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the rates. An approach as taken by the Connecticut court in the *Curran* case, *supra*, certainly appears to be a sound answer to the problem.

Charles Ellsworth Heilmann

Security Transactions—Uniform Trust Receipts Act

P, a credit corporation, purchased a new automobile from the manufacturer. Pursuant to a trust receipt plan between a new car dealer and *P*, the vehicle was delivered to the dealer. Dealer executed a trust receipt on the vehicle naming *P* entruster and dealer trustee. Dealer at the same time executed a promissory note for the value of the vehicle and gave it to *P*. *P* had previously filed a statement of trust receipt financing with the Secretary of State of West Virginia in conformity with the Uniform Trust Receipts Act, W. VA. CODE ch. 38, art. 15, § 13 (Michie 1961). Dealer, without having discharged the obligation owing *P*, secured a loan from *D*, a bank. Dealer executed a promissory note to *D* and gave a chattel deed of trust on the vehicle. Dealer then made application for certificate of title to the vehicle, fraudulently purporting to be the owner, but requesting the lien in favor of *D* be shown on the title. The title was issued and sent to *D*. *P* repossessed the vehicle and instituted this suit for declaratory judgment. The trial court found for *D*. *Held*, reversed. *P* was the actual owner of the vehicle, not a lienor, and its interest in the vehicle was protected by filing under Uniform Trust Receipts Act. *Commercial Credit Corp. v. Citizens Nat'l Bank*, 133 S.E.2d 720 (W. Va. 1963).

In the principal case *D* took the position that it should prevail by reason of having its lien noted on the certificate of title as required by W. VA. CODE ch. 17A, art. 4A, § § 3 and 5 (Michie 1961). Filing under this provision is adequate notice to creditors and purchasers from the time of filing. No other recordation is required or of any effect. *D* contended that *P*, having failed to have its lien reflected on the certificate of title, should not be protected.

The court exposed a fatal flaw in *D*'s argument by declaring that under the Uniform Trust Receipts Act, W. VA. CODE ch. 38, art. 15 (Michie 1961) *P* was not a "lienor," but the "real and actual owner" of the vehicle. *Accord, Commercial Credit Co. v. Interstate Securities Co.*, 197 S.W.2d 1000 (Mo. 1946); *General Motors*

Acceptance Corp. v. Associates Discount Corp., 267 App. Div. 1032, 48 N.Y.S.2d 242 (1944). Having complied with the filing requirements *P* could be divested of ownership only by the sale of the vehicle to a buyer in the ordinary course of business or by the dealer paying his debt to *P*. As the owner, *P* would not fall within the provisions of W. VA. CODE ch. 17A, art. 4A § §3 & 5 (Michie 1961).

Although the enactment of Article 9, Secured Transactions, of the Uniform Commercial Code, W. VA. CODE ch. 46, art. 9 (Michie Supp. 1963) specifically repeals the Uniform Trust Receipts Act, the efficacy of the trust receipt method of financing is retained. Trust receipts are expressly recognized and accorded the same treatment as chattel deeds of trust, pledges, etc. W. VA. CODE ch. 46, art. 9, § 102 (Michie Supp. 1963). All such interests are designated "security interests"—interests in personal property or fixtures intended to secure payment or performance of an obligation. W. VA. CODE ch. 46, art. 1, § 201 (Michie Supp. 1963).

The Uniform Code provides for standardized filing procedures. The security interests created by a trust receipt and a chattel deed of trust would be subject to the filing provisions of the Uniform Code in order to be protected. This is true even though in the case of a trust receipt the entruster is the owner of the property to which the security interest attaches. W. VA. CODE ch. 46, art. 9, § 202 (Michie Supp. 1963).

The filing provisions of the Uniform Code are, however, inapplicable in those instances where the security interest is in property subject to a state statute requiring indication of security interests on a certificate of title. Protection of such interests is effected only by complying with the title certificate statute. W. VA. CODE ch. 46, art. 9, § 302 (Michie Supp. 1963). In Pennsylvania it has been held that once a title has been issued a security interest in the vehicle is protected by notation on the title, notwithstanding the Uniform Code. *Union Nat. Bank & Trust Co. v. Geyer Auction*, 18 Pa. D. & C.2d 98 (1958); *Girard Trust Bank v. Lepley Ford*, 13 Pa. D. & C.2d 119 (1956).

At first glance W. VA. CODE ch. 17A, art. 4A (Michie 1961) may appear to negate the effect of the Uniform Code in relation to automobiles. However, closer examination reveals that it does not apply, at least within the confines of this discussion, i.e., trust

receipts. This statute does not require the dealer to secure a certificate of title. It merely says, that once the title is obtained, liens and encumbrances must be noted thereon to be protected. It also provides that application for certificate of the title shall be made only by the owner of the vehicle. W. VA. CODE ch. 17A, art. 4A, § 1 (Michie 1961). In the principal case the court declared that the entruster, not the dealer, was the owner of the vehicle. It is not readily apparent from the court's syllabus whether *P* derived its ownership from compliance with the Uniform Trust Receipts Act, W. VA. CODE ch. 38, art. 15 (Michie 1961) or whether compliance merely protected *P*'s ownership, which existed independent of the Act. The latter view is more likely. This view is supported by the court's statement that ". . . if the Uniform Trust Receipts Act has any meaning . . . an entruster's ownership is protected when he complies . . ." As the dealer is not the owner of vehicles financed by trust receipts, these vehicles would remain untitled until sold to a consumer.

Thus there will be an interval from the time the dealer takes possession of the vehicle until it is sold to the ultimate consumer—an interval when the vehicle is untitled—when W. VA. CODE ch. 17A, art. 4A (Michie 1961) would not operate. That a security interest created and existing during this interval could only be protected by filing under the Uniform Code is implied in *Howarth v. Universal C.I.T. Credit Corp.*, 203 F.Supp. 279 (W.D. Pa. 1962).

A security interest perfected by filing under the Uniform Code is afforded less extensive protection than if noted on a certificate of title. The former may be defeated by a buyer in the ordinary course of business—even if the buyer knows of the security interest. W. VA. CODE ch. 46, art. 9, § 307 (Michie Supp. 1963). The latter is good against all the world.

It appears that the decision in the principal case will have substantially the same effect on trust receipt financing under the Uniform Code as before. It seems unlikely that the Uniform Code will, in and of itself, do much to make trust receipt financing less attractive from either the entruster's or the trustee's point of view.

Richard Marion Alker