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SECTION 303 OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

JAMES THOMAS CONNOR*

A good deal has been written concerning the present Civil Relief Act¹ and its prototype, the 1918 Act.² It is not the intention of this article to undertake another excursion along avenues already well explored.³ Rather, attention here will be focused on that part of the Act which is contained in Section 303. Two weighty reasons justify this concentration of interest. First of all, Section 303 is an innovation.⁴ It is not found in the 1918 Act.⁵ Secondly, the tremendous development in deferred-payment purchases of motor vehicles and accessories during the past two decades indicates that Section 303, confined as it is to this situation, will be resorted to constantly in the administration of this mora-

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¹ 54 STAT. 1178 (1940), 50 U.S.C.A. p. 112 (Supp. 1941).

² 40 STAT. 440 (1918), 50 U.S.C.A. p. 178 (1923).

³ As to the 1918 Act, See Ferry, Rosenbaum, & Wigmore, *History of the Soldiers' and Sailors' Civil Relief Act* (1918) 3 MASS. L.Q. 204; Ferry, Rosenbaum, & Wigmore, *Soldiers' and Sailors' Civil Rights Bill* (1918) 12 ILL. L. REV. 449; Notes (1918) 3 MASS.L.Q. 230, 4 MASS.L.Q. 24.

For a discussion of the Soldiers' and Sailors' Civil Act of 1940, See Bendetson, *the Soldiers' and Sailors' Civil Relief Act of 1940* (1940) 2 W. & L. L. REV. 1; Muench, *Soldiers' and Sailors' Civil Relief Act of 1940* (1940) 6 JOHN MARSHALL L.Q. 190; Cockrill, *Soldiers' and Sailors' Civil Relief Act of 1940* (1941) 27 A.B.A.J. 23; Crane, *Soldiers' and Sailors' Relief Act of 1940* (1941) 7 U. OF PITT. L. REV. 300; Kuhns, *The Soldiers' and Sailors' Civil Relief Act of 1940* (1941) 20 NEBR.L.REV. 357; Rogers, *The Soldiers' and Sailors' Civil Relief Act of 1940* (1941) 29 GEO. L. J. 748; Taintor & Butts, *Soldiers' and Sailors' Civil Relief Act of 1940* (1941) 13 MISS.L.J. 467.

⁴ As a matter of fact, the present Act when introduced by Senator Overton of Louisiana did not contain § 303. (See S. 4270, 76th Cong., 3d Sess.). The subject matter of § 303 was contained in a House Amendment to the original Senate Bill. [See Conference Report, H.R.REP. NO. 3030, 76th Cong., 3d Sess., (1940) 51.]

⁵ There was no counterpart in the 1918 Act to the subject matter of the present Section 303. 54 STAT. 1183 (1940), 50 U.S.C.A. §533 (Supp. 1941).

torium statute.⁶ It is the purpose of this paper therefore to examine this section in detail and to explore all of its significant aspects in an effort to arrive at sound and defensible conclusions with respect to its function, scope, and application.

Sec. 303. No court shall stay a proceeding to resume possession of a motor vehicle, tractor, or the accessories of either, or for an order of sale thereof, where said motor vehicle, tractor, or accessories are encumbered by a purchase money mortgage, conditional sales contract, or a lease or bailment with a view to purchase, unless the court shall find that 50 per centum or more of the purchase price of said property has been paid, but in any such proceeding the court may, before entering an order or judgment, require the plaintiff to file a bond, approved by the court, conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any such judgment or order should the judgment or order be set aside in whole or in part.

"50 per centum . . . of the purchase price"

The first matter to be determined in the application of Section 303 is whether 50 per centum or more of the purchase price has been paid, since unless it has been, this section is unavailing to the defendant in a proceeding to resume possession. For the reason that the typical installment purchase is shrouded in euphemistic language and is presented to the purchaser with a liberal application of "sugar", a detailed analysis of a standard agreement will contribute to a better understanding. Let us suppose, for example, that the total retail price of the motor vehicle is \$1158.00. An allowance of \$358. is made on the purchaser's old car, leaving a net total due of \$800.00. Usually, the creditor represents that its interest rate is only 6 per centum on the unpaid balance. The unwary purchaser may not realize of course that the total interest for the period of the contract is reckoned on the original unpaid balance whereas by each installment he is reducing the principal with the result that actual interest more nearly approximates 12 per centum on the entire transaction. Be that as it may, the purchaser is usually thinking about the amount of the installment due each month and how he will meet it, rather than of the refinements of high

