Nevertheless, the first order that the court made was an attempt to regenerate some feeling between the children and their father and, in a way, to make him feel some involvement in what they were doing. But the order was appealed before it could have any such beneficial effect and when the matter was referred back to the court, Angela felt threatened — maybe her father would get some greater custody after all. She had been cooperating before the appeal, but not all that willingly.

There is no hope now for any kind of real shared custody. Both of the girls have matured further and both have more to say about what they are going to have to do. Both are very active in school and each has indicated they want things just the way they are: Angela - no visitation, and Dana - the kind of visitation she has now with the option on her own of working out longer periods with her father if she wants to do so.

As this proceeding came to a close, the father's counsel was only arguing for a return to the situation as it existed before the new hearing was granted. She was not urging what to all seemed impossible — real joint custody. Angela will have to awaken to a relationship with her father when she becomes old enough to realize that he has a need and a right to such relationship, and that he loves her, else why would he go through all of this? When that will happen, if ever, we cannot forecast. Dana may expand her relationship with her father and if she does, in the end, we are sure she will find it rewarding.

When this started out, the mother was hostile to the father. She had no intent of cooperating in having the children visit with him. He had hostile feelings toward her too and the two met in open conflict. We perceive that now the mother is willing that the children should be with their father, though much of that may be out of fear that some sanction will be imposed against her if she does not cooperate. Even a sanction against the mother would further elevate Angela's feelings against her father. So we are nowhere.

Under all of the circumstances, there is little to do except leave things the way they are. Dana will continue to live with her mother and visit with her father at least once every two weeks. Angela will live with her mother but we will not make an order requiring her to visit with her father.

ORDER OF COURT

April 12, 1985, custody of Angela Mellott and Dana Mellott, children of Donna J. Mellott and Chalmer J. Mellott, shall be in Donna J. Mellott, the mother.

Chalmer M. Mellott shall have visitation rights with Dana Mellott as now being practiced and on such additional occasions as may be worked out between the child and her father.

Angela Mellott being unwilling to spend any time with her father, his request for visitation or other custody with Angela is denied.

The parties shall each pay their own costs.

INDUSTRIAL VALLEY BANK V. FIRST NATIONAL BANK OF GREENCASTLE, C.P. Franklin County Branch A.D. 1983 - 328

Declaratory Judgment - UCC - Purchase Money Security Interest

1. Where a loan is made after a vehicle is purchased and no lien is documented on the manufacturer's certificate of origin at the time of purchase, the lender does not have a purchase money security interest despite the latersigning of a security agreement.

Stephen T. Burdmuy, Esquire, Counsel for plaintiff

David S. Dickey, Esquire, Counsel for defendant

ADJUDICATION AND VERDICT

EPPINGER, P.J., May 9, 1985:

Under an agreement made on November 24, 1980, Industrial Valley Bank & Trust Company (Valley) periodically made loans to Cambridge Wreckers, Inc., (Cambridge) of Cornwell Heights, Pennsylvania, to finance the purchase of the inventory of Cambridge. Valley retained a security interest in all of Cambridge's inventory and accounts receivable. The security agreement between Valley and Cambridge defines inventory as, "goods held for sale or lease or being processed for sale or lease in Debtor's

business, as now or hereafter conducted including all raw materials, goods in process, parts, finished goods and supplies customarily classified as inventory."[1] Valley properly perfected its security interest by filing a financing statement in Bucks County and with the Pennsylvania Department of State.

