

CANADA / JUDGMENT

Prowal v. Buttar

2005 BCSC 288

COURT

Supreme Court of British Columbia

DECIDED

2 March 2005

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2005 BCSC 288 Prowal v. Buttar IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Prowal v. Buttar, 2005 BCSC 288 Date: 20050302 Docket: M021186 Registry: Vancouver Between: Paul Prowal Plaintiff And Manjit Buttar, W.S. Leasing Ltd., and Erana Boire as representative of Raymond Douglas Boire, Deceased Defendants And Insurance Corporation of British Columbia Third Party

- and - Docket: M015676 Registry: Vancouver Between: Erana Boire as representative of Raymond Douglas Boire, Deceased Plaintiff And Manjit Buttar and W.S. Leasing Ltd. Defendants And Insurance Corporation of British Columbia Third Party Before: The Honourable Mr. Justice Slade Reasons for Judgment Counsel for the Plaintiff, Paul Prowal: D. Cave Counsel for the Defendant, W.S. Leasing Ltd. and the Third Party, I.C.B.C.: R.F. Hungerford Counsel for the Defendant/Plaintiff, Erana Boire: R. Gibbens Date and Place of Hearing: February 23, 2005 Vancouver, B.C. I. INTRODUCTION

- [1] W.S. Leasing Ltd. is sued as the owner of a motor vehicle which was involved in an accident in March, 2001.
- [2] Action No. M021186 is an action for personal injuries allegedly sustained in the motor vehicle accident. Action No. M015676 is an action brought pursuant to the Family Compensation Act, R.S.B.C. 1996, c. 126, by the widow of one of the occupants of the motor vehicle involved in the motor vehicle accident who died as a result of the accident.
- [3] It is, for the purposes of this application, common ground that Manjit Buttar was in possession of the vehicle pursuant to an agreement with W.S. Leasing Ltd. dated January 26, 2001.
- [4] W.S. Leasing seeks as order that the claims of the plaintiffs against it be dismissed. II. THE ISSUE
- [5] The issue is whether the agreement is a conditional sale agreement. If it is, W.S. Leasing would not, due to the operation of s. 86(3) of the Motor Vehicle Act, R.S.B.C. 1996, c. 318, be considered the owner, and would not be vicariously liable as an owner within the meaning of s. 86(1) of the Motor Vehicle Act. III. THE AGREEMENT

- [6] The agreement is styled as a "Business Lease Agreement". It provides for a down payment of \$1,200, and monthly payments of \$421.82. The term of the lease commences on January 26, 2001, and expires January 26, 2004. The total of all monthly payments is \$15,166.08.
- [7] Paragraph six of the agreement provides: Residual Value The lessee agrees to pay to the Leasing Company \$7,000.00 which is the "Undepreciated Book Value" of the Vehicle on the expiration of the term, representing a genuine pre-estimate of the fair market value plus all applicable taxes OR arrange to have the Vehicle sold in a commercially reasonable manner and adjust the proceeds as indicated in the Surrender and Disposition of Vehicles section.
- [8] Under the heading "Additional Terms and Conditions (Business)", the following provisions are included: VEHICLE TITLE AND OWNERSHIP This Lease is intended to be a true lease for all purposes, including, without limitation, tax and personal property security laws. The Leasing Company is the owner of the Vehicle and, at all times, title to and ownership of the Vehicle shall remain with the Leasing Company. USE OF THE VEHICLE During the Term, the Lessee shall be entitled to use the Vehicle for the purpose set out on page one of this Lease. SECURITY DEPOSIT The Lessee shall pay to the Leasing Company upon signing this Lease a security deposit in the amount specified on page one of this Lease. The security deposit shall be refundable to the Lessee and shall be returned to the Lessee, without interest, upon the expiration of the Term and upon the return of the Vehicle to the Leasing Company in good condition, normal wear and use excepted. WARRANTIES Upon expiration of the Term, the Lessee shall re-assign to the Leasing Company every warranty and guarantee made by the manufacturer with respect to the Vehicle and the equipment located on the Vehicle. NO EARLY TERMINATION The Lessee does not have the right to buy out or terminate this Lease prior to the expiration of the Term, except with the consent of the Leasing Company. OWNERSHIP The Lessee and the Leasing Company specifically agree that this Lease is intended to be treated as and constitutes a true lease for all purposes including, without limitation, income and other tax and personal property security and credit laws. Accordingly, the Leasing Company, is and remains the owner of the Vehicle and retains all the benefits of ownership. Also, the Lessee specifically acknowledges that no verbal understanding or representation was made by or on behalf of the Dealer of the Leasing Company to the Lessee that the Lessee was being granted any right or option to acquire the Vehicle or the rights of the Dealer or the Leasing Company in respect of the Vehicle other than as provided in section 6 of the lease Agreement. (emphasis added)
- [9] Paragraph 6 must be read together with clauses in the agreement which address the obligations of the parties upon the surrender and disposition of the leased vehicle. These clauses provide for an adjustment of proceeds, as between the lessor and the lessee, if the vehicle is sold during the term of the lease. Section 6 incorporates those adjustments where the lessee opts to sell the vehicle after the expiry of the lease term. IV. THE LAW

