

BETWEEN

CB
APPLICANT

AND

XY
RESPONDENT

Date of Order:

23 May 2014

Referee:

Referee Reuvecamp

ORDER OF THE DISPUTES TRIBUNAL

This order is made in the absence of the respondent and pursuant to section 42 Disputes Tribunal Act 1988

The Tribunal hereby orders XY to pay the amount of \$2,800.00 to CB on or before 13 June 2014

Reasons

[1] CB claims that he purchased a Toyota Sprinter Marino from XY on 2 May 2013. The car was repossessed by ABC Limited on 19 March 2014 under an undisclosed security interest over it granted by XY. CB claims a refund of the purchase price..

Law

[2] Law of Contract, Sale of Goods Act 1908

Issue

[3] Did XY comply with his contractual and statutory obligations to provide CB with an unencumbered interest in the car?

Findings

[4] The relevant law is the law of contract and the Sale of Goods Act 1908. The transaction involves two individuals not in trade and the Consumer Guarantees Act 1993 does not apply.

[5] A person who sells a good cannot transfer a better title (i.e. right) than he has himself. This means that if you are not the owner, you cannot make somebody else the owner. A thief therefore cannot make a person buying from him the owner of a stolen car. Neither can the seller deprive a person who has a prior registered security over the car of that right by selling the car to another person unless the relevant item is a consumer good of less than \$2,000 value at the time the security interest became effective.(section 54 Personal Property Securities Act 1999).

[6] Section 14 of the Sale of Goods Act protects the buyer in this situation and entitles him to rescind the contract for breach of an implied condition that the rights transferred should be unencumbered, i.e. free from a security interest that has not been disclosed to him. I find that that is the case here. CB is therefore entitled to a full refund of the price paid for the car.

