

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA09-541

SUPERIOR, INC., SUPERIOR
PONTIAC-CADILLAC, SUPERIOR
ONE, INC., AND SUPERIOR BUICK
GMC

APPELLANTS

V.

JAMES ARRINGTON AND AUTO
BUYERS OF ARKANSAS, INC.

APPELLEES

Opinion Delivered DECEMBER 16, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CV2008-1159]

HONORABLE WILLARD
PROCTOR, JR., JUDGE

AFFIRMED

KAREN R. BAKER, Judge

On July 10, 2007, appellants Superior, Inc., et al., purchased a 2002 Chevrolet Avalanche from Henry Smith and Nylisha Beasley as a trade-in vehicle. Mr. Smith's and Ms. Beasley's title for the vehicle showed that it was free and clear of liens and encumbrances. On July 13, 2007, appellee Auto Buyers purchased the vehicle from Superior. Kellog Valley Motors then purchased it from Auto Buyers. Finally, Brenda Saldivar purchased the vehicle from Kellog Valley Motors and received a new title, which showed the Kellog Valley Motors' lien, but no other liens or encumbrances. EZ Credit repossessed Ms. Saldivar's vehicle based on a lien filed in March 2007, which did not appear on the title even as late as August 2007 when Ms. Saldivar titled the vehicle.

Although there is no dispute that Ms. Saldivar was a good-faith purchaser for value,



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instead of asserting her rights against EZ Credit for the wrongful repossession of her vehicle, Ms. Saldivar requested and received reimbursement for the cost of the vehicle from Kellog Valley Motors. Kellog Valley Motors then requested and received reimbursement for the cost of the vehicle from Auto Buyers. Auto Buyers then requested reimbursement for the cost of the vehicle from Superior. Superior refused to reimburse Auto Buyers, asserting that it was a good-faith purchaser for value that passed good title to Auto Buyers. On January 30, 2008, Auto Buyers filed suit against Superior for breach of its “contractual obligation” to provide the vehicle with good title that was free and clear of encumbrances.

On February 5, the trial court heard the matter and considered the evidence submitted, including the parties’ stipulations of fact. Significantly, the parties stipulated that Superior, Auto Buyers, Kellog Valley Motors, and Brenda Saldivar were each a “good-faith purchaser for value relying on the validity of the vehicle title.” They further stipulated that there were no misrepresentations made to any parties regarding the status of the vehicle title between Auto Buyers, Superior, and Kellog Valley Motors. These parties lacked knowledge of any liens or encumbrances on the vehicle. Finally, the parties also stipulated that Auto Buyers would offer testimony that it is habit and custom in the automobile industry that if the seller cannot provide good title, the seller will repurchase the vehicle.

At the conclusion of the bench trial, the court found in favor of Auto Buyers, not on the UCC basis, but on the basis of the course of dealing within the industry argument. The court observed that the automobile dealers’ repurchase of vehicles with flawed titles “is how



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this works within the industry.” The court entered judgment for Auto Buyers in the amount of \$11,270 and over Superior’s objection, also awarded attorney’s fees in the amount of \$2,034.

On appeal, Superior challenges the trial court’s decision, asserting that the trial court did not correctly apply Arkansas’ UCC provisions and controlling case law and also asserting that the trial court’s finding of a course of dealing between Superior and Auto Buyers was clearly against the preponderance of the evidence. We find no error and affirm.

Superior argues that under the UCC, Smith and Beasley, who traded the vehicle to Superior, had voidable title to Superior as a good-faith purchaser for value, as did every dealer in the transaction as well as the final purchaser of the vehicle, Ms. Saldivar. Superior asserts that when EZ Credit repossessed the vehicle, Ms. Saldivar’s recourse was against EZ Credit for the wrongful possession of the vehicle, not against Kellog Valley Motors for reimbursement. Superior further argues that the fact that Kellog Valley Motors and Auto Buyers made the business decision to reimburse their good-faith purchasers for the cost of the vehicle, does not render Superior, a good-faith purchaser, liable for damages and/or any less entitled to the protection it is afforded against others in the chain of title.

This court has previously explained that public policy requires that the burden of remedying a voidable title to a used car lies with the used-car dealer, rather than the purchaser of the used car:

Appellant, and used-car dealers in general, are beneficiaries of the provision in section 4-2-403(1) allowing good-faith purchasers to pass good title even when they have



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been defrauded in obtaining the goods that they sell. The assurance that the purchaser of second-hand goods will not be subject to potential claims by those in the chain of title that may have been victims of fraud gives buyers of used vehicles confidence that the transaction will be binding and secure, thereby increasing both the value of the individual vehicle and volume of used-vehicle sales in general. We think that confidence in documents of title issued by the State likewise benefits the business interests of used-car dealers. As beneficiaries of these assurances to buyers, and as the parties best equipped to investigate title irregularities, we think that the risk of forged title documents can and should be borne by dealers rather than purchasers.

Pine Meadow Autoflex, LLC v. Taylor, 104 Ark. App. 262, 266, 290 S.W.3d 626, 629 (2009).

The habit and custom within the used-car industry for sellers to reimburse the buyer when the seller cannot deliver good title to the vehicle, as described by *Auto Buyers*, is consistent with this public policy. This practice of reimbursement also falls squarely within our statutory definition of trade usage:

(c) A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

Ark. Code Ann. § 4-1-303 (Supp. 2009).

The trade usage of reimbursing the dealers who have purchased through a chain of transactions back to the voidable title similarly promotes this policy:



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The controlling case is *Midway Auto Sales v. Clarkson, supra*, where we held that one who obtains property by fraud acquires voidable title and therefore has power to transfer good title to a good-faith purchaser for value; even where delivery is procured through criminal fraud, voidable title passes. Here, it is likely that Cates obtained the duplicate title by criminal fraud but, even so, the sale to Asher gave Asher voidable title, *Midway Auto Sales, supra*, and the subsequent purchasers therefore were empowered to transfer good title pursuant to Ark. Code Ann. § 4-2-403(1)(d) (Repl. 2001).

Pine Meadow Autoflex, 104 Ark. App. at 265–66, 290 S.W.3d at 629.

This trade usage is also consistent with the concept of good faith and fair dealing. “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing. Ark. Code Ann. § 4-1-201(b)(20). Whether a party has acted in good faith in a commercial transaction is generally a question of fact. *Midway Auto Sales v. Clarkson*, 71 Ark. App. 316, 29 S.W.3d 788 (2000).

The trial court’s determination that the course of dealing in the used-car trade that a seller will reimburse the buyer when the seller cannot deliver title to the vehicle free and clear of liens or encumbrances is supported by the evidence and public policy. Accordingly, we affirm.

Affirmed.

HENRY and BROWN, JJ., agree.

Stockland & Trantham, P.A., by: *Charles S. Trantham* and *Karen P. Freeman*, for appellants.

Kelly Law Firm, PLC, by: *A.J. Kelly*, for appellees.