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## OLD CARS IN LAW

# THE CASE OF THE RESTORED ROLLS

To a car collector, the word "restoration" means the return of an automobile to its former glory. To a lawyer, however, the term also can mean the return of property or its value to its rightful owner. In pin-stripe parlance this second meaning is also called "restitution."

The law of restitution often presents interesting dilemmas. For example, assume A defrauded B into paying C money that A legitimately owed C. Assume further that C did not know that A had defrauded B. Is B entitled to get back from C what B paid C?

The case of *Lloyds of London v. London Limousine Service* presented such a situation.

Stelian Ionita owned London Limousine, a New York business that provided luxurious rental cars for weddings and other special occasions. On April 11, 1986, Ionita borrowed \$50,000 from Progressive Credit Union. Ionita pledged as collateral for that loan three automobiles, including a 1964 Rolls-Royce. On March 18, 1987, Ionita borrowed an additional \$12,000, pledging as collateral the three cars plus a 1970 Jaguar.

On June 20, 1987, Lloyds of London issued an insurance policy to London Limousine, which provided \$70,000 of theft coverage for the Rolls-Royce.

On December 22, 1987, a police officer found the Rolls abandoned on a street in Queens, New York. The keys were in the ignition and the driver's side window was rolled

down. The officer checked the automobile's registration, but was apparently unable to obtain London Limousine's telephone number. The police impounded the Rolls as evidence in an ongoing investigation into automobile insurance fraud in Queens. The police made no further effort to locate the car's owner.

On December 28, 1987, Ionita reported to police in Manhattan's Greenwich Village that he had parked the Rolls on Houston Street in the Village earlier that evening and that it was missing. On January 11, 1988, the theft was reported to Lloyds. Lloyds was unable to trace the car through the police because the police would not give out information regarding evidence it was holding in an ongoing investigation.

Lloyds retained an adjuster. On February 4, 1988, Ionita gave the adjuster an affidavit regarding the theft. On May 3, 1988, Ionita executed a sworn proof of loss claim form to Lloyds. The adjuster recommended that Lloyds pay the loss. Lloyds did so on June 15, 1988, with a check payable jointly to Ionita and Progressive for \$57,725. (The police released the Rolls on June 20, 1988, too late to stop Lloyds' payment.) Progressive applied \$46,341 of the payment to the unpaid balance of Ionita's two loans. Progressive credited the balance to Ionita's account. Ionita withdrew \$6000 from this account in June 1988, and the balance in August and September, after Lloyds discovered that

Ionita had committed fraud. According to police records, Ionita

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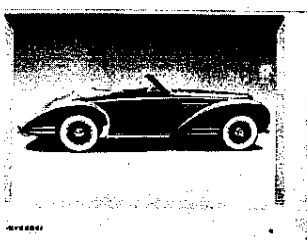


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also pled guilty to making a false report to the police.

Lloyds sued Ionita, London Limousine, Progressive, and others in federal court, claiming that Lloyds was entitled to repayment of the money it had paid out on Ionita's false theft claim.

On May 8, 1991, the United States District Court for the Southern District of New York ruled that Ionita was liable to Lloyds for \$57,725, concluding "it is clear that he defrauded Lloyds of that amount of money." However, the court also ruled that Progressive did not have to repay to Lloyds the money paid to Progressive.

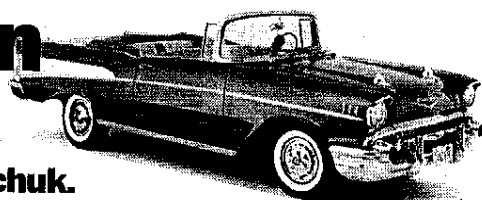
The court noted that Lloyds had made its loss payment in a check payable to Ionita and Progressive as joint payees. This was pursuant to the arrangement between Ionita and Progressive under which Progressive had made a loan to Ionita secured by the Rolls. Progressive had no knowledge of Ionita's criminal activity before it accepted the money from Lloyds. According to the court, when Lloyds' representative advised Progressive of Ionita's fraud, Progressive clearly and properly told Lloyds that Progressive could not prevent Ionita from withdrawing the balance from the credit union without some legal restraint. The court further noted that, "for reasons unknown," Lloyds had thereafter failed to take the legal measures necessary to prevent Progressive from paying the balance to Ionita.

The court ruled that the law of New York State applied to the controversy between Lloyds and Progressive. Citing a vintage 1923 case, the court noted that, in New York, a creditor who receives payment from a third party, without the creditor knowing that the debtor had defrauded the third party into making that payment, is not obligated to repay the money (i.e., "make restitution") to the third party. Thus, Progressive was not required to repay to Lloyds the money Progressive had credited and given to Ionita.

*Lawrence Savell is an attorney and writer in New York City. This column provides general information and is not intended as a substitute for consulting a lawyer.*

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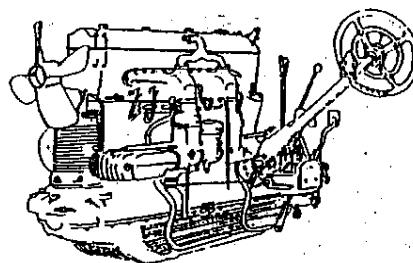
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