

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Seizures Act*,  
R.S.N.W.T., 1988, c.S-6, as amended;

AND IN THE MATTER OF a certain seizure  
made October 27th, 2000.

BETWEEN:

THE BANK OF NOVA SCOTIA

Applicant

-and-

DAVID KELLETT

Respondent

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Application for sale of a boat seized by the Sheriff; ruling on validity of Conditional Sale Agreement.

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REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE V.A.SCHULER

Heard at Yellowknife, Northwest Territories  
on February 16, 2001

Reasons Filed: March 19, 2001

Counsel for the Applicant: Charles Thompson

Counsel for the Respondent: Louis Walsh

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REASONS FOR JUDGMENT

[1] The facts of this case are straightforward. John Dube purchased a boat from Canada North Distributors Limited under a conditional sale agreement whereby he would take possession of the boat but Canada North would retain ownership of it until the purchase price was paid in full.

[2] Canada North assigned the conditional sale agreement to the Applicant which then registered it pursuant to the *Conditional Sales Act*, R.S.N.W.T. 1988, c.C-14, on May 11, 1995.

[3] In October 1996 the Respondent purchased the boat from Mr. Dube. He says he had no notice of the conditional sale agreement. There is no evidence as to whether he conducted a search at the Document Registry for registrations under the *Conditional Sales Act*.

[4] In May 1997 Mr. Dube defaulted in payment under the conditional sale agreement. The Applicant made efforts to seize the boat in February of 1998, but was unsuccessful because the Respondent would not tell the bailiff where the boat was.

[5] The Applicant did not renew registration of the conditional sale agreement within three years of the original registration as required by the *Conditional Sales Act* but did file a renewal statement on April 15, 1999, approximately one year after the original registration expired. The Applicant seized the boat from the Respondent's possession on October 27, 2000 and now seeks to sell it to recover the money owing on the conditional sale agreement.

[6] The Respondent objects to the sale. He argues that during the interval between the expiry of the original registration of the conditional sale agreement and the filing of the renewal statement, he became the legal owner of the boat free and clear of the conditional sale agreement between Dube and the Applicant. Although he does not dispute that when he purchased the boat, it was subject to the conditional sale agreement, he says that during the interval, the agreement ceased to be valid and his rights as the legal owner kicked in. He relies on s.4(1) of the *Conditional Sales Act*, which provides:

4.(1) A conditional sale that has been registered in accordance with this Act ceases to be valid against a creditor and against a subsequent purchaser claiming from or under the buyer in good faith, for valuable consideration and without notice after the expiration of three years from its registration unless before the expiration of that period, a renewal statement is registered in accordance with this section and the buyer shall, notwithstanding such agreement, be deemed to be the owner of the goods as against any such seller.

[7] Section 5(1) of the Act permits a renewal statement not registered within the three year period to be registered at a later date. Under s.5(2), late registration takes place "subject to the rights of other persons that have accrued before late registration". The Respondent argues that the late registration of the conditional sale agreement was subject to his rights as owner which accrued during the interval before the late registration.

[8] The Applicant relies on the Alberta case of *Bank of Nova Scotia v. Tissington* (1990), 31 A.R. 332 (Master's Chambers). There, the Alberta legislation provided that a seller or bailor under a conditional sale was not permitted to *set up any right of property or right of possession* against certain categories of individuals. In that case, a third party had purchased an airplane while the original registration of a conditional sale agreement was still in force. The registration was not renewed until two months after the time required under the legislation. The third party argued that upon expiry

of the original registration, its interest in the airplane became “perfected”. This is essentially the same argument made by the Respondent in this case.

[9] In *Tissington*, Master Funduk concluded that the relevant time, in a dispute between a conditional vendor and an innocent third party, is when the third party acquired his interest in the chattel. If there was a registration in effect at that time, the conditional vendor can, without more, enforce his right of ownership and his right of possession. The Master called it a completely unwarranted result to hold that a third party’s rights are elevated at some later time because of the conditional vendor’s failure to register a renewal statement.

[10] The Respondent in this case seeks to distinguish *Tissington* on the basis of the difference between the Alberta and Northwest Territories legislation, arguing that the Alberta seller simply cannot set up any right of property or right of possession, although his title to the property is not affected, whereas for the Northwest Territories seller the conditional sale agreement becomes invalid, divesting the vendor of its rights and passing clear title to the third party.

[11] The Respondent in effect says that the conditional sale agreement becomes void. But s.4(1) does not say void; it says that the agreement ceases to be valid. That suggests to me that the agreement ceases to be valid in the sense of valid and enforceable. As pointed out in the Applicant’s submissions, the practical effect of the Alberta and the Northwest Territories legislation is the same in that the vendor loses his right and ability to enforce the agreement, to re-possess the property.

[12] Despite the difference in the wording between the Alberta and the Northwest Territories legislation, the same unwarranted result would obtain if one were to hold that under the territorial legislation a third party who acquired the property at a time when the conditional seller’s rights were enforceable would have elevated rights at a later time simply because the conditional vendor failed to register a renewal statement on time, whether it be late by one day or several months. The third party cannot obtain more rights than he began with when he purchased the property. So in this case the Respondent could not obtain more rights than Mr. Dube was able to give him when he sold him the boat subject to the properly registered conditional sale agreement. His interest continues to be subject to the conditional sale agreement.

[13] Here, although the Respondent says he had no notice of the conditional sale agreement, the Applicant had protected its rights by registration under the Act. The Respondent purchased the boat from Dube at a time when the Applicant's rights were protected. The intent of the legislation is to protect certain categories of individuals, such as purchasers who have no notice of a conditional sale agreement and make their purchase at a time when the agreement is not registered. The failure to register has prejudiced them. But there is no prejudice to the Respondent in this case because when he purchased the boat, the Applicant's registration was in force, just as it was when the Applicant tried the first time to seize the boat from the Respondent's possession.

[14] Accordingly, I rule that the seizure on October 27, 2000 was valid and an order will issue for sale of the boat by the Sheriff pursuant to the *Seizures Act*, R.S.N.W.T. 1988, c.S-6. As conceded by the Applicant, the items such as the boat trailer, fishing gear and life jackets seized with the boat and which are not subject to the conditional sale agreement, shall be returned to the Respondent.

[15] Although the Applicant requested solicitor and client costs, I am not satisfied that the clause providing for same in the agreement binds the Respondent and accordingly the Applicant will have costs against the Respondent on a party and party basis only, in column II of the tariff, including the costs of the sale.

[16] The proceeds of sale are to be distributed first to the Applicant in payment of the amount owing under the agreement, second to the Applicant in payment of its costs and third, any remaining balance shall be paid to the Respondent.

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

Dated at Yellowknife, Northwest Territories  
this 19<sup>th</sup> day of March 2001.

Counsel for the Applicant: Charles Thompson  
Counsel for the Respondent: Louis Walsh

S-0001-CV-2001000036

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