

Amended Opinion

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Re: Joe Weddington v. Badell's Auto Body, Inc.
C.A. No. 2002-09-008

LETTER OPINION

Dear Counsel:

Trial in the above captioned matter took place on Friday, August 13, 2004. Following the conclusion of testimony and receipt of evidence the Court reserved decision. This is the Court's final decision and order.

This is an *appeal de novo* brought pursuant to 10 *Del. C.* §9570 *et seq.* The sole issue to be decided following trial is the contract value for restoration of two body fenders brought by the defendant to plaintiff's body shop before this Court. The Court finds the issue of contract formation is not relevant because defendant conceded at trial that he believed the value of the restoration work was \$700.00 and waived any argument that a *bona fide* contract was not entered into by

parties. In essence, defendant conceded a contract for restoration of the two fenders was formed but disputes the price of the contract invoice. A collateral issue is whether the Auto Repair Fraud Prevention Act, 6 *Del. C.* §4903A applies to the instant facts. Assuming *arguendo* it does, the Court finds the defendant waived any estimate requirements pursuant to 6 *Del. C.* §4903A(b). Nonetheless, a careful reading of the Act would cause this Court to conclude the Act does not cover automobile restoration work but only “auto repair work” which means performing or attempting to “perform repairs and/or maintenance on a motor vehicle for financial profit.” 6 *Del. C.* §4902A(4). Clearly plaintiff did not perform automobile repairs or maintenance on defendant’s 1930 Model A, but sanded and primed only the fenders.

The Court therefore finds by a preponderance of evidence that the value of contract following trial executed between the parties is \$1,393.62. The Court therefore enters judgment in favor of the plaintiff in that amount plus pre and judgment interest pursuant to 6 *Del. C.* §2301 *et seq.* Each party shall bear their own costs.

THE FACTS

Brandon Badell (“Badell”) operates and owns a collision business for the past fifteen (15) years. At the time the parties entered into the instant contract his shop was located at 950 Ridge Road, Claymont, Delaware. At that time he

employed three or four employees. Badell's Auto Body was a collision and restoration shop for motor vehicles. Generally, older cars were restored at this location. In 2002 he was fixing approximately 300 – 325 cars. He also performed “small jobs” and also “large jobs”, maintained and used frame equipment, miscellaneous tools and a fully computerized office. In April 2002 he had contact with the defendant, Joe Weddington (“Weddington”). Weddington came to his shop and spoke to him about restoring two rear fenders on his 1930 Model A. Defendant visited the shop approximately five times and the parties consummated an oral contract and entered into agreement to restore both fenders.

According to Badell he could not give a total price figure to Weddington but provided Weddington an hourly rate of \$45.00. This is customary in the industry because with restoration work it is impossible to determine how much work is needed. Badell also presented testimony that is the “general rule” in restoration work.

The parties agreed to restore the fenders given to Badell after approximately three meetings and Weddington visited the shop following the first restoration of the left fender. The Court finds clearly the parties agreed to \$45.00 per hour and Badell worked on the first fender for two and a half days and kept Weddington subsequently informed of the status of the restoration of the first fender. Weddington visited Badell's shop and Badell informed Weddington that it

would be approximately \$700.00 for the first fender and approximately \$700.00 for the second fender. Weddington agreed and stated “it [the first fender] looked great” and requested that Badell finish the second fender.

When Weddington received the final invoice,¹ he declined payment. Badell testified at trial that all the restoration work was reasonable and necessary charges and customary in the industry. According to Badell, Weddington, even after discussing the price of \$45.00 per hour and meeting separately at his shop five times told him about the invoice that he was now not going to pay for the restoration work to the two fenders.

Weddington presented testimony at trial and conceded he met with Badell April 16, 17, 18, and one other date in 2002. He agreed the first fender was finished April 17, 2002. Weddington has not paid for the instant fenders, nor has he provided payment to Badell according to their agreement. Weddington agreed at trial that if the invoice was for \$700.00 he would have paid Badell because he believed \$700.00 was the total price for both fenders.

