

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN BANKRUPTCY
IN THE MATTER OF THE BANKRUPTCY OF

PAUL MARCEL ROY

(Summary Administration)

MEMORANDUM OF JUDGMENT

[1] Paul Roy made an assignment in bankruptcy on May 23, 1997. Browning Smith Inc., the Applicant, is his Trustee.

[2] This application concerns a 1988 Ford F250 Supercab 4 x 4. Mr. Roy listed it as one of his assets in his Statement of Affairs made pursuant to s.158(d) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3 as amended. He also listed as a liability a \$4500.00 secured debt to Rent-A-Relic Ltd.

[3] Rent-A-Relic filed a Proof of Claim with the Trustee, stating that it held the Ford as security for money owing. It provided a copy of a "Motor Vehicle Conditional Sales Contract" between itself and Mr. Roy. That document indicates that Mr. Roy was to pay \$4500.00 for the Ford by way of a \$1000.00 downpayment and then monthly instalments of \$500.00 each. There is no reference in the document to title or ownership.

[4] Mr. Roy stopped paying the instalments, leaving a balance owing of \$2000.00. At some point Rent-A-Relic repossessed the Ford and has had it in storage to date. The Ford was never registered in Mr. Roy's name and remains in the name of Rent-A-Relic, which says that the vehicle sustained considerable damage while in the possession of Mr. Roy.

[5] Browning Smith Inc. now seeks an order that (i) legal title and possession of the Ford be transferred to Browning Smith Inc. free and clear of any charges and (ii) that

Browning Smith Inc. be granted leave to transfer, sell or dispose of the Ford free of any encumbrances.

[6] The difficulty is that the Ford is not and never has been in the name of Mr. Roy.

[7] Browning Smith Inc. argues, however, that because Mr. Roy took possession of the Ford, ownership also passed to him. It relies on s.2(1) of the *Conditional Sales Act*, R.S.N.W.T. 1988, c.C-14, which reads as follows:

Where the possession of goods has been delivered to a buyer under a conditional sale, unless the conditional sale is evidenced and is registered in accordance with this Act, every provision contained in the conditional sale by which the property in the goods remains in the seller is void

- (a) as against a creditor; and
- (b) as against a subsequent purchaser or mortgagee claiming from or under the buyer in good faith, for valuable consideration and without notice.

[8] Browning Smith Inc. argues that because possession of the Ford was delivered to Mr. Roy and the document titled “Motor Vehicle Conditional Sales Contract” was not registered pursuant to the *Conditional Sales Act*, ownership passed to Mr. Roy and did not remain with Rent-A-Relic.

[9] I do not agree that the effect of s.2(1) is to pass ownership in the manner suggested. Section 2(1) simply provides that where possession of goods is delivered to the buyer under a conditional sale, a provision in the conditional sale by which property in the goods remains in the seller is, in the absence of registration, void against certain individuals. Browning Smith Inc. has not been shown to be either a creditor or a subsequent purchaser or mortgagee as described in s.2(1).

[10] The failure to register does not, therefore, affect Rent-A-Relic’s title to the Ford as against the Trustee.

[11] Section 2(1) is designed to protect those who lend money to a borrower or who buy an asset for value and without notice of a conditional seller’s interest in that asset. The section protects those who would be prejudiced if a seller who had failed to register could come forward and assert a claim.

[12] It has not been shown that the Trustee has suffered any prejudice in this case. While the Trustee may have a claim to the extent of the money actually paid by Mr. Roy for the Ford, that claim may well be offset by charges for the use of the Ford and the damage done to it while it was in the possession of Mr. Roy. I do not decide this point as the Trustee's claim was not put forward on that basis. The amounts involved, however, are not substantial.

[13] I also note that it has not been established that ownership of the Ford was ever intended to pass to Mr. Roy in the absence of payment in full of the purchase price.

[14] In the circumstances, the failure of Rent-A-Relic to appeal the Trustee's Notice of Disallowance of its claim within 30 days as required by s.135(4) of the *Bankruptcy and Insolvency Act* is irrelevant.

[15] For the reasons set out above, I find that there is no basis upon which to make the orders sought and the application of Browning Smith Inc. is therefore dismissed.

V.A. Schuler,
J.S.C.

Dated at Yellowknife, NT, this
1st day of April 1998

Counsel for the Trustee, Browning Smith Inc.: Garth Wallbridge
Roy Ferrier appeared for Rent-A-Relic Ltd.

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THE HONOURABLE V.A. SCHULER
