CASE UPDATE

2 December 2019

REMEDY FOR SECOND-HAND CAR BUYER AGAINST FINANCE COMPANY WHEN ERRANT CAR DEALER FLEES WITH PURCHASE MONEY

Introduction

1. Buying a car from second hand car dealers can be a risky affair. If the car dealer does not pay the finance company, car buyers can find their purchase repossessed without notice by the finance company as the finance company is often the registered owner of the car.

2. In *Seah Lee Pheng Celeste v Lu Guan (formerly t/a SG Carline) and Privilege Capital Pte. Ltd.* District Court Case No. 1584 of 2018, the Court held that such a purchaser had obtained good title to the car and that by seizing and the car and disposing it, the finance company is liable to the purchaser under conversion for her loss and damage.

3. The action was premised on sections 2(1) and 9 of the Factors Act and section 25 of the Sale of Goods Act on which there is a dearth of local case authority apart from *Kau Joo Guan v Kwek Seow Hui t/a Car Dynasty and One Motor Pte Ltd* [2015] SGDC 279 ("***Kau Joo Guan***") that distinguished the earlier case of *Chiam Hui Tian Cindy v Kenso Leasing Pte Ltd* [2012] SGDC 80 with a similar factual matrix but failed to take into consideration the relevant statutory provisions.

4. The successful Plaintiff was represented by Mr Gan Theng Chong, Ms Melissa Ng and Ms Kelley Wong of Lee & Lee.

Background

5. The Plaintiff, Mdm Seah Lee Pheng Celeste, and her husband visited the 1st Defendant's showroom on 26 August 2017 and purchased a 2-year-old Toyota Vellfire ("**the Car**") for the sum of $131,800.00. Based on records, the 1st Defendant, Lu Guan, is a China national but she was not present in the showroom. The entire transaction was primarily between the Plaintiff and one Lim Wei Qiang ("**Jeremy**"), an employee of the 1st Defendant.

6. On 30 August 2017, the Plaintiff took delivery of the Car from the 1st Defendant's showroom. Marcus Heng Tze Wei ("**Marcus**"), another employee of the 1st Defendant who had prepared the sale agreement for the Plaintiff's execution was present. The Plaintiff paid the remainder sum of $132,143.00 (including the additional sums for the insurance premium and the Land Transport Authority ("**LTA**") registration/transfer fee) by way of a UOB <u>cash cheque</u>.

7. Before driving off with the Car, the Plaintiff received an insurance note for the Car in her name and was informed by Jeremy that the ownership to the Car would be transferred to her within the next few days.

8. After taking delivery, the Plaintiff had continuous use and possession of the Car for the next 8 months or so until 11 May 2018, when she was shocked to find the Car missing from her residence. The Plaintiff later found out through the authorities that the Car was repossessed by the 2nd Defendant, Privilege Capital Pte. Ltd., (the registered owner of the Car) and eventually sold to Mova Automative Pte Ltd for the sum of $122,000.00 on 17 May 2018.

For any queries relating to this article, please contact:

Gan Theng Chong
ganthengchong@leenlee.com.sg

Melissa Ng
melissang@leenlee.com.sg

Kelley Wong
kelleywong@leenlee.com.sg

Authors:
Gan Theng Chong
Melissa Ng
Kelley Wong

Lee & Lee
50 Raffles Place, #06-00 Singapore Land Tower, Singapore 048623
Tel: +65 6220 0666

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9. The 2nd Defendant is a finance company in the business of hire purchase financing for motor vehicles. It entered into a Floor Stock Facilities Agreement with the 1st Defendant on 21 July 2017. Under the said Agreement, the 2nd Defendant gave possession of the Car to the 1st Defendant for the 1st Defendant's sale of the Car.

10. The Plaintiff commenced this action on the basis that she was the legal and beneficial owner of the Car and the 2nd Defendant's repossession of the Car was therefore wrongful and a tortious act of conversion.

11. At trial, the Plaintiff proceeded only against the 2nd Defendant as the 1st Defendant had apparently returned to China and was in any case, likely to be a figurehead for the business and a person of straw. As the Car was already sold, the Plaintiff no longer sought recovery of the Car but instead claimed damages in the sum of $122,000.00, being the subsequent sale price.

