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R. J. Engel

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NOTES

INSTALLMENT SALES: Purpose of Unruh Act; Comparison with Automobile Sales Legislation

Is California's Retail Installment Act,¹ known as the Unruh Act, free of the vagueness which California courts have found in those code sections which regulate automobile transactions? It is the purpose of this article to show that it is. While handling litigation concerning automobile installment sales, California courts have found themselves in somewhat of a dilemma.² In the case of *General Motors Acceptance Corp. v. Kyle*,³ the California Supreme Court stated,⁴

[Cal. Civ. Code] section 2982 does not specify the effect of violation of the formal requirements. Sanctions for substantive violations have been stated and amended by the legislature, but their operation . . . is entirely fortuitous. . . . Furthermore, the legislature has said nothing about the effect of violations upon the property rights in the vehicle.

In the absence of legislative direction, the courts have invoked their own remedies. These remedies, they have assumed, are in accord with the legislative desire, there having been no amendments to the contrary.⁵ It is the purpose of this article to show that this legislative direction is clearly present in the Unruh Act.

Subcommittee Reports — Legislative Intent

Generally, legislative direction is available only through reference to the statute. However, another valuable directive is legislative intent. The intent behind the Unruh Act is clearly expressed in two reports,⁶ which were submitted prior to the statute's effective date of January, 1960.

The committee expressed the opinion: "It is a time-honored principle that consumer credit should be extended to those who are entitled to it on the basis of their stability, ability to pay, willingness to pay and according to their station in life as related to the articles purchased, but should be refused to those who do not qualify."⁷ The committee found in many in-

¹ CAL. CIV. CODE §§ 1801-1812.9.

² See *General Motors Acceptance Corp. v. Kyle*, 54 Cal. 2d —, 351 P.2d 768, 4 Cal. Rptr. 496 (1960); *Baum v. Aleman*, 139 Cal. App. 2d Supp. 929, 293 P.2d 162 (1956); *Work of the California Legislature* (1949), 23 So. CAL. L. REV. 1, 39; Note, 2 STAN. L. REV. 362 (1950); Note, 39 CALIF. L. REV. 450 (1951).

³ 54 Cal 2d —, 351 P.2d 768, 4 Cal. Rptr. 496 (1960).

⁴ *Id.* at —, 351 P.2d at 772, 4 Cal. Rptr. at 500.

⁵ *General Motors Acceptance Corp. v. Kyle*, *supra* note 2; *Baum v. Aleman*, *supra* note 2.

⁶ PRELIMINARY REPORT OF SUBCOMMITTEE ON LENDING AND FISCAL AGENCIES, *Appendix to the Journal of the Assembly*, Vol. 15, No. 19 (1958) (hereinafter cited as PRELIMINARY REPORT); FINAL REPORT OF SUBCOMMITTEE ON LENDING AND FISCAL AGENCIES, *Appendix to the Journal of the Assembly*, Vol. 15, No. 22 (1959) (hereinafter cited as FINAL REPORT).

⁷ FINAL REPORT 12.

stances that individuals were paying a 30-60 per cent service charge on an installment contract of one to two years. The committee felt that the buyer seems to be interested only in the amount of his monthly payment and his needs. The seller is aware of this attitude and, by fast talk confined to the cash price and monthly payments, obtains the buyer's signature to a chattel mortgage note. "None of the notes . . . inspected by [the committee's] investigator disclosed the amount of the finance charge or the total time balance."⁸

The position of the finance companies is that these higher rates are necessary because of the greater risks involved and because their costs must come from these charges. They maintain that lower rates are not sufficient for the finance organization dealing with "non-bankable" risks.⁹

However, the committee stated, "as the rates increase, so does the temptation to accept lower grade paper arise, and this can lead into 'overloading' the buyer with debt beyond his reasonable ability to discharge."¹⁰ Because of this overloading, the committee found that the rate of bankruptcies in the state is substantially increased. Estimates were that between 25-50 per cent of bankruptcies are the result of deficiency judgments on installment contracts.¹¹

