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September 4, 2007

RECEIVED

SEP 06 2007

TIME:

Clay County Circuit Court

Clay County Circuit Court
Clay County Circuit Clerk
11 S. Water Street.
Liberty, MO 64068

Re: *Duff, William v. Officer Frazier, et al.,*
Case No. 07CY-CV06125

Dear Clerk:

Please find enclosed the original and one copy of *Defendants' Motion to Dismiss Plaintiff's Replevin Claim* for filing in the above-referenced case.

We would appreciate your returning a file stamped copy to our office in the enclosed self-addressed, stamped envelope. Thank you for your attention to this matter.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

Emily A. Dodge
Assistant Attorney General

EAD:sm

cc: William D. Duff

FILED

SEP 06 2007

TIME

IN THE CIRCUIT COURT OF CLAY COUNTY
MISSOURI

WILLIAM D. DUFF,
Plaintiff,

v.

OFFICER FRAZIER, et al.,
Defendants.

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Clay County Circuit Court

Case No. 07CY-CV06125

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S REPLEVIN CLAIM

Plaintiff amended his petition to add a claim for replevin of a 1996 Buick Plaintiff allegedly purchased on EBay. In addition to Defendants' pending motion to dismiss, Defendants specifically move this Court, pursuant to Rule 55.27, to dismiss Plaintiff's claim in replevin for failure to state a claim upon which relief may be granted. Plaintiff has the burden of proving his superior right to possession of the Buick and Defendants' wrongful detention, burdens he cannot meet. See Bonnell v. Mahaffey, 493 S.W.2d 688, 690-91 (Mo. App. 1973).

ARGUMENT

Defendants refer the Court to the factual background and pleadings stated in their first motion to dismiss. Plaintiff has not registered the Buick in the State of Missouri and did not have proof of insurance for the vehicle when he was arrested. The Buick sported fake license plates. Plaintiff asserts he purchased the Buick on EBay, and attached a purported bill of sale as an exhibit to his petition.

A plaintiff without properly assigned title to a motor vehicle cannot maintain a replevin action for that vehicle. Wilks v. Stone, 339 S.W.2d 590, 594 (Mo. App. 1960). In the State of Missouri, it is unlawful to purchase or sell any motor vehicle without assigning the title as provided

by statute. MO. REV. STAT. §301.210.4 (2007). The sale of a motor vehicle without assignment of the title is fraudulent and a void transaction. Section 301.210.4; Bonnell v. Mahaffey, 493 S.W.2d 688, 690-91 (Mo. App. 1973). The statute is strictly enforced; as Plaintiff did not receive the title to the vehicle from the seller, he received no right or title to the automobile. Id. As Plaintiff was not the owner of the Buick and had no legal right to its possession, his replevin claim fails as a matter of law. Turman v. Schneider Bailey, Inc., 768 S.W.2d 108, 112 (Mo. App. W.D. 1988).

Moreover, the officers' detention of the Buick was not wrongful, but was a legally authorized exercise of the officers' law enforcement duties. See Mitchell v. Village of Edmundson, 891 S.W.2d 848, 850 (Mo. App. E.D. 1995).

Conclusion

WHEREFORE, Defendants request that the Court dismiss Plaintiff's replevin claim with prejudice, and for such other and further relief as the Court deems just and proper in the premises.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

BY: 
EMILY A. DODGE
Assistant Attorney General
Missouri Bar No. 53914

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid
this 4th day of September, 2007 to:

William D. Duff
108 NW 101 PL.
Kansas City, MO 64155


Assistant Attorney General