AUTOMOBILE PURCHASER'S TITLE UPHELD AGAINST DEALER'S "FLOOR PLAN" MORTGAGEE

Mutual Finance Co. v. Kozoil
111 Ohio App. 501, 165 N.E.2d 444 (1960)

Defendant entered into a contract with N. J. Popovic, Inc., a retail automobile dealer, for the purchase of a new Chrysler. Defendant took possession of the car, paid the purchase price, and demanded a certificate of title from Popovic. Title to the motor vehicle was held by plaintiff finance company which had a floor plan mortgage with Popovic.[1] Plantiff accepted and paid drafts to Popovic knowing him to be "out of trust."[2] Following the bankruptcy of Popovic, plaintiff brought suit to replevy the automobile, relying on the floor plan mortgage and possession of the manufacturer's statement of origin.[3] A divided court rejected petitioner's claim and entered judgment in favor of defendant's cross-petition directing plaintiff to present defendant with a certificate of title.

The crucial issue in the case revolves around the classic conflict between a purchaser in good faith and a mortgagee who left his unencumbered goods with the mortgagor engaged in the sale of such goods. Purchasers have been protected from mortgagees' claims by agency, estoppel, and waiver.[4] The mobility of motor vehicles has led to passage of special acts designed to regulate motor vehicle sales and resolve questions concerning dealer's fraud. Chapter 4505[5] of the Ohio Revised Code, enacted in 1937, was designed to curtail the theft of automobiles and to protect subsequent innocent third parties in their dealing with motor vehicles. A certificate of title in Ohio serves as a recording device for all encumbrances upon motor vehicles and as prima facie or conclusive evidence of ownership, depending on judicial interpretation. Section 4505.04 provides that:

> No person acquiring a motor vehicle . . . shall acquire any . . . title . . . until such person has had issued to him a certificate of title . . . nor shall any waiver or estoppel operate in favor of such person against a person having possession of such certificate of title. . . .

If literally construed, the Certificate of Title Act would preclude enforcement of all interests, legal or equitable, unless evidenced by a certifi-

[1] The finance company paid Chrysler Corp. and had the manufacturer's statement of origin sent directly to it as security for the floor-plan mortgage with Popovic.

[2] "Out of Trust" in the automobile retail trade, meant the failure of the dealer to remit money paid on cash purchases to the financial institution holding the wholesale or floor-plan mortgage on the automobile sold. Mutual Finance Co. v. Kozoil, 111 Ohio App. 501, 505, 165 N.E.2d 444, 447 (1960).

[3] Assignment from wholesaler to purchaser necessary to show title. Ohio Rev. Code § 4505.05.

[4] See generally 2 Jones, Chattel Mortgages and Conditional Sales § 422, 458, 466 (1933).

[5] 117 Ohio Laws 373 (1937). "To Prevent the Importation of Stolen Motor Vehicles and Thefts and Frauds in the Transfer of Title to Motor Vehicles. . . ."

cate.[6] The harshness of such a literal interpretation would not give effect to the often quoted statement from *Automobile Finance Co. v. Munday*, "The very purpose of the law is to protect ownership against fraud."[7] The *Munday* decision refused to give the holder of the certificate protection if he were a defrauder or one whose negligence made another's fraud possible. The *Munday* case was cited and approved in *Workman v. Republic Mutual Insurance Co.*[8] which held that ownership of a motor vehicle passed to the purchaser who signed an installment note, took possession, and gave the seller an application for transfer of the certificate of title.

