

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

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| BERNELL HAILEY, |) | |
| |) | |
| Plaintiff/Counterclaim-Defendant, |) | |
| |) | |
| v. |) | C.A. No. CPU4-17-000964 |
| |) | |
| RACE PROVEN MOTORSPORTS, |) | |
| FRAN SCHATZ, and BILL SCHATZ, |) | |
| |) | |
| Defendants/Counterclaim-Plaintiffs. |) | |

ORDER

On December 4, 2018, this Court issued a Memorandum Opinion and Order finding for Bernell Hailey (“Plaintiff”) as set forth in the opinion. On December 11, 2018, Race Proven Motorsports, Inc. (“RPM”), Fran Schatz (“Fran”), and Bill Schatz (“Bill”) (collectively “Defendants”) timely noticed the present Motion for Reargument (the “Motion”) pursuant to Court of Common Pleas Civil Rule 59(e). On December 18, 2018, the Plaintiff filed a written response to the Motion. This is the Final Decision and Order on Defendants’ Motion for Reargument.

I. Factual and Procedural Posture

Plaintiff filed this action against Defendants alleging that Defendants made unauthorized alterations and repairs to his vehicle and caused damage to his engine. Defendants denied Plaintiff’s claim and contended that they took reasonable action in working on Plaintiff’s vehicle.

On July 18, 2018 and July 19, 2018, the parties appeared before the Court for trial. At the time, Plaintiff provided testimony that Al Coluzzi (“Coluzzi”) built a custom engine for Plaintiff’s vehicle. Coluzzi testified at trial that upon completion of the engine and inspection of

the engine, he did not observe any mechanical problems with the engine as built. Plaintiff then took his vehicle to Defendants to have the engine and a supercharger installed. Plaintiff received a \$11,810.00 estimate for the work, and in agreement to that amount, Plaintiff paid Defendants \$7,750.00 upfront.

Throughout the course of the project, additional charges were made, which included the replacement of original parts in the engine and installation of a specialized fuel system to deliver fuel to the engine. At trial, Plaintiff acknowledged the charge for the fuel system; however, Plaintiff did not authorize several other charges, including the removal and replacement of parts originally installed by Coluzzi. After Defendants installed the engine and supercharger into the vehicle, Defendants tested it and determined the engine was destroyed after they had possession of the vehicle and engine.

On January 5, 2015, Defendants pulled out the engine and requested Plaintiff to pay \$3,500.00 towards his invoice balance. On January 12, 2015, Plaintiff paid \$2,000.00 towards the balance. On April 13, 2015, Defendants contacted Plaintiff for an update and Plaintiff notified Defendants that he would pick up his vehicle and that his attorney would be in contact with Defendants. Defendants then refused to release Plaintiff's vehicle until the remaining balance was paid and thereafter charged excessive storage fees as a reprisal for Plaintiff retaining an attorney.

At conclusion of the testimony and introduction of exhibits, the Court took the matter under advisement. On December 4, 2018, the Court issued its Final Memorandum Opinion and Order and found in favor of the Plaintiff. The Court concluded that Defendants violated several subsections of the Auto Repair Fraud Prevention Act (the "Act") and negligently damaged Plaintiff's engine and supercharger.

II. Parties' Contentions

A. Defendants' Motion

In its Motion, Defendants initially argue that this Court does not have jurisdiction over claims arising from the Act. However, Defendants insist that if this Court does have jurisdiction, it erred in awarding Plaintiff double the amount Plaintiff paid to Defendants. Defendants assert that it provided Plaintiff with estimates and Plaintiff acknowledged a completion date of the work. Further, Defendants argues that Plaintiff offered no evidence that he was harmed by the lack of a written completion date or that such an omission was material. In addition, Defendants maintain that even if this Court still finds Defendants violated the Act, no award should be given to Plaintiff, because he only paid for charges he approved and Defendants did not receive consideration for unauthorized charges. Moreover, Defendants advance that this Court failed to address proof of the elements of negligence. Furthermore, Defendants argue that Coluzzi's experience is limited to building engines. Defendants assert that Coluzzi has no experience with engines after integration into a vehicle, no experience analyzing the cause of engine failure after dynamic testing and no qualifications to offer evidence with reference to fuel systems. Ultimately, Defendants request reargument so that the Court can address these concerns.

B. Plaintiff's Response in Opposition

The Plaintiff contends that Defendants Motion should be denied. First the Plaintiff asserts that this Court does in fact have jurisdiction to hear Plaintiff's claim under the Act, in accordance with section 4909A(c) of the Act. Plaintiff further argues that Defendants fail to show this Court how it erred in awarding Plaintiff damages for Defendants multiple violations of the Act. Plaintiff makes reference to the unauthorized repairs by Defendants and Defendants refusal to return Plaintiff's vehicle until he paid for the unauthorized repairs. Notably, Plaintiff

argues that Defendants are wrong in its estimate claims because the Act does not provide an exception for substantial compliance with its requirements. Finally, Plaintiff addresses Defendants objections to Coluzzi as an expert, contending that Defendants overlook the fact that it removed parts from the engine and installed a new fuel system that injected the wrong fuel mixture. Plaintiff states that the engine only failed once Defendant tampered with the engine.

