BENJAMIN v. LINDNER AVIATION, INC.

Supreme Court of Iowa, 1995.
534 N.W.2d 400.

TERNUS, JUSTICE.

* * *

In April of 1992, State Central Bank became the owner of an airplane when the bank repossessed it from its prior owner who had defaulted on a loan. In August of that year, the bank took the plane to Lindner Aviation for a routine annual inspection. Benjamin worked for Lindner Aviation and did the inspection.

As part of the inspection, Benjamin removed panels from the underside of the wings. Although these panels were to be removed annually as part of the routine inspection, a couple of the screws holding the panel on the left wing were so rusty that Benjamin had to use a drill to remove them. Benjamin testified that the panel probably had not been removed for several years.

Inside the left wing Benjamin discovered two packets approximately four inches high and wrapped in aluminum foil. He removed the packets from the wing and took off the foil wrapping. Inside the foil was paper currency, tied in string and wrapped in handkerchiefs. The currency [totalled almost $19,000 and] was predominately twenty-dollar bills with mint dates before the 1960s, primarily in the 1950s. The money smelled musty.

Benjamin took one packet to his jeep and then reported what he had found to his supervisor, offering to divide the money with him. However, the supervisor reported the discovery to the owner of Lindner Aviation, William Engle. Engle insisted that they contact the authorities and he called the Department of Criminal Investigation. The money was eventually turned over to the Keokuk police department.

Two days later, Benjamin filed an affidavit with the county auditor claiming that he was the finder of the currency under the provisions of Iowa Code chapter 644 (1991). Lindner Aviation and the bank also filed claims to the money. The notices required by chapter 644 were published and posted. See Iowa Code § 644.8 (1991). No one came forward within twelve months claiming to be the true owner of the money. See id. § 644.11 (if true owner does not claim property within twelve months, the right to the property vests in the finder).

Benjamin filed this declaratory judgment action against Lindner Aviation and the bank to establish his right to the property. The parties tried the case to the court. The district court held that chapter 644 applies only to "lost" property and the money here was mislaid property. The court awarded the money to the bank, holding that it was entitled to possession of the money to the exclusion of all but the true owner. The court also held that Benjamin was a "finder" within the meaning of chapter 644 and awarded him a ten percent finder's fee. See id. § 644.13 (a finder of lost property is entitled to ten percent of the value of the lost property as a reward).

Benjamin appealed. He claims that chapter 644 governs the disposition of all found property and any common law distinctions between various types of found property are no longer valid. He asserts alternatively that even under the common law classes of found property, he is entitled to the money he discovered. He claims that the trial court should have found that the property was treasure trove or was lost or abandoned rather than mislaid, thereby entitling the finder to the property.

The bank and Lindner Aviation cross-appealed. Lindner Aviation claims that if the money is mislaid property, it is entitled to the money

as the owner of the premises on which the money was found, the hangar where the plane was parked. It argues in the alternative that it is the finder, not Benjamin, because Benjamin discovered the money during his work for Lindner Aviation. The bank asserts in its cross-appeal that it owns the premises where the money was found—the airplane—and that no one is entitled to a finder's fee because chapter 644 does not apply to mislaid property.

Benjamin argues that chapter 644 governs the rights of finders of property and abrogates the common law distinctions between types of found property. As he points out, lost property statutes are intended "to encourage and facilitate the return of property to the true owner, and then to reward a finder for his honesty if the property remains unclaimed." Paset v. Old Orchard Bank & Trust Co., 62 Ill.App.3d 534, 19 Ill.Dec. 389, 393, 378 N.E.2d 1264, 1268 (1978) (interpreting a statute similar to chapter 644); * * *. These goals, Benjamin argues, can best be achieved by applying such statutes to all types of found property.

* * *

Although a few courts have adopted an expansive view of lost property statutes, we think Iowa law is to the contrary. In 1937, we quoted and affirmed a trial court ruling that "the old law of treasure trove is not merged in the statutory law of chapter 515, 1935 Code of Iowa." Zornes v. Bowen, 223 Iowa 1141, 1145, 274 N.W. 877, 879 (1937). Chapter 515 of the 1935 Iowa Code was eventually renumbered as chapter 644. The relevant sections of chapter 644 are unchanged since our 1937 decision. As recently as 1991, we stated that "[t]he rights of finders of property vary according to the characterization of the property found." Ritz v. Selma United Methodist Church, 467 N.W.2d 266, 268 (Iowa 1991). We went on to define and apply the common law classifications of found property in deciding the rights of the parties. Id. at 269. As our prior cases show, we have continued to use the common law distinctions between classes of found property despite the legislature's enactment of chapter 644 and its predecessors.

