

OLD CARS IN LAW

THE FILCHED FERRARI

In previous columns, we have examined cases emphasizing the need for a buyer to make sure that the collector car he or she is considering has the qualities the seller says it has. But such qualities are not limited to physical characteristics like appearance, performance and authenticity. Perhaps the most important quality a buyer must verify is a *legal* one — namely, does the seller really *own* the car or have the right to sell it?

The wrong answer can be disastrous to a buyer, as the recent case of *Amezcuca v. Zamarelli* makes painfully clear.

According to the court, Alberto Rodolfo Amezcuca, a citizen of Mexico, restored, repaired and collected classic automobiles. He would purchase the automobiles in the US and have them delivered to Mexico. He then stored the automobiles in a glass enclosure at his home.

Amezcuca claimed that one of his collector cars, a black circa 1971 Ferrari Daytona Spyder convertible, was stolen from him in Mexico in 1981 and illegally smuggled back into the US.

In 1984, Edward F. Zamarelli was shown a "Mexican collection" of thirteen collector cars at a Miami dealership. One of these vehicles was the aforementioned Ferrari. Zamarelli (who was unaware that the car had allegedly been stolen) purchased the Ferrari for \$77,500, acquired a Florida title to it in his name, and brought the car back to his home in Warren, Ohio. He later obtained an Ohio Certificate of Title.

In 1986, Zamarelli advertised the Ferrari for sale in the *Ferrari Newsletter*. After learning of the advertisement and that the serial number on the offered Ferrari matched that of his stolen Ferrari, Amezcuca filed a lawsuit. Amezcuca's suit was for "replevin," a proceeding where an owner of property seeks to recover the property from another who allegedly wrongfully possesses it.

Zamarelli made a motion for summary judgment, asking the court to dismiss Amezcuca's claims without a trial.

The court overruled Zamarelli's motion. The case was then tried before a jury which returned a verdict in favor of Amezcuca. Zamarelli thereafter made additional motions for a judgment notwithstanding the verdict and/or a new trial, both of which the trial court denied. Zamarelli appealed.

On June 19, 1992, the Court of Appeals of Ohio, Trumbull County, affirmed the trial court's ruling for Amezcuca.

Zamarelli had presented several arguments to support his contention that the jury should have ruled in his favor. These included: (1) that he complied with Ohio title law; (2) that Amezcuca offered no evidence that the Ferrari was stolen; and (3) that Amezcuca offered no evidence that he owned the vehicle. The court concluded that these arguments were without merit.

The court first pointed out that the fact that Zamarelli obtained an Ohio title to the Ferrari did not automatically entitle him to judgment as a matter of law. The court cited an earlier Ohio case that observed that "a thief cannot convey valid title to a stolen motor vehicle to a bona fide purchaser for value without notice, although the certificate of title used in the purported transfer appears valid on its face." A "bona fide purchaser" is someone who buys property in "good faith" and without knowing of any defects in the title of the seller or that another person has outstanding rights to the property.

The court secondly pointed out that, contrary to Zamarelli's assertion, there was testimony at the trial which, if believed, established that Amezcuca had been wrongfully deprived of his automobile.

The jury had found this testimony to be credible and the appellate court would not disturb that finding.

The court thirdly noted that, regarding the proof of ownership of the Ferrari, there had been evidence presented that Amezcuca had purchased the vehicle for \$115,000 from a collector car company in Beverly Hills, California (which had previously purchased the Ferrari from a famous film director). The court therefore concluded that there had been competent, credible evidence to support the jury's finding that Amezcuca was the true owner of the Ferrari.

The *Amezcuca* case follows the general rule adopted by American courts (and many legislatures) that the owner of stolen property does not lose his or her title to that property because of the theft. Therefore, one who buys from a thief (or from a reseller who bought from the thief) does not acquire title as against the true owner, even if the buyer purchases in "good faith" and without any knowledge of the wrongdoing. The true owner generally may recover his or her property from the purchaser even if the thief had also stolen or forged a title certificate, or obtained a title certificate in another state, and delivered it to the buyer. Thus, the prudent warning of *caveat emptor* — let the buyer beware — includes a caution to purchasers to be as sure as possible that the car they want is not already "wanted" by its true owner and the law.

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.

LAWRENCE SAVELL