UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 32 | Number 4 Article 8

6-1-1954

# Mortgages -- Agency -- Power of Dealer to Bind Owner by Mortgage -- Indicia of Ownership -- Automobile Title Certificates

John Randolph Ingram

tion of income or the management, conservation or maintenance of income producing property.[67] Later decisions have indicated that the expenses of defending a business which is *per se* illegal, as distinguished from a legal business operated in an illegal manner, are not deductible, and any holding to the contrary would frustrate public policy.[68]

LEWIS F. CAMP, JR.

**Mortgages—Agency—Power of Dealer to Bind Owner by Mortgage—Indicia of Ownership—Automobile Title Certificates**

There has been a practice among used-car dealers in purchasing automobiles to receive title certificates with the assignment form on the reverse side merely signed by the assignor-seller but blank as to the assignee-car dealer. Later when the automobile is resold, the new owner's name is entered in the blank as assignee; and there is an anonymous notarization of the original seller's signature. Thus, the transaction is represented as one solely between the original seller and the new owner, concealing the intermediate ownership of the used-car dealer in direct contravention of the North Carolina Motor Vehicle Registration Act.[1]

Since a sale of personal property is not required to be evidenced by any written instrument in order to be valid, it has been held in North Carolina that there may be a transfer of title to an automobile without complying with the registration statute which requires a transfer and delivery of a certificate of title.[2] Therefore, it seems that a buyer may get good title from a dealer who is an actual owner whether he holds an incomplete title certificate or no certificate at all. The aforementioned practice of receiving blank title certificates may, however, mislead third parties where a dealer is not the actual owner but a limited agent.

Such was the situation in *Hawkins v. M & J Finance Corp.*[3] In this case the plaintiff, owner of an automobile, delivered his car and title certificate, with the assignment form on the reverse side blank as to the

[67] Commissioner v. Josephs, 168 F. 2d 233 (8th Cir. 1948); Commissioner v. Heide, 165 F. 2d 699 (2d Cir. 1948). These cases held that a casual trustee could not deduct the expenses incurred in defending against a charge of breach of duty as a trustee. It would be difficult to reconcile these cases with Bingham v. Commissioner, 325 U. S. 365 (1945).

[68] Thomas v. Commissioner, 18 T. C. 1417 (1951); Stralla v. Commissioner, 9 T. C. 801 (1947).

[1] N. C. GEN. STAT. §§ 20-72 *et seq.* (1953).

[2] Carolina Discount Corp. v. Landis Motor Co., 190 N. C. 157, 129 S. E. 414 (1925). In this case *P* had an unrecorded conditional sale on an automobile which *X* sold "free of encumbrance" to *D*. *X* violated the Motor Vehicle Registration Act by not endorsing and delivering the title certificate to *D*. The title certificate showed the outstanding conditional sale. *P* claimed that title could not pass to *D* without a compliance with the statute. *Held:* title passed to *D*. *P* should have recorded his conditional sale in order to put *D* on notice of the encumbrance.

[3] 238 N. C. 174, 77 S. E. 2d 669 (1953).

assignee but signed by the assignor-owner, to a used-car dealer for resale. Instead the dealer exceeded his actual authority to sell and mortgaged the car to the defendant finance company, which loaned money on the car relying on the trade practice among car dealers as showing that title had been transferred to the dealer by the transfer of the certificate signed in blank. The owner was allowed to recover his car from the mortgagee, the court holding that: (1) the dealer authorized merely to sell had no implied authority to mortgage the car; and (2) the defendant-mortgagee could not rely on this trade practice and the blank title certificate as indicating ownership in the dealer so as to estop the real owner from claiming his title. On this latter point the court said:

> These practices may not be used as a basis for invoking the doctrine of estoppel. To permit such would be to legalize by indirection this practice of suppressing notice of intermediate dealer ownership as well as the companion practice of anonymous notarization of transfer certificates, and thereby override the salutary procedure fixed by statute for the prevention and suppression of the very type of fraud and chicanery with which we are at grips in the instant case. The public policy of this State as fixed by these statutes may not be put to naught in such manner. The principles of equity will not permit.[4]

When there is a sale or mortgage by a person not the owner, as in the *Hawkins* case, the rights of the owner as against the buyer or mortgagee may depend on: (1) whether the person selling or mortgaging is an agent of the owner;[5] or (2) whether such person may legally be treated as an owner.[6]

In dealing with the person as an agent, one may rely on the implied or apparent authority of the agent, *i.e.,* that which the principal holds his agent out to the world as having. It is elemental that no authority to sell should be inferred from the *mere* possession of goods.[7] Where,

[4] *Id.* at 184, 77 S. E. 2d at 677.

