COLORADO COURT OF APPEALS

Court of Appeals No. 12CA0021
Morgan County District Court No. 10CV62
Honorable Charles M. Hobbs, Judge

Huffman Livestock, LP, a Virginia limited partnership,

Plaintiff-Appellant,

v.

M5 Consulting, LLC, a Colorado corporation; Jamie Mount, a Colorado citizen; and Cattle Consultants, LLC, a Colorado corporation,

Defendants-Appellants.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division VII
Opinion by JUDGE ROMÁN
Hawthorne and Furman, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(f)
Announced January 17, 2013

Snell & Wilmer L.L.P., John O'Brien, Jessica E. Yates, Denver, Colorado, for Plaintiff-Appellant

Houtchens, Houtchens, & Greenfield, L.L.C., Brandon B. Houtchens, Greeley, Colorado, for Defendants-Appellees M5 Consulting, LLC and Jamie Mount

Wyatt & Wyatt, LLC, David R. Wyatt, Fort Collins, Colorado, for Defendant-Appellee Cattle Consultants, LLC

Plaintiff, Huffman Livestock, LP (Huffman) appeals the November 30, 2011, district court judgment in favor of defendants, Jamie Mount, a Colorado citizen (Mount), M5 Consulting, LLC, a Colorado corporation (M5), and Cattle Consultants, LLC, a Colorado corporation (Cattle Consultants). We reverse and remand with directions.

I. Background

At issue in this case are 165 cattle that Huffman sold to Freddie Lynn Smith II (Smith), for which Huffman was never paid.[1] Smith in turn sold the cattle to Mount. Huffman sued Mount, who claims to be a good faith purchaser.

Long before these transactions, in 2009, unbeknownst to Huffman, Mount and Smith entered into a joint venture and agreed to form two companies together. As part of their business relationship, Mount and Smith together applied for a number of loans to finance cattle purchases, including a $750,000 line of credit. Over time, Smith was unable to repay debts owed to Mount as well as their lending institutions, including Cattle Consultants.

[1] Huffman obtained default judgment on breach of contract and fraud claims against three of the original defendants, including Smith and two Oklahoma corporations belonging to Smith, C&S Cattle and T&S Livestock.

To address Smith's escalating debt problems, Smith and Mount entered into a "Pay-Off Agreement."

The Pay-Off Agreement provided that Smith would sell his cattle to Mount at a $150 per head discount. The discount would apply toward repaying the $37,000 Smith owed Mount's M5 entity as well as repaying a portion of the principal owed to Cattle Consultants. In addition, Mount received an additional $325,000 line of credit from Cattle Consultants to purchase Smith's cattle and to facilitate execution of the Pay-Off Agreement. Finally, pursuant to the Pay-Off Agreement, the cattle Mount purchased from Smith would be sent to Colorado for Cattle Consultants to perfect its security interest and to satisfy Smith's debt.

Smith did not deliver all his cattle to Colorado, however. Instead, Smith sought permission from Mount to use "replacement cattle," which Smith would purchase from a third party in order to satisfy the Pay-Off Agreement. Mount approved this arrangement. Mount and Smith then received an additional $750,000 line of credit from Cattle Empire, a Kansas feedlot company, to purchase the replacement cattle.

Against this backdrop, Smith approached Huffman about buying cattle from him, which, unbeknownst to Huffman were to be

the replacement cattle that Smith planned to sell to Mount to satisfy his debt to Mount. Huffman conducted due diligence on Smith's ability to pay for the cattle, in part by contacting Mount.

Mount informed Huffman that "as far as he knew everything was fine, [and Smith] had never bounced a check." Mount did not reveal his joint ventures with Smith, tell Huffman about Smith's financial difficulties, or disclose that Mount himself would ultimately purchase Huffman's cattle from Smith at a $150 discount per head.

Based on the information disclosed, Huffman shipped 165 cattle to English feedlot[2] and invoiced C&S Cattle $99,510.99. Mount purchased the cattle from Smith for $77,125.79[3] by sending a check for that amount directly to Cattle Consultants to satisfy Smith's debt. Mount then sold the cattle to another party for a net profit of $110,982.01.[4] But Smith never paid Huffman.

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[2] English Feedlot is a Colorado company with feed yards in Brush and Wiggins, Colorado. It was a client of Mount's M5 consulting company.

[3] This is the amount Smith owed to Cattle Consultants.

[4] The feed bill for finishing the cattle was $76,890.37. The sale proceeds were $187,872.38. The difference, $110,982.01, was deposited in the trial court's registry.

Huffman brought the following claims: (1) fraud and negligent misrepresentation against Mount and M5[5]; (2) unjust enrichment, conversion, and civil theft against Mount, M5, and Cattle Consultants; and (3) replevin[6] against all parties.

A trial to the court was held. The district court issued findings of fact and conclusions of law, dismissing all claims against Mount, M5, and Cattle Consultants. The district court found that Mount was a buyer in the ordinary course, who acted in good faith and, as such, was protected under applicable provisions of Colorado's Uniform Commercial Code (UCC).

Because the court concluded that Mount was a buyer in the ordinary course of business, the court also found that Cattle Consultants held a perfected security interest in the cattle owned by Mount. The court ordered the $110,982.01 held in the court's registry to be paid to Cattle Consultants and Mount.

Huffman appeals.

II. Standard of Review

[5] Huffman also asserted that M5 was liable under a reverse corporate piercing-alter ego theory based on Mount's control of M5.

[6] At trial, the replevin claim was no longer viable because the cattle had been sold. Therefore, pursuant to C.R.C.P. 15(b), Huffman's claim for replevin was amended to conform to the evidence of a claim for declaratory relief that Huffman was entitled to the cattle sale proceeds in the court's registry.

When faced with a mixed question of fact and law, we "review the findings of fact for clear error and still look de novo at the legal conclusions that the trial court drew from those factual findings." *E-470 Pub. Highway Auth. v. 455 Co.*, 3 P.3d 18, 22 (Colo. 2000).

III. Huffman's Appeal as to Mount

Huffman contends the district court erred in concluding Mount was a buyer in the ordinary course under the UCC.[7] We conclude that Mount's conduct fails to meet the objective "observance of reasonable commercial standards of fair dealing" requirement for merchants under section 4-2-103(1)(b), C.R.S. 2012, which, along with section 4-1-201(b)(19), sets forth the definition of "good faith", required for one to be a "buyer in the ordinary course of business" under section 4-1-201(b)(9), C.R.S. 2012. *See* § 4-1-201 official cmt. 20, C.R.S. 2012. Based on this resolution, we do not reach the separate subjective element of

[7] Because the parties did not comply with the livestock bill of sale laws, sections 35-54-101 to -106, C.R.S. 2012, the livestock requirements of Colorado's UCC codified in section 4-2-403(1.5), C.R.S. 2012, did not apply, and the district court properly relied on the applicable UCC sale and title provisions under section 4-2-403(1) and (2), C.R.S. 2012, governing transfer of title. *See Cugnini v. Reynolds Cattle Co.*, 687 P.2d 962, 965 (Colo. 1984).

"honesty in fact."[8] Because we agree with Huffman that Mount's conduct lacked "good faith" we reverse.

A. Buyer in the Ordinary Course

If Mount is a buyer in the ordinary course under section 4-2-403(2), C.R.S. 2012, he received good title to the cattle when he purchased them from Smith, such that Huffman's rights were terminated and Cattle Consultants had a perfected security interest. Whether Mount qualifies as a "buyer in the ordinary course" – as defined in section 4-1-201(b)(9) and as applied in section 4-2-403(2) – is a question of law that we review de novo. *Georg v. Metro Fixtures Contractors, Inc.*, 178 P.3d 1209, 1212 (Colo. 2008).

