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The Uniform Commercial Code and the Texas Certificate of Title Act Are in Pari Materia

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But when a fledgling party tries in good faith to comply with an unclear statutory procedure, and a reasonable analogy supports inclusion of the party on the ballot, a compelling argument is made for a liberal reading of the statute to allow inclusion. The purpose of the statute could not be to require a slavish conformity to standards that are not even made clear. As noted above,⁴³ the purpose of election regulations is to prevent fraud and corrupt practices in the election processes. It is difficult to understand how this purpose would be thwarted if La Raza Unida were allowed to have its party designation on the ballot.

It is not improper to consider the effect of such a decision on other minority groups. Other courts have considered this in their decisions.⁴⁴ Minorities are already suspicious of "establishment" forms and procedures. Here a group has attempted to work within the system and has been struck down on a technicality. Their next attempt might be outside the system. Groups such as this petitioner should be encouraged, not discouraged, to do as they have done.⁴⁵

Paul T. Mann

The Uniform Commercial Code and the Texas Certificate of Title Act Are *In Pari Materia*

Defendants, automobile dealers, purchased four automobiles from Parker Chevrolet.¹ Plaintiff, Associates Discount, who held a perfected security interest and the manufacturer's certificate on each automobile, caused the automobiles to be seized and sold under writ of sequestration. The defendants counterclaimed, alleging that the plaintiff was guilty of malicious conversion. Plaintiff appealed appellate court judgments in favor of defendants' counterclaims, and upholding their motions for summary judgment.² *Held, affirmed in part and*

⁴³ See text accompanying note 14 *supra*.

⁴⁴ *Williams v. Rhodes*, 393 U.S. 23 (1968); *Bacon v. Holzman*, 264 F. Supp. 120 (E.D. Ill. 1967).

⁴⁵ The court in *Bacon v. Holzman*, 264 F. Supp. 120 (N.D. Ill. 1967), had before it another instance in which a minority party's nominating petition was denied on technical grounds. The court's language indicates an approach which to this writer is highly preferable to the approach taken by the Texas court. The opinion reads, *id.* at 133-34:

Seemingly it is the unstated . . . policy to compel petitioners generally to strictly comply with every statutory requirement. As a result and in apparent good faith, technical grounds are often utilized to disqualify nominating petitions. For the most part such action is statutorily on impeccable ground. . . . [T]he provisions . . . should be interpreted liberally Most certainly, those provisions should not be construed in a fashion which discourages candidates or causes them to become cynical of the process. . . . It is highly desirable in our judgment, that the Board make a conscious effort to refrain from disqualifying signatures for mere technical reasons. . . . Such an approach is destructive of the democratic process in the long run. We believe that every citizen should be encouraged to run for office, or to enter public service.

¹ Parker Chevrolet was a co-defendant who did not appeal.

² *Rattan Chevrolet, Inc. v. Associates Discount Corp.*, 443 S.W.2d 360 (Tex. Civ. App.—Dallas 1969), *error granted*; *Banner Chevrolet, Inc. v. Associates Discount Corp.*, 443 S.W.2d 370 (Tex. Civ. App.—Dallas 1969), *error granted*.

remanded in part: An automobile dealer who purchases in the ordinary course of business from the inventory of another dealer is entitled to the rights of a buyer in the ordinary course of business under the Texas Business and Commerce Code and those rights are not nullified by the Texas Certificate of Title Act; therefore, the case is remanded to determine if the defendants are in fact buyers in the ordinary course of business, and the extent of their damages. *Associates Discount Corp. v. Rattan Chevrolet, Inc.; Associates Discount Corp. v. Banner Chevrolet, Inc.*, 462 S.W.2d 546 (Tex. 1970).

