

1957

## Weldon R. Reeder v. General Motors Corp. : Brief of Respondent

Utah Supreme Court

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Rich, Elton & Mangum; Attorneys for Defendant;

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

FILED

MAR 27 1957

WELDON R. REEDER,  
*Plaintiff and Appellant,*  
— vs. —  
GENERAL MOTORS CORPORATION,  
a corporation  
*Defendant and Respondent.*

Chief Justice, Supreme Court, Utah

Case  
No. 8601

Brief of Respondent

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(b) PLAINTIFF DID NOT SHOW ANY CON- TRACTUAL OBLIGATION ON THE PART OF DEFENDANT TO DELIVER TITLE TO PLAINTIFF; AND	
(c) PLAINTIFF DID NOT SHOW ANY CON- DUCT ON THE PART OF DEFENDANT WHICH WOULD ESTOP IT FROM DENY- ING TITLE TO THE CAR TO BE IN PLAINTIFF.	
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*Defendant and Respondent.*

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## Brief of Respondent

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### STATEMENT OF FACTS

We feel that a restatement of the facts is necessary to enable this Court to understand the issues presented on this appeal. The statement given by appellant is so incomplete and unrelated to sequence of events that it is difficult to follow and connect.

The action is for alleged conversion of a 1955 Buick automobile, *which plaintiff claimed to own*, in the possession of defendant, and which it is alleged defendant refused to deliver to him (R. 1).

Defendant denied that plaintiff owned the car and that it was guilty of converting the same (R. 2).

Plaintiff's evidence showed that Valley Motor Company was a Buick dealer at Logan, under a written contract introduced in evidence by plaintiff (Ex. "A") (R 12), which provided that the dealer should pay in cash for each shipment of cars (see par. 3 thereof); that the dealer is not the agent or legal representative of seller (see par. 29); and that the dealer is solely responsible for all commitments to customers and that seller shall not be held responsible for any commitments of the dealer unless it assumes such responsibility in writing (see par. 30).

On January 3, 1955 plaintiff entered into an agreement with Valley Motor Company to buy a new car (Ex. "B") (R 12). Valley Motor Company sent to defendant an order for the car (Ex. "B") to be delivered to plaintiff at Flint, Michigan, on January 20, 1955, upon authorization from Valley Motor Company.

Valley Motor Company never paid for the car in cash, pursuant to contract, nor did it do so by use of the credit facilities of General Motors Acceptance Corporation (R. 50); nor did plaintiff take delivery of the car on January 20, 1955, or at any other time (R. 20).

On January 18, 1955, defendant delivered to General Motors Acceptance Corporation a bill of sale covering the car (Ex. "C") for completion of financing by Valley

Motor Company, at which time a trust receipt and promissory note were prepared by G.M.A.C. and held in its files until January 31, 1955, when they were returned to defendant (Ex. "E"). Exhibit "C" reads as follows:

"To General Motors Acceptance Corporation (hereinafter referred to as G.M.A.C.):

The undersigned dealer, hereinafter referred to as the trustee, hereby accepts delivery and possession of the above described property under the conditions and for the purposes herein expressed:

1. Title to said property remains in G.M.A.C. as security retained for and until the trustee's payment in cash of the amount of his (its, their) promissory note of same identification number.
2. Said property is in the possession of the trustee hereunder at his (its, their) sole risk of all loss or injury for the purpose of storing and exhibiting same preliminary to and in procuring the sale thereof.
3. The trustee agrees to keep said property free of all taxes, liens, and encumbrances, to keep said property brand-new and subject to inspection and not to use or operate same for demonstration or otherwise without express permission except as may be necessary to drive same from freight depot or from receiving city to trustee's place of business, at trustee's risk en route, against all loss and damage to said property, persons or other property; not to sell, loan, pledge, mortgage, or otherwise dispose of said property until payment of said amount and not to use said property illegally, improperly or for hire.

4. In the event of trustee's default in payment under and according to said promissory note or not complying with the terms and conditions hereof, and in the event of trustee's bankruptcy, insolvency or receivership, or G. M. A. C. deems itself insecure or said property or any part thereof in danger of misuse, loss, seizure or confiscation G.M.A.C. may take immediate possession of said property without demand or legal process, and for this purpose may enter upon the premises wherever said property may be and remove same. Thereupon G.M.A.C. may, at its election either (a) sell said property upon notice at public or private sale for the trustee's account, or (b) declare the transaction and the trustee's obligation under said promissory note to be terminated and cancelled and retain any sums of money paid by the trustee as a deposit on delivery hereunder. Recorded on the 'date of execution' specified above."