The legislature has had many opportunities since our decision in Zornes to amend the statute so that it clearly applies to all types of found property. However, it has not done so. When the legislature leaves a statute unchanged after the supreme court has interpreted it, we presume the legislature has acquiesced in our interpretation. State v. Sheffey, 234 N.W.2d 92, 97 (Iowa 1975). Therefore, we presume here that the legislature approves of our application of chapter 644 to lost property only. Consequently, we hold that chapter 644 does not abrogate the common law classifications of found property. We note this position is consistent with that taken by most jurisdictions. See, e.g., Bishop v. Ellsworth, 91 Ill.App.2d 386, 234 N.E.2d 49, 51 (1968) (holding lost property statute does not apply to abandoned or mislaid property); Foster v. Fidelity Safe Deposit Co., 264 Mo. 89, 174 S.W. 376, 379 (1915) (refusing to apply lost property statute to property that would not be considered lost under the common law); Sovern v. Yoran, 16 Or. 269, 20

P. 100, 105 (1888) (same); Zech v. Accola, 253 Wis. 80, 33 N.W.2d 232, 235 (1948) (concluding that if legislature had intended to include treasure trove within lost property statute, it would have specifically mentioned treasure trove).

* * *

Under the common law, there are four categories of found property: (1) abandoned property, (2) lost property, (3) mislaid property, and (4) treasure trove. Ritz, 467 N.W.2d at 269. The rights of a finder of property depend on how the found property is classified. Id. at 268–69.

A. *Abandoned property.* Property is abandoned when the owner no longer wants to possess it. Cf. Pearson v. City of Guttenberg, 245 N.W.2d 519, 529 (Iowa 1976) (considering abandonment of real estate). Abandonment is shown by proof that the owner intends to abandon the property and has voluntarily relinquished all right, title and interest in the property. Ritz, 467 N.W.2d at 269; 1 Am.Jur.2d Abandoned Property §§ 11–14, at 15–20. Abandoned property belongs to the finder of the property against all others, including the former owner. Ritz, 467 N.W.2d at 269.

B. *Lost property.* "Property is lost when the owner unintentionally and involuntarily parts with its possession and does not know where it is." Id. (citing Eldridge v. Herman, 291 N.W.2d 319, 323 (Iowa 1980)); accord 1 Am.Jur.2d Abandoned Property § 4, at 9–10. Stolen property found by someone who did not participate in the theft is lost property. Flood, 218 Iowa at 905, 253 N.W. at 513; 1 Am.Jur.2d Abandoned Property § 5, at 11. Under chapter 644, lost property becomes the property of the finder once the statutory procedures are followed and the owner makes no claim within twelve months. Iowa Code § 644.11 (1991).

C. *Mislaid property.* Mislaid property is voluntarily put in a certain place by the owner who then overlooks or forgets where the property is. Ritz, 467 N.W.2d at 269. It differs from lost property in that the owner voluntarily and intentionally places mislaid property in the location where it is eventually found by another. 1 Am.Jur.2d Abandoned Property § 10, at 14. In contrast, property is not considered lost unless the owner parts with it involuntarily. Ritz, 467 N.W.2d at 269; 1 Am.Jur.2d Abandoned Property § 10, at 14; see Hill v. Schrunk, 207 Or. 71, 292 P.2d 141, 143 (1956) (carefully concealed currency was mislaid property, not lost property).

The finder of mislaid property acquires no rights to the property. 1 Am.Jur.2d Abandoned Property § 24, at 30. The right of possession of mislaid property belongs to the owner of the premises upon which the property is found, as against all persons other than the true owner. Ritz, 467 N.W.2d at 269.

D. *Treasure trove.* Treasure trove consists of coins or currency concealed by the owner. Id. It includes an element of antiquity. Id. To be classified as treasure trove, the property must have been hidden or concealed for such a length of time that the owner is probably dead or

undiscoverable. Id.; 1 Am.Jur.2d Abandoned Property § 8, at 13. Treasure trove belongs to the finder as against all but the true owner. Zornes, 223 Iowa at 1145, 274 N.W. at 879.

We think there was substantial evidence to find that the currency discovered by Benjamin was mislaid property. In the Eldridge case, we examined the location where the money was found as a factor in determining whether the money was lost property. Eldridge, 291 N.W.2d at 323; accord 1 Am.Jur.2d Abandoned Property § 6, at 11–12 ("The place where money or property claimed as lost is found is an important factor in the determination of the question of whether it was lost or only mislaid."). Similarly, in Ritz, we considered the manner in which the money had been secreted in deciding that it had not been abandoned. Ritz, 467 N.W.2d at 269.

