IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CAMAL TERRY	)	
	)	
Plaintiff-Below/Appellant,	)	
	)	
v.	)	C.A. No. CPU4-15-000546
	)	
ROBIN DRIVE AUTO,	)	
	)	
Defendant-Below/Appellee	)	

Submitted: December 7, 2016
Decided: January 4, 2017

Camal Terry
612 Franklin Boulevard
Newark, DE 19702
Plaintiff-Below/Appellant

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DECISION AFTER TRIAL

This is an appeal *de novo* from the Justice of the Peace Court No. 13, and centers upon payments made toward the purchase of a motor vehicle. The Plaintiff-Below/Appellant, Camal Terry (hereinafter "Terry"), brought an action sounding in breach of contract against the Defendant-Below/Appellee, Robin Drive Auto (hereinafter "Robin Drive"), seeking to recover the $1,250.00 Terry had allegedly made in payments to Robin Drive.

On December 7, 2016, a trial *de novo* was convened on the matter. At the conclusion of the trial, the Court reserved decision. This is the Court's final decision after trial.

LEGAL STANDARD

Court of Common Pleas Civil Rule 72.3 governs *de novo* appeals from the Justice of the Peace Court. A *de novo* trial from the Justice of the Peace Court "means a trial anew, whether of law or fact, according to the usual or required mode of procedure."[1] The burden of proof in an action for breach of contract is proof by a preponderance of the evidence.[2]

During the trial, the Court sat as the sole trier of fact. Therefore, it is the Court's responsibility to assess the credibility of the testifying witnesses and, where there is a conflict in the testimony, to reconcile these conflicts, "if reasonably possible[,] so as to make one harmonious story."[3] In doing so, the Court takes into consideration the demeanor of the witnesses, their apparent fairness in giving their testimony, their opportunities in hearing and knowing the facts about which they testified, and any bias or interest that they may have concerning the nature of the case.[4]

FACTS

At trial, the Court heard testimony from Terry and from David DeMeglio (hereinafter "DeMeglio"), the owner of Robin Drive. The Court also received documentary evidence in the form of a Test Drive Agreement, a Sales Agreement, and four (4) receipts. As the sole trier of fact, the Court finds the relevant facts to be as follows.

In June of 2014, Terry began working for Robin Drive. Aside from his regular income, Terry received various amounts in "store credit," usable for goods and services sold by Robin

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[1] *Cooper's Home Furnishings, Inc. v. Smith*, 250 A.2d 507, 508 (Del. Super. 1969).
[2] *See Gregory v. Frazer*, 2010 WL 4262030, at *1 (Del. Com. Pl. Oct. 8, 2010); *VLIW Technology, LLC v. Hewlett-Packard, Co.*, 840 A.2d 606, 612 (Del. 2003).
[3] *Nat'l Grange Mut. Ins. Co. v. Nelson F. Davis, Jr., et. al.*, 2000 WL 33275030, at *4 (Del. Com. Pl. Feb. 9, 2000).
[4] *State v. Westfall*, 2008 WL 2855030, at *3 (Del. Com. Pl. Apr. 22, 2008).

Drive.[5] In July of 2014, Terry decided to purchase a 1995 BMW 3 Series (the "Vehicle") from Robin Drive for approximately $4,500.00. Pursuant to an oral agreement, Terry began making cash payments toward the Vehicle, totaling at least $300.00 by August 20, 2014.[6] On August 20, 2014, Terry signed a written agreement with Robin Drive (the "Contract"), pertaining to Terry's intended purchase of the Vehicle.[7]

The Contract is a single page document, the top of which contains such information as the stock number and type of the Vehicle, Terry's name, and a starting date listed as August 20, 2014. The Contract listed the full price as $4,995.00, with a required down payment of $1,200.00. According to the Contract, the total down payment received on August 20, 2014 was $560.00, with a remaining balance due of $640.00.[8] Installments toward the down payment were to be made weekly, beginning on August 22, 2014.

In addition to the aforementioned terms, the Contract contained four block paragraphs of text. The Contract stated, *inter alia*, that "the maximum term of this layaway is twenty-one (21) days from todays [sic] date." Concerning the consequences of a breach, "[f]ailure to follow these terms will void this contract." In addition, "[a]ll money paid towards this layaway will be applied to the costs of storing this vehicle as well as internal cost to prep said vehicle for sale." The Contract states that all deposits are not transferrable or refundable, and that breach will forfeit any claims to the Vehicle.

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[5] According to DiMeglio, this store credit was essentially "Monopoly money." DiMeglio testified that it was given out for good performance and otherwise served as a reward to employees. However, DiMeglio also testified that Robin Drive did not keep formal records of how much store credit had been earned or used by employees.

[6] The receipts entered into evidence, although faded, demonstrate two separate payments of $100 on August 1, 2014, and one payment of $100 on August 20, 2014.

[7] While the Contract is titled a "Sales Agreement," it is not an agreement of sale, but rather, an agreement *to sell* – the Contract is a layaway contract, in which Robin Drive agrees to hold the Vehicle for Terry in contemplation of a formal sale of the Vehicle to Terry.

[8] DiMeglio testified some of the down payment was made via store credit; however, DiMeglio could not recall how much was store credit, nor did he provide any records or other documents showing if, in fact, any of the amount was store credit.

At the bottom of the Contract, there is a signature line with Terry's name. Also along the bottom are several handwritten notes, including a notation of "Approved with mother as cosigner – customer agree." Another note says "update: Camal lost job, deal ok w/ mother." None of these handwritten additions are initialed, dated, or otherwise verified on the face of the Contract.

After the Contract was signed, Terry continued making payments; however, Terry admitted he had missed one payment, which he made up in a subsequent week. At some point in September, Terry was discharged from Robin Drive, leaving Terry unemployed and dependent upon his parents for money.[9] Ultimately, Terry did not meet the requisite down payment by September 26, 2014.[10] Furthermore, when Terry came to Robin Drive to complete the paperwork, Terry's mother reportedly declined to sign as a guarantor. In addition, Terry failed to provide proof of insurance, as required by the Contract. At this point, Robin Drive considered the deal to be "dead."

In October of 2014, Robin Drive attempted to "revive" the deal, and told Terry he could have the Vehicle if he met the requirements. On October 11, 2014, Terry provided an additional payment of $250.00 to Robin Drive. However, after the payment, Terry was unable to meet the requirements of the Contract. Specifically, Terry's stepfather refused to fill out an application to be a co-signer, Terry again failed to provide proof of insurance, and Terry had not paid the requisite $1,200.00. This marked the close of Terry's dealings with Robin Drive, and the instant matter proceeded into the courts.

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[9] Neither witness provided any testimony as to the cause or circumstances of this termination.

[10] While Terry testified to making eleven (11) payments of at least $100.00 each, with one of the payments totaling $250.00, Terry did not establish a timeline of when those payments were received, nor did he introduce receipts detailing how much had been paid by any given date. Only four (4) receipts were admitted into evidence, totaling cash payments of $550.00.

DISCUSSION

The chronology of this matter involves three distinct phases: (1) the pre-Contract phase; (2) the Contract phase; and (3) the post-Contract phase. However, because the pre- and post-Contract phases may depend upon the validity of the Contract itself, the Court will first address the matters in the Contract phase.

I. The Contract Phase

The Contract was signed on August 20, 2014, and contained a single page detailing the terms of the layaway, the deposit, payments, and the consequences of default. The Uniform Commercial Code governs the creation, interpretation, and enforcement of the Contract because it involves a merchant – Robin Drive – selling a Vehicle, which is a consumer good, to Terry, a consumer.[11]

Under UCC § 2-204, "A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract." Furthermore, "Terms . . . set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented . . . [b]y course of performance, course of dealing, or usage of trade[.]"[12] "In order for there to be an agreement, the parties must have a distinct intention common to both without doubt or difference."[13]

The Court finds there was a meeting of the minds with respect to the down payment. The Contract states there was a total required down payment of $1,200.00. Terry testified he

