

STATE OF MICHIGAN
COURT OF APPEALS

COMMERCIAL SERVICES OF PERRY,

Plaintiff-Appellant,

and

KRISTINE ANN JOHNSON,

Intervening Plaintiff-Appellee,

v

DEK AUTOMOTIVE, d/b/a HUNTINGTON
MOTORS, DARRYL K. WALKER, EDWARD
PAGE, and RENITA L. LAKEY,

Defendants-Appellees.

UNPUBLISHED

March 25, 2010

No. 289827

Oakland Circuit Court

LC No. 2008-092123-PD

Before: Servitto, P.J., and Bandstra and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court order directing that title to a 2005 Bentley be transferred to intervening plaintiff free of all liens. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In April 2007, Miami Valley Bank made a loan of \$128,800 to defendant DEK Automotive Group, doing business as Huntington Motors Ltd. A 2005 Bentley automobile served as collateral for the loan, and title to the automobile reflected the secured interest. Plaintiff purchased that loan account on March 18, 2008.

Approximately six months before plaintiff purchased the loan, Huntington Motors sold the Bentley to Randy Saylor, who paid for the vehicle with a cashier's check for \$125,000. Mr. Saylor gave the automobile to intervening plaintiff, Kristine Johnson, who was his fiancé at the time. Defendants failed to pay off plaintiff's secured interest, and also failed to apply to the secretary of state to transfer title to Mr. Saylor or intervening plaintiff. Instead, defendants issued multiple temporary registrations and also provided intervening plaintiff with a dealer's license plate.

The trial court granted summary disposition to plaintiff against defendants and awarded plaintiff a judgment in the amount of \$135,024.61. Subsequently, the trial court also ordered that title to the car be transferred to intervening plaintiff, Ms. Johnson, with all liens removed. That part of the order directing transfer of title without liens is the only matter at issue on appeal.

The trial court made an equitable decision when it considered the entire history of the subject motor vehicle and decided the rights of all persons interested in the subject matter based on its determination of the requirements of justice and good conscience. See *Sinicropi v Mazurek*, 279 Mich App 455, 465-466; 760 NW2d 520 (2008). The relief granted in an equitable decision is reviewed de novo on appeal. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

The Michigan Vehicle Code (MVC) governs automobile ownership. *Whitcraft v Wolfe*, 148 Mich App 40, 50; 384 NW2d 400 (1986). The MVC provides that the effective date of a title transfer is the date of the purchaser's signature on the application for title:

Upon delivery of a motor vehicle and the transfer, sale or assignment of the title or interest in a motor vehicle by a person, including a dealer, the effective date of the transfer of title or interest in the vehicle is the date of signature on either the application for title or the assignment of the certificate of title by the purchaser, transferee, or assignee. [MCL 257.233.]

When a dealer sells a vehicle it is required to apply to the secretary of state for a new title within fifteen days of delivering the vehicle to the purchaser. MCL 257.217(4). Beyond the mandatory language of that section, the MVC makes it a "misdemeanor for any person to fail or neglect to properly endorse and deliver a certificate of title to a transferee or owner lawfully entitled thereto." MCL 257.239.

"Failure to comply with the statutory requirements relating to endorsement and delivery of the certificate of title renders the transaction void." *Whitcraft*, 148 Mich App at 50. However, "lesser title-transfer defects, even those involving statutory violations, may not be fatal to a transfer of ownership." *Id.* at 53.

In *Ladd v Ford Consumer Finance Co, Inc*, 217 Mich App 119; 550 NW2d 826 (1996), rev'd by 458 Mich 876; 586 NW2d 404 (1998), the courts had to decide whether the sale of a mobile home was void because the seller never requested delivery of the certificate of origin from defendant who had financed the seller's inventory. *Id.* The defendant held the certificate of origin as part of its security interest in the seller's inventory. *Id.* The seller, however, did not pay off the defendant's lien and never requested the certificate of origin for the plaintiff-buyer. *Id.* Without the certificate of origin, the plaintiff-buyer could not get a certificate of title to the mobile home. *Id.*

Our Supreme Court in *Ladd* did not require strict compliance with the statutory requirements for transfer of ownership. Instead, the Supreme Court stated that the buyer, "having fulfilled his obligations under the purchase agreement with the dealer, was entitled to have the dealer obtain the certificate of origin and deliver it to him so that he could apply for and obtain a title." 458 Mich at 876.

In the present case, plaintiff stipulated that intervening plaintiff received her interest in the vehicle from Mr. Saylor, who had paid the full purchase price for it. Once all of the purchaser's obligations under the purchase agreement were fulfilled, defendants were then required to file for a new certificate of title within 15 days. However, defendants failed to comply with the applicable statute. MCL 257.217(4). Despite the defendant car dealer's failure to comply with the statutory requirements, intervening plaintiff fulfilled her obligations under the purchase agreement with that defendant. Hence, the trial court appropriately ordered the transfer of title to her free of liens. See *Ladd*, 458 Mich at 876.

While plaintiff relies heavily upon *Bayer v Jackson City Bank & Trust Co*, 335 Mich 99; 55 NW2d 746 (1952) to argue that the transaction for the sale of the vehicle was void, this case differs significantly in that plaintiff has already received a judgment against defendants for the *full amount due* under the original loan documents. Generally, only compensatory damages are available in Michigan, and the purpose of such damages is to make a party whole for the losses suffered. *Rafferty v Markovitz*, 461 Mich 265, 270-271; 602 NW2d 367 (1999). Therefore, the award of damages is limited to the amount of loss actually suffered. *Id.*

As pointed out above, plaintiff received a monetary judgment for the full amount of the loss on the loan to defendants. Plaintiff did not request the collateral and then, after sale, a deficiency judgment. Rather, plaintiff is in possession of a judgment for the entire amount of the loss and is requesting, *in addition*, an award of the collateral. Plaintiff's request, then, is for a recovery greater than the losses suffered—a result that equity would not allow to stand.

Affirmed.

/s/ Deborah A. Servitto
/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood