

Claim No: 299147

Date:20081107

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Boutilier v. National Exchange & Brokers Inc., 2008 NSSM 91

BETWEEN:

Name Gregory Boutilier Claimant

Name National Exchange & Brokers Inc. Defendant

Revised Decision: The text of the original decision has been revised to remove addresses of the parties on July 3, 2009.

DECISION

BACKGROUND

- (1) The Claimant, Gregory Boutilier, claims the sum of \$1,000.00 from the Defendant, National Exchange & Brokers Inc.
- (2) The basis of the claim is that the Claimant states that he purchased a Saint Mary's University 2001 championship ring from the Defendant and that the ring subsequently was discovered to be a stolen ring. The Defendant now seeks to be reimbursed for the cost of the ring.
- (3) The Defendant denies liability and states that the ring was not purchased from them by the Claimant.

BURDEN OF PROOF

- (4) The burden of proof is the civil balance of probabilities and rests with the Claimant.

ANALYSIS

- (5) The Court heard the evidence of the Claimant, Gregory Boutilier, Steven Bennett, owner of the Defendant, Detective Constable Steve McCormack, David Baker, and Adam Redden.
- (6) A statement was tendered purportedly signed by Christine Johnson confirming that a ring obtained from her was custom made by a jewellery company in St. John's, Newfoundland. The note from Ms. Johnson is hearsay evidence as Ms. Johnson was not made available for cross-examination. Also, there is a lack of detail in the information provided in the note as there is no specific reference to a 2001 Saint Mary's University championship ring which, as described by the Claimant, would be a unique ring containing the name and uniform number of the person who owned the ring.
- (7) The burden is on the Claimant to prove, first of all, that the ring was purchased from the Defendant, secondly, that the ring was in fact a stolen ring and, thirdly, that the purchase price was \$1,000.00.
- (8) The Claimant's evidence is that he purchased two rings from the Defendant at a total price of \$2,400.00. He stated that he had purchased a lot of gold and diamonds around that time and admitted that he had purchased jewellery from other vendors. He also admitted that he bought groups of jewellery over a period of time of weeks or even months.
- (9) He states that after he purchased the ring, he contacted Saint Mary's University to see if the person who originally owned the ring wanted to buy it back. He professes that he didn't know that the ring was stolen.
- (10) He then met with someone who purported to be the owner but in fact was an undercover Police Officer and made arrangements for the ring to be bought back for \$800.00. When questioned by the Officer, he told him that he had won the ring in a poker game.
- (11) He was charged with extortion and possession of stolen property, however, charges were eventually dropped.

- (12) The Claimant's own evidence is confusing and contradictory. He testified that he purchased the ring from the Defendant yet he told the undercover Police Officer that he won it in a poker game. He states that he purchased the ring for the sum of \$1,000.00 yet he indicates that he was willing to sell it back for \$800.00.
- (13) He relies upon the evidence of Detective Constable McCormack as proof that the ring was purchased from the Defendant as according to him, Detective Constable McCormack spoke to Mr. Bennett, and it was admitted that the ring was purchased from the Defendant's establishment.
- (14) Detective Constable McCormack stated that the Claimant was arrested and transported to the Halifax Police Station for questioning. He also stated that he did call the Defendant and that he was told over the phone that the ring was purchased there but the cost of the purchase of the ring was not confirmed during that conversation.
- (15) Mr. Bennett states that when Detective Constable McCormack called him, he had asked to describe the ring and there was some discussion about who the ring had been purchased from. Mr. Bennett states there was some confusion since he had purchased more than one ring from this particular individual, Ms. Johnson.
- (16) Detective Constable McCormack was clear in his evidence that Mr. Bennett was familiar with the ring as being a football ring not a Rolex ring. I conclude from his evidence that Mr. Bennett admitted during this conversation that he had in fact sold a football ring to the Claimant. Where there is any difference in the evidence between Mr. Bennett and Detective Constable McCormack on this point, I accept the evidence of Detective Constable McCormack who gave his evidence in a straightforward manner and whose recollection was clear. I had the impression from listening to Mr. Bennett's evidence that he attempted to intentionally tailor his evidence to fit a version of events that would be favorable to him no matter how unlikely that version of events seemed.
- (17) I find that the Defendant did sell a Saint Mary's University football ring to the Claimant, that it was a stolen ring as confirmed by Detective Constable McCormack, and that the Claimant has suffered damages as a result.
- (18) I imply a term into the contract between the parties to the effect that the merchandise sold from the Defendant to the Claimant would not be stolen merchandise, otherwise, it would obviously have no value to the Claimant.

- (19) The Claimant bought a very distinct Saint Mary's University football ring which was easily identifiable.
- (20) Even though the Claimant had no receipt for the purchase of the ring, this is not unusual as the Defendant and their witnesses testified that their practice is simply to provide a business card with the type of item written on the back and the purchase price. No actual documents are provided which would constitute a receipt in the usual sense of the word. I conclude that the Defendant does not keep meticulous records of each business transaction.

DAMAGES

- (21) While I accept the Claimant's evidence that he purchased the football ring from the Defendant, the evidence concerning the purchase price of the ring was confusing. He insisted in his direct evidence that he paid \$2,400.00 for two rings yet he admitted on cross-examination that he bought groups of jewellery over a period of time of weeks and even months. He stated that he paid \$1,000.00 for the ring yet tried to sell it for \$800.00.
- (22) Mr. Bennett and the other witnesses for the Defendant were clear that for a ring of 52.4 grams, 10 karat gold, the sale price would be in the \$500.00 range.
- (23) I am prepared to award the Claimant the sum of \$500.00.

COSTS

- (24) Since both parties have been partly successful, each party will bear their own costs.

Dated at Dartmouth, Nova Scotia,
on November 7, 2008.

Patrick L. Casey, Q.C., Adjudicator

