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

CLARENCE PRITCHETT,	)	
	)	
Plaintiff-Below/Appellee	)	
	)	
V.	)	C.A. No. CPU4-12-002461
	)	(JP13-11-015394)
I/O REPAIR, INC. and	)	
SEAN STEVENS	)	
	)	
Defendants-Below/Appellants	)	

Submitted: March 28, 2013 Decided: April 22, 2013

Clarence Pritchett
116 McMullen Circle
Wilmington, DE 19802
Self-Represented Appellant

Michael C. Heyden, Esquire 1201 King Street Wilmington, DE 19801 Attorney for Appellee

# **DECISION AFTER TRIAL**

Trial took place in the above-captioned matter on Thursday, March 28, 2013, in the Court of Common Pleas. The matter is an appeal *de novo* brought pursuant to 10 *Del. C.* § 9570 *et. seq.* from the Justice of the Peace Court. For the reasons below, the Court finds in favor of Defendants-Below/Appellants I/O Repair, Inc. and Sean Stevens (collectively "Defendants") regarding the breach of contract action filed by Clarence Pritchett. The Court finds in favor of Clarence Pritchett on the counterclaim filed by I/O Repair, Inc. and Mr. Stevens.

#### I. Procedural History

Plaintiff Clarence Pritchett is a resident of Wilmington, Delaware. Defendant I/O Repair, Inc. ("I/O Repair") is a boat repair company based in Crownsville, Maryland. Defendant Sean Stevens is part-owner of I/O Repair.

On October 20, 2011, Mr. Pritchett filed a Complaint in the Justice of the Peace Court against I/O Repair, Inc. and Mr. Stevens. Mr. Pritchett sought to recover \$6,040 for a boat purchased from Mr. Stevens that proved to be inoperable.

The record reflects that I/O Repair and Mr. Stevens were served with a summons and a copy of the Complaint on November 16, 2011 and November 28, 2011, respectively. On May 30, 2012, after having received no responsive filings from I/O Repair or Mr. Stevens, the Justice of the Peace entered a default judgment in the amount of \$6,040 in favor of Mr. Pritchett. On June 13, 2012, a Notice of Appeal was filed in this Court by Mr. Stevens on behalf of both himself and I/O Repair.

On June 26, 2012, I/O Repair and Mr. Stevens filed an appeal with this Court pursuant to 10 *Del. C.* § 9571. Defendants filed an Answer and counterclaim with the Court on August 14, 2012. In the counterclaim, Defendants contended Mr. Pritchett was in breach of contract for failing to pay for "materials, repairs, storage and transportation" expenses incurred by Defendants. Defendants contended that these expenses were to be paid by Mr. Pritchett pursuant to an oral contract between the two parties. Defendants did not state a specific amount sought. After a pretrial conference was held, Mr. Pritchett filed a motion to amend the Complaint to include storage fees. The motion was granted. The matter proceeded to trial on March 28, 2013.

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<sup>&</sup>lt;sup>1</sup> "From any final order, ruling, decision or judgment of the court in a civil action there shall be the right of appeal to the Court of Common Pleas of the State in the county in which said order, ruling, decision or judgment was rendered." 10 *Del. C.* § 9571(a). Such an appeal must be a trial *de novo.* 10 *Del. C.* § 9571(c).

## II. Facts

At trial, Mr. Pritchett testified during his case in chief and in rebuttal. Mr. Sean Stevens and Mr. Christopher Stevens, part-owner of I/O Repair and brother of Sean Stevens, testified in turn on behalf of the defense. Both the plaintiff<sup>2</sup> and defendants<sup>3</sup> submitted several documents into evidence.

It is uncontested Mr. Pritchett purchased a boat from the defendants for \$4,500. Mr. Pritchett paid \$2,500 as a down payment at the time of purchase, with the understanding that the remaining \$2,000 would be paid at the time of delivery. The boat was to be delivered in seven to ten days; however, the boat was not actually delivered until two and a half months later. Mr. Stevens testified and Mr. Pritchett did not dispute that the delays were caused at least in part by Mr. Pritchett's son-in law, Mr. Taylor requesting additional work on the boat, and that the work was in fact performed.

