IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

LEWES BODY WORKS	:	
	:	C.A.#04-08-045
Plaintiff/Appellee	:	
	:	
v.	:	
	:	
JOHN C. SWIFT	:	
	:	**Submitted: November 29, 2006**
Defendant/Appellant	:	**Decided: February 9, 2007**

Mary R. Schrider-Fox Esquire, attorney for Plaintiff, Lewes Body Works
Dean A. Campbell Esquire, attorney for Defendant, John C. Swift

DECISION AFTER TRIAL

The Court is called upon to determine whether the Defendant breached his contract with Plaintiff by failing to pay for services rendered, and if so, whether this breach was excused due to the Plaintiff's alleged violations of the Auto Repair Fraud Prevention Act. *6 Del.C. § 4901A et. seq.* The Court heard evidence in this *de novo* appeal during a trial held on November 29, 2006. After review of that evidence, the Court finds that the Defendant breached the contract when he failed to pay for services rendered. The Court also finds that Defendant has no grounds on which he can void this contract, since his counterclaims are factually unsupported. Therefore, the Court finds in favor of the Plaintiff, Lewes Body Works, in the amount of $6,439.87.

FACTS

The Court makes the following findings of fact after reviewing the testimony and exhibits submitted. Following a motor vehicle accident and an incident of vandalism, John C. Swift III (defendant below/currently appellant– hereinafter Swift) contracted with Lewes Body Works (plaintiff below/currently appellee/counter appellant - hereinafter "LBW") to repair his 2001 Ford F350 4x4. Swift and LBW concede that they entered into two binding oral contracts regarding the repair of the vehicle.

After obtaining estimates from the insurance company, Capital Adjusters, Inc., (hereinafter "Capital") LBW repaired each point of damage approved for repair by Capital. LBW also submitted a supplemental request to repair additional damage that they found during the initial repairs. Capital approved this request, and LBW repaired that damage as well.

Swift picked up his vehicle approximately 6 weeks after it was towed to LBW. At that time he appeared satisfied and tendered payment by check to LBW in the amount of $6439.87. However, he returned shortly thereafter complaining that the right front wheel was vibrating and the vehicle was pulling to the right. LBW placed the spare tire on the right front side of the truck. According to Swift, this did not alleviate the problem, and LBW was not interested in trying to fix the problem. LBW however, testified that they asked Swift to return the vehicle

several times so they could try to determine the problem and repair it. Swift did not return.

Swift then took the vehicle to Boulevard Ford, where they determined that the frame was damaged. Boulevard Ford performed an additional $4,900.00 of work, replacing the frame and reconstructing the vehicle. Capital paid Swift for this repair, as well as for all repairs performed by LBW.

After bringing the vehicle to Boulevard Ford, Swift stopped payment on his check to LBW. LBW then filed suit to recover the contract price for the services they rendered to Swift.

DISCUSSION

Since both parties concede that they formed a valid contract, there are only two issues for the Court to address. The first issue is whether Swift is in breach of the contract he made with LBW. The second issue is whether Swift is entitled to void the contract due to LBW's alleged misrepresentation under the Delaware Auto Repair Fraud Prevention Act, (*6 Del. C. § 4901A et. seq.)* and the Consumer Protection Act. *6 Del. C. § 2513.*[1]

[1] Under 6 Del C. § 4909A(b) any violation of the Auto Repair Fraud Prevention Act is deemed an unlawful practice under the Consumer Protection Act as well. For the purposes of this decision, the Defendant's allegations will be referred to under the Auto Repair Fraud Prevention Act only.

LBW's Claim of Breach

LBW alleges that Swift failed to pay them for the repairs they performed on his damaged vehicle. After reviewing the facts, the Court finds that LBW performed the necessary repairs to the vehicle, and therefore Swift's non-payment constitutes breach.

Under Delaware law, a party alleging a breach must prove that a contract existed, that the defendant breached an obligation imposed by that contract, and that the plaintiff has suffered damages because of the breach. *LVIW Technology, LLC v. Hewlett-Packard Co. Stmicroelectronics, Inc., 840 A.2d 606, 612 (Del. 2003).* In addition, to recover these damages plaintiff must show that they substantially performed under the terms of the contract. *Emmett Hickman Co. v. Emilio Capaldi Developer, Inc.*, 251 A.2d 571 (Del. Super. 1969).

It is undisputed that a contract existed between Swift and LBW. Furthermore, Swift admits that he did not pay LBW for any of the services they performed. The only questions for the Court to determine are whether LBW performed their portion of the contract, and if so, what damages they incurred due to Swift's non-payment.