The place where Benjamin found the money and the manner in which it was hidden are also important here. The bills were carefully tied and wrapped and then concealed in a location that was accessible only by removing screws and a panel. These circumstances support an inference that the money was placed there intentionally. This inference supports the conclusion that the money was mislaid. Jackson v. Steinberg, 186 Or. 129, 200 P.2d 376, 378 (1948) (fact that $800 in currency was found concealed beneath the paper lining of a dresser indicates that money was intentionally concealed with intention of reclaiming it; therefore, property was mislaid, not lost); Schley v. Couch, 155 Tex. 195, 284 S.W.2d 333, 336 (1955) (holding that money found buried under garage floor was mislaid property as a matter of law because circumstances showed that money was placed there deliberately and court presumed that owner had either forgotten where he hid the money or had died before retrieving it).

The same facts that support the trial court's conclusion that the money was mislaid prevent us from ruling as a matter of law that the property was lost. Property is not considered lost unless considering the place where and the conditions under which the property is found, there is an inference that the property was left there unintentionally. 1 Am.Jur.2d Abandoned Property § 6, at 12; see Sovern, 20 P. at 105 (holding that coins found in a jar under a wooden floor of a barn were not lost property because the circumstances showed that the money was hidden there intentionally); see Farrare v. City of Pasco, 68 Wash.App. 459, 843 P.2d 1082, 1084 (1992) (where currency was deliberately concealed, it cannot be characterized as lost property). Contrary to Benjamin's position the circumstances here do not support a conclusion that the money was placed in the wing of the airplane unintentionally. Additionally, as the trial court concluded, there was no evidence suggesting that the money was placed in the wing by someone other than the owner of the money and that its location was unknown to the owner. For these reasons, we reject Benjamin's argument that the trial court was obligated to find that the currency Benjamin discovered was lost property.

We also reject Benjamin's assertion that as a matter of law this money was abandoned property. Both logic and common sense suggest that it is unlikely someone would voluntarily part with over $18,000 with the intention of terminating his ownership. The location where this money was found is much more consistent with the conclusion that the owner of the property was placing the money there for safekeeping. See Ritz, 467 N.W.2d at 269 (property not abandoned where money was buried in jars and tin cans, indicating a desire by the owner to preserve it); Jackson, 200 P.2d at 378 (because currency was concealed intentionally and deliberately, the bills could not be regarded as abandoned property); 1 Am.Jur.2d Abandoned Property § 13, at 17 (where property is concealed in such a way that the concealment appears intentional and deliberate, there can be no abandonment). We will not presume that an owner has abandoned his property when his conduct is consistent with a continued claim to the property. * * *

Finally, we also conclude that the trial court was not obligated to decide that this money was treasure trove. Based on the dates of the currency, the money was no older than thirty-five years. The mint dates, the musty odor and the rusty condition of a few of the panel screws indicate that the money may have been hidden for some time. However, there was no evidence of the age of the airplane or the date of its last inspection. These facts may have shown that the money was concealed for a much shorter period of time.

Moreover, it is also significant that the airplane had a well-documented ownership history. The record reveals that there were only two owners of the plane prior to the bank. One was the person from whom the bank repossessed the plane; the other was the original purchaser of the plane when it was manufactured. Nevertheless, there is no indication that Benjamin or any other party attempted to locate and notify the prior owners of the plane, which could very possibly have led to the identification of the true owner of the money. Under these circumstances, we cannot say as a matter of law that the money meets the antiquity requirement or that it is probable that the owner of the money is not discoverable.

* * *

Because the money discovered by Benjamin was properly found to be mislaid property, it belongs to the owner of the premises where it was found. Mislaid property is entrusted to the owner of the premises where it is found rather than the finder of the property because it is assumed that the true owner may eventually recall where he has placed his property and return there to reclaim it. * * *

We think that the premises where the money was found is the airplane, not Lindner Aviation's hangar where the airplane happened to be parked when the money was discovered. The policy behind giving ownership of mislaid property to the owner of the premises where the property was mislaid supports this conclusion. If the true owner of the

money attempts to locate it, he would initially look for the plane; it is unlikely he would begin his search by contacting businesses where the airplane might have been inspected. Therefore, we affirm the trial court's judgment that the bank, as the owner of the plane, has the right to possession of the property as against all but the true owner.

Benjamin claims that if he is not entitled to the money, he should be paid a ten percent finder's fee under section 644.13. The problem with this claim is that only the finder of "lost goods, money, bank notes, and other things" is rewarded with a finder's fee under chapter 644. Iowa Code § 644.13 (1991). Because the property found by Benjamin was mislaid property, not lost property, section 644.13 does not apply here. The trial court erred in awarding Benjamin a finder's fee.

We conclude that the district court's finding that the money discovered by Benjamin was mislaid property is supported by substantial evidence. Therefore, we affirm the district court's judgment that the bank has the right to the money as against all but the true owner. This decision makes it unnecessary to decide whether Benjamin or Lindner Aviation was the finder of the property. We reverse the court's decision awarding a finder's fee to Benjamin.