Issues considered

12. The Plaintiff's case was premised on the argument that she was the owner of the Car pursuant to sections 2(1) and 9 of the Factors Act (Cap. 386) and section 25 of the Sale of Goods Act (Cap. 393). Essentially, these provisions state that a buyer obtains good title to the chattel if the seller (i.e. the 1st Defendant) was a mercantile agent in possession of the chattel with the owner's (i.e. the 2nd Defendant) consent and the chattel was sold to the buyer in the ordinary course of the seller's business.

> ***Factors Act***
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> *2(1). Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same:*
>
> *Provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has no authority to make the same.*
>
> *9. Where a person, having bought or agreed to buy goods, obtains with the consent of the seller possession of the goods or the documents of title to the goods, the delivery or transfer, by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.*
>
> ***Sale of Goods Act***
>
> *25. Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, has the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.*

13. To counter the argument, the 2nd Defendant asserted that the Plaintiff knew or ought to have known of the 2nd Defendant's title and therefore acted in bad faith in taking possession of the Car against that knowledge. At the doorstep of trial, the 2nd Defendant also alleged that the Plaintiff was not a *bona fide* purchaser for value as she had no evidence she paid for the Car and she could have conspired with Jeremy to encash the cheque together.

14. The following four issues were identified and agreed between parties for the purpose of the trial:-

    (a) whether the Plaintiff had paid value for the Car;

    (b) whether the Plaintiff was a *bona fide* purchaser;

    (c) whether the 1st Defendant's sale of the Car to the Plaintiff was made by the 1st Defendant acting in the ordinary course of business; and

    (d) whether the Plaintiff had, at the time of the sale, notice that the 1st Defendant did not have the authority to sell the Car.

Issues (a) and (b) - whether the Plaintiff paid value for the Car and whether the Plaintiff is a* bona fide *purchaser for value

15. There was no evidence Jeremy encashed the cheque with the Plaintiff as the 2nd Defendant suggested. In fact, the evidence from UOB subsequently revealed that it was Marcus who encashed the cheque, and not Jeremy.

16. In the end, based on the evidence led by the Plaintiff, the Court held that it was clear the Plaintiff had paid value for the car to the 1st Defendant and was a *bona fide* purchaser for value.

Issue (c) - whether the sale of the car to the Plaintiff was made by the 1st Defendant acting in the ordinary course of business

17. The Court agreed with the Plaintiff's submission that the 2nd Defendant was a mercantile agent within the meaning of the provisions and that the sale was made in the ordinary course of business. In fact, the Court held that the 2nd Defendant's submission otherwise was untenable as this was the very business of the 2nd Defendant.

18. There was also the suggestion that the sale was not in the ordinary course of business as the payment was made by way of cash cheque without any receipts issued. However, while this was not common, it did not make the transaction outside the ordinary course of business.

Issue (d) - whether the Plaintiff had, at the time of the sale, notice that the 1st Defendant did not have the authority to sell the car

19. Section 2 of the Factors Act would not apply if the Plaintiff:-

    (a) did not act in good faith; and

    (b) had notice that the 1st Defendant has no authority to sell the Car.

20. The Court accepted that the test for a lack of good faith often requires actual dishonesty or fraud. Mere negligence is not good enough, even if negligence is established. Where it is alleged that the Plaintiff was negligent, the facts and circumstances must be such that the Plaintiff was or should have been suspicious that something was wrong but deliberately refrained from making inquiries.

21. For the Plaintiff to be deemed to have notice that the 1st Defendant did not have authority to sell the Car, it must be established that the circumstances are such that a reasonable person in her shoes would have her suspicions aroused and that she wilfully shut her eyes to the means of knowledge available to her.

22. On the facts, there was nothing about the sale transaction that should have raised alarm bells or which the Plaintiff should have been suspicious of. The Plaintiff's failure to check the LTA records on the ownership of the Car, to look out for the LTA transfer letter or to question why she did not receive such a letter and to check with LTA as regards the payment of road tax despite having the Car for 8 months do not, whether on its own or taken together, amount to lack of good faith even if the Plaintiff had been negligent in not taking those steps.

