STATE OF RHODE ISLAND

KENT, SC. **SUPERIOR COURT**

[Filed: January 7, 2021]

L. DAVID WILDGOOSE	:	
	:	
VS.	:	**C.A. No. KC-2017-0642**
	:	
RI BOAT SERVICES, LLC	:	

DECISION

LANPHEAR, J. This matter came on for trial before the Court, jury waived.

Findings of Fact

The Court makes the following findings of fact.

In 2015, Mr. Wildgoose struck a buoy in Narragansett Bay with his vessel, a 32-foot 2006 Bayliner powerboat. Mr. Wildgoose had the boat towed to Wickford Harbor where he obtained an estimate to repair the boat. He used this estimate to receive an insurance settlement but did not have the boat repaired at that yard.

Apparently unsatisfied with the cost, Mr. Wildgoose then brought the boat to RI Boat Services to obtain another estimate, speaking with Gene Messier, one of the owners. RI Boat Services is in the business of storing and repairing boats in Warwick. The estimate of work to be performed by RI Boat Services totaled $34,339.07 and included the necessary repairs to the fiberglass hull. The bill listed the labor for the fiberglass at $85 per hour. Ex. 1.

Apparently still dissatisfied, Mr. Wildgoose then contacted Raymond Lima, who was the fiberglass subcontractor used by RI Boat Services. Mr. Lima provided a verbal quote to Mr. Wildgoose to do the fiberglass work on the damaged boat for $85 per hour. Although there was

no written contract, Mr. Wildgoose authorized Mr. Lima to do the work and paid a $15,000 deposit to RI Boat Services sometime prior to June 14, 2016.

In May 2016, Mr. Wildgoose delivered a Mako powerboat to RI Boat Services for engine work. Mr. Wildgoose claims he asked for an estimate and never received one. However, the Court finds that RI Boat Services informed Mr. Wildgoose that it needed minor engine repair and provided a rough, verbal estimate. Mr. Wildgoose never responded.

During the spring of 2016, the work on the Bayliner was completed by RI Boat Services and by Mr. Lima. On June 14, 2016, Mr. Wildgoose was invoiced $7146.25 for the completed work (after applying the deposit). Ex. 2. This invoice was prepared by Daniel Dolloff of RI Boat Services. As with the estimate, the invoice listed the fiberglass work on the bill, its routine practice. One of the lines on the invoice reads "LABOR/REPAIR FIBERGLASS/HULL DAMAGE TO BOW/RAY @ 52 HOURS." It states that the price was $100, and the total was $5200. Ex. 2. This invoice is dated April 13, 2016, as all of RI Boat Services' invoices are dated when the account is open, not when the bill is sent.

Immediately upon receipt of the bill, Mr. Wildgoose commenced a tirade of emails. Ex. 3. He first noted that he was going to pay Mr. Lima, and Mr. Dolloff promptly replied that he could do so. Twelve minutes thereafter, Mr. Wildgoose demanded Mr. Lima's telephone number, which Mr. Dolloff provided promptly. On the next day, Mr. Wildgoose claimed that the invoicing was "excessive according to industry standards," complained about the late delivery of the boat, demanded a current bill (although he had just received a bill), and asked if Mr. Lima's business was legitimate. Mr. Wildgoose also asked for Mr. Lima's time cards and appeared at RI Boat Services demanding delivery of the boat by Friday. He also stopped by to speak with Gene Messier. Exs. 4 and 5.

The Court reasonably infers that Mr. Messier was not pleased with the email demands and the threats to Mr. Lima, after RI Boat Services had already worked with Mr. Wildgoose on the bills and completed the work. Mr. Wildgoose responded by asking, in writing, whether his boat would be released before the bill was paid, and the corporate status of Mr. Lima's business. Not liking the response from Mr. Messier, Mr. Wildgoose then approached Mr. Lima. Mr. Lima suggested that Mr. Wildgoose discuss the situation with RI Boat Services.

On June 21, 2016, Mr. Wildgoose sent a certified mail letter which he referenced as a "Notice of Intent" to obtain legal counsel. Ex. 6. On the same day, RI Boat Services paid Mr. Lima $5200 for the work on the Bayliner. Ex. 9.

Although he had threatened to get counsel, Mr. Wildgoose chose to do nothing. He left the two boats at RI Boat Services during the summer and didn't pay anything on the bill. He never informed RI Boat Services that it would not be working on the Mako, he never made a partial payment on the Bayliner (although he recognized that over $5500 was still due), and never informed RI Boat Services what his plans were. The boats stayed at RI Boat Services.

