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CASE NOTES

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ANTITRUST LAWS — Robinson-Patman Act — Applicable to Territorial Price Discrimination Between Purchasers. — Respondent, a nationwide brewer, reduced beer prices in the St. Louis market while maintaining higher prices elsewhere. The Federal Trade Commission issued a cease and desist order charging respondent with violation of section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act, 49 Stat. 1526 (1936), 15 U. S. C. § 13 (a) (1952), on the ground that the price reduction was discriminatory and tended to lessen competition in the St. Louis market. The Court of Appeals for the Seventh Circuit, on review, set aside the order on the ground that the threshold element of price discrimination as used in the Robinson-Patman Act, was not established. On certiorari, HELD: Reversed. Charging customers of one region lower prices, while maintaining higher prices elsewhere, is price discrimination as defined within the Robinson-Patman Act. *FTC v. Anheuser-Busch, Inc.*, 80 Sup. Ct. 1267, 4 L. Ed. 2d 1385 (1960).

The applicability of section 2 of the Clayton Act, 38 Stat. 730 (1914), to cases where injury is to sellers' competition is quite obvious. The primary line of commerce or the sellers' competition was that which Congress sought to protect by passage of section 2 of the Clayton Act. *Van Camp & Sons v. American Can Co.*, 278 U. S. 245, 73 L. Ed. 311 (1928). The Robinson-Patman Act, 49 Stat. 1526 (1936), 15 U. S. C. § 13 (1952), which amended section 2 of the Clayton Act, was directed primarily at situations involving injury in the secondary line of commerce, which is the buyers' competition. *FTC v. Automatic Canteen Co.*, 346 U. S. 61, 97 L. Ed. 1454 (1952). However, the Robinson-Patman Act only narrows the defenses under section 2 of the Clayton Act, ATT'Y. GEN. NAT'L. COMM'R. ANTITRUST REP. 156 (1955), and in so doing would logically retain the prohibition to injury in the sellers' line of commerce. Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, *supra*, reads in pertinent part as follows: "It shall be unlawful . . . to discriminate in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition or tend to create a

monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination . . . " The term "to discriminate in price" referred to in the Robinson-Patman Act has been defined as charging two purchasers different prices. *FTC v. Morton Salt Co.*, 334 U. S. 37, 99 L. Ed. 1196 (1947). The price differential may be justified by certain defenses contained in the Robinson-Patman Act. 49 Stat. 1526 (1936), 15 U. S. C. § 13(a), (b) (1952); *Standard Oil Co. v. FTC*, 340 U. S. 231, 95 L. Ed. 239 (1951). The purchasers discriminated among may or may not be in competition with one another. If they are in competition with each other, then the discrimination would clearly be within the meaning of the Robinson-Patman Act. *Corn Products Refining Co. v. FTC*, 324 U. S. 726, 89 L. Ed. 1320 (1944). If, however, as in the principal case the buyers are not in competition with one another, at least one court has held that this is not discrimination within the meaning of the Robinson-Patman Act. *Balian Ice Cream Co. v. Arden Farms Co.*, 231 F. 2d 356 (9th Cir. 1955) *cert. denied*, 350 U. S. 991 (1955). The Court felt there must be some relationship between the two purchasers. Rep. Utterback, who was in charge of the bill in the House of Representatives, made the statement that he felt that there must be some relationship between the purchasers. 80 CONG. REC. 9416 (1936). Competition would clearly be such a relationship. The history of the Robinson-Patman Act is contradictory to the view held in the *Balian* case and Rep. Utterback's statement, since territorial price cutting was the principal evil sought to be corrected by Congress with passage of section 2 of the Clayton Act. H. R. REPT. No. 627, 63d Cong., 2d Sess. 8-9 (1914). The predatory practices sought to be eliminated involved no competition between purchasers. Since, as previously mentioned, the Robinson-Patman Act in effect extended the power of the Clayton Act, the vitality of the prohibition of territorial price cutting logically would be in effect today. The courts seem to have followed this view. In two decisions by the court of appeals it was specifically held that the purchasers discriminated among need not be in competition with each other. *Atlas Bld'g Prod. Co. v. Diamond Block & Gravel Co.*, 269 F. 2d 950 (10th Cir. 1959) *cert. denied*, 80 Sup. Ct. 1608 (1960); *Muller v. FTC*, 142 F. 2d 511 (6th Cir. 1944). In the recent

