

The Belated Barracuda

IN THEIR 1977 HIT "BARRACUDA," the rock band Heart sang:

*You lying so low in the weeds
Bet you gonna ambush me
You'd have me down on my knees
Wouldn't you, Barracuda?*

In a drier context, the law tries to protect people from certain inordinately oppressive provisions that may "lie in the weeds" of agreements. One such case, *Schroeder v. Partin*—decided on August 4, 2011, by the Supreme Court of Idaho—considered whether a particular contractual provision relating to a classic car should be enforced.

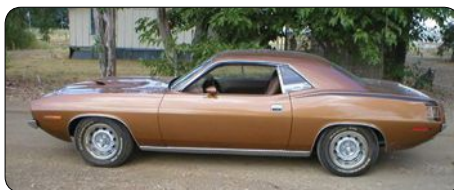
According to court documents, Cody Schroeder invests in classic cars and hires professionals to refurbish them. In 2006, Schroeder purchased a 1970 Barracuda and wanted to install a special engine. That fall, to avoid an 18-month delay in orders for manufactured engines, Schroeder hired Erik Partin to assemble an engine. The parties originally agreed that Schroeder would provide parts and pay Partin \$950. Although Schroeder hoped Partin would build and install the engine within four or five months, the parties did not originally set a performance deadline.

The project took longer than anticipated. In response to Schroeder's evident frustration, Partin drafted and gave Schroeder a letter and Performance Agreement. The letter stated that Partin "decided to write up this Performance Clause so that you will have some reassurance" that the work on the car would be completed by October 8, 2008. The Performance Agreement stated: "This is a binding performance contract stating that the delivery of [Schroeder's Barracuda] to Charlie's Auto [R]efinishing for painting, shall be no later than October 8, 2008. If delivery date is not met, a penalty of \$2,500.00 shall be incurred payable to owner of [the Barracuda]. Further penalty for non-delivery by due date will be the sum of \$100.00 a day for every day thereafter until said vehicle is delivered..."

Partin signed the Performance Agreement on September 23, 2008; Schroeder signed it the next day. Although Schroeder had originally intended to take the Barracuda from Partin in September, even if the engine work was incomplete, the Performance Agreement convinced Schroeder to allow Partin to finish the work.

Partin did not deliver the Barracuda to Schroeder on October 8, 2008. On November 21, 2008, Schroeder sued Partin for breach of contract. Partin delivered the Barracuda to Schroeder on December 23, 2008, 75 days after the date set forth in the Performance Agreement.

The jury found Partin was liable to Schroeder for \$7,578.11 for breaching the parties' contract for services by improperly assembling and installing the engine, and an additional \$10,000 for breach of the Performance Agreement. The jury found Schroeder liable to Partin for \$9,221 in unpaid parts and services.



Partin moved the trial court for a judgment in his favor notwithstanding (despite) the jury's verdict ("JNOV"), claiming that the "liquidated damages" provision was unenforceable. The trial court granted Partin's motion; Schroeder appealed.

The Supreme Court ruled for Schroeder, reversing the trial court.

In its ruling, the Supreme Court discussed policies supporting approval of "liquidated damages" (i.e., an amount specified in advance) provisions: "The advantages of stipulating in advance a sum payable as damages are manifold. For both parties, it may facilitate the calculation of risks and reduce the cost of proof. For the injured party, it may afford the only possibility of compensation for loss that is not susceptible of proof with sufficient certainty. For society as a whole, it may save the time of judges, juries and witnesses, as well as the parties, and may cut the expense of litigation... Thus, as long as a liquidated damages clause is intended at the outset to reasonably compensate a party for potential damages resulting from a breach, rather than to deter or punish the breach, the clause will be enforceable.

"A liquidated damage provision should be enforced: 'In any case where the circumstances are such that accurate determination of the damages would be difficult

or impossible, and provided that the liquidated damages fixed by the contract bear a reasonable relation to actual damages. But, where the forfeiture or damage fixed by the contract is arbitrary and bears no reasonable relation to the anticipated damage, and is exorbitant and unconscionable, it is regarded as a 'penalty', and the contractual provision therefore is void and unenforceable.'

"The party asserting that a liquidated damages clause is unenforceable bears the burden of proving that the liquidated damages are not reasonably related to actual damages, and/or are exorbitant and unconscionable.

"The record contains substantial evidence upon which a reasonable jury could find that the terms of the Performance Agreement were reasonably related to the damages Schroeder might incur if the engine was not timely constructed and installed."

Among other things, "a reasonable jury could find that the party who voluntarily and independently drafted a contract providing for liquidated damages in the event of breach would not impose upon himself an unreasonable or punitive means of assessing those damages... Partin drafted the Performance Agreement upon his own volition. A reasonable jury could rationally find that Partin did not voluntarily draft, offer to Schroeder, and enter into a Performance Agreement so oppressively one-sided that no reasonable person would have agreed to be bound by its terms. Partin was intimately acquainted with the delays, difficulties and costs associated with building and installing the Barracuda's engine and testified that the Performance Agreement was 'fair compensation.'

"Thus, we conclude that substantial evidence supported the jury's determination that the Performance Agreement was enforceable. We therefore vacate the district court's grant of JNOV and remand for reinstatement of the jury verdict in favor of Schroeder."

This Barracuda case illuminates some of the risks and benefits that must be assessed when considering an agreement with a liquidated damages provision. Treading carefully is prudent, lest one end up seriously under water. ☞