

1958

Martin Machinery, Inc. v. Steevell-Paterson Finance Company and Ralph A. Sleeter, Jr. : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

FILED

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MARTIN MACHINERY, INC.,
Plaintiff and Respondent,

— vs. —

STREVELL-PATERSON
FINANCE COMPANY,
a corporation,
Defendant and Appellant,
RALPH A. SLEETER, JR.,
Defendant.

Clerk, Supreme Court, Utah

Case
No. 8784

Appellant's Brief

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TABLE OF CONTENTS		Page
STATEMENT OF FACTS.....		1
STATEMENT OF POINTS:		
POINT I. THE COURT ERRED AS A MATTER OF LAW IN GRANTING THE MOTION FOR SUM- MARY JUDGMENT BECAUSE THERE IS A DEFINITE ISSUE AS TO THE FACTS.....		4
ARGUMENT:		
POINT I. THE COURT ERRED AS A MATTER OF LAW IN GRANTING THE MOTION FOR SUM- MARY JUDGMENT BECAUSE THERE IS A DEFINITE ISSUE AS TO THE FACTS.....		5
CONCLUSION		19

TABLE OF AUTHORITIES

Cases

Arron Ferer and Sons v. Richfield Oil Corp. 150 F 2d 12.....	7
Crofoot v. Thatcher, 19 Utah 212, 57 P. 171.....	16
Fountain v. Filson, 336 U.S. 681, 69 S. Ct. 754, 93 L. Ed. 971.....	7
Holbrook v. Webster, — Ut. 2d —, — P. 2d —	7
McClain v. Saranac Mach Co., 94 Colo. 145, 28 P. 2d 1009.....	17
Puzzle Min. & Red. Co. v. Morse Bro. Mach. & Supply Co., 24 Colo. App. 74, 131 P. 791.....	17
Turnbull v. Cole, 70 Colo. 364, 201 P. 887.....	17
Ulibarri v. Christenson, 2 Ut. 2d 367, 275 P. 2d 170.....	7
Young v. Felornia, 121 Ut. 646, 244 P. 2d 862.....	7

Statutes and Rules

U. C. A. 1953, 9-1-1.....	15
U. C. A. 1953, 16-8-1	19
U. C. A. 1953, 16-8-3	19
U. R. C. P. 56(c).....	5
Colorado Revised Statutes, 1953, 20-1-20.....	16

Texts

17 A.L.R. 1427	10, 13
43 A.L.R. 1252.....	10
92 A.L.R. 311	10
175 A.L.R. 1378.....	9, 10
47 Am. Jur. Sales Sec. 833.....	10, 11, 12 and 13
10 Am. Jur. 715.....	13
10 Am. Jur. 722.....	14
11 Am. Jur. 386.....	16
Moore's Federal Practice, Vol. 6.....	5, 6
Restatement on Conflicts, Sec. 265.....	17
Restatement on Conflicts, Sec. 272.....	18
Williston on Sales, Vol. 2, Page 322.....	18

IN THE SUPREME COURT OF THE STATE OF UTAH

MARTIN MACHINERY, INC.,
Plaintiff and Respondent,

— vs. —

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a corporation,

Defendant and Appellant,

RALPH A. SLEETER, JR.,

Defendant.

Case
No. 8784

Appellant's Brief

STATEMENT OF FACTS

This appeal is taken by Strevell-Paterson Finance Company from a Judgment granting Summary Judgment in favor of the Plaintiff and against this Defendant.

The parties will be referred to as they appeared in the Court below. Martin Machinery, Inc., was the Plaintiff below and Strevell-Paterson Finance Company was one Defendant and Ralph A. Sleeter, Jr., the other. This appeal is taken by Strevell-Paterson Finance Company only.

