

Reconstructing Chevy

The Cost Of Unfinished Business

by Lawrence Savell

Last month, we began exploring *Rasnick vs. Tubbs*, decided in February by the Court of Appeals of Ohio, involving the breach of a contract for construction of a 1952 Chevy Pro Modified race car from a 1952 sports coupe.

After finding that a valid contract existed between plaintiffs Charles and Tonyua Rasnick and defendant Dennis Tubbs, the court addressed the damages the trial court awarded the Rasnicks.

The court noted “[i]t is axiomatic that a claimant seeking to recover for a breach of contract must show injuries as a result of the breach in order to recover damages from the breaching party...Damages are not awarded for a mere breach alone. In this case, Tubbs’ failure to fulfill his obligations under the contract resulted in damage to the Rasnicks. The Rasnicks were forced to find another mechanic to finish their car and were faced with thousands of dollars of additional expense. They sought to recover these compensatory costs from Tubbs. However, when the trial court determined the amount of damages the Rasnicks were entitled to as compensation for Tubbs’ breach of contract, it failed to consider the cost it would take for the Rasnicks to complete their race car. Instead, it appears that the trial court attempted to restore to the Rasnicks the excess monies (benefit) that they had conferred on Tubbs...”

“The trial court calculated damages by first determining that the total cost of parts necessary to build the race car was \$23,731.57. Deducting this amount from the contract price to be paid by the Rasnicks (\$52,820), the court figured that Tubbs was to receive \$29,088.43 for his labor on the project.

The trial court then concluded that since the race car was 75 percent complete, Tubbs should have only received 75 percent of \$29,088.43, or \$21,816.32. Given that the Rasnicks paid him \$37,720 for his labor, the trial court found Tubbs was overpaid \$15,903.68 and awarded the Rasnicks this amount in damages.”

The appellate court found the trial court’s determination of damages to be incorrect for a number of reasons. “First, even assuming, arguendo, restitution (giving back the amount by which Tubbs was unjustly enriched) damages were the correct remedy in this case, the trial court’s formula fails to consider costs other than labor incurred by Tubbs...The evidence at trial was that Tubbs purchased some of the parts that ultimately comprised the Rasnicks’ car, however, the court’s award of damages fails to account for these expenditures.”

“Moreover, we can find no evidence in the record justifying the trial court’s conclusion that Tubbs had completed 75 percent of the race car construction. Nor does the court explain how it determined that the total cost of parts necessary to complete the car would be \$23,731.57.”

“Second, we fail to see the ‘logic’ in the trial court’s assumption that the Rasnicks could have their car completed ‘based on the original agreement of the parties’ by another mechanic at the same price they agreed to pay Tubbs. This statement ignores the fact that not every auto body shop charges the same for labor or has the same markup on parts, as was demonstrated by the testimony and evidence at trial. Furthermore, there was some evidence that Tubbs may have taken on the race car construction at a lowered price

because he thought he would get some advertising benefit from the deal.”

Finally, the court took issue with the trial court’s award because it failed to give the Rasnicks the “expectation” damages they sought in their complaint. “Generally, a party injured by a breach of contract is entitled to his expectation interest, or ‘his interest in having the benefit of his bargain by being put in as good a position as he would have been in had the contract been performed.’... The fact is, had the contract in this case been performed, the Rasnicks would have paid \$52,820 for a completed race car...[T]he trial court’s decision fails to ensure that the Rasnicks reap the benefit of their bargain.”

Generally, damages to compensate for such an expectation interest are calculated as (1) the loss in the value to the plaintiff of the other party’s performance caused by the failure or deficiency, plus (2) any other loss, including incidental or consequential loss, caused by the breach, less (3) any cost or other loss that the plaintiff has avoided by not having to perform. “In this case, the loss in value is the difference between the value of performance rendered without a breach and the value of performance as it was actually rendered. This loss in value is difficult to determine with any certainty since little if any evidence was presented at trial about the value of Tubbs’ partial performance. Moreover, evidence regarding the percentage of Tubbs’ partial performance was conflicting and did not support the court’s finding of 75 percent in any event.”

“Since the loss has not been demonstrated with sufficient certainty, the Rasnicks may recover damages based on ‘the reasonable cost of completing

performance or of remedying the defects if that cost is not clearly disproportionate to the probable loss in value.'...[I]t is up to the trial court to determine exactly what value to assign as completion costs, since there was evidence that some expenses incurred by the Rasnicks when finishing the race car may have been avoided...For example, there was testimony in the record that the Rasnicks failed to adequately protect the race car from moisture after removing it from Tubbs' shop. As a result, rust accumulated on parts of the car which had to be removed before the car could be completed. There was also some con-

troversy as to whether or not some of Tubbs' work was done incorrectly, thereby necessitating that the Rasnicks incur some additional costs to correct the defects in construction. Whether these costs are found to be necessary or not and what values the court wants to assign to them based on the record, are judgments left to the trial court as finder of fact."

"Once the trial court determines the reasonable cost of completing performance, this amount must be decrease[d] by the value of the cost avoided by the Rasnicks. This requires that the trial court determine how much of the orig-

inal contract price the Rasnicks have paid. The remaining amount that was unpaid under the contract are the costs avoided and must be subtracted from the damages awarded the Rasnicks for completing construction of the race car."



Lawrence Savell is Counsel at the law firm Chadbourne & Parke LLP in New York City. This column provides general information and cannot substitute for consultation with an attorney. Additional background on this and prior "Old Cars in Law" articles can be found on-line at www.carcollector.com