

1958

Universal C. I. T. Credit Corp. v. Courtesy Motors, Inc. : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT

of the

STATE OF UTAH

FILED

AUG 15 1958

UNIVERSAL C.I.T. CREDIT
CORPORATION,*Plaintiff and Appellant,*

—vs.—

COURTESY MOTORS, INC.,

Defendant and Respondent.

Clerk, Supreme Court, Utah

Case No. 8877

BRIEF OF RESPONDENT

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IN THE SUPREME COURT
of the
STATE OF UTAH

UNIVERSAL C.I.T. CREDIT
CORPORATION,

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—vs.—

COURTESY MOTORS, INC.,

Defendant and Respondent.

Case No. 8877

BRIEF OF RESPONDENT

STATEMENT OF FACTS

The respondent, Courtesy Motors, Inc., substantially agrees with the statement of facts contained in the brief of appellant, Universal C.I.T. Credit Corporation, with the following exceptions and additions:

The transaction out of which this case arises involves Goffe Motor Company, an automobile dealer in Pueblo, Colorado, Dick A. Channel, the purchaser of the vehicle, Universal C.I.T. Credit Corporation, the appellant and purchaser of the contract of sale, and Courtesy Motors, Inc., the respondent and subsequent purchaser of the vehicle from Dick A. Channel. For convenience the parties will hereinafter be referred to as "Goffe," "Channel," "C.I.T." and "Courtesy," respectively.

The deal for the purchase of the automobile by Channel from Goffe was made November 26, 1957. (R. 25) Instead of receiving on November 27, 1956, a down payment as represented to C.I.T. on the contract (Ex. P-1), Goffe had in fact only received a post-dated check in the amount of \$853.85. (R. 49)

On December 1, 1956, Channel picked up the automobile in question and Goffe delivered to him all the documents necessary to permit him to obtain title to the automobile in his own name, free and clear of all encumbrances. (R. 39)

There is no evidence that Goffe Motor Company gave any instructions whatsoever to Channel with reference to his recording the mortgage.

Subsequent to December 1, 1956, and prior to December 7, 1956, Goffe forwarded its contract with Channel to C.I.T. for purchase by C.I.T. (R. 47)

Two or three days after December 1, 1956, Goffe learned from the Firestone Company, where Channel was supposed to be employed, that Channel had skipped town and that the Firestone Company had found discrepancies in its own books which had been handled by Channel. (R. 45, 46) On December 7, 1956, Goffe called the C.I.T. office to find out what it should do about the Channel transaction, at which time C.I.T. recommended that Goffe file the Channel mortgage of record. (R. 50)

The automobile was subsequently purchased by Courtesy from Channel. Employees of Courtesy who handled the transaction did not have any actual knowledge of any outstanding mortgage on the vehicle and did not recognize that the bill of sale to the same (Ex. P-2) had been cut in two. (R. 83-85)

The attempted recordation of the mortgage in no wise complied with the provisions of Section 13(19) Chapter 16 of the 1935 Colorado Statutes Annotated (1953 Cum. Supp.). (Ex. D-8) It has never been claimed by C.I.T. that Courtesy had *constructive* notice of the mortgage by virtue of the recording.

C.I.T. has merely contended that Courtesy had *implied* notice of its mortgage by reason of being put upon a duty of inquiry regarding the same, because of the mutilation of the bill of sale, Ex. 2. (R. 18)

The automobile in question is in Salt Lake City and available for a mortgage foreclosure proceeding as well as the person who purchased the same from Courtesy. (R. 8, 9)

POINTS RELIED UPON

POINT I.

UNDER THE PECULIAR CIRCUMSTANCES OF THIS CASE, COURTESY OWED NO DUTY TO C.I.T. WHICH COULD SERVE AS A BASIS FOR APPELLANT'S ACTION IN TORT.

POINT II.

COURTESY, AT THE TIME THE AUTOMOBILE IN QUESTION WAS SOLD TO CHANNEL, HAD NO NOTICE, ACTUAL OR IMPLIED, OF ANY EQUITY OF C.I.T. IN THE SAID AUTOMOBILE. ON THIS ISSUE REASONABLE MINDS COULD NOT DIFFER AND THE TRIAL COURT WAS JUSTIFIED IN GRANTING THE RESPONDENT'S MOTION FOR A DIRECTED VERDICT.

POINT III.

IF THE EVIDENCE ON THE QUESTION OF THE RESPONDENT'S IMPLIED NOTICE OF THE INTEREST OF C.I.T. IN THE SAID AUTOMOBILE WERE SUCH THAT REASONABLE MINDS COULD DIFFER, THEN THE QUESTION OF IMPLIED NOTICE IS NOT ONE FOR THE COURT BUT IS A QUESTION FOR THE JURY.

