STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 14, 2014)

PROVIDENCE AUTO BODY, INC.	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PB 11-5541**
	:	
PEERLESS INSURANCE COMPANY	:	
Defendant.	:	

DECISION

SILVERSTEIN, J. Providence Auto Body, Inc. (PAB) brings this suit against Peerless Insurance Company (Peerless) for alleged tortious interference and breach of contract. Previously, this Court dismissed a count seeking preliminary injunction. Currently before the Court is Peerless' motion for summary judgment pursuant to Super. R. Civ. P. 56 as to all remaining counts. PAB opposes Peerless' motion as to all counts.

I

Facts and Travel

Peerless is authorized to conduct business in the State of Rhode Island. PAB is a Rhode Island corporation that maintains a full collision repair license issued by the Department of Business Regulation. PAB is engaged in the business of repairing collision-damaged vehicles. As a repair shop, PAB has had occasion to repair vehicles that are either insured by Peerless or are owned by claimants of Peerless.

Pursuant to G.L. 1956 § 27-9.1-4(a)(23), the failure of an insurer to obtain an appraisal of a vehicle for which damages exceed $2500 can be considered an unfair claims practice. Therefore, insurance companies, such as Peerless, utilize appraisers and adjusters to appraise

vehicles, both at independent repair facilities, such as PAB, and at direct repair shops.[1] As part of the appraisal, the cost associated with labor must be factored in. The cost of labor will vary depending on the hourly rate used by the appraiser. To assist in the calculation of the hourly rate, § 27-29-4.4 was enacted requiring insurance companies to conduct labor rate surveys to establish a prevailing auto body labor rate.[2] During the relevant time period, PAB had a posted labor rate of $88 per hour, and Peerless used an average labor rate in the Providence area of $45 per hour. PAB and Peerless, in part due to the gap between PAB's posted rate and Peerless' average rate, allegedly negotiated for an hourly labor rate of $66 in January 2010. Thereafter, Peerless paid PAB at the $66 per hour labor rate on over twenty claims. This relationship ceased in April 2011 when Peerless instructed appraisers to stop using the $66 per hour rate for PAB vehicle repairs, and instead to use the $45 per hour rate.

One such instance where Peerless instructed the appraiser not to calculate the appraisal using the negotiated rate involved the appraisal of Thomas Tufano's (Tufano) vehicle.[3] Tufano authorized PAB to repair his vehicle. Tufano insured his vehicle with Peerless. Tufano provided notice to Peerless that he would have his vehicle repaired at PAB. During Tufano's communications with Peerless representatives, Tufano was advised that PAB was not on Peerless' referral list. Additionally, Peerless attempted to have Tufano agree to have his vehicle

[1] See § 27-29-4.4(a)(1)(iv) ("'Direct repair program' means any methods through which an insurer refers, suggests, recommends a specific auto body repair facility, with whom the insurer has a formal agreement and/or contract to provide auto body repair services, to insureds and/or claimants.").

[2] "Each insurer must conduct an auto body labor rate survey, in writing, annually to determine a prevailing auto body labor rate for fully licensed auto body repair facilities." Sec. 27-29-4.4(a)(2).

[3] PAB provided factual background regarding three other customers of PAB and Peerless insureds for which PAB alleges improper conduct by Peerless. These three instances involve similar conduct as to what took place with Tufano; specifically, unexplained delay in scheduling an appraisal and/or referring customers to other shops for appraisal purposes. Because the factual circumstances are similar, the Court does not need to detail each circumstance.

inspected at a different shop. Tufano resisted these attempts. After nearly a week, Peerless contacted Tufano and told him that Peerless was unable to inspect his vehicle at PAB because PAB's charges were in excess of what Peerless was willing to pay for labor. Peerless then asked Tufano if his vehicle could be inspected on a side street near PAB. Eventually, over a month after Tufano initially contacted Peerless, his vehicle was appraised.

