THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT LUCIA

HCVAP 2012/0021

BETWEEN

[1] JULIET SUTHERLAND
[2] DERRIK SATCHELL

Appellants

and

BANK OF SAINT LUCIA LIMITED

Respondent

Before:
The Hon. Mr. Don Mitchell — Justice of Appeal [Ag.]

Appearances on paper:
Ms. Diana M. Thomas of Peter I. Foster & Associates, for the Appellants
Mr. Thaddeus M. Antoine of Francis & Antoine, for the Respondent

---

2012: September 5.

Civil appeal – Interlocutory appeal – Preliminary issue – Bill of sale granted to Bank by borrower to secure loan to purchase second-hand car – Bill of sale executed by borrower prior to Bank paying proceeds of loan to car dealer – Bill of sale registered subsequently – Car dealer later selling same car to second purchaser – Borrower defaulting in payments on loan – Bank seizing car based on bill of sale – Whether bill of sale valid against second purchaser of car – Whether car was after-acquired property the bill of sale over it being void as against second purchaser

A bill of sale was granted to the respondent bank by a borrower from the bank to secure a loan to purchase a second-hand car. The borrower had produced to the bank a letter from the car dealer providing confirmation of the price the car dealer would accept for the car. The bank paid the purchase price directly to the account of the car dealer. Some months after that, the car somehow came to be in the possession of the car dealer and was sold by him a second time, on this occasion to the first appellant. She remained in possession of the car for nearly 3 years and then entered into an agreement with the second appellant to sell the car to him. The original borrower eventually defaulted on his loan payments and the bank seized the car while it was in the possession of the second appellant. The first appellant claimed to have purchased the car in good faith from the car dealer.

The appellants brought a claim against the bank, seeking an order for the return of the car and damages for its detention and conversion. The bank pleaded the bill of sale. The appellants claimed that the borrower was not the true owner of the car when he executed the bill of sale. As such, section 8 of the Bills of Sale Act provided that the bill of sale was void as against the second purchaser. The court ordered a determination of the preliminary issue.

In her decision on the preliminary issue, the learned master held that section 8 did not operate to defeat or render void the bill of sale in question. The section was designed to prevent situations where property which was the subject of the bill of sale was acquired after the execution of the bill, but was later found not to belong to the grantor but to a third party. She found that the borrower had accepted the offer for the sale of the vehicle to him, and she could not see how it would not be possible for him to be considered the true owner in light of the definition of true owner. The appellants appealed the master's decision.

Held: disallowing the appeal, upholding the ruling of the master, and confirming the orders she made for further case management, that:

1. Contrary to the statement of the issues by the second purchaser, the letter signed by the car dealer is not the written agreement between the car dealer and the borrower. A chattel such as a car does not require a written agreement for title in it to pass. Confirmation from the car dealer to the bank of the price he was willing to accept, and payment of that price to him by the bank on the borrower's behalf constituted the complete contract of sale.

2. In such circumstances, the car cannot be described as either "future goods" or "after-acquired property" as submitted by the appellants.

3. The bank obtained a security interest in the car from the moment that it paid the money to the car dealer and submitted its bill of sale for registration. The two parts of the lending transaction, the payment of the loan proceeds and the obtaining of the security interest, must occur simultaneously for the Act to work as designed. It must be so for the protection of all the parties, the bank, the borrower, and the car dealer.

JUDGMENT

[1] MITCHELL JA [AG]: This is an interlocutory appeal, made with the leave of a judge of the High Court. It arises as a result of a decision made by the learned Master Kimberly Cenac-Phulgence on a preliminary issue raised by the appellants at case management. It has been passed to me to be dealt with as a single judge of the Court of Appeal on written submissions pursuant to rule 62.10(5) of the Civil

Procedure Rules 2000 ("CPR 2000"). I have considered the written submissions of the appellant and the record of appeal filed on 11th July 2012, and the written submissions of the respondent filed on 24th July 2012.

[2] The appeal concerns the interpretation of the Bills of Sale Act[1] ("the Act"). Johnson Mondesir ("Mr. Mondesir") signed a bill of sale dated 20th April 2006, which was subsequently registered on 2nd May 2006 as number 82591 in Volume 42 of the Bills of Sale Register in the Office of Deeds and Mortgages over a Ford Explorer Sport Track ("the vehicle") in favour of the Bank of Saint Lucia Limited ("the Bank"). The evidence before the learned master was that Mr. Mondesir was purchasing the vehicle from Mr. Charles Simon of "Omni Operations". Mr. Simon gave Mr. Mondesir a letter on his company letterhead addressed to "To Whom It May Concern" and dated 10th April 2006 in which Mr. Simon stated:

> "I Charles Simon owner of vehicle Ford Sport Track am selling the vehicle to Mr. Johnson Mondesir for the sum of $50,000.00.
>
> "For more information please contact me at cell #716-1617 or 484-1617."

