STATE OF MICHIGAN

COURT OF APPEALS

AERO DETROIT, INC.,

Plaintiff-Appellee,

v

FEDERAL PIPE & STEEL CORPORATION,

Defendant-Appellant,

and

HYDRAULIC PRESS REFIT MANUFACTURING, INC., and ELWARD J. VICTORIEN,

Defendants-Appellees,

and

NORMAN EQUIPMENT COMPANY,

Defendant.

UNPUBLISHED

September 13, 1996

No. 182099
LC No. 92-441396

Before: Wahls, P.J., and Murphy and C.D. Corwin,* JJ.

PER CURIAM.

In this case involving interpretation of the UCC, defendant Federal Pipe & Steel Corporation (Federal) appeals as of right the trial court's order granting summary disposition in favor of plaintiff Aero Detroit, Inc. (Aero), and dismissing all counter-claims brought by Federal. This case involves a question of priority over a hydraulic press that was manufactured by Hydraulic Press Refit Manufacturing, Inc. (HPRM), and secured by Federal, but sold to Aero.

The parties stipulated to the facts of this case in the trial court. HPRM was engaged in the business of manufacturing and refitting hydraulic presses for use in manufacturing processes. Aero was

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* Circuit judge, sitting on the Court of Appeals by assignment.

in the automotive engineering and manufacturing business. Aero entered into a contract with Chrysler Corporation to manufacture body panels for the Viper, a Chrysler automobile. On September 3, 1991, Aero issued a purchase order for HPRM to build a 300-ton Straight-Side Guided-Ram hydraulic press built to Aero's specifications that would be used in Aero's manufacturing process.

In order to construct the presses, HPRM ordered steel plates from Federal, a steel company. Federal was advised by HPRM that upon completion of the press, the press had been sold by HPRM to an unidentified third party. Federal provided $47,000 in materials to HPRM to build the press. In order to secure repayment for the materials it supplied, Federal was granted a security interest from HPRM on November 7, 1991, in the press. On November 13, 1991, a UCC-1 financing statement covering the press was filed with the Michigan Secretary of State.

Because HPRM did not complete the manufacture of the press by the December 12, 1991, delivery date, Aero extended the delivery deadline to February 14, 1992, and imposed a $150-a-day penalty for HPRM's failure to deliver the press. In May, 1992, after the extended deadline had passed, HPRM requested prepayment of the press from Aero so that the press could be completed. Aero agreed to the request if HPRM would execute and deliver a bill of sale to Aero. Aero received a bill of sale indicating that Aero received unencumbered title to the press.

The press was completed and delivered to Aero in August, 1992. After delivery, the press was not "properly or fully operational." Although HPRM was paid in full for the press, HPRM did not pay Federal for the $47,470 in materials it received. Unaware that Aero had possession of the press, Federal filed an action against HPRM for claim and delivery of the press. On November 10, 1992, Federal obtained a default judgment against HPRM, Norman Equipment Company, and J. Victorien Elward for $47,470.36 in damages and for possession of the press conditioned on HPRM's possession of the press. After the claim against HPRM was filed, Federal learned that the press had been delivered to Aero.

After Aero became aware of Federal's claim, Aero initiated this cause of action against defendants, seeking declaratory relief concerning Federal's claimed security interest in the press. Federal filed a counter-claim against Aero for claim and delivery of the press. Both parties moved for summary disposition.

The trial court determined that the issue in this case was whether Aero's ownership and possession of the press was subject to Federal's prior perfected security interest. The trial court found that Aero was a buyer in the ordinary course of business and purchased the press free and clear of Federal's security interest. The court found that Aero complied with the terms of the purchase agreement and did not discover the existence of the security interest in the press until one month after it took delivery of the press. Furthermore, the trial court did not find that any aspects of the purchase of the press were extraordinary to the extent that the purchase was executed out of the course of ordinary business. HPRM was found to be a merchant or an entity who manufactures and sells hydraulic presses. Finally, the trial court determined that the equitable doctrine of laches was not applicable to the

case because the stipulated facts did not indicate any lack of due diligence on the part of Aero or any prejudice to Federal from Aero's dilatory act.

A person who purchases goods from a merchant who deals in goods of that kind and who qualifies as a buyer in the ordinary course of business, takes title to the goods free and clear of the security interests created by the seller. MCL 440.9307(1); MSA 19.4307(1); *Larson v Van Horn*, 110 Mich App 369, 379; 313 NW2d 288 (1981). A buyer in the ordinary course of business is a "person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interests of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind." MCL 440.1201(9); MSA 19.1201(9).

