FINANCINGS LTD V STIMSON

THE MASTER OF THE ROLLS: Mr Anthony George Stimson saw an Austin motor car on the premises of the Stanmore Motor Co advertised for sale at 350. On 16th March 1961, he signed a hire purchase agreement form which was produced by the Stanmore Motor Co. It was in law not an agreement, but only an offer by Mr Stimson to enter into a hire purchase agreement with a company called Financings Ltd, Finance Company. I need not go into all the details except to say at once that there was a Clause in it which made it clear that "this agreement shall become binding on the owner", that is on the Finance Company, "only upon acceptance by signature on behalf of the owner and the hiring shall be deemed to commence on such date of acceptance". Now, to go at once almost to the end of the story, the Finance Company did not sign the acceptance until the data which they put upon it, on the 25th March, 1961. The interval of time between the signing of the offer on the 19th March and the purported acceptance on the 25th March is most important because much happened in between.

Mr Stimson was not allowed to take the car away on 16th March even though he had signed the form. The reason was because he had not then got the required insurance cover for it. He produced the ordinary third-party insurance cover. This was not satisfactory because comprehensive cover was required. But on Saturday, 18th March Mr Stimson did produce a comprehensive cover note. He produced it to the Stanmore Motor Company. They telephoned Finance Company and got their assent. He paid the first instalment of 70 on the car and he was allowed to take the car away. No doubt both Mr Stimson and Finance Company thought at that time that an agreement had been concluded, but in fact it had not. Certainly a hire purchase agreement had not been concluded because, as I have said, on its wording it depended on a signature which did not take place until a week later. At all events, Mr Stimson took the car away. He had it on the Saturday and drove it on the Sunday. He was not satisfied at all with its condition and performance. In the result, on Monday, 20th March he was so dissatisfied with it that he returned it to the Stanmore Motor Company. He saw the manager and proprietor, Mr Cozens-Walker, and explained that he did not want the car after all, and, in order to settle the matter, he offered to forfeit the 70 he had paid. It is not altogether clear what Mr Cozens-Walker said to him, but it seems that he told him that the Stanmore Motor Company would get in touch with Finance Company and let him know the outcome. Also it was suggested that Mr Stimson should get in touch with Finance Company himself. However, by some oversight, the Stanmore Motor Company did not get in touch with Finance Company; nor did Mr Stimson. Nevertheless, Mr Stimson thought that, having returned the car, he had no longer any responsibility for it. Accordingly, on Thursday, 23rd March he cancelled the insurance cover note.

Then the critical event happened. On the night of 24th/25th March the Stanmore Motor Company's premises were broken into and the car was stolen. In the course of the theft the car was badly scratched and damaged. When it was recovered, it was obviously not worth the same money as it was before. The car having been recovered, Finance Company were told about it. They had the car back and sold it by auction and got some 240 for it. Now they claim in this action damages from Mr Stimson. They say he defaulted under the hire purchase agreement which he signed. Alternatively, by an amendment they seek to claim damages against him as a bailee on the terms of that hire purchase agreement.

Such is the outline of the facts. I need not at the moment go into the question of the condition and roadworthiness of the car, because it seems to me that the crucial matter in the case is

whether there was ever a binding agreement between Mr Stimson and Finance Company. The document which Mr Stimson signed on 16th March was only an offer. Before it was accepted, he returned the car to the dealer and made it clear that he did not want the car any more. Was that a revocation of the offer? To my mind, that was a clear revocation provided that it was made to a person having authority to receive it. But was the dealer a person authorised to receive the revocation? Was he the agent of Finance Company for the purpose?