Plaintiff never had title to the car (R. 28) ; never had possession of the car (R. 28) ; never paid defendant the purchase price of the car ; and never had any contractual relationship with defendant relating to acquisition of title to the car (R. 27-28).

Valley Motor Company never had title to the car (Ex. 1) ; never had actual possession of the car ; and had no contract with defendant for acquisition of title excepting for cash (Ex. 1). General Motors Acceptance Corporation held title until January 31, 1955, and was not to convey title to Valley until the car was paid for (Ex. "C"),

which was never done. Plaintiff offered no evidence that either defendant or G. M. A. C. was ever paid for the car.

In the meantime, Valley Motor Company lost its credit standing and the trust receipt and the title papers were returned to defendant (R. 50-51). See Ex. "E."

Plaintiff testified that on January 25, 1955, he called defendant's office in Michigan and talked to some unidentified individual who advised him that his car was there and had been since January 20th (R. 36); that on the 24th day of January, 1955, plaintiff was advised not to go to Flint for the car (R. 45), but nevertheless on January 27, 1955, he went to defendant's plant in Michigan, talked to a Mr. Burkhart and was advised that the car was not there; it had been reshipped (R. 26).

## STATEMENT OF POINTS

THE JUDGMENT OF THE TRIAL COURT IN DENYING PLAINTIFF RECOVERY FOR CONVERSION WAS CORRECT, BECAUSE:

- (a) PLAINTIFF DID NOT SHOW TITLE TO CAR;
- (b) PLAINTIFF DID NOT SHOW ANY CONTRACTUAL OBLIGATION ON THE PART OF DEFENDANT TO DELIVER TITLE TO PLAINTIFF; AND



- (c) PLAINTIFF DID NOT SHOW ANY CONDUCT ON THE PART OF DEFENDANT WHICH WOULD ESTOP IT FROM DENYING TITLE TO THE CAR TO BE IN PLAINTIFF.

## ARGUMENT

The judgment of the trial court in denying plaintiff recovery for conversion was correct, because :

- (a) Plaintiff did not show title to the car ;
- (b) Plaintiff did not show any contractual obligation on the part of defendant to deliver title to plaintiff ; and
- (c) Plaintiff did not show any conduct on the part of defendant which would stop it from denying title to the car to be in plaintiff.

This is an action for conversion based upon plaintiff's alleged ownership of the car. Where right to possession is based upon ownership and title, plaintiff must prove that fact. The rule is well stated in cases from this Court :

*Madsen v. Madsen*, 269 Pac. 132, 72 Utah 96, as follows :

“A conversion of personal property is defined as an unauthorized assumption and exercise of the right of ownership over goods or personal chattels *of another* to the alteration of their con-

dition or the exclusion of the *owner's rights*, and 'trover' is the technical name of the common-law action provided for the redress thereof (38 Cyc. 2005), and the measure of damages for conversion when property is not returned is the value of the property at the time of the conversion, plus interest."

*Johnson v. Flowers*, 228 Pac. 2d 406, 119 Utah 425:

"The general rule is announced in 53 Am. Jur., Trover and Conversion, p. 863-4, Sec. 68, as follows: 'The general rule is that an action for conversion is not maintainable unless the plaintiff, at the time of the alleged conversion, is entitled to the immediate possession of the property. An interest in the property which does not carry with it a right to possession is not sufficient; the right to maintain the action may not be based upon a right to possession at a future time.' "

*Larsen v. Knight*, 233 Pac. 2d 365, 120 Utah 261:

" 'The general rule is that an action for conversion is not maintainable unless the plaintiff, at the time of the alleged conversion, is entitled to the immediate possession of the property.' 53 Am. J. 863; *Johnson v. Flowers*, Utah, 228 P. 2d 406."

