

1957

Weldon R. Reeder v. General Motors Corp. : Brief of Appellant

Utah Supreme Court

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In the Supreme Court
of the State of Utah

WELDON R. REEDER,
Plaintiff and Appellant,

vs.

GENERAL MOTORS CORP.,
a Corporation,
Defendant and Respondent.

BRIEF OF
APPELLANT
Appeal No. 8601

Appeal from the District Court of the First
Judicial District of the State of Utah
In and for the County of Cache

Hon. Lewis Jones, Judge

Respectfully submitted.

BULLEN & OLSON

By Charles P. Olson

Attorneys for Plaintiff

and Appellant.

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BRIEF OF
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Appeal No. 8601

STATEMENT OF FACTS

On January 3, 1955, plaintiff and appellant, Weldon Reeder, entered into a contract (Pl. Ex. B) with the Valley Motor Company of Logan, Utah, for the purchase of a 1955 special order Buick Sedan, turning in a used car worth \$2075.00 as part payment. The Valley Motor Company, an authorized dealer of the defendant, then placed an order for this automobile with defendant. (Pl. Ex. 3) This order was received by the defendant on January 4, 1955. (Tr. 48 and 49)

Plaintiff's order bearing his name was placed into the production schedule in the regular course of defendant's business and production or manufacture of said vehicle

completed on January 14, 1955. (Tr. 49) On January 17, Valley Motor Company notified Defendant that plaintiff desired factory delivery and this was arranged pursuant to a factory delivery authorization form of General Motors Corporation (Pl. Ex. 1) This form indicated that plaintiff was to pick up the Buick on the morning of January 20th, 1955, at the Customer Drive-Away at Flint, Michigan, where it was to be delivered by the factory prior to that date. On January 18, 1955, defendant delivered the Buick Automobile to the Customer Drive-Away in the name of the plaintiff (Tr. 49 and 50 and Pl. Ex. 2), at which time a Bill of Sale was executed by defendant in favor of General Motors Acceptance Corporation. (Pl. Ex. C) At the same time, a car invoice was executed showing the car as having been sold to General Motors Acceptance Corporation (hereinafter referred to as GMAC) for retail delivery to the plaintiff. (Pl. Ex. D) On this same form, the car invoice, (pl. Ex. D) was a Sight Draft payable to GMAC to be drawn on Valley Motor Company, the retail dealer, not due until January 26, 1955. Also, on the bottom of the Bill of Sale (Pl. Ex. C) from defendant to GMAC was a Trust Receipt between GMAC and the said Valley Motor Company, together with a promissory note from Valley Motor Company to GMAC not due until January 26, 1955. Each of these documents to-wit: The Notice of Shipment (Ex. 2), the Bill of Sale (Ex. C), and the Car Invoice (Ex. D) bore plaintiff's name upon it, and the Notice

of Shipment bore the notation after plaintiff's name: "1-20-A. M.", which corresponded to the scheduled delivery date shown on the factory delivery authorization form. (Ex. 1).

On January 18, 1955, plaintiff registered the car in his name and secured license plates for it. (Tr. 19, 20, Ex. 4)

The plaintiff made arrangements to go back to Flint, Michigan on January 20, 1955, (Tr. 20) but was delayed because a truck which a friend of his was to drive back from Michigan for Valley Motor Company would not be ready until about January 25, 1955, and plaintiff and his friend were planning to make the trip together. (Tr. 21)

On January 25, 1955, at about one o'clock in the afternoon, plaintiff called the defendant's Customer Drive-Away and asked if they had his car there for him. (Tr. 22, 36 and 43) Plaintiff was advised that his car was there and had been there since January 20th. He was asked why he had not picked it up. (Tr. 36, 43). Plaintiff advised defendant's Customer Drive-Away that he had been delayed but that he would be there in two days. Plaintiff was advised by defendant's Customer Drive-Away that this would be alright, but that they were charging him storage on the car. (Tr. 36, 43) Plaintiff agreed to this.

The evening following plaintiff's afternoon conver-

sation with Defendant's Customer Drive-Away, Mr. Ray Dilmore, an employee of the defendant, called plaintiff just as plaintiff was leaving to catch the airplane to Flint, and advised plaintiff not to go back to Flint. Apparently no reason was given. This was the same employee of the defendant who told plaintiff on January 24, 1955, that plaintiff's car never reached production. (Tr. 44, 46).

