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MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(St. Louis City)

**FILED**

NOV - 1 2013

22<sup>ND</sup> JUDICIAL CIRCUIT  
CIRCUIT CLERK'S OFFICE  
BY \_\_\_\_\_ DEPUTY

\_\_\_\_\_, LLC

VS

\_\_\_\_\_

CASE NO. 1222-AC16914

DIVISION 28

November 1, 2013

## JUDGMENT AND ORDER

This cause was called for bench trial on September 26, 2013. Plaintiff appeared in person and through counsel, Connie McFarland Butler. Defendant appeared in person and through counsel, Grant Mabie. Evidence was adduced and this Court took the matter under submission.

### Findings of Fact and Conclusions of Law

The evidence establishes that on August 20, 2010, plaintiff purchased a 1971 Oldsmobile Cutlass Supreme Convertible. On the date of the sale, the seller \_\_\_\_\_ assigned the vehicle title to plaintiff, Classy Investments, LLC and tendered the original *Certificate of Title* to plaintiