



**Before the
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of a 1982 Chevrolet Corvette, VIN
1G1AY0788C5119231, Purchased by Cynthia and
Wayne Boettcher.

Case No. 97-H-1037

FINAL DECISION

Cynthia and Wayne Boettcher applied to the Department of Transportation for a title and registration for a 1982 Chevrolet Corvette. By letter dated November 6, 1996, the Department refused to issue a title or registration to them. By letter dated April 28, 1997, the Boettchers requested a hearing to review the Department's decision.

Pursuant to due notice a hearing was held on June 4, 1997, in Madison, Wisconsin, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the parties to this proceeding are certified as follows:

Cynthia and Wayne Boettcher, by
Attorney Marta T. Meyers
Foley and Lardner
PO Box 1497
Madison, WI 53701-1497

Wisconsin Department of Transportation, by
Attorney Charles M. Kernats
Office of General Counsel
PO Box 7910
Madison, WI 53707-7910

The Administrative Law Judge issued a proposed decision on June 30, 1997. No comments on the proposed decision were received. The proposed decision is adopted as the final decision in this matter.

Findings of Fact

The Administrator finds:

1. On July 1, 1996, Cynthia and Wayne Boettcher contracted to purchase a 1982 Chevrolet Corvette, VIN 1G1AY0788C5119231, from Capitol Corvette. Pursuant to the purchase contract, the Boettchers traded in a 1993 Ford Probe plus paid \$4212.50 including tax, license and title fees for the 1982 Chevrolet Corvette. Cynthia and Wayne Boettcher took possession of the Corvette and retained possession of the vehicle as of the of the hearing in this matter.
2. In July, 1996, Capitol Corvette was a motor vehicle dealer conducting business at 5400 King James Way, Madison, Wisconsin, 53719. Capitol Corvette was in the business of selling Corvettes. Capitol Corvette was a sole proprietorship and held motor vehicle dealer license number 1047. David C. Larson was the owner and sole proprietor of Capitol Corvette. On December 9, 1996, the Division of Hearings and Appeals issued an order revoking Capitol Corvette's motor vehicle dealer license (Docket Nos. 96-H-986 and 96-H-993).
3. The Division of Motor Vehicles of the Department of Transportation (DMV) is part of an agency of the State of Wisconsin and is authorized under sec. 218.01, Stats., to license, inspect, and regulate motor vehicle dealers in Wisconsin. DMV also has the authority under chapters 341 and 342, Stats., to issue titles and registration for motor vehicles in Wisconsin.
4. The 1982 Chevrolet Corvette purchased by Cynthia and Wayne Boettcher was owned by Paul E. Blake. Mr. Blake had entered into a consignment agreement with Capitol Corvette to sell the vehicle. Capitol Corvette failed to pay Mr. Blake the purchase price for this vehicle, in violation of the terms of the consignment agreement.
5. Mr. Blake filed a theft claim with his insurance company, Country Mutual Insurance Company, for the value of the vehicle. Country Mutual Insurance Company paid Mr. Blake on his claim and Mr. Blake assigned his interest in the vehicle to Country Mutual Insurance Company.
6. Cynthia and Wayne Boettcher applied to the DMV for Wisconsin title and registration for the subject vehicle. Because of conflicting ownership claims, the DMV refused to issue a title or registration to the Boettchers.
7. When Cynthia and Wayne Boettcher purchased the subject vehicle from Capitol Corvette, they were not aware that it was owned by Paul Blake or that the Corvette was sold on consignment by Capitol Corvette for Mr. Blake. Cynthia and Wayne Boettcher purchased the Corvette at Capitol Corvette's business premises, and they believed that Capitol Corvette owned this vehicle

and had the authority to sell it. Capitol Corvette did not inform The Boettchers that the Corvette was owned by Mr. Blake.

