

Cycle and Carriage Motor Dealer Pte Ltd v Hong Leong Finance Ltd
[2004] SGHC 274

Case Number : DA 13/2004
Decision Date : 09 December 2004
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Adrian Ee Hock Hoe and Janice Chia Yong Yong (Ramdas and Wong) for the appellant; Phua Siow Choon (Michael BB Ong and Co) for the respondent
Parties : Cycle and Carriage Motor Dealer Pte Ltd — Hong Leong Finance Ltd

Tort – Conversion – Respondent purchasing vehicle and entering into hire purchase agreement – Registered owner of vehicle deregistering vehicle in breach of hire purchase agreement – Appellant purchasing Preferential Additional Registration Fee certificate and using it to offset registration fees on another vehicle – Whether certificate capable of conversion – Whether respondent having immediate right of possession of certificate – Whether appellant's dealings with certificate inconsistent with respondent's rights and done with intention to assert rights inconsistent with respondent's

9 December 2004

Lai Kew Chai J:

1 This was an appeal from the District Court ([2004] SGDC 105). It concerned the actionability for conversion of a Preferential Additional Registration Fee ("PARF") certificate. In the court below, the learned district judge held that a case for conversion was successfully made out by the respondent and ordered the appellant to pay \$92,710.00 with interest and costs fixed at \$2,526.05. After hearing the appeal by the appellant on 13 September 2004, I dismissed it with costs fixed at \$3,500.00. Before I set out the grounds for my decision, the following facts are not in dispute.

Agreed facts

2 The respondent purchased one second-hand Mercedes Benz S280 AT bearing the registration number SCK 8028A ("the vehicle") from Hiap Hoe Motor Trading Co (Pte) Ltd. On 15 September 2000, the appellant entered into a hire purchase agreement with one Ang Eng Hian ("Ang"), for the amount of \$110,000.00. Ang was the registered owner of this vehicle.

3 At all material times, the respondent retained possession and custody of the Vehicle Log Card and Certificate of Entitlement ("COE").

4 A number of events occurred on 18 October 2000. The vehicle was deregistered. The Land Transport Authority ("LTA") issued PARF certificate no 0034376XP0000, for the deregistration. The PARF carried a rebate value of \$92,710.00. On the same day, one Huang Wei Duan, trading as E-Type Motoring, sold the PARF certificate to the appellant for the sum of \$92,710.00. The appellant proceeded to use the PARF certificate for the registration of a Mercedes E280 Elegance that was purchased by Starwood Asia Pacific Management Pte Ltd ("Starwood").

5 The PARF certificate was transferred to Starwood, and its value offset the payment of the additional registration fee, quota premium and registration fee for Starwood's new Mercedes E280 Elegance.

6 What is also not disputed by the parties is that the appellant was not aware of the existence of the hire purchase agreement or circumstances which led to the deregistration of the first vehicle.

7 On 18 August 2003, the respondent claimed against the appellant the sum of \$92,710.00 being damages for conversion of the PARF certificate. It also brought an alternative claim for money had and received, but this was not pursued at trial or on appeal. In this appeal, I only have to address the issue of the claim for conversion in respect of the PARF certificate, and why it should succeed in this case, as found by the learned district judge.

8 An explanation of the special circumstances surrounding car hire purchase transactions and vehicular ownership in Singapore would set the issue in some context. Here I rely on the learned district judge's lucid explanation at [10] of her judgment:

In Singapore, the [moneys] disbursed under hire purchase agreements for cars cover various distinct property interests: the value of the physical chattel, expressed as Open Market Value ('OMV'), a [ten-year] licence to own the car, being the Certificate of Entitlement ('COE'), and a Special Registration Fee ('ARF'). These properties also have distinct transactional values. The car could be sold for parts or exported in whole. COE and ARF have a surrender value calculated upon their unexpired remainder tenure. For cars with COEs registered before May 2002, the PARF rebate is a percentage of the OMV, with the percentage varying with the age of the car. For cars registered with COEs obtained after May 2002, the PARF rebate is a percentage of the ARF, with the percentage varying with the age of the car. This rebate may be used to offset the taxes and fees of a new car, in particular, the ARF, the COE Quota Premium and the Registration Fee. The value of the rebate is evidenced by the PARF certificate issued at time of deregistration. The PARF certificate may be transferred and is widely traded.

9 The noteworthy point about PARF certificates is that they represent a rebate value, which may offset taxes and other fees. I would also add that although the PARF certificate may be transferred and is widely traded, its value is determined by reference to the previous vehicle for which it was issued, even if this was done at the point of deregistration. In the peculiar circumstances of vehicular ownership in our country, I agree with the learned district judge's observations that PARF certificates provide evidence of what is actually the surrender value of a vehicle upon deregistration. When the PARF certificate comes into existence, after a hirer breaches the terms of his hire purchase agreement and deregisters the vehicle in question, it would follow that the vehicle's surrender value also crystallises at the point of the breach. Against this factual matrix, I would conclude that it is simply not practicable as a matter of law to separate the PARF certificate from the vehicle under hire purchase.

