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IN THE COURT OF APPEALS OF IOWA CLERK SUPREME COURT

ROBERT R. RUNGE, Administrator
of the Estate of JANE R. RUNGE,
Deceased,

Appellant,

v.

VOGLER-NIEMAN CHEVROLET, INC.,
and HEZY LEE MARCUM,

Appellees.

Filed December 28, 1977

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2-59100

Appeal from Dallas District Court - Robert O. Frederick, Judge.

Plaintiff appeals from summary judgment. Affirmed.

Glenn L. Norris, of Hawkins, Hedberg & Ward, of Des Moines, for appellant.

Michael H. Figenshaw, of Bradshaw, Fowler, Proctor & Fairgrave, of Des Moines,
for appellee Vogler-Nieman Chevrolet, Inc.

Submitted to Albee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

This is a wrongful death action brought by Robert R. Runge, as administrator of the estate of his wife, Jane R. Runge. He appeals from summary judgment in favor of Vogler-Nieman Chevrolet, Inc., which judgment held that Vogler-Nieman was not the owner of the car which struck and killed plaintiff's decedent in a head-on collision, and was therefore not liable to Runge under § 321.493, The Code. We review this summary judgment, rendered pursuant to rule 237, Rules of Civil Procedure, in accordance with the principles discussed in *Daboll v. Hoden*, 222 N.W.2d 727, 731-34 (Iowa 1974), and repeated in *Meyer v. Nottger*, 241 N.W.2d 911, 916-17 (Iowa 1976).

The collision giving rise to this action occurred on September 10, 1973, between cars driven by Jane R. Runge and Hezy Lee Marcum. Marcum was driving a 1960 Chevrolet Bel-Air which he had acquired from Vogler-Nieman. He had signed a purchase order for the car on August 31, 1973, and paid \$50 down. On September 8, he paid, partly in cash and partly by check, the remainder of the \$259.50 price, which included tax and title fee. He also signed the application for certificate of title and took delivery of the car at that time. The delivery had not been approved by Vogler-Nieman's office manager, Ralph W. Huffman. The record also indicates that Huffman called the South Des Moines National Bank on September 10, a Monday, and determined that Marcum's account did not contain funds sufficient to honor the check to Vogler-Nieman. Huffman completed the reassignment and the application for certificate of title, entering the date of September 12, 1973. After sending the documents to the Boone County Treasurer, he caused the Treasurer to delay processing of the title until after October 3 or 4, when a woman identifying herself as Mrs. Marcum paid Vogler-Nieman the balance due in cash.

Under § 321.45(2), The Code, a prima facie case of ownership is made against a defendant by showing that it holds a certificate of title to a motor vehicle. *Six v. Freshour*, 231 N.W.2d 588, 591 (Iowa 1975). However, by the plain language of § 321.45(2)(d), and by the last sentence in the second paragraph of § 321.493, that prima facie case can have no effect upon the question of whether Vogler-Nieman was the owner under § 321.493. *Six v. Freshour* has no application here because that case presented no issue of whether a sale had occurred.

There is no dispute that possession of the vehicle had been delivered to Marcum, as required by the second paragraph of § 321.493. The fighting issue is whether a

dispute exists about any facts material to the question of whether a bona fide sale had occurred. Determination of this question is controlled by *Hartman v. Norman*, 253 Iowa 694, 113 N.W.2d 374 (1962), and by § 554.240(2), The Code. Because motor vehicles are "goods," see § 554.2105(1), Article 2 of the Uniform Commercial Code applies to their sale. "Sale" is defined in § 554.2106(1) as the passing of title from seller to buyer for a price. Section 554.2401 determines when title passes. Specifically applicable to this situation is § 554.2401(2), which provides that in the absence of an explicit contrary agreement "title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods. . . even though a document of title is to be delivered at a different time or place. . . ." See *Gross v. Powell*, 181 N.W.2d 113 (Minn. 1970).

In sum, the material facts are not in dispute. Vogler-Nieman delivered possession of the car to Marcum upon receipt of cash and a check for the agreed purchase price. When Marcum took delivery, he signed an application for transfer of title. That document was transmitted to the Treasurer's office for change of title. The dispute is only whether Marcum, the buyer, had sufficiently performed, and whether the certificate of title was properly dealt with. Under § 554.2401(2), however, these questions are not material to the issue of whether a transfer of title, and therefore a sale, has occurred. *Hartman v. Norman*, decided before enactment of the Uniform Commercial Code, is entirely consistent with this analysis. Trial court was correct in ruling that the undisputed material facts entitled Vogler-Nieman to judgment as a matter of law.¹

AFFIRMED.

¹ Plaintiff also complains because summary judgment was granted prior to discovery; neither those persons whose affidavits supported the motion or the resistance, nor Mr. or Mrs. Marcum, had been deposed. The record, however, fails to disclose that plaintiff at any point either moved for or specifically requested additional time to pursue discovery. See *Carter v. Jernigan*, 227 N.W.2d 131, 133, 135-36 (Iowa 1975).