⁶ The truth of this prediction can be attested from the personal experience of the writer who, during the first year of this Act's operation, was called upon countless times in his capacity as Chief of the Legal Division, Louisiana Selective Service System, to advise inductees concerning their "bought on time" automobiles.

finance. In the example selected he will find that the monthly payment will be \$52.53 for a period of eighteen months. Breaking this down we find that \$4.00 of this sum represents interest (based on 6 per centum of the unpaid balance of \$800.00) and \$4.09 represents "carrying charges" (insurance, etc.). It is apparent then that each month \$44.44 is in reduction of principal. When it is recalled that the original purchase price was \$1158.00 and \$358.00 was allowed on the old car, it appears that \$221.00 will have to be paid on the principal in order to reach 50 per centum of the purchase price or \$579.00. Thus this purchaser will have come within the intendment of section 303 when he has paid his fifth installment which will represent a payment at that time of \$222.20 on principal. From the foregoing it is evident that the precise terms of each installment contract will have to be examined and a "break down" made in order to determine when the minimum of 50 per centum on the purchase price has been paid. And it must be remembered that the "purchase price" must be taken as the base and not the net balance due after the "trade-in" allowance.

"encumbered by a purchase money mortgage"

This innocent looking phrase may at first blush seem to have implicit in it one of the most perplexing legal problems which will arise under the section. The usual purchase-money mortgage is a well understood device. In its simplest form it constitutes an encumbrance in favor of the seller upon the subject-matter of the sale to secure the unpaid balance due to the seller on the contract.⁷ So long as the transaction remains a two-party, seller-purchaser, mortgagee-mortgagor agreement, no special difficulty need be anticipated. When we consider motor vehicle and tractor financing it has been developed, however, striking possibilities present themselves. It is generally known that the automobile dealer (the seller) immediately sells the security (the note plus purchase-money mortgage) as soon as it is executed by the purchaser. The standard practice is to have the purchaser execute an ordinary chattel mortgage or conditional sales agreement to secure payment of a note payable to the order of the dealer and calling for the payment of stated installments on the purchase price. The dealer immediately

⁷ 5 TIFFANY, REAL PROPERTY (3d ed. 1939) § 1462.

indorses the note, with or without recourse, forwards it and the chattel mortgage to his finance company or bank and simultaneously draws a sight draft on the indorsee for the full principal balance due and secured by the mortgage. The interesting question now presents itself whether, as between the indorsee who is a holder in due course of the note and the purchaser of the motor vehicle, the security still remains a purchase-money mortgage. And it is important! For if it is not a purchase-money mortgage in the hands of the holder in due course, but simply "other security in the nature of a mortgage . . .",⁸ the latter may well contend that even though the purchaser has paid more than 50 per centum of the purchase price, the matter of legal relief in case of default should be adjudicated under section 302 rather than 303. The significance of this contention becomes apparent when it is remembered that section 303 specifically mandates the court to grant a stay of repossession if it finds that 50 per centum of the purchase price has been paid whereas under section 302 the court may either grant a stay or "make such other disposition of the case as may be equitable to conserve the interests of all parties".⁹ Having gained this point, i.e., that section 302 rather than 303 should be applied, it is possible for the creditor to argue with touching eloquence and with considerable persuasiveness that it is far better to permit the repossession of the motor vehicle and sell it for the account of the purchaser

⁸ § 302(1). 54 STAT. 1182 (1940), 50 U.S.C.A. §532 (1) (Supp. 1941).

⁹ 54 STAT. 1182 (1940), 50 U.S.C.A. § 532 (Supp. 1941). "Sec. 302.

(1) The provisions of this section shall apply only to obligations originating prior to the date of approval of this Act and secured by mortgage trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of the military service and still so owned by him. (2) In any proceeding commenced in any court during the period of military service to enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, except as provided in section 303, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service—(a) stay the proceedings as provided in this Act; or (b) make such other disposition of the case as may be equitable to conserve the interests of all parties. (3) No sale under a power of sale or under a judgment entered upon warrant of attorney to confess judgment contained in any such obligation shall be valid if made during the period of military service or within three months thereafter, unless upon an order of sale previously granted by the court and a return thereto made and approved by the court."

than to have it stored away or worn out by use during the period of immunity from the obligation of the payments, thus diminishing the value of the security. Nor is the interest of the creditor in maintaining the value of its security the only persuasive factor. There is little comfort in store for the purchaser whether he stores the automobile or uses it. In either case it depreciates rapidly. In the meantime the unpaid and over-due but un-collectable installments mount apace and, according to the terms of the Act, the immunity created by it terminates three months after the completion of military service.¹⁰ Thus the purchaser may find himself with neither the "game or a name". Who is to say that the creditor is not rendering the person in military service a distinct service by re-possessing the motor vehicle or tractor and disposing of it for his account? And what will it profit a person to return to civil life only to have a deficiency judgment executable against him within ninety days—a judgment which in all probability he will be unable to pay!¹¹

