

RECENT DEVELOPMENTS

UNIFORM COMMERCIAL CODE

BY EXPRESS LANGUAGE IN THE ACT THE UCC TRUMPS TEXAS CERTIFICATE OF TITLE ACT

Vibbert v. Par, Inc., ___ S.W.3d ___ (Tex.App.—El Paso 2006).

FACTS: In June 2001, Sandra Vibbert and her husband traded in their Nissan Altima for a used Mercedes Benz from G.S. Motor Sports (“G.S.”). G.S. agreed to pay the balance owed on the Nissan to Wells Fargo Bank, the original lien holder. G.S. sold the Nissan a few days after the trade to new buyers. This subsequent sale of the Nissan was financed by a division of Cygnet Finance (“Cygnet”). Wells Fargo notified the Vibberts that payment was due on the Nissan. G.S.’ payoff check to Wells Fargo had bounced, and Wells Fargo decided to pursue the Vibberts. The Vibberts then sued G.S. for DTPA violations, fraud, and breach of contract. Cygnet, the lien holder of the second sale of the Nissan, contracted with Par, Inc. to obtain a duplicate title on the Nissan. Par. and its agents allegedly signed Sandra Vibbert’s name and the name of an officer at Wells Fargo, the original lien holder, to the certificate of title in order to transfer title from the Vibberts and Wells Fargo to Cygnet and the new owners of the Nissan. The Vibberts filed suit against Par for conversion by fraudulently transferring title. The trial court granted summary judgment in favor of Par and the Vibberts appealed.

HOLDING: Affirmed.

REASONING: The court concluded that under the UCC, title to the Nissan passed to the car dealer when the former owner physically delivered the vehicle. Sandra no longer owned or had a right to possession of the Nissan. The Vibberts argued that the Texas Certificate of Title Act (the “Act”) made the sale void because Sandra failed to transfer the certificate of title at the time she gave

possession of the Nissan to G.S. The Vibberts also argued that the certificate of title showing Sandra Vibbert as owner created a presumption of ownership and a right to possession. However, the court, relying on *Tyler Car & Truck Ctr. v. Empire Fire & Marine Ins. Co.*, 2 S.W.3d 482, 485 (Tex. App – Tyler 1999), found that the Vibberts failed to show evidence to support a presumption of ownership or Sandra’s right to possession and summary judgment was appropriate.

At the time of the sale, chapter 501.071(a) of the Texas Transportation Code prohibited the sale of motor vehicles without a transfer of the certificate of title by the named owner at the time of the sale. The code further provided that any sale made in violation of this provision was void and title could not pass until the parties to the transaction complied with all requirements. TEX. TRANSP. CODE CHAPTER 501.073 (Vernon 1999). The court then looked to the legislative intent of the Act, which was: 1) to prevent auto theft; 2) to lessen the importation into the state of stolen vehicles; and 3) to prevent the sale of encumbered vehicles without disclosure to the purchaser of a lien secured by a vehicle. TEX. TRANSP. CODE ANN. §501.003 (Vernon 1999); *First Nat’l Bank v. Buss*, 143 S.W.3d 915, 919 (Tex. App – Corpus Christi 2004). Since enforcing the sale would not interfere with the purpose of the Certificate of Title Act, the court upheld summary judgment for Par.

Lastly, the court noted a conflict existed between the Act and the UCC provision, TEX. BUS. & COM. CODE ANN. §2.401(b). However, the Act expressly stated that “Chapters 1 through 9 of the [UCC] control[led] over a conflicting provision of Chapter 501.” TEX. TRANSP. CODE ANN. § 501.005. Thus, the court concluded the UCC provision trumped the Texas Act by its express language.

MISCELLANEOUS

FOR DIVERSITY JURISDICTION PURPOSES, NATIONAL BANK IS A CITIZEN OF STATE IN WHICH ITS MAIN OFFICE IS LOCATED

Wachovia Bank v. Schmidt, 126 S. Ct. 941 (2006).

FACTS: Wachovia Bank (“Wachovia”) is a national banking association with a designated main office in Charlotte, North Carolina, and branch offices in several other states, including South Carolina. A group of South Carolina citizens sued the bank in a South Carolina state court claiming that the bank fraudulently induced them to participate in an illegitimate tax shelter. Relying on a claim of diversity of citizenship, Wachovia filed a petition to compel arbitration of the dispute in federal district court. The district court denied the petition on the merits and Wachovia appealed the decision.

To determine the bank’s citizenship, the Fourth Circuit looked to the language in 28 U.S.C.S. § 1348, which reads, in part: “All national banking associations shall, for the purposes

of all other actions by or against them, be deemed citizens of the States in which they are respectively located.” 28 U.S.C.S. § 1348. The appellate court determined the meaning of the term “located” implied that a bank is a citizen in every state in which it maintains a branch office. Because Wachovia operated a branch in South Carolina, the bank was considered to be a citizen of that state. As a result, diversity of citizenship did not exist between the parties to the fraudulent inducement claim and the claim could not be adjudicated in federal court. The Supreme Court granted certiorari to resolve the disagreements over the meaning of § 1348.

HOLDING: Reversed and remanded.

REASONING: The Fourth Circuit cited three reasons for the decision to give inclusive meaning to the term “located” as used in § 1348. First, the court relied upon the term’s dictionary definition to include physical presence. Second, the court looked to the use of the terms “established” and “located” in the code and determined that each term was used independently of the other. Finally, the court cited the language used by the Supreme