

STATEMENT OF FACTS

Ferrari VIN #0799GT

1995-1999 procedures in Spain and Portugal

Year 1995

Preliminary remark:

The judgments/court orders from “Court #5 of First Instance of Marbella” dated February 4, 1994, signed by Judge Adriano Jimenez Hayas and from “Court #5 of First Instance of Marbella” listed as “Pre-Trial Proceedings 677/93C” possible date November 2, 1995, signed by Judge Antonio Ruiz Villen, (in the possession of Mr. Hallingby!) cannot be found in my documents.

1. In 1995 Attorney Eduardo Sanz Marquez of “Sanz-Arribas&CID Abogados” represented the interests of Mr. Friedli in Marbella.

According to a fax message of Attorney Sanz Marquez on 2 February 1995 a civil procedure was carried out at the Marbella Law Court No. 5. It is not clear according to that document against whom the civil action was filed, but most probably against the Italians (Mr. Giudice, Mr. Meninno etc.). In the above mentioned fax message Attorney Sanz Marquez asked Mr. Friedli for evidence documents like the original car papers, insurance documents, purchase contracts from the garage “Elite Car Diffussion” in Fraschels, Switzerland, and an estimation regarding the value of these cars. It was probably quite difficult for Mr. Friedli to provide the car papers, as he gave the original documents to Mr. Kelvin Fisher in 1991, when the cars were transported from Spain to Switzerland.

Evidence Fax message from Attorney Eduardo Sanz Marquez to Mr. **No. 83**
Friedli on 2 February 1995

2. In a fax message on 20 April 1995 to Attorney Bratschi (Berne/Switzerland), Attorney Sanz summarized the different legal procedures pending at the Marbella Court. He pointed out, that a first complaint was lodged after the undue taking of the cars by “Motorauto Marbella” and swindles done by the Italians (in 1991). The procedures reference was “diligencias penalise 1451/-C” before Marbella Law Court No. 2. The first criminal procedure ended with the judgment on 20 March 1993 (see evidence no. 55) and with the order of a 3 month term, during which the civil action was lodged and consequently the cars remained judicially seized.

Attorney Sanz then complained about the Law Court of Marbella and its carelessness for giving the vehicles to the Italians, although the civil complaint was started within the legal settled term. (Remark: Precisely verbalized, the cars remained judicially seized after the decision of 20 March 1993, but at the garage “Motorauto Marbella”, where the cars were *in danger*. On 17 Mai 1993, and hence within the 3 month term, the Marbella Court ordered the exhibition of the cars to Mr. Friedli by “Motorauto Marbella” respectively by Mr. Fisher and the prolongation of the judicial seizure; see evidence no. 61).

Attorney Sanz additionally mentioned in that fax message to analyze if a compensation from the Department of Justice could be claimed due to the irresponsibility of the Marbellan Judges.

Attorney Sanz further informed Dr. Bratschi that a new (criminal) complaint was filed after the disappearance of the cars. This procedure was pending at Marbella Law Court No. 5 and has the reference “diligencias previas no. 677/93”.

Further on Attorney Sanz mentioned problems regarding the cooperation with the Portuguese law enforcement (rogatory commission), as he (and the Spanish Police) had not received any response for more than one year.

The main lawsuit has the procedure no. 334/93 and was pending at the Marbella Law Court no. 5. Attorney Sanz explained to Attorney Bratschi that he is trying to recover the cars (probably from the Italians) and if they would not appear (which he considered as most likely) he indented to reimburse the amount of USD 1.9 million (and probably claiming this amount from the Italians or from the State of Spain as compensation).

Evidence Fax message on 20 April 1995 from Attorney Eduardo Sanz **No. 84**
 Marquez to Attorney Dr. Peter Bratschi

3. In a letter from Attorney Dr. Ruoss (representing Dr. Gerber) on 26 April 1995, the latter informed Attorney Peter Keller (Swiss lawyer, representing Mr. Friedli) about the following important aspects. The letter is written in German:

(1) Dr. Gerber found out from a private contact, that Ferrari 0799 GT was offered for sale in Bologna by an Italian called Meninno last summer (accordingly 1994). It remained unclear, where the car was located and if it was transported to Italy.

(2) According to unconfirmed information Dr. Gerber had heard, that Ferrari 0799 GT was sold to a company called "Classic Coach Ltd" USA, for which a Mr. Joe Triarcy was believed to work for. Dr. Gerber was not sure, if the above mentioned company had ever taken the car over.