[11] Article 2 of Delaware's UCC is codified under Title 6 of the Delaware Code, and "applies to transactions in goods[.]" UCC § 2-102.
[12] UCC § 2-202.
[13] *Gleason v. Ney*, 1981 WL 88231, at *1 (Del. Ch. Aug. 25, 1981).

believed the down payment was $800.00, but this assertion is not credible given how conspicuous that term is on the face of the Contract.[14] It is well settled that "a party who enters into a contract governed by Delaware law will be charged with knowledge of the contents of the instrument and will be deemed to have knowingly agreed to the plain terms of the instrument absent some well-pled reason to infer otherwise."[15] The Court does not find a difference of $400.00 to be a significant enough variation under these circumstances to negate finding a distinct intention common to both parties as it relates to the written Contract.

However, as discussed *infra*, the Court does not find there was a meeting of the minds with respect to certain other essential terms of the Contract. It is apparent the Contract contains numerous ambiguities, some or all of which have the potential to render the creation of the Contract invalid. When a contract is ambiguous on its face, the Court must analyze the contract to determine, where possible, the intent of the parties. Whereas a flaw or failure of a term may render a contract voidable, in whole or in part, Delaware recognizes certain circumstances where the contract is unenforceable in its entirety. "Certain agreements . . . are so egregiously flawed that they are void at the outset. Those arrangements are often referred to as being void *ab initio,* Latin for "from the beginning." A court may never enforce agreements void *ab initio,* no matter what the intentions of the parties may be."[16] "Under Delaware common law, contracts that offend public policy or harm the public are deemed *void,* as opposed to voidable."[17]

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[14] While the assertion of an $800.00 down payment is not credible for the written Contract, the Court finds the statement does not undermine Terry's ultimate credibility, nor does it undermine Terry's credibility with respect to other portions of Terry's dealings with Robin Drive. As discussed *infra*, the nature of the Contract, the pre- and post-Contract phases, and the use of cash payments intermingled with "Monopoly money" would likely confuse any unsophisticated consumer. Therefore, the Court specifically interprets this confusion against Robin Drive.

[15] *Chapter 7 Trustee Constantino Flores v. Strauss Water Ltd.*, 2016 WL 5243950, at *6 (Del. Ch. Sep. 22, 2016) (internal citations omitted).

[16] *Lincoln Nat. Life Ins. Co. v. Joseph Schlanger 2006 Ins. Trust*, 28 A.3d 436, 441 (Del. 2011).

[17] *Id.*

While not rendering a contract void *per se*, " '[C]ourts traditionally have reviewed with heightened scrutiny the terms of contracts of adhesion, form contracts offered on a take-or-leave basis by a party with stronger bargaining power to a party with weaker power.' An 'adhesion contract' is defined as a 'standard-form contract prepared by one party, to be signed by the party in a weaker position, usually a consumer, who adheres to the contract with little choice about the terms.' "[18] In addition, "[t]he Court may apply *contra proferentem* to construe ambiguous terms in a non-negotiated contract against the contract's drafter. That is, the doctrine is limited to resolve ambiguities."[19]

An unambiguous contract is sufficient on its face; an unambiguous contract exists when a reasonable, objective third person would understand what the term means.[20] "If, however, there is more than one reasonable interpretation, a provision is ambiguous. But, a provision is not ambiguous just because the parties disagree on its proper construction; nor are unreasonable interpretations considered."[21] "The relative importance of a term is by its nature a fact-intensive inquiry. . . . Where, however, the unresolved terms are material and the parties' intent cannot be gleaned from other aspects of the agreement, no enforceable contract exists."[22]

Turning to the matter at hand, the Court is concerned with the numerous ambiguities and contradictions within the Contract. Again, because this is a contract of adhesion, the Court will interpret all ambiguities against Robin Drive; if the ambiguities are insurmountable and material, then the Contract will be deemed void *ab initio*. The Court notes that the Contract is not for the

