

STATE OF MICHIGAN
COURT OF APPEALS

MERCEDES-BENZ FINANCIAL,
and DCFS USA, LLC,

UNPUBLISHED
August 5, 2014

Plaintiffs-Appellees,

v

No. 311680
Macomb Circuit Court
LC No. 11-2279 CZ

JANE M. POWELL and ROBERT H. POWELL,

Defendants-Third-Party Defendants,

and

AARON P. JACOBS,

Defendant-Third-Party Plaintiff,

and

ERICK A. ELLIS,

Defendant-Third-Party Plaintiff-
Appellant

Before: BECKERING, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Defendant Ellis appeals the final opinion and order of the trial court granting summary disposition to plaintiff Mercedes-Benz and denying his motion for summary disposition. The controversy in this case involves the determination of the ownership of a 2007 Mercedes-Benz that was transferred through numerous persons with a forged release of lien early in the chain of title to an end purchaser who had no knowledge of the forgery. We granted leave to appeal to review the chain of title and determine whether summary disposition was appropriate.¹ Upon review, we vacate the trial court's order granting summary disposition to plaintiff, affirm the trial

¹ *Mercedes-Benz Financial v Jane M. Powell*, unpublished order of the Court of Appeals, entered May 3, 2013 (Docket No. 311680).

court's order denying defendant summary disposition and remand for proceedings consistent with this opinion.

I. BACKGROUND

Jane M. Powell and Robert H. Powell executed a retail installment contract with Mercedes-Benz Financial to finance a 2007 Mercedes Benz S550V (the vehicle) for the amount of \$97,647.20 on August 23, 2006.² On August 29, plaintiff filed an RD-108 Application for Certificate of Title with the Michigan Department of State, which then issued a certificate of title for the vehicle that displayed plaintiff as lien holder and the Powells as owners. The Powells made an agreement to sell the vehicle to Aaron Jacobs in 2007 or 2008. Jacobs was to make payments to the Powells and the Powells were to forward the payments to plaintiff. Jacobs failed to make the payments and the Powells defaulted on their contract with plaintiff. On July 3, 2008, the Powells filed for Chapter 7 Bankruptcy, contacted plaintiff to inform it of their intent to surrender the vehicle and of the vehicle's location with Jacobs. However, plaintiff did not locate or repossess the vehicle.

A letter dated June 28, 2010, that falsely claimed to have released the lien and satisfied the debt owed to plaintiff, was addressed and allegedly sent to the Powells' Michigan address. The letter was signed "Lender Agent Brad Killinger". Killenger was unknown to the Powells or to plaintiff. With the lien fraudulently released, Jane Powell then appointed Gary Cortez Johnson as her agent to facilitate the transfer of the vehicle's title to Jacobs. On June 30, 2010, a duplicate Certificate of Title was issued by the Michigan Department of State showing a release of plaintiff's lien.

The duplicate title read that DC FIN SVCS AMER LLC had released its lien on the vehicle. Printed under the statement of release were a signature and the date July 1, 2010. The signature of the agent purportedly authorizing release was again that of the unknown Brad Killinger. Jacobs signed the duplicate title as purchaser under the title assignment by seller section.

On July 8, 2010, Jacobs' application for certificate of title was granted and he was issued a title that stated "No Secured Interest on Record." Marvin Dabish, the owner of Motor City Automotive and Collision, and an authorized agent for a dealership called Zak's Auto, purchased the vehicle from Jacobs on behalf of Zak's Auto, remitting a cashier's check to Jacobs in the amount of \$25,000 on July 31, 2010. A Certificate of Title was never issued in Dabish's name. Later, Dabish allegedly sold the vehicle to Erick Ellis. On September 29, 2010, another transfer of title application was filed which listed Jacobs as the seller, Ellis as the purchaser and the sale price as \$20,000. By the time Ellis purchased the vehicle, the wheel rims were bent and it needed approximately \$4,000 worth of repair work. On September 30, 2010, the Michigan Department of State issued Ellis a purportedly lien-free or 'clean' Certificate of Title.

