CITATION: *Tou's Garden Pty Ltd v Redline Automotive* [2010] NTMC 038

PARTIES:	TOU'S GARDEN PTY LTD
	v
	DERRECK FRANZ SPERRER T/AS REDLINE AUTOMOTIVE
TITLE OF COURT:	Local Court
JURISDICTION:	Small Claims
FILE NO(s):	20938319
DELIVERED ON:	26 May 2010
DELIVERED AT:	Darwin
HEARING DATE(s):	25 May 2010
JUDGMENT OF:	J Johnson A/JR

CATCHWORDS:

MOTOR VEHICLE – COST OF REPAIRS – MUST NOT BE EXTRAVAGANT OR UNREASONABLE

REPRESENTATION:

Counsel:

Plaintiff:	Mr Quin
Defendant:	Mr Sperrer

Solicitors:

Plaintiff:	N/A
Defendant:	N/A

Judgment category classification:	C
Judgment ID number:	[2010] NTMC 038
Number of paragraphs:	21

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20938319

BETWEEN:

TOU'S GARDEN PTY LTD

Plaintiff

AND:

DERRECK FRANZ SPERRER T/AS REDLINE AUTOMOTIVE

Defendant

REASONS FOR JUDGMENT

(Delivered 26 May 2010)

Mr J JOHNSON A/JR

The Issue Stated

1. In September 2008 the plaintiff entrusted the repair of a Volkswagen Caravelle ("the vehicle") to the defendant automotive repair business. The vehicle is relatively aged, being a 1985 year model with 222,778 kilometres on its odometer and, I am told in evidence by the defendant automotive repairer, is unusual in that it has a water-cooled engine. The vehicle was ultimately repaired by the defendant for a total tax invoiced cost of $7,478.46.

2. The plaintiff has paid $2,000.00 by way of "deposit" for the repair work thereby leaving $5,478.46 in outstanding payment due. The plaintiff takes exception to the total cost of repair and asserts in its Statement of Claim that "The defendant failed in their duty of care to contain costs in the repair".

3. So it is that an impasse has arisen between the parties: the vehicle remains in the possession of the defendant pending payment of the outstanding cost of repairs; and the plaintiff claims the return of the vehicle subject to payment of a lesser amount of $3,067.48 against the outstanding amount of $5,478.46.

The Law

4. In *Stocovaz v Fung* [2007] NSWCA 199, Handley AJA observed, *inter alia*, (and with references omitted) that:

> 36. The claimant submitted that the answers to questions 2(i) and 2(ii) were inconsistent. Considered in isolation this may appear to be the case. However the questions and answers must be read with his Honour's reasons for judgment. His Honour treated extravagant and unreasonable as synonymous in this context. This was also the understanding of Dr Lushington in *The Pactolus* (1856) Swab 173, which his Honour referred to. Ever since courts and commentators have treated extravagant and unreasonable in this context as interchangeable. The authorities and texts which establish this are summarised in his Honour's judgment.
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> 37. In my judgment the answers to question 2 can be reconciled when one bears in mind that there may not be a single fair and reasonable cost for repairing a damaged motor vehicle, especially a Mercedes costing $95,563 new. There is likely to be a range of costs all of which are fair and reasonable. In such a case acceptable evidence that a lower cost would be fair and reasonable cannot of itself establish that a higher cost was outside the range and not fair and reasonable.
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> 38. The true question would be whether the cost incurred was outside the range. In my judgment this is only another way of asking whether the cost incurred was extravagant or unreasonable.

5. On my reading of that authority, a number of key issues of relevance to the present dispute emerge. Firstly, in assessing cost of repairs to a vehicle the Court must look to what is "fair and reasonable" or, put another way, whether such cost is "extravagant or unreasonable". Secondly, there is likely to be a range of costs all of which are fair and reasonable. And, thirdly, acceptable evidence that a lower cost would be fair and reasonable cannot of itself establish that a higher cost is outside the range and not fair and reasonable.

6. In my view therefore the plaintiff must prove, on the ordinary civil standard of persuasion, that the subject cost of repair is “outside the range” and, thereby, “extravagant or unreasonable”, albeit that in this context those words are “interchangeable”.

The Evidence

7. The thrust of the plaintiff’s argument as to the cost of repairs being “outside the range” founded upon 3 principal assertions. These were, firstly, that the defendant had charged 14 hours labour to “remove engine, strip, inspect and quote” (exhibit “D4”). This, in the plaintiff’s submission, was an “error of judgement”. The defendant ought to have recognised at a very early stage that the engine was beyond economic repair and it was “extravagant” to incur that amount of labour to arrive at such an explicitly obvious conclusion.

8. Secondly, the plaintiff asserted that the hourly rate charged by the defendant ($85.00 per hour) was “too expensive” and offered in support that a specialist diesel engine repair service which he utilised in the course of his business charged only $80.00 per hour for an arguably more specialised and complex engine repair service.

9. Thirdly, the plaintiff attempted to establish that during the repair period the defendant’s mechanics were largely “unsupervised” and that their “effectiveness” or “productivity” was, thereby, questionable. The argument proceeded, as I understood it, upon assertion that the defendant was absent for a significant part of the repair period; that he employed mechanics on so-called “457 Visas”; and that the repairs were used as a “filler job to book hours to”. The sub-class 457 visa program is, as I understand it, the most commonly used program for employers to sponsor overseas workers to work in Australia on a temporary basis.