case of *Moore v. Mead's Fine Bread,* 348 U. S. 115, 99 L. Ed. 145 (1954), the question of territorial price discrimination was partly involved and no competition between purchasers was evident. The Supreme Court in regards to this price cutting said, "it is . . . clear that . . . the Clayton Act and the Robinson-Patman Act barred the use of interstate business to destroy local business, outlawing the price cutting employed by the respondent."

The Court is unquestionably correct in holding the Robinson-Patman Act applicable to cases where the injury is to sellers' competition. The *Van Camp* case, a previous decision restricting section 2 of the Clayton Act to cases where the injury was to sellers' competition, was overruled. The Court there held that other lines of commerce as well as that of sellers were protected by section 2 of the Clayton Act. Under the Robinson-Patman Act the correctness of this view would not seem to be in doubt. In the *Moore* case, no doubt as to the applicability of the Robinson-Patman Act was cast. That case involved injury to sellers' competition. As previously mentioned, the intent of Congress in passing section 2 of the Clayton Act was to eliminate territorial price cutting of large companies. If here the Court had held that the respondent was not guilty of price discrimination under the Robinson-Patman Act due to a lack of competition between buyers, it would plainly have been at odds with what Congress intended under section 2 of the Clayton Act and the decision in the *Moore* case. A contrary ruling to the present one would be in effect a mandate to discriminators to escape liability by showing themselves guilty of the evil Congress sought to correct with section 2 of the Clayton Act.

JAMES H. FOWLES, III.

EVIDENCE — Ownership of Automobile — Certificate of Title Only Evidence of Ownership. — Plaintiff, alleged daughter and only heir of deceased, sought to obtain possession of an automobile of deceased by virtue of a certificate of title which showed her to be the owner. Defendant, who was living with deceased at the time of his death, originally had possession of the automobile and the certificate, but plaintiff acquired the certificate by claiming that she wanted

to help defendant settle her affairs. Trial court directed a verdict in favor of plaintiff on the grounds that the certificate of title made out a prima facie case which defendant did not rebut. On appeal, HELD: Reversed. A certificate of title is not title in itself but only evidence of title. However, the daughter's claim, based on the contention that she was the daughter and only heir of the deceased, but with no positive testimony to prove this fact, was sufficient to raise a jury question as to whether plaintiff held the vehicle by gift or whether defendant was the actual owner. *Robinson v. Martin,* —Ark.—, 328 S. W. 2d 260 (1959).

Today many states require registration of title of motor vehicles. *Staunton Industrial Loan Corp. v. Wilson,* 190 F. 2d 706 (4th Cir. 1951). The statutes usually provide for the issuance of a certificate of title manifesting ownership and its recordation with the state agency in charge of motor vehicle registration. *Codding v. Jackson,* 132 Colo. 320, 287 P. 2d 976 (1955). This is a departure from the common law which did not require a transfer of a certificate showing ownership of a chattel to perfect a purchaser's title. See BROWN, PERSONAL PROPERTY, § 66 (2d ed. 1955). The generally recognized purpose of such modification is to provide a means of identifying motor vehicles, to ascertain owners thereof, to prevent theft of vehicles, and to prevent fraud. *State Farm Mut. Auto Ins. Co. v. Drawbaugh,* 159 Neb. 149, 65 N. W. 2d 542 (1954). The application of the statutes vary. In some jurisdictions the certificate of title constitutes sole and conclusive evidence of ownership. *Eureka Security Fire & Marine Ins. Co. v. Maxwell,* 276 F. 2d 132 (4th Cir. 1960); *Turpin v. Standard Reliance Ins. Co.,* 169 Neb. 233, 99 N. W. 2d 26 (1959). A possible exception to this rule may apply when fraud is involved. *Zoloto v. Scott,* 160 N. E. 2d 318 (Ohio 1959); *Automobile Fin. Co. v. Munday,* 137 Ohio St. 504, 30 N. E. 2d 1002 (1940). Other jurisdictions hold that the certificate creates a presumption of ownership but that the presumption may be overcome by evidence of actual ownership. *United States Cas. Co. v. Ohio Cas. Ins. Co.,* 208 F. 2d 451 (5th Cir. 1953); *Federico v. Universal C. I. T. Credit Corp.,* 140 Colo. 145, 343 P. 2d 830 (1959). Finally, there are courts which regard the certificate as mere evidence of title, *Champa v. Consolidated Fin. Corp.,* 231 Ind. 580, 110 N. E. 2d 289 (1953); *Rody v. Winn,* 162 Cal. App. 2d 35, 327 P. 2d

