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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

JAN 05 2017

CASE NO. 2016 CP-07-0067

SC Court of Appeals

George Drayton

Joshua Paschal and Imported Cars, Inc. d/b/a Stokes
Honda Cars of Beaufort

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Bradford N. Martin

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

2016 DEC -2 AM 10:46
CLERK OF COURT
BEAUFORT COUNTY, S.C.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

EXHIBIT
A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3069
Judge Code

12/1/16
Date

RECEIVED

JAN 05 2017

IN THE STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE CIRCUIT COURT SC Court of Appeals
)
) FOR THE 14TH JUDICIAL CIRCUIT

George Drayton,

) C/A No. 2016-CP-07-0067
)

Plaintiff,

) ORDER GRANTING DEFENDANT'S
) MOTION FOR SUMMARY JUDGMENT
)

vs.

Joshua Paschal and Imported Cars, Inc.
d/b/a Stokes Honda Cars of Beaufort,

)
)
)

Defendants.

2016 DEC -2 AM 10:15
JONATHAN ROSS
BEAUFORT COUNTY, SC
CLERK OF COURT

This matter came before the Court on November 16, 2016 at a regularly scheduled non-jury term upon co-Defendant Imported Cars, Inc., d/b/a Stokes Honda Cars of Beaufort's ("Stokes Honda") Motion for Summary Judgment, pursuant to Rule 56, SCRCP. Stokes Honda seeks Summary Judgment as to Plaintiff's causes of action for Conversion and Replevin. Present before the Court was Bradford N. Martin, Attorney for Stokes Honda, and William F. Barnes, III, Attorney for the Plaintiff. Co-Defendant Joshua Paschal, *pro se*, informed the Court of his planned absence. Since the Motion was directed at the Plaintiff, the hearing went forward without Defendant Paschal. After consideration of oral arguments, pre-trial briefs, relevant statutory and case law, as well as the entire record, this Court finds that Defendant is entitled to Summary Judgment for both causes of action. Consequently, I make the following findings of fact and conclusions of law:

SUMMARY JUDGMENT STANDARD

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. The movant seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Knight v. Austin*, 396 S.C. 518, 722 S.E. 2d 803 (2012). Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Murphy v. Tyndall*, 384 S.C. 50, 681 S.E. 2d 28 (Ct. App. 2009). Summary judgment should be denied where the non-moving party submits a mere scintilla of evidence. *Azar v. City of Columbia*, 414 S.C. 307, 778 S.E. 2d 315 (2015).

Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial. *Id.* Rule 56(e), SCRPC. Whether the law recognizes a particular duty is an issue of law to be determined by the Court. *Jackson v. Swordfish Investments, LLC*, 365 S.C. 608, 620 S.E.2d 54 (2005).

FINDINGS OF FACT

The facts in the light most favorable to Plaintiff are as follows: Joshua Paschal went to Stokes Honda on December 21, 2015 to trade in a 2016 Mercedes Benz for a 2016 Honda Civic. It is undisputed that the Mercedes Benz was worth far more than the Honda. Stokes, as standard operating procedure: 1) confirmed that Paschal was the sole registered owner of the trade-in

vehicle¹; 2) confirmed that the car was titled in his name²; 3) confirmed he had insurance in his name³; 4) verified his identity by reviewing and copying his driver's license with his picture⁴; and 5) made sure there were no liens on the trade-in⁵. Stokes then accepted the trade and turned the Honda over to Paschal once the paperwork was completed, and issued him a check for \$26,120 for the difference in value of the cars.

Plaintiff Drayton presented evidence through his affidavit that he had no driver's license, that Defendant Paschal was 21 years old, and that Paschal was to drive him to and from his doctor's appointments in Charleston. He also presented two "Two Whom it May Concern" documents he claimed that Defendant Paschal signs stating that Paschal registered two different cars for Drayton. There was no such document for the trade-in Mercedes Benz.

Plaintiff Drayton also presented a copy of a check to Mercedes Benz of Hilton Head as evidence that Drayton, not Paschal, purchased the trade in Mercedes. He further claimed he did not intend to gift the trade in to Defendant Paschal. Finally, Drayton claimed he told Defendant Stokes Honda after the sale that the Mercedes Benz was his but they only offered to sell it back to him for \$55,000.

CONCLUSIONS OF LAW

I. CONVERSION

Conversion is "the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights...Conversion may arise by some illegal use or misuse, or by illegal detention of another's

¹ Ex. A to Defendant's Memorandum of Law in Support of Summary Judgment

² Ex. B to Defendant's Memorandum of Law in Support of Summary Judgment

³ Ex. C to Defendant's Memorandum of Law in Support of Summary Judgment

⁴ Ex. D to Defendant's Memorandum of Law in Support of Summary Judgment

⁵ Ex. B to Defendant's Memorandum of Law in Support of Summary Judgment

chattel” *Am. Credit of Sumter, Inc. v. Nationwide Mut. Ins. Co.*, 378 S.C. 623, 629, 663 S.E.2d 492, 495 (2008).

