

When is a Speed Six Not a Speed Six?

The judge placed huge importance on documents that show a car's continuous history—if claims to its authenticity are made while promoting a sale

The High Court in London has recently given judgment in the case of Brewer vs. Stanley Mann, Fortis Lease UK Limited and Stanley Mann Racing Limited. The judgment emphasizes the importance of accuracy when giving sale descriptions of collector cars.

The judge's finding, heavily in favor of the private buyer and against the seller, raises some interesting issues for dealers, auction houses and buyers. This judgment has caused some waves in the U.K. trade, and is already subject to appeal.

The facts

In June 2007, London-based vintage Bentley specialist Stanley Mann sold a car which he described as a 1930 Bentley Speed Six to a Mrs. Brewer. This was his first mistake.

Mrs. Brewer, a lawyer admitted to practice in New Jersey, New York, Florida and England, turned out to be a formidable opponent. She and her husband, both vintage Bentley enthusiasts, had seen Stanley Mann's advertisement for a Speed Six in *Classic & Sportscar* magazine, and they visited his shop to inspect and discuss the car.

The evidence showed that in the late 1970s Stanley had acquired a discarded bare chassis frame from a 1930 Speed Six. The chassis was in very poor condition, but it was stamped with its chassis number.

That chassis was repaired with much new steel, and Stanley then fitted an engine from a 1927 Bentley 6½ Litre, which he had uprated to Speed Six specification.

The car was built up with a new body and many new and used components to resemble a 1930 Speed Six open tourer, and it was sold in 1980 to Ian James, who owned it for some 26 years. I remember Ian driving his Bentley on rallies in the mid-1980s, and being impressed by his strength, which he certainly needed to wrestle this huge beast around the French hairpins.

In December 2006, James consigned this Bentley to Stanley Mann on a sale or return basis. In June 2007, Mrs. Brewer bought the car for £425,000 (\$844,330 at that time) with finance provided by the bank Fortis Lease UK Limited and two days later, once the sale was consummated, Stanley Mann in turn bought the car from Ian James for £325,000 (\$645,664).

Just over a year later, in the financially difficult days of late 2008, Mrs. Brewer considered selling the Bentley and sought advice from one of the London auction houses. They told her that the engine was not an original Speed Six, but was a 6½ Litre motor reconstructed to Speed Six specification.

Mrs. Brewer stopped her finance payments. Fortis then took the car back and resold it to Stanley Mann. Mrs. Brewer then started High Court proceedings against Stanley Mann and Fortis for misrepresentation and breach of contract.

The Court's decision

There was conflicting evidence at court about what Stanley Mann had said to Mrs. Brewer when she first inspected the car. Mrs. Brewer was adamant that Mann had assured her that the engine was a Speed Six engine,



No question about the provenance of this car—1930 Bentley Speed Six "Old Number 3"

which he denied, but her evidence was accepted. The judge also considered that, as the representation about the engine was crucial in Mrs. Brewer's decision to buy the car, a warranty should be implied into the purchase contract that the car she was buying had a genuine Speed Six engine.

Under the British Sale of Goods Act (roughly equivalent to the Uniform Commercial Code sale of goods provisions), any item sold by description must conform to its description. Since the judge decided (based on expert evidence) that the car did not have a genuine Speed Six engine, it followed that it did not match its description. As a result, there was a breach of contract, and Mrs. Brewer was entitled to damages.

In a long and detailed judgment, the judge stated that, for a correct description of the Bentley, Stanley Mann should have referred expressly to the much-repaired chassis and replacement engine. He also should have described the significant changes to the car over its lifetime.

In reaching this conclusion, the judge also placed huge importance on documents that show a car's continuous history—if claims to its authenticity are made while promoting a sale of the car. The judge's finding on this "continuous history" point is worth quoting in full, because if this part is upheld on appeal it may be significant for the future, at least in the U.K.:

"It is clear that everyone involved with Speed Sixes now regard it as essential, for such a car to be properly described as a Speed Six, to be accompanied by a continuous history, being a full, unbroken and authentic set of documents which identify in a reliable manner who has owned the car, the uses that it has been put to and a description of its service history and any restoration, rebuilding or reconstruction work that the car has experienced throughout its life since originally leaving the Cricklewood works.

