

MAINE STATE LEGISLATURE

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STATE OF MAINE

80-25

Inter-Departmental Memorandum Date February 5, 1980To Linwood Ross, DeputyDept. Secretary of StateFrom Steven Wright, AssistantDept. Attorney GeneralSubject Issuance of title certificate when a prior seller alleges a claim to the vehicle

You have asked whether the Secretary of State should issue a certificate of title to a bona fide purchaser for value (hereinafter BFP) of a motor vehicle, when the seller of the vehicle to the bona fide purchaser has not satisfied his own obligations with respect to his purchase of the vehicle. Specifically, your question is if a third person purchases a motor vehicle and subsequently applies for a certificate of title to that vehicle and the papers appear to be in order, but the Secretary of State subsequently learns that the seller has failed to pay for the vehicle he sold, may the Secretary of State issue the third person a certificate of title? We answer in the affirmative.

It is our understanding that the chain of title to the motor vehicle in the instant case is without defect. That is, the title to the motor vehicle has been properly assigned to each purchaser in the chain. The problem has arisen because a prior seller apparently assigned title to the vehicle in return for a check that was later returned due to insufficient funds. When the prior seller contacted the buyer informing him that he wanted his money or his vehicle returned, he was informed that the vehicle had been resold to a third person, the proverbial BFP. The prior seller then contacted the Secretary of State, requesting that no certificate of title be issued to any third person because of the fact that he had yet to have been paid. The BFP, however, had already applied for his certificate of title knowing nothing of the problems involved in the previous transfer.

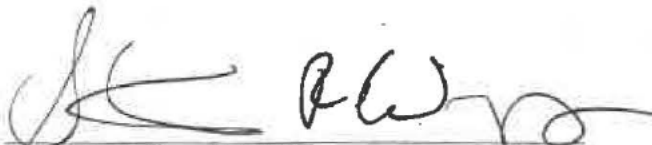
29 MRSA §2444 mandates that the Secretary of State not issue a certificate of title for a vehicle if it is reported to him that the vehicle is involved in a theft or criminal conversion. That section also provides that the Secretary of State may disregard the report of a conversion unless a warrant has been issued for the arrest of a person charged with the conversion. It is our understanding in the instant case that no such warrant was issued. Therefore, because the documents which correspond to the various transfers of the vehicle evidence that each time the vehicle was transferred the title was properly assigned (consistent with 29 MRSA §2372, sub-§1), there is no existent defect to the title for which the applicant BFP has applied. The Secretary of State should, then, issue the certificate of title which has been applied for by the BFP, the current possessor of the vehicle.

It should be noted that the certificate of title issued by the Secretary of State is only prima facie evidence of the facts appearing on it. 29 MRSA §2367, sub-§4. This means that absent

any contradictory evidence, the certificate vests ownership in the person whose name appears on the certificate. Once, however, contradictory evidence is brought forth, the contestant would be on equal footing with the holder of the certificate in a court of law determining the true owner of the vehicle.

Also, in this case it appears that the last purchaser of the vehicle, had he been careful to check the chain of title of the vehicle, would not have been put on notice of the earlier seller's claim to the vehicle. The earlier seller had properly assigned title to the later seller, from whom the purchaser obtained the vehicle. In light of this fact, it would be a harsh consequence to this last purchaser to deny him ownership of the vehicle he may have so cautiously purchased. Further, the issuance of the certificate of title to the present applicant in no way affects the right of the original seller to his claim against the later seller for the money due to him. While he may have a more difficult time recovering the actual vehicle, the consideration he sought from his contract with the later seller was money. A court of law finding that the later seller had indeed breached his contract with the original seller could easily make the original seller whole by granting him a judgment for his damages.

If you have any additional questions on this matter, please feel free to contact me.



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