The evidence presented at trial indicates that LBW performed a great deal of work on Swift's vehicle. This is evidenced by Mr. Perez's testimony that he observed most of the work being completed by his employees, and provided the

Court with the estimates from Capital Adjusters, Inc. of which he based his repairs. *(Plaintiff's Ex. 1-3).* To further establish their performance under the contract, LBW offers several invoices from parts that were purchased to repair Swift's vehicle, invoices from work which LBW sub-contracted, and LBW's credit card statement indicating payment for expenses related to Swift's vehicle. *(Plaintiff's Ex. 5-9).* Most importantly however, Mr. Swift himself admitted to the Court that most of the work was completed. This indicates that LBW performed their portion of the bargain, which triggered Swift's duty to pay LBW.

Defendant Has Not Established Grounds To Void The Contract

Swift alleges that the LBW has violated three sections of the Auto Repair Fraud Prevention Act found in *6 Del. C. §4901A et. seq.* Specifically, that LBW misrepresented that repairs were made to his vehicle, that LBW did not provided him with an invoice, and that LBW never gave Swift an opportunity to view the damaged parts of his vehicle. *Id.* Swift avers that these violations provide him grounds to void the contract. The Court does not agree.

Misrepresentation

Swift alleges LBW made fraudulent misrepresentations to him about the repair of the vehicle by "representing that certain vehicle parts had been repaired and/or replaced when in fact they had not". *See, Defendant's Answer and Counterclaim.* After hearing the evidence, the Court finds that Mr. Swift has failed

to establish sufficient evidence to support a finding of misrepresentation on the part of LBW.

The provisions of the Delaware Auto Repair Fraud Prevention Act were designed to "safeguard the public against fraudulent auto repair practices thereby enhancing public confidence in legitimate auto repair facilities and mechanics" *6 Del. C. § 4901A.* One such provision precludes an automotive repair establishment from engaging in any "unlawful practices". *6 Del. C. § 4903A.* An unlawful practice is defined as:

> "Deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or omission of any material fact in connection with auto repair work by an automotive repair facility, whether or not any person has in fact been misled , deceived or damaged thereby, or the act, use or employment by any auto repair facility of a deceptive trade practice in connection with auto repair work shall constitute an unlawful practice." 6 Del. C. § 4903A.

Examples of "unlawful practices" under this section include, but are not limited to; misrepresenting that auto repair work has been made to a motor vehicle. *6 Del. C. § 4903A(b)(2).* If an auto repair facility is found to have made misrepresentations to a customer, the customer may void the contract and seek two times the amount paid in consideration for the repair as damages. *6 Del. C. § 4909A(c).*

In this case, Swift alleges that LBW made fraudulent misrepresentations to him in two ways. First, he alleges that LBW failed to properly repaint the marks of

vandalism on the left side of his vehicle, despite charging him for the service and indicating it was repaired. Second, he alleges that LBW failed to repair the frame of his vehicle.

Regarding the allegedly defective paint-job, Swift offered very little evidence to establish this claim at trial. The only evidence presented was his opinion that LBW merely attempted to buff out the scratches but failed to actually paint the vehicle, and Boulevard Ford's estimate to repaint the vehicle. *(Defendant's Ex. E)* Swift offered no photographic evidence of these damages for the Court to consider, nor did he offer any testimony to confirm his opinion of the alleged non-performance. Conversely, Mr. Perez, testified that he personally supervised most of the work done to Mr. Swift's vehicle, and that the vehicle had been painted according to the terms of the estimate provided by Capital. The Court also finds it interesting that the testimony at trial indicated Swift was pleased with the work, at least regarding its outward appearance, when he picked up his vehicle. This is evidenced by Perez's statement that Swift told him, "it looks just as good as when I bought it, if not better". This tends to be corroborated by the fact that Swift took delivery of the vehicle, and failed to make any complaint about the paint-job until after he discovered the problem with the frame. Given these facts, I cannot find that Swift has established that LBW misrepresented their work regarding the

paint-job. Therefore, any alleged misrepresentation regarding LBW's paint and finish work does not provide Swift with a ground to void the contract.

The second allegation of misrepresentation surrounds LBW's work done to Swift's frame. Here, Swift alleges that his frame was damaged, and that LBW failed to repair the frame properly. To prove this allegation he offers three pieces of evidence. First, that when he returned home after picking up his truck he noticed that the front wheel on the right hand side was protruding approximately 2 and ¼ inches beyond the fender while the left wheel was inside the fender by 2 and ¼ inches. Second, he offers the estimate of Capital Adjusters, Inc. indicating that Boulevard Ford subsequently replaced the frame. *(Defendant's Ex. D).* Finally, he testified that LBW attempted to fix the frame by heating it and hitting it with a hammer. He attempts to prove this last contention by offering his own testimony that while the vehicle was disassembled at Boulevard Ford, he observed burn and dent marks on the frame. In his opinion, based on years of experience working with metal in general construction, this was an attempt to heat and bend the frame.

