

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY
MERCANTILE COURT**



ON APPEAL FROM THE WANDSWORTH COUNTY COURT

Claim No. 8QT53127

Between:

**NINE REGIONS LIMITED
(trading as LOG BOOK LOANS)**

Claimant/Respondent

-and-

WELCOME FINANCIAL SERVICES LIMITED

Defendant/Appellant

JUDGMENT

Introduction

1. The Appellant is a company which provides credit, including personal loans and car finance through hire purchase agreements.
2. The Respondent is a company which provides "no credit check" loans to individuals with a bad credit history secured against the debtor's vehicle, title to which is assigned to the Respondent by means of a Bill of Sale.
3. The Appellant appeals against the Order of District Judge Habershon sitting at Wandsworth County Court dated 7th August 2009. By that Order, she granted a declaration that the Respondent was beneficially entitled to the proceeds of sale of the motor vehicle registration number P002 OCR held by British Car Auctions Limited and that the Appellant had no proprietary interest therein.
4. There are 9 other similar cases currently stayed pending this appeal.
5. The Appellant submits that the Learned Judge was wrong in law to find that the Respondent was a 'private purchaser' within the meaning of section 27(2) of the Hire Purchase Act 1964 as defined by section 29(2) of the Hire Purchase Act 1964.

Agreed Facts

6. The Appellant purchased the motor vehicle P002 OCR, a silver Ford Ka, on the 17th July 2007 from Bournemouth Motor Company (the Vehicle"). The Appellant

entered into a hire purchase agreement for a total sum payable of £6,012 at 37.5% APR regulated by the Consumer Credit Act 1974 with a Miss Charli Scott of Flat 9, 35 Parkstone Road, Poole, Dorset BH15 2NG on the same day.

7. It was an express term of the agreement with the Appellant that *"the goods will not become your property until you have made all the payments. You must not sell them before then"*.
8. As is standard practice under such agreements, although title to the Vehicle remained with the Appellant, Miss Scott drove the Vehicle away.
9. Miss Scott subsequently, in breach of the terms of her agreement with the Appellant, entered into an agreement with the Respondent three days later on the 20th July 2007 whereby she assigned the Vehicle to the Respondent pursuant to a Bill of Sale dated 20th July 2007 as security for a loan of £1286.06 at 347.6% APR.
10. Clauses 7, 8 and 10 of the Bill of Sale contained the following express terms: *"that in case the Borrower shall make default in payment or in the performance of any sum under the Consumer Credit Agreement or be in breach of any obligation in it or in the performance of any covenant or agreement contained in this Bill of Sale and necessary for maintaining this security or if he shall do or suffer any matter of thing whereby he shall become a bankrupt or shall suffer the Vehicle to be distrained for rent, rates or taxes or if he shall not without reasonable excuse upon demand in writing by the Lender produce to it the last receipt for rent, rates and taxes or if execution shall during the continuance of this security have been levied against the goods including the Vehicle of the Borrower under any judgment at law then and in any such case it shall be lawful for the lender its servants or agents to the Borrower to seize and take possession of the vehicle from the property of the Borrower or from any public place, and to use reasonable and proportionate measures to seize and take possession of the vehicle from any other place."* [Clause 7]
11. *"If the lender has a right to seize the vehicle and wishes to do so, the lender will notify you before doing so by sending you the appropriate Default Notice and once the period has expired during which you can remedy any breach the lender and its agents may enter and remain on any premises owned by the borrower where the vehicle may be and if necessary break open doors and windows in order to obtain*

admission and take possession of the vehicle and take it away and after the expiration of 5 clear days from the date of seizure may sell the vehicle by public auction or private contract on or off the premises. The Lender and its agents may also take reasonable and proportionate measures to seize and take possession of the vehicle from any other place." [Clause 8]

