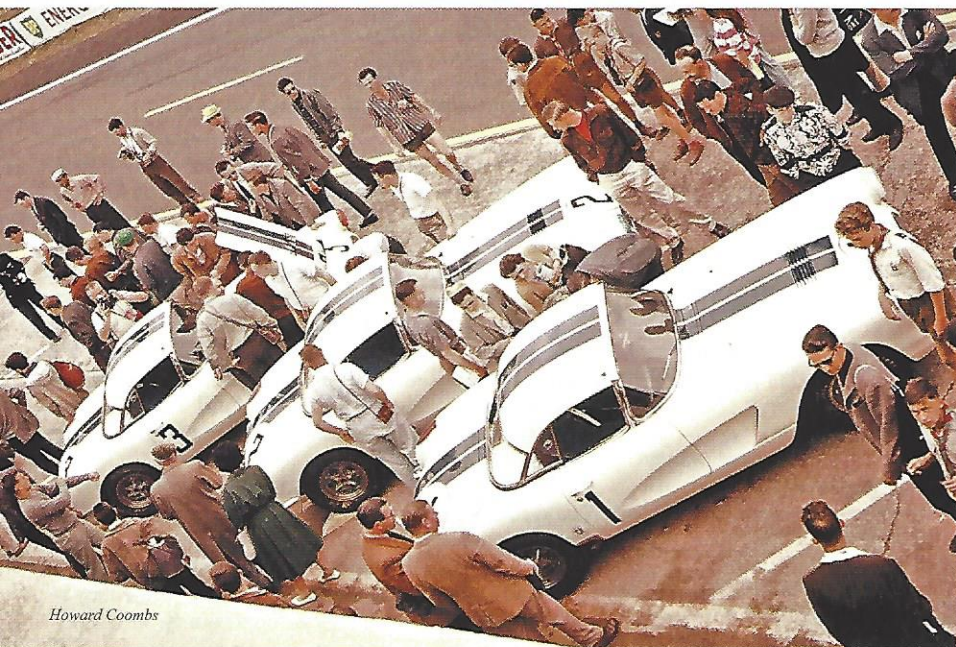


Corvette Litigation Hits the Finish Line

The long-running Cunningham Corvette case is settled, and Ford comes to terms with the John Cena Ford GT



Howard Coombs

The Cunningham Corvettes at Le Mans. Number 1 might show up at an auction in the near future

After five years of “Legal Files” columns about this case (December 2013, p. 40; January 2014, p. 42; September 2015, p. 73), the legal battles over the #1 Cunningham Corvette seem to have come to an end. On December 21, 2018, Porter County Indiana Superior Court Judge Jeffrey W. Clymer appointed Indianapolis attorney William Baten as receiver, directing him to take possession of the Cunningham Corvette and sell it at a no-reserve auction.

To refresh your memory, the Corvette we are talking about is the #1 car out of the group of three Corvettes the Briggs Cunningham team took to Le Mans in 1960. The #1 car crashed badly early in the race, and the #2 car failed to finish. The #3 car finished 1st in class and 8th overall, however, making quite an international impression for Chevrolet and the American automobile industry.

The #2 and #3 cars had been located and recovered — and became parts of the collections of Bruce Meyer and Chip Miller. But the #1 car was missing until 2012, when it was located and acquired by Chip Miller as a favor for Kevin Mackay, who had restored #2 for him. It was purchased from the estate of Richard Carr, a Florida judge and car collector who had stored the car in his warehouse until his death.

Ownership challenges

As soon as the discovery was made public, Dan Mathis Jr. popped up and claimed that the Corvette was stolen from his father, Dan Mathis Sr., and that he was the rightful owner. Mathis entered into a partnership with Domenico Idoni, a Corvette historian and no stranger to collector-car litigation, to challenge Mackay’s ownership and acquire the Corvette. Idoni was in turn acting on behalf of his partnership with Gino Burelli, an Indiana automobile dealership owner.

Down into the legal rabbit hole

The Corvette was once owned by Dan Mathis Sr., who drag-raced it. After that point, the chain of title gets pretty foggy.

Mackay’s version was that Mathis Sr. traded it to a John Lehmkuhle,

who sold it to Carr, thereby ultimately passing good title to Mackay.

The Mathis/Idoni/Burelli version was that the car was stolen from Mathis Sr., perhaps by Lehmkuhle, before it went to Carr. That left ownership with Mathis Sr., and ultimately passed to his family when he died. Reconciling or just deciding between those stories was what the lawsuit was all about.

The litigation took a number of twists and turns, the first major one being when Mathis Jr. lost his interest in the Corvette by filing bankruptcy. In the course of that proceeding, the bankruptcy trustee sold Mathis Jr.’s interest in the Corvette to Idoni and Burelli for \$25,000.