A "buyer in the ordinary course of business" is defined as "a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a [merchant] in the business of selling goods

[8] "Good faith" requires (1) "honesty in fact," measured subjectively; and (2) "the observance of reasonable commercial standards of fair dealing," measured objectively. *See* J. White & R. Summers, *Handbook of the Law Under the Uniform Commercial Code* § 6-3, at 218 (2d ed. 1980); *see also First Nat'l Bank v. Gilbert Marshall & Co.*, 780 P.2d 73, 75-76 (Colo. App. 1989).

of that kind." § 4-1-201(b)(9); *see* § 4-2-104(1), C.R.S. 2012 (defining "merchant"). In a transaction for the sale of goods, a buyer merchant[9] can also obtain good title as a good faith purchaser by showing he acted in good faith, even when the person from whom he purchased the goods had voidable title due to lack of payment or fraudulent acquisition. § 4-2-403(1), C.R.S. 2012.

B. Good Faith – Reasonable Commercial Standards of Fair Dealing

The UCC definition of "good faith" requires both "the subjective element of honesty in fact and the objective element of the observance of reasonable commercial standards of fair dealing." § 4-1-201 official cmt. 20, C.R.S. 2012; *see People v. Yascavage,* 101 P.3d 1090, 1092 (Colo. 2004) (comments to a statute are relevant in its interpretation); *West v. Roberts*, 143 P.3d 1037, 1041 (Colo. 2006) (quoting § 4-1-201(b)(19), C.R.S. 2012).

1. Reasonable Commercial Standards

Observance of reasonable commercial standards of fair dealing is measured objectively. *Brasher's Cascade Auto Auction v. Valley Auto Sales & Leasing*, 15 Cal. Rptr. 3d 70, 75 (Cal. Ct. App. 2004).

[9] There is no dispute that Mount was a merchant and that he bought the cattle from Smith, who was also a merchant in the business of selling cattle.

In 2006, the Colorado legislature amended title 4 C.R.S. to broaden applicability of the merchant standard of good faith (honesty in fact and the observance of reasonable commercial standards of fair dealing) to the remaining Articles of the Uniform Commercial Code.[10] § 4-1-201 official cmt. 20. As a result, the same "good faith" standard now applies to (1) "buyers" and "purchasers" in article 2 sales; (2) "drawers" of notes under article 3; and (3) "holders in due course" of negotiable instruments under article 9. *See* §§ 4-3-103(a)(3) – (4), 4-3-302(a)(2), 4-9-102(a)(43), C.R.S. 2012. Accordingly, we recognize the terms "good faith purchaser for value" and "holder in due course" as interchangeable with "buyer in the ordinary course," and we find cases dealing with these terms instructive. David Morris Phillips, *The Commercial Culpability Scale*, 92 Yale L.J. 228, 231 & n.7 (1982) (the "good faith purchase doctrine" "grants certain transferees better rights than their transferors had"; this "transferee goes by several names in the Code": "he is a 'good faith purchaser for value,' UCC § 2-403(1), or a 'buyer in the ordinary course of business,' *id.* § 2-403(2), (3); in article 3 (commercial paper),

[10] Former section 4-1-201(b)(19), C.R.S. 1976, applied only to merchants, while "good faith" applicable to other articles of the UCC required only subjective "honesty in fact." § 4-1-201 cmt. 20.

a 'holder in due course,' *id.* § 3-305; . . . in article 8 (securities), a 'bona fide purchaser,' *id.* § 8-302(1); and in article 9 (secured transactions), a purchaser who 'gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected,' *id.* § 9-301(1)(c), or a 'buyer in ordinary course of business,' *id.* § 9-307(3)").

Under the UCC's good faith requirement, a "holder 'must act in a way that is fair according to commercial standards that are themselves reasonable.'" *Any Kind Checks Cashed, Inc. v. Talcott*, 830 So. 2d 160, 165 (Fla. Dist. Ct. App. 2002) (quoting *Maine Family Fed. Credit Union v. Sun Life Assurance Co.*, 727 A.2d 335, 343 (Me. 1999)). As the Maine Supreme Court observed:

> While there has been little time for the development of a body of law interpreting this new objective requirement, there can be no mistaking the fact that a holder may no longer act with a pure heart and an empty head and still obtain holder in due course status. The pure heart of the holder must now be accompanied by reasoning that assures conduct comporting with reasonable commercial standards of fair dealing.

Maine Family, 727 A.2d at 342 (footnote omitted).

