

Stolen Property

The epic legal battles over a stolen 1954 Ferrari 375 Plus Grand Prix

Karl Kleve was an atomic scientist who worked on the Manhattan Project. Later in life, he became a Cincinnati real estate investor who amassed an impressive collection of over 400 cars. He also designed and built 24 Kleve Supercars. Among the Cadillacs, Rolls-Royces, Kleves and Bugattis was a 1954 Ferrari 375 Plus, s/n 0384AM, one of only six made.

The 375 Plus was the 427 Cobra of its era, brutally fast, with barely adequate brakes, and an adequate suspension. S/N 0384AM had a long and storied history, participating in the Mille Miglia before coming to the U.S., where it was particularly successful in the races held on airbases during that time.

A similar 375 sold in the last 90 days, according to our resident Ferrari expert Mike Sheehan, in the neighborhood of \$5m. So you can see that there's enough at stake here to keep more than a few attorneys busy.

Kleve purchased S/N 0384AM for \$2,500 in 1958, in damaged condition and without an engine, after the dashboard wiring had caught fire. Kleve had the car partially disassembled for a restoration that he never seemed to get around to. It was stored outside, on Kleve's property sandwiched in by other cars, and largely forgotten.

In 1989, Kleve learned it had been stolen when a Ferrari Owners Club acquaintance told him that three men who were trying to sell the car had contacted the club nine months previously to ask about its value.

A trip around the world

Kleve reported the car stolen and set out to find it. He traced the car through Atlanta, Saudi Arabia, Italy and France to Belgium, where it had been seized by authorities when they found it on their hot sheet.

For some reason, the Belgian authorities had released it to a Michel Kruch in 1990, who then sold it to Jack Swaters, a well-known Belgian race driver and Ferrari importer, and his partner, Philippe Lancksweert. Swaters restored the car, installed a correct-type 375 engine and raced it extensively throughout Europe.

The Ferrari is now the subject of an intense legal battle being waged in the Ohio state court system between Swaters and Kleve's daughter, Kristine Kleve Lawson, who, with her two sisters, inherited Kleve's estate after he died in 2003.

"Legal Files" sourced its information from court filings, news reports, and Janaya Trotter of the Cincinnati law firm of Ritter & Randolph, who along with Daniel Randolph, represents Lawson. "Legal Files" was unable to reach Swaters' attorneys for comment.

A questionable serial number

"Legal Files" has previously explained how different countries take different approaches to the ownership of a stolen car that has been sold to an innocent purchaser.

Belgium takes a compromise approach where the rightful owner can get the car back by paying the purchaser the amount he paid for the car. Trotter explained that Kleve tried to do just that, but Swaters refused to accept the payment. Instead, Swaters insisted that he had a different car, s/n 0394AM.

There had been rumors that the serial number was either illegible or poorly altered. However, the bill of sale Kruch gave to Swaters specifically identified it as s/n 0384AM. And, a short time ago, examination of the Ferrari at Ferrari Classiche, where it is presently stored, confirmed that it is, in fact, s/n 0384AM.

The story gets fuzzy

In 1999, Kleve hired Mark Daniels, who works on locating stolen cars, to help negotiate a deal to get the Ferrari back. Swaters, Kleve and Daniels engaged in negotiations to resolve the mess, with Swaters buying the car from Kleve.

"This is where the story gets fuzzy," Trotter said.



The stolen 375 MM as it arrived at Swaters

An agreement was apparently reached, and Kleve signed a three-page contract and sent it to Swaters. Kleve's copy, which is unsigned, shows a purchase price of \$2.5 million on page one. Swaters' copy, with all signatures on the last page, shows a purchase price on page one of \$625,000. The other difference is that Swater's copy has the purchase money going to Daniels. Kleve's copy has Daniel's name crossed out and Kleve's inserted.

Lawson claims that contract pages got switched—and Kleve never received any of the money. Swaters produced two checks, in the amounts of \$400,000 made payable to Kleve and Daniels, and \$225,000 made payable to Daniels' company, National Search Services. And the \$400,000 check appears to have been endorsed by Daniels as Kleve's agent, not by Kleve.

Swaters filed the lawsuit to clear up the title to the car and to claim ownership of the VIN plate, hood, fuel tank, steering wheel, wheels, instruments and other body parts that Kleve had taken off the Ferrari before it had been stolen.

Lawson filed a counterclaim that states she is the rightful owner of the car, and that she is entitled to pay Swaters his original purchase price and get it back. The parties have filed numerous procedural motions that are, as of this writing, under consideration by the judge. It seems that they have a long, expensive, road ahead of them. But several issues have come to light that we can take a look at in normal "Legal Files" style.

Whose Parts Are These Anyway?

Swaters' position seems to be that, when he purchased "the Ferrari" from Kleve under the disputed contract, he also became the owner of the parts that Kleve had taken off the car. Swaters apparently claims that the parts were still part of the car, even though they were removed from it.

This seems to be a pretty tough claim for Swaters to win. How many times have we bought cars and learned later that various parts were retained by the seller? Can we go back and claim that we are entitled to get the original Rudge wheels for our 300SL that the seller kept in his garage? Or are we entitled only to the replacement wheels that were on the car when we bought it—and were the only wheels we ever saw? The answers seem obvious, but perhaps Swaters will teach us

all something new.

