

1954

Jack Layton and Marian Layton v. Kay Clark : Brief of Appellant

Utah Supreme Court

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In the Supreme Court

of the State of Utah

JACK LAYTON AND

MARIAN LAYTON

a partnership dba

DENVER AUTO AUCTION,

Respondents,

vs.

KAY CLARK,

Appellant.

No. 8238

APPEAL

FILED
SEP - 7 1954

Clerk, Supreme Court, Utah

APPELLANT'S BRIEF

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The trial court should have held that in Colorado a reservation of title in a sale of personal property is regarded as a chattel mortgage, and is required to be filed as required by the chattel mortgage statute, and there being no compliance with the Colorado Statute on this matter, the reservation of title in this case is invalid

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of the State of Utah

JACK LAYTON AND

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DENVER AUTO AUCTION,

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vs.

KAY CLARK,

Appellant.

No. 8238

APPEAL

APPEAL FROM THE THIRD JUDICIAL DISTRICT
COURT OF THE STATE OF UTAH, HONORABLE CLAR-
ENCE E. BAKER, JUDGE.

APPELLANT'S BRIEF

STATEMENT OF FACTS

The facts in this case are stipulated to and are as
follows:

The respondents (plaintiffs in the District Court) in Denver, Colorado, are in the business of selling automobiles wholesale by auction exclusively to automobile dealers for resale. The respondents conditionally sold three automobiles to M. R. Bruce, a licensed automobile dealer doing business as RaDon Auto Sales at Salt Lake City, Utah. The respondents gave possession of those automobiles to M. R. Bruce who brought them to Salt Lake City and placed them on his used car lot for resale. The appellant, Kay Clark, in good faith purchased one of these automobiles for the sum of \$1400.00 in the usual course of trade and paid in full for said automobile, the used car dealer representing that he was the "lawful owner thereof and of all interest therein". (Exhibit B).

The respondents brought a Replevin action to secure possession of the automobile, and the Trial Court held that the respondent had superior title to the automobile and could recover it from appellant.

STATEMENT OF POINTS

POINT I

THE TRIAL COURT SHOULD HAVE HELD THAT RESPONDENTS ARE ESTOPPED TO ASSERT THEIR TITLE AS AGAINST APPELLANT, A BONA FIDE PURCHASER FOR VALUE FROM A DEALER, AND THAT APPELLANT, THEREFORE, OBTAINED GOOD TITLE THERETO.

POINT II

THE TRIAL COURT SHOULD HAVE HELD THAT IN COLORADO A RESERVATION OF TITLE IN A SALE OF PERSONAL PROPERTY IS REGARDED AS A CHATTEL

MORTGAGE, AND IS REQUIRED TO BE FILED AS REQUIRED BY THE CHATTEL MORTGAGE STATUTE, AND THERE BEING NO COMPLIANCE WITH THE COLORADO STATUTE ON THIS MATTER THE RESERVATION OF TITLE IN THE RESPONDENT IS INVALID.

ARGUMENT

POINT I

THE TRIAL COURT SHOULD HAVE HELD THAT RESPONDENTS ARE ESTOPPED TO ASSERT THEIR TITLE AS AGAINST APPELLANT, A BONA FIDE PURCHASER FOR VALUE FROM A DEALER, AND THAT APPELLANT, THEREFORE, OBTAINED GOOD TITLE THERETO.

The general law on this point is dealt with in 47 A.L.R. 85 and in 88 A.L.R. 109. The numerous citations appearing in these annotations leave no doubt that the general rule appears to be: that where goods are sold on conditional sale, with express or implied authority to the buyer to resell them, a purchaser from the buyer obtains good title thereto.

Basically one cannot convey a greater title than he has. This basic rule conflicts with the attempt to protect a bona fide purchaser, and an exception has been made in most jurisdictions, either on the theory of estoppel or agency (indicia of title, plus possession) where the buyer takes the goods for *resale* and is a *dealer* in such goods. The sub-vendee in that case, if he is a purchaser in good faith and for value, is protected. Whether he is protected in this state or not will depend upon the philosophy of the court and which of the two innocent parties involved they would rather protect. We feel that the appellant should prevail. The

burden and risk of dealer's dishonesty should be rightfully placed on those who sell or entrust him with possession of goods without obtaining payment therefor; this burden and risk should not be placed upon those who purchase from such a dealer in the regular course of trade.

Turning to the Utah law we have felt that it favors the appellant's viewpoint and adhere to that decision in spite of the decision of the trial court.

For example, the following comes from the syllabus of the *Harrison v. Auto Securities Co., et al*, 257 P. 677:

"Innocent purchaser of auto from local agents held entitled to possession as against firm holding state agency, which intrusted car to local agents for purpose of exhibiting it and soliciting sales, though sale of particular car was without authority.

Principal is bound by acts of agents which fall within apparent scope of authority, and will not be permitted to deny agent's authority, as against innocent third parties who dealt with agents in good faith.

Where one of two innocent parties must suffer from wrongful act of third person, loss should fall on one who, by his conduct, created circumstances which enabled third party to perpetrate wrong and cause loss."