The record shows that the Defendant Ralph A. Sleeter, Jr., was operating a cleaning establishment in Salt Lake County known as the Rainbow Cleaners (R. 16). On or about October 15, 1955, Mr. Sleeter needed some additional equipment to operate his business. Mr. C. M. Robinson contacted Mr. Sleeter about the equipment needed, and on October 15, 1955, had Mr. Sleeter sign the agreement which is the subject of this dispute (R. 16-17). The Plaintiff, Martin Machinery, Inc., is a foreign corporation and is not qualified to do business in the State of Utah. Mr. Robinson was the exclusive sales representative in the State of Utah for the Plaintiff (R. 14). The one piece of equipment which Mr. Sleeter sought to purchase was located in Montrose, Colorado, at the time of the execution of the agreement (R. 16). Concurrently with the signing of the agreement heretofore referred to, Mr. Robinson had Mr. Sleeter sign what appears to be a bill of sale on eight items of equipment already owned by Mr. Sleeter and located in his place of business at 2497 South State Street, Salt Lake City, Utah. (See Exh. attached to Affidavit R. 18; R. 16.) In order to secure the payment of the one item which Mr. Sleeter sought to purchase, these eight items were placed on the purchase contract under a heading of "Rewrite of Machinery in Plant." These items were never moved from the plant here in Salt Lake City. They were added to the contract solely for the purpose of giving security to the seller of the *one* item on the contract as a "Chattel Mortgage and Security" (R. 24). Thereafter, Mr. Sleeter borrowed \$336.00 from Strevell-Paterson Finance Company and gave them a Chattel Mortgage on an item of equipment

not covered by Plaintiff's agreement, and on the 2nd day of October, 1956, Mr. Sleeter borrowed \$2,016.00 from the Defendant Strevell-Paterson Finance Company and gave them a Chattel Mortgage on all of the items shown on the agreement dated October 15, 1955 (R. 10-12). On August 9, 1957, the Plaintiff filed an action to recover *all* of the items of equipment shown on the October 15, 1955, agreement (R. 1-3). This Defendant answered and asserted its claim to the said equipment and sought to foreclose on its Chattel Mortgages (R. 7-12). On August 21, 1957, Mr. Sleeter filed bankruptcy and included both of these claims in his schedule (R. 23). The Plaintiff never filed its instrument with the County Recorder of Salt Lake County, as required for Chattel Mortgages by U.C.A. 1953, 9-1-1 (2). (R. 20) Both instruments of the Defendant were filed as required by law (R. 21-22).

On October 1, 1957, the Plaintiff filed a Motion for Summary Judgment supported by an Affidavit of Mr. C. Mardee Robinson to the effect that he was the sales representative of the Plaintiff in the State of Utah, and that he procured and submitted to the Plaintiff the agreement signed by Mr. Sleeter on October 15, 1955 (R. 13-17). The Defendant Strevell-Paterson Finance Company submitted counter-affidavits to resist the Motion of the Plaintiff, as follows: Mr. Robert L. Backman stated that he had searched the records and could not find the agreement of October 15, 1955 on file (R. 20); Mr. D. P. Allred stated that the Chattel Mortgages of the Defendant were filed (R. 21-22); the Clerk of the Federal Court attests to the fact that Mr. Sleeter had taken bankruptcy and that these

two accounts were listed on the schedules (R. 23); and finally, Mr. Sleeter states that the equipment placed on the agreement under the caption of "Rewrite of Machinery in Plant" was owned by Affiant prior to the execution of the agreement and was placed on the agreement as security "in order to give Martin Machinery a Chattel Mortgage and security for the Affiant to purchase the mercury dry-cleaning unit shown on said Contract" and that the equipment was never returned to Martin Machinery prior to or at the time of the execution of the agreement (R. 24-25). Argument was had before the Court upon the Plaintiff's Motion of October 18, 1957, and the Court took the matter under advisement. On November 7, 1957, while the Court still had the matter under advisement and without leave of Court, the Plaintiff submitted a further affidavit (R. 18-19). Thereafter, on the 8th day of November, 1957, and without giving this Defendant a chance to answer said Affidavit, the Court made and entered its Findings of Fact and Conclusions of Law and Judgment in this matter (R. 26-30). It is from these Findings and Judgment that this Defendant appeals.

STATEMENT OF POINTS

POINT I.

