

1958

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George E. Bridwell; Attorney for Appellant;

Recommended Citation

Brief of Appellant, *Universal C. I. T. Credit Corp. v. Courtesy Motors, inc.*, No. 8877 (Utah Supreme Court, 1958).
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IN THE SUPREME COURT
of the

STATE OF UTAH FILED

JUN 24 1958

UNIVERSAL C. I. T. CREDIT COR-
PORATION,

Plaintiff and Appellant,

vs.

COURTESY MOTORS, INC.

Defendant and Respondent.

Supreme Court, Utah

Case No.
8877

BRIEF OF APPELLANT

GEORGE E. BRIDWELL

Attorney for Appellant

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IN THE SUPREME COURT
of the
STATE OF UTAH

UNIVERSAL C. I. T. CREDIT COR-
PORATION,

Plaintiff and Appellant,

vs.

COURTESY MOTORS, INC.

Defendant and Respondent.

Case No.
8877

BRIEF OF APPELLANT

STATEMENT OF THE CASE

On the 27th day of November, 1956, an individual named Dick A. Channel purchased a 1956 Dodge automobile from the Goffe Motor Company in Pueblo, Colorado (Tr. 4).

Dick A. Channel, at that time, made a down payment of Eight Hundred Seventy Eight Dollars and Eighty Five Cents (\$878.85) on said vehicle and executed a chattel mort-

gage for the balance due of Two Thousand Seven Hundred Sixty Three Dollars and Thirty Six Cents (\$2,763.36) (Plaintiff's Exhibit No. 1).

On or about said same day the chattel mortgage executed upon Mr. Channel's Dodge motor car was assigned, sold and delivered to the Plaintiff in this action (Tr. 5, Line 29 to Tr. 7, Line 6).

On the same day of the sale of the Dodge Car to Dick A. Channel, the Goffe Motor Company executed a bill of sale to the purchaser at that time (Tr. 7, Lines 16 to 30).

On or about the 7th day of December, 1956, it came to the attention of the Goffe Motor Company in Pueblo, Colorado, that Dick A. Channel had been guilty of certain peculations and had left town with the mortgaged automobile. It was then that the Goffe Motor Company procured recordation of the chattel mortgage covering said vehicle with the office of the County Recorder of Pueblo County, Colorado (Tr. 13, Lines 4 to 28).

Plaintiff corporation, to this day, has received no money upon the mortgage it purchased (Tr. 68, Line 26 to Tr. 69, Line 17).

On the 29th day of December, 1956, Defendant Motor Company agreed to purchase the Dodge vehicle from Dick A. Channel for the sum of Two Thousand Dollars (\$2,000.00). One Thousand Three Hundred Dollars (\$1,300.00) was thus paid to Defendant pursuant to the terms of this agreement, and the balance of Seven Hundred Dollars (\$700.00) was never paid because Dick A. Channel has not been heard from

since. (Defendant's Answers to Interrogatories, Question No. 2).

On December 29, 1956, when Defendant Motor Company purchased the Dodge vehicle, Dick A. Channel showed the bill of sale covering said vehicle to Mr. Larson, the person that handled the transaction for Defendant Motor Company. The bill of sale, Plaintiff's Exhibit 2, was mutilated at the time it was received by Defendant car dealer (Tr. 59, Line 4 to Tr. Line 60, Line 14).

The mutilation done upon the bill of sale that was taken by Defendant Motor Company as evidence of title in Dick A. Channel was a cutting so that the place for recordation of lien was missing from the bill of sale (Plaintiff's Exhibit 2 and Tr. 60, Lines 11 to 14).

An exact duplicate copy of subject bill of sale was offered and received in evidence so that the trier of fact and the trier of law could examine same to see the condition, originally, of a bill of sale used in the state of Colorado for purposes of comparison to determine the extent of mutilation (Plaintiff's Exhibit 3 and Tr. 8, Lines 14 to 27).

On December 31, 1956, Defendant was advised that the Plaintiff in this action claimed security interest in and to said Dodge vehicle (Defendant's Answers to Interrogatories, Question No. 4).

On the 7th day of January, 1957, the managing agent of Universal C. I. T. Credit Corporation, in writing, informed Mr. Randy Larson, of Defendant Motor Company, that Universal C. I. T. Credit Corporation claimed security interest

in said vehicle (Plaintiff's Exhibit 14, and Tr. 66, Lines 7 to 21).

Despite Defendant Corporation's notice and knowledge that Universal C. I. T. Credit Corporation claimed security interest in the vehicle, the Defendant, through the mistake of employees of the State Tax Commission of Utah, obtained Utah Certificate of Title upon said vehicle (Tr. 46, Lines 3 to 5). The Trial Judge refused to permit Mr. Philip Proctor, the assistant director of the motor vehicle division, State Tax Commission of the State of Utah, to testify that it would not be in the normal or usual course of practice in his office to issue Utah Certificate of Title upon Colorado bill of sale that was obviously mutilated. Appellant claims that refusal to permit Mr. Proctor to so testify was error. The question propounded of Mr. Proctor upon which objection of Defendant was sustained is to be found at Tr. 54, Lines 9 to 25).

Mr. Scott Thorne, an employee of the Utah State Tax Commission, who in fact approved the issuance of the Utah Certificate of Title upon the Dick A. Channel vehicle, was called as a witness by the Defendant Corporation. That witness, Scott Thorne, examined the mutilated bill of sale and stated that he would not, upon examination of that document, issue Utah Certificate of Title (Tr. 81, Lines 4 to 6, and Tr. 81, Lines 11 and 12).

On February 12, 1957, Defendant, knowing of the security interest of Plaintiff Corporation in the Dodge vehicle, sold it for the sum of Two Thousand Three Hundred Forty Nine Dollars (\$2,349.00). (Defendant's Answer to Interrogatories No. 6).

The attorney for the Plaintiff Corporation and the attorneys for Defendant stipulated and agreed at the trial that after the purchase of the Dodge vehicle by Defendant, and prior to the time that the vehicle was sold, Plaintiff-Appellant's attorney requested Defendant to return the vehicle to Plaintiff Corporation, which was not done (Tr. 19, Lines 14 to 28).

Plaintiff filed this action, claiming that Defendant Corporation had converted its security interest in said vehicle to its own use and benefit.

The case was pre-tried before the Honorable A. H. Ellett and at the pre-trial, Defendant claimed it was a bona fide purchaser of subject vehicle up to the sum of One Thousand Three Hundred Dollars (\$1,300.00), the amount it had paid to Dick A. Channel, and at the pre-trial, Defendant Corporation acknowledged and agreed that it was indebted to Plaintiff Corporation for \$895.30, said sum being its proceeds over and above cost, and costs of sale.

The matter was tried before a jury on the 25th day of March, 1958, but at the conclusion of testimony upon behalf of Plaintiff, the Trial Judge directed the jury to return a verdict in favor of Defendant and against the Plaintiff, no cause of action, which presumably also constitutes a remand of the pre-trial Order made and entered before the trial of the cause as to the Plaintiff's entitlement to the Eight Hundred Ninety Five Dollars Thirty Cents (\$895.30).

It is from the directed verdict of the Trial Court that this appeal is taken.

The laws of the State of Colorado, in order to afford con-

structive notice protection for mortgagees, requires that a chattel mortgage upon a motor vehicle, together with an old certificate of title, be filed with the County Clerk of the County of sale. The County Clerk then forwards the certificate of title to the State Tax Commission of the State of Colorado for issuance of a new certificate with proper notation of lien recorded upon said new certificate of title. Plaintiff-Appellant makes no claim that there was proper compliance with the Colorado Mortgage Statute to furnish it with the protection of constructive notice. Plaintiff-Appellant's sole claim is that under the circumstances herein involved, Defendant Corporation had actual notice of the outstanding claim of Plaintiff Universal C. I. T. Credit Corporation and the Defendant Corporation is not entitled to benefits as a bona fide purchaser for value, without notice of the superior claim of Universal C. I. T. Credit Corporation.

POINT I.

KNOWLEDGE SUFFICIENT TO PUT A PURCHASER UPON NOTICE OF AN OUTSTANDING LIEN UPON PERSONAL PROPERTY DEPRIVES SUCH PURCHASER OF THE RIGHTS OF A BONA FIDE PURCHASER FOR VALUE, IF THE PERSONAL PROPERTY PURCHASED IS ENCUMBERED, AND REASONABLE INQUIRY WOULD HAVE REVEALED AN OUTSTANDING LIEN AGAINST THE PROPERTY PURCHASED.

It is clear from the evidence adduced at the trial that a Utah Certificate of Title could not have issued upon the Dodge

vehicle purchased by Dick A. Channel, upon which Universal C. I. T. Credit Corporation had a mortgage, unless a Colorado bill of sale was presented to the Tax Commission together with application for new title (Tr. 52, Lines 1 to 8).