It was urged before the County Court Judge, on the authority of **Campbell Discount Company Limited v Gall** (1961, 1 Q.B. 431) in this court, that the dealer is not the agent of Finance Company; and the County Court Judge, to his regret, felt that he was bound to hold that there was insufficient evidence to show that the dealer was the agent of Finance Company for the purpose of receiving back the motor car. I take a different view. I look on **Campbell Discount Company Limited v Gall** as being a very special case on its own facts. It seems to me that, in this transaction before us, as indeed in most of these hire purchase transactions, the dealer is for many purposes the agent of the Finance Company. Mr Iwi in his argument pointed out a number of matters in which it cannot be denied that the dealer is the agent of the Finance Company. The dealer holds the necessary forms; he hands them over to the hirer to sign; he forwards them to the Finance Company; he receives the deposit as agent for the Finance Company: he receives from the Finance Company information that they are willing to accept the transaction; and he is authorised to pass on that communication to the hirer. He was in this very case the agent on behalf of the Finance Company to see that the insurance cover was all in proper order. He rejected the first cover which was offered and accepted the comprehensive cover which he said was satisfactory. Most important of all, he was the agent of the Finance Company to hand over the motor car to the hirer. It seems to me that, if we take, as we should, a realistic view of the position, the dealer is in many respects and for many purposes the agent of the Finance Company. I am aware, of course, that the Finance Companies often put clauses into their forms in which they say that the dealer is not their agent. But these clauses are often not worth the paper they are written on. Nobody can make an assertion of that kind in an agreement so as to bind the courts if it is contrary to the facts of the case. We all know that people often try to put clauses in a tenancy agreement so as to say that it is a licence and not a tenancy. But the courts take no notice of it if it is contrary to the truth. So, also, if they put into one of these agreements a clause that the dealer is not their agent, it does not bind the courts if he is in fact their agent. In this case we are not troubled by any such clause, for there is none. And, on the facts, I am clearly of opinion that the dealer was ostensibly authorised to receive communications on behalf of Finance Company. Just as he was authorised to deliver the car to Mr Stimson in the first place, so he was ostensibly authorised to receive it back when it was returned. Just as he was authorised to receive the offer for Finance Company, so, also, he was ostensibly authorised to receive the revocation: and to receive the communication that the hirer had no further use for it.

I am aware that the hirer did not in terms revoke the offer, for the simple reason that he thought the agreement was concluded. But he made it clear that he did not wish to proceed with the matter and that is all that was necessary. In my judgment, therefore, the offer was revoked on 20th March and there was, for this reason, no concluded contract. Even if I am wrong on that point, there is the second point to be considered which appealed to the County Court Judge. He said: When this offer was made, it was made on the basis that the car was in good condition, or at all events in the condition in which Mr Stimson had seen it, but, before the offer was accepted (it was accepted on March 25th), on the night of Mar. 24th/25th it suffered this extra damage which cost 44 to repair, having been scratched and dented by the

thieves who stole it. Can a man accept an offer when the condition of the goods has deteriorated in a material respect since the date of the offer?

It seems to me that, on the facts of this case, the offer made by Mr Stimson was a conditional offer. It was conditional on the car remaining in substantially the same condition until the moment of acceptance. Take the case put by Donovan, LJ, in the course of the argument: Suppose an offer is made to buy a Rolls-Royce car at a high price on one day and, before it is accepted, it suffers the next day severe damage. Can it be accepted and the offeror bound? My answer to that is: No, because the offer is conditional on the goods at the moment of acceptance remaining in substantially the same condition as at the time of the offer.

Mr Rawley argued that there was an express clause here saying that the goods were to be "at the risk of the hirer from the time of purchase by the owner". The time of purchase by the owner, he said, was 18th March when Finance Company told the dealer orally that they accepted the transaction. Thenceforward, he said, the goods were at the risk of Mr Stimson. This shows, says counsel, that the condition which I have suggested is inconsistent with the express terms, or, at all events, is not to be implied. In my judgment, however, this clause on which counsel relies only comes into operation when a contract is concluded and accepted. Meanwhile the offer is made on the understanding that, so long as it remains an offer, it is conditional on the goods being in substantially the same condition as at the time when the offer was made.

I agree, therefore, with the County Court Judge in thinking that, in view of the damage which occurred to this car before the acceptance was given, Finance Company were not in a position to accept the offer, because the condition on which it was made had not been fulfilled. So on that ground also there was no contract.

