

## A Tale Of Two Mercedes

### *One Battle Doesn't Win The War*

*by Lawrence Savell*

**W**e've all heard statements to the effect that, "he won the battle but lost the war." In litigation, a party can "win the battle" in terms of being the prevailing party, but can "lose the war" if the amount of damages awarded are significantly less than what was sought.

The measure and assessment of damages is thus often a critical inquiry in a lawsuit. A recent case focusing on this issue in the context of an agreement regarding the sale of two collector cars was *Berg vs. Gohlike*, decided on June 17, 1997 by the Court of Appeals of Minnesota.

According to the Court, Harvey Skip Berg owned two vintage Mercedes, a 1929 SSK and a 1930 Cabriolet C. The engine for the Cabriolet C was not assembled. Berg signed an agreement with Leland Gohlike under which Gohlike would be paid a commission if he sold one or both of the cars. The agreement also stated: "If Skip Berg sells one or both cars himself, he agrees to pay Lee Gohlike a commission of 2.5 percent on the sale(s)." It further provided that Gohlike would install several parts on the SSK at his own expense before the car was sold.

Gohlike installed the parts on the SSK at Berg's shop. Then, with Berg's permission, Gohlike took the Cabriolet C engine parts to his own shop to assemble them. When a dispute arose about the terms of the parties' agreement, Berg demanded that Gohlike return the engine parts. Gohlike refused. Berg sold the SSK himself, then sued Gohlike for replevin (whereby one claims ownership, and seeks the return, of certain property from another who allegedly wrongfully possesses it) and related claims. Gohlike also sued Berg for breach of contract and related claims.

The district (lower) court found that

Berg had breached the parties' agreement by failing to pay Gohlike a commission on the sale of the SSK. The court awarded Gohlike damages of 2.5 percent of the sale price of the SSK. It also determined that Gohlike had taken a complete, but unassembled, engine from Berg's shop. Observing that an auction house had offered to set a \$375,000 reserve price for the Cabriolet C with the unassembled engine, it found that \$375,000 was the base value of the car in this condition. It further found that the Cabriolet C was worth \$300,000 without the engine and that the engine therefore was worth \$75,000. The court ordered Gohlike to return all the engine parts in his possession to Berg or to pay Berg \$75,000.


Berg appealed, arguing that the district court awarded him insufficient damages for replevin. Gohlike also appealed, challenging the damages awarded to him for breach of contract.

The Court of Appeals agreed with Berg's argument that the district court erred in ordering only the return of the parts in Gohlike's possession. "In a replevin action, where the prevailing party is not in possession of the property, judgment must be entered in the alternative for the possession of the property or for its value where recovery is not possible. The district court should have ordered Gohlike to return all the parts taken from Berg's shop or to pay damages. We reverse this part of the damage award and remand [send the case back to the lower court] to allow the district court to enter such an order."

The Court observed that Gohlike had admitted at trial that he no longer had all the parts taken from Berg's shop. "In a replevin action, if possession cannot be obtained of the whole of such property but may be obtained for part thereof then the party entitled thereto may have possession of the part which may be obtained

and recover the value of the remainder or may elect to take judgment for the value of the whole of such property. On remand, the district court also must determine the value of any parts taken from Berg's shop that are no longer in Gohlike's possession."

The Court also agreed with Berg's argument that the district court erred in determining that the entire engine was worth \$75,000, because this figure was calculated using the reserve price of the Cabriolet C rather than its fair market value. "The proper measure of damages in a replevin action generally is 'the fair, reasonable market value of the goods at the time of the taking'...Fair market value is 'the amount at which property would change hands between a willing buyer and a willing seller'...A reserve price, however, is 'the price fixed and announced as the minimum at which property will be sold at an auction,...The minimum price that a seller is willing to accept for an item at auction is not always the price that a buyer is willing to pay for the item. Further, the reserve price offered by an auction house is not always accepted by a seller. Because the district court here made no findings showing it had determined that the reserve price offered for the Cabriolet C also was its fair market value, the court's valuation of the engine was not based on fair market value. We reverse the \$75,000 damage award and remand to allow the district court to determine the fair market value of the engine."

The Court rejected Gohlike's remaining arguments. 

---

*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](http://www.carcollector.com).*