(3) The final recipient of the car and the apparent actual possessor of Ferrari 0799 GT was a Dr. Scott Rosen. He is a dentist and collector of exclusive cars. Dr. Gerber respectively Dr. Ruoss then unveiled the exact address of Dr. Scott Rosen in Bedford/NY to Attorney Peter Keller.

Dr. Ruoss then advised Attorney Peter Keller to have the car seized in the USA and to inform Dr. Scott Rosen about the Investigations of Interpol in order to avoid the disappearance of the car again.

On 27 April 1995 Attorney Peter Keller immediately informed Attorney Sanz about the said letter from Attorney Dr. Ruoss and the probable location of Ferrari 0799GT in New York.

Remark:

This correspondence proves the good cooperation between Dr. Gerber (and his Attorney) and Mr. Friedli (and his Attorney). Both tried by all means to recover the cars. This correspondence also proves that there was no dispute between Dr. Gerber and Mr. Friedli.

- Evidence**
1. Letter from Attorney Dr. Ruoss to Attorney Peter Keller, on 26 April 1995 **No. 85**
 2. Letter and fax message from Attorney Peter Keller to Attorney Sanz, on 27 April 1995 **No. 86**

4. On 11 Mai 1995 Attorney Peter Keller contacted Attorney Peter Briger in New York and addressed several legal questions to him. In this letter Attorney Peter Keller made it clear, that the cars (and the real estate property of Mr. Friedli in Spain) were only *formally* transferred to the Italians, who had never paid the amount due. Additionally, Attorney Peter Keller wrote that Mr. Friedli expected his cars to be returned to him after having handed in a bank guarantee to the Court of Marbella. The thereby mentioned month of the theft (June 1993) is not correct. The cars disappeared on 7 July 1993; the garage "Motorauto Marbella" was inspected on 20. July 1993 by Attorney Torrabadella, that is the day the theft was discovered.

On 23 Mai 1995 Attorney Peter Briger answered the questions of Attorney Peter Keller in a fax message.

Attorney Peter Briger made the following important remarks in that fax message:

"Under the UCC (Uniform Commercial Code) a purchaser of goods acquires from the seller only such title as the seller had in the goods. A thief does not have title to property he has stolen and thus cannot convey title to another through a sale or otherwise. The rightful owner of the property thus retains right to the property superior to someone who purchased the property from the thief".

Additionally Attorney Peter Briger made the following important remark:

"To obtain possession of the vehicle, Mr. Friedli would have to bring an action for conversion against Dr. Rosen. The fact that Dr. Rosen's conduct may have been wholly innocent in that he purchased the vehicle in good faith, without knowledge that I was stolen would not be a defense to such an action"

- Evidence**
1. Fax message from Attorney Peter Keller to Attorney Peter Briger (New York), on 11 Mai 1995 **No. 87**
 2. Fax message from Attorney Peter Briger (New York) to Attorney Peter Keller, on 23 Mai 1995 **No. 88**

5. On 23 June 1995 Mr. Friedli received a fax message from Attorney Fernando Antunez (Partner of Attorney Sanz in Marbella) informing the former about the investigations of the Portuguese police based on the letters rogatory of the Marbellan Police to the Portuguese Police.

The Portuguese Police prepared a report about the happenings regarding the disappearance of the Ferrari cars, written in Portuguese but translated into Spanish. Additionally, Mr. Friedli received a document from the Portuguese Police concerning the interrogation of Mr. Pedro Manuel Poiares Serra, who took the four Ferrari cars over in Lisbon.

Interrogation of Mr. Pedro Manuel Poiares Serra by Inspector Dr. Alfredo Esberard and El Agente Filipe Cardia at the Judicial Police in Lisbon on 28 March 1994

Mr. Poiares was identified as follows:

Name: Pedro Manuel Poiares Serra "Alcunha" from Lousa (home town)

Nationality: Portuguese / birthday: 16. April 1961

Civil status: unmarried / profession: car dealer

Address: 108 Columbano Bordalo Pinheiro Avenue, Lisbon

Criminal background:

- Procedure at the Tribunal of Boa-Hora regarding falsification of cars in 1987: acquittal
- Procedure at the Tribunal of Oeiras regarding the crime of defamation in 1982: conviction to pay a fine of 12,000 escudos

"Mr. Poiares stated that his professional activity is dealing with new or second hand vehicles. In general he would sell these cars to foreigners like Spaniards, Swiss and Germans. Indeed he had acquired four antique Ferrari cars from the company Motorauto Marbella, located at Avenue Ricardo Soriano 59, Marbella, in July 1993."