In the afternoon of January 27, 1955, plaintiff arrived at the defendant's Customer Drive-Away at Flint, Michigan, and ultimately was shown to the office of Mr. L. D. Burkhart, whose office was at the Customer Drive-Away, Flint, Michigan. Plaintiff inquired about the car and was advised that "Well your automobile isn't here." (Tr. 25) Following further conversation, plaintiff was told: "Your car is being reshipped." (Tr. 26) Plaintiff then inquired: "Had I been here on January the 20th could I have gotten my automobile?" Mr. Burkhart told plaintiff "Yes" (Tr. 26)

On January 26, 1955, the car distribution department of defendant's Buick Motor Division notified the Drive-Away Department of Buick Motor Division to return the car for shipment and the next day plaintiff's automobile was shipped to another dealer. (Tr. 51)

Plaintiff returned home and on June 28, 1955 commenced this action against Defendant.

Plaintiff alleged conversion on the part of the de-

fendant in refusing to surrender possession of said automobile to him and in selling it to another, contrary to the right of the plaintiff in the automobile. Plaintiff demanded judgment in the amount of \$3507.47 for the conversion. Defendants answer denied the allegations and a trial was held before First District Judge Lewis Jones, and a jury. At the close of the plaintiff's evidence, the defendant moved for a dismissal and for a directed verdict. The court refused. At the end of the defendant's evidence, both parties moved for a Directed Verdict, and on the theory that there was no controversy in the facts, and that all questions were questions of law, the parties stipulated that the jury might be dismissed and the matter handled by the judge in the form of a directed verdict. On October 8, 1956, the District Court entered the judgment appealed from granting defendant's Motion for a Directed Verdict.

The District Court, in announcing its decision in open court, based its ruling in favor of the defendant upon one of two grounds: (1) That the defendant had the right to rescind the sale, or exercise the right of stoppage in transitu, and (2) That under the trust receipt the security was held in the car by General Motors Acceptance Corporation until the cash was received. (Tr. 65, 66)

STATEMENT OF POINTS

That the District Court erred in granting de-

fendant's motion for a directed verdict and in failing to grant plaintiff's motion for a directed verdict made at the conclusion of the evidence of the case.

ARGUMENT

This being an appeal from a judgment entered on a directed verdict for the defendant, the evidence in the case must be viewed in light most favorable to plaintiff and all evidence favorable to the plaintiff must be accepted as true and as providing all facts which it reasonably tends to prove, and the plaintiff is entitled to the benefit of all inferences fairly deducible therefrom. 2 Barron & Holtzoff, Federal Practice & Procedure, Section 1075, Page 761, and cases cited therein.

At the trial, the defendant offered no testimony from witnesses, and the testimony offered by the plaintiff is uncontradicted. There appears to be no conflict of fact, and the determination of the respective rights and duties of the parties lies in an application of statutory rules of law to those facts. The particular statutes involved are the Trust Receipts Act and the Sales Act. Both Utah and Michigan have adopted the Uniform Law on each of these subjects, so reference in this brief will be made to the Utah Law only.

The plaintiff contends that he is a "Buyer in the Ordinary Course of Trade" as defined in the Trust Receipts Act, Sec. 9-2-1, U. C. A. 1953, and is protected as such. The Plaintiff maintains that he was the purchaser

of the automobile in question and that he had the right of immediate possession at the time the defendant sold the automobile for a second time to a third party.

The undisputed facts are that plaintiff entered into a contract to buy a car from defendant's authorized dealer. The dealer ordered the car from defendant, in the name of the plaintiff, and the defendant produced the car and delivered it to its Customer Drive-Away in the name of the plaintiff. At the same time, defendant executed a Bill of Sale in favor of General Motors Acceptance Corporation, who in turn gave a Trust Receipt in favor of the dealer with whom plaintiff had his contract. In all of the documents referring to the car, plaintiff was identified as the retail purchaser of it. Under this arrangement, General Motors Acceptance Corporation was the entrustor, and Valley Motor Company, the defendant's dealer with whom plaintiff contracted, was the trustee. And, at this point in the procedure, the defendant had divested its self of title by virtue of the Bill of Sale to General Motors Acceptance Corporation.

