

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

FLORENCE SWATERS

24, Clos des Cheneaux
B-1390 Grez-Doiceau
Belgium

JACQUES "JACK" SWATERS

143, Chaussee de Charleroi
B-1060 Brussels
Belgium

Plaintiffs,

vs.

KRISTINE KLEVE LAWSON

individually and in her capacity as
a beneficiary of the Estate of Karl Kleve
2887 Harrison Avenue
Cincinnati, Ohio 45211

John Does 1-2
unknown beneficiaries of the Estate
of Karl Kleve

John Does 3-4
Unknown transferees of Kristine Kleve
Lawson

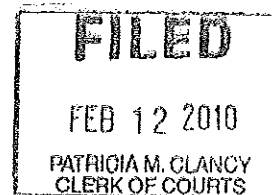
Defendants.

Case No.

A1001370

Judge

COMPLAINT



For their complaint against Defendants Kristine Kleve Lawson and John Does 1-4, Plaintiffs, Florence Swaters and Jack Swaters (collectively, "Plaintiffs"), state as follows:

BACKGROUND

1. Karl Kleve was a collector of cars who lived in Westwood, Ohio.

2. Among his 300+ collection of cars and parts was a Ferrari 375 Plus Grand Prix Roadster, serial number 0384AM ("Vehicle").

3. In 1958, Karl Kleve purchased the Vehicle from an individual in Chicago, Illinois for \$2,500. The Vehicle was sold to Karl Kleve in damaged condition as a result of a fire to the wiring system in the dash area. Copies of the 1958 Bill of Sale and an Affidavit of Karl Kleve attesting to this purchase and condition of the Vehicle are attached collectively as Exhibit A.

4. Sometime between 1985 and 1989, the Vehicle and its VIN data plate were stolen from Karl Kleve. In January 1989, Karl Kleve reported the theft to the Green Township police department and the F.B.I. A copy of the Affidavit of Karl Kleve attesting to the theft is attached as Exhibit B.

5. In 1989, the Vehicle entered Belgium through an auto trader named "L'Exception Automobile" based in Brussels.

6. Because the Vehicle had been reported as stolen in the United States, the Criminal Investigation Department of the Office of the Kings Prosecutor in Belgium seized the Vehicle in customs and conducted an investigation.

7. In February 1990, the Belgian authorities lifted the seizure of the Vehicle and allowed L'Exception Automobile to sell it in Belgium. A copy of the communication lifting the seizure along with a certified translated copy, is attached as Exhibit C.

8. In March 1990, Jack Swaters (who owned an exclusive Ferrari import and distribution business in Belgium), partnered with Philippe Lancksweert ("Lancksweert") and purchased the Vehicle in good faith from

L'Exception Automobile in Belgium. A copy of the photograph of the Vehicle in its damaged condition at the time of this purchase is attached as Exhibit D.

9. Despite its damaged condition, the Vehicle retained an extremely high value as a collector's item (only 6 were ever made by Ferrari) and the possibility of restoration. The more complete the vehicle, the higher the value.

10. Swaters and Lancksweert restored the Vehicle in Belgium and Italy at Ferrari headquarters for the sole purpose of racing it throughout Europe. Copies of the Vehicle in various stages of restoration are attached collectively as Exhibit E.

11. In or around 1997, Karl Kleve retained the services of Mark Daniels, President of National Search Services, Inc. located in Palm Beach Gardens, Florida, to locate the Vehicle and resolve any ownership disputes.

12. Mark Daniels caused a lien to be placed on the title of the Vehicle in Ohio during his search for the Vehicle. A copy of the Ohio title evidencing this lien is attached as Exhibit F.

13. Once the Vehicle was located, Karl Kleve appointed Mark Daniels as his agent and attorney-in-fact to pursue negotiations with Swaters and Lancksweert to resolve all ownership issues. A copy of the Letter of Authority, Letter of Authority Affidavit of Karl Kleve, and the Limited Power of Attorney executed by Karl Kleve are collectively attached as Exhibit G.

14. Jack Swaters designated Philippe Lancksweert as his agent for the purpose of consummating the transactions with Karl Kleve regarding the Vehicle. A copy of the Designation of Agent is attached as Exhibit H.

15. On September 2, 1999, Karl Kleve, Mark Daniels, and Philippe Lancksweert executed documents transferring all ownership rights claimed by Karl Kleve to Lancksweert and Swaters.

16. Mark Daniels executed a Bill of Sale on behalf of Karl Kleve, together with his respective predecessors in interest, legal successors and assigns, agents, attorney, and representatives, in favor of Lancksweert. A copy of the Bill of Sale is attached as Exhibit I.

17. Karl Kleve, Mark Daniels, and Philippe Lancksweert executed a Settlement Agreement evidencing the settlement of all ownership issues regarding the Vehicle and setting forth the obligations of the parties with respect to the Vehicle and its ownership. A copy of the Settlement Agreement is attached as Exhibit J.

18. Upon execution of the Settlement Agreement and pursuant to its terms, Lancksweert escrowed \$625,000 - \$400,000 for Karl Kleve and Mark Daniels, \$225,000 for Mark Daniels' company, National Search Services. Copies of both checks are attached collectively as Exhibit K.

19. As set forth in the Letter of Authority and Limited Power of Attorney, Mark Daniels collected and cashed the escrowed funds on behalf of himself and Karl Kleve. A copy of the endorsed check is attached as Exhibit L.

20. Following receipt of the funds, Mark Daniels executed a Lien Release and signed the Ohio title as agent and attorney-in-fact for Karl Kleve, as seller. A copy of the Lien Release is attached as Exhibit M, along with a copy of the Ohio title evidencing the lien release and transferor/seller signature as Exhibit N.

21. Both theft reports with the Green Township police department and the F.B.I. were cancelled and the Vehicle no longer listed as stolen. Copies of the removal of theft status confirmations from Green Township and the F.B.I. are attached collectively as Exhibit O.

22. Karl Kleve also executed a Release of Theft Status Agreement releasing the theft status of the Vehicle that he had reported in 1989 and agreed to deliver the Vehicle to Lancksweert and Swaters "for its and their use forever." A copy of the Release of Theft Status Agreement is attached as Exhibit P.

23. The Settlement Agreement was specifically amended to allow the parties to issue a statement regarding the Vehicle that "all claims with regard to ownership of the automobile have been resolved." A copy of the Amendment is attached as Exhibit Q.

24. Pursuant to the Settlement Agreement, Karl Kleve agreed to "transfer good and clear title and executed relevant documents for the benefit of Lancksweert" for the Vehicle.

25. Also pursuant to the Settlement Agreement, Karl Kleve and Mark Daniels agreed to indemnify and hold harmless Lancksweert and/or any other person or entity he may designate, from all claims, expenses or damages (including reasonable attorney's fees and cost) arising from or related to their ownership, possession or control of the Vehicle and any breach of any representation or covenant.

26. Following execution of the transfer documents and receipt of the Ohio title, Lancksweert did not sign the title as buyer or register the Vehicle in Ohio because it had been in Belgium since 1989 and at that time, was never

intended to be registered in Ohio but intended for restoration and classic races in Europe only.

27. Neither Karl Kleve nor Mark Daniels ever delivered any parts or the VIN plate to Lancksweert.

28. In December 2003, Karl Kleve died and his daughter, Kristine Kleve Lawson ("Lawson"), a beneficiary of his estate, was appointed Administrator by the Hamilton County Probate Court, case no. 2004000216. A copy of the Entry Appointing Fiduciary - Letters of Authority appointing Lawson as the Administrator is attached as Exhibit R.

29. As the Administrator of Karl Kleve's estate, Lawson had the authority and responsibility to perform and fulfill all contractual obligations of her father, the decedent, Karl Kleve, regarding the Vehicle.

30. Instead, Lawson executed an Application for Sale/Transfer of Motor Vehicle and stated that she was in possession of a Ferrari with the serial number 0384AM and requested that the Vehicle be transferred to herself, and Karyl Kleve and Katrina English, both beneficiaries of the estate. A copy of the Application for Sale/Transfer of Motor Vehicle is attached as Exhibit S.