"He further states that he was having conversations regarding the purchase of these vehicles with this Marbellan enterprise since 1991. But since the cars were confiscated by a Spanish Court order, concrete negotiations became only possible in July 1993 after an authorization of this Court was given, according to which the vehicles were allowed to be commercialized during a period of 90 days (!). He acquired these vehicles from the before mentioned enterprise for 70-80 millions escudos. The cars were ordered in the month of July. The cars were delivered to the Hotel Ritz in Lisbon by the company "Pierre Motors" from Motril, Granada, Spain. The cars were in a bad condition why they had to be repaired at a repair shop in Odivelas llamado: "Repair shop of Carlos Mendes", exactly located at Olival de

Basto-Odivelas. After the reparation, the cars were exported to the USA through an English company named "L-H.Harms" and by a Belgium subsidiary in Amberes. The sale of the cars was not carried out for an amount of money but for exchange of various vehicles; the quantity received for this sale could not be specified by him. He offered several documents to the Investigators to prove the sale of the cars and the payment of the Ferraris. "

"He also offered documents to prove the legal nature of the business done with the company "Motorauto Marbella", which he could provide within short time. The Ferrari cars came together with documentation and with a photocopy of the approval of the Spanish Court authorizing the sale (!). All questions relating to the sale of these cars were dealt by an Attorney in Marbella, who was in the possession of those documents and whom could be interrogated by the Police. The cars were not matriculated, but its documents were verified and turned out to be of Swiss and American origin. The business was carried out lawfully and with the consent/approval of the Spanish court in order to conduct the sale."

The interrogation was terminated at 11:55h

Report of Portuguese Police from 14/18 July 1994, elaborated by Inspector Alfredo Esberard and Agent Filipe Cardia (proceeding reference no. 313-95.JUD)

- The responsible inspector stated that the report was written after a request of the Spanish Police to localize and confiscate the four Ferrari cars. The four Ferrari cars were according to this Police report stolen ("robados") in Spain and brought to Portugal ("to our country" / "a nuestro pais") by the interrogated Mr. Pedro Manuel Pioares (Pioares) Serra.
- The inspector states furthermore that Mr. Pedro Serra is a car dealer with garages in Lisbon. But the said (Ferrari) cars could not be located.
- Additionally, the Portuguese Inspector concluded that:
 - the said cars were confiscated ("estaban confiscados") in Marbella/Spain by order of the Instruction Court No. 2 of Marbella and handed over to a Mr. Kelvin John Fisher who was to be qualified as depository / trustee (!).

- that the cars were transported from to Lisbon on 6 July 1993 by Mr. Pedro (Poiares) Serra to the Hotel Ritz, where they were stored at the garage of this hotel.
- Dr. Joao Boto, representing the Swiss Embassy in Portugal, had declared
 - that the Ferrari cars were deposited in a garage in Marbella by the Swiss owner (“propietario de nacionalidad suiza) in order to sell them to an Italian.
 - that the seller (Mr. Friedli) asked for a “bank guarantee” in respect of the future sale of the cars, which was presented to the former but later turned out to be forged.
 - that the owner (“el propietario”) of the cars noticed that the cars had disappeared from the place where they were stored
 - that according to the declarations of a Mr. Alvaro Teixeira, the owner of a transport company in Motril/Spain, the cars were transported to Lisbon by the former.
- The inspector moreover informed that Mr. Pedro Manuel Poiares Serra had declared:
 - to have received the Ferrari cars from the company “Motorauto Marbella” located in Marbella/Spain, for the amount of 70-80 millions escudos
 - that there were negotiations from 1991 until 1993, which became concrete in July 1993 after a Spanish Court would have allowed commercializing the said cars
(Remark: This information is obviously wrong and based on the erroneous statements of Mr. Poiares to the Portuguese Police. True is that the Marbella Court ordered the exhibition of the cars to Mr. Friedli and the maintenance of the judicial seizure on 17 Mai 1993; see evidence no. 61)
 - that Ferrari cars would have been repaired and sold to the USA through a Belgium subsidiary of the English company “E.H. Harms”

- that the cars came together with the documents and a photocopy of a paper of the Spanish Court, which would have “authorized” the sale
 - that photocopies of sales contracts regarding the vending of the cars from “Motorauto Marbella” to “Sociedad Shoreham Investments Ltd” (a company which belonged to Mr. Pedro Manuel Poiares Serra) were provided.
 - that in the said sales contracts it had been agreed:”Motorauto Marbella S.L. transfers the ownership of the four Ferrari cars to (the company) “Sociedad Shoreham Investments Ltd” by payment of the USD 400,000.00, without having a referring contract, but based on the fact that the cars were seized by the Court
 - that the company “Sociedad Shoreham Investments Ltd” had authorized Mr. Pedro Serra (Poiares) to sell the cars within 90 days, being obliged to pay to the mentioned company USD 900’000.00; a commission on sales of 20% was stipulated.
- This information was then transferred to the Instruction Court No. 5 of Marbella, Malaga, Spain, based on the letters rogatory No. 164625; to this (matter) the (procedure) number DP no. 24160100 will be attributed.

Lisbon, 14 July 1994

- Evidence**
1. Fax message from Attorney Fernando Antunez on 23 June 1995 to Mr. Bernhard Friedli, including the interrogation of Mr. Pedor Maneul Poiares by the Portuguese Police on 28 March 1994 (original Portuguese document with Spanish translation included) **No. 89**
 2. Report of the Portuguese Police, elaborated by Inspector Alfredo Esberard and Agent Filipe Cardia on 14/18 July 1994, as response to the letters rogatory of the Marbellan Police **No. 90**

6. In a letter from 24 July 1995 Mr. Friedli informs Attorney Torrabadella (in French) that he was told (by Dr. Gerber) that Ferrari VIN 0799GT was offered for sale in Bologna/Italy by an Italian called Meninno. In addition, he informed that Ferrari 0799Gt was transported to a company named "Classic Coach Ltd", belonging to a Mr. Joe Triarcy. The buyer of the car is supposed to be a Dr. Scott Rosen from Bedford, NY, USA. Moreover, Mr. Friedli informed Attorney Torrabadella, that he was told that a criminal complaint was being prepared by an Attorney in New York regarding the offence of larceny ("*for having bought a car from a crime*"/ "*pour avoir acheter une voiture d'une crime*").

Evidence Letter from Mr. Friedli to Attorney Torrabadella (in French), **No. 91**
on 24 July 1995

Year 1996

7. As it will be shown later a law suit (civil procedure) and a criminal procedure against the Italians (Mr. Giudice & co.) were pending at the Marbellan Court.

(Remark 1: Mr. Kelvin Fisher probably disappeared after shutting down the garage "Motorauto Marbella" in July 1993 [with the exception of the interrogation in September 1994]; he is not mentioned in any document throughout the period of 1996-1999)

Remark 2: I am not in the possession of any further court documents relating to the period 1996-2000.

On 4 March 1996 Attorney Torrabadella sent a letter to Mr. Friedli, informing him in French about the police and judicial turning point in Marbella concerning the theft of the Ferrari cars (..."*concernant le vol des voitures Ferraris*"). Attorney Torrabadella referred to some documents. It remains unclear what was meant by the "turning point".

In a letter on 11 March 1996 to Attorney Torrabadella, Mr. Friedli thanked to the former and told him to await “the judgment” (“*nous attendons le jugement*”).

- Evidence**
1. Letter from Attorney Jaime Torrabadella (Interloi S.L.) to Mr. Friedli, 4 March 1996 **No. 92**
 2. Letter from Mr. Friedli to Attorney Jaime Torrabadella, 11 March 1996 **No. 93**

8. In a fax message from Attorney Peter Keller to Attorney Eduardo Sanz Marquez (on 10 July 1996) the former asked for a summary of the legal actions carried out regarding the Ferrari cars. Additionally, Attorney Keller informed Attorney Sanz that no legal action was carried out against Dr. Scott Rosen in New York yet.

- Evidence**
- Fax message from Attorney Peter Keller to Attorney Sanz Marquez, on 10 July 1996 **No. 94**

Mr. Friedli died in the second half of 1996. The procedures were continued by his heirs, especially by the widow Mrs. Annerose Friedli-von Muehlenen.

