

Takeshi NAKAZATO
vs.
MICROL CORPORATION, Inc. et
al.

Civil Action No. 83-0001
District Court NMI

Decided February 2, 1984

1. Civil Procedure - Summary Judgment

Summary judgment is proper if, when viewing the evidence in the light most favorable to the party opposed to the motion, the movant is entitled to judgment as a matter of law.

2. Civil Procedure - Summary Judgment

The trial court may grant motion for summary judgment only when no material questions of fact remain.

3. Estoppel

Where bank as lien holder of vehicle quotes net payoff amount to car dealer and accepts payment in that amount, bank is estopped from asserting any other existing lien rights, notwithstanding its negligent oversight of second lien on vehicle.

4. Conversion

Where bank as lien holder of vehicle quotes net payoff amount to car dealer and accepts payment in that amount, bank is estopped from asserting any other existing lien rights, and bank's subsequent repossession of vehicle from third party amounted to conversion.

5. Consumer Protection - Prohibited Acts

The Consumer Protection Act was not intended to prohibit only acts which constitute deception or are intended to fool

the customer. 33 T.T.C. §353 [4 CMC §5101 et seq.].

6. Consumer Protection - Prohibited Acts

The Consumer Protection Act is broadly worded and is meant to be construed liberally to provide protection of all kinds to the consumer. 33 T.T.C. §353 [4 C.M.C. §5101 et seq.].

7. Consumer Protection - Repossessions

Where bank as lien holder of vehicle quotes net payoff amount to dealer and accepts payment in that amount, and car dealer relies on figure and resells car to third party, bank's subsequent repossession from third party violates Consumer Protection Act. 33 T.T.C. §353 [4 CMC §5101 et seq.].

FILED
Clerk
District Court

FEB 02 1984

For The Northern Mariana Islands
[Signature]
Mandy B. [unclear]

IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

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TAKESHI NAKAZATO,)
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Plaintiff,)
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vs.)
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MICROL CORPORATION, INC.)
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Defendant and Cross-)
Claimant,)
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vs.)
BANK OF GUAM,)
)
Defendant and Third-)
Party Plaintiff,)
)
vs.)
)
SIMON I. KAPILEO,)
)
Third-Party Defendant.)

CIVIL ACTION NO. 83-0001

DECISION

Plaintiff Nakazato brings this Motion for Summary Judgment against defendant Microl Corporation on the issues of breach of warranty of title and liability for violation of the Consumer Protection Act (33 TTC § 353), and against defendant Bank of Guam on the issues of conversion and liability for violation of 33 TTC § 353. For the reasons set forth below, the Motion is granted as against Bank of Guam and denied as against Microl Corporation.

1 The facts relevant to this Motion are as follows:

2 On February 19, 1982, plaintiff Nakazato purchased from
3 Microl Corporation a 1979 Toyota Cressida for \$1,700. Plaintiff
4 paid cash for this automobile. At the time of sale, Nakazato was
5 told by Francisco Sablan, Sales Manager at Microl, that there had
6 been an outstanding lien on the automobile, but that it had been
7 paid off by Microl, and that as soon as Microl received the
8 Certificate of Ownership from the Bank of Guam it would be
9 immediately passed on to Mr. Nakazato.

10 On February 17, 1982, Mr. Sablan had contacted Bank of
11 Guam and requested it to provide a pay out figure to clear any
12 lien or encumbrance upon the Toyota Cressida. Bank of Guam
13 informed Mr. Sablan that the pay out sum was \$976.96, whereupon
14 Mr. Sablan caused a check in that amount to be cut by Microl and
15 hand carried to the Bank of Guam for the purpose of paying off
16 the lien. Upon payment of the pay off amount, Microl expected to
17 receive the Certificate of Ownership on the Toyota Cressida, as
18 is the common regular practice in the finance and transfer of
19 motor vehicles between dealers and banks in the CNMI. The Bank
20 of Guam did not, however, give the Certificate of Title to Microl
21 at that time.

22 Nakazato subsequently made several inquiries to Microl
23 regarding the Certificate of Title, and Microl in turn requested
24 Bank of Guam to surrender the certificate. For various reasons,
25 none of which have been clearly stated, Bank of Guam failed or
26 refused to give the Certificate of Title to Microl. The Court

1 can and does infer, however, from the facts that Bank of Guam's
2 failure or refusal was due to the existence of a second lien on
3 the vehicle the amount of which exceeded \$4,000.

