

Finders Weepers in Real Estate!



By Brian Madigan LL.B.

Ben Wicks was a political cartoonist and satirist. He had amassed over 3,000 cartoons by the end of his lifetime.

The issue under discussion is **who owns his cartoons**.

Here's what happened. Ben had them stored in boxes, garbage bags, desks etc. They were simply everywhere! They were never organized or properly catalogued despite their value. But, when he started out, he never realized that he was going to be famous.

Some of the cartoons had been "stored" in plastic garbage bags and left with his son and daughter-in-law. They were moving out west, and left the bags in the garage for the movers. The movers thought they were garbage and so they were left behind. The new purchaser found them, and at first did not think they had much value. However, he soon came to realize that they were of significant value so he tried to sell them. The Wicks family brought an action in the Superior Court for their return.

So, who owns them?

Richard Harnett claims that he owns them. They were abandoned as garbage which he found in his own garage. He simply could have taken them to the curb. But, he looked in and found something which turned out to have value.

The trial Judge quoted with approval the following summary of the law:

Ownership

"An understanding of the applicable law begins with an appreciation of the importance of ownership. This has been expressed as the duty we owe to our neighbour, who is the owner of goods.

At common law, one's duty to one's neighbour, who is the owner, or entitled to possession, of any goods is to refrain from doing any voluntary act in relation to his goods, which is a usurpation of his proprietary or possessory rights in them. Subject to some exceptions which are irrelevant for the purposes of the present case, it matters not that the doer of the act of usurpation did not know, and could not by the exercise of any reasonable care have known, of his neighbour's interest in the goods. The duty is absolute; he acts at his peril."

Abandonment

Ownership can be lost where the owner abandons the goods. Abandonment has been defined as:

Abandonment occurs when there is "a giving up, a total desertion, and absolute relinquishment" of private goods by the former owner. It may arise when the owner with the specific intent of desertion and relinquishment casts away or leaves behind his property..."

Failure to Seek

Failure to look for property that has been unintentionally lost is one factor that, depending on the particular facts, may contribute to the inference of an intention to abandon.

Onus of Proof

Once ownership has been established, the onus of proving abandonment rests with the defendant:

The facts

In this particular case, the trial Judge noted the following facts:

- Ben Wicks was disorganized, but he maintained ownership
- The movers made an error (their instructions had been clear)
- The boxes and bags were stored out west and were never abandoned
- It was not evident that cartoons, in fact, were missing
- The widow of Ben Wicks went out west to retrieve the cartoons

Judge Lederer concluded: "the evidence, taken as a whole, does not, on a balance of probabilities, demonstrate any implied intention to abandon this material." Consequently, he ordered the return of the cartoons.

It should be noted the Wicks family then donated these cartoons to York University.

Note: The cartoon in the caption is an example of one of Ben Wick's many fine works.

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