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PROTECTING THE RIGHTS OF THE BONA-FIDE PURCHASER FOR VALUE

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Abstract
This study examines the role of the Sale of Goods Law (SGL) in safeguarding the rights of bona fide purchasers for value (BFPV) and emphasizes the necessity of such protections. Using the doctrinal legal research methodology, this study investigates the legal principles, statutes, and judicial precedents that shape the legal framework surrounding BFPV. A comparative analysis of BFPV under property law and commercial law reveals a stark contrast in the burden of due diligence imposed on purchasers. Under property law, purchasers are expected to conduct thorough due diligence, whereas commercial transactions primarily require purchasers to pay valuable consideration and act in good faith, even in cases of negligence. Furthermore, exceptions to the nemo dat quod non habet principle, as enshrined in the SGL, provide additional protections for BFPV, ensuring transactional security amidst uncertainties in verifying the legitimacy of sellers' titles. This study concludes that these statutory exceptions and legal safeguards are crucial in mitigating risks associated with commercial transactions and facilitating equitable trade.

Keywords: Protect, rights, bonafide-purchaser, value

1. Introduction

A bona fide purchaser for value (BFPV) is recognized as an innocent buyer in the eyes of the law, shielded from competing proprietary claims. The principle of protecting the rights of BFPV embodies an equitable dimension, closely linked to the 'clean hands doctrine,' which upholds fairness for individuals acting in good faith. The legal protection of BFPV is central to balancing two competing legal doctrines: the protection of proprietary rights, which upholds the notion that no one can transfer a title superior to their own, and the protection of commercial transactions, which asserts that individuals who act in good faith and provide valuable consideration should obtain a valid title. As Lord Denning articulated in *Bishopsgate Motor Finance Corporation v Transport Brakes Ltd*,[1] the longstanding principle of property protection has evolved through common law and statutory modifications to accommodate the practical realities of modern trade. The interplay between these principles underscores the necessity of legal mechanisms that safeguard BFPV, ensuring fairness and stability in commercial dealings.

2. Conceptualization of the Bona-fide Purchaser for Value according to Case Law

2.1 BPFV under Property Law

(1.) The case of *Ageh v Tortya*,[2]

The case of *Ageh v Tortya*,[3] involved a sale executed by a vendor who had no title or documents of title to support his ownership. Thus, the claim made to the purchaser in support of his title was that he had applied to the Local Government Authority to grant him a right of occupancy over the said land. Consequently, the court of first instance (the trial court), held that the appellant (purchaser) failed to show due diligence in investigating the title of his vendor; had notice of matters affecting the efficacy of the title of his vendor; and that he hurriedly executed his construction project 'in a bid to overreach the interest of the respondent and did not act with clean hands. On that account the sale was nullified by the court, for the protection of the propriety rights of the original owner of the

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[1] (1949) I.K B 322; (1949) IALL E.R 37

[2] *Ageh v Tortya* (2003) 6 NWLR (Pt. 816) 385

[3] Ibid.

land. The conditions for the recognition of a claimant as a BFPV are outline by Muhammad, J.C.A. when he held thus –

> *A bonafide purchaser for value without notice of any defect in the title of the seller is defined to be one who without notice of another's claim of prior right to the property in equity acquires title to it for a valuable consideration. It is important to note that when a person is said to be a bonafide purchaser for value without notice, such notice may be actual or constructive and clearly it refers to notice of matters which might affect the efficacy of the title of the vendor. In the instant case, the appellant had notice of the fact that his vendor had not established title to the property and that he was not granted right of occupancy over the land. He therefore had constructive notice of a defect in the title of the vendor.*[4]

The flaw identified therein was the failure of the purchaser to find out whether the vendor owned the land by traditional right or that he acquired it from a third party who had such a right; his failure to wait until the approval or disapproval of the vendors application to the local government authority for a right to occupancy before making a decision to purchase; and his failure to avail himself of the principle of caveat emptor which obliges the purchaser to take reasonable steps to beware of the defects of the vendors title. [5] Thus, it was held that it is 'the primary responsibility of a purchaser of land in particular to mount a rigorous search in order to satisfy himself that the land is free from any encumbrances' in order to avoid entering into a bad contract or bargain.[6] The sale was declared void ab initio, in line with the principle of nemo dat quod non habet ('he who has not, cannot give').[7] The court was also cognizant of the fact that complaints were made to the purchaser during the execution of his construction project, therefore he had 'constructive notice of the problem looming his head against the vendor's title.'[8] As implied by the decision of the court, in regard to the purchase of landed property, a BFPV is expected to trace the traditional root of title to the property; have made enquiries and investigations concerning the perfection of the vendors title; pay valuable consideration; act in good faith; be sure of his title before executing any construction projects; and must be oblivious to any existing defects in the vendor's tile, with no actual, implied, constructive or circumstantial access to such information.

