

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.M. 471 OF 1987

BETWEEN	MUSSON JAMAICA LIMITED	PLAINTIFF
A N D	GARY WEE TOM	DEFENDANT
EXPARTE	BANK OF NOVA SCOTIA JAMAICA LIMITED (In the matter of an Interpleader Summons.)	CLAIMANT

Dr. W. McCalla for the Interpleader.

Mr. D. A. Gittens for the Plaintiff/Judgment Creditor.

Heard: 25th and 27th of January, 1989.

Master:

The Plaintiff as a Judgment Creditor issued a writ of execution, on a judgment obtained against the Defendant. Accordingly, the Bailiff for the Resident Magistrate's Court for the parish of St. Catherine seized the Defendant's motor car whereupon the Bank of Nova Scotia (Jamaica) Limited issued an interpleader summons claiming an interest in the chattel ranking in preference to that of the Plaintiff, judgment-creditor.

In support of its claim the Bank through one Mr. Glendale Singh, the manager at its Hagley Park Road Branch, filed an affidavit and thereto exhibited a facsimile of the bill of sale on the motor car which the defendant signed in the bank's favour.

Under the heading

"HIRE PURCHASE ACT 1974
CONSUMER'S BILL OF SALE"

appeared the particulars of a mortgage agreement in stereotyped form and its annexed schedule described as "item 3: THE SAID PROPERTY" - a motor car.
for the plaintiff

Mr. Gittens/resisted the bank's claim on the grounds that the bill of sale had not been registered as required by Section 3 of the Bills of Sale Act and that failure to designate its function within the purview of the Hire Purchase Act precluded it from enjoying the exemption from registration. The mere heading "Hire Purchase Act 1974" he submitted, was unavailing, as well as the recitals headed:

"(2) This Bill of Sale is a consumer's bill of sale as defined in the Hire Purchase Act 1974 (hereinafter called "the Act") and is subject to all the provisions of the Act relating to consumer's bills of sale."

82

on behalf of the claimant
Dr. McCalla/in an endeavour to bring the document within the provisions of Section 36 of the Hire Purchase Act, attempted by way of a further affidavit to establish that the express purpose of the loan was for Defendant to purchase the car.

Section 35 of the Hire Purchase Act equates a consumer's bill of sale with:

".... any document which is a bill of sale as defined under Section 2 of the Bills of Sale Act, not being -

(a) a document the subject matter of which includes -

(i) any part of the stock in trade; or

(ii) any plant or equipment, of a trade, business or calling; or"

Continuing, it excludes

"(b) a document made or given to a bank for a debt incurred for a purpose other than the purchase of the subject matter of such document."

At length in my ruling given orally did I indicate reasons, based on submissions before me, why I ruled as inadmissible, evidence offered to establish the

"purpose of the subject-matter of such document"

For brevity, those I now omit, but offer the short answer which I did not expressly invoke, why the document failed to qualify as a consumer's bill of sale and consequently did not enure to the bank's advantage, having not been registered as a bill of sale, simpliciter.

The retention in the stereotyped recitals at (1)

"The mortgagor has requested the mortgage to extend to him such loan or loans or other general or specific financial and banking facilities - "

is in effect,

"a purpose other than the purchase of the subject-matter of such document."

The result is to strike at the status of the document qua "consumer's bill of sale." I venture to express the view that that situation would still obtain even if additionally, a purpose namely

"the purchase of (such car), the subject-matter of such document."

had been recorded expressly.

3.

Inadvertent to the short reasons above, I had granted leave to appeal, having dismissed the interpleader summons.



B. H. B. Reid

Master.

10th February, 1989.