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Possession counts when finders aren't keepers

Sometimes they're the weepers, at least in this court case

It's a common misconception that the old adage "finders keepers, losers weepers" is the law of Canada. In most cases, however, that's actually not the rule our courts follow, as a builder in Stratford, Ont., found out.

The story takes place at 16 Jarvis St., in Stratford, where Jean and Harry Weitzner lived together for 38 years prior to Harry's tragic death in a fire in 1989. Harry left a will naming his wife as his sole heir.

For about 30 years, Harry operated a scrapyard on the site, using a portion of his home as a business office.

After she became a widow, Jean continued to live in the house until 1995, when she moved into a senior's apartment at the age of 85. Two years later, in June of 1997, she sold the property to Wilbert Herman and his wife, Jean.

In July 1997, the Hermans hired Cornelius Gansevles to demolish the house. Wilbert was on site when the demolition began. During the levelling of the house, a fire extinguisher rolled out of a crawlspace under the business office in the home. An unspecified quantity of silver coins was found in the extinguisher, along with \$130,000 in old \$50 and \$100 bills. The money was in 26 neat bundles of \$5,000 each.

Many of the bills were stuck together and smelled of mildew. They bore different dates starting in 1954, but were all dated before Harry's death in 1989.

Neither Jean nor the Hermans knew about the hidden money when they signed the agreement of purchase and sale.

The Hermans tried to keep the find quiet but didn't count on 89-year-old Jean Weitzner going to the local beauty salon, apparently the clearinghouse for local gossip.

Shortly after the demolition, the Hermans visited Jean Weitzner, ostensibly to return some photographs they found in the house.

During the visit, Jean told the Hermans that she heard they found \$12,000 on the property during the demolition. Wilbert Herman admitted that he found that much "and a little more" but he had to share it with the contractor. Someone suggested they split it three ways with themselves and the contractor getting \$4,000 each.

The Hermans returned later with a cheque for \$4,000 payable to Jean Weitzner and got her to sign an agreement accepting the cheque in full payment "for any money found in or around the house."

The document also said that Jean didn't know the money was in the house, and that the Hermans "may keep any amount they have found."

No one bothered to tell Jean before she signed the agreement that the buyer had actually found \$130,000, not \$12,000. It's not clear how Jean found out the truth, but there was an independent witness present when the old extinguisher rolled out of the crawlspace. In another incident, Wilbert Herman sued Cornelius Gansevles, the contractor, for \$2,000 interest on a loan that had been partially paid off, and the cat may have come out of the bag during the Small Claims Court proceedings.

In any event, it wasn't long before everybody was suing everybody else in Superior Court, all of them claiming to be entitled to the money.

Jean claimed she inherited the money from her husband even though she didn't know about it, and the deed to the house was never meant to pass title to the cash.

Gansevles, the contractor, claimed salvage rights. The Hermans argued that Jean abandoned the contents along with the house, and transferred the money to them by delivering, on closing, a signed Bill of Sale for the moveable items in the house.

The Hermans argued "finders keepers," an old rule applying to chattels, or items of personal property not attached to land or a building. The finders keepers rule, they said, goes back to an old English court case in 1722. The ancient principle of law that covers the situation is that the finder of a lost chattel acquires good title to it as against everyone but the true owner or someone enjoying a better claim, or a superior title. As with most legal rules, however, there are always exceptions. This case was one of the exceptions.

Justice Dougald McDermid ruled that Jean could recover the full \$130,000 from Wilbert and Jean Herman, minus the \$4,000 she got when she signed the release. That document was worthless, and the Hermans did not even bother to argue in court that it was valid.

In his judgment, Justice McDermid decided that there was no agreement that ownership of the money was transferred along with the deed to the house or the bill of sale for the contents. He also tossed out the claim for salvage rights. He ruled that even though the Hermans contracted to buy the house "as is," that did not mean the money in the fire extinguisher came with title to the land.

The judge said it was absurd to believe that someone could buy a property for \$163,500 and retain \$130,000 in cash inside it at the same time.

After hearing testimony from the former bookkeeper of Harry's scrap metal business, the judge even went out of his way to declare that Harry had always properly reported cash receipts to his accountants just in case, I suppose, anyone in Ottawa wanted to invoke their own salvage rights.

The next time someone says that the finders-keepers rule still applies, it might be worthwhile recalling the story about Jean Weitzner and the mildewed cash. A better statement of the rule might be that possession is nine-tenths of the law. In this case, Jean Weitzner's one-tenth rights carried the day.

I wonder what happened to the fire extinguisher.

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