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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY CIRCUIT COURT
Letitia H. Verdin, Circuit Court Judge
Case No. 2019-CP-23-7116

Appellate Case No.: 2022-00011

Jessie J. Carter, ... Appellant,

v.

Oscar Quirroga d/b/a Oscar Auto Sales and
Marco A. Quiroga d/b/a Oscar Auto Sales and
Palmetto Surety Corporation, ... Respondents.

FINAL BRIEF OF APPELLANT

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September 30, 2022

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3. Did the trial court err in finding that the contract of sale for the vehicle was rescinded despite the Respondents acceptance of and failure to return $5000 in purchase money for the vehicle?

4. Did the trial court err in finding the contract of sale for the vehicle was rescinded where the Respondents failed to return the Appellant to status *quo ante*?

STATEMENT OF THE CASE

This case was initiated by the Appellant's filing of a summons and complaint on December 19, 2019 alleging that Respondents Oscar Quirroga, Marco Quirroga, and Oscar Auto Sales violated the S.C. Unfair Trade Practices Act when they refused to deliver to the Appellant a vehicle or return the purchase money paid for the vehicle. An amended summons and complaint was filed on August 6, 2021 adding Respondent Palmetto, Oscar Auto's dealership surety. Respondent Palmetto filed an answer, cross-claim and motion to dismiss. A hearing on the motion to dismiss was convened on November 9, 2021 before the Hon. Letitia H. Verdin. Appearing at the hearing were the Respondents Quirroga and Oscar Auto Sales represented by James O'Connell and Palmetto Surety by Barrett Brewer. Appellant was represented by Matthew J. Kappel. As a result of the hearing an Order was issued on November 17, 2021, dismissing Palmetto as a defendant in the case. A motion to alter or amend judgment was filed on November 29, 2021 and denied by written order by the Hon. Letitia H. Verdin on December 7, 2021. A timely notice of appeal was filed. It is from those Orders that appeal is taken.

ARGUMENT

I. THE CIRCUIT COURT ERRED DISMISSING CAR DEALER'S SURETY BASED ON A FINDING THAT THE APPELLANT WAS NOT AN "OWNER" OF A VEHICLE AS CONTEMPLATED UNDER § 56-15-320.

The Appellant entered into a contract of sale for the purchase of a 1999 Ford Mustang from the Respondents Marco Qurrioga and Oscar Quirroga, d/b/a as Oscar Auto Sales. (Supp. R. p. 15). Respondent's accepted a $500 deposit and submitted paperwork required by the finance company for $5,000 as the remainder of the purchase price. (Supp. R. pp. 16, 17). The Respondent executed an Affidavit & Notification of Sale of Motor Vehicle in the Appellant's name. (Supp. R. p. 15). Some dispute arose between the parties and the Appellant attempted to cancel the contract. On August 5, 2021, the Respondent provided the Appellant with a check for $500 representing his deposit.(Supp. R. p. 18). On the same day the Respondent received $5,000 from the finance company on the purchase of the vehicle. (Supp. R. p. 19). The Respondent subsequently sold the vehicle to a third party and has failed to return the Appellant's $5,000 purchase money. (Supp. R. p. 20). The Respondents Qurrioga subsequently converted the Appellant's purchase money to their own use and have ceased doing business.

Respondent Palmetto Surety Corporation is the issuer of a surety bond covering the Respondents in compliance with § 56-15-320(B) (Supp R. pp. 11-14). That bond was in effect at the time of the Appellant's contract of sale and the Respondents' receipt and conversion of the Appellant's purchase money of $5,000. Appellant filed suit against Respondents Qurrioga for damages and Respondent Palmetto based on its bond. Respondent Palmetto moved to be dismissed based on the claim that Appellant was not an "owner" of a vehicle under § 56-15-320(B) and therefore not covered by its bond. The circuit court granted Palmetto's motion reasoning that even if Appellant

had been an "owner" under the contract of sale, he was no longer an "owner" of the vehicle once he rescinded the sale. This was error.

The clear purpose of S.C. Code § 56-15-320(B) is to provide protection for purchasers of vehicles from loss or damage occasioned by the fraudulent representations of a licensed dealer:

> "The Dealer Bond Statute "specifically states the purpose of a dealer's bond is to indemnify 'for loss or damage suffered by an owner of a motor vehicle, or his legal representative.'" Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (quoting S.C. Code Ann. § 56-15-320(B)). In fact, the Dealer Bond Statute provides that "[a]n owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages." S.C. Code Ann. § 56-15-320(B).

Centennial Cas. Co. v. W. Sur. Co., 412 S.C. 331, 334, 772 S.E.2d 274, 276 (2015).

In Centennial the Court found that bills of sale appointing an "agent and legal representative" was sufficient to trigger the application of 56-15-320(B). Likewise, the Affidavit and Notification of Sale to the Appellant was sufficient to establish Appellant as an owner for the purposes of 56-15-320(B).

> Each applicant for licensure as a dealer or wholesaler shall furnish a surety bond in the penal amount of thirty thousand dollars on a form prescribed by the director of the department. The bond must be given to the department and executed by the applicant, as principal, and by a corporate surety company authorized to do business in this State, as surety. The bond must be conditioned upon the applicant or licensee complying with the statutes applicable to the license and as indemnification for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter. An owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter. However, regardless of the number of years a bond remains in effect, the

> aggregate liability of the surety for claims is limited to thirty thousand dollars on each bond and to the amount of the actual loss incurred. The surety may terminate its liability under the bond by giving the department thirty days' written notice of its intent to cancel the bond. The cancellation does not affect liability incurred or accrued before the cancellation.

S.C. Code Ann. § 56-15-320(B).

In the circuit court the Appellant argued that he became the owner of the vehicle when he contracted for the sale, paid the deposit and was issued an Affidavit & Notification of Sale of Motor Vehicle in the Appellant's name. The circuit court declined to rule specifically on the issue of whether the Appellant had become an owner under the statute finding instead that even if the Appellant was an owner at the time he contracted for the sale of the vehicle, he was not an owner under 56-15-320(B) after he rescinded the contract. The court's reasoning is flawed as the Appellant's attempt at rescission was unsuccessful, and as a result, he remained the "owner" of the car.

Here, while the Respondents represented that they would cancel the contract of sale they subsequently accepted the purchase money from the finance company. Despite demand, the Respondents failed to return the purchase money to either the Appellant or the finance company and ultimately converted the funds to there own use. The Respondents further failed to deliver the vehicle to the Appellant and instead sold it to a third party. (Supp. R. p. 20). The Respondents' representation that they would cancel the contract was therefore clearly false. The Appellant's attempt at rescission was without effect as the Respondents failed to return the Appellant to the status *quo ante*. Because the Appellant was not returned to the status *quo ante* by the Respondents there was, as a matter of law, no rescission of the contract. "[G]enerally a party who wishes to rescind a contract must place the opposite party in the status *quo*. Hamilton Ridge

Lumber Corp. v. Boston Insurance Co., 133 S.C. 472, 131 S.E. 22 (1925); 17 Am. Jur. (2d) Contracts § 512 at 994 (1964)." Williams v. Leventis, 290 S.C. 386, 389-90, 350 S.E.2d 520, 522 (Ct. App. 1986). Here, Appellant was never returned to the status *quo ante*. Appellant's attempt to rescind the contract was therefore ineffective.

The Respondents Quiroga accepted a $500 deposit from the Appellant and issued an Affidavit and Notification of Sale establishing Appellant's ownership interest in the vehicle. The Respondents subsequently accepted $5,000 based on the sale of the vehicle. Respondents then failed to return the $5,000 or provide the Appellant with the vehicle. Because they have failed to return the Appellant to the status *quo ante* the Respondents cannot claim a recision of the contract of sale. Appellant therefore remains an "owner" of the vehicle as contemplated by § 56-15-320(B). The circuit court was therefore in error.

CONCLUSION

Based on the foregoing the decision of the circuit court granting Respondent Palmetto's motion to be dismissed should be reversed.

Respectfully submitted,

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PROOF OF SERVICE

I certify that on May 12, 2022, I served the Appellant's Final Brief on the Respondents, and others if so indicated, by AIS email only addressed to counsel of record, and any others, and by other means, as indicated below:

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