

1988

John Preston Creer and Frank Moyle Creer v. Valley Bank and Trust Company : Brief of Appellant

Utah Supreme Court

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STATE COURT

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IN THE SUPREME COURT OF THE STATE OF UTAH

JOHN PRESTON CREER and)	
FRANK MOYLE CREER,)	
)	BRIEF OF APPELLANTS,
Plaintiffs-Respondents,)	VALLEY BANK AND TRUST
)	COMPANY and VALLEY
v.)	CENTRAL BANK
)	
VALLEY BANK AND TRUST)	Case No. 88-0179
COMPANY, a Utah corporation,)	Priority No. 14B
VALLEY CENTRAL BANK, a)	
Utah corporation, and)	
MARCUS TAYLOR, Receiver,)	
)	
Defendants-Appellants.)	

APPEAL FROM THE JUDGMENT OF THE
SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY
THE HONORABLE DON V. TIBBS, DISTRICT COURT JUDGE

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JURISDICTION

The Utah Supreme Court has jurisdiction over this appeal pursuant to Article VIII, §3 of the Utah Constitution, and Utah Code Ann. §78-2-2 (1953 as amended), and Rule 3(a), Rules of the Utah Supreme Court.

NATURE OF PROCEEDINGS

This is an appeal from a final Judgment dated April 6, 1988, and entered April 11, 1988, by the Honorable Don V. Tibbs, Sixth Judicial District Court of Sevier County, State of Utah.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Did the district court err in concluding as a matter of law that Valley's prior security interest in the cement mixer was junior and inferior to Plaintiffs' claim of ownership to the cement mixer?

STATEMENT OF THE CASE

1. Nature of the Case

Plaintiffs instituted this action against Defendants for a determination that Plaintiffs' claim to a 1978 International cement mixer, ten yard, Cummins 230, serial no. CF57HHA23465 (the "cement mixer"), prevails over Defendants' interests in the cement mixer.

2. Course of Proceedings

On October 27, 1987, Plaintiff's filed a Verified Complaint for Declaratory Relief in the Sixth Judicial District Court in and for Sevier County, State of Utah, civil no. 10140, requesting a determination that Plaintiffs own and that Defendants have no interest in the cement mixer. (R. 1) Valley Bank and Trust Company and Valley Central Bank (collectively referred to as "Valley") filed an Answer and Counterclaim. The Counterclaim alleged that Valley is entitled to its reasonable attorney's fees pursuant to §78-27-56, Utah Code Ann. (1953 as amended), for Plaintiffs' failure to bring their action in good faith. (R. 42) Plaintiffs replied to Valleys' Counterclaim (R. 54) and the parties began discovery proceedings.

On March 3, 1988, Valley filed a Motion for Summary Judgment which was followed by a Cross-Motion for Summary Judgment filed by Plaintiffs on March 9, 1988. (R. 163, 177) After hearing both parties' Motions for Summary Judgment, the Honorable Don V. Tibbs granted Plaintiffs' motion and denied Valley's motion. (R. 197) On April 6, 1988, the court entered Findings of Fact and Conclusions of Law, concluding that F. Creer has title to, and Valley has no interest in, the cement mixer. (R. 203; Addendum No. 1)

Judgment against Valley was entered by the court on April 6, 1988 (R. 208) and on May 2, 1988, Valley filed a Notice of Appeal to the Utah Supreme Court. (R. 212) Both parties subsequently moved for summary disposition of the case, which motions were denied by the court and the appeal was reserved for plenary review.

3. Statement of Facts

On April 22, 1982, Lays Rock Products, Inc. ("Lays"), executed and delivered to Valley a promissory note ("Note") in the principal sum of \$250,000. (R. 204) As security for the Note, Lays executed and delivered to Valley a security agreement granting Valley a security interest in certain personal property, including the cement mixer, which is the subject of this action. (R. 204) Lays was the owner and had possession of the cement mixer at the time the security agreement was executed. (R. 8) Valley's security interest attached to the cement mixer, but was not perfected. (R. 167, 204) Lays was later merged into L.A. Young Sons Construction Company ("L.A. Young"). (R. 167, 204)