Peerless provided written notice to Tufano of its appraisal of estimate of damages. Peerless' estimate was for the total amount of $5001.09. The estimate provided by Peerless utilized the $45 labor rate. Additionally, the notice informed Tufano that it was his right to choose any shop to do the repairs, but in the event that the shop he chose estimated costs in excess of Peerless' estimate, then Tufano was to inform Peerless of such difference. At that time, Peerless would provide Tufano with at least one local repair shop willing to make the repairs for the estimate provided by Peerless. If Tufano still chose to go with PAB, then Peerless would not be required to pay the difference. This procedure was all in accordance with Insurance Regulation 73, § 7(B)(1).[4]

Based on Peerless' refusal to continue to pay the negotiated labor rate and because of the alleged conduct by Peerless, PAB filed suit against Peerless. PAB asserted a count seeking preliminary injunction, which was dismissed by this Court in December 2011. PAB also

[4] "If the Claimant notifies the Insurer within thirty-five (35) Days of the receipt of the cash settlement for said partial loss, based upon a written estimate which he or she obtains, that necessary repairs will exceed the written estimate prepared by or for the Insurer, the Insurer shall:

"i. pay the difference between the written estimate and a higher estimate obtained by the Claimant, or

"ii. promptly provide the Claimant with the name of at least one Automobile Body Shop that will make the repairs for the amount of the written estimate. Said Automobile Body Shop shall be located within a reasonable distance from Claimant's residence . . . . The Claimant shall not be required to use said Automobile Body Shop; however, the Insurer shall not be required to pay for the difference between the Insurer's written estimate and the Claimant's estimate if the Claimant chooses to use another Automobile Body Shop."

asserted tortious interference with contracts (Count II), tortious interference with prospective contracts (Count III), and breach of contract (Count IV) claims. Peerless moves for summary judgment as to the three remaining counts, which PAB opposes.

II

Standard of Review

"Summary judgment is a proceeding in which the proponent must demonstrate by affidavits, depositions, pleadings and other documentary matter . . . that he or she is entitled to judgment as a matter of law and that there are no genuine issues of material fact." Palmisciano v. Burrillville Racing Ass'n, 603 A.2d 317, 320 (R.I. 1992) (citing Steinberg v. State, 427 A.2d 338 (R.I. 1981)). The court, during a summary judgment proceeding, "does not pass upon the weight or the credibility of the evidence but must consider the affidavits and other pleadings in a light most favorable to the party opposing the motion." Id. (citing Lennon v. MacGregor, 423 A.2d 820 (R.I. 1980)). Moreover, "the justice's only function is to determine whether there are any issues involving material facts." Steinberg, 427 A.2d at 340. The court's purpose during the summary judgment procedure is issue finding, not issue determination. O'Connor v. McKanna, 116 R.I. 627, 359 A.2d 350 (1976). Therefore, the only task for the judge in ruling on a summary judgment motion is to determine whether there is a genuine issue concerning any material fact. Id.

"When an examination of pleadings, affidavits, admissions, answers to interrogatories and other similar matters, viewed in a light most favorable to the party opposing the motion, reveals no such issue, the suit is ripe for summary judgment." Indus. Nat'l Bank v. Peloso, 121 R.I. 305, 307-08, 397 A.2d 1312, 1313 (1979). "[T]he opposing parties will not be allowed to rely upon mere allegations or denials in their pleadings. Rather, by affidavits or otherwise they

have an affirmative duty to set forth specific facts showing that there is a genuine issue of material fact." Bourg v. Bristol Boat Co., 705 A.2d 969, 971 (R.I. 1998). However, it is not an absolute requirement that the nonmoving party file an affidavit in opposition to the motion. Steinberg, 427 A.2d at 338. If the affidavit of the moving party does not establish the absence of a material factual issue, the trial justice should deny the motion despite the failure of the nonmoving party to file a counter-affidavit.

III

Discussion

A

Tortious Interference

PAB argues that Peerless has tortiously interfered with both existing and prospective contracts. It asserts that Peerless has improperly informed PAB customers regarding the appraisal of their vehicles. Conversely, Peerless contends that PAB has not satisfied the necessary elements of a tortious interference claim. Specifically, Peerless asserts that its conduct was not an intentional interference, and that PAB did not sustain damages.

A tortious interference with prospective contracts claims requires the showing of "(1) the existence of a business relationship or expectancy, (2) knowledge by the interferor of the relationship or expectancy, (3) an intentional act of interference, (4) proof that the interference caused the harm sustained, and (5) damages to the plaintiff." Mesolella v. City of Providence, 508 A.2d 661, 669 (R.I. 1986). The same elements apply to the tort of intentional interference with contractual relations, with the additional requirement that an actual contract exist. Id. at 670. (citing Smith Dev. Corp. v. Bilow Enters., Inc., 112 R.I. 203, 211, 308 A.2d 477, 482 (1973)).

