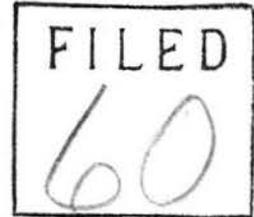


THE CHATTEL MORTGAGE:

A chattel mortgage cannot be released, which was filed by the mortgagee with an assignment in blank attached without presenting chattel mortgage and note in accordance with Section 3099 Laws of Missouri 1935, page 209.

January 28, 1938



Mr. L.R. Mead,
Recorder of Deeds,
Saline County,
Marshall, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of January 19, 1938 requesting an official opinion from this office which reads as follows:

"Section 3099, Revised Statutes of Missouri, 1929, found at page 209, Laws of Missouri, 1935, provides for the different methods for satisfying chattel mortgages on the records. Paragraph 1 is as follows:

'1. By the mortgagee, cestui que trust, his agent or assigns, on the margin of such index, which shall be attested by the recorder.'

Do I have a right as Recorder to make an entry of satisfaction on the record in a case where a copy of the mortgage is filed, said copy showing that the note and mortgage have been assigned in blank by the mortgagee, and the mortgagee later appears without the original note or mortgage and insists on being permitted to satisfy the same?

You will note that this sub-division of the section does not provide that the original mortgage shall be produced but only says that the mortgagee, cestui que trust, his agents or assigns, can satisfy the same on the margin of the index."

Section 3099, as set out in the Laws of Missouri 1935 at page 209, reads as follows:

"Such recorder shall enter in a book, to be provided by him for such purpose, the names of all the parties to such instrument, arranging the names of such mortgagors or grantors alphabetically, and shall note thereon the time of filing such instrument or copy, for which said recorder shall receive a fee of twenty cents. Said fee shall also include and cover all costs for discharging said mortgage or deed of trust according to the methods hereinafter provided. Such mortgage or deed of trust, when satisfied, shall be discharged by any of the following methods:

1. By the mortgagee, cestui que trust, his agent or assigns, on the margin of such index, which shall be attested by the recorder.
2. Upon the presentation by the mortgagor or grantor of the original mortgage or deed of trust, and upon such mortgagor or grantor making affidavit before such recorder that the instrument presented by him is the original of the copy on file, and that such mortgage or deed of trust has been fully paid and satisfied.
3. Upon presentation or receipt of an order in writing, signed by the mortgagee or cestui que trust, thereof, attested by a justice of the peace, or any notary public, stating that such instrument has been paid and satisfied.

When any of these provisions have been complied with, it shall be the duty of the recorder to enter in a column for that purpose the word 'satisfied,' giving date. When a chattel mortgage shall be satisfied as above provided, the recorder may deliver

said mortgage to the holder of the note secured thereby, or, if the holder of said note refuse to receive the same the recorder may destroy said mortgage: Provided, that the recorder may deliver to the parties entitled thereto, or destroy all such mortgages now remaining on file in his office and which have been entered satisfied on the chattel mortgage register."

In your letter you state that the mortgagee filed a copy of the chattel mortgage in your office, which before filing, had been endorsed in blank leaving the name of the last mortgagee, according to your record, in blank. On the face of the chattel mortgage constructive notice is given to the public that the mortgagee who filed the chattel mortgage was not the owner of the chattel mortgage. The original mortgagee, not being the owner of the chattel mortgage according to your record, could not release under paragraph one of section 3099 without a further record showing he was the mortgagee, cestui que trust or an agent or assignee. You also stated that the original mortgagee insisted on releasing the chattel mortgage without showing the original note and mortgage. In order to satisfy the record, under paragraph one of section 3099, someone must present the original mortgage and note in order to protect you in case the mortgage has been assigned to someone other than the party desiring to release the chattel mortgage. There are no statutes in regard to blank assignments of chattel mortgages, but section 2643 R.S. Mo. 1929 in regard to negotiable instruments reads as follows:

"Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill up as such for any amount. In order that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such

instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time."

