

**IN THE DISTRICT COURT
AT WAITAKERE**

**CIV-2017-090-000165
[2017] NZDC 18318**

BETWEEN

REM ENGLISH
Applicant

AND

ZANE MORRIS-STEWART
BADEN STEWART
LISA DOUGLAS
Respondents

Hearing: 15 August 2017

Appearances: L Tatila for the Applicant
Respondents appear in Person

Judgment: 15 August 2017

ORAL JUDGMENT OF JUDGE G M HARRISON

[1] This is an application by Constable English of the Henderson Police for an order pursuant to s 40 Police Act 2008 whereby the ownership of a Holden Commodore motor vehicle registered number [registration number deleted] is in doubt and so Constable English has applied to the Court pursuant to s 40 for an order determining ownership of the vehicle.

[2] On 16 October 2016, Mr Zane Morris-Stewart was the driver of the vehicle. He had purchased it sometime earlier and the vehicle was registered in the name of his father, Mr Baden Stewart, on 30 September 2016. That registration was done for insurance purposes. On 16 October, Zane, if I may call him that to distinguish him from his father, while driving, saw a Nissan Skyline vehicle in Arodella Crescent in Ranui with a “For Sale” sign on it. As he went to inspect the vehicle, he was approached by an individual later identified as Matthew Day. He expressed some interest in Zane’s Holden and told him he was interested in a swap of vehicles and a

test drive of the Holden. The two then drove the other vehicle and it seems that Mr Day was second to drive the Commodore vehicle. Having done so, at the end of that trip he said words to the effect to Zane, "Sweet mate the deal is done," and threw Zane the keys to the Nissan and drove away in the Holden.

[3] Constable English later interviewed Mr Day at the Henderson Police Station. His version, according to Constable English's record of it, was that after they had respectively driven the different vehicles, that he was approached by Zane who said deal. Mr Day claims he said, "Okay as long as there is no cash owing on the Holden." So the record of those two individuals is somewhat contradictory but in my view it makes no significant outcome on this matter.

[4] Shortly after the swap of the vehicles was undertaken, I think Zane went and spoke to the police, in fact that same day, 16 October, having complained that he did not agree to the swap although he did acquire possession of the Nissan on that day and I understand still has possession of it. That same day the Holden was registered in the name of Stacey Collis. It seems she was Mr Day's partner or girlfriend. There were subsequent changes of name registered in respect of the Holden. On 9 December, Zane changed the Holden ownership into his name only for Stacey Collis to change it back into her name on 15 December 2016.

[5] It seems that Ms Collis and/or Mr Day required cash and decided that they would sell the Holden. This was registered for sale or posted for sale on Facebook and Ms Lisa Douglas responded to that advertisement and arranged to meet Mr Day and Ms Collis I think on 27 December 2016. There the vehicle changed hands. Ms Douglas paid \$6000 in cash for the vehicle and it was subsequently transferred into her name on 27 December.

[6] The issue then is who owns the vehicle. I refer firstly to s 27(2) Sale of Goods Act 1908. It reads:

Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or 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, or under any agreement for sale, pledge, or other

disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

[7] What that means in more simple terms is that a bona fide purchaser for value without notice of any defect in the title to a vehicle acquires good title to it. It is trite to say that the vehicle falls within the definition of goods as defined in the Sale of Goods Act.

[8] In *Garrow and Fenton's Law of Personal Property in New Zealand*, the 7th edition at paragraph 2.16, the following is stated:

Where a person who has bought or agreed to buy goods has possession with the seller's consent a disposition by the purchaser or by a mercantile agent acting for the purchaser, to a person receiving them in good faith and without notice takes effect as if the disposition were authorised by the true owner.

[9] The position is really put beyond doubt in a decision of the New Zealand Court of Appeal in *Jeffcott v Andrew Motors Ltd*¹. That was a case in which a vehicle was handed to a purchaser who tendered a cheque in payment of the purchase price, all the time knowing there were insufficient funds to meet payment of the cheque. The cheque was not paid but in the meantime the purchaser had sold the vehicle to another person. The person buying it had no knowledge of the transaction in which it was acquired and the question arose as to the true ownership of the vehicle.

[10] The Court of Appeal in determining the matter referred to s 27(2) Sale of Goods Act, that I have just read, and went on to consider some English case authority. That authority established that even if possession of the vehicle was obtained by a trick that was held to be possession by consent. On the facts of that case the Court held that the delivery of the vehicle was a voluntary delivery without qualification, even if induced by the tendering of a valueless cheque. The Court went on to find that the subsequent purchaser had acquired good title to the vehicle despite the trick that had been played upon the original vendor.

¹ *Jeffcott v Andrew Motors Ltd* [1960] NZLR 721

[11] Now applying that reasoning to this case, it is clear that when the vehicles were exchanged on 16 October in 2016, even if Zane had not fully intended a swap of the vehicles and even if he had been misled to some degree by Matthew Day, nevertheless there was a transaction between them whereby a swap of the vehicles had been discussed, vehicles had been test driven and there is the conflict in the evidence of both individuals as to what was said at the time that Matthew Day acquired possession of the vehicle. That is unfortunate from the position of Zane and his father, but the fact of the matter is that on the face of it Matthew Day obtained the vehicle, even if by a ruse or a trick but, nevertheless, obtained possession of it. Zane still has the Nissan vehicle.

[12] In those circumstances, I have to consider the position of Lisa Douglas. She had no knowledge, according to the evidence, of the transaction between Mr Day and Zane. She paid \$6000 for the vehicle when it was purchased and, in my view, she falls wholly within the definition of a bona fide purchaser for value of the vehicle and she must, therefore, be regarded as the true owner of it.

[13] That is an unfortunate outcome for Mr Zane Stewart and his father. They have the Nissan vehicle. I do not know what can be done with that to improve its condition and/or otherwise to turn it into a valuable asset. They may wish to discuss that further with an appropriate member of the police. But other than that my formal order is that Ms Lisa Douglas is the true and correct owner of the vehicle.

G M Harrison
District Court Judge