10 I turn now to the action in conversion in respect of the PARF certificate.

Ingredients of the conversion action in this case

11 The form of conversion referred to in this case is summarised in *Halsbury's Laws of England* vol 45 (4th Ed, 1985) para 1422, that "there must be a positive wrongful act in dealing with the goods in a manner inconsistent with the owner's rights, and an intention in so doing to deny the owner's rights or to assert a right inconsistent with them". The passage goes on to state that there need not be any knowledge on the part of the person sued that the goods belong to someone else; nor need there be any positive intention to challenge the true owner's rights. Fraud is not a necessary ingredient. Goods may be the subject of successive and independent conversions by

persons dealing with them in such a manner and with such an intention.

12 In summary, the learned district judge held as follows:

- (a) The PARF certificate is a chattel that is capable of conversion. The value of it is the face value of the certificate.
- (b) The fact that the appellant had no knowledge of the intervening fraud (*ie* Ang's breach of the hire purchase agreement) and was a *bona fide* purchaser of the PARF certificate for value, is not material to the present proceedings. Dealing with the goods in a manner inconsistent with the owner's rights, and an intention in so doing to assert rights that are inconsistent with the owner's, are sufficient.
- (c) Once the physical document, the PARF certificate, came into existence in the course of Ang's breach of his hire purchase agreement, the respondent had an immediate right of possession of it. The PARF certificate formed an integral part of the motor car. From the outset, the hire purchase company owns the surrender value of a car, and this is evidenced by the PARF certificate.

Issues in the appeal

13 In the appeal before me, I could not perceive any serious challenge to the first two findings. The PARF certificate is a chattel that evidences a chose in action. It is capable of conversion. The learned district judge drew a correct analogy with cheques, which have been held to be capable of conversion: *Kleinwort, Sons & Co v Comptoir National D'Escompte de Paris* [1894] 2 QB 157. I was referred to the following passage in *Lloyds Bank, Limited v The Chartered Bank of India, Australia and China* [1929] 1 KB 40 at 55:

Conversion primarily is conversion of chattels, and the relation of bank to customer is that of debtor and creditor. As no specific coins in a bank are the property of any specific customer there might appear to be some difficulty in holding that a bank ... had converted its customer's chattels; but a series of decisions ... have surmounted the difficulty by treating the conversion as of the chattel, the piece of paper, the cheque under which the money was collected, and the value of the chattel converted as the money received under it ...

14 This is well-settled law. The appellant tried to argue that the "surrender value" is not a subject matter that is capable of conversion. The learned district judge was clearly referring to the immediate right to possession of the physical certificate, once it came into existence following Ang's breach. It is perfectly acceptable proposition for the respondent to argue, as it has done, that as a cheque, the PARF certificate is a piece of paper (of value). It may form the subject matter of conversion proceedings. I also make reference to *Exklusiv Auto Services Pte Ltd v Chan Yong Chua Eric* [1996] 1 SLR 433. An action for conversion of a COE was dismissed on the ground that there was no evidence that the COE was the property of the appellant in that case. What is implicit is that COEs are capable of being the subject matter of conversion. The same should hold true for PARF certificates.

15 Equally obvious is the irrelevance of the appellant's knowledge of Ang's breach of the hire purchase agreement. As set out in the passage on conversion that is summarised in *Halsbury's Laws of England* ([11] *supra*), such knowledge is immaterial. This passage has been referred to in *UCO Bank*

v Ringle Pte Ltd [1995] 1 SLR 713.

16 The appellant argued that the consequence of holding that an innocent party may be liable for conversion of a PARF certificate issued by the LTA would be that any person purchasing PARF certificates is potentially liable for conversion. This is not true in every case. Conversion actions can be avoided if proper inquiry is made of the claim of title of the vehicle and its accompanying certificates, such as COE and PARF. There is no credible suggestion that a finding against innocent parties, as in the case, would provide companies such as the respondent with limitless actions for conversions. Once an order for damages is made following the determination of liability, the claimant is compensated for his entire interest in the chattel. His title is extinguished, and the parties move on.

17 The principal question, upon which a conversion action succeeds or fails, is to identify who had the immediate right to possess the subject matter of conversion. A breach of any hire purchase agreement would give the hire purchase company the right to immediate possession of the car and to maintain an action for conversion: see *North General Wagon & Finance Co Ltd v Graham* [1950] 2 KB 7.