Here, the district court found the cattle industry to be one in which handshakes are the norm, reputation and personal relationships take precedent over regulatory schemes, and candor

between merchants is not expected. However, the district court erred in not applying section 4-2-103(1)(b), which codifies the UCC's "good faith" merchant definition, in evaluating whether Mount, a merchant, acted in good faith. § 4-2-103(1)(b). In so erring, the court incorrectly framed the issue as "what duty was owed by Mount to Huffman" and "the reasonableness of Huffman's reliance thereon."

In addressing whether Mount acted in good faith, the district court determined that because loose standards in the cattle industry did not require more candor or honesty, Mount was a good faith purchaser for value and a buyer in the ordinary course. The district court applied section 4-2-403(1) and (2), which govern the power to transfer title to good faith purchasers for value and buyers in ordinary course of business and concluded: (1) since Mount did not have actual knowledge of Smith's fraud, and the cattle industry does not expect "candor between merchants to reach near fiduciary standards," Mount was under no duty to disclose Smith's financial dealings of which he was aware, and (2) because of the loose cattle

industry standards, Huffman's reliance on Mount's information was unreasonable.[11]

Further, the district court's erroneous application of an incorrect standard for good faith resulted in an outcome that contravenes the policy behind section 4-2-403(1), that is, "to protect the party least able to protect herself - the good faith purchaser for value." *West*, 143 P.3d at 1045 (citing *Anderson Contracting Co. v. Zurich Ins. Co.*, 448 So. 2d 37, 38 (Fla. Dist. Ct. App. 1984) (original seller better positioned to take precautions to prevent loss than a later purchaser)); *see also Brasher's*, 15 Cal. Rptr. 3d at 90 (where innocent parties must suffer from acts of a third party, "the loss should fall upon the one whose conduct created the circumstances which enabled the third[] party to perpetrate the wrong or cause the loss").

Here, the district court incorrectly framed the tripartite relationship between Huffman, Smith and Mount, as one involving two innocent parties, Huffman and Mount. However, Mount's

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[11] The district court stated that in the cattle industry there is a routine failure to rely on state and federal statutory schemes; that the industry standard is based on the maxim *caveat venditor*: let the seller beware; that candor is not expected between merchants; and that Huffman's reliance on Mount's statements was unreasonable.

conduct created the circumstances which enabled Smith to perpetrate the wrong or cause the loss and so Mount was not an innocent party. Therefore, reliance on the cattle industry's informal standards to justify Mount's innocence, despite his lack of good faith, was inapposite to UCC policy purposes.

Under the UCC's objective good faith requirement, a party acts without good faith by failing to abide by routine business practices. *See Rudiger Charolais Ranches v. Van De Graaf Ranches,* 994 F.2d 670, 672-73 (9th Cir. 1993) (reasonable commercial standards include a "custom or practice" unless in conflict with a statute).

In *Rudiger*, a merchant buyer took delivery of cattle and paid for them without obtaining the brand release documents required by statute. The Ninth Circuit held as a matter of law that the buyer was not a good faith purchaser because it did not comply with the "reasonable commercial standards" requirement of the UCC even though it acted honestly and according to the standards of the cattle trade. *Id.* at 673. The Ninth Circuit relied on section 2-103(1)(b) of the UCC, holding that a custom or practice which violates a statute is not a reasonable commercial standard, and thus the cattle industry customs were no longer reasonable. *Id.*

Here, the Colorado statutory provisions governing sales of cattle require a legal bill of sale and a properly executed brand inspection certificate indicating the owner's brand. *See* §§ 35-53-102, 35-54-103, C.R.S. 2012. These principles of brand law supplement the UCC, and, to the extent they are inconsistent with UCC article 2, they supersede it. *See Moffat County State Bank v. Producers Livestock Marketing Ass'n*, 598 F. Supp. 1562, 1567 (D. Colo. 1984), *aff'd*, 833 F.2d 908 (10th Cir. 1987). However, the UCC does not supplant the brand laws, and wherever possible, UCC provisions and the specific livestock bill of sale statutes should be harmonized. *Cugnini v. Reynolds Cattle Co.*, 648 P.2d 159, 163 (Colo. App. 1981), *aff'd*, 687 P.2d 962 (Colo. 1984) (*Cugnini II*).

