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Recent Decisions

SALES — EFFECT OF THE OHIO CERTIFICATE OF MOTOR VEHICLE TITLE LAW ON THE BONA FIDE PURCHASER DOCTRINE

*Mutual Finance Company v. Municipal Employees Union Local
No. 1099, 110 Ohio App. 341, 165 N.E.2d 435 (1960)*

Plaintiff, Mutual Finance Company, had obtained a "floor plan mortgage"¹ covering four new Chrysler automobiles from N. J. Popovic, a franchised dealer of the Chrysler Corporation. Under the floor plan arrangement, Mutual paid Chrysler Corporation for the four new autos delivered to Popovic. Mutual retained a note and chattel mortgage along with the manufacturer's statements of origin² covering the four vehicles. Popovic sold the automobiles to the defendants, who had no notice of the prior liens on the purchased autos. Defendants had traded in their used cars as part payment and had financed the remainder of the purchase price through Mutual. Mutual retained chattel mortgages as security for its loan to defendants. This transaction gave Mutual a second lien on the same four automobiles. Mutual then honored a draft drawn upon itself by Popovic in the amount of the retail loans and sent that amount to Popovic rather than applying this amount toward satisfaction of the floor plan mortgage covering the same autos. Upon default of payment by Popovic under the floor plan mortgage,³ plaintiff instituted an action of replevin to regain possession of the four vehicles from the defendants.

Plaintiff based its right to possession of the cars on the Certificate of Title Law which states that continued possession of a mortgage along with the certificate of origin of an automobile creates a valid lien as against subsequent purchasers.⁴ Defendant's cross petition sought an order compelling Mutual to assign the manufacturer's statements of origin of the vehicles to the defendants, Municipal Employees Union, Local No. 1099. The basis for defendant's demand was that the plaintiff was estopped from denying the dealer's ability to pass good title to a bona fide purchaser

1. A "floor plan mortgage" is the buying and mortgaging of automobiles by a finance company which then allows them to be placed on the floor of a dealer so that the dealer may sell them in the ordinary course of his business.

2. Manufacturers' statements of origin are those manufacturers' certificates which accompany the delivery of any new automobiles to the dealer. They contain certain identification markings of the auto.

3. The mortgage agreement provided that the mortgagor was to be in default when after selling one of the mortgaged autos he failed to pay off the mortgage on that particular auto from the proceeds of the sale.

4. OHIO REV. CODE § 4505.13.

when the plaintiff knowingly allowed the dealer to display the vehicles for sale in the ordinary course of the dealer's retail business.⁵

The trial court denied plaintiff's request and granted to the defendants the relief prayed for in the cross petition.⁶ Its decision was based in the first instance on the grounds of "floor plan estoppel" as set forth by the defendant. Secondly, the court held that Mutual, in financing the retail purchases of the autos upon which it had prior floor plan mortgages, had extinguished its floor plan mortgage on the autos. Since Popovic was obligated to pay off the floor plan mortgage with the proceeds from the sale of the autos which were "floor planned," Mutual, in granting the retail loans to the defendants, should have applied the amounts of those loans in satisfaction of the floor plan mortgage.⁷ From this ruling the plaintiff appealed, claiming that the trial court had erred in not recognizing that the Act had abolished the equitable defense of "floor plan estoppel." It was argued that according to the terms of the Act ownership was made to depend solely on the certificate of title.

To understand plaintiff's position some discussion of the mechanics of the Act must be given. The Certificate of Motor Vehicle Title Law represents a radical change in the registration of liens on new vehicles.⁸ The new Act provides for the registration of liens directly on the automobile certificate of title, in lieu of the filing of mortgages in the office of the county recorder.⁹ A chattel mortgage covering a new motor vehicle is effective if such mortgage

is accompanied by delivery of a manufacturer's or importer's certificate and followed by actual and continued possession of such certificate by the holder of said instrument.¹⁰

Such a mortgage is valid against subsequent purchasers.¹¹ The Act in this respect places the burden upon one acquiring a chattel mortgage on an automobile, prior to its initial sale to a retail purchaser, to obtain the manufacturer's certificate of origin of said vehicle and maintain continued possession of such certificate. It must also be kept in mind that a purchaser obtains a title certificate to a new automobile indirectly in that the dealer is required to obtain it in the name of the purchaser upon

5. This is an application of the "floor plan estoppel doctrine." See *National Guar. & Fin. Co. v. Praff Motor Car Co.*, 124 Ohio St. 34, 176 N.E. 678 (1931); 9 OHIO JUR. 2d *Chattel Mortgages* § 112 (1954).

6. *Mutual Fin. Co. v. Meade*, 161 N.E.2d 561 (Ohio C.P. 1959). This opinion represents the decision in seven separate actions involving the same legal issue.

7. *Id.* at 565.

8. *Mutual Fin. Co. v. Municipal Employees Union Local No. 1099*, 110 Ohio App. 341, 350, 165 N.E.2d 435, 442 (1960). See also, *Union Commercial Corp. v. R. J. Schmunk Co.*, 30 Ohio L. Abs. 116 (Ct. App. 1939).