Although the chattel mortgage is not considered a negotiable instrument, it secures a negotiable instrument to-wit, the note which is described in the chattel mortgage. Under section 2643 it gives authority for the person in possession of the note to complete it by filling up the blanks therein.

8 Corpus Juris, page 182, paragraph 313 reads as follows:

"The delivery of an inchoate or incomplete bill or note, as where the instrument is delivered with blanks left for the insertion of the amount or terms of payment, or where a signature on a blank paper is delivered with the intention of having a complete instrument written over it, confers presumptive authority on the person to whom it is delivered, and on subsequent holders, to complete the instrument by filling the blanks, or by writing the instrument, as the case may be, in the way apparently contemplated by the signer, with matter general conformity with the character of the writing. Thus a note may be written on the reverse side of a blank indorsement which has been so delivered, and a bill may be drawn on a blank acceptance which has been duly executed and stamped; but the form itself cannot be changed and the blanks filled so as to make a different instrument.

The Negotiable Instruments Law expressly provides that, 'where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein.' This provision

is merely declaratory of the common law."

Also in 8 Corpus Juris, page 183, paragraph 314 it states:

"a. The implied power to fill blanks extends to all parts of the paper, even to the promise itself, and the pronoun 'I' or 'we' may be inserted. It also includes the signature; the name of the drawee or the payee; the date; the time or place of payment; the amount to be paid; and the rate of interest agreed upon or the statutory rate.*****"

Under the authority of paragraphs 313 and 314, the original mortgagee after assigning his interest in the chattel mortgage, for the purpose of releasing same, may place his name in the blank assignment as assignee from himself.

In the case of Fischman-Harris Realty Co. v. Kleine, 82 S.W. (2d) 605, the court held:

"Legal effect of indorsement in blank on note prior to delivery cannot be varied by evidence from a source other than instrument itself, and indorser cannot be charged with primary liability of maker by proof of contrary parol agreement."

Under this authority a statement by the mortgagee that he is still the owner of the chattel mortgage a copy of which he has filed in your office, can only be shown by the presentment of the chattel mortgage and note itself.

In the case of Commercial Investment Company v. Whitlock, 274 S.W. 833, the court said:

"When the First National Bank was designated as the place of payment, a place of payment was added when none was theretofore specified, and such addition under the facts was a material alteration. Section 911, supra. Section 800, R.S. 1919, provides that, where an acceptance of an instrument payable at a fixed period

after sight is undated, any holder may insert therein the true date of acceptance. Hence the insertion of the date of the acceptance did not affect the validity of the bills. Defendants accepted the bills, and thereby admitted that they were the drawees, and are estopped from defending on the ground that there was no drawee designated in the original bills. Daniel On Negotiable Instruments (6th Ed.) 486, 497; 7 Cyc. 570; 6 C.J. p. 299, 471; Davis v. Clark, 6 Q.B. 16; Peto v. Reynolds, 9 Exch. 410. Also the rule is that, where the drawee's name is left blank, such may be filled in under an implied authority like any other blank. 7 Cyc. 570 and 620; Clay & Funkhouser Banking Co. v. Dobyys et al., 213 Mo. App. 468, 255 S.W. 946. The point was not directly ruled in the case last cited, but the rule mentioned was fully recognized."

CONCLUSION

Under the authorities above set out, the mortgagee after assigning the mortgage before filing a copy in your office has assigned his rights to such an extent that he may not release under paragraph 1 of section 3099 without presenting the original mortgage and note showing that he is the mortgagee as described by paragraph one of section 3099. The chattel mortgage filed and as described by you in your letter cannot be released under any circumstances under paragraph three of section 3099 for the reason that the chattel mortgage only describes an alleged mortgagee who has assigned his interest in blank to a person unknown and not of record in your office.

It is further the opinion of this office that the mortgagor may release such chattel mortgage as described in

Mr. L.R. Mead

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your letter by complying with paragraph two of section 3099.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

WJB:DA