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Conflict of Laws: Security Interests in Movable

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instituted by a private person and not the state.

Although the language and rationale in *Wood* seems to violate the concept of paternal authority, the practical effect of the decision may be less serious than it appears initially. The supreme court's rejection of the propriety of a judicial comparison between the parents and a competing party in determining the child's "best interest"⁴⁸ limits the scope of the court's inquiry to a consideration of the parent's fitness. If the parent is found to be fit and able to care for the child, the parental right to custody is superior to that of a third person, even one better able to provide for the child's welfare.⁴⁹ As a practical matter, the courts require a serious case before they will declare a parent unfit⁵⁰ and thus the *Wood* decision will not significantly increase the likelihood of a parent being deprived of custody during the existence of the marriage.

However, by permitting the district court to inquire into parental fitness and to deprive an unfit parent of custody in habeas corpus proceedings to promote the "welfare of the child," the decision has in effect read into the law a remedy for a blatant violation of the parental obligations imposed by the Civil Code.⁵¹ It would seem that if such a sanction is desirable, the legislature and not the courts should provide it.

Douglas W. Truxillo

CONFLICT OF LAWS: SECURITY INTERESTS IN MOVABLES

Disputes over security interests in movable property that generate conflict of laws questions arise in two contexts: the litigants may be the immediate parties to a contract secured by a movable or the

48. "A judicial comparison of qualified competitors for custody of a child does violence to the rule of 'parental right.'" *Wood v. Beard*, 290 So. 2d 675, 677 (La. 1974).

49. The rationale of *Wood* may have implicitly overruled *State ex rel. Paul v. Peniston*, 235 La. 579, 105 So. 2d 228 (1958), in which the court awarded custody to the non-parent in the "best interest" of the child, even though the parents were fit and able to properly care for the child. *But see Sanders v. Pepper*, 305 So. 2d 746 (La. App. 2d Cir. 1974). Because of an unusual factual situation, the district court awarded custody to the grandparents, even though the parent was not found to be unfit.

50. *E.g.*, in *Wood*, the mother's prior assault conviction was considered insufficient to render her unfit. The court emphasized the heavy burden on the non-parent to prove parental unfitness. *Wood v. Beard*, 290 So. 2d 675, 678 (La. 1974).

51. Since the parental obligations of support, maintenance and education (LA. CIV. CODE art. 227) are fundamental, a complete lack of any one should be considered as equivalent to the type of parental unfitness that has warranted the court in removing the child from the parent.

parties may be the creditor under the contract and a third-party claimant. As the single state which has not enacted the sections of the Uniform Commercial Code (UCC) dealing with security rights,¹ Louisiana relies upon the Civil Code and subsequent legislation and jurisprudence to resolve conflict of laws issues in creditor-debtor and creditor-third party contests. This note sets forth that body of Louisiana law in the context of the rules and directives that govern conflict of laws issues nationally.

National Conflict of Laws Directives

Both the Restatement (Second) Conflict of Laws and the UCC provide general rules for resolving conflict of laws questions in disputes involving security interests in movable property. The Restatement declares that, as between the immediate parties, the law of the state with the most "significant relationship" to the parties, the property, and the security interest will determine the validity and effect of a security interest in a movable.² To decide which state has the most significant relationship to the transaction, a court, subject to constitutional restrictions, may follow a statutory directive of the forum state on choice of law. If there is no such directive, it may consider the needs of the interstate or international systems of commerce, the relevant policies of the forum or other states, the protection of justified expectations, the policies underlying security interest law, the certainty and uniformity of result, and the ease in determining and applying the appropriate law.³ For purposes of enforcement and redemption, as well as for resolving issues of validity, the court should give greater weight to the location of the movable at the time the security interest attached than to any other contact.⁴

With regard to the rights of creditors and third parties, the Restatement provides that a security interest in property is not affected by the mere removal of the property from the state in which the security agreement was perfected.⁵ However, the effect of a sale or other disposition of the property upon the pre-existing security interest will be determined by the laws of the state to which the property has been removed if the creditor has taken the steps necessary under the law of that state to reperfect his interest against third-party

1. UNIFORM COMMERCIAL CODE §§ 9-101 to 9-507. As of 1974, Louisiana has adopted only articles 1, 3, 4, and 5 of the UCC.

2. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 251(a) (1969).

3. *Id.* § 6.

