

# A Tale In Search Of A Title

In this holiday season, if you asked a bunch of people (none of them lawyers) what the term “redhibition” meant, you would probably get a lot of responses about trying to be good, at least while the distinctively-suited Santa was watching.

Lawyers, particularly those from Louisiana, would more likely recognize the term as a concept from the Civil Law (a body of law followed in that state given its French heritage). “Redhibition” refers to the ability of a buyer to avoid or undo a purchase because of a defect or “vice” in the item which renders it either absolutely useless or its use so inconvenient or imperfect that it may be presumed the buyer would not have purchased it had he or she known of the defect.

This takes us to *Hearod v. Select Motor Company*, a case which appropriately (given the season) involved a gift, decided on April 2, 2008 by the Court of Appeal of Louisiana.

According to the Court, Thera Hearod wanted to buy a collector car for her teenage daughter who was about to enter college. She visited Select, a classic car dealership, and purchased a 1972 Chevrolet Chevelle. Mrs. Hearod paid \$32,938.20 for the vehicle, which included tax, title, license, and an extended warranty.

Select completed the registration process for a temporary tag to allow Mrs. Hearod legally to drive the newly-purchased car while she waited for the plate to arrive. However, while Mrs. Hearod was waiting, the Louisiana Department of Public Safety and Corrections informed Select that the issuance of the title was placed on hold due to discrepancies involving the VIN. Select apprised Mrs. Hearod and rapidly applied for a second temporary tag to allow her to use the vehicle while the discrepancies were corrected.

However, after the expiration date of the second temporary tag, the problem had not been resolved. Mrs. Hearod was thus unable to drive the car any longer, because without a valid title she could neither insure the car nor acquire a license plate. Select initiated a lawsuit to order the DPSC to issue a title in Mrs. Hearod’s name. The trial court so ordered, and that ruling was affirmed on appeal.

In the meantime, Mrs. Hearod sued Select alleging a redhibitory defect. While the parties were awaiting trial, a title in Mrs. Hearod’s name was finally issued – two years after the purchase. The trial court ruled for Select, concluding that a defect did not exist in this case, and even if it did, “Select did everything in its power to correct the defect.”

Mrs. Hearod appealed.

The Court of Appeal affirmed the trial court’s ruling for Select.

“[To] prevail in a redhibitory action, the plaintiff must

prove that: (1) the thing sold is absolutely useless for its intended purpose or its use so inconvenient that had he known of the defect, he would never have purchased it; (2) the defect existed at the time of sale but was not apparent; and (3) the seller was given an opportunity to repair the defect.”

“In instances where the seller was not aware of the vice of the thing, he is only bound to repair, remedy or correct the vice before a redhibitory action can be brought, whereas a bad faith seller has no corresponding right. . . . Furthermore, ‘[a] good faith seller is to be afforded a reasonable opportunity to repair the defect in the light of the particular circumstances of each case.’”

“In this case. . . it is clear that the evidence supports the trial court’s judgment. . . . Admittedly, Mrs. Hearod proved that the use of the car was so inconvenient that had she known of the defect, she would never have purchased it . . . Nevertheless, we find that Mrs. Hearod failed to establish that a redhibitory defect pertaining to the title existed at the time of sale.”

“Select possessed a valid title to the vehicle at the time of sale, and it had no reason to believe that the issuance of a new title in Mrs. Hearod’s name would be denied. Moreover, it was only after the sale that [DPSC] refused to issue a valid title to the vehicle due to previous discrepancies. But, assuming arguendo that a redhibitory defect in the title existed, Select, as a good faith seller, was entitled to be given a reasonable opportunity to repair the defect in light of the particular circumstances of this case.”

“Notwithstanding Select’s attempts to secure a valid title for Mrs. Hearod, she contends that the lapse of two years before the title was finally issued was not reasonable and, thus, constitutes a redhibitory defect. We disagree. It is clear from the record that Select did everything within its reach to secure a valid title for Mrs. Hearod. However, there are unforeseen instances when the issuance of title to a used vehicle must go through a dilatory bureaucratic procedure in order to amend any discrepancies and deficiencies in the title that may have surfaced due to previous ownership interests or plainly as a result of human fallibility. In this case, Select had no control over this procedure and was unable to expedite its progress. Therefore, in light of these circumstances, we find that Select corrected the alleged defect in a reasonable manner, thereby obliterating any redhibitory defect that may have existed.”

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“Redhibition” comes from the Latin “redhibere,” meaning (to cause a seller) to have back or again what it had before. Kinda like what happens at the mall on December 26.

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Lawrence Savell (lsavell@chadbournelaw.com) is a litigator with the law firm Chadbourne & Parke LLP. This article provides general information and cannot substitute for consultation with an attorney; additional background is at [www.lawrencesavell.com](http://www.lawrencesavell.com). Savell’s humorous original lawyer music CDs are available at [www.LawTunes.com](http://www.LawTunes.com).