[5] Carter v. Rowley, 59 Cal. App. 486, 211 Pac. 267 (1922); Spooner v. Cummings, 151 Mass. 313, 23 N. E. 839 (1890); Stockyards Nat. Bank of South Omaha v. Harris Wool Co., 316 Mo. 426, 289 S. W. 623 (1926); Atlantic Discount Corp. v. Young, 224 N. C. 89, 29 S. E. 2d 29 (1944); Southern Ry. v. W. A. Simpkins Co., 178 N. C. 273, 100 S. E. 418 (1919); Mahar v. White, 190 Okla. 434, 124 P. 2d 260 (1942); Brown Bros. & Co. v. The William Clark Co., 22 R. I. 36, 46 Atl. 239 (1900); Zerr v. Howell, 84 S. W. 2d 867 (Tex. Civ. App. 1935); Rogers v. Whitney, 91 Vt. 79, 99 Atl. 419 (1916).

[6] Rapp v. Fred W. Hauger Motors Co., 77 Cal. App. 417, 246 Pac. 1067 (1926); Bailey v. Hoover, 233 Ky. 681, 26 S. W. 2d 522 (1930); Ruddy v. Oregon Auto. Credit Corp., 179 Ore. 688, 174 P. 2d 603 (1946); Commercial Finance Corp. v. Burke, 173 Ore. 341, 145 P. 2d 473 (1944); Scruggs v. Crockett Auto. Co., 41 S. W. 2d 509 (Tex. Civ. App. 1931); Boice v. Finance Corp., 127 Va. 563, 102 S. E. 591 (1920).

[7] Pacific Accept. Corp. v. Bank of Italy, 59 Cal. App. 76, 209 Pac. 1024 (1922);

however, in addition to possession by a limited agent, the owner has given such evidence of authority to sell as usually accompanies such authority according to the custom of trade, this is evidence, not that he is the owner, but that he has received authority from the owner to sell.[8] Illustrative of this latter situation is *Carter v. Rowley*,[9] where an owner left his automobile with a dealer to "find" a purchaser. Instead the dealer sold to an innocent purchaser. There was evidence that: (1) the owner had left his car in the possession of a dealer in secondhand cars; (2) the dealer's premises were surrounded with conspicuous signs advertising used-cars for sale; and (3) the owner knew the dealer's line of business. The court held that such circumstances, in addition to possession, according to the custom of trade and general understanding of businessmen indicated an authority in the dealer to consummate a sale.

Once an authority to sell is established there arises the question what other incidental authority exists by implication. Generally, the authority to sell confers authority to fix any terms and conditions necessary to the sale;[10] but it does not ordinarily include the power to sell on credit,[11] to exchange or barter,[12] or to pledge or mortgage.[13] Consequently, in situations such as that in the *Hawkins* case, courts seem reluctant to extend protection, solely on the basis of an implied agency, to the mortgagee of a dealer with authority limited to selling.[14]

Where a real owner has clothed an agent with indicia of title and such title is relied on by an innocent purchaser, the purchaser may prevail, not on the basis of the agent's apparent authority to represent any-

---

Overland Texarkana Co. v. Bickley, 152 La. 622, 94 So. 138 (1922); Hawkins v. M & J Finance Corp., 238 N. C. 174, 178, 77 S. E. 2d 669, 672 (1953); Handley Motor Co., Inc. v. Wood, 237 N. C. 318, 323, 75 S. E. 2d 312, 316 (1953); American Exchange Nat. Bank v. Winder, 198 N. C. 18, 21, 150 S. E. 489, 491 (1929); Hedges v. Burke, 147 Tenn. 247, 247 S. W. 91 (1923).

[8] Carter v. Rowley, 59 Cal. App. 486, 211 Pac. 267 (1922); Atlantic Discount Corp. v. Young, 224 N. C. 89, 29 S. E. 2d 29 (1944); Mahar v. White, 190 Okla. 434, 124 P. 2d 260 (1942).

[9] 59 Cal. App. 486, 211 Pac. 267 (1922).

[10] Powell v. King Lumber Co., 168 N. C. 632, 84 S. E. 1032 (1915); Daniel v. Atlantic Coast Line Railroad, 136 N. C. 517, 48 S. E. 816 (1904); TIFFANY, AGENCY § 32 (2nd ed. 1924).