The evidence suggested that this view arose, or was at least confirmed, as a custom of the Speed Six trade by Justice Otton's judgment in 1990 in *Hubbard vs. Middlebridge Scimitar Limited*. This "Old Number One" judgment is certainly widely known to, and relied on by, enthusiasts, owners, dealers, auctioneers and valuers involved with Speed Sixes."

In short, "Old Number One" is a 1990 case where the authenticity of a Bentley Speed Six Race car—known as Old Number One—was called into question after a deal for \$17m was made for the sale of the car. Justice Otton said that the car's logbook, Bentley service records, the Bentley Drivers Club register and other evidence showed that the car, although it had been crashed and rebuilt, still retained its historic identity as Old Number One.

A question of missing documentation

While his solicitor assures me that Stanley Mann has multiple grounds for appeal, it is that part of the judgment quoted above that exercises me the most. I suspect that the judge has noted evidence from each party's expert witness about the desirability

(in terms of provenance) of an unbroken set of documents as to a car's ownership, use, service records and restoration history. He has then made the extra step to find (as a question of fact, so it seems) that if this written record of continuous history is absent or broken, the car in question may not properly be described by that model name (i.e. as a "Speed Six").

In my view, "this finding of fact" by the judge is a bridge too far, and is not justified by the "Old Number One" judgment from 1990. We can all think of real or hypothetical examples where the written record of a car's ownership, use, servicing or restoration has been lost in the mists of time, and yet its provenance as a good example of that model is undoubted.

Am I the only car nut who dreams of finding that missing Bugatti Type 57SC (no, make that an 8C Alfa) whose owner bricked it up in a barn in France in spring 1940 as the tanks rolled closer?

If all the stamped numbers corresponded with the factory records, it would not matter to the car's continuous history or provenance that no one could verify who owned my barn find between 1936 and 1940, or indeed who had left it in the barn, as long as the landowner could pass me good title to the car (and preferably had no idea of its value). If the car is clearly the real car, that is enough in itself.

Final thoughts

It remains to be seen how this decision will be viewed by the Court of Appeal, but for the moment it highlights the dangers for dealers (and indeed auction houses and their vendors) when describing or making claims about the car being offered.

In English law there has always been a fine line between a throw-away statement which a potential purchaser will recognize as "a mere puff" which cannot be sued upon, and a statement that while designed to achieve a sale is in fact relied on by the buyer, and which creates a legal obligation.

It will not always be obvious what pre-contractual statements may give rise to legal obligations later on. So in the perfect world, the prudent dealer will keep a written record of all representations (whether oral or written) that he makes about a car, and ensure that what he says is accurate and verifiable.

Luckily for us lawyers the world is not perfect.

MARTIN EMMISON is a partner in the London law firm of Goodman Derrick LLP, and he specializes in transactions and disputes in the collector car field. Martin can be contacted by email memmison@gdlaw.co.uk or by telephone. His comments are general in nature and are not intended to substitute for consultation with an attorney.

A U.S. Perspective

By John Draneas

Many SCM readers will wonder if the result in this case would be significantly different under U.S. law. In large measure, the result would have been much the same.

Under the Uniform Commercial Code, a seller's description of the car as a Bentley Speed Six would constitute a contractual warranty that the car actually meets that description. When it turns out not to be a Speed Six, the buyer has a breach of contract claim. In addition, if the seller is aware that the car is not really a Speed Six, then the buyer can also sue for misrepresentation or fraud.

The critical factual issue would be whether or not the car is a Speed Six, which may not be as easy a question as one would expect, given the age and rarity of some collector cars—and the possible variations from their original configurations. For those reasons, a U.S. court would consider evidence from collector car experts about what essential elements make a car a genuine Speed Six.

Nonetheless, I agree with Emmison. A U.S. court ruling that a car cannot be a Speed Six if it does not come with full documentation of its chain of ownership and provenance would be quite novel. Under U.S. law, documentation can certainly prove the identity of a car, but it doesn't create the identity. ♦

JOHN DRANEAS is an attorney in Oregon. His comments are general in nature and are not intended to substitute for consultation with an attorney.