31. Lawson also executed an Application to Sell Personal Property in which she attached a Description of Automobiles and listed "Miscellaneous Parts" valued at \$25,000. A copy of the Application to Sell Personal Property is attached as Exhibit T.

32. Karyl Kleve and Katrina English both consented to the sale of personal property and thereafter, the court granted Lawson's application. Copies

of the Consents to Sale of Personal Property and the Entry Authorizing Sale of Personal Property are attached collectively as Exhibit U.

33. In November 2004, Lancksweert sold his ownership in the Vehicle to Swaters and Florence Swaters ("Florence") began helping her father, Jack Swaters, manage the Vehicle.

34. In August 2005, Lawson engaged the services of Kruse International, an auction company to auction the vehicles and parts from Karl Kleve's estate. A copy of the press release advertising the auction is attached as Exhibit V.

35. Florence and Swaters learned that Lawson claimed to possess and intended to auction parts to the Vehicle, including but not limited to, the VIN data plate, fuel tank, engine cover, steering wheel, wheel supports, three wheels, one rear wing, and five instruments (collectively, "Parts").

36. Upon learning that Parts to the Vehicle were to be auctioned, Florence and Swaters hired Bruce Whitmer, Esq. who contacted Lawson as Administrator of the Estate, and demanded the return of any Parts to the Vehicle prior to the auction. A copy of Mr. Whitmer's correspondence to Lawson, the Administrator, is attached as Exhibit W.

37. Upon information and belief, Lawson did not introduce the Parts at the auction but retained possession of them.

38. In November 2006, one year following the auction and notice of Swaters' ownership and demand, Lawson, as Administrator, transferred title in the Vehicle to herself individually. A copy of the Vehicle registration search is attached as Exhibit X.

39. In March 2009, Florence became an equal owner of the Vehicle with her father.

40. Despite demand, Lawson has refused to transfer title or the Parts to the rightful owners of the Vehicle – Florence and Swaters.

PARTIES

41. Jack Swaters is an individual residing in Brussels, Belgium, Europe.

42. Florence Swaters is an individual residing in Grez-Doiceau, Belgium, Europe.

43. Kristine Kleve Lawson is an individual who, upon information and belief, resides in Cincinnati, Ohio, Hamilton County.

44. John Does 1-2 are unknown beneficiaries of the estate of Karl Kleve who may claim an ownership interest in the Vehicle and the Parts, and are believed to be residents of Hamilton County.

45. John Does 3-4 are unknown transferees of Lawson who may have possession of any Parts or titles of the Vehicle, whose residence is unknown.

JURISDICTION AND VENUE

46. This Court has personal jurisdiction over the Defendants because Defendants are residents of Hamilton County and have transacted business and their affairs in Hamilton County.

47. Venue is proper because a substantial part of the events or omissions giving rise to the claims occurred in Hamilton County; all of the Defendants are, upon information and belief, residents of Hamilton County; and the Parts and title to the Vehicle are located in Hamilton County.

COUNT ONE
Breach of Contract Against Lawson

48. Plaintiffs repeat the allegations contained in paragraphs 1 through 47 above as if fully rewritten herein.

49. Pursuant to the terms of the Settlement Agreement and Bill of Sale, Karl Kleve was required to transfer the entire Vehicle to Swaters through Lancksweert.

50. Mark Daniels signed the title of the Vehicle and executed a Lien Release evidencing his company's release of the lien on the Vehicle.

51. Lawson, as beneficiary of the estate of Karl Kleve and with the authority and responsibility as the duly appointed Administrator, was obligated to perform the contractual obligations of Karl Kleve as his legal successor under the Settlement Agreement, and transfer any and all Parts of the Vehicle and the title, to Swaters through Lancksweert.

52. Swaters and Lancksweert performed their obligations under the Settlement Agreement and deposited the required funds into escrow.

53. Even after receiving notice of Swaters's ownership in the Vehicle and a demand to return all Parts, Lawson as Administrator and individual, breached the Settlement Agreement and Bill of Sale by refusing to transfer any and all Parts of the Vehicle and by transferring title in the Vehicle to herself individually.

54. As a result of Lawson's breach, Florence and Swaters have been damaged in an amount to be determined at trial but believed to be in excess of \$25,000.00.