On April 29, 1983, Cambridge purchased a 1984 Chevrolet Corvette from Roberts Chevrolet, Inc., (Roberts) in Green Cove Springs, Florida. Payment was made by a certified check from Cambridge dated April 28, 1983 for $24,000. The check was signed by Cambridge's president, Wayne Soffian. At the time Cambridge purchased the Corvette from Roberts, Soffian signed an affidavit that the car would be transported oustide Florida for resale and for no other purpose and that Cambridge was licensed and registered as a motor vehicle dealer in Pennsylvania.[2]

On May 19, 1983, the First National Bank of Greencastle (National) made a loan to Cambridge for $24,000 and claims to have retained a security interest in the Corvette as evidenced by a note and security agreement entered on the same date.[3] National contends that this security interest constitutes a "purchase money security interest" under 13 Pa.C.S.A. § 9107, and that the money loaned to Cambridge was in fact used to purchase the Corvette.

National received the Certificate of Origin for the Corvette and had its lien for $25,878.72 (principal and interest) entered on the Certificate. By authority given National by the secretary-treasurer of Cambridge,[4] the loan proceeds were deposited in the account of Shadow Carriers, Inc., (Shadow) at National. At that time Cambridge owed Shadow a substantial amount of money for roll-back truck bodies which Shadow had sold to Cambridge. At the time of this $24,000 payment to Shadow, it immediately paid $23,095.83 to National.

[1] Plaintiff's Exhibit No. 1.

[2] Deposition of Mike O'Connor and Carol Parduhn, Plaintiff's Exhibit No. 6.

[3] Defense Exhibit No. 1.

[4] Defense Exhibit No. 4.

Cambridge defaulted on both loans. National repossessed the Corvette and sold it for $23,000, retaining the proceeds. Valley then instituted this action for declaratory and other relief alleging that the Corvette was part of Cambridge's inventory and thus subject to its prior security interest.

The action is in two counts. In the first count, Valley asks for a judgment declaring that it has a security interest in the Corvette which has priority over National's security interest. Valley also asks for the return of the vehicle and for damages in the amount of any diminution in the value of the vehicle. In the second count, Valley alleges that National sold the Corvette and asks for a judgment in the amount of the sale proceeds.

National has filed a counterclaim asking for a judgment declaring that its security interest in the Corvette has priority over Valley's.

The initial question we must decide is whether the Corvette was part of the inventory of Cambridge. We find that it was. Wayne Soffian, President of Cambridge, dealt with both Roberts and National in this transaction. He was not available to either party at the time of the trial. At the time of settlement for the Corvette, Soffian signed an Affidavit titled, "Purchase of Motor Vehicle by Nonresident Dealer for Resale outside Florida." In so doing Soffian certified, before a notary, that the Corvette would, "be transported outside Florida for resale *and for no other purpose,* and that the purchaser is licensed and registered as a *motor vehicle dealer* in the state"[5] (emphasis added).

Mike O'Connor, an employee of Roberts, testified in his deposition that he had no reason to doubt that Soffian was not a certified car dealer in Pennsylvania.[6] Soffian displayed a Pennsylvania dealer registration card [7] to O'Connor who also testified that he had no reason to doubt that Soffian was buying the Corvette for Cambridge.[8] In no way did Soffian indicate that he

[5] Deposition of Mike O'Connor and Carol Parduhn, Plaintiff's Exhibit No. 6.

[6] Deposition of Mike O'Connor and Carol Parduhn, P. 19.

[7] Deposition of Mike O'Connor and Carol Parduhn, Plaintiff's Exhibit No. 5.

[8] Deposition of Mike O'Connor and Carol Parduhn, P. 20.

was not buying this car for Cambridge in his capacity as dealer/owner.[9] At the time of purchase, Soffian received the manufacturer's statement of origin which was the common practice when a car was being purchased by an out-of-state dealer. Thus we conclude that the car was purchased to become a part of the inventory of Cambridge. Cambridge's principal business was dealing in trucks. But it was not shown that there was a limitation on its dealership that prohibited Cambridge from selling cars.

The second question we must determine is whether National had a valid "purchase money security interest" in the Corvette. We find it did not.

13 Pa.C.S.A. §9107 states that:

> "A security interest is a 'purchase money security interest' to the extent that it is:
>
> (1) taken or retained by the seller of the collateral to secure all or part of its price; or
>
> (2) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used."