(2) *Best (Nig.) Ltd. v B.H. (Nig.) Ltd.*[9]

In *Best (Nig.) Ltd. v B.H. (Nig.) Ltd.,*[10] it was held that a bona fide purchaser for value without notice is a person who purchased property for valuable consideration without notice of any prior right or title which if upheld will derogate from the title which he has purported to acquire. Judging from the facts of the case, in the lead judgment delivered by Fabiyi, J.S.C, it was held that in order for there to be an existing contract of sale, there must be an agreement in which all parties involved are ad idem on essential terms and conditions of the contract; 'and the promise of each party must be supported by consideration.'[11] Thus, a breach of a fundamental condition will lead to the vitiation of the contract. Consequently, the failure of the purchaser to adhere to a conditional term of the contract i.e. 'the payment of a consent fee to the Lagos state government', caused the trial and appeal courts to make the concurrent finding that 'there is no enforceable contract. As implied by the decision of the court, in regard to the purchase of landed property, a BFPV must make all

[4]Ibid, 396-397, paras. G-E; 399, paras. B-C*; Jaffar v Ladipo* (1969) 1 All NLR 165.
[5] *Ageh v Tortya* (n 2) 395; 396 paras A – C
[6] Ibid, 396 paras D – E; *Owo v Kasumu* (1932) 11 NLR
[7] Ibid, 396 para H; *Adelaja v. Fanoiki* (1990) 2 NWLR (Pt. 131) 137
[8] Ibid, 399 para D
[9] (2011) 5 NWLR (Pt. 1239) 95
[10] Ibid.
[11] Ibid, 116 Para F; *Yaro v Arewa Construction Ltd.* (2007) 17 NWLR (Pt. 1063) 333

necessary payments, in-line with the terms of the contract; and in the case of a conditional sale, a BFPV must execute all the conditions for sale, stipulated by the vendor.[12]

2.2 BPFV under Commercial Law

The case of *Law Union and Rock Ins. v Omuoha*[13] involved a claim of indemnity made by the respondent against the appellant, which amounted to N40, 000, as the estimated value of a Peugeot 504 Saloon car insured with the insurance company (the appellant). While the insurance scheme was still in force, the car was destroyed by fire. However, the insurance company refused to indemnify the respondent, after discovering that prior to the execution of the insurance policy, the car was a stolen property. Nonetheless, the court of first instance held that the insurance policy was valid and enforceable. On appeal the court considered the provision of Section 22(1.) of the Sale of Goods Act, which confirms that when goods are sold in the 'market overt according to the usage of the market', a purchaser who buys the chattel in good faith, without notice of any defects in the title of the seller, acquires a good title to the goods. On that account, the court made reference to section 62(2) of the Sale of Goods Act, which states that a thing is deemed to be done in good faith within the meaning of the Act when it is in fact done honestly, whether it is done negligently or not.[14] Considering that there is no direct evidence showing that the respondent knew that the car was stolen, or 'that he had acquired interest in it in suspicious circumstances.'[15] A purchaser is protected when in the view of the court, he is recognized as 'an innocent purchaser for value without notice of any defect in the title of his vendor.'[16] As implied by the decision of the court, in regard to a sale of goods contract, a BFPV must pay the value (purchase price) for the chattel i.e. a reasonable price; must have acted in good faith, regardless of any signs of negligence on his part and have no knowledge of the defective title of the seller.

2.3 The Difference between a BFPV under Property Law and Commercial Law

The concept of BFPV applies equally to the purchasers of chattel real (landed property) as well as chattel personal (goods/commodities). However, as portrayed in the previously cited cases, a heavier burden is placed on the purchasers of landed property, as expressed in the courts reference to the principle of caveat emptor in the case of *Ageh v Tortya*.[17] That is a development which appears to be a consequence of the various avenues available to the purchasers of property to conduct due diligence. While on the other hand, due to the nature of perishable and non-perishable commodities, which can be exported to, and imported from various parts of the world, or the state as the case maybe, there is much more difficulty and uncertainty in verifying the title of traders/sellers. Consequently, the law goes to greater lengths in order to protect innocent purchasers of goods, who have paid a reasonable price for the commodities, without notice of any defects in the seller's title. So long as they acted honestly, irrespective of whether they acted negligently, or not.