² Exhibit 1: Retail Installment Contract, attached to Plaintiff / Appellee's Brief on Appeal

Plaintiff filed its complaint against the Powells, Jacob and Ellis on June 7, 2011. Later, both parties motioned the trial court for summary disposition under MCR 2.116(C)(10). Plaintiff argued its interest in the vehicle was superior to that of Ellis' and that Ellis' claim of title was the direct result of forgery that rendered the transfer of the vehicle to him void as a matter of law. Ellis argued plaintiff was required to refile its security interest with the Michigan Department of State in order to preserve it under MCL 257.238, presumably after the Powells' bankruptcy proceeding, and that when the lien was not re-filed, plaintiff's interest was extinguished. Ellis also argued laches and that he was a bona fide purchaser for value who was protected under the common law as the rightful owner of the vehicle.

The trial court issued a final opinion and order that melded two distinct legal theories but ultimately voided defendant's interest in the vehicle. The trial court was persuaded by plaintiff's argument that the legal effect of forgery on the vehicle title was analogous to the effect of forgery on deeds to real property, where title was rendered void. The court relied on *Vanderwall v Midkiff*, 166 Mich App 688; 421 NW2d 271 (1988) when it opined that a bona fide purchaser, who in the chain of title received a forged deed, cannot obtain a valid interest or title in the property. The trial court adopted the analysis of *NXCESS Motor Cars, Inc v JP Morgan Chase Bank, NA*, 317 SW3d 462 (TX, 2010) that held a "forged certificate of title passes no title to the vehicle" where "a forged document on which a certificate of title is based voids that title." The trial court subsequently concluded that Ellis' title was therefore void.

Ellis' summary disposition arguments based on laches and MCL 257.238 were rejected. The trial court granted plaintiff summary disposition under MCR 2.116(C)(10), writing: "All certificates of title issued after the discharge of plaintiff's lien are void. Plaintiff's interest is superior to defendant Erick Ellis', and plaintiff is entitled to possession of the Vehicle."

II. SUMMARY DISPOSITION

"A trial court's grant or denial of summary disposition under MCR 2.116(C)(10) is reviewed de novo on appeal. A motion for summary disposition tests whether there is factual support for a claim." *Mino v Clio School Dist*, 255 Mich App 60, 67; 661 NW2d 586 (2003) (citations omitted). "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "The motion should be granted if the evidence demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law." *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001) (citation and quotation omitted). "This Court is liberal in finding genuine issues of material fact." *Jimkoski v Shupe*, 282 Mich App 1, 5; 763 NW2d 1 (2008). A genuine issue of material fact exists when, after viewing the evidence in the light most favorable to the nonmoving party, the record leaves open an issue upon which reasonable minds may differ. *Debano-Griffin v Lake County*, 493 Mich 167, 175; 828 NW2d 634 (2013).

The issues discussed below were properly preserved for appeal, having both been raised and addressed by the trial court. *Fast Air, Inc v Knight*, 235 Mich App 541, 549-550; 599 NW2d 489 (1999).

A. *MCR 2.116(C)(10)*

The resolution of this case is dependent on whether Ellis' theory that he should prevail as a bona fide purchaser receiving title from a person with a voidable title is legally and factual provable. Therefore, we must begin with an examination of the applicable Michigan statutes that govern transfer of title to motor vehicles.

While the UCC governs general title provisions for the transfer of goods, the MVC controls the transfer of title to vehicles.³ "The UCC does not govern the means by which automobile ownership may be transferred except perhaps where the MVC contains no applicable law." *Messer v Averill*, 28 Mich App 62, 66; 183 NW2d 802 (1970), *lv den* 384 Mich 808 (1971). Therefore, the MVC preempts the UCC in regard to transfers of vehicle ownership. *Whitcraft v Wolfe*, 148 Mich App 40, 50; 384 NW2d 400 (1985) (citation omitted). It is necessary to examine the chain of title transfers from the Powells to Ellis through the lens of the UCC as modified by the MVC in order to determine rightful ownership of the vehicle.