Let us examine the problem which has been posed. It is worthy of attention that, whereas section 303 speaks of a "purchase-money mortgage", the language of section 302 is "or other security in the nature of a mortgage. . . ." Furthermore, section 301¹², which deals necessarily with conditional sales agreements, leaves no opportunity for a dubious construction since it includes not only the original seller but also the assignee of the seller, thus making it abundantly clear that whoever figures in the security as a creditor must resort to judicial proceedings in order to exercise any option to rescind or terminate the contract and resume possession of the property. Is it permissible to conclude therefore that the Congress intended to attach a special limitation to section

¹⁰ § 204. 54 STAT. 1181 (1940), 50 U.S.C.A. §524 (Supp. 1941).

¹¹ This very argument was urged in a repossession case in which the author of this article appeared as *amicus curiae*.

¹² 54 STAT. 1182 (1940), 50 U.S.C.A. §531 (Supp. 1941). "Sec. 301 (1) No person who prior to the date of approval of this Act has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for non-payment of any installment falling due during the period of such military service, except by action in a court of competent jurisdiction. . . ."

303 by the phrase "purchase-money mortgage"? An examination of sections 301, 302, and 303 of the Act strongly suggests the conclusion that the Congress was addressing itself to the general problem of "debtor with equity and incumbrance" and intended by section 303 to be decisive in the result to be achieved at least to the extent that there shall be no re-possession when the debtor's equity, amounted to 50 per centum or more and the matter involved a motor vehicle, tractor, or the accessories thereof.¹³ On the matter of legislative intent it is elementary however that unless a statute includes a specific situation within its intendment by appropriate language, it cannot be applied to the situation no matter how desirable the inclusion may seem to be from the point of view of the judge.¹⁴ Were it not for the possibility of a strict and literal construction, there seems to be very little doubt that the creditor is a holder in due course of a negotiable instrument and the chattel mortgage might be likened to a trust deed of real estate to the extent that it represents security for the benefit of the holder of the note whoever he may be at the date of maturity.¹⁵ Or to take the more realistic (functional) view, the mortgage is evidence of a lien to secure payment and nothing more.¹⁶ Certainly, from the viewpoint of the debtor, the payments made are in reduction of the debt for which the security was given and this is what occurs no matter who is the legal owner of the note representing the debt. Thus it would not seem to be of the essence of a "purchase-money mortgage" that the original creditor retain the security and the evidence of the debt.

Aside from the foregoing theoretical analysis of the situation, there is a very practical reason why this phase of the problem may never seriously trouble the courts. The

¹³ See Conference Report, H. R. REP. NO. 3030, 76th Cong., 3d Sess. (1940) 51.

¹⁴ See *Kent v. Rothensies*, 120 F. (2d) 476 (E. D. Pa. 1941) and *Fleming v. Belo Corporation*, 121 F. (2d) 201 (N.D. Tex. 1941).

¹⁵ 5 TIFFANY, REAL PROPERTY (3d ed. 1939) §1400.

¹⁶ *Hannah and Hogg v. Richter Brewing Company et al.*, 149 Mich. 220, 112 N.W. 713 (1907). In discussing the nature of a chattel mortgage, the court speaking through McAlvay, C. J., stated: "While many of the courts hold to the common law doctrine that a chattel mortgage is an instrument of sale conveying the title of the property, this court has held that the true relation of the parties to a chattel mortgage is that of debtor on one side and creditor secured by lien on the other", citing *Lucking v. Wesson*, 25 Mich. 443. See the interesting discussion by Glenn, *The Chattel Mortgage as a Statutory Security* (1939) 25 VA. L. REV. 316.

argument thus far advanced to favor the application of section 302 rather than 303 on the assumption that the security no longer remains a purchase-money mortgage when it has been negotiated is specious. It is a double-edged sword! For if section 302 should be applied when the security has been negotiated for the reason that it is no longer a purchase-money mortgage, it should be applied regardless of the amount of the purchaser's equity. Thus the owner of the security would lose the benefit of the positive injunction contained in section 303 that no stay of repossession shall be granted if less than 50 per centum of the purchase price has been paid. When this fact is fully realized by the holder in due course of the security, it is safe to assume that he will not urge this construction.

There is a more serious consideration implicit in the contention however. If the creditor who has purchased the security can convince the court that section 302 is the appropriate section to be applied, he will have set at rest the question whether section 303 is to be applied to purchases subsequent to the effective date of the Act. Section 302 is limited *in haec verba* to obligations originating prior to the date of the approval of the Act. (October 17, 1940) This phase of the problem will be discussed presently.

