Bailment Leases in Pennsylvania

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BAILMENT LEASES IN PENNSYLVANIA

To the student of Pennsylvania law it seems hardly necessary to point out in detail the importance of the bailment lease in Pennsylvania. However, a brief discussion of its importance and use may not be devoid of usefulness.

A distinction between a bailment lease and a conditional sale usually arises when creditors of the bailee seek to attach chattels which are in his possession for debts due them. The difficulty arises in view of the fact that both transactions accomplish the same end, namely a reservation of a special property interest in the seller until the buyer has fully paid the purchase price of the chattel. Under the law of most states, including Pennsylvania, a conditional sale had to be made a part of the public record before it was valid and enforceable against the judgment creditors of the vendee. A bailment lease, on the other hand, did not have to be recorded.

It was, therefore, argued by the opponents of the bailment lease that in view of the fact that the vendee was cloaked with the most important indicia of ownership, namely possession, that the courts judicially countenanced a perpetration of fraud upon creditors when they recognize the distinction between a bailment lease and a conditional sale.

The framers of the Uniform Conditional Sales Act, therefore, saw fit to include a bailment lease within the definition of a conditional sale.\(^1\)

The courts of Pennsylvania, however, were not too impressed with the arguments against the bailment lease and answer that the very nature of life necessarily requires the use of bailments; but caution, furthermore, that while they recognize the necessity of bailment leases they will look to the intent of the parties rather than the nomenclature used in determining whether a given set of facts is tantamount to a bailment lease or a conditional sale.

The legislative branch of the Commonwealth apparently agrees with the arguments of the courts in view of the fact that when adopting the Uniform Conditional Sales Act as a part of the law of the Commonwealth subsection 2 of section 1 which defined bailment leases as conditional sales was expressly omitted from the Act of Assembly.\(^2\)

A bailment lease has been defined as a commercial transaction whereby the owner of a chattel gives it to another under an agreement of transfer which contains these essentials: a lease (1) for a definite term; (2) at a definite rental; (3) with a provision that the chattel is to be returned to the owner at the termination of the term unless the bailee; (4) exercises his option to buy the chattel upon the payment of the entire rental and perhaps upon the payment of an additional sum, notwithstanding the fact that it may be nominal. Moreover, the lease must be (5) for use and not for sale.\(^3\)

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\(^1\) Uniform Conditional Sales Act, § 1 (2).
\(^2\) Act of 1925, May 12, P.L. 603, 69 P.S. 361.
The writer proposes to examine the extent to which the appellate courts of Pennsylvania have adhered to or have departed from this definition in the judicial determination of whether a given set of facts amount to a bailment lease or a conditional sale. The problem will be approached by an examination of the decision to determine the necessity or non-necessity of the presence of the above enumerated elements.

(1) For a definite term. In *Stiles v. Seaton* the trustees of the bankrupt attempted to recover certain personal property which the bankrupt, by the terms of the agreement, "agrees to rent" and the defendant "agrees to hire" at a monthly rental of $500.00, with the added stipulation that if and when the amount of rent paid shall amount to $9,980.70, title to the property shall vest in the defendants, the purported lessees.

It will be noted that the agreement does not contain an express stipulation for a definite term nor does it contain a stipulation for a return of the property in the event of a default in payments or violations of certain express covenants. The trial court construed the document as a bailment lease, which judgment was affirmed on appeal. The Supreme Court said, "But while both these provisions are important and sometimes controlling evidence of the intentions of the parties in executing the instrument, neither is essential to the existence of a bailment." The Court then added in this event the instrument is to be construed as a lease at will.

In *Summerson v. Hicks*, the Supreme Court reversed the trial court which had construed the agreement as a bailment lease. The purported lease of the property contained a stipulation for the payment of a certain sum of money on or before April 1. The lease also provided that ownership was to remain in the purported lessor until the full payment was made as well as the fact that the owner was entitled to possession of the chattel upon default in payments.

While it is admitted that the opinion was principally based upon the expressed stipulation that ownership was to remain in the lessor which the court interpreted as indicative of a conditional sale, it is nonetheless true that the court made mention of the fact that no definite term was set forth in the agreement. It is, therefore, submitted that while the necessity of a definite term was mentioned by way of *dicta*, the Supreme Court indicated that a definite term was essential to a bailment lease and, if necessary, would have reversed solely on that ground.

In *Leatherman v. Moyer*, the plaintiff was in possession of three cows under an agreement which called for the payment of $355.00 to the defendant within one month until which payment the title to the cows remained in the defendant. The court noted that the agreement failed to state a definite term of bailment and after

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5 *Summerson v. Hicks*, 134 Pa. 566, 19 Atl. 808 (1890).
favorably quoting *Stern v. Paul*, *supra*, decided that the agreement was a conditional sale and not a bailment lease.