3. The BFPV and the Principle of Caveat Emptor under the SGL

One of the characteristics of a BFPV is that he had no notice of any defects in the title of the seller at the point of executing the contract of sale.[18] Thus, a purchaser cannot be protected by the law from defects made known to him by the seller before the execution of the contract of sale. That is why section 11(3) of the SGL makes reference to instances where it is inferred from the contract or 'circumstances an intention that the seller should transfer only such title as he or a third person may have' in regard to any disclosed charge or encumbrance made known to the purchaser before the

[12] Unknown Author, 'Sales: Bonafide Purchaser: Conditional Sale: Notice of Condition'. *Michigan Law Review* [1914] (12) (4) 332
[13] (1998) NWLR (Pt. 555) 576
[14] *Law Union and Rock Ins. v Omuoha* (1998) NWLR (Pt. 555) 590, para. D
[15] Ibid, 583.
[16] Ibid, 584.
[17] *Ageh v Tortya* (2003) 6 NWLR (Pt. 816) 385
[18] Section 21 of the SGL

contract is made.[19] The price of the goods is also an important factor for consideration, especially in cases where the purchase price is unreasonably low.[20] Because it is arguable that a purchaser who buys goods at an unjustifiably low price, is not a BFPV. Hence, the purchaser needs to beware of 'any description applied to them, the price (if relevant) and all other relevant circumstances.'[21]

4. Effects of the Contract of Sale

In the law of sale of goods, two primary legal effects emerge upon the formation of a valid contract. These effects are fundamental to the relationship between the buyer and the seller and are central to determining rights, obligations, and remedies under such contracts. They are:

4.1 Payment of the Seller's Price

The first effect of a sale of goods contract is the payment of the agreed price by the buyer to the seller.[22] This payment constitutes the consideration from the buyer's side and is crucial to the enforceability of the contract, as non-payment entitles the seller to seek remedies, including suing for the price or exercising a lien over the goods if possession remains with the seller. The obligation to pay the price is therefore not ancillary, but central to the contract itself. Payment of the price may be immediate, postponed, or made in instalments, depending on the terms of the contract. Failure to pay the agreed price can give rise to remedies in favour of the seller, including the right to sue for the price or the right to rescind the contract where appropriate. As observed in the English case of *Rowland v Divall*,[23] even where the buyer has taken possession of the goods, the failure of the seller to deliver good title (which is linked to the transfer of property) may entitle the buyer to recover the price already paid, illustrating the reciprocal nature of the payment and transfer of title.

4.2 Transfer of Property to the Purchaser

The second major effect is the transfer of property in the goods from the seller to the buyer.[24] This transfer is a defining feature of a sale, distinguishing it from agreements to sell or hire-purchase arrangements. It marks the point at which the buyer acquires title to the goods and is significant for determining who bears the risk of loss or damage to the goods. Property in goods passes to the buyer when the parties intend it to pass. For specific or ascertained goods, this typically occurs when the contract is made, unless a different intention appears from the terms or circumstances.[25] The transfer of property also carries legal consequences with respect to third parties and remedies. For instance, once property has passed, the seller cannot resell the goods to another person without breaching the buyer's ownership rights. Additionally, once ownership passes, the risk of loss (unless otherwise agreed) also shifts to the buyer. In *Carlos Federspiel & Co. SA v Charles Twigg & Co. Ltd.,*[26] it was held that property in goods does not pass until the goods are ascertained and appropriated to the contract. This underscores the principle that mere agreement is not sufficient; the goods must be clearly identified and agreed upon as those to which the contract refers.

5. The Concept of Value

In terms of a sale of goods contract and in accordance to section 1(1) of the Sale of Goods law[27], value refers to the monetary price of goods. Section 27[28], further expanded the meaning of value in terms of substance, to mean the actual value of anything exchanged within the context of that section i.e. goods, documents of title to goods etc. The value of goods can also be influenced by various

[19] Section 11(5) of the SGL
[20] Section 13(6) of the SGL
[21] Section 13(6) of the SGL
[22] Section 1(1) & 27 of the SGL
[23] [1923] 2 KB 500
[24] Section 1(4), 1(5), 1(6), 11, 15, 16, 22, & 23 of the SGL
[25] *Re Wait [1927] 1 Ch 606*
[26] [1957] 1 Lloyd's Rep. 240
[27] Laws of Bayelsa State [Volume 5] 2006
[28] Ibid.

factors which include: the state of the country's economy, the season of the year (in relation to agricultural products), the effects of scarcity and abundance, the nature of the goods, the cost of raw materials involved in the production process etc., as it is vital to note that a bona-fide purchaser must correlatively buy goods for a bona-fide price or value, which is accepted by the court as reasonable, considering the customs of the trade in question and all the circumstances surrounding the case.[29]

6. Protection of the BFPV under the Sale of Goods Law

There are various provision of the SGL which by design protects the rights and interests of BFPV, especially the provisions guaranteeing the right of sellers to sell, and the exceptions to the principle of nemo dat quod non habet.

