UNIFORM COMMERCIAL CODE

ROHWEDER V. ABERDEEN PRODUCTION CREDIT ASSOCIATION: ATTACHMENT OF SECURITY INTERESTS AND THE BAILMENT/ CONDITIONAL SALE PROBLEM

In *Rohweder v. Aberdeen Production Credit Association*,[1] a panel of the Eighth Circuit made it clear that the property interest of a genuine bailee is insufficient to support the attachment of a security interest asserted by a creditor of the bailee.[2] Specifically, the "mere possession of the collateral or an unexercised option to purchase does not give the debtor sufficient right for a security interest to attach."[3] Therefore, the threshhold inquiry is whether the arrangement is a true bailment or whether it is actually a disguised sale or security arrangement, in which case the bailee's creditor's security interest may attach.[4]

Rohweder brought this action for conversion of his cattle against the Aberdeen Production Credit Association ("PCA").[5] In 1981, Rohweder delivered cattle to Bellman under what Rohweder termed a "share agreement" whereby Rohweder retained ownership of the cattle while Bellman bred the cows with his bulls.[6] The parties would share the calves on a percentage basis.[7] In addition, Bellman had an option to purchase the cows for 625 dollars each.[8]

Prior to this arrangement, Bellman had procured loans from the PCA.[9] To secure the loans, Bellman executed security agreements in his livestock in favor of the PCA.[10] In December of 1981, Bellman filed for Bankruptcy, but assured Rohweder that his cattle were not included in the bankruptcy proceeding.[11] An officer of the PCA prevented Rohweder from removing his cattle but gave his assurances that the cattle would not be moved without notice.[12] However, a few hours later, the officer ordered some of the cattle to be slaughtered.[13]

At trial, the district court determined that the PCA's security interest was properly perfected and covered after-acquired livestock.[14]

1. 765 F.2d 109 (8th Cir. 1985).
2. *Id.* at 112.
3. *Id.*
4. *Id.* at 113.
5. *Id.* at 111.
6. *Id.* at 110-11.
7. *Id.* at 110.
8. *Id.* at 111.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*

Rohweder argued that Bellman's intent had been to create a bailment and was accordingly sufficient to support the attachment of a security interest.[15] The district court granted the PCA's motion for a directed verdict, ruling that Bellman's significant control over the cattle and his option to purchase were sufficient rights for the security agreement to attach.[16]

The Eighth Circuit, in an opinion by Judge Bright, characterized the case as turning on the issue of whether the arrangement between Rohweder and Bellman amounted to a "true" bailment or a conditional sale.[17] Judge Bright first distinguished the two cases relied upon by the district court as situations in which a true bailment did not exist.[18] Judge Bright then noted that "mere possession of the collateral or an unexercised option to purchase" is an insufficient right to support the attachment of a security interest, and "the security interest of a bailor's creditor does not attach to goods which are the subject of a bailment."[19] Therefore, the district court had erred by failing to classify the arrangement between the parties before deciding the rights of the parties.[20]

Judge Bright then refuted the PCA's argument that Rohweder was estopped from denying the security interest.[21] Judge Bright held that the district court had failed to address South Dakota state law on this issue and that the PCA had not shown that it had actually relied upon the words or conduct of Rohweder.[22] Therefore, since the district court had not considered whether a bailment existed and had not properly addressed the estoppel issue, the directed verdict was reversed and the cause remanded for further proceedings.[23] Specifically, the Eighth Circuit concluded that if Rohweder had intended a conditional sale, then Rohweder would have held only a security interest and the attachment by PCA would have been effective.[24] If,

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15. *Id.*

16. *Id.*

17. *Id.* at 113.

18. *Id.* at 112. The district court relied upon Kinetics Technology Int'l Corp. v. Fourth Nat'l Bank, 705 F.2d 396 (10th Cir. 1983) and Morton Booth Co. v. Tiara Furniture, Inc., 564 P.2d 210 (Okla. 1977). Judge Bright stated that each case involved a debtor who had contracted to manufacture goods out of raw materials supplied by the purchaser. *Rohweder*, 765 F.2d at 112. In each case, the court allowed the debtor's creditors' security interests to attach to the raw materials. *Id.* Judge Bright noted that these cases involved either a sale or a security arrangement, and not a true bailment. *Id.*

19. *Rohweder*, 765 F.2d at 112.

20. *See id.* at 113.

21. *Id.* at 112-13.

22. *Id.*

23. *See id.*

24. *Id.* at 113.

however, Rohweder had intended only to create a bailment, then PCA's security interest could not have attached to the cattle.[25]

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25. *Id.*