Colorado's UCC also codifies passage of title to cattle. § 4-2-403(1.5), C.R.S. 2012 (in passing title to cattle, if seller has not received payment, the purchaser "does not have power to transfer good title to a good faith purchaser for value until payment is made").[12] The legislature specifically added subsection (1.5) to 4-2-403 to control transferring title to cattle. *See West,* 143 P.3d at

[12] In Colorado, a bill of sale transfers title to livestock pursuant to sections 35-54-101 to -106. However, when no bill of sale is issued, title to cattle transfers pursuant to the UCC. *Cugnini II*, 687 P.2d at 965; *Rochester Ranch Co. v. Stubblefield*, 640 P.2d 267, 268 (Colo. App. 1981).

1043. Accordingly, because our legislature has explicitly addressed how the passage of title to cattle is to proceed, a custom or practice which violates this statute is not a reasonable commercial standard as a matter of law. *Rudiger*, 994 F.2d at 673.

We recognize that in *Cugnini* a good faith purchaser prevailed in spite of his failure to comply with livestock bill of sale law. *Cugnini II*, 687 P.2d at 967. There, the sellers claimed that the buyer did not have title to the cattle because it was not a buyer in the ordinary course. The sellers specifically pointed to the buyer's failure to acquire a brand inspection certificate and acceptance of an inadequate bill of sale as violating the standards of fair dealing in the cattle trade. Our supreme court reviewed the trial court's findings related to the prevailing standards of fair dealing in the cattle trade and accepted its conclusion that the buyer's "failure to obtain a brand inspection certificate prior to paying for the cattle was within the ordinary course." *Id.* at 968. However, the supreme court did not provide guidance on what evidence is required to determine an industry's prevailing standards. *Id.*

Moreover, the court in *Cugnini II* explicitly refrained from broadly concluding whether these cattle industry standards were reasonable. *Id.* Instead, *Cugnini II* held that the cattle industry

standards of noncompliance with the livestock bill of sale statute were reasonable, "at least within the context of [that particular buyer/seller] relationship." *Id.* The buyer never obtained a brand inspection certificate and made "only minimal efforts regarding the brand inspection certificate and the bill of sale." *Id.* Nonetheless, it was deemed reasonable for the buyer to presume that the sellers rightfully owned the cattle because the buyer was unaware of the sellers' financial difficulties and he had worked with the sellers in the past without any problems. *Id.*

The facts in this case are distinguishable from *Cugnini*. Mount knew of Smith's financial problems and helped orchestrate the transaction at issue for the purpose of helping Smith pay off his debts to Cattle Consultants and Mount. Not only that, the bargain price terms were favorable to Mount, and Mount had been heavily involved in Smith's affairs prior to the Huffman sale. *See id.* Mount relies on the loose commercial standards of fair dealing among cattle dealers to explain why he had no "duty of care to Huffman [to] disclose all adverse information he knew about Smith." We agree with Huffman, however, that this argument misses the point.

Observance of commercial standards amounts to good faith if the standards are "reasonably related to achieving fair dealing" in

the context of the particular industry in question. *Daiwa Prods., Inc. v. Nationsbank*, 885 So. 2d 884, 889 (Fla. Dist. Ct. App. 2004). And "fairness" should be "measured by taking a global view of the underlying transaction and all of its participants." *Cunningham v. LeGrand*, 2012 WL 2054112, *11 (S.D. W. Va. No. 2:11-cv-0142, June 5, 2012) (unpublished memorandum opinion and order) (quoting *Any Kind Checks*, 830 So. 2d at 165)).

Based on the totality of the circumstances, and the undisputed facts related to Mount and Smith's relationship, we disagree with the district court's conclusion that the rather loose standards of fair dealing in the cattle industry excused Mount's and Smith's conduct. Further, as discussed, because the loose standards of the cattle industry conflict with specific statutory provisions in this case governing livestock sales, they cannot reasonably justify Mount's actions.