I. THE TEXAS CERTIFICATE OF TITLE ACT AND THE COMMON LAW

Under the common law an owner who entrusted goods with a dealer in goods of the same type assumed the risk that the dealer would not sell them to a bona fide purchaser.³ A bona fide purchaser without knowledge of the circumstances would get good title.⁴ This rule is codified in section 2.403 of the Uniform Commercial Code.⁵

This long-acknowledged rule was overturned in Texas in *Motor Investment Co. v. City of Hamlin*.⁶ That case involved a foreclosure action by a finance company on a fire truck purchased by the city. The lien attached as security for a loan to the truck dealer for the purchase of the vehicle, and this was noted on the manufacturer's certificate and filed with the county clerk. The purchaser never saw the certificate, nor did it ever receive a certificate of title. The truck was hauled from Dallas to Hamlin on a convoy where it was demonstrated and sold. The court stated that this sale was not in the regular course of business and that the city was not a purchaser out of inventory. The court then held that section 45 of the Certificate of Title Act gave the mortgagee a superior claim to the good faith purchaser.⁷ That section states that "[e]xposure for sale of any motor vehicle by the owner thereof with the knowledge and consent of any mortgagee shall not affect the rights of any mortgagee as against all third parties."⁸ Despite the fact that an "owner" does not ordinarily include a dealer,⁹ the court held that "owner," as used in section 45, was not so restricted, but included all owners.¹⁰ The rule of this case is rather harsh and would appear to impose a burden on the alienation of motor vehicles.¹¹

The purpose of the Certificate of Title Act is to prevent theft, traffic in stolen automobiles, and the sale of encumbered motor vehicles without disclosure to the purchaser of any and all liens.¹² The procedure for new automobiles is not to issue the certificate of title until the automobile is sold to

³ R. BROWN, LAW OF PERSONAL PROPERTY § 71 (1936).

⁴ *Id.*

⁵ TEX. BUS. & COMM. CODE ANN. § 2.403 (1968).

⁶ 142 Tex. 486, 179 S.W.2d 278 (1944).

⁷ TEX. PEN. CODE ANN. art. 1436-1, § 45 (1953).

⁸ *Id.*

⁹ *Id.* § 4.

¹⁰ 142 Tex. at 492, 179 S.W.2d at 281.

¹¹ See, e.g., 2 G. GILMORE, SECURITY INTEREST IN PERSONAL PROPERTY § 26.9 (1965), where the author suggests that an ordinary good faith purchaser out of inventory should always take free of a certificate of title act.

¹² TEX. PEN. CODE ANN. art. 1436-1, § 1 (1953).

an ordinary customer.¹³ While the car is being transferred from manufacturer to dealer to another dealer, etc., the manufacturer's certificate, which is held by either the dealer or his financier, suffices as the certificate of title.¹⁴ Any security interest in the automobile must be shown on the manufacturer's certificate.¹⁵ While the strict interpretation given the Act by the court in *Motor Investment* certainly achieved the purpose of the Act, it was an abrupt, and perhaps unwarranted, change from the common law.

In two other jurisdictions the adoption of the Uniform Commercial Code has limited the effect of existing Certificate of Title Acts.¹⁶ The Code allows a buyer in the ordinary course of business to take title free of a perfected security interest even though he has knowledge of that interest.¹⁷ In Pennsylvania, for example, the courts have held that the Pennsylvania Motor Vehicle Code¹⁸ must be read in conjunction with the Uniform Commercial Code and cannot defeat the rights of a purchaser out of inventory.¹⁹ The Code does not expressly repeal the Certificate of Title Act, but it does repeal all acts and parts of acts that conflict with it.²⁰ Furthermore, since the Code was adopted after the Act, the Code, being the later in time, would prevail.²¹

II. THE UNIFORM COMMERCIAL CODE AS APPLIED TO THE SALE OF AUTOMOBILES

The sponsor's official text of the Uniform Commercial Code, which Texas has followed, requires that a purchase-money security interest in motor vehicles be filed.²² Most purchase-money security interests do not have to be filed, but the writers specifically included motor vehicles as an exception.²³ Some states have refused to grant special treatment to motor vehicles by either not specifically including them as an exception,²⁴ or by stating that where the Code and Certificate of Title Act conflict, the Title Act will prevail.²⁵ It is possible for both to exist without conflict as long as secured parties are not

¹³ *Id.* §§ 7, 28.

