

**Order**

**In the Small Claims Court of Nova Scotia**  
**Citation: *Lynds v. Bogle*, 2019 NSSM 39**

Claim: 482573

**BETWEEN:**

**John Lynds**

[...]

**CLAIMANT**

**AND**

**TERRY BOGLE**

[...]

**DEFENDANT**

**REASONS FOR DECISION**

**BEFORE:**

Shelly A. Martin, Adjudicator  
Hearing held at Truro, on June 17, 2019.  
Decision Rendered on August 6<sup>th</sup>, 2019

**By the Court:**

Background

[1] After winning the lottery several years ago, Mr. Lynds invested in several properties in the Truro area. A tenant, Michael Upton, was using one of Lynds' properties on Pictou Road to operate a shed-building business. In the course of their acquaintance, Mr. Lynds was approached by Mr. Upton, who expressed a desire to have truck and gutter machine to rent so that he could expand his business. Mr. Lynds later purchased a 2010 Ford Econoline Van 2010 (VIN #1FTNE2EW6ADA28492) and 2013 Arisin Utility Trailer, (VIN #5YCBE2423DH010901) and shortly thereafter rented the same to Mr. Upton at a rate of \$1000.00 per month. The events that unfolded in the years that followed, as relayed to the court by the parties to this case, would rival a Hollywood blockbuster. It is worth mentioning that Mr. Upton, the rogue of this story, is now

serving federal time for 14 counts of fraud.

[2] In the months that followed, when Mr. Lynds inquired about the rental fee and the whereabouts of the van and trailer, Mr. Upton would tell Mr. Lynds that it was “on a job.” Mr. Lynds eventually began to feel that something was amiss. After Mr. Upton failed to pay for the lease, he was shortly thereafter charged with stealing lumber and faced other criminal charges for fraud. Mr. Lynds testified that he registered both the van and the trailer as stolen. Approached by one of Mr. Upton's former workers, Mr. Lynds then learned his trailer and van were in the possession of Terry Bogle, who had some time previous bought them from Michael Upton.

[3] Mr. Lynds approached Mr. Bogle several months ago to address the situation. The van was in the yard, but the trailer was gone, sold to a third party. In court, Mr. Lynds questioned how Mr. Bogle could purchase a vehicle and trailer without papers, to which Mr. Bogle responded that Mr. Upton had provided signed registration papers. Mr. Lynds testified that he did not sign such papers and is unsure how Mr. Upton would have acquired them. I accept his testimony in this regard.

[4] On this basis Mr. Bogle, who described himself as honest but someone who “likes to wheel and deal” purchased Mr. Lynds’ vehicles from Mr. Upton.

[5] Mr. Lynds complained to the RCMP, who advised him to pursue a civil action and so, he launched an action seeking the return of this van and the trailer.

[6] Mr. Bogle and Mr. Lynds attempted to negotiate a settlement between themselves but were unable to come to an agreement together. Mr. Bogle has admitted to still being in possession of the Van, though he testified that the trailer was sold some time ago. When queried, he could not recall the name of the party who purchased the trailer from him. Mr. Lynds is seeking the return of the van still in Mr. Bogle’s possession and compensation for the trailer.

[7] The question for this court is who bears the loss when a rogue steals something and then purports to sell title to it in good faith to an innocent purchaser without any notice? Should the innocent party, the original owner, suffer the loss, or should the loss be borne by the innocent purchaser without notice?

[8] In Nova Scotia, the *Sale of Goods Act*, R.S.A. 1980, c. S-2, contains provisions that deal with title issues in respect of stolen goods. The relevant

sections are:

24. (1) *Subject to this Act, if goods are sold by a person who is not the owner of them and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.*

25. *When the seller of goods has a voidable title to them but his title has not been avoided at the time of sale, the buyer acquires a good title to the goods if he buys them in good faith and without notice of the seller's defect in title.*

27. (1) *When a person who has sold goods continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving them in good faith and without notice of the previous sale has the same effect as if the person making the delivery or transfer was expressly authorized by the owner of the goods to make it.*

[9] From the legislation above, Section 24 is the legislative expression of the rule of *nemo dat quod non habet*, meaning "no one gives what they don't have." The basic premise is that a thief who sells stolen property cannot convey title to the purchaser. The purchaser of stolen goods, even if he is an innocent party who was unaware that the goods were stolen, must give it back. Such an innocent party, who sells the goods onward, would be liable in monetary damages to the true owner.

[10] The case law in this regard is very old, but the principles governing sale of good with defective title was found in *Fridman, Sale of Goods in Canada* (4<sup>th</sup> ed) at 121-149. Also, I am mindful of *Industrial Brandon v. Leckie* 1972 CanLII 1004 (AB QB), [1972] 6 W.W.R. 113 (Alta. S.C.) that stands for the principle that when goods are taken by theft, the owner is entitled to their return.

[11] This is not to say that Mr. Bogle is a thief. He is, in the eyes of the law, an innocent purchaser and I believe Mr. Bogle and Mr. Lynds to both be honest men. Although Mr. Lynds was flummoxed about why Mr. Bogle would purchase vehicles in this way, knowing Mr. Upton's character, I am also mindful of the fact that both parties have testified that Mr. Upton was capable of "making everything sound do good." Hindsight offers considerable perspective on these dealings, and I

believe that Mr. Bogle felt he was purchasing a vehicle legitimately.

[12] I can in no way find based on the evidence that Mr. Lynds was considered to be in business with Mr. Upton or that Mr. Upton had his permission to sell the van and trailer. Accordingly, the *Sale of Goods Act* and the case law to which I have referred mandate that Mr. Bogle does not have valid title to the Ford Econoline Van. Accordingly, it must be returned to Mr. Lynds.

[13] On the matter of the trailer, Mr. Bogle's testimony of his sale of the trailer is the equivalent here of a conversion. Accordingly, he must also compensate Mr. Lynds for the loss of his trailer. Owing to the fact that Mr. Bogle testified her paid \$8000.00 for the trailer, I order that he pay this sum to Mr. Lynds.

Based on the foregoing, the following Order is made:

1. That the Claimant's action against the Defendant is allowed.
2. That the Ford 2010 Ford Econoline Van 2010 (VIN #1FTNE2EW6ADA28492) be returned to the Claimant's possession.
3. That the Defendant pay to the Claimant the sum of \$8000.00 representing the purchase price of the 2013 Arisin Utility Trailer, (VIN #5YCBE2423DH010901).
4. That the Defendant shall also pay to the Claimant the costs of filing this action with the Small Claims Court of Nova Scotia.

Dated at Truro, in the County of Colchester, in the Province of Nova Scotia, on the 6<sup>th</sup> day of August 2019.

Original: Court File

Copy: Claimant(s)

Copy: Defendant(s)

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Shelly A. Martin,  
Adjudicator