Intentional interference requires proof of legal malice; an intent to do harm without justification. See Jolicoeur Furniture Co. v. Baldelli, 653 A.2d 740, 753 (R.I. 1995). A showing that there was no recognized privilege or other justification for the alleged tortfeasor's actions will constitute legal malice. Belliveau Bldg. Corp. v. O'Coin, 763 A.2d 622, 627 (R.I. 2000). When determining whether interference was unjustified, courts rely on seven factors set forth in Restatement (Second) Torts § 767, at 26-7 (1979):

> "(1) the nature of the actor's conduct; (2) the actor's motive; (3) the contractual interests with which the conduct interferes; (4) the interests sought to be advanced by the actor; (5) the balance of social interests in protecting freedom of action of the actor and the contractual freedom of the putative plaintiff; (6) the proximity of the actor's conduct to the interference complained of; and (7) the parties' relationship." Id. at 628 n.3.

The burden is on the plaintiff to make a prima facie showing that the interference was without justification, "[b]ut after the plaintiff establishes these prima facie elements, '[t]he burden of proving sufficient justification for the interference shifts to the defendant.'" Id. at 627.

1

Damages

PAB alleges damages with its existing contracts due to Peerless' refusal to pay the negotiated hourly rate.[5] PAB, in its memorandum, asserts damages with prospective contracts

[5] This cause of damages is better suited to be addressed in PAB's breach of contract claim. Additionally, because the Court finds that PAB's alleged damages are insufficient to maintain a tortious interference claim, the Court will not fully analyze whether Peerless' conduct was unjustified and improper, but the Court does note that actions which constitute economic competition typically do not rise to the level of improper interference. See Dan B. Dobbs et al., The Law of Torts § 630 (2d ed. 2011); see also DeBonaventura v. Nationwide Mut. Ins. Co., 419 A.2d 942, 949 (Del. Ch. 1980) ("The practice of the insurance companies to calculate the reimbursement for its insured based upon the lowest prevailing price in the marketplace . . . is the very essence of competition.").

because "[p]robability dictates that there were many more customers of PAB that were told they could not have their vehicles appraised or repaired at PAB . . . ." Mem. at 20.

Damages in a tortious interference case require that plaintiffs "prove either that 'but for' [defendant's] interference, it would not have suffered injury, or that 'it is reasonably probable that but for the interference' [plaintiff] would not have been injured." APG, Inc. v. MCI Telecomms. Corp., 436 F.3d 294, 304 (1st Cir. 2006) (quoting Mesolella, 508 A.2d at 671). Rhode Island law requires a showing of damages that is "reasonably definite and is neither speculative nor remote." Palazzi v. State, 113 R.I. 218, 224, 319 A.2d 658, 662 (1974).

PAB has not properly quantified how much, if at all, it has suffered as a result of Peerless' alleged tortious conduct. See Smith Dev. Corp., 112 R.I. at 212, 308 A.2d at 482. Even if the Court were to accept as true that PAB was damaged as a result of Peerless' refusal to pay the negotiated rate, these damages are a causation of a breach of a contract between Peerless and PAB, not damages that resulted from interference with a contract that PAB had with one of its customers. See Shire Corp. v. R.I. Dep't of Transp., No. PB 09-5686, 2012 WL 756991 at *56 (R.I. Super. Ct. Mar. 2, 2012) ("It seems to this Court that in most cases, interference with a contract to which the interferor is or is essentially a party really amounts to breach of contract, and a claim for tortious interference is not actionable."); see also Robertson Stephens, Inc. v. Chubb Corp., 473 F. Supp. 2d 265, 275 (D.R.I. 2007) (stating it is "well-settled that a party cannot tortiously interfere with its own contract"); URI Cogeneration Partners, LP v. Bd. of Governors for Higher Educ., 915 F. Supp. 1267, 1289 (D.R.I. 1996) (stating that it is "clear" that tortious interference applies only to parties outside the agreement). Thus, PAB has not set forth damages that were a result of Peerless' tortious interference with contracts of PAB's customers.