THE COURT ERRED AS A MATTER OF LAW IN GRANTING THE MOTION FOR SUMMARY JUDGMENT BECAUSE THERE IS A DEFINITE ISSUE AS TO THE FACTS.

ARGUMENT

POINT I.

THE COURT ERRED AS A MATTER OF LAW IN GRANTING THE MOTION FOR SUMMARY JUDGMENT BECAUSE THERE IS A DEFINITE ISSUE AS TO THE FACTS.

Courts should only grant Summary Judgment where the facts are clear and unequivocal. U.R.C.P. 56(c) provides in part as follows :

“... The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law . . .”

Professor Moore in his treatise on the Federal Rules of Civil Procedure has this comment on this particular rule:

“The function of the summary judgment is to avoid a useless trial; and a trial is not only useless (sic) but absolutely necessary where there is a genuine issue as to any material fact. *In ruling on a motion for summary judgment the court's function is to determine whether such a genuine issue exists, not to resolve any factual issues.*” (Moore's *Federal Practice*, Vol. 6, p. 2101) (Emphasis added)

“The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to judg-

ment as a matter of law. *The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact.* Since it is not the function of the trial court to adjudicate genuine factual issues at the hearing on the motion for summary judgment, in ruling on the motion *all inferences of fact from the proofs proffered at the hearing must be drawn against the movant and in favor of the party opposing the motion.* And the papers supporting movant's position are closely scrutinized, while the opposing papers are indulgently treated, in determining whether the movant has satisfied his burden.

“To satisfy the moving party's burden the evidentiary material before the court, if taken as true, must establish the absence of any genuine issue of material fact, and it must appear that there is no real question as to the credibility of the evidentiary material, so that it is to be taken as true. If the nonexistence of any genuine issue of material fact is established by such credible evidence that on the facts and the law the movant is entitled to judgment as a matter of law, the motion should be granted, unless the opposing party shows good reason why he is at the time of the hearing unable to present facts in opposition to the motion. If, however, the papers before the court disclose a real issue of credibility or, apart from credibility, fail to establish clearly that there is no genuine issue as to any material fact, the motion must be denied.” (*Moore's Federal Practice*, Vol. 6, pp. 2123-2126) (Emphasis added)

Mr. Sleeter clearly states in his affidavit that the items listed on the agreement under the heading “Re-

write of Machinery in Plant'' were placed on there for security in the form of a Chattel Mortgage (R. 24). Certainly the following issues are clearly raised by the pleadings and affidavits filed in this case:

1. Whether or not the agreement dated October 15, 1955, is a Chattel Mortgage or Conditional Sales Contract.
2. Whether or not the items listed under "Re-write of Machinery in Plant" were in fact conveyed to the Plaintiff for good and valuable consideration and to be the sole and separate property of Plaintiff which could be resold to the Defendant Sleeter.
3. Whether or not the Plaintiff was doing business in Utah and had never qualified.

The evidence must be clear and unequivocal in order to support a Summary Judgment (*Young v. Felornia* (1952) 121 Utah 646, 244 P. 2d 862 (Cert. denied 344 U. S. 885); *Ulibarri v. Christenson*, 2 Ut. 2d 367, 275 P. 2d 170; *Fountain v. Filson* (1949) 336 U.S. 681, 69 S. Ct. 754, 93 L. Ed. 971; *Holbrook et ux v. Webster's, Inc., et al*, (1958) Case No. 8724, Ut. 2d,, P. 2d)

In the case *Arron Ferer & Sons v. Richfield Oil Corporation*, (CCA 9, (1945) 150 F. 2d 12), a Motion for Summary Judgment was denied on an action on a contract where the affidavit showed a conflict to exist. Headnote No. 1 of that case clearly states the Court's position:

"Where plaintiff files an affidavit denying prior agreement between parties and alleging that pleaded agreement was the only one made and seeks a

summary judgment thereon, and defendant files affidavits contradicting statements of plaintiff's affidavit, the affidavits create a genuine issue as to a material fact requiring usual trial by witnesses, subject to cross-examination, and District Court should deny motion for summary judgment. Federal Rules of Civil Procedure, rule 52(2), 28 U.S.C.A. following section 723c."