*Christensen v. Pugh*, 36 Pac. 2d 100, 84 Utah 440:

"Conversion is any unauthorized act of dominion or ownership exercised by one person *over the personal property of another* in denial of his right in the property, or inconsistent with it. Cooley on Torts (4th Ed.) Sec. 331. The most frequently quoted definition is that in 2 Greenleaf on Evid., Sec. 642: 'Conversion consists either in the appropriation of a thing to the party's own use and beneficial enjoyment, or in its destruction, or in exercising dominion over it, *in exclusion or de-*

*fiance of the owner's right, or in withholding the possession of the property from the owner under a claim of title inconsistent with his own.'* Under all the authorities where transfer of possession was had by the owner's consent, even though under misrepresentation as to the purpose for the transfer, until some act is done by the bailee which is a denial, or violation, or disregard, of the owner's rights in the property, conversion will not lie. *The gist of conversion is not the acquisition of property by a wrongdoer, but the wrongful deprivation of it to the owner.'*

See also *Lee Woodworking Company v. Hub Plating Works*, 217 Fed. 2d 453:

“It is fundamental that the plaintiff would be required to prove title to the property and the right to immediate possession before it could recover in trover. *Nettleton v. Kerr*, 167 Ill. App. 74; *Ridge v. Giffrow*, 220 Ill. App. 590.”

Since this is the general rule we shall cite no further cases.

Plaintiff, by his own evidence, showed title and right to possession in General Motors Corporation, defendant, under the terms of Exhibit 1 until it was paid in cash for the car.

He also proved by his evidence, assuming the transaction with General Motors Acceptance Corporation to have been completed, which it was not because the papers were still in the hands of G.M.A.C., that title to the car and right of possession were in G.M.A.C. until the car was paid for. Neither title or possession, or the right

to title, passed from defendant and G.M.A.C. according to plaintiff's own evidence.

Since neither General Motors or G.M.A.C. was ever paid for the car by either Valley or plaintiff, there the matter of title and right to possession rests so far as this case is concerned, according to the written documents presented by plaintiff himself.

Plaintiff seeks to overcome this obvious defect in his case by two arguments:

1. That he was told by some unidentified telephone operator over long distance phone on January 25, 1956, that his car was ready for him; and
2. That the Valley Motor Company, by reason of the trust receipt (Ex. C) became trustee of the title for plaintiff; and that since plaintiff had theretofore made a contract with Valley for purchase of the car, plaintiff had the right as third party beneficiary to title and possession as against General Motors and G.M.A.C., notwithstanding the wording of the contract papers.

We shall discuss these two propositions in the order stated.

## 1.

### TELEPHONE CONVERSATION

A telephone conversation with some unidentified telephone operator was insufficient to divest defendant or

G.M.A.C. of title to the car as established by the written contract documents introduced in evidence by plaintiff. Plaintiff seems to place great weight upon this alleged conversation. In the absence of any showing as to the identity and authority of this telephone operator, this is completely answered by the case of *Utah Foundry & Machine Company v. Utah Gas & Coke Co.*, 131 Pac. 1173, 42 Utah 533. In that case plaintiff brought action for moneys due for iron castings sold to defendant. Defendant counterclaimed for conversion. One Wright was agent for defendant and allegedly unlawfully sold iron to one Croft. This Court laid down the following rule as to the authority of an agent as follows:

“There is the evidence of Croft, Sr.’s admission that he received iron from Wright; that he paid him for it; and that he presumed Wright had paid it to the defendant.

\* \* \* \*

“The admission of Croft, Sr., was not a binding admission of the plaintiff. He was the secretary of the plaintiff corporation, and its bookkeeper, and collector. *The rule is well settled that, to bind the principal with an admission of his agent, the declaration or statement of the agent must have been made within the scope of his employment and during the transaction of business by him for the principal and in relation to such business; that is, the declaration or statement of the agent must be contemporaneous with or in the course of the business or transaction and in relation thereto conducted by the agent for the principal within the scope of the agency. The declarations or statements of the agent here were not made under any such circumstance. They were made long after the transactions with respect to which they were de-*

clared had wholly ended, long after the business had been conducted, and were not made in the course of nor in relation to any business which the agent was then transacting or conducting for the principal. Certainly, an agent not in the course or transaction of any business for his principal, may not on the public mart or elsewhere make binding admissions of fact against his principal by a mere narration of facts relating to transactions wholly ended and long past. Property rights of the principal cannot be bartered away in any such manner as that.” (Italics supplied)

The written contract, Sec. 35, Ex. 1, expressly precluded the authority of anyone to alter the contract by oral commitment, and certainly an unidentified telephone operator could not do it.

