

1993 Ohio App. LEXIS 4765, \*

**Jack Schmidt** Oldsmobile, Inc., Plaintiff-Appellant, v. **Commonwealth Capital Corp.**, Defendants-Appellees.

No. 93AP-223 (REGULAR CALENDAR)

COURT OF APPEALS OF OHIO, TENTH APPELLATE DISTRICT, FRANKLIN COUNTY

1993 Ohio App. LEXIS 4765

September 30, 1993, Rendered

**PRIOR HISTORY:** [\*1]

APPEAL from the Franklin County Municipal Court.

**DISPOSITION:** Judgment reversed and cause remanded.

**CASE SUMMARY**

**PROCEDURAL POSTURE:** Plaintiff car dealer sought review of a decision by the Franklin County Municipal Court (Ohio), which entered judgment in favor of defendant corporation in the car dealer's action to collect the balance due on a car purchase contract.

**OVERVIEW:** An agent for the corporation signed a car purchase contract with the car dealer. The corporation made payments on the car, but failed to pay the balance in full. The car dealer brought an action for the balance. The lower court found that the corporation's agent had not signed in a representative capacity for the corporation and, thereby, entered judgment in favor of the corporation. Upon appeal, the court reversed and remanded. The court held that the evidence indicated that the agent purported to enter into a contract on behalf of the corporation to purchase a car, but that he was not authorized to sign contracts on behalf of the corporation. The agent never had title to the car personally until it was transferred to him by the corporation.

**OUTCOME:** The court reversed and remanded the judgment that had been entered in favor of the corporation.

**CORE TERMS:** assignments of error, assignment of error, well-taken, purported, purchase price, transferred, purchaser, purchase agreement, factual issues, ratification, twenty-seven, certificate, personally, signature, drawer, power of attorney, personally liable, purchase contract, partial payment, matter of law, serial number, phone call, transportation, communicated, estoppel, notation, mailed

**LexisNexis(R) Headnotes** ♦ [Hide Headnotes](#)

<sup>HN1</sup> A contract in which a purchaser's name is indicated as a corporation, and the signature is that of an individual, purports to be a contract signed by the individual in a representative capacity whether or not that capacity is indicated. If the individual is not authorized to sign on behalf of the named corporation, the individual is personally liable and may be personally liable as well because of the style of the signature. [More Like This Headnote](#)

**COUNSEL:** Dean S. Taglanis and Paul Croushore, for appellant.

Bruce L. Cameron Co., L.P.A., and Bruce L. Cameron, for appellees.

**JUDGES:** WHITESIDE, CLOSE, MILLIGAN

**OPINIONBY:** WHITESIDE

**OPINION:** OPINION

WHITESIDE, J.

Plaintiff, **Jack Schmidt** Oldsmobile, Inc., appeals from a judgment of the Franklin County Municipal Court and raises five assignments of error, as follows:

1. "The trial court erred in finding that **Commonwealth's** agent did not sign the purchase agreement in a representative capacity where the document listed the purchaser as **Commonwealth** and a corporate check was issued the following day."
2. "The trial court erred in finding that the agent had title personally because plaintiff had titled the automobile in **Commonwealth's** name and **Commonwealth's** president purported to transfer the automobile to the agent for nominal consideration."
3. "The trial court erred in finding that payments made by a corporate check signed by the president did not show intent to purchase the automobile for the corporation."
4. "The trial court erred in failing to hold that **Commonwealth [\*2]** was bound by the acts of its agents where a ratification by partial payment and receipt and transfer of title was made."
5. "The trial court erred in failing to find that **Commonwealth's** partial payments and receipt of title estopped it from claiming that its agent's acts were unauthorized."

This case arises from a transaction participated in by an agent of plaintiff and one Nick Roman, who apparently purported to act on behalf of defendant **Commonwealth Capital** Corporation. Roman, on or about October 27, 1988, signed a purchase contract for a 1987 **Olds** Ciera, in which the purchaser's name is indicated as "**Commonwealth Capital** Corp." Although the printed contract indicates that cash on delivery is to be paid in the amount of the full purchase price, taxes and fees, totalling \$ 8,261.38, a handwritten notation on the contract states: "1/2 in 1 wk. balance in 30 days per JDS."

**Commonwealth Capital** Corporation issued a check dated the next day, October

28, 1988, to plaintiff in the amount of \$ 2,500 on which is noted "partial payment 1978 **Olds** Ciera," followed by the serial number of the vehicle being sold. There is no indication on this check that this payment is other than on [\*3] behalf of the drawer, **Commonwealth Capital** Corporation.

