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Personal Property

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PERSONAL PROPERTY

ESTOPPEL—MOTOR VEHICLES ACT

Erwin v. Southwestern Inv. Co.¹ denied the defense of estoppel to the defendant because the certificate of title involved was not completed in accordance with Article 1436-1 of the Texas Penal Code and because the defendant did not reasonably, and in good faith, rely upon the conduct of the plaintiff. The decision reversed the Texas Court of Civil Appeals² and affirmed the judgment of the District Court.

The plaintiff had authorized Dunn, a used-car dealer, to sell his car. In order to facilitate the sale, he delivered to Dunn his certificate of title endorsed in blank. The plaintiff refused Dunn's request to have the transfer on the back of the certificate notarized until a purchaser was found. Section 33 of Article 1436-1³ requires the owner to appear before a notary public and swear to the transfer before a valid sale can be completed. Going beyond the scope of his authority, Dunn borrowed \$1,540 from the defendant and left the certificate of title as security. Section 51⁴ of the same article makes it unlawful for anyone to offer for sale or to offer as security any motor vehicle unless he has in his possession the proper receipt or certificate of title. Dunn retained possession

¹..... Tex., 215 S. W. (2d) 330 (1948).

²Southwestern Inv. Co. v. Erwin, 213 S. W. (2d) 81 (Tex. Civ. App. 1948).

³"No motor vehicle may be disposed of at subsequent sale unless the owner designated in the certificate of title shall transfer the certificate of title on form to be prescribed by the Department before a Notary Public, which form shall include, among such other matters as the Department may determine, an affidavit to the effect that the signer is the owner of the motor vehicle, and that there are no liens against such motor vehicle, except such as are shown on the certificate of title, and no title to any motor vehicle shall pass or vest until such transfer be so executed." TEX. PEN. CODE (Vernon 1948) art. 1436-1 § 33.

⁴"It shall hereafter be unlawful for any person, either by himself or through any agent, to offer for sale or to sell or to offer as security for any obligation any motor vehicle registered or licensed in this State without then and there having in his possession the proper receipt or certificate of title covering the motor vehicle so offered." TEX. PEN. CODE (Vernon 1948) art. 1436-1 § 51.

of the car under a trust receipt. An agent of the defendant instructed a stenographer to insert Dunn's name as transferee and sign the notary's certificate as if the plaintiff had appeared before her. This was done even though the plaintiff was known to the agent of the defendant. Dunn later disappeared, and the defendant took possession of the automobile as mortgagee under the trust receipt. Plaintiff sued for conversion. Defendant pleaded that the plaintiff had invested Dunn with apparent title and was estopped to deny the defendant's title. Section 53⁵ states: "All sales made in violation of this Act shall be void . . ." In line with previous decisions,⁶ the court held that a person dealing with the holder of an incomplete transfer of a certificate of title ordinarily is in no position to plead estoppel against the true owners.

Generally, in order for the defendant to invoke the defense of estoppel successfully, he must establish that he was damaged because he reasonably, and in good faith, relied upon the intentional or negligent misrepresentations of the plaintiff.⁷ Apart from the express provisions of Article 1436-1, on the facts as understood by the Supreme Court, the defendant was not entitled to the defense of estoppel. As pointed out by the Supreme Court, the manner in which the defendant completed the transfer showed neither good faith reliance on the plaintiff's conduct nor equitable conduct on its own part.

⁵"All sales made in violation of this Act shall be void and no title shall pass until the provisions of this Act have been complied with." TEX. PEN. CODE (Vernon 1948) art. 1436-1 § 53.

⁶McKinney v. Croan, 114 Tex. 9, 188 S. W. (2d) 144 (1945); Hoskins v. Carpenter, 201 S. W. (2d) 606 (Tex. Civ. App. 1947) writ of error refused; Elder Chevrolet Co. v. Bailey County Motor Co. 151 S. W. (2d) 938 (Tex. Civ. App. 1941).

⁷Bynum v. Preston, 69 Tex. 287, 6 S. W. 428 (1887) quoted Bigelow's definition of estoppel as follows:

"(1.) There must have been a false representation or concealment of material facts; (2) the representations must have been made with a knowledge of the facts; (3) the party to whom it was made must have been ignorant of the truth of the matter; (4) it must have been made with the intention that the other party should act upon it; and (5) the other party must have been induced to act upon it." Bigelow, Estop. 484." See also: Collins v. San Antonio Food Products & Produce Co., 188 S. W. (2d) 888 (Tex. Civ. App. 1945) writ of error dismissed; Noxon v. Cockburn, 147 S. W. (2d) 872 (Tex. Civ. App. 1941) writ of error refused; 31 C. J. S. 237 § 59 (1942); 2 TEX. JUR. 490 § 221 (1929).

The Supreme Court pointed out that they did not intend to hold that estoppel could never be raised against a claim that the transfer of the certificate had not been properly executed. To illustrate a situation where estoppel could be properly applied, the court cited *Wise v. Cain*,⁸ in which the plaintiff gave a car to the defendant and told her to have the transfer notarized, which she did. Section 33⁹ requires that the owner appear before the notary public and swear to the affidavit. The court held that failure to so appear and swear made the transfer false, and the participating parties were guilty of a criminal offense. However, the plaintiff was held estopped from asserting the invalidity of the transfer, as he could not take advantage of his own wrong.

An interesting sidelight to the principal case was the difference in the interpretation of the facts between the Court of Civil Appeals and the Supreme Court. The former court stressed the fact that the plaintiff admitted he wanted to give Dunn all the authority necessary to make the sale. The Supreme Court held this was an incomplete statement of plaintiff's testimony and went on to state that the plaintiff refused to go before a notary public until the sale was consummated.

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⁸212 S. W. (2d) 880 (Tex. Civ. App. 1948) *writ of error refused*.

⁹See note 3 *supra*.