4. *Id.* § 254(2); § 251, comment (e).

5. *Id.* § 252.

claims.⁶

The UCC accords with the Restatement in providing that, absent contrary agreement, when the transaction under consideration bears an "appropriate relation" to the state, a court should turn to the applicable specific provisions of the Code as enacted by the state to determine the rights of the immediate parties.⁷ Generally, such relation exists, and the law of the forum state controls, only when the last event giving rise to the assertion that the security interest is perfected occurs within the state.⁸ However, when there is a conditional sale and the parties intend to remove the goods to a second state within thirty days after the debtor receives possession, the law of the second state governs perfection and the effect of perfection or nonperfection until the expiration of the thirty-day period and will control thereafter if the creditor files the security agreement in that jurisdiction *and* if the goods are removed before the end of the period as intended.⁹ In addition, when a movable is registered under a certificate of title law of the state where the security interest attached, the law of that state controls regardless of the circumstances of removal until the goods are registered in another jurisdiction.¹⁰ Finally, if the property is mobile, normally used in more than one state, and not covered by certificate of title requirements,¹¹ or if the property is an account or general intangible, the law of the state in which the debtor is located will control the transaction.¹²

The UCC determines the rights of creditors and third-party claimants by providing that if a security interest is valid at the time the collateral is removed to a second state, it will be deemed valid and subject to the law of the state where perfected for four months after removal.¹³ During the four-month period, the creditor is required to refile or otherwise reperfect the security interest in accordance with the laws of the state to which the property has been removed. The laws of that state then govern competing claims of the creditor, debtor, and third parties.¹⁴

6. *Id.* § 253 & comment (a).

7. UNIFORM COMMERCIAL CODE § 1-105(1).

8. *Id.* § 9-103(1)(b).

9. *Id.* § 9-103(1)(c).

10. *Id.* § 9-103(2).

11. *E.g.*, road building and construction machinery, airplanes, trailers, shipping containers, etc. UNIFORM COMMERCIAL CODE § 9-103(3)(a).

12. UNIFORM COMMERCIAL CODE § 9-103(3).

13. *Id.* § 9-103(1)(d). However, if less than four months remain before the expiration of the period of perfection in the jurisdiction from which the collateral was removed, the security interest remains valid only until the end of such period. *Id.* § 9-103(1)(d)(i).

14. Exceptions to the four-month rule are transactions in which the security inter-

Louisiana Legislation

Civil Code articles 9 and 10 outline the general rules governing conflict of laws questions in Louisiana. The Code declares that persons residing within the state and property within its borders are subject to Louisiana law.¹⁵ Written instruments, such as those disposing of property by pledge or mortgage, are governed by the laws of the state where executed unless they are intended to have effect in another state, whose laws would then control.¹⁶

The Louisiana Chattel Mortgage Act¹⁷ determines the rights of a creditor and debtor who have executed a mortgage agreement on a movable in Louisiana or intend that the agreement take effect here. Under the Act, a mortgage on a movable not subject to the Vehicle Certificate of Title Law¹⁸ will be valid in Louisiana as between the immediate parties and subject to the jurisdiction of Louisiana courts regardless of the location of the secured property or the residence of the creditor or debtor. The mortgage must state in writing the amount and due date of the debt secured by it and describe the property mortgaged and its location. Recordation is not necessary to perfect the security interest between the immediate parties.

As between the creditor and third-party claimants, the Chattel Mortgage Act provides that a security interest is not valid or enforceable until the time of recordation.¹⁹ The mortgage must be created either by authentic act or by private act duly authenticated, and it need be filed for record only in the parish where the property is to be located if the debtor does not reside in the state.²⁰ If the creditor is a nonresident, however, he must record the mortgage in both the parish where the property is to be located under the terms of the mortgage instrument as well as in the parish of the debtor's domicile.²¹ From

est was *not* perfected in the jurisdiction from which the collateral was removed. See *id.* § 9—103(1)(c) to 103(2).

15. LA. CIV. CODE art. 9 provides: "The law is obligatory upon all inhabitants of the State indiscriminately; the foreigner, whilst residing in the State, and his property within its limits, are subject to the laws of the State." See also LA. CIV. CODE art. 491 providing in pertinent part: "Persons who reside out of the State, can not dispose of the property they possess here, in a manner different from that prescribed by its laws."

