COURT OF APPEALS
DECISION
DATED AND FILED

June 18, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP2932 **Cir. Ct. No. 2007SC573**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

JENNIFER PACOCHA,

PLAINTIFF-RESPONDENT,

V.

J&K ALIGNING, INC., D/B/A SUMMERFIELD ALIGNING SERVICE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Fond du Lac County: DALE L. ENGLISH, Judge. *Affirmed*.

¶1 NEUBAUER, J.[1] J&K Aligning, Inc., d/b/a Summerfield Aligning Service, appeals from a WIS. STAT. ch. 799 small claims judgment in favor of

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

(continued)

Jennifer Pacocha in the amount of $207.90. The judgment resulted from a dispute between the parties as to the amount owed by Pacocha to Summerfield for vehicle repairs. Summerfield argues that the trial court erred in ordering it to reimburse Pacocha for amounts paid for vehicle repairs. We disagree and affirm the judgment.

¶2 On February 28, 2007, Pacocha filed a small claims summons and complaint against Summerfield demanding judgment in the amount of $819.63. On March 29, 2007, Summerfield answered Pacocha's complaint denying liability. The parties failed to reach an agreement in mediation and the matter proceeded to trial on November 6, 2007.

¶3 Pacocha testified that on November 8, 2006, she contacted Summerfield about her vehicle because her "heater didn't work." On November 13, she left her car to be looked at and was contacted and told that she needed a radiator flush for $75. Pacocha approved the repair. A few hours later Pacocha was contacted again and told that the intake manifold seal needed to be fixed for $450. Again, Pacocha approved the repair. When Pacocha picked up her car the next day, the "check engine light" was on when she turned on her car, and when she left, she felt the car "rattling" and "kind of shaking."

¶4 Because the check engine light had not been on when Pacocha brought the car to Summerfield, she returned the car and was told by a serviceman that he would "take a look at it." Pacocha waited for an hour and a half and was then told that the serviceman had fixed an "O-ring seal on the fuel injector."

We note that Pacocha chose not to file a respondent's brief in the appeal. On April 15, 2008, this court ordered that the appeal be submitted to the court without the respondent's brief.

When Pacocha got back in her car the check engine light was still on but it "wasn't as jerky as it was before." Pacocha's trial exhibit reflects that she was also told that she had a wire problem and needed new wires put in. She returned with her vehicle on November 15, and was told that the problem was the fuel injector and spark plugs.

¶5 Pacocha dropped off her vehicle on November 16 and left it overnight, approving a new fuel injector and spark plugs "if that would fix the problem." When she picked up the car on November 17, she was charged $207.90. When she turned on her car the check engine light was still on and the car was no different. Pacocha then stopped payment on the check she had written for the repairs.

¶6 The following day Pacocha brought the vehicle back in and told Jim Treptow, the owner, that the car had not been fixed. Treptow went for a ride with Pacocha and neither felt any problems with the vehicle. Pacocha ended up taking the vehicle to Bob Fish Chevrolet where the problem—an ignition coil pack—was fixed.

¶7 Treptow also testified at trial. As to the initial repair, he testified that the vehicle did not have any heat because the cooling system needed to be flushed out. Because there was a leak in the intake manifold, it needed to be replaced before the system could be flushed. With respect to the new fuel injector and spark plugs, Treptow testified that they needed to do that anyway because the plugs "wear out" at 100,000 miles, but he also acknowledged that the injector "probably got dirty from us taking it off and moving things around." Treptow testified that when they went for a ride following the November 17 repair the check engine light was not on. However, when Treptow hooked the vehicle to the

diagnostics computer, it did indicate that a problem existed, but he did not know what it was.

¶8 At the close of testimony, the trial court confirmed that Pacocha was requesting $819.63, including the costs of the Summerfield repairs and also $174.09 as reimbursement for the repair at Bob Fish Chevrolet. The trial court stated its reasoning and determination on the record.

> I guess here's the way that I, as a non-mechanical person, analyzed this. Bear in mind that Ms. Pacocha has the burden of proof…. I don't think there's any problem with the original invoice for $437.64, for the work that was done with the intake gasket, cleaning the sludge out, et cetera, flushing the coolant system. I think that was necessary and I'm not going to award her that Summerfield reimburse Ms. Pacocha for that amount. I think that was properly done under the circumstances.
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> With respect to the invoice for the $207.90, I guess I take a different view of that. I mean, the problem turned out to be the ignition coil which Bob Fish fixed. I don't think, Ms. Pacocha, that they should have to pay you or reimburse you for the amount you paid to Bob Fish to have the coil replaced which took care of the engine light on and the poor running problem.
>
> But that being said, I don't think that they're entitled to keep the $207.90 either for the wires, the fuel injector and so on. That didn't solve the problem….
>
> The, the ignition coil was, that problem was never diagnosed by Summerfield and that was replaced and diagnosed by Bob Fish. I think the work that was done in the interim didn't address the problem and I just don't think it's fair that you should be on the hook for the $207.90 which is the second invoice.

