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The Artisan Lienholder vs. the Perfected Security Interest

Donald J. Elardo*

PROBABLY NO LIEN is a greater favorite of the law than the lien of an artisan who contributes his labor to create, repair, or enhance the value of property.¹ His is a position long favored under the common law; and such protection is currently reflected in either state statutes or controlling case decisions.

An artisan who furnishes labor and materials for the repair of chattel property has a valid common law lien upon such property for the reasonable value of his labor and materials while he retains possession of the property.² A common law lien has been defined as a right extended to a person to retain that which is in his possession belonging to another, until the demand or charge of the person in possession is paid or satisfied.³

Pre-Code Decisions and Rules

Despite its usually favored position, the artisan's lien was long held subordinate to the perfected interest of a chattel mortgagee. The leading Ohio case, *Metropolitan Securities Co. v. Orlow*, held the chattel mortgagee in a foreclosure proceeding prior to a mechanic in possession of an automobile on which the latter had a valid artisan's lien.⁴ However, three dissenters to this holding laid down the foundation for that reasoning which would later lead to UCC 9-310.⁵

Prior to 1912, codified rights of lienholders were non-existent under Ohio law, and any legislative act attempting to provide such rights in lienholders would have been struck down as being unconstitutional.⁶ Only the common law rule was available to the aggrieved artisan.⁷ In 1912 a constitutional amendment was adopted permitting the passage

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¹ *National Bond and Investment Co. v. American Auto Hotel Co.*, 24 Ohio N.P. (n.s.) 584 (C. P. Hamilton County 1924).

² *Metropolitan Securities Co. v. Orlow*, 107 Ohio St. 583, 140 N.E. 306 (1923).

³ *Black's Law Dictionary* 346 (4th ed. 1951).

⁴ *Metropolitan Securities v. Orlow*, *supra* note 2.

⁵ *Id.*, at 595-611.

The Uniform Commercial Code is incorporated into Chapters 1301 to 1309 inclusive, of the Ohio Revised Code. § 9-310 of the Uniform Commercial Code and § 1309.29 of the Ohio Revised Code are the same. Reference to one is therefore reference to the other. See note 13 *infra*.

⁶ *Palmer and Crawford v. Tingle*, 55 Ohio St. 423, 45 N.E. 313 (1896).

⁷ *Metropolitan Securities v. Orlow*, *supra* note 2.

of laws to secure for artisan lienholders "their just dues" in furnishing labor and materials to another's property.⁸

The majority in *Metropolitan* held that the amendment was applicable only to real property, and that since no statutes had been enacted to effectuate the amendment, it was inoperative on the case at bar since the amendment was not self-executing.⁹ The proper recording of the chattel mortgage by the mortgagee served as constructive notice to all who would deal with the mortgagor that a prior lien existed; and by no interpretation of a covenant within the mortgage, that the mortgagor would maintain the automobile in "first class condition," would the majority accept the "agency theory" that the mortgagor, by a contract for repairs, could subordinate the lien of the mortgagee.

The language of Chief Justice Marshall in the *Metropolitan* opinion succinctly sets down the rationale of the majority:

The underlying principles (*sic*) . . . is that the lien which is prior in time is prior in right, and that the record of the mortgage is notice to the whole world, including the repair man. It is apparent that a mortgagee without notice of the intended repairs has no opportunity to protect himself, and that he cannot be the judge of whether repairs are needed, or to what extent such repairs would enhance the value of the property, or whether the contract for repairs is a reasonable one; while, on the other hand, the repair man has every opportunity to fully protect himself before either expending labor or using materials in repairs. There is no obligation on his part to do anything, or to incur a penny of expense, until he has assurance that the property is free from incumbrance. If the person in possession of the machine, who requests that repairs be made, cannot give such assurance, the artisan is not bound to proceed.¹⁰

The dissenters argued that the constitutional amendment carried the force of a statute and was thus self-executing. Moreover, they argued, the amendment was stated in general terminology and the word "property" could not be construed so as to preclude personal property. Indeed, personal property must have been included since a greater protection of the artisan is required in his dealings therewith because of the perishable and transitory nature of both the property and its apparent owner.

