer goods have been prohibited by [Civil Code, section 1812.5](#), but a reposessor must still account to the buyer for any surplus derived from the proceeds of the resale. ([Civ. Code, s 1812.4](#).) These provisions of the Civil Code are limited to retail installment contracts covering tangible chattels *387 bought primarily for personal, family, or household purposes ([Civ. Code, ss 1802.6, 1802.5, 1802.1](#)), a classification which obviously would not include restaurant equipment. Business equipment is still subject to the general provisions of the Commercial Code, which continue to permit deficiency judgments after repossession and resale. ([Com. Code, s 9504](#).)’ <<[UCC § 9-504](#)>>

[3] There is no question but that the Unruh Act was designed to protect the consumer from abusive credit practices. Such protection, however, was not deemed to be necessary where equally competent businessmen are dealing with each other in arm’s

length transactions. A perusal of the Commercial Code sections as contrasted with comparable sections of the Unruh Act clearly evidences this intent on the part of the Legislature.[FN2] Thus, [Civil Code section 1804.1](#)[FN3] prohibits a seller from exacting a contractual waiver of defenses from a buyer, whereas [Commercial Code section 9206](#) <<UCC § 9-206>>permits a seller to do so, and ****171** the amended official comment to such section makes it clear that ‘such clauses * * * are validated outside the Consumer field’ and that ‘the validation of waivers * * * is expressly made ‘subject to any Statute or decision’ which may restrict the waiver’s effectiveness in the case of a buyer of Consumer goods.’ (Emphasis ours.) In short, the Commercial Code is replete with evidence that the Legislature intended consumer transactions to be governed by different principles than those which govern transactions among businessmen. For example, the official comment to section 9101 provides, in part: ‘Consumer installment sales and consumer loans present special problems of a nature which makes special regulation of them inappropriate in a general commercial codification.’ And section 9109 <<UCC § 9-109>>, in classifying goods, provides: ‘Goods are (1) ‘consumer goods’ if they are used or bought for use primarily for personal, family or household purposes; (2) ‘Equipment’ if they are used or bought for use primarily in business * * *.’ It is not without ***388** significance that the definition of goods in the Unruh Act parallels the definition of consumer goods in the Commercial Code.

[4] Thus, there is a real distinction between goods purchased for personal use and goods purchased for business use. The two are mutually exclusive, and the principal use to which the property is put should be considered as determinative. Accordingly, we hold that goods purchased, as in the present case, for business use, are governed by the provisions of the Commercial Code, and not those of the Unruh Act,

Footnotes

- 1 [Civil Code section 1812.5](#):
‘If the proceeds of the sale are not sufficient to cover items (1), (2) and (3) of Section 1812.4, the holder may not recover the deficiency from the buyer or from anyone who has succeeded to the obligations of the buyer.’
- 2 The transaction here involved is not governed by the [Uniform Commercial Code \(ss 10101, 10102\)](#). While that code had been introduced and passed in the 1963 regular session of the Legislature and approved by the Governor on June 8, 1963, its effective date is January 1, 1965. The right to a deficiency judgment as of

and a deficiency judgment, while not permitted by the latter, is authorized under the [Uniform Commercial Code \(s 9504\)](#) <<UCC § 9-504>>.

The Effect of the Finding of Tender

[5] As a general rule, a premature offer of performance is not a valid tender, and a buyer under an instalment contract calling for payments at specified intervals cannot put his seller in default by tendering the unpaid balance, since the seller is not required to accept such payment prematurely. However, the parties may provide in their contract for a right of prepayment. ([Record etc. Co. v. Pageman Hold. Corp.](#), 42 Cal.2d 227, 232, 266 P.2d 1; [Smith v. Hill](#), 237 Cal.App.2d 374, 394-395, 47 Cal.Rptr. 49; [Warshauer v. Bauer Construction Co.](#), 179 Cal.App.2d 44, 50, 3 Cal.Rptr. 570. Under the Unruh Act, however, a buyer has an absolute right to prepayment. ([Civil Code s 1806.3](#).) In the present case, the trial court, applying the Unruh Act to the transaction in question, evidently assumed that a right of prepayment existed and, accordingly, found that a valid tender had been made. Since we have concluded that the Unruh Act does not apply, on remand it will be necessary for the court to first determine from the four corners of the instruments involved whether prepayment was contemplated, and second, if such a right is found to exist, whether in fact there has been a valid tender.

The judgment is reversed.

KAUS, P.J., and AISO, J. pro tem.,[FN*] concur.

All Citations

266 Cal.App.2d 384, 72 Cal.Rptr. 168, 5 UCC Rep.Serv. 1028

the time of the contract in question is determined under [Civil Code section 1780](#). (See [McMillen v. Pippin](#), 211 Cal.App.2d 674, 676, 27 Cal.Rptr. 590.)