[11] Bowles v. Rice, 107 Va. 51, 57 S. E. 575 (1907); RESTATEMENT, AGENCY § 65 (1934).

[12] Davison v. Parks, 79 N. H. 262, 108 Atl. 288 (1919); MECHEM OUTLINES OF AGENCY §§ 262-267 (3rd ed. 1923).

[13] Pacific Finance Corp. v. Hendley, 119 Cal. App. 697, 7 P. 2d 391 (1932); Moberg v. Commercial Credit Corp., 230 Minn. 469, 42 N. W. 2d 54 (1950); 2 WILLISTON, SALES §317 (Rev. ed. 1948).

[14] Coolbaugh v. Atlantic Motor Finance Co., 101 N. J. L. 215, 128 Atl. 595 (1925); National Guarantee & Finance Co. v. Pfaff Motor Co., 124 Ohio 34, 176 N. E. 678 (1931). *But cf.* Bauer v. Commercial Credit Co., 163 Wash. 210, 300 Pac. 1049 (1931), where estoppel was applicable and a mortgagee prevailed against an owner. 45 HARV. L. REV. 375 (1931).

one, but on his apparent ownership.[15] In this situation the real owner by his misleading actions is estopped to claim his title. That the real owner thus clothes the agent means that the indicia of title must emanate from the owner with his consent or knowledge as distinguished from indicia feloniously created or obtained, as by forgery.[16] The real owner may be estopped to claim his title where he entrusts possession plus a certain document—automobile title certificate[17] or bill of sale.[18]

Where an automobile title certificate is relied on as an indicium of ownership, according to the *Hawkins* decision, it must be full and complete on its face when received by a third party. North Carolina seems to be in accord with the weight of authority which holds that an incomplete title certificate is not only insufficient indicium of ownership, but is constructive notice of want of title.[19] But where a dealer is entrusted with possession of an owner's automobile and certificate of title with the assignment form on the reverse side blank as to the assignee but signed by the assignor-owner, and the dealer completes the instrument so there are no patent defects, it has been held that a third party may rely on the certificate as indicium of title and treat the dealer as an owner.[20]

JOHN RANDOLPH INGRAM

[15] Boice v. Finance & Guaranty Corp., 127 Va. 563, 102 S. E. 591 (1920). See also, San Joaquin Valley Securities Co. v. Harris, 123 Cal. App. 774, 11 P. 2d 49 (1932), illustrating that as indicia of ownership must be coupled with possession, so must possession be coupled with such indicia.

[16] Royle v. Worcester Buick Co., 243 Mass. 143, 137 N. E. 531 (1922). Where the wrongdoer obtains the possession of the certificates of title, ownership, or registration, not by the voluntary act, or with the acquiescence or knowledge of the owner, but by theft or forgery, considerations requiring the invocation of the doctrine of estoppel against the owner are lacking, since the evidences of ownership having been secured by the felonious acts of the wrongdoer, the owner has done nothing to mislead third persons purchasing the property from the wrongdoer on the assumption of his ownership thereof.

[17] Washington Lumber & Millwork Co. v. McGuire, 213 Cal. 13, 1 P. 2d 437 (1931).

[18] Bailey v. Hoover, 233 Ky. 681, 26 S. W. 2d 522 (1930).

[19] A. C. Nelson Auto Sales, Inc. v. Turner, 241 Iowa 927, 44 N. W. 2d 36 (1950); Moberg v. Commercial Credit Corp., 230 Minn. 469, 42 N. W. 2d 54 (1950); Pearl v. Interstate Securities Co., 357 Mo. 160, 206 S. W. 2d 975 (1947); Erwin v. Southwestern Investment Co., 147 Tex. 260, 215 S. W. 2d 330 (1948). See, Wilson v. Commercial Finance Co., 239 N. C. 349, 358, 359, 71 S. E. 2d 908, 915, 916 (1954), where the court stated that under the law of Virginia an automobile registration card would not constitute an indicium of title because the sole evidence of the ownership of a motor vehicle is the certificate of title. The court also said that ignoring the law of Virginia, in this case, the registration card would not be an indicium of title since the notice of transfer form on the reverse side of the card was blank and unsigned.

[20] Commercial Finance Corp. v. Burke, 173 Ore. 341, 145 P. 2d 473 (1944).