The majority view was established as precedent and such was destined to become deep-rooted. A chattel mortgagee who properly recorded his interest in collateral was prior to any artisan who might later treat the property.

⁸ Ohio Const., art. II, § 33.

"Laws may be passed to secure to mechanics, artisans, laborers, sub-contractors and material men, their just dues by direct lien upon the property, upon which they have bestowed labor or for which they have furnished material. No other provision of the constitution shall impair or limit this power."

⁹ Ohio Rev. Code, §§ 1311.01 to 1311.68 inclusive, were later enacted to implement the intent obvious in the above amendment.

¹⁰ *Metropolitan Securities v. Orlow*, *supra* note 2, at 594.

In *National Bond and Investment Co. v. American Auto Hotel Co.*, a similar result was obtained.¹¹ With *Metropolitan* controlling, a chattel mortgagee who had properly recorded his interest was deemed to take precedence over the owner of a public garage with whom the police had placed a stolen automobile found on the street.

In *Auto Top & Trimming Co. v. American Finance Co.*, the *Metropolitan* rule was again applied with a similar result.¹² A chattel mortgagee was held to have a right of action in replevin to regain an automobile which was in the possession of an artisan lienholder. The artisan's common law lien for the reasonable value of his services was not extinguished by his forced loss of possession; but he was relegated to a status of secondary priority—to take whatever, if anything, remained after the chattel mortgagee had satisfied his interest.

Thus pre-Code Ohio law clearly placed the artisan lienholder in a position inferior to the chattel mortgagee who had recorded his interest and had thereby served constructive notice on all subsequent claimants who would treat the collateral.

The Uniform Commercial Code

At first glance, UCC 9-310 would seem to reverse the *Metropolitan* rule in favor of the artisan lienholder.¹³ But the lawyer who would rely on the generality of this section without further investigation may well encounter some upsetting experiences.

It has been broadly stated that so long as the lienholder retains possession of the goods on which he has a claim, UCC 9-310 overrides any pre-Code decisional law to the contrary.¹⁴ How, then, might the *Metropolitan* case be decided under UCC 9-310? Would the artisan lienholder be favored over the perfected security interest of a prior creditor? The answer is "yes," if the sweeping generality above is accepted as the true state of the law; the answer is "no," if UCC 9-310 is examined in light of its true implication.

Where UCC 9-310 Will Not Affect Pre-Code Law

In *Ohio Finance Co. v. Middleton*, an artisan's common law lien on an automobile in his possession was held superior to the properly recorded prior lien of a chattel mortgagee.¹⁵ The court held that, since

¹¹ *National Bond v. American Auto Hotel*, *supra* note 1.

¹² 124 Ohio St. 169, 177 N.E. 217 (1931).

¹³ Uniform Commercial Code § 9-310; Ohio Rev. Code § 1309.29.

"When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise."

¹⁴ Hensen, *Priorities Under the UCC*, 41 *Notre Dame Law*. 425, 454 (1965).

¹⁵ 14 Ohio App. 43 (2d Dist. Ct. App. 1921).

the automobile was in the lawful possession of the mortgagor, and since it was intended, as between mortgagor and mortgagee, that the former would retain and use the automobile for a long period of time, there had arisen the latter's implied consent to the mortgagor's undertaking of repairs on behalf of the mortgagee's collateral interest. In effect, the mortgagor, having implied authority to preserve the usable condition of the automobile and enhance its value, was the "agent" of the mortgagee for the purpose of making repairs.

Thus liens securing claims arising from work intended to preserve or enhance the value of collateral, subject to a security interest, have priority over an earlier security interest even though perfected.¹⁶ This is true even though the artisan's services or materials are furnished without the knowledge or approval of the secured party, unless the declared policy of the legislature provides otherwise.¹⁷ The above rule, having arisen under pre-Code law, would be the same under UCC 9-310.

