

IN THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION

CLAIM NO:HQ01X03736

B E T W E E N:

DENNIS TANNER

Claimant

- and -

(1) PETER JOHN FILBY

(2) ALAN G T HOWELL

Defendants

**STATEMENT OF FACTS IN RELATION TO
MEDIATION HEARING ON
2 APRIL 2003**

1. The Claimant, Mr Tanner at all material times ran a business called Pilgrim Cars. Pilgrim Cars manufactures and sells AC Cobra replica's called Pilgrim Sumos. The chassis and body of the cars are manufactured by Pilgrim Cars. The mechanical parts come from second hand "donor" cars.
2. Mr Tanner also owns one of two leading kit car magazines called "Kit Car". The first Defendant, Mr Filby owns the other magazine "Which Kit?"
3. In August 1999, Mr Tanner sold the Second Defendant, Mr Howell, a Pilgrim Sumo for £12,800. The car had been assembled by a previous customer of Pilgrim Cars who had sold it back to the business.
4. On the day the car was sold to Mr Howell, it was put through and passed an MOT test.
5. Unfortunately, Mr Howell experienced a number of problems with the car.

These were:

- The fuses in the cars headlights blew.
 - An oil filler cap fell off.
 - A fault developed with the fuel pump.
 - The clutch master cylinder needed replacing.
 - The zipper on the car's hood needed repairing.
6. Repairs were carried out by Mr Howell's local garage, TMC Gas Power, run by Mr Armitage.
7. More seriously, in or around January 2000 after the car had been driven some 1,000 miles, the cars front suspension collapsed while Mr Howell was driving down the M11 motorway causing Mr Howell to crash. Fortunately, there was no injury to Mr Howell. An AA recovery mechanic identified the cause of the crash as being with a nylock nut that held the car's front suspension in place. According to the AA mechanic, the nylock nut had worked loose and had come off.
8. Again, repairs to the car were carried out by TMC Gas Power. Some weeks later, further problems developed with the car's gearbox.
9. At the end of February 2000, Mr Howell sued Mr Tanner for the cost of the repairs amounting to some £1,300. The trial of Mr Howell's claim took place in the Tunbridge Wells County Court. After hearing submissions from both Mr Tanner and Mr Howell, the County Court Judge determined that:
- Mr Tanner was responsible for the faulty fuel pump and the clutch master cylinder.
 - Mr Tanner was not responsible for the car's front suspension collapsing and the subsequent faults with the gearbox.

10. At the hearing, Mr Howell made various allegations about poor after sales service. The County Court Judge rejected these allegations and determined that Mr Howell had unreasonably denied Mr Tanner the opportunity of attending to the repairs himself.
11. All in all Mr Howell was awarded £72 plus costs.
12. Mr Filby (who was himself involved in separate litigation with Mr Tanner dating from September 1998) attended the County Court trial hearing.
13. Following the hearing, Mr Howell wrote a letter to Mr Filby describing his dealings with Mr Tanner and the problems he experienced with the Pilgrim Sumo.
14. The letter was published by Mr Filby in the March 2001 edition of Which Kit? under the title "Tale of a Pilgrim".
15. Mr Tanner takes objection to the letter in that:
 - (1) it repeats allegations about poor after-sales service that the County Court Judge rejected;
 - (2) it charges Mr Tanner with having "a disgusting and arrogant" attitude;
 - (3) it charges Mr Tanner with not honouring a verbal guarantee;
 - (4) it implies that Mr Tanner was responsible for the collapse of the cars front suspension, again, something which the County Court Judge rejected; and
 - (5) it stated that Mr Howell has "won" his case when, in fact, much of Mr Howell's case had been rejected.
16. A follow up article and several letters from readers appeared in the subsequent editions of Which Kit? Mr Tanner takes objection to these as well because, amongst other things, they repeat the allegations about poor after sales service and refer to him as having a "couldn't give a toss" attitude. They also charged him with bringing the kit car industry into disrepute.

17. Mr Tanner's case is that, in publishing the articles and letters in the above editions of Which Kit?, Mr Filby was motivated by malice and deliberately misrepresented what had happened at the County Court trial to inflict financial ruin on him. In particular, Mr Tanner points to:

- (1) the existing Litigation between the two men and the attending animosity by both parties;
- (2) a letter written by Mr Filby in or around 1 February 2001 in which Mr Filby threatened to devastate Mr Tanner's business if Mr Tanner did not settle his claim and pay Mr Filby's costs;
- (3) the fact that Mr Filby attended the County Court hearing and so knew that the letter allegedly written by Mr Howell and published by Mr Filby in the February edition of Which Kit? did not accurately record the County Court Judge's findings; and
- (4) that Mr Filby continued to publish derogatory letters about Mr Tanner and make derogatory editorial comments (see, for example, the March 2003 edition of Which Kit?) notwithstanding the fact that Mr Tanner and Mr Filby gave each other mutual undertakings in March 2001 not to do so as part of a settlement of the previous litigation between them.

18. Mr Filby's and Mr Howell's cases are that the contents of the articles and letters published in the February, March and April 2001 editions of Which Kit? are true and/or fair comment. Mr Filby denies that in publishing Mr Howell's letter, he was motivated by malice.

Nylock nut

19. One of the issues that will need to be determined by the trial judge is who is responsible for the nylock nut coming loose and falling off. Mr Tanner's case in the County Court trial (which was accepted by the County Court Judge) was that TMC Gaspower probably

tampered with the nylock nut in the course of their carrying out repairs to the car's brakes. Responsibility for it working loose therefore lies with them and not him.

20. Mr Filby and Mr Howell's case is that TMC Gaspower did not carry out work on the car's brakes (see Mr Armitage's statement) and so responsibility for the nut failing must lie with Mr Tanner.
21. Mr Tanner's response to this is that, even if TMC Gaspower did not carry out work on the car's brakes, the car was thoroughly checked and passed an MOT on the day it was sold (see Mr Holmes' and Mr Bedford's witness statements). Accordingly the allegations in the "Tale of the Pilgrim" article that Pilgrim/Mr Tanner had failed ensure that the car was checked over before it was sold are unjustified.

Clifford Chance

1 April 2003