National's $24,000 loan to Cambridge did not allow Cambridge "to acquire rights in or the use of collateral" as the loan was made approximately 3 weeks after Cambridge purchased the Corvette. The Corvette was purchased with a check from Cambridge, not National.[10] At the time of purchase, no lien was documented on the Manufacturer's Certificate of Origin.

In fact, Cambridge never received the $24,000 loan from National. Immediately after approval of the loan on May 19, 1983, Cambridge authorized National to deposit the loan proceeds in Shadow's account at National to satisfy part of a $50,000 debt which Cambridge owed Shadow. It was not National's money that purchased the Corvette.

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[9] Deposition of Mike O'Connor and Carol Parduhn, P. 20.

[10] Deposition of Mike O'Connor and Carol Parduhn, Plaintiff's Exhibit No. 4.

In conclusion, we find that the Corvette was part of the inventory of Cambridge and thus subject to Valley's prior perfected security interest. National did not have a valid "purchase money security interest" thus its repossession and sale of the Corvette were improper, and Valley having stipulated that the proceeds of the sale by National would be a proper verdict, we find Valley is entitled to a verdict in the sum of $23,000 against National.

VERDICT

May 9, 1985, the court finds for Industrial Valley Bank & Trust Co., plaintiff, against First National Bank of Greencastle, defendant, in the amount of $23,000.

MELVILLE V. WAYNESBORO HOSPITAL, C.P. Franklin County Branch, A.D. 1984 - 115

Employment - Contract - Breach - Summary Judgment

1. Summary judgment may be granted only when the moving party proves there is no genuine issue of fact.

2. Even if facts are not in dispute, if the parties disagree about the inferences to be drawn from those facts, then a motion for summary judgment must be denied.

3. Employment contracts which do not fix a definite duration are not always terminable at will, but are sometimes construed as providing for a reasonable or some particular period inferred from the nature and circumstances of the undertaking.

John N. Keller, Esquire, Counsel for plaintiff

David H. Allshouse, Esquire, Counsel for defendant

Richard J. Walsh, Esquire, Counsel for defendant

OPINION AND ORDER

EPPINGER, P.J., May 16, 1985:

Elsie M. Melville (Melville), a Registered Nurse, was employed by Waynesboro Hospital (Hospital) for over twenty-seven years. In September, 1976, Melville was promoted to the position of Administrative Day Supervisor of Nursing.

Melville enjoyed this position but in June, 1977, at the Hospital's request, she agreed to serve as Temporary Director of Nursing with the Hospital's agreement that an active search would be made for a permanent Director of Nursing at which time Melville would be returned to her position as Day Supervisor of Nursing. On September 11, 1977, by written memorandum[1] from the Hospital's Administrator, E. L. Perun, Melville was named Director of Nursing. Perun continued the agreement with Melville that when a new Director of Nursing was found, she would return to her former position.

Perun left his position as Hospital Administrator in December, 1979, but before he left he made a memorandum of the Hospital's agreement with Melville which was placed in her personnel file. The memorandum stated that:

> "At the request of the Personnel Committee of the Board of Managers, I have talked with you and have asked you to temporarily take the Director of Nursing position. At this time we need your qualifications, knowledge, and rapport with the nursing department during the building program planning. This will be renewed yearly.
>
> It is my intention to revert your position back to Day Supervisor under a new Director of Nursing. It is important that a sound position be maintained for you in the future, for you are giving a great deal to the hospital and administration at a time we need you the most."[2]

On March 31, 1980, Melville wrote a letter to the Personnel Committee of the Board of Managers of the Hospital and to the New Hospital Administrator, William G. George, requesting that by May 1, 1980 she be returned to her former position as Day

[1] Exhibit A of Plaintiff's Complaint.
[2] Exhibit B of Plaintiff's Complaint.