

A Matter Of Great Import

Cars Are Not Entitled To Duty-Free Status

It has been said that much of what lawyers do tends to be repetitive, tedious, and essentially (perhaps appropriate in the context of an automotive publication) mechanical. And there is an element of truth in that. However, the “art” of practicing law is creatively applying and interpreting the rules that govern our behavior (and convincing courts or other authorities to accept such application and interpretation) so that a desirable result, perhaps previously thought unattainable, can be achieved.

The case of *Connor vs. United States*, decided on March 27, 2000, by the United States Court of International Trade, presents such an effort, albeit an unsuccessful one, in the context of a collector car.

According to the Court, Plaintiff William T. Connor II owned a 1929 Bentley Blower racer. Connor wished to import the Bentley into this country, but also wished to avoid having to pay the normally applicable customs tariff.

Before undertaking the importation, Connor filed a ruling request with the United States Customs Service. He (and his lawyers) creatively asserted that the Bentley should be classified under a provision of the Harmonized Tariff Schedule of the United States, which provides for duty-free entry of “collections, and collector’s pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic, or numismatic interest.” Connor argued that this classification was applicable here because the Bentley was a collector’s item and, as such, it would not be used for any utilitarian purpose. Instead, the automobile would be entered in classic car shows and made available for display in the Peterson Automobile Museum in the Natural History Museum of Los Angeles County.

Unfortunately for Connor, the Customs Service ruled that the Bentley did not meet the requirements for duty-free classification. The Service concluded that “the guidelines...indicate a narrow interpretation of coverage,” and the Bentley did not fit under the list of samples.

Connor asked the Court of International Trade to review that ruling, arguing that the Court had jurisdiction (i.e., the necessary authority) to do so. He cited a section of the United States Code providing that “the Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to importation of the goods involved, a ruling issued...relating to classification, valuation, [or] rate of duty..., but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.”

The United States moved to dismiss the action, based in part on the ground that Connor had not demonstrated that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to importation. Thus, it argued that the Court lacked jurisdiction.

The Court agreed with the United States and granted its motion to dismiss. The Court noted that, for Connor to prevail, he had to show clear and convincing evidence of an immediate harm for which there would be no adequate future corrective relief.

Reviewing the evidence, the Court concluded that Connor’s alleged injury was not imminent. “In the present case, Plaintiff [Connor] alleges that if he is not afforded judicial review prior to importing the Bentley, he will be subject to ‘an immediate, unnecessary, and unacceptable risk of irreparable loss by shipping the unique, rare, and irreplaceable Bentley Blower just to ‘exhaust administrative remedies.’”...However, Plaintiff has not produced clear and convincing evidence that the Bentley will be damaged or destroyed in shipment. Plaintiff has argued that “ships sink and planes crash,”...but in order to prove jurisdiction...Plaintiff must show...that there is an immediate threat that the harm will occur, not just an immediate threat that the harm could occur.... Plaintiff is not under any contractual obligation to import the Bentley, and could decide either to keep the car in its present location, or to move it to a different country.... Thus, in the present case, even if Plaintiff proved that he would suffer actual harm, as opposed to the risk of harm, by importing the Bentley to obtain judicial review, the harm would not be imminent because Plaintiff could elect not to import the automobile.

“As to the inadequacy of future relief, Plaintiff has provided considerable evidence in the form of book excerpts and magazine and newspaper articles to support his claim that the Bentley is a unique automobile, which could not be replaced if it were destroyed. However, Plaintiff has not cited any evidence to support his claim that the automobile would be of less value if its original elements were damaged and repaired. Nevertheless, even if Plaintiff proved the inadequacy of future corrective relief, this alone would not defeat Defendant’s motion to dismiss...[since] Plaintiff has not provided evidence of an imminent injury.”



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