It was stated that "the regulation of financing rates would result in retailers becoming more cautious in extending credit, particularly as to overloading the buyer."¹² It was the opinion of the subcommittee that "if large numbers of . . . [poor credit risks] are induced to contract . . . beyond their ability to pay, there is a serious danger to the whole economy. . . . [T]he paramount interest of the general public over and above the rights of the sellers *and* (emphasis added) buyers should be the determining factor."¹³ "Many of the restrictions imposed by the proposed bill are directed toward attracting more attention to the *quality* of the installment debt rather than to the aggregate of installment debt outstanding. . . . If installment credit is sound in individual cases, it is then likely to be sound in the aggregate."¹⁴

Here then is the crux of the legislative purpose behind the Unruh Act. If sound credit could be established in the individual case, then the ultimate purpose of establishing sound credit in the whole economy could be achieved. The public's interest is the determining factor, not the rights of the sellers and buyers.¹⁵

Remedies Provided by the Unruh Act

During the course of the subcommittee's investigation, the findings uncovered the following major problems: 1) failure of the buyer to know the terms of the agreement due to vague and incomplete agreements or to

⁸ FINAL REPORT 15.

⁹ *Id.* at 80.

¹⁰ PRELIMINARY REPORT 12.

¹¹ FINAL REPORT 74, 85.

¹² *Id.* at 74.

¹³ *Id.* at 86-87.

¹⁴ PRELIMINARY REPORT 17.

¹⁵ This directive or purpose is contrary to what the courts have decided is the purpose of California's automobile code sections. In *General Motors Acceptance Corp. v. Kyle*, 54 Cal. 2d at —, 351 P.2d at 770, 4 Cal. Rptr. at 498, the court stated that the purpose of CAL. CIV. CODE § 2982 (a) is to protect the purchaser.

signing blank contracts, 2) exorbitant charges for extending credit, 3) buyers' loss of rights due to an assignment of their contracts to finance companies, 4) the need of penalties for insuring ethical and legitimate performances in this field, 5) the detrimental effect on business stability in extending credit to buyers unable to live up to their obligations.¹⁶

In order to counteract these problems the following provisions were incorporated in the Unruh Act.

1) So that the buyer would be more aware of his bargain, the act requires that several enumerated items be disclosed in the contract *before* the buyer signs the agreement.¹⁷ However, the statute provides that if the buyer does sign, his signature will act as a *conclusive* presumption that the contract was complete when he signed.¹⁸ This provision may raise the question as to whether or not the practice of signing blank contracts will actually be avoided by the act.¹⁹

2) The subcommittee found that many buyers would overburden themselves even if they knew they were being charged exorbitantly.²⁰ Therefore, the statute expressly limits the permissible time-price differential or service charge.²¹ This provision most strongly manifests the legislature's concern for the general public over the buyer and seller. Even if both the buyer and seller wish to enter a credit arrangement based on a poor risk, the legislature feels the public interest in stable business is more important.

3) The statute also provides that notification of any assignment must be sent to the buyer.²² This notification must state that the buyer has fifteen days to reply, advising the assignee of any rights against the seller. If this reply is not received within fifteen days, the assignee then takes the status of a holder in due course. It may be questionable whether this provision will protect the buyer's rights from assignments. Since most sellers assign their contracts to finance companies on the same day the obligation is created, the buyer will have to be aware of any invasion of his rights within a very short time after undertaking the obligation. This does not seem likely, as most violations will not become apparent until long after fifteen days have passed.²³ Also, it might be noticed that the legislature felt large print was necessary for disclosure²⁴ but not for a notice of assignment.

4) The statute has four provisions for penalties.²⁵ Willful violations will be considered a misdemeanor and accidental violations will cause the seller to lose all his charges, which have been paid or are expected to be paid, in excess of the original sale price. However, the statute provides that

¹⁶ PRELIMINARY REPORT 7; FINAL REPORT 12-13, 74-75, 85-87.