AFFIRMED IN PART; REVERSED IN PART.

* * *

SNELL, JUSTICE (dissenting).

The life of the law is logic, it has been said. See Davis v. Aiken, 111 Ga.App. 505, 142 S.E.2d 112, 119 (1965) (quoting Sir Edward Coke). If so, it should be applied here.

* * *

After considering the four categories of found money, the majority decides that Benjamin found mislaid money. The result is that the bank gets all the money; Benjamin, the finder, gets nothing. Apart from the obvious unfairness in result, I believe this conclusion fails to come from logical analysis.

Mislaid property is property voluntarily put in a certain place by the owner who then overlooks or forgets where the property is. Ritz v. Selma United Methodist Church, 467 N.W.2d 266, 268 (Iowa 1991). The property here consisted of two packets of paper currency totalling $18,910, three to four inches high, wrapped in aluminum foil. Inside the foil, the paper currency, predominantly twenty dollar bills, was tied with string and wrapped in handkerchiefs. Most of the mint dates were in the 1950s with one dated 1934. These packets were found in the left wing of the Mooney airplane after Benjamin removed a panel held in by rusty screws.

These facts satisfy the requirement that the property was voluntarily put in a certain place by the owner. But the second test for determining that property is mislaid is that the owner "overlooks or forgets

where the property is." See Ritz, 467 N.W.2d at 269. I do not believe that the facts, logic, or common sense lead to a finding that this requirement is met. It is not likely or reasonable to suppose that a person would secrete $18,000 in an airplane wing and then forget where it was.

Cases cited by the majority contrasting "mislaid" property and "lost" property are appropriate for a comparison of these principles but do not foreclose other considerations. After finding the money, Benjamin proceeded to give written notice of finding the property as prescribed in Iowa Code chapter 644 (1993), "Lost Property." As set out in section 556F.8, notices were posted on the courthouse door and in three other public places in the county. In addition, notice was published once each week for three consecutive weeks in a newspaper of general circulation in the county. Also, affidavits of publication were filed with the county auditor who then had them published as part of the board of supervisors' proceedings. Iowa Code § 556F.9. After twelve months, if no person appears to claim and prove ownership of the property, the right to the property rests irrevocably in the finder. Iowa Code § 556F.11.

The purpose of this type of legal notice is to give people the opportunity to assert a claim if they have one. See, e.g., Neeley v. Murchison, 815 F.2d 345, 347 (5th Cir.1987). If no claim is made, the law presumes there is none or for whatever reason it is not asserted. Thus, a failure to make a claim after legal notice is given is a bar to a claim made thereafter. See, e.g., Tulsa Professional Collection Servs., Inc. v. Pope, 485 U.S. 478, 481, 108 S.Ct. 1340, 1343, 99 L.Ed.2d 565, 572–73 (1988).

Benjamin followed the law in giving legal notice of finding property. None of the parties dispute this. The suggestion that Benjamin should have initiated a further search for the true owner is not a requirement of the law, is therefore irrelevant, and in no way diminishes Benjamin's rights as finder.

The scenario unfolded in this case convinces me that the money found in the airplane wing was abandoned. Property is abandoned when the owner no longer wants to possess it. See Ritz, 467 N.W.2d at 269; Pearson v. City of Guttenberg, 245 N.W.2d 519, 529 (Iowa 1976). The money had been there for years, possibly thirty. No owner had claimed it in that time. No claim was made by the owner after legally prescribed notice was given that it had been found. Thereafter, logic and the law support a finding that the owner has voluntarily relinquished all right, title, and interest in the property. Whether the money was abandoned due to its connection to illegal drug trafficking or is otherwise contraband property is a matter for speculation. In any event, abandonment by the true owner has legally occurred and been established.

I would hold that Benjamin is legally entitled to the entire amount of money that he found in the airplane wing as the owner of abandoned property.

HARRIS and ANDREASEN, JJ., join this dissent.

Note

1. *What if the money had been treated as "lost"?* Suppose the Iowa Supreme Court had held that the money was "lost" rather than "mislaid." Since the money was found in the scope of Benjamin's employment, should Lindner Aviation, his employer, have the better claim to it? For a consideration of *Benjamin,* see Moorman, Finders Weepers, Losers Weepers? 82 Iowa L. Rev. 717 (1997).