It is equally clear that Dick A. Channel showed his bill of sale to the agent for Courtesy Motor Company upon selling his vehicle to them, and the bill of sale was then in the form it is now, mutilated (Tr. 60, Lines 8 to 14).

At this point, it becomes important for the Court to have before it the mutilated bill of sale, Plaintiff's Exhibit 2, and to compare an un mutilated form, which is the form denominated Plaintiff's Exhibit 3.

There follows an exact replica duplication of Plaintiff's Exhibit 2 and Plaintiff's Exhibit 3.

DEALER'S BILL OF SALE FOR NEW OR USED MOTOR VEHICLES

Date of Sale. November 27 19 56~~EXHIBIT~~ P-2~~CASE NO.~~ 11218For value received the undersigned, a Colorado Licensed Motor Vehicle Dealer does hereby sell, assign and convey unto
Dick A. Channel 1020 W. 15th Pueblo, Colorado(If Colo. M.V.D.)
(License No.) and does hereby warrant title to the NEW ☐ or USED ☒ vehicle described on the reverse side hereof, and that the vehicle is subject to liens or encumbrances, or not, as shown thereon.Dealer's
Lic. No. 81 DEALER GOFFE MOTOR COMPANY AUTHORIZED
Agent. John A. WilsonSTATE OF COLORADO, } On this 27th day of November, 19 56 beforeCounty of Pueblo } ss. me, a Notary Public, in and for said County, personally appearedJohn A. Wilson for Goffe Motor Company

and who is personally known to me, and makes oath that the matters set forth in the foregoing statement are true.

My commission expires August 2, 19 60

(SEAL)

Wilma H. Sumner
Notary Public

STATE OF COLORADO

APPLICATION FOR A TITLE FOR A MOTOR VEHICLE

MAKE Dodge TITLE NUMBER C
 YEAR 1956 MODEL D63 COUNTY Pueblo
 BODY TYPE Clb Coupe MOTOR NO. _____
 WEIGHT 3505 MFGRS. NO. 3502 4577
 LIST PRICE \$ 2424.00 CAPACITY: _____
 DATE PURCHASED 11-27-56 BUS OR TRUCK _____
 FIRST SOLD 2-13-56
 NAME OF OWNER Dick A. Channel
 ADDRESS 1020 W. 15th St.
 CITY Pueblo STATE Colorado
 FROM WHOM PURCHASED GOFFE MOTOR COMPANY
 ADDRESS 7th and Court St., Pueblo

STATE OF COLORADO

County of _____

} ss.

I, _____

whose address is _____

 _____, upon oath,
 depose and say:

That I am the owner, or duly authorized agent of the owner of the motor vehicle described herein; that the matters set forth in said application are true of my own knowledge; and that said motor vehicle describ

(Reverse Side)

EXHIBIT 2.

DEALER'S BILL OF SALE FOR NEW OR USED MOTOR VEHICLE ~~112198~~ P-3

Date of Sale November 27 19 56

For value received the undersigned, a Colorado Licensed Motor Vehicle Dealer does hereby sell, assign and ~~convey~~ to
Dick A. Channel 1020 W. 15th St. Pueblo, Colorado

ASE NO. 112198

(If Colo. M.V.D.)
 (License No.) and does hereby warrant title to the NEW ☐ or USED ☒ vehicle described on the reverse side hereof, and that the vehicle is subject to liens or encumbrances, or not, as shown thereon.

Dealer's 81 DEALER GOFFE MOTOR COMPANY AUTHORIZED Agent John A. Wilson

STATE OF COLORADO, }
 County of Pueblo } ss. On this 27th day of November, 19 58 before
John A. Wilson me, a Notary Public, in and for said County, personally appeared
for Goffe Motor Company

and who is personally known to me, and makes oath that the matters set forth in the foregoing statement are true.
 My commission expires Aug. 1, 19 60.

(SEAL)

Wilma H. J. J. J.
 Notary Public.

AFFIDAVIT OF PHYSICAL INSPECTION

The following affidavit must be filled out if the motor vehicle is registered or titled in a state other than Colorado, or before a Special Colorado Identification Number is issued to any motor vehicle or trailer. The motor and manufacturer's (ID) number must be inspected and verified by a Law Enforcement Officer, Licensed Colorado Dealer or Official Inspection Station.

This is to certify that I have made a physical inspection of the motor and manufacturer's numbers of a

Year Make Model Licensed by State of License No.

and find the correct motor number to be and the correct ID. No. to be

Signature of Inspecting Officer

Official Title

Date

Name of Garage or Official Inspection Station

Address

License No.

