



HIGH COURT OF AUSTRALIA

Public Information Officer

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GENERAL MOTORS ACCEPTANCE CORPORATION AUSTRALIA AND AUTO GROUP
LIMITED (receivers and managers appointed) (administrators appointed) v SOUTHBANK
TRADERS PTY LTD

A vendor of motor vehicles sold on terms in which title did not pass to the purchaser until the total purchase price was paid had a security interest in the vehicles within the meaning of the Victorian *Chattel Securities Act*, the High Court of Australia held today.

In 2002, Southbank Traders, a motor vehicle wholesaler, sold 10 vehicles to Kingstrate Pty Ltd, trading as Dandenong Suzuki. The sale agreement contained a clause by which the vendor retained title to the goods until the purchase price was paid. Kingstrate took possession of the vehicles. While the purchase price was still unpaid, Kingstrate sold on the vehicles to a financier, General Motors Acceptance Corporation (GMAC), while still displaying them for sale. One vehicle was later sold to a member of the public and is not the subject of litigation. GMAC registered a security interest under the *Chattel Securities Act* in December 2002. Southbank did not register a security interest at the time of the original sale. The Act defines “security interest” as an interest in or a power over goods which secures payment of a debt or the performance of any other obligation and includes an interest in or power over goods of a lessor, owner or other supplier of goods.

Section 7(1) of the Act provides that, where a secured party has an unregistered security interest or a registered inventory security interest in goods but is not in possession of them, and a purchaser purchases or purports to purchase the goods for value in good faith and without notice of the security interest from a supplier who is the debtor or another person in possession of the goods, the security interest of the secured party is extinguished. In May 2003, Southbank sued GMAC for conversion (wrongful dealing with goods inconsistently with the owner’s rights) or alternatively for detainment (wrongful detention of goods). Southbank denied that its interest was a “security interest”. It also disputed that GMAC’s purchase or purported purchase was for value in good faith and without notice. In the Victorian County Court, Judge Timothy Holt dismissed Southbank’s claim on the ground that it had an unregistered security interest in the vehicles which had been extinguished upon the purchase or purported purchase of the vehicles by GMAC by the operation of section 7(1). Judge Holt’s decision was reversed by the Victorian Court of Appeal, which held that Southbank did not have a security interest and that section 7(1) did not apply to extinguish its interest, so it was entitled to succeed. GMAC appealed to the High Court.

The High Court unanimously allowed the appeal. It held that Southbank, as a vendor of motor vehicles sold by way of conditional sale, on terms that title did not pass to Kingstrate until the purchase price was paid in full, had a security interest in the vehicles within the meaning of the *Chattel Securities Act* and that this interest was extinguished by section 7(1). The Court held that a conclusion that “security interest” includes conditional sales is consistent with the purpose of the legislation, the statutory context, and the text itself. Outstanding issues were remitted to the Court of Appeal, which may then be remitted to the County Court for further trial.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court’s reasons.*