

1. The security interest on the paper folder is classified as a purchase money security interest (PMSI) in equipment because it was used to secure the payment for the paper folder itself, which is equipment. A secured party may declare default and accelerate the debt if the security instrument allows this, as it did here. Also, it may peaceably repossess the equipment, as it did here. The secured party may then either sell the equipment and claim a default if the sale is not high enough to cover the debt or it may keep the equipment in full or partial satisfaction. If it decides to keep in full or partial satisfaction, it must first send notice to the debtor of this and of the amount of satisfaction. If the debtor agrees or fails to object within 20 days then it is considered a done deal and the debtor has no future rights to the equipment.

Here, Miracle repossessed, sent the required notice, and RIP did not object after receiving the notice. On December 1, this is more than 20 days after getting the notice so RIP has no right to redeem the machine.

2. This is considered a PMSI in consumer goods because it was a security interest used to secure the purchase price of a consumer good, the pitching machine for personal purposes. PSMI's in consumer goods do not follow the same rules as above. First, if a buyer has paid more than 60% of the purchase price, goods cannot be kept by the secured party it must be resold. Here, RIP bought the machine in April and made 3 or 4 payments. The balance was \$5,000. So there is no way he has paid 60% so this rule does not apply. But if a secured party recovers and chooses to keep a consumer good instead of reselling, then the secured party must take the goods as full satisfaction of the debt. Partial satisfaction is not allowed. Here, not only did Knuckler request partial satisfaction he also requested more money. This is not allowed, even by the agreement between the two. Since this is not allowed, Knuckler has not properly sold or kept the machine. A buyer has an equitable right to reclaim until this happens. Therefore, RIP can reclaim the pitching machine by paying the amount due on the note.

RIP may also file a suit against Knuckler for violating the above provisions of the code in which he can recover all interest paid under the agreement plus 10% of the purchase price. (\$500.00).

(1) RIP has waived any rights he may have had in the paper folding machine. The machine is equipment for RIP's mail order business. Miracle has a valid security interest (Purchase Money Security Interest) in the machine (although not perfected because they did not file a financing statement within 20 days of possession.) Under Texas law three things must occur for a security interest to attach: 1) Creditor gives value; 2) security agreement; 3) Debtor has rights to the collateral. Here, Miracle gave value by selling the machine on credit, there was a valid security agreement and RIP had rights in the collateral when he took possession.

In Texas, foreclosure of a security interest is a self help remedy. The creditor is not required to give notice of foreclosure but may not breach the peace. Here, RIP did not object to foreclosure. Therefore, there was no breach of peace.

Under Texas law a creditor may sell foreclosed property at a public or private sale, or may strictly foreclose and keep the property itself. For non-consumer goods strict foreclosure may be used in satisfaction of all or part of the debt. Here, Miracle has taken the option to strictly foreclose in full satisfaction of the debt.

In Texas, in order to strictly foreclose the creditor must give notice to the debtor, any surety, and any other creditors who have filed a security interest in the property. Here there are no other creditors or surety. The written proposal by Miracle seems sufficient to give RIP notice of Miracle's intent to strictly foreclose. In Texas, if notice to a strict foreclosure for non-consumer goods (and consumer goods if not 60% paid for) is not objected to within 20 days of notice it is waived. Here, Notice was sent October 1, RIP did not object, as of December 1 he has waived any rights he may have had in the machine.

(2) RIP may be able to get the pitching machine back. Knuckler has a valid perfected purchase money security interest. As mentioned above: 1) value was given; 2) security agreement; 3) RIP has rights in the collateral. Further, because it is a consumer good with a purchase money security interest it is automatically perfected on attachment.

Unlike for non-consumer goods, strict foreclosure for consumer goods must be in full satisfaction of the debt.

RIP has two options in getting the machine back. RIP may try to argue Knuckler breached the peace in repossessing the machine. RIP agreed to a deal of partial

satisfaction and payment. This is not valid because in Texas strict foreclosure of consumer goods must be in full satisfaction. RIP may try to argue he was misled. However, Texas has held some trickery is allowed when repossessing, this is not likely a breach of peace.

