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Re: Christopher Everett v. Building Concepts of America, Inc., Anthony Ferrara
Case No. 2003-07-162

LETTER OPINION

Dear Mr. Smith and Mr. Griffith:

This is an appeal *de nove* brought pursuant to 10 Del. C. § 9570 *et seq.* Trial in the above captioned matter took place on Monday, August 9, 2004. Following the receipt of evidence and testimony, the Court reserved decision. This is the final order and decision by the Court.

The sole issue following trial is whether Christopher Everett ("Plaintiff") proved by a preponderance of evidence an underlying debt of $3200.00 allegedly owed by Building Concepts of America, Inc., and Anthony Ferrara ("Defendants"), for breach of an oral contract between the parties. For the reasons set forth below, the Court finds based upon the trial record that the Plaintiff has not proven the underlying debt.

THE FACTS

The Court finds the following relevant facts[1]: Plaintiff is a former employee of Defendant Building Concepts of America, Inc. ("BCA") When Plaintiff was initially hired in 1999 by BCA, he did not have a vehicle. He was hired as a project manager and needed to be on site so it was necessary for Plaintiff to have transportation. Defendant Anthony Ferrara, president and general manager of BCA, made an agreement with Plaintiff for the purchase of a 1995 Chevrolet pick-up truck from BCA. The agreement was Plaintiff was to work for Defendant and $50 would be deducted each week from Plaintiff's pay and be applied to the agreed upon $5,500 purchase price. BCA paid for the truck's fuel, maintenance and insurance at all times. If Plaintiff continued to work for the Defendant and paid the $5500 at $50 a month, the vehicle would eventually be his.

Plaintiff was injured on the job sometime between December of 2000 and January of 2001. Plaintiff continued to work for BCA until February of 2001 at which point approximately $3200 had been deducted from his pay for the truck. BCA had completed the job Plaintiff had supervised, so BCA switched Plaintiff from a salary position to an hourly wage position on a construction crew. Plaintiff was not making enough money during the winter months and decided to leave BCA. On his last day, Plaintiff returned the truck and keys to BCA.

Plaintiff claims that when he returned the truck to BCA, Anthony Ferrara promised he would return the $3200 paid on the installment purchase contract to Plaintiff. Defendants contend that there was no such agreement and the Court agrees and finds there was no subsequent agreement.

[1] The Court received the following exhibits into evidence: Plaintiff's Exhibit 1 was a Statement of Account on the Chevy Pickup truck. Defendant's Exhibit 1 was a copy of the insurance policy on the truck. Defendant's 2 was a statement from Exxon Mobile for gas used to fuel the truck. Defendant's Exhibit 3 was a receipt for maintenance on the vehicle.

OPINION AND ORDER

Plaintiff has a burden of proving the underlying debt action by a preponderance of the evidence. *See, e.g. Asset Recovery Services, Inc., LLC v. Process Systems Integration, Inc.,* C.A. No.: 1999-10-124, Court of Common Pleas, N.C. 2002 LEXIS C.P. 55, Welch, J.(February 6, 2002). Based upon the trial testimony and the evidence received, the Court finds by a preponderance of the evidence that there was no second agreement between the parties whereby BCA would return the $3200 paid towards the purchase price of the truck. There was an installment purchase agreement between the parties. When Plaintiff ceased working for BCA, he failed to pay the remaining balance due under the contract, and therefore was not entitled to the truck nor the return of monies previously paid. The Court therefore enters judgment for the Defendants and against the Plaintiff. Each party shall bear their own costs.

IT IS SO ORDERED this 9th day of August 2004.

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William C. Bradley
Associate Judge