¹⁴ *Id.* §§ 22, 28.

¹⁵ *Id.* § 41.

¹⁶ *See, e.g.*, *Medico Leasing Co. v. Smith*, 457 P.2d 548 (Okla. 1969); *Sterling Acceptance Co. v. Grimes*, 194 Pa. Super. 503, 168 A.2d 600 (1961).

¹⁷ TEX. BUS. & COMM. CODE ANN. § 9.307(a) (1968). *See also id.* § 1.201(9), which states:

Buyer in the ordinary course of business means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. 'Buying' may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

Note that knowledge of the existence of a security interest differs from knowledge that the sale violates a security interest. *See O.M. Scott Credit Corp. v. Apex, Inc.*, 97 R.I. 442, 198 A.2d 673 (1964).

¹⁸ PA. STAT. ANN. tit. 75, § 201 (1960).

¹⁹ *Sterling Acceptance Co. v. Grimes*, 194 Pa. Super. 503, 168 A.2d 600 (1961).

²⁰ TEX. BUS. & COMM. CODE ANN. § 10.102 (1968).

²¹ *Cain v. State*, 20 Tex. 355 (1857).

²² TEX. BUS. & COMM. CODE ANN. § 9.302(d) (1968).

²³ *Id.*

²⁴ *See, e.g.*, MASS. GEN. LAWS ANN. ch. 106, § 9-302(1)(d) (1963).

²⁵ *See, e.g.*, WYO. STAT. ANN. § 34-9-203(2) (Cum. Supp. 1969).

given priority over buyers in the ordinary course of business.²⁶ Texas has shown an intent that motor vehicles held in inventory be included in the Code by specifically including a statement to that effect in a section exempting other security interests which are centrally filed under some other statute.²⁷ Nothing in the Code specifically shows an intent to repeal the Certificate of Title Act, however.

Both Pennsylvania and Oklahoma courts have applied the terms of the Code to motor vehicle sales.²⁸ In an Oklahoma case²⁹ the true owner of the automobile entrusted it with a dealer who sold it to another dealer. The court held that the purchasing dealer was a buyer in the ordinary course of business, and that it was immaterial that the true owner still held the certificate of title.³⁰ That case is certainly more in line with the common law than the Texas rule as stated in *Motor Investment*.

Several pre-Code cases had held that an automobile dealer was a bona fide purchaser and could take title free of any security interest of which he had no knowledge.³¹ Code section 9.307(a) permits a buyer in the ordinary course of business to take free of a security interest "even though the security interest is perfected and even though the buyer knows of its existence."³² Since the bona fide purchaser without knowledge seems to be the forerunner of the buyer in the ordinary course of business, the holdings under the Code are not really unique, nor should they be unexpected. However, these cases and the Code are in conflict with the Texas supreme court's interpretation of the Texas Certificate of Title Act in *Motor Investment*.

III. ASSOCIATES DISCOUNT CORP. v. RATTAN CHEVROLET, INC.; ASSOCIATES DISCOUNT CORP. v. BANNER CHEVROLET, INC.

The Supreme Court of Texas had not dealt with the clash between the Code and the Act until the present cases. *Associates Discount Corp. v. Rattan*

²⁶ See, e.g., Macey, *Motor Vehicle Title Certificates vs The UCC: The Two Faces of Automobile Dealer Financing*, 74 COM. L.J. 5 (1969), where the author states that most of the confusion arises over the question of whether the security interest must be filed under both the Act and the Code. In the author's opinion the Code should apply to motor vehicle sales. For further proof that the controversy exists, see C. BUNN, H. SNEED, R. SPEIDEL, & K. REDDEN, AN INTRODUCTION TO THE UNIFORM COMMERCIAL CODE § 4.14(B) (1964), where the authors state: "If you've wondered why we haven't as yet selected automobiles for an illustration you'll now discover why. They're so 'different.' 'Different' in that our neat law of security is upset by an overlay of motor vehicle registration and titling statutes"

²⁷ TEX. BUS. & COMM. CODE ANN. § 9.302(d) (1968).

