

BETWEEN

**FC
APPLICANT**

AND

**TX
RESPONDENT**

Date of Order:

23/04/2018

Referee:

Referee: Robertshawe

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that TX is to pay to FC the sum of \$6,850.00 on or before Thursday, 31 May 2018.

Facts

[1] FC purchased a XX motorbike from TX for \$6,400.00. The transport of the bike to Wellington cost \$450.00.

[2] When FC applied to register her ownership of the bike, she received a letter from the NZTA stating that the bike was a vehicle of interest to the Police. FC was directed to contact the Police. The Police confirmed that the bike had been stolen from its original owner some months prior. It was then passed or sold to a man in Te Anau, who sold it to Mr TX. Mr TX then on-sold the bike to FC. The Police advised FC to return the bike to the original owner, a Ms CD, from AB.

[3] FC could not afford to have the bike sent to AB, so stored it in her garage pending the outcome of these proceedings. She filed a claim against Mr TX for \$7,030.00, being the return of the purchase price, plus transport costs and filing fee.

Issues

[4] Mr TX defended the proceedings on the grounds that he had nothing to do with the original theft, that Ms XY may well not be telling the truth about her predicament, that she still had possession of the bike and no proof of the true owner, that nobody had ever been convicted of the theft, and that the owner may have claimed on their insurance policy for the loss.

[5] The issues to be resolved are:

- (a) Is the bike stolen property?
- (b) If so, is Mr TX liable to refund the purchase price and costs?

Is the bike stolen property?

[6] I am satisfied that the bike was stolen property. Whilst Mr TX did not know about its past when he bought it, it was established from the information given to FC by the Police that it was stolen from Ms CD in AB, and ended up with FC, two transactions later. The status of

the bike is confirmed by the letter FC received from NZTA and the subsequent confirmation by the Police.

[7] FC has now returned the bike to the owner by delivering it to the GG Police Station. The Police arranged for a local salvage and storage facility to hold the bike (All Recoveries Limited), and FC changed the ownership registration back to the name of the original owner, as provided to her by the Police. All Recoveries has confirmed that the owner's husband collected the bike on 23 February 2018.

Is Mr TX liable to refund the purchase price and transport costs?

[8] A seller cannot pass on title to goods that he does not have (s149 Contract and Commercial Law Act 2017). Buyers of stolen goods cannot obtain title, nor pass on title to unsuspecting buyers. However, a seller warrants that they own the goods they are selling (s135). This becomes an implied condition which entitles a buyer to obtain a refund of the purchase price and damages for costs incurred if it turns out a seller does not have good title (s132).

[9] There are limited exceptions to this rule. These are summarised below:

- Where the seller has the express or implied authority of the true owner (s149(2));
- Where the true owner has given the seller the ability to appear to own the goods, thus creating apparent authority (s149(2));
- Where the seller is a mercantile agent in the business of buying and selling goods (s149(4)(a));
- Where the seller on sells the goods where they have no right to do so (e.g., where a buyer has purchased them but not yet received them) (s153);
- Where the buyer on sells the goods before they have the right to do so (e.g., where the buyer has possession but has not yet paid for goods) (s154).

Conclusion

[10] None of these exceptions apply in this case. Mr TX is not associated with the original owner and was selling the bike privately. The theft had occurred before Mr TX had possession of the bike. There was no on-sale during another transaction.

[11] Mr TX submitted that s152 of the Act preserves his right to sell the bike in the absence of any conviction for the original theft. That section states that the property in stolen goods reverts in the original owner if the offender is convicted, despite any intermediate dealing with the goods. However, s152 does not take precedence over the usual rules, and simply protects the owner if another person claims precedence under an exception set out in 9(a)-(e) above.

[12] Mr TX also submitted that s154 preserved his rights. Again, this is not the case. That section is only intended to operate as between a seller and buyer where the buyer on-sells when they have no right to do so. It does not affect the true owner's rights. As also explained above, s154 does not take away the rights of the true owner, but only protects the purchaser as against the intermediate seller.

[13] It is not known whether the true owner received any insurance payment for the bike at the time it was stolen, although FC believes from her discussions with the Police that she did not. If a claim was made, then the insurance company may have an interest in the bike. However, that possibility does not result in any defence to this claim, as it is purely a matter between Ms CD and her insurer.

[14] Consequently, Mr TX is liable to refund the purchase price of the goods, and the cost of transport incurred by FC to get the bike to Wellington (\$6,850.00). Mr TX would be able to make his own claim against the person from whom he bought the bike.

[15] FC also claimed her filing fee. However, this can only be awarded in limited circumstances that do not apply in this case (s43 Disputes Tribunal Act 1988).