It will be noted that in *Summerson v. Hicks*, decided in 1890, the Supreme Court by very strong and pointed *dicta*, indicated that a definite term was necessary to a bailment lease while the same court in *Stiles v. Seaton*, 1901, said a definite term was not essential to a bailment lease. In *Leatherman v. Moyer*, 1931, the Superior Court indicated that a definite term was essential to a bailment lease. Thus it is seen that the Supreme Court disregarded one of its previous decisions, while making no mention of the previous decision in the latter opinion, and the Superior Court disregarding the later Supreme Court decision and following the pointed *dictum* of the earlier Supreme Court decision.

**Definite Rental:** There is at least one Pennsylvania case in which the agreement did not contain a definite rental and the court nevertheless construed it as a bailment lease. In *Chamberlain v. Smith*, the agreement called for the delivery of oxen to the purported lessee to keep and work for a term of one year upon the completion of which the cattle were to be returned to the purported lessor. The agreement further provided, however, that the purported lessee could obtain title to the cattle by payment of $40.00.

In discussing the provision regarding the payment of the $40.00 to obtain title, the court emphatically said that the agreement was an offer to sell with an extended time in which to accept the offer. It will be noted, however, that the agreement is devoid of any provision for payment, as rental, if the lessee does not elect to purchase the oxen. It is submitted that the agreement does not contemplate a definite rental, in fact no rental whatsoever, and the transaction was a conditional sale rather than a bailment lease.

No Pennsylvania cases have been found in which an agreement was held to be a bailment lease if it did not contemplate a definite rental. Many cases, however, set forth the stipulation regarding a definite rental as an essential element of a bailment lease.

When one considers that a bailment lease is essentially a bailment for the mutual benefit of the bailor and bailee in that it usually contemplates a transfer of title and in addition that the so-called rental payments are deducted from the purchase price, it seems logical that the bailee should pay a definite rental for use of the chattel and not a lump sum if he elects to purchase the chattel. It is, therefore, submitted that a stipulation for rental of the chattel is a most consistent, if not absolutely essential, element of the very nature of the bailment lease.

**No Return:** In *Farquhar v. McAlevy*, the court remarked, "It lacked the

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essential feature of a bailment, viz., a stipulation for a return of the property at the end of the term." This case as far as can be determined has not been overruled in Pennsylvania.

There are, however, two relatively recent Superior Court decisions, namely, General Motors Acceptance Corporation v. Hartman\(^{10}\) and Kindig v. Wertz,\(^{11}\) in both of which the matter was discussed and the court said that a provision for return of the chattel upon completion of the term was not necessary to a bailment lease. In the latter case, the court quoted Enlow v. Klein\(^{12}\) in which it was said, "neither is a stipulation for the return of the property on the expiration of the time during which the bailment is operative necessary, for if it is not returned the bailor may resort to his legal remedies, and thus enforce his contract."

Thus it is seen that the two decisions of the Superior Court have elected to follow Enlow v. Klein while totally disregarding a Supreme Court decision which seems to hold the contrary view.

It must be admitted that the Hartman case contained only *dictum* to this effect; such *dictum* did, however, appear to be rather definite and seemed to leave no doubt as to the position of the Court on this matter.

It is submitted that the requirement that the bailment lease should contain such a stipulation is not without foundation in view of the fact that the very nature of a bailment contemplates a return of the property upon the termination of the period of the bailment and notwithstanding the fact that the bailee may exercise his option to purchase the property.

*Option to Buy:* An option may be defined as a right which one person has and for which he has given sufficient consideration to purchase, if he chooses, within a given period certain property interests of another.

The Pennsylvania cases do not require that the buyer have a technical option in order to construe the agreement as a bailment lease. According to the appellate decisions of the Commonwealth an agreement will be construed as a bailment lease even though the seller is to merely execute a bill of sale to the buyer upon the receipt of the final payment.

In *Ditman v. Cottrell,\(^{13}\) the lessor rented a certain printing press to lessee for a definite term at a definite rental and upon the expiration of the term provided that all covenants have been kept the lessor agreed to execute a bill of sale to the lessee. The Court in a *per curiam* opinion affirmed the judgment of the lower court which had held the agreement to be a bailment lease.

