



Neutral Citation Number: [2015] EWHC 1456 (QB)

Case No: HQ123X05713

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/05/2015

Before :

MRS JUSTICE MCGOWAN

Between :

ERNST HRABALEK **Claimant**
- and -
CHRISTIAN HRABALEK **Defendant**

MR SIWARD ATKINS (instructed by **WILMOT & CO SOLICITORS**) for the **Claimant**
MR CARL TROMAN (instructed by **GOODMAN DERRICK LLP**) for the **Defendant**

Hearing dates: 19 - 27 FEBRUARY 2015

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MRS JUSTICE MCGOWAN

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Introduction

1. The Claimant and the Defendant are father and son. They are both Austrian nationals, the father now lives mainly in Thailand and the son in England. Both share an enthusiasm for vintage cars and in particular for Lancia Stratos cars. It is four such cars that are the subject of this dispute. The cars are worth something in the region of 3 million Euros.

Proceedings

2. The Defendant seeks a declaration that the cars are, in fact, his property and the Claimant seeks the return of the cars which he says are, and always have been, his property.
3. The important areas of dispute in this case are fairly narrow. It is agreed that the Claimant acquired the four cars at different times and that they were most recently in the possession of the Defendant. Whether the Claimant actually made a gift of the cars to the Defendant or simply pretended to make a gift of them is the issue that has to be determined. It is accepted that there is no documentary evidence of a gift.
4. There are a number of issues of fact, very few of which need to be resolved to determine the central issue. In the course of evidence, each of the parties has had their credibility tested beyond breaking point. It is accepted by both parties that neither has reached the end of their evidence as a wholly reliable or creditworthy witness.

Law

5. There are no legal issues to be determined in this case. The only points that arise are agreed as follows:
 - a. The transaction took place in Austria and both parties agree that for a valid gift to be effected under Austrian law, in the absence of a notarised deed of gift, both parties must intend that there is to be a gift and the property must be handed over in completion of that joint intention.
 - b. No question of either party having any beneficial interest in the cars has been pursued in this hearing.
 - c. No question that the Defendant owned the cars before the date of the purported gift arises.

Issues

6. Both parties made lengthy witness statements, gave evidence and called a witness or witnesses to support their case. It is not necessary to determine every issue of fact in dispute between them, only those sufficient to reach conclusions on the sole issue. This has become an acrimonious conflict which on occasion became emotionally charged. That being said there were a substantial number of areas of agreement.

7. On occasions it was clear that the Claimant found the proceedings very difficult. He has a number of health problems. His English is limited to the extent that he required an interpreter but good enough that he either did understand some questions or thought he did. Giving evidence through an interpreter adds to the difficulty and that requires some allowance. In addition his memory let him down on occasions and there were times when he appeared to have moments of genuine confusion. There were also occasions when he was unable to remain in court to listen to his son's evidence.
8. The Defendant is much younger and speaks very good English. He did not appear to have the same emotional difficulty as his father in dealing with the proceedings. He did not have the same age-related problems of recollection.
9. The history of the acquisition of the cars was agreed in large measure. Those limited areas of dispute may be genuine errors of recollection but in any event do not need to be determined to assist in reaching a decision.
10. Father and son shared a love of cars and it was clear that, for them that shared passion was evidence of the good relationship that existed between them. The Claimant had made and apparently lost large wealth throughout his career, certainly he had sufficient to have amassed such a valuable collection.
11. There is a calendar of events in the world of such car enthusiasts. It is a community in which there are strong ties and even stronger rivalries. The acquisition of such cars is a passion; it appears that completing a set is an obsession.
12. By 2000 the Claimant had acquired the four cars in this case: the Street car, the Prototype, the Safari and the Turbo. The cars were sometimes identified by colour but more consistently by those labels. Both the Claimant and the Defendant played a role in the process of acquiring the cars. The Claimant accepted in his witness statement that he had acquired some of the cars in a manner designed to avoid tax. He also accepted that he had been convicted of tax fraud and sentenced to a short term of imprisonment, apparently varied to a community penalty.
13. The Claimant lived in Austria during that period and generally kept the cars at his home address unless one or more was at an exhibition or meeting.
14. There is no dispute that the Claimant had intended that his collection was to pass to his son at some stage. It was a matter discussed between the two of them, within the family in general and it was an intention advertised to the community of car enthusiasts. The core issue is, was that gift actually made at the time of the World Stratos meeting organised by the Claimant in 2000?
15. The Claimant says that the long talked of gift was not actually made, the Respondent says it was.

Relevant Evidence

16. The evidence in the case ranged back over 15 years. Both protagonists made lengthy witness statements and gave evidence at considerable length. A recital of the evidence in witness statements or given orally by them or their witnesses is

unnecessary. Nor is it necessary or helpful to investigate and determine all those issues raised in order to reach a judgment in this case. The better course, in part led by counsel in their helpful written submissions before trial, is to concentrate on the salient occasions and even then, only on the important details. Accordingly the evidence is dealt with under the following headings,

a. 2000 World Stratos Meeting.