## A. Clarence Pritchett's Testimony

Mr. Pritchett testified during his case in chief and in rebuttal. He testified that, two years earlier, he had purchased a boat<sup>4</sup> from I/O Repair. According to Mr. Pritchett, the engine of the boat stopped working when he and Mr. Stevens took the boat out on a "sea trial", and that the boat had to be towed back to the dock. During his initial testimony, Mr. Pritchett gave no explanation for the engine failure. After both Stevens testified, Mr. Pritchett again took the

<sup>&</sup>lt;sup>2</sup> Plaintiff's Exhibit 1 is a letter from Mia L. Mealey stating that Mr. Pritchett has paid her \$3,200 for storing the boat in her yard. Plaintiff's Exhibit 2 is an ownership record of the boat from the Maryland Department of Natural Resources. Plaintiff's Exhibit 3 is a letter from Frederick Taylor, Mr. Pritchett's son-in-law, substantially corroborating Mr. Pritchett's testimony. Plaintiff's Exhibit 4 is an email sent to Mr. Pritchett from Sharon M. Carrick, Director of the Maryland DNR Licensing & Registration Service, stating that I/O Repair is not a licensed boat dealer in Maryland.

<sup>&</sup>lt;sup>3</sup> Defendant's Exhibit 1 is an invoice from I/O Repair detailing the alleged repairs done to the boat. Defendant's Exhibit 2 is a picture of the lower half of the back side, the stern, of the boat. Defendant's Exhibit 3 is a picture of part of the top of the boat.

<sup>4</sup> Specifically, Mr. Pritchett contended the boat was a 1988 Sea Ray Sorrento.

<sup>&</sup>lt;sup>5</sup> The Court understands a sea trial to be the equivalent of a test drive for automobiles, allowing the prospective buyer to inspect the vessel on the water before agreeing to purchase it.

stand. This time, he claimed that Mr. Stevens was at the helm of the boat during the sea trial and that the boat ran aground, causing damage to the propeller and engine. Mr. Pritchett testified Mr. Stevens assured him that he (Mr. Stevens) "would take care of everything." At the conclusion of the sea trial, Mr. Pritchett paid the balance of the purchase price (\$2,000), despite the results of the sea trial. Mr. Pritchett contended that this payment was made with the understanding between the parties that Mr. Stevens would make the necessary repairs to the boat at no additional cost to Mr. Pritchett.

Mr. Pritchett testified that Mr. Stevens never made any repairs to the boat, and that the only promise Mr. Stevens fulfilled was cleaning out some leaves and branches that had fallen into the boat. Mr. Pritchett stated that he took the boat out on the water on only one occasion; however, safety concerns prompted him to return to dock before he made it out of the marina. According to Mr. Pritchett, he called Mr. Stevens on numerous occasions seeking the allegedly promised repairs, but Mr. Stevens did not return his phone calls. Mr. Pritchett then put the boat up for sale in 2012, but was unable to attract a buyer.

#### B. Sean Stevens' Testimony

Defendant Sean Stevens then testified for the defense. Mr. Stevens confirmed that he owned one half of I/O Repair, Inc. Mr. Stevens stated that the boat sale at issue occurred in May of 2011. He further corroborated Mr. Pritchett's testimony regarding the sale price and the timing of payments. Mr. Stevens also agreed that he and Mr. Pritchett took the boat out for a sea trial.