16. LA. CIV. CODE art. 10 provides in part: "The form and effect of public and private written instruments are governed by the laws and usages of the places where they are passed or executed. But the effect of acts passed in one country to have effect in another country, is regulated by the laws of the country where such acts are to have effect."

17. LA. R.S. 9:5351-82, *as amended*.

18. LA. R.S. 32:701-34 (1950), *as amended*.

19. LA. R.S. 9:5354 (1950), *as amended* by La. Acts 1954, No. 481 § 1.

20. LA. R.S. 9:5353 (1950), *as amended*.

21. *Id.*

the time of recordation, the mortgage is superior to all subsequent privileges or preferences, with one important exception: if the nonresident creditor expressly or impliedly consents to the secured property being placed on sale by a Louisiana debtor in the usual course of business, he is precluded from asserting his mortgage rights against good faith retail purchasers.²² Moreover, if the debtor is a wholesaler, retailer, or dealer licensed to sell the type of property covered by the mortgage, the creditor is deemed to have consented to its sale and such constructive consent may not be negated or withheld by any provision in the mortgage.²³

The Vehicle Certificate of Title Law²⁴ rather than the Chattel Mortgage Act governs security interests in all motor vehicles required to be registered and licensed under the Louisiana Vehicle Registration License Tax Law.²⁵ Under the provisions of the Act, Louisiana law will control in a conflict of laws dispute when the chattel mortgage creating the security interest is executed or intended to have effect in Louisiana. The law requires detailed description²⁶ of the secured property and provides penalties if the debtor removes the vehicle to another state without the consent of the creditor or disposes of it with the intent of defeating the mortgage.²⁷

Under the Vehicle Certificate of Title Law, the mortgage securing an interest in a motor vehicle will be effective against third parties and will be superior in rank to all subsequent privileges if made by authentic act and noted on the face of the certificate of title by the Commissioner of Vehicles within fifteen days.²⁸ A mortgage given by an automobile dealer to secure a floor plan loan on a new vehicle for which no application for certificate of title has been made becomes effective against third parties from the time of execution if entered in the register of floor plan mortgages by the Commissioner within fifteen days.²⁹ If the creditor consents to the sale of the secured vehicle in the usual course of his debtor's business, he cannot assert his rights against third party good faith purchasers.³⁰

22. LA. R.S. 9:5354 (1950), *as amended* by La. Acts 1954, No. 481 § 1.

23. *Id.*

24. LA. R.S. 32:701-34 (1950), *as amended*.

25. LA. R.S. 47:451-540 (1950), *as amended*.

26. The mortgage instrument must set forth in writing the obligations of the parties and contain a description of the make, year, model, body type, motor and manufacturer's serial numbers, license number, and location of the secured property. LA. R.S. 32:710(A) (Supp. 1950), *as amended*.

27. LA. R.S. 32:710(G) (Supp. 1950), *as amended*.

28. LA. R.S. 32:710(B) (Supp. 1950), *as amended* by La. Acts 1972, No. 771 § 5.

29. *Id.*

30. LA. R.S. 32:710(C) (Supp. 1950), *as amended* by La. Acts 1972, No. 771 § 5.

Louisiana Jurisprudence

Security interest litigation involving conflict of laws issues in Louisiana has dealt exclusively with chattel mortgages, foreign conditional sales agreements, and the claims of lienholders and third-party purchasers against property subject to these two security devices. In a dispute between the immediate parties to a chattel mortgage,³¹ a Louisiana court asserts jurisdiction when the secured property is found in the state and brought before the court by means of a writ of sequestration.³² Although the court generally will follow Civil Code article 10 and recognize the validity of a foreign chattel mortgage that complies with the formal requirements imposed by the state of registration,³³ it will refuse to admit to evidence a valid foreign mortgage instrument executed under conditions that do not also conform to the Louisiana requirements of an authentic act.³⁴ The courts have further demanded strict compliance with the statutory requirements of property description in both Louisiana and foreign laws and have even declared mortgage agreements invalid in instances where the property had been accurately but incompletely described.³⁵

With regard to the claims of a creditor against a third-party purchaser or lienholder, the courts have required Louisiana recordation for a mortgage to have effect unless the creditor can demonstrate that the secured property was removed from the state of execution without his consent or knowledge.³⁶ The burden of proof rests with the creditor,³⁷ but where he can show that the removal was surreptitious, the court will protect him under the recordation laws of his home

31. For commentary on the development of chattel mortgage law in Louisiana, see R. SLOVENKO, *TREATISE ON CREDITOR'S RIGHTS UNDER LOUISIANA CIVIL LAW* 375-520 (1968); Daggett, *The Chattel Mortgage in Louisiana*, 16 *TEX. L. REV.* 162 (1938).