- 3 The original Unruh Act, commencing at [Civil Code s 1801](#), became effective on January 1, 1961, and the amendment to [section 1812.5](#) prohibiting deficiency judgments in matters governed by that act was added by statute in 1963.

a Assigned by Chairman of the Judicial Council.

Citing References (23)

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	1. Massey-Ferguson Credit Corp. v. Casaulong 133 Cal.Rptr. 497, 498 , Cal.App. 3 Dist. Action was brought to recover deficiency arising from repossession and sale of gas combine originally bought by defendants under a conditional sale contract. The Superior Court,...	Oct. 22, 1976	Case		—
Cited by	2. Cessna Finance Corp. v. Pivo 129 Cal.Rptr. 888, 891+ , Cal.App. 4 Dist. Appeal was taken form an order of the Superior Court, Orange County, William S. Lee, J., which entered judgment in favor of buyers in an action by seller's assignee for recovery of...	May 14, 1976	Case		4 UCC Rep.Serv.
—	3. Secured transactions: what constitutes "consumer goods" under UCC sec. 9-109(1) 77 A.L.R.3d 1225 This annotation collects and discusses those cases in which the courts have considered what constitutes "consumer goods" as that phrase is used in UCC § 9-109(1). Any local...	1977	ALR	—	1 2 3 UCC Rep.Serv.
—	4. Rights and remedies as between parties to conditional sale after seller has repossessed himself of the property 99 A.L.R. 1288 (Supplementing annotations in 37 A.L.R. 91, and 83 A.L.R. 959.) As to the right of a seller to recover the unpaid balance of the purchase price under special statutes, see the...	1935	ALR	—	1 2 4 UCC Rep.Serv.
—	5. Anderson on the Uniform Commercial Code s 9-109:12, § 9-109:12. Generally The classification of tangible collateral is determined by the principal use to which the collateral is put. The principal or predominant use to which the goods are actually put by...	2019	Other Secondary Source	—	—
—	6. Anderson on the Uniform Commercial Code s 1-102:241, § 1-102:241. Generally The UCC is to be construed and applied to promote its underlying purposes and policies of achieving uniformity, simplification, clarification and modernization of the law relating...	2019	Other Secondary Source	—	—
—	7. Anderson on the Uniform Commercial Code s 1-103:176 [Rev], § 1-103:176 [Rev]. Generally The UCC is to be construed and applied to promote its underlying purposes and policies of achieving uniformity, simplification, clarification and modernization of the law relating...	2019	Other Secondary Source	—	1 UCC Rep.Serv.
—	8. Hawland Uniform Commercial Codes Series s 9-109:1, § 9-109:1. In general The Code drafters recognized that various forms of personal property might serve as collateral in a secured transaction. Broadly, the types of collateral fall either within the...	2019	Other Secondary Source	—	—

Treatment	Title	Date	Type	Depth	Headnote(s)
—	9. Hawklund Uniform Commercial Codes Series s 10-101:4, § 10-101:4. "Events." Like the word "transactions," "events" is used in section 10-101 to justify in the appropriate case the applicability of the U.C.C. law to contracts that had their inception in...	2019	Other Secondary Source	—	—
—	10. Hawklund Uniform Commercial Codes Series s 9-102:10 [Rev], § 9-102:10 [Rev]. Goods The definition of goods contained in revised Section 9-102(a)(44) [Rev] as all things movable is similar to the definition contained in Article 2, Section 2-105(1) (and see also...	2019	Other Secondary Source	—	—
—	11. Miller and Starr California Real Estate s 1:109, § 1:109. Conditions concurrent—Performance; requirements for an effective tender "Tender" defined. A "tender" is an offer of performance in contrast to the actual performance itself. A proper tender must be made timely and in good faith, and the offeror...	2019	Other Secondary Source	—	5 UCC Rep.Serv.
—	12. Miller and Starr California Real Estate s 37:17, § 37:17. Determining the maximum allowable rate of interest—For personal, family or household purposes "Consumer" loans defined. The maximum rate of interest that can be charged on a "consumer" loan is 10 percent per annum. For purposes of identification, a consumer loan is...	2019	Other Secondary Source	—	—
—	13. Restatement (Third) of Torts: General Principles s 14 DD, § 14. Statutory Compliance Restatement (Third) of Torts: General Principles (a) An actor's compliance with a pertinent statute, while evidence of non-negligence, does not preclude a finding that the actor is negligent under § 4 for failing to adopt...	2019	Other Secondary Source	—	—
—	14. § 16. Statutory Compliance (a) An actor's compliance with a pertinent statute, while evidence of non-negligence, does not preclude a finding that the actor is negligent under § 3 for failing to adopt...	2019	Other Secondary Source	—	—
—	15. Witkin, California Summary 10th Contracts s 794, Requisites of Tender. Witkin, California Summary 10th Contracts A tender must be of full performance, at a proper time and place, made by the debtor or by some person on his or her behalf and with the debtor's consent, to the creditor or some...	2019	Other Secondary Source	—	5 UCC Rep.Serv.
—	16. Witkin, California Summary 10th Sales s 270, Inapplicable to Commercial Sales. Witkin, California Summary 10th Sales The Act applies only to sales of goods to consumers. This appears from the definition of "goods" (C.C. 1802.1: "for use primarily for personal, family or household purposes"),...	2019	Other Secondary Source	—	1 2 4 UCC Rep.Serv.

