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Judgment  
6, 1965

IN THE PRIVY COUNCIL

2043 of 1964

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O N A P P E A L

FROM THE HIGH COURT OF AUSTRALIA

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B E T W E E N :

*PACIFIC*  
MOTOR AUCTIONS PTY. LIMITED Appellant

- and -

MOTOR CREDITS (HIRE FINANCE)  
LIMITED Respondent

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CASE FOR RESPONDENT

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RECORD

10 1. This Appeal is brought by special leave granted by Her Majesty by Order in Council dated the 14th day of January 1964.

2. This action was tried by Mr. Justice Walsh of the Supreme Court of New South Wales without a jury as a Commercial Cause under the Commercial Causes Act (N.S.W.), 1903 - 1957.

20 3. The action was one in which the Respondent sued the Appellant for the return of twenty second-hand motor vehicles which it alleged had been wrongfully detained by the Appellant. At the trial the Respondent abandoned its claim with respect to four of the vehicles and as an alternative to the return of the remaining sixteen, it claimed to recover their value and damages for detention.

pp.233-234

4. The Trial Judge found a verdict for the Defendant in the action, the abovenamed Appellant,

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and from this decision the Respondent, the Plaintiff in the action, appealed as of right to the High Court of Australia.

5. The High Court by a majority consisting of Mr. Justice Taylor and Mr. Justice Owen with Mr. Justice McTiernan dissenting allowed the appeal and set aside the verdict and judgment entered in favour of the Appellant and remitted the action to the Supreme Court of New South Wales for assessment of damages.

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6. The companies and persons involved in this litigation were:-

Motor Credits (Hire Finance) Limited

The Plaintiff in the action, the Appellant in the High Court of Australia, and the Respondent to this appeal.

A company carrying on the business of financing, inter alia, the dealings in second-hand motor vehicles, (hereinafter referred to as the "Plaintiff").

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Gulson, Norman John, the Manager in New South Wales of the Plaintiff.

Stevens, Robert Walter, Acceptance Manager of the Plaintiff.

Patrick, Graham, an officer of the Plaintiff.

Motor Auctions Pty. Limited (formerly Pacific Motor Auctions Pty. Limited)

The Defendant in the action, the Respondent in the High Court of Australia, and the Appellant in this appeal.

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A company carrying on the business of selling second-hand motor vehicles by public auction and otherwise,

(hereinafter referred to as the "Defendant").

Crealey, Cecil Milton, the Managing Director of the Defendant.

Guest, Adrian George, an officer of the Defendant.

Skinner, Albert Edwin, the accountant of the Defendant.

Motordom Pty. Limited referred to throughout these proceedings as "Motordom".

A company which carried on the business of a dealer in second-hand motor vehicles.

Webb, Robert, the Managing Director of such company who had carried on the same business before the incorporation of the company under the firm name of Motordom.

Bell, Mrs., an employee of Motordom.

10 7. Webb had on 17th February 1960 entered into an agreement with the Plaintiff called a display agreement, the purpose of which was to provide Webb with financial assistance in the purchase of his stock of second-hand motor vehicles. The agreement in so far as is material to the matters involved in this litigation provided that Webb would purchase such vehicles as the Plaintiff may authorize him in writing to purchase and that the Plaintiff would pay him 20 90% of the purchase price of such vehicles, that Webb should retain possession of the vehicles as bailee and upon the sale of a vehicle would account to the Plaintiff for the amount paid by the Plaintiff to Webb in respect of such vehicle together with interest which was very considerably reduced in the event of the sale of the vehicle being financed by means of a hire purchase agreement with the Plaintiff. p.252

30 8. In June, 1960 Motordom Pty. Limited was incorporated and Webb's business was thereafter carried on by that Company, of which Webb was the Manager and for all practical purposes, the owner. No new agreement was signed with the Plaintiff. p.212

9. The terms of the written "display" agreement were never adhered to either by Webb or by Motordom after its incorporation.

40 10. It appears that the Trial Judge took the view and the High Court accepted this view that the effect of the arrangement was that Motordom purchased all cars on its own account and that when any of them was approved by the Plaintiff for the purposes of the "display plan" arrangement and 90% of the original purchase price was paid over to Motordom, title to the car passed to the Plaintiff and it was thereafter held by Motordom as a bailee from the Plaintiff for pp.211-212 p.236 pp.244-245

RECORD

the purpose of reselling it in accordance with the "display plan" arrangement.

11. All vehicles purchased by Motordom were not brought into the "display plan" arrangement which was limited by the amount of money the Plaintiff was prepared to invest. In the first plan a limit of £3,000. 0. 0 was applied but this was later increased to £5,000. 0. 0.

12. Motordom from time to time purchased motor vehicles from the Defendant which extended to Motordom seven days' credit for vehicles so purchased. Some vehicles purchased by Motordom from the Defendant were from time to time brought into the "display plan" arrangement with the Plaintiff.

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p.237

13. During the week prior to 2nd November, 1960 Motordom had given to the Defendant three cheques for £6,965., £2,535. and £3,790. respectively all of which were dishonoured.

p.217

14. Walsh J. held that the Defendant knew that Motordom had obtained "floor plan accommodation" from the Plaintiff and that Crealey was told in the latter part of October, 1960 that the limit of such accommodation was being increased to £5,000.

