

gram pursuant to the Surface Mining Control and Reclamation Act of 1977.

The uncontradicted evidence shows that the obligation of plaintiff to reclaim the site was performed. Thereby plaintiff and defendant were released by performance.

Defendant asserts that the contract should be released because of a complete failure of consideration. This insistence is based upon a hypertechnical view of the agreement. As heretofore observed, the purpose of the agreement was to provide defendant relief from a \$96,000 liability in exchange for the \$50,000 deposit held for indemnity. Relief was provided, hence the promised payment should be paid. Performance of its obligation cost defendant nothing. Defendant has the deposit by Mitchell of \$50,000 to satisfy its obligation to plaintiff without expense to defendant.

In 17A Am.Jur.2d—Contracts—§ 618—p. 627 is found the following text:

Where parties capable of contracting deliberately enter into a written contract by which there is created a condition precedent to a right of action, such condition must be performed or its requirements waived or excused. With regard to conditions precedent, there must, if such conditions have not been waived or excused, be at least a substantial performance thereof in order to authorize a recovery as for performance of the contract....

The accomplishment of the purpose and objective of the condition precedent constituted a substantial performance of the condition. In 17A Am.Jur.2d § 631 p. 631 (p. 640?) is found the following text:

Although there is some early authority in support of the rule that a party must strictly or literally perform the stipulations on his part before the other party is obligated to perform, unless the promises are independent, the modern authorities support a more liberal rule. Thus, it is said that the law looks to the spirit of the contract and not the letter of it, and that the question therefore is not whether a party has literally complied with it, but whether he has substantially done so. This has long been the rule in equity....

In the present case, the defendant has received all of the benefits of the performance of the condition precedent, at heavy expense to the plaintiff. Every consideration of justice and equity demands that defendant pay the agreed price of the benefit without expense to itself by utilizing the fund which it holds from Mitchell for the purpose.

Plaintiff's complaint sought recovery under the alternate theories of *quantum meruit*, implied contract and estoppel. However, these alternative grounds need not be discussed in the light of the foregoing.

The judgment of the Trial Court is affirmed. Costs of this appeal are adjudged against the appellant. The cause is remanded to the Trial Court for enforcement of its judgment.

Affirmed and Remanded.

LEWIS and CANTRELL, JJ., concur.



**KEEP FRESH FILTERS, INC. d/b/a
Diversified Financial Planners,
Inc., Plaintiff/Appellee,**

v.

**Connie REGULI and Iona Senecal,
Defendants/Appellants.**

Court of Appeals of Tennessee,
Middle Section at Nashville.

Sept. 2, 1994.

Judgment creditor filed suit against judgment debtor and lender that had security interest in judgment debtor's automobile requesting declaration that judgment creditor's lien was superior to lender's security interest, that lender's security interest was fraudulent transfer, and that trial court subject automobile to judgment. On cross motions for partial summary judgment on priority issue, the Chancery Court, Davidson

cancelled the sheriff's sale without consulting Keep Fresh Filters or the trial court. Keep Fresh Filters did not discover what the sheriff's department had done until Ms. Reguli had already obtained the automobile.

Keep Fresh Filters filed suit against Ms. Reguli and Ms. Senecal on August 28, 1991 requesting (1) a declaration that its lien was superior to Ms. Senecal's security interest, (2) a declaration that Ms. Senecal's security interest was a fraudulent transfer, and (3) a request that the trial court subject the automobile to the judgment pursuant to Tenn. Code Ann. § 16-11-104 (1994). Both parties sought partial summary judgments on the priority issue. On October 14, 1992, the trial court entered an order granting Keep Fresh Filters' motion and declaring that its execution lien was superior to Ms. Senecal's security interest. Ms. Reguli and Ms. Senecal perfected this appeal after the trial court certified its order as final in accordance with Tenn.R.Civ.P. 54.02.

II.

[1] Three bodies of law govern the respective rights that Keep Fresh Filters and Ms. Senecal have in Ms. Reguli's automobile. They include Article Nine of the Uniform Commercial Code, the statutes governing motor vehicle certificates of title, and the statutes governing judgment liens and executions. Construed together, these statutes provide the principles for fixing the priorities among competing lien claimants and secured parties.

A.

[2] Except for the transactions identified in Tenn.Code Ann. § 47-9-104 (1992), Article Nine of the Uniform Commercial Code applies to all consensual transactions intended to create a security interest in goods by contract. Tenn.Code Ann. § 47-9-102(1)(a), -102(2) (1992). Motor vehicles are goods for the purpose of Article Nine, and therefore, the Uniform Commercial Code applies to transactions intended to create a security interest in automobiles. Tenn.Code Ann. § 47-9-105(1)(h) (1992); *Manufacturers Acceptance Corp. v. Gibson*, 220 Tenn. 654, 657, 422 S.W.2d 435, 436 (1967).

[3] Article Nine is not, however, the only body of law governing security interests in automobiles. In accordance with Tenn.Code Ann. § 47-9-302(3)(b) (1992), Article Nine's filing requirements must give way to any statutory scheme that provides for the central filing of security interests or the notation of these interests on a certificate of title. Tennessee's motor vehicle title and registration laws are just such statutes. Thus, compliance with these statutes is the exclusive method for perfecting a security interest in automobiles not part of inventory. Tenn. Code Ann. § 55-3-126(b) (1993); *Personal Loan & Fin. Corp. v. Guardian Discount Co.*, 206 Tenn. 221, 226, 332 S.W.2d 504, 506 (1960); *Bank of Commerce v. Waddell*, 731 S.W.2d 61, 62 (Tenn.Ct.App.1986); *Star Chrysler-Plymouth, Inc. v. Phillips*, Davidson Equity, slip op. at 11-12, 5 T.A.M. 48-8, [1973-1980 Transfer Binder] Secured Transactions Guide (CCH) ¶ 53,486 (Tenn.Ct.App. Oct. 29, 1980); see also *Coble Sys., Inc. v. Coors of the Cumberland, Inc. (In re Coors of the Cumberland, Inc.)*, 19 B.R. 313, 320 (Bankr.M.D.Tenn.1982).

[4, 5] Even though the motor vehicle title and registration statutes control the filing requirements for perfecting security interests in automobiles, the Uniform Commercial Code still provides the rules for determining priorities among persons claiming an interest in the same automobile. Secured parties, even unperfected secured parties, have greater rights in collateral than any other creditor unless Article Nine provides otherwise. Tenn.Code Ann. § 47-9-201 (1992); 2 James J. White & Robert S. Summers, *Uniform Commercial Code* § 26-2 (3d ed. 1988). While Tenn.Code Ann. § 47-9-312 (1992) governs the priorities among competing security interests in the same collateral, Tenn. Code Ann. § 47-9-301 (1992) governs the priorities among unperfected security interests and other types of claims.

Tenn.Code Ann. § 47-9-301(1)(b) specifically provides that an unperfected security interest is subordinate to the rights of "a person who becomes a lien creditor before the security interest is perfected." This provision controls the outcome of this appeal.