

FORDE

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THE HIGH COURT

1982 No. 9441P

BETWEEN:

HENRY FORDE & SON FINANCE LIMITED

PLAINTIFF

AND

JOHN FORDE & GENERAL ACCIDENT FIRE & LIFE ASSURANCE
COMPANY LIMITED

DEFENDANTS

Judgment of Miss Justice Carroll delivered the 13th day of June 1986.

The Plaintiff and the first Defendant John Forde entered into an agreement for the hire of a motor vehicle in November 1979. Insurance moneys amounting to over £11,000 have become payable and the Plaintiff claims to be entitled to the moneys under the terms of the memorandum of agreement, whereas the Defendant claims the agreement is unenforceable because the memorandum was not signed by or on behalf of the Plaintiff as owner.

The first issue is whether the printed part of the memorandum containing the Plaintiff's name is sufficient signature for the purposes of Section 3 (2) (a) of the Hire-Purchase Act 1946. Section 3 (2) provides :-

"An owner shall not be entitled to enforce a hire-purchase agreement or any contract of guarantee relating thereto or any right to recover the goods from the hirer, and no security given by the hirer in respect of money payable

under the hire-purchase agreement or given by a guarantor in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the hirer or guarantor by any holder thereof, unless the requirement specified in the foregoing subsection has been complied with, and -

- (a) a note or memorandum of the agreement is made and signed by the hirer and by or on behalf of all other parties to the agreement, and
- (b) the note or memorandum contains a statement of the hire-purchase price and of the cash price of the goods to which the agreement relates and of the amount of each of the instalments by which the hire-purchase price is to be paid and of the date, or the mode of determining the date, upon which each instalment is payable, and contains a list of the goods to which the agreement relates sufficient to identify them, and
- (c) the note or memorandum contains a notice, which is at least as prominent as the rest of the contents of the note or memorandum, in the terms prescribed in the Schedule to this Act, and
- (d) a copy of the note or memorandum is delivered or sent to the hirer within seven days of the making of the agreement:

Provided that if the Court is satisfied in any action that a failure to comply with the requirements specified in the foregoing subsection or any requirement specified in paragraph (b), (c) or (d) of this subsection has not prejudiced the hirer, and that it would be just and equitable

to dispense with the requirement, the Court may, subject to any conditions that it thinks fit to impose, dispense with that requirement for the purposes of the action."

Therefore the Court does not have power to dispense with the requirement contained in subparagraph (a) as to signing.

It was submitted by Mr. Nesbitt for the Plaintiff that an analogy can be drawn with Section 4 of the Statute of Frauds which requires writing signed by the person declaring the trust. In Touret .v. Cripps (1879 48 Law Journal 564) a letter containing an offer of a lease and sufficiently stating the terms was not signed in writing but was written on a sheet of paper headed in print "From Richard L. Cripps". Hall V.C. applied the principle that if a memorandum adequate in other respects contains a name in print "yet in such a way as to show that the sender recognised it to be his name" it was sufficient compliance with the statute. This is a case which has been followed many times since in relation to sale of land. But in my opinion this case is not strictly analogous.

In relation to hire-purchase agreements, the legislature considered it was essential for the enforcement of a hire-purchase agreement that a note or memorandum should be signed by the hirer and by or on behalf of all other parties to the agreement. In order to be signed the document should have a signature or mark which identifies it as an act of the party. This would not prevent a signature or mark being affixed by some mechanical means other than writing with a pen, but the form of words

"Accepted for and on behalf of Henry Forde & Sons Finance
Limited
Signature of owner.....
Authorised official....."

does not purport to be a signature or mark of the Plaintiff. It is a preamble to the signature or mark which should follow.

Therefore at the time of making the agreement, the memorandum was not signed by the owner. The form of memo in all respects complies with the requirements of paragraph (b) and (c). A copy of the memorandum signed by the hirer but not by the owner was sent within the time limited by paragraph (c).

The question arises if there can be compliance with paragraph (d) by sending a memorandum which is unsigned by the owner.

In my opinion what was contemplated by the legislature was that the hirer would be sent a copy of the memorandum signed in accordance with paragraph (a) complying with the requirements of paragraphs (b) and (c). Therefore, there has been non-compliance with paragraph (d).

The last question for resolution is whether the signature on behalf of the owner can be affixed to the memorandum at a later date, as happened here when the original memorandum was signed by Mr. McGrane in 1982.

In my opinion there is no reason why this cannot be done. Subsection (2) provides that the owner is not entitled to enforce a hire-purchase agreement unless (inter alia) a note or memorandum is made and signed by all parties. This has now been done. It is the enforceability of the agreement which is affected by non signature not its existence. If the owner signs after the period has elapsed for sending a copy to the hirer, there will, of necessity, be non-compliance with paragraph (d). In a suitable case the Court can dispense with the

requirement of paragraph (d).

There has been no evidence given by the Defendant. I cannot see how non-compliance with paragraph (d) has prejudiced the Defendant. The agreement is therefore enforceable.

Mella Carroll.

*Approved
25-6-86.*