

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 333

Suit No 6646 of 1985

Between

Orchard Credit Pte Ltd

... Plaintiff

And

Lim Check Meng

... Defendant

GROUND OF DECISION

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Orchard Credit Pte Ltd v Lim Check Meng

[1992] SGHC 333

Suit No 6646 of 1985
Lim Teong Qwee JC
29 December 1992

1 JUDGMENT:

2 GROUNDS OF DECISION

3 By a hire purchase agreement contained in an offer in a printed form dated 25 February 1985 made by the defendant Lim Check Meng ("Lim") and an acceptance printed at the foot of the form also dated 25 February 1985 signed for the plaintiff Orchard Credit Pte Ltd ("Orchard Credit") by its manager Heng Jee Pang ("Heng") Orchard Credit as owner agreed to let on hire to Lim and Lim agreed to take a Mercedes Benz 450 SLC motorcar upon the terms and conditions referred to in the offer. The hiring commenced on 25 February 1985 and it was agreed that Lim would pay rent instalments of \$2,795.83 per month commencing on 25 March 1985 for 24 months and that upon full payment of these instalments and the due compliance with all the other terms and conditions of the agreement he would have the option to become the owner of the vehicle. Lim took possession of the vehicle but never paid any of the 24 instalments. By this action commenced by writ issued on 10 July 1985 Orchard Credit claimed the instalments which had then fallen due and all other instalments becoming

due down to the date of judgment and interest. Orchard Credit also claimed \$7,234 for money paid to the Registrar of Vehicles ("Registrar") on 28 November 1988 for road tax.

4 Lim denied the claim. At the trial he was still in possession of the vehicle. He was not in continuous possession of the vehicle since the commencement of the hire though. On 30 March 1988 Orchard Credit repossessed the vehicle for failure on the part of Lim to pay any of the instalments then due. Lim made an application in this action for an order that Orchard Credit release the vehicle to him and on 10 November 1988 an order was made for the vehicle to be released to him upon his providing a banker's guarantee "for the sum of \$70,000.00 being the sum of < Orchard Credit's > claim in this action and upon the undertaking of < Lim > not to dispose of < the vehicle > until after the hearing of this action". The repossession would have terminated the agreement but it does not appear on what footing the vehicle was released to Lim and whether any new agreement was made between the parties. I go back now to the events prior to the repossession.

5 On 23 March 1985 which was 2 days before the first instalment was due the Registrar seized the vehicle apparently for failure to pay the registration fee of \$1,000, the additional registration fee of \$41,811 and arrears of road tax for the period January to June 1985 amounting to \$2,938. The vehicle had been bought from one Lee Tian Meng ("Lee") by Orchard Credit at the request of Lim as stated in the offer immediately prior to the commencement of the hire and had been registered as owned by Lee. Lee had paid the registration fee, the additional registration fee and the tax for the period January to June 1985 to the Registrar by cheque but his cheque had been dishonoured. Upon the making of the hire purchase agreement the vehicle was to have been transferred to Lim and the transfer registered. In fact Lee forged the registration of the transfer. Lee

was convicted of forgery for the purpose of cheating on 22 September 1986. The vehicle was eventually returned to Lim in September 1987 after he had paid to the Registrar the registration fee, the additional registration fee and accumulated taxes remaining unpaid.

6 Since the commencement of the hire on 25 February 1985 Lim had been out of possession of the vehicle from 23 March 1985 to September 1987 and again from 30 March 1988 to December 1988. He raised the following defences to the claim: (1) The hire purchase agreement was void. (2) The hire purchase agreement was a sham and void as no consideration was paid by him. (3) Orchard Credit's title to the vehicle was defective "at the material time" (presumably immediately before the hire purchase agreement was made) and he was entitled to treat the agreement as void. It is not pleaded whether he had in fact elected to do so. (4) The hire purchase agreement was void for breach of an implied condition of sale that the title to the vehicle was unencumbered. (5) Orchard Credit had wrongfully repudiated the hire purchase agreement when it repossessed the vehicle on 30 March 1988 and he was entitled to treat the wrongful repudiation as discharging him from performance of his own obligations under the hire purchase agreement or in the alternative he was entitled to set off \$44,280 against any amount found to be due to Orchard Credit. Again there is no election pleaded. (6) If the hire purchase agreement was valid, then he was entitled to set off \$44,280 paid by him to the Registrar to get the vehicle back against any amount found to be due to Orchard Credit. (7) And finally the only amount due to Orchard Credit was \$10,720 which is said to reflect the difference between the purchase price of \$95,000 and \$40,000 paid to Lee and \$44,280 paid to the Registrar.