The Bank considered this an agreement for sale. Mr. Mondesir negotiated with the Bank for a loan of $45,000.00 to purchase the vehicle. On 2nd May 2006, on the basis of his representations, the Bank granted him a loan of $63,850.00, inclusive of interest and charges, for the purpose of purchasing the vehicle from Mr. Simon. On the same day, the Bank issued a cheque in favour of Mr. Simon in the sum of $50,000.00 to cover the purchase price and the following day

---

[1] Cap. 13.06, Revised Laws of Saint Lucia 2008. Sections 8 and 9 of the Act state as follows:
8. AFTER ACQUIRED PROPERTY
Save as hereinafter mentioned, a bill of sale is void except as against the grantor, in respect of any personal chattels specifically described in the schedule to the bill of sale of which the grantor was not the true owner at the time of the execution of the bill of sale.
9. EXCEPTION
This Act does not render a bill of sale void in respect of any fixtures separately assigned or charged, where such fixtures are used in, attached to, or brought upon any land, plantation, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures specifically described in the schedule to such bill of sale.

deposited it to the account of Mr. Simon. The Bank obtained an insurance cover note in its favour over the vehicle for the period 26th April 2006 to 26th April 2007.

[3] On 11th January 2007 Mr. Simon sold the same vehicle to Ms. Sutherland. How Mr. Simon came to be still in possession of the vehicle after he had been paid for it by the loan proceeds made to Mr. Mondesir is not explained. Ms. Sutherland obtained possession of the vehicle and remained in possession of it until 9th December 2009, when she put Mr. Satchell in possession of it pursuant to her agreement to sell it to him. Mr. Satchell was to get title to the vehicle when he had completed paying Ms. Sutherland for it. In due course, Mr. Mondesir defaulted on his loan payments to the Bank. After sending various warning letters to him, on 26th April 2010 the Bank seized the vehicle when it was in Mr. Satchell's possession.

[4] Ms. Sutherland and Mr. Satchell sued the bank to recover the vehicle and damages. They claim delivery of the vehicle and damages for loss of its use at $300.00 per day plus general damages, and alternatively damages for trespass to and conversion of the vehicle, and aggravated damages for the manner in which they say the vehicle was seized. They claim that section 8 of the Act applies to their particular situation. They claim that Mr. Mondesir did not own the vehicle when he gave the Bank the bill of sale. As such, while the bill of sale may continue to be valid against Mr. Mondesir, it is void as against them. The Bank filed an amended defence in which it contends that title to the vehicle was assigned to it by the bill of sale.

[5] Ms. Sutherland and Mr. Satchell filed an amended reply to the defence in which they claim that the bill of sale was void pursuant to section 8 of the Bills of Sale Act. Their reasoning is that the bill of sale was executed on 20th April 2006 and the payment was made to Mr. Mondesir on 2nd May 2006. They claim that, if indeed Mr. Mondesir acquired the property in the vehicle, which they deny, he was not the true owner of it at the time he executed the bill of sale. Alternatively, they

claim that Ms. Sutherland acquired title to the vehicle free and clear from all encumbrances pursuant to Article 296 of the Commercial Code.[2] Further, Mr. Simon was in possession of the vehicle when she purchased it from him; he was in the business of importing used vehicles for sale; and she was not aware of the sale from him to Mr. Mondesir and could not have reasonably found out about it; and she purchased it in good faith. Alternatively, they claim they have prescribed Mr. Mondesir's title pursuant to Article 2130 of the Civil Code.[3]

[6] On 23rd November 2010 the court ordered counsel for Ms. Sutherland and Mr. Satchell to file written submissions on the validity of the bill of sale. These submissions were filed on 3rd December 2010, and a few days later counsel for the Bank filed submissions in reply. It is not clear what application if any was before the court. It is described in the judgment as a preliminary issue concerning the legal validity of the Bill of Sale. The learned master delivered her decision on 27th April 2012. She found that section 8 did not operate to defeat or render void the bill of sale in question. She found that what the section was trying to avoid was where property which was the subject matter of a bill of sale was acquired after execution of the bill but was afterwards found not to belong to the grantor but to a third party. This, she said, cannot be said to be the case here as the bill of sale never purported to assign property which was to be after acquired, as the process of obtaining the loan was all geared towards purchasing the vehicle. She found that Mr. Mondesir had accepted the offer for sale of the vehicle, and she could not see how it would not be possible for Mr. Mondesir to be considered as a true owner in light of the definition of true owner as stated in Halsbury's Laws of England.