23. Further, the Plaintiff submitted that even if the she had made further enquiries as regards the ownership of the Car, it still would not have affected the transaction as her enquires would merely have revealed that the 1st Defendant had possession of the Car with the consent of and authority from the 2nd Defendant to sell the Car.

24. The Court agreed and noted that that given the circumstances, the Plaintiff had no reason to think that the 1st Defendant did not have the authority to sell the Car or to view the transaction with suspicion, and adopted a similar sentiment in *Kau Joo Guan*:-

> *When a second hand car buyer walks into a dealer's shop to view cars, the last thing he expects is that the dealer has no right to sell the cars on display. Otherwise, why would these cars be in his shop in the first place? That is the common sense of brick-and-mortar second hand car sales. This is notwithstanding the occasional newspaper article on problems encountered with second hand car dealers, which the sensible consumer would hardly retain in his head so that he would view a potential dealer vendor with suspicion. I do not think that generally – such being my own experience from the days when we had registration books until now when we no longer have registration books – one would ask to look at the so-called log card.*

25. Finally, the 2nd Defendant tried to suggest that the 1st Defendant did not have the requisite authority to sell the Car. According to the 2nd Defendant's argument, the 1st Defendant is required to notify the 2nd Defendant of any sale of the Car and by failing to do so, the 1st Defendant was in repudiatory breach of the Floor Stock Agreement. As a result, the 1st Defendant was no longer in possession of the Car with the 2nd Defendant's consent.

26. However, the Court rejected the 2nd Defendant's argument as any breach of the Floor Stock Agreement by the 1st Defendant was between the two defendants and a third party (such as the Plaintiff) cannot be made to suffer the consequences of such breaches by the 1st Defendant. Consequently, it is for the 2nd Defendant to look for the 1st Defendant for compensation arising from such breaches

Orders

27. In conclusion, the Court found that the Plaintiff had obtained good title to the Car. By seizing the Car and disposing of it, the 2nd Defendant is thereby liable under conversion to the Plaintiff for her loss and damage.

28. The Court thus allowed the Plaintiff's claim and ordered the 2nd Defendant to pay the Plaintiff:-

    (a) The sum of $122,000.00;

    (b) Interest; and

    (c) Costs fixed at $14,000.00 plus disbursements fixed at $2,440.60.

Implications

29. The LTA system was changed to enable car buyers to complete the sale transaction and vehicle transfer online to reduce the likelihood of similar car scams (see: https://www.straitstimes.com/singapore/transport/vehicle-sale-and-transfer-will-soon-be-done-online-to-eradicate-car-scams). However, it is apparent that there are still cases falling through the cracks where buyers find that the titles to the cars are not transferred to their names even after they have made full payment and taken delivery of the car.

30. The recent line of District Court cases now makes it clear that a good faith buyer is not without a remedy as the buyer can obtain good title to the car by operation of the relevant provisions, even if title has not been properly transferred to the buyer's name. Accordingly, although the finance company remains the registered owner of the car, it is not entitled to repossess the car but instead obliged to transfer the title of the car to the good faith buyer or risk being sued for conversion.

31. While it may seem unfair that the finance company is to bear the financial burden in such event, the Courts have taken the view that between a car buyer and a car finance company, the latter is in a better position to take steps to minimise risk of losses caused by a scam of such nature. As stated by the learned District Judge Loo Ngan Chor in *Kau Joo Guan*:-

    If anything, I am humbly of the view that it is for men of commerce such as the 2nd defendant (also a finance company in that case) and others who provide finance for car dealers, in the same trade, knowing their co-dealers and alive to its pitfalls, to organize their ways of doing business so that they do not become traps for the unwary car buyer.

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The following partners lead our departments:

Kwa Kim Li
Managing Partner
kwakimli@leenlee.com.sg

Quek Mong Hua
Litigation & Dispute Resolution
quekmonghua@leenlee.com.sg

Owyong Thian Soo
Real Estate
owyongthiansoo@leenlee.com.sg

Tan Tee Jim, S.C.
Intellectual Property
tanteejim@leenlee.com.sg

Adrian Chan
Corporate
adrianchan@leenlee.com.sg

Louise Tan
Banking
louisetan@leenlee.com.sg