579 (1958); or as no muniment of title. *Adkisson v. Waitman*, 202 Okla. 309, 213 P. 2d 579 (1950); *Liebendofer v. Wilson*, 175 Pa. Super. 632, 107 A. 2d 133 (1954).

In the instant case the court, by viewing the certificate as evidence to be weighed by the jury along with other factors in the case, is following the view taken by many courts in recent decisions. The courts at first zealously construed the statute by recognizing no right or interest in a motor vehicle unless a certificate of title was produced by the person claiming ownership. They soon found that legislative intent was being defeated by such construction. Now most courts give a liberal construction to the statutes. It appears that the South Carolina Legislature has accepted the most pragmatic of the theories concerning the evidentiary status of the certificate by stating that the certificate is prima facie evidence of the facts appearing on it. CODE OF LAWS OF SOUTH CAROLINA, § 46-139.45 (1952). Unless the certificate is questioned, its holder will be presumed to be the owner with any encumbrances that it shows; however, evidence of actual ownership may rebut this presumption. By this interpretation it seems that the purpose of the statute will be most readily accomplished.

MIRIAM BRITT.

LABOR LAW — Taft-Hartley Act — Remedy for a Runaway Shop. — By transferring its plant to Hanover, Pennsylvania, from Philadelphia, defendant company was found to have breached its existing collective bargaining contract, which prohibited plant removal for any reason, and to have engaged in an unfair labor practice. [See separate decision *United Shoe Workers of America v. Brooks Shoe Mfg. Co.*, 183 F. Supp. 568 (D. C. Pa. 1960)]. The plaintiff union which has represented the workers for twenty years suffered a financial loss as a result of the lay-off of members in Philadelphia. Its reputation as a bargaining agent was also damaged. The court felt to require that operations be returned to the original site would be unwarranted from an economic standpoint, and to order the company to offer jobs and transportation expenses to the employees would be impractical. The sole question before the court was that of

the proper remedy. The defendant contended that the union should be entitled only to past dues lost while the contract was in force. HELD: The union is entitled to recover actual damages for dues lost to date and for a twenty-year period in the future, and the court is not prohibited from granting the union punitive damages under section 301 of the Labor Management Relations Act (Taft-Hartley Act), 29 U. S. C. § 185 (1952). *United Shoe Workers of America v. Brooks Shoe Mfg. Co.*, 187 F. Supp. 509 (D. C. Pa. 1960).