2. *Treasure trove.* The *Benjamin* court avoids characterizing the money as treasure trove. Recent decisions increasingly simply reject the doctrine. Consider, in this regard, the following language of a recent Idaho decision:

> Corliss argues that the district court erred in deciding that the law of treasure trove should not apply in Idaho. However, the doctrine of treasure trove has never been adopted in this state. Idaho Code s 73–116 provides: "[t]he common law of England, so far as it is not repugnant to, or inconsistent with, the constitution or laws of the United States, in all cases not provided for in these compiled laws, is the rule of decision in all courts of this state." Nevertheless, the history of the "finders keepers" rule was not a part of the common law of England at the time the colonies gained their independence. Rather, the doctrine of treasure trove was created to determine a rightful possessor of buried Roman treasures discovered in feudal times. See Leeanna Izuel, *Property Owner's Constructive Possession of Treasure Trove: Rethinking the Finders Keepers Rule*, 38 U.C.L.A. L.Rev. 1659, 1666–67 (1991). And while the common law initially awarded the treasure to the finder, the crown, as early as the year 1130, exercised its royal prerogative to take such property for itself. Id. Only after the American colonies gained their independence from England did some states grant possession of treasure trove to the finder. Id. Thus, it does not appear that the "finders keepers" rule of treasure trove was a part of the common law of England as defined by Idaho Code s 73–116. We hold that the district court correctly determined that I.C. s 73–116 does not require the treasure trove doctrine to be adopted in Idaho.
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> Additionally, we conclude that the rule of treasure trove is of dubious heritage and misunderstood application, inconsistent with our values and traditions. The danger of adopting the doctrine of treasure trove is laid out in *Morgan* [*v. Wiser*] 711 S.W.2d at 222–23 (Tenn.App. 1985):
>
> > [We] find the rule with respect to treasure-trove to be out of harmony with modern notions of fair play. The common-law rule of treasure-trove invites trespassers to roam at large over the property of others with their metal detecting devices and to dig wherever such devices tell them property might be found. If the discovery happens to fit the definition of treasure-trove, the trespasser may claim it as his own. To paraphrase another court: The mind refuses consent to the proposition that one may go upon the lands of another and dig up and take away anything he discovers there which does not belong to the owner of the land. [citation omitted]

> The invitation to trespassers inherent in the rule with respect to treasure-trove is repugnant to the common law rules dealing with trespassers in general. The common-law made a trespass an actionable wrong without the necessity of showing any damage therefrom. Because a trespass often involved a breach of the peace and because the law was designed to keep the peace, the common law dealt severely with trespassers.
>
> Recognizing the validity of the idea that the discouragement of trespassers contributes to the preservation of the peace in the community, we think this state should not follow the common law rule with respect to treasure-trove.

Corliss v. Wenner, 136 Idaho 417, 34 P.3d 1100 (Idaho App.2001).

PAYNE v. TK AUTO WHOLESALERS

Appellate Court of Connecticut, 2006.
98 Conn.App. 533, 911 A.2d 747.

GRUENDEL, ROGERS and LAVINE, Js.

GRUENDEL, J.

This appeal exemplifies that, in appellate adjudication, it is the law that must prevail, rather than any particular party. The fascinating facts are as follows. On February 7, 2003, the plaintiff headed to the defendant's premises with the aim of purchasing a 1995 Lincoln Mark VIII automobile. Michael Robson, an employee of the defendant, greeted the plaintiff, who identified himself as Paul Payne.[2] After a cursory examination of the automobile on the defendant's premises, the plaintiff agreed to purchase it. The two proceeded to Robson's office to complete the necessary paperwork, where the plaintiff provided Robson with a Connecticut driver's license in the name of Paul Payne and signed both a credit application and purchase order as Paul Payne. At that time, Robson noticed that the photograph on the driver's license looked nothing like the plaintiff. He nevertheless continued the transaction without raising any concern as to the plaintiff's identity and allegedly accepted the plaintiff's down payment of $1300 in cash. Although the plaintiff expressed a desire to take the automobile that day, Robson explained that bank approval of the purchase and vehicle registration first were required.

After the plaintiff left the premises, Robson obtained a telephone number for Paul Payne. When Robson contacted him and inquired about the purchase, Paul Payne stated that he was not purchasing an automobile. Paul Payne then told Robson that the plaintiff had stolen his identity and asked Robson to contact the police. Robson complied, and the police in turn instructed Robson to contact the plaintiff and ask him to return to the premises to complete the transaction. At approximately 7 p.m. that evening, the plaintiff arrived. As the plaintiff completed a vehicle registration form, officers from the Plainville police department apprehended him. Officer Eric Peterson asked the plaintiff his name, to which he replied, "Paul Payne." Peterson also observed that the plaintiff had signed Paul Payne on the registration form. At the time of arrest, officers found the aforementioned Connecticut driver's license, a birth certificate of Paul Payne and certain tax documents of Paul Payne in the plaintiff's possession. The jury subsequently convicted the plaintiff of identity theft in violation of *General Statutes § 53a–129a*, forgery in the second degree in violation of *General Statutes § 53a–139(a)(1)*, criminal attempt to commit larceny in the second degree in violation of *General Statutes § 53a–123(a)(1)* and criminal impersonation in violation of *General Statutes § 53a–130(a)(1)*.

