



**GENERAL MOTORS ACCEPTANCE CORP., A DELAWARE
CORPORATION AUTHORIZED TO DO BUSINESS IN FLORIDA,
APPELLANT,**

V.

**HONEST AIR CONDITIONING & HEATING, INC., CORY BABCOCK
AND WILLIAM STEVENSON, APPELLEES.**

PRESENTED BY:

DANIEL PAEZ

VANESSA HATEM

MATT REGALADO

CASE OVERVIEW

- In September 2001, Cory Babcock and Honest Air purchased a New Corvette For \$52,516.20 from GMAC, with additional details within the RISC (Retail Installment Sales Contract). At the time GMAC perfected its security interest in the Corvette by making sure it reflects GMAC on the lien.
- In August of 2002, Mr. Babcock and Honest Air traded the Corvette to Florida Auto Brokers as part of the purchase of different vehicle.
- In December of 2002, Florida Auto Brokers sent a check for the amount necessary to satisfy the lien to GMAC. Once GMAC received the check they released the lien and forward the title without making sure the Funds cleared.
- In July 2003, GMAC sued Honest Air and Mr. Babcock for \$35,815.26 as damages resulting from the breach of the terms of the RISC.



QUESTION 1

- In this appeal following a nonjury trial, General Motors Acceptance Corp. (GMAC) appeals from an adverse final judgment determining that its automobile retail installment sale contract was a negotiable instrument as defined by chapter 673, Florida Statutes (2001). The judgment also found that because GMAC's conduct impaired the value of the debtor's collateral, no damages were due to GMAC from defendants Cory Babcock and Honest Air Conditioning & Heating, Inc. ("Honest Air").^[1] On appeal, GMAC asserts that the trial court erred in determining that the retail installment sale contract (RISC) was a negotiable instrument and that this error allowed defendants Babcock and Honest Air to avail themselves of protections afforded by section 673.6051(5).^[2] We conclude that the court erred in finding that the RISC is a negotiable instrument. However, we affirm because GMAC, by its business practices and conduct, bore the risk of loss in its transactions involving Mr. Babcock and Honest Air.



QUESTION 1

- This states that GMAC is appealing the court's decision regarding the RISC (Retail Installment Sales Contract) and that the courts were wrong by determining the RISC as a "negotiable instrument". The courts ruling allowed Babcock and Honest Air to use UCC 673.6051(5) to get out of being liable to pay the \$35,815.26 in damages. The courts also agreed that GMAC business practices lead to the risk of loss and eventually lead to the fact that Mr. Babcock and Honest Air were no longer liable.
- The things that make a "negotiable instrument" are the following: 1 - It is in Writing, 2 - Signed by the maker, 3 - Unconditional promise to pay, 4 - Fixed amount of money, 5 - Payable on demand or at definite time, 6 - Payable to "order" or to "bearer".
- Section 673.6051(5) provides, in pertinent part: If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment.



QUESTION 2

- At the nonjury trial, Honest Air and Mr. Babcock asserted that the RISC was a negotiable instrument and that they were entitled to the application of and operation of sections 673.6051(6) and (7), which provide that either failure to maintain perfection of the interest in collateral or to preserve the value of the collateral discharges the debtors to the extent that the impairment would cause the debtors to pay more than they would have been obligated to pay had the impairment not occurred. In its written judgment, the trial court concurred that section 673.6051 applied, found that the value of the collateral exceeded the amount claimed by GMAC, and rendered judgment in favor of Honest Air and Mr. Babcock.
- This is explaining Babcock and Honest Airs reasoning of why they should be off the hook using the UCC 673.6051(6) which basically states GMAC gave up the “perfection of interest” in the Corvette when they removed the lien. Also its stating that courts agreed with the UCC applied and that because the value of the collateral exceeded the amount claimed by GMAC.



