

Nardito F. FORMANES, et al.
vs.
Concepcion Y. SABLAN, et al.

Civil Action No. 87-558
Commonwealth Trial Court

Decided January 28, 1988

1. Civil Procedure - Summary Judgment - Conversion of Motion to Dismiss

Where affidavits and documents are submitted pursuant to a motion to dismiss for failure to state a claim, the motion to dismiss is treated as a motion for summary judgment. Com.R.Civ.P. 56; Com.R.Civ.P. 12(b).

2. Civil Procedure - Discovery - Depositions

Where, at the argument on a motion for summary judgment, no counsel objected to the manner of the taking of a deposition nor the certification process and counsel stipulated at the deposition to the procedure for taking the testimony, court considered any departures from the rules to be waived by all parties attending the deposition. Com.Tr.C.R.Civ.P. 29.

3. Motor Vehicles - Licensing

Statute which provides that no person, except those expressly excepted, may operate any motor vehicle upon a highway in the Commonwealth unless that person has been licensed, does not, per se, prohibit the sale of a motor vehicle to an unlicensed driver. 9 CMC §2201.

4. Banking - Finance - Motor Vehicles

A bank or commercial lender involved in a financial transaction in which an automobile is financed has no affirmative duty to investigate whether the driver has a driver's license before advancing funds.

5. Motor Vehicles - Ownership

Pursuant to Commonwealth statute, the person entitled to possession of a vehicle as the purchaser under a conditional sales contract is the owner, and not the party having a security interest in vehicle. 9 CMC §1103(e).

6. Negligent Entrustment - Duty

Providing financing and supervising a transaction to protect its security interest does not necessarily create a legal duty on the part of the lender in an action for negligent entrustment of a motor vehicle.

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
COMMONWEALTH TRIAL COURT

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5	NARDITO F. FORMANES and)	CIVIL ACTION NO. 87-558
6	FILOMENA VILLAFUERTE,)	
7)	
8	Plaintiffs,)	
9)	
10	vs.)	<u>ORDER</u>
11	CONCEPCION Y. SABLAN, ESTANIS))	
12	E. SIMIRON, BANK OF GUAM,)	
13	PACIFICA INS. UNDERWRITERS,)	
14	INC., TOKIO MARINE AND FIRE)	
15	INSURANCE CO., LTD.,)	
16	jointly and severally,)	
17)	
18	Defendants.)	
19)	

Defendant Bank of Guam (BOG) has filed a motion to dismiss Count II of the complaint which charges it with negligently entrusting a vehicle to co-defendant Simiron who apparently injured plaintiffs, while driving a vehicle, the purchase of which was financed by BOG.

PROCEDURAL POSTURE OF THE MOTION

Although BOG has framed and styled its motion as a Rule 12(b)(6) motion to dismiss, the plaintiffs, in resisting the motion, have filed an affidavit of their counsel which refers to the deposition of the manager of BOG. Both counsel, at argument, referred to and discussed portions of the

1 deposition and the exhibits attached thereto.* The question
2 arises whether this "converts" the motion to dismiss to a
3 Rule 56 Summary Judgment Motion.

4 Com.R.Civ.Pro., Rule 12(b) states that:

5 If, on a motion asserting the defense numbered
6 (6) to dismiss for failure of the pleading to state a
7 claim upon which relief can be granted, matters
8 outside the pleading are presented to and not excluded
9 by the court, the motion shall be treated as one for
10 summary judgment and disposed of as provided in
11 Rule 56, and all parties shall be given reasonable
12 opportunity to present all material made pertinent to
13 such a motion by Rule 56.

14 [1] Where affidavits and documents are submitted pursuant to a
15 motion to dismiss for failure to state a claim, the motion to
16 dismiss is treated as a motion for summary judgment. Goodman
17 v. Parwatiker, 570 F.2d 801, 803 (8th Cir., 1978).

18 Since plaintiffs in their memorandum of points and
19 authorities in opposition to defendant's motion to dismiss
20

21 [2] Plaintiffs' counsel's affidavit refers to the deposition
22 of Mike Nahalowaa, General Manager for the Bank of Guam on
23 Saipan. On page 1 of the deposition it appears that opposing
24 counsel stipulated to the procedure for the taking of the
25 testimony of Mr. Nahalowaa. At the argument for this motion,
no counsel objected to the manner of the taking of the
deposition nor the certification process. Rule 29,
Com.R.Civ.Pro. allows for such a stipulation and agreement and
the court will consider any departures from the rules to be
waived by all parties attending the deposition.

attached an affidavit discussing the deposition of Mike W. Naholowaa, which deposition was subsequently referred to and discussed by both counsel at the hearing on plaintiffs' motion, this motion will be treated as a motion for summary judgment pursuant to Com.R.Civ.Pro. Rule 56. Thus, the court must examine all the pleadings, depositions, and affidavits to determine if there is any genuine issue of material fact as to the allegations presented in Count II of plaintiffs' complaint in order to determine if defendant is entitled to a judgment as a matter of law.