In 1948, however, the Ohio Supreme Court in *Mielke v. Leeberson*[9] took a sharp turn toward strict construction of the act by holding that section 4505.04 ". . . is not only sweeping but is unrestricted and unlimited." The *Mielke* syllabus provides that title to a motor vehicle in Ohio can be shown only by a certificate of title.[10] In the 1953 decision of *Garlick v. McFarland* the Ohio Supreme Court held that ". . . where an owner fails to comply with the Certificate of Title Act by not assigning and delivering his certificate of title to the purchaser, title does not pass."[11] The most recent Ohio Supreme Court decision concerning section 4505.04 upheld the *Mielke* line of decisions and cast further doubt on the status of *Munday* and *Workman*. The court held that although a purchaser has possession of a motor vehicle, has paid for it, and has filed an application for a certificate of title, "Until such time as a certificate of title is issued to a purchaser no title to the automobile passes to him."[12]

In adhering to a very narrow interpretation of the Certificate of Title Act the Ohio Supreme Court has stated that "The drastic character of this Statute and its far reaching effect become more apparent with the passing of time."[13] The court has apparently felt obligated to follow the exact wording of the statute regardless of the result. The court has further noted that "the meaning of the statute does not gain in clarity by prolixity of statement."[14] It might be added that although prolixity of statement fails to clarify the law, failure to exercise the judicial function of interpretation leads only to stultification of the law.

Faced with this development of the law the lower courts have strained to

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[6] Certificate of Title Act held to be constitutional, State ex rel. City Loan and Savings Co. v. Taggart, 134 Ohio St. 374, 17 N.E.2d 758 (1938).

[7] Automobile Finance Co. v. Munday, 137 Ohio St. 504, 521, 30 N.E.2d 1002, 1010 (1939).

[8] Workman v. Republic Mutual Ins. Co., 144 Ohio St. 37, 56 N.E.2d 190 (1944).

[9] Miekle v. Leeberson, 150 Ohio St. 528, 534, 83 N.E.2d 209, 213, 7 A.L.R. 2d 1347s, 6 W. Res. L. Rev. 222 (1954).

[10] "Ohio's Certificate of Title Act is an example of the most stringent type." 5 W. Res. L. Rev. 403, 404 (1954). See 48 Yale L. J. 1238 (1939) for a comparison of strict title act to Torrens Land Registration Act.

[11] Garlick v. McFarland, 159 Ohio St. 539, 549, 113 N.E.2d 92, 97 (1953).

[12] Brewer v. DeCant, 167 Ohio St. 411, 415, 149 N.E.2d 166, 169 (1957).

[13] In re Estate of Case, 161 Ohio St. 288, 291, 118 N.E.2d 836, 838 (1954).

[14] *Supra* note 13, at 293, 118 N.E.2d at 839.

either modify the language of the act or to avoid it altogether in an effort to protect the innocent purchaser and prevent the defrauder from realizing the fruits of his fraud.[15] The court in the instant case states that "The title law was passed for the purpose of preventing fraud and deception in passing title to automobiles not to encourage it. The purchaser, as well as the lending agency, is entitled to its benefits."[16]

The *Kozoil* court sought to avoid the harshness of the application of the title act by holding that:

> Purchasers of motor vehicles, by the doctrine of exclusion, are not subject to the provision of Section 4505.13, Revised Code, that "exposure for sale of any motor vehicle by the owner thereof, with the knowledge or with the knowledge and consent of the holder of any lien, mortgage, or encumbrance thereon, shall not render such lien, mortgage, or encumbrance ineffective as against the creditors of such owner, or against holders of subsequent liens, or mortgages, or encumbrances upon such motor vehicle."[17]

The legislature's failure to include purchasers under the provision concerning "exposure for sale" would seem to remit the parties to the law as it existed before passage of the title act.[18] It is dubious whether floor-plan estoppel can be used in the light of section 4505.04 and the gloss added to it by the courts.[19] The possibility of agency, however, appears to be available in a proper case.[20]

The argument favoring strict interpretation urges that since purchase of an automobile occurs so seldom in the life of an ordinary person, it is not unreasonable to expect purchasers to demand a certificate of title on a new automobile. But in Ohio an owner is not required under existing law to obtain a certificate on a new automobile. The manufacturer's or importer's statement is deemed sufficient. To find the purchaser responsible for constructive notice is to ignore the reality of the usual dealer-purchaser relation-