Although Mr. Swift's evidence indicates that LBW did not repair, and likely missed the problems with the frame of Swift's vehicle, LBW did not represent to Swift that any work had been done to his frame. Swift's allegations of misrepresentation necessitate that LBW "misrepresent that auto repair work has been made to a motor vehicle." *6 Del. C. § 4903A.* There is no evidence before the

Court that LBW ever represented to Swift that they performed any work on the frame. Mr. Perez testified that LBW did not do any work on the frame other than measure it to determine if the frame was damaged. Perez indicated that he found no damage, and that if there was a problem with the frame, he simply missed it. Furthermore, the invoices provided by LBW do not indicate any work was ever approved by Capital, nor charged by LBW for frame repair. *(Plaintiff's Ex. 1-3).* In order to have made a misrepresentation that they repaired the frame, when in fact they hadn't, LBW would first have to make *a representation* that they repaired the frame. Here LBW didn't make any representations regarding the frame of Swift's vehicle other than it was measured. Therefore Swift has failed to establish LBW made a misrepresentation to him, and this too cannot serve as a ground on which Swift can void the contract.

Other Alleged Violations of the Act

Swift also argues that LBW violated other provisions of the Auto Repair Fraud Prevention Act. Specifically, he avers that LBW violated the act by failing to provide him an invoice required by *6 Del. C. §4905A,* and failing to provide him an opportunity to view the damaged parts of his vehicle which had been replaced as required under *6 Del. C. §4906A.* After a review of the evidence, the Court finds that LBW did not violate these provisions of the act, since they made the necessary communications with Swift's agent, Capital Adjusters, Inc.

Delaware law allows the trier of fact to determine whether an agency relationship exists. *Desmond v. Lucks, 1989 WL 64065 (Del. Super.).* While the existence of agency is a fact to be proved, it may be implied by the circumstances. *Mechell v. Palmer, 343 A.2d 620 (Del. Supr., 1975).*

Here the facts presented indicate to the Court that an agency relationship existed between Mr. Swift and Capital. First, and most importantly, Swift admitted on cross-examination that Capital was working on his behalf while his vehicle was being repaired. Furthermore, Mr. Perez testified that but for the initial consultation with Swift, Capital handled the entire transaction.

Based on the existence of this relationship, Swift's claims fail. Mr. Perez testified that he met with a representative from Capital, and showed them the parts that he had removed from Mr. Swift's vehicle. The representative from Capital photographed them and then directed Perez to throw them out. Regarding the invoice requirement, Capital initially created the estimates that were later adopted by LBW as LBW's invoices. Thus, there was no need for LBW to return the invoices back to Capital once they had performed the work. Given these facts, LBW has not violated these sections of the act, and Swift's claims again fail.

Since the court finds that all three of the claims Swift asserts are not meritorious, he has not established any ground which would allow him to void his contract. He is therefore liable to LBW for damages under the contract.

Furthermore, his request for damages in the amount of $8,862.00 need not be addressed by the Court since he has not established that LBW has breached the contract, or violated the provisions of The Act.

Damages

Since LBW has substantially performed under the contract, and Swift has breached his duty to pay under the contract, LBW is entitled to damages. Normally, the remedy for a breach of contract is based upon the reasonable expectations of the parties. *Duncan v. TheraTx., Inc.*, 775 A.2d 1019, 1022 (Del. 2001). Expectation damages are measured by the amount of money that would put the non-breaching party in the same position as if the breaching party had performed the contract. *Id*.

Here, LBW's documentary evidence indicates that they spent approximately 39 hours "labor" fixing Swift's vehicle, and expended money to obtain parts and/or services. *(Plaintiff's Ex. 1-9).* Mr. Perez's testimony indicated to the court that the contract price, which included all expenditures, labor, and profits, was $6,439.87. Based on this evidence, the Court finds that LBW has incurred $6,439.87 in damages on account of Swift's breach. Furthermore, this amount was the reasonable expectation of the parties to the contract, as well as Capital Adjusters who approved that amount for the repairs.

CONCLUSION

For the foregoing reasons, judgment is entered in favor of LBW in the amount of $6439.87 with costs and post judgment interest. Swifts counterclaim is denied.

IT IS SO ORDERED this _____day of February, 2007.

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Judge Rosemary Betts Beauregard