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April 29, 2006

Finders not keepers in real estate deals

A Quebec judge has written the final chapter in the case of the \$100,000 in cash found in a house once owned by a missing member of a biker gang.

It all started last June when a couple in Trois-Rivières, Que., purchased the house at 2620 André St.. The bank they bought it from had repossessed it after the mortgage went into default.

The former owner of the house was Marc-André Hinse, the alleged head of the Hells Angels motorcycle gang in Trois-Rivières. Local police have been looking for Hinse since May 2004, when they carried out raids on members of the biker gang.

At the time, the police executed a search warrant on the house, but missed the plastic bag containing the money. After the police were finished, the bank took over and eventually sold the house.

When the new owners began renovations last October, a plastic bag containing \$100,000 in \$20 bills fell out of a panel in the bathroom ceiling. They immediately turned it over to police.

Earlier this month, Crown prosecutor Claude Girard told a Quebec court that the money was hidden in the house by its former occupants, who were involved in the local chapter of the Hells Angels.

Quebec court judge Guy Lambert ruled that the money represented the proceeds of crime, and therefore belongs to the government of Quebec. The new owners got nothing for their efforts and honesty.

The biker cash is reminiscent of another finders keepers case which went to court in Stratford, Ont., a few years ago. 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 Weitzner operated a scrapyard on the site, using a portion of his home as a business office.

After she became a widow, Jean Weitzner 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 Herman.

In July, 1997, the Hermans hired Cornelius Gansel 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 crawl space under the business office in the home. A quantity of silver coins was found in the extinguisher, along with \$130,000 in old \$50 and \$100 bills. All the bills were dated before Harry's death in 1989.

Shortly after the demolition, Wilbert Herman admitted to Jean Weitzner that he had found \$12,000 "and a little more" but he had to share it with the contractor. They agreed to split it three ways with the buyer, seller and contractor getting \$4,000 each.

Soon the truth leaked out, and it wasn't long before everybody was suing everybody else, all of them claiming to be entitled to the full \$130,000.

Weitzner 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.

Gansel, the contractor, claimed salvage rights. The Hermans argued that Weitzner abandoned the contents along with the house, and transferred the money to them by delivering a bill of sale on closing for the moveable items left in the house.

The Hermans based their claim on "finders keepers," an old rule applying to items of personal property not attached to land or a building. That ancient principle of law states that the finder of a lost item acquires good title to it against everyone but the true owner. As with most legal rules, however, there are always exceptions, and this case was one of the exceptions.

Justice Dougald McDermid ruled that Weitzner could recover the full \$130,000 from Wilbert and Jean Herman. He found that ownership of the money was not transferred along with the deed to the house or the bill of sale for its contents.

He also tossed out the contractor's 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 the title.

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.

The general rule about found property may well be "finders keepers," but at least in the case of the Hells Angels money and the Stratford windfall, it seems that the exceptions will prevail over the rule itself.

I wonder what happened to the fire extinguisher.