



Seller beware

On the rare occasions I've sold a vehicle, I've believed that insisting that the buyer did his or her due diligence, writing 'as is, where is' on the agreement and having both parties sign it, covered me should there be any comeback. I've just learned that I was completely wrong. A reader called, suggesting it'd be worth doing a story about a situation that he'd found himself in. What he told me blew my mind.

I'm going to change the names, because this saga isn't over. I have seen the original court documents. This story is the real deal. The long-time hot rodder who rang doesn't want to rubbish anyone, he just wants people to be aware of what can, and did, happen.

In July last year 'John' sold his hot rod. He'd owned it for a few years, and states that he had only changed the wheels. It had been built by a reputable hot rod shop around 25 years prior.

John had advertised the car in detail, to the best of his knowledge. The car had registration, a WOF, and a cert plate. He wrote in the advert that the car was LVV certified. He told the buyer, who we will call 'Dick', that the car had different wheels that didn't match the cert plate. John gave Dick the valuable set of wheels and tyres that were on the car when he bought it, for free, so that it would correspond with the plate.

Dick went away happy. He paid a fair price, and as far as he was concerned at the time, he'd bought a good car.

Around six months later, John gets a call. Dick had gone to get a fender exemption, and the LVV certifier picked up some significant issues with the car, specifically the seat belt mounts and the steering column. He'd had a quote of around \$30,000 to get this fixed. Dick told John that he wanted to return the car and get his money back, plus expenses. His arguments, and they were backed up by the certifier, was that the way seat belts were mounted wasn't - and never would have been - legal. It had been LVV certified, so the mounts must have been compiled when it was built. Also, the column didn't match the cert plate, therefore John must have changed the car. Plus, the wheels that Dick was given to match the plate (for free) were a half-inch different width to what was on the cert plate.

John thought long and hard, and told Dick sorry, no refund. 'You did your due diligence. It was sold as is where is, and no, I did not change the car.'

Dick's response: 'Pay me the costs to get it fixed, or I'll see you in court'.

John called his bluff. He did not believe that he had done anything wrong. A few months later he got a summons to appear at an Order of Disputes Tribunal hearing at a District Court.

There were three hearings, with Dick taking a certifier as a witness. John provided a magazine feature done not long after the car had been built that he believed proved nothing had been changed. He took along his mechanic who had concerns over the way the seat belts were fitted during a previous WOF inspection; he'd phoned the LVVTA, and got told 'if it matches the cert plate, it's fine'.

In court, John stated that 'he was not aware that the seat belt mounts didn't comply, and that the column didn't match the plate. The car was sold as is, and he did not intentionally misrepresent the car'.

Well, John lost. There are a couple of pages of reasons in the court document. The critical part is, 'section 35 of the Commercial Law and Contracts Act 2017... A party to a contract is entitled to damages for any loss suffered where that party has been induced to enter the contract by a misrepresentation, whether innocent or fraudulent... I find 'John' did make this representation... it is irrelevant if it is made innocently.'

To be clear, 'innocence' is not a defence. In court, the amount of damages was reduced to \$11,400 which was a quote for the work by a reputable hot rod shop. But get this. Dick was also awarded an additional \$1000 because the free wheels that John gave him didn't match the cert plate!

He's currently seeking legal advice about either appealing; taking the person he bought the car off to court ('not my style', he said); and/or pursuing the original certifier.

Regardless, there's a big lesson to be learned here. If you're selling a vehicle, stating 'as is, where is' is worthless. And if it's modified, make sure that it matches the cert plate. If it doesn't, let the buyer decide if they want to go ahead with the purchase. If they do, detail every single discrepancy on the sale and purchase agreement, and have both parties sign it. It seems that the onus is on the seller, and nobody wants to find themselves in John's unfortunate position.

- Alistair

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■ **THIS MONTH'S REALLY BAD JOKE:**
Q: Why do bees stay in their hives during winter?
A: Swarm.

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