Between approximately June, 1986, and March, 1987, Plaintiff, John P. Creer ("J.P. Creer") performed legal services for L.A. Young. (R. 204) L.A. Young, however,

failed to compensate J.P. Creer, for his legal services and in March, 1987, J.P. Creer informed L.A. Young that he would not continue legal representation unless L.A. Young paid J.P. Creer's legal bill. (R. 205) As a result, L.A. Young, through its president, Alan G. Young, executed and delivered to J.P. Creer a certificate of title to the cement mixer. (R. 205) J.P. Creer later transferred title to the cement mixer to his son, Plaintiff, Frank Creer ("F. Creer"). (R. 205) There is nothing in the record to show that F. Creer gave any consideration to J.P. Creer for the transfer of the title. J.P. Creer transferred the vehicle to his son, F. Creer, because J.P. Creer did not want an uninsured vehicle registered in his name. (R. 134)

At the time he received title to the cement mixer, J.P. Creer intended and understood that it was being transferred in partial satisfaction of L.A. Young's debt to J.P. Creer for previously rendered legal services and that it was not intended as security for that debt. (R. 205) J.P. Creer never received delivery or had possession of the cement mixer. (R. 205) F. Creer briefly obtained possession of the cement mixer for a few minutes in September, 1987, without the consent and against the will of the debtor's president, Alan Young. (R. 181-182, 190-191) Creer relinquished posses-

sion of the cement mixer after being told by Alan Young that if F. Creer took the vehicle there would be a serious altercation. (R. 181-182, 190-191) The cement mixer remained in the possession of L.A. Young until Marcus Taylor, as receiver, took possession of it. (R. 181, 191) Neither J.P. Creer nor F. Creer asserts a security interest in the cement mixer, but rather base their claim to the cement mixer on an ownership interest evidenced by the certificate of title. (R. 205)

SUMMARY OF ARGUMENTS

ARGUMENT I

Summary judgment is proper only where there is no genuine issue of material fact and where the moving party is entitled to judgment as a matter of law. In reviewing a lower court's conclusions of law, the reviewing court examines the conclusions of law for correctness and is not required to accord any deference to those conclusions. Because the lower court's conclusions of law are incorrect, Plaintiffs were not entitled to judgment as a matter of law and the judgment against Valley should be reversed.

ARGUMENT II, POINT A

Section 70A-9-203, Utah Code Ann. (1953 as amended), of the Utah Uniform Commercial Code provides that a security interest is enforceable against the debtor and third parties

when 1) there is a written security agreement; 2) the secured party has given value for the security interest; and 3) the debtor has rights in the collateral. Because Valley has complied with all three requirements, Valley's security interest in the cement mixer attached, rendering Valley's security interest in the cement mixer valid and enforceable.

ARGUMENT II, POINT B

Section 70A-9-301, Utah Code Ann. (1953 as amended), of the Utah Uniform Commercial Code is the sole provision which addresses and resolves the relative priorities between an unperfected security interest of the type held by Valley and a claimed ownership interest of the type asserted by Plaintiffs. In order to prevail over an unperfected security interest, §70A-9-301 requires that a party must be a buyer and have received delivery of the collateral. The fact that the cement mixer was transferred to J.P. Creer in partial satisfaction of a money debt owed to him by L.A. Young for previously rendered legal services precludes Plaintiffs from being buyers within the meaning of §70A-9-301. Additionally, J.P. Creer never had possession of the cement mixer and neither J.P. Creer nor F. Creer ever received delivery of the cement mixer. According to the terms of §70A-9-301, Valley's

unperfected security interest is superior to Plaintiff's claimed ownership interest in the cement mixer.

ARGUMENT III

Plaintiffs repeatedly emphasize that the perfection of a security interest in a motor vehicle must be effectuated in accordance with the Utah Motor Vehicle Act. However, Plaintiffs have failed to cite authority which addresses the treatment of security interests which are unperfected as against competing claims of ownership. Essentially, Plaintiffs argue that the perfection of a security interest is the exclusive means by which a person may prevail against a competing claim of ownership in a vehicle. Plaintiffs' contention is unfounded and constitutes a serious misunderstanding of Draper Bank and Trust Co. v. Lawson, 675 P.2d 1174 (Utah 1983).