In these circumstances, there is no need for me to go into the other points which were raised in the course of the argument as to the roadworthiness of the car or into the question of damages. But as to the amendment which was put in by Mr Rawley in this court suggesting that this was a bailment on the terms of the hire purchase agreement, I would only say that if the hire purchase agreement was never concluded, I cannot think that there was a bailment on the terms of it.

I would, therefore, dismiss this appeal.

LORD JUSTICE DONOVAN: The dealer in this case was clearly Finance Company's agent to do a variety of things: to receive an offer of hire purchase; to tell the proposed hire purchaser, Mr Stimson, that Finance Company would accept the business; to ensure that comprehensive insurance was effected by Mr Stimson; and thereafter to deliver the car to him. In the written hire purchase form of agreement there was no clause negativing agency between Finance Company and the dealer. In these circumstances, authority to receive a notice of revocation of the hire purchase offer was, in my opinion, within the dealer's authority as ostensible agent for Finance Company, and on this point I entirely agree with what has been said by the Master of the Rolls.

Then was a notice of revocation given before the offer was accepted? That acceptance must be taken to have taken place not earlier than 25th March 1961. Before then, namely, on 20th March Mr Stimson had taken the car back to the dealer, told him he did not want to go on with the transaction and offered to forfeit his deposit. The dealer said words to the effect that he would get in touch with Finance Company to see what could be arranged, and told Mr Stimson that he himself should also communicate with Finance Company, which Mr Stimson did not do. Clearly both parties were under the impression that what was in view was the

rescission of an existing concluded contract, whereas at this moment there was no contract at all. But it is conceded, and I think rightly so, that, if an offeror makes it clear that he does not want to go on with the transaction, it is properly treated as a revocation of his offer, notwithstanding that the words used would be more appropriate to a case of rescission. Thus one reaches the stage that an offer here has been revoked before acceptance and the revocation communicated to the ostensible agent of the offeree. There is thus an end of the matter in favour of the respondent to this appeal.

But if this view be wrong, I would agree that the offer here was on the basis that the car remained substantially in the same condition until acceptance, and that this did not happen. I do not regard Clause 2 of the terms of the printed hire purchase agreement ("The hirer's acceptance of delivery of the goods shall be conclusive that he has examined the goods and found them to be complete and in good order and condition and in every way satisfactory to him ") as incorporated in the offer. Who would offer to purchase a car on terms that if it were severely damaged before the offer was accepted, he, the offeror, would pay the bill? The suggestion seems to me to be quite unreal. I think that the offer is conditioned, in a case where the documents are in the form which they take here, by the clause which the offeror signs to the effect that he has examined the goods and satisfied himself that they are in good order and condition. What is the point of this provision if, before acceptance, the goods are heavily damaged but, nevertheless, the offeror can still be compelled to buy them. The County Court Judge held that there must, therefore, be implied a term that, until acceptance, the goods would remain in substantially the same state as at the date of the offer; and I think that this is both good sense and good law.

On either of the foregoing grounds, therefore, I think that the appeal fails, though, if I may say so, it could not have been better argued than it was by Mr Rawley.

With regard to the alternative argument which we permitted on receiving Finance Company' amendment to his pleading, to the effect that there was a separate oral contract on 18th March when the car was delivered in advance of the expected hire purchase agreement, such oral contract embodying practically all the terms of the proposed hire purchase agreement, I agree with the contention of Mr Stimson that, on the facts, this argument cannot be sustained. I think that all that happened was that Mr Stimson was allowed to possess the car in advance of the contract. He thereby became a bailee, but the bailment ceased on 20th March when the car was returned to the dealer whom, as I say, I regard as having ostensible authority to receive it back.