The MVC requires the owner of a vehicle to sign the assignment of title, have a statement regarding any security interest in the vehicle printed on the title, and deliver the title to the purchaser. MCL 257.233(8),(9). Transfer of title to a motor vehicle is complete at the time the application is signed. *Perry v Golling Chrysler Plymouth Jeep, Inc*, 477 Mich 62, 63; 729 NW2d 500 (2007). "Notwithstanding any delay in forwarding the certificate of title to the Secretary of State, title to a motor vehicle passes upon delivery of a properly executed assignment of certificate of title." *Shank v Kurka*, 174 Mich App 284, 287; 435 NW2d 453 (1988) (citation omitted). "It is apparaent [sic] from the language of the statute . . . that the legislature sought to cover every transaction involving the transfer of a motor vehicle from the owner to another, as well as transfer by operation of law." *Taylor v Burdick*, 320 Mich 25, 31-32; 30 NW2d 418 (1948).

Failure to comply with the transferring requirements of MCL 257.333 will render a transfer of ownership void. *Dodson v Imperial Motors, Inc*, 295 F2d 609, 612-613 (CA 6, 1961) citing *Bayer v Jackson City Bank & Trust Co*, 335 Mich 99, 105; 55 NW2d 746 (1952). Arguably, the transfer requirements of MCL 257.233 were complied with at each transfer. While Ms. Powell argued that she never saw the forged letter extinguishing any security interest

³ MCL 440.2401; MCL 257.233; 1949 PA 300 ("AN ACT to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles[.]")

of Mercedes-Benz, there is no competent evidence that her signature on subsequent documents relying on that letter was forged. It is undisputed that the Powells endorsed the transfer section of an RD-108, caused a statement regarding the security interest to be displayed on the title, and appointed an agent to facilitate the delivery of the title to Jacobs. It is noteworthy that Jacobs is alleged to have defaulted on the payments of the vehicle. However, there is no competent evidence that he knew of the forged release of the lien. Jacobs sold the vehicle to Dabish who, in turn sold it to Ellis. There is no evidence of Dabish having any knowledge of the forgery. After the sale to Ellis, Dabish facilitated Jacobs' endorsement of the transfer section of the title and caused a statement regarding an absence of any security interest to be displayed on the title.

Clearly the transfer of title to Jacobs was the direct result of forgery. An effective transfer of title requires "[t]he certificate [to] show the payment or satisfaction of any security interest as shown on the original title." MCL 257.233(8). When a lien on a vehicle has been released or satisfied, a termination statement must be filed.⁴ MCL 257.238(c)(1) requires a termination statement to be filed with the department "[w]henver there is no outstanding obligation and no commitment to make advances, incur obligations or otherwise give value, secured or to be secured by a security interest in a vehicle, or an accessory thereon." Once the termination statement is filed, the department issues a new certificate of title displaying the status of the lien. In this case, the statement which purported the lien was satisfied was fraudulent and signed by someone without authority to do so. The same unauthorized signature appeared on the duplicate title transferring ownership to Jacobs as feigned evidence that plaintiff's lien was released on July 1, 2010. Because there was still an outstanding obligation to plaintiff, the termination statement was incorrect.

We find that the circumstances of this case render Jacobs' title voidable not void and that subsequently if Ellis was a bona fide purchaser he should prevail and the interests of plaintiff should be extinguished.

Jacobs' possession of voidable title allowed him to transfer good title to a good faith purchaser for value. UCC § 2-403; *Jones v Linebaugh*, 34 Mich App 305, 311; 191 NW2d 142 (1971). "A good faith purchaser for value is one who purchases without notice of a defect in the vendor's title." *Michigan Nat Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992) citing *Simon v Brown*, 38 Mich 552, 555 (1878). To qualify as a good faith purchaser Ellis must have acted in good faith in purchasing the Mercedes-Benz and accepting transfer of title. The UCC has defined good faith as "honesty in fact in the conduct or transaction concerned," MCL 440.1201(19), and the question of whether it exists or not in any particular case is normally a question of fact for a jury to decide, *Pemberton v Dharmani*, 207 Mich App 522, 529 n 1; 525 NW2d 497 (1994) (citation omitted).