12. *"The Lender shall be entitled out of the proceeds of any such sale to retain an amount equivalent to all sums due in accordance with the Consumer Credit Agreement and all other reasonable costs charges, payments and expenses incurred ... "* [Clause 10].
13. The Bill of Sale was registered with the Supreme Court of England and Wales on the 29th July 2007.
14. It is common ground that, in accordance with their usual business practices, the Respondent registered its interest in the Vehicle on the HPI Limited ("the Register") on the 20th July 2007 and the Appellant registered its interest on the Register on the 23rd July 2007.
15. Miss Scott defaulted on the terms of her loan with the Respondent. A default notice was served on her by the Respondent on in October 2007.
16. The Vehicle was repossessed by Anglia UK, as agents for the Respondent, in or about November 2007.
17. The Vehicle was sold by British Car Auctions Limited, as agents for the Respondent, at an auction at their Blackbushe House for £3241.90.

The Law

18. The starting point is the principle of *nemo dat quod non habet*, namely no one can transfer a better title to goods than he himself possesses. Section 21(1) of the Sale of Goods Act 1979 provides:

*"21.- Sale by person not the owner.
(1) Subject to this Act, where goods are sold by a person who is not their owner, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell."*
19. Section 27(2) of the Hire-Purchase Act 1964 (as amended by the Consumer Credit Act 1974 which repealed the majority of the 1964 Act save for Part III thereof) provides a limited statutory exception to the above general rule in the

case of a disposition to a "private purchaser":

"(2) Where the disposition referred to in subsection (1) above is to a private purchaser, and he is a purchaser of the motor vehicle in good faith without notice of the hire-purchase or conditional sale agreement (the "relevant agreement") that disposition shall have effect as if the creditor's title to the vehicle has been vested in the debtor immediately before that disposition."

20. Section 29(1) defines "disposition" as *"any sale or contract of sale (including a conditional sale agreement), any bailment under a hire-purchase agreement and any transfer of the property in goods in pursuance of a provision in that behalf contained in a hire-purchase agreement, and includes any transaction purporting to be a disposition"*.

21. Section 29(2) defines a "private purchaser" as follows:

"(2) In this Part of this Act "trade or finance purchaser" means a purchaser who, at the time of the disposition made to him, carries on a business which consists, wholly or partly--

(a) of purchasing motor vehicles for the purpose of offering or exposing them for sale, or

(b) of providing finance by purchasing motor vehicles for the purpose of bailing or (in Scotland) hiring them under hire-purchase agreements or agreeing to sell them under conditional sale agreements, and "private purchaser" means a purchaser who, at the time of the disposition made to him, does not carry on any such business."

22. The term 'private purchaser' is used in mirrored contradistinction to a 'trade or finance purchaser' so that a private purchaser means a purchaser who, at the time of the disposition made to him, does not carry on any such business as described in section 29(2).

23. Practitioner texts accept that broadly speaking a trade or finance purchaser means a motor dealer or a finance house and that the intention of the provisions was to protect members of the public who buy as consumers but not motor dealers or finance companies who can look after themselves.

24. The intention of Parliament is clearly seen from Lord Drumalbyn's speech in the House of Lords introducing the amendments to the Hire Purchase (No 2) Bill :

"Part 111 of the Bill is concerned with protecting the man who buys a car in good faith and later finds that, because it was the subject of a hire purchase agreement, he has no title to it. ... The first two subsections of the new clause in amendment no.77 contain what is really the basic provision: that where the hirer sells the car to a person who buys it in good faith and without notice of the hire-purchase agreement, that person gets a good title, or, to be strictly accurate, as good a title as was possessed by the finance house who had let the car to the fraudulent hirer. The scheme is for the protection of the public, and, quite reasonably, the finance houses did not think that motor dealers or finance houses should be so protected since they can and should be on their guard against buying cars which are on hire purchase ... My Lords, fraudulent sales of cars on hire-purchase have caused a real hardship to the victims. We are glad that it has been possible to introduce these provisions to protect such people in a reasonably simple way.

We feel confident that they will be generally welcomed."

25. Lord Denning MR, in the case of Stevenson v Beverley Bentinck Limited [1974] 1 WLR 483 at 486 confirmed the reasoning of Parliament:

"It may be asked: why was no protection given to trade or finance purchasers? No doubt because Parliament thought they were well able to take care of themselves. There is available to them in the Hire-Purchase Information Service. Whenever a car is offered to a trade purchaser or motor dealer for sale, he at once wants to know whether it is on hire-purchase or not? He then gets an answer on which he can safely act: see Moorgate Mercantile Co Ltd v Twitchings [1976] 225."

26. Subsequent case law, such as Industrial & Corporate Finance Limited v. Wyder Group Limited (trading as Ducati) [2008] 152 (37) SJLB 31, has clarified that although it is common practice to do so, there is no legal duty on finance companies to register their interest in motor vehicles on the HPI Register, although it is obviously prudent to do so without delay.

Submissions

27. Although there are 11 grounds of appeal, Mr Jaspal for the Appellants expertly honed them to criticisms of the learned judge's interpretation of both Section 29 (2) (a) and (b) of the Hire Purchase Act 1964. She misdirected herself in law, he submitted.
28. First, the learned judge failed to make any finding on the "purpose" of the Respondent in entering the Bill of Sale and loan dated 20th July 2007.
29. Secondly, the learned judge failed to consider the "part" purposes of the Respondent in entering into this disposition, concentrating wholly on main purposes. .
30. Thirdly, the learned judge misconstrued subsection 2(b) of the Act and so failed to consider bailment in isolation of Hire Purchase and conditional sale agreements.
31. Mr Joseph submitted to the contrary and that the learned judge had made a factual finding that his client was a "private purchaser" which ought not to be disturbed on appeal.

Review of the Judgment of District Judge Habershon

32. The Learned District Judge's finding of law and fact on subsection 2(a) is set out in paragraph 13 of her judgment:

"The present case is very different, and in my view easily distinguished from GE Capital Bank Ltd v Rushton and another because the purpose of the purchase of the car in this case was (a) not for the purpose of offering or exposing it for sale; and (b) not bought with a view to selling it at a profit. Indeed, Mr Foster, in his evidence was very clear that C goes to considerable lengths to avoid selling any of the vehicles it owns. He said that C's business would not be profitable if its intention were to resell the vehicles and where borrowers from it were in default other methods of recovering the sums due to it were always employed wherever possible and a sale of a vehicle would be a remedy of last resort. Mr Foster also pointed to the fact that, while he was not able to provide precise details, the proportion of repossessed and sold cars each year was very small as a percentage of its business."

33. In the case of GE Capital Bank v Rushton and another [2006] 1WLR 899 at 911 the Court of Appeal had held that section 29(2) of the 1964 Act directed attention both to the business of the purchaser immediately prior to and at the time of the disposition, and to the purpose for which the vehicle was bought. In that case, the first defendant had not taken any formal steps to set himself up as a motor dealer, but had purchased the vehicles as a business venture with a view to selling them at a profit and therefore fell within the definition of a trade purchaser.
34. The Court of Appeal were referred to the case of Davies v Sumner [1984] 1 WLR 1301 at 1305, a case under section 1 (1)(a) of the Trade Descriptions Act 1968, in which the critical words were "in the course of a trade or business", Lord Keith of Kinkel held that the expression "in the course of a trade or business" required some degree of regularity, but did not prevent a "one-off adventure in the nature of trade carried through with a view to profit" falling within the definition.
35. Likewise, in the case of Conroy v Kenny [1999] 1WLR 1340 at 1345 to 1346, a case under the Moneylenders Act 1990, the Court of Appeal held that a licensed moneylender was "in the business of money lending" when he makes his first loan even if he never makes another.
36. In the case of Stevenson v Beverley Bentinck Ltd (supra)), the Claimant was a tool inspector, who had for some 18 months bought and sold motor vehicles on a modest scale in his own time in the evenings and weekends. The trial judge, and the Court of Appeal concurred, held that he was a 'trade or finance purchaser'.
37. In this case, the learned judge did not actually address in paragraph 13 of her judgment the key question she had posed herself in paragraph 8 of her judgment, namely:

"I have been asked to determine whether C was a private purchaser"

by determining what the purposes were rather than what they were not. She merely answered what the purpose was not.

