

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1993] SGCA 86

CA 178/1992

Between

Lim Check Meng

... Appellant

And

Orchard Credit Pte Ltd

... Respondent

GROUND OF DECISION

Road Traffic — Offences; Credit and Security — Hire-purchase — Duties;
Credit and Security — Hire-purchase — Duties; Words and Phrases; Words
and Phrases

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Lim Check Meng v Orchard Credit Pte Ltd

[1993] SGCA 86

CA 178/1992

Karthigesu JA; L P Thean JA; Yong Pung How CJ

27 November 1993

1 Cur Adv Vult

2 This is an appeal from the decision of Lim Teong Qwee JC in which he allowed the claim by the respondents for arrears of instalments of hire and interest under a hire purchase agreement dated 25 February 1985 made between them and the appellant relating to the hire of a motor vehicle, a Mercedes Benz 450 SLC. Also in that decision, the learned judicial commissioner disallowed a claim by the respondents for \$7,234 being road tax for the vehicle which they had paid for the period from 30 March 1988 to 15 December 1988 while the vehicle was in their possession. There was no respondent's notice filed against this part of his decision.

3 The material facts that led to this appeal are not seriously in dispute and are as follows. One Lee Tian Meng ('Lee') offered to sell to the appellant a Mercedes Benz 280 SE for the sum of \$90,000. The offer was accepted and the appellant paid to Lee a total sum amounting to \$40,000 in three instalments. However, Lee did not deliver the Mercedes Benz 280 SE to the appellant as agreed and instead offered to the appellant another car, a Mercedes Benz 450

SLC, for the sum of \$95,000 in place of the Mercedes Benz 280 SE. The appellant agreed to take the Mercedes Benz 450 SLC at that price, but as he did not have the means to pay the balance of \$55,000, both he and Lee approached the respondents seeking finance for this amount. In consequence, the respondents agreed to purchase the vehicle from Lee and to let it to the appellant on hire purchase terms. On or about 25 February 1985, Lee made out an invoice to the respondents in respect of the sale of the vehicle to them and on the same day, the appellant signed a hire purchase agreement (`the agreement`) with the respondents whereby he acknowledged that he had requested the respondents to purchase the Mercedes Benz 450 SLC (`the vehicle`) and let it to him on hire on terms and conditions contained in the agreement. Under the agreement, the hiring commenced on 25 February 1985 and the appellant agreed to pay the hire instalments at the rate of \$2,795.83 per month commencing from 25 March 1985 for 24 months and upon full payment of all the hire instalments and due compliance with all the terms and conditions of the agreement, he would be entitled to exercise the option to become the owner of the vehicle.

4 After the agreement was signed, Lee was permitted to attend to the registration of the transfer of the vehicle to the appellant with the Registry of Vehicles (`ROV`). There was a dispute as to the circumstances in which Lee was so permitted to attend to the registration. According to the respondents, one Heng Jee Pang (`Heng`), the managing director of the respondents, told the appellant and Lee that the respondents themselves would effect registration of the transfer of the car with the ROV. Lee then told Heng that he needed the money urgently and offered to attend to the registration personally, but Heng did not agree. At that point, the appellant also offered to go with Lee to the ROV to effect the registration. Heng agreed to that and the appellant and Lee left the respondents' office ostensibly for the ROV. They returned later with the log

book on which the registration of the transfer of the vehicle to the appellant was shown to have been effected. The respondents then paid the sum of \$55,000 to Lee and the appellant took possession of the vehicle. However, the appellant's version of the events was markedly different. He said that he was attended to at the respondents' office not by Heng but by one Tay, another employee of the respondents. It was Tay who agreed to provide finance for the sum of \$55,000 and who told him that it would take at least one week to effect registration of the transfer as it was the Chinese New Year period at that time. The appellant stated that he told Tay that he needed the car urgently, and that Lee offered to attend to the registration so as to facilitate the hand over of the vehicle. Tay refused but finally gave in after some persuasion by Lee. The appellant denied that he accompanied Lee to the ROV. However, nothing turns on the question as to which of the two versions was to be accepted. The court below made no finding of fact on this point.