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[18] *HCR-Manor Care v. Fugee*, 2010 WL 780020, at *5 (Del. Super. Jan. 26, 2010) (internal citations omitted).
[19] *Barton v. Club Ventures Investments LLC*, 2013 WL 6072249, at *6 (Del. Ch. Nov. 19, 2013) (internal citations omitted).
[20] *See Brace Industrial Contracting, Inc. v. Peterson Enterprises, Inc.*, 2016 WL 6426398, at *6 (Del. Ch. Oct. 31, 2016).
[21] *Massachusetts Mut. Life Ins. Co. v. Certain Underwriters at Lloyd's of London*, 2014 WL 3707989, at *5 (Del. Super. Jun. 6, 2014) (internal citations omitted).
[22] *Spacht v. Cahall*, 2016 WL 6298836, at *4 (Del. Super. Oct. 27, 2016) (internal citations omitted).

actual sale of the Vehicle and, therefore, is not expected to contain many of the terms common to a bill of sale. Instead, the Contract is one for a layaway, pending down payment, and delineates the rights and obligations of the parties during the course of that layaway.

Because this is a Contract for a layaway, the Court finds one of the foundational terms to be the duration of the layaway. The Contract provides that "[t]he maximum term of this layaway is twenty-one days from todays [sic] date." This clause is both bolded and italicized. Furthermore, it is one of only four such bolded clauses, suggesting relatively high importance. However, elsewhere in the Contract is a "deferred down payment schedule," which details the dates of future payments and the amount of such payments. According to the schedule, Terry was to pay $100.00 a week for six weeks – a duration of forty-two days, and twice the duration of the aforementioned maximum term of the layaway. The applicable duration is further confused by the notation of the pickup date as being September 26, 2014 – a date occurring thirty-seven days after the Contract was signed.

On the face of the Contract, there are three different endpoints for the layaway, spread between twenty-one and forty-two days. This ambiguity is troubling, because it directly undermines a central pillar of the Contract. If a contract for a layaway is to have any meaning, and is to be at all capable of protecting the rights of the parties, then there must be a reasonably clear statement as to when the layaway terminates.

Also, the Contract states "[t]he total down payment for this vehicle must be paid in full by the close of business on or before the 21st day (or the pickup date shown above if its [sic] earlier)." This clause is equally problematic, and adds an additional complication: it contemplates the fact the pickup date might be something other than twenty-one days from the date the Contract was signed, yet it only recognizes a modification *shortening* this period. The

Contract is utterly silent as to what would happen when the payment schedule *exceeded* the twenty-one day maximum term of payment. As with the layaway duration, the date on which payment must be received in full is critical, and any failure in this term renders the Contract meaningless.

Next, the Contract contains a peculiar term: "All money paid towards this layaway will be applied to the costs of storing this vehicle as well as internal cost to prep said vehicle for sale." This clause follows a provision stating "[f]ailure to follow these terms will void this contract[,]"[23] but does not reference being applicable only in the event of default. Furthermore, the paragraph also contains a clause that explicitly does not involve default, thereby indicating the paragraph is not limited to the topic of default. A reasonable interpretation suggests the money paid pursuant to the layaway is not deducted from the total cost of the vehicle, but is instead payment of storage and preparation fees.[24]

Buttressing this interpretation is the testimony of DeMeglio, who stated that he waived the fees for Terry, but implied he was under no obligation to do so. This interpretation, which is entirely reasonable under the plain language of the Contract and DeMeglio's testimony, would contradict the terms suggesting the requisite payments are made toward the down payment on the vehicle. In fact, this interpretation would shed new light on the clause requiring the down payment be paid in full, as that term would now read as requiring a full down payment *in*

[23] The Court is also troubled with the language of this clause. Under a plain reading, this sentence means the entirety of the Contract is void upon breach – not just Robin Drive's obligations. A fair, if somewhat strained, reading of the clause would invalidate every other clause pertaining to the consequences of breach.