The September 2015 edition of “Legal Files” reported that an uneasy settlement had been reached, giving Mackay a 30% interest in the Corvette and 70% to the Idoni/Burelli partnership. Idoni and Burelli had a limited time to acquire Mackay’s 30% interest for \$750,000, but they were unable to do so. The odd-couple partners then proceeded to work on selling the Corvette, but made no progress.

Another plaintiff

Progress toward a sale stalled when Larry Martin filed suit on an unrelated claim that Idoni owed him \$250,600. Martin prevailed — and acquired a lien against Idoni’s interest in the Corvette. With interest, the amount of Martin’s lien had grown to about \$500,000. When Martin tried to have the Corvette seized and sold to satisfy his judgment, Burelli intervened and stopped the seizure — at least temporarily.

Idoni out

The next surprise came when Burelli bought Idoni out of the Corvette. According to Burelli, Idoni owed him about \$1.4 million — from other dealings between them — and they agreed that Burelli would take Idoni’s interest in the Corvette in satisfaction of that debt. All friendly, of course.

Burelli teeters

Burelli’s fortunes hit a snag when Key Bank sued him, and his business partners were sued for defaulting on about \$3.6 million of loans secured by their commercial properties. That didn’t affect the Corvette litigation much. Burelli had been given until March 31, 2019, to sell the Corvette, and expectations were that, if it was not sold earlier, it could be auctioned at Amelia Island.

But the last nail was hammered into the coffin when NextGear Capital filed suit against Burelli and his dealerships and business partners, claiming it was owed about \$28 million. NextGear had floored (financed) automobile inventories for the dealerships — Harbor Chevrolet, Harbor Buick and Top Flight Corvettes — and claimed that they sold cars out of trust to the tune of \$28 million and were continuing to do so.

“Selling out of trust” is flooring-company lingo for a dealer selling cars and not paying the flooring company the money they had loaned against the cars.

The last chapter?

That was the last straw, and Martin filed a motion to appoint a receiver to take possession of the Corvette and sell it. The judge agreed,

and directed each of the parties to name their receiver choices. The judge selected William Baten, who had been nominated by Martin, and he was appointed on December 21, 2018.

Baten seems to be an excellent choice. A very experienced Indianapolis attorney, he now works only as a mediator and arbitrator. The best part is that he's a car guy and racer. He has been actively and successfully racing a Camaro in the SCCA Trans-Am class, and is a former Corvette collector.

Baten told "Legal Files" that he hasn't gotten very far yet, as he just got appointed. He sees this as a "really fun" assignment, and is determined to "do his homework" and his best to "get the highest price possible for the car."

"In a way, this is a very serendipitous assignment," Baten said. "My longtime racing dream has been to race a Corvette at Le Mans."

Although the judge ordered him to sell the Corvette at a no-reserve auction, Baten is open to other approaches to the sale of the car — if they appear likely to bring a higher sales price. Meanwhile, he's been getting emails from auction companies willing to help.

This may do the trick. The court order binds all the parties who claim an interest in the Corvette, so whoever buys it will take it free and clear of all of their claims. Look for the #1 Cunningham Corvette at an upcoming auction.

Ford GT update

As previously reported in "Legal Files" (February 2018, p. 62; August 2018, p. 54; December 2018, p. 58), Ford's new supercar seems to be spending more time in the courts than on the street. Ford sued pro wrestler and TV personality John Cena for breaching his agreement not to resell his GT for at least 24 months. Ford also sued the dealership that later resold Cena's GT. Both cases have been settled.

"Legal Files" has been critical about the underlying business model

adopted by Ford, Porsche and other manufacturers. These companies build very desirable "halo" models, build too few of them, are overly finicky about who buys them — and then get bent out of shape when the buyers resell them for big profits.

"Legal Files" has also been critical of Ford's legal approach, suggesting that it is technically ineffective and works only by legal intimidation. Now Ford seems to be changing its tack.

The latest version of the Ford GT order confirmation form contains this new provision:

"By signing this Order Confirmation Form you are verifying...you agree that you...will not sell the vehicle within the first 24 months of delivery. For value received and as security for the...performance of all obligations...including the agreement to not sell the vehicle...you hereby grant Ford a continuing security interest for 24 months in the Ford GT...You authorize Ford and its dealers to note liens on the documents of title and you will execute and deliver any documents necessary for these purposes."

Whether the underlying business plan is a good one or not, this approach should be legally and practically effective. It now contains a specific promise not to resell the GT for 24 months, given as a condition of the sale of the car to the buyer. It creates a lien on the GT to secure performance of that promise. Those two differences should make this legally enforceable.

And, by noting the lien on the title, it makes it impossible to transfer clear title to a buyer without a sign-off from Ford, which would never be given during the 24 months.

It's great to know that someone at Ford reads SCM! ♦

JOHN DRANEAS is an attorney in Oregon. His comments are general in nature and are not intended to substitute for consultation with an attorney. He can be reached through www.draneaslaw.com.