- i. This was a lavish and expensive meeting organised and paid for by the Claimant. It was held at Castle Rosenberg in 2000. It is common ground that the Claimant told people at the show that he would make a gift of the cars to his son. Therefore the detailed rehearsal of such statements does not help the fundamental question. The Claimant maintains that he was content to allow their fellow enthusiasts to believe that the cars belonged to his son. This would enhance the Defendant's reputation in that world and be a first step for him to building up his own collection. He was prepared to encourage the deceit so that people involved such as Sandro Munari, would write a letter in the period 2004-2005, [D2-1068], saying that the Prototype belonged to the Defendant, further adding weight to the pretence. Equally telephone cards were printed showing the Defendant as the owner and labels were created for the cars themselves bearing the name "Hrabi". There was some dispute as to whether that was a nickname used by one or both of the parties but as it is accepted that the intention was to declare to the world at large that the Defendant had become the owner of the cars, truthfully or otherwise, resolution of that issue is not necessary. In any event such publicity material had been created in the years before the purported gift in 2000.
- ii. There is evidence of the Defendant's carrying on after 2000 as though he were the owner of the cars from that date. The Claimant says as part of the ongoing pretence, the Defendant says as evidence of the true position, that he was the owner.
- iii. The Claimant denies giving physical possession of the cars to the Defendant at this meeting in 2000. It is agreed that they continued generally to remain in the physical possession of the Claimant during the greater part of the following decade. There is no dispute but that the Defendant was able to take them and show them on occasion, although the Claimant contended that such an undertaking would always require his permission.
- iv. There had been previous proceedings involving the cars. The Claimant had tried to institute criminal proceedings in Germany for the recovery of the cars. They appear to have failed on jurisdictional grounds.
- v. It is said by both Eveline, the Claimant's ex-wife and Michaela, his daughter that he had said he would make the gift at the time of the Defendant's graduation. It is clear that such statements were made.

b. Erste Bank Loan for the purchase of the Turbo

- i. The Claimant had failed in his first few attempts to buy the Turbo from its owner, Shiro Kosaka, who lived in Japan. Eventually he decided to

use a third party, Tarek Esreb, a Syrian national who was a school friend of the Defendant. It is accepted that Mr Kosaka was to be deceived as to the identity of the purchaser.

- ii. It was necessary that a loan be raised for the purchase of this car. That was done with Erste Bank through its employee Mrs. Reidl. The bank documentation is clear on its face but does not appear to reflect the true position. The purchase price, as declared is almost certainly not to be relied upon. The liability for repayments under the loan was apparently to fall on the Defendant but neither party could even begin to give a satisfactory account of the transaction with the bank. Why the Defendant would be liable for the loan if the car was a gift to him by the Claimant remains totally opaque. A clear inference is that both parties were less than straightforward with the bank in order to secure the loan, again that is not a matter that is determinative of the issue in the case.

c. Private Communication Between the Parties about the Gift

- i. This is the only area of evidence where any real reliance can be placed on what either party has said. In these communications neither is creating an impression for the outside world. Both parties have lied in their dealings with others and cannot be relied upon in their evidence in these proceedings. The only declarations that can safely be relied upon to disclose the truth of what was happening and what was intended to happen can be found when they speak directly to one another and when those communications are reliably recorded for posterity in email and text message traffic between the two. Neither is creating an image for public consumption or seeking to refashion events or recollections for the purpose of these proceedings.
- ii. On the Defendant's account the cars had been his since the Summer of 2000. He says that the gift spoken of at the World meeting in 2000 and on many other occasions had been completed at that time. That the cars had been passed to him with the full intention of his father. The Claimant's case was that there had merely been the pretence of a gift to deceive the public but that father and son had always known the true position. He accepted that he had often talked of making such a gift to family, friends and the public but had never put the act of giving the cars to his son into effect.
- iii. The email of 14 August 2007 sent at 12.49 by the Defendant to the Claimant is one of the most important and reliable documents presented by either party. It is written at a time when the relationship between father and son is still good and affectionate, it deals with ordinary, everyday family matters and against that background it is the most valuable insight into the position most likely to demonstrate the truth of the issues in this case. It appears in the original German at [D1-431] and in translation at [D1-433].

“Hello Daddy,

Thank you for your email!

It is a pity that the game never arrived.....I also sent one to Tarek (in Syria). I didn't even use a recorded delivery, and funnily enough it actually arrived! Okay, no problem, I will give you one when we see each other again!

Yes, I think I am now okay with getting acquainted with your new family, and I would like to come visit you in Phuket. However, I have to take care of my affairs here first...otherwise I can't really go away for any length of time!

Thank you for your willingness to give me the prototype. It means more to me than every other Stratos, even the Safari, on which I worked for several months of my life together with Luigi, for which I searched for parts, and from which I acquired my detailed knowledge of the Stratos.

The prototype means a lot to me, and has a kind of value for me that cannot be associated with money. I would really like to hand down this car from generation to generation - always to the firstborn son, and I want it to always remain under "Hrabalek ownership".

