Case Note: Evans v. Harry Robinson Pontiac-Buick and UCC Choice of Law in Consumer Sales Transactions

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I. Introduction

Harry Robinson Pontiac-Buick, Inc., holding that Texas law applied to a retail installment contract for the sale of a car by an Arkansas dealer to an Arkansas resident. This decision has a number of implications relating to consumer financial services law.

II. Facts of the Evans Case

Joe Buck E. Evans, a resident of Arkansas, went to an Arkansas auto dealer, Harry Robinson Pontiac-Buick, to purchase a vehicle. He picked out a 1994 Buick Skylark and signed a retail installment contract to buy the car, with an interest rate of 18 percent. This contract would be usurious under Arkansas law.

The precise nature of what happened next is essential to the analysis. The stated and "undisputed" facts are as follows:

In order to obtain financing, Evans completed and signed a credit application for First Fidelity Acceptance Corporation at the offices of Harry Robinson. First Fidelity is a Nevada corporation with a business office in Texas. First Fidelity evaluated Evans’s information at its Texas office and informed Harry Robinson that it had conditionally approved Evans’s application. On June 6, 1994, Evans entered into a retail installment contract with Harry Robinson for the purchase of a 1994 Buick Skylark. Contemporaneous with the contract, Evans also completed and signed an employment verification authorization for First Fidelity. First Fidelity received this document at its Texas office and then made its final decision to extend credit to Evans for the financing of the Buick Skylark.

The face of the retail installment contract, language in bold print indicates that the contract was assigned. Specifically, the contract provided that the agreement was assigned to First Fidelity and reflects First Fidelity’s address and telephone number. The language further described that the terms of the assignment were made under separate agreement. The assignment provision was signed by Harry Robinson on the same day Evans signed the contract.

The retail installment contract also stated that the parties agreed that the contract was to be governed by the law of Texas.

Evans stated that he knew First Fidelity was providing the financing, that an agent of First Fidelity was present when the contract was signed, and that all payments were to be mailed to First Fidelity in Texas.

The contract would be usurious under Arkansas law, but valid under Texas law. The issue was whether Arkansas or Texas law should apply. This required a traditional choice of law analysis.

III. Choice of Law Under the UCC

It is ironic, in view of the traditional complexity of some choice of law analyses, that describing the conflicts issues presented in this case is the easy part. The law is not straightforward and clear, and was properly presented by the court.

The starting point for this analysis is Uniform Commercial Code (UCC) section 1-105, the UCC choice of law provision. Consistent with well established principles of law, section 1-105(1) recognizes the priority of party autonomy, generally deferring to a contractual choice of law provision, so long as the parties’ choice bears a reasonable relation to the transaction. This is generally interpreted to reference and incorporate the significant relationship analysis of the Restatement (Second) of Conflict of Laws (section 188). Since the Evans contract specifically provided for application of Texas law, the primary remaining issue under section 1-105(1) was whether that choice bore a reasonable relationship to the parties’ transaction. Simply put, the Evans Court concluded that the Texas contacts noted in the facts above were sufficient to establish a reasonable relationship to Texas law under section 1-105(1). Based on traditional choice of law analyses, which have recognized very minimal contacts as sufficient for these purposes, in the context of the stated facts this conclusion seems warranted.

IV. Choice of Law Under the Restatement (Second)

A. General Observations on the Restatement (Second)

Most states have embraced to some extent the "most significant relationship" test as embodied in the Restatement (Second) of Conflict of Laws (Second Restatement). The Second Restatement's "most significant relationship" test embraces a particular approach to conflicts problems, differing somewhat from his older "vested rights" or territorial rights approach. As noted above, the choice of law provisions on section 1-105(1) strongly reflect the influence of the second Restatement. Section 188 of the Second Restatement, "Law Governing in Absence of an Effective Choice by the Parties," provides:

The rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties under the principles stated in Section 6.