COUNT TWO
Specific Performance Against Lawson

55. Plaintiffs repeat the allegations contained in paragraphs 1 through 54 above as if fully rewritten herein.

56. The Bill of Sale and Settlement Agreement are certain, unambiguous contracts, mutually entered into and executed by the parties based on valuable consideration.

57. The Bill of Sale and Settlement Agreement are fair in all parts, free from misrepresentation or misapprehension, fraud, mistake, imposition, surprise, or unconscionability.

58. Specific performance of the Bill of Sale and Settlement Agreement would not be unconscionable on Lawson as the transfer of any and all Parts to the Vehicle and the title, would only serve to fulfill her father's intent and obligation under the contracts.

59. This Court has the authority to direct Lawson to fulfill the obligations set forth in the Bill of Sale and Settlement Agreement and Plaintiffs demand specific performance of both contracts.

COUNT THREE
Conversion Against Lawson

60. Plaintiffs repeat the allegations contained in paragraphs 1 through 59 above as if fully rewritten herein.

61. In November 2006, Lawson, as Administrator, transferred the Parts and title to the Vehicle to herself individually.

62. By retaining possession of the Parts and title of the Vehicle and to the exclusion of Florence and Swaters, the rightful owners of the Vehicle, Lawson has unlawfully converted them.

63. Lawson acted with malice or insult when she transferred the Parts and title to herself individually after she was notified of Swaters' ownership in the Vehicle.

64. As a result of Lawson's conversion, Florence and Swaters have been damaged in an amount including punitive damages, to be determined at trial and believed to be in excess of \$25,000.00.

COUNT FOUR
Replevin Against Lawson and John Does 1-2

65. Plaintiffs repeat the allegations contained in paragraphs 1 through 64 above as if fully rewritten herein.

66. Florence and Swaters are the rightful owners of the Vehicle which includes all Parts and title, and have the right to immediate possession.

67. Lawson has refused to return the Parts and transfer title and unlawfully retains possession of the Parts and title of the Vehicle which are believed to be in Hamilton County.

68. John Does 1-2 may also unlawfully retain possession of Parts or an interest in the title of the Vehicle which are currently believed to be in Hamilton County.

69. John Does 3-4 may also unlawfully retain possession of Parts or an interest in the title of the Vehicle as a result of any unlawful transfer by Lawson.

70. The value of the Parts and title are believed to exceed \$25,000.00.

71. The Parts and title have not been taken for any tax assessment or fine levied by virtue of any law or statute of the State of Ohio, nor have they been seized under any execution or attachment against the goods and chattels of Plaintiffs liable to execution.

72. Consequently, the Plaintiffs are entitled to a prejudgment order for possession of the Parts and title to the Vehicle.

COUNT FIVE

Unjust Enrichment Against Lawson and John Does 1-2

73. Plaintiffs repeat the allegations contained in paragraphs 1 through 72 above as if fully rewritten herein.

74. By performing their obligations under the Settlement Agreement, Lancksweert and Swaters conferred a substantial benefit to Karl Kleve.

75. Lancksweert and Swaters did not perform their obligations gratuitously but with the expectation that Karl Kleve would transfer to them any and all Parts to the Vehicle along with good, clear title.

76. As beneficiaries of the estate of Karl Kleve, Lawson and John Does 1-2 knew of the benefits conferred by Lancksweert and Swaters and have retained such benefits under circumstances where it would be unjust to do so.

77. Plaintiffs have been damaged by Defendants' unlawful retention of benefits and have been unjustly enriched in an amount to be determined at trial but believed to be in excess of \$25,000.00.

COUNT SIX

Equitable Restitution Against Lawson and John Does 1-4

78. Plaintiffs repeat the allegations contained in paragraphs 1 through 77 above as if fully rewritten herein.

79. Plaintiffs notified Lawson of their ownership rights in the Vehicle and demanded the return of any and all Parts in her possession, but Lawson refused.

80. Because the Vehicle can be properly identified as belonging to the Plaintiffs, Lawson must return any and all Parts she possesses, including good, clear title to the Vehicle, to Plaintiffs.

81. Because Lawson knew of Swaters' ownership interest in the Vehicle, any transfer, sale, or conveyance of any Parts or title to John Does 3-4 is unlawful and Plaintiffs are entitled to recover the products of such transfers.

COUNT SEVEN
Accounting

82. Plaintiffs repeat the allegations contained in paragraphs 1 through 81 above as if fully rewritten herein.

83. As a beneficiary, Administrator, and otherwise, Lawson has a duty to Plaintiffs to account for the Parts of the Vehicle in her possession and belonging to Plaintiffs.

84. Plaintiffs are entitled to an accounting and inventory of all Parts of the Vehicle in Lawson's possession or in the possession of any third-party or transferee, known by Lawson to exist.

85. As a direct result of Lawson's failure to account for any of the Parts of the Vehicle, Plaintiffs have suffered and will continue to suffer damages in an amount to be determined at trial.

COUNT EIGHT
Declaratory Judgment

86. Plaintiffs repeat the allegations contained in paragraphs 1 through 85 above as if fully rewritten herein.

87. An actual and bona fide controversy, which is justifiable in character, exists between Plaintiffs and Lawson regarding the parties' obligations and rights pursuant to the Bill of Sale and Settlement Agreement.

88. Plaintiffs contend that they are the true owners of the Vehicle and that Lawson is obligated to transfer any and all Parts and good, clear title of the Vehicle to Plaintiffs.

89. Upon information and belief, Lawson contends that she is not obligated to transfer anything regarding the Vehicle to Plaintiffs.

90. The Court's declaration of the provisions, meaning and interpretation of the parties' rights and responsibilities pursuant to the Bill of Sale and Settlement Agreement, may resolve this controversy and is necessary to the preservation of parties' rights that may otherwise be impaired or lost.

91. Pursuant to Ohio Rev. Code § 2721, et. seq., Plaintiffs request that this Court declare that the Bill of Sale and Settlement Agreement are valid, enforceable contracts; that Plaintiffs are the rightful owners to the Vehicle and any and all Parts of the Vehicle; and Plaintiffs are entitled to good, clear title to the Vehicle pursuant to the contracts.

COUNT NINE
Temporary and Permanent Injunctive Relief

92. Plaintiffs repeat the allegations contained in paragraphs 1 through 91 above as if fully rewritten herein.

93. Plaintiffs currently possess the original chassis of the Vehicle along with a Bill of Sale and Settlement Agreement from its prior owner, Karl Kleve, conveying all rights and title to the Vehicle to Plaintiffs.

94. Because Lawson has refused to return any Parts and registered another title to herself individually, despite knowledge of Plaintiffs' ownership, Plaintiffs will suffer immediate and irreparable injury if the Court does not enjoin Lawson from selling, transferring, or conveying or attempting to sell, transfer, or convey any interest in the Parts, the title, or the Vehicle.

WHEREFORE, Plaintiffs requests that the Court enter judgment in Plaintiffs' favor on each of Plaintiffs' claims as follows:

1. for breach of contract damages in an amount to be proven at trial;
2. for specific performance of the Bill of Sale and Settlement Agreement;
3. for damages, including punitive damages, for unlawful conversion of the Parts and title to the Vehicle;
4. for judgment directing Defendants to appear for the purpose of showing cause why a prejudgment order for possession should not issue and the Parts and title to the Vehicle be delivered to Plaintiffs; awarding Plaintiffs judgment for possession of the Parts and title of the Vehicle; and awarding Plaintiffs the costs and expenses of removing the Parts and transferring title in the Vehicle, and the costs of such bond or undertaking as may be ordered by the Court;
5. for damages for unjust enrichment in an amount to be proven at trial;

6. for restitution of all Parts and title to the Vehicle;
7. for an accounting of all Parts of the Vehicle in Defendants' possession, in the possession of any third parties or transferees, or known to exist by Defendant Lawson;
8. for a declaration that the Plaintiffs are the rightful owners of the Vehicle, including all Parts, and are entitled to good clear, title;
9. for temporary and permanent injunctive relief enjoining Defendants from taking any actions regarding the Vehicle, Parts, and title;
10. for all costs and attorneys' fees;
11. and for any and all further relief this Court deems just and appropriate.

Of counsel:

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Respectfully submitted,



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