The Perils Of Nonperformance

A Lesson To Heed Before Restoring Your Car

by Lawrence Savell

Many car collectors increase the enjoyment of their hobby by developing the expertise (and patience) necessary to restore and maintain their own vehicles. Some go even further and extend their hobby to a business, restoring and maintaining the old cars of others for (hopefully) profit.

Anyone contemplating such a step should keep in mind that, once you promise to perform work, you are obligated to perform it, both competently and within the time agreed. Failure to comply with your obligations can result in not just losing business, but also possibly having to defend a lawsuit by, and pay damages to, your dissatisfied customer.

A recent case illustrating the types of damages a restorer may have to pay in the event of a breach of contract was *Levesque vs. Harris*, decided on May 27, 1997 by the Superior Court of Connecticut.

According to the Court, each of the three plaintiffs entered into an agreement with the defendant to have a particular antique vehicle restored. In each case, the defendant failed to do the work he contracted to do, and/or did not complete the work which was done in a workmanlike manner. The defendant also failed to appear in court, and a default judgment was entered against him. The Court then turned to the measure of damages in each case.

In the first case, on or about December 5, 1990, Alfred Levesque delivered a 1971 Corvette to the defendant pursuant to an oral agreement to completely restore the body and engine of the vehicle. Levesque paid the defendant $13,000 at that time for the work which was to have been completed within six to eight months. In November 1996, when Levesque brought his lawsuit, the work had not been done although the Corvette remained in the possession of the defendant. The vehicle had been partially dismantled and left outside where its condition had deteriorated. Many parts had been removed and were missing.

The Court awarded the following damages to Levesque: (1) recovery of initial payment, $13,000; (2) paint damage repair, $1,500; (3) brake repair (due to exposure to weather and years of non-use), $2,100; (4) repair of exhaust system (due to weather exposure), $825; (5) cost to replace missing parts (door panels and hardware; lights, lens and lamp assemblies) which were removed by the defendant, $950; (6) exhaust bezels, $80; (7) rally wheels, $75; (8) spare tire, $126; (9) front and rear bumpers, $1,235; (10) antenna, $48; (11) seat belts, $299; (12) interior and exterior rear view mirror, $131; (13) 2 T-top panels, $214; (14) designer floor mats, $247; (15) 2 seat covers, $214; and (16) emblems with Corvette logo and lettering, $175. It also awarded statutory interest on the $13,000 initial payment from January 1, 1992 (commencing approximately one year from the date of contract) at 10 percent, totaling $5,723.32. Finally, it awarded attorneys' fees/punitive damages of $2,500 for violation of the Connecticut Unfair Trade Practices Act. These damages totaled $29,442.32.

In the second case, on or about November 19, 1994, Peter J. Pekarovic, Jr. and Barbara A. Pekarovic delivered a 1955 Ford F-100 pickup truck to the defendant pursuant to an agreement to have the vehicle refinished, restored, and reassembled for an estimated cost of $6,500, with the work to be completed by approximately March 1995. The plaintiffs paid the defendant $3,500 as a down payment. As of September 1996, the work had not been done. On or about October 12, 1996, the plaintiffs retrieved their vehicle by loading it onto a flatbed and removing it.

The Court awarded the following damages to the Pekarovics: (1) recovery of initial payment, $3,500; (2) statutory interest (10%), $697.12; and (3) attorneys' fees/punitive damages (again for violation of CUTPA), $2,500. These damages totaled $6,697.12.

In the third case, on or about April 1, 1992, John Ryan delivered his 1967 Porsche 911 pursuant to an oral agreement by the defendant to restore the vehicle. The work was to have been completed within five to six months. Ryan paid $11,000 in advance of the restoration. In June 1996, the work had not been completed, and the work that had been done was not done in a workmanlike manner, necessitating corrective repairs. Also, parts which had been dismantled were missing.

The Court awarded the following damages to Ryan: (1) damages for repair of incorrect painting color, for improperly prepared areas of painting/bonding and for pockmarked painting areas, $1,000; (2) recovery for installation of fog lights not installed, $250; (3) recovery for replacement of windshield washers not installed, $200; and (4) recovery for damage to the car from its sitting unused for four years in the defendant's shop (brake system, $750; electrical system, $180, exhaust system, $500), $1,430. It also awarded attorneys' fees/punitive damages under CUTPA for $2,500. These damages totaled $5,380.

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These cases illustrate, those contemplating taking restoration from personal hobby to profit-making business should heed the still-prudent 2,000-year-old caveat of Publius in his Maxim 528: "Never promise more than you can perform."

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