BY LAWRENCE SAVELL

The Crying Inside Chrysler

IN THEIR CLASSIC SONG, "You Can't Always Get What You Want," the Rolling Stones advised:

You can't always get what you want
But if you try, sometimes you find
You get what you need.

It's the eternal question of what we desire versus what we require. But what if you get everything you think you want… and it ends up being less than everything you need? Such was the case of *Lewis v. Classic Auto Body*, decided on March 22, 2012, by the Court of Appeals of Ohio.

According to the court, Warren Lewis owned a 1968 Chrysler 300. On January 5, 2000, Lewis delivered the Chrysler to Classic Auto Body ("Classic") to have it restored to showroom condition. Classic agreed to perform the restoration, and Lewis gave Classic a $500 non-refundable deposit. On January 11, 2000, Classic gave Lewis a written estimate, indicating that the restoration would cost approximately $5,055.75.

On February 18, 2000, Lewis paid Classic an additional $482 toward his outstanding balance for various mechanical repairs recommended by Classic.

Approximately four years later, Lewis (apparently a very patient man) contacted Classic to inquire about the status of his vehicle. Classic advised Lewis that if he paid $2,000 toward his outstanding balance, his vehicle would be completed within a "reasonable time." On April 7, 2004, Lewis paid Classic an additional $2,000 toward his outstanding balance.

By June 2006, Classic had not started the restoration. Classic told Lewis that he had to pay the entire balance of his outstanding bill before his vehicle would be a priority. On June 1, 2006, Lewis paid Classic the remaining balance in full.

By 2008, the restoration project had still not been completed by Classic, and Lewis demanded the return of his vehicle and money. However, Classic "guaranteed" the project would be completed by June 10, 2008. Yet on that date, the restoration was still not done. Again, Classic "guaranteed" that the project would be completed by July 14, 2008. Despite Classic's repeated assurances that the restoration would be completed, the company failed to meet the latest deadline.

On November 29, 2010, Lewis sued Classic, alleging breach of contract and fraud because the vehicle had neither been restored nor returned to him. Classic did not answer Lewis's complaint.

On March 8, 2011, Lewis filed a motion for a default judgment for Classic's failure to answer.

On June 2, 2011, the trial court entered a default judgment in favor of Lewis. The trial court ordered Classic to pay Lewis $6,300 and to return the Chrysler to him within five days.

So Lewis got all that he wanted, right? Well, not exactly…

Upon retrieving the vehicle on or about July 9, 2011, Lewis discovered that Classic had allowed the vehicle to deteriorate and had stripped portions of its interior, creating extensive damages that were not considered when Lewis was awarded the default judgment in June.

On August 3, 2011, Lewis filed a motion for relief from judgment—in other words, he asked for a do-over, a new trial where he could seek additional compensation. On August 23, the trial court denied Lewis's motion.

Lewis appealed to the Court of Appeals. He argued that the additional damage to the Chrysler constituted "newly discovered evidence" justifying a new trial.

The Court of Appeals also denied Lewis's appeal, affirming the trial court's judgment. Thus, the Court of Appeals left the trial court's ruling as it was, and did not allow Lewis to obtain additional compensation from Classic for the damage to the Chrysler.

The Court of Appeals noted that to grant a new trial on the grounds of newly discovered evidence, one must prove, among other things, "that the new evidence has been discovered since the trial, and could not, in the exercise of due diligence [that is, reasonable investigation] have been discovered before the trial…"

Lewis provided the Court of Appeals an appraisal he received from Third Party Auto Appraisal Company ("Third Party Auto") on July 16, 2011, a week after Classic returned the Chrysler to him. In its report, Third Party Auto indicated that the Chrysler was worth approximately $11,215 at the time Classic received it on January 5, 2000. However, based on the substantial interior damage caused to the vehicle while in Classic's possession, Third Party Auto estimated that the vehicle's market value had diminished to approximately $780. Additionally, Third Party Auto estimated that the vehicle would have a current value of approximately $16,575 if the restoration had been completed by Classic, as originally requested.

The Court of Appeals rejected Lewis's appeal because his discovery of the additional damages to his vehicle did not constitute "newly discovered evidence" that was incapable of discovery by due diligence at the time of trial. The court noted that "due diligence" is defined as "such a measure of prudence, activity, or assiduity as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances…

"Although [Lewis] has submitted documentation that verifies the significant damage caused to his vehicle since January 5, 2000, he has failed to set forth operative facts that would support the contention that he in fact exercised due diligence, but was unable to discover this evidence prior to the issuance of the June 2, 2011, default judgment."

The court noted that Lewis provided no evidence nor asserted facts in his appeal to suggest that he attempted to, but was prevented from discovering the full extent of his damages prior to receiving a default judgment. Therefore, the Court of Appeals was unable to conclude that the trial court erred in denying his motion for relief from judgment.

Thus, in this case, Lewis received all of what he had thought at one time he wanted, but it turned out that it was not all that he ultimately needed.