Federal argues first that Aero was not a buyer in the ordinary course of business because it did not buy in good faith. We disagree. A buyer in the ordinary course of business must buy the goods "in good faith." MCL 440.1201(9); MSA 19.1201(9). Good faith is generally defined as "honesty in fact in the conduct or transaction concerned." MCL 440.1201(19); MSA 19.1201(19). Good faith under the UCC is evaluated according to a subjective test rather than an objective, "reasonably prudent person" standard. *Michigan National Bank v Metro Institutional Food Service*, 198 Mich App 236, 241; 497 NW2d 225 (1993). Here, because the evidence is undisputed that Aero did not have actual knowledge of Federal's security interest in the press until after Aero purchased and took delivery of the press, Aero bought the press in good faith. *Id.* In addition, it is perfectly consistent for a buyer in the ordinary course of business to understand that he will take goods free and clear of a known security interest because the secured party intended for the debtor to be able to sell the goods. White & Summers, Uniform Commercial Code (3d Ed), § 24-13, p 1167; see Official comment 2 to MCL 440.9307; MSA 19.9307.

We disagree with Federal that the trial court should have used the definition of "good faith" found in MCL 440.2103(1)(b); MSA 19.2103(1)(b). That definition applies only "in the case of a merchant." The stipulated facts indicated that Aero was engaged in the business of automotive engineering and manufacturing. Aero was not a dealer of hydraulic presses. Because Aero did not deal in or otherwise hold itself out to have particular skill or knowledge in the manufacturing of hydraulic presses, it was not a "merchant" with respect to this transaction. MCL 440.2104(1); MSA 19.2104(1).

Federal argues that MCL 440.9307(1); MSA 19.9307(1) does not apply because Aero was not purchasing inventory. We disagree. It is true that this section applies primarily when a buyer in the ordinary course of business purchases inventory. MCL 440.9307 (Comment 2); MSA 19.9307 (Comment 2). Goods are inventory if they are "held by a person who holds them for sale or lease . . ., or if they are raw materials, work in process or material used or consumed in a business." MCL 440.9109(4); MSA 19.9109(4). Because HPRM was engaged in the business of manufacturing and refitting hydraulic presses for use in manufacturing processes, and the press was manufactured and sold to Aero, the press was inventory in the hands of HPRM. *Id.* Accordingly, MCL 440.9307(1); MSA 19.9307(1) applies here.

Finally, there were no unusual aspects of this case which would take it out of the definition of the ordinary course of business. The fact that HPRM experienced difficulty and time delays in manufacturing the press or that HPRM demanded payment in full prior to delivery of the press did not cause the transaction to be out of the ordinary. See *Foy v First National Bank of Elkhart*, 868 F2d 251, 255-256 (CA 7, 1989); compare *Bank of Illinois v Dye*, 163 Ill App 3d 1018; 517 NE2d 38, 40-41 (1987); *Rawl's Auto Action Sales v Dick Herriman Ford, Inc*, 690 F2d 422, 428 (CA 4, 1982). The trial court did not err in its determination that Aero was a buyer in the ordinary course of business and purchased the press free and clear of Federal's security interest. MCL 440.9307(1); MSA 19.9307(1).

Federal also argues that the doctrine of laches should prevent Aero from taking the press free and clear of Federal's perfected security interest. We disagree. Federal did not obtain its security interest in the press until after Aero had contracted to purchase the press from HPRM. Aero paid for and took delivery of the press before it had any knowledge of Federal's security interest. A failure of a buyer in the ordinary course of business to make an investigation into whether the goods are subject to a security interest does not indicate a lack of due diligence. See *Eberhard v Harper-Grace Hospitals*, 179 Mich App 24, 38; 445 NW2d 469 (1989). In any case, Federal knew that, once the press was completed, it had been sold to a buyer. Because Federal failed to use this knowledge to prevent its injury, it would be inappropriate to afford Federal equitable relief. See generally *Atty Gen v Thomas Solvent Co*, 146 Mich App 55, 66; 380 NW2d 53 (1985).

Affirmed.

/s/ Myron H. Wahls
/s/ William B. Murphy
/s/ Charles D. Corwin