Additionally, PAB's assertion that Peerless probably interfered with other potential customers of PAB is too remote a theory upon which to base damages for interference with prospective contracts. See Dessert Beauty, Inc. v. Fox, 568 F. Supp. 2d 416, 429 (S.D.N.Y. 2008) ("[T]he 'public and customers at large are far too general to constitute a specific third party' for purposes of a tortious interference claim.") (quoting Gen. Motors Corp. v. Dealmaker LLC, No. 07 Civ. 141 (TJM), 2007 WL 2454208, at *9 (N.D.N.Y. Aug. 23, 2007)). While Rhode Island courts "do not require mathematical certainty" in the calculation of damages, there must be some rational standard by which the court may be guided. See Abbey Medical/Abbey Rents, Inc. v. Mignacca, 471 A.2d 189, 195 (R.I. 1984). In M.V.B. Collision, Inc. v. Allstate Ins. Co., 728 F. Supp. 2d 205, 214 (E.D.N.Y. 2010), the repair shop set forth evidence that "on specific occasions, insureds sought to have [plaintiff] repair their cars, but [defendant insurance company] interfered with the relationship between the insured and [plaintiff.]" PAB has set forth no evidence such as that in M.V.B. Collision, Inc., but rather relies on speculation that Peerless must have told other customers that they could not use PAB to appraise or repair their vehicles, which is insufficient to prove damages. See Palazzi, 113 R.I. at 222, 319 A.2d at 662. Because PAB has failed to properly set forth damages that it has sustained as a result of Peerless' alleged tortious interference, summary judgment is granted in favor of Peerless on Counts II (tortious interference with contracts) and III (tortious interference with prospective contracts).

B

Breach of Contract

PAB claims that Peerless breached the contract established between the two parties to pay the negotiated rate of $66 per hour for labor performed by PAB on Peerless insured vehicles. In support of their motion for summary judgment, Peerless presents several theories as to why

Peerless cannot be liable. Peerless asserts that (1) PAB lacks standing to bring such a claim against Peerless; (2) no contract existed between PAB and Peerless; (3) any contract that may have existed was terminated by the passage of time; (4) any contract that may have existed is unenforceable as it did not satisfy the Statute of Frauds; (5) any contract was terminable at will as it was a personal services contract; and (6) any contract made was modified and accepted when PAB accepted a lower rate.

1

Standing

Peerless argues that PAB lacks standing as the repair shop to bring a direct suit against Peerless as the insurer. In reliance on this theory, Peerless cites § 27-7-2 which provides that "[a]n injured party . . . in his or her suit against the insured, shall not join the insurer as a defendant." Peerless contends that PAB first must sue Tufano, as the insured, before PAB can maintain a suit against Peerless. PAB acknowledges this general rule but argues that its direct claim against Peerless is distinguishable from any situation contemplated by § 27-7-2 because it regards a contract between PAB and Peerless, separate and apart from any conduct that occurred between PAB and its customers.

When addressing issues of standing, our Supreme Court has announced that "[t]he question is whether the person whose standing is challenged has alleged an injury in fact resulting from the challenged [act]. If he [or she] has, he [or she] satisfies the requirement of standing." Pontbriand v. Sundlun, 699 A.2d 856, 862 (R.I. 1997) (quoting R.I. Ophthalmological Soc'y v. Cannon, 113 R.I. 16, 26, 317 A.2d 124, 129 (1974)). Additionally, "in Rhode Island and in most jurisdictions, an injured party lacks standing to maintain a direct action for damages

against a tortfeasor's insurer until and unless the injured party has secured a judgment against the [insured]." Mendez v. Brites, 849 A.2d 329, 333 n.2 (R.I. 2004).

This Court agrees that PAB is not seeking damages as a result of any contract that Peerless may have with third parties, but rather is seeking damages as a result of an alleged breach of contract between PAB and Peerless. The Legislature could not have envisioned § 27-7-2 as precluding insurers and repair shops from entering into contracts regarding labor rates which later would be rendered unenforceable for lack of standing. This is obviously the case when examining § 27-29-4.4(a)(1)(v), which defines "contract rate" to "mean[] any labor rate to which an auto body repair facility and an insurer have agreed in a formal agreement and/or written contract." Even though the formalities contemplated by § 27-29-4.4(a)(1)(v) may not be present here, the Court finds the fact that the Legislature contemplated the potential for auto body shops and insurers to enter into contracts significant on the issue of standing. If the Legislature intended § 27-7-2 to prevent repair shops from directly suing insurers under contracts between the two parties, then contract rates as defined in § 27-29-4.4 would be rendered unenforceable. See State v. Clark, 974 A.2d 558, 571 (R.I. 2009) ("[T]he Legislature is presumed to have intended each word or provision of a statute to express a significant meaning, and the [C]ourt will give effect to every word, clause, or sentence, whenever possible."). This Court finds that the Legislature could not have intended such a result and, therefore, finds that PAB has standing to bring a claim against Peerless for breach of contract.