III. Legal Standard

Pursuant to Court of Common Pleas Civil Rule 59(e), “[a] motion for reargument is the proper device for seeking reconsideration by the Trial Court of its findings of fact, conclusions of law or judgment.”¹ A motion for reargument, however, does not entitle the moving party to merely reiterate arguments that were previously presented to the Court, nor does it provide the moving party with an opportunity to present new arguments not raised in the original proceeding.² The Court will deny the motion to reargue unless the moving party shows that the Court either has overlooked a controlling precedent or legal principle, or has misapprehended the law or facts in a manner that would change the outcome of its decision had it been correctly or fully informed.³ A party seeking reargument “must demonstrate newly discovered evidence, a change in the law, or manifest injustice.”⁴

IV. Discussion

In its Motion, the Defendants assert that Reargument is appropriate because the Court of Common Pleas does not have jurisdiction over claims arising from the Act. However, subsection 4909A of the Act clearly states that a consumer may bring an action against an automotive repair

¹ *Parisan v. Cohan*, 2012 WL 1066506, at *1 (Del. Com. Pl. Mar. 29, 2012).

² *State v. Slaney*, 2016 WL 281464, at *2 (Del. Com. Pl. Jan. 20, 2016).

³ *Parisan*, 2012 WL 1066506, at *1

⁴ *Id.*

facility who has violated the Act in the Justice of the Peace Court.⁵ However, the Act further provides that “[n]othing in this subsection shall prohibit a person from otherwise seeking a recovery in an action for damages against an automotive repair facility in a court of competent jurisdiction.”⁶

Further, Defendants reiterate its argument that it provided estimates of the auto repair work to Plaintiff and Plaintiff accepted the estimate. Specifically, Defendants claim that despite the defect in its estimate, Plaintiff acknowledged a completion date for the work to be done on his vehicle. In addition, Defendants argue that Plaintiff offered no evidence that he was harmed or that the omission of a completion date was material. The Court addressed this previously presented argument in its Final Memorandum Opinion and Order and found that in addition to the estimation requirements under 4904A, Defendants also violated 4907A when it made unauthorized repairs and 4903A when it held Plaintiff’s vehicle hostage. Thus, Defendants rehashed arguments fail because the Court finds that Defendants violated multiple section of the Act as set forth in its Final Memorandum Opinion and Order.

Moreover, Defendants assert that no damages should be awarded to Plaintiff, because Plaintiff only paid for what he approved. However, Defendants fail to address the other violations that it committed under the Act, and the consideration Plaintiff is owed for the damaged engine, supercharger and vehicle no longer in his possession.

Finally, Defendants argue that the Court erred in failing to address proof of each negligence element. However, this position is inaccurate. The Court in its Final Memorandum Opinion and Order considered all of the evidence presented, summarized the pertinent evidence and addressed proof of each element, which included the expert testimony of Coluzzi.

⁵ 6 Del. C. § 4909A(c)

⁶ *Id.*

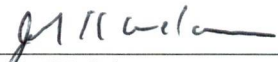
Defendants argue that Coluzzi had no experience with engines after installation into a vehicle; no experience analyzing the cause of engine failure after dynamic testing; and no qualifications to offer evidence with regards to the effect of fuel systems. However, Coluzzi was qualified as an expert at trial and rendered an opinion as an expert based upon reasonable certainty as an auto mechanic on the engine failure.

At oral argument, Defendants argued in support of its Motion that the Court's decision is flawed because no expert opinion was offered by Plaintiff. To the contrary, the Court certified Coluzzi who testified that a bad fuel mixture causes a domino effect that leads to connecting rods breaking and catastrophic engine failure. The Court based its findings on his expert testimony. As a qualified expert, Coluzzi testified that swapping out part of the engine or tampering with the engine parts and using an improper fuel mixture can destroy an engine. Therefore, the Court finds Coluzzi an expert and based its findings on his expert opinion. In addition, as the Court previously ruled, the Defendants had the ability to test the engine but did not test it prior to tampering with its original parts and installing a customized fuel system. After reviewing all of the facts and evidence were presented, the Court found that Defendants negligently installed Plaintiff's engine and supercharger.

V. Final Order

For the foregoing reasons, the Court finds no basis to alter or modify its Final Opinion and Order. Thus, Defendants' Motion to Reargue is **DENIED**. Each party shall bear their own costs.

IT IS SO ORDERED.



John K. Welch,
Judge

cc: Ms. Patricia Thomas, Judicial Case Manager, Civil