9. OHIO REV. CODE § 4505.14.

10. *Ibid.*

11. *Ibid.*

presentment of the manufacturer's certificate of origin.¹² This places the burden upon the purchaser to make certain that the dealer has the manufacturer's statement of origin to the vehicle he has purchased. This practice becomes extremely important because the Certificate of Motor Vehicle Title Law does not allow one to obtain any "right, title or interest" in a vehicle without possession of the certificate of title.¹³ It forbids any court in law or equity to recognize title in one who does not possess the certificate of title.¹⁴ Nor can any waiver or estoppel operate in favor of one not possessing the certificate of title or manufacturer's statement of origin.¹⁵ This provision indicates that the legislature anticipated a situation in which a vehicle would get ahead of its title. Prior Ohio court decisions have given a literal interpretation to the Act, especially the provision which recognizes the validity of a prior lien as against subsequent purchasers.¹⁶

The court of appeals agreed with plaintiff's contention that the Certificate of Motor Vehicle Title Law did away with the "floor plan estoppel" doctrine.¹⁷ But the court then went on to affirm the trial court's decision on the equitable grounds that, as between two innocent parties, the first to trust the wrongdoer and give the means for committing fraud must bear the loss. Accordingly, Mutual, which was the first to trust Popovic and give him the means to commit fraud on the defendants, was made to bear the loss. Mutual's floor plan mortgage was, in effect, nullified by the court.¹⁸ In attempting to further support this decision the court observed that Mutual's method of policing the automobiles had been faulty, and that with due diligence it could have averted the entire situation. The court in thus nullifying the lien on equitable grounds failed to give a literal interpretation to the Act.

The propriety of the court's application of the equitable doctrine is doubtful for two reasons. First, the cases cited by the court to uphold its application of the equity theory are cases in which the two innocent parties concerned had equal legal rights.¹⁹ In the case under considera-

12. OHIO REV. CODE § 4505.06. Under this section a dealer is required to obtain a certificate of title in behalf of the purchaser within three days after the sale of the automobile.

13. OHIO REV. CODE § 4505.04. This section repealed the Bill of Sale Law, Ohio Gen. Code §§ 6310-3 to -14, which provided that a receipt of bill of sale from a dealer was evidence of title to an automobile.

14. OHIO REV. CODE § 4505.04.

15. *Ibid.* Associates Inv. Co. v. Le Boutillier, 69 Ohio App. 62, 42 N.E.2d 1011 (1941).

16. Associates Inv. Co. v. Le Boutillier, 69 Ohio App. 62, 42 N.E.2d 1011 (1941); Crawford Fin. Co. v. Derby, 63 Ohio App. 50, 25 N.E.2d 306 (1939).

17. Mutual Fin. Co. v. Municipal Employees Union Local No. 1099, 110 Ohio App. 341, 353, 165 N.E.2d 435, 442 (1960).

18. *Ibid.*

19. A number of cases were cited by the court in support of this proposition. Among them were: McHenry v. Old Citizens' Nat'l Bank, 85 Ohio St. 203, 97 N.E. 395 (1911); Wilson v. Hicks, 40 Ohio St. 418 (1884); Selser v. Brock, 3 Ohio St. 302 (1854).

tion Mutual Finance Company had a chattel mortgage created in accordance with the provisions of the applicable statute. On the other hand, the defendants had no legal right to the automobiles since the statute precludes any party from gaining any "right, title or interest" in a vehicle unless he has obtained a certificate of title.²⁰ Secondly, the equity theory is in the nature of an estoppel which the statute specifically forbids being applied in favor of one who does not possess the certificate of title.²¹ The court of appeal's decision thus goes counter to the express mandate of the Ohio legislature.

It is possible that the same result could have been achieved without such conflict. The trial court found that Mutual extinguished its floor plan or wholesale mortgage lien when it financed the purchase of the same autos which were the subject of its floor plan mortgage.²² Popovic was to pay off the floor plan mortgages with the proceeds from the sale of the autos. When the purchasers borrowed money from Mutual to purchase these same autos, Mutual had in its possession the necessary amount of money to satisfy its prior lien. Having been in possession of the necessary amount of money from the source which was to supply such money to extinguish the lien, Mutual must be deemed to have extinguished its floor plan mortgage (even though, in fact, Mutual had given the amount of the retail loan to Popovic expecting Popovic to pay it back to Mutual).

The court of appeals in arriving at an equitable result set itself against the plain meaning of the Ohio Certificate of Motor Vehicle Title Law. Difficult as such cases are, it should be left to the legislature to amend the act to prevent inequitable results such as would have occurred here had the court given a literal reading to the statute. Other states have averted this problem by enacting special statutes which protect the bona fide purchaser from unknown liens on vehicles in a dealer's possession.²³

20. OHIO REV. CODE § 4505.13. For example in *Milke v. Leeberson*, 150 Ohio St. 528, 83 N.E.2d 209 (1948), the Ohio Supreme Court said it was upon the plaintiff to prove he had the title certificate to the vehicle he was driving in order for him to establish ownership and recover for damages to the vehicle. In *Gailich v. McFarland*, 159 Ohio St. 539, 113 N.E.2d 92 (1953), the Ohio Supreme Court again gave a literal interpretation to the Certificate of Motor Vehicle Title Law by deciding that although defendant had sold his auto and no longer retained possession of it, the fact that he retained the certificate of title to the auto was conclusive as to whether defendant's insurance policy on said auto was still in effect. Through possession of the title certificate, defendant, in the eyes of the law, was the owner of the vehicle. See also, *In re Estate of Case*, 161 Ohio St. 288, 118 N.E.2d 836 (1954); *Kelley Kar Co. v. Finkler*, 155 Ohio St. 541, 99 N.E.2d 665 (1951); *Fredericks v. Birkett L. Williams Co.*, 68 Ohio App. 217, 40 N.E.2d 162 (1940).

21. OHIO REV. CODE § 4505.04.

22. *Mutual Fin. Co. v. Meade*, 161 N.E.2d 561, 565 (Ohio C.P. 1959).

23. See, e.g., N.Y. LIEN LAW § 230-2 (1922); MO. REV. STAT. § 443.480 (1949). See also, Note, *The Effect of Motor Registration Statutes on Security Transactions and Recordations*, [1951] WASH. U.L.Q. 539, 540.