

2023 Regular Session

HOUSE BILL NO. 176

BY REPRESENTATIVE JEFFERSON

(On Recommendation of the Louisiana State Law Institute)

AN ACT

To amend and reenact Civil Code Article 525 and to enact Civil Code Article 520, relative to transfer of ownership of movable property; to provide for transfer of ownership by merchants; to provide for the effect of various provisions of the Civil Code; to provide for registered movables; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Article 525 is hereby amended and reenacted and Civil Code Article 520 is hereby enacted to read as follows:

Art. 520. Transfer of ownership by merchant

Except as otherwise provided by legislation, a transferee in good faith and for fair value acquires ownership of a corporeal movable from a transferor who is not the owner only if the transferor has possession of the thing with consent of the owner, is a merchant customarily selling similar things, and transfers the thing in the regular course of the transferor's business.

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(a) This provision is new. It sets forth a limited exception to the rule that the transfer of a thing of another does not convey ownership. See Article 2452. It does so by formulating a rule that is consistent with the doctrine of entrustment found in the Uniform Commercial Code. See U.C.C. Sections 2-403(2) and 2A-305(2). The

rule formulated by this Article is also consistent with the French doctrine of *la possession vaut titre*, but only as applied to certain transfers. See French Civil Code Article 2276. The purpose of this Article is to protect a good faith purchaser for value who acquires a movable from a transferor who has possession of the thing with the owner's consent, but only when the transferor is a merchant customarily selling similar things and the transfer is in the regular course of the transferor's business.

(b) The protection that this Article affords to a transferee of a movable in good faith, for fair value, and in the regular course of business is similar to the protections afforded to a "buyer in the ordinary course of business" as that term is used in the Uniform Commercial Code. See R.S. 10:1-201(b)(9); U.C.C. Sections 1-201(b)(9) and 2A-103(1)(a). Under that definition, neither a dation en paiement nor a transfer in bulk is a sale to a buyer in the ordinary course of business. Similarly, under this Article, neither a dation en paiement nor a transfer in bulk is a sale in the regular course of the transferor's business.

(c) Louisiana courts have, in the past, occasionally applied the doctrine of equitable estoppel to bar an owner's action for revendication against a good faith purchaser of a movable who purchased it from a person to whom the owner voluntarily delivered possession. According to that jurisprudence, the owner who clothes the possessor with every possible indicium of ownership must bear the loss when the possessor transfers the thing to a good faith purchaser. *Theriac v. McKeever*, 405 So. 2d 354 (La. App. 2 Cir. 1981); *James v. Judice*, 140 So. 2d 169 (La. App. 3 Cir. 1962); *Flatte v. Nichols*, 96 So. 2d 477 (La. 1957); *William Frantz & Co. v. Fink*, 52 So. 131 (La. 1909). While the courts' use of the doctrine of equitable estoppel is in line with the Uniform Commercial Code's entrustment doctrine and the French principle of *la possession vaut titre*, the approach formulated by this Article is more predictable than the prior jurisprudence. This Article displaces the doctrine of equitable estoppel in this context by declaring that, except as otherwise provided by legislation, one who has possession of a corporeal movable with the owner's consent may transfer its ownership to another only if the requirements of this Article are met.

(d) The requirement that the transferor have possession with the owner's consent negates the application of this Article to lost or stolen things. The owner's right to recover lost or stolen things from a possessor is governed by Articles 521 and 524.

(e) In the absence of a rule like the one set forth in this Article, Louisiana courts have erroneously applied Article 524, which by its very terms applies only to lost or stolen movables, to the transfer of a movable by a person who has possession of the thing with the owner's consent. See *Livestock Producers, Inc. v. Littleton*, 748 So. 2d 537 (La. App. 2 Cir. 1999); *Louisiana Lift & Equipment, Inc. v. Eizel*, 770 So. 2d 859 (La. App. 2 Cir. 2000). Unless otherwise provided by legislation, if the requirements of this Article are not satisfied, the transfer of a corporeal movable by a person who has possession of it with the owner's consent does not transfer ownership, and the owner may recover the movable from the transferee without reimbursing the purchase price, even if the transferee is in good faith.

(f) This Article does not affect the law of mandate. Quite apart from this provision, a mandatary in possession of a corporeal movable belonging to the principal may have actual or apparent authority to transfer its ownership to another.

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1 Art. 525. Registered movables.

2 ~~The provisions of this Chapter do not apply to movables that are~~ Movables
3 ~~required by law to be registered in public records~~ are subject to the provisions of this
4 Chapter.

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6 This provision fills a gap in the law. Former Article 525 declared: "The
7 provisions of this Chapter do not apply to movables that are required by law to be
8 registered in public records." However, neither the former article nor any other
9 provision stated in the affirmative what law governed transfers of registered
10 movables in lieu of this Chapter. Although sellers of motor vehicles are required to
11 comply with the Vehicle Certificate of Title Law, R.S. 32:701 et seq., the Vehicle
12 Certificate of Title Law does not contain provisions addressing the transfer of
13 ownership of motor vehicles. Louisiana courts have held consistently that the
14 Vehicle Certificate of Title Law does not require transfer of the certificate of title to
15 a vehicle in order for the sale to be a valid one and that the sale of a vehicle is not
16 affected by non-compliance with the Vehicle Certificate of Title Law.
17 Transportation Equipment Co. v. Dabdoub, 69 So. 2d 640 (La. Ct. App. 1954); Flatte
18 v. Nichols, 96 So. 2d 477 (La. 1957); Shanks v. Callahan, 232 So. 2d 306 (La. App.
19 1 Cir. 1969); Tarver v. Tarver, 242 So. 2 374 (La. App. 2 Cir. 1970); Robinson v.
20 Jackson, 255 So. 2d 846 (La. App. 2 Cir. 1971); Theriac v. McKeever, 405 So. 2d
21 354 (La. App. 2 Cir. 1981); Wright v. Barnes, 541 So. 2d 977 (La. App. 2 Cir. 1989);
22 Maloney v. State Farm Ins. Co., 583 So. 2d 12 (La. App. 4 Cir. 1991); Biggs v.
23 Prewitt, 669 So. 2d 441 (La. App. 1 Cir. 1995); Lambert v. Ray Brandt Dodge, Inc.,
24 31 So. 3d 1108 (La. App. 5 Cir. 2010). Nevertheless, failure to comply with the
25 Vehicle Certificate of Title Law is not without consequence. For example, the
26 purchaser's failure to obtain a certificate of title to the vehicle in accordance with the
27 Vehicle Certificate of Title Law prevents the purchaser from acquiring a "marketable
28 title." R.S. 32:706. In addition, a person's knowing failure to comply with disclosure
29 provisions of the Vehicle Certificate of Title Law may expose that person to criminal

1 and/or civil liability. See, e.g., R.S. 32:706.1. Notwithstanding those and other
2 obligations imposed by the Vehicle Certificate of Title Law upon parties involved
3 in the transfer of vehicles, the provisions of this Chapter govern the transfer of
4 ownership of such vehicles.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____