

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. MV. 87-250

WORLD OMNI LEASING,

§

Petitioner.

§

FINAL ORDER

This matter involves a contested title to a 1985 Toyota, VIN JT4RN61D9F5064322. The parties asserting title are World Omni Leasing ("World Omni") and Mr. A. B. King ("King"). A hearing was conducted in the matter on April 21, 1988. The parties were represented at said hearing by William B. Hairston, III, Esq., and Ron Davenport, Esq., for World Omni and King, respectively. Assistant counsel John J. Breckenridge appeared on behalf of the Revenue Department. Based on the evidence presented in the case, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

World Omni owned the vehicle in question, a 1985 Toyota Pickup, VIN JT4RN61D9F5064322, and leased the vehicle to Mr. Larry Cummins ("Cummins") on April 30, 1985. The lease did not contain an option to purchase. Nevertheless, Cummins subsequently traded the vehicle to Edwards Dodge, Inc. ("Edwards Dodge" or "Edwards"). No evidence was presented as to when the vehicle was traded to Edwards Dodge.

Edwards Dodge sold the vehicle to King in the normal course of business on December 26, 1986. At the time, King was unaware of

World Omni's interest in the vehicle and did not discover World Omni's involvement until late 1987. King executed an application for certificate of title on December 26, 1986 that was to be delivered by Edwards Dodge to the Revenue Department. However, Edwards Dodge never filed the application with the Department and has since gone out of business.

At some point, Edwards Dodge contacted World Omni to determine the sales price of the vehicle. The record does not indicate whether the parties communicated before or after the vehicle was traded to Edwards Dodge or before or after the subsequent sale to King. In any case, Edwards Dodge issued a check to World Omni for \$12,670.50 dated January 6, 1987 as payment in full for the vehicle. World Omni received and endorsed the check on January 13, 1987, and on January 20, 1987 delivered to Edwards Dodge a bill of sale and the certificate of title for the vehicle. World Omni also executed a "Special Memorandum of Sale and Receipt for Payment" on January 20, 1987 indicating that the vehicle had been sold to Edwards Dodge for \$12,670.50.

on January 22, 1987, the check from Edwards Dodge to World Omni was returned dishonored by the bank. World Omni subsequently notified the Department and requested a replacement certificate of title on the vehicle. Conversely, King demands that he should receive a certificate of title as a good faith purchaser from Edwards Dodge.

CONCLUSIONS OF LAW

Four questions must be decided: (1) Should title revert to World Omni as a result of the check from Edwards Dodge being dishonored by the bank? (2) Was title transferred by delivery of the certificate of title from World Omni to Edwards Dodge on January 20, 1987? (3) Was good title transferred when the vehicle was traded by Cummins to Edwards Dodge and subsequently sold to King? (4) what was the legal effect of World Omni selling the vehicle to Edwards Dodge after Edwards Dodge had sold the vehicle to King?

World Omni first argues that payment of a debt by check is a conditional payment only. Consequently, if the check is later dishonored, the original or underlying obligation remains in full force and effect and title to the subject property should revert to the seller, citing Code of Ala. 1975, §§7-2-511 and 7-3-802; Johnson v. Dairyland Insurance Company, 398 So.2d 317 (1981); and Kelly v. Kelly, 303 So.2d 108 (1974).

World Omni's contention is correct to a point. A buyer's underlying obligation is satisfied on payment by check only after the check is properly honored by a bank. But if title to the subject property has passed to the buyer, title does not revert to the seller if the check is subsequently dishonored. Rather, the seller's options are to sue on either the check itself or the underlying obligation.

Section 7-2-511(3) states in part that "payment by check is conditional and is defeated as between the parties by dishonor of

the check on due presentment". Further, §7-3-802 provides that if "the instrument is dishonored action may be maintained on either the instrument or the obligation. . ." But if title has passed to the buyer, neither section requires that title must revert to the seller if the check is dishonored.

Consequently, if title had passed from World Omni to Edwards Dodge, the subsequent dishonor of the check would not cause title to revert to World Omni, but would only give World Omni the right to sue on either the check or the underlying debt for the vehicle.

On the second question, the certificate of title was transferred from World Omni to Edwards Dodge on January 20, 1987. However, mere possession or delivery of a certificate of title does not control actual passage of title. Rather, passage of title on a sale is controlled by the Uniform Commercial Code, Code of Ala. 1975, §7-2-401 et seq.<sup>1</sup>

The certificate of title issued under Code of Ala. 1975, §32-8-1 et seq. merely provides a prima facie title in the person whose name is on the certificate. Whitworth v. Dodd, 435 So.2d 1305 (1983); Congress Finance Corp. v. Funderburk, 416 So.2d 1059 (1982);

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<sup>1</sup>As will be discussed, passage of title under the UCC may be triggered in certain instances by delivery of a document of title, see §7-2-401(3)(a).

Ranger Insurance Company v. Whitlow, 514 So.2d 1338 (1987). As stated by the Court of Civil Appeals in Congress Finance Corporation, supra, at page 1062:

We find, therefore, that section 32-8-44 does not provide an exclusive method of transferring ownership. For example, non-delivery of a certificate of title does not prevent, as between the parties, the passage of title from the seller to the buyer. Wood Chevrolet Company v. Bank of the Southeast, 352 So.2d 1350 (Ala. 1977). Likewise, depending upon the circumstances, it appears that a transfer may be effective as to third parties, such as Congress Finance, notwithstanding the parties' failure to transfer the certificate of title. See, e.g., Matter of Emergency Beason Corp., 665 F.2d 36 (2d Cir. 1981). To hold otherwise would, in effect, render a certificate of title the absolute evidence of ownership regardless of the circumstances. The statute does not mandate such a conclusion. (emphasis added)

Consequently, the fact that World Omni actually transferred the certificate of title to Edwards Dodge on January 20, 1987 is not conclusive. Rather, the case turns on which party has proper claim to title under the UCC. Section 7-2-401 controls title as between parties to a contract, whereas §7-2-403 controls as to third parties. See Ledbetter v. Darwin Dobbs Co., Inc., 473 So.2d 197.