While incarcerated, the plaintiff commenced this civil action in April, 2004. His complaint alleged statutory theft in violation of *General*

2. Paul Payne is the plaintiff's cousin and is not a party to this action.

Statutes § 52–564,[3] unconscionability of contract under *General Statutes § 42a–2–302*[4] and a violation of the Connecticut Unfair Trade Practices Act (CUTPA), *General Statutes § 42–110a et seq.* The accompanying prayer for relief sought $1300 *537 in compensatory damages and $9 million in punitive damages due to the "severe emotional distress" he had endured. During oral argument on a motion to strike, the court learned that the plaintiff had removed $3000 from Paul Payne's bank account. As the court recounted: "Despite being notified of his constitutional right, the plaintiff stated that he obtained the aforementioned money by presenting identification documents to the bank that were in the name of Paul Payne." In response, the defendant argued that the plaintiff lacked standing to maintain the action. The court agreed and dismissed the action. * * *. In its memorandum of decision, the court stated: "The plaintiff freely admits how he obtained the subject money. The manner in which it was obtained did not imbue the plaintiff with a possessory interest in the [$1300 down payment]. While the bank or the plaintiff's cousin [Paul Payne] may have a possessory interest in the money, the plaintiff does not. Simply put, the money was not his. Since the plaintiff does not have a possessory interest in the money, he does not have the legal right to seek its recovery." The plaintiff thereafter filed a motion to open the judgment, which the court denied, and this appeal followed.

On appeal, the plaintiff claims that the court improperly concluded that he lacked standing to maintain his action against the defendant. "Standing is the legal right to set judicial machinery in motion ... and implicates this court's subject matter jurisdiction.... A party cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy.... The burden rests with the party who seeks the exercise of jurisdiction in his favor ... clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." (Citations omitted; internal quotation marks omitted.) *Goodyear v. Discala*, 269 Conn. 507, 511, 849 A.2d 791 (2004). "The question of standing does not involve an inquiry into the merits of the case.... It merely requires allegations of a colorable claim of injury to an interest that is arguably protected by [a] statute or common law." * * *

We consider first whether the plaintiff has a legally protected interest in the present case. The court concluded that the plaintiff had no possessory interest in the money he surrendered to the defendant as a

3. *General Statutes § 52–564* provides: "Any person who steals any property of another, or knowingly receives and conceals stolen property, shall pay the owner treble his damages."

4. The doctrine of unconscionability generally serves as a special defense in contract actions. See, e.g., *Hottle v. BDO Seidman, LLP*, 268 Conn. 694, 704, 846 A.2d 862 (2004); *IBM Credit Corp. v. Mark Facey & Co.*, 44 Conn.App. 490, 491, 690 A.2d 410 (1997). Although the complaint alleged that the purchase order was unconscionable, the plaintiff acknowledges in his appellate brief that unconscionability "was [a] basis of his CUTPA claim."

down payment on the automobile. We disagree. As the United States Court of Appeals for the Second Circuit explained in *United States v. Haqq,* 278 F.3d 44 (2d Cir.2002), "[a]lthough a thief certainly has no ownership interest in a stolen item, the law recognizes his possessory interest: the well-settled common-law rule [is] that a thief in possession of stolen goods has an ownership interest superior to the world at large, save one with a better claim to the property." (Internal quotation marks omitted). *Id., at 50;* see also *Government of the Virgin Islands v. Edwards,* 903 F.2d 267, 273 (3d Cir.1990) ("[i]t has long been a principle of common law that one in possession of property has the right to keep it against all but those with a better title"); *Anderson v. Gouldberg,* 51 Minn. 294, 295, 53 N.W. 636 (1892) (holding that thief may maintain replevin action against third party that deprived him of stolen goods). As Justice Holmes observed more than one century ago, "one who has possession of goods is entitled to keep them as against any one not having a better title...." *Odd-Fellows Hall Assn. v. McAllister,* 153 Mass. 292, 295, 26 N.E. 862 (1891).

Connecticut law long has recognized that "[t]he person in possession the law regards as owner, except in a contest with one who has the true title." *Fowler v. Fowler,* 52 Conn. 254, 257 (1884); see also *Hall v. Schoenwetter,* 239 Conn. 553, 563, 686 A.2d 980 (1996); *Chapel-High Corp. v. Cavallaro,* 141 Conn. 407, 411, 106 A.2d 720 (1954). That principle is embodied in our Penal Code. *General Statutes § 53a–118(5)* defines an "owner" as "any person who has a right to possession superior to that of a taker, obtainer or withholder," a definition used for purposes of larceny, robbery and related offenses. Our case law further acknowledges that "[t]he term owner is one of general application and includes one having an interest other than the full legal and beneficial title.... The word owner is one of flexible meaning, and it varies from an absolute proprietary interest to a mere possessory right.... It is not a technical term and, thus, is not confined to a person who has the absolute right in a chattel, but also applies to a person who has possession and control thereof." (Internal quotation marks omitted.) *Label Systems Corp. v. Aghamohammadi,* 270 Conn. 291, 329, 852 A.2d 703 (2004). In light of the foregoing, we conclude that the plaintiff had a legally protected possessory interest in the money he surrendered to the defendant on February 7, 2003.