There appears to be no doubt but that the agreement which is shown as Exhibit "A" (R. 16) was executed on the 15th day of October, 1955, by Ralph A. Sleeter, Jr. The list of equipment shown on this agreement under the heading of "Rewrite of Machinery in Plant" was equipment that already belonged to Mr. Sleeter and of which he had possession in his plant here in Salt Lake City, Utah (R. 24). This equipment was never removed from his plant nor anything done to it (R. 24). The affidavit of Mr. Sleeter (R. 24) states that this equipment was placed on the agreement only to give a security to Martin Machinery for the purchase of the mercury dry cleaning unit shown on the lower portion of the agreement. It was only intended by him to give them, in the form of a Chattel Mortgage, a lien upon this equipment in order that it would guarantee the performance of this agreement to pay the balance. The affidavit of Mr. C. Mardee Robinson (R. 18) referring to a bill of sale executed by Mr. Ralph Sleeter on this equipment, when taken together with the agreement (R. 16-17) and the affidavit of Mr. Sleeter (R. 24), shows that this bill of sale was taken only as a subterfuge. This equipment was owned by Mr. Sleeter prior to the execution of this agree-

ment, and this purported bill of sale is dated the same day as the date on the agreement. The agreement shows on its face that Mr. Sleeter owned outright this equipment and credit is given on the agreement for the value of this equipment. The value of this equipment in the amount of \$3,640.00 was Mr. Sleeter's which he had paid for and belonged to him prior to the execution of any bill of sale or this particular agreement. The agreement further shows that if Mr. Sleeter was buying all of this equipment he should have paid a sales tax on the full amount of \$6,105.00, rather than paying the sales tax on the amount of only \$1,750.00, which is shown on the face of the agreement as \$35.00 and which is two per cent of the sale price of the dry cleaning unit. This shows further evidence that it was only intended by the parties that this one item should be sold and, in fact, the balance of the agreement is strictly to give security for the purchase price of this one item. Although the agreement appears to be in the form of a conditional sales contract, the Court may inquire, and should inquire, as to whether or not this is a conditional sales contract or, in fact, a chattel mortgage. This determination is a question of fact which should be submitted to the trial court rather than tried upon Summary Judgment.

“Determination of the question, whether a particular transaction, is a conditional sale or a chattel mortgage, in the final analysis, depends upon the intention of the parties, *which is to be ascertained from their conduct, the attendant circumstances, and the terms of the agreement.*” (175 A.L.R. 1378) (Emphasis added)

The attendant facts in this particular case appear quite obvious to show that this agreement was intended as a chattel mortgage and not a conditional sales contract. The question of whether or not an agreement is a conditional sale or a chattel mortgage wherein the absolute sale takes place with the reservation of title as security has been considered by the courts in numerous cases and annotated in the following annotations: 17 A.L.R. 1427, 43 A.L.R. 1252, 92 A.L.R. 311, and 175 A.L.R. 1372. The general tenor of all of these annotations is to the effect that the determination of whether or not a contract is a conditional sale or a chattel mortgage depends upon the intent of the parties, and as heretofore quoted, this intent is to be ascertained from their conduct and the attendant circumstances, as well as the terms and conditions of the agreement. This question of a conditional sales contract vs. a chattel mortgage is discussed in detail in 47 *Am. Jur.* "Sales," Sec, 833. Some of the statements extracted from that section are as follows:

"Notwithstanding a provision reserving title to an article until payment of the purchase price, a contract may constitute an absolute sale. In passing upon the question whether a contract with a reservation of title constitutes a conditional sale or a sale with a reservation merely in the nature of a lien, the courts if they take the latter view of the contract, do not always style it an absolute sale, but may characterize the transaction, as a whole, as a chattel mortgage." (Page 14)