LORD JUSTICE PEARSON: This hire purchase transaction, as unhappily so often happens with hire purchase transactions, creates complicated, artificial and obscure legal relationships between the parties. I am not able, on the point of ostensible authority, to see the position in quite the same way as my brethren have seen it. It is very difficult, in my view, to assess exactly how much authority the dealer has to act, on the one side on behalf of the proposed hire purchaser, and on the other side on behalf of the Finance Company. There is a complicated relationship, because the dealer has himself his own interest in the transaction and he is a party to the three-cornered arrangements. He is going to sell the car to the Finance Company, whereupon the Finance Company will let it out on hire to the hire purchaser. Therefore, it is often very difficult to make sure to what extent the dealer is acting in any one of his three capacities, first, on his own behalf as the proposed seller, secondly, sometimes in some respects as agent for the hire purchaser, and, thirdly, sometimes in some respects as agent for the Finance Company.

Now in this case it was, or must be taken to have been, made clear to Mr Stimson that the dealer was not authorised to conclude the hire purchase agreement. The form of the hire purchase agreement was produced to him, and it was plainly set out in Condition No.13 of the proposed hire purchase agreement:

"This agreement shall become binding on the owner only upon acceptance by signature on behalf of the owner and the hiring shall be deemed to commence on such date of acceptance."

On 16th March 1961 the proposed hire purchaser, Mr Stimson having had time to study these documents, came back with his own signature on the front page. He thereby made his offer, and he handed it to the dealer on that day for transmission to Finance Company. It was transmitted, and Finance Company seem to have received it probably on the 17th or, at any rate, not later than 20th March; almost certainly it must have been about the 17th. Then, after a telephone conversation had taken place between the dealer and Finance Company, the dealer, obviously with the authority of Finance Company, informed the proposed hire purchaser that the proposition was acceptable to Finance Company, and possession of the car was given by the dealer to the hire purchaser. At that moment the transaction was not concluded: the agreement had not yet been signed by Finance Company as owners, and, therefore, there was no hire purchase agreement in existence. But some contract has to be inferred from the conduct of the parties. On the one hand the proposed hire purchaser signed and handed in his offer. He had also, at the request of the dealer and for the benefit of Finance Company, produced a comprehensive insurance cover to show that the car was going to be properly covered. But at that moment there was only a preliminary bailment. There was delivery of the car to the hire purchaser, but no hire purchase agreement had come into force. The expectation was that, in a few days' time, there would be a signature on behalf of Finance Company as owners, which would be an acceptance of the offer and conclude the contract and there would be a hire purchase agreement. But if, for some reason, Finance Company decided they would not go on with the transaction, then the understanding must have been that, in such event, the motor car would have to be handed back by the proposed hire purchaser. That is the position on 18th March and I agree that one cannot read into the terms of that provisional bailment all the terms of the hire purchase agreement. That would not be consistent with the evident intention of the parties, which was merely to create a provisional situation in anticipation of the hire purchase agreement being concluded.

It may well be that the dealer had authority and appeared to have authority from Finance Company to do various things, in particular to hand over the car and to scrutinise the proposed insurance cover to make sure it was a satisfactory comprehensive cover, and it may be there was authority in other respects as well. But I do not see that it follows from any of the facts of this case that the dealer had authority to receive notice of revocation in the relevant sense, which would not be merely to receive it and transmit it to Finance Company on the basis that the dealer would be the authorised and proper channel of communication. The authority would have to go further in the present case. It has to be said that, at the moment when the hire purchaser gave notice to the dealer of his desire to revoke his offer, that was automatically at that moment notice to Finance Company. In my view, that is not a reasonable view of the facts. It is reasonable to say that if the hire purchaser wished to withdraw his offer, it would be right for him to inform the dealer and make the dealer his agent for the purpose of passing on the message. The dealer would be the authorised channel of communication, but it does not follow that Finance Company had made the dealer their agent to such an extent that the mere giving of a revocation notice to the dealer would then and there amount to a withdrawal of the offer. It is clear that the dealer was not authorised to conclude the transaction, and, therefore, one may ask: why should he be authorised on his

own initiative or by his mere receipt of some notice to undo the transaction? He clearly was not authorised to rescind an agreement if an agreement had been completed, and it does not seem to me to follow from any of the facts that he was acting in such a capacity that information given to him was at once information given to Finance Company.