POINT IV.

THERE IS NO EVIDENCE THAT COURTESY HAS DESTROYED ANY SECURITY INTEREST OF C.I.T. IN THE AUTOMOBILE.

ARGUMENT

POINT I.

UNDER THE PECULIAR CIRCUMSTANCES OF THIS CASE, COURTESY OWED NO DUTY TO C.I.T. WHICH COULD SERVE AS A BASIS FOR APPELLANT'S ACTION IN TORT.

In selling the automobile to Channel, Goffe failed to follow the statutory procedures by which it could have protected itself and any assignee of the mortgage executed by Channel. Having bungled the transaction and permitted itself to be deceived by Channel, Goffe, has sought to pass the resulting damage to Courtesy. The deal with Channel was closed on November 27, 1956. (R. 25) Channel took possession of the automobile on December 1, 1956, and received all of the documents needed by him to apply for title in his own name, free and clear of all encumbrances. (R. 39)

Goffe made no effort whatsoever to see that a new title was issued in Channel's name evidencing the mortgage to either Goffe Motor Company or appellant. Had Goffe followed the provisions of Section 13(19) of Chapter 16 of the 1935 Colorado Statutes Annotated, 1953, Cumulative Supplement (Ex. D-8), this case would never have arisen. Channel would not have been in a position to deceive any one. He would never have received in his own hands the means of securing a clear title to the automobile, free from all encumbrances. Goffe would have presented the documents to the proper county official contemplated in said Section 13(19) and in due course a new title would have issued to Channel, showing the lien in favor of appellant.

John A. Wilson, the general manager of Goffe (R. 24) admitted at the trial that Goffe has now changed its procedure to comply with the statutory requirements and thereby protect the interests of the finance company involved. (R. 58)

In addition, Goffe on November 27, 1956, accepted a post-dated check from Channel. (R. 49) The company purported to assign the mortgage executed by Channel to C.I.T., representing that the down payment as indicated had been made, when, in fact, it had nothing but a promise to pay evidenced by the post-dated check. (Ex. D-6, R. 49)

When Channel left the state it became impossible to record the mortgage in such a manner as to give constructive notice thereof to any subsequent purchaser of the vehicle. The above mentioned Section 13(19) could not be complied with. At that time, neither Goffe nor C.I.T. could comply with the provisions of Section 13(19) of Chapter 16 of the 1935 Colorado Statutes Annotated. That section sets forth in detail the procedure to be followed by the holder of any chattel mortgage on the motor vehicle desiring to secure to himself the protective rights afforded. No claim has ever been made that Courtesy had *constructive* notice of the mortgage claimed by C.I.T. by virtue of the ineffectual recording thereof. C.I.T. has merely claimed that Courtesy had *implied* notice of the same by reason of being put upon a duty of inquiry because of a very artful mutilation of the bill of sale. (R. 18)

A study of testimony adduced at the trial makes it aparent that C.I.T. is actually not the party in interest. While it is claimed it paid \$2,000.00 for the Channel mortgage, it is evident that Goffe misrepresented the transaction and the document to the appellant by stating that it had received a down payment of \$853.85, and that the transaction was recorded as a legal transaction and that title would issue showing C.I.T. as lien-holder. (Ex. P-1) Wilson hedged when asked about repayment to appellant (R. 50-51), and never did say that Goffe *would not* refund the \$2,000.00 to the appellant.

This is a case where Goffe by its own negligent conduct made it possible for Channel to deceive Courtesy. Had Goffe exercised the ordinary and reasonable care becoming a dealer in motor vehicles and complied with the statutory requirements for filing the mortgage of record, neither the appellant nor the respondent would have been injured.

Courtesy had no contractual relationship with Goffe or C.I.T. and no knowledge whatsoever of the mortgage.

This is an action in tort. What duty did Courtesy owe to Universal C.I.T. Credit Corporation?

POINT II.

COURTESY, AT THE TIME THE AUTOMOBILE IN QUESTION WAS SOLD TO CHANNEL, HAD NO NOTICE, ACTUAL OR IMPLIED, OF ANY EQUITY OF C.I.T. IN THE SAID AUTOMOBILE. ON THIS ISSUE REASONABLE MINDS COULD NOT DIFFER AND THE TRIAL COURT WAS JUSTIFIED IN GRANTING THE RESPONDENT'S MOTION FOR A DIRECTED VERDICT.

A comparison of the bill of sale from Goffe to Channel, Exhibit P-2, which was delivered to Courtesy, and Exhibit P-3, the complete Colorado form, indicates that Exhibit P-2 has been very skillfully and artfully cut in two. In granting the motion of Courtesy for a directed verdict, the trial judge in effect held that the evidence was such that reasonable minds could not differ in believing that Courtesy had no actual notice of any interest of C.I.T. in the vehicle, and in believing that the cutting of Exhibit 2 was so skillful that any reasonable person would be deceived.