In the absence of an effective choice of law by the parties (see Section 6), the contacts to be taken into account in applying the principles of Section 6 to determine the law applicable to an issue include:

(a) The place of contracting;
(b) The place of negotiation of the contract;
(c) The place of performance;
(d) The location of the subject matter of the contract; and
(e) The domicile, residence, nationality, place of incorporation and place of business of the parties.

These contacts are to be evaluated according to their importance with respect to the particular issue.

If the place of negotiating the contract and the place of performance are in the same state, the local law of that state will usually be applied, except as otherwise provided in the provisions of sections 189-199 and 203.

These contacts are to be evaluated according to their relative importance with respect to the particular issue, according to the Second Restatement section 6 "Choice of Law Principles.

(a) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

Sections 6. Choice of Law Principles:

II. Choice of Law Principles.

2. If, e.g., Oliver Katt, et al. v. Is保修, 433 S.W.2d 140 (1968).


V. The Separate Transactions Issue

Somewhat ironically, the consumer in Evans argued that the sale and financing of the car by the dealer together constituted a separate transaction, conducted wholly in Arkansas, that was not part of the assignment of the credit sale contract to the Texas assignee. The irony is this is that consumers seeking to impose liability for dealer wrongdoing on deep-pocket assignees have more commonly argued that the credit sale and assignment are a single transaction, while assignees have generally emphasized that their possession of the contract is a separate transaction from the dealer's credit sale of the car.

In Evans, these roles were reversed. The assignee apparently argued that the assignment was prearranged as an integral part of the original sale, so that the assignment to the Texas assignee created sufficient Texas contacts with the dealer's credit sale to warrant application of Texas law to the retail installment contract.

VI. Factual Issues

As a result of these arguments, factual issues feature prominently in the analysis. The Evans Court accepted the "undisputed" facts as provided by the parties, the trial court, and the contract. If we do the same, and accept the facts as stated by the Court (see supra Pt. II), it appears that the execution and assignment of the credit contract were indeed part and parcel of a single transaction, negotiated directly with the assignee as part of the retail sale, executed simultaneously, and contemplated by all of the parties from the beginning as a single sale and credit transaction. If this characterization is correct, the intent of the buyer and assignee to directly finance the original purchase in Texas provides sufficient contacts to warrant application of Texas law to the retail sales contract on the basis of UCC section 1-105(1) and established choice of law doctrine. The terms of the contract and the facts as presented to and described by the Evans Court are consistent with this view.

The problem is that this is not the way business is customarily conducted in the auto retail and finance business today. It may have been the case here, but if so, this was an unusual transaction from the perspective of most participants in this industry.

Today most auto retailers have access to many sources of funds in the secondary market for assignment of retail installment contracts. Such a dealer will typically close the retail sale and then (in a separate transaction) try to sell the contract in the secondary market at the highest possible price. Loan underwriting standards for various secondary market funding sources may be considered by the dealer in advance, in order to be sure the contract is salable and perhaps to meet secondary market requirements. But in your author's experience, in most of these transactions the sale between the dealer and consumer is a separate matter from the secondary market contract. In a separate deal, the dealer is not a party to the contract. In a separate deal, the contract is sold to an assignee. These are two separate transactions. The assignee and assignment are not determined or constituted until after the retail credit sale has been closed.

Thus, an interesting question is raised by Evans. If Evans had involved the more typical factual scenario where the assignment is a separate transaction, would there be sufficient Texas contacts with the retail sales transaction to warrant application of Texas law? Choice of law analysis requires relatively minimal contacts, and there is essentially a presumption in favor of contacts validity, but there must be some Texas connection to the retail sale if Texas law is to be applied to an Arkansas dealer's retail sale. For the reasons stated, the contacts provided by a subsequent Texas assignee of the contract in Evans the assignment to the Texas assignee was closed before and separate from the prior sale, as part of that same transaction, and was incorporated into the retail installment contract. These factors made it easy for the Evans Court to find sufficient Texas contacts. But absent these factors it appears that such contacts would be lacking. Without those factors, there would be no reasonable relation to Texas (as to the transaction between the buyer and dealer) and without that reasonable relation, an assignment of the contract to a party without a reasonable relation to Texas law is not a valid assignment of the contract to a party without a reasonable relation to Texas law.

