

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

John Perkins)

Plaintiff,)

v.)

Pratik K. Desai,)

Defendant.)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-23-0217

Order

ENTERED COMPUTER

2014 NOV 20 PM 4 39

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

On May 23, 2012, Plaintiff John Perkins was driving his 1987 silver Porsche 928 S4 Coupe in a parking lot when Defendant allegedly backed out of a parking space and impacted the left front side of Perkins' car. No one, thankfully, was hurt.

In April 2013, Perkins sued Defendant, demanding damages of \$15,910.28, the cost of repairs to the Porsche. At his February 2014 deposition, Perkins, who is a licensed lawyer, testified he bought the Porsche on eBay just a few days before the wreck in 2012, but could not remember the purchase price. In the summer of 2013, he sold it over the internet to a buyer from Seattle, but again he could not recall the exact price nor did he have copies of the bill of sale or other transaction documents. When asked by defense counsel if he could find the sales records or otherwise determine the transaction prices, Perkins repeatedly testified "it's possible." Perkins Dep. at 27-29. Defendant then sent written discovery to Perkins seeking more information about his purchase and sale of the Porsche, to which he replied he had none.

Defendant now moves for partial summary judgment, seeking a ruling that any damages awarded to Perkins be limited to his reasonable repair costs. Given Perkins' inability to produce evidence concerning his purchase of the Porsche and its post-accident sale, Defendant asserts Perkins should not be allowed to claim depreciation. Perkins resists, maintaining lost value is a

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proper element of damages for personal property loss. He anticipates calling an expert witness at trial to testify how the wreck lessened his Porsche's value.

Perkins' inability to recall or provide documents concerning details of the sale of his car might strike some as odd. In his complaint, he declared the Porsche was "an all-original antique vehicle that has never been damaged nor repainted in any part." Complaint at ¶ 9. It is possible that a party—including one who is a lawyer—might forget basic details of the recent sale of a treasured item. It is also possible that a party, even a lawyer, might not have retained in his papers any record of what must have been a momentous transaction, or be able to access the records that may still exist electronically.

One could not deny the belief in such possibilities, but this court will proceed in a more rational direction, and grant Defendant's motion. Perkins is barred from presenting evidence of the Porsche's fair market value at trial from any source, whether by expert testimony or his own refreshed recollection.¹ A party who sells goods in the market cannot later come to court and dun another in damages for previous injury to the value of those goods while simultaneously frustrating inquiry into the market price obtained. Such conduct could justify a court to use its inherent power to toss the entire claim, which is what this court will do, with prejudice, unless Perkins on or before January 5, 2015, provides documentation concerning the price and other details of his original 2012 purchase and the 2013 sale.

IT IS SO ORDERED.



D. Garrison Hill
Circuit Judge

November 20, 2014
Greenville, South Carolina

¹ This order shall not be construed to limit Defendant's right to present evidence of the Porsche's sale price history.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP2302176

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
NOV 20 PM 4 39

John Perkins vs. Pratik K Desai

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy:
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order on Defendant's Motion for Partial Summary Judgment and in the Alternative Motoin in Limine in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to dajones@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 20th day of November, 2015.

Court Reporter:

PRESIDING JUDGE - D. Garrison Hill

Aaron Francis De Bruin 200 N. Main Street Suite
301 Greenville, SC 29601

William Layton Duncan Butler, Means, Evins & Browne, P.A. P.O. Drawer 451 Spartanburg, SC
29304-0451

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

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Paul B. Wickensimer Greenville County Clerk Of Court

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

D. Garrison Hill, Circuit Court Judge

DEC 29 2014

SC Court of Appeals

Case No. 2013-CP-23-02176


John Perkins.....Appellant,

vs.

Pratik K. Desai.....Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal for the above-captioned case on Pratik K. Desai by depositing a copy of it in the United States Mail, postage prepaid, on December 19, 2014, address to his attorney of record, William L. Duncan, Post Office Drawer 451, Spartanburg, South Carolina 29304.



Amy F. Wood