As already noted, there was no such recordation in compliance with the statutory requirements of Colorado as to give constructive notice to any third party of the outstanding mortgage on the vehicle. See again the requirements of Section 13(19) of Chapter 16 of the 1935 Colorado Statutes Annotated (1953 Cumulative Supplement). An examination of said Exhibit P-2 reveals how skillfully the instrument was cut, so as to remove any and all trace of the lien information.

A person trained in the law and skilled in the use of legal verbiage might recognize the incompleteness of Exhibit P-2, but those who handled the documents were not so trained. The evidence shows, however, that those who handled the instrument were without exception de-

ceived by what had been done. Randy Larson, an experienced salesman for Courtesy, knew only the bare requirements for a valid bill of sale. He had never seen such a Colorado document before. He thought the instrument contained the requisites of a valid bill of sale. He did not know the precise wording of the same, and assumed it was sufficient. He was looking for names, signatures and a notarization. (R. 84, 85)

Scott Thorne, an employee of the State Tax Commission, also had occasion to pass on the sufficiency of the bill of sale. He testified that title documents are always examined to determine the validity of the title of the applicant, and that these documents were passed upon and accepted by him and the vehicle thereupon retitled in the name of Courtesy. (R. 99, 100)

These trained and experienced personnel were misled and deceived by Exhibit P-2. None of them noticed that the lien information had been severed therefrom. The trial court was fully justified in view of such evidence in concluding that reasonable minds could not differ in believing that any reasonable person would be fooled thereby. The respondent's motion for a directed verdict was properly granted.

POINT III.

IF THE EVIDENCE ON THE QUESTION OF THE RESPONDENT'S IMPLIED NOTICE OF THE INTEREST OF C.I.T. IN THE SAID AUTOMOBILE WERE SUCH THAT REASONABLE MINDS COULD DIFFER, THEN THE QUESTION OF IMPLIED NOTICE IS NOT ONE FOR THE COURT BUT IS A QUESTION FOR THE JURY.

It is axiomatic that when facts are uncontradicted, or where but one conclusion or inference is reasonably possible from the evidence so that reasonable minds would draw the same conclusions therefrom, the question becomes one of law for the trial court. See 88 C.J.S. Trial, Sec. 210; *Eklund v. Metropolitan Life Ins. Co.*, 89 Utah 273, 57 P. (2d) 362; *Wilcox v. Cloward*, 88 Utah 503, 56 P. (2d) 1.

The exercise by the trial court of its discretion in granting the respondent's motion to direct a verdict in its favor should not be disturbed unless such discretion has been abused. 5-A C.J.S. Appeal and Error, Sec. 1612, p. 117.

If the evidence regarding the transaction between Channel and Courtesy Motors, Inc., were such that reasonable men might differ in their belief as to whether Courtesy was put on a duty of inquiry, the case should have been sent to the jury.

Counsel for C.I.T. contends in his brief at page 16 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.”

The appellant, C.I.T., on this appeal is asking the Court to reverse the trial court and enter a judgment in its favor. The evidence in this case justifies no such relief for all who handled Exhibit P-2 were deceived. Now,

if the evidence is such that reasonable minds might differ in their conclusion, the question of whether Courtesy had actual notice, or whether the notice it had was sufficient to put it on a duty of inquiry, is ordinarily a question of fact for the jury to decide. The general rule is stated in 92 C.J.S., Vendor & Purchaser, Sec. 374, p. 309: 309:

“ . . . where the evidence is such that only one conclusion may reasonably be drawn therefrom, the question is for the court, and in such a case it is error for the court to submit the question to the jury. However, questions of fact as to which there is a conflict in the evidence, or the evidence is such that different inferences might reasonably be drawn therefrom, are ordinarily for the jury under proper instructions. Thus, the questions of whether one was an innocent purchaser, bona fides, adequacy of consideration, possession, notice, whether the purchaser was put on inquiry, and whether inquiry would have resulted in notice, are ordinarily for the jury.”

See also *McCarthy v. Lane*, 16 N.E. (2d) 683 (Mass. 1938); *Walker v. Mackey*, 253 P. (2d) 280 (Ore. 1953); *Three Sixty Five Club v. Shostak*, 232 P. (2d) 546 (Cal. 1951).

Certainly there was no basis for appellant's motion for a directed verdict, for without exception everyone that handled the bill of sale, Exhibit P-2, was deceived by

the artful cutting of the document. The trial court was, therefore, justified in denying appellant's motion for a directed verdict and in directing a verdict for respondent, Courtesy.