[24] The Court notes Robin Drive did not offer any testimony as to what these fees might entail, nor is such information found anywhere on the Contract.

addition to the storage fees. While this clause potentially does not go to the heart of the agreement, it is still indicative of the pervasiveness and extent of the ambiguities.[25]

The Court finds these ambiguities to be substantial and to cast significant doubt upon some of the fundamental terms of the Contract. At its core, a basic layaway contract should at least contain the following unambiguous terms: 1) the goods to be placed on layaway; 2) the amount of money necessary to receive the goods; 3) the maximum duration of the layaway; and 4) the date payment must be made in full.[26] On the first term, the Contract unambiguously references the stock number, make, model, and year of the Vehicle. On the second term, there is some ambiguity as to whether there is an additional, hidden cost for storage fees. On the third term, there are three different durations, contained in a single page document, and thus significant ambiguity. Likewise, on the fourth term, there is equally significant ambiguity, particularly to the extent that payment may be due in whole later or earlier than the maximum term of the layaway.

As previously noted, when "the unresolved terms are material and the parties' intent cannot be gleaned from other aspects of the agreement, no enforceable contract exists."[27] The Court finds the only evidence with respect to intent to be as follows: 1) the Vehicle was to be placed on layaway; 2) Terry was to make the total down payment; 3) Terry was to provide a cosigner and proof of insurance. The Court did not hear any credible testimony with respect to a shared intent for how long this process was to take, when payment was to be made, or any other such matters. Likewise, there is a distinct possibility of Robin Drive intending to require a

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[25] The Court's concern on this matter is whether the stated amount due to satisfy the buyer's obligations of payment is inaccurate. If the term is inaccurate, then this would further undermine the Court's ability to find a meeting of the minds.

[26] In practice, the third and fourth terms would likely be the same.

[27] *Spacht*, *supra*, at *4 (internal citations omitted).

different price from the one listed on the Contract, thus further divesting the document of shared intent. The ambiguous terms are pivotal to the purpose of the Contract and, consequently, fatally undermine that purpose. Accordingly, the Court finds the Contract to be void *ab initio*.[28] If the Court were to supply terms or enact its own interpretations in this matter, then the Court would not be construing the Contract, but would rather be acting to draft the Contract anew.

II. The Pre- and Post-Contract Phases

As noted *supra*, the dealings between Terry and Robin Drive included a period of weeks prior to the signing of the Contract and a period of weeks after Robin Drive considered the deal to be "dead." In the pre-Contract phase, Terry paid Robin Drive $300.00 in cash toward the Vehicle, while in the post-Contract phase Terry paid Robin Drive $250.00 toward the Vehicle. Neither of these payments were made pursuant to a written agreement.

Under UCC § 2-201, "a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought[.]" Because the sale of the Vehicle was governed by the UCC, Robin Drive was required to operate pursuant to a written contract. Robin Drive cannot claim the monies paid were pursuant to an agreement for the sale of the Vehicle, because doing so would constitute enforcing an oral agreement against Terry in violation of the statute of frauds.

Without an enforceable agreement, this matter satisfies the elements of unjust enrichment. "Unjust enrichment 'is the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity

[28] The Court recognizes there are credible grounds for determining whether Robin Drive preemptively breached the Contract or whether the Contract itself was unconscionable. However, because the Contract is void *ab initio*, the Court does not reach these alternative theories.

and good conscience.'"[29] The elements of unjust enrichment are as follows: (1) an enrichment; (2) an impoverishment; (3) a relation between the enrichment and impoverishment; (4) the absence of justification; and (5) the absence of a remedy provided by law.[30] A claim for unjust enrichment cannot survive when there is an adequate remedy under contract law.[31] "As a court of general jurisdiction, this Court has jurisdiction over actions at law. This jurisdiction includes the right . . . to hear a civil action for unjust enrichment."[32]

The Court observes Terry did not bring a claim for unjust enrichment in his Complaint with the Justice of the Peace Court or in his Complaint on Appeal. However, "[t]he Court is cognizant of the fact that Appellant is litigating this appeal *pro se.* In such cases, courts . . . are at liberty to reasonably interpret a *pro se* litigant's filings, pleadings and appeals 'in a favorable light to alleviate the technical inaccuracies typical in many *pro se* legal arguments....' "[33] At its core, Terry's Complaint alleges the following: 1) he paid money to Robin Drive; 2) Robin Drive never returned the money; and 3) Terry never received anything for his money.

