MORTGAGES

Mortgages — Agency — Sales — Effect of Floor Plan Rule on Competing Chattel Mortgages

Young, a used car dealer, purchased a used automobile, financing his purchase by executing a chattel mortgage thereon to the plaintiff, which mortgage was duly recorded. Young represented to the plaintiff that the car was to be for his own personal use, and the trial court found as a fact that the plaintiff had no knowledge that the car was to be resold. Shortly afterwards Young sold the car to Boster who made a down payment and executed a chattel mortgage to Young to secure the unpaid balance. On the same day, for a valuable consideration, Young assigned the mortgage to the defendant, whereupon Young left for parts unknown. When Boster learned of the plaintiff's prior mortgage, he surrendered the car to the defendant, and the plaintiff now sues in replevin to recover the car. The Court of Appeals held for the plaintiff, estopping the defendant to set up the floor plan rule defense.

The Floor Plan Rule is a doctrine which estops the lienholder or the conditional vendor of a dealer's merchandise to assert his claim against an innocent third party, who is misled by the dealer's appearance of ownership or of authority to sell. The doctrine is founded on the rules of agency, relating to apparent ownership and apparent authority. When dealing with the ability of a person to make a valid sale, it matters not which of these appearances is created.[2] Mere possesison of an encumbered chattel by a dealer in similar articles is sufficient in itself to justify a reliance upon an apparent authority to sell.[3] Some additional indicia of property are required for a reasonable reliance,[4] the amount varying with the views of the court.[5] Since the floor plan defense is based on an estoppel, arising from the misleading acts of the mortgagee in clothing the dealer with indicia of property, when the court found that the plaintiff had no knowledge, actual or implied, that the car was to be sold, the defendant's estoppel argument was refuted. Hence the rule that the floor plan doctrine is no defense to a subsequent mortgagee where the

[1] Springfield Loan Co. v. National Guarantee and Finance Co., 63 Ohio App. 508, 27 N.E. (2d.) 257 (1939).

[2] Mathews, Cases and Materials on the Law of Agency and Partnership (1940) 205.

[3] Levi v. Booth, 58 Md. 305, 42 Am. Rep. 332 (1882); Utica Trust and Deposit Co. v. Decker, 244 N.Y. 340, 155 N.E. 665 (1927); Williston on Sales (2d ed. 1924) sec. 314, p. 720.

[4] Levi v. Booth, note 3 *supra*. Williston on Sales (2d ed. 1924) sec. 315, p. 721.

[5] Compare Utica Trust and Deposit Co. v. Decker, note 3 *supra*, with Boice v. Finance and Guaranty Corporation, 127 Va. 563, 102 S.E. 591, 10 A.L.R. 654 (1920).

prior mortgagee lacked such knowledge. As the court in the principal case admits, the defendant succeeded to all rights of Boster, the purchaser, it is obvious that the same rule applies to a purchaser. Apparently this court did not distinguish between a mortgagee and a purchaser of the dealer, as did the Supreme Court in *National Guarantee and Finance Co.* v. *Pfaff Motor Car Co.*,[6] where the court refused to apply the Floor Plan Rule in favor of a mortgagee of the dealer, and indicated that the doctrine is only invoked to protect purchasers. The principal case at least leaves open the possibility of successful use of that defense, where the subsequent mortgagee can prove the elements of estoppel. The leading case asserting the floor plan doctrine, although using it in that instance to protect a purchaser, indicates that similar protection would be accorded a mortgagee of the dealer.[7] The first Ohio court to recognize the rule appears to have adopted this view without reservation.[8] In *Colonial Finance Co.* v. *McCrate*,[9] the Court of Appeals in *dicta* based on the authority of the *Pfaff* case,[10] said that the floor plan rule was a doctrine to protect the ordinary purchaser, which under the laws of Ohio includes a mortgagee of the dealer. The Uniform Sales Act defines purchaser as including a mortgagee or pledgee.[11] In defense of the distinction between subsequent purchasers and subsequent mortgagees of the dealer, one might suggest as did the court in the principal case,[12] that being accustomed to mortgage transactions, the mortgagee should be aware of the existence as well as the purpose of the Chattel Mortgage Recording Act.[13] Especially is this true where the defendant, as here, is a Finance Company. Yet, the floor plan rule is designed to cushion the effect of strict adherence to the fiction of constructive notice. In short, it is an exception to the recording act. Viewed in this light and remembering that the recording act refers to both subsequent purchasers and mortgagees, one wonders whether the above argument is sufficiently strong to support the distinction. In summary the principal case serves a twofold purpose, for it eliminates the floor plan rule in one fact situation, yet by the limitation of its rule leaves open a pathway