1. *Was the plaintiff, on the facts, a Buyer in the Ordinary Course of Trade and protected as such under Sec. 9-2-1, U. C. A., 1953?*

The above stated Section reads as follows:

“Buyer in the ordinary course of trade’ means a person to whom goods are sold and delivered for new value and who acts in good faith and without actual knowledge of a limitation on the

trustee's liberty of sale, including one who takes by conditional sale or under a pre-existing mercantile contract with the trustee to buy the goods delivered, or like goods, for cash or on credit . . ."

The plaintiff meticulously fits into this definition. He was sold the goods by Valley Motor Company under a Retail Car Contract and paid \$2075.00 for them in the form of a trade-in. This comes within the phrase "a pre-existing mercantile contract with the trustee (Valley Motor Company) to buy the goods delivered for cash or on credit." There was no limitation on the trustee's liberty of sale, (See bottom of Ex. C for Trust Receipt) but even if there were the plaintiff's good faith has not been question and actual knowledge of any limitation has never been asserted.

As to the delivery factor, no case law has succinctly placed the boundaries of the term delivery as here used. Its purpose, however, has been commented on as being a requisite to prevent collusive transactions where there is no actual sale. See Heindl, *Trust Receipt Financing under the Uniform Trust Receipts Act.*, 26 Chi.-Kent L. Rev. 197, 246 (1948). No such factor appears anywhere in this case, therefore the question of "delivery" is not a substantial problem. But be that as it may, there was a delivery in this case which should more than satisfy the requirements of the statute. At the time Valley Motor Company placed the plaintiffs car order (Ex. 3) with the defendant, a special stamp containing "Flint Retail

Store, name, date, time,” was placed on this order over the plaintiffs name and over the date and time “1-20 AM”. When the plaintiff called as a witness Mr. Robert Dilmore, who was, during the time of the transaction mentioned herein, a district manager for Buick Motor Division of the defendant General Motors Corporation (Tr. 31), Mr. Dilmer was asked the following question: Question by Mr. Olson:

“Well, how does the Buick Division know that the car should be kept at the customer drive-away rather than sent to the dealer?”

Answer by Mr. Dilmore:

“Well, that is established on that Wholesale Car Order Form by a special stamp.” (Tr. 52)

Mr. Dilmore was then shown the wholesale car order and he identified the special stamp on it.(Tr. 53)

The question was then asked Mr. Dilmore:

“So that when the dealer indicates that on the wholesale order the customer wants factory delivery and that stamp is placed on there, Buick Motor Division acknowledges that information and agrees to deliver it to the Customer Drive-Away?”

Mr. Dilmore’s answer was: “That is right.” (Tr. 53)

Then, on January 18th, 1955, the defendant executed Exhibit 2, the Notie of Shipment giving notice that the automobile which had been manufactured or produced

pursuant to the order for plaintiff was shipped to defendant's drive-away, Flint, Michigan. This Notice of Shipment identifies a sales order by Number 8091, the same number contained on the wholesale car order, Exhibit 3.

And there is no question but that the automobile was delivered to Customer Drive-Away by defendant. The question was asked the defendant, (Tr. 49): "Was the said vehicle ever delivered to Buick Customer Drive-Away?"

Answer: "Yes."

Question: "If so, when?"

Answer: "January 18, 1955."

Question: "If so, in the name of what customer?"

Answer: "Weldon R. Reeder."

Certainly this constitutes a sufficient delivery. *Whitmore Oxygen Co. vs. Utah State Tax Comm.*, 114 U. 1, 196 P(2d) 976, (1948) at Page 980; *Haynes vs. Douglas Fir Ex. Co.*, Ore., 90 P(2d) 761, (1939).

And see in this respect the Utah case of *Middleton vs. Evans*, 86 U. 396, 45 P. (2d) 570, (1935), wherein this Court said:

"If there is any question about the delivery in this case to the carrier being sufficient to constitute an unconditional appropriation to this contract, it will be settled by the fact that it is a well-

established rule that delivery to a person appointed by the buyer to receive the goods or to any third person at the buyer's request or with his consent is sufficient delivery to the buyer." Citing authority.

But to take the matter a step further, and assuming for purpose of argument that the facts above stated do not constitute a delivery under the Trust Receipts Act, it is submitted that there are a long line of cases holding that actual manual transfer of possession is not necessary to constitute delivery. In *Van Drimmelen vs. Converse*, 190 Iowa 1350, 181 N. W. 699 (1921) it was stated that "Delivery does not imply a physical change of location, but is determined by the intent of the parties at the time of the sale to transfer to the vendee the dominion and control over the thing purchased". No part of the purchase price in that case had been paid, nor had the buyer removed the goods from the seller's premises, but it was the *understanding* of the parties that the buyer was to "remove the corn from the premises as soon as possible". The court held that this constituted sufficient delivery in construing the important delivery requirement of the statute of frauds.