DISCUSSION

Count II of plaintiffs' complaint alleges, in essence, that BOG was negligent in permitting Simiron to take possession of the automobile which was subsequently involved in the accident that was the genesis of this lawsuit. Plaintiffs claim that by virtue of BOG's providing financing for the purchase of the automobile by defendants Simiron and Sablan from Joeten Motors, BOG was the legal owner of the automobile. Plaintiffs also assert that because BOG made an examination of the assets, expenses, and personal background of Simiron and required Simiron to obtain insurance on the vehicle, BOG knew that Simiron was not a legally licensed driver and therefore was not qualified to operate said vehicle.

However, the uncontradicted facts indicate that BOG merely purchased the contract (hereinafter "the contract") made between Joeten Motors and Sablan and Simiron. Naholowaa Deposition p. 4. As plaintiffs correctly point out, BOG's

1 decision as to whether to buy the contract was based upon the
2 status of defendants' employment, their credit history, and any
3 recommendation from the dealer, Joeten Motors. BOG also
4 required that the customers, Sablan and Simiron, obtain an
5 insurance policy on the automobile to be purchased. Naholowaa
6 Depo. p. 8. At this point, plaintiffs conclude that because
7 BOG required these things, BOG became "acquainted" with Simiron
8 and knew or should have known that he was not a licensed
9 driver. This assertion is not supported by the facts.

10 First of all, BOG never had any direct contact with
11 Simiron. In purchasing the contract from Joeten Motors, BOG
12 ran a credit check on Simiron, checked his employment records,
13 sought a recommendation from Joeten Motors, and required Sablan
14 and Simiron, as co-purchasers, to obtain insurance on the
15 automobile. The Application for Credit and Insurance,
16 Exhibit 9 attached to Naholowaa's Deposition, was completed by
17 Sablan and included her driver's license number. Although
18 Simiron signed this application form as a co-purchaser, the
19 information contained therein pertained only to Sablan. This
20 application was apparently sufficient for Sablan and Simiron to
21 obtain the required insurance. From these facts, BOG could not
22 possibly have known that Simiron did not have a driver's
23 license.

24 [34] Secondly, although 9 CMC § 2201, provides that no person,
25 except those expressly excepted, may operate any motor vehicle
upon a highway in the Commonwealth unless that person has been
licensed, this does not, per se, prohibit the sale of a motor

1 vehicle to an unlicensed driver. See Drake v. Morris Plan Co.,
2 125 Cal.Rptr. 667, 670 (1976). Likewise, the mere financing of
3 an automobile purchase between a dealer and an unlicensed
4 driver is not prohibited by any Commonwealth statute. Cases
5 have consistently held that a bank or commercial lender
6 involved in a financial transaction in which an automobile is
7 financed has no affirmative duty to investigate the driver
8 before advancing funds. McKenna v. Straughan, 222 Cal.Rptr.
9 462, 466 (1986); Altman v. Morris Plan Co., 130 Cal.Rptr. 397,
10 402 (1976); Drake v. Morris Plan Co., supra, 125 Cal.Rptr. 667,
11 670. Thus, BOG was under no legal duty to conduct any
12 investigation as to whether Simiron had a driver's license.

13 [5] Finally, plaintiffs contend that BOG "was the legal owner
14 of the vehicle driven by defendant Simiron." However, the
15 Vehicle Code defines the "owner" of a vehicle as "the person
16 entitled to possession of a vehicle as the purchaser under a
17 conditional sales contract; the mortgagor of a vehicle"
18 9 CMC § 1103(e). Pursuant to 5 CMC § 2401 title to the vehicle
19 passed to Sablan and Simiron when Joeten Motors delivered the
20 vehicle to them. Consequently, plaintiffs' assertion that by
21 virtue of taking a security interest in the vehicle, BOG was
22 the "owner" of that vehicle is not supported by the laws of the
23 Commonwealth.

24 Plaintiffs' opposition memorandum also cites Restatement
25 (Second) of Torts, § 390 in support of their position. As this
section deals with one who supplies a chattel to another the
court finds this section to be inapplicable here since BOG

clearly did not supply any chattel to anyone.

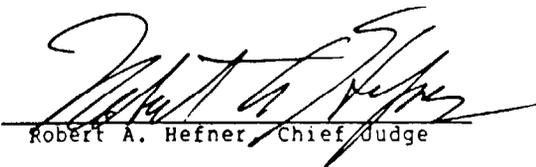
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[6] In essence BOG merely loaned money on the security of the vehicle and its supervision of the transaction was limited to protecting its security interest. BOG's participation in the sale of the vehicle to Sablan and Simiron was so minimal and restricted that the transaction did not create a legal duty on the part of BOG, as a mere lender, to protect plaintiffs from damages allegedly caused by Simiron's illegal use of the vehicle. See, Drake v. Morris Plan Co, supra, 125 Cal.Rptr. 667, 670. In short, providing financing, under these facts, cannot be termed negligent entrustment.

Based on the foregoing, Summary Judgment is hereby entered on Count II in favor of the Bank of Guam and against the plaintiffs and Count II is dismissed.

SO ORDERED.

Dated at Saipan, MP, this 28th day of January, 1988.


Robert A. Hefner, Chief Judge