¶9 On November 12, 2007, the trial court entered a judgment in favor of Pacocha in the amount of $207.90. Summerfield appeals.

¶10 Summerfield contends that the trial court erred in failing to apply principles of contract law to the issues presented. Summerfield's counsel, who also appeared at the small claims hearing now cites to 17 Am. Jur. 2d Contracts and RESTATEMENT (SECOND) OF CONTRACTS for the proposition that there was a binding contract with respect to the November 17 repairs and that there is no evidence of failure to perform or breach of contract.

¶11 In support, Summerfield points us to the November 17 written repair order which sets forth the proposed repairs, costs of parts and signed authorization by Pacocha. Summerfield additionally argues that there is "no dispute of fact but that the plaintiff was told … that [the vehicle] needed a tune up which would include the spark plugs (and fuel injector). She authorized these repairs. The repairs were necessary and done properly." We reject Summerfield's arguments and conclude that the trial court's findings were not clearly erroneous.

¶12 In reaching its determination, the trial court expressly acknowledged the invoice authorizing the November 17 repairs, and thus acknowledged the existence of a contract between the parties. However, it further found that Summerfield was "not entitled to keep the $207.90 either for the wires, the fuel injector and so on. That didn't solve the problem." The trial court's inquiry into the circumstances underlying the November 17 repairs is supported by law.

¶13 "[C]ontracts require the element of mutual meeting of the minds and of intention to contract." ***Garvey v. Buhler***, 146 Wis. 2d 281, 289, 430 N.W.2d 616 (Ct. App. 1988). Meeting of the minds or mutual assent does not mean that the parties must subjectively agree to the same interpretation at the time of contracting. *See* ***Nauga, Inc. v. Westel Milwaukee Co.***, 216 Wis. 2d 306, 313, 576 N.W.2d 573 (Ct. App. 1998). Rather, mutual assent is judged by an objective

standard and, therefore, we look to the parties' words, written and oral, as well as their conduct, to determine if they intended to enter into a contract and agreed on the essential terms of the contract. *See* ***id***.

¶14 As to the evidence presented, Pacocha testified and the trial court found that the proposed repair of the spark plugs and fuel injector were premised upon her understanding that these things were contributing to the vehicle running poorly and the engine light being on. Treptow also testified that he replaced the spark plugs and fuel injector after telling Pacocha that those parts could be causing the problem with the vehicle. He testified: "I called her and told her that could be a possibility." According to Treptow, "She said, 'Well, if that's going to take care of it put an injector in.' She was very accommodating that way…. So we put the injector in. But she still had an engine light."

¶15 It is undisputed that the engine light was not on until after Pacocha picked up her vehicle from Summerfield after the first repair on November 14. The testimony supports an inference that the repairs were being done to resolve the engine light problem, not for purposes of a general tune up. The trial court's determination that J&K was not entitled to the $207.90 for the November 17 repairs because it "didn't solve the problem," reflects its finding as to the parties' understanding in entering into the contract—namely, Summerfield's understanding in proposing and completing the repairs and Pacocha's understanding in authorizing them.

¶16 Small claims trials are subject to the rules of civil procedure. WIS. STAT. § 799.04(1). The trial court's "[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." WIS. STAT. § 805.17(2).

¶17 Here the trial court noted that Pacocha had "the burden of proving by the preponderance of the evidence that [she] should win." The trial court found that Pacocha was obligated to pay the first repair bill of $437.64 and could not recover for the repair costs incurred at Bob Fish Chevrolet. However, the court found that it would be unfair for Pacocha to be obligated to pay the November 17 repair bill of $207.90 because "it did not solve the problem."

¶18 We conclude that the trial court's findings are supported by evidence in the record and therefore were not clearly erroneous. ***Noll v. Dimiceli's Inc.***, 115 Wis. 2d 641, 643-44, 340 N.W.2d 575 (Ct. App. 1983) (a trial court's finding of fact is not clearly erroneous if there is credible evidence to support it). We affirm the small claims judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.