

REVIEW



Title Defects Ground Sale of Aircraft



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Introduction

Welcome to our electronic news review published by M&P Legal. We hope that the publication is of interest to recipients. Please contact any of the individuals listed on the contact us page with comments for future articles.



Advocate John T Aycok takes a look at ...

....a recent Manx case which raised issues as to when a buyer can reject goods, even after extensive usage.

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Title Defects Ground Sale of Aircraft

A buyer who has repeatedly used an item can still recover the whole purchase price if there has been a total failure of consideration, the Isle of Man High Court has held.

Relying on the leading case from England decided in 1923, the Manx Court has ruled that the buyer of a £77,000 Cessna 303 aircraft was entitled to return of the purchase price when it transpired that there were difficulties with the title that had supposedly been transferred to the buyer. This was in spite of the fact that the aircraft's new owner had made fifty two return flights in the Cessna, ten of which had been after the buyer had served notice of termination of the sales contract on the seller.

His Honour Deemster Corlett in a summary procedure judgment found that the key legal issue in the case was whether use of the aircraft, after the notice of termination was given, bars the buyer from recovery of the purchase price. This was material because the goods had been used after the buyer had discovered that there were issues with the passing of good title to him. Deemster Corlett regarded English case law as highly persuasive because the Isle of Man sale of goods law was to all intents and purposes the same as in England.

The English case of *Rowland v Divall* [1923] 2 KB 500 decided by the Court of Appeal in 1923 was cited as still the leading authority on the issue. In that case, where

the item transferred was a motor car, the Court of Appeal held that even though there had been use of the car the consideration had totally failed because the seller did not have proper title to it, meaning the plaintiff (as he was then known) was compelled to surrender it to the true owner.

In the Isle of Man High Court case, the seller was an individual who was regarded by the court as an honest and honourable man but had been caught up in the chequered history of the aircraft whereby there had been prior title issues. The seller had purported to sell the aircraft to the purchaser by an agreement in May 2011 and there were express provisions as to the proper transfer of title in the sale and purchase agreement. The aircraft also suffered minor faults but the Deemster ruled these to be largely immaterial to the main issue as to whether the title problems had caused total failure of consideration.

After hearing evidence from the parties Deemster Corlett held that *Rowland v Divall* was still good authority and that because of the ongoing title problems the seller had been in breach of both the implied term as to title set out in the Supply of Goods and Services Act 1996 of Tynwald and the express term as to title as set out in the sale and purchase agreement between the parties.

Deemster Corlett reassured himself that *Rowland v Divall* was still good authority

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citing the 31st Edition of Chitty on Contracts. The court focused on the buyer's usage of aircraft following notice of the termination as being the real issue in the case but decided that because of the principle in Rowland v Divall, as supported by its modern citation in Chitty, the usage post-termination in the context of the case was irrelevant to the issue of enforcement of the right to claim title.

The defendant also sought to rely on section 35(4) of the Sale of Goods Act 1983 of Tynwald which provides that a buyer is deemed to have accepted goods after the lapse of a reasonable time without rejection. Deemster Corlett held that the section was not relevant where the buyer had rejected the goods as occurred in the present case.

This ruling illustrates that sound principles from cases heard ninety years ago are still being followed in contemporary courts. In this case, the key issue was the title to the aircraft and the ongoing issues with that caused the court to unravel the transaction and order a refund of the purchase price irrespective of the buyer's usage of the aircraft.

Advocate John Aycock is Head of the Litigation Department at M&P Legal Advocates, Solicitors and Attorneys in the Isle of Man and is also admitted as a Solicitor/Advocate in England and Wales.



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