Exhibit 10 is another invoice (again dated April 13, 2016) prepared and sent in September 2016, as it contained late charges through September 13, 2016. RI Boat Services began to add interest to Mr. Wildgoose's bill for the Bayliner starting on July 13, 2016. It charged for summer storage and indicated the boat will be considered abandoned on October 13, 2016. With the boats still there, inactive in the fall of 2016, RI Boat Services shrink-wrapped (a plastic covering) and winterized the Bayliner for the winter to protect the engine from freezing. The Mako, still on a trailer, had already been winterized for the prior year. The Court knows of no response to this mailing by Mr. Wildgoose.

In May 2017, counsel for Mr. Wildgoose sent a demand letter to RI Boat Services seeking to reduce the cost of the fiberglass work and obtain possession of the Bayliner. On June 21, 2017, Mr. Wildgoose was sent a "Notice of Lien" on the Bayliner from RI Boat Services. Ex. 7.

On June 13, 2017, Mr. Wildgoose commenced litigation through counsel which referenced only the Bayliner. After filing suit and in August of 2017, Mr. Wildgoose sent a letter to RI Boat Services indicating that he didn't understand the storage charges on either boat and asking that he be able to retrieve the Mako. Ex. 16. The charges to the Mako were $1305 as of October 2017, mostly for storage. Ex 17.

On or about August 3, 2017, RI Boat Services sent an invoice to Mr. Wildgoose for storage of the Mako for $1044. Although represented by counsel, Mr. Wildgoose sent a letter to RI Boat Services on August 7, 2017complaining of the charges, and suggesting that he had tried to retrieve the Mako. Ex. 16. The Court finds this statement self-serving and not credible. There was no other evidence that he tried to retrieve the boat. Mr. Wildgoose offered no date that he tried to retrieve the boat and referred to no specific demands. Mr. Wildgoose wrote this letter in response to an appropriate bill and made no suggestion that he would pay it. In October 2017, RI Boat Services sent an invoice to Mr. Wildgoose for the Mako storage for $1305.00. Ex. 17. By then, the Mako had been at RI Boat Services for over sixteen months.

After an agreement in June 2017, the Court ordered return of the Bayliner in return for the posting of a bond. The Mako was released in June 2020, after agreement of counsel and after a bond was posted.

There was never any question that Mr. Lima did the fiberglass work, that he subcontracted for RI Boat Services, and that RI Boat Services did the engine work in the spring of 2016. There was never any question about the quality of the work.

Presentation of Witnesses

In *State v Forbes*, 925 A.2d 929 (R.I. 2007) the high court noted that the lower courts should comment on the presentation of the witnesses, in order to adjudge credibility.

Mr. Wildgoose had been prepared. He was familiar with the documents prior to getting on the stand and spoke clearly during direct examination. He admitted upfront that he received a higher insurance settlement, a lower estimate from a Wickford boatyard, but sought an even lower one from RI Boat Services, and then from Mr. Lima. While the Court found him credible through his discussion of the documents, the Court does not find his testimony credible concerning whether Mr. Lima agreed to a reduction in June 2016. The Court also doubts the sincerity of his actions: he immediately questioned the propriety of both Mr. Lima and RI Boat Services' businesses when receiving a bill for $1200 more than he expected. Rather than stopping by the business to clear it up, he immediately sent a series of emails, threatening the creditor.

While Mr. Wildgoose claims that he tried to retrieve the Mako boat after the June 2017 letter, there is no evidence that he ever did. The June 2017 letter did not discuss the Mako, and there is no correspondence from Mr. Wildgoose about the Mako, and the Court did not find Mr. Wildgoose's testimony credible. Mr. Wildgoose also claimed that Mr. Messier told him on June 21, 2017 that the boat would not be released until the bill was paid, but there is no writing to this effect, and no reference to it in any of Mr. Wildgoose's correspondence. The Court does not find this testimony credible. The Court cannot and does not find that Mr. Wildgoose made any attempt to retrieve the boats prior to the June 2017 Notice of Lien.

The Court found the testimony of Mr. Dolloff and Mr. Messier to be credible. Their testimony was credible and consistent, and they were cooperative with all counsel. While their testimony was occasionally corrected by the printed documents, Mr. Messier had entrusted Mr.

Dolloff to handle the accounting. Obviously, it had been some time since they dealt with Mr. Wildgoose and had regularly handled other customers since that time. They were cooperative. The Court found each of them credible.

Analysis

The original June 2017 Complaint contained three counts: One prayed for replevin of the Bayliner, the second sought damages, and the third alleged a breach of contract. The timely answer alleged three counts: Breach of contract, a lien pursuant to G.L. 1956 § 34-46-1, and unjust enrichment. Each of the pleadings related only to the Bayliner. In October of 2018, the Complaint was amended by adding a count for replevin of the Mako vessel and another count for damages and unlawful detention of the Mako. In October of 2020, after trial, a sixth count was added to the Complaint, adding another count for damages to the Mako and its trailer.

