

General Motors Acceptance Corp. of Canada v. Alex Williamson Motor Sales Ltd., [2010] O.J. No. 404

Ontario Judgments

Ontario Court of Appeal

Toronto, Ontario

J.I. Laskin, R.P. Armstrong and R.G. Juriansz JJ.A.

Heard: January 25, 2010.

Oral judgment: January 25, 2010.

Released: February 2, 2010.

Docket: C50928

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Between General Motors Acceptance Corporation of Canada Limited, Plaintiff (Respondent), and Alex Williamson Motor Sales Limited, Defendant (Appellant)

(4 paras.)

Case Summary

Commercial law — Secured transactions — Priorities — Appeal by the defendant from decision finding that the respondent's security interest in a motor vehicle and its proceeds took priority over appellant's interest dismissed — The appellant sold the vehicle to a dealer which financed the purchase through respondent — Respondent had security agreement over purchaser's inventory — Purchaser went bankrupt and appellant repossessed vehicle — Fact that respondent asked to return vehicle to manufacturer and obtain a credit did not constitute a disposition and did not discharge respondent's security interest.

Statutes, Regulations and Rules Cited:

Personal Property Security Act, R.S.O. 1990, c. P.10, s. 63

Appeal From:

On appeal from the order of Justice Peter A. Cumming of the Superior Court of Justice, dated July 28, 2009.

Counsel

Douglas Turner, Q.C., for the appellant.

Edward M. Hyer, for the respondent.

ENDORSEMENT

The following judgment was delivered by

THE COURT (orally)

1 Alex Williamson Motor Sales Limited ("Williamson") appeals from the decision of the Commercial Court motions judge that the security interest of General Motors Acceptance Corporation of Canada Limited ("GMAC") in a motor vehicle and its proceeds took priority over its interest.

2 Williamson had sold the Vehicle to Bruce Bissell Buick Pontiac Limited ("Bissell"), which had financed the purchase with GMAC, its inventory financier. Bissell made an assignment in bankruptcy and its cheque to Williamson was returned by Williamson's bank. Williamson subsequently took possession of the Vehicle.

3 Williamson recognizes that when it sold the vehicle to Bissell it became part of Bissell's inventory and that GMAC's security agreements covering Bissell's inventory attached to the vehicle. Williamson argues, however, that GMAC asked GM to take the vehicle back and give it a credit. Williamson submits that this constituted a disposition under s. 63 of the Personal Property Security Act, R.S.O. 1990, c. P.10 that had the effect of discharging GMAC's security interest as provided by s. 63(9).

4 While the motion judge did not refer to the portion of the affidavit evidence that Williamson now relies on, it is clear that he found that GMAC had not disposed of the collateral. On the record before us, we are unable to interfere with the motion judge's view of the facts. Consequently, the appeal fails and is dismissed with costs fixed at \$3,500, inclusive of disbursements and GST.

J.I. LASKIN J.A.
R.P. ARMSTRONG J.A.
R.G. JURIAN SZ J.A.

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