

# The Leaky Lotus

BY LAWRENCE SAVELL

Over the years, legislatures have enacted a wide variety of so-called "consumer protection" statutes. Such legislation is generally designed to protect and/or expand the rights of consumers when they purchase or contract for products or services.

A question that often arises is how broadly such statutes apply. For example, does an automotive repair statute cover restoration of collector cars? This issue was recently addressed in *Morris v. Gregory*, decided on July 18, 1995 by the Court of Appeals of Maryland.

According to the Court, Susan Morris owned a 1964 Lotus Elan. In 1988, the Lotus was involved in an accident, resulting in damage to its front fender and passenger side door as well as a crack in the fiberglass near the passenger seat. The fiberglass damage worsened with continued use of the car. As a result, water leaked into the passenger compartment.

In 1991, Morris decided to have the accident damage repaired and to have further body restoration and mechanical work done on the car. She was referred to Mark Gregory, who operated "Mark of Distinction, Quality Restorations." Morris showed Gregory a 1965 photograph of her car, and requested an estimate of the cost of restoring the body of the car to its depicted appearance. She also advised Gregory that she only wanted to spend \$3,500 for the work. Gregory orally estimated that the restoration could be done for that amount, but he refused to put the estimate in writing. (Gregory testified that he had explained he could only do the work on a time and material basis. Morris testified that an oral agreement was reached that the body restoration charge would not exceed \$3,500.)

Morris delivered the Lotus to Gregory. (Gregory testified that after the paint was stripped from the Lotus, he discovered that the fiberglass damage was far more extensive than previously known. Morris testified that Gregory only mentioned that the stripping process had caused some pinholes in the fiberglass that needed to be filled, and that Gregory had not mentioned any additional charges. She further testified that had she been informed that the cost of the work would exceed \$6,000, she would not have authorized it.)

Gregory worked on the Lotus from January to March of 1992. He then presented Morris with bills totaling \$6,155.65, and threatened to sell the vehicle if they were not paid. Morris paid the bills, and then sued Gregory on various grounds, including for an allegedly unfair or deceptive practice under the Maryland Consumer Protection Act, for performing the work without first providing her with or informing her of her right to a written estimate as required under the Automobile Repair Facility Act (ARFA).

The trial judge concluded that ARFA did not apply to persons performing automobile body work, and ruled in favor

of Gregory on that count. Morris appealed to the circuit (intermediate appeals) court which, although concluding that ARFA did generally apply to automotive body work, ruled that it did not apply to restorations of antique automobiles. Morris appealed again.

The Court of Appeals reversed, ruling for Morris, and ordering a new trial on her consumer protection claim.

The Court noted that the key issue on appeal was whether Gregory was an "automobile repair facility" such that his failure to provide Morris with a written estimate or notice of her right to one would be a violation. ARFA defined "automobile repair facility" as "any person who diagnoses or corrects malfunctions of a motor vehicle for financial profit." The Court noted that the Lotus had been functioning badly because its body was leaking, that Morris had taken it to Gregory, who diagnosed and corrected that malfunction, and that he had performed such services to make a financial profit. It thus concluded that Gregory was an "automobile repair facility." It also ruled there was no basis for distinguishing motor work and body work here.

The Court also rejected Gregory's argument that the work done to the Lotus was restoration, not repair, and that restoration work was not covered by the estimate requirements. Assuming for the sake of argument that the work done was restoration, it stated that it saw no reason to draw such a distinction, in the absence of any statutory language or evidence of intent by the legislature to exempt restoration work. It concluded that "the restoration of an antique car is not distinguishable, for purposes of ARFA, from body work on any other vehicle, as the Legislature has not provided such an exception."

Despite the ruling in this case, you should not automatically assume that collector car restoration work done in other jurisdictions will be viewed as coming within the scope of such consumer protection legislation. This will depend on the applicable law and the particular facts of your case. It thus remains important that you always get in advance a written estimate of the cost of work to be done on your car (and consider taking your business elsewhere if you cannot obtain one), to avoid an unpleasant surprise down the road.




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