Paschal, not Drayton, was the legal owner in possession of the trade-in when he came to Stokes. One in possession of personal property is presumed to be the owner and one purchasing such property is required to use only reasonable diligence to ascertain if there are any defects in the title thereto. *Russell Willis, Inc. v. Page*, 213 S.C. 156, 166-167, 48 S.E.2d 627, 632 (1948). Paschal was in possession of the Mercedes, and Stokes Honda performed 5 different tests to ascertain the title holder of the car.

Plaintiff relies on *Tollison v. Reaves*, 277 S.C. 443, 289 S.E.2d 163 (1982) to argue that “the presumption of ownership evidenced by the certificate of title may be overcome by evidence that the true owner of the vehicle is a person other than the one in whose name the vehicle is registered.” *Id* at 445, 164. Citing *Banker’s Ins. Co. of Pa. v. Griffin*, 244 S.C. 552, 137 S.E.2d 785, 787 (1964). The Court is unpersuaded by this argument. The *Tollison* case involved determining insurance coverage, and not the sale of a car to an innocent third party without notice. The title holder and driver agreed on the true ownership of the car; only the insurance company for the driver objected. Drayton may very well prevail in his claim against Paschal, but this case gives no guidance when a third party is involved.

The case on point is *Page, supra*. *Page* stands for the proposition that if one claiming ownership has been at fault or negligent in placing the innocent purchaser for value:

in a position to create an appearance reasonably likely to deceive or mislead an innocent purchaser as to the ownership, then the [purported owner] is estopped from asserting its claim against the [third party]. This is no more than giving recognition to the doctrine long followed in this state that if one of two innocent persons must suffer by the fraud of another, the one whose negligence makes the fraud possible must bear the loss. (*Citations omitted*)

Page 213 S.C. at 169; 485 S.E.2d at 633.

Stokes used reasonable diligence to ascertain the ownership of the trade-in by: 1) verifying the South Carolina Registration; 2) verifying the South Carolina Title Information; 3) verifying the insurance information; 4) verifying the identity of the buyer; and 5) investigating whether or not any liens or encumbrances existed on the trade-in. There is not even a scintilla of evidence presented by Drayton that would put Stokes Honda on notice that the trade-in was his, and not Paschal's.

Drayton was also negligent as a matter of law by not doing any of the following: 1) adding his name to the registration; 2) adding his name to the title; 3) adding his name to the insurance policy; 4) putting a lien on the Mercedes in his name; or 5) preparing a "To whom it may concern" document for Pascal to present to a dealership. Any of these actions would have put Stokes Honda on notice. Drayton's failures created an appearance reasonably likely to deceive any subsequent purchaser. To penalize Stokes Honda would bring commerce to a halt. Therefore, Drayton has shown no questions of material facts that would support a verdict for conversion against Stokes Honda.

II. REPLEVIN

Replevin is the wrongful detention of the property in dispute. In order to prevail, Plaintiff must prove "1) that he [is] the owner of, or had special interest in [the property]... 2) that [he is] entitled to the immediate possession thereof; 3) and that defendants wrongfully detained the same." *Jackson v. Frier*, 146 S.C. 322, 330, 144 S.E. 66, 68 (1928) "The certificate of title statute creates a rebuttable presumption that the vehicle's owner is the owner reflected on the title document." *Tollison v. Reaves*, 277 S.C. 443, 445, 289 S.E.2d 163, 164 (1982). Paschal's name was on the title, not Drayton's. Drayton claims he can overcome the presumption of ownership of the trade-in Mercedes because he claims he paid for the car and it was not a gift to Paschal.

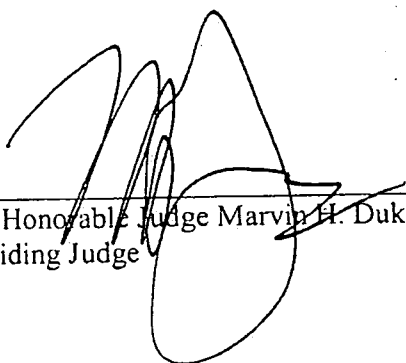
This very well may be so, but is not before the Court today. Drayton cannot show a scintilla of evidence that Stokes Honda wrongfully detained the car.

Paschal conveyed title to the subject vehicle to Stokes in an arms-length transaction. Stokes paid adequate consideration, \$26,120, plus a new Honda, for the subject vehicle. (See Exhibit E, ¶ 10) Stokes was an innocent purchaser for value and exercised reasonable diligence in ascertaining the ownership of the trade-in. As stated earlier, Drayton is estopped as a matter of law from claiming ownership due to his own negligence in created appearances reasonably likely to deceive or mislead an innocent purchaser as to the true ownership of the car.

The only evidence in the record is that, at the time of sale, title was properly transferred to Stokes and the car was not wrongfully detained. Therefore, summary judgment should be granted in favor of Stokes.

IT IS THEREFORE ORDERED that co-Defendant Stokes Honda's Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.



The Honorable Judge Marvin H. Dukes, III
Presiding Judge

Dated: 26/1/16