So, also in the case of *Jones v. Commercial Invet. Trust* 64 Utah 151, 228 Pac. 896:

"I am of the opinion that when the appellant placed its automobile into the possession of the

Naylor-Woodruff Motor Company for the purpose of sale, knowing that the latter was a retail dealer in such cars, and that it would hold out and advertise itself as the owner thereof and as having the right to sell the same, and permitted the dealer to exhibit the car for sale in its sales-room, under the circumstances shown in this case, it thereby clothed the dealer with such apparent ownership and authority to sell that it ought to be, and is estopped to deny as against Jones, who purchased the car from the dealer in good faith, for full value, in the regular course of the seller's business and at retail, and without any knowledge or notice of the appellant's claim thereto, that the dealer had the right to make the sale and to assert its superior title to the car."

The *Harrison v. Auto Securities* case (supra) is also to be found in 57 A.L.R. 388, with an annotation on page 393. Quoting from that annotation we have the following:

"The reported case (*I. E. Harrison v. Auto Securities*) holds that an innocent purchaser for value from a retail dealer in automobiles, of an automobile intrusted to the dealer by his principal solely for the purpose of exhibition, the soliciting of sales, and the holding of prospective purchasers, acquire title, and is entitled to possession thereto, notwithstanding the lack of actual or implied authority of the agent to sell.

A somewhat similar ruling was made in *Jones v. Commercial Invest. Trust* (supra) where the court held that the owner of an automobile who placed it in possession of a retail dealer in such

cars, knowing that the dealer would hold out and advertise itself as owner and as having the right to sell it, and who permitted the dealer to exhibit the car for sale, thereby clothed the latter with an apparent ownership and authority to sell, and was estopped to deny, as against a bona fide purchaser in good faith and for full value in regular course of business, and at retail, that the dealer had no right to make the sale or assert a superior title."

These Utah cases, seem to go along with appellant's theory of the law.

Respondent attempts to throw doubt on the position of the Utah Court by reference to *Swartz vs. White* reported in 13 P. (2d) 643, Utah case 1932. It is only by misconstruing this case that the trial court could rule against the appellant. We definitely do not feel that this case justifies any such a holding for the following reasons: (1) the facts are different; it is not a case of the owner giving a dealer possession for resale in the ordinary course of business; (2) Section 41-1-72, 1953 Utah Code Annotated which that case interpreted as mandatory is expressly analyzed and overruled in the case of *Jackson v. James*, 97 Utah 41, 89 P. 2d 23g as follows:

"These provisions (i.e. 41-1-72) are not absolute, mandatory, or controlling in their application.

They do not confer or deny substantive rights.

They are procedural or evidentiary in nature."

(3) the case itself on page 645 expressly recognizes that the principle of estoppel can create a better title in the

transferee than the transferor himself had, and this is the position that we take in the present case.

We will make no further comment on the law or the facts. Enough has been stated to present the theory and reasoning behind it for the court's consideration. The cases are many and the annotations quite exhaustive on these matters. To present more would not add to the knowledge of the court or aid it in the determination of this conflict, as the cases and annotation will do that better than this short brief. We refer you to them and to the brief of a sister case, also on appeal to this court: Joe Heaston and H. R. Ellis, a partnership, dba Heaston-Ellis Motor Company, Respondents, vs. Manuael Martinez, Appellant, Appeal No..... involving the same principles of law.

POINT II

THE TRIAL COURT SHOULD HAVE HELD THAT IN COLORADO A RESERVATION OF TITLE IN A SALE OF PERSONAL PROPERTY IS REGARDED AS A CHATTEL MORTGAGE, AND IS REQUIRED TO BE FILED AS REQUIRED BY THE CHATTEL MORTGAGE STATUTE, AND THERE BEING NO COMPLIANCE WITH THE COLORADO STATUTE ON THIS MATTER THE RESERVATION OF TITLE IN THE RESPONDENT IS INVALID.

In Colorado a reservation of title in a sale of personal property is regarded as a chattel mortgage, and is required to be filed as required by the chattel mortgage statute (47 A.L.R. 86); since there has been no offer or stipulation of evidence of compliance with the Colorado statute or law on this matter, the reservation of title in

this case is invalid.

CONCLUSION

The holding of the trial court should be reversed. Respondents by placing M. R. Bruce in possession of the car, and by allowing him to transport it from Denver to Salt Lake City for purposes of resale cannot now assert their claim of title against the appellant who purchased from Bruce in the usual course of trade for value and without notice of respondents' claim. This conclusion is inescapable in the light of the better reasoned cases and upon well established general rules of estoppel; and in addition rests upon the well known principle that where one of two innocent parties must suffer from the wrongful act of a third person, the loss should fall on the one who, by his conduct, created the circumstances which enabled the third party to perpetrate the wrong and cause the loss.

It will be seen then that the position of the appellant rests not only upon strong and compelling equitable grounds insofar as it protects the innocent purchaser from a retail dealer, but would also ultimately accrue to the advantage of the wholesale used car dealer himself.

If we follow the respondent's contention to its logical conclusion, an intending purchaser in order to secure his position as a bona fide purchaser for value would have to require that the retail dealer before purchase show him a registration certificate indicating a transfer on the records of the Department of Motor Vehicles of

the State of Utah. With the fluctuating value of used cars, such a requirement would ultimately wreck havoc with the retail dealers' business, and, indirectly, of course, the wholesaler business also, and would impede the normal flow of commerce in that trade. And when this condition is added to the fact that it would uproot well established principles of law, which have been repeatedly enunciated by the courts of the land, we submit that the position of the appellant is the only tenable one.

We urge, therefore, that the decision should be reversed with instructions to enter judgment in favor of the appellant.

Respectfully submitted,

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Received a copy of the foregoing brief this day
of September, 1954.

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Attorney for Respondent