18 In the present appeal, the court had to determine who had the immediate right to possess the PARF certificate at the time the PARF certificate was issued pursuant to the deregistration of the vehicle. Was it Ang or the respondent? The appellant submitted that it was Ang who had the immediate right to possess the PARF certificate. It challenged the learned district judge's conclusion that the respondent had the immediate right to possess the PARF certificate at the time it was issued, and therefore the respondent had the right to maintain an action against the appellant for conversion of the certificate.

19 The appellant did not dispute that the respondent had the immediate right to possess the vehicle (as opposed to the accompanying documents) if there was a breach of the hire purchase agreement. This is apparent from cl 9 of the agreement. With respect to the PARF certificate, it argued that the immediate right to possess the PARF certificate vested in Ang, for two reasons. Firstly, the hire purchase agreement does not provide for the immediate right to possess the PARF certificate, or the rebate value that it represents. Secondly, it was argued that Ang had the immediate right to possess the PARF certificate by the operation of the Road Traffic (Motor Vehicles, Registration and Licensing) Rules (Cap 276, R 5, 1999 Rev Ed) ("the Rules"). The appellant argued that r 8(3)(a) provides that the "applicant" for the PARF rebate "has to be or has been the registered owner" of the motor vehicle. Rule 2(1) defines the "registered owner" as a person registered under the Road Traffic Act (Cap 276, 1997 Rev Ed) ("the Act") as the owner of the motor vehicle. However, the Act clearly does not envisage "owner" to mean "legal owner". On the contrary, s 2 of the Act defines "owner" in relation to a vehicle which is the subject of a hiring or hire purchase agreement, to mean the person in possession of the vehicle under that agreement. That is not an explicit reference to legal ownership.

20 The references to the Rules do not assist the court when determining who has the immediate right to possess. Even where the PARF certificate was issued in Ang's name by the LTA, by the operation of the Rules, the definition of "owner" in the Act does not in any way vest the immediate right to possess on Ang *per se*.

21 The most practicable solution is to proceed on the basis that the PARF certificate actually forms part of the vehicle that is subject to hire purchase arrangements. I bear in mind the following factors:

- (a) Without the PARF and COE, a vehicle cannot be used on the roads of Singapore;
- (b) The value of the PARF certificate is directly related to the age of the motor vehicle;
- (c) The PARF value is directly related to the ARF paid upon the registration of the motor vehicle; and
- (d) The PARF certificate is issued by the LTA after the motor vehicle is deregistered.

22 Within the scheme of the Act and the Rules, the PARF certificate, like the COE, is inextricably linked with the vehicle.

23 An appropriate analogy may be drawn with conversion actions that are brought in respect of vehicles that are sold together with licences of value. The case of *Douglas Valley Finance Co Ltd v S Hughes (Hirers) Ltd* [1969] 1 QB 738 is instructive. Licences known as special "A" licences were attached to certain lorries that were subject to hire purchase arrangements. The effect of the special "A" licences was that they substantially increased the value of the motor vehicles. A series of transactions caused a severance of the special "A" licences from the lorries, which resulted in a diminution in their value. This led to an action by the plaintiff against the defendant for conversion of the licences. The court held that these licences were so much appurtenant to the vehicles that without them the vehicles could not be used for their designated purpose and the licences substantially affected their value.

24 By parity of reasoning, once a PARF certificate or COE is taken away from a motor vehicle, the latter can no longer be used for its intended purpose within our legislative framework.

25 Inasmuch as the respondent was the legal owner of the vehicle (under the hire purchase arrangement), it was also the legal owner of the PARF certificate. Accordingly, the right of immediate possession vests with the respondent. It is the respondent who can legitimately maintain an action for conversion in respect of the PARF certificate. The fact that the PARF certificate is only issued at the stage of deregistration does not affect this principle. I agreed with the learned district judge when she reasoned that from the outset the respondent, as the hire purchase company, owned the surrender value. The right to the PARF rebate crystallised from inception. The value at any point during the hire purchase depended on such facts as the age of the vehicle and its Open Market Value. Once the PARF certificate was issued, the respondent held an immediate right of possession of it.

26 Once chattels have been let on hire purchase terms, it is trite that the hirer does not acquire any better title than a possessory one. No proprietary interest will vest in the hirer until he has made his last payment and exercised his option to purchase. Until the hirer undertakes these final steps, the *nemo dat* rule will prevent him from transferring a better title. I fail to see how any rule of law or equity can operate to vest to the hirer the immediate right of possession of the PARF certificate, thereby excusing the appellant from any liability for conversion.

27 For the above reasons, I was of the view that the PARF certificate can in fact form the subject matter of conversion, and was in fact converted by the appellant when it used the certificate to offset the registration fees for its customer, Starwood. I accordingly dismissed the appeal, with costs of the appeal fixed at \$3,500.00.

Appeal dismissed with costs.

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