

Good-Faith Purchasers

A chimney-sweep finds a jewel. He gives it to his friend, a jeweler, who designs and crafts a gold ring around the jewel's unique shape. Frederica van Snoot sees the ring, buys it for \$10,000, and wears it around town. One day, Jeremiah Hobnob recognizes the jewel he lost last month and demands it back. As against the chimney-sweep, this is an easy case... But the jeweler and van Snoot are harder cases, because both of them have made investments. The jeweler invested gold and labor to turn the jewel into a ring. For her part, van Snoot paid out \$10,000. If Hobnob is entitled to the jewel, the jeweler or van Snoot or both will end up poorer than when they started.

The common law mitigated the harshness of this result with two doctrines. One, the rule of *accession*, provided that someone who sufficiently improves another person's property is allowed to keep it. Importantly, the hornbook rule is that accession only operates in favor of *good-faith* improvers; someone who knows the property is not hers acts at her own peril when she combines it with her own property or labor. The jeweler is potentially protected by accession. The other doctrine protected *good faith purchasers for value* from the unknown claims of third parties. It too only protects only parties who act in good faith, i.e., those who do not know or have reason to know they are buying property with clouded title. Frederica van Snoot may be just such a purchaser.

Despite their similarities, they have important differences. For example, it is hornbook law that "a thief takes no title and can give none": good-faith purchase can never cut off the claims of an owner from whom the property was stolen. But accession can. Also, observe that while ownership of the property may be the primary question in these cases, it is often not the only issue. Once ownership is allocated, courts often require restitutionary payments to shift losses from more innocent to more culpable parties.

Uniform Commercial Code

§ 2-403. *Power to transfer; good faith purchase of goods; "entrusting"*

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good

title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

- (a) The transferor was deceived as to the identity of the purchaser, or
- (b) The delivery was in exchange for a check which is later dishonored, or
- (c) It was agreed that the transaction was to be a “cash sale,” or
- (d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) “Entrusting” includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor’s disposition of the goods have been such as to be larcenous under the criminal law.

Kotis v. Nowlin Jewelry, Inc.

844 S.W.2d 920 (1992)

DRAUGHN, Justice.

Eddie Kotis appeals from a judgment declaring appellee, Nowlin Jewelry, Inc., the sole owner of a Rolex watch, and awarding appellee attorney’s fees. Kotis raises fourteen points of error. We affirm.

On June 11, 1990, Steve Sitton acquired a gold ladies Rolex watch, President model, with a diamond bezel from Nowlin Jewelry by forging a check belonging to his brother and misrepresenting to Nowlin that he had his brother’s authorization for the purchase. The purchase price of the watch, and the amount of the forged check, was \$9,438.50. The next day, Sitton telephoned Eddie Kotis, the owner of a used car dealership, and asked Kotis if he was interested in buying a Rolex watch. Kotis indicated interest and

Sitton came to the car lot[.] Kotis purchased the watch for \$3,550.00. Kotis also called Nowlin's Jewelry that same day and spoke with Cherie Nowlin.

Ms. Nowlin told Kotis that Sitton had purchased the watch the day before. Ms. Nowlin testified that Kotis would not immediately identify himself. Because she did not have the payment information available, Ms. Nowlin asked if she could call him back. Kotis then gave his name and number. Ms. Nowlin testified that she called Kotis and told him the amount of the check and that it had not yet cleared. Kotis told Ms. Nowlin that he did not have the watch and that he did not want the watch. Ms. Nowlin also testified that Kotis would not tell her how much Sitton was asking for the watch.

John Nowlin, the president of Nowlin's Jewelry, testified that, after this call from Kotis, Nowlin's bookkeeper began attempting to confirm whether the check had cleared. When they learned the check would not be honored by the bank, Nowlin called Kotis, but Kotis refused to talk to Nowlin. Kotis referred Nowlin to his attorney. On June 25, 1990, Kotis' attorney called Nowlin and suggested that Nowlin hire an attorney and allegedly indicated that Nowlin could buy the watch back from Kotis. Nowlin refused to repurchase the watch.

After Sitton was indicted for forgery and theft, the district court ordered Nowlin's Jewelry to hold the watch until there was an adjudication of the ownership of the watch. Nowlin then filed suit seeking a declaratory judgment that Nowlin was the sole owner of the watch. Kotis filed a counterclaim for a declaration that Kotis was a good faith purchaser of the watch and was entitled to possession and title of the watch. After a bench trial, the trial court rendered judgment declaring Nowlin the sole owner of the watch. The trial court also filed Findings of Fact and Conclusions of Law.

In point of error one, Kotis claims the trial court erred in concluding that Sitton did not receive the watch through a transaction of purchase with Nowlin, within the meaning of Tex.Bus. & Com.Code Ann. § 2.403(a). Where a party challenges a trial court's conclusions of law, we may sustain the judgment on any legal theory supported by the evidence. Incorrect conclusions of law will not require reversal if the controlling findings of facts will support a correct legal theory.