4 On October 20, 1982, while Nakazato was visiting Japan,
5 the Bank of Guam went to Nakazato's premises, where the Toyota
6 was located, and over Nakazato's brother's protests, took the
7 vehicle away, telling his brother that Nakazato owed the bank
8 money on the car.

9 Upon his return from Japan on October 30, 1982,
10 Nakazato went to Microl Corporation and demanded an explanation
11 as to why the car had been taken, and again requested the Certi-
12 ficate of Title to the vehicle. At this time, an employee of
13 Microl Corporation informed him that the Bank of Guam was
14 claiming a second lien on the vehicle.

15 The following Monday Nakazato went to Bank of Guam,
16 informed them that he had paid Microl \$1,700 for the car and
17 showed them his receipt from Microl. He told Bank of Guam that
18 Microl had informed him on October 30, 1982 that they had paid
19 off Bank of Guam's lien in February, 1982. He demanded that Bank
20 of Guam return the vehicle to him.

21 The bank's employees, after discussing the matter, told
22 Nakazato that they were the legal owners of the vehicle, that the
23 bank had a valid lien on the vehicle and that they would not give
24 him the vehicle. Nakazato returned to Microl Corporation and
25 informed them of the Bank of Guam's position.

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A. Breach of Warranty

As to plaintiff's Motion for Summary Judgment against defendant Microl Corporation on the issues of breach of warranty of title and violation of the Consumer Protection Act, the Court finds that there exist genuine issues of fact which can only be resolved at trial, and therefore, the motion is denied.

Plaintiff alleges that Microl breached the warranty of title at the time of sale in that there was an outstanding lien on the vehicle at the time, and the Certificate of Title was in the name of Bank of Guam.

Microl asserts, by affidavit, that the lien on the vehicle was paid off by Microl Corporation the day before sale of the vehicle to plaintiff by a check to the Bank of Guam, setting forth (in the check description portion) exactly what the payment was for. The information regarding the net pay-off amount was provided by and received from the Bank of Guam. The day following transmittal of the check plaintiff received a bill of sale from Microl Corporation asserting that there were no liens or encumbrances on the vehicle.

[9] Thus, Microl Corporation asserts, it had full right and title to the vehicle and complete authority to sell it, and, as a matter of law, Bank of Guam is estopped to assert any additional lien rights in the vehicle after providing Microl with a pay out figure (see below). This is true even assuming, arguendo, that Microl was aware at the time it requested a pay out figure that the original owners had taken out a second, third, or even fourth

1 loan on the vehicle. It requested a pay out amount from the
2 lienholder, received a figure and paid this amount. The payment
3 was accepted by the lienholder, and as a matter of law estops the
4 lienholder from asserting, and for purposes of this case, extin-
5 guishes any other existing lien rights the bank may have had
6 against Microl Corp. or its transferees.

7 There is a question, however, as to the extent to which
8 Microl fulfilled its duty to transfer good title to plaintiff in
9 that the Certificate of Title was not obtained from the bank
10 until after the car had been taken from plaintiff. The evidence
11 is conflicting as to the extent of inquiries made by Microl to
12 the bank regarding delivery of the Certificate of Title. This is
13 a question of fact and must be resolved at trial.

14 Because the claim for violation of the Consumer
15 Protection Act depends largely upon the same evidence necessary
16 to establish breach of warranty, plaintiff's Motion for Summary
17 Judgment on this issue is also denied.

18
19 **B. Conversion**

20 Plaintiff contends that Bank of Guam's actions in
21 removing the subject vehicle from plaintiff's property amount to
22 conversion of the vehicle. The bank answers that conversion can
23 only be found by an essentially tortious act which cannot be
24 justified or excused in law. The acts of the Bank of Guam, it
25 argues, were not tortious and they are justified or excused in
26 law in that the bank was the legal owner of the vehicle and had a

1 lien interest therein. The repossession, the bank argues, was
2 done under a security agreement and for the purpose of satisfying
3 a secured loan.