"It sometimes becomes a close question to determine whether a contract is one of absolute sale with a reservation of title by way of a chattel mortgage or collateral security, or whether it is a

conditional sales contract with an absolute reservation of title in the vendor, with payment of the purchase price a condition precedent to the passing of title. It is recognized that the determination of this question is always attended with some difficulty by reason of the narrow line of distinction between conditional sales contracts and chattel mortgages, each case depending on its peculiar or special circumstances. The real distinction between a conditional sale and an absolute sale with a mortgage back is that under the former the vendor remains the owner, subject to the vendee's right to acquire the title by complying with the stipulated conditions; while under the latter the vendee immediately becomes the owner, subject to the lien created by the mortgage. A mortgage is a security for a debt, while a conditional sale is a transfer of ownership for a price paid, or to be paid, to become absolute on a particular event, or a purchase accompanied by an agreement to resell on particular terms, although it is said with reference to the latter transaction that the line between defeasible sales and chattel mortgages cannot be marked out by any general rule. In the case of a conditional sale, no present title vests in the vendee, but his title rests upon the performance of the condition prescribed in the contract, while in the case of a common-law mortgage the title passes at once to the mortgagee, subject to be repassed on the performance of an express condition subsequent, or the mortgagee merely has a lien on the property in jurisdictions where a chattel mortgage does not pass title. The passing of the title is, therefore, the real test to determine the character of the sale as absolute with reservation of security, or conditional. *The chief criterion for determining the character of the transaction is the intention of the parties as disclosed by the entire contract, the circumstances attending to the trans-*

action, and conduct of the parties. The true nature of the transaction is not permitted to be obscured by artifice, form, or superficial declaration of intention. Such a construction should be adopted, if possible, as will harmonize and give effect to all the terms and provisions of the contract. Doubts will be resolved against a vendor when there is a purposeful ambiguity in the instrument designed to serve his purpose. Conditional sales are not favored in law, and where it is doubtful from the face of an instrument whether it is a conditional sale or a mortgage, the courts generally treat it as a mortgage, for such construction is more apt to attain the ends of justice and prevent fraud and oppression, because an error which converts a conditional sale into a mortgage is less injurious than an error which changes a mortgage into a conditional sale. Courts of equity do not favor conditional sales, and they may pronounce an instrument which resolves itself into a security for the performance of an act a mortgage, although at law it may be considered a conditional sale. However, even in courts of equity, the intention of the parties is the principal thing to be regarded, and only in case of doubt and to prevent fraud will equity declare a transaction to constitute a mortgage rather than a conditional sale.” (pp. 16-17) (Emphasis added)

“Notwithstanding a clause reserving title in the seller, however, other provisions of the contract or the circumstances surrounding the transaction may be so inconsistent with the theory of the retention of title as to establish the dominant intent to be to vest the title in the buyer, subject, of course, to the lien created by the reservation of title. In such case, the sale will be construed to be absolute. In this regard it may be said that in con-

struing provisions in the contract by which the vendor seeks rights other than the mere reservation of title to the property, the courts are not astute to hold a contract to be one of conditional sale, but will hold it to be one of absolute sale with a reservation of title amounting, at least in effect, to a chattel mortgage.” (Page 20)

The very thing attempted here by the Plaintiff, Martin Machinery, Inc., in taking a deed on property belonging to the Defendant Sleeter is to create a common law mortgage. The common law mortgage is the absolute sale of the property by the mortgagor to the mortgagee subject to being redeemed according to the terms of the contract between the parties. (See 10 *Am. Jur.* Chattel Mortgages p. 715)

“Of course, the real distinction between an absolute and a conditional sale is that the title passes when the sale is absolute, while it remains in the seller when the sale is conditional. The passing of the title is, therefore, the real test to determine the character of the sale in this regard. Whether the parties intend that the title shall pass is to be determined from the circumstances attending the transaction, and the reserving title in the seller until payment of the purchase price indicates a conditional sale; but notwithstanding this clause, other provisions of the contract may be so inconsistent with the theory of the retention of title in the seller as to establish the dominant intent to be to vest the title in the buyer, subject, of course, to the lien created by the reservation of the title. In such case, the sale will be construed to be absolute.” (Annotation “What Amounts to a Conditional Sale” 17 *A.L.R.* 1433)

Since each case must be decided upon its own circumstances, as a general rule, there certainly could be no basis for the granting of the Motion for Summary Judgment when all the circumstances and surrounding facts of the giving of the instrument have not been presented to the Court.