In contrast, in Evans the plaintiff's counsel cited Huchinson.12 The Evans Court distinguished Huchinson on grounds that the contract in that case did not contain a choice of law clause. Therefore, the UCC section 1-105 defense to party autonomy (the basis for the decision in Evans) is not available to the assignee to use. Instead, the assignee argues the assignment was made under section 1-105(1) of the Arkansas Code and that the assignment was made to a party with a reasonable relation to Texas. Clearly this is an entirely different line of analysis in that the assignee in Evans, on the other hand, was not an assignee, was not attempting to enforce any contract, was not served with process, and in fact, the assignee in Evans had not even received a copy of the suit. The Evans Court held that the assignment was made under the assignment clause of the contract, and thereby entered into the retail installment contract created by the assignment.

VII. The Evans Case Law Analysis

The Evans Court focused on two de finitive Arkansas law cases, Arkansas Apartment Distributing Co. v. Tandy Electronics,13 and Hutchinson v. Republic Finance Co., Inc.14 In Arkansas Apartments, the contract was executed in Arkansas but provided for application of Texas law. The court in Arkansas Apartments held that the contract was executed in Arkansas, but was accepted by Tandy in Texas. Thus provided a "reasonable relationship with Texas to warrant recognition of the parties' agreement under UCC section 1-105.

The Evans Court found Arkansas Apartments to be the controlling precedent, and cited the important contacts to be considered in this type of case: Where the transaction originated, where payments were to be sent, and where the parties were located.15 In Evans, both of the latter contacts were in Texas, and these contacts were consistent with the parties' contractual choice of law, hence there was a reasonable relation to Texas under section 1-105, as in Arkansas Apartments.

In contrast, in Evans the plaintiff's counsel cited Huchinson.16 The Evans Court distinguished Huchinson on grounds that the contract in that case did not contain a choice of law clause. Therefore, the UCC section 1-105 defense to party autonomy (the basis for the decision in Evans) is not available to the assignee in Huchinson, and under section 1-105(1) of the Arkansas Code the assignee was unable to apply the law of the forum to the retail installment contract.

For interpreting the Court's statements as a broad principle of law that a secondary assignee somehow finds the consumer's prior retail purchase because the assignee later applies the consumer's contract to the dealer. Such an interpretation is just too far afield from the issues before the Evans Court to be considered credible.

VIII. Conclusion

Based on the stated facts in Evans, the Court's choice of law analysis is sound. The results could easily be different, however, and in the more common factual scenario where there is no separate secondary sale of the consumer's contract. The Court's analysis serves to emphasize the importance of determining whether the assignment of the retail installment contract is a subsequent transaction that is separate from the underlying retail sale of goods.

The Evans Court is to be commended for applying established choice of law rules to the stated facts before it. Moreover, there are sound policy reasons to favor validation of contracts. If the assignee knew he was signing an 8 percent contract and agreed to be covered by Texas law, and there are sufficient minimum contracts with Texas to make this a reasonable choice, there is no legal or equitable reason to later invalidate the contract on that basis.

But contract assignees who rely on this case and assert a "single transaction" theory for choice of law purposes should be aware that they may be giving up important assignee protections against liability for unknown wrongdoing by the dealer, by characterizing the assignment as an integral part of the retail credit sale. For that matter, that many assignees may not want to cross.

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12. 980 S.W.2d 52 (Ark. 1999).


15. 744 S.W.2d 326 (Ark. 1988).


17. The Evans Court noted that the assignee was not served with process, and in fact, the assignee in Evans had not even received a copy of the suit. The Evans Court held that the assignment was made under the assignment clause of the contract, and thereby entered into the retail installment contract created by the assignment.

18. Evans, 90 S.W.3d at 195.

19. (unpublished opinion).

20. See, e.g., Huchinson's citation of section 1-105 of the Uniform Commercial Code, which provides: "A separate transaction includes the entire purpose of and relation of the instruments of the separate transaction with the underlying transaction or transactions."