2. Prior Knowledge of Seller's Financial Difficulties

Courts have also found that prior knowledge of the seller's financial difficulties, or acquiring the goods in connection with a seller's pre-existing debt with the buyer, precludes a finding of "good faith." In *Blackhawk Pontiac Sales, Inc. v. Orr,* 405 N.E.2d 499, 502 (Ill. App. Ct. 1980), a purchaser-dealer who bought cars

from a seller-dealer with voidable title was found not to act in good faith because (1) he knew when the cars were delivered to him that they were not paid for because the seller-dealer was in financial difficulty, had been passing bad checks, and did not have enough money to purchase the cars; and (2) the whole transaction was for the purpose of wiping out the seller-dealer's previous debt owed to the purchaser-dealer, so that the purchaser-dealer did not give value. *Id.* at 502-03.

Similarly, in *Gross v. Appelgren*, 171 Colo. 7, 19, 467 P.2d 789, 795 (1970), our supreme court observed that "[t]he Bank was so closely connected with the entire transaction that it cannot be heard to say under the circumstances here that it, in good faith, was a holder in due course of the several notes of the plaintiffs." *See Commercial Credit Co. v. Childs*, 137 S.W.2d 260, 262 (Ark. 1940) ("We think appellant was so closely connected with the entire transaction or with the deal that it can not be heard to say that it, in good faith, was an innocent purchaser of the instrument for value before maturity."); *see also In re Hamilton*, 197 B.R. 305, 307 (Bankr. E.D. Ark. 1996) (defendant who was "not a stranger to the transactions, but an integral part of the transactions from their inception" did not act in good faith).

Here, Mount knew of Smith's financial difficulties, he was heavily involved in Smith's affairs, he had participated in business ventures with Smith, he co-signed a line of credit with Smith, he acquired financing for the transaction involving Huffman's cattle, and he helped arrange financing for the transaction so as to ensure that Smith was able to repay the debt owed to M5 and Cattle Consultants.

3. Purchasing Goods at Below Market Value

Likewise, other jurisdictions have held that a buyer is not a good faith purchaser when there are such obvious suspicious circumstances that would put a buyer on notice. Specific circumstances include purchasing the goods at below market value or for "a bargain." *See, e.g., Karibian v. Paletta*, 332 N.W.2d 484, 487 (Mich. Ct. App. 1983). Purchasing goods at below market value is a red flag that can deny a party "good faith purchaser" status. *See, e.g., Tempur-Pedic Int'l, Inc. v. Waste to Charity, Inc.*, 483 F. Supp. 2d 766, 775 (W.D. Ark. 2007); *Interstate Cigar Co. v. United States*, 32 Fed. Cl. 66, 70 (1994); *Kotis v. Nowlin Jewelry, Inc.*, 844 S.W.2d 920, 924 (Tex. App. 1992).

In this case, Smith was required to sell his cattle to Mount at a $150 per head discount, for a total discount of $30,900 applied

toward Smith's debt owed to Mount's M5. This discount further evidences the unreasonable nature of the transaction.

4. Knowledge of Irregularities in a Transaction

Additionally, prior knowledge of irregularities in a transaction or participating in a transaction that is not commercially reasonable can prevent the good faith standard from being met. *See, e.g., Blackhawk*, 405 N.E.2d at 502; *Carter v. Cookie Coleman Cattle Co.*, 271 S.W.3d 856, 860 (Tex. App. 2008).

In *In re Four Star Music Co.*, 2 B.R. 454, 464-65 (Bankr. M.D. Tenn. 1979), a party was not a good faith buyer when it did not follow industry practices and "the terms of the purchase and sale were so highly unusual and beneficial" that the merchant could not have believed they were commercially reasonable. *Id.* at 465.

As stated by the Delaware Supreme Court in a case involving the holder of chattel paper: "[T]he more the holder knows about the underlying transaction which is the source of the paper, the more he controls or participates in it, the less he fits the role of good faith purchaser for value . . . ." *Jones v. Approved Bancredit Corp.*, 256 A.2d 739, 741-42 (Del. 1969).

