

RENDERED: OCTOBER 16, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-000406-MR
AND
NO. 2008-CA-000407-MR

QUALITY CAR & TRUCK
LEASING

APPELLANT

v.

APPEAL FROM CARTER CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 02-CI-00313
AND NO. 03-CI-00103

PONDEROSA HEAVY DUTY
TRUCKS, INC.; AND JAMES
GIBSON

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; VANMETER, JUDGE; LAMBERT,¹
SENIOR JUDGE.

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

LAMBERT, SENIOR JUDGE: Appellant, Quality Car & Truck Leasing (Quality Leasing), appeals from the trial court's summary judgment in favor of Appellee, Ponderosa Heavy Duty Trucks. Appellant argues that there were genuine issues of material fact sufficient to preclude summary judgment. As we have concluded otherwise, the judgment of the trial court is affirmed.

James Gibson approached Ponderosa seeking to purchase a used Peterbilt semi-tractor. When a suitable vehicle was found, Ponderosa suggested that Gibson contact Quality Leasing to arrange financing or leasing. Ponderosa and Quality Leasing regularly engaged in similar business activities.

Although Gibson testified that he was informed by Ponderosa that the truck in question had never been wrecked, Ponderosa produced testimony that it told Gibson the truck was recently returned from the body shop where a fender and door had been repaired and the truck painted. Quality Leasing produced testimony that in the past, it had discussed salvaged vehicles with Ponderosa and informed Ponderosa it would not buy salvaged trucks for leasing. The Quality Leasing witness testified that she was told by a Ponderosa representative that the truck selected by Gibson was not salvaged. However, it was later revealed that previously the vehicle had been sold as scrap after being damaged in a hurricane and that it was, indeed, a salvaged vehicle.

Prior to the purchase, Quality Leasing sent a representative to view and inspect the truck. Quality Leasing then contacted Ponderosa and advised that

Gibson would deliver its check for the purchase price and return the paperwork to Quality Leasing. When Gibson delivered the check, he signed, in his name only, the invoices and a disclosure furnished by Ponderosa that the vehicle had been salvaged and was sold “as is” without any warranty. A salvage title was made out to Quality Leasing reflecting its purchase of the vehicle for \$68,500.00 on August 22, 2000. That same day, Quality Leasing leased the truck to Gibson. Gibson commenced use of the truck and used it for 150,000 miles before becoming unable to make the payments to Quality Leasing.

Quality Leasing brought this action in September 2002. Ponderosa filed its motion for summary judgment shortly before the date of a scheduled jury trial. The trial court granted summary judgment by order entered November 20, 2007 and this appeal followed.

There are factual differences between the Quality Leasing version and the Ponderosa version of the transaction history. The disputed facts, however, are not material to resolution of the case. The undisputed facts are that Quality Leasing delivered to James Gibson a check for the purchase price and sent him to Ponderosa to conclude the transaction. As a part of the closing, Gibson signed documents that stated in the strongest possible terms that the truck was being sold “as is” and that there was no warranty of any kind. Gibson also signed a disclosure instrument that stated “Buyer is aware that the unit has or had a salvage title. The truck is sold as is where is.” From the foregoing it is abundantly clear that Gibson was invested with actual or apparent authority to act on behalf of Quality Leasing

and that his waiver of rights and acknowledgement of information are attributable to Quality Leasing. Appropriate to these facts is *American Nat. Red Cross v. Brandeis Machinery & Supply Co.*, 286 Ky. 665, 151 S.W.2d 445, 451 (1941):

No doctrine is better settled than that a principal is bound by the act of his appointed or recognized agent when it is within that sphere. Concretely, if the principal has held out that an agent is authorized to buy goods for him he is bound by the purchases made which are fairly and reasonably within the class specifically authorized and within the apparent scope of the authority where the seller is ignorant of any limitations upon the character of goods to be bought or the scope of authority.

With respect to the trial court's summary judgment, "[t]he standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Summary judgment is "proper where the movant shows that the adverse party could not prevail under any circumstances." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991).

As Ponderosa provided Gibson, an actual or apparent agent of Quality Leasing, with documents showing a salvage title and that the truck was sold "as is" without a warranty, a complete defense to Quality Leasing's claim was established. Summary judgment is thus appropriate as "it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor." *Huddleston v. Hughes*, 843 S.W.2d 901, 903 (Ky. App. 1992).

The judgment of the Carter Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Paul E. Craft
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BRIEF FOR APPELLEE,
PONDEROSA HEAVY DUTY
TRUCKS, INC.:

W. Jeffrey Scott
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