7 At the trial Mr Kanisan said he was not proceeding with any of the grounds of defence alleging that the hire purchase agreement was void. He was

also not claiming any relief on the ground of wrongful repudiation. That left only the last two. I gave judgment for Orchard Credit for arrears of instalments together with interest from the due date of each instalment down to the date of judgment at 16% per annum but excluding the period 30 March 1988 to 15 December 1988 when the vehicle was repossessed and eventually released pursuant to the order of court dated 10 November 1988. No interest was awarded for this excluded period and similarly no instalment was to fall due during the period and subsequent instalments were to be postponed accordingly. I dismissed Orchard Credit's claim for \$7,234. I awarded costs to Orchard Credit. Lim has now given notice of appeal.

8 Set off for money paid to the Registrar

9 It was not in dispute that there is an implied warranty that during the currency of the hire purchase agreement Lim was entitled to quiet possession of the vehicle and that there would be a breach of this warranty if the seizure of the vehicle by the Registrar was a lawful act. I was referred to the following passage in *Hire-Purchase Law And Practice* by R M Goode (2nd Edition) at page 223:

10 "There is an implied warranty in a hire-purchase agreement that the owner, in addition to putting the hirer into possession of the goods, will leave him in peaceful possession of them during the currency of the agreement. This warranty is broken if the hirer's enjoyment of possession is interfered with either by the owner himself or by the lawful acts of third parties."

11 In my opinion this correctly states the law. The substantial question in this case is whether the Registrar was entitled to seize the vehicle on 23 March 1985.

12 Section 11 of the Road Traffic Act (Cap 276) provides:

13 "(1) Subject to the provisions of this Act and the rules, a tax shall be charged in respect of -

14 (a) the first registration of every vehicle under this Act; and

15 (b) every vehicle used or kept on any road in Singapore,

16 and the tax shall be paid upon a licence to be taken out by the person keeping the vehicle.

17 (2) The tax chargeable under subsection (1)(a) in respect of a vehicle shall be of such an amount as the Minister may prescribe from time to time and the Minister may prescribe different taxes for vehicles of different classes, categories or descriptions or vehicles used for different purposes.

18 (3) The tax chargeable under subsection (1)(b) in respect of a vehicle of any description shall be chargeable by reference to such annual or semi-annual rate as may be prescribed by the Minister from time to time.

19 "

20 The tax chargeable under s 11(1)(a) of the Act is prescribed as a fee payable on the registration of a vehicle under r 5 of the Road Traffic (Motor Vehicles, Registration and Licensing) Rules and an additional fee payable on the first registration in Singapore under r 6. The registration fee in this case was \$1,000 and the additional registration fee was \$41,811. The tax chargeable under s 11(1)(b) of the Act is prescribed as a fee payable for a licence under r 33 of the Rules. It was \$2,938 for 6 months from January to June 1985.

21 Section 30(1) of the Act provides:

22 "If any tax payable in respect of any vehicle remains unpaid after one month commencing from the date of expiry of the licence last in force for the vehicle, the Registrar may issue a warrant in the prescribed form directing the officer named therein to seize the vehicle and recover the tax due from the proceeds of the sale of the vehicle."