"No court shall stay a proceeding"

It is interesting to note that section 301 of the Act applies only to cases in which there has been received a deposit or installment of the purchase price by the creditor prior to the date of the approval of the Act (October 17, 1940). Section 302 specifically states that it shall apply only to obligations prior to the date of the approval of the Act. Both of these sections refer to section 303 by way of exception. It remains to be determined then whether a similar limitation is imposed upon the court in the application of section 303. Nowhere in the section does one find any language to indicate that it is to be applied only to obligations originating prior to the effective date of the Act. Yet if 303 is to be considered *in pari materia* with sections 301 and 302, there is ground for alleging that its operation is to be confined to agreements entered into prior to October 17, 1940. Some practical considerations lead to the same conclusion since if the immunity from repossession created in favor of the purchaser whose

equity in the motor vehicle is 50 per centum or greater is to be extended to purchasers who contract subsequent to the effective date of the Act, considerable injustice is done to the creditor. One answer of course, is that the creditor is free to refrain from accepting the contract. And it must always be kept in mind that the entire Act is essentially a moratorium and is not intended to be a defense to liability on obligations fairly assumed. Nevertheless, the rapidly depreciable character of the security in this situation offers little encouragement to the creditor if he is forced to wait an indefinite time before he can collect up to 50 per centum of his claim. Aside from a literal construction of the Act, the decision whether 303 is to be confined to obligations originating prior to October 17, 1940, will bring into focus the relative desirability of inducing creditors (finance companies) to extend credit to purchasers of motor vehicles subsequent to this date or of affording an indefinite moratorium to a person in the military service who has at least a 50 per centum equity in the automobile or tractor regardless of the time of the purchase. It is regrettable that the matter has been left to conjecture.

To return to a consideration of the terms of the section, a fair reading forces the conclusion that 303 is to apply regardless of the date of the original contract. The situations envisaged in sections 301 and 302 make it abundantly clear that were these sections not confined to agreements (or payments) made prior to the date of approval, a great temptation would have been created to undertake improvident installment purchases by those who anticipated entrance into military service.¹⁷ The example of the Insurance Article of the Act¹⁸ which confined its benefits to contracts which were made and a premium paid before the date of approval of the Act *or not less than thirty days before entry* into the military service is in point. The writer knows that insurance companies did a "land office" business by virtue of the "thirty days before entry into the military service" grace period, especially among National Guardsmen who were given more than thirty days notice of their activation. It is safe to predict that a large percentage of these policies will be

¹⁷ See the comment of Bendetson, *A Discussion of the Soldiers' and Sailors' Civil Relief Act of 1940* (1940) 2 W. & L. L. REV. 1, 32, 33.

¹⁸ § 402. 54STAT. 1183 (1940), 50 U.S.C.A. § 542 (Supp. 1941).

allowed to lapse after the insured returns to civil life and must repay all back premiums to the Government in order to continue the policy in force.¹⁹ The same result could have been anticipated under sections 301 and 302 were their operations not confined to previous obligations. Turning to 303 the same considerations do not weight so heavily. By its terms if the purchaser does not have a 50 per centum equity he stands to have the motor vehicle or tractor repossessed. If he does have a 50 per centum interest he is protected from repossession and the creditor may be forced to wait for his balance. The natural restraint imposed by these factors justifies a distinction in applying the various sections under consideration. The better view would seem to be then that section 303 was not intended to be limited only to purchases of motor vehicles and tractors made prior to October 17, 1940, that is, if the argument previously examined relative to "purchase-money mortgages" does not force a different result in the case of purchasers of this security.

There is a final matter posed by the phrase "No court shall stay a proceeding to resume possession of a motor vehicle. . . ." It has been pointed out heretofore that both sections 301 and 302 refer to section 303 by way of exception to their applications. It should be emphasized therefore that section 303 relates only to a proceeding to resume possession. It is provided that such a proceeding shall not be stayed in the special case of motor vehicles, tractors and their accessories unless 50 per centum of the purchase price has been paid. In the situation contemplated by sections 301 (conditional sales) and 302 (mortgages, trust deeds, or other security in the nature of a mortgage on real or personal property) a stay may be granted regardless of the equity of the debtor. One may inquire what relief if any is available to the creditor under the Act in those cases where 50 per centum or more has been paid on the purchase price. It has been suggested²⁰ that the court still has authority to "make such other disposition of the case as may be equitable to conserve the interests of all parties". This is undoubtedly true as to obligations originating prior to the date of approval of the Act but if section 303 is construed to apply to pur-

¹⁹ § 410. 54 STAT. 1185 (1940), 50 U.S.C.A. § 551 (Supp. 1941).

