

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2019-001769-CA-01

SECTION: CA25

JUDGE: Valerie R. Manno Schurr

James N Glover, Jr.

Plaintiff(s)

vs.

Power Yachts Intl, LLC et al

Defendant(s)

_____ /

**ORDER GRANTING PLAINTIFF'S RENEWED MOTION FOR SUMMARY
JUDGMENT AS TO COUNT I REPLEVIN OF THE AMENDED COMPLAINT**

THIS CAUSE, having come before the Court for a hearing on October 27, 2021, and revisited on December 6, 2021, upon James N. Glover, Jr. (Father) and James N. Glover, Jr.'s (Son) (collectively "Plaintiffs")'s Renewed Motion for Summary Judgment as to Count I Replevin of the Amended Complaint ("Motion") as against Defendants Francisco Vasallo and Maribel Vasallo, and the Court, after considering all summary judgment materials, including the evidence and having heard oral arguments, and being fully advised therein, does hereby: **ORDER AND ADJUDGE** as follows:

I. Standard on Summary Judgement

Pursuant to Rule 1.150, summary judgment shall be granted if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law. Fla. R. Civ. P. 1.150(1). Rule 1.150 was amended effective May 1, 2021, thereby "adopting the text of Federal Rule 56 almost verbatim." *See In re: Amendments to Florida Rule of Civil Procedure 1.150*, SC20-1490, 2021 WL 1684095 at *3 (Fla. Apr. 29, 2021). As such, rule 1.150 "shall be construed and applied in accordance with the federal summary judgment

standard.” Fla. R. Civ. P. 150(a).

The initial burden is on the movant to demonstrate the absence of a “genuine, triable issue of material fact.” *See* Fla. R. Civ. P. 1.150(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). The substantive law applicable to the dispute will identify which facts are material. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). As such, “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Id.* at 248. “Once the moving party has met its initial burden, Rule [1.150] requires the nonmoving party to go beyond the pleadings and identify facts which show a genuine issue for trial.” *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th Cir. 2000). The nonmoving party must come forward with sufficient evidence supporting the existence of a genuine triable issue of material fact. *See Anderson*, 477 U.S. at 248-249; *Celotex*, 477 U.S. at 327. If a dispute about a material fact is genuine, meaning, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party or the court could find in favor of the nonmoving party, summary judgment is not proper. *Anderson*, 477 U.S. at 248-49. The Court’s function at the summary judgment stage is not “to weigh the evidence and determine the truth of the matter but it is limited to determine whether there is a genuine issue for trial.” *Id.* at 249. “[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party” or for the court to render a judgment in favor of the non-movant. *See id.* When the evidence is merely colorable or is not significantly probative and “the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial’” and summary judgment may be granted. *See id.* at 249-250; *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

II. Factual Findings and Conclusions of Law.

1. On or about November 11, 2016, Father, obtained title to a Mystic Powerboat, Model

M4200, Identification Number DZNM4213A616 (“Vessel”). **See** Motion, Exhibit A-1.

2. Father was named on the title and registration for the Vessel. **See** Exhibit A-1, Motion.

3. Father executed a valid power of attorney, authorizing Son to act on his behalf as it relates the Vessel. **See** Motion, Exhibit A-2.

4. On or about July 21, 2018, Plaintiff executed a “2018 M4200 Order Form” for a new vessel for a total price of \$684,407.00 before discounts, with no terms or any reference for a trade in. Further, the agreement did not authorize Mystic Powerboats, Inc. (“Mystic”) to unilaterally sell the original Vessel. **See** Motion, Exhibit B.

5. On November 11, 2018, the Vasallos paid an initial deposit of \$3,000.00 to Power Yachts Int’l, LLC (“PYI”) on the Vessel. **See** Dep. Tr. of Francisco Vasallo, 32:11-18.

6. On November 13, 2018, PYI and the Vasallos signed a closing statement and purchase agreement for the Vessel. The closing statement represented that PYI alone, was the seller of the Vessel. **See id.** at 31:2-25; 32:1-6; 51:15-18.

7. Francisco Vasallo was aware that PYI did not own the Vessel before entering into a contract for purchase. **See id.** at 26:22-5; 27:1-6.

8. On November 13, 2018, the Vasallos wired \$365,595.00 to PYI. **See** Motion, Exhibit I; **see also** Dep. Tr. of Francisco Vasallo, 87:20-25; 88:1-25; 89:1-3.

9. Prior to wiring the \$365,595.00 to PYI, Francisco Vasallo never saw any written confirmation from the owner of the Vessel as to its price, or any written proof that PYI had authority to sell the Vessel. Further, he never asked PYI to see the title of the Vessel. **See** Dep. Tr. of Francisco Vasallo, 63:10-22.

