IN THE DISTRICT COURT OF MOBILE COUNTY, ALABAMA

MOFFETT LINDA,)		
	Plaintiff,)		
)		
V.)	Case No.:	DV-2008-002692.00
)		
DEANS SCAPE METAL,)		
	Defendant.)		

ORDER

This is a very sad and tragic case for the Plaintiff. The testimony and exhibits revealed that the Plaintiff had entrusted her brother, Warren Evans, to take her 1999 Buick Century automobile to Bama Auto Repair in Chickasaw, Alabama, to have some repair work done on the vehicle. Apparently, the repair work was completed and the vehicle had been placed outside of the fence of the auto repair business on Friday, October 10, 2008, and had been allowed to sit there for one (1)week, until October 17, 2008. On that date, the vehicle was stolen, by means of being hauled off behind a "green Dodge pickup" truck. Testimony established that the owner of the Bama Auto Repair shop had contacted Warren Evans, the brother of the Plaintiff, about coming to pick up the vehicle. The brother had been informed that if the vehicle were not picked up, then the repair shop would start charging a daily storage fee. Mr. Evans apparently told the auto repair shop owner simply to park the vehicle outside of the business' fence and leave the keys in a mutually-agreed upon hidden area on the car. A former employee of the auto repair shop, Walter Leon Dees, Jr., [hereinafter "Leon Dees"] who had actually done work on the Century, came by the business on October 17, 2008, looking for money and inquiring about the automobile. Several conversations ensued between the business owner and Leon Dees, but those talks are not directly pertinent to this litigation.

After hauling the Buick Century to the Defendant Dean's Scrap Metal's place of business in Eight Mile, Alabama, on October 17, 2008, Leon Dees lied to the Defendant in that he (Dees) stated that he (Dees) was the owner of the vehicle, when he never was the owner, and even signed an Affidavit of Ownership asserting that he was the owner and that the title to the vehicle had been lost or stolen. The Defendant paid Leon Dees \$129.60, as scrap money for the vehicle and proceeded to crush it that day. A police investigation uncovered the criminal act done by Leon Dees and he was charged with Theft of Property in the First Degree the next day, October 18, 2008.

This lawsuit was brought by Ms. Linda Moffett against Dean's Scrap Metal Company in an effort to recover the value of her stolen and destroyed vehicle. As sad as it is for Ms. Moffett to have lost her vehicle, and for it to have been destroyed, this Court realizes how sad it is for her that the Court is required, by the law and the facts, to enter a Judgment in favor of the Defendant, Dean's Scrap Metal. The Court is compelled to enter this ORDER because once Leon Dees brought the vehicle to the Defendant and falsified the Affidavit of Ownership, and once the Defendant Dean's Scrap Metal made the required record of the transaction, Defendant Dean's Scrap Metal was not under any further legal obligation to require additional proof of ownership.

The Alabama Legislature in 2007 passed into law a collection of statutes termed the "Secondary Metal Recycling" laws and they are found in Section 13A-8-30 through -39 of the <u>Alabama Criminal Code</u>. These laws set out the requirements placed upon recyclers of secondary metals as well as imposing criminal penalties for violations of the law. As can be seen from the exhibits which the Defendant

introduced, and which this Court has made part of the record in this case, Dean's Scrap Metal followed the law it was required to follow and is not liable to the Plaintiff, Ms. Moffett, even though Dean's crushed her vehicle without her permission. Dean's observed the vehicle, received an Affidavit of Ownership, even though falsified, and paid a reasonable price for what was offerred as junk. The fact that Leon Dees was committing what appears to be a serious criminal act does not make Dean's Scrap Metal responsible. Ms. Moffett's 1999 Buick Century was one (1) of eleven (11) vehicles purchased by Dean's that day. In comparing the prices paid for the other vehicles, Ms. Moffett's car was not the highest valued item, but it was also not the least valued. If Ms. Moffett's vehicle had been "brand new" or in what some call a "mint condition", then it could be argued that Dean's Scrap Metal violated some duty a reasonable person would have had in that situation to conduct a further investigation into the vehicle's background. Here, however, there was no testimony that this vehicle was anything particularly more or less than any other vehicle that Dean's buys and destroys on a daily basis.

It could well be argued that the law relating to scraping of vehicles should put more of an obligation on the metal recycling company than it currently does. Examples might include a requirement that the recycler wait for three (3) days or five (5) days or seven (7) days or longer before destroying a vehicle, or a requirement that the recycler receive clearance from law enforcement that the vehicle is not stolen prior to crushing it, or a requirement that the seller produce in fact a bona fide title to the vehicle before the recycler can purchase it. Unfortunately for Ms. Moffett, those requirements are not currently in our law and this Court, like any Court, is authorized only to follow the law, and not write new law, which is a function under our system of government reserved for the Legislaure.

As part of that function, the Legislature included in the statutes establishing the Metal Recycling law a section where the Legislature clearly expressed its intent that victims of theft of metal property be fully compensated ("full restitution" be ordered) when the criminal who stole such property is sentenced for that theft. See Section 13A-8-34, Code of Alabama, 1975, amended 2007. Ms. Moffett certainly has the option of contacting the District Attorney's Office regarding the possible prosecution of Leon Dees for theft of her vehicle and, in the event of conviction, an order from the criminal court judge of restitution from Leon Dees.

Although the sympathy of this Court certainly rests with the Plaintiff, Ms. Moffett, the law which this Court must follow directs that Judgment be entered in favor of the Defendant, and it is so ordered. Costs having been prepaid, no order is made as to same. All parties have fourteen (14) days to file an appeal. Done and entered this 4th day of September, 2009.