Each of the parties allege breach of contract. Exhibit 1 is the estimate, constituting an offer. Mr. Wildgoose accepted the contract and gave consideration by paying a deposit. RI Boat Services began work on the Bayliner. The written estimate is the contract between the parties. There was no showing of any amendment, certainly no amendment that RI Boat Services agreed to, and Mr. Lima was never a party to the contract.

The breach is more troubling. In April 2016, the work was completed fulfilling RI Boat Services' obligations under the contract. RI Boat Services sent a bill in June 2016 (Ex. 2). Mr. Wildgoose never paid all, or any part of that bill. Mr. Wildgoose's failure to pay was a material, substantial breach of the contract. *Women's Development Corporation v. City of Central Falls*, 764 A.2d 151, 158 (R.I. 2001).

Mr. Wildgoose may be contending that the bill was incorrect and that caused the breach. While that may have led to the breakdown in the relationship, it shouldn't have, and it did not

constitute a material breach. First, the estimate gave a higher total price overall and a higher price for the fiberglass. It was an estimate. The bill was $12,192.82 less than the estimate. The portion of the bill relating to the fiberglass work is about half of the estimate. Second, when Mr. Wildgoose commenced his immediate, harsh emails to RI Boat Services, Mr. Dolloff dutifully and appropriately responded to each note. By the tone of the emails, RI Boat Services may have even adjusted any error in the bill, but Mr. Wildgoose accused Mr. Lima and RI Boat Services of impropriety and then descended upon Mr. Lima, a subcontractor. By his own computation, Mr. Wildgoose would still owe over $6300. Mr. Wildgoose never offered a solution, and never offered or made any partial payment. After his threats in June 2016, Mr. Wildgoose did nothing, and he left two boats at RI Boat Services' yard, the Mako uncovered and unwinterized for over a year. Even the storage bills in late 2016 failed to prompt a response. As indicated in its above findings, the Court does not find that Mr. Wildgoose made any attempt to retrieve the Bayliner until counsel's letter of May 2017.

The Court concludes that RI Boat Services is due $6366.25 from Mr. Wildgoose as of July 14, 2016 (thirty days after the original bill), and Mr. Wildgoose was in breach as of that day. Although it may have been entitled to obtain $100 per hour for the fiberglass labor, RI Boat Services never pressed this or proved this.

There was no written contract for the Mako. Instead, Mr. Wildgoose dropped it off for an estimate, was given an oral estimate and a description of work to be done. Mr. Wildgoose then did nothing (perhaps because he just received the bill for the Bayliner or perhaps because of another reason). In any event, Mr. Wildgoose did nothing about the abandoned Mako. It appears he did not even retain counsel for the Mako, as the initial letters and pleading did not reference the abandoned Mako at all. Mr. Wildgoose claims he never agreed to store the boat there. So too, RI

Boat Services never agreed to store it indefinitely. However, Mr. Wildgoose did store the Mako at a company that is in the business of storing and repairing boats. He was sent an invoice on August 3, 2017 and on October 4, 2017 for storage—the same month in 2018 that the Complaint was amended seeking replevin of the Mako. Exs. 15 and 17. Mr. Wildgoose never contested the amount of the invoice, only whether it was due. Indeed, he seemed to appreciate that the engine had been winterized and that it was shrink-wrapped for the winter of 2016-17. RI Boat Services proved that Mr. Wildgoose was unjustly enriched by the storage of the Mako at RI Boat Services. The bill of August 3, 2017 establishes damages for $1044, plus interest after thirty days from September 2, 2017.

Section 34-46-2 provides a lien to RI Boat Services for storage of these two boats. In the letter of June 21, 2017 (Ex. 7), Mr. Wildgoose was informed of this lien on the Bayliner. The invoice (Ex. 17) referencing an auction of the Mako establishes the lien. RI Boat Services never enforced the lien by an auction or the like, but it may have done so. Clearly, RI Boat Services was entitled to keep possession of the boat until the lien was paid (though it was never established that Mr. Wildgoose attempted to retrieve the boats).

Mr. Wildgoose claims that he is entitled to damages, particularly for the Mako, for "loss of use." Pl.'s Post-Trial Mem. at 5-6. However, Mr. Wildgoose has failed to establish that he was deprived of its use. He failed to establish that he could not retrieve the Mako. Secondly, he failed to prove damages. Plaintiff relies on *Longo v. Monast*, 70 R.I. 460, 462, 40 A.2d 433, 434 (1944). However, in that case the defendant negligently damaged the automobile, left it inoperable and needing to be towed from the scene, and Mr. Longo was required to rent a car to get to work. Here, Mr. Wildgoose's boat was inoperable when delivered through no fault of RI Boat Services. The Mako was on a trailer. Mr. Wildgoose testified that he could have chartered the Black Rose

to travel offshore, with a captain, at $1200 per day. On cross, he established that he chartered the Black Rose on one occasion at some point during 2016, and he shared the expense with his brother. At best, Mr. Wildgoose established $600 in damages. However, he failed to establish a loss of the boat's use.