RIP may try to argue Knuckler failed to foreclose and re-sell in a commercially reasonable way. In Texas, all foreclosure proceedings must be commercially reasonable. The burden is on the creditor. If the creditor has breached the commercially reasonable standard with regard to consumer goods, the debtor is entitled to 10% of the purchase price plus the finance charges.

Further, a debtor has a right to reclaim the property if it has not already been sold or subject to strict foreclosure. Since the strict foreclosure was invalid and the property has not been sold, RIP may be able to obtain the machine. Note he may be liable for costs of foreclosure, storage, etc.

Additionally, even though RIP put the strict foreclosure plus payments in writing, it is not valid to waive his right to notice. Any waiver must be authenticated. Thus RIP can claim he still has not received written notice from Knuckler in regards to strict foreclosure.

Note the facts do not support the high equity (60%) consumer good exception requiring sale within 90 days.

1. Rip does not have any rights or remedies to assert against Miracle. Rip bought the paper-folding machine from Miracle. Miracle had a security agreement to secure the debt. Rip then stopped making payments on the machine. Although Article 9 does not define a default, a default occurs when the person stops making payments on the debt. Here, Rip stopped making payments to Miracle for three months. Because of this, Miracle had the right to take the property in a repossession. Since the agreement called for it, Miracle had the right to accelerate the debt also. When Miracle obtained the property through repossession, they did not have to give notice, did not have to get court approval, and had to do so without breaching the peace. No facts indicate that the peace was breached by Miracle. To the contrary, the facts indicate that Rip allowed them to take the machine.

When Miracle took the machine they had two options; they could sell it or keep it in partial or total satisfaction in a strict foreclosure. To keep the item in strict foreclosure, Miracle had to tell Rip that they were doing so, unless Rip waived his right to notice after the default. The facts indicate that Rip was given notice a week after the repossession that Miracle wished to keep the machine in total satisfaction of the debt. In order for Miracle to do this, Rip had to consent in a signed writing, or fail to dissent to the notice from Miracle within 20 days. Rip did not give a signed consent, however, Rip never responded to Miracle's notice that they were keeping the item in total satisfaction of the debt. Assuming that 20 days have passed since the notice, Rip has effectively consented and therefore Miracle has the right to keep the item in total satisfaction of the debt.

Because Miracle complied with the law in retaining the item in total satisfaction, Rip has no remedies available to him.

2. Rip has rights and remedies to assert against Knuckler. Rip bought the pitching machine from Knuckler and used it at his home to help his son. Although Article 9 does not define a default, a default occurs when the person stops making payments on the debt. Here, Rip stopped making payments to Knuckler for three months. Therefore, Knuckler had the right to repossess the property. Just as with Miracle, it does not appear that Knuckler breached the peace when repossessing the machine because Rip agreed to it.

When a repossession occurs, the creditor has the option to sell the item to pay off the debt, or to keep it in total or partial satisfaction of the debt in a strict foreclosure. Here, the item was used by Rip at his home. Therefore, this is a consumer good. When consumer goods are involved, the creditor may not keep the goods in partial satisfaction of the debt, but may only keep the goods in total satisfaction of the debt. The facts indicate that Knuckler took the pitching machine and told Rip that it would be in partial satisfaction of the debt. In addition, when a creditor repossesses a consumer good that has been paid off by at least 60%, the creditor must sell the item within 90 days. Rip bought the machine for \$5000 and based on the facts seems to have made payments in April, May, June and July before he began defaulting in August. Because Rip has not paid at least 60% of the debt, this will not apply. However, Knuckler still may not keep the machine in partial satisfaction of the debt. Rip will be able to recover remedies from Knuckler for doing so. Rip will be able to recover actual damages plus 10% of the debt on the consumer good.

END OF EXAM