The car means so much to me because I not only found it, but I also think that I have contributed a lot to the increase in its value. Even the fact that the car was in Geneva in 2005 helped. I also associate with the car a relationship to yourself, because when I was just 16 years old we did a lot of things together. The prototype is the Stratos and it means everything to me.

Ultimately it is your decision.

I also know that you have always tried to be "just" and "fair", and that you have mostly succeeded in doing so. The prototype does not have any "numerical value" for me. In principle, it does not matter to me whether it is worth €50,000 or €5 million. I will NEVER sell this car...for this reason the value is also strictly nominal.

It would of course be nice if I could maintain the Stratos collection in full, but I understand that this would not be fair, and I also understand that you want to divide the cars and their effective value among your children. As I have said, I had never intended to sell the cars after your death, but wanted to keep the cars in your honour in our family.

I'm aware that in the short term we have to solve a couple of our financial problems!

I am in the process of selling the green one, as well as the Dino. I think I can get 250,000 euros for the green one. But I also think that I would need about two months to do so. For the Dino, I think that I could realistically get E50,000 - E60,000. However, I would have to invest about £4,000 before doing so. The "body" needs £2,500 (in order to remove the rust bubbles and to improve the optical appearance of the car), and the mechanical system needs about £1,500. The muffler is COMPLETELY rusted through...it would have to be replaced...and the clutch is sticking, and the brakes also do not work.

Whatever. I think that I will do it 100% in the medium to long term. I am fighting EVERY DAY for success, and I am really working hard at it. It will work out!

What is important is firstly to solve the financial problems in the short-term, or to find a solution. This is now my current task.

As I have said, I would really need £4,000 to make the Dino ready for sale. Do you think there would be a possibility...any possibility at all to perhaps get or borrow the money from Fellerer?

I still have not paid Tarek his £4,000 back. Instead, I had to borrow another £2,000 from him in order to keep the bank from dissolving my accounts and filing a lawsuit against me. Tarek understands this, and he is giving me several weeks' time to then pay back the 6,000 pounds to him in full. Hopefully by then I will have sold the green one, or the Dino.

Right now things are very difficult for me in financial terms. I know they are the same for you as well, but I would be thankful to you if you happened to have a solution for how to come up somehow in the short term with the £4,000. If the Dino is sold off, you would of course also have money!

We must come up with a strategic solution together. I will help you and you can help me. This is the only way we can get out of the current situation. I am very good at selling, and I think I can achieve more than anyone else, including Roks or DeCillia. In regard to selling old-timers, especially Stratos cars, I think I really am the best.

I hope we can meet up in October in Vienna? I think you wanted to come with your family to Vienna?

Chris

PS: thanks for your decision regarding the prototype! You have no idea how much that means to me!!! THANKS”

- iv. It is an open-hearted exchange written at a time when the Defendant and Claimant were both going through financial problems. It shows a tentative willingness on the Defendant’s part to meet the Claimant’s new family. It harks back to their shared passion for the collection and improvement of the Stratos cars. Of vital importance is the discussion of the gift of the prototype as a future event, not something which on the Defendant’s case had happened seven years before.
 - v. The Claimant responds on the general topics but in particular talks about getting the gift documented in writing before a notary public in the future. [D1-429]
 - vi. In evidence the Defendant claimed that he had written the email at his father’s request because the email was to be used by his father to obtain credit in Thailand. He gave evidence that his father had asked him to use the phrase “first born son” and a few other similar phrases as that would be helpful. How his father's ability to obtain credit would be enhanced by giving away a very valuable asset, such as this car, was never explained. He said the request had been made by his father and the plan had been that this email should just look normal.
 - vii. That evidence was wholly incredible. He could give no satisfactory account of why he should write such a private email in these terms seven years after he claimed the purported gift had been made. Such explanation that he gave was manifestly untrue and unreliable. Equally he could not explain the rest of the correspondence written in similar terms.
 - viii. It is proof that neither of the two protagonists believed that the prototype or the balance of the collection had been given to the Defendant by August 2007.
17. Neither party in this case is generally creditworthy or reliable. The Claimant accepts falsely leading people to believe that he had made a gift of the cars. That list includes the various witnesses in the case to whom the story had been told. Generally the story was to enhance his son’s reputation but on the occasion of the loan from Erste Bank it was possibly to facilitate the obtaining of the loan.
 18. He accepts some form of dishonourable conduct towards the tax authorities in Austria and Mr Kosaka, the vendor of the Turbo. There are considerable doubts as to his veracity in his dealing with Erste Bank.
 19. It is clear that he had intended, at some point, to give the cars to the Defendant, in his life-time, and quite possibly, as he told his former wife at the time of his son’s graduation. Despite that, it is a safe conclusion from all the personal correspondence between the parties, the most important of which is highlighted in the email of 14 August 2007 that, for whatever reason, he did not make that gift. Further it is absolutely clear from the communication between father and son, that the Defendant knew that the proposed gift had not in fact taken place.

20. Applying the burden of proof to the Claimant's case throughout, about which counsel did not agree, it is clear that the evidence satisfies it to the required standard and demonstrates that the Claimant did not, in fact, make the gift and further that the Defendant knew that the gift had not been made. The cars were and remain the property of the Claimant.