Similarly in the law of Bailments, where the law requires a delivery of the property from the bailor to the bailee as an essential element of the bailment contract, the law always recognizes a bailment in situations where a vendor of goods retains possession of them under circumstances where the property in the goods has passed,

and hold the vendor of the property to be the bailee even though there has been no physical delivery of the property to the bailee. 8 C. J. S. Bailments, 3 (g).

In the case at bar, the automobile was shipped by the defendant to the Customer Drive-Away in the name of the plaintiff. It was to be picked up by the plaintiff on January 20, 1955. This was in lieu of the more usual shipment to the dealer and later delivery to the buyer. It was agreed by all concerned that the Customer Drive-Away garage was to be the delivery point. This was confirmed by a telephone conversation on January 25, 1955, when the personnel of the garage informed the plaintiff that they were holding the automobile for him charging him storage, and then inquired when he would be there to pick the car up. This, along with the many documents that named the plaintiff and the place of delivery, would seem to be sound proof of the intention of the parties.

Further, these facts are indicative of the accepted relationship between the parties. The garage was charging storage, from the date of defendant's delivery to it on the 20th. They were bailees of the automobile for the benefit of the plaintiff, the bailor. This is supported by the many railroad carrier cases, which if not directly in point, are very closely analagous to the present situation. In *Neimeyer Lumber Co. vs Burlington & M. R. R. Co.*, 54 Neb. 321, 74 N. W. 670 (1898), the court stated that "When delivery is made to a carrier, he is in contem-

plation of law the bailee of the person to whom and not by whom goods are consigned.” Thus it has long been the rule of law that the vendee and not the vendor has the risk of loss once delivery to the carrier has been made and has the right to sue the carrier for negligence.

Carrier’s also charge storage on goods ready to be picked up after the passage of free time, as do other bailee’s such as warehousemen at the end of the railroad line, and as we submit does the Customer Drive-Away Garage who is in receipt of an automobile shipped to them from the factory to be held for a buyer.

According to the Notice of Shipment, (Exhibit 2) the automobile was shipped to the Customer Drive-Away Garage on January 18, 1955 as per the agreement of the parties. Although the carrier is unknown, the evidence indicated that the automobile was shipped and that it did arrive at the garage. Sec. 60-3-6, U. C. A., 1953 indicates that under this set of facts it is “deemed to be delivery of the goods to the buyer . . .” *Alderman Bros. Co. vs. Westinghouse Air Brake Co.* 92 Conn. 419, 103 A. 267 (1918). The exception stated in Sec. 60-2-3, Rule (5), does not change this result.

It should be firmly kept in mind that at all times during the critical periods involved in this action the property in the automobile had passed from the defendant.

Rule 5 of Section 60-2-3, U. C. A., 1953, provides:

“If a contract to sell requires the seller to deliver the goods to the buyer, *or at a particular place*, or to pay the freight or cost of transportation to the buyer or to a particular place, the property does not pass until the goods have been delivered to the buyer or *have reached the place agreed upon.*” (Emphasis ours)

See also Rule 2 concerning contracts to sell specific goods and Rule 4(a) concerning contracts to sell unascertained or future goods by description when goods of that description and in a deliverable state are unconditionally appropriated to the contract.

In *Birdsong et al vs. W. H. & F. Jordon, Jr. Inc.*, 297 Fed. 742, (1924) the court construed the New York law in this respect by saying that when a chattel is to be delivered to a particular place and it is so delivered, title then passes. Possession of the goods has no bearing on the question of when title passes. The court also pointed out that title may pass simultaneously to a buyer and to a purchaser from that buyer when delivery is to be made at the same time and place.

The plaintiff submits that on the facts he was buyer in the ordinary course of trade and the provisions of Sec. 9-2-9, (2) U.C.A., 1953, apply.

We turn now to the question of the rights of the defendant in disposing of the Automobile and the rights of plaintiff under said Sec. 9-2-9, (2) U.C.A., 1953.