## 2.

### TRUST RECEIPT ACT AND SALES ACT

Plaintiff seeks by some type of legal gymnastics to write his name as beneficiary of the trust receipt written up by G.M.A.C., held in its files, never delivered to Valley, and subsequently returned to defendant. He would delete the entire wording of the document itself which expressly states on its face, if it were supposed that it had become a valid document, *that title was to remain in G.M.A.C. until it was paid for the car by Valley*, and expressly negated the right of Valley to sell or convey the car. *Valley was not trustee of the title, as argued by plaintiff. G.M.A.C. held title. Valley was to have had*

*only a qualified and limited right of possession, which it never took.*

By what legal sophistry can a court be urged to write into a document something that is not there, and delete from a document what is expressly written into it? This Court has many times held in no uncertain terms that the function of a court is to interpret written documents, not to rewrite the contract to suit litigants. It is not necessary to cite cases on a proposition as fundamental as this.

In the first place, the Trust Receipts Act of either Utah or Michigan has no place in this case. The trustee (Valley) was never given title to be held in trust. If plaintiff felt that he had some case under the Michigan law, by reason of this trust receipt (Ex. C), it would have to be an action against G.M.A.C. for violation of the trust document. He would have to allege and prove the Michigan law, and then prove some obligation on the part of G.M.A.C. to deliver title to plaintiff in spite of and notwithstanding the express wording of the trust receipt to the contrary. The Utah Trust Receipts Act has no place in the case whatsoever. That part of the transaction took place in Michigan and the documents never left the possession of G.M.A.C. in Michigan. The express wording of the statute under the definition of trustee is that the trustee is one who has *possession* of property or documents under a trust receipt. Valley never had actual possession or title.

The purpose of the Trust Receipts Act, if it had anything to do with this case, is to permit the warehousing of merchandise, with title retaining features, without compliance with the recording statutes of the State where the warehousing is to be done. Nowhere does the Trust Receipts Act invalidate the terms and provisions of the trust documents, and this is particularly true where the title and possession are retained by the entrustor.

Sec. 9-2-1, UCA, 1953, expressly states that it applies only to a sale by the trustee *for new value*, where the goods are *sold and delivered for new value*, or where the *delivery* is made on a pre-existing contract for cash or on credit.

Plaintiff's purchase contract with Valley was on January 3, 1955, at which time he turned in his old car to Valley. This was fifteen days *before* the date of the trust receipt. There is no evidence that he *thereafter* gave any *new value* to either Valley or defendant G.M.A.C.

Plaintiff never had delivery of the car from anyone. Counsel's argument that delivery of the car by defendant to its own Customer Drive-Away department constituted delivery to plaintiff is so fantastic and so unrealistic as to require no answer.

The purpose of Sec. 9-2-1 of the Trust Receipts Act, if it were applicable, is to create an estoppel against the entrustor (in this case it would be G.M.A.C.) in favor of a *subsequent* purchaser who parts with *new value* and



who takes *delivery* from a trustee in possession of the property, or a prior purchaser who subsequently parts with *new value* by way of *cash or credit* and *who takes delivery* from a *trustee in possession*. Plaintiff does not fit into this picture by any stretch of the imagination. Whatever of value he parted with was on January 3, 1955, and the contract that he signed was on the same date, fifteen days prior to the date of the trust receipt, and plaintiff never at any time parted with any value to Valley *after* the date of the trust receipt; and the alleged trustee *never had possession*, which is the very basis of applicability of the Trust Receipts Act.

The same general principles are set forth in our Sales Act (Sec. 60-2-7, UCA 1953) which reads as follows:

“Sale by a person not the owner.—(1) Subject to the provisions of this title, where goods are sold by a person who is not the owner thereof, 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.

“(2) Nothing in this title, however, shall effect:

“(a) The provisions of any factors’ acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

“(b) The validity of any contract to sell or sale under any special common law or statutory power of sale, or under the order of a court of competent jurisdiction.”