PLAINTI
 (Front Side)

STATE OF COLORADO

APPLICATION FOR A TITLE FOR A MOTOR VEHICLE

MAKE Dodge TITLE NUMBER C
 YEAR 1956 MODEL D63 COUNTY Pueblo
 BODY TYPE Custom Royal CC Lancer MOTOR NO. D633 36546
 WEIGHT 3505 MFGRS. NO. 35024577
 LIST PRICE \$ 2693.00 CAPACITY:
 DATE PURCHASED 11-27-56 BUS OR TRUCK
 DATE FIRST SOLD 2-15-56
 NAME OF OWNER Dick A. Channel
 ADDRESS 1020 W. 15th St.
 CITY Pueblo STATE Colorado
 FROM WHOM PURCHASED Goffe Motor Company
 ADDRESS 7th and Court, Pueblo, Colorado
 VEHICLE IS SUBJECT TO LIEN OR ENCUMBRANCE (YES OR NO) YES
 FIRST LIEN IN FAVOR OF UCIT Corporation
 ADDRESS 401 N. Main, Pueblo, Colorado
 DATE OF LIEN 11227-56 AMOUNT OF LIEN \$ 2763.36
 AMOUNT OUTSTANDING \$ 2763.36 RECORDED Pueblo COUNTY
 2ND LIEN IN FAVOR OF _____
 ADDRESS _____
 DATE OF LIEN _____ AMOUNT OF LIEN \$ _____
 AMOUNT OUTSTANDING \$ _____ RECORDED _____ COUNTY
 PREVIOUS TITLE NO. C 125211 COUNTY Weld
 DATE APPLICATION ACCEPTED _____

STATE OF COLORADO

County of _____

ss.

I, _____

whose address is _____

_____, upon oath,
depose and say:

That I am the owner, or duly authorized agent of the owner of the motor vehicle described herein; that the matters set forth in said application are true of my own knowledge; and that said motor vehicle described herein is subject only to the lien or liens noted in said application.

Subscribed and sworn to before me this _____

day of _____ A. D. 19 _____

My commission expires _____

County Clerk or Notary Public.

Riverside Printing Co. — Pueblo

Counsel for Appellant feels that his comments upon the obvious condition of mutilation of the subject bill of sale in this matter would be redundant. An agent for a motor car dealer who deals in vehicles and knows the import of bills of sale would, at a mere glance, know that Plaintiff's Exhibit 2 was an incomplete document. That document should certainly be a red flag to any prudent person, and a fortiori, an automobile dealer.

Under the facts of this case and under the law recognized in all jurisdictions, had the bill of sale been complete and fair upon its face the Defendant purchaser would have been apprised of the lien rights of Universal C. I. T. Credit Corporation, and the same could have been affirmed by calling the County Recorder of Pueblo County, Colorado. At this point, in the event that there had been no recordation of the mortgage in Pueblo County, then it might be arguable that the Defendant purchaser would be entitled to purchase free of claim.

However, the obvious condition of mutilation of the bill of sale absolutely put Defendant purchaser upon notice that something was wrong, and it was put upon duty of inquiry. Inquiry to the selling dealer, Goffe Motor Company in Pueblo, Colorado, or to the Pueblo County Recorder would have revealed the claim of Universal C. I. T. Credit Corporation, as said mortgage was recorded on December 7, 1956, and Defendant purchaser did not have any dealings of any kind or nature with Dick A. Channel before the 29th day of December, 1956.

Appellant contends that under the circumstances of this

case, Courtesy Motor Company is not a bona fide purchaser for value, because of its chargeability of knowledge and duty of inquiry. It dealt with that car at its peril.

The language to be found at 39 Am. Jur. 238, substantiates Appellants' position in this matter:

"Means of knowledge and knowledge itself, are, in legal effect, the same thing where there is enough to put a party upon inquiry. Knowledge which one has or ought to have under the circumstances is imputed to him. When a party has information or knowledge of certain extraneous facts which of themselves do not amount to, nor tend to show, an actual notice, but which are sufficient to put a reasonably prudent man upon an inquiry respecting a conflicting interest, claim, or right, and the circumstances are such that the inquiry, if made and followed up with reasonable care and diligence, would lead to the discovery of the truth, to a knowledge of the interest, claim, or right which really exists, then the party is absolutely charged with a constructive notice of such interest, claim or right. In other words, whatever fairly puts a person on inquiry is sufficient notice where the means of knowledge are at hand; and if he omits to inquire, he is then chargeable with all the facts, which, by a proper inquiry, he might have ascertained. A person has no right to shut his eyes or his ears to avoid information, and then say that he had no notice. He does wrong not to heed the signs and signals seen by him. It will not do to remain wilfully ignorant of a thing readily ascertainable, and it is no excuse for failure to make an inquiry, that if made, it might have failed to develop the truth. IT HAS BEEN SAID THAT WANT OF ACTUAL KNOWLEDGE IN SUCH A CASE IS A SPECIES OF FRAUD — WHEN ONE HAS ACTUAL KNOWLEDGE OF SUCH FACTS