II. *Did the defendant have the rights of an entruster*

under the trust receipt issued on January 18, 1955?

The Trust Receipt was issued by the defendant naming General Motor's Acceptance Corporation, herein referred to as GMAC, as the entrustor and Valley Motor Company as the trustee. This gave GMAC a security interest in the automobile and gave Valley Motor Company the power to sell it, which, of course, they had done. The purpose of this transaction is evident. GMAC becomes the financing agency, paying the defendant for the automobile and receiving by assignment the rights of the seller. General Motors thereby avoids the financing risk and the administrative expense. The remaining interest of the defendant is of a parental nature in looking out for a close business associate. Since General Motors and GMAC are two separate corporations, to hold that General Motors can exercise rights assigned to GMAC is to say that there is no distinction between the two.

Assuming, however, that the defendant can exercise those rights the question becomes: "Can those rights prevail over a Buyer in the ordinary Course of Trade?"

Sec. 9-2-9 (2) U.C.A., 1953, is emphatic when it says " . . . such buyer takes free of the entruster's security interest in the goods so sold . . . "

This result and its justification can be found in *Peoples Finance and Thrift Co. of Visalia v. Bowman et al*, 58 Cal Ap 2d 729, 137 P2d. (1943), a case which

points out that it was the misplaced confidence of the entrustor in the trustee's integrity that caused the loss. The entrustor must stay consistent with the faith he has placed in his trustee. See also *Commercial Discount Co. v. Mehne*, 42 Cal Ap 2d 220, 108 P2d 735, (1941).

III. *Did the Defendant on the facts have right to exercise an unpaid seller's lien under Sec. 60-4-1, U.C.A., 1953?*

In its oral decision, the lower court indicated that defendant had the rights of an unpaid seller, to-wit: right to rescind and stoppage in transitu. To exercise such rights, the seller must comply with the requisites as set out in the sales act, which is in effect both in Utah and Michigan.

a) Was the Defendant an unpaid Seller?

The Bill of Sale and Invoice show on their face that when the title passed from General Motors to GMAC, GMAC gave "valuable consideration". The defendant has stated that this consisted of a note that was later returned under the date of January 31, 1955. This was after the conversation in question and has no bearing on the position of the seller at the time of the conversion. Further it must be pointed out that the letter supposedly sent on January 31, 1955 was stamped received by the addressee in August of 1955, after suit had been filed. That fact remains that at the time of the

conversation on January 26, 1955, the seller had in his hands valuable consideration for the sale and transfer of the automobile. A negotiable note in the hands of the seller means that he has been "conditionally paid", that is, that he has surrendered the right to sue on the obligation until the instrument is due.

But even assuming that the defendant had not been paid and that the goods had been sold on credit, the Sales Act only allows exercise of the lien, upon which the right to rescind depends, when the term of credit has expired. (Sec. 60-4-3, U. C. A., 1953) The term of credit on all documents between GMAC and their trustee, Valley Motor Company, as well as on the note between GMAC and the defendant was January 26, 1955 and the automobile was resold during that business day, prior to the statutory time for payment. Sec. 44-1-87, U.C.A., 1953. This also goes to substantiate the fact that the defendant was not an unpaid seller.

IV. *Right of defendant to exercise stoppage in transitu.*

Stoppage in transitu, being an extension of the right of the seller's lien is subject to all the infirmities already mentioned, to-wit: defendant is not an unpaid seller, or assuming the sale was made on credit, the term of credit had not expired. Further under the clear wording of the statute the goods were no longer in transit after the arrival of the goods at the appointed destination (The Customer Drive-Away), and after the carrier

or other bailee acknowledges to the buyer that he holds the goods on his behalf and continues in possession of them as bailee for the buyer. Sec. 60-4-7 (2) (b), U.C.A., 1953. The phone call already referred to comes directly within this provision of the code.

Even if this were not so, the defendant would still not have the right of stoppage in transitu in light of the common law doctrine laid down in *Memphis & L.R.R. Co. vs. Freed*, 38 Ark. 614 (1882) and as more fully enunciated in *Neimeyer Lumber Co. v. Burlington & M.R.R. Co.* 54 Neb. 321, 74 N. W. 670 at page 676, where it was held that "In order that a vendor of goods may exercise the right of stoppage in transitu, it is essential that the goods at the time be in transit from such vendor to his immediate vendee". This decision is based on the theory that consignment to a sub vendee makes inequitable a refusal of delivery based on the failure of the vendee, to whom the vendor has extended trust and credit. Inherent in this view is the fact that the vendor has acquiesced in the sale to the sub-vendee and is fully aware of his purchase and rights in the goods. There can be little question that in the case at bar, the defendant had full knowledge of the resale and the sub-vendee's rights and interest in the automobile for the consignment was to a destination completely out of reach of his immediate buyer, Valley Motor Company, and for the purpose of, as the consignment indicates, delivery to the plaintiff.