10. On December 21, 2018, the Vasallos went to PYI to retrieve the Vessel, *see id.* at 99:9-20, but Jonathan Vu (“Vu”) did not appear, *see id.* at 107:22-25.

11. Vu informed the Vasallos that he could not convey the Vessel at the agreed upon price. *See id.* at 108:13-22.

12. Francisco Vasallo requested a refund, and Vu referred him to an attorney, who informed that Vu wanted to pay the money back on a payment plan. *See id.* at 109:1-18; 110: 4-8.

13. Francisco Vasallo told Vu that he was going to the police. *See id.* at 111:21-24; 113:22-25; 114:1-4.

14. Francisco Vasallo also told Vu: “I’m going to go do a report and then look for an attorney. So just, you know, think about what you want to do.” *See id.* at 116:1-5.

15. After a police report was filed, Francisco Vasallo and Vu spoke again, and Vu agreed to a new contract. *See id.* at 113:22-25; 114:1-14.

16. On December 21, 2018, at the time of taking possession the Vassallos never made any record inquiry, never received any verification that PYI was authorized to sell the Vessel, never asked for any verification that PYI was authorized to sell the Vessel nor whether the true owner approved the new contract. *See id.* at 91:8-16.

17. At no point did the Vasallos check title or make any inquiry with the Department of Highway Safety and Motor Vehicles on the Vessel. *See* Francisco Vasallo’s Responses to Requests for Admissions; *see also* Dep. Tr. of Francisco Vasallo, 77:4-19.

18. Detective Philip Lamanna of the Cape Coral Police Department has submitted a warrant for Jonathan Vu and Mary Jane Baker-Vu of Power Yachts for their fraudulent activities at Power Yachts. *See* Dep. Tr. of Philip Lamanna, 43:2-5; 45:2-13.

(A) Jonathan Vu and PYI could not convey title; thus, the sale of the Vessel was void.

“[T]here is a well recognized rule that a bona fide purchaser of a chattel taken tortiously or wrongfully, as where it has been taken by trespass, does not by his purchase acquire title good against the true owner. The rule applies where possession of a chattel has been obtained by theft or other criminal act such as involves a taking of possession without the owner’s consent.” *See Southeast Foods, Inc. v. Penguin Frozen Foods*, 203 So. 2d 39, 43 (Fla. 3d DCA 1967). In the absence of some intervening principle of estoppel, one cannot convey a better title than he has, and conversely, one cannot claim a better title than he, in fact, receives.” *See Anderson Contracting Co. v. Zurich Insur. Co.*, 448 So. 2d 37, 38 (Fla. 1st DCA 1984). Notably, “where an owner has voluntarily parted with possession of his chattel, even though induced [to part with his possession] by criminal act, a bona fide purchaser can acquire good title, under the theory that where one of two innocent parties must suffer because of the wrongdoing of a third person, the loss must fall on the party who by his conduct created the circumstances which enabled the third party to perpetrate the wrong.” *Id.* However, no such estoppel argument can be advanced against an owner of property that is stolen and subsequently sold to an innocent purchaser.” *Id.* at 39. Based on such, the Court concludes the following:

1. On date that PYI sold the Vessel to the Vasallos, PYI did not hold title to the Vessel and did not have consent or authority to sell the Vessel;
2. Francisco Vasallo admittedly knew that PYI was not the owner when negotiating the purchase of the Vessel;
3. The Vasallos were not permitted to rely on the representations of PYI that the ‘sale’ was authorized by the owner;
4. The Vasallos had knowledge that the ‘sale’ of the Vessel would be contrary to the

ownership rights of a third party;

5. The Vasallos made no independent inquiry into the Department of Highway Safety and Motor Vehicles or otherwise as to verification of title to determine whether: PYI held title to the Vessel, PYI had authority to transfer title, or the owner authorized the ‘sale’;

6. Any and all Bill of Sales, Power of Attorney, or Purchase Agreement authorizing the December 21, 2018, ‘sale’ to the Vasallos was not executed by James N. Glover Jr.

7. Title to the Vessel never transferred to the Vasallos because Vu had no authority to transfer title. *See Trumbull Chevrolet Sales Co. v. Seawright*, 134 So. 2d 829, 831 (Fla. 1st DCA 1961) (“In the absence of some intervening principle of estoppel or waiver, no one can convey better title than he has, and conversely, in the absence of some such intervening right, one cannot claim a better title than he, in fact, receives.”).

(B) The Vasallos are not purchasers in the ordinary course or bona fide purchasers.

Section 328.03, Fla. Stat., makes it unlawful for: a person to purchase or otherwise acquire a vessel required to be titled by the state without obtaining a certificate of title for the vessel in his name. “The purchaser or transferee shall, within 30 days after a change in vessel ownership, file an application for a title transfer with the county tax collector.” § 328.03, Fla. Stat. “The records in the office of the Motor Vehicle Commissioner constitute notice to prospective purchaser of the motor vehicle.” *See Castner v. Zeimer*, 125 So. 2d 134, 137 (Fla. 2d DCA 1960).