Furthermore, Court of Common Pleas Civil Rule 15(b) permits a party to amend the pleadings to conform to the evidence. Rule 15(b) "is written upon the assumption that pleadings are not an end in themselves but are designed to assist, not deter, the disposition of litigation on its merits. . . . A trial judge in his discretion must always permit or deny the amendment by weighing the desirability of ending the litigation on its merits against possible prejudice or surprise to the other side."[34] If "the record reflects that there was sufficient testimony on the issue such that the Defendants had a fair opportunity to refute and defend the amounts sought

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[29] *Nemec v. Shrader*, 991 A.2d 1120, 1129 (Del. 2009) (quoting, *Fleer Corp. v. Topps Chewing Gum*, 539 A.2d 1060, 1062 (Del. 1988)).
[30] *Id.*; *see also Jackson Nat. Life Ins. Co. v. Kennedy*, 741 A.2d 377, 394 (Del. Ch. 1999).
[31] *See Uppal v. Waters*, 2016 WL 4211774, at *3 (Del. Super. Aug. 9, 2016).
[32] *Ramunno & Ramunno, P.A. v. Potter*, 2016 WL 2844441, at *3 (Del. Super. May 10, 2016).
[33] *Wyatte v. Unemployment Ins. Appeals Bd.*, 2016 WL 552882, at *2 (Del. Super. Feb. 9, 2016) (internal citations omitted).
[34] *Bellanca Corp. v. Bellanca*, 169 A.2d 620, 622 (Del. 1961).

beyond the period of the Complaint," then the pleadings may be amended.[35] Because Terry's pleadings can be fairly construed as including an alternative ground for unjust enrichment,[36] and because this Court would grant a motion to amend the pleadings regardless, the Court is comfortable addressing a claim for unjust enrichment.

Applying the elements of unjust enrichment to the facts of the case, it is uncontroverted that 1) Robin Drive was enriched; 2) Terry was impoverished; and 3) there is a relationship between the enrichment and the impoverishment. The remaining two elements, that of an absence of justification and an absence of a remedy at law, are disposed of pursuant to the discussion in Part I, *supra*. If the Contract is invalid, which this Court has found to be the case, then Robin Drive does not enjoy a justification for its enrichment, nor does Terry have an adequate remedy under contract law. Therefore, the Court finds Robin Drive was unjustly enriched at the expense of Terry. This holding encompasses the pre- and post-Contract phases individually, while also finding unjust enrichment for the Contract phase itself – because the Contract was void or otherwise unenforceable, Robin Drive was unjustly enriched by any payments made during the course of the Contract.

III. Damages

Under a theory of unjust enrichment, a plaintiff is entitled to recover the amount of money unjustly retained by the defendant.[37] However, as with breach of contract, damages "must be proven with reasonable certainty. Recovery is not available to the extent that the

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[35] *Maple Hill Homeowners Association v. Newton*, 2015 WL 1205283, at *2 (Del. Com. Pl. Mar. 9, 2015).
[36] While a party "may plead unjust enrichment in the alternative to his breach of contract claim, alternative pleading of this kind is generally only allowed "when there is doubt surrounding the enforceability or the existence of the contract."" *Khushaim v. Tullow Inc.*, 2016 WL 3594752, at *8 (Del. Super. Jun. 27, 2016) (internal citations omitted). There is no question as to the doubtfulness of the enforceability of the Contract in the case *sub judice*.
[37] *See Mehta v. Smurfit-Stone Container Corp.*, 2014 WL 5438534, at *6 (Del. Ch. Oct. 20, 2014).

alleged damages are uncertain, contingent, conjectural, or speculative."[38] Terry's testimony was that he paid a total of $1,250.00 to Robin Drive. DeMeglio testified to receiving only $350.00, plus perhaps something extra on the date the Contract was signed. The documentary evidence, on the other hand, establishes the following amounts: 1) $100.00, paid on August 1, 2014; 2) $100.00, paid on August 1, 2014; 3) $100.00, paid on August 20, 2014; 4) $560.00, paid on August 20, 2014; and 5) $250.00, paid on October 11, 2014. These amounts total $1,110.00.

