Commercial Law III (Secured Transactions) (May 1971)

William & Mary Law School
I. 20 Points

Contractor on June 1 as lessee entered into a "lease agreement" with X Equipment Company as lessor, whereby X delivered a new Ingersoll air compressor to Contractor. The agreement was in writing and stated certain provisions as to use and maintenance of the equipment by the lessee; provided for a rental of $450 per month for a minimum of one month, and thereafter at the same rate "until the aforesaid equipment is returned to the lessor". Lessor reserved the right to terminate if the equipment was abused, or the lease was otherwise violated. 90% of the rental paid was to be applied on the specified purchase price of $7,500. Thus the making of 19 monthly installment payments when due would satisfy the purchase price in full; however, the lessee could relieve himself of any further obligation at any time by returning the equipment to the lessor.

On the following October 1 Contractor made a chattel mortgage of this and other property to Friendly Finance Corp. without disclosing the interest of X. This mortgage, which was duly filed under the Code, was given to Friendly only because Friendly had threatened legal action on an existing unsecured loan to Contractor unless some collateral was forthcoming.

Three months later, because of a default on its loan and on the chattel mortgage, Friendly took possession of the compressor as permitted by the chattel mortgage. X Equipment (the rent being two months overdue entitling it to possession under the lease provisions) sues Friendly for conversion. Discuss the respective rights of X Equipment and Friendly, and decide.

II. 16 Points

A Bank makes a cash loan on June 1 by security agreement to "Better-Bilt Mousetraps, Inc." (BBM) on "hardwood, steel wire, and other raw materials, now owned or hereafter acquired, including proceeds." At the time there were $25,000 worth of such materials on hand.

On July 10 a conditional sale contract was entered into whereby C sold to BBM a wire-forming machine for $20,000 of which $2,000 was paid in cash, the balance being due in installments over a 3 year period.

On July 14 the machine was delivered; on the 16th, J, a judgment creditor of BBM, who had no knowledge of the above transactions, levied on the raw materials and the machine. C filed July 18; A filed July 19.

Discuss and define the interests and priorities of each of the 3 creditors as to:

(1) the property described in the first paragraph.

(2) the property described in the second paragraph.

III. 22 Points

S had been in the business of buying, fattening and selling cattle for several years. During this period he had maintained a more or less continuing borrowing relationship with J Bank, covered by a security agreement filed under 9-401 (1) (c) at page 697 (second alternative) of the Code. He would borrow to buy new cattle, and repay when the cattle were sold.

S sold 85 head of fattened cattle at the currently prevailing price to P, a meat packer who had bought from S many times in the past. J Bank, finding that S was short on collateral, seized these 85 head which were still in S's pens, and sold them. P now sues J Bank for conversion.

P makes the following contentions, either of which (he claims) will entitle him to recover:
(1) The security agreement provided: "Borrower will not sell, lease or otherwise dispose of the collateral otherwise than in the ordinary course of its business at prices constituting the then fair market value thereof".

(2) The filing was ineffective as to P and the security interest unperfected. (J Bank had filed as set forth above as it believed the cattle to be "inventory". It contended that they were not "farm products" because S was not involved in a farming operation.)

Discuss points 1 and 2 and decide. (This is an actual recent case.)

IV. 15 Points

Discuss the relationship of 9-204 (3) and 9-108 of the Code to Section 60 of the Bankruptcy Act as to preference as brought out in various cases culminating in Du Bay v. Williams - Rose City Claim (Portland newspaper) in the U.S. Circuit Court of Appeals.

Construct a brief hypothetical case (or state the facts in Du Bay v. Williams) to illustrate the problem.

V. 15 Points

C, a nightclub entertainer, signed a chattel mortgage to X on his guitar and amplifier which he used for his performances. X gave value and the chattel mortgage was filed in the proper office. Being in the form of a mortgage it did not bear X's signature or address, though there was handwritten on the face above the text the words "this is the property of X". C, of course, had signed and his address was shown.

C later pawned the mortgaged property to P who had no notice of X's claim. After demand and refusal X sued P for conversion.

P defended on the ground that the filing was defective; X argued that (1) there was a substantial compliance with the code and (2) that filing for property of this character is not required. Discuss and decide whether P or X or both have perfected security interests; then decide the case on priorities.

VI. 12 Points

Kentucky Mills, a textile manufacturer, needs money. Benn Brass, a factor, offers to buy $30,000 face amount of Kentucky's accounts receivable which he will select out of Kentucky's total receivables of $100,000. A purchase price of $27,000 is agreed on and paid, and the $30,000 of accounts are by written document assigned to Benn without recourse. Kentucky Mills continues to service the accounts.

Explain whether or not filing is necessary under Article 9. If filing is required, will it be made at (in addition to the Secretary of State's Office) the residence or office of Kentucky Mills, or Benn Brass, or the persons who owe the accounts? Why? Use requirements at p. 698 (Third Alternative) of Code for this purpose.