
CANADA / JUDGMENT

C.L. Hagan Transportation Ltd. v. Canadian Acceptance Corp.

[1974] SCR 491

COURT

Supreme Court of Canada

DECIDED

29 June 1973

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C.L. Hagan Transportation Ltd. v. Canadian Acceptance Corp.

Collection

Supreme Court Judgments

Date

1973-06-29

Report

[1974] SCR 491

Judges

Martland, Ronald; Ritchie, Roland Almon; Spence, Wishart Flett; Laskin, Bora; Dickson, Robert George Brian

On appeal from

Saskatchewan

Subjects

Sale

Decision Content

Supreme Court of Canada

C.L. Hagan Transportation Ltd. v. Canadian Acceptance Corp., [1974] S.C.R. 491

Date: 1973-06-29

C.L. Hagan Transportation Ltd. (Defendant) Appellant;

and

Canadian Acceptance Corporation Limited (Plaintiff) Respondent.

1973: June 19; 1973: June 29.

Present: Martland, Ritchie, Spence, Laskin and Dickson JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Conditional sales—Assignment of chattel mortgage—Recourse agreement—Default of purchaser—Chattel not repossessed—Whether assignee of chattel mortgage precluded from recovering amount owing thereunder from assignor—The Limitation of Civil Rights Act, R.S.S. 1965, c. 103, s. 18.

The question raised in the present appeal was whether the assignee of a chattel mortgage, given by a purchaser of a tractor to secure the balance of the purchase price, is precluded by reason of s. 18(1) of The Limitation of Civil Rights Act, R.S.S. 1965, c. 103, from recovering the amount owing thereunder from the assignor when the purchaser defaults and the chattel is not repossessed. The trial judge held that the said s. 18(1) did not preclude recovery by an assignee from the assignor seller who was liable on a personal covenant for payment, even if it was given in the form of a guarantee. On appeal, the Court of Appeal unanimously affirmed this judgment. The appellant assignor then appealed to this Court.

Held: The appeal should be dismissed.

Section 18(1) by its very terms is concerned with a restriction on the right of recovery; and, taking it in context, it is unreal to conceptualize its provisions as nullifying a purchaser's primary obligation so as to reach the conclusion that a guarantee, otherwise valid, fails for want of subject-matter. The statutory purpose to protect a purchaser of a chattel against liability to answer for the debt incurred by purchase of the chattel, and limiting the seller as against the purchaser to repossession of the chattel and sale thereof, does not extend to sellers and their assignees who, as between themselves, have arranged for financing the purchase, in whole or in part, and have, as between themselves, entered into a recourse agreement should the purchaser default.

Edmonton Airport Hotel Co. Ltd. et al. v. Credit Foncier Franco-Canadien, [1965] S.C.R. 441, applied; Traders Finance Corp'n. Ltd. v. Casselman, [1960] S.C.R. 242 distinguished; Traves v. Manchur (1958), 26 W.W.R. 158, referred to.

APPEAL from a judgment of the Court of Appeal for Saskatchewan[1], dismissing an appeal from a judgment of MacPherson J. Appeal dismissed.

G.W. Semenchuck, for the defendant, appellant.

D.G. McLeod, Q.C., and C.G. Morris, for the plaintiff, respondent.

The judgment of the Court was delivered by

LASKIN J.—The question in this appeal is whether the assignee of a chattel mortgage, given by a purchaser of a tractor to secure the balance of the purchase price, is precluded by reason of s. 18(1) of The Limitation of Civil Rights Act, R.S.S. 1965, c. 103, from recovering the amount owing thereunder from the assignor when the purchaser defaults and the chattel is not repossessed. I have formulated the issue without the embellishment of the particular facts, which I shall state briefly because I do not think they alter the frame of the issue.

The appellant sold a tractor to the MacDonalds, husband and wife, and they gave him a chattel mortgage on the tractor and on a used car to secure \$17,000, the unpaid balance of the purchase price of the tractor, and also \$5,954, being a pre-existing debt owing to the appellant by the MacDonalds. The total indebtedness specified in the chattel mortgage, including finance charges, was \$28,353. A promissory note for this sum was executed by the MacDonalds at the same time in favour of the appellant. Immediately upon the execution of the chattel mortgage and note, the former was assigned to the respondent by a document entitled “mortgagee’s assignment and agreement” and the note was also endorsed to it. All the paper was executed in the offices of the respondent and on its forms.

The MacDonalds defaulted when \$20,032 was still owing for principal and interest, and payment was demanded from the appellant but it denied liability. After commencing action against the appellant, the respondent served a notice of seizure upon the MacDonalds but withdrew it and continued with its action against the appellant upon the provisions for payment in the document of assignment and agreement and upon the promissory note. The claim on the note was later abandoned and the action proceeded to trial on the assignment and agreement. MacPherson J. held that s. 18(1) of The Limitation of Civil Rights Act did not preclude recovery by an assignee from the assignor seller who was liable on a personal covenant for payment, even if it was given in the form of a guarantee. This judgment was affirmed on appeal by a unanimous Court in reasons given by Woods J.A. (with whom Maguire J.A. concurred) and by Brownridge J.A.

Woods J.A. was of the view, relying on the judgment of this Court in *Edmonton Airport Hotel Co. Ltd. and Superstein v. Credit Foncier Franco-Canadien*[2] that a debt arose in the present case for which chattel security was given and that the fact that it was unenforceable against the MacDonalds did not affect the appellant’s liability on its guarantee. Brownridge J.A. also held that the *Edmonton Airport Hotel* case was applicable but not before dealing with the earlier judgment of this Court in *Traders Finance Corp. Ltd. v. Casselman*[3] and concluding that the law as there laid down (which would have led him to a result in favour of the present appellant) had been changed by the enactment in 1961 of what is now s. 18(5) of The Limitation of Civil Rights Act.

The relevant terms of the “mortgagee’s assignment and agreement” read as follows:

For value received, we hereby sell and assign to Canadian Acceptance Corporation Limited (herein termed "C.A.C.") all our right, title and interest in and to the mortgage annexed hereto, including the right to collect all instalments due or to become due thereunder, the property covered thereby, and our rights under any guaranty, together with any reserve, holdback and the proceeds of said mortgage, with full power to C.A.C. in its or our name to take all such legal or other proceedings as we might take, save for this assignment.

In consideration of the purchase by C.A.C. of said mortgage, we hereby unconditionally guarantee, jointly and severally with the Mortgagor and any other guarantor, the payment promptly when due of every instalment specified therein and any extension or rewrite charges and in default of payment of any instalment or the performance of any requirement thereof by Mortgagor, we will, upon demand, pay C.A.C. the full amount remaining unpaid, without first requiring C.A.C. to proceed against the Mortgagor, any other guarantor or the security. ...we shall remain liable hereunder even if the security and/or right of action against the principal debtor or any guarantor has, by operation of law or otherwise, been released, ceased to exist or be available.

The contention of the appellant is that it was merely a guarantor of the MacDonalds and that there was no independent contract of indemnity between it and the respondent. On this footing, it is its submission that under s. 18(1) of The Limitation of Civil Rights Act there is no debt owing by the MacDonalds and that the guarantee cannot be enforced when there is no primary obligation. Alternatively, as I understood the submission of appellant's counsel, the argument was advanced that no action lay upon the guarantee even if there was a debt in existence since it could not be enforced against the MacDonalds.

I reproduce s. 18(1), (4) and (5) of The Limitation of Civil Rights Act as follows:

18 (1) When an article, the selling price whereof exceeds \$100, is hereafter sold, and the vendor, after delivery, has a lien thereon for all or part of the purchase price, the vendor's right to recover the unpaid purchase money shall be restricted to his lien upon the article sold, and his right to repossession and sale thereof, notwithstanding anything to the contrary in The Agricultural Machinery Act, or in any other Act or in any agreement or contract between the vendor and purchaser.