At this point, however, the testimony between the parties differed. Mr. Stevens agreed that delivery took longer than expected, but contended that the delay was caused by Frederick

Taylor, Mr. Pritchett's son-in-law. According to Mr. Stevens, Mr. Taylor would continually call I/O Repair requesting that additional work be done to the boat before delivery; however, Mr. Pritchett testified that the additional work was neither requested nor authorized by him, and he therefore refused to pay for the work. After the requested work was completed, the boat was delivered to Mr. Pritchett's marina. Upon delivery, the boat was taken out for a sea trial. Mr. Stevens testified that there were no problems with the engine or operation of the boat during the sea trial. Mr. Stevens stated that during the sea trial, the engine did not reach the optimal number of revolutions per minute; this was caused by an oversized propeller on the boat. Mr. Stevens testified that he replaced the propeller with a smaller one (which would cause the engine to reach optimal RPMs) the next day.

Mr. Stevens then testified that shortly after delivery of the boat, Mr. Pritchett called because the boat had run aground and needed to be towed back to a marina. Mr. Stevens stated that when he found Mr. Pritchett and the boat, the engine had overheated. Additionally, upon further examination of the engine, Mr. Stevens discovered sand and silt inside parts of the motor. Mr. Stevens explained that the overheated engine indicated that the engine had been running while the boat was aground. Mr. Stevens testified that at that point, Mr. Pritchett agreed that Mr. Stevens would undertake repairs to return the boat to operable condition. Mr. Stevens testified that the requested repairs were completed; however, Mr. Pritchett never paid for the repairs.

#### C. Christopher Stevens' Testimony

Finally, Christopher Stevens<sup>6</sup> was called by the defense. Christopher stated he is the brother of Defendant Sean Stevens, and half-owner of I/O Repair. Christopher testified that he

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<sup>&</sup>lt;sup>6</sup> This opinion will refer to Christopher Stevens simply by his first name to avoid any confusion with Sean Stevens, a defendant in the matter.

was not present during most of the sea trial. He did state, however, that he was present when the boat returned from the sea trial. Christopher testified that the motor was running well, and the boat was not towed back to the marina during the sea trial.

According to Christopher, about two weeks after the boat was delivered, Mr. Pritchett called I/O Repair to report that the boat had run aground. Christopher stated that he pulled the boat off the sand bar and towed the boat to its new marina, which was a substantial distance away. The endeavor took over eight hours. Upon inspection of the boat the following day, Christopher stated that the boat had run aground so hard that the motor had overheated and shut off. Additionally, the engine was filled with sand, and the boat's internal wiring was melted from the heat of the motor.

# **III. Discussion**

### A. Clarence Pritchett's Claim

To recover on a claim of a breach of contract, a plaintiff must prove three elements. First, the plaintiff must prove that a contract did indeed exist between the parties, whether express or implied. Second, the plaintiff must prove that the defendant breached an obligation owed to plaintiff by way of the contract.<sup>8</sup> Third, the plaintiff must prove the resultant damages that flowed from the breach.9

Thus, to prevail on his breach of contract claim, Mr. Pritchett must have proved by a preponderance of the evidence that a contract for boat repairs did indeed exist between himself and I/O Repair; that I/O Repair breached this agreement by failing to repair the boat, and; that Mr. Pritchett suffered damages resulting from this breach.

Kuroda v. SPJS Holdings, LLC, 971 A.2d 872, 883 (Del. Ch. 2009).
 Id.
 Id.

It is Mr. Pritchett's position that, following the sea trial, and before the \$2,000 payment, Mr. Stevens assured Mr. Pritchett that the boat would be in good working order upon delivery. Mr. Pritchett contends that these repairs were never made, the boat has never been in safe, operable condition, and he has suffered financial loss as a result.

The Court finds Mr. Pritchett's testimony regarding the sea trial not credible. Both parties agreed that the original sales agreement included Mr. Pritchett paying \$2,500 as a down payment for the boat when he selected it, with the remaining \$2,000 to be paid upon delivery. This \$2,000 was to be paid—and, according to both parties, was indeed paid—immediately after the sea trial. According to Mr. Pritchett's original testimony, the engine failed on the sea trial, and the boat needed to be towed back to land. The Court finds it unlikely that Mr. Pritchett would have been willing to pay the additional \$2,000 for a boat that had failed during Mr. Pritchett's only observation of the boat on the water.