Plaintiff caused a certificate of title to be issued indicating the owner of the vehicle involved to be **Commonwealth Capital** Corporation, the title date being November 7, 1988. **Schmidt**, however, did not acquire a title to the vehicle until October 31, 1988, the previous owner being Target Rent A Car. By check number 5102, dated January 27, 1989, payable to plaintiff in the amount of \$ 2,000, **Commonwealth Capital** Corporation made a second payment, the check notation again being "payment on 1987 **Olds** Ciera," followed by the serial number of the vehicle in question. There is no indication on the check that the payment is otherwise than upon behalf of the drawer of the check, **Commonwealth Capital** Corporation. Apparently, a third payment was made in the amount of \$ 1,000, in any event, the account submitted by plaintiff shows such third payment and indicates that the balance due is \$ 2,761.38, for which this action was brought.

The case proceeded to trial, and the president of defendant **Commonwealth Capital** Corporation testified that Nick Roman was not an agent of **Commonwealth Capital** Corporation and had no authority to sign any [\*4] agreement upon its behalf. Nevertheless, he admitted that **Commonwealth Capital** Corporation made the two payments but contended that they were made as an accommodation to Roman who was "an associate" of **Commonwealth Capital** Corporation. The president of **Commonwealth** admitted that he signed the checks. He also admitted that he signed, on behalf of **Commonwealth Capital** Corporation, an assignment of the title to the vehicle to Nicholas G. Roman for a consideration of \$ 800 on February 19, 1991, some twenty-seven months after plaintiff had transferred the automobile to defendant **Commonwealth Capital** Corporation by causing the certificate of title to be issued.

Notwithstanding this evidence, the trial court found for defendant **Commonwealth Capital** Corporation, specifically stating in the conclusions of law that "plaintiff has failed to sustain its burden that **Commonwealth Capital** Corporation purchased the automobile which is the subject of this litigation."

The trial court made a factual finding that Roman did not sign the agreement in a representative capacity for **Commonwealth Capital** Corporation and that he was not authorized to sign any contract on behalf of that corporation. However, [\*5] there are other factual findings by the trial court which are not supported by the evidence, including:

(1) "The only transfer document for the automobile which is signed in a representative capacity was the power of attorney signed by Mr. Roman."

(2) "Mr. Roman had title to the vehicle personally."

(3) "Plaintiff mistakenly mailed the car title to Mr. John Hubly on November 7, 1988 even though a balance of \$ 8,068.31 was due to plaintiff."

(4) "Mr. Hubly subsequently signed the car title over to Mr. Roman."

(5) "Mr. Hubly's payments did not show an intention to purchase the car. Plaintiff received the following payments for this car: 1. \$ 2,500 on October 27, 1988, [sic]

from Nick Roman. 2. \$ 2,000 on November 29, 1990, [sic] by John A. Hubly. 3. \$ 1,000 on November 29, 1990 by John A. Hubly."

(6) "Mr. Hubly testified that he received a phone call from Danny **Schmidt** asking for his assistance [sic] in getting this account paid."

(7) "Mr. Hubly further testified that a business \* \* \* check was not used."

**HNT** A contract such as herein involved (plaintiff's exhibit A), in which the purchaser's name is indicated as **Commonwealth [\*6] Capital** Corporation, and the signature is that of an individual, purports to be a contract signed by the individual in a representative capacity whether or not that capacity is indicated. If the individual is not authorized to sign on behalf of the named corporation, the individual is personally liable and may be personally liable as well because of the style of the signature. In addition, the power of attorney not only had the words "Vice President" added to the side by an unknown person but also had the name "**Commonwealth Capital** Corp." immediately above the signature by Roman. Similarly, the unsigned invoice of **Jack Schmidt** indicates the purchaser to be **Commonwealth Capital** Corporation, as does the account. Thus, the evidence indicates that Roman purported to enter into a contract on behalf of **Commonwealth Capital** Corporation to purchase a vehicle from plaintiff but that he was not authorized to sign contracts on behalf of the corporation.

Contrary to the trial court's finding, Roman never had title to the vehicle personally until it was transferred to him by defendant **Commonwealth Capital** Corporation, some twenty-seven months later. In the interim, the title was in **Commonwealth [\*7] Capital** Corporation, which also had paid at least \$ 4,500 toward the purchase price of the vehicle without indication that it was not purchasing the vehicle noted on the checks. Although plaintiff did mail the car title to **Commonwealth Capital** Corporation, there is no evidence that this was a mistake since the title was in that corporate name, and there is no evidence as to whether the title was mailed to the president, Hubly, as opposed merely to the corporation.