- (4) Subsection (1) applies to all instalment sales, whether the sales are effected by way of a conditional sale agreement or lien note, or by way of a promissory note in the first instance with the delivery at the time of sale or subsequent thereto to the vendor of a chattel mortgage covering the whole or part of the purchase price of the article sold.
- (5) Where an article with respect to which subsection (1) applies is repossessed and not redeemed, or is surrendered to the vendor, the indebtedness of the purchaser in respect of the purchase price of the article is extinguished, and any moneys thereafter paid in respect of the purchase price are recoverable in any court of competent jurisdiction.

Section 18(1) by its very terms is concerned with a restriction on the right of recovery; and, taking it in context, it is, in my view, unreal to conceptualize its provisions as nullifying a purchaser's primary obligation so as to reach the conclusion that a guarantee, otherwise valid, fails for want of subject-matter. The statutory purpose to protect a purchaser of a chattel against liability to answer for the debt incurred by purchase of the chattel, and limiting the seller as against the purchaser to repossession of the chattel and sale thereof, does not extend to sellers and their assignees who, as between themselves, have arranged for financing the purchase, in whole or in part, and have, as between themselves, entered into a recourse agreement should the purchaser default. The risk of default which the seller must endure as against the purchaser is not carried over by the statute to the seller's assignee as against the seller. Their relations inter se are outside the statute.

The main contention of the appellant in the present case rests not so much upon the language of s. 18(1) and related provisions but upon some sentences in the judgment of this Court in the Casselman case and upon the survival effect of those sentences notwithstanding the subsequent enactment of s. 18(5). This provision, unlike s. 18(1), speaks of extinguishment of the debt of the purchaser upon the repossession of the chattel by the seller or upon its surrender to the seller. I do not need to consider whether the seller can refuse to accept a surrender from the purchaser because the seller can, in no event, obtain any pecuniary judgment against the purchaser for unpaid purchase money, and, indeed, s. 18(5) on its face entitles the purchaser to recover any money paid after repossession or surrender.

It was contended by the appellant that s. 18(5) was merely a response to the judgment of Hall C.J.Q.B. (as he then was) in *Traves v. Manchur*[4]. In that case, action was brought upon a post-dated cheque given by the purchaser as the down payment on the purchase of two tractors. The purchaser was still in possession of the tractors when action was taken after the cheque was dishonoured when presented for payment on its due date. Subsequently the tractors were repossessed by the finance company to which the conditional sale contract under which they were sold had been assigned. They were eventually resold at a heavy loss after notice to the purchaser. It was held that the plaintiff was entitled to judgment because the cheque was for a cash payment not included in the secured unpaid balance; it would have been different if it were given to cover part of the unpaid purchase price. Whether or not s. 18(5) was enacted to cure in favour of a purchaser the result reached in *Traves v. Manchur* on its particular facts, it obviously does not touch the case where there is a cash down payment and the lien or security is given for the unpaid balance. I do not see how it affects the issue in the present case on its facts even if the words "the indebtedness of the purchaser in respect of the purchase price of the article is extinguished" be taken to mean exactly that as between seller and purchaser. Those words recognize that a debt existed, and it is repossession or surrender of the chattel that results in its extinction so as to entitle the purchaser to recover anything paid thereon thereafter.

The contention that s. 18(5) has not changed the previous state of the law is, as I have already noted, made on the basis that the law, that is the construction of s. 18(1), was definitively established by the Casselman case and, indeed, that it was not affected by the Edmonton Airport Hotel case because that case turned on the provisions of Alberta legislation relating to land mortgages and agreements for the sale of land.

