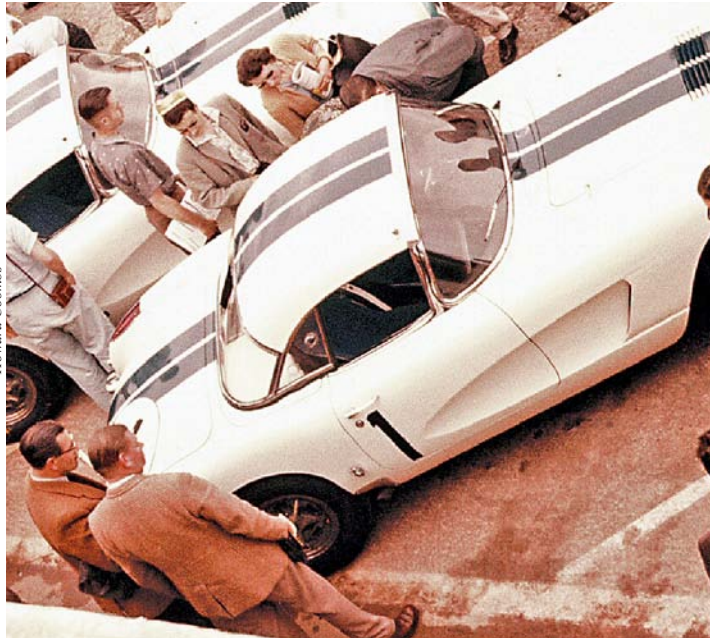


One Solution to Tangled Corvette Case

Mackay would probably win a long, costly court fight, but would a settlement make good business sense for all?



Howard Coombs

Last month's "Legal Files" (December 2013, p. 40) reported on the conflicting ownership claims to the Briggs Cunningham #1 Le Mans Corvette.

The claims of plaintiff Dan Mathis Jr. took an unexpected turn when defendant Kevin Mackay's attorney discovered that Mathis had failed to mention the Corvette when he filed bankruptcy. That put his bankruptcy trustee in control. The trustee was set to auction Mathis's rights on October 15.

Mathis's partners, Idoni and Borelli, had submitted a bid of \$25,000, but it was speculated that Mathis would derail the sale by filing an appeal.

Mathis did not appeal. The trustee received no other bids, and Idoni and Borelli acquired all of Mathis's rights to the Corvette. That put the litigation, stalled by the bankruptcy, right back on the front burner.

Questions about family

Mathis claims that he inherited the Corvette. When his father died, it passed to his mother. When she died, it passed to him, their only child. Mathis Jr. testified unequivocally to that several times. Only one problem — Mackay's attorney has discovered through searches of birth records that there are at least four other Mathis children. Two of them have been located. Two others have been identified but have not been located. That presents two problems for the plaintiff group:

First, even under his view of the situation, the largest interest that Mathis Jr. could possibly have in the Corvette would be 20%.

Second, the ownership claims cannot be properly determined without the participation of all of the possible owners.

Mackay will press that point with a motion to dismiss the litigation on the basis that Mathis has not involved all necessary parties to the litigation. His odds of winning that seem pretty good. However, Mathis and his partners could be allowed to solve the problem by adding the additional parties.

This revelation has opened another level of opportunity. The Mathis siblings are certainly capable of selling their interests in the Corvette.

Idoni and Borelli could bolster their position by buying up their interests. Similarly, Mackay could hedge his position by buying their interests as well. That could spark quite an auction. However, "Legal Files" has been told that Mackay has no interest in doing that.

Broken chain of title

As previously reported in the December 2013 "Legal Files," the last registered owner of the Corvette was Jerry Moore, who states that he sold the Corvette to Mathis Sr. and endorsed the Florida title over to him.

Mackay doesn't dispute that much. Moore now says that he obtained a replacement title and endorsed it over to Mathis Jr. because he believed that Mathis had the Corvette and he was just "trying to do the right thing." He was surprised to learn the true situation, and does not know why Mathis Sr. did not title the car or what he later did with it.

Mackay's ownership claim is derived from Richard Carr. Carr's widow has produced an authentic-appearing bill of sale that transferred ownership to Carr from John Lehmkuhle. Lehmkuhle states that he acquired ownership of the Corvette in a trade for his Dodge Demon drag car with a "black drag racer" — whom he believes to have been Mathis Sr. Unfortunately, the Demon was not registered at the time, and its title cannot be traced any further.