“There is no general rule for determining whether a particular transaction is a mortgage or a conditional sale and every case must be decided on its own circumstances. The legal aspect of the contract in this respect depends upon the intention of the parties, to be ascertained by a consideration of the entire instrument and the surrounding circumstances, *and not upon the form of the instrument or the name which the parties may have given to it.* However, certain tests which have been applied by the courts for arriving at the intention of the parties are considered at length in another article.

“Courts of equity do not favor conditional sales; and where it is doubtful whether a transaction was intended as a conditional sale or a mortgage, they will pronounce it a mortgage, since they are disposed to consider every deed, whatever its form, which resolves itself into a security for the performance of any act, as a mortgage. This is not the absolute rule, however, for it is tempered by the rule that nothing is to be inferred which is contrary to the clearly expressed intention of the parties. *The burden of proof in doubtful cases is on him who insists that the transaction was a conditional sale to show that such was the intention of the parties.*” (10 Am. Jur. Chattel Mortgages, pp. 722-723) (Emphasis added)

The agreement between the parties hereto if classified as a chattel mortgage does not give them any priority over Strevell-Paterson Finance Company. The Utah Code requires that a chattel mortgage unless the “personal property is delivered to and retained by the mortgagee,” is not valid against the rights of any other person unless a copy thereof has been filed in the office of the county recorder wherein the mortgagor resides. (U.C.A. 1953, 9-1-1) The record in this case shows that no copy was filed with the County Recorder’s office in Salt Lake County. (R 20)

It is admitted by the Appellant that this filing statute does not apply to a conditional sales contract except where the instrument is a bill of sale which shall have the effect of a mortgage or a lien upon the property. The statute covering this particular point is *U.C.A.* 1953, 9-1-1.

“9-1-1. Requisites for Validity. — Unless the possession of a personal property is delivered to and retained by the mortgagee, no mortgage thereof shall be valid as against the rights and interests of any person other than the parties thereto, unless:

“(1) . . .

“(2) The mortgage, or a copy thereof certified to be such by a notary public or other officer authorized to take acknowledgments, is filed, but not for recordation, in the office of the recorder of the county where the mortgagor resides, or, in case he is a non-resident of this state, in the office of the recorder of the county or counties where the property may be at the time of the execution of the mortgage.”

Furthermore, it should be noted that in one of the arguments of Plaintiff, as presented to the lower court, he indicated that the agreement, although signed here in the State of Utah by Mr. Sleeter, was not doing business in this State since the agreement must be submitted to the Plaintiff in Denver, Colorado, for acceptance. This is borne out by clause three of the agreement which reads in part:

“This Contract shall become binding upon the Seller when approved by one of its duly authorized officers at its principal office in Denver, Colorado, . . .” (R. 16)

The rule of law is well established that a construction of the contract is made under the laws of the State in which the contract is made. (See *Crofoot v. Thatcher*, 19 Utah 212, 57 P. 171, 75 Am. St. Rep. 725)

“As far as it is possible to generalize upon the important preliminary question as to the place where contracts in general may be said to be completed, made, or executed, the rule may be laid down that if the parties to a prospective contract are in different jurisdictions, *the place where the last act is done which is necessary to complete the contract and give it validity is regarded as the place in which the contract is made or completed.*” (11 Am. Jur. “Conflict of Laws,” Sec. 100, p. 386) (Emphasis added)

The Colorado law does not recognize a conditional sales contract as anything except a chattel mortgage insofar as the rights of third parties are concerned. The *Colorado Revised Statutes* of 1953, 20-1-20, provide as follows:

“*What conveyances have effect of chattel mortgages.*—Except as provided in section 20-1-6 the provisions of this article shall extend to all bills of sale, deeds of trust and other conveyances of personal property intended by the parties to have the effect of a mortgage or lien upon such property.”

