

# THE CASE OF THE TWO-LITER LOTUS

## PART II

LAWRENCE SAVELL

Last month, in Part I, we reviewed the claims and historical background of *Spyder Enterprises, Inc. v. Ward*, decided on December 30, 1994, by the United States District Court for the Eastern District of New York in Brooklyn. Now let's see how the court ruled in this case involving the purchase of a 1962 Lotus 24 Formula One race car.

The court first addressed the issue whether the seller, Richard Ward, had fraudulently induced the sale. Under New York law, a plaintiff claiming fraud must prove that (1) a false representation was made as to a material (*i.e.*, important) fact; (2) the defendant knew the representation was false; (3) the representation was calculated to induce reliance; (4) the plaintiff relied on the representation and was unaware of its falsity; and (5) the plaintiff was injured by his or her reliance on that representation. The court ruled that Singer had established those facts, that Ward had assured Singer at the time that the engine was an historically appropriate 1.5-liter BRM model, and that this assurance was a material factor in Singer's decision to purchase the car.

Ward had presented evidence that two-liter engines could be "destroyed"—mechanically adapted to a lesser 1.5-liter displacement so they could qualify for an FIA-sanctioned racing event. However, Ward did not present any evidence that any such adaptation was ever attempted with an engine appropriate to a Lotus 24 in an FIA-sanctioned Grand Prix event. Although since 1966 two-liter engines have been paired with Lotus chassis in certain racing events, those events are nonsanctioned and known as vintage historical races. They are non-FIA; therefore, participation in them could not earn the winners legitimate points toward the Championship.

Moreover, the court pointedly observed that, "for Singer, a vintage car collector, historical racing is entirely beside the point. Singer collects vintage cars; he does not race them. Vintage car collectors are motivated to purchase an automobile by its provenance [*i.e.*, pedigree] and its investment potential rather than by any points-winning capability. Because throughout Formula One history a Lotus 24 chassis had never been paired with a two-liter engine, the pairing of a Lotus 24 with a two-liter BRM would seem to a serious collector to indicate an almost blasphemous contempt for the car's distinguished history. As only thirty-one 1.5-liter BRM engines and thirty-three Coventry Climax engines were ever manufactured, they are of tremendous historical significance to collectors of vintage racing machinery and memorabilia."

The court then turned to Ward's attempt to assert the doctrine of caveat emptor—arguing that Singer was barred from relief because he should not have relied on information from Ward, but should have instead conducted his own investigation into the car's condition and history. It concluded, however, that Ward was barred from asserting this defense because of the previous finding that he had engaged in material misrepresentation. Following a 1938 ruling from New York's highest court, it stated, "[t]he doctrine of caveat emptor will not relieve a defendant who has engaged in such conduct from liability for fraud, for [i]t is no excuse for a culpable misrepresentation that a means of probing it were at hand."

The court also rejected that defense because it found that Ward had made an *express warranty* (a specific promise) regarding the engine. It ruled that such warranties are "intended precisely to re-

lieve the [buyer] of any duty to ascertain the fact for himself." Thus, Singer was not required to hire an expert to verify Ward's statements.

The court then addressed Ward's defense that Singer had not timely rescinded (*i.e.*, undone) the sale, but rather, had through negotiations between Singer and a potential purchaser demonstrated an intent to reaffirm the contract. Under the law, a party seeking to rescind a contract must do so promptly once it learns that the contract has been breached. The court ruled that Singer's writing Ward 31 days after the transaction saying that "I would like you to take back the car and refund the moneys in full" was a timely and adequate rescission. It further ruled that Singer should not be penalized for prudently attempting to mitigate (*i.e.*, lessen) his damages by speaking with a single prospective purchaser when faced with Ward's refusal to refund his money.

Finally, the court ruled that Singer was entitled to prejudgment interest—interest computed from the date of the sale. Under New York law, a court has discretion to award such interest in certain cases. The court noted that, because of Ward's actions, Singer had lost the use of the money he paid during the four years from the date of sale until the judgment. (It noted, but was not persuaded by, the fact that the market value of the car—which Ward would now be getting back in exchange for returning the purchase price—had declined to little more than half of what it was in 1990.)

*Lawrence Savell is an attorney with Chadbourne & Parke in New York City. This column provides general information and cannot substitute for consultation with a lawyer.*