Wherein lies the distinction between the factually analogous *Metropolitan* and *Ohio Finance* cases? It lies, however fine it may be, in the difference between the mortgagee's merely entrusting the chattel to the mortgagor in which case the claim of the mortgagee is paramount; and the mortgagee's implied consent that his "agent," the mortgagor, undertake repairs necessary to preserve the chattel in usable condition, in which case the artisan lienholder's claim supersedes the priority of the mortgagee's claim.

Where UCC 9-310 Will Affect Pre-Code Law

In *First National Bank of Marysville v. Bahan*, the court was faced with the first instance of a clash between pre-Code decisional rules and UCC 9-310.¹⁸ A mechanic who twice rendered services on a mortgagor's tractor kept possession of it on the second occasion when payment was not forthcoming. To regain the chattel, the mortgagee bank then sued, as parties defendant, the mechanic and a second mortgagee bank. The mechanic, relying on UCC 9-310, maintained that his right to possession evidenced a higher priority than that of the mortgagee banks. The court was able to avoid the application of UCC 9-310 by basing its decision on a procedural tenet. The chattel mortgages had been executed and recorded prior to the adoption of the Uniform Commercial Code in Ohio (July 1, 1962); while the services rendered by the mechanic had taken place after that time. To give priority to the mechanic would have raised a constitutional question, both national and state in scope, involving the impairment of contractual obligations by a legislative

¹⁶ Uniform Commercial Code § 9-310, Comment 1.

¹⁷ O. Spivack, *Secured Transactions*, 115 (3rd ed. 1963).

¹⁸ 26 Ohio Op. 2d 429, 198 N.E.2d 272 (C. P. Champaign County 1964).

enactment.¹⁹ The court was able to side-step both the constitutional issue and the issue involving interpretation and application of UCC 9-310 by utilizing another section of the Ohio Revised Code, Section 1301.15.²⁰

In effect, pre-Code law was deemed controlling even though the Uniform Commercial Code had been adopted prior to the appearance of this case before the bar. It is interesting to note the court's clarity in reiterating the *Metropolitan* rule, long held as the controlling principle of law in matters of this nature.²¹ It is perhaps more interesting to note the court's reluctance to speculate as to the essence of UCC 9-310 in its substantive sense.²²

Although the court in the above case avoided the basic question, UCC 9-310 does change the former rule relating to chattel mortgages under which filing constituted notice to all, including artisans, repairmen and mechanics.²³ UCC 9-310 also changes the pre-Code rule regarding conditional sales contracts and bailment leases which held that where the seller or lessor retained "title" to the "collateral," it was beyond the power of the buyer or lessee to confer priority upon an artisan by ordering repairs or improvements to collateral without the consent of the "owner."²⁴

It is also apparent that the old pre-Code theories and rules regarding the mortgagor's "agency" or lack of it, however treated by the courts formerly, have been superseded by the rule of UCC 9-310 and are of no bearing today. It would appear that a debtor now has the ability, through the incurrance of liabilities on behalf of the secured collateral, to elevate an artisan lienholder to a favored position.

¹⁹ U.S. Const., art. I, § 10; Ohio Const., art. II, § 28.

The test employed in the *First National Bank* case to determine contractual impairment was whether the legislative enactment altered the obligation in favor of one party against another, either by enlarging or reducing the obligation?

Clearly, had the court accepted the lienholder's position based on UCC 9-310, the value in the chattel mortgages held by the banks would have been diminished by the vaulting of the mechanic into a favored position.

²⁰ Ohio Rev. Code, § 1301.15 (1963).

"Transactions validly entered into before July 1, 1962, and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced. . . . Instruments . . . filed prior to July 1, 1962, in accordance with the law at the time of such filings shall be deemed to be filed under 1301, 1302, 1304, 1305, 1306, 1307, 1308, and 1309 of the Revised Code as of the original date in filing and may be continued or terminated as provided in such chapters."

There is no counterpart to this section in the Uniform Commercial Code since the matter of effectuating orderly change from pre-Code law is left to the adopting states.

²¹ *First National Bank v. Bahan*, *supra* note 18 at p. 430.