That view of the matter is also borne out by the evidence as to what happened on Monday, 20th March when the intending hire purchaser came to the dealer and said in effect:

"Here is the car; I have brought it back; I do not want to go on with the transaction".

What was then said by Mr Cozens-Walker on behalf of the dealer was:

"Very well; I will get in touch with one of the directors of the Finance Company whom I know and will see what can be done and I will let you know the outcome"

and, according to the evidence of Mr Cozens-Walker, which seems to have been accepted by the learned Judge, he also added:

"But you, Mr Stimson, must also see if you can get in touch with the Finance Company and make the necessary arrangements yourself".

The explanation of that as a matter of history is that probably both of those parties, namely, the dealer and the proposed hire purchaser, thought that there was a concluded contract and that what had to be done was to bring about a rescission of it by agreement, because the proposed hire purchaser also added that he was willing to forfeit his deposit of 70 which he had already paid in order to secure a rescission of the proposed transaction so far as it had gone. That is consistent with assuming that there was a concluded agreement which had to be rescinded on terms rather than an offer which had to be withdrawn. I do not see how one can spell out from that conversation a receipt by the dealer of notice of revocation of the offer. It was not what they were purporting to do, and, to my mind, there is no sufficient evidence of actual or ostensible authority on the part of the dealer to receive any communication as immediately constituting notice to Finance Company. Such authority was not possessed in fact; it was not an apparent or ostensible authority; and Mr Cozens-Walker did not profess to have it. So on the first point I am unfortunately not able to agree that there was ostensible authority, nor, as I think is the more accurate way of putting it, that the mere holding of that conversation between Mr Stimson, the proposed hire purchaser, and Mr Cozens-Walker on behalf of the dealer, constituted the giving of notice to Finance Company of revocation of the offer.

However, on the second point, I do agree that the offer was conditional. It is not necessary for the purpose of this case to lay down any broad general propositions about what happens when there is a change in the condition of the goods between the date of offer and the date of acceptance, because we have important special features in this case. This was a hire purchase transaction, and the offer which was signed by the proposed hire purchaser, Mr Stimson on 16th March contained this provision:

"In signing this agreement the hirer acknowledges that before he signed it - (c) he had examined the goods and satisfied himself that they were in good order and condition."

That is something which has to be signed by the offeror. What is the meaning of it and what have you to infer in order to give reasonable business efficacy to this transaction? The obvious intention is this, that both the proposed hire purchaser and the Finance Company will be able to rely on the condition of the car as it appears to the proposed hire purchaser when he made his offer, and it is on the basis of the car being in that condition that various figures, which one finds on the same page, must have been assessed. The cash price of the goods was

350. That is right as long as the car remains in the same condition, but if in the meantime it suffers injury so that it is depreciated by 100, that figure will be wrong and it should be altered to 250. Equally, the initial instalment of 70 having been paid, it appears to leave 280 to be found, but that figure also would be wrong; if 100 damage had occurred in the meantime, it should be reduced to 180. The amount and number of the monthly instalments would also become wrong. Furthermore (and this is important), in the event of the hire purchaser making default in payment of the instalments, he would, under the terms of the hire purchase agreement, become liable to pay a certain figure. That figure would by that time have become much too high if 100 of damage had been incurred.

The learned Judge found in terms that this car suffered severe damage before the acceptance, and that there was substantial depreciation as the result. On that basis, it seems to me that we should by implication read into this offer, in order to give the transaction that business efficacy which the parties must have intended it to have, an implied condition that this offer is capable of acceptance only if the car remains in substantially the same condition with substantially the same value. That condition in this case was not fulfilled, because the car was severely damaged and its value was substantially depreciated. Therefore, when Finance Company purported to accept it on a date, which we must assume was 25th March it was an offer which was no longer capable of acceptance, and, therefore, no agreement was concluded.

On that ground, I agree that the appeal should be dismissed.