38. The consequence of this error is that she was only able to determine by exclusion

one sole purpose of the Respondents, namely, that they were lenders not motor dealers and that the car was “*merely some security for a loan for unrelated purposes*”. Here also muddling up the purposes of Borrower with those of the Lender – the Borrowers intention being irrelevant.

39. On the agreed facts of the instant case, and applying the above case law, the Respondent also had the undoubted ulterior purpose of purchasing the vehicle as a security, “partly “for the purpose of offering them or exposing them for sale in the event of the borrower's likely default, as acknowledged by the Respondent's own terms and conditions of the Bill of Sale. The evidence on the number of security vehicles having to be sold is not important if it is part of the “business plan” of the Respondents to do so as a last resort in the event of defaults. Currently a significant number of 165 are being sold at auction albeit a small percentage of those secured.
40. The Respondents are a long way from being the private “private purchasers” envisaged by the Act and indeed they implicitly recognise that by their operation of the HPI checks they make to protect themselves in the event of resale.
41. In my judgment, on the agreed facts of the instant case, “a” (not “the”) purpose of the Respondent purchasing the vehicles was to sell them in the event of default of the terms of the Agreement.
42. The Learned District Judge's finding of law and fact on subsection 2(b) is set out in paragraphs 14 and 15 of her judgment:

“The loan obtained from C therefore had no connection with the acquisition of the car and was doubtless used by her for completely unrelated purposes”
[Paragraph 14].

“Clearly, therefore, there was no conditional sale agreement and the loan provided to borrowers from C (and in this case Miss Scott) could not be defined as 'hire purchase' since it was not intended for, or linked to, the acquisition of a vehicle. I am of the view that the mere fact that C may be defined as a Finance Company does not, of itself, exclude it from the definition of 'private purchase' although I agree that the use of a Bill of Sale rather than a hire purchase agreement or conditional sale agreement would be insufficient to protect C. My reason for finding that C does not fall within section 29(2)(b) is, as I have said, that the finance provided is not for the purpose of, or in any way linked to, the

acquisition by the user of the car. In the case of loans by C the vehicle is merely [some] security for a loan for unrelated purposes." [paragraph 15]

43. Section 29(2)(b) ostensibly provides for 3 alternative sets of circumstances where finance is provided:

Bailing;

Hire purchase agreements; and

Agreeing to sell them under conditional sale agreements.

44. The learned judge believed that the undoubted "bailment" needed to be linked to the acquisition of the vehicle under hire purchase, not the loan, but Section 29 (2) (b) simply does not say that.
45. Mr Joseph valiantly argued that it did but conceded that it would involve moving the bracket around "in Scotland" to "in Scotland hiring them".
46. I am satisfied that parliament meant as intended that this subsection should be broad to cover all business situations where motor cars act security for finance, not just being the subject of hire purchase and conditional sale agreements. This would manifestly cover the situation here where the main "purposes" is to provide finance to a high risk sub-prime customer for potential substantial reward at an exorbitant rate of interest necessarily secured with the vehicle in their ownership "bailed" back to the Borrower. Again in this context, the Respondents are not within the ambit of a consumer such as a "private purchaser". Finance companies were not designed to fall within the protection of the definition of a private purchaser. It would be to go against the purpose of the legislation if the Claimant were to be able to claim protection because it used a bill of sale rather than a hire purchase agreement or a conditional sale agreement.

Conclusion

47. For the reasons stated above, the appeal is allowed and the order of District Judge Habershon dated 7th August 2009 be substituted by a declaration that the Appellant is entitled to the proceeds of sale of the Vehicle.

His Honour Judge Simon Brown QC
Specialist Mercantile Judge



22nd April 2010