²² The court, however, does imply that the application of UCC 9-310 would have led to a result in favor of the mechanic. See *First National Bank v. Bahan*, *supra* note 18, at 431.

²³ 48 Ohio Jur. 2d (Part 2), Secured Transactions § 219 (1966).

²⁴ Spivack, *op. cit. supra* note 17, at 116.

The "Unless Clause"

The last statement of the previous section is obviously clothed in indefinite, non-committal language. This is intended and with good reason. As intimated above, the lawyer must examine UCC 9-310 carefully and necessarily involve himself beyond its terminology. The usual clarity and conciseness of the Uniform Commercial Code, in general, must not be permitted to lull him into complacency regarding the multifaceted implications of that which is couched in every phrase. It is especially the last clause of UCC 9-310 that may ensnare the unwary lawyer should he be cursory or superficial in his research.

UCC 9-310 unequivocally asserts the preference of an artisan lienholder over a perfected security interest "unless the lien is statutory and the statute expressly provides otherwise."²⁵ That is, if the artisan's lien is created or codified by statute and such expressly subordinates the artisan's lien to a prior security interest, UCC 9-310 does not repeal that statutory provision.²⁶

The basic questions which the lawyer must recognize and resolve in dealing with UCC 9-310 include the following:

1. Is the lien common law in nature or has it been codified by statute?
2. If the latter, what provisions are encompassed within the statute regarding prior security interests?
3. Is the prior security interest statutorily defined?
4. If so, what provisions within it relate to artisan's or repairmen's liens?
 - a. Is the statute silent regarding these, or
 - b. is there express provision for the priority of the security interest?

The lawyer must necessarily examine all these questions in light of both the factual circumstances presented by a problem and the applicable common law or statutory rules before he can safely undertake a course of action.

UCC 9-310 Construed

In *Commonwealth Loan Co. v. Downtown Lincoln-Mercury Co.*, the most significant decision to date was rendered regarding the import of UCC 9-310.²⁷ Not only was this section applied to the case at bar, but it was necessarily construed by the court as to its relevance in Ohio.

²⁵ Ohio Rev. Code, *supra* note 13.

²⁶ Spivack, *op. cit. supra* note 17, at 116.

²⁷ 4 Ohio App.2d 4 (1st Dist. Ct. App. 1964), *a'ff'd sub nom.* *Commonwealth Loan Co. v. Downtown Lincoln Mercury Co.*, 2 Ohio St. 2d 169, 207 N.E.2d 545 (1965).

For an examination of the construction of UCC 9-310 and the rules arising therefrom, the decision of the appellate court must be analyzed.

Its construction and the holding that followed will doubtless be controlling as to all similar problems arising in the future.

Recognizing the latent ambiguity of UCC 9-310, the court sought "to breathe sense and meaning into it; to give effect to all its terms and provisions; and to render it compatible with other and related enactments whenever and wherever possible."²⁸ The issue in *Commonwealth* involved the right to possession of chattel property—an automobile. Was such right in the secured party (loan company), or in the holder of an artisan's lien (automobile agency)? Applying UCC 9-310 as construed, the court held for the loan company because of the existence of the Motor Vehicle Certificate of Title Act.²⁹ The latter, clearly the most significant statute falling within the "unless clause" of UCC 9-310, expressly provides that a security interest denoted on the certificate of title is superior to the claim of any subsequent party attaining an interest in the collateral.³⁰

To further illustrate the complexities confronting the lawyer in dealing with UCC 9-310 and, for example, the Motor Vehicle Title Act, it would be enlightening to examine two other related Ohio statutes, both of which are relevant in determining the relative priorities as between the contending parties. First, the old common law artisan's lien has been made statutory in Ohio.³¹ In deference to the Motor Vehicle Title Act, this statutory lien expressly excludes motor vehicles from its operation. Thus, as applied to automobiles, the artisan's lien is still deemed a common law lien and, because of the Title Act, will not be

²⁸ *Id.*, at 6.

