

**NOT DESIGNATED FOR PUBLICATION**

<b>ANGELA M. BOYD</b>	*	<b>NO. 2003-CA-1101</b>
<b>VERSUS</b>	*	<b>COURT OF APPEAL</b>
<b>AUTOMOTIVE</b>	*	<b>FOURTH CIRCUIT</b>
<b>INVESTMENTS, L.L.C., D/B/A</b>	*	<b>STATE OF LOUISIANA</b>
<b>REGENCY BUICK-GMC</b>	*	
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APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 99-19148, DIVISION "G-11"  
Honorable Robin M. Giarrusso, Judge  
\* \* \* \* \*

**JUDGE DENNIS R. BAGNERIS, SR.**  
\* \* \* \* \*

(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris Sr., Judge Leon A. Cannizzaro Jr.)

**CANNIZZARO, J., - DISSENTS IN PART AND CONCURS IN PART WITH REASONS**

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**AFFIRMED**

The defendant, Premier Imports, L.L.C., doing business as Premier Mitsubishi (Premier) appeals from a trial court judgment rendered in favor of the plaintiff, Angela Boyd, awarding her damages in connection with the conversion of her automobile. For the reasons assigned, we affirm.

**FACTS AND PROCEDURAL HISTORY:**

On September 14, 1999, Ms. Boyd entered into an agreement with Premier for the purchase of a new 1999 Mitsubishi Eclipse. Ms. Boyd planned to obtain financing through her credit union and to trade in her 1990 Mercury Cougar. Premier allowed Ms. Boyd to take the Eclipse home as a loaner vehicle pending the completion of the financing. Ms. Boyd left her Cougar at the dealership.

On September 17, 1999, Ms. Boyd notified Premier that her credit union declined to provide financing on the 1999 Eclipse because the 2000 models were available. The parties agreed to request financing for the purchase of a 2000 Eclipse. Ms. Boyd was subsequently denied financing for the 2000 Eclipse.

Ms. Boyd testified that on September 18, 1999, she received a call

from someone who said they had purchased her Cougar from Premier and that her check stubs were still in the vehicle. Ms. Boyd further testified that when she first questioned Premier they denied that the Cougar had been sold. It was confirmed at trial that Premier had sold Ms. Boyd's Cougar to one of its employees (now former employee), Michael Green (Green), the day after the vehicle was left at the dealership. Premier admitted that they did not have the title to the Cougar when it was sold.

Ms. Boyd testified that for several weeks she tried to communicate with Premier to inquire about her vehicle, but was given the "run-around". Specifically, Ms. Boyd stated that she made at least thirty-five phone calls to the dealership, visited the dealership at least ten times, sent three letters to the owner of the dealership, but was unsuccessful in speaking with anyone in charge about retrieving her Cougar. At some point, Premier admitted to Ms. Boyd that her Cougar had been sold, and that they were attempting to get it back from Green who was no longer in their employ. During this time, Ms. Boyd continued to use the Eclipse.

It is not disputed that during the night on October 18, 1999, two Premier employees went to Ms. Boyd's residence and took back the Eclipse without notice. The next morning, Ms. Boyd believed the Eclipse had been stolen and reported it as such to the New Orleans Police Department.

Premier still did not return Ms. Boyd's Cougar. Premier claimed that it was necessary to take back the Eclipse because Ms. Boyd refused to return it. To the contrary, Ms. Boyd testified that she was never told to return the Eclipse. Ms. Boyd further claimed that she had personal property in the Eclipse when it was taken.

Ms. Boyd filed the instant lawsuit on November 24, 1999, alleging damages for breach of contract, negligence infliction of emotional distress, fraud, unjust enrichment, conversion, and unfair and deceptive trade practices. On the night of December 6, 1999, Ms. Boyd's Cougar was returned to her residence without notice. Ms. Boyd claimed that all of her personal belongings were missing from the car, and that the car had been damaged. Ms. Boyd amended her petition to seek compensation for the \$3,000.00 in estimated damages to her car.

A bench trial was held on December 10, 2002 and January 9, 2003. On January 30, 2003, judgment was rendered in favor of Ms. Boyd and against Premier, awarding Ms. Boyd \$13,700.00 in damages and \$5,507.00 in attorney's fees plus interest and costs. The trial court itemized the damages as follows:

Conversion	\$5,000.00
Loss of Use	\$2,000.00
Mental Anguish	\$5,000.00
Property in cars	\$ 700.00
Car repairs (limited to value of vehicle)	\$1,000.00

Attorney's Fees (pursuant to R.S. 51:1409) \$5,507.00

The judgment was thereafter amended on February 5, 2003, to correct a typographical error naming the wrong defendant. Premier's motion for a new trial was denied on February 14, 2003. Premier now appeals this final judgment.

**DISCUSSION:**

Premier argues that the record does not contain sufficient evidence to support the individual damage awards. Specifically, Premier argues:

1. The award of \$1,000.00 for repairs to Boyd's vehicle (limited to the value of the vehicle). Premier submits that the only evidence in the record to suggest that the 1990 Cougar had a value of \$1,000.00 was the fact that Premier offered Ms. Boyd \$1,000.00 as a trade in.

