

THE THREE MILLION DOLLAR MERCEDES

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In last month's column, we discussed the common situation of someone suing to obtain possession of a collector car that someone else had but which the plaintiff felt he or she had the true right to possess. But what about the opposite situation, where a person or business (such as a restorer or storage company) has possession of a car that really belongs to someone else — but you don't know which of multiple claimants really has the right to it? How do you decide who owns it — and avoid being sued by the others who disagree with your decision?

To deal with such also-common situations, the law has developed the concept of "interpleader." Interpleader is a procedure where the holder of property (who asserts no ownership claim to it) initiates a state or federal court lawsuit joining the multiple potential claimants as defendants. The benefit of interpleader is that it usually relieves the holder of the property from liability to the claimants, leaving them to fight over it among themselves.

A recent interpleader action involving a very valuable collector car was *Truck-a-Tune, Inc. v. Re*, decided on May 2, 1994 by the United States Court of Appeals for the Second Circuit.

According to the court, Gisela Von Krieger, a United States citizen, died in 1989 in Switzerland. She owned a 1936 Mercedes-Benz Model 540K, which she had stored at the Homestead Inn in Greenwich, Connecticut, since 1959. She continued to pay the monthly storage fees after she moved to Europe in the early 1960s. When Dr. James Smith purchased the Homestead Inn, he transferred storage responsibilities for the car to Truck-a-Tune, a company he owned. Upon Von Krieger's death, a Swiss probate court authorized the administrator of her es-

tate to recover the Mercedes. The car, which apparently still bore a 1956 license plate, was claimed to be worth between \$2.5—3 million. The administrator appointed Thomas Re as his representative. Re initiated legal proceedings in New York State, where the Surrogate's Court ordered Truck-a-Tune to turn over the Mercedes to him. Truck-a-Tune, however, refused.

Truck-a-Tune filed an affidavit with the Greenwich Tax Assessor, stating that it had possession of the Mercedes and that the car's owner was deceased. Because Von Krieger had failed to pay personal property taxes on the Mercedes since 1959, the Assessor asked the Connecticut Probate Court to appoint a temporary Connecticut administrator of the estate to prevent the car from leaving Connecticut. Gayle Wilhelm was appointed administrator and directed to take possession of the car.

Re then obtained an order from the New York Surrogate's Court directing Truck-a-Tune to appear and show why it should not be sanctioned for failing to deliver the Mercedes to Re.

Faced with these apparently contradictory commands from the New York and Connecticut state courts, Truck-a-Tune brought an interpleader action in federal court. Truck-a-Tune sought (1) an order requiring defendants Re and Wilhelm to settle their respective claims to the Mercedes, and (2) an injunction against any action by them in any court against Truck-a-Tune for failing to deliver the Mercedes at an earlier date. It also asked for a temporary restraining order and a preliminary injunction.

Shortly before the hearing on Truck-a-Tune's motion for a preliminary injunction, Re and Wilhelm agreed that Truck-a-Tune should turn the car over to Wilhelm. At the hearing, Truck-a-

Tune argued that that agreement did not end the controversy, because the company still faced contempt of court charges in New York Surrogate's Court for its failure to turn over the car to Re as ordered.

The federal District Court judge disagreed, denied Truck-a-Tune's motion, and dismissed its complaint. It left to be decided by a state court the dispute between Truck-a-Tune and Re. Truck-a-Tune appealed.

In its May 2, 1994 opinion, the Court of Appeals affirmed the lower court's ruling. It agreed that the District Court acted within its discretion in declining to decide the dispute regarding the contempt charges against Truck-a-Tune. Truck-a-Tune thus had to defend against those charges back in the New York state court.

Those in the collector car business who often have in their possession vehicles owned by others should keep the interpleader procedure in mind in the event of conflicting claims of ownership by others. The Truck-a-Tune case, however, illustrates the risks that persons or companies "caught in the middle" may still face, and the need to act quickly to consider such a proceeding when (or even before) a formal claim is filed or an order is entered against them.

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