2

Existence of Contract

Peerless argues that a contract between it and PAB never existed. Among the reasons Peerless claims that a contract did not exist was that the only contract Peerless entered into was

between Peerless and Peerless' insureds, and that Peerless only agreed to pay the negotiated rate on seven claims. PAB disputes these two claims, arguing that a contract did, in fact, exist between Peerless and PAB and that said contract was not exclusive to the seven delineated claims.

A party must prove by a fair preponderance of the evidence that the party has complied with his or her portion of the contract and that the other party wrongfully breached the contract to succeed on a breach of contract claim. DelFarno v. Aetna Cas. and Sur. Co., 673 A.2d 71, 72 (R.I. 1996). "It is a fundamental principle of contract law that a bilateral contract requires mutuality of obligation." Centerville Builders, Inc. v. Wynne, 683 A.2d 1340, 1341 (R.I. 1996). Moreover, a contract may exist through writing or some other expression of assent, including oral assent. See J. Koury Steel Erectors, Inc. of Mass. v. San-Vel Concrete Corp., 120 R.I. 360, 365, 387 A.2d 694, 697 (1978).

PAB, through its Rule 30(b)(6) designee, alleges that PAB and Peerless entered into a contract for an hourly labor rate that was negotiated between the two parties. (Duquette Dep. 5:15–7:2, Apr. 19, 2013.) PAB asserts that the existence of this agreement is confirmed by an e-mail from Kevin Cajda (Cajda), an employee of Peerless, to Stephen Loiselle (Loiselle), an appraiser used by Peerless. (Peerless Ex. B.) In the e-mail, Loiselle inquires of Cajda whether PAB was truthful when it told Loiselle that PAB had negotiated a labor rate of $66 per hour with Peerless. Loiselle additionally set forth seven claim numbers that he had either recently inspected or was set to inspect at PAB. In response to Loiselle's inquiry, Cajda responded that:

> "I had to negotiate labor rates to $66. This is ok. That's perfect, enter it with a market adjustment at this time on all those claims. I just checked some of the claim #'s and all are going to PAB? great. What else am I suppose to do. Let's make it happen pal. I want this done and over with. Thanks. When you upload make note that I discussed rates with PAB Norman." (Peerless Ex. B.)

Clearly, Peerless acknowledges that it negotiated a labor rate of $66 per hour with PAB through the e-mail. (Peerless Ex. B.) Additionally, Peerless' claim that the negotiated labor rate was confined to the seven enumerated claim numbers in Loiselle's original e-mail is not clearly supported by the evidence submitted and is, at the very least, a question of fact. See O'Connor, 116 R.I. at 634, 359 A.2d at 354 ("This court has not expressly stated that summary judgment should be denied when a contract is ambiguous but we have consistently held that summary judgment is a drastic remedy and should only be applied when there is no genuine issue of material fact."). First, PAB asserts that the negotiated rate was to be used on all claims from that point forward. See Petrarca Aff. ¶ 3; Duquette Dep. 17:9–17:20, Apr. 19, 2013. Additionally, PAB asserts that Peerless paid the negotiated rate on over twenty claims, up until April 2011. It is evident that an agreement was reached between PAB and Peerless, whereby Peerless agreed to pay the negotiated rate on Peerless-insured claims.

3

Modification and/or Termination of Contract

Peerless argues that the contract between it and PAB was either modified and/or terminated by the passage of time and non-payment of the negotiated rate. PAB asserts that it neither conceded that the contract could be terminated, nor did it ever accept a lower rate of payment from Peerless so that the contract could be modified. Additionally, PAB argues that any potential modification is a question of fact that cannot be determined during a summary judgment proceeding.

The Court confirmed supra that an agreement existed in some form between PAB and Peerless. However, the two sides clearly disagree over the terms of the agreement, and specifically, any duration of the agreement. Contracts between parties may be modified if "the

party alleging the modification [] show[s] that the parties demonstrated both subjective and objective intent to be bound by the new contract's terms." See Fondedile, S.A. v. C.E. Maguire, Inc., 610 A.2d 87, 92 (R.I. 1992).

The arguments submitted by Peerless as to why the contract was either terminable or modified are questions of fact that cannot be resolved on a Super. R. Civ. P. 56 motion. First, the terms and existence of any contract are disputed by the two parties, and both have set forth evidence as to what the terms were. Accordingly,

> "[w]here one party to an action affirms and the other denies the existence of a contract, and the evidence introduced is conflicting, but there is evidence from which a contract may be inferred, the jury should determine the fact of the existence or nonexistence of the contract. It is particularly in the jury's realm to determine whether an oral contract exists . . . . Generally, the jury must determine . . . whether conduct indicates a promise; the terms of an oral contract; and whether actions of parties constitute a renewal of a contract." 75A Am. Jur. 2d Trial § 669 (2014) (emphasis added).