We turn next to the question of whether the plaintiff alleged a colorable claim of injury. To prevail, he must demonstrate that he "has been specially and injuriously affected by the decision." (Internal quotation marks omitted.) *Edgewood Village, Inc. v. Housing Authority,* 265 Conn. 280, 288, 828 A.2d 52 (2003), cert. denied, 540 U.S. 1180, 124 S.Ct. 1416, 158 L.Ed.2d 82 (2004). The plaintiff's complaint alleged that, cognizant of the discrepancy between his person and the driver's license he had provided, the defendant nevertheless knowingly accepted the $1300 down payment on the automobile. Because the automobile transaction never was completed nor was the $1300 returned, the plaintiff

claims a direct injury due to his superior possessory interest in the money.

In its appellate brief, the defendant contends that the plaintiff's injury is indirect. "[D]irectness of injury is, and has long been, a part of the standing inquiry." *Ganim v. Smith & Wesson Corp.*, 258 Conn. 313, 364, 780 A.2d 98 (2001). Consequently, where "the harms asserted to have been suffered directly by a plaintiff are in reality derivative of injuries to a third party, the injuries are not direct but are indirect, and the plaintiff has no standing to assert them." *Id.*, at 347–48, 780 A.2d 98. The defendant maintains that because the plaintiff conceded that he obtained the money by presenting identification documents to his cousin's bank that were in the name of Paul Payne, the money properly belonged to either the bank or Paul Payne. Hence, it argues that the plaintiff suffered no direct injury. We do not agree. The plaintiff's complaint did not allege injuries to a third party, but rather to the plaintiff. Although both the bank and Paul Payne certainly were injured in the present case, it remains that the plaintiff's possessory interest in the $1300 is superior to that of the defendant. We find instructive the decision of the Supreme Court of Minnesota in *Anderson v. Gouldberg*, supra, 51 Minn. at 294, 53 N.W. 636. The plaintiff in that case obtained possession of certain timber by trespassing on the land of a third party, only to have the timber stolen by the defendant. In defending against an action by the plaintiff for replevin, the defendant maintained that the plaintiff was not the rightful owner of the property. The court rejected such a defense: "When it is said that to maintain replevin the plaintiff's possession must have been lawful, it means merely that it must have been lawful as against the person who deprived him of it; and possession is good title against all the world except those having a better ***541** title.... One who takes property from the possession of another can only rebut this presumption [of title] by showing a superior title in himself, or in some way connecting himself with one who has." *Id.*, at 295–96, 53 N.W. 636; see also 4 Restatement (Second) Torts, § 895, comment (f), pp. 387–88 (1979).

In the present case, only the plaintiff and the defendant are parties to the action. The defense that the money at issue properly belonged to either Paul Payne or his bank is of no avail to the defendant. We therefore conclude that the plaintiff has alleged a colorable claim of direct injury. Consequently, the court's determination that the plaintiff lacked standing to pursue his action against the defendant cannot stand.

Under Connecticut law, a possessory interest sufficiently establishes standing to pursue a conversion action in our courts. See *Label Systems Corp. v. Aghamohammadi*, supra, 270 Conn. at 330, 852 A.2d 703 (plaintiff's possession and control of car gave it standing to bring conversion claim as to insurance proceeds related to accident involving company car); *Lawton v. Weiner*, 91 Conn.App. 698, 719, 882 A.2d 151 (2005) (because plaintiff had possessory interest in posters, plaintiff had standing to bring claim for conversion of posters). We have neither been presented with nor can we discern any reason why a different result

should attach to CUTPA cases. Although CUTPA is an "essentially equitable" cause of action; *Associated Investment Co. Ltd. Partnership v. Williams Associates IV,* 230 Conn. 148, 155, 645 A.2d 505 (1994); the court's finding that the plaintiff procured the $1300 by thievery has little relevance to the issue of whether he has standing to maintain an action regarding the defendant's acceptance and retention of his down payment. Rather, that finding pertains to the merits of the action. Although this particular plaintiff may have come to the court with unclean hands; see *Thompson v. Orcutt,* 257 Conn. 301, 310–11, 777 A.2d 670 (2001); that factor has no place in this stage of the proceedings.

