

THE CASE OF THE TWO-LITER LOTUS

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Misrepresentation or fraud claims regarding old cars typically allege that the seller's promises about the vehicle exceeded its true value, condition, or authenticity. But did you ever consider that such claims could be based on the allegation that the car was, in a sense, more than what the seller promised?

This was the situation presented in the case of *SpyderEnterprises, Inc. v. Ward*, decided on December 30, 1994 by the United States District Court for the Eastern District of New York in Brooklyn.

According to the court, Spyder is a corporation owned by its president, Everett Anton Singer, a vintage car collector. Singer learned from a November 1989 magazine advertisement that Richard Ward was interested in selling a 1962 Lotus 24 Formula One racer — one of only twelve that were built, and of only nine that are known to still exist. The ad read: "Lotus Type 24/BRM Formula One, 1962 — Chassis #945 w/6-spd Colatti box, excellent original condition throughout, first class racing history, some spares, \$300,000."

Singer and Ward had telephone conversations and exchanged correspondence regarding the car. Singer testified that, in the course of these communications, Ward told him that the Lotus' engine had a 1.5-liter displacement. The communications culminated in Singer's purchase of the vehicle in March 1990 for \$255,000.

Soon after Singer took possession of the car in April 1990, he dismantled it for cleaning. After taking apart the chassis, he discovered that the serial number of the engine did not comport with the serial number listed on a vehicle identity form Ward had previously sent him. Singer's investigation revealed that the BRM engine actually had a maximum cylinder capacity of two liters instead of 1.5.

Singer argued that this additional ca-

capacity was a major detriment, rather than an enhancement of the value of the car, in light of the history of Formula One racers. Singer asked Ward to refund his money; Ward refused. Spyder then sued Ward in federal court, alleging that Ward had made fraudulent representations to Singer about the car's engine which had induced the purchase. Spyder asked the court to rescind (*i.e.*, undo) the sale. Ward countered that (1) he had not fraudulently induced the sale (and had not represented that the engine had a 1.5 liter cylinder capacity); (2) the doctrine of caveat emptor precluded Spyder from prevailing; (3) Singer had not attempted to rescind the contract promptly enough, but had actually reaffirmed (*i.e.*, reinforced) it; and (4) in the event of a ruling for Spyder, it should not be awarded interest.

In his opinion, District Judge David G. Trager provided an extensive analysis of Formula One history relevant to the case. The court noted that the Grand Prix racing series was established in the first decade of this century, with the first event being held in Le Mans, France in 1906. The organizers of the series created a "formula" or list of parameters within which an event's and a race car's attributes had to fall in order to qualify. These guidelines ranged from course distance and the number of qualifying events to a car's minimum weight requirements and maximum engine displacement. The formula was altered from time to time to accommodate developing automotive technology.

After World War II, the World Championship for Drivers was founded. It sanctioned a new series of racing events — "World Champion Formula One." The Federation Internationale de l'Automobile (FIA), the governing body for sanctioned Grand Prix events, administered the Championship and set the Formula One regulations. The first

Formula One event was held in 1950, in Silverstone, England. Top finishers in FIA-sanctioned Grand Prix events were awarded points. At the end of each racing season, the racer that had earned the most points in a set number of events was declared to be the World Driving Champion.

The formula originally adopted for Formula One races set a maximum engine displacement of 1.5 liters (that cap remained in effect until 1966). Engines in excess of this maximum cylinder capacity were disqualified; races that accepted cars that violated Formula One parameters could not award points to the race's winners and such races were not considered to be official "Grand Prix" events.

The court noted that, based on uncontroverted expert testimony, the Lotus 24 automobiles were always raced in Formula One events with either a 1.5-liter "BRM" engine, or a 1.45-liter Coventry Climax engine. Throughout the history of Grand Prix Formula One racing, Lotus 24 automobiles were never paired with two liter engines of any make. By the time the displacement formula was relaxed by the FIA in 1966, the Lotus 24 had retired from the Formula One racing scene.

It was uncontested that the BRM engine found inside the particular vehicle involved in this case had a two liter displacement and was manufactured sometime after the Lotus 24 had retired from Formula One competition in 1965.

(Next month, in Part II, we will examine how the court ruled on Spyder's claims and Ward's defenses.)

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