Ellis must have had no notice of any fraud or irregularity in the title he received and paid valuable consideration for the vehicle to be found a good faith purchaser. *Karibian v Paletta*,

⁴ Interestingly, neither party submitted the termination statement that was filed with the Department of State for our review.

122 Mich App 353, 359-360; 332 NW2d 484 (1983). There was no evidence submitted that Ellis had notice of the lien, the counterfeit termination of the lien, or any forgery. The title application signed by Ellis was prepared by Dabish, who represented a dealership and stated there was no security interest on record. If Ellis can also prove that he paid valuable consideration for the automobile he would be a good faith purchaser for value. Any right plaintiff claims to have in the ownership or repossession of the vehicle would be subordinate to Ellis' rights as a good faith purchaser. UCC § 2-702.

However, a material question of fact exists as to whether Ellis paid valuable consideration for the vehicle. This is a question the trial court never reached having concluded early on that the transfer from the Powells to Ellis was void. Sworn deposition testimony from Ellis indicated he paid \$20,000 to Dabish in exchange for the vehicle. The application for title prepared by Dabish recited the same consideration. However, plaintiff asserts that Dabish denied receiving \$20,000 from Ellis. This assertion places the facts of Ellis' paid consideration in dispute. This Court could not confirm the validity of Dabish's denial because the evidence presented did not include his entire deposition transcript, only excerpts. The question of Ellis' status as a good faith purchaser for value should be presented to a jury if, plaintiff can present competent evidence to support the assertion in its brief that Dabish denied receiving any consideration for the vehicle.

B. MCL 257.238

Ellis also argues that he was entitled to summary disposition under MCR 2.116(C)(10) because as a matter of law plaintiff lost its security interest in the vehicle when it failed to refile its lien with the Michigan Department of State. We disagree.

MCL 257.238(a) provides

(a) **Certificate of title.** When an owner named in a certificate of title creates a security interest in the vehicle described in such certificate or in any accessory thereon:

(1) The owner shall immediately *execute an application* in the form prescribed by the department *to name the holder of the security interest on the certificate of title . . .* to the holder of the security interest.

* * *

(4) Upon receipt of the certificate of title, application and the required fee *the department shall issue a new certificate . . . setting forth the name and address of each holder of a security interest in the vehicle . . .* for which a termination statement has not been filed . . . [Emphasis added.]

The requirements of MCL 257.238 obligate the lien holder to execute an application with the department to cause the department to identify the holder of the security interest on the certificate of title. It is then upon the department to issue a new certificate. Plaintiff complied with these requirements. Plaintiff submitted an application to the department notifying it of its security interest. The duplicate certificate of title clearly displayed DaimlerChrysler Financial Services Americas LLC as a secured party which evidenced that the department was prompted by plaintiff's application to issue a new title. Subsequent certificates of title read "no secured interest on record" not because plaintiff failed to refile its security interest, but because the Powells allegedly forged an inaccurate letter indicating a satisfaction and release of the lien. MCL 257.238 imposed no other filing requirement on plaintiff outside of what it had already done. The trial court did not err in holding that plaintiff was only required to file its lien once with the Michigan Department of State when the security interest was first created in order to protect its interest in the vehicle.

Similarly, Ellis' argument that plaintiff engaged in constructive fraud by not refiling its security interest fails.

Accordingly we vacate the trial court's order granting summary disposition to plaintiff and remand for a determination of Ellis' status as a bona fide purchaser where the facts are in dispute as to the consideration he paid. We affirm the trial court's order denying summary disposition to Ellis where there was no requirement for plaintiff to refile its security interest under MCL 257.238. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan