

IN THE COURT OF COMMON PLEAS IN FOR THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

State of Delaware,	:	
	:	C.A. No. U508-10-0116
Plaintiff,	:	
	:	
v.	:	
	:	
All Approved Auto Sales, L.L.C., a	:	
Delaware limited liability company;	:	
William Marker, an individual;	:	
and Wholesale Motors, Inc., a Delaware	:	
corporation.	:	
	:	
Defendants.	:	

Submitted: March 27, 2009

Decided: March 27, 2009

Motion for Summary Judgment is granted in part and denied in part.

Richard W. Hubbard, Esquire, Department of Justice, 820 north French Street, 5th Floor,
Wilmington, Delaware 19801, Attorney for Plaintiff.

William Marker, 112 Skyline Locust, Ridgewood Manor, Smyrna, Delaware 19977,
Registered Agent for All Approved Motors

Sean M. Lynn, Esquire, Hudson, Jones, Jaywork & Fisher, LLC, 225 South State Street,
Dover, Delaware 19901, Attorney for Wholesale Motors, Inc.

Trader, J.

In this consumer fraud action brought by the State of Delaware, the State seeks civil penalties against the defendant, All Approved Auto Sales, L.L.C. “All Approved” and William Marker, as well as an action of replevin on behalf of consumers who purchased cars from All Approved and did not receive the titles to the motor vehicles. The titles are in the possession of Wholesale Motors, Inc. “Wholesale Motors” and Wholesale Motors has refused to turn the titles over to the purchasers.

All Approved and William Marker failed to file an answer to the complaint and on January 25, 2009, default judgment was entered against All Approved and civil penalties against All Approved were assessed by the Court in the amount of \$50,000.00. William Marker has filed a petition in bankruptcy and the proceedings from this Court are stayed as to him.

The attorneys for the State and Wholesale Motors have agreed that there is no genuine material issue of fact in this case and each side has filed a motion for summary judgment.

The relevant facts are as follows: Various consumers purchased cars from All Approved. The purchasers were given possession of the vehicles, but were told that the titles to the motor vehicles were sent to the Delaware Division of Motor Vehicles for title registration. The purchasers were told that they would receive the titles in a few weeks. The purchasers were not told that All Approved did not have the titles, because the titles were in the possession of Wholesale Motors, Inc. It appears that there was an agreement between All Approved and Wholesale Motors that titles would not be transferred to All Approved until Wholesale Motors received payments for the cars. All Approved sent checks to Wholesale Motors for payment of the cars, but the checks were returned for

insufficient funds. Wholesale Motors never received payment for the cars and therefore never transferred titles of the cars to All Approved.

The first issue in this case is the right of the State of Delaware to bring an action in behalf of consumers for replevin of motor vehicles titles. Title 29 *Del. C.* § 2517(c)(2) states that the Attorney General, through the Director of the Consumer Protection Division, shall have the authority and responsibility:

To bring an action or actions, in state courts of competent jurisdiction, against any person, firm, business, corporation, proprietorship or other entity in order to enforce...all laws or regulations in which the Division of Consumer Affairs is charged with enforcement thereof. In such actions, the Department of Justice may seek and recover, on behalf of the State, moneys or property wrongfully obtained as a result of the alleged violations, penalties and/or fines against violators...reasonable attorneys' fees and investigative costs....

Under the above statute the Attorney General has broad authority to bring an action in behalf of consumers including property wrongfully withheld from consumers.

The State initially brought this civil action in behalf of ten consumers. It appears that the State cannot locate three of the consumers and their vehicles have been repossessed. Therefore, the civil action in brought in behalf of the seven remaining consumers.

Wholesale Motors contends that it is entitled to retain the title of the motor vehicles because of the fraudulent conduct of All Approved. I disagree. Initially, I note that Wholesale Motors did not plead fraud with particularity as required by the Rules of this Court. Notwithstanding the failure of the defendant to plead fraud with particularity, I will address the merits of the issues in this case. It appears that the parties agree that the automobiles were consigned by Wholesale Motors to All Approved. Consignment is a transaction regardless of the form, in which a person delivers goods to a

merchant for the purpose of sale. 6 *Del. C.* § 9-102(20). A consignee is a merchant to which the consigned goods are delivered. 6 *Del. C.* § 9-102(19). The merchant is someone who deals in goods of that kind under a name other than the name of the person making the delivery. 6 *Del. C.* § 9-102(20)(A)(i). In this case, All Approved is the consignee and Wholesale Motors is the consignor. A consignor is the person who delivers goods to a consignee on consignment. 6 *Del. C.* § 9-102(21).

Title 6 *Del. C.* §9-13(a) states the rights and title of the consignee with respect to creditors and purchasers.

Consignee has consignor's rights. Except as otherwise provided in subsection (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had the power to transfer. 6 *Del. C.* § 9-319(a).

Therefore, All Approved as the consignee has full rights and title to the vehicles and may transfer those to the purchasers for value. Therefore, the State is entitled to obtain titles to the vehicles from Wholesale Motors for the benefit of purchasers who rightfully should have them because the purchasers bought those vehicles from the consignee. Additionally, it should be noted that under 21 *Del. C.* §6307(b)(3) a wholesale dealer may not sell vehicles on consignment.

Assuming arguendo that these vehicles were transferred from Wholesale Motors to All Approved under an entrustment, the following analysis is relevant: Under 6 *Del. C.* §2-403(2) "An entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in the ordinary course of business." "Entrusting' includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the

delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's dispositions of the goods have been such as to be larcenous under the criminal law." 6 *Del. C.* § 2-403(3). Thus, no matter how All Approved obtained the goods the possession of the vehicles by All Approved is entrustment.

All Approved transferred to the purchasers of the vehicles all rights to the vehicles that Wholesale Motors had. "A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased." 6 *Del. C.* § 2-403(1). In this case, the purchaser obtained Wholesale Motors interest to the vehicles. The purchasers have the rights to the titles to these vehicles even if "the delivery was procured through fraud punishable as larcenous under the criminal law." 6 *Del. C.* § 2-403(1)(d).

In this replevin action, the State is seeking to obtain the titles to the vehicles from Wholesale Motors for the benefit of the purchasers who rightfully should have them as purchasers of the vehicles in the ordinary course of business from an entruster or in the alternative as purchasers from a consignee.

In summary, the State can proceed with an action of replevin against Wholesale Motors for the titles to the purchased vehicles and as bona fide purchases, they take the vehicles with the same rights and title as that of Wholesale Motors either under a theory of consignment or theory of entrustment. The fact that Wholesale Motors did not receive payment for the cars is not a defense to the replevin action. It does not matter that there may be fraud by the retailer in obtaining possession of the vehicles.

Based on these conclusions of law, it is therefore ordered that judgment be entered in behalf of the State of Delaware and against Wholesale Motors, Inc. for

possession of titles to the motor vehicles for Twauna Rush, Anthony Moore, Leon Bivins, Denise Washington, Janet Daniels, and Donna Frazier-Durham, plus reasonable attorney's fees, and investigative costs. It is denied as to State's claim in behalf of all other persons.

IT IS SO ORDERED.

Merrill C. Trader
Judge