The Casselman case involved an action on a second promissory note given in effect by Casselman (it was signed in the name of a company not yet incorporated and also by Casselman) to his nominee who purchased under a conditional sale agreement a tractor-trailer in a transaction in which Casselman provided the down payment. The nominee gave a promissory note as additional security for the balance of the purchase price and the conditional sale agreement was assigned to the appellant finance company to which the nominee's note was also endorsed. Subsequently, upon the transfer of the equipment to Casselman under an agreement to which the appellant and the selling dealer gave their consents the second promissory note for the unpaid balance was given to the nominee who endorsed it to the selling dealer and he in turn endorsed it to the appellant. Under the transfer agreement the second note was stated to be collateral only to the conditional sale agreement and to the first note.

On these facts, under which it was clear that the nominee reserved no title as against Casselman, although its interest was subject to a reservation of title in the dealer and in the dealer's assignee, it was held by this Court that the second note stood in no higher position than the first which, being for the unpaid balance of the purchase price, was not enforceable against Casselman by virtue of s. 18(1) of The Limitation of Civil Rights Act. It is true that Judson J. speaking for the Court (there were concurring reasons by Locke J.) said in the course of his reasons that the first note "was not enforceable under the statute because no debt existed to the knowledge of the payee and endorsee" (at pp. 246-47), and also that "there was no debt between Casselman and [his nominee] or between Casselman and the dealer" (at p. 247). But putting these words in context, this was "because by the terms of the statute there could be no personal obligation to pay the unpaid balance in a transaction of this kind" and, further, "the section takes away a personal right of action for the balance of the unpaid purchase price if a lien is reserved" (at p. 247).

I do not think that there is any warrant for the conclusion that the Casselman case stands for the proposition that no debt exists at large. All that the Court was concerned with there was whether, as between purchaser and seller's assignee, there was an enforceable obligation through a promissory note when that note was given for the unpaid balance of the purchase price of an article upon which a lien had been reserved. To say in that context that no debt existed does not lend support to a submission by the seller that it is also discharged from any obligation which it assumed to its assignee and that it can rely on s. 18(1) for that result.

It is on this very point that the Edmonton Airport Hotel case is persuasive. In so far as the action in that case was taken by the respondent finance company against the appellant Superstein as guarantor of the other appellant, it parallels the situation in the present case. What Judson J. said there is applicable here, namely, that although there was an unenforceable debt against the mortgagor this was no defence, in the circumstances of the case, to the liability of the guarantor.

The submissions of the appellant would treat s. 18(1) as affording refuge to a seller from a claim of its assignee as well as a refuge for the purchaser from a claim by the seller for unpaid purchase money. Neither the language of the provision nor the purpose which animated it supports such a result. Far from denying the existence of a debt between purchaser and seller, s. 18 is founded upon its existence and then proceeds to confine the means of its realization against the purchaser. I see nothing in it which destroys the liability of the seller, as guarantor, to its assignee. We are not concerned here with situations where the primary obligation is in its inception illegal or is beyond the power of the obligor, nor with situations where the creditor has engaged in conduct which releases the guarantor. There is analogy (which I need not pursue) to the present case in bankruptcy cases which hold that the discharge of a primary debtor by operation of law does not release the guarantor: see Rowlatt, *Principal and Surety*, 1936, 3rd ed., at p. 271.

I do not find it necessary to determine whether there was in this case, under the assignment and agreement between the appellant and respondent, an independent covenant of indemnity in addition to a guarantee. In either case the respondent is entitled to succeed. I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the defendant, appellant: Pierce, Hleck, Kanuka, Goetz, Thuringer, Kaufman & Semenchuck, Regina.

Solicitors for the plaintiff, respondent: Pedersen, Norman, McLeod & Todd, Regina.

[1] [1972] 4 W.W.R. 530, 27 D.L.R. (3d) 197.

[2] [1965] S.C.R. 441.

[3] [1960] S.C.R. 242.

[4] (1958), 26 W.W.R. 158.

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