

When buying valuable second-hand goods, get everything in writing

Where a car or other valuable second-hand goods cost as much as a house, it is too risky to rely on oral warranties and general descriptions alone, warns **Jonathan Silverman**

The law on misrepresentation has come a long way since the case involving the Austin Seven and the dealer who said "it's a nice little runner I'd stake my life on it", as can be seen from the recent decision of the Court of Appeal in *Brewer v Mann* [2012] EWCA Civ 246.

Over restoration can apparently be a killer, and this case concerned a classic car which the buyer readily accepted didn't have its original body; it was a replica of a racing Bentley that had originally been a saloon, but where the engine had been replaced in the mid 1930s yet later rebuilt to a certain specification – and that engine specification was at the heart of the case.

So, as with a Sheraton table with replacement legs or a Constable that has been significantly retouched, the question is where do you draw the line and when is this likely to lead to litigation. Does a rebuilt and enhanced specification engine entitle a buyer to rescind? The judge at first instance thought so; the Court of Appeal held otherwise.

Practitioners advising classic car dealers are doubtless giving sighs of relief having read the court's decision.

Mrs Brewer spent £425,000 on a Bentley Speed Six, bought on HP, supplied by the leading Cricklewood Bentley dealer in Europe, but after some 18 months she decided to try to rescind the contract, alleging the engine was not truly a Speed Six. The dealer had all along said it was 'Speed Six specification' and that he was entitled to describe it as such since it was built on a Speed Six chassis with the relevant chassis number (even though it transpired that only part of the chassis was original).

The finance company on repossessing the car for non-payment of instalments by Mrs

Brewer sold it back to Mr Mann who, after carrying out some more work, sold it for considerably more; so perhaps the court was recognising the open market's view of value rather than expressing more technical legal opinions?

Much focused on how the car was described and what the buyer stated she wanted; the advice to lawyers acting for buyers (and indeed sellers wishing to stay



out of the courts) is simple: get it in writing. Relying upon a general description or perhaps on published articles about a vehicle or other collectable is simply not enough.

Perhaps it's inevitable that when an old car stops being something bought for pleasure and use but rather becomes an investment in an iconic design that things start to get out of proportion. One wonders how anyone buying an 80-year-old car which is in roadworthy condition (and in this case suitable for racing even today) can honestly expect most of the car to be original or unrestored. While a painting hanging on a wall or a desk sitting in a hallway is generally not subject to much wear and tear, few cars will have been cocooned for most of their lives and the ravages of rust and corrosion will have taken their toll.

Consequently, whether acting for a buyer or a seller it is foolhardy for the practitioner to advise either party to proceed using a standard short form motor traders' invoice, and it is also unwise for the parties to rely upon the small print.

Thorough description

It is far safer to insist upon a bespoke and properly drafted bill of sale for the vehicle comprehensive in its description of the vehicle, perhaps annexing an independent consultant's report – after all we're talking about cars changing hands at 'house prices'.

The *Mann* case involved a £425,000 Bentley, but Chris Evans spent £4.5m on a Ferrari and certainly an appreciable number go across my desk at £1m plus, especially where a car has a racing history.

The value attributable to a car, for example, raced by Stirling Moss in a particular race that he won, as against the same model and specification car without that racing history, may baffle the uninspired solicitor but be worth a great deal to the buyer. However, they must ensure that the heart doesn't rule the head – where the buyer regards these elements as significant to the price he is paying this has to be properly documented.

Mann illustrates the risks of relying upon oral warranties and demonstrates how they can be readily misunderstood or misinterpreted. Statements of opinion are just that and no more. Due diligence plays a considerable role in such cases and never has the adage 'let the buyer beware' been more true than in the classic car market.



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