Section 301 (a) of the Labor Management Relations Act, 49 Stat. 452 (1935-36), as amended by 61 Stat. 156 (1947), as amended by 73 Stat. 519 (1959), 29 U. S. C. § 185 (a) (1952), permits federal district courts to entertain suits for breach of collective bargaining contracts. Section 8 (a) (1) of the National Labor Relations Act proscribes certain employer activities as unfair labor practices, 29 U. S. C. § 158 (a) (1) (1952). Jurisdiction of a federal district court, however, is not precluded where an unfair labor practice may also constitute a breach of a collective agreement. *Textile Workers Union of America v. Arista Mills Co.*, 193 F. 2d 529 (4th Cir. 1951). A breach of a collective bargaining contract is not an unfair labor practice within the contemplation of the Act. *Association of Westinghouse Salaried Employees v. Westinghouse Elec. Co.*, 348 U. S. 437, 99 L. Ed. 510 (1954), *rehearing denied*, 349 U. S. 925, 99 L. Ed. 1256 (1955). An act may be a breach of the contract as well as an unfair labor practice, but the former is enforced by the courts while the latter is enforced by the National Labor Relations Board. *Lodge 12, District 37, International Ass'n. of Machinists v. Cameron Iron Works*, 257 F. 2d 467 (5th Cir. 1958), *cert. denied*, 358 U. S. 880, 3 L. Ed. 2d 110 (1958). Actual damages have been obtained by a union under section 301 (a) for an employer's breach of a collective agreement, *Burlesque Artist Ass'n. v. Hirst Enterprises*, 267 F. 2d 414 (3d Cir. 1959); *Silverton v. Rich*, 119 F. Supp. 434 (D. C. Cal. 1954), and punitive damages have been awarded an employer under section 303 of the Act, 29 U. S. C. § 187 (1952), *United Mine Workers v. Meadow Creek Coal Co.*, 263 F. 2d 52 (6th Cir. 1959), *cert. denied*, 359 U. S. 1013, 3 L. Ed. 2d 1038 (1959). By way of comparison, the NLRB has provided alternative remedies where an unlawful plant removal is involved. Because it is limited by the principle of reasonableness and is prohibited from

exercising punitive powers, *Republic Steel Corp. v. NLRB*, 311 U. S. 7, 85 L. Ed. 6 (1940), the Board either requires the "runaway shop" to be returned to its former location or orders reinstatement of employees with expenses for moving and transportation. *Rome Products Co.*, 77 NLRB 1217 (1948); *Klotz*, 13 NLRB 746 (1939). Conversely, a state court, in an action where a plant transfer violated a collective agreement, conceded that the union was entitled to compensatory damages. *Farulla v. Freundlich*, 279 N. Y. Supp. 228 (1935). There is a contrary view, however, which contends that the Act makes no provision for the recovery of punitive damages. *Patton v. United Mine Workers*, 114 F. Supp. 596 (D. C. Va. 1953), *rev'd* 211 F. 2d 742 (4th Cir. 1954), *cert. denied*, 348 U. S. 324, 99 L. Ed. 649 (1954). The United States Supreme Court has declared, nevertheless, that the lower federal courts "must fashion substantive law to apply in section 301 (a) from the policy of national labor laws" with the scope of "judicial inventiveness" determined by the problem involved. *Textile Workers Union of America v. Lincoln Mills*, 353 U. S. 448, 1 L. Ed. 2d 972 (1957).

Following the declared policy of the Supreme Court, the lower federal district court in the principal case fashioned a rule which indicates that actual and punitive damages will be awarded where a breach of a collective contract is "something more than a dispute between employer and union" but is, at the same time, an unfair labor practice. By projecting the *status quo* of the parties, as it existed at the time of the breach, into the future, although based on probability, allows speculation to enter the decision. Is it conjecture to say that because of a twenty-year bargaining history it is probable that an employer and a union will bargain twenty more years? This court thinks not, but it does admit that a forty or fifty year period would be. Why draw a line at twenty years to distinguish between probability and possibility? Under the court's decision, the plaintiff not only receives compensation for the breach of an existing contract, but also obtains damages for breach of a contract which has mere potential existence. How can one undo that which never has been done? The award of punitive damages, granted because defendant's conduct amounted to an unfair labor practice as well as a contract breach, cannot be sustained in the light of the decisions above. To quote from Mr. Justice

Frankfurter's dissent in the *Lincoln Mills* case, "there are severe limits on 'judicial inventiveness' even for the most imaginative judges." The court could have better justified granting the plaintiff the same amount of damages by compensating for the injury which its reputation endured as the result of the breach. The court did indicate this factor but did not develop it to any large extent. To have awarded damages by this method would have been not only more reasonable but more practical, and certainly less objectionable.

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