The Colorado Supreme Court has held that a conditional sales contract will not be recognized as leaving title in the vendor as against interested parties without notice and constitutes an absolute sale as against third persons. (See *Puzzle Mining & Reduction Co. v. Morse Bros. Machinery & Supply Co.*, 24 Colo. App. 74, 131 P. 791; *Turnbull v. Cole*, 70 Colo. 364, 201 P. 887; *McClain v. Saranac Machinery Company*, 94 Colo. 145, 28 P. 2d 1009).

The Plaintiff may argue that this contract is one that is made in Utah, since the installation of the unit was to be made in Utah, and therefore the Utah law should apply. The rule of law quoted above is to the effect that the contract is to be construed by the law of the State where the contract is made. This means that it is the place where the last act necessary to make a valid contract takes place, i.e., where several parties are to accept the offer and it requires several signatures before the agreement is binding, the place of the last signing is the place of the making of the contract. It is not the place where the last act in the performance of the contract is to take place.

The *Restatement on Conflicts*, section 265, provides as follows :

“The validity and effect of a mortgage of a chattel are determined by the law of the state where the chattel is at the time when the mortgage is executed.”

“*Comment.* The law of the place where a chattel is determines the form necessary to the creation of a valid mortgage of the chattel. It also determines the validity of the mortgage in all other respects, both as between the parties thereto and as against third persons. So too, the law of the state where the chattel is at the time of the mortgage determines the nature and extent of the rights acquired thereunder . . .”

Section 272 provides:

“Whether a conditional sale is effective to enable the vendor to retain title is determined by the law of the state where the chattel is at the time of the sale.”

Williston on Sales, Vol. 2, Revised Edition, Section 339 at Page 322, in discussing the question of the removal of a chattel from one State to another, states the following:

“A distinction has been taken by a number of courts in cases where goods are bought on a conditional sale for immediate removal to another State, and the seller either ships the goods himself or is aware of the buyer’s purpose. It has been held that the courts of the State to which the property is removed will apply its own rules, though the conditional sale was entered into in another State; but there is no general assent to this distinction, for other courts apply the rule prevailing in the jurisdictions where the conditional sale was made, although the goods were to be removed immediately to another jurisdiction.”

Assuming that the contract is one that is made in Utah, then the question truly raised is whether or not the Plaintiff has been doing business in Utah such that it comes within the provisions of the Code requiring it to qualify. (*U.C.A.* 1953, 16-8-3) The writer of this brief has personally checked with the Secretary of State's Office for the State of Utah and has been informed that even to the date of this writing that the Plaintiff, Martin Machinery, Inc., has never qualified to do business in Utah as required by *U.C.A.* 1953, 16-8-1. This is true despite the fact that the court found that the Plaintiff was a Colorado corporation "with authority to operate and carry on its business within the State of Utah." (R. 26) There was never any evidence presented to the court to the effect that the Plaintiff had ever qualified to carry on business in the State of Utah. In fact, the evidence presented by the Plaintiff was to show that the Plaintiff was not carrying on any business in the State of Utah (R. 18-19). The finding of the court is contrary to all of the evidence presented. If the finding of the Court is to stand, when in truth and in fact, the Plaintiff has never qualified with *U.C.A.* 1953, 16-8-1, then Plaintiff truly comes within the provisions of *U.C.A.* 1618-3 and cannot sue on this agreement.

CONCLUSION

In conclusion, the Appellant submits that the agreement entered into on October 15, 1955, is in fact a chattel mortgage since the items shown thereon were given for the purpose of securing the payment for the purchase of

one item known as a “mercury dry cleaning unit.” The affidavit submitted by Mr. Sleeter substantiates this position, and the Court should have had all of the evidence surrounding the facts and circumstances in the creation of this instrument. It is further submitted that there is sufficient conflict in the facts and evidence as presented that the Court should, as a matter of law, have denied the Motion for Summary Judgment.

Respectfully submitted,

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