Viewing the factual allegations of the complaint in the light most favorable to the plaintiff, it is clear to us that he had a possessory interest superior to that of the defendant and has been directly injured by the defendant's alleged retention of the down payment on the automobile. In the eyes of the law, the plaintiff, as the person in possession, must be regarded as the owner of the property in question, except in a contest with one who has the true title. Accordingly, the plaintiff has standing to pursue his claim against the defendant. * * *

The judgment is reversed and the case is remanded for further proceedings according to law.

Notes

1. Why does the court in *Payne* talk so much about standing? Why is this issue important? The court says its holding is not on the merits. Do you agree? After all, the case the court relies on heavily, *Anderson v. Gouldberg*, was a decision on the merits.

2. *Anderson rationale.* According to Anderson v. Gouldberg, a rule allowing "a mere wrongdoer who is a stranger to the property" to prove that a third party (not the plaintiff) is the owner "would lead to an endless series of unlawful seizures and reprisals in every case where property had once passed out of the possession of the rightful owner"? Do you agree? This rationale is adopted in 1 F. Harper & F. James, Torts 118 (1956), although it is conceded that the rule "may occasionally permit a thief or other wrongdoer to obtain protection designed for the rightful owner." Cf. W. Prosser and W. Keeton, Torts 103 (5th Ed. 1984), asserting that in every case where a wrongful possessor was allowed to recover the full value of chattels in a conversion action, "the plaintiff has been in possession under some colorable claim of 'right' and that '[n]o court has allowed an admitted, or even a clearly proved, thief without claim of right to recover, and it seems improbable that one ever will.'" The foregoing view is shared by Professor Helmholz, who maintains that "a gap exists between the decided cases and the hornbook rule that possession of chattels, however acquired, prevails against anyone but the rightful owner. First, ordinary statements of the rule exaggerate the frequency of disputes between two wrongdoers. Most cases involving purely possessory claims are not like Anderson v. Gouldberg. Second, when possessory claims arise in litigation, courts regularly reject them if they stem from wrongful possession. Courts examine the quality of possession as well as the fact of possession. Third, the most common use of

the hornbook rule in judicial opinions has been to permit courts to disregard technical flaws in one person's title when those flaws might permit a wrongful possessor to prevail." Helmholz, Wrongful Possession of Chattels: Hornbook Law and Case Law, 80 Nw.U.L.Rev. 1221, 1242–43 (1986). How would Professor Helmholz react to *Payne?*

3. *True owner ascertainable.* What should the trial court in *Payne* do now? How about requiring plaintiff to bring his cousin and the bank into the case as parties? Otherwise the case law suggests that plaintiff-wrongdoer should win on the merits and obtain a judgment for $1300. In any event will any sane court permit the plaintiff to recover punitive damages under the Connecticut Unfair Trade Practices Act?

4. *Burglar as prior possessor.* Consider the following interesting fact situation. The apartments of both Alcover and Hammel were burglarized and Edwards later was arrested and convicted for the two burglaries. Incident to the arrest, police seized the following jewelry from Edwards that he was wearing at the time: two gold chains, one gold bracelet, a pendent with four diamonds, and five gold rings, four containing precious stones and a fifth containing an initial from someone other than Edwards. Over a year later, Edwards filed a motion to compel the government to return the jewelry. Neither Alcover nor Hammel could identify the property as belonging to them. The trial court refused Edwards' request, but the United States Court of Appeals for the Third Circuit held in Edwards' favor, stating:

> We agree that the circumstances of Edwards' possession of expensive jewelry are suspicious particularly in light of his efforts to secrete some of the jewelry from the authorities. * * *
>
> Edwards was admittedly in possession of the jewelry when it was taken from his immediate possession at the police station. It has long been a principle of common law that one in possession of property has the right to keep it against all but those with a better title. See e.g., Anderson v. Gouldberg, 51 Minn. 294, 53 N.W. 636 (1892), citing Armory v. Delamirie, 1 Strange 504, 93 Eng.Reprint 664.
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> * * *
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> It follows that by virtue of his possession, Edwards made a sufficient showing of entitlement unless the government or a third party could show a cognizable claim of ownership or right to possession adverse to that of defendant. * * * We have no doubt that it would be antithetical to the notions of fairness and justice under which we operate to convert the government's right to temporary possession to a right to hold such property indefinitely. * * *
>
> In this case, the government satisfied itself that the property was not taken from either the Hammel or Alcover burglaries. The government has not suggested that the property is needed to aid it in any other investigation. It has had ample opportunity to locate any persons who contend that they are the rightful owners of the property.

Government of the Virgin Islands v. Edwards, 903 F.2d 267 (3d Cir.1990). Is this an appropriate case for the application of *Anderson?* How would Professor Helmholz analyze this case?