

## If You Don't Build It, They Will Sue

### *A Binding Contract*

*by Lawrence Savell*

When most collectors put money and effort into their beloved car, they do so to restore it as precisely as possible (or as physically or fiscally feasible) to its original grandeur. Sometimes, however, collectors seek to modify their vehicle from its original state.

The case of *Rasnick vs. Tubbs*, decided on February 25, 1998 by the Court of Appeals of Ohio, involved the latter situation.

According to the Court, in December 1994, Dennis Tubbs orally agreed to construct a 1952 Chevy Pro Modified race car from a 1952 sport coupe already owned by Charles and Tonyua Rasnick. In addition to paying Tubbs \$52,820 for the job, the Rasnicks were to supply the engine, transmission, and clutch assembly for the race car. Any other parts purchased by the Rasnicks would be counted toward the agreed purchase price of \$52,820. The construction was to be completed over a period of 20 weeks. The Rasnicks agreed to pay installments of \$1,000 each week for Tubbs' labor although the contract did not allocate a part of the purchase price for labor.

By May 12, 1995, the car was not completed and the parties saw the need to enter into a written contract. The written contract embodied substantially the same terms as the oral agreement; however, it provided that Tubbs would complete construction of the race car within six weeks of receiving the wheels and tires. When the race car was finished, the Rasnicks would pay the balance due under the contract in a lump sum.

The evidence at trial indicated that the wheels and tires were delivered to Tubbs' shop on or about May 26, 1995.

Six weeks after this date the car was still not completed. Nevertheless, the Rasnicks continued to make \$1,000 payments to Tubbs and Tubbs continued intermittently to work on the car. By February 29, 1996, the Rasnicks had paid approximately \$49,619.25 toward the contract price and the car was still not finished.

According to the Rasnicks and one other witness, Tubbs informed the Rasnicks that he would not finish construction of the race car unless he was paid an additional \$20,000, and could not guarantee that the costs to complete the car would not exceed this amount. Refusing to pay more than the contracted price, the Rasnicks removed the partially constructed race car from Tubbs' shop, with Tubbs' consent, and subsequently took it to another mechanic for completion. Tubbs denied these statements and claimed that he could have finished the car for \$5,609.70.

On April 4, 1996, the Rasnicks sued Tubbs for breach of contract, seeking damages of \$25,000 representing their cost to have the car completed at another shop. The trial court ruled for the Rasnicks, awarding them \$15,903.68. Tubbs appealed.

The Court of Appeals affirmed the trial court's decision in part, vacated (rescinded) it in part, and sent the case back for further proceedings.

The Court rejected Tubbs' argument the trial court erred in finding that a binding contract existed. "A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes a duty....In order for a party to be bound to a contract, the party must consent to its terms, the contract

must be certain and definite, and there must be a meeting of the minds of both parties."

It found that those requirements had been satisfied. "The record in this case is replete with evidence that the parties were of one mind concerning the agreement for the construction of the race car. What began as an oral agreement wherein one party agreed to build a race car and the other party agreed to pay a sum of money in exchange, was subsequently put down in a written document entitled a 'contract.' The terms of the contract were certain and definite. It was stated that the total expenditure by the Rasnicks was to be \$52,820 for which they would receive a race car. This price included the cost of parts necessary to complete the car with the exception of the motor and clutch assembly. Other parts supplied by the Rasnicks would be deducted from the total purchase price. The Rasnicks agreed to make weekly payments of \$1,000 for Tubbs' labor costs and Tubbs was to complete the car within six weeks of receiving the wheels and tires. While the deadline for completion of the car was continually extended, this modification was by agreement of the parties. The parties had a meeting of the minds as to these terms. We find that the record supports the trial court's determination that the parties entered into a binding contract for the construction of a race car."

In next month's column, we will examine the court's analysis of the damages awarded.



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