ARGUMENT I

THE SUPREME COURT IS NOT REQUIRED
TO ACCORD ANY DEFERENCE TO THE
DISTRICT COURT'S CONCLUSIONS OF LAW
AND REVIEWS THOSE CONCLUSIONS FOR
CORRECTNESS

Summary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), Utah Rules of Civil Procedure. Valley contends on appeal that the

lower court erred in granting Plaintiffs' Motion for Summary Judgment on the grounds that the lower court's conclusions of law are incorrect so that Defendants were not entitled to judgment as a matter of law.

It is a well settled principle of appellate review that an appellate court is not required to accord any deference to the lower court's conclusions of law. Wessel v. Erickson Landscaping Co., 711 P.2d 250, 253 (Utah 1985). This court has consistently held that in reviewing a trial court's legal conclusions, the reviewing court examines the lower court's legal conclusions for correctness. Wessel, 711 P.2d at 253; Scharf v. BMG Corp., 700 P.2d 1068, 1070 (Utah 1985).

In this appeal, Valley accepts as true the factual findings adopted by the district court. Thus, Valley readily endorses the crucial facts that L.A. Young granted Valley a valid security interest in the cement mixer, that L.A. Young transferred title to the cement mixer to J.P. Creer as partial satisfaction of L.A. Young's obligation to J.P. Creer for the payment of legal fees, and that J.P. Creer at no time received delivery or had possession of the cement mixer.

Valley does, however, challenge the district court's conclusions of law that 1) Valley's failure to perfect its security interest in the cement mixer precludes it from

prevailing over F. Creer's ownership claim to the cement mixer; and that 2) F. Creer's claim to the cement mixer is superior to Valley's unperfected security interest in the cement mixer. As explained below, the district court failed to properly apply §70A-9-301(1) of the Utah Uniform Commercial Code to determine the relative priority of each parties' claim. Because Plaintiffs were not entitled to judgment as a matter of law, the district court erred in granting judgment against Valley and the judgment should be reversed in favor of Valley.

ARGUMENT II

VALLEY HAS AN ENFORCEABLE SECURITY INTEREST IN THE CEMENT MIXER WHICH HAS PRIORITY OVER PLAINTIFFS' CLAIMED INTEREST

POINT A: Valley's Security Interest in the Cement Mixer
Has Attached and is Enforceable Against J.P.
Creer and F. Creer.

Section 70A-9-203, Utah Code Ann. (1953 as amended), of the Utah Uniform Commercial Code, provides that a security interest in collateral is not enforceable against the debtor or third parties unless three requirements are met. First, the debtor must have a signed, written security agreement. §70A-9-203(a). Second, a secured party must give value for the security interest. §70A-0-203(b). Finally, the debtor

must have rights in the collateral. §70A-9-203(c). See, Valley Bank and Trust Co. v. Gerber, 526 P.2d 1121, 1125 (Utah 1974).

In the case at bar, all three requirements for Valley's security interest to attach are met. With regard to the first requirement, Lays executed and delivered to Valley a written security agreement granting Valley a security interest in the cement mixer on October 28, 1983. (R. 204) In satisfaction of the second requirement, Valley gave value for the security interest by extending a loan to Lays in the sum of \$250,000, as evidenced by the Note. (R. 174, 204) Finally, because Lays had title to and possession of the cement mixer (R. 5), Lays had acquired "rights" to the cement mixer. Having met all three conditions, Valley's security interest in the cement mixer attached and became enforceable against Lays and third parties such as J.P. Creer and F. Creer.

The lower court failed to appreciate the significance of the attachment of a security interest in collateral. The effect of the attachment of a security interest in collateral is to establish the creditor's rights in the collateral vis a vis the debtor, and in some instances, third parties. Outlining the three requirements necessary for a

security interest to attach, §70A-9-203 provides that once those three requirements have been met, the security interest attaches to the collateral and becomes enforceable against the debtor or third parties with respect to the collateral. In the absence of a superior competing interest, a security interest which has attached to the collateral entitles the creditor to the right to repossess the collateral upon default of the underlying obligation, according to the provisions of Article 9 of the Utah Uniform Commercial Code. Perfection, on the other hand, establishes a creditor's rights in collateral in relation to other perfected security interests and other third parties.