10. The plaintiff, by vehicle of its Statement of Claim, offers to pay $3,067.48 against the outstanding cost of $5,478.46. The methodology for arriving at that figure is detailed in a letter to the defendant dated 2 August 2009 (not exhibited). The plaintiff subsequently made a further offer of compromise to the defendant but the defendant has stood firm in its demand for payment of the “documented” cost of repairs.

11. The defendant’s evidence was that, upon inspection, the subject engine exhibited significant corrosion and a “weeping head”. This was said to have been caused by poor attention to coolant and coolant system maintenance and, because the engine had aluminium “blocks” and “heads” held by steel “studs”, this resulted in significant aluminium oxidisation of the blocks and heads and corrosion of the steel studs. Thus it was very difficult to remove the engine and strip it down for the purpose of assessing its reparability. In support of this contention the defendant put into evidence a copy of the Jobcard for the repair showing a breakdown of the total number of hours (by date and time) spent in removing, dismantling and inspecting the engine (exhibit “D3”). As I understood that evidence, the actual time spent (after allowing for meal breaks) was in the vicinity 24.6 hours but the plaintiff had only been charged for 14 of those hours (exhibit “D4”). At the end of that process the defendant issued the plaintiff with a Tax Invoice which, when ultimately amended, amounted to $1,602.70 including, *inter alia*, GST, towage fees, and the 14 hours labour.

12. Once the engine had been dismantled, it was the defendant’s evidence that he obtained 2 quotes for specialist repair of the damaged engine components but, in his view, these were not economic so he sought and received approval from the plaintiff to replace the engine with a newly reconditioned “long motor”. He asked the plaintiff to pay a deposit on such reconditioned engine but by the time such deposit was paid the first engine he had found at a price of $2,000.00 was no longer available and he had to purchase a

second at an increased price of $2,500.00 plus freight to Darwin and, as it was on an “exchange” basis, freight for the return of the old engine.

13. Once the exchange motor had been received, the defendant incurred a further 12 hours labour in refitting it to the vehicle and fitting it with accessories. There was some dispute as to the need for some of those accessories, but as I understood the evidence, most of the accessories from the plaintiff’s old engine were either not compatible with the replacement engine (water pump) or required repair to return them to service (alternator). At the end of this process a further Tax Invoice was issued to the plaintiff in the amount of $5,875.76 with GST, and which included $2,500.00 for the replacement engine, freight costs, and $1,020.00 for labour (12 hours).

14. Finally the defendant asserted that, contrary to the submissions of the plaintiff, he had only been absent for a short period (1 week) during the repair and that of a total of 15 staff which he employed only 2 were on “457 Visas”.

Findings

15. Upon a thorough review of the evidence before me I am comfortably satisfied that the cost of repairs to the plaintiff’s vehicle is not “extravagant or unreasonable” or, indeed, “outside the range” as I understand the meaning of those terms in *Stocovaz v Fung* [2007] NSWCA 199 (see paragraph 4 above). Whilst there was nothing adduced in evidence before me that I might properly describe as independent expert evidence, the parties to the proceeding were frank in their submissions and the documentary evidence was sufficient in my view to enable me to undertake a thorough and proper analysis of the claim.

16. I accept the defendant's evidence that, given the age and relatively distinctive type of vehicle to which the repairs were required, those repairs were both more difficult and more time consuming than might otherwise

have been the case and that they were clearly not outside the acceptable industry range (exhibit “D5”). I did not detect that the defendant was otherwise than a competent automotive repair business or that it had any motive to charge other than the legitimately incurred reasonable cost of repairs.

17. For its part, the plaintiff was clearly unhappy with the final cost of repairs. Its evidence was that the market value of the subject vehicle at the completion of repairs was in the order of $3,000.00 to $5,000.00 and, thus, that the vehicle was beyond “economic repair”. However, there is no dispute that the plaintiff authorised the defendant both to commence repair of the vehicle and to purchase a reconditioned motor for which the plaintiff paid a $2,000.00 “deposit”.

18. Similarly, in February 2009 the defendant sent to the plaintiff Tax Invoice No. 1801 (exhibit “D4”) which was subsequently amended. Attached to that Tax Invoice was a type-written note which offered a clear choice to the plaintiff in terms that “If you do not want to continue with the job, let me know and we will drop the car back to your place”.

19. Whether or not the vehicle was beyond “economic repair” is therefore, in my opinion, not to the point in circumstances where the plaintiff, by payment of a “deposit”, continued to authorise repairs and ignore the defendant’s offer not to continue with the job.

Summary

20. In summary I have found, on the balance of probabilities, that the cost of repairs to the plaintiff's vehicle is not unreasonable or outside the industry range for a vehicle of that age and condition. Upon that basis it is my view that the plaintiff has not satisfied the legal burden upon it sufficient to succeed in its claim and the claim must therefore be dismissed.

Order

21. The plaintiff's claim is dismissed.

Dated this 26th day of May 2010

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Julian Johnson
Acting Judicial Registrar