¹⁷ CAL. CIV. CODE §§ 1803.1-1803.8.

¹⁸ CAL. CIV. CODE § 1803.7.

¹⁹ This problem of signing blank contracts was raised in the case of *Adams v. Caruso*, 134 Cal. App. 2d 403, 285 P.2d 1022 (1955). The court held that the completed documents did not conform to the party's agreement despite the buyer's signature.

²⁰ FINAL REPORT 75-76.

²¹ CAL. CIV. CODE §§ 1805.1-1805.5.

²² CAL. CIV. CODE § 1804.2.

²³ See Britton & Ulrich, *The Illinois Retail Instalment Sales Act—Historical Background and Comparative Legislation*, 53 NW. U.L. REV. 137, 174 (1958).

²⁴ CAL. CIV. CODE § 1803.2.

²⁵ CAL. CIV. CODE §§ 1812.6-1812.9.

the seller or holder may avoid any penalty if he corrects the error within ten days after becoming aware of his mistake.²⁶ The correction must come within ten days of discovery and not necessarily ten days after the consummation of the contract. It seems clear, by this provision, that the legislature did not intend the Unruh Act to be punitive. Rather, the legislature set a standard and instead of making a non-compliance punishable, provided that only a refusal to comply will be punished.

The net result of these provisions is the legislature's attempt to create sound credit in the individual case and as a result make credit, hence business, sound in the aggregate. The requirements for disclosure may cause buyers to be more conscious of price. But by making the buyer's signature a conclusive presumption that he signed a completed contract, the legislature has eliminated any legal issue as to signing blank contracts. Unless the buyer has crossed out all blank spaces before signing, he will be obligated by what may later be filled in. Hence the disclosure requirements *may* help to lower credit rates.

However, by directly limiting the time-price differential, the legislature has assured the public that credit risks not covered by the allotted time-price differential will not receive credit. No seller will extend credit if to do so would be unprofitable. Although the seller will not be punished for charging a higher rate, he will be punished if he refuses to lower the rate if and when he is made aware of his non-compliance. This threat of punishment should make non-compliance unprofitable.

California Civil Code Section 2982 as Contrasted to the Unruh Act

We have seen that the legislature was more concerned with the public's interest in sound credit than the seller's and buyer's rights to free trade. We have seen this concern expressed through enactment of a non-punitive, but nonetheless influential regulatory act. It remains to be seen whether this expression avoids the dilemma that was found under the automobile installment legislation.

Under the automobile code section,²⁷ no provision was made for violation of the formal requirements, and no provision was made for rights in the property when the code section was violated. The courts have decided that a violation of formal requirements will make the contract unenforceable, and in case of a violation, the seller has the right to the vehicle.²⁸

However, under the Unruh Act the effect of a violation would be different. Contrary to section 2982,²⁹ the Unruh Act does not have any separation of requirements into formal and substantive classification. The penalty provisions apply uniformly to all provisions of the Act. Secondly, the penalty provisions make no mention of the contract being unenforceable.³⁰

²⁶ CAL. CIV. CODE § 1812.8.

²⁷ CAL. CIV. CODE § 2982.

²⁸ See *General Motors Acceptance Corp. v. Kyle*, 54 Cal. 2d —, 351 P.2d 768, 4 Cal. Rptr. 496 (1960).

²⁹ CAL. CIV. CODE § 2982 (e) provides for penalty only if (c) and (d) are violated. It makes no provision for violation of (a) and (b). This differentiation has been labeled by the courts as "formal" [a, b] and "substantive" [c, d] requirements. See *General Motors Acceptance Corp. v. Kyle*, 54 Cal. 2d at —, 351 P.2d at 772, 4 Cal. Rptr. at 500.

³⁰ *But cf.* CAL. CIV. CODE § 2982 (e) provides that substantive violations shall make the contract unenforceable.