The word "lien" appears twice in § 1309.29 (*supra* note 13). Its first use refers to the claim of the artisan or mechanic in possession of the collateral; whereas its second appearance refers to the claim of the secured interest.

In the simplest terminology, the rule may be more easily understood: "When a person . . . furnishes service or materials with respect to goods subject to a security interest, a lien upon the goods . . . given by statute or rule of law takes priority over the security interest unless the *security interest* is statutory and the statute provides otherwise."

²⁹ Ohio Rev. Code, § 4505.13 (1961).

"Any security agreement covering a security interest in a motor vehicle, if such instrument is accompanied by delivery of . . . a certificate of title, if a notation of such instrument has been made by the clerk of the court of common pleas on the face of such certificate, shall be valid as against the creditors of the debtor, whether armed with process or not, and against subsequent purchasers, secured parties, and other lienholders or claimants."

³⁰ Thus, it is settled in Ohio that the Motor Vehicle Title Act subordinates UCC 9-310. *But see* Security Interests in Motor Vehicles under the UCC: A Chassis for Certificate of Title Legislation, 70 Yale L. J. 995, 1014 (1961), where it is argued that an inquiry into the commercial significance of mechanics liens seems to dictate that UCC 9-310 be construed as repealing the provisions of any title act subordinating mechanics liens since such subordination tends to discourage necessary repairs to the automobile—an instrument vital to modern society.

³¹ Ohio Rev. Code, § 1333.41 (1963).

"Every bailee for hire performing work or furnishing material on personal property other than on motor vehicles . . . at the request of the owner shall have a lien upon such property for the charge for such work and materials furnished by such bailee for hire. . . ."

favored.³² Secondly, the Ohio Revised Code makes it unnecessary to file in order to perfect a security interest in automobiles.³³

The statutory interplay is obviously significant thereby causing the lawyer to extend himself far beyond the boundaries of UCC 9-310 itself.

Other Considerations

Where a statute is silent and does not expressly favor a secured interest over other claimants, the artisan's lien, by virtue of UCC 9-310, takes priority even though under pre-Code law the statute had been construed by decision to make his lien subordinate.³⁴

Any statute, however, may expressly deny the priority of the artisan lienholder furnished him by UCC 9-310.³⁵ Thus UCC 9-310 which seemingly favors artisans over prior secured interests does so only where other statutes do not expressly provide otherwise. It therefore follows that the lawyer will need to look throughout the Ohio Revised Code to be assured that he stands on firm footing when interpreting UCC 9-310 within the context of his particular problem.

Conclusion

Just how great a change has been effected through the replacement of Ohio's pre-Code statutes and decisional rules of law by UCC 9-310? Certainly not as much as one would estimate after a cursory examination of UCC 9-310. For example, the Motor Vehicle Title Act has had the effect of carrying into substantive statutory law the judicial rule previously laid down in the *Metropolitan* and subsequent related cases.³⁶ Today's artisan, in this instance, would fare no better than he did forty-five years ago. Indeed, the *Auto Top* case and the *Commonwealth* case, analogous in factual circumstance, have yielded the same decisional result although the two were separated by some thirty-seven years and were subject to different "codes" of law.

There have been, however, significant changes in favor of the artisan as has been indicated above. The relationship as to priorities in collateral between the artisan lienholder and the secured party have generally been reversed. Public policy has finally dictated greater protection for the artisan whose maintenance of, and enhancements to, collateral unquestionably contribute much to the continuing growth of our complex economy.

³² *Commonwealth Loan Co. v. Downtown Lincoln Mercury Co.*, *supra* note 27.

³³ Ohio Rev. Code, § 1309.21 (C, 2).

"The filing provisions of Chapter 1309.01 to 1309.50 inclusive, of the Ohio Revised Code do not apply to a security interest in property subject to a statute of this state . . . which . . . requires indication on a certificate of title of such security interests in such property. . . ."

³⁴ Uniform Commercial Code, § 9-310, Comment 2.

³⁵ *Commonwealth Loan case*, *supra* note 27.

³⁶ *Ibid.*