5 On 23 March 1985, two days before the first instalment of hire was due under the agreement, the Registrar of Vehicles ('the registrar') seized the vehicle for failure to pay (i) the additional registration fee of \$41,811, (ii) the registration fee of \$1,000 and (iii) the arrears of road tax for the period from January to June 1985 amounting to \$2,938. It transpired that Lee, prior to the date on which he was supposed to have effected registration of the transfer, had given to the ROV a cheque for the total amount which was subsequently dishonoured. In addition, it was discovered that the registration of the transfer to the appellant appearing in the log book which was supposedly to have been effected at the ROV was forged by Lee. Lee was subsequently charged with, and convicted of, cheating on 22 September 1986.

6 In the meanwhile, on 10 July 1985, the respondents, not having received from the appellant any instalments of hire under the agreement, took out a writ

against him claiming all the arrears of instalments of hire that had fallen due and further arrears as would be falling due plus interest. The claim was resisted, and the defence filed at that time was that the respondents were not the owners of the vehicle as it was never registered under s 10(1) of the Road Traffic Act (Cap 276) ('the Act') and it was impounded by the registrar. Accordingly, it was averred that the respondents had no rights over the vehicle and the agreement was void. After the defence was filed, for about two years, no further step was taken by either party in the proceedings.

7 Not surprisingly, the action was overtaken by events. The vehicle remained with the ROV until 30 April 1987 when a disposal inquiry was held and the vehicle was ordered to be released to the appellant, and it was so released to him. However, subsequently, the vehicle was again seized by the registrar for non-payment of registration fees and road tax. Finally, on 15 September 1987, the appellant paid to the ROV the registration fees and road tax totalling \$44,280 and the vehicle was released to the appellant. He was eventually registered with the ROV as the owner of the vehicle.

8 In March 1988, however, the respondents invoked their rights under the agreement and repossessed the vehicle for failure to pay the instalments of hire, and soon thereafter the necessary notice was taken out for continuation of the proceedings. The appellant made an application to court for release of the vehicle, and on 10 November 1988 an order was made for the release on the appellant furnishing a banker's guarantee for the amount of \$70,000. The vehicle was released to the appellant on 15 December 1988. However, the respondents, in the meanwhile, had paid road tax in respect of the vehicle amounting to \$7,234 for the period in which the car was in their possession.

9 Before the action came on for trial, the parties amended their pleadings. The respondents included a claim of \$7,234 which they had paid to the ROV as road tax for the period when they had possession of the car. The appellant amended substantially his defence and raised several defences. However, when the action came on for trial, only two defences were pursued and they were as follows:

- (a) that he was entitled to set off a sum of \$44,280 paid to the registrar for registration fees and road tax, and
- (b) that the only amount due to the respondents was \$10,720 being the difference between the sum of \$55,000 due under the agreement and \$44,280 paid to the registrar.

10 In effect, there was only one defence and that was the right of set-off against part of the claim. The respondents filed a reply which was subsequently amended. By para 16 of the amended reply, the respondents raised the following obligations of the appellant under the agreement. It was averred that:

- (a) under cl 4(n) of the agreement, it was the appellant's obligation to take delivery of the vehicle and there was an implied warranty that it was the appellant's duty to effect registration of the transfer of the vehicle so that he could lawfully use the vehicle, and
- (b) under cl 4(m) of the agreement, the appellant undertook to comply with all proper obligations relating to the vehicle or its possession or use and not to do or suffer to be done anything with regard to the vehicle which would in any way prejudice the respondents' rights.

11 The respondents further averred that the appellant, in breach of these obligations, failed to ensure that the vehicle had been duly registered and transferred to him.

12 The action was heard before Lim Teong Qwee JC. He held that there was an implied warranty that during the currency of the agreement the appellant was entitled to quiet possession of the vehicle and that this warranty would be broken if the appellant's enjoyment of the possession was interfered with either by the owner himself or by any lawful act of a third party. He then considered the question whether the registrar was entitled to seize the vehicle on 23 March 1985, and having examined ss 11 and 30 of the Act he came to the conclusion that the registrar was not entitled to seize the vehicle on 23 March 1985 under s 30(1). He therefore held that the seizure was 'not a lawful act and the seizure was accordingly not a breach of the implied warranty of quiet possession'; and as there was no breach of the implied warranty, the appellant was not entitled to set off the amount paid to the registrar. The learned judicial commissioner further held that apart from the argument on the breach of warranty of quiet possession, nothing more was pleaded to show that the appellant was entitled to set off the amount claimed. He found that there was no reasonable grounds for the defence and the appellant was not entitled to set off the amount as averred by him. In the result, he gave judgment to the respondents for the arrears of instalments of hire with interests at the rate stipulated in the agreement. However, as the vehicle was repossessed by the respondents and was in their possession for the period from 30 March 1988 to 15 December 1988, he excluded this period in the computation of interest. Finally, on the claim by the respondents for \$7,234 being the road tax for the period when the vehicle was in their possession, the learned judicial commissioner was of the view that the agreement was suspended during this period, and held that it was not open to the respondents to rely on the terms of the agreement and that the respondents were therefore not entitled to recover this sum from the appellant.