Rhode Island's law on replevin is found in R.I.G.L. Chapter 34-21. However, as Mr. Wildgoose never established that either boat was wrongfully taken, wrongfully detained, or that demand was made for the return of the Mako, replevin is inappropriate. *Brunswick Corp. v. Sposato*, 120 R.I. 673, 676, 389 A.2d 1251, 1253 (1978). As to the Bayliner, demand was made, but RI Boat Services had an appropriate lien to retain the boat, at least in the short run, to assure payment of storage bills and to make the repairs. Further, replevin is inappropriate at this point as counsel have worked together to return the possession of each boat to Mr. Wildgoose, who has them now. Mr. Wildgoose failed to establish a replevin action, a breach of contract by RI Boat Services, or an unjust enrichment of RI Boat Services (who has carried this account due for years).

Finally, Mr. Wildgoose seeks recovery for damage to the Mako, the boat that he simply left at RI Boat Services. The Court does not find this to be a bailment; indeed, Mr. Wildgoose dropped off the Mako just before his turmoil over the Bayliner erupted. He chose not to have the work done on the boat and simply left it.

Mr. Wildgoose asserts that the video screen for his global positioning unit had faded, the tires on the trailer were flat, there was a broken spring on the trailer and a stain. He repaired these items himself. Mr. Wildgoose did not establish the value of these items or the labor, or that the damage was anything other than ordinary wear and tear, or that they were not caused by his leaving

the boat at RI Boat Services without a cover. He has not established harm or damages and is denied recovery under Count VI of his Amended Complaint.[1]

Conclusion

Judgment on Counts I through VI, inclusive, of the Complaint is awarded to RI Boat Services. No damages, no interest.

Judgment on Counts I, II and III of the Counterclaim are awarded to RI Boat Services and against Mr. Wildgoose. On Count I, judgment is awarded for $6366.25 plus interest and costs from July 14, 2016. On Count II, judgment is awarded to RI Boat Services, no damages, no interest. On Count III, judgment is awarded to RI Boat Services for $1044 plus prejudgment

[1] A word about damages is appropriate. Mr. Wildgoose issued subpoenas to two private businesses to attempt to establish the value of going without a boat. When he subpoenaed the keeper of records of the Freedom Boat Club, the Court was attempting to determine the relevance of the membership costs of a private club to the loss of use of two specific boats. During that discussion, it became evident that not only was the proposed testimony irrelevant, but he had subpoenaed an expert witness that was not privately retained and was not there voluntarily. The Court disallowed the testimony referencing *Owens v. Silvia*, which held:

> "Absent extraordinary circumstances not present in this case, a non-party expert cannot be compelled to give opinion testimony against his will." *Owens*, 838 A.2d 881, 901-02 (R.I. 2003) (footnote omitted). *See Sousa v. Chaset*, 519 A.2d 1132, 1136 (R.I. 1987); *Ondis v. Pion*, 497 A.2d 13, 18 (R.I. 1985). In *Sousa*, the plaintiff attempted to subpoena an expert who did not wish to testify. This Court held the trial court properly sustained defendant's objection, stating "[a]n expert who has not been engaged, but only subpoenaed, cannot be compelled to give opinion testimony against his or her will. 519 A.2d at 1136. In *Ondis*, the plaintiff wished to subpoena a plastic surgeon who had observed the plaintiff's injuries and treatment and to elicit from the witness an expert opinion. This Court held that it is the "obligation of a party who desires expert testimony to obtain the services of a qualified person on a voluntary basis." 497 A.2d at 18.

Undaunted, Mr. Wildgoose subpoenaed David Fetherston of Wickford Boat Rental and subpoenaed the Freedom Boat Club again. The Court confirmed that they were not in attendance voluntarily and were not retained, and then disallowed that testimony. Accordingly, Mr. Wildgoose never submitted any probative evidence for the loss of use of either boat. Hence, the Court would have been unable to assess damages, if liability had been established.

interest and costs from September 2, 2017, which amount is separate from and in addition to the judgment for Count I of the Counterclaim.

Counsel for Defendant shall prepare a judgment and an order awarding sufficient funds from the Registry of the Court to Defendant to satisfy this judgment plus the prejudgment, post-judgment interest and costs.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	L. David Wildgoose v. RI Boat Services, LLC
CASE NO:	C.A. No. KC-2017-0642
COURT:	Kent County Superior Court
DATE DECISION FILED:	January 7, 2021
JUSTICE/MAGISTRATE:	Lanphear, J.
ATTORNEYS:	
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