Recognizing that the holder of an unperfected security interest has a valid and enforceable interest in the collateral, the question arises as to whether there are any circumstances under which an unperfected security-interest holder has priority over other interests in the collateral. That inquiry is answered by §70A-9-301, Utah Code Ann. (1953 as amended), of the Utah Uniform Commercial Code. Section 70A-9-301 is the sole provision which addresses and resolves the relative priorities between an unperfected security

interest of the type held by Valley and the owner of goods of the type asserted by Plaintiffs.¹

POINT B: Under §70A-9-301(1)(c) of the Utah Uniform Commercial Code, Valley's Security Interest in the Cement Mixer is Superior to Plaintiffs' Ownership Claim Because Plaintiffs are not "Buyers" and Have not "Received Delivery of the Collateral".

Section 70A-9-301, Utah Code Ann. (1953 as amended) enumerates various categories of persons who are deemed to take priority over persons with unperfected security interests. That section provides in pertinent part as follows:

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(c) in the case of goods . . . a person who is not a secured party and who is a . . . buyer not in the ordinary course of business . . . to the extent he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected. . . .

(Emphasis added.) Plaintiff's claim of ownership interest to the cement mixer has priority over Valley's unperfected se-

¹ The Utah Motor Vehicle Act contains no provisions which address the competing interests of a party with an unperfected security interest in a vehicle and a party with a claimed ownership interest, who is not a buyer of the vehicle and who has not received delivery or possession of the vehicle.

curity interest only if they can establish that they have met all the requirements of §70A-9-301. Plaintiffs clearly have not satisfied the requirements of being a "buyer" and of having "received delivery of the collateral."

Defining "buyer in the ordinary course of business," §70A-1-201(9) of the Utah Uniform Commercial Code provides that "'[b]uying' . . . does not include a transfer through or in total or partial satisfaction of a money debt." See Walter E. Heller Western, Inc. v. Bohemia, Inc., 61 Or. App. 57, 655 P.2d 1073 (Or. 1972). Applying this definition to the facts of this case, J.P. Creer was clearly not a "buyer" of the cement mixer. The lower court's findings of fact state that:

[a]t the time he received the title to the cement mixer, J.P. Creer intended and understood that it was being transferred to him in partial satisfaction of L.A. Young's obligation to pay legal fees. . .

(R. 205) Throughout this litigation, J.P. Creer has admitted that L.A. Young owed him a money debt for previously rendered legal services and that title to the cement mixer was transferred to him in partial satisfaction of that debt.
(R. 3, 145, 205)

In addition to not being "buyers" within the meaning of §70A-9-301, Plaintiffs also did not "receive delivery of

the collateral," as required by §70A-9-301. See, Federal Insurance Deposit Corp. v. Yates, 719 S.W.2d 481, 484-485 (Mo. App. 1986). As indicated in the lower court's findings of fact, J.P. Creer has at no time received delivery or had possession of the cement mixer. (R. 205) In September, 1987, F. Creer briefly obtained possession of the cement mixer for a few minutes without the consent and against the will of an officer of the debtor, Alan Young. (R. 181-182, 190-191) F. Creer relinquished his possession of the cement mixer after being told by Alan Young that if F. Creer took the vehicle, there would be a serious altercation. (R. 181-182, 190-191) F. Creer's momentary possession of the cement mixer clearly does not constitute a delivery by L.A. Young of the cement mixer to J.P. Creer. Because Plaintiffs are not "buyers" and because J.P. Creer did not "receive delivery" of the cement mixer, Plaintiffs cannot prevail against Valley's enforceable security interest in the cement mixer.

Valley's security interest in the cement mixer attached to the cement mixer and became enforceable against the debtor, L.A. Young. The priority of that security interest in relation to a claimed ownership interest, such as Plaintiffs', is resolved by §70A-9-301. Because that section

dictates that Valley's interest is superior to Plaintiffs', the lower court erred in granting Plaintiffs' summary judgment as a matter of law and the judgment should be reversed in favor of Valley.