Otherwise, they argue that there was no appraisal or expert testimony to substantiate the value. Premier curiously maintains that they offered Ms. Boyd \$1,000.00 for her trade in, even though they valued the Cougar at \$200.00.

2. The award of \$700.00 for personal property missing from the vehicles. Premier contends that this award was solely based on Ms. Boyd's testimony, and is not supported by credible evidence.
3. The award of \$2,000.00 for loss of use. With respect to this element

of damages, Premier asserts that \$2,000.00 for the temporary loss of use of a vehicle that the trial court assumed was worth only \$1,000.00, was excessive. Further, Premier maintains that Ms. Boyd produced no receipts for cabs, rental cars or estimates of the cost of a rental car.

4. The award of \$5,000.00 for conversion. Premier argues that the award of conversion is duplicative of the award for mental anguish. As such, Premier contends that the award for conversion constitutes punitive damages, which are not allowed under Louisiana law unless expressly authorized by statute.
5. The award of \$5,507.00 for attorney's fees. Premier asserts that there is no evidence in the record to show how the amount of attorney's fees was computed. Premier points out that Ms. Boyd did not submit any bills or timesheets to substantiate the amount of attorney's fees.

A court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong."

*Rosell v. ESCO*, 549 So.2d 840 (La.1989); *Stobart v. State, Through Department of Development and Transportation*, 617 So. 2d 880, 883 (La. 1993). In *Mart v. Hill*, 505 So. 2d. 1120, 1127 (La. 1987), the Louisiana Supreme Court announced a two-part test for the reversal of a fact finder's determinations:

1. The appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court, and
2. The appellate court must further determine that the record establishes that the finding is clearly wrong or manifestly erroneous.

In essence, this test means that a reviewing court must do more than simply review a record for some evidence which supports the trial court's finding; it must determine that the record, as a whole, establishes the trial court was justified in its conclusions. However, because the fact finder is best aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said, when there is a conflict in the testimony reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. *Rosell*, at 844; *Arceneaux v. Domingue*, 365 So.2d 1330 (La.1978); *Housley v. Cerise*, 579 So.2d 973 (La.1991).

The issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the fact finder's conclusion was a reasonable one. *Cosse v. Allen-Bradley Co.*, 601 So.2d 1349, 1351 (La.1992). The reviewing court must always keep in mind that "if the trial court or jury's findings are reasonable in light of the record reviewed in its

entirety, the court of appeal may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.” *Sistler v. Liberty Mut. Ins. Co.*, 558 So.2d 1106, 1112 (La.1990). Consequently, when there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. *Id.*, at 1112.

In the present case, many of the allegations made by Ms. Boyd were uncontradicted. Specifically, there is no dispute that Premier kept possession of Ms. Boyd’s vehicle for almost two months, sold it without title or permission from Ms. Boyd, and returned it damaged. Testimony from Green confirmed the fact that the Cougar was not damaged when he purchased it and returned it to Premier. Further, Ms. Boyd submitted a repair estimate for her vehicle. In light of the fact that the repairs exceeded the value of the vehicle, we find no error in the trial court’s award of \$1,000.00 for repairs. The trial court apparently relied on Premier’s trade in offer of \$1,000.00 to place a value on Ms. Boyd’s vehicle.

The trial court found the testimony of Ms. Boyd “to be very credible and the defendant’s employees to be less than credible.” Ms. Boyd testified in great detail of the emotional distress she endured as a result of Premier’s actions, the value of her missing personal belongings, and her lack of

transportation. Ms. Boyd's mother corroborated much of what Ms. Boyd described. Her mother testified that she accompanied Ms. Boyd to the dealership and witnessed the fact that no one would speak to Ms. Boyd, she was aware of the stress and resulting migraine headaches that Ms. Boyd endured, and she was aware of the transportation problems that Ms. Boyd faced as a result of having no vehicle.

The correct test for reviewing a damage award is not to second-guess the trial court as to other reasonable conclusions it could have reached, but to review the trial court's findings to see if the record reflects that the trier of fact abused its much discretion. *Turner v. Krauss Co., Ltd.*, 543 So.2d 563 (La. App. 4 Cir.4/27/89). Considering the testimony and the evidence presented, we find the damages awarded to be reasonable and well within the trial court's discretion.

Premier further argues that the trial court erred in awarding attorney's fees because the record does not support such an award. We recognize that a party seeking attorney's fees bears the responsibility of introducing timesheets and bills into the record. *Mossy Motors, Inc. v. Sewerage & Water Board*, 01-0486 (La. App. 4 Cir. 9/19/01), 797 So. 2d 133. We further recognize, however, that when the services of an attorney are evident from the record, proof of services is not necessary. *Federal Services Corp.*

*v. Mule-Durel, Inc.*, 95-2192 (La. App. 4 Cir. 5/15/96), 676 So. 2d 597. In this case, the work done by the attorney for Ms. Boyd was evident to the trial judge by an examination of the record. Her award of 40% of the damages awarded does not seem unreasonable in light of the work involved as evidenced by this record.

Finally, Ms. Boyd seeks an additional award of attorney's fees for this appeal; however, since she did not appeal the judgment of the trial court or answer this appeal, she may not now seek additional attorney's fees. La. C.C.P. art. 2133.

For the foregoing reasons, the judgment of the trial court is affirmed.

**AFFIRME**

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