[7] It is this decision that Ms. Sutherland and Mr. Satchell appeal. They filed written submissions in support of their notice of appeal, and the Bank has filed written submissions in reply. Both of them repeat and develop the arguments they made

[2] Ch. 244, Revised Laws of Saint Lucia 1957.
[3] Cap. 4.01, Revised Laws of Saint Lucia 2008.

in the court below. The appellants urge several grounds of appeal which they say reveal two main issues. One, are Ms. Sutherland and Mr. Satchell within the class of persons against whom a bill of sale can be rendered void pursuant to section 8 of the Act on the basis that the bill of sale was granted at a time when the grantor was not the true owner of the vehicle; and two, if the answer to the first issue is yes, is the letter from Mr. Simon sufficient to amount to such beneficial ownership, without more, so as to comply with the requirement of section 8 of the Act? Ms. Sutherland and Mr. Satchell submit that the purpose of the section is to make it impossible for a bill of sale, except in limited circumstances which do not apply here, to state in a bill of sale that future goods, or goods to be acquired by the grantor, were covered by the bill of sale. They rely on the learning in Halsbury's Laws of England[4] explaining the meaning of the relevant section in the English Act dealing with 'future goods', 'after-acquired chattels', and the meaning of 'true owner.'

[8] The history of security bills of sale is a messy and obscure one. If one goes back to the rule in Twyne's Case,[5] the transferring of an interest in personal property without also immediately transferring possession was considered a fraudulent conveyance. It took over two hundred years before such security interests were regarded as legitimate. Today, it is one of the commonest banking transactions a borrower enters into with his or her bank. It is usual today for a bill of sale to be granted by a purchaser to a bank where that bank is providing a loan, and paying the car dealer some or all of the purchase price. The borrower signs the bill of sale before the money is ever paid to the dealer and before receiving ownership of the vehicle. If he did not do so, the bank would refuse to disburse the loan funds to the dealer. If the bank had to wait until the dealer had been paid the loan proceeds before it was able to assure itself that it would be granted the security interest, the bank would refuse the loan. The bank would risk its loan being unsecured for a period of time, which would be unacceptable banking practice. If,

[4] 5th edn., Vol. 50, paras. 1635, 1697, 1698, 1699, and 1701.
[5] 76 E R 809; (1601) 3 Co Rep 80.

on the other hand, the car dealer was to be obliged to part with ownership of the vehicle before receiving the purchase price, he would be at risk of being defrauded by an unscrupulous purchaser who managed to acquire the proceeds of the loan and who failed to pay him. Both of these unacceptable outcomes are avoided by the usual practice of banks in granting car loans and registering their securities, all in accordance with the provisions of the Bills of Sale Act. As is commonly known, the bank pays the proceeds of the borrower's loan directly to the car dealer to ensure that there is no question of the title not passing to the borrower. Simultaneously, the bank submits the bill of sale earlier signed by the borrower to the Registry of bills of sale for registration. The two transactions are simultaneous in law. It must be so for the protection of all of the parties, the bank, the borrower, and the car dealer.

[9] In such circumstances, the vehicle cannot be described as either "future goods" or "after-acquired" property, as submitted by Ms. Sutherland and Mr. Satchell. This misinterpretation arises from a misunderstanding of the facts in this case and the law applicable to them. Contrary to the statement of the issues by them, the letter signed by Mr. Simon is not the written agreement between Mr. Simon and Mr. Mondesir. A chattel such as a vehicle does not require a written agreement for title in it to pass. Confirmation from Mr. Simon to the Bank of the price he was willing to accept, and payment of that price to him by the Bank on Mr. Mondesir's behalf constituted the complete contract of sale. The Bank obtained a security interest in the vehicle from the moment that it paid the money to Mr. Simon and submitted its bill of sale for registration. The two parts of the lending transaction, the payment of the loan proceeds and the obtaining of the security interest, must occur simultaneously for the Act to work as designed.

[10] This case involves the all too familiar situation where a person innocently purchases a vehicle from a second-hand car dealer and then discovers that the vehicle is the subject of a registered bill of sale only when the bailiffs turn up at his home and seize the vehicle as having been assigned to a bank as security for a

loan granted to a previous owner. There is a reason why second-hand vehicles are cheap: their acquisition is risky. Ms. Sutherland and Mr. Satchell will have to seek their remedy against Mr. Simon. He will have to explain how he was justified in accepting money from both Mr. Mondesir and Ms. Sutherland.

[11] In the circumstances, the conclusion that the learned master came to was the correct one. The appeal is dismissed with costs to the Bank which I assess at $2,000.00. The order of the learned master remitting the matter to case management is affirmed. There are remaining issues on the claim mentioned at paragraph 6 above still to be resolved.

Don Mitchell
Justice of Appeal [Ag.]