It is the duty of the Court to reconcile discrepancies in the evidence. Beginning with Terry, the Court notes Terry was unable to provide a reasonable timeline of his payments, the precise amounts of his payments, and was at times inconsistent in his testimony concerning his payments. The Court finds these inconsistencies to be understandable and reasonable under the facts introduced at trial. Terry, an unsophisticated individual, was faced with cash payments, intermingled with "Monopoly money," pursuant to an oral contract – which was then succeeded by an ambiguous written Contract. It would be of greater surprise if Terry were able to possess a clear and unwavering understanding of the terms and nature of these arrangements, given the nature of his dealings with Robin Drive. However, while the Court accepts Terry made numerous payments to Robin Drive, there are nevertheless inconsistencies in Terry's testimony. While these inconsistencies are not the product of bad faith, the Court does not find Terry is entitled to the full $1,250.00 he seeks on the basis of his testimony alone.

Turning to Robin Drive, DeMeglio stated he does not handle money for the business, he employs others to handle the bookkeeping, and he had little to no independent recollection of receiving any money from Terry outside of the receipts presented at trial. The Court notes DeMeglio did not produce those receipts; rather, DeMeglio maintained Robin Drive received less from Terry until confronted with the receipts produced by Terry. Furthermore, Robin Drive

[38] *Dill v. Dill*, 2016 WL 4127455, at *1 (Del. Super. Aug. 2, 2016) (internal citations omitted).

did not produce any records whatsoever pertaining to Terry's account. The receipts provided by Terry were of the sort used all throughout Delaware, if not the nation; they were white, rectangular pieces of paper, perforated so as to allow removal from a book of such receipts, and undoubtedly came with carbon paper to provide Robin Drive with its own records. If Robin Drive did possess carbon copies, then those copies were not provided at trial.

During the trial, Robin Drive questioned Terry concerning his inability to produce additional receipts to support his contentions regarding payment. While Robin Drive does not have an affirmative obligation to present its own case, and can instead rest upon Terry's ability or inability to prove his case, the Court notes Robin Drive – the sophisticated business entity – did not produce a single record to prove its assertion or to disprove Terry's assertions. Robin Drive was in the best position to provide such evidence, and the Court cannot assume that such evidence would have borne out Robin Drive's positions. Furthermore, while DeMeglio testified some of the $560.00 down payment received on August 20, 2014 was made up of store credit, DeMeglio was unable to say how much store credit was included in this $560.00. DeMeglio further testified to the lack of records concerning such credit. The Court has no basis for reaching a dollar amount, nor does the Court have any support beyond DeMeglio's testimony that store credit was used at all. Therefore, the Court finds Robin Drive failed to rebut Terry's testimony concerning payments. The Court finds the Contract, drafted by Robin Drive, indicates that $560.00 in cash was received upon signing. The written agreement is conclusive on this point.

The total uncontroverted amount of payments was $350.00, representing $100.00 on August 1, 2014, and $250.00 on October 11, 2014. Given the vast inconsistencies between the two accounts and the lack of reliability on either side with respect to specific additional

payments, the Court is inclined to accept the documentary evidence as the strongest indication of the remaining payments. Accordingly, the Court finds Robin Auto unjustly received and retained payments totaling $1,110.00. For the purposes of the record, the amounts are divided as follows: $300.00 in the pre-Contract phase; $560.00 in the Contract phase; and $250.00 in the post-Contract phase.

CONCLUSION

For the foregoing reasons, the Court finds in favor of the Plaintiff-Below/Appellant, Camal Terry, and against the Defendant-Below/Appellee, Robin Drive Auto. **IT IS HEREBY ORDERED** this 4th day of January, 2017, that Camal Terry is awarded damages in the amount of $1,110.00. Each party is to bear its own costs.

The Honorable Carl C. Danberg
Judge

cc: Angelia McNair, Judicial Case Processor