32. *Harnischfeger Sale Corp. v. Sternberg Co.*, 179 La. 317, 154 So. 10 (1934). Jurisdiction is acquired by virtue of the mortgage, however, and not the sequestration. *Id.* at 332, 154 So. at 15.

33. *Remington-Rand, Inc. v. Profits Island Gravel Co.*, 144 So. 636 (La. App. 1st Cir. 1932).

34. *Bass v. Prewett*, 225 La. 883, 74 So. 2d 150 (1954).

35. *Valley Securities Co. v. DeRoussel*, 16 La. App. 115, 133 So. 405 (Orl. Cir. 1931). See also *Consolidated Companies, Inc. v. Laws*, 11 La. App. 676, 124 So. 775 (1st Cir. 1929).

36. If the foreign creditor knew of or consented to removal of the property to Louisiana, he is protected only from the time of recordation in this state; if his mortgage is valid in another state but recorded here after another lien has attached in this state, his claim will be inferior in rank to that of the lien-holder. See *Devant v. Pecou*, 13 La. App. 594, 128 So. 700 (1st Cir. 1930).

37. *G.F.C. Corp. v. Rollings*, 50 So. 2d 460 (La. App. 1st Cir. 1951), *aff'd*, 221 La. 166, 59 So. 2d 108 (1952).

state, despite the requirements of recordation imposed by the Louisiana Chattel Mortgage Act and Vehicle Certificate of Title Law.³⁸

The conditional sale, by which the possession of the movable is transferred under contractual provisions reserving title in the creditor until full payment of the purchase price,³⁹ has wide-spread use as a security device in other states, though it remains unlawful in Louisiana.⁴⁰ When the agreement has been executed in another state in accordance with its laws, Louisiana courts hold that the law of the foreign state controls, provided that the secured property has been brought to Louisiana without the creditor's knowledge or consent.⁴¹ However, if the creditor has knowledge that the property he seeks to protect under a conditional sales agreement is to be brought to Louisiana, he will be deemed either to have attempted to avoid the effect of Louisiana law or to have intended that all disputes arising under the sales agreement be controlled by the law of this state. Thus foreign creditors who have shipped goods to Louisiana have found their security interests unenforceable here under one theory or the other.⁴² Moreover, if the dispute between a creditor and debtor exhibits significant factual contacts with this state, the courts may feel justified in applying Louisiana law. In *Universal CIT Credit Corp. v. Hulett*,⁴³

38. *General Motors Acceptance Corp. v. Nuss*, 195 La. 209, 196 So. 323 (1940).

39. See Comment, 2 LA. L. REV. 338 (1940).

40. When a creditor and a debtor enter into a conditional sales agreement in Louisiana or intend that it take effect here, the courts will deny the right of ownership reserved by the creditor and hold that the transaction is a completed sale on the theory that vesting of title is the essence of a contract of sale, an element which cannot be contracted against by the parties. *Thomas v. Philip Werlein, Ltd.*, 181 La. 104, 158 So. 635 (1935); *Morelock v. Morgan & Bird Gravel Co.*, 174 La. 658, 141 So. 368 (1931); *Barber Asphalt Paving Co. v. St. Louis Cypress Co.*, 121 La. 152, 46 So. 193 (1908); *Claude Neon Fed. Co. v. Angell*, 153 So. 581 (La. App. 2d Cir. 1934).

41. *General Motors Acceptance Corp. v. Nuss*, 195 La. 209, 196 So. 323 (1940); *Universal C.I.T. Credit Corp. v. Hulett*, 151 So. 2d 705 (La. App. 3d Cir. 1963). The security interest will be enforceable if the foreign creditor has knowledge that the collateral will be brought to another state that recognizes conditional sales agreements. *Fisher v. Bullington*, 223 La. 368, 65 So. 2d 880 (1953). The foreign conditional sales agreement need not stipulate that the secured property will remain in the state in order to protect the creditor. *Universal C.I.T. Credit Corp. v. Victor Motor Co.*, 33 So. 2d 703 (La. App. 1st Cir. 1948).