23 The Registrar's power to issue a warrant for the seizure of the vehicle arises (1) when any tax payable in respect of the vehicle is unpaid, and (2) when such tax remains unpaid for one month from the date of expiry of the licence last in force for the vehicle. On 23 March 1985 when the vehicle was seized the registration fee of \$1,000 and additional registration fee of \$41,811 chargeable under s 11(1)(a) of the Act and the licence fee of \$2,938 for a licence for 6 months from January to June 1985 chargeable under s 11(1)(b) of the Act were unpaid since the cheque given in payment had been dishonoured. However, this was the first occasion when a licence was taken out. There was no licence last in force. The first and only licence then in force was the licence taken out for 6 months which would not expire until 30 June 1985. At no time before then was any tax unpaid for "one month from the date of expiry of the licence last in force". It may be observed that in s 15 prescribing a penalty express provision is made for a case where there is no licence last in force.

24 In my judgment s 30(1) of the Act does not apply to a case of any tax remaining unpaid but which is payable on a licence first taken out in respect of the vehicle. The seizure of the vehicle by the Registrar on 23 March 1985 was not a lawful act and such seizure was accordingly not a breach of the implied warranty of quiet possession. It is alleged in para 13 of the defence that Lim paid \$44,280 to the Registrar on 15 September 1987 to recover possession of

the vehicle. In evidence he referred to the letter from the Registrar dated 5 September 1987. It appears that \$44,280 is the sum of the registration fee of \$1,000, the additional registration fee of \$41,811 and the adjusted licence fee of \$1,469 for the period 23 January 1985 to 31 March 1985. Lim said he paid \$47,283 which included the accumulated outstanding licence fees and late payment and warrant fees. As there was no breach of the implied warranty he was not entitled to set off the amount paid to the Registrar.

25 It was also submitted by Mr Kanisan that this vehicle had been imported from Hongkong and assuming that it was last registered in Hongkong it must have had a licence last in force before 23 January 1985 when it was first registered in Singapore. I saw no reason for making any such assumption and further under s 8 of the Act "licence" in s 30(1) meant a licence issued under Part I of the Act. I was unable to agree with this submission.

26 I disallowed the set off and gave judgment for Orchard Credit for the arrears of instalments with interest at the rate stipulated in the hire purchase agreement.

27 Purchase price less amounts paid to Lee and the Registrar

28 The case was put in this way. Lim agreed to buy the vehicle from Lee for \$95,000. He paid \$40,000 to account leaving a balance of \$55,000 and Lee arranged for this to be paid to Orchard Credit. The hire purchase agreement was then entered into to provide for payment by Lim of \$55,000 and terms charges by 24 monthly instalments. No more was pleaded in the defence to show how he was entitled to a set off in respect of money paid to the Registrar other than the alleged breach of warranty of quiet possession which I have already

considered. In my judgment there was no reasonable ground of defence in the case as pleaded.

29 Excluded period

30 Orchard Credit repossessed the vehicle on 30 March 1988 and it was released on 15 December 1988 pursuant to the order of court dated 10 November 1988. Both counsel were unable to tell me on what footing the release was ordered. The repossession would have terminated the hire purchase agreement and Orchard Credit would have been entitled to keep the vehicle but the vehicle was ordered to be released and it was released. Counsel were unable to assist me as to the consequences of the repossession and release in the circumstances of the case. On the bare facts such as they were I took the view that the repossession operated to suspend the hire purchase agreement and since Orchard Credit was given a banker's guarantee in respect of its claim it would be just and fair that no interest should accrue to any amount due for unpaid instalments during the period Lim was out of possession on this ground. I accordingly excluded this period for the purpose of interest.

31 Claim for \$7,234

32 Heng gave no evidence on this claim under examination in chief but under cross-examination this is his evidence:

33 "Q: Payment of road tax - \$7,234. For what period?

34 A: Can't recall."

35 He gave no other evidence.

36 The statement of claim says Orchard Credit paid this on 28 November 1988 for road tax for the period it had possession of the vehicle. It had possession from 30 March 1988 to 15 December 1988. Since the hire purchase agreement was suspended from operation during this period it was not open to Orchard Credit to rely on its terms to require Lim to make this payment. As pleaded the payment to the Registrar was for tax in respect of the vehicle for the period it was in Orchard Credit's possession. In my judgment it was not entitled to recover from Lim the amount paid and I dismissed this claim.

Lim Teong Qwee JC

Josephine Low for the plaintiff
M P Kanisan and Chan Kia Pheng for the defendant