World Omni possessed title and leased the vehicle to Cummins. Cummins traded the vehicle to Edwards Dodge and Edwards Dodge subsequently sold the vehicle to King on December 26, 1986.

How is title affected by the above dealings? Section 7-2-403(1) provides in part that "a person with voidable title has power to transfer a good title to a good faith purchaser for value". To obtain voidable title, the seller must obtain delivery through a

"transaction of purchase". That is, the party delivering the goods to the seller must have intended that the seller would become the owner. American Standard Credit v. National Cement Co., 643 F.2d 248 (1981); Ledbetter v. Darwin Dobbs Co., Inc., 473 So.2d 197 (1985).

A lease is not a transaction of purchase within the meaning of §7-2-403(1). That is, a lessee or bailee has void title and cannot pass good title under §7-2-403(1). American Standard Credit v. National Cement Inc., supra; Eastman Kodak Co. v. Harrison, 639 F2d 1213 (1981).

Thus, Cummins had void title and could pass no better to Edwards Dodge, which in turn could not pass good title to King under §7-2-403(1). In short, World Omni retained title even after the sale by Edwards Dodge to King on December 26, 1986.

However, at some point either before or subsequent to the December 26, 1986 sale to King, Edwards Dodge communicated with World Omni and received a purchase price for the vehicle. Edwards Dodge then issued a check in full payment to World Omni on January 6, 1987. World Omni received and endorsed the check on January 13, 1987, and on January 20, 1987 issued the certificate of title and a bill of sale to Edwards Dodge.

Did World Omni's actions effectively transfer good title to Edwards Dodge? Code of Ala. 1975, §7-2-401 controls passage of

title as between parties to a sale. Subsection (2) thereunder provides that title passes upon delivery of the subject goods. However, the vehicle in question had long since been "delivered" prior to the January, 1987 dealings between World Omni and Edwards.

Code of Ala. 1975, §7-2-401(3)(a) provides that if the goods are not to be delivered, then title passes upon delivery of the document of title. Thus, title to the vehicle passed to Edwards Dodge upon delivery by World Omni of the bill of sale and certificate of title on January 20, 1987. As noted, the fact that the check was later dishonored would not cause the title to revert to World Omni.<sup>2</sup>

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<sup>2</sup>If World Omni had sold the vehicle to Edwards Dodge and Edwards Dodge had subsequently sold the vehicle to King, King would clearly have good title notwithstanding the check being dishonored. Section 7-2-403(1) provides in part as follows:

When goods have been delivered under a transaction of purchase the purchaser has such power (to transfer good title) even though:

(b) The delivery was in exchange for a check which is later dishonored,





What is the effect of Edwards Dodge obtaining good title after selling the vehicle to King? King originally received void title from Edwards Dodge. However, the subsequent good title obtained by Edwards Dodge would flow to King as a prior good faith purchaser and thereby cure any prior defect in title.

Further, World Omni was on notice at least before January 6, 1987 (date of check to World Omni) that Edwards Dodge had the car and was either offering it for sale or had sold it to King. Thus, while World Omni did not originally delivery or entrust the vehicle to Edwards Dodge, it acquiesced in that fact by taking no action to recover the vehicle, but rather, accepting payment for the vehicle and thereafter transferring title.

Section 7-2-403(2) provides that "[A]ny entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business". Section 7-2-403(3) defines "entrusting" as "any delivery and any acquiescence in retention of possession". Clearly World Omni knew that Edwards Dodge was holding the vehicle for sale or that the vehicle had already been sold to King. In either case, World Omni took no action to recover the vehicle but instead subsequently sold the vehicle to Edwards Dodge. Having acquiesced in the trade by Cummins to Edwards and/or the subsequent sale to King, World Omni cannot now claim that it is an innocent party and should receive a replacement title to the vehicle.

King argues that Code of Ala. 1975, §7-9-307 is applicable. That section provides in substance that a good faith buyer takes free of any security interest created by the seller. The logic behind the section is that a buyer has the right to expect that goods purchased from a business are free and clear of any third party claims. Further, a secured creditor of a retail business is on notice that the goods are being offered for sale to good faith purchasers. Whitworth v. Dodd, supra.

However, the case at hand does not involve the priority of a secured creditor. Rather, the case turns of title to the vehicle, which as stated is controlled by §7-2-401, et seq. Thus, §7-9-307 is inapplicable.

In summary, World Omni retained title after the sale by Edwards to King on December 26, 1986. However, World Omni thereafter sold the vehicle and title was transferred to Edwards Dodge. The after acquired good title cured the defective title originally given to King. Finally, title did not revert to World Omni as a result of the dishonored check.

In addition, World Omni by its actions acquiesced in the trade by Cummins to Edwards and the sale to King.<sup>3</sup> Consequently, even

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<sup>3</sup>Edwards Dodge, as a dealership, would reasonably have contacted World Omni prior to taking the vehicle in trade and subsequently selling it to King. If so, then clearly World Omni would have acquiesced in possession by Edwards and good title would have gone to King under the entrustment provisions of §7-2-403(2).

without the actual sale and transfer of title by world Omni to Edwards, title would go to King, as a good faith purchaser, under §7-2-403(2).

The above considered, title to the vehicle should be issued to King. Therefore the Title Section of the Motor Vehicle Division is hereby directed to issue the certificate of title to the vehicle in question in the name of A. B. King.

Done this 24th day of May, 1988.

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