Year 1997

9. The documentation regarding the year 1997 is very modest.

In a letter on 15 August 1997 Attorney Dr. Bratschi (representing the heirs of Mr. Friedli) advised Attorney Eduardo Sanz Marquez about the possibility claiming damage compensation from the State (of Spain) for handing out the cars too early. He then asked Attorney Sanz to make sure that the claims concerning the state liability will not come under the statute of limitations.

- Evidence**
- Fax message from Attorney Dr. Peter Bratschi to Attorney Sanz Marquez, on 15 August 1997 **No. 95**

Year 1998

10. On 26 June 1998 Attorney Dr. Peter Bratschi (represented by Lukas Wyss) asked Attorney Sanz about news in this case.

On 1 July 1998 Attorney Dr. Peter Bratschi was informed by Attorney Sanz Marquez that the (civil) claim (against the Italians) was dismissed by the Judge of Marbella, but that an appeal was interposed and a hearing awaited. He further informed that in this case the judgment would estimate their claims; another claim against the State (of Spain) for damage compensation would be an option.

The civil action against the Italians claimed the return of the cars or the payment of the price of the cars (in case of their disappearance) plus damages.

A fax message from Attorney Dr. Peter Bratschi (represented by Lukas Wyss) on 22 December 1998 made it clear that the criminal procedure regarding the Ferrari cars was still pending in the year 1998.

- Evidence**
1. Fax message from Attorney Lukas Wyss (representing **No. 96** Dr. Bratschi) to Attorney Sanz Arribas, 26 June 1998
 2. Fax message from Attorney Sanz Arribas to Attorney **No. 97** Dr. Peter Bratschi, 1 July 1998
 3. Fax message from Attorney Lukas Wyss (representing **No. 98** Dr. Bratschi) to Attorney Sanz Arribas, 6 July 1998
 4. Fax message from Attorney Sanz Marquez to Attorney **No. 99** Dr. Peter Bratschi, 20 July 1998
 5. Fax message from Attorney Lukas Wyss (representing **No. 100** Dr. Bratschi) to Attorney Sanz Marquez, 22 December 1998

Year 1999

11. On 14 January 1999 Attorney Lukas Wyss informed Mrs. Friedli (the widow) about the criminal procedures regarding "Gatoo" and the Ferraris.

Attorney Wyss informed that

(1) concerning the matter “Gatoo” the prosecuting attorney (in Spain) had brought in an accusation regarding the same crimes as against Mr. Rodriguez (= Attorney Juan Ramirez Rodriguez).

(Remark: These accusations probably concerned the failed real estate deals of Mr. Friedli in Spain. I don't know what is meant by the matter “Gatoo”. Mr. Friedli became the victim of the Italians [Mr. Meninno & co.], who never paid and never intended to pay the purchase price for Mr. Friedli's real estate property in Spain. The involved bogus company in this respect was the enterprise “Diska”, which belonged to the family holding of dean judge Pilar Ramirez)

(2) Regarding the Ferraris, Attorney Jose Barros Sales in Portugal had not undertaken any further steps since April 1995. The latter had no further information about the Ferraris.

The fax message on 18 January 1999 to Mrs. Friedli (the widow of Mr. Friedli) had the same information as the letter on 14 January 1999 which is mentioned above, except of the 3rd paragraph.

In paragraph 3, Attorney Wyss informed Mrs. Friedli based on information from Attorney Sanz, that the prosecuting attorney in Spain had ceased the criminal procedure (without mentioning which one and why). Additionally, the civil claims (most probably against the Italians) had been dismissed, because the judge had considered the acquisition (by the Italians) and the purchase price of the Ferraris as insufficiently proven. Attorney Sanz had interposed an appeal and was waiting for the court hearing at the Supreme Court.

Remark:

Even if the mentioned judgment of the civil court of Marbella was negative for the heirs of Mr. Friedli, it shows that according to Spanish law (and the Marbellan Court) no valid sales contract was concluded between Mr. Friedli and the Italians (Mr. Giudice, Mr. Meninno etc.) and hence no property on the Ferrari cars was transferred to anyone.

- Evidence**
1. Letter from Attorney Lukas Wyss to Mrs. Annerose Friedli, **No. 101**
14 January 1999
 2. Fax message from Attorney Lukas Wyss to Mrs. Annerose **No. 102**
Friedli, 18 January 1999