

or punitive damages that conflicts with § 8371. Section 1716 does not address the situation where an insurer has acted in bad faith or wantonly, thus leaving the plaintiff without a remedy for such behavior which resulted in a denial of wage loss benefits unless a bad faith claim under § 8371 is permitted.

In conclusion, the court finds that the provisions in § 1716 are not in conflict with the punitive damages remedy for bad faith under § 8371. The statutes shall be construed to give effect to both. The court denies defendant's motion to dismiss plaintiff's claim for punitive damages based upon bad faith denial of wage loss benefits.

ORDER OF COURT

December 8, 1992, the court denies defendant's preliminary objections alleging:

1. Lack of subject matter jurisdiction;
2. The complaint lacks conformity to rule of law;
3. The insured lacks standing.
4. Punitive damages under 42 Pa.C.S. § 8371 are not available in the instant case.

J.I. CASE CREDIT PLAINTIFF V. SHINDLEDECKER, ETC. ET AL., C.P.C.D. Franklin County Branch, No. A.D. 1992-333

Replevin - Security Interest - Buyer in the Ordinary Course of Business
(UCC Section 9307 (a))

1. The protection afforded a buyer in the ordinary course of business under UCC Section 9307 applies primarily to the purchase of inventory.
2. Where the owner of a piece of excavating equipment is in the business of developing real estate and had never before sold construction equipment, he is not a person in the business of selling goods of that kind.

Keith O. Brenneman, Esq., Attorney for Plaintiff
Deborah K. Hoff, Esq., Attorney for Defendant

OPINION AND ORDER

WALKER, J., October 16, 1992:

FINDINGS OF FACT

Plaintiff, J. I. Case Credit Corp., filed this action for replevin of an excavator in the possession of defendant, David L. Shindledecker. In October, 1988, Ward Investments, Inc. (hereinafter "Ward") entered into a retail installment contract with Groff Tractor & Equipment, Inc. (hereinafter "Groff"). Groff assigned the contract to the plaintiff. On October 27, 1988, Groff filed a financing statement locally and with the Commonwealth of Pennsylvania, Department of State, which listed Ward as a debtor and the plaintiff as a secured party.

On May 26, 1991, Ward entered into a refinancing agreement with the plaintiff to revise payment schedules of the previous retail installment contract. Ward subsequently defaulted on the refinancing agreement and then sold the excavator to the defendant. Defendant testified he did not perform a search for liens on the excavator, was not informed of the plaintiff's lien on the excavator, and thus was not aware of plaintiff's perfected security interest prior to the purchase from Ward.

Plaintiff filed a motion for writ of seizure pursuant to Pa.R.C.P. § 1075.1. A hearing on the motion was held on September 22, 1992. The purpose of the hearing was to determine whether the plaintiff has established probable validity of his claim as required by Pa.R.C.P. § 1075.1(e), and not a final hearing on the merits. This matter is now ripe for disposition.

DISCUSSION

Defendant asserts that although plaintiff perfected its security interest prior to defendant's purchase, the plaintiff is estopped from enforcing the security interest because the defendant was a buyer in the ordinary course of business and purchased the excavator in good faith from a person in the business of selling goods of that kind or, alternatively, that the plaintiff implicitly authorized the sale. The court will address the arguments individually.

The Uniform Commercial Code states:

A buyer in the ordinary course of business... takes free of a

security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

U.C.C. § 9307(a).

A buyer in the ordinary course of business is one who purchases "from a person in the business of selling goods of that kind." U.C.C. § 1-201 (9). The protection afforded a buyer under Section 9307 applies primarily to the purchase of inventory. U.C.C. § 9307, cmt. 2.

The court is of the opinion that the defendant purchased the excavator in good faith and the plaintiffs do not argue to the contrary. The issue is therefore whether Ward is a person in the business of selling excavators or similar machinery. The court finds it is not.

The president of Ward testified that the company was in the business of developing residential real estate and not in the business of selling or leasing equipment, and had never sold a piece of construction equipment. Thus, the defendant cannot avail himself to the protection afforded buyers in Section 9307 because Ward was not a person in the business of selling excavators, or goods of that kind.

Defendants argue that because the excavator was available for inspections at Groff Tractors, along with several other items Groff was attempting to sell on consignment for Ward, Ward was in the "business of selling" at the time of the purchase. The court finds this argument unpersuasive in that, as previously stated, Section 9307 applies primarily to inventory. Ward was simply trying to sell a piece of equipment in exchange for a discharge of a previous debt for work performed by the defendant, plus an equal amount in cash. The court finds that this isolated disposition of goods does not change Ward from a real estate developer to a person in the business of selling, and the defendant's only recourse is to show that the plaintiff authorized the sale.

In support of the implicit authorization argument, defendant relies on the following section of the Uniform Commercial

Code:

[A] security interest continues in collateral notwithstanding sale, exchange or other disposition thereof *unless the disposition was authorized by the secured party in the security agreement or otherwise.*

U.C.C. § 9306(b) (emphasis added).

Although the court is uncertain whether implicit authorization suffices to trigger the applicability of this section, resolution of this issue is not necessary because the court finds that the plaintiff did not implicitly authorize the sale of the excavator.

The defendant inspected the excavator on at least two occasions at Groff's place of business. Defendant was aware that Groff was selling the excavator on consignment for Ward. Defendant testified that he never informed Groff or plaintiff that he was going to purchase the excavator from Ward. Defendant used the excavator for six weeks before making his decision to purchase. Defendant purchased the machine directly from Ward and did not communicate with the plaintiff or Groff until after he discovered the lien.

The court finds that neither the plaintiff nor Groff had any knowledge of defendant's intention to purchase the excavator and thus could not have implicitly authorized the sale.

In conclusion, the court finds the plaintiff has established probable validity of success of the claim for replevin and grants the motion for a writ of seizure.

ORDER OF COURT

October 16, 1992, the plaintiff's motion for writ of seizure is granted. The plaintiff is further ordered to post bond as required by Pa.R.C.P. 1075.1(e), in the amount required by Pa.R.C.P. 1075.3, pending final disposition of this case.