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pp.216-217

15. At about 4.15 p.m. on the 2nd November, 1960 Gulson rang Webb and revoked the authority of Motordom to deal with cars in which the Plaintiff had an interest. Gulson said to Webb "The authority to handle our stock is withdrawn. Do not touch our stock. Mr. Patrick and I will be at your yard at 9.0 in the morning". This revocation was not communicated to the Defendant.

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p.218  
p.318

16. Walsh J. also held that Patrick, on the afternoon of the 2nd November, 1960, visited Crealey for the purpose of endeavouring to locate the whereabouts of certain vehicles which were missing and Patrick showed Crealey a list of vehicles which became Exhibit "AA" and which had the words "display plan" as part of its heading. The Trial Judge held that such an interview did take place although there was some conflict of evidence concerning exactly what was said at such interview.

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17. The trial Judge made certain findings with regard to the events which took place prior to and

during the night of 2nd November, 1960 and after stating that Crealey first had knowledge that a cheque from Motordom had been dishonoured about the 25th October, 1960, proceeded as follows:-

10 "He, himself, (i.e. Crealey) did not get in touch with Webb until 2nd November but meanwhile Guest had had some discussions with Webb and had been told that everything would be alright and the cheques would be met. But on the 2nd November  
10 Webb told Guest by telephone that he was in trouble and would come out to the Defendant's office. Guest got in touch with Crealey who spoke to Webb by telephone and Webb said the cheques would be met the next day but nevertheless it was arranged that he would come out and see Crealey. He did so and Crealey said, "I want some satisfaction tonight", and proposed that Webb should sell some of his stock, 'to offset the returned cheques'. If the cheques were met,  
20 Crealey would return the cars, that is, re-sell them to Motordom. Webb agreed. A party from the Defendant's office, and Webb, then went to several yards, and cars were selected and listed, and prices put against them by Guest. After some discussion about the prices Webb said that he would definitely be taking the cars back, and Crealey then agreed to adopt the prices which Motordom had paid for the cars when it acquired them. There was an arrangement that the Defendant  
30 would hold the cars, to re-deliver them to Motordom, if the money was found. The total amount due to the Defendant had been calculated at £16,510. It seems that there was some additional debt, apart from the cheques above-mentioned. After 29 cars had been listed, it seems that an upwards adjustment of the price assigned for some of them took place, in order that the total price would come up to £16,510. For each vehicle declarations were obtained,  
40 signed by Webb, reciting a sale of the vehicle at a specific price and stating that the vehicle was the seller's sole property, free from any other interest, and that the seller had good right and title to sell it. A cheque which the Defendant's accountant, Skinner, had taken with him, was completed in favour of Motordom, for £16,510 and was signed for the Defendant by Crealey and Skinner. On the back of it was written, 'Please pay to order of Pacific Motor Auctions Ltd.', and  
50 this was signed by Webb. The cheque was handed back to the Defendant's representatives. The cars were taken away and were subsequently re-sold

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by the Defendant. The dishonoured cheques of Motordom were not met and on each of them is endorsed the words, 'payment stopped'."

pp.223-226

18. The Defendant at the trial claimed that the Plaintiff was estopped from denying the authority of Motordom to sell the vehicles to the Defendant and Walsh J. accepted the judgment in Eastern Distributors Limited v. Goldring (1957) 2 Q.B.600 at 614 as a correct exposition of the relevant common law principles involved and found in favour of the Defendant.

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19. The Defendant also relied by way of defence on the provisions of Section 28(1) of the Sale of Goods Act (N.S.W.) 1923-1953 which is in similar terms to Section 25(1) of the Sale of Goods Act (Imp.) but Walsh J. made no finding on this defence.

p.243  
p.246

20. The majority in the High Court rejected the defence under Section 28(1) of the Sale of Goods Act (N.S.W.) 1923-1953.

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p.239

21. The majority in the High Court held that Walsh J. had fallen into error in upholding the Defendant's defence of estoppel because he considered it was an immaterial consideration that the transaction of the 2nd November, 1960 was not in the ordinary course of the business of Motordom.

22. The Plaintiff respectfully submits that the majority decision of Taylor J. and Owen J. in the High Court is correct.

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23. On the hearing of this appeal the following arguments are intended to be submitted on behalf of the Plaintiff.

- (a) THAT the transaction which took place on the night of 2nd November, 1960 was not in the ordinary course of the business of Motordom and that whether it was a case of ostensible ownership or ostensible agency the Plaintiff is not estopped from denying the authority of Motordom to sell motor vehicles to the Defendant.

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- (b) THAT Section 28(1) of the Sale of Goods Act (N.S.W.) 1923-1953 has no application to the facts of this case since Motordom was not in possession of the goods merely as the seller of them to the Respondent but as a bailee under the "display plan" agreement.

R.J.M. NEWTON.

No 43 of 1964

IN THE PRIVY COUNCIL

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CASE FOR RESPONDENT

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KINGSLEY WOOD & CO.,  
6/7 Queen Street,  
London, E.C.2.

Solicitors for the  
Respondent.