ARGUMENT III

THE PROVISIONS OF THE UTAH MOTOR VEHICLE CODE ARE ABSOLUTELY IRRE- LEVANT TO THE DETERMINATION OF THE PRIORITY OF VALLEY'S AND PLAIN- TIFFS' COMPETING INTERESTS IN THE CEMENT MIXER

Plaintiffs' position in this case is that the Utah Uniform Commercial Code is inapplicable because the facts involve a motor vehicle. (Response to Appellants' Motion for Reversal of Judgment, filed June 8, 1988, p. 1) Plaintiffs assert instead that the provisions of the Utah Motor Vehicle Act exclusively govern the parties' competing claims to the cement mixer and entitle Plaintiffs' to a prior right to the cement mixer. (R. 182) Plaintiffs cite absolutely no authority for either contention.

Plaintiffs have repeatedly asserted in the trial court and on appeal the rule that the perfection of a security interest in a motor vehicle must be effectuated in accordance with the Utah Motor Vehicle Act. Valley does not dispute this principle and concedes, as it has throughout the

course of this litigation, that it did not perfect its security interest in the cement mixer.

Plaintiffs' discussion of the method by which a security interest in a vehicle must be perfected demonstrates Plaintiffs' lack of understanding of the distinction between the method of perfecting a security interest in motor vehicles and the procedure to determine the priority of an unperfected security interest in a vehicle and a claimed ownership interest of a person who has not received delivery or possession of the vehicle and whose interest was obtained as payment of an antecedent debt.

Essentially, Plaintiffs' argue that the perfection of a security interest under the Utah Motor Vehicle Act is the exclusive means by which a person may prevail against a competing claim of ownership in a vehicle. Plaintiffs appear to base their argument on their understanding of this court's decision in Draper Bank and Trust Co. v. Lawson, 675 P.2d 1174 (Utah 1983). Draper Bank stands for the proposition that the Utah Motor Vehicle Act provides the exclusive means to perfect the security interest in vehicles. Draper Bank, 675 P.2d at 1177. It does not state or suggest that the perfection of a security interest in a vehicle is determinative of the priority of competing claims to a vehicle.

Plaintiffs construe Draper Bank far beyond its stated holding to mean that unless a person's security interest in a vehicle is perfected under the Motor Vehicle Act, that person loses all interest in the vehicle, regardless of the strength of competing claims to the vehicle. According to Plaintiff's view, a person who has given no value for the vehicle, who has actual knowledge of the pre-existing security interest, and who has never had possession or delivery of the vehicle, has a superior interest in the vehicle to the person who has a valid and enforceable, but unperfected security interest.

Contrary to Plaintiff's assumption, failing to perfect a security interest does not extinguish the security interest and the rights associated with it. Those rights continue to exist. Where one of two competing claims is an unperfected security interest, the resolution of those claims is governed by §70A-9-301 of the Utah Uniform Commercial Code. When that section is properly applied, Valley is entitled to judgment against Plaintiffs as a matter of law.

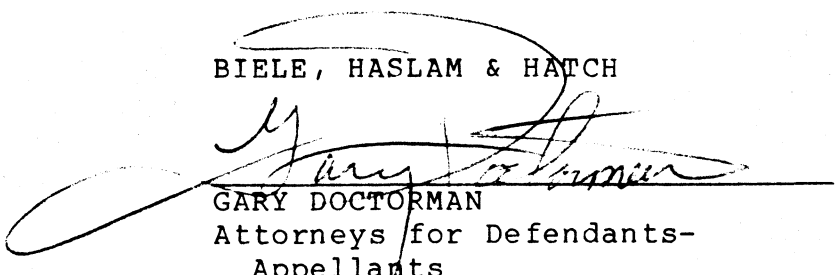
CONCLUSION

The lower court's conclusions of law are incorrect. According to §70A-9-203, Valley acquired a valid and enforceable security interest which attached to the cement mixer. Section 70A-9-301 is the exclusive provision which

addresses competing claims of holders of unperfected security interests and ownership claims of persons who are not secured parties, such as Plaintiffs. In order for Plaintiffs' claimed ownership interest to prevail over Valley's attached, but unperfected security interest, Plaintiffs must satisfy each of the requirements set forth in §70A-9-301(1)(c). Because Plaintiffs are not buyers and have not received delivery of the collateral, Plaintiffs' claim to the cement mixer is inferior to Valley's. Section 70A-9-301 therefore dictates as a matter of law that Valley's interest in the cement mixer is superior to Plaintiffs' claimed interest. Because Plaintiffs are not entitled to judgment as a matter of law, Valley respectfully requests that this court reverse the lower court's judgment and grant judgment in favor of Valley, together with Valley's attorney's fees and the costs of the appeal.

