State of New York
County of Ontario
Canandaigua City Court

Index Number: **SC-000852-11/CA**

Daryl S Hilkert
Claimant(s)

-against-

Andrew Northrup
Defendant(s)

DECISION

Present: Hon. Stephen D. Aronson

Appearances: Claimant: Pro se

Defendant: Pro se

In this small claims case, the claimant seeks $5,000 from the defendant for breach of contract. A hearing was held on December 15, 2011.

The undisputed facts show that the defendant was a race car driver who had dealings with the claimant relating to both parties' pursuit of racing cars. When they met last year, defendant purchased a race car and motor from the claimant. Following this transaction, the parties discussed that the defendant would join the claimant's race team and would "put in" $16,000. Subsequently, they discussed that the defendant would "put in" $8,000 and build 2 motors. There was no clear or credible evidence about how the $8,000 would be paid. There was a suggestion, but no credible evidence, that the $8,000 was to be paid in services.

In any event, one motor was built and blew up in claimant's car. The defendant took the motor to a repair shop. After the defendant failed to pay a $1,500 deposit, the claimant paid the deposit and defendant paid the $2,700 balance. The claimant testified that defendant got 14 sets of gears for $475 and returned only 7 sets; it is unclear why claimant even brings out this evidence. The claimant contended that defendant borrowed a fire suit worth $1,600 but never

returned it. At the conclusion of the small claims hearing, the defendant stated that he brought the fire suit with him and would return it to claimant after court. The court presumes that the fire suit was returned.

The claimant contends that he housed the defendant's car at his shop, prepped his tires, used a carburetor and no money was exchanged. Claimant contends that the defendant purchased a radiator for $550, but he was never paid for it; it is unclear why claimant brings out this evidence. Claimant contends defendant purchased three tires valued at $140 each; that defendant used two, claimant used one. It is unclear why claimant brings out this evidence. Claimant contends that defendant was trying to sell his car at the end of the season, but it had claimant's high-performance carburetor on it; that claimant took the carburetor off and switched it with a different carburetor; that defendant "lost it" when he found out about the switch.

The claimant contends that at the end of the race season, he put his car up for sale; that defendant wanted to buy another car from him. So, the parties entered into a written agreement for the purchase of a 2007 TEO Bowflex Procar. The agreement specified that the defendant would pay for the car along with the "remaining balance from the 2011 race season" and the fire suit. The claimant contends that $4,500 was attributed to the "remaining balance from the 2011 race season" and the fire suit. No money was paid by the defendant by the due date on the agreement. He now seeks $5,000 (the jurisdictional limit of the court) on the theory that the "defendant owes way more than that."

The defendant contends that the original agreement was for $8,000 for a year for both cars - his car and claimant's car. He contends that he purchased 3 tires and radiator for $550 and that he paid the balance of $2,700 for the motor. He contends that he sees it that each party is out about $4,000 apiece. The defendant contends that when they teamed up the end of May, his car was not in claimant's shop because there was no room. He contends that towards the end of July,

the crew chief got into an argument with claimant's brother and as a result, defendant was advised that it would be best for defendant to "split" from the claimant, which he did. He contends that all of a sudden he's told he owes $8,000 for leaving early. He contends that he didn't think he owed $8,000 because "defendant put it into a car."

The defendant contends that in October they started talking about a new agreement to buy another car. He contends that after the agreement was signed, the claimant started to text him for money that wasn't due yet; defendant contends that claimant told defendant that he had other people wanting the car so he told claimant to go ahead and sell it. He contends that he heard nothing further until he received the court papers to come to court. He contends that he only got the fire suit, a rear axle and a carburetor; so, out of the $8,000 he spent, the only thing owed is the fire suit and possibly an axle. He contends that the $4,500 ("remaining balance from the 2011 race season") plus everything else in the contract made it worth his signing the agreement. He contends that he is getting out of racing due to health reasons.

In every small claims case, the court is bound to perform substantial justice to the parties in accordance with principles of substantive law. Uniform City Court Act § 1804.

The key to understanding the legal issues in this case is the recognition that there were two agreements between the parties -- an oral agreement and a written agreement. The resolution of the legal issues between the parties depends upon whether either agreement is enforceable.

Under New York law, every agreement is void unless it is in writing if the agreement by its terms is not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime (Gen. Obligations Law § 5-701 (a)(1) ["statute of frauds"]). In this case, the claimant contends that the defendant initially orally agreed to pay $16,000 to join the claimant's race team; and, he contends that this oral agreement was changed to $8,000 and 2 motors. Notwithstanding whether this agreement is violative of the

statute of frauds because it is not in writing, the court cannot conclusively determine the original oral agreement. The credible evidence does not show that the parties agreed upon how the money was to be paid and over what period of time it was to be paid. The credible evidence shows that the parties may have considered that the money was to be replaced by services rendered or by exchange of car parts. The credible evidence does not establish the consideration for the original agreement. Accordingly, under New York law, the original agreement (for $8, 000 or $16,000) is unenforceable by a court of law.

However, the parties entered into a written agreement on October 24, 2011. According to the written agreement, the car (2007 TEO Bowflex Procar) would be given to the defendant and the deal would be complete after the defendant paid the full amount of $14,000 by February 5, 2012. The agreement was rescinded by the defendant when he told the claimant to go ahead and sell the car to someone else. The agreement attributes $4,500 to: "clears out 2011 race agreement and fire suit." So, in other words, there is some evidence that the defendant's past obligation to the claimant is $4,500. The defendant disputes that this figure actually represents his past obligation.

Given an assessment of the credibility of the parties, given the fact that the parties have no documentary evidence other than the October 24, 2011 agreement, given the fact that the parties' original agreement is unenforceable, given the fact that the defendant returned the fire suit to the claimant and given the fact that it is impossible to reconcile the terms of the parties' original verbal agreement, substantial justice would be afforded the parties by dismissing the claim.

Judgment for defendant dismissing the claim.

ENTERED: Canandaigua, New York
DATED: December 28, 2011

Hon. Stephen D. Aronson
City Court Judge

"An appeal from this judgment must be taken no later than the earliest of the following dates: (I) thirty days after receipt in court of a copy of the judgment by the appealing party, (ii) thirty days after personal delivery of a copy of the judgment by another party to the action to the appealing party (or by the appealing party to another party), or (iii) thirty-five days after the mailing of a copy of the judgment to the appealing party by the clerk of the court or by another party to the action."

Exhibits will be held for 30 days at which time they will be destroyed, if not picked up.