13 Before us, it was argued by counsel for the appellant that the learned judicial commissioner was in error in holding that the registrar has no power to seize the vehicle. Counsel relied on s 95 of the Act which, so far as material, provides as follows:

When any person is found ... to be using a vehicle in contravention of any provision of this Act ... the Registrar or any officer authorised in writing in that behalf by the Registrar on production of his authority may, whenever it appears ... that such action is necessary to cause a discontinuance of the offence, take or cause to be taken, ... the vehicle ... to a place of safety there to be kept until released by order of ... the Registrar, ...

14 This section was not brought to the attention of the learned judicial commissioner. We agree with the submission made on behalf of the appellant that this section gives to the registrar the power to seize the vehicle if it was used in contravention of the Act. The registration and additional registration fees were tax chargeable under s 11(1)(a) of the Act and the rates were prescribed under rr 5 and 6 of the Road Traffic (Motor Vehicles, Registration and Licensing) Rules (`Rules`), and the road tax was chargeable under s 11(1)(b) of the Act and was prescribed as a fee payable for a licence under r 33 of the Rules. The use of the vehicle by the appellant at the material time without payment of the outstanding registration fees and road tax was clearly in contravention of the Act. On this point, we need to refer only to ss 15 and 17 which, so far as relevant, provide:

(15) Any person who uses or keeps on any road any vehicle for which a licence is not in force, ... shall be guilty of an offence ...

(17) Subject to this section, a person who for any period keeps a vehicle in respect of which tax under this Act has at any time become chargeable shall, ... be liable to pay tax under this Act in respect of the vehicle for that period.

15 Having regard to these provisions of the Act, we are of the opinion that the seizure of the vehicle by the registrar was not an unlawful act. It is not necessary for us to go further and express any view on the construction of s 30(1) of the Act as determined by the learned judicial commissioner.

16 We now turn to the main issue in this appeal which is this: on whom lies the obligation to pay the outstanding registration fees and road tax which were payable in respect of the vehicle as at the date on which the agreement was made? This issue may be resolved by considering first the positions of the respective parties at common law and secondly the extent to which such positions have been varied by any provision of the Act and the agreement. It is common ground that the Hire-Purchase Act (Cap 125) does not apply to the transaction made between the parties.

17 We revert to the basic facts before us. Prior to 25 February 1985, Lee was the owner of the vehicle. At the request of the appellant, the respondents purchased the vehicle from Lee. At the time of purchase, the registration fees and road tax were chargeable in respect of the vehicle and were not paid. The person responsible for paying these outstanding sums was undoubtedly Lee, but he had not paid them and had sold the vehicle to the respondents. Immediately after the purchase, the respondents and the appellant entered into the agreement, and what was made between them was basically an agreement for the hire of the vehicle by the appellant from the respondents at a monthly charge or rent with an option to the appellant to acquire the vehicle on the expiry of the agreement. Until he exercised the option, the appellant was only the hirer of the vehicle. In these circumstances, unless the agreement otherwise provides, he has no responsibility for paying the outstanding registration fees and road tax. What then is the position of the respondents? They had not agreed with Lee to assume the obligation of paying the outstanding sums. Nonetheless they purchased a

vehicle burdened with these sums and so long as the sums remained unpaid, they continued to be `chargeable` in respect of the vehicle.

18 The next question is: what is the nature of these payments? On this, we turn to s 11 of the Act which, in so far as material, provides:

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

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

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

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

...

