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Recent Decision

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RECENT DECISIONS

SECURED TRANSACTIONS—UNIFORM COMMERCIAL CODE—SUBROGATION OF THIRD LIENOR TO ORIGINAL LIEN AS AGAINST SECOND LIENOR.

French Lumber Co. v. Commercial Realty and Fin. Co. (Mass. 1964).

French Lumber Company (French) purchased an automobile and financed it through a secured note to Ware Trust Company (Ware). The security agreement was duly recorded. Five months later, French pledged its equity in the automobile to Commercial Realty and Finance Company (Commercial) as partial security for a loan. Commercial's security interest in the car was duly recorded. Two months later French, in default on the original note to Ware, refinanced the car with Associates Discount Corporation and Ware was paid in full. Associates' interest in the car was duly recorded. One year later, French was in default on the Associates note and the automobile was repossessed and sold. Both Associates and Commercial claimed the proceeds of the sale and a bill in equity was brought by French to determine the ownership of the proceeds.

HELD: Affirming the decree of the trial court, the provision of the Uniform Commercial Code[1] which provides that the order of filing determines the order of priorities among conflicting interests in the same collateral[2] does not preclude the application of pre-existing state subrogation law to allow the third lienor to recover under the right of the original lienor. *French Lumber Co. v. Commercial Realty and Fin. Co.*, 195 N.E.2d 507 (Mass. 1964).

Massachusetts is one of thirty jurisdictions which have adopted the Uniform Commercial Code (hereafter referred to as Code). Thus, the major determination to be made by the court was the relation of the pre-existing law of subrogation to the Uniform Commercial Code.

Article 9 of the Code establishes a comprehensive scheme for the regulation of security interests in personal property and fixtures. Article 9 is considered (by one writer closely associated with the Code) the Code's most significant contribution to Amer-

1. Adopted by Mass. in 1958.
2. MASS. ANN. LAWS ch. 106, § 9-312(5)(a) (Special Supp. 1958). (Note: Massachusetts citations conform to those of the Uniform Commercial Code.)

ican statutory law.[3] It has also been said that no section of Article 9 presented more difficulties or received a more thorough consideration than those sections specifically dealing with priorities.[4]

The court in this case agreed that the pertinent provision of the Code provides that the order of filing determines the order of priorities among conflicting interests in the same collateral;[5] it did not find, however, that the Code prevented Associates from succeeding to Ware's priority through subrogation. Noting that the general provisions of the Code specify that the principles of law and equity should supplement the Code's provisions unless otherwise provided,[6] the court said "no provision of the Code purports to affect the fundamental equitable doctrine of subrogation."[7]

Subrogation, which has its roots in the principles of equity, is simply a doctrine of substitution.[8] It has long been recognized that the doctrine of subrogation does not flow from any fixed law and is invoked in the interests of justice and equity.[9] Perhaps, as the court said in *George A. Hoagland & Co. v. Decker*,[10] no doctrine of equity jurisprudence is more beneficent in its operation than is subrogation and perhaps none stands in higher favor. In general, courts have been inclined to extend rather than restrict the doctrine by giving it broad and liberal application in the interests of justice.[11]

The weight of authority in this country is that one who advances money to a debtor, at the request of the debtor, to discharge a prior lien on real or personal property is entitled to subrogation to the prior lien so discharged, as against the holder of an intervening lien of which he was ignorant. This is the general rule even if the intervening lien was properly recorded

3. Schnader, *Foreword* to UNIFORM COMMERCIAL CODE (U.L.A.) at viii (1962).
4. Coogan, *Article 9 of the Uniform Commercial Code: Priorities Among Secured Creditors and the "Floating Lien,"* 72 HARV. L. REV. 838, 855 (1959).
5. *Supra* note 2.
6. MASS. ANN. LAWS ch. 106, § 1-103 (Special Supp. 1958).
7. French Lumber Co. v. Commercial Realty & Fin. Co., 195 N.E.2d 507, 510 (Mass. 1964).
8. Employers Mut. Liab. Ins. Co. of Wis. v. Griffin Constr. Co., 280 S.W.2d 179 (Ky. 1955).
9. Livingstain v. Columbian Banking & Trust Co., 77 S.C. 305, 57 S.E. 182 (1906).
10. 118 Neb. 194, 224 N.W. 14 (1929).
11. Mosher v. Conway, 45 Ariz. 463, 46 P.2d 110 (1935); Eastern States Petroleum Co. v. Universal Oil Products Co., 28 Del. Ch. 365, 44 A.2d 11 (Del. Ch. 1945).

and the party seeking subrogation was negligent or careless in searching the records for prior interests. However, an important and necessary element is that the intervening lienor suffers no injustice: he is left occupying the same position as he did before the original lien was discharged.[12] This is the position that the South Carolina court has taken in its most recent decisions.[13]

In the instant case the evidence indicated that Associates was ignorant of Commercial's interest in the automobile and that Commercial would be left in exactly the same position if Associates subrogated to Ware's rights.

Thus, the court's decision to allow Associates to subrogate to Ware's priority was clearly in accord with the prevailing opinion regarding subrogation. It can hardly be disputed that the decision was far more just and equitable than it would have been had the doctrine of subrogation not been applied.

From the standpoint of the law in South Carolina, it is interesting to note that it is probable that there would have been a significant factual difference. The South Carolina Code requires that security interests in a vehicle be listed on the owner's certificate of title.[14] This is done when the lienholder files his interest with the South Carolina Highway Department; in filing an interest the lienholder must also forward the owner's certificate of title unless it is already in the possession of a prior lienor. In either case, in the process of filing a lien to perfect an interest against subsequent interest holders, it is highly doubtful a lienor could avoid discovery of prior interests in a vehicle.

The Uniform Commercial Code is presently being considered for enactment by a joint committee of the South Carolina General Assembly.[15] Enactment of the Uniform Commercial Code would not have any effect on the recording of motor vehicle liens.[16]

12. *E.g.*, Wilkins v. Gibson, 13 Ga. 31, 38 S.E. 374 (1901); Louisville Joint Stock Land Bank v. Bank of Pembroke, 225 Ky. 375, 9 S.W.2d 113 (1928); Worcester No. Sav. Institution v. Farwell, 292 Mass. 568, 198 N.E. 897 (1935). See generally Annot., 70 A.L.R. 1396 (1931).

13. Meaders Bros. v. Skelton, 234 S.C. 134, 107 S.E.2d 1 (1959); James v. Martin, 150 S.C. 75, 147 S.E. 752 (1928); Enterprise Bank v. Federal Land Bank of Columbia, 139 S.C. 397, 138 S.E. 146 (1925). *But see* M. S. Bailey & Sons v. Wood, 71 S.C. 36, 50 S.E. 631 (1904); Gunter v. Addy, 58 S.C. 178, 36 S.E. 553 (1899); Jefferies v. Allen, 29 S.C. 501, 7 S.E. 828 (1887); Calmes v. McCracken, 8 S.C. 87 (1876). These earlier decisions did not permit subrogation in the absence of specific agreement or assignment, or when the new interest holder took his interest ignorant of an intervening recorded interest.

14. S. C. CODE ANN. § 46-150 (1962).

15. Acts and Joint Resolutions, South Carolina at 2323 (1962).

16. UNIFORM COMMERCIAL CODE § 9-302(3)(b).

It is doubtful then that Associates, absent misrepresentation, could have assumed the position of lienor without actual notice in South Carolina. The law in South Carolina is unclear as to whether subrogation will be denied if a subsequent lienor has actual notice of an intervening lien.[17]

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17. No cases have been found for this point. As to constructive notice, see note 13, *supra*.