The general principles related to the purchase of motor vehicles compare to the intent of the legislature in regards to vessel transactions. The “objective is to protect the interest and title of the rightful owner against fraudulent sales of such property, to establish a uniform method of transfer, and to insure, as far as practicable, the validity of title and possessory rights of the ultimate owner.” *Trumbull Chevrolet Sales Co.*, 134 So. 2d at 837 (Fla. 1st DCA 1961). To be

an “innocent purchaser,” the buyer must be charged notice of recording statutes: “[o]ne cannot be a bona fide purchaser if he fails to make timely inquiry as to the condition of the title of the motor vehicle as recorded with the Motor Vehicle Commissioner.” *Castner*, 125 So. 2d at 137; *Orlando Dodge v. First Union Nat’l Bank*, 661 So. 2d 322 (Fla. 5th DCA 1995). The burden of inquiry into the Motor Vehicle Office was placed “squarely upon the purchaser of a second-hand motor vehicle, and if he relies upon the representation of the vendor and it turns out that his confidence has been misplaced, he cannot escape the result of his own carelessness.” *Castner*, 125 So. 2d at 137; *Trumbull Chevrolet Sales Co.*, 134 So. 2d at 841; *Vincent v. Gen. Motors Acceptance Corp.*, 75 So. 2d 778, 781 (Fla. 1954).

Both the “bona fide purchaser” and “buyer in the ordinary course” defense fail if the party claiming its protection have knowledge of the rights of a third party. *Compare Milnes v. GE Credit Corp.*, 377 So. 2d 725, 728 (Fla. 3d DCA 1979) (defining “buyer in the ordinary course” as one who takes in “good faith” and “without knowledge”) *with DGG Dev. Corp. v. Estate of Capponi*, 983 So. 2d 1232, 1234 (Fla. 5th DCA 2008) (defining a bona fide purchaser as one who must have (1) acquired the legal title to the property in question; (2) paid value therefor; and (3) been innocent of knowledge of the [interest of another] at the time when consideration was paid and title acquired). The Court concludes that the evidence establishes the following:

1. The ‘sale’ of the Vessel from PYI to the Vasallos occurred on December 21, 2018, when a sales contract was executed;
2. Plaintiffs did not authorize the Vessel to be sold at the price paid by the Vasallos;
3. The documents signed by Plaintiffs and relied on by the Vasallos did not exist until at least January 11, 2019, and undisputedly did not exist at sale on December 21, 2018;
4. The Vasallos offered no evidence that they signed any application for title, received any

temporary title or registration, or confirmed or inquired about title, or even that PYI had actual authority to convey title. *See Trumbull Chevrolet Sales Co.*, 134 So. 2d at 831 (“Under Florida law failure to comply with Fla. Stat. ch. 319.27 deprives the purchaser of the right to plead that he is a subsequent purchaser for value, without notice, and that he cannot escape the penalty of his own carelessness.”);

5. The Vasallos’ confidence was misplaced in PYI but admitted that they solely and carelessly relied on Vu and PYI’s representation that such were authorized to convey title, and the Vasallos admitted they paid a fee to PYI for the purposes of fulfilling all statutory requirements of title; however, the Vasallos cannot escape their own carelessness;

6. The Vasallos were on actual and constructive notice of Plaintiffs’ title which was recorded with the State of Florida; thus, the Vasallos could not be bona fide purchasers or buyers in the ordinary course. *See McCausland v. Davis*, 204 So. 2d 334, 335 (Fla. 2d DCA 1967).

IV. Conclusion

Accordingly, it is **ORDERED and ADJUDGED** that Plaintiff’s Motion as against Defendants Francisco Vasallo and Maribel Vasallo is GRANTED:

- (1) Possession of the Vessel is to be immediately released to Plaintiff James N. Glover Jr.;
- (2) Title shall be restored in the name of Plaintiff James N. Glover Jr.;
- (3) Administrative STOP NUMBER 212977067 will immediately be removed, and Title Number 125277467 with Hull Identification Number DZNM4213A616 will be restored in the name of Plaintiff James N. Glover Jr. and a new Title Certificate

shall be Issued in the name of Plaintiff James N. Glover Jr.

- (4) This Court also reserves jurisdiction to award Plaintiffs their reasonable attorneys' fees and costs incurred from this action.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 14th day of December, 2021.

2019-001769-CA-01 12-14-2021 12:23 P


2019-001769-CA-01 12-14-2021 12:23 PM

Hon. Valerie R. Manno Schurr

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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