AS WOULD PUT A PRUDENT MAN ON INQUIRY, IT BECOMES HIS DUTY TO MAKE INQUIRY, AND HE IS GUILTY OF BAD FAITH IF HE NEGLECTS TO DO SO, AND CONSEQUENTLY HE WILL BE CHARGED WITH THE ACTUAL NOTICE HE WOULD HAVE RECEIVED IF HE HAD MADE INQUIRY.” (Emphasis supplied).

It is Appellant’s position that the question of sufficiency of the notice required to reasonably put a person on inquiry is a matter of law to be decided by the Court. It would appear that the Trial Court in this matter decided as a matter of law that the mutilated bill of sale did not constitute such notice as would put a reasonable man upon inquiry, but, to the contrary, ruled that there was no notice of any kind or nature, not even for the jury to determine.

That position seems incredible. It was admitted by the person that handled the transaction for Courtesy Motors, Inc., that he examined the mutilated bill of sale in the form it was in at the trial of this case (Tr. 59, Line 4 to Tr. 60, Line 14). The name of Goffe Motor Company, the selling dealer, appeared upon the un mutilated portion of the bill of sale and the simple expedient of making a phone call to that dealer would have revealed Universal C. I. T. Credit Corporation’s security interest (Plaintiff’s Exhibit 2). Or a phone call to the County Recorder of Pueblo County would have revealed to Courtesy Motor Company the security interest, as such mortgage had been recorded 22 days previous to the transaction herein complained of (Tr. 13, Lines 4 to 28).

In view of the foregoing, it seems abundantly clear that Defendant Motor Company could not possibly be a bona fide

purchaser for value, without notice of the claim of Universal C. I. T. Credit Corporation. On the contrary, it was put upon duty of inquiry on the 29th day of December, 1956, when it examined the obviously mutilated bill of sale. On December 31, 1956, Defendant Company was further informed of the security interest claimed in the Dodge vehicle. Again, on the 7th day of January, 1957, Defendant Corporation was put upon notice, this time in writing, (Plaintiff's Exhibit 14). And again, it is admitted that subsequent to that date and prior to the time that Defendant Corporation sold the vehicle, that the attorney for Appellant Corporation requested an immediate return of the vehicle (Stipulation Tr. 19, Lines 14 to 28).

It is Appellant's position that on the 29th day of December, 1956, Defendant, having been put upon positive duty of inquiry because of the condition of the bill of sale, committed a conversion of the security interest of Plaintiff in the motor vehicle. On December 31, it was again advised of Plaintiff's security interest and Defendant Corporation continued to exercise unauthorized dominion and control over Plaintiff's security, which again constituted conversion. Again, prior to sale, when Plaintiff's counsel requested return of the vehicle it committed conversion.

It should be apparent to the Honorable Court that Defendant Motor Company had absolutely no regard for the rights of Plaintiff in this matter and it should be made to pay the full amount of the security interest of Plaintiff in said Dodge vehicle which was Two Thousand Seven Hundred Sixty Three Dollars and Thirty Six Cents (\$2,763.36).

CONCLUSION

Defendant Motor Car Company dealt with the security of Plaintiff with actual knowledge of the encumbrance of Universal C. I. T. Credit Corporation at all times. Actual knowledge should be imputed to Defendant from the inception of its dealings because of the condition of the mutilated bill of sale. Defendant is not a bona fide purchaser, and it should be compelled to pay the sum of Two Thousand Seven Hundred Sixty Three Dollars and Thirty Six Cents (\$2,763.36) to Plaintiff because of its conversion of Plaintiff's security, and its wanton continuation of dominion and control of the vehicle with full knowledge of Plaintiff's interest in the same.

The Defendant could acquire only the interest of the seller, which was nil, because no payments were ever made on the mortgage by the seller.

Respectfully submitted,

GEORGE E. BRIDWELL

Attorney for Appellant

Received two true copies hereof this.....day of
June, 1958.

McKAY, BURTON, McMILLAN AND RICHARDS

By.....
Attorneys for Defendant