In *Kindig v. Wertz,\(^{14}\) the plaintiff's testator entered into an agreement with defendant's intestate whereby the intestate agreed to lease certain mules to testator for a definite period at a definite rental. It was also agreed that the mules shall be-

\(^{13}\) Ditman v. Cottrell, 125 Pa. 606, 17 Atl. 504 (1889).
come the property of the testator if, and only if, the full payments were made. The court held such an arrangement to be an option to buy and a bailment lease.

Another interesting situation is seen in *Dando v. Foulds*. The lessor agreed to lease certain chattels to lessee for a definite period at a definite rental. The agreement further provided that at the expiration of the term the lessor would sell and the lessee would buy the chattels in question.

It is noteworthy that the agreement did not contain an option to buy but rather a stipulation whereby the lessor had a contractual duty to sell and the lessee a contractual duty to buy the leased chattels. Nevertheless, the court determined that the agreement was a bailment lease.

It is therefore seen from a consideration of the above cases that the courts of Pennsylvania are rather lenient in determining the existence of an option to buy. It is submitted that the courts will find an option to buy, at least in name, as long as the lessee is to gain title at any time during or upon the completion of the term of bailment. The courts, moreover, do not concern themselves with the manner by which the lessee is to gain title. He may even have a contractual duty to do so and upon failure to perform may be found liable in an action of assumpsit.

*For Use and Not For Sale*: In determining whether the agreement constituted a bailment for use as distinguished from a bailment for sale, one finds that it is sometimes most difficult to precisely determine the intent of the parties. This is so because in both a bailment lease and a conditional sale there is always a superimposed agreement which calls for the transfer of title at some future date.

While the courts have not judicially defined what is meant by the term, "for use and not for sale," it is apparent from a reading of the cases that the agreement must not on its face constitute a sale *ab initio* but must rather call for a bailment with an option to purchase at some future date.

In *Forrest v. Nelson Bros. and Co.*, the agreement stated that the owner of eighteen looms "has agreed to sell" them to one Andrews for a certain price payable in four installments which became due on certain dates. The agreement stipulated that as each loom was paid for a bill of sale for that loom would be given to Andrews. The looms were to be delivered to Andrews and used by him in his business, and the plaintiff, the owner, had the right to repossess the looms upon the breach of any covenant. The court determined that the agreement was a conditional sale and in its opinion placed emphasis upon the fact that by the terms of the agreement Forrest "has agreed to sell" and, furthermore, that Andrews was to insure the goods in the name of Forrest. Both of these stipulations, the court said, are incompatible with the nature of a bailment lease and are indicative of a conditional sale.

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15 Dando v. Foulds, 105 Pa. 74, (1884).
In the more recent case of Hoeveler-Stutz Company v. Cleveland Motor Sales, the court said that when automobiles are given to a franchise holder for the purpose of resale by him to the general public, the agreement is a conditional sale and not a bailment lease, notwithstanding the fact that the parties referred to it as a lease.

The facts of the case are briefly as follows: The plaintiff, a district distributor of Stutz automobiles, under an agreement with the defendant, by the terms of which the defendant agreed to purchase cars from the distributor, delivered ten cars to the defendant. Although the terms of the original agreement called for payment on delivery or on presentation of a sight draft with the bill of lading attached, the plaintiff attempted to make a credit sale secured by a bailment lease.

In condemning the transaction the court said that one of the necessary elements of a bailment lease is that the subject matter must be given for the use of the bailee and not for sale by him to any third party. The court also pointed out that if such an agreement was condoned, the purchaser from the dealer would be "an unwitting guarantor of the credit of his dealer."

In Johnstown Automobile v. Read, the plaintiff delivered a car to one Myers under a bailment lease for a period of thirty days. Myers pledged the car as security for a loan made to him by defendant who later gained possession of the car. In an action of replevin, the court construed the transaction as a bailment lease notwithstanding the fact that the bailment was one for sale and not for use.

It is interesting to note that this case was decided about two months after the Stern case, supra, in which the same court said an essential element of a bailment lease is the fact that it must be for use and not for sale. The doctrine of the Read case was subsequently approved in Sunbury Finance Company v. Boyd Motor Company, as well as in Commercial Banking Corporation v. Active Loan Company of Philadelphia.

Thus it is seen that while the Superior Court said in the Stern case, supra, that an essential element of a bailment lease was the fact that the bailment must be for use and not for sale, the courts make an exception in the case of an automobile franchise wherein the distributor gives the dealer possession of cars under a bailment lease. The relation between the distributor and dealer is said to be a conditional sale because the bailment is one for sale and not for use.

If, however, the dealer pledges the car as security for his own debt, the transaction between the distributor and the dealer is said to be a bailment lease so as to protect the distributor in an action of replevin against the pledgee of the dealer.

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