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Clarity in the Eternal Hire-Purchase Triangle

Ong Siew Hwa v UMW Toyota Motor Sdn Bhd [2018] 1 LNS 742 (FC)

| by Shona Anne Thomas |

In the early 1970s, the Federal Court in *Ahmad Ismail*^[1] held that upon a customer executing a hire-purchase agreement with a financier for the purposes of financing the purchase of goods from a dealer, it supersedes any agreement he may have with the dealer and, therefore, he only has a contractual relationship with the financier. The legal effect of applying the principle in *Ahmad Ismail* is that the consumer has no claim against the dealer.

Over the decades, however, doubt has been cast on the case of *Ahmad Ismail*, partly due to the enactment of the Consumer Protection Act 1999. Consumers have been relying on cases such as *Puncak Niaga*^[2] and *Matang Plastik*^[3] to claim that the dealer is in breach of the statutory implied guarantee under sections 30 to 37 of the Consumer Protection Act 1999. Thus, the issue whether a consumer under a hire-purchase agreement has a claim against the dealer has continued to be litigated in the Malaysian courts.

Recently, the Federal Court has affirmed the principle in *Ahmad Ismail* and held that:

- (a) Any contractual relationship between the dealer and the consumer is superseded by the execution of a hire-purchase agreement. The hirer, as such, will have no claim against the dealer.
- (b) The Consumer Protection Act 1999 is stated to be supplemental in nature and without prejudice to any other law regulating contractual relations.^[4] Hence, the Hire-Purchase Act 1967 and case law relating to it will continue to apply.
- (c) *Puncak Niaga* and *Matang Plastik* are cases that do not concern hire-purchase agreements.

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The Federal Court's judgment may be viewed [here](#).

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[1] *Ahmad Ismail v Malaya Motor Co Anor* [1973] 2 MLJ 66

[2] *Puncak Niaga (M) Sdn Bhd v NZ Wheels Sdn Bhd* [2012] 1 MLJ 27

[3] *Matang Plastik & Metal Work Industries Sdn Bhd & Ors v Daimler Chrysler (M) Sdn Bhd & Ors* [2014] 6 MLJ 244

[4] Consumer Protection Act 1999, s 2(4)