

# Paying the Price

BY LAWRENCE SAVELL

Last month, we reviewed the facts in *Simeone v. First Bank National Association*, involving the asserted breach of a contract to sell collector cars and parts, decided earlier this year by the Eighth Circuit Court of Appeals. This month, we explore how the Court dealt with seller First Bank's challenge to the jury's award to the plaintiff of \$2,405,000, including (1) \$585,000 in "compensatory" damages, (2) \$1,595,000 in "consequential" damages, (3) \$225,000 in "incidental" damages, and (4) "prejudgment interest."

**Compensatory damages:** Under Minnesota law, the measure of damages for a seller's breach of contract is "the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages."

At trial, the evidence showed the vehicles were rare, and in some cases unique, classic automobiles of historic significance. The disassembled parts, as well, were scarce commodities. An expert in vintage automobiles valued the cars and parts at \$1,355,000 at the time of the breach. Based on the evidence, the jury concluded that, at the time of the breach, the property had a fair market value of \$1,035,000. The difference between this value and the \$450,000 contract price was \$585,000, the amount of compensatory damages awarded. The Court ruled that the evidence supported the jury's determination.

**Consequential damages:** Under Minnesota law, recoverable consequential damages include: "Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover [i.e., the buyer obtaining similar goods elsewhere] or otherwise." Consequential damages are not available in every case, but are only proper if the seller had reason to foresee the particular requirements of the buyer, and even then only if such loss could not be prevented.

The Court found that consequential damages were foreseeable in this case. The commercial banking officer of First Bank, who acted on its behalf during the relevant negotiations with Simeone, testified that he was aware that collectors may trade vehicles to enhance their collection. Further, Simeone testified he told First Bank's broker that he intended to use the cars and parts for trading or possible resale to obtain additional cars. Finally, Simeone contracted to purchase hundreds of automotive parts that the jury would reasonably presume would have to be either resold or assembled into something of increased value.

The Court also rejected First Bank's argument that Simeone failed to adequately "cover" or mitigate his damages by not purchasing the automobiles and parts from the company to whom First Bank sold them. It agreed with the jury that the seller failed to sustain its burden of proof that the buyer acted unreasonably in failing to prevent his loss. The duty to cover "does not require an injured party to take

measures which are unreasonable or impractical or which require expenditures disproportionate to the loss sought to be avoided or which are beyond his financial means." Thus, "it is unreasonable to require that Simeone expend over \$1,000,000, almost \$700,000 more than the contract obligated him to pay, to purchase the cars and parts in order to effect cover and mitigate his loss."

Finally, the Court rejected First Bank's contention that the consequential damages award was too speculative as a matter of law to be the basis for recovery. Under Minnesota law, "the controlling principle governing actions for damages is that damages which are speculative, remote, or conjectural are not recoverable." However, a plaintiff's losses need not be proven with mathematical precision. "Once the fact of loss has been shown, the difficulty of proving its amount will not preclude recovery so long as there is proof of a reasonable basis upon which to approximate the amount."

Here, two experts in antique and classic cars testified as to the value of the vehicles and parts at the time of the breach as well as their appreciated value two years after the breach. This testimony was based on their knowledge of the available market, the rate at which such unique cars appreciate in value because of their scarcity and desirability among collectors, and the prices commanded by comparable vehicles.

**Incidental damages:** Under Minnesota law, incidental damages resulting from a seller's breach include: "Expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach." In a victory for First Bank, the Court reversed the jury's award to Simeone of \$225,000 in incidental damages, since it apparently reflected his cost of "cover" in purchasing the 1929 SS Roadster (\$470,000 purchase price minus \$250,000 contract price, plus \$5,000 for dismissal of the buyer from a civil action), for which he had already been compensated through both the compensatory and consequential damages awards.

**Prejudgment interest:** According to the Court, "Prejudgment interest is an element of damages awarded to provide full compensation by converting time-of-demand damages into time-of-verdict damages. It is designed to compensate the plaintiff for the loss of the use of the money owed." The Court agreed that Simeone was entitled to prejudgment interest on the revised damages award.

*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 <http://www.carcollector.com>*