Treatment	Title	Date	Type	Depth	Headnote(s)
—	<p>17. Cal. Jur. 3d Consumer and Borrower Protection Laws s 358, § 358. Exclusions—Purchase of goods for business purposes Cal. Jur. 3d Consumer and Borrower Protection Laws</p> <p>The protection from abusive credit practices provided by the Unruh Act is not deemed necessary for equally competent businesspersons dealing with each other in arm's length...</p>	2019	Other Secondary Source	—	<p>3 UCC Rep.Serv.</p>
—	<p>18. Cal. Jur. 3d Payment s 15, § 15. Generally Cal. Jur. 3d Payment</p> <p>The time agreed to by the parties controls the time for payment. Also, when an obligation fixes a time for performance, an offer of performance must be made at that time, within...</p>	2019	Other Secondary Source	—	<p>5 UCC Rep.Serv.</p>
—	<p>19. Cal. Jur. 3d Secured Transactions s 39, § 39. Equipment Cal. Jur. 3d Secured Transactions</p> <p>"Equipment" means goods other than inventory, farm products, or consumer goods. The sale of equipment is a commercial transaction and never a transaction involving a consumer, so...</p>	2019	Other Secondary Source	—	—
—	<p>20. Cal. Civ. Prac. Business Litigation s 57:3, § 57:3. Transactions excluded</p> <p>The Unruh Retail Installment Sales Act is inapplicable to commercial sales and is limited in application to sales of goods for use primarily for personal, family, or household...</p>	2019	Other Secondary Source	—	—
—	<p>21. CJS Secured Transactions s 178, § 178. Discharge and satisfaction of security interest, generally CJS Secured Transactions</p> <p>Unless displaced by the particular provisions of the Uniform Commercial Code (Code), the principles of law and equity, including the law merchant and the law relative to capacity...</p>	2019	Other Secondary Source	—	<p>5 UCC Rep.Serv.</p>
—	<p>22. THE CALIFORNIA ARTICLE 9 NO-DEFICIENCY RULE: UNDERMINING THE SECURED PARTY'S SECURITY 34 Hastings L.J. 153 , 177</p> <p>The underlying purpose of article 9 of the Uniform Commercial Code ("UCC") is to provide a single device for regulating security interests in personal property, including the...</p>	1982	Law Review	—	—
—	<p>23. I CAN GET IT FOR YOU WHOLESALE: THE LINGERING PROBLEM OF AUTOMOBILE DEFICIENCY JUDGMENTS 27 Stan. L. Rev. 1081 , 1107</p> <p>The majority of states, while increasingly protecting the buyer in most areas of consumer transactions, still maintain at least one well-defended stronghold for the secured...</p>	1975	Law Review	—	—

Table of Authorities (5)

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	<p>1. Elster's Sales v. El Bodrero Hotel, Inc. 58 Cal.Rptr. 492, Cal.App. 2 Dist., 1967</p> <p>Seller's suit on defaulted conditional sales contract, wherein defaulting buyer contended that on resale of equipment, seller had realized surplus above amount of debt. The...</p>	Case			170
Cited	<p>2. McMillen v. Pippin 27 Cal.Rptr. 590, Cal.App. 1 Dist., 1963</p> <p>Action for deficiency judgment following alleged resale of conditionally sold logging equipment. The seller obtained the deficiency judgment in Superior Court, County of Mendocino,...</p>	Case			171
Cited	<p>3. Record Mach. & Tool Co. v. Pageman Holding Corp. 266 P.2d 1, Cal., 1954</p> <p>Declaratory judgment action by buyer against seller under conditional sales contract, relating to realty, personalty, and patents, and for declaration of rights under the contract,...</p>	Case			171
Mentioned	<p> 4. Smith v. Hill 47 Cal.Rptr. 49, Cal.App. 4 Dist., 1965</p> <p>Action by vendor to quiet title to real and personal property and for appointment of receiver. Cross complaint by purchaser for specific performance of the contract for the sale of...</p>	Case			171
Mentioned	<p> 5. Warshauer v. Bauer Const. Co. 3 Cal.Rptr. 570, Cal.App. 1 Dist., 1960</p> <p>Action by purchasers to recover from vendor the deposit and down payment which had been paid to vendor's agent who had absconded. The Superior Court, County of San Mateo, Wayne R....</p>	Case			171

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.