Similarly, the balance due at that time was not \$ 8,068.31 but, rather, \$ 5,761.38. Furthermore, Hubly made no payments on the purchase of the vehicle; instead, the payments were made by **Commonwealth Capital** Corporation, although Hubly, as president of the corporation, signed the checks on behalf of the corporation. No payment whatsoever was made by Roman, the October 28, 1988 payment in the amount of \$ 2,500 being paid by **Commonwealth Capital** Corporation by check. Similarly, the payment in the amount of \$ 2,000 was again by **Commonwealth Capital** Corporation, not by Hubly, although he signed the check on behalf of the corporation, and the check is dated January 27, 1989, not November 29, 1990.

The evidence of the third payment **[\*8]** is somewhat confusing since it appears only on the account and indicates a \$ 1,000 credit on November 29, 1990. Likewise, the account indicates the \$ 2,000 payment being credited on November 29, 1990, rather than by the date of the check, January 27, 1989. Although Hubly did testify that he made a payment because of a phone call from Danny **Schmidt**, he did not indicate that **Schmidt** asked for "assistance" in getting the account paid but, instead, with respect to his conversation with Danny **Schmidt**, stated: "He discussed with me several times the fact that the account was not current." (Tr. 38.) However, he stated that, even though he then sent checks to plaintiff, it was not his intent on

behalf of the corporation to satisfy an account of the corporation with plaintiff. He did not, however, testify that he ever communicated any of this information to plaintiff.

Neither check contains any indication that a payment was being made, for anyone other than the drawer, **Commonwealth Capital** Corporation, and specifically indicates it is to pay for part of the purchase price on the particular vehicle involved. Hubly, as president of **Commonwealth Capital** Corporation, testified that: "Nick [\*9] was an associate of ours. Anybody that knows Nick knows that he had a series of problems in life. We assisted him from time to time. He needed transportation; we helped him get some transportation." (Tr. 37.)

He did not indicate that he ever communicated this to plaintiff. Rather, he testified in regard to the reason for issuing checks to plaintiff: "I'm sure he [Roman] came in and pleaded that he needed some payments to be made to **Jack Schmidt**, and we made a couple of payments." (Tr. 37.) As indicated, both checks were business checks of **Commonwealth Capital** Corporation and **Commonwealth's** president, Hubly, admitted that they were.

Turning more specifically to the assignments of error, the first assignment of error is well-taken to the extent that the purchase agreement purported to be a purchase agreement on behalf of **Commonwealth Capital** Corporation, not Roman, and **Commonwealth** issued a corporate check in the amount of \$ 2,500 for part payment toward the purchase price of the vehicle without indicating that the payment was other than on its own behalf toward purchase of the automobile described on the check. A few days later, plaintiff transferred the automobile to defendant [\*10] **Commonwealth Capital** Corporation causing the certificate of title to be issued in its name.

Similarly, the second assignment of error is well-taken to the extent that the trial court erred in finding that Roman had title to the vehicle prior to its transfer to him by **Commonwealth Capital** Corporation some twenty-seven months after the sale involved.

The third assignment of error, however, is not well-taken in that although the payments made by corporate checks signed by the president of the corporation do constitute evidence that the purchase of the automobile was by the corporation, the trial court's error was factual in that the trial court found that no business check was used and, instead, the checks were those of Hubly, rather than the corporation.

Similarly, the fourth assignment of error is not well-taken since we do not find that there was a ratification as a matter of law of Roman's unauthorized act by payment by **Commonwealth Capital** Corporation of the two checks. However, those actions do constitute some evidence of ratification of Roman's acts, especially where no communication to the contrary is made to the seller, plaintiff, who, in reliance upon the issuance of those [\*11] checks consistent with the purported purchase contract, causes title to be transferred to the corporation.

The trial court did not reach the issue of estoppel raised by the fifth assignment of error, so that assignment of error is not well-taken at this time, even though the issue of estoppel is raised by the evidence as indicated above.

In short, the last three assignments of error are not well-taken as phrased since

plaintiff seeks for this court to determine the issues as a matter of law, and there are factual issues raised by each of these assignments of error. These factual issues were not resolved by the trial court because of findings of fact which are not supported by competent, credible evidence as indicated above.

Accordingly, the first two assignments of error are sustained to the extent indicated, and the last three assignments of error are overruled, there being factual issues for resolution by the trial court, and the judgment of the Franklin County Municipal Court is reversed, and this cause is remanded to that court for further proceedings in accordance with law consistent with this opinion.

Judgment reversed and cause remanded.

CLOSE and MILLIGAN, JJ., concur.

MILLIGAN, [\*12] J., retired, of the Fifth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.