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THE MARRED MARMON

The Dutch philosopher Benedict Spinoza long ago concluded that "Desire is the very essence of man." This observation may nowhere be truer than with respect to a car collector and the automobile he or she dreams of owning.

But the danger of desire is that sometimes it can blind us to reality. This was the case in *Ardell and Jeanith Miller v. Doris Flynn and Jack Miller*, decided in March by the United States District Court for the Southern District of Illinois.

According to the Court, Doris Flynn and her husband Chester owned a 1932 Marmon V-16 sedan. The Marmon is an extremely rare collector car; only 395 were manufactured between 1931 and 1933 and possibly only 75 still exist. Chester, an automotive engineer and Marmon expert, rebuilt the car's engine in 1977-78.

When the Flynn's moved in 1983, Chester asked a friend, Jack R. Miller, an amateur car collector, to store the Marmon at Jack's home in Fayetteville, Georgia. In 1984, after Chester's death, Doris asked Jack to help her sell the car.

Doris and Jack placed an advertisement in *Hemmings Motor News* offering a 16-cylinder Marmon with a "newly rebuilt" engine. Ardell and Jeanith Miller of Illinois saw the ad. Ardell, who was "mechanically or automotively minded," had been looking for a Marmon V-16 for years.

Following a telephone conversation, Ardell and Jeanith gave Doris a \$5000 deposit. In April 1986, Ardell and Jeanith inspected the Marmon at Jack's home. During their inspection, Jack informed them that he had driven the car less than 70 miles since he had it and that the engine was newly rebuilt.

Before purchasing the Marmon, Ardell went for a test drive

with Jack. The drive was brief because the Marmon overheated. Ardell also noticed that the vehicle pulled to the right. Ardell later testified that, after inspecting and test driving the vehicle, he did not believe that the engine was "newly rebuilt." He noted (among other things) that the engine leaked water, both cylinder heads dripped oil and needed to be re-torqued, the hoses and hose clamps did not look new, and the clutch did not operate properly.

Despite noting these problems, and without having a mechanic look the car over, Ardell and Jeanith agreed to a purchase price of \$41,000 and gave Jack a check for the balance due after their deposit. Doris gave Jack a commission of five percent plus expenses.

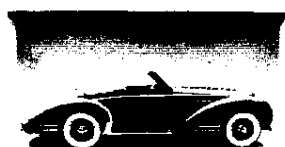
Although Ardell had planned to drive the Marmon back to Illinois, Jack suggested otherwise, partially due to the age of the vehicle. Indeed, Ardell later testified that he doubted whether the car could have made it out of Jack's subdivision. After Ardell shipped the Marmon to Illinois, he drove it for a short distance with the engine again overheating. It was later discovered that the Marmon V-16 engine had a design defect, leading to excessive camshaft wear.

Ardell and Jeanith sued Doris and Jack in August 1987, alleging that the defendants had made fraudulent representations regarding the condition of the Marmon's engine, and that Ardell had purchased the automobile because of such misrepresentations. In an Order filed March 5, 1992, the United States Magistrate Judge who presided over the non-jury trial of the case ruled in favor of the defendants Doris and Jack.

Reviewing the applicable law of Georgia, the Magistrate Judge observed that "One cannot assert a fraudulent misrepresentation

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sentation concerning a statement which the plaintiff knew to be false" and that "The law does not afford relief to one who suffers by not using the ordinary means of information...."

The Magistrate Judge ruled that the plaintiffs had failed to prove that the defendants fraudulently misrepresented the condition of the Marmon's engine. The Magistrate Judge pointed to Ardell's striking and detailed testimony that he knew when he test drove and looked at the vehicle that the engine had not been "newly rebuilt." Indeed, when asked why he had purchased a vehicle with such obvious defects, Ardell conceded that it is easy to overlook faults when you want something badly.

Based on such testimony, the Magistrate Judge concluded that "Ardell Miller's purchase of the 1932 Marmon V-16 sedan was the product of plaintiff's zealous desire to own a Marmon, coupled with his willingness to overlook obvious problems that the vehicle evidenced when he inspected it at defendant Jack R. Miller's home in Georgia."

The plaintiffs did not appeal.

The ancient chariot collector Aristotle observed that "It is the nature of desire not to be satisfied." The *Miller* case shows how desire, if not tempered by reality, can lead to disappointment. No matter how much a collector may want a particular car, he or she must not blind himself or herself to such realities as the vehicle's true condition, appearance, or performance, but must consider such facts in deciding whether to buy and, if so, how much to pay. To update the advice of the English poet William Blake, "Man's Desires [should be] limited by his Perceptions."

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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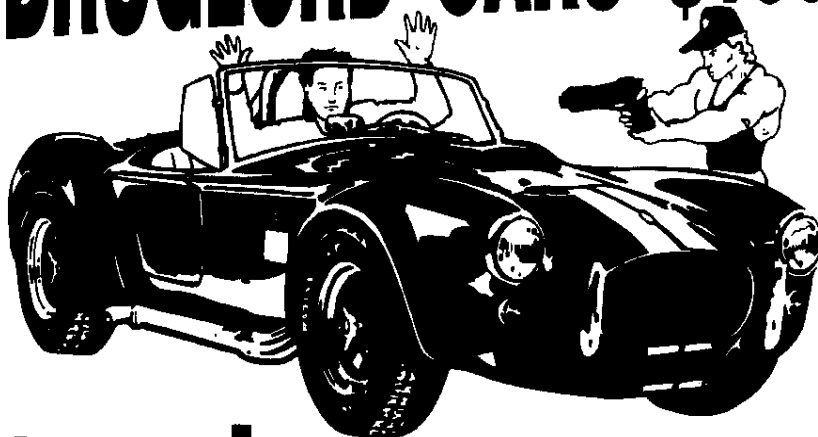
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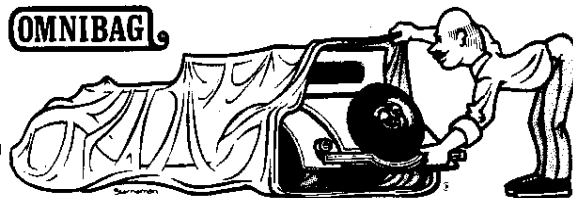
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