Swater's chances seem even slimmer after an affidavit was recently filed by Lancksweert stating that the purported \$625,000 purchase price was a reduction from \$750,000 on account of there not being any parts available. That seems to be corroborated by the fact that the contract makes no mention of the parts—the property is simply identified as "Ferrari 375 Plus serial number 0384AM." If Swaters was expecting to get the parts, shouldn't they have been mentioned? This is pure speculation, but he may not have known that Kleve still had them. The current legal conflict started in 2005, when Lawson engaged Kruse International to auction some of Kleve's vehicles and the Ferrari parts.

Swaters' attorney sent a letter to Lawson demand-



Ralph Lauren's restored 375 MM

Photo: Jarrett Rothmeier

ing that the parts be turned over to Swaters, and Lawson then withdrew them from the auction. Perhaps Swaters didn't know the parts still existed until he saw the auction listing.

Which Contract Is It Anyway?

This is going to be a huge "He said, She said" battle over the validity of the 1999 Swaters-Kleve contract.

Swaters looks pretty good here with a fully-signed contract, but Lawson makes good points about the strikingly different first pages and the lack of proof of payment. Lawson also claims to have a forensic analysis that concludes that the signature page matches the first two pages of Kleve's copy, but it does not match the first two pages of Swaters' copy. There doesn't seem to be any shortcut here, and after a full trial, the answer will depend upon which side produces the better evidence—and which side the judge views as the more believable.

Statute of limitations complications

Both Ohio and New York (which the 1999 contract references as the applicable law), have four-year statutes of limitation for breach-of-contract claims. This would seem to be a huge obstacle for Swaters, as he claims to have purchased the car from Kleve in 1999. If Kleve breached that contract by failing to turn over the parts, it seems that Swaters lost his legal rights in 2003.

Swaters claims that when Lawson became the administrator of Kleve's estate, she became obligated to fulfill Kleve's contractual obligations to Swaters, so she is now the one who has breached the contract.

"Legal Files" knows a thing or two about probate law, and isn't buying this argument. The administrator of an estate has all the same defenses against a claim as the decedent had, including the statute of limitations. Further, all persons who have claims against a decedent

are required to present them in the probate proceeding. If a claimant fails to do so within the time allowed, the claim is barred, and the claimant gets no right to later sue the beneficiaries of the estate.

The scope of Daniels' authority

The 1999 negotiations and transactions were carried out largely through Daniels acting under a power of attorney given him by Kleve. Swaters received a bill of sale and an Ohio certificate of title to the Ferrari, both signed by Daniels as Kleve's agent, and appears to have paid the \$625,000 to Daniels.

As documentation of Daniels' authority, Swaters submitted a signed and notarized 1999 letter of authority that Kleve gave to Daniels. However, this document seems to empower Daniels only to "pursue negotiations...for possible settlement..." regarding the stolen car. This appears to be a limited authorization, and it would not seem to authorize him to transfer title or receive payments. "Legal Files" expects that the scope of Daniels' authority will be a major issue in the case.

If Daniels did not have the legal authority to sign the title documents on Kleve's behalf, then Swaters must establish that the 1999 contract was legally binding and that he met all of his contractual obligations to establish ownership of the Ferrari.

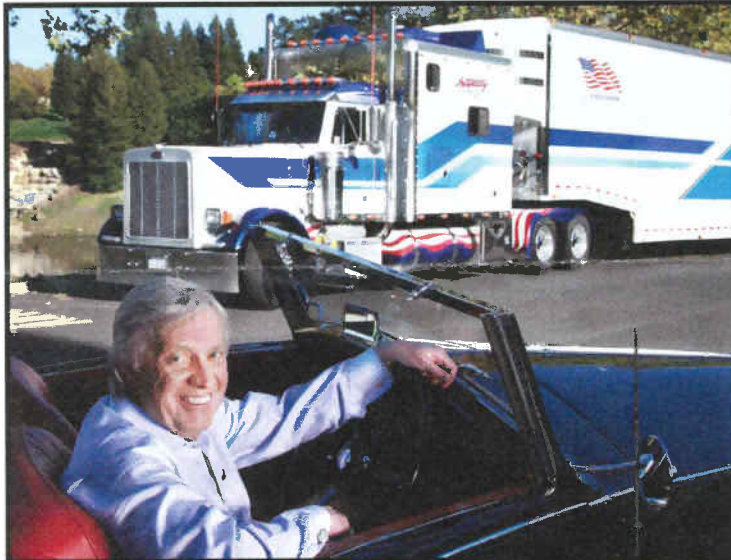
Further, Swaters needs his version of the contract to be valid. Otherwise, he cannot prove that he performed under the contract by paying money to Daniels, unless either the letter of authority is broad enough to authorize Daniels to receive Kleve's money, or he proves some other specific direction from Kleve to pay Daniels.

Innocent purchaser?

A lot will probably be made about Swaters' innocence, or lack thereof. It's easy enough to claim that, with all the publicity in the car collector community about the theft of this car, a person in Swaters' position as a significant collector should have known the car was stolen when he bought it. But that is really a minor issue, as it only goes to whether or not Lawson has to repay Swaters the money he paid for the car. But on the other hand, Swaters' knowledge at the time, and his efforts to avoid returning the car to Kleve, may affect his credibility on other issues.

No matter how you cut it, this is going to be a long litigation road. We should be hearing quite a lot about this case for a long time, unless someone blinks and agrees to a quick settlement. ♦

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



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