Respectfully submitted this 10th day of August,
1988.

BIELE, HASLAM & HATCH



GARY DOCTORMAN

Attorneys for Defendants-
Appellants

CERTIFICATE OF SERVICE

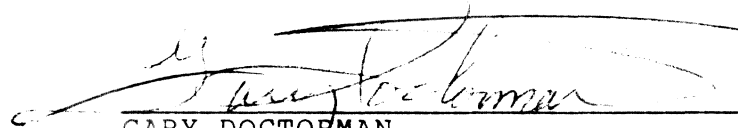
I hereby certify that on the 10th day of August, 1988, I caused four true and correct copies of the foregoing BRIEF OF APPELLANTS, VALLEY BANK AND TRUST CO. AND VALLEY CENTRAL BANK to be hand delivered to the following counsel of record:

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DATED this 10th day of August, 1988.

~~BIELE, HASLAM & HATCH~~


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ADDENDUM NO. 1

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S. Robins

IN THE SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY
STATE OF UTAH

FRANK MOYLE CREER and	:	
JOHN PRESTON CREER,	:	
	:	FINDINGS OF FACT AND
Plaintiffs,	:	CONCLUSIONS OF LAW
	:	
vs.	:	
	:	
VALLEY BANK AND TRUST	:	
COMPANY, a Utah Corporation,	:	
VALLEY CENTRAL BANK, a	:	Civil No. 87-10-10140-1
Utah Corporation, and	:	
MARCUS TAYLOR, Receiver,	:	
	:	JUDGE DON V. TIBBS
Defendants.	:	
	:	

The parties' cross-motions for summary judgment came on regularly for hearing before the undersigned on March 16, 1988, at 10:00 a.m. Plaintiff, John Preston Creer, appeared personally and represented himself pro se. Plaintiff, Frank Moyle Creer, was neither present nor represented by his counsel, Keith Bradford Romney, Jr., Esq., but stipulated that John Preston Creer could represent him in this hearing. Defendants, Valley Bank and Trust Company and Valley Central Bank (collectively

"Valley") were represented by their counsel, John T. Anderson of Biele, Haslam & Hatch. Defendant, Marcus Taylor, appeared and represented himself pro se.

The court having heard and considered the arguments, representations and stipulations of counsel, and having orally announced its decision to grant plaintiff's motion for summary judgment and deny defendants' motion for summary judgment, hereby makes and enters its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. On April 22, 1982, Lays Rock Products, Inc. ("Lays"), a corporation which was later merged into L. A. Young Sons Construction Company ("L.A. Young"), executed and delivered to Valley a promissory note ("Note") in the principal sum of \$250,000.00.

2. As security for the Note, Lays, on October 22, 1983, granted to Valley a security interest in certain personal property including an International cement mixer, Cummins 230, Serial No. CF257HHA23465 (the "Cement Mixer").

3. Valley never perfected its security interest in the Cement Mixer by complying with the requirements of the Utah Motor Vehicle Code.

4. Plaintiff, John Preston Creer ("J.P. Creer"), performed legal services for L. A. Young between about June, 1986, and March, 1987.

5. L. A. Young failed to compensate J. P. Creer for his legal services. Therefore, in March, 1987, J. P. Creer informed L. A. Young that he would not continue his legal representation unless payment was made of the legal bill.

6. Accordingly, on March 25, 1987, L. A. Young (through Alan G. Young), executed and delivered to J. P. Creer a certificate of title to the Cement Mixer. J. P. Creer later transferred title to the Cement Mixer to his son, plaintiff, Frank Creer ("F. Creer").

