

THE CONTESTED COMMISSION

In prior columns we have explored cases involving disputes

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Schwanke claimed that he found flaws in the Mercedes, and offered

whether a contract for the sale of a collector car existed and, if so, whether it was breached by the buyer or seller. But such disputes may not only involve just those two parties. Sometimes a seller or buyer of a collector car may deal with a third person such as a broker to set up or otherwise assist in a transaction. In such cases there is always the potential for that third person to end up in a dispute with one or both of the original parties to the sale.

The recent case of *Olson v. Jahimiak* involved such a situation.

David Jahimiak is a dentist who also sinks his teeth into the collector car business, operating a dealership in La Crosse, Wisconsin that specializes in such automobiles. One of his crowning possessions was a 1955 Mercedes-Benz 300 SL gull wing coupe. According to court opinions, John Olson apparently contacted Jahimiak and stated he had a buyer for the car. Jahimiak apparently agreed to pay Olson a \$14,000 commission if the buyer, Kai Schwanke, paid \$214,000 for the Mercedes.

Schwanke verbally told Jahimiak he would buy the car for \$214,000, subject to inspection. Schwanke made an appointment with the doctor to see the car. He flew from California to La Crosse, and, on January 5, 1989, inspected the car.

Jahimiak \$210,000. Jahimiak rejected this offer. Schwanke then returned to his hotel. During the night, Jahimiak received (and accepted) a better offer from another buyer. Jahimiak called Olson and Schwanke the next morning and informed them that he had sold the car.


Seeking the wisdom of the courts and claiming that Jahimiak's actions adversely affected him, Olson sued Jahimiak for the commission. Jahimiak made a motion for summary judgment, asking the court to dismiss the case. The La Crosse County Circuit Court granted Jahimiak's motion. It ruled that Olson's claim depended on the existence of a contract between Jahimiak and Schwanke. The court found that no such contract existed because (1) Jahimiak withdrew the offer without Schwanke having accepted it; and (2) there was no "consideration" paid (*i.e.*, something given or given up in exchange) to prevent Jahimiak's withdrawing the offer. Olson appealed, arguing, among other things, that (1) the parties' initial agreement prevented Jahimiak from selling to another prospective purchaser while Schwanke was in La Crosse and (2) Schwanke's overnight stay in La Crosse constituted "consideration."

On February 11, 1992, the Wisconsin Court of Appeals considered these is-

sues, eschewed Olson's arguments and affirmed the lower court's ruling for Jahimiak.

The Court of Appeals examined the question of whether an enforceable "option contract" existed. Where parties agree to such a contract, where the buyer can exercise the "option" upon satisfactory inspection of the property, the court will allow the buyer a *reasonable time* to exercise the option. Here, an unsigned and incomplete written agreement which Jahimiak gave Schwanke provided that any agreement would be reached and down payment made on January 5, 1989. But on that day Schwanke had merely inspected the car, indicated that no further inspection was necessary, made a counteroffer that Jahimiak rejected, and left the scene. The Court of Appeals concluded that the "reasonable time" allowed for inspection and deliberation expired at that point. Therefore, Jahimiak had no obligation to turn away other buyers unless he and Schwanke had created an additional binding agreement, extending or renewing the initial offer. The Court of Appeals agreed with the trial court that they had not created such an additional agreement.

The court further noted that an option contract without "consideration" is revokable before acceptance. Schwanke had paid no "consideration" — defined by the court as "the slightest inconvenience or trouble that a person would not ordinarily be obligated to perform" — to prevent Jahimiak from withdrawing the offer. Capping its opinion, the Court of Appeals brushed away Olson's argument that Schwanke's overnight stay in La Crosse constituted "consideration," since Schwanke had scheduled his trip to La Crosse, including an overnight stay, before he and Jahimiak ever met. The court ruled that, because there was no "consideration" given by Schwanke, Jahimiak could pull out his offer any time before acceptance.

Although the court found that Jahimiak was not liable to Olson, the case gives an important reminder to car collectors: There may be others besides just the person whom you are considering selling to or buying from who may try to put the bite on you if the proposed deal goes sour. 

Lawrence Savell is an attorney and writer in New York City. This column provides general information and is not intended as a substitute for consulting a lawyer (or a dentist).