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Supreme Court refuses to take loss of opportunity damages case

*Hughes v. Pendragon Sabre Ltd t/a Porsche Centre Bolton
UKSC 2016/0037*

Article by David Bowden

The Supreme Court of the United Kingdom has refused permission for a final appeal by the Porsche Centre Bolton. It was seeking to over-turn a controversial decision handed down by the Court of Appeal earlier this year. The Court of Appeal, in a case with unusual facts, had overturned a sensible decision of a trial judge. It awarded Mr Hughes £35,000 damages for a car which he wanted to buy, was unable to do so, but if he had it might have been worth this greater sum. The County Court dismissed the case against the dealer ruling that Mr Hughes had suffered no loss. The Supreme Court decided there was no point of law of general public importance.

Hughes v. Pendragon Sabre Ltd t/a Porsche Centre Bolton
UKSC 2016/0037 19 July 2016
Supreme Court of the United Kingdom (Lords Mance, Clarke and Wilson JJSC)

What are the facts?

Mr Hughes ordered a limited edition Porsche 911 GT3 RS4, signed an order form and paid a £10,000 deposit. He was assured by the dealer he was first in the queue but there was no guarantee the dealer would be assigned any of these cars. The dealer did in fact get a car but, reneging on its word to Mr Hughes, sold it to someone else instead.

What happened in the County Court?

Mr Hughes brought a claim against the car dealer for damages. This was dismissed by District Judge Knifton on 22nd November 2013 in the Preston County Court. As this was a multi-track case, the appeal went to the Court of Appeal.

What happened in the Court of Appeal?

In a reserved judgment handed down on 20 January 2016 the Court of Appeal over ruled the judge below - [2016] EWCA Civ 18. Mr Hughes case was that section 51(2) of the Sale of Goods Act 1979 applied and damages under that section do not have to be assessed by reference to the date of breach. He said that the court could refer instead to the evidence before the trial judge that this limited edition car was later found to be on sale at £174,850 at a Leicestershire Porsche dealer in 2012.

It decided to award Mr Hughes damages of £35,000. Although the retail price of the car was £135,000, as it was a limited edition its value had increased and buyers were willing to pay around £170,000 to secure one. Mr Justice Cranston (who gave the judgment of the court in which Lord Justice Richards and Lady Justice Macur also sat) accordingly ruled that the measure of damages was the difference between these figures.

What was the criticism of the Court of Appeal judgement?

This is extraordinary decision because the evidence before District Judge Knifton was that Mr Hughes wanted to keep the car and did not want to sell it.

What happened in the Supreme Court?

The car dealer sought permission for a final appeal which if it were granted, it would then be seeking to over-turn the judgement of the Court of Appeal and restore the judgement of District Judge Knifton in Preston County Court. However on 19 July 2016 a panel of 3 Supreme Court Justices has refused permission for a final appeal on the basis that *'the application does not raise an arguable point of law of general public importance'*. This means that the decision of the Court of Appeal stands.

What lessons can be learned from this case?

This is an unusual case because it is rare for cars to increase in value. It didn't help the car dealer in the Court of Appeal that it had clearly made an offer to Mr Hughes and then reneged on it. Before he became a judge, Ross Cranston had written a consumer law text book and retains an interest in the field. The judgement is littered with references to a number of contract cases that are the staples of 1st year law students (such as *Hadley v Baxendale*, *Cudgen Rutile v Clarke*, and *Herrington v British Railways Board*) which the Supreme Court will not now get a chance to rake over the embers of. Perhaps the argument in *Bunker Malta* persuaded it to lose any appetite for another contested sale of goods case.

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