²⁰ Bendetson, *A Discussion of the Soldiers' and Sailors' Civil Relief Act of 1940* (1940) 2 W. & L.L. REV. 1, 12.

chases of motor vehicles and tractors regardless of the date of the contract there will be a definite hiatus into which will fall those transactions dating after October 17, 1940. If 50 per centum of the purchase price has been paid a proceeding to repossess must be stayed (section 303) but the alternative disposition (*sic*) provided in section 302 is unavailable because the agreement was entered into subsequent to the date of approval of the Act. Of course, it is entirely possible that section 204²¹ under Article II of the Act dealing with General Relief will be invoked in this situation. One must never lose sight of the fact, however, that repossession is the element of the contract primarily relied upon as an inducement to the creditor to negotiate. To deny this remedy therefore, leaves the creditor little solace when he seeks from the court such other disposition of the case as may be equitable to conserve the interests of all parties. So far as the creditor is concerned, the only equitable way in which to conserve not only his interest but that of the purchaser, is to repossess the motor vehicle in any case of default and inability to pay and have it sold for the account of the purchaser. It is evident that the economic considerations involved here are of far-reaching effect.

Conclusion

At the time this is written, no illumination has been cast by judicial interpretations upon the problems discussed herein. As was observed previously, section 303 has no counterpart in the 1918 Act. Thus no assistance can be secured from that source. It is felt however that the courts in administering section 303 will indulge in a literal construction. This means that its application will not be confined to transactions originating prior to the effective date of the Act and to this extent, the section will not be considered *in pari materia* with sections 301 and 302.

Something ought to be said in conclusion about two rather serious short-comings in the Act which stem from a

²¹ 54 STAT. 1181 (1940), 50 U.S.C.A. § 524 (Supp. 1941). "Sec. 204. Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this Act may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just, whether as to payment in installments of such amounts and at such times as the court may fix or otherwise. . . ."

consideration of section 303. First of all, in those cases where repossession is authorized (less than 50 per centum equity in the purchaser) no provision is made for an equitable composition of the purchaser's interest. It may be that in most instances the amount paid at the time of default just about fairly compensates for the use and consequent depreciation. This may not always be the case and so provision ought to have been made authorizing the court to demand as a condition to granting an order of seizure, a just reimbursement to the purchaser for any sum paid in over and above the fair use value of the vehicle while in his possession. Furthermore, the failure to provide for this disposition of the situation will undoubtedly result in the creditor repossessing the vehicle and selling it for the account of the original purchaser and assessing a deficiency against him if the transaction is not fully liquidated in the resale. Paragraph (3) of 301 will not avail the defendant in this proceeding.²² This would be an unwarranted (it would seem) advantage to the creditor and provision ought to be made authorizing the court to make a final and conclusive disposition of the issue in all cases where repossession is authorized and required.

Another deficiency in the Act is its failure to give sufficient attention to its end effect. While it is true that no penalties may accrue²³ still the Act limits its moratorium immunity to the period of military service and sixty or ninety days thereafter, as the case may be. Thus the laudable purpose of the Act may become a boomerang and its ultimate effect an iniquitous burden upon persons who have completed their military service. For example, the installment payments on a motor vehicle may be suspended during the period of military service. During this time however the period contemplated by the contract for the total payments may have passed. Their payment has been suspended. All stated payments have accrued. Suddenly the full amount becomes collectable when the immunity of the statute is removed. Wisdom would dictate that provision be made for a resumption of the payments after a return to civil life in the same

²² Section 301 (3) is confined to hearings on actions growing out of conditional sales, etc., upon which a deposit or installment of the purchase price has been paid prior to the date of approval of the Act.

²³ § 202. 54 STAT. 1181 (1940), 50 U.S.C.A. § 522 (Supp. 1941).

fashion as they were intended to be made at the time they were interrupted.²⁴ In this manner the problem of the debtor is eased at a time when he is confronted with many difficulties of readjustment. Obviously there is yet time to correct the short-comings just discussed.

One cannot but admit a feeling of regret that legislation so far reaching in its social, economic, and moral effects did not receive more careful attention during times of tranquility in order that its purpose might be understood against the background of contemporary economic and financial practices and its objectives secured in a clear and comprehensible manner.

²⁴ It is felt that sec. 204 does not accomplish this since this section seems to confine the discretion of the judge to decree payments in installments or otherwise to the period of military service and three months thereafter. It is at the end of this period and subsequently that the relief is needed.