QUESTION 3

- Our analysis of this case begins with chapter 673, which is titled Uniform Commercial Code: Negotiable Instruments. Section 673.1041(1) generally defines a negotiable instrument as "an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise on order." Additionally, it must be "payable to bearer or to order at the time it is issued or first comes into possession of a holder" and "payable on demand or at a definite time." § 673.1041(1)(a), (b). A negotiable instrument, by definition, "[d]oes not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money." § 673.1041(1)(c). This is explaining Babcock and Honest Airs reasoning of why they should be off the hook using the UCC 673.6051(6) which basically states GMAC gave up the "perfection of interest" in the Corvette when they removed the lien. Also its stating that courts agreed with the UCC applied and that because the value of the collateral exceeded the amount claimed by GMAC.



QUESTION 3

- Negotiable instrument.- means an unconditional promise or order to pay an amount of money, with or without interest or other charges described in the promise or order, if it:
 - Is payable to bearer (person, owner, possessor) or to order at the time it is issued or comes into possession of a holder;
 - Is payable on demand or at a definite time;
 - Does not state any other undertaking or instruction by the person promising or payment to do any act in addition to the payment of money, but the promise or order may contain:
 - An undertaking or power to give, maintain, or protect collateral to secure
 - An authorization or power to the holder to confess judgment or realize on or dispose collateral; or
 - A waiver of the benefit of any law intended for the advantage or protection of an obligor.



QUESTION 4

- In contrast, the RISC in this case creates a series of obligations upon the vehicle purchaser, requiring the buyer "to buy the vehicle on credit under the agreement"; "to pay the creditor the amount financed and finance charge according to the payment schedule"; and to give "the creditor a security interest" in the vehicle. The RISC sets forth additional instructions or undertakings by both the "person promising" payment and by the creditor [37*37](#) "ordering payment." Among other things, the debtor agrees not to remove the vehicle from the United States and to reimburse advances made by the creditor in payment of repair or storage bills, and the creditor agrees to dispose of the collateral in certain ways following repossession. The RISC also obligates the buyer to pay fees for late payment or dishonored checks. All of these undertakings bring the RISC within the exclusionary language of section 673.1041(1)(c), which provides that a negotiable instrument "does not state any other undertakings" in addition to the payment of money. A negotiable instrument should be "simple, certain, unconditional, and subject to no contingencies. As some writers have said, it must be a[] courier without luggage."

[Mason v. Flowers, 91 Fla. 224, 107 So. 334, 335 \(1926\).](#)



QUESTION 4

- Showing the factors/elements of the RISC in the case, such as buying the vehicle under the agreement, a payment schedule, giving the creditor (GMAC) security interest in the vehicle. The RISC gives specific instructions to the person promising (Debtor Honest Air and Mr. Babcock who is paying) and by the creditor (GMAC) ordering payment. Debtor Honest Air and Mr. Babcock agrees not to remove the corvette from the United States If vehicle gets reposed, the debtor (Honest Air and Mr. Babcock) must pay creditor (GMAC) the fees.
- The RISC also obligates the buyer (Honest Air and Mr. Babcock) to pay fees for late payment or dishonored checks.



QUESTION 5

- The Uniform Commercial Code comment to section 673.1041 provides, in part: Words making a promise or order payable to bearer or to order are the most distinguishing feature of a negotiable instrument and such words are frequently referred to as "words of negotiability." Article 3 is not meant to apply to contracts for the sale of goods or services or the sale or lease of real property or similar writings that may contain a promise to pay money. The use of words of negotiability in such contracts would be an aberration. The comment further provides: Although such a writing cannot be made a negotiable instrument within Article 3 by contract or conduct of its parties, nothing in Section 3-104 or in Section 3-102 is intended to mean that in a particular case involving such a writing a court could not arrive at a result similar to the result that would follow if the writing were a negotiable instrument. § 673.1041, Fla. Stat. Ann. (1993). Thus, the comment clarifies that Article 3 was not intended to apply to a contract for the sale of an automobile; nevertheless, nothing in Article 3 would prevent a court from arriving at a decision "similar to the result that would follow" if the RISC were a negotiable instrument.



