IN THE HIGH COURT OF NEW ZEALAND
GISBORNE REGISTRY

M. 39/85

2/4

3

LOW PRIORITY

BETWEEN ENTERPRISE CARS LTD

Appellant

AND BROADLANDS FINANCE LTD

Respondent

249

Hearing: 5 March 1986

Counsel: Cooper for the Appellant
Webb for the Respondent

Judgment: ~~21 March 1986~~ 3 April 1986 - according to Registrar, Gisborne 18/4

JUDGMENT OF THORP J

This is an appeal against the judgment given in the District Court at Gisborne on 15 October, 1985, ordering that possession of a Holden motor vehicle in the control and possession of the appellant be given to the respondent finance company which held a registered instrument by way of security under the Chattels Transfer Act (1924) in respect of that vehicle.

The sole challenge to Broadlands' claim in the District Court was as to the adequacy of proof of ownership of the vehicle at the time the instrument was executed.

Only one witness was called for the Plaintiff. This was an officer of that company who gave evidence of the making

of an advance to a Mr Morris, the obtaining of an instrument by way of security from him, the registration of that security, failure to meet loan payments under it, and unsuccessful claims made on Enterprise Cars Limited for the delivery up of the vehicle then held by it to Broadlands.

In cross examination Enterprise introduced copies of Certificates of Ownership issued by the Registrar of Motor Vehicles. This evidence showed that Mr. Morris was registered as owner of the vehicle in 1978, that a change of ownership to Morris Antiques Ltd was registered in March 1981 some sixteen months prior to the execution of the instrument on which Broadlands relied.

The learned trial Judge expressed the view that such certificates did not constitute evidence of ownership, and said:

> "In any event I suspect that it does not really matter what the certificate of registration of the motor vehicle says in this case because I think the matter is covered by the provisions of Section 24 Chattels and Transfer Act which, read in combination with the provisions of the instrument by way of security, makes it clear that a valid instrument can be given to a lender, not withstanding the fact that the borrower is not the owner of the chattels concerned at the time the instrument is given, provided that monies advanced pursuant to the instrument are used in the acquisition of the chattel itself."

On the evidence before him that view was in my opinion properly urged as determining the dispute between the parties. Unfortunately, it now appears that the document that was put before His Honour was by some error not a correct copy of the relevant security. The Court had produced to it a miniature microfiche copy of the relevant instrument. In addition the Judge was provided with a printed page of conditions which it appears was presented to him as a legible version of the conditions in the microfiche copy. However, clause 13 of the conditions on that page, which was a clause clearly incorporating Section 24 and its statutory presumption, has now been found not to have been included in the instrument itself. This discovery necessarily required that Broadlands seek its salvation elsewhere than in Section 24.

Mr Webb set out to achieve that result on two bases: First, he submitted that registration of an instrument under the Chattels Transfer Act created a rebutable presumption that the grantor was the owner of the property thereby secured. Secondly he submitted that while registration certificates issued under the Transport Act might constitute evidence pointing towards ownership for various purposes, such certificates were not "evidence of ownership".

Neither submission was supported by either direct or persuasive authority. Each depends in essence on Mr Webb's construction of the Chattel Transfer legislation,

its purposes and its operation.

For the proposition of a rebutable presumption of ownership, he relied on the implication in all instruments by virtue of Section 49 of the Act of warranties of title by the grantor. That provision serves a plain and substantial purpose quite apart from the creation of any presumption such as Mr Webb urges, and I am unable to find anything in the history of the Legislation or its operation which requires me to recognise such a presumption.

Ball's Law of Chattels Transfer, p. xxi, refers back to the long title of the progenitor of our legislation, the Registration of Bills Of Sale Act (1854) UK for enlightenment as to the purposes of the Legislation, these being to prevent fraud on creditors by reason of secret charges or assignments. The United Kingdom legislation, and the New Zealand legislation which has followed it, seek to avoid that evil by providing a system of registration which will give notice to all the world, and by providing that unregistered securities shall be invalid against such persons as the Official Assignee in Bankruptcy.

As part of the statutory scheme special provision is made in Section 24 whereby a lender may obtain a valid security over a chattel purchased with the monies lent under that

security. For that purpose the section provides that "the grantor shall be deemed to have acquired the chattels contemporaneously with the execution of the instrument" where the instrument is expressed to be given as security for a loan to be expended, in whole or in part, in the purchase of those chattels.

Other provisions in the legislation also create presumptions of fact: see eg Section 17 (1) and the presumption there created of due execution of instruments. However the fact that the only presumption as to ownership is that in Section 24, the fact that the draftsman has not hesitated to make express provision for statutory presumption if that course is necessary, the absence of any such presumption as that for Mr Webb argues, and the absence (so far as I can see) of any necessity for such a presumption to achieve the principal purposes of the Act all persuade me to reject his submission.

As to his second submission, it is surprising that there are so far reported decisions on the evidentiary value of "ownership papers" for motor vehicles, the certificates issued by the Registrar of Motor Vehicles pursuant to Section 16 and 17 Transport Act 1962.

It was accepted by Mr Cooper that such certificates are not the equivalent of "Certificates of Title" providing

conclusive proof of ownership. His submission was simply that the certificates are evidence of ownership, and that in the present case the certificate produced was the only evidence of ownership.

For his first and principal proposition on this subject, he has the impressive support of the opinions of Gresson P and Cleary J in Fawcett v Star Car Sales Limited (1960) NZLR 406 at 418 and 428, and Somers J in Timaru Transport v Ministry of Transport (1980) 2 NZLR 638 at 642, even though in each case the opinions expressed are obiter. He is also entitled to call in aid the English authorities as to the evidentiary value of the English Motor Vehicle Log Books: Bishopsgate Motor Finance Corporation Ltd v Transport Brakes Ltd (1949) 1KBN 322, 337, 338, Pearson v Rose & Young Ltd (1951) 1KB 275, 289 and Brentworth Finance Ltd v Lubert (1968) 1 Qb 680, 684.

In my view, our certificates of ownership should on principal certainly have no less evidentiary weight than the less official English "Log Books."

Finally, the classification of the certificates as rebutable evidence of their contents has the approval of Cross on Evidence, 3rd NZ Edn, p. 554.

I can see no reason to differ from the views so widely held.

I conclude that while on the material before him, the learned trial Judge was entitled to reach the conclusion he did reach, as:

1. The parties accept there was an error in the transcription of the relevant clauses of the instrument which was put before the Court, and that Section 24 can no longer be called in aid:
2. The only evidence of ownership at the time of the execution of the instrument points against the grantor being the owner of the chattel at that time: and
3. There is no evidence that the applicant's possession was other than lawful possession of the vehicle at the time the action was brought:

there was no sufficient ground for the making of an order for possession of the vehicle in favour of the respondent and against the appellant.

The judgment entered in the District Court will accordingly be vacated, and in its place there will be judgment for the defendant, now appellant.

As the appellant, though unwittingly, was a party to the manner in which the misleading copy came to be put before and acted upon by the trial Judge, there will be no order for costs on this appeal.