8. Neither Cynthia nor Wayne Boettcher has ever worked for an automobile dealer or in the automotive industry. Prior to this transaction, neither Cynthia nor Wayne Boettcher had any financial dealings with Capitol Corvette or David Larson.
9. Cynthia and Wayne Boettcher purchased the subject motor vehicle in good faith and without knowledge that the sale was in violation of the ownership rights of Paul Blake. Cynthia and Wayne Boettcher are buyers in the ordinary course of business of the subject motor vehicle

Discussion

Cynthia and Wayne Boettcher have applied to the DMV for a certificate of title and registration for the subject motor vehicle. Pursuant to secs. 342.11(1) and 342.12(2), Stats., the DMV refused to issue a title or registration to the Boettchers for the subject motor vehicle.¹

The Wisconsin motor vehicle code is silent with respect to issuance of a title and registration in this situation. The transaction is regulated by the Uniform Commercial code. Pursuant to the sec. 402.403(2), Stats., "[a]ny entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business." In the instant matter, Paul Blake entrusted the subject motor vehicle to Capitol Corvette for the purpose of selling

¹ Sec 342.11(1), Stats., provides in relevant part:

The department shall refuse issuance of a certificate of title ... for any of the following reasons:

- (1) The department has reasonable grounds to believe that:
 - (a) The person alleged to be the owner of the vehicle is not the owner.
 - (b) The application contains a false or fraudulent statement.

Sec. 342.12(2), Stats., provides in relevant part:

- (2) If the department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the department, subject to sub. (3), shall either:
 - (a) Withhold issuance of a certificate of title until the applicant presents documents reasonable sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it; or
 - (b) Issue a distinctive certificate of title pursuant to sec. 342.10(4) or 342.283

the vehicle. Accordingly, Capitol Corvette had the power to transfer ownership of the vehicle to a buyer.

Capitol Corvette has authority to transfer interest in the vehicle even if the consignor has retained title. In general, the interests of a consignor are not protected unless the consignor complies with one of the three alternatives set forth at sec. 402.326(3), Stats., relating to informing prospective creditors of the consignee of a potential security interest.² Country Mutual Insurance Company has not alleged that Paul Blake, its insured, complied with the provisions of sec. 402.326(3), Stats.

Cynthia and Wayne Boettcher purchased the vehicle from Capitol Corvette. They were unaware that Capitol Corvette was selling the vehicle on consignment. Even if the Boettchers had been aware that the vehicle was being sold on consignment, there is no evidence that they should have suspected that Capitol Corvette did not intend to use the proceeds of this sale to pay the consignor or the sale was fraudulent in any manner.

The Boettchers have the burden to prove that they are buyers in the ordinary course of business. The phrase "buyer in the ordinary course of business" is defined at sec. 402.201(9), Stats. Sec. 401.201(9), Stats., provides in relevant part that: "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest of a 3rd party in the goods buys in ordinary course from a person in the business of selling goods of that kind . . .'. Based on the evidence in the record, it appears that Cynthia and Wayne Boettcher are good faith purchasers who purchased the vehicle without knowledge that the sale was in violation of the ownership rights of Paul Blake. Cynthia and Wayne Boettcher purchased the vehicle from Capitol Corvette, a licensed motor vehicle dealer, which at the time of the purchase was a company in the business of selling used motor vehicles.

² Sec. 402.326(3), Stats., provides in relevant part:

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which the person deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. This subsection is applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery:

- (a) Complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or
- (b) Establishes that the person conducting the business is generally known by that person's creditors to be substantially engaged in selling the goods of others; or
- (c) Complies with the filing provisions of ch. 409

Conclusions of Law

The Administrator concludes:

1. Pursuant to sec. 402.403(2), Stats., Capitol Corvette had the power to transfer all of Paul Blake's ownership rights in the subject motor vehicle to a buyer in the ordinary course of business.
2. Cynthia and Wayne Boettcher are buyers in the ordinary course of business of the subject motor vehicle. Pursuant to sec. 402.403, Stats., Cynthia and Wayne Boettcher have acquired title and ownership of the subject motor vehicle.
3. Pursuant to secs. 346.26 and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

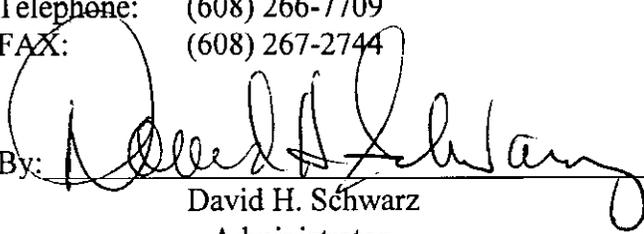
Order

The Administrator orders:

The Division of Motor Vehicles of the Department of Transportation shall issue a motor vehicle title and registration to Cynthia and Wayne Boettcher for the 1982 Chevrolet Corvette, VIN 1G1AY0788C5119231, which is the subject of this matter.

Dated at Madison, Wisconsin on July 24, 1997.

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By: 

David H. Schwarz
Administrator