Additionally, Mr. Pritchett's version of events was inconsistent. Mr. Pritchett offered the testimony that Mr. Stevens had actually run the boat aground during the sea trial, rendering the boat inoperable, only after Mr. Stevens introduced photographic evidence that a propeller blade had broken off and mud had reached the body of the boat. Finally, in his later testimony, Mr. Pritchett referred to the damage pictured in Defense Exhibit #2 as a "chip" to the propeller. As opposed to this characterization, the photograph clearly shows what appears to be serious damage to the propeller; in fact, a substantial portion of the propeller was broken off and the paint on the propeller was scraped. This damage, combined with the mud and sand on the body of the boat, would lead even a layperson to conclude that this boat had run aground at some point. Mr. Pritchett's inconsistent testimony regarding what happened during the sea trial and his testimony regarding the propeller undermine his credibility in the eyes of the Court.

<sup>10</sup> Defense Exhibit #2.

The plaintiff has the burden of proving each element of a breach of contract claim by a preponderance of the evidence.<sup>11</sup> After considering both the evidence presented at trial and the surrounding circumstances of the case, the Court finds that Mr. Pritchett has failed to establish by a preponderance of the evidence the second element of a successful breach of contract claim—that I/O Repair and Mr. Stevens breached an obligation owed to Mr. Pritchett by way of the contract. As such, on the original breach of contract claim brought by Mr. Pritchett, the Court finds in favor of defendants Sean Stevens and I/O Repair.

# B. Sean Stevens' and I/O Repair's Counterclaim

As stated above, a successful breach of contract claim requires the proof of three elements. First, the plaintiff must prove that a contract did indeed exist between the parties, whether express or implied.<sup>12</sup> Second, the plaintiff must prove that the defendant breached an obligation owed to plaintiff by way of the contract.<sup>13</sup> Third, the plaintiff must prove the resultant damages that flowed from the breach.<sup>14</sup> The party bringing the claim must prove these elements by a preponderance of the evidence.<sup>15</sup>

To prove the first element of a successful breach of the contract claim (the existence of the contract), the party claiming that a contract existed must prove that "(1) the parties intended that the contract would bind them; (2) [that] the terms of the contract [were] sufficiently definite, and (3) [that] the parties exchange[d] legal consideration." When attempting to prove the existence of a contract between parties, the burden of proof on the claimant is identical to the

<sup>&</sup>lt;sup>11</sup> First State Const., Inc. v. Thoro-Good's Concrete Co., 2010 WL 1782410, at \*3 (Del. Super. May 3, 2010).

<sup>&</sup>lt;sup>12</sup> *Kuroda*, 971 A.2d at 883.

<sup>&</sup>lt;sup>13</sup> *Id*.

<sup>&</sup>lt;sup>14</sup> *Id*.

<sup>&</sup>lt;sup>15</sup> First State Const., Inc. 2010 WL 1782410, at \*3.

<sup>&</sup>lt;sup>16</sup> Osborn ex rel. Osborn v. Kemp, 991 A.2d 1153, 1158 (Del. 2010).

standard when proving a breach of a contract—by a "preponderance of the evidence." When the contract is alleged to be an oral contract, courts must look to the "surrounding circumstances and course of dealing between the parties in order to ascertain their intent." Finally, an ambiguity in a contract exists when the provision of the contract at issue is reasonably susceptible to more than one interpretation. Where an ambiguity exists in a contract, it is generally construed against the party that created the ambiguity. 20

Thus, to prevail on its counterclaim, I/O Repair must have proved by a preponderance of the evidence that a contract for boat repairs (outside of the original boat sale agreement) did indeed exist between itself and Mr. Pritchett. Additionally, I/O Repair must also have proved that Mr. Pritchett breached this agreement by failing to pay for repairs that were performed on the boat, and that I/O Repair suffered damages resulting from this breach.