However, even if the discretion of the trial court were abused in this matter, the appellant's motion should not be granted, but in that event the case, in accordance with the authorities cited, should normally be sent to the jury upon appropriate instructions, except for the reasons set forth in Point No. IV.

POINT IV.

THERE IS NO EVIDENCE THAT COURTESY HAS DESTROYED ANY SECURITY INTEREST OF C.I.T. IN THE AUTOMOBILE.

The appellant, C.I.T., has based its action upon the premise that Courtesy has destroyed an alleged security interest in the automobile in question. See Paragraphs 6 and 7 of plaintiff's complaint. (R. 2) Assuming that the appellant had a valid security interest in the vehicle, wherein has the same been destroyed by Courtesy?

There is no question that the respondent, Courtesy purchased the automobile in question from Channel. That fact is admitted. But that does not of itself destroy any equity that C.I.T. may have had in the automobile. See *United States v. Rogers & Rogers*, 36 F. Supp. 79 (District Ct., D. Minnesota, 1941), Appeal dismissed 121 F. (2d) 1019; *Midland Nat. Bank & Trust Co. v. Peterson*, 281 N.W. 683 (Wis., 1938); *Louden v. Cooper*, 100 P. (2d) 42 (Wash., 1940).

Courtesy, in its Answers to Interrogatories No. 6, (R. 8), has advised C.I.T. that the automobile was subsequently sold to one Lavell Witney, 155 Second Avenue, Salt Lake City, Utah, on February 12, 1957. Even this additional fact does not constitute any destruction of the security interest of C.I.T. in the vehicle and give rise to a cause of action. See *United States v. Rogers & Rogers*, supra; *Midland Nat. Bank & Trust Co. v. Petersen*, supra; *Louden v. Cooper*, supra.

“It is elementary that before a tort can be committed there must be an invasion of a legal right. ***

“. . . neither the sale by the mortgagor of property subject to a chattel mortgage nor a subsequent sale by his vendee constitute conversion of the property described in the chattel mortgage.” *United States v. Rogers & Rogers*, supra.

Has the automobile itself been destroyed? No. Has the mortgage of C.I.T. (assuming its validity) been destroyed? No, it was admitted in evidence. (Ex. P-1) Does the security interest in the automobile arising from the mortgage still exist in favor of C.I.T.? Certainly, unless cut off by a bona fide purchaser.

The only possible way that any security interest of C.I.T. would be destroyed in this case is through a purchase of the automobile by a bona fide purchaser. But if

Courtesy is such a purchaser, as it so claims to be, then there can be no cause of action against Courtesy. 92 C.J.S. Vendor & Purchaser, Sec. 367, p. 300. On the other hand, if Lavell Whitney purchased the vehicle subject to the mortgage or knew of the same and was thus not a bona fide purchaser—and *there is no evidence that such is not the case* — then there is no reason why the appellant could not foreclose its chattel mortgage and be made whole. No security interest of C.I.T. would be destroyed.

It is elementary that C.I.T., as plaintiff in this action, assumes the burden of proving its case. If it has a valid mortgage there is nothing to show that it cannot now proceed to foreclose the same. Until C.I.T. has made such an effort, and it is shown that its security interest in the automobile is destroyed as alleged, there is no showing that it has suffered any damage whatsoever at the hands of Courtesy. Until the vehicle has been placed beyond the reach of C.I.T. it cannot complain of injury. *Louden v. Cooper*, *supra*.

These circumstances alone were justification enough for the trial court to grant the respondent's motion for a directed verdict.

SUMMARY

In summary, Courtesy Motors, Inc., contends that any damage to C.I.T. resulting in this case is due to the bungling, negligent conduct of Goffe. It is doubtful that C.I.T. is even the real party in interest. In any event, Courtesy Motors, Inc., is a bona fide purchaser of the automobile and was therefore justified in re-selling the

same. It had no constructive notice of any mortgage in favor of C.I.T. nor was Courtesy Motors, Inc., put on any duty of inquiry by reason of the cutting of the original bill of sale Ex. P-2. On this latter issue, the Court was justified in concluding that reasonable minds would not differ.

If the trial court abused its discretion and reasonable minds would differ as to the existence of Courtesy's duty of further inquiry, then the case normally should have gone to the jury upon appropriate instructions, except, however, that even if Courtesy had a duty of inquiry and in the exercise of that duty would have discovered the mortgage in favor of C.I.T., still, there has been no destruction of any security interest of C.I.T. in the vehicle. The automobile and its last purchaser are in Salt Lake City, Utah. C.I.T. can, if it has a valid mortgage, proceed to foreclose the same.

The judgment of the trial court should be affirmed.

Respectfully submitted,

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