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[15] Wholesale mortgage lien is extinguished where finance company also handled purchaser's retail loan. Mutual Finance Co. v. Municipal Employees Union, 110 Ohio App. 341, 165 N.E.2d 435 (1960). Certificate holder is not protected where there is fraud or theft. Moch v. Kaffits, 75 Ohio App. 305, 62 N.E.2d 172 (1944) (theft); Erie County United Bank v. Bogart, 75 Ohio 250, 61 N.E.2d 811 (1945) (forgery); Lazerich v. Associate Investment Co., 30 Ohio L. Abs. 112 (1939). "The fact that the Supreme Court has announced that as the law (Mielke and Garlick cases) is still in the opinion of the Court, not good law. . . ." Automobile Owners Insurance Co. v. Olney, 84 Ohio L. Abs. 242 (C.P. 1958).

[16] *Supra* note 2, at 511, 165 N.E.2d at 450.

[17] *Supra* note 2, at 501.

[18] Writers suggesting this approach include 45 Va. L. Rev. 754 (1959) and 5 W. Res. L. Rev. 403 (1954).

[19] Crawford Finance Co. v. Derby, 63 Ohio App. 50, 25 N.E.2d 306 (1939).

[20] Doctrine of agency by apparent authority is still available under the title act to a purchaser who can prove that he was justified in relying upon authority invested in the vendor of an automobile by the owner thereof. Mutual Finance Co. v. Meade, 110 Ohio App. 341, 161 N.E.2d 561 (1960).

ship. Since an actual certificate of title on a new automobile does not exist, the purchaser has no way of checking the true ownership other than accepting the dealer's assurances. The defendant in the instant case reasonably relied on the dealer's title due to circumstances for which the mortgagee was largely responsible. It is common knowledge that dealers handle title transfers and registration, often after receipt of payment and delivery of the automobile.[21] Kozoil had no reason to doubt the dealer's apparent ownership nor had he an effective means to discover ownership if he had doubted Popovic.[22]

Until such time as the legislature modifies the stringency of the act and clarifies its position on purchasers of new motor vehicles, the holding in the instant case seems to be the best approach. As the majority opinion states:

> It seems incredible that judicial interpretation of the motor vehicle title law should find within its provisions a legislative purpose to defeat the right of an innocent purchaser for value, when the holder of the mortgage and the manufacturer's statement of certificate of origin expressly consents to exposing the automobile covered by the mortgage for sale, . . . when both dealer and mortgagee are attempting to accomplish a common purpose.[23]

The Ohio Supreme Court in a per curiam opinion sustained the decision of the appellate court.[24] The result is based on the agency relationship without recourse to discussion of the title law. Escape from the title law can be made only by ignoring it on the assumption that the legislature as a body of reasonable men could not have meant the act to apply to situations such as the *Kozoil* case. The court appears ready to adopt a more courageous judicial approach to prevent further solidification of the *Mielke* line of decisions and to bring the title act in line with current notions of justice. As Justice Frankfurter has cogently stated, "The claims of dominant opinion rooted in sentiments of justice and public morality are among the most powerful shaping-forces in lawmaking by courts. Legislation and adjudication are interacting influences in the development of law."[25] The last remnants of the concept of "Let the buyer beware"[26] must be considered according to modern jurisprudence and can not be allowed to devitalize the judicial role of dispensing justice to individuals based on the facts of the case before the court.

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[21] See Fogle v. General Credit, 122 F.2d 45, 50 (D.C. Cir. 1941).

[22] *Supra* note 2, at 507, 165 N.E.2d at 448.

[23] *Supra* note 2, at 514, 165 N.E.2d at 452.

[24] Mutual Finance Co. v. Kozoil, 172 O.S. 265, 175 N.E.2d 88 (1961).

[25] National City Bank of New York v. Republic of China, 348 U.S. 356, 360, 75 S. Ct. 423, 426 (1955).

[26] "The record reads as though Mutual expected Popovic to be "out of trust" and as long as they, Mutual, held the titles, their attitude was, . . . 'let the buyer beware.'" *Supra* note 2, at 507, 165 N.E.2d at 448.