The Court declines to adduce what the actual terms of the oral contract were because "[t]he construction of contracts that are wholly or partially oral is ordinarily for the jury." 17B C.J.S. Contracts § 1056 (2014). Moreover, "questions regarding the modification of a contract are ones of fact, and are to be determined by the trier of fact upon the evidence of the case." Id. at § 1042. Thus, this Court finds it to be a question of fact whether the contract at issue was either terminated or modified by either party.

4

Statute of Frauds

Peerless next argues that, because Peerless never signed a contract with PAB to act as surety for Peerless' insureds, the contract must fail because it is not in writing and signed, and thus does not satisfy the requirements of the Statute of Frauds. PAB responds that Peerless

repeatedly admitted that it was liable to pay Tufano's debt under the insurance contract Tufano had with Peerless. PAB also argues that the Statute of Frauds cannot apply to the contract between PAB and Peerless, for which PAB has alleged damages.

Rhode Island's Statute of Frauds can be found in § 9-1-4.[6] In Burrillville Lumber Co. v. Rawson, 68 R.I. 1, 26 A.2d 10 (1942), the Court stated that:

> "[N]o action shall be brought whereby to charge any person upon his special promise to answer for the debt of another, unless the promise or agreement upon which such action is brought or some note or memorandum thereof is in writing and signed by the party to be charged or by some other person by him thereunto duly authorized."

Essentially, a non-debtor party can be liable for the debt of another if the non-debtor signed a written agreement with the creditor. Without a written agreement, the non-debtor party cannot be liable if they raise the Statute of Frauds as a defense to the claimed breach of contract. See id.

Here, Peerless asserts that it is the non-debtor party and PAB is the creditor, and that it cannot be liable for the debt owed to PAB without signing a writing. Peerless' argument is unpersuasive. Peerless and PAB entered into a contract to pay labor rates at a negotiated rate. PAB alleges damages from Peerless' failure to pay the negotiated rate stemming from the contract between PAB and Peerless. In fact, PAB recognized at the hearing before this Court that if Peerless' insureds took the check provided to them by Peerless and absconded, then PAB would have no recourse against Peerless. Clearly, PAB never considered Peerless to act as surety for its insureds, but rather only expected Peerless to honor the agreement to pay the negotiated rate. Accordingly, this Court finds that the Statute of Frauds is inapplicable.

[6] Section 9-1-4(4) provides that "[n]o action shall be brought: [w]hereby to charge any person upon his or her special promise to answer for the debt, default, or miscarriage of another person[.]"

5

Personal Services Contract

Finally, Peerless argues that the contract was in the nature of a personal services contract, because Tufano, along with other Peerless insureds, required that their vehicles be repaired at PAB. Peerless asserts that Tufano chose PAB to do the repairs because he believed PAB was uniquely qualified, "and as a consequence, the service contract became personal in nature." (Peerless Mem. 13.) (emphasis added).

A personal services contract will arise when the "services and attentions . . . were undoubtedly contemplated by the parties as more agreeable and efficient than the services of strangers could be[.]" Parker v. Macomber, 17 R.I. 674, 24 A. 464 (1892). Even if Peerless is correct that the service contract between Tufano and PAB was a personal services contract, Peerless again attacks the wrong contract. PAB has alleged a breach of contract between PAB and Peerless. Any classification of the service contract that exists between PAB and Tufano, or any insured for that matter, is wholly inapplicable to the analysis of whether Peerless breached its contract with PAB. Accordingly, the Court denies Peerless' motion for summary judgment as to Count IV.

IV

Conclusion

Based on the foregoing analysis, this Court grants summary judgment in favor of Peerless as to Counts II and III. With respect to Count IV, this Court finds that questions of fact exist as regarding the existence, terms, and status of the contract between PAB and Peerless. Therefore, this Court denies summary judgment as to Count IV.

Counsel for Peerless may present an order consistent herewith which shall be settled after due notice to counsel of record.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Providence Auto Body, Inc. v. Peerless Insurance Company**
CASE NO:	**PB 11-5541**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**April 14, 2014**
JUSTICE/MAGISTRATE:	**Silverstein, J.**
ATTORNEYS:	
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For Defendant:	**Kevin J. Holley, Esq.**