²⁸ *Medico Leasing Co. v. Smith*, 457 P.2d 548 (Okla. 1969); *Associates Discount Corp. v. Old Freeport Bank*, 421 Pa. 609, 220 A.2d 621 (1966); *Taylor Motor Rental, Inc. v. Associates Discount Corp.*, 196 Pa. Super. 182, 173 A.2d 688 (1961); *Sterling Acceptance Co. v. Grimes*, 194 Pa. Super. 503, 168 A.2d 600 (1961); *Weisel v. McBride*, 191 Pa. Super. 411, 156 A.2d 613 (1959). See also *Howarth v. Universal C.I.T. Credit Corp.*, 203 F. Supp. 279 (W.D. Pa. 1962), where a federal court, using Pennsylvania law, applied the Code to a motor vehicle transaction.

²⁹ *Medico Leasing Co. v. Smith*, 457 P.2d 548 (Okla. 1969).

³⁰ *Id.* at 551.

³¹ *Colonial Fin. Co. v. DeBenigno*, 125 Conn. 626, 7 A.2d 841 (1939); *C. Jon Dev. Corp. v. Pand-Rorsche Corp.*, 69 Ill. App. 2d 469, 217 N.E.2d 416 (1966); *General Fin. Corp. v. Krause Motor Sales*, 302 Ill. App. 210, 23 N.E.2d 781 (1939); *P & E Fin. Co. v. Stonecipher*, 386 P.2d 765 (Okla. 1963); *Stemmons v. Universal C.I.T. Credit Corp.*, 301 P.2d 212 (Okla. 1956).

³² TEX. BUS. & COMM. CODE ANN. § 9.307(a) (1968).

*Chevrolet, Inc. and Associates Discount Corp. v. Banner Chevrolet, Inc.*³³ were consolidated by the supreme court because they involved substantially the same facts. The issue in both was whether “[p]urchase by an automobile dealer from another dealer of a new, unregistered motor vehicle which is subject to a security interest created by the seller is governed by provisions of Uniform Commercial Code that protect a buyer in ordinary course of business.”³⁴ In order to resolve this question the court first decided that section 45 of the Texas Certificate of Title Act³⁵ did not negate the applicable provision of the Code.³⁶

As previously stated, the Certificate of Title Act has been interpreted to give the holder of a security interest in motor vehicles a right to repossess the vehicle from a good faith purchaser.³⁷ This provision is, thus, in direct conflict with Code section 9.307(a). The court found that since the statutes deal with the same subject, they are *in pari materia*.³⁸ This, in effect, repeals the Act as far as it applies to transactions with a buyer in the ordinary course of business, but it is still effective in all other types of transactions. Since the Code does expressly repeal certain other acts by name, and without legislative guidelines to the contrary, this is the most logical conclusion the court could make.

Once the court decided that the Certificate of Title Act did not nullify the applicable Code provision, it had no trouble in determining that the Code applies to transactions between automobile dealers, and that a dealer was entitled to the status of a buyer in the ordinary course of business. The Pennsylvania cases cited earlier leave no doubt on this.³⁹ The court stated that since the definition of “goods” in section 2.105 was broad enough to include automobiles, it was clear that the Code applied to automobile sales.⁴⁰ This seems somewhat cavalier in view of the controversy elsewhere that filing requirements under a title act preclude application of the Code to motor vehicle sales.⁴¹ This decision would have been better justified by the specific inclusions of motor vehicle sales in article 9 of the Code. The court’s difficulty probably arises from the fact that it attempted to justify the decision both by section 2.403⁴² and section 9.307(a).⁴³ Since the claimant here was a secured party, the court should have relied solely on article 9, as it is specifically designed for transactions in secured goods. Still, this neither explains, nor justifies, the court’s failure to discuss the possibility that the sale of motor vehicles may be exempt from the Code.

