

STATE OF MICHIGAN
COURT OF APPEALS

HOWARD BOUWENS,

Plaintiff-Appellant,

v

DEAN CIAMPA,

Defendant-Appellee,

and

JOHN DOE,

Defendant.

UNPUBLISHED

December 11, 1998

No. 205477

Wayne Circuit Court

LC No. 96-623459 CZ

Before: Sawyer, P.J., and Wahls and Hoekstra, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the summary dismissal of his conversion action. We reverse and remand for trial. This case is being decided without oral argument pursuant to MCR 7.214(E).

Generally, when faced with a choice between two innocent parties in a case involving fraud, a court will rule in favor of the party other than the one who made the fraud possible. *Karibian v Paletta*, 122 Mich App 353, 356; 332 NW2d 484 (1983). Accordingly, where goods are obtained by fraud, the seller may reclaim them unless another has purchased those goods and can establish their status as a good faith bona fide purchaser for value. *Pinkerton Bros Co v Bromley*, 128 Mich 236, 239-240; 87 NW 200 (1901); *Karibian, supra*. If the goods are stolen from their owner, however, then the person from whom they are stolen may recover them. *Karibian, supra*.

Defendant Ciampa endorsed the title to his Lincoln and delivered it, along with the Lincoln, to an unidentified third party female, thereby transferring title to the Lincoln from defendant. MCL 257.233(4) and (5); MSA 9.1933(4) and (5); *Ladd v Ford Consumer Finance Co, Inc*, 217 Mich App 119, 127; 550 NW2d 826 (1996); *Whitcraft v Wolfe*, 148 Mich App 40, 50; 384 NW2d 400

(1985); *Karibian*, 122 Mich App at 358. This transfer and delivery of the title and Lincoln to the third party female by defendant was the intended result of the third parties' material and false representations that the Lincoln was being purchased for valuable consideration as established by the third party male's representations that he wished to purchase the vehicle, the third party female's inspection of the vehicle and the third party female's tendering to defendant of a phony cashier's check made out in the amount of the price agreed upon by defendant and the third party male. *Arim v General Motors Corp*, 206 Mich App 178, 195; 520 NW2d 695 (1994); Keeton, Dobbs, Keeton and Owen, Prosser and Keeton on Torts (5th ed), §§ 5, 106, pp 206, 736. The third parties' knowledge of the falsity of the misrepresentations can be inferred from the fact that an advertisement listing the Lincoln for sale was placed in the Detroit Free Press immediately after, and possibly before, the initial sale was consummated and by the fact that the vehicle was sold to plaintiff for only \$16,000 rather than the \$28,500 the third parties represented to defendant that they were paying him. *Arim, supra*. Under such circumstances, the third parties defrauded defendant and, thereby, acquired title to the Lincoln by fraud.

Because the title was transferred in compliance with the Michigan Vehicle Code but was procured through fraud, the title was voidable, not void. *Ladd*, 217 Mich App at 127; *Jack Mann Chevrolet Co v Associates Investment Co*, 125 F2d 778, 786 (CA 6, 1942). A person possessing a voidable title has the power to transfer good title to a good faith purchaser. *Jones v Linebaugh*, 34 Mich App 305, 311; 191 NW2d 142 (1971). Under these circumstances, the question then becomes whether plaintiff can prove that he was a good faith bona fide purchaser for value. *Karibian, supra*. In light of the price plaintiff paid in 1996 for a 1995 Lincoln and the circumstances surrounding the transfer of the title and the Lincoln to plaintiff, a jury question remains regarding whether plaintiff should have been on constructive notice that the unidentified female did not own the Lincoln. *Karibian*, 122 Mich App at 359-360.

Reversed and remanded for trial. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Myron H. Wahls

/s/ Joel P. Hoekstra