42. *General Talking Pictures Corp. v. Pine Tree Amusement Co.*, 180 La. 529, 156 So. 812 (1934); *American Slicing Machine Co. v. Rothschild & Lyons*, 12 La. App. 287, 125 So. 499 (La. App. 2d Cir. 1929). See *In re Wallace Lincoln-Mercury, Inc.*, 326 F. Supp. 1243 (W.D. La. 1971), where a federal court applied Louisiana law to the prejudice of plaintiff finance company which had deliberately chosen to employ its standardized loan forms and agreements instead of observing the requirements of the Louisiana Chattel Mortgage Floor Plan in the sale of property to be removed to Louisiana.

43. 151 So. 2d 705 (La. App. 3d Cir. 1963).

a foreign creditor under a conditional sales agreement executed in Indiana was denied a deficiency judgment against a resident buyer. The secured property had been repossessed in Louisiana and subsequently sold without prior appraisal outside the state. The Third Circuit Court of Appeal held that Louisiana law should govern the rights of the parties, after selecting from the "competing intra-state and extra-state factors those which [the] court regards to be significant. . . ."⁴⁴

In cases involving third-party claims, the courts have generally held that the law of the state where a valid conditional sale was confected will control, provided that the secured property was removed to Louisiana without the creditor's knowledge or consent, and that the third party dealt with the property in good faith.⁴⁵ However, there are two exceptions to this rule. First, where the foreign creditor has reason to know of the removal of the secured property but the third-party purchaser has acted in questionable faith, the court has balanced the fault of each to determine whether the foreign creditor deserves the protection of Louisiana law.⁴⁶ Second, where some particular statute or provision of the Civil Code applies to the facts of the dispute, if there is no fourteenth amendment due process defense, the courts may apply Louisiana law to protect a good faith third party, despite the creditor's lack of consent to or knowledge of the removal of the secured property. Thus the courts have found materialmen's and laborer's liens superior in rank to the claims of a foreign conditional sales creditor⁴⁷ and have stated that, under Civil Code articles 3506 and 3507, a good faith third-party purchaser is entitled to restoration of his purchase price by the conditional sales creditor if the purchaser has kept property which is subject to a valid foreign conditional sales agreement in his possession for three or more years.⁴⁸

Conclusion

To resolve a conflict of laws question in disputes involving movable property where the litigants are the immediate parties to a secu-

44. *Id.* at 710

45. *Pecora v. James*, 150 So. 2d 90 (La. App. 4th Cir. 1963); *May Fin. Co. v. Nagy*, 62 So. 2d 152 (La. App. 2d Cir. 1952); *Commercial Credit Corp. v. Post*, 52 So. 2d 559 (La. App. 2d Cir. 1951); *Finance Security Co. v. Mexic*, 188 So. 657 (La. App. Or. Cir. 1939).

46. *General Motors Acceptance Corp. v. Stoma*, 241 So. 2d 816 (La. App. 3d Cir. 1970).

47. *Fred E. Cooper, Inc. v. Farr*, 165 So. 2d 605 (La. App. 2d Cir.), *writ refused*, 246 La. 838, 167 So. 2d 667 (1964).

48. *See Security Sales Co. v. Blackwell*, 167 La. 667, 120 So. 45 (1928).

rity agreement, Louisiana turns from the "significant relationship" and "appropriate relation" tests of the Restatement and the UCC and requires for application of Louisiana law that the contracting parties have either validly executed the security agreement in Louisiana or intended it to take effect in this state. Filing is not necessary for the application of Louisiana law.

In contests between creditors and third parties, Louisiana departs substantially from the requirements of states that have adopted the UCC. Rather than protect the rights of a foreign creditor for a four-month period until he reperfects his security agreement in accordance with the Louisiana Chattel Mortgage Act, Louisiana law will protect his interest indefinitely if he can show that he neither had knowledge of nor consented to the removal of the secured property to this state. Louisiana law will also protect a resident creditor under the same circumstances when secured property has been removed to another state regardless of the four-month reperfecting rule of the state to which the secured property has been removed. If the creditor has knowledge that the secured property is to be removed to Louisiana from the state where his interest was perfected, however, whether he is a Louisiana resident or not, Louisiana law will protect his rights against good faith third party claims only from the time of recordation in this state.

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