Here, evidence at trial showed the following:

- Mount and Smith engaged in business partnerships;

- Mount knew of Smith's financial difficulties;
- Mount was heavily involved in Smith's affairs;
- Mount helped arrange for Smith's loan with Cattle Consultants, and helped Smith get financing for other transactions;
- Mount secured a joint line of credit with Smith from Cattle Empire and orchestrated the Pay-Off Agreement so that Smith could pay back Cattle Consultants the loan proceeds; and
- Mount received a $150 discount per head of cattle.

Moreover, Mount testified that he engaged in the transaction at issue to ensure that Smith repaid a preexisting debt to Mount's entity, M5, by purchasing the cattle from Smith at a substantial discount. Mount further testified that he and Smith had a joint line of credit through Cattle Empire for the purpose of paying Huffman for the replacement cattle, so that Mount could buy the cattle from Smith and pay off Smith's existing debt to Cattle Consultants.

For these reasons, we conclude that Mount was not a good faith purchaser or a buyer in the ordinary course because he did

not act in good faith. Therefore, Mount did not take good title under the UCC. § 4-2-403(1)-(2).

IV. Huffman's Appeal as to Cattle Consultants

Because we find that Mount was not a buyer in the ordinary course and did not take good title under the UCC, we necessarily conclude that Cattle Consultants' security interest was not perfected.

Under section 4-9-203(b), C.R.S. 2012, "a security interest is enforceable against the debtor and third parties with respect to the collateral only if: (1) [v]alue has been given; [and] (2) [t]he debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party." As concluded above, Mount had no rights in Huffman's cattle, nor did he have the power to transfer rights to others, because he was not a buyer in the ordinary course. Therefore, Cattle Consultants' security interest is not enforceable against Huffman.

V. Huffman's Request for Relief

Huffman seeks proceeds from the cattle sale in lieu of reclamation for the replevin-declaratory relief claim, as well as a favorable judgment on the conversion claim.

A. Replevin or Profits in Lieu Thereof

Because neither Mount nor Cattle Consultants obtained good title to the cattle, Huffman remains the rightful owner and an unpaid seller. Mount and Cattle Consultant's lack of good faith purchaser or buyer in the ordinary course status does not deprive Huffman of the right to reclamation. § 4-2-507 official cmt. 3, C.R.S. 2012; § 4-2-511(2)-(3), C.R.S. 2012; *Cooperative Finance Ass'n v. B&J Cattle Co.*, 937 P.2d 915, 919 (Colo. App. 1997); *Ranchers & Farmers Livestock Auction Co. v. Honey*, 38 Colo. App. 69, 73-74, 552 P.2d 313, 317 (1976) (when defendants sold cattle on buyer's behalf, although they acquired and then passed title, because they were not good faith purchasers, seller maintained a right of reclamation).

However, Huffman cannot reclaim the cattle because they have since been sold. Accordingly, Huffman is entitled to declaratory relief that it remained the rightful owner of the cattle. *Ranchers & Farmers*, 38 Colo. App. at 73-74, 552 P.3d at 317; *see also Greater Louisville Auto Auction, Inc. v. Ogle Buick, Inc.*, 387 S.W.2d 17, 21 (Ky. Ct. App. 1965). Huffman is therefore entitled to judgment in its favor on the replevin claim and the $110,982.01 in net proceeds from the sale of the cattle.

B. Huffman's Other Claims

Huffman's other claims include (1) conversion and damages against Mount and Cattle Consultants; (2) civil theft against Mount and Cattle Consultants; and (3) reverse corporate piercing-alter ego against Mount and M5.

Consistent with our finding that Mount and Cattle Consultants did not acquire title to the cattle, we remand these claims to the trial court for further findings.

VI. Conclusion

Based upon the above disposition, Huffman is entitled to favorable judgment on its request for declaratory relief and the cattle sale proceeds of $110,982.01. We remand for further proceedings on Huffman's remaining claims of conversion, damages, civil theft, and reverse corporate piercing-alter ego.

The district court's judgment is reversed and the case is remanded for further determinations consistent with this opinion.

JUDGE HAWTHORNE and JUDGE FURMAN concur.