

**IN THE DISTRICT COURT  
AT CHRISTCHURCH**

**CIV-2016-009-002760  
[2017] NZDC 861**

BETWEEN	NEW ZEALAND POLICE Applicant
AND	SIMON JAMES BEE Respondent
AND	SHELDON ALLAN BENSON Respondent

Hearing: 10 January 2017

Appearances: Ms Sparks for the Applicant  
Respondent Bee in Person  
Respondent Benson in Person

Judgment: 20 January 2017

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**RESERVED JUDGMENT OF JUDGE P R KELLAR**

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[1] The Police have applied for orders under s 154 of The Search and Surveillance Act 2012 determining ownership of a Honda motorcycle.

[2] In August 2008 Mr Benson reported a burglary at his home in Leeston from which the motorcycle was stolen. In April 2016 Mr Bee contacted Police to inform Police that he had purchased a motorcycle and that during the course of making improvements to it, he noticed that some of the serial number had been ground off. He made a check on the internet and discovered that the motorcycle had been stolen in 2008. Mr Bee informed Police he had purchased the motorcycle from a Mr Ludemann. Police made inquiries of Mr Ludemann and discovered that he had purchased the motorcycle from a Mr Chamberlain some six years ago. Mr Chamberlain informed Police he had purchased the motorcycle in 2010 and had it for six months before selling it.

[3] Aside from initial registration of the motorcycle the subsequent transfers were not registered with the New Zealand Transport Agency.

[4] Mr Benson as the original owner and Mr Bee as the subsequent purchaser and person in possession of the motorcycle both seek to retain possession of it.

[5] Section 23(1) of the Sale of Goods Act 1908 provides:

**23 Sale by person not the owner**

(1) Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, 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.

[6] Section 23(1) of the Sale of Goods Act applies where a seller has no rights of ownership and is not acting with the authority of the owner. This must be the case here because the thief had no rights of ownership and did not transfer possession of the motorcycle with Mr Benson's authority. Therefore, Mr Benson's right as the original owner is not affected. He is not bound by a transaction that he did not authorise and was not a party to.

[7] Sections 24 – 27 of the Sale of Goods Act provide exceptions to the principle expressed in s 23(1) of the Sale of Goods Act 1908. Section 25 provides that where the seller's title has not been avoided at the time of sale, the buyer acquires a good title to the goods provided he or she bought them in good faith and without notice of the seller's defective title. Section 27 covers two situations – one where the seller is allowed to keep possession of the goods and the second where the buyer obtains possession without having property in them and resells them. This exception mostly operates where there are creditors involved.

[8] An innocent buyer, namely Mr Bee and presumably the prior purchasers, will acquire a good title to the motorcycle if the seller's title is voidable, but not if the seller had no title at all. If, as here, the contract between the true owner and the seller is void, such as in the case of stolen goods, then no property in the goods will

pass to the seller and the buyer will not acquire a good title even if he or she purchased the goods in good faith and without notice of the seller's defective title.

[9] A reasonable buyer in the chain of purchasers would have been put on notice to check the registration of the motorcycle and any other relevant information pertaining to it. In the present case, there is no evidence that any of the purchasers did so.

[10] Although there have been several transactions between the time when the motorcycle was stolen and when Mr Bee purchased it, there is nothing to suggest that any of the exceptions to the general rule apply. The effect of the rule in s 23(1) of the Sale of Goods Act is that Mr Benson as the original owner retains ownership despite subsequent sales and purchases.

[11] Mr Benson remains the owner of the motorcycle and is entitled to possession of it.

[12] No issue as to costs arises.

P R Kellar  
District Court Judge