Kotis contends there is evidence that the watch is a "good" under the UCC, there was a voluntary transfer of the watch, and there was physical delivery of the watch. Thus,

Kotis maintains that the transaction between Sitton and Nowlin was a transaction of purchase such that Sitton acquired the ability to transfer good title to a good faith purchaser under § 2.403 [which was identical in relevant part to the UCC excerpt quoted above]. ...

Neither the code nor case law defines the phrase “transaction of purchase.” “Purchase” is defined by the code as a “taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.” Tex. Bus. & Com. Code Ann. § 1.201(32) (Vernon 1968). Thus, only voluntary transactions can constitute transactions of purchase.

Having found no Texas case law concerning what constitutes a transaction of purchase under § 2.403(a), we have looked to case law from other states. Based on the code definition of a purchase as a voluntary transaction, these cases reason that a thief who wrongfully takes the goods against the will of the owner is not a purchaser. *See Suburban Motors, Inc. v. State Farm Mut. Automobile Ins. Co.*, 268 Cal. Rptr. 16, 18 (Cal. Ct. App. 1990); *Charles Evans BMW, Inc. v. Williams* 395 S.E.2d 650, 651-52 (Ga. Ct. App. 1990); *Inmi-Etti v. Aluisi*, 492 A.2d 917 (Md. Ct. App. 1985). On the other hand, a swindler who fraudulently induces the victim to deliver the goods voluntarily is a purchaser under the code.

In this case, Nowlin’s Jewelry voluntarily delivered the watch to Sitton in return for payment by check that was later discovered to be forged. Sitton did not obtain the watch against the will of the owner. Rather, Sitton fraudulently induced Nowlin’s Jewelry to deliver the watch voluntarily. Thus, we agree with appellant that the trial court erred in concluding that Sitton did not receive the watch through a transaction of purchase under § 2.403(a). We sustain point of error one.

In point of error two, Kotis contends the trial court erred in concluding that, at the time Sitton sold the watch to Kotis, Sitton did not have at least voidable title to the watch. In point of error nine, Kotis challenges the trial court’s conclusion that Nowlin’s Jewelry had legal and equitable title at all times relevant to the lawsuit. The lack of Texas case law addressing such issues under the code again requires us to look to case law from other states to assist in our analysis.

In *Suburban Motors, Inc. v. State Farm Mut. Automobile Ins. Co.*, the California court noted that § 2.403 provides for the creation of voidable title where there is a voluntary transfer of goods. Section 2.403(a)(1)-(4) set forth the types of voluntary transactions that can give the purchaser voidable title. Where goods are stolen such that there is no voluntary transfer, only void title results. Subsection (4) provides that a purchaser can obtain voidable title to the goods even if “delivery was procured through fraud punishable as larcenous under the criminal law.” This subsection applies to cases involving acts fraudulent to the seller such as where the seller delivers the goods in return for a forged check. Although Sitton paid Nowlin’s Jewelry with a forged check, he obtained possession of the watch through a voluntary transaction of purchase and received voidable, rather than void, title to the watch. Thus, the trial court erred in concluding that Sitton received no title to the watch and in concluding that Nowlin’s retained title at all relevant times. We sustain points of error two and nine.

In point of error three, Kotis claims the trial court erred in concluding that Kotis did not give sufficient value for the watch to receive protection under § 2.403, that Kotis did not take good title to the watch as a good faith purchaser, that Kotis did not receive good title to the watch, and that Kotis is not entitled to the watch under § 2.403. In points of error four through eight, Kotis challenges the trial court’s findings regarding his good faith, his honesty in fact, and his actual belief, and the reasonableness of the belief, that the watch had been received unlawfully.

Under § 2.403(a), a transferor with voidable title can transfer good title to a good faith purchaser. Good faith means “honesty in fact in the conduct or transaction concerned.” Tex.Bus. & Com. Code Ann. § 1.201(19) (Vernon 1968). The test for good faith is the actual belief of the party and not the reasonableness of that belief. *La Sara Grain v. First Nat’l Bank*, 673 S.W.2d 558, 563 (Tex.1984).

Kotis was a dealer in used cars and testified that he had bought several cars from Sitton in the past and had no reason not to trust Sitton. He also testified that on June 12, 1990, Sitton called and asked Kotis if he was interested in buying a Ladies Rolex. Once Kotis indicated his interest in the watch, Sitton came to Kotis’s place of business. According to Kotis, Sitton said that he had received \$18,000.00 upon the sale of his house and that he had used this to purchase the watch for his girlfriend several months before. Kotis paid \$3,550.00 for the watch. Kotis further testified that he then spoke to a friend,

Gary Neal Martin, who also knew Sitton. Martin sagely advised Kotis to contact Nowlin's to check whether Sitton had financed the watch. Kotis testified that he called Nowlin's after buying the watch.