[6] 124 Ohio St. 34, 176 N.E. 678 (1931).

[7] Boice v. Finance and Guaranty Corporation, note 5 *supra*.

[8] Hostetler v. National Acceptance Co., 36 Ohio App. 141, 172 N.E. 851 (1930). For history of the Floor Plan Rule in Ohio, see Note (1939) 5 OHIO STATE L. J. 422.

[9] 60 Ohio App. 68, 76, 19 N.E. (1938). See Note (1939) 5 OHIO STATE L. J. 422; see also, Note (1939) 16 Ohio Op. 103.

[10] National Guarantee and Finance Co. v. Pfaff Motor Car Co., *supra*, note 6.

[11] OHIO G.C. sec. 8456.

[12] Springfield Loan Co. v. National Guarantee and Finance Co., note 1 *supra*.

[13] OHIO G.C. sec. 8560 *et seq*. See also *Conditional Sales Act*, OHIO G.C. sec. 8568 *et seq*.

to the breakdown of a questionable distinction between subsequent purchasers and mortgagees.

It is noteworthy that the facts of the principal case arose before the Certificate of Title Act became effective.[14] This act would preclude the problem of the principal case by providing title registration and a recordation of encumbrances on the certificate of title, thus facilitating actual notice.[15] But the act is narrow in its scope, referring only to motor vehicles, leaving the problem discussed above still alive with respect to other chattels.

J. P. M.

TORTS

NEGLIGENCE — DUTY OF PLAINTIFF — PROXIMATE CAUSE

Plaintiff brought an action against the Board of County Commissioners for the destruction of her home by fire. Liability was predicated upon a statute which made the commissioners liable in their official capacity for damages, caused by their negligence, in not keeping roads or bridges in repair.[1] The commissioners had allowed a ditch to remain open across a county road, making it impossible for the apparatus of the fire department to reach the scene of the fire, and prevent the subsequent damage. On these facts, the Court of Appeals for Hamilton County held that the defendants were not liable, because the plaintiff was not included within the class of persons protected by statute, and because the blockade of the road was not the proximate cause of the loss.[2]

It is often said in negligence actions, that to enable the plaintiff to maintain an action, he must show that the defendant owed him a duty of reasonable care, and that such a duty is owing to the plaintiff, if and only if, the defendant should anticipate that some one in the position of the plaintiff might be hurt, if the defendant did not use reasonable care.

A leading case announcing this doctrine is *Palsgraff* v. *Long Island Railroad Co.*[3] In that case the plaintiff was denied recovery for being injured by a set of scales, falling from overhead as a result of an explosion of a package of fire crackers some distance away, which were knocked

[14] OHIO G.C. *sec.* 6290-1 to -20, Effective Jan. 1, 1938. This act is not retroactive; see OHIO G.C. sec. 6290-9.

[15] OHIO G.C. sec. 6290-4 and -9. By provision in OHIO G.C. sec. 6290-9 the *Chattel Mortgage Recording Act,* cited note 13 *supra,* shall never apply to motor vehicles.

[1] OHIO G.C. sec. 2408. The board (of county commissioners) shall be liable in its official capacity for damages received by reason of its negligence or carelessness in not keeping any such road or bridge (public, state or county) in proper repair.

[2] Sheley v. Swing, 65 Ohio App. 109, 29 N.E. (2d) 364 (1939).

[3] 248 N.Y. 339, 162 N.E. 99 (1928).