(5) For the purposes of the tax, in so far as it is **chargeable** in respect of the use or keeping of a vehicle on a road, a vehicle shall be deemed

(a) to be **chargeable** with the like tax as on the occasion of the issue of the vehicle licence or last vehicle licence issued for the vehicle under this Act, and to be so chargeable by reference to the prescribed rate as applicable to the vehicle on that occasion; or

(b) if no vehicle licence has been issued for the vehicle under this Act, to be **chargeable** by reference to the prescribed rate applicable to the vehicle. [Emphasis added.]

19 It is significant that throughout the section, the words used in relation to the levy or imposition of tax on a vehicle are `charged` and `chargeable`. Further, to enforce payment of the tax chargeable under s 11, the Act by s 30(1) empowers the registrar to issue a warrant directing a seizure of the vehicle where tax in respect thereof is unpaid and to recover the tax from the proceeds of sale of the vehicle. It is implicit in that subsection that the registrar has power to sell the vehicle seized. Section 95 empowers, among others, the registrar to take any vehicle used in contravention of the Act and place it in a safe place, and also

confers on the registrar the power to sell the vehicle and apply the proceeds from the sale `in payment of any licence fees` which may be due. Having regard to these provisions of the Act, it seems to us that the tax `chargeable` in respect of a vehicle under s 11 of the Act is effectively in the nature of a charge or encumbrance on the vehicle. Until such tax is paid or discharged, it continues to be attached to the vehicle. That being the position, it follows that in this case the respondents having purchased the vehicle without having the `encumbrance` thereon discharged by the previous owner became liable to pay the tax then outstanding and unpaid, and that liability remained with them when they hired out the vehicle to the appellant under the agreement.

20 There is another reason why, as between the appellant and the respondents, it was the obligation of the latter to pay the outstanding registration fees and road tax. Arising from the agreement, there was an implied warranty that the appellant as the hirer would have quiet possession of the vehicle during the currency of the agreement. This implied warranty was accepted by the respondents: see para 15 of their amended reply. In view of this implied warranty, the respondents were under an obligation to ensure that the outstanding registration fees and road tax were duly paid by Lee (who was the owner at the material time) and in default of payment by him they themselves would have to pay the same.

21 We next turn to consider the obligations of the parties under the Act. It was argued by counsel for the respondents that the registration fees and road tax chargeable in respect of the vehicle relate to the maintenance and use of the vehicle and the appellant was the person liable to pay them. She relied on s 17 of the Act. We do not think that s 17 supports her argument. Under s 17, the appellant was only liable to pay any tax under the Act in respect of the vehicle for the period in which he kept the vehicle. He did not keep the vehicle until 25

February 1985 or immediately thereafter. Hence, even under the Act, he was under no obligation to pay the outstanding registration fees and road tax payable as at the date of the agreement.

22 We next turn to consider whether such obligation of the respondents has been varied by the terms of the agreement. As pleaded by the respondents in their amended reply, there are only two provisions thereof on which they relied, namely, cl 4(m) and (n).

23 We propose to consider the provisions in their inverse order. Clause 4(n) provides as follows:

(4) The hirer agrees:

...

(n) that it is the hirer's obligation to obtain delivery of the goods.

24 This clause only imposes on the appellant the obligation `to obtain delivery` of the vehicle. But the payment of outstanding registration fees and road tax of the vehicle is not a necessary incidence of obtaining delivery of the vehicle and clearly does not fall within the ambit of this provision. It was, however, pleaded that there was an implied warranty arising from this provision that it was the appellant's duty to effect registration of the transfer of the vehicle so that he could lawfully use the vehicle. In our opinion, the obligation under this clause does not give rise to such an implied warranty. Even if there is such an implied warranty, it does not extend to assuming an obligation to pay all outstanding registration fees and road tax then payable. At most, it extends to cover expenses, if any, incurred in obtaining delivery of the vehicle. In our opinion, no such warranty as that pleaded by the respondents can be implied from this provision.