Cherie Nowlin testified that she received a phone call from Kotis on June 12, 1990, although Kotis did not immediately identify himself. Kotis asked if Nowlin's had sold a gold President model Rolex watch with a diamond bezel about a month before. When asked, Kotis told Ms. Nowlin that Sitton had come to Kotis' car lot and was trying to sell the watch. Ms. Nowlin testified that Kotis told her he did not want the watch because he already owned a Rolex. Ms. Nowlin told Kotis that Sitton had purchased the watch the day before. Kotis asked about the method of payment. Because Ms. Nowlin did not know, she agreed to check and call Kotis back. She called Kotis back and advised him that Sitton had paid for the watch with a check that had not yet cleared. When Ms. Nowlin asked if Kotis had the watch, Kotis said no and would not tell her how much Sitton was asking for the watch. Ms. Nowlin did advise Kotis of the amount of the check.

After these calls, the owner of Nowlin's asked his bookkeeper to call the bank regarding Sitton's check. They learned on June 15, 1990 that the check would be dishonored. John Nowlin called Kotis the next day and advised him about the dishonored check. Kotis refused to talk to Nowlin and told Nowlin to contact his attorney. Nowlin also testified that a reasonable amount to pay for a Ladies President Rolex watch with a diamond bezel in mint condition was \$7,000.00-\$8,000.00. Nowlin maintained that \$3,500.00 was an exorbitantly low price for a watch like this.

The trier of fact is the sole judge of the credibility of the witnesses and the weight to be given their testimony. Kotis testified that he lied when he spoke with Cherie Nowlin and that he had already purchased the watch before he learned that Sitton's story was false. The judge, as the trier of fact, may not have believed Kotis when he said that he had already purchased the watch. If the judge disbelieved this part of Kotis' testimony, other facts tend to show that Kotis did not believe the transaction was lawful. For example, when Kotis spoke with Nowlin's, he initially refused to identify himself, he said that he did not have the watch and that he did not want the watch, he refused to divulge Sitton's asking price, and he later refused to talk with Nowlin and advised

Nowlin to contact Kotis' attorney. Thus, there is evidence supporting the trial court's finding that Kotis did not act in good faith.

There are sufficient facts to uphold the trial court's findings even if the judge had accepted as true Kotis' testimony that, despite his statements to Nowlin's, he had already purchased the watch when he called Nowlin's. The testimony indicated that Kotis was familiar with the price of Rolex watches and that \$3,550.00 was an extremely low price for a mint condition watch of this type. An unreasonably low price is evidence the buyer knows the goods are stolen. Although the test is what Kotis actually believed, we agree with appellee that we need not let this standard sanction willful disregard of suspicious facts that would lead a reasonable person to believe the transaction was unlawful. Thus, we find sufficient evidence to uphold the trial court's findings regarding Kotis' lack of status as a good faith purchaser. We overrule points of error three through eight. ...

We affirm the trial court's judgment.

Notes and Questions

1. Is there anything Kotis can do to get back his \$3,550?
2. Why is there so much discussion of whether Kotis called Nowlin before or after he had purchased the watch from Sitton?

Answer questions 3-7 under UCC 2-403. Note that each of these questions is designed to have a single right answer. For each question, identify the phrase(s), sentence(s), and/or section(s) from UCC 2-403 that are most relevant to answering the questions.

3. Nowlin sold the watch to Sitton thinking that Sitton was, in fact, Lord Rasmussen, a regular customer who had excellent credit. Sitton paid nothing but instead told Nowlin to "put it on his tab" and that he (e.g. Lord Rasmussen) would pay the bill later that month. Sitton then sold the watch for \$8000 to Lady Rose, who had no reason to be suspicious of Sitton's title. Nowlin sues Lady Rose for the watch. Who wins?

4. Same question and facts as Question 3, except Sitton gives the watch to Lady Rose as a birthday present. Lady Rose had no reason to be suspicious of Sitton's title.
5. Nowlin lost his watch in Exposition Park. Sitton picked it up and sold it to Lady Rose, who had no reason to be suspicious of Sitton's title. Nowlin sues Lady Rose for the watch. Who wins?
6. Nowlin's watch has stopped working, so he brings it to Sitton's shop. Sitton both repairs watches and sells new and used watches. Sitton repairs the watch but gets confused and sells it to Lady Rose, who came into Sitton's store to buy a watch for her son. Nowlin sues Lady Rose. Who wins?
7. Nowlin lost his watch in Exposition Park. Sitton, the owner of a used watch store, picked up the watch and put it in a display case in his shop. Lady Rose, came into Sitton's store to buy a watch for her son and purchased the watch that Nowlin had lost. Nowlin sues Lady Rose. Who wins?