- [10] Section 86(3) of the Motor Vehicle Act provides: If a motor vehicle has been sold, and is in possession of the purchaser under a contract of conditional sale by which the title to the motor vehicle remains in the seller until the purchaser becomes the owner on full compliance with the contract, the purchaser is deemed an owner within the meaning of this section, but the seller or the seller's assignee is not deemed to be an owner within the meaning of this section.
- [11] In *Shchoenbach v. Truong* (1996), 19 B.C.L.R. (3d) 313 (C.A.), McEachern C.J. applied the following definition in finding that a lease option is a conditional sales agreement within the meaning of s. 79(3), now 86(3) of the Motor Vehicle Act (at ¶9): This court decided in *Re Nishi Industries*, [1978] 6 W.W.R. 736 (B.C.C.A.), that a lease option agreement is a conditional sales agreement, which is defined in the Sale of Goods on Condition Act R.S.B.C. 1979, c. 373: "conditional sale" means a contract...
- (b) for the hiring of goods by which it is agreed that the hirer shall become, or have the option of becoming, the owner of the goods on full compliance with the terms of the contract.
- [12] It was held in *Yeung v. Au*, [2004] B.C.J. No. 2623, 2004 BCSC 1648, that the foregoing definition, which was taken from the Sale of Goods on Condition Act, survived the repeal of the latter act, and the introduction of the Personal Property Security Act (at ¶55).
- [13] The agreement does not set out, in express terms, that the lessee has an option to purchase the vehicle on the termination of the lease. However, the terms of the agreement leave no room for a conclusion other than that the lessee has this very option. I refer to the last sentence of the "Ownership" clause, which reads: Also, the Lessee specifically acknowledges that no verbal understanding or representation was made by or on behalf of the Dealer of the Leasing Company to the Lessee that the Lessee was being granted any right or option to acquire the Vehicle or the rights of the Dealer or the Leasing Company in respect of the Vehicle other than as provided in section 6 of the lease Agreement. (emphasis added)
- [14] Section 6 of the lease agreement establishes a fixed amount payable by the lessee to exercise the option. The lessee may also opt to have the vehicle sold and adjust the proceeds as indicated in the "Surrender and Disposition of Vehicles" section.
- [15] The plaintiffs refer to *Seawest Financial Corp. v. Thomas Grey Development Ltd.* (1983), 47 B.C.L.R. 192 (Co. Ct.) as authority for their position that the agreement does not come within the definition of conditional sales agreement in the Sale of Goods on Condition Act. In *Seawest Financial Corp., MacKinnon*, Co. Ct. J. (as he then was), found that the agreement in issue gave the lessee an option to bid, not an option to purchase. He found that (at ¶11): One of the essentials of an option to purchase is therefore lacking, i.e. the unilateral right of the lessee to compel the lessor to sell the car.
- [16] In the present matter, it is clear that the agreement gives the lessee the option to either purchase the vehicle at a fixed price, or sell the vehicle and split the proceeds with the lessor. The essential element of an option to purchase is present. V. DISPOSITION

[17] The actions as against W.S. Leasing Ltd. are dismissed, with costs. "H.A. Slade J." The Honourable Mr. Justice H.A. Slade

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