V. *Notwithstanding all of the above, if it is found that the defendant had either the right to exercise an unpaid seller's lien or the right of stoppage in transitu, the subsequent resale of the automobile was directly contrary in its timing and method to the remedy laid down in the Sales Act, Sec. 60-4-9, U.C.A., 1953.*

The right of resale given in the Sales Act, 60-4-2, U.C.A., 1953, is limited by Sec. 60-4-9.

The resale of the goods may be made if 1) "the goods are of perishable nature". Certainly not relevant here. 2) Where the seller expressly reserves the right of resale in case of buyers default. Again not applicable, because there was no evidence whatsoever of such a reservation. 3) "Where the buyer has been in default in the payment of the price an unreasonable time". As has been pointed out, the buyer was not even in default at all. In the first place, defendant, in the Bill of Sale executed by it, acknowledged payment, and in the second place, assuming credit was involved, the resale here was made on the same day that the credit extended was to mature. "In the absence of proof of presentment for payment, the defendant cannot claim that the plaintiff was in default in the payment of the purchase price". *O'Kane v. North American Distilling Co.*, 171 NYS 275, (1918). They went on to say: "Even if, however, we assume that the plaintiff was in default the defendant could not sell the goods without proper notice to the plaintiff and there is no evidence in the case that such

notice was given.” The case at bar, like the *O’Kane* case is an example of a sale by a seller alleging merely a right to possession as security for the purchase price, made without any justification.

Subsection (3) of 60-4-9 points out that in such a case as this notice is relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made. It is submitted that even without this provision the time of the resale was patently unreasonable, the same being made on the day the demand note was dated.

The question of rescission is subject to precisely the same infirmities as the resale provision. Sec. 60-5-3. That is, default must be for an unreasonable time, or the right must be reserved. It is doubtful that the defendant claims a rescission, having based its argument on the trial level on the assumption that the plaintiff had no rights. Any argument before this court would have to be based on the letter of January 31, 1955 which was transmitted after the resale and thus ineffective prior to the conversion claimed.

Finally Utah Code Annotated Sec. 60-4-11 (1953) would seem to stress the importance of the above facts. It states “ . . . the unpaid seller’s right of lien or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, *unless the seller has assented thereto.*” (emphasis ours).

The legislature by these words confirm the view that assent by the seller to a further sale by his buyer not only affects the rights of the seller but defeats them in favor of the sub-vendee. This, then, is the underlying basis of the case decisions herein cited, of the Uniform Trust Receipts Act, and of the Uniform Sales Act, all of which are the foundations of the Utah Code. It is a recurrent theme that cannot be ignored.

CONCLUSION

The testimony and the documentary evidence in this case seems to clearly establish that the sequence of events, the sequence of interest and rights in the property and the sequence of right to possession in this case, following plaintiff's order from defendant's dealer and the dealer's order from the defendant in plaintiff's name, were, and without doubt the parties involved intended it to be this way if the documents executed by them are to mean anything at all, as follows:

From the manufacturer (the defendant General Motors) to the entrustor (GMAC), from the entrustor (GMAC) to the dealer's trustee (Valley Motor Company) and from the dealer to the retail purchaser (Plaintiff). *Jones vs. Comercial Investment Trust*, 64 U. 151, 228 Pac. 869 (1924), particularly at 902. By unanimous agreement, the plaintiff's right to immediate possession was fixed as of the morning of January 20, 1955. Everything agreed and contemplated to be performed had been

performed at that time, and plaintiff's rights became vested. It is difficult to see how a self-serving, ex parte act by the defendant could destroy these vested rights of plaintiff.

And finally, since a number of references has been made to the Sales Act, the Court's attention is directed to Section 60-5-4, Utah Code Annotated, 1953, which provides:

60-5-4. Action by Buyer For Converting or Detaining Goods. — Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld.

Respectfully submitted.

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