The court remanded the case to determine whether the defendants were in fact buyers in the ordinary course of business. Since their uncontradicted

³³ 462 S.W.2d 546 (Tex. 1970).

³⁴ *Id.* at 546.

³⁵ TEX. PEN. CODE ANN. art. 1436-1, § 45 (1953).

³⁶ TEX. BUS. & COMM. CODE ANN. § 9.307(a) (1968).

³⁷ *Motor Inv. Co. v. City of Hamlin*, 142 Tex. 486, 179 S.W.2d 278 (1944).

³⁸ 462 S.W.2d at 549.

³⁹ Even though the decisions of that jurisdiction have little precedential value in Texas, in view of the fact that the Code is a uniform law and that this is a case of first impression in Texas, the court was justified in looking to another jurisdiction for the answer.

⁴⁰ 462 S.W.2d at 549.

⁴¹ See *Macey*, *supra* note 26.

⁴² The codification of the common-law rule of entrusted goods.

⁴³ This section places a buyer in the ordinary course of business in a preferred position.

affidavits stated that they were, this appears to be superfluous. The fact that this was originally a summary judgment may have influenced the disposition. Also, the court declined to say what effect the failure to transfer the manufacturer's certificate would have. However, since knowledge is not a factor, the notice that would be furnished by the certificates is immaterial. The only fact that seems to be missing is the measure of damages.

IV. CONCLUSION

This decision realigns Texas with the long-acknowledged common-law principle favoring a bona fide purchaser where goods are entrusted to a dealer in the same kind of goods. That principle is expressed in section 2.403 of the Code with respect to the sale of ordinary goods. Section 9.307(a) applies this rule to sales of secured goods. An interpretation of the Texas Certificate of Title Act giving the secured party the right to take the motor vehicle from the bona fide purchaser is contrary to this well-established precedent.

The real issue of the case is whether the secured party or the buyer in the ordinary course of business is going to be forced to take action against the seller. The Code specifically gives the secured party the right to any proceeds from the sale of the secured goods.⁴⁴ The plaintiff included the term "proceeds" in his financing statement; therefore, this right will last for the duration of the financing statement.⁴⁵ Since a financier is normally in a better position to determine the seller's solvency and credibility, it seems that he should bear the brunt of having to seek retribution from the seller. As noted by one of the Code commentators,⁴⁶ the lender knows that the borrower intends to sell the items, and trading would be discouraged if a buyer knew that his right was subject to a prior inventory lien. As a practical matter, the dealer in these situations is usually judgment proof, but that should not influence a determination between the lender and the purchaser. Another commentator has stated that all priorities involving security interests should be governed by the Code no matter what the local title act may say.⁴⁷ The Texas legislature has proposed that the provisions of the Certificate of Title Act in conflict with the Code be repealed.⁴⁸ In view of this decision such action no longer is necessary—except, perhaps, for emphasis.

This holding quite properly leaves the plaintiff solely to his judgment against the dealer, in the absence of a showing of bad faith or an unusual course of business. It is important to note that this decision will not affect transactions in stolen property. Nor does the Code advance traffic in stolen goods. This decision merely settles the priority between a secured party and a buyer in the ordinary course of business. The Certificate of Title Act will still control traffic in stolen vehicles—its most important function.

E. Russell Nunnally, Jr.

⁴⁴ TEX. BUS. & COMM. CODE ANN. § 9.306 (1968).

⁴⁵ *Id.*

⁴⁶ 2 W. HAWKLAND, A TRANSACTIONAL GUIDE TO THE UNIFORM COMMERCIAL CODE 708-11 (1964).

⁴⁷ 2 G. GILMORE, *supra* note 11, § 26.9.

⁴⁸ Ruud, *Amendment of the Texas Certificate of Title Act To Conform It to the Uniform Commercial Code*, 33 TEX. B.J. 968 (1970).