25 Counsel relied on the case of ***Bentworth Finance Ltd v Lubert & Anor***.¹ There, by a hire-purchase agreement, the plaintiffs let a second-hand motor car to the first defendant and the second defendant agreed to indemnify the plaintiffs against all loss and damage which they might suffer arising from the agreement. The first defendant obtained the car from dealers who had since disappeared. The car was delivered to the first defendant but was left outside her house and no log book was given to her with the result that she could not use the car. After some months, the plaintiffs repossessed the car. It was held that there was an implied condition of the hire-purchase agreement that the log book should be supplied, that until it was supplied the car could not be used as the first defendant could not get it licensed or pay tax, and that as the log book was not delivered the hire-purchase agreement did not come into operation. We do not find that case of any assistance here. It certainly does not support the contention made on behalf of the respondents. It is one thing to say that under the agreement there was an obligation on the part of the appellant to obtain delivery of the vehicle and also to obtain the log book from Lee, but it is another thing to say that it was the appellant's obligation in obtaining delivery of the vehicle to pay up all the arrears of registration fees and road tax.

26 We now turn to cl 4(m) which provides as follows:

(4) The hirer agrees:

...

(m) To comply with all proper obligations relating to the goods or their possession or use and not to do or suffer to be done anything with regard to the goods which would in any way prejudice the owner's rights hereunder and to repay to the owner any moneys it may properly expend to make good any failure by the hirer to comply with any such obligation.

27 Counsel for the respondents relied heavily on this provision and, in particular, the words `all proper obligations relating to the goods or their possession or use` and contended that by reason of this paragraph, the appellant had become liable to pay the outstanding registration fees and road tax. We disagree. These words, in our opinion, cover payment of any fees or taxes payable for the maintenance and use of the vehicle from the commencement of the hiring. They do not cover the registration fees and road tax accrued and payable prior to the commencement, as before that date the appellant did not have possession and use of the vehicle. This paragraph therefore does not shift to the appellant the obligation to pay the outstanding registration fees and road tax.

28 Hence, there is nothing in the agreement which imposes on the appellant the obligation to pay the registration fees and road tax for the period prior to 25 February 1985. It is not disputed that the appellant in obtaining the release of the vehicle had paid to the ROV the following:

(a) registration fee \$42,811

(b) arrears of road tax (23 January 1985 to 31 March 1985) \$
1,469

\$44,280

29 Since the hiring commenced on 25 February 1985, the appellant was liable under cl 4(m) to pay the road tax as from that date and hence a proportionate portion of the road tax of \$1,469 would be payable by him and this proportionate amount is \$756.10. This amount should be deducted from \$44,280 resulting in a net amount of \$43,523.90 which is payable by the respondents. As this amount had been paid by the appellant, he is entitled to set

off this sum against part of the claim of the respondents. Accordingly, the amount due and payable to the respondents should be computed as follows:

Total amount of instalments due under the agreement
\$67,099.92

Less amount paid by the appellant to ROV and
payable by the respondents \$43,523.90

Add the interest payable on overdue instalments under the
agreement

(after the above deduction) \$ 9,894.20

Net total amount \$33,470.22

30 In the result, the judgment given below is varied, and there will be judgment for the respondents in the sum of \$33,470.22. To this extent, the appeal is allowed.

31 We now come to the question of costs. As regards the costs below, the order made below as to costs should stand, as the respondents had succeeded partially. However, in view of the amount in which the respondents are entitled to judgment, the costs awarded would be on the subordinate courts scales. As for the costs of the appeal, we do not think that the appellant is entitled to any, although he has succeeded in this appeal. The points which we have dealt with here were not raised and argued below. We therefore make no order as to the costs of the appeal. The appellant is entitled to repayment of the deposit in court as security for costs, and we so order.

32 Before we conclude, we would like to say a word on the cases filed by both parties pursuant to O 57 r 9A. This is another instance where the cases filed on behalf of the parties do not comply with the provisions of that rule. The appellant's case is wholly inadequate and falls far short of the standard required.

It is more like a petition of appeal than a case. The case filed on behalf of the respondents is even more deplorable. It set out six questions or issues but does not set out the case of the respondents. It is completely devoid of any substance. We deprecate the filing of such phantom cases. If counsel or solicitors engaged in an appeal have no idea whatsoever as to the form and content of the case they should file on behalf of their clients, they should consult some precedents and may also seek guidance from the precedents appearing on pp 228 et seq in 5 *Atkin`s Encyclopaedia of Court Forms in Civil Proceedings* (4th Ed, 1992). ***Order accordingly.***

Karthigesu JA
L P Thean JA
Yong Pung How CJ

MP Kanisan and Shamim Dhilawala (Palakrishnan & Pnrs) for the
appellant
Josephine Low (Michael Khoo & BB Ong) for the respondents