At trial, Sean Stevens contended that after the boat ran aground, Mr. Pritchett and he agreed that I/O Repair would repair the damage done to the boat. Mr. Stevens contends that these repairs were completed, and that Mr. Pritchett has not paid for the repairs.

The main evidence submitted by Defendants in support of the counterclaim was an invoice from I/O Repair.<sup>21</sup> On the invoice, dated June 23, 2012, various repairs are listed, totaling \$7,966.74. The invoice does not list a recipient under the "Bill To:" section of the invoice, but under the "Customer ID" section of the invoice, "clarence pritchett [sic]" is listed. Mr. Stevens testified that the listed date, June 23, 2012, is the date the invoice was printed.

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<sup>&</sup>lt;sup>17</sup> Carlson, 925 A.2d at 524.

<sup>&</sup>lt;sup>18</sup> *Id.* (internal quotation omitted).

<sup>&</sup>lt;sup>19</sup> AT&T Corp. v. Faraday Capital, Ltd., 918 A.2d 1104, 1108 (Del. 2007).

<sup>&</sup>lt;sup>20</sup> Intel Corp. v. American Guarantee & Liab. Ins. Co., 51 A.3d 442, 447 (Del. 2012).

<sup>&</sup>lt;sup>21</sup> Defense Exhibit #1.

There are several issues with both the substance of and the circumstances surrounding the invoice. Based on Mr. Stevens' testimony, the invoice was not even printed until nearly one year after the repairs were allegedly made. In fact, the invoice was printed a full month after a default judgment was entered against I/O Repair in the Justice of the Peace Court. No testimony was introduced and no document was submitted to the Court to suggest the invoice was ever generated before then or sent to Mr. Pritchett. It would stand to reason that an invoice totaling almost \$8,000 would have been sent immediately after the repairs were made, and a copy kept in order to document the transaction.

It is not in dispute that some of the repairs to the boat were ordered by Mr. Taylor. It was also not disputed by Mr. Stevens or I/O Repair that Mr. Taylor did not possess the authority to direct repairs to the boat, yet, neither party attempted to identify which repairs were directed by Mr. Taylor. The Court is therefore unable to distinguish between items ordered by Mr. Pritchett and those ordered by Mr. Taylor. Additionally, the invoice contains several alleged repairs which were to have taken place before the sale of the boat.<sup>22</sup> The amount charged for these alleged repairs totals \$1,863.23. According to both parties, these repairs were part of the original sales agreement, not a part of the separate repair contract that was alleged to have existed. This error on the invoice reduces its efficacy as reliable evidence.

As stated above, in a counterclaim for a breach of contract, the defendant has the burden of proving, by a preponderance of the evidence, each element of a breach of contract claim.<sup>23</sup> After considering both the evidence presented at trial and the surrounding circumstances of the

<sup>&</sup>lt;sup>22</sup> These repairs are at the beginning of the invoice and include "2 bank battery charger 30 amp," "1000 watt power inverter," "depth sounder," "batteries," "repair navigation lights and install charger and inverter," "install depth sounder," and "rewire auto bildge [sic] pump." <sup>23</sup> First State Const., Inc. 2010 WL 1782410, at \*3.

case (as the Court is required to do when the alleged contract is oral),<sup>24</sup> the Court finds that I/O Repairs and Sean Stevens have failed to prove by a preponderance of the evidence the first element of a successful breach of contract claim—that a contract between the parties existed for the repairs listed on the invoice. Because the defendants have failed to make such a showing, the Court finds in favor of Mr. Pritchett on Defendants' counterclaim.

IT IS SO ORDERED this 22<sup>nd</sup> day of April, 2013

The Honorable Carl C. Danberg

Judge

cc: Tamu White, Supervisor Civil Department

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<sup>&</sup>lt;sup>24</sup> Carlson, 925 A.2d at 524.