QUESTION 5

- GMAC was found that not have a legitimate negotiable instrument with Babcock. The words they used were found to be negotiable and as stated in the Uniform Commercial Code are not to be used for contracts that apply to the sale of goods or services and the promise to pay money. It can be concluded that GMAC using “words of negotiability” was not appropriate for a contract for the sale of an automobile.



QUESTION 6

- At the conclusion of the trial, the court found that GMAC improvidently released its lien on the Corvette as a result of its business strategy. There is ample competent, substantial evidence to support the trial court's finding that GMAC's business practices resulted in the loss of its security. GMAC's representative testified that it was not the company's policy to verify that a dealership check cleared with sufficient funds before releasing its lien. Because GMAC has such a large number of accounts, there is no practical way for the company to be notified when a particular check has cleared the bank. Each bank has a different clearance time. Furthermore, GMAC receives thousands of payoff checks every day for vehicles on which it holds liens, and fewer than one-half percent of those checks are returned for insufficient funds. It is apparent that in the commercial setting in which it operates, GMAC of necessity bears some risk of loss.



QUESTION 6

- GMAC's own business practices in which they did not follow up and verify that the funds issued to them cleared through the bank before releasing the lien they put on Mr. Babcock's vehicle was their own fault and resulted in losing their capital. They should have verified the funds first but they argued that there is no possible way to verify all the funds they receive on a daily basis due to their extensive amount of clients. GMAC bears all risk in knowing that operating on such a huge platform they will run into this problem.



QUESTION 7

- This court's function is not to evaluate the economic prudence of GMAC's. However, since GMAC's policy regarding checks tendered in satisfaction of a RISC does not include insuring that the check is backed by sufficient funds, GMAC cannot by following that policy transfer the risk of loss from nonpayment to an innocent purchaser. When GMAC released the lien 38*38 prior to receipt of the funds, it permitted the Corvette to be transferred to a third party for value, thus depriving Honest Air and Mr. Babcock of their right to dispose of the Corvette in a manner that would satisfy their obligation under the RISC to pay GMAC in full. The Florida statutes[5] and UCC sections applicable to retail installment contracts place minimal burdens on creditors such as GMAC, but the result of their noncompliance can be extremely onerous to the debtor. See *Wilmington Trust Co. v. Conner*, 415 A.2d 773, 777 (Del.1980) (commenting on an Article 9 case), cited in *State Nat'l Bank v. N.W. Dodge, Inc.*, 108 Ill.App. 3d 376, 64 Ill.Dec. 26, 438 N.E.2d 1345, 1349 (1982) (also arising under Article 9). Therefore, when exercising its right to payment in full before releasing its lien, GMAC is obligated to perform that function properly.



QUESTION 7

- The court's function is not to evaluate the financial practicalities of GMAC's policies.
- Even though GMAC's policy regarding checks gives in satisfaction of the RISC, it does not include that the check is backed (cleared) by sufficient funds.
- Because of those policies GMAC cannot transfer the risk of loss from nonpayment to an innocent purchaser.
- When GMAC released the lien (without receiving the full funds) it permitted the Corvette to be transferred to the third party (Florida Auto Brokers), which denies Honest Air and Mr. Babcock of their right to arrange for the Corvette, to satisfy their obligation (debt to GMAC) under the RISC to pay GMAC in full.
- The Florida statutes and UCC sections, in regards to retail installment contracts, it places a minimal burden on creditors such as GMAC, but the result of their nonfulfillment can be extremely difficult to the debtor.



QUESTION 8

- Explain who won and provide a conclusion.
- The courts ruled that there was enough evidence to support their initial rulings in favor of honest Air and Babcock. The court felt that the fact the GMAC released the lien and that value of the vehicle at the time of exceed the remaining debt made this case a slam dunk. There is closure though, the court did find judgment against William Stevenson who was the Salesman from the Florida Auto Brokers. In the end, justice prevails.

