

# The Mismatched Mercedes



**M**aking purchases online has become a regular practice for most Americans and the range of purchase can be anywhere from a subscription to *Car Collector* right up to the purchase of a collector car!

Cars, or rather car parts are the subject of this month's case, *Adsit Company, Inc. v. Gustin*, decided on October 16, 2007 by the Court of Appeals of Indiana.

According to the Court, Kevin Gustin owned "a classic 1967 Mercedes-Benz roadster" [230 SL]. His mother, Mary Gustin, went to the website of Adsit, a retailer of parts and accessories for Mercedes-Benz automobiles. She ordered two camel-colored leather seat covers and two camel-colored leather armrest covers for Kevin's car.

Prior to placing an order on the Adsit website, a customer must click an "I Accept" button on the page describing the company policy. Among other things, the policy provides:

"Absolutely no refunds or returns. Our warranty is for 30 days on an exchange basis only. All sales are final."

"In the event that the buyer fails to pay as agreed, the buyer agrees to pay all attorney fees, court cost[s], expenses and interest incurred by [Adsit] in the collection of all sums."

"All seat upholstery is manufactured using the original German leathers or MB Tex vinyls to the original pattern for the correct look. Most original colors are available. If you

have any questions about the color of your interior, please supply us with your vin # or send a sample of your old interior. All interior items are special order and non-returnable so please order carefully."

Although Mary attempted to enter the Mercedes' VIN, she apparently did so incorrectly. "Consequently, when Adsit employees looked at the VIN, they dismissed it because it was not a VIN for a Mercedes-Benz vehicle." (There is no reference in the Court's decision to Adsit personnel attempting to contact the customer to clarify the vehicle information provided, although they did contact her regarding credit card information (ultimately her daughter-in-law Julie's was substituted). Adsit then ordered camel-colored leather seat and armrest covers from its supplier, German Auto Tops.

When Julie and Kevin received the package, they discovered that there were no armrest covers and that the color of the seat covers did not match their vehicle's interior. Apparently, the factory no longer made camel-colored armrest covers; Kevin subsequently received a credit on his credit card for the armrest covers. Within six days of receiving the seat covers, Julie and Kevin returned them, and received confirmation of delivery. They also reversed the charge on their credit card.

Adsit filed a breach of contract action, seeking \$1,100 for the seat covers, \$750 in attorney fees, and \$600 in collection

costs. The trial court entered judgment for Adsit but found that the company had “failed to mitigate damages” and “[t]herefore [Adsit] is only entitled to recover attorney fees of \$500.00.” Both sides appealed.

The Court of Appeals affirmed some parts of the ruling and reversed others.

The Court of Appeals agreed with the trial court that Adsit had not breached any warranties: “[T]here is no evidence in the record that Adsit was aware that the Gustins intended the products to be used in the restoration of a 1967 Mercedes-Benz roadster. Consequently, we find that the trial court properly concluded that Adsit did not breach the [implied] warranty of fitness for a particular purpose.”

The Court of Appeals also affirmed that Adsit had not breached an express warranty. “[I]t was the Gustins who included an erroneous VIN as part of the transaction. Adsit was not obligated by virtue of the contract or otherwise to correct the Gustins’ error. Inasmuch as the VIN provided by the Gustins to Adsit did not correspond to a Mercedes-Benz vehicle, we cannot conclude that Adsit breached an express warranty by providing seat covers that did not precisely match the interior of the Gustins’ vehicle.”

(There is no reference in the Court’s decision as to whether Adsit’s inability to deliver the full set of items ordered itself constituted a breach of contract or warranty.)

The Court also agreed that the Gustins had breached the contract by wrongfully rejecting the seat covers when the contract explicitly provided that all sales were final.

However, it concluded that the Gustins were not liable for damages for breaching the contract. Apparently, the covers were lost after they were returned. “Given that Adsit bore the risk of loss and that it was otherwise required to resell the goods and credit the Gustins for the value of the resale, . . . we find that the trial court properly concluded that Adsit is not entitled to damages stemming from the Gustins’ wrongful rejection of the seat covers.”

Finally, the Court analyzed the contract language providing for “attor-

ney fees . . . incurred by Adsit company in the collection of all sums.” It found that, as Adsit had not proved that it was entitled to damages stemming from the Gustins’ breach, the trial court erred in awarding attorney fees in the amount of \$500 to the company.

Although the Gustins ultimately did not have to pay anything to Adsit, the case makes the point that, when you contract with another, be it in hard copy or online, check carefully to make sure you accurately provide and the agreement properly reflects all necessary information. 

Lawrence Savell (lsavell@chadbournelaw.com) is a litigator with the law firm Chadbourne & Parke LLP. This article provides general information and cannot substitute for consultation with an attorney; additional background is at [www.lawrencesavell.com](http://www.lawrencesavell.com). Savell’s humorous original lawyer music CDs are available at [www.LawTunes.com](http://www.LawTunes.com).