

**C.F. GARCIA ENTERPRISES, INC. v. ENTERPRISE FORD TRACTOR, INC.**  
**480 S.E.2d 497 (Va. 1997)**

KEENAN, Justice.

In this appeal, we consider whether a contract created a security interest or a lease.

In April 1989, C.F. Garcia Enterprises, Inc. (Garcia), and Enterprise Ford Tractor, Inc. (Enterprise), entered into a contract titled "Equipment Lease Agreement." The contract provided for Garcia to lease a 1979 Ford model 555 Tractor-Loader-Backhoe (backhoe) from Enterprise in exchange for monthly rental payments totalling \$17,250. The contract provided that when the lease terminated on July 31, 1990, Garcia retained the option to purchase the backhoe for \$1 upon informing Enterprise in writing that it intended to exercise this option.

The contract also provided that if Garcia failed to make any rental payment when due, Enterprise could demand the entire balance of the rental payments. The default provision also stated that, in the event Garcia failed to make a rental payment when due, Enterprise could demand the surrender of the equipment and repossess it.

It is undisputed that Garcia was late in making each monthly payment, and that Enterprise never demanded the entire balance due, nor the surrender of the backhoe. The final payment, due July 1, 1990, was mailed on August 3, 1990, and was cashed by Enterprise on August 9, 1990. Garcia did not inform Enterprise in writing that it intended to exercise its option to purchase the backhoe, nor did it tender \$1 to exercise that option.

On August 5, 1990, Enterprise took possession of the backhoe from one of Garcia's work sites. Enterprise performed \$1,532.31 of repairs on the backhoe, and sold it for \$13,000, less selling expenses of \$250. Enterprise did not give Garcia prior notice of the sale.

Garcia later instituted this action against Enterprise alleging breach of contract, conversion, and violation of the Virginia Uniform Commercial Code (UCC). Enterprise moved for summary judgment on the ground that Garcia had failed to make timely payments under the lease agreement, to give notice of its intent to purchase the backhoe, or to tender the required \$1 consideration. The trial court granted the motion for summary judgment and entered final judgment for Enterprise.

On appeal, Garcia contends that the contract provision allowing Garcia to purchase the backhoe for \$1 establishes, as a matter of law, that the contract was a security agreement rather than a lease. Thus, Garcia asserts, Enterprise was not entitled to repossess the backhoe based on Garcia's late payments, but was limited to pursuing a secured party's remedies under the UCC.

In response, Enterprise argues that the plain language of the contract created a lease between the parties, and that Garcia's failure to make timely payments and exercise its option to purchase the backhoe extinguished its right to obtain full title to the equipment at the termination of the agreement. We disagree with Enterprise.

Since the interpretation of a contract is a question of law, we are not bound by the trial court's conclusions on this issue, and we are permitted the same opportunity as the trial court to consider the contract language. *Langman v. Alumni Ass'n of the Univ. of Virginia*, 247 Va. 491, 498, 442 S.E.2d 669, 674 (1994); *Wilson v. Holyfield*, 227 Va. 184, 187-88, 313 S.E.2d 396, 398 (1984). To resolve the interests of the parties in the backhoe, we must determine whether the contract was a lease or a security agreement.

Article 9 of the UCC governs any transaction, "regardless of its form," which is intended to create a security interest in personal property. VA. CODE § 8.9-102. Thus, we turn to the UCC definition of "security interest," which is applicable throughout the Commercial Code. In defining the term "security interest," VA. CODE § 8.1-201(37) provides, in relevant part:

Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property *for no additional consideration or for a nominal consideration does make the lease one intended for security.* [Emphasis added.]

We have not previously addressed this statutory provision. The plain language of the statute creates a security interest in property as a matter of law if the parties' contract allows the lessee to become the owner of the leased property for nominal or no additional consideration upon compliance with the terms of the lease....

This statutory language is based on the rationale that when the terms of the "lease" and option to purchase are such that the only sensible course of action for the "lessee" at the end of the term is to exercise that option and become the owner of the property, the "lease" becomes one intended to create a security interest under Code § 8.1-201(37). *Percival Construction Co. v. Miller & Miller Auctioneers, Inc.*, 532 F.2d 166, 172 (10th Cir. 1976). If a contract contains such an option, the agreement is conclusively presumed to be one intended as security, without reference to other facts from which the opposite conclusion might be drawn. *In re J.A. Thompson & Son, Inc.*, 665 F.2d 941, 947 (9th Cir. 1982); *see In re Marhoefer Packing Co.*, 674 F.2d 1139, 1142 (7th Cir. 1982); *Morris v. Lyons Capitol Resources, Inc.*, 510 N.E.2d 221, 223 (Ind. Ct. App. 1987); *Commercial Credit Equipment Corp. v. Parsons*, 820 S.W.2d 315, 319 (Mo. Ct. App. 1991); *Peco, Inc. v. Hartbauer Tool & Die Co.*, 500 P.2d 708, 709-10 (Or. 1972); *FMA Financial Corp. v. Pro-Printers*, 590 P.2d 803, 805 (Utah 1979). Thus, as a matter of law, the present contract was a security agreement because it provided Garcia the option to purchase the backhoe for nominal consideration upon compliance with the terms of the agreement.

\* \* \*

*Reversed and remanded.*