Motor vehicle, derelict title

Number: INFORMAL

Date: March 12, 2013

Detective Lieutenant Brad Stark
Okeechobee County Sheriff's Office
504 Northwest 4 Street
Okeechobee, Florida 34972

Dear Lieutenant Stark:

This is in response to your recent letter requesting assistance in determining ownership rights to a motor vehicle which has been stolen and sold to a secondhand metal recycler who possesses a derelict title issued by the tax collector, but which is still titled to the owner.

You set forth the following timeline. A vehicle is stolen on January 10, 2013, and on the same day is sold to a secondhand metal recycler by the suspect. At that time, the vehicle had a valid title and tag. On January 12, 2013, the vehicle is reported as stolen by its owner and the sheriff's office recovers it from the recycler. However, the metal recycler has applied for a derelict title from the tax collector. On January 14, 2013, the vehicle is processed by the sheriff's department. The next day the owner is notified that it may be retrieved at a towing company, but the owner does not have sufficient funds to retrieve the vehicle. On January 16, 2013, the tax collector processes the derelict title application, with a projected destruction date of January 23, 2013. On January 21, 2013, the owner retrieves the vehicle from the towing company. The next day, January 22, 2013, the vehicle is sold to another metal recycler and is destroyed. On January 23, 2013, the recycler holding the derelict title requests possession of the vehicle.

While this office will not comment on the rightful possession or ownership of the vehicle, the following general comments regarding secondary metals recyclers are offered in order to be of assistance.

Part II, Chapter 538, Florida Statutes, governs secondary metals recyclers (SMR), defining an SMR as any person who:

"(a) Is engaged, from a fixed location, in the business of purchase transactions or gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
(b) Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof."[1]

Pursuant to the statute, SMRs are required to create and maintain certain records, such as a legible paper record and legible electronic record (which format is approved by the Florida Department of Law Enforcement). The electronic record must be transmitted to the appropriate law enforcement agency no later than 10:00 a.m. of the business day following the transaction.[2] The statute further enumerates specific information which must be on the form, among which are: a signed statement from the person delivering the property that she or he is the rightful owner of, or is entitled to sell, the property; a vehicle description including the make, model, and tag number; a description of the person from whom the regulated metals property was acquired; and a photograph or likeness of the person selling the property.[3]

Specific to the acquisition of a vehicle, section 538.19(5), Florida Statutes, provides:

"(5) A secondary metals recycler registered with the department that purchases a motor vehicle from a licensed salvage motor vehicle dealer as defined in s. 320.27 or another secondary metals recycler registered with the department and uses a mechanical crusher to convert the vehicle to scrap metal must obtain a signed statement from the seller stating that the seller has surrendered the vehicle's certificate of title to the Department of Highway Safety and Motor Vehicles as provided in s. 319.30 or otherwise complied with the titling requirements provided by law for conversion of the vehicle to scrap metal. A secondary metals recycler is not liable for the seller's failure to comply with the titling requirements provided by law for conversion of a motor vehicle to scrap metal if the secondary metals recycler obtains and maintains the seller's signed statement."

Particularly relevant to the situation you have posed, section 538.21, Florida Statutes, provides:

"(1) Whenever a law enforcement officer has reasonable cause to believe that certain items of regulated metals property in the possession of a secondary metals recycler have been stolen, the law enforcement officer may issue a hold notice to the secondary metals recycler.
(a) The hold notice shall be in writing, shall be delivered to the secondary metals recycler, shall specifically identify those items of regulated metals property that are believed to have been stolen and that are subject to the notice, and shall inform the secondary metals recycler of the information contained in this section.
(b) Upon receipt of the notice issued in accordance with this section, the secondary metals recycler receiving the notice may not process or remove the items of regulated metals property identified in the notice, or any portion thereof, from the place of business of the secondary metals recycler for 15 calendar days after receipt of the notice by the secondary metals recycler, unless sooner released by a law enforcement officer.
(2) No later than the expiration of the foregoing 15-day period, a law enforcement officer may issue a second hold notice to the secondary metals recycler, which shall be an extended hold notice.
(a) The extended hold notice shall be in writing, shall be delivered to the secondary metals recycler, shall specifically identify those items of regulated metals property that are believed to have been stolen and that are subject to the extended hold notice, and shall inform the secondary metals recycler of the information contained in this section.
(b) Upon receipt of the extended hold notice issued in accordance with this section, the secondary metals recycler receiving the extended hold notice may not process or remove the items of regulated metals property identified in the notice, or any portion thereof, from the place

of business of the secondary metals recycler for 45 calendar days after receipt of the extended hold notice by the secondary metals recycler, unless sooner released by a law enforcement officer.
(3) At the expiration of the hold period or, if extended in accordance with this section, at the expiration of the extended hold period, the hold is automatically released and the secondary metals recycler may dispose of the regulated metals property unless other disposition has been ordered by a court of competent jurisdiction.
(4) This section provides a uniform statewide process and preempts municipal or county ordinances enacted after December 31, 2008, relating specifically to secondary metals recyclers holding such metals."

In setting forth violations and penalties under the act, section 538.23(2), Florida Statutes, states:

"(2) A secondary metals recycler is presumed to know upon receipt of stolen regulated metals property in a purchase transaction that the regulated metals property has been stolen from another if the secondary metals recycler knowingly and intentionally fails to maintain the information required in s. 538.19 and shall, upon conviction of a violation of s. 812.015, be punished as provided in s. 812.014(2) or (3)."

A person who knowingly gives false verification of ownership or who gives a false or altered identification and who receives money from a secondary metals recycler in return for regulated metals property commits: a third degree felony if the money or other consideration received is worth less than $300; a second degree felony if the consideration is worth $300 or more.[4] Moreover, if the lawful owner recovers stolen regulated metals property from a secondary metals recycler who has complied with the provisions in Part II, Chapter 538, Florida Statutes, and the person who sold the metals to the recycler is convicted of theft, a violation of the statute, or dealing in stolen property, the court must order the defendant to make full restitution to the secondary metal recycler.[5]

In instances where allegedly stolen property has been sold to an SMR, the party, other than the SMR, claiming ownership of the property in the SMR’s possession may, if a timely report of the theft was made to the proper authorities, bring an action for replevin in the county or circuit court.[6]

Finally, the statutes governing secondary metals recyclers prohibit certain acts and practices. Section 538.26(5), Florida Statutes, prohibits an SMR from purchasing regulated metals property unless the recycler obtains reasonable proof that the seller:

"1. Owns such property. Reasonable proof of ownership may include, but is not limited to, a receipt or bill of sale; or
2. Is an employee, agent, or contractor of the property’s owner who is authorized to sell the property on behalf of the owner. Reasonable proof of authorization to sell the property includes, but is not limited to, a signed letter on the owner’s letterhead, dated no later than 90 days before the sale, authorizing the seller to sell the property."

Thus, it would appear that statutory requirements and prohibitions contained in Part II, Chapter 538, Florida Statutes, address the proper manner in which secondary metals recyclers may

protect their interest in metals they acquire. I trust these informal comments will be of assistance to you in resolving the matter you raise.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 538.18(11), Fla. Stat.

[2] Section 538.19(1), Fla. Stat.

[3] Section 538.19(2), Fla. Stat.

[4] Section 538.23(3)(a) and (b), Fla. Stat.

[5] Section 538.23(4), Fla. Stat.

[6] Section 538.24, Fla. Stat.