

A Bid For Liability

Is An Auctioneer Responsible For Cars Sold Over The Block?

As this magazine frequently reports, many collector cars are sold at auctions. In previous columns we have discussed the potential liability of manufacturers and owners for cars that cause damage to others. But can an auctioneer be held liable to a driver for injuries the driver suffers in a crash caused by a faulty old car bought at auction?

This question was addressed by the New York Supreme (trial) Court, Kings County, in *Dillon vs. Toyota Co.*, published on May 25, 1999.

According to the Court, on December 8, 1992, plaintiff Dillon attended an auction at defendant Skyline Auto Exchange, an auctioneer of used automobiles. Since the auction was only open to licensed dealers and not to the public, the plaintiff was accompanied by a representative of defendant Foreign Auto Works, a licensed dealer. At the auction, defendant Omid Wholesalers sold a Toyota to Foreign, which then sold the car to plaintiff later that day.

Approximately two months after plaintiff purchased the Toyota, she became aware that it had a recurrent stalling problem. Despite repeatedly taking the car to a mechanic, the problem persisted. On October 5, 1993, as plaintiff exited the Southern State Parkway to go northbound on the Meadowbrook Parkway and was about to enter the curved part of the roadway, the automobile stalled; the steering did not respond nor did the brakes. Consequently, plaintiff hit an exit sign by the curb, and the automobile then rolled down a hill and hit a tree, causing her to sustain personal injuries.

Dillon sued for negligence, strict products liability (liability without regard to "fault" where certain particularly dangerous products are involved), and breach of express and implied warranties. The defendants moved for summary judgment seeking dismissal of plaintiff's complaint. Skyline argued that it was not a "seller" of the Toyota, but was merely an auctioneer, which never held title.

The Court ruled in favor of Skyline. It began its analysis by noting that "[t]here are no New York cases addressing the issue of whether auctioneers may be held liable under the doctrine of strict products liability for losses or injuries allegedly resulting from defective goods which they did not own, but which they sold at auction. Courts in other jurisdictions which have decided this issue, however, have all ruled that strict products liability may not be imposed upon auc-

tioners, reasoning that an auctioneer is not the type of party who is intended to be subjected to strict products liability...[I]t has been held that where an auctioneer does not deal exclusively with a particular manufacturer nor regularly sell a particular product or product line, it is not a 'seller'...


"Furthermore, the courts in New York have emphasized that '[s]trict products liability should not be imposed upon a party whose role in placing the product in the stream of commerce is so peripheral to the manufacture and marketing of the product that it would not further the policy considerations which are the foundation for the imposition of this onerous liability on certain sellers'...Such policy considerations include the seller's ability, due to its continuing relationship with the manufacturer, 'to exert pressure for the improved safety of products'...

"In the case at bar, public policy considerations do not support the imposition of strict products liability upon Skyline. Skyline had no relationship whatsoever with Toyota Company, the manufacturer of the allegedly defective automobile. Skyline did not limit the auction services it provided to any particular manufacturer or dealer. Skyline also did not regularly sell a particular type of automobile or product line on behalf of a specific manufacturer, nor did it have a connection with any one manufacturer or dealer. Thus, Skyline was not in a position to exert pressure upon the manufacturer to produce a safer product...

"Skyline never obtained title to any of the automobiles it auctioned at its facility. Rather, it expressly provided in its terms and conditions to the auction that '[t]his sale is solely a transaction between buying and selling dealers,' and that '[n]o representations to third parties regarding title, marketability, merchantability or any other matter is made or intended.' Furthermore, Skyline had no involvement whatsoever with the public. It did not permit members of the public to purchase automobiles at its auctions, but, instead, allowed only dealers with valid licenses to place bids on vehicles being auctioned."

The Court also ruled that Skyline could not be held liable under a theory of breach of warranties. "[T]he automobile was sold with a warranty disclaimer, *i.e.*, the terms and conditions of the sale provided that the automobile was sold 'without warranty' and 'As Is,' and that '[n]o representations to third parties regarding title, marketability, merchantability, or any other matter is made or intended.'"

The plaintiff's negligence claims also failed, since "Skyline did not sell the subject automobile to plaintiff and it did not undertake or owe any duty to her..."

In this case, holding the auctioneer responsible for the injuries suffered was a hard—indeed impossible—sell. 

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