4 The Bank of Guam admits that it provided Microl with a
5 pay out figure in response to Microl's request for such, but
6 contends that the figure provided was only to pay off the balance
7 due under an initial dealer loan agreement which provided
8 financing for the vehicle. There was at that time, and remaining
9 at least until October 20, 1982, another loan taken out by the
10 original owner from the Bank of Guam and also secured by the
11 vehicle, in the approximate amount of \$4,000. The Bank of Guam
12 simply asserts that the pay off amount on this separate loan was
13 not provided to Microl, but it does not give any clear reason for
14 its failure to include it in Microl's request for a figure which
15 would clear any liens or encumbrances on the vehicle.

16 The bank variously asserts that the two separate loans
17 were kept in different file drawers, and/or that it had no reason
18 to believe that Microl wished to pay off all encumbrances upon
19 the vehicle, and/or it provided Microl with the pay out amount
20 only on the dealer loan agreement because Microl was contractual-
21 ly obligated to pay that amount. These arguments pale into
22 nothingness when considered in the light of the relationship
23 between them -- a car dealer and a bank in the business of
24 financing car loans. What is more believable is that the
25 employees of the bank made an error in not including the second
26 loan amount in the pay off figure; an error which was exacerbated

1 when the vehicle was taken from plaintiff's property without his
2 permission.

3 It is the normal business of Microl Corporation to sell
4 automobiles and necessarily to transfer good title thereto. The
5 Bank of Guam was aware of this when it provided Microl with a pay
6 off figure. It is simply not reasonable to conclude that Bank of
7 Guam actually expected or intended to maintain a security
8 interest in this vehicle after a pay out figure was requested and
9 actually paid to the bank.

10 [4] Moreover, the undisputed facts show, that in response
11 to a specific request from Microl Corporation to provide it with
12 a pay off figure to extinguish all liens and encumbrances upon
13 the subject vehicle, Bank of Guam quoted a figure of \$976.96.
14 Microl, in good faith reliance on such figure immediately
15 tendered payment of this amount, which payment was accepted by
16 Bank of Guam. In further reliance on the bank's quotations,
17 Microl sold the vehicle to an innocent third party, assuring this
18 party that Microl would deliver the Certificate of Title to the
19 vehicle just as soon as it was received from the bank. The bank
20 never delivered the certificate, though it had accepted Microl's
21 payment in extinguishment of all liens. The bank is estopped to
22 claim, under these facts, a lien on the vehicle against, at
23 least, the plaintiff. Its subsequent taking of the vehicle from
24 the owner's premises without the owner's permission, and refusal
25 thereafter to return it upon the owner's demand, was a tortious
26 act without justification or excuse under the law.

1 The Court finds that it is immaterial whether or not
2 the bank held a valid second lien upon the vehicle at the time
3 Microl made its request for a pay off figure. The bank provided
4 a pay off figure, which figure was reasonably relied upon by
5 Microl, and subsequently by plaintiff, as having fully
6 extinguished all liens on the vehicle. The bank was, from that
7 moment on, estopped to assert against Microl Corporation or
8 plaintiff any additional liens on the vehicle, it having waived
9 any such right thereto by accepting Microl's check for the quoted
10 amount.

11 Thus, the bank was not the owner of the vehicle, nor
12 did it have any interest therein, at the time the vehicle was
13 taken from the plaintiff's property. The taking therefore
14 amounts to conversion and summary judgment is granted for
15 plaintiff against Bank of Guam on this issue.

16 [5] Plaintiff alleges the same facts as above in support of
17 his claim for violation of the Consumer Protection Act.
18 Defendant Bank of Guam argues that the Consumer Protection Act
19 was not intended to apply to a situation such as this, but
20 rather, was intended to prohibit only acts which constitute
21 deception or are intended to fool the consumer. The Court finds
22 no merit whatsoever in this argument.

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[6,7] The Consumer Protection Act^e is broadly worded and is meant to be construed liberally to provide protection of all kinds to the consumer. Bank of Guam's actions here easily fall within its provisions, and plaintiff's motion is also granted in regard to the claim for violation of the Act.

The issue of damages is not before the Court in this motion and thus the measure of damages will be determined according to the evidence presented at trial.

DATED this 2nd day of February, 1984.



JUDGE ALFRED LAURETA