See also *Schwartz v. White*, 13 Pac. 2d 643, and *Thomas v. Farrell*, 26 Pac. 2d 328. Both are Utah cases.

The various elements to constitute an estoppel in all of its phases has been clearly set forth in the Utah case of *Barber v. Anderson*, 274 P. 136:

“ ‘In conformity with the principle already stated which lies at the basis of the doctrine, and upon the authority of decisions which have recognized and adopted that principle, the following are the essential elements which enter into and form a part of an equitable estoppel in all of its phases and applications. One caution, however, is necessary and very important. It would be unsafe and misleading to rely on these general requisites as applicable to every case, without examining the instances in which they have been modified or limited. 1. There must be a conduct — acts, language, or silence — amounting to a representation or a concealment of material facts. 2. These facts must be known to the party estopped at the time of his said conduct, or at least the circumstances must be such that knowledge of them is necessarily imputed to him. 3. The truth concerning these facts must be unknown to the other party claiming the benefit of the estoppel, at the time when such conduct was done, *and at the time when it was acted upon by him*. 4. The conduct must be done with the intention, or at least with the *expectation*, that it will be acted upon by the other party, or under such circumstances that it is both natural and probable that it will be so acted upon. There are several familiar species in which it is simply impossible to ascribe any intention or even expectation to the party estopped that his conduct will be acted upon by the one who afterwards claims the benefit of the estoppel. 5. The conduct must

be relied upon by the other party, and, *thus relying, he must be led to act upon it.* 6. *He must in fact act upon it in such a manner as to change his position for the worse*; in other words, he must so act that he would suffer a loss if he were compelled to surrender or forego or alter what he has done by reason of the first party being permitted to repudiate his conduct and to assert rights inconsistent with it.' ''

Also, see Utah cases of *Cook v. Cook*, 174 Pac. 2d 434, and *Cache Valley General Hospital v. Cache County*, 67 Pac. 2d 639. There is no estoppel where one party has not conducted himself so that another acts in reliance on his conduct.

The elements of estoppel in the case at bar are conspicuous only by their entire absence. At the time plaintiff made his agreement with Valley Motor and at the time he parted with his property there was no conduct or representation upon the part of the defendant. None is contended. Wherein did plaintiff change his position for the worse by reason of any conduct on the part of defendant? The record clearly and beyond any doubts refutes all such ideas. Quite the contrary, at the earliest opportunity the defendant advised the plaintiff *not* to alter or change his position.

There seems to be no doubt that the sales contract between the plaintiff and Valley Motor was breached by the Valley Motor and plaintiff undoubtedly believes that they are no longer responsible. Of this fact we have no knowledge. We do know that in this action the plaintiff

is grasping at straws in order to recoup his loss. We know of no action that may be based on such a notion.

Plaintiff refers to Valley as defendant's authorized dealer and implies that there is some agency relationship between defendant and Valley. The contract expressly says to the contrary. And these contracts have uniformly been upheld by the courts. Without extensive quotations, we cite the following authorities:

*Whitson et al v. Pacific Nash Motor Co.*, 215 Pac. 846.

*S. B. McMaster, Inc. v. Chevrolet Motor Co.*, 3 Fed. 2d 469.

*Hudson v. Gulf Oil Co.*, 2 S. E. 2d 26.

*Ford v. Willys-Overland, Inc.*, 147 S. E. 822.

*Anheuser-Busch v. Manion*, 100 S. W. 2d 672.

*Detroit Motor Appliance Co. v. Taylor*, 4 F. Supp. 2d 520.

*Brown v. Cleveland Tractor Co.*, 251 N. W. 557.

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*Gibbs v. Plymouth Motor Co.*, 166 S. E. 74.

*Silverman v. Samuel Mallinger Co.*, 100 A. (2d) 715.

*State v. W. T. Rawleigh Co.*, 174 S. E. 385.

*Mathews Conveyor Co. v. Palmer-Bee Co.*, 135 Fed. 2d 73.

We respectfully submit that the trial court was correct in directing a verdict for defendant. Plaintiff's evidence failed to show any title in plaintiff; failed to show any right to possession as against defendant; and on the contrary showed title in the property in defendant and G. M. A. C., not plaintiff; and he failed to show any estoppel against defendant under any existing or applicable law.

Respectfully submitted,

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