

Finders Keepers



By Brian Madigan

This isn't just a kids' expression, it's the law. But, there certainly are some rules when it comes to real estate.

The current controversy involves the "finding" of cartoons penned by the late **Ben Wicks** (*opposite*). Ben was a prolific editorial cartoonist and political satirist. While he was a great creative mind and spirit, he was not good at looking after his things. After a lifetime of producing humorous cartoons in volume, he really never cleaned up after himself. He never had a moment to properly organize his life's work.

So, he stored it just about everywhere, including his three children's homes. His son Vincent had about 3,000 of the cartoons. He sold his house to Mr. Harnett in 1992. Shortly thereafter, the new owner's brother Richard Harnett found the cartoons in a plastic garbage bag in the garage.

So, the legal question is "who owns the cartoons"?

Basically, Harnett kept the cartoons "under wrap" until after Ben Wicks passed away. Harnett then surfaced in 2001 and wished to make some money by printing them in a book. Now, if there is one law that book publishers know very well it is the law of copyright. And, they said that the Wicks family must agree, since they inherited the copyright from Ben when he died in 2000.

The Wicks family thought that Harnett should simply return the cartoons and perhaps be paid a small fee for "storage". But, Harnett says he owns them! Now, the Wicks family had to sue for their return. The cartoons would have a value of perhaps \$75,000 to \$100,000.

The trial Judge Thomas Lederer cautioned Harnett that "the onus is very high here to prove specific intent" to abandon the drawings, either expressly or by inference. This comment followed evidence that Ben stored his works in green plastic bags, ordinarily used for refuse.

The legal principles that apply in a case like this are rather straightforward:

- A finder gets to keep the property against everyone other than the true owner
- The finder must have a legal right to be in the location where the find is made
- The true owner only loses his property if it can be clearly demonstrated that he intended to part with it, abandon it or give it away

So, hence the discussions about green plastic bags left in a garage at the time of

moving.

There have been numerous Court rulings with respect to such cases. A finder who picked up some cash on the floor in a bank was allowed to keep it. The customer who lost it could not be located and it was found in the public part of the bank. In another case, a finder was obligated to turn the money over to the bank when it was found in the private office section of the bank where the public was ordinarily excluded, and he was present there, only upon invitation.

A finder who came across some \$100,000 hidden in the ceiling of a house that he purchased was obligated to turn the money over to the Crown. It was determined that the former owner, a member of the Hell's Angels was the true owner, but that the money was in fact "proceeds of crime", so it could not be retained.

There are several cases that simply deal with money or assets overlooked and left behind by former owners. In most cases, the property is hidden, so it's not really "abandoned" in a legal sense.

What do you think about the Ben Wicks cartoons? Should they be returned to his estate?

Here are the reasons why they should:

- The property was valuable
- The cartoons were stored
- They were not abandoned
- They were left behind by mistake
- Ben Wicks is the rightful owner
- Ben Wicks holds the copyright to their reproduction

And, if you must argue the "other side", here is the argument:

- The property had limited to no value
- The cartoons were not stored
- They were placed in garbage bags
- They should have been thrown out
- The new owner of the house had the legal right to dispose of them
- The brother having identified them was able to retain them

It seems actually like a clever legal argument, however, there is a very significant issue in this particular case. These were original works in which Ben Wicks retained ownership of the copyright. That right cannot simply be left behind in a plastic bag, even if it is opaque green and many people use it for garbage. And, if you don't take it out to the curb, it's probably not abandoned.

The common law of "finders keepers" was never intended to deprive the true owner of his property. It was simply there to sort out who has the highest rights to the property if the true owner cannot be found or identified. Not much of an

argument for Mr. Harnett, unless he can prove that Ben Wicks himself simply thought it was all garbage in the first place.

The trial Judge has reserved his decision and we should all know the fate of Ben's cartoons in a few weeks.

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