Weddington’s main defense at trial was that he thought both fenders for his 1934 Model A Ford would cost \$700.00 and therefore that is why he has not made final or partial payment, nor picked up the fenders.

¹ Plaintiff’s Exhibit No. 1 was not entitled Final Invoice but the Court finds based upon the testimony at trial that defendant received it, and because of the format of Badell’s computer, and his past practice, it was intended as a request for final payment.

Weddington testified he was familiar with the auto repair industry. He has worked for Chrysler for eighteen years and done some restoration work himself. Weddington denied he that he had agreed to a \$45.00 per hour rate and believes he could have purchased substitute parts from a catalog for approximately \$200.00 - \$250.00. Weddington also testified at trial that he did not object when Badell provided him the first fender which he agreed was done in a workman's like manner. Weddington's position was that had the final invoice been \$700.00 for both fenders he would have paid Badell's Auto Body for the restoration work.

Weddington paid \$8,000.00 for the 1930 Model A in Media, Pennsylvania and testified at trial that he eventually wanted the whole car "stripped and primed" so that he could subsequently paint the motor vehicle. Weddington agrees that the parties met approximately four times and that he delivered initially his car on a trailer to show to Badell, as well as subsequently took the fenders off his motor vehicle at the request of Badell and personally delivered them to Badell's shop for the restoration work.

THE LAW

Plaintiff has the burden of proving the underlying contract price by a preponderance of evidence. *See e.g. Wirt v. Matthews*, C.C.P. N.C., C.A. No. 199-12-271, 2002 CP Lexis 17, January 17, 2002 (Welch, J.).

Chapter 49A. Auto Repair Fraud Prevention

§4902A. Definitions.

(4) "Auto repair work" means performing or attempting to perform repairs and/or maintenance on a motor vehicle for financial profit.

§4904A. Estimate requirements for auto repair work.

(b) *Oral estimates and authorization.* -- If a customer or a person the auto repair facility reasonably believes is acting on the customer's behalf, waives his or her right to a written estimate, the automotive repair facility shall orally provide to the customer or a person the automotive repair facility reasonably believes to be acting on a customer's behalf the estimated price and completion date before beginning any auto repair work; provided however, that the person giving the oral estimate shall make a written record of the requirements set forth in subsections (a)(1) through (3) of this section, sign or initial the written document and retain such document for a period of no less than 2 years.

OPINION AND ORDER

The Court finds by a preponderance the evidence following trial that the value of the instant contract was as set in the final invoice of \$1,393.62 to the defendant. (Plaintiff's Exhibit No. 1). The Court has carefully scrutinized the credibility of the witnesses and finds that Badell's version of the facts was clearly more sound and credible. Defendant visited Badell's premises approximately five times; he delivered his car initially on a flatbed to show the defendant; he agreed to \$45.00 per hour; Badell showed the first fender to Weddington following completion and defendant agreed with continuing the restoration at \$45.00 per hour. In addition, assuming 6 *Del. C.* §4902A applies, a careful reading of 46 *Del. C.* §4904A the Court finds that defendant waived any written estimate because of

the agreement between the parties of \$45.00 per hour coupled with the custom in the industry and “general rule” that plaintiff could not give a fixed estimate. In addition, a careful reading of the definition of “auto repair work” indicates that restoration work on automobile fenders is not covered under the Auto Repair Fraud Prevention Act, 6 *Del. C.* §4902A because actual motor vehicle repairs were not made by the plaintiff. Applying basic statutory rules of construction it appears to this Court restoration work on the fenders was not contemplated. Plaintiff undertook restoration work of two custom fenders which appears to the Court to fall clearly outside this subchapter of the Delaware Code.

The Court therefore enters judgment in favor of the plaintiff for \$1,393.62 plus pre and post judgment interest pursuant to 6 *Del. C.* §2301 *et seq.* Each party shall bear their own costs.

IT IS SO ORDERED this 18th day of August, 2004.

Honorable John K. Welch
Associate Judge