6.1 The Implied Undertaking as to the Sellers Title, and his Concomitant Right to Seller to Sell

In order to protect the rights of the BFPV, the SGL creates an implied condition/contractual requirement that in the case of a sale, the seller is expected to have the right the sell. Even in cases of an agreement to sell where the seller has no title to the goods, there is still an implied undertaking that he will have the right to sell 'at the time when the property is to pass' to the purchaser.[30]There is also an implied warranty on the part of the seller that the goods are free from any undisclosed charge or encumbrances that will hinder the purchaser from enjoying quiet possession of the goods.[31]

6.2 The Rights of the BFPV as an Exception to the Principle of Nemo Dat Quod Non Habet

The nemo dat rule connotes that 'no one gives what he doesn't have.' It is a legal rule which holds that a purchaser cannot effectively execute a contract of sale with a seller that has no right of ownership over the commodities sold. The nemo dat rule is captured in section 20(1) of the SGL, which verifies the position that when goods are sold by a seller who has no title, or who is not authorized to sell the 'buyer acquires no better title than the seller had.' However, exceptions are stated therein, specifically when the owner is estopped from vitiating the sale, or when the sale is sanctioned by an order of a court of competent jurisdiction.[32] The SGL has provided various operational circumstances through which sales can be executed by persons who have no title to the goods. Such scenarios include –

(1.) When goods are purchased from a seller who has a voidable title, the purchaser acquires a good title to the goods, 'provided he buys them in good faith and without notice of the seller's defect of title'; and the sellers title 'has not been voided at the time of the sale.'[33]

(2.) In cases where a sale is executed by a seller in possession after sale, 'any sale, pledge, or other disposition' of the goods to any person receiving them in good faith and without notice of the previous sale, will be deemed an authorized sale.[34] In the case of *Worcester Works Finance Ltd v Cooden Engineering Co. Ltd,*[35] it was held that it does not matter whether a seller remains in possession as a bailee or trespasser or whether he is lawfully in possession or not. It is sufficient that he remains continuously in possession of the goods that he had sold to the buyer.

(3.) When a buyer who either purchases or agrees to purchase goods, is in possession of the goods or the title documents for the goods with the consent of the seller: sells, pledges, or executes any other disposition of the property in favour of a person who receives 'in good faith and

[29] Unknown Author, 'Purchaser for Value, without Notice, of a Power of Attorney'. *Harvard Law Review, vol.* [1901] (15) (3) 227
[30] Section 11(1) of the SGL
[31] Section 11(2) of the SGL
[32] Section 20(2) of the SGL
[33] Section 21 of the SGL; *Phillips v Brooks Ltd (1919) 2 KB 243 N*
[34] Section 22 of the SGL
[35] (1972) 1 Q.B 210

without notice of any lien or other right of the original seller in respect of the goods shall have the same effect as if the person making the delivery or transfer were mercantile agents in possession of the goods or documents of title with the consent of the owner.[36] In the case of *Du-Jardin v Beadman Bros Ltd,*[37] it was held that the buyer must equally deliver or transfer the physical possession of goods or the document before a valid title can be said to have passed.

(4.) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods,[38] any sale, pledge, or other disposition of the goods made by him, in the ordinary course of his business as a mercantile agent is valid, to the extent that the purchaser acts in good faith, and without notice of any defects in title or restrictions on the agents right to sell.[39]

7. Conclusion

In line with section 68 of the SGL, a BFPV is not exempted from the protection of the law, even if he acted negligently. Nonetheless. The key requirements are that in order for his ownership rights as a purchaser to be protected by the SGL, under commercial transactions, he must have acted in good faith; had no notice of any defects in the seller's title or right to sell the goods and paid valuable consideration or a reasonable purchase price.

This research also concludes that it is imperative to protect the ownership rights of BVPF in commercial contracts, considering the nature of sale of goods transactions, especially in the case of commodities sold in the market place or other orthodox venues where sales are usually made. In view of the fact that, in such scenarios it is difficult to verify the seller's right to sell, or any other defects affecting the title of the trader, in regard to the goods sold.

[36] Section 23 of the SGL

[37] (1952) 2 Q.B 712; (1952) 2 ALL E.R. 160

[38] Section 25 of the SGL states that 'a pledge of the document of title to goods shall be deemed to be a pledge of the goods'; while section 68 of the SGL states that 'documents of title to goods includes any bill of lading, dock warrant, ware house keeper's certificate and warrant or order for the delivery of goods, any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing, or purporting to authorize, either by endorsement or by delivery the possessor of the document to transfer or receive goods thereby represented.'

[39] Section 24 of the SGL; CG Luther, 'The Test of Conversion'. *Harvard Law Review* [1908] (21) (6) 408 Unknown Author, 'Trusts. Following Misappropriated Property. What Constitutes a Purchaser for Value'. *Harvard Law Review* [1921] (35) (2) 213