A question of credibility

That creates a gap in the chain of title between Mathis Sr. and Lehmkuhle. Mathis Jr. explains the gap by insisting that the Corvette was stolen. Mackay claims there is no evidence whatsoever of a theft — and the better explanation is that Mathis Sr. traded the Corvette exactly as Lehmkuhle states.

"Legal Files" predicts that this will be the key factual question in this case. There is little doubt about Moore's story. But all it proves is that Mathis Sr. owned the Corvette at one time. Thus, it will boil down to Lehmkuhle's story and his credibility.

Mathis has started to attack Lehmkuhle's credibility by pointing out that he has a long criminal record involving car thefts. As a general statement, prior criminal convictions cast doubt about the veracity of a witness. However, that is not an absolute, and Mackay should be expected to stress that Lehmkuhle has no dog in this fight — and no reason to lie.

Lack of inheritance formalities

The plaintiff group appears to have a number of procedural problems. The first is that there are no clear transfers from Mathis Sr. to Mrs. Mathis and the Mathis children because neither of the estates went through probate.

Mathis claims that the Corvette passed from Mathis Sr. to Mrs. Mathis at his death "by operation of law." A transfer by operation of law is what happens when a couple owns a car as joint tenants and one of them dies. The surviving joint tenant automatically becomes the sole owner.

That could not have happened here, as Mathis Sr. never titled the Corvette after acquiring it from Moore. Titling the car in his and his wife's names would have been the only way to have created a joint tenancy.

Both Mr. and Mrs. Mathis apparently died without a will. Under Florida law at the time, Mr. Mathis's property would have passed in roughly equal shares to his wife and children. Mrs. Mathis's property would have passed equally to her children. Although that seems to get us to the same end result, that would not be exactly the case if one of the Mathises had children without the other.

Nonetheless, the heirs don't automatically become the owners of the property at a person's death. Generally, the estate has to go through a probate process to transfer legal ownership. There are two good reasons for this:

First, although the Mathis family says that Mr. and Mrs. Mathis both died without leaving wills, a judge has not yet determined that to be the case. The possibility remains that one or both of them left a will that left the assets to others.

Second, the heirs cannot take ownership of the property if there are unpaid creditors. A probate is needed to formally look for unpaid creditors.

These technical shortcomings probably give Mackay another basis to dismiss the lawsuit. The plaintiff group could probably solve that problem by opening probate of both Mathis estates, creating an appropriate plaintiff.

Even more technical problems

The legal complications just keep coming here. First off, we have to keep in mind that the pending case is a replevin action — a legal action for a person to recover goods that were wrongly withheld — filed by Mathis in federal court in Pennsylvania. That could limit the future proceedings.

The theory of a replevin action is that the court is being asked to order Mackay to return the car to its rightful owner. That makes sense if the Florida certificate of title issued to Mathis unequivocally establishes his ownership. But that is now very doubtful. It may not be possible for Mathis and/or his partners to continue this case without first going through a separate suit to establish ownership rights.

The jurisdiction of the federal court is based upon diversity of state citizenship — Mathis is a resident of Florida and Mackay is a resident of Pennsylvania. Venue is based upon Mackay's residency and the fact that the Corvette is in Pennsylvania.

Now that it appears that additional parties will need to be added, we

can't know if the diversity of citizenship and the Pennsylvania venue will survive. And, if probates of the Mathis estates are needed, that will complicate those matters even further.

Dismissal ahead?

For these reasons, it appears reasonably likely that Mackay will succeed in the dismissal of the pending action. But where will that leave him? He has possession of the Corvette, but a seemingly valid Florida certificate of title says that Mathis is the rightful owner. Mackay probably won't be able to title the Corvette anywhere without going through a separate proceeding to establish that he is the rightful owner of the Corvette.

As I just returned from the SEMA show in Las Vegas, placing a bet seems to be in order. Based upon what we know now, "Legal Files" would bet that Mackay will end up the rightful owner of the Briggs Cunningham Corvette. Although all seem to agree that Mathis owned the car at one time, there is no clear proof of what he did with it. Lehmkuhle's story seems more plausible than Mathis's unsubstantiated theft claim, and his criminal record notwithstanding, he doesn't seem to have any reason to be lying here.

"Legal Files" also bets that the parties will be talking settlement at some time soon. Mathis is out. Itoni and Borelli have a lot of money invested in this, but they are going to have a very hard time ending up the winners. Mackay looks likely to prevail, but only after a long, expensive litigation process. The Corvette is certainly valuable enough to justify that expense, so Itoni and Borelli won't be able to spend Mackay into submission. But, at some point, someone in Mackay's position starts thinking that paying off the plaintiffs — and ending the battle — makes more economic sense than paying to win in court. ♦

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.



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