7. At the time he received title to the Cement Mixer, J. P. Creer intended and understood that it was being transferred to him in partial satisfaction of L. A. Young's obligation to pay legal fees and was not intended as security for that debt.

8. J. P. Creer has never received delivery or had possession of the Cement Mixer. F. Creer briefly obtained possession of the Cement Mixer in September of 1987, but relinquished that possession upon being threatened with bodily injury.

9. John Preston Creer did not know there had been a security interest filed by Valley on the Cement Mixer at the time the title was transferred.

10. Neither J. P. Creer nor F. Creer asserts a security interest in the Cement Mixer, but rather based their claim as one of ownership evidenced by a certificate of title.

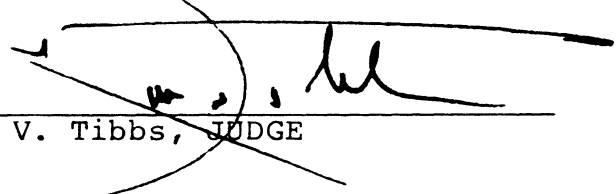
CONCLUSIONS OF LAW

1. Defendants' failure to perfect their security interest in the Cement Mixer in accordance with the provisions of Sections 41-1-80-87, Utah Code Annotated (1953 as amended) precludes them from asserting their priority in the Cement Mixer as against the claim of ownership of plaintiffs.

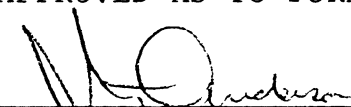
2. Plaintiffs' claim of ownership in and to the Cement Mixer is superior to the unperfected security interest of defendants in the Cement Mixer.

DATED this 6th day of April, 1988.

BY THE COURT:


Don V. Tibbs, JUDGE

APPROVED AS TO FORM:


John T. Anderson
Attorney for Defendants

ADDENDUM NO. 2

JOHN PRESTON CREER (0753)
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IN THE SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY
STATE OF UTAH

FRANK MOYLE CREER and
JOHN PRESTON CREER,

Plaintiffs,

vs.

VALLEY BANK AND TRUST
COMPANY, a Utah Corporation,
VALLEY CENTRAL BANK, a
Utah Corporation, and
MARCUS TAYLOR, Receiver,

Defendants.

JUDGMENT

Civil No. 87-10-10140-1

JUDGE DON V. TIBBS

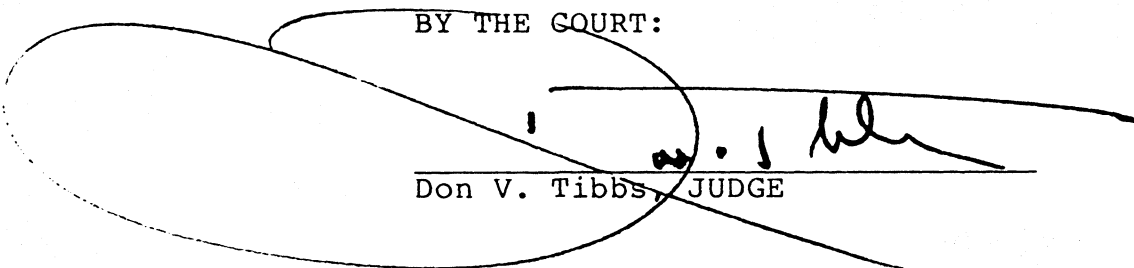
Plaintiffs' and defendants' Motions for Summary Judgment came on before the above entitled Court on March 16, 1988, before the Honorable Don V. Tibbs, District Judge. John Preston Creer appearing for the plaintiffs, and John T. Anderson appearing for the defendants. The issues have been fully argued and briefed and the court having reviewed the file herein and entered its Findings of Fact and Conclusions of Law;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
DECREED as follows:

1. That the plaintiff Frank Moyle Creer has title to
the 1978 International cement mixer truck (I.D. VIN-CF
257HHA23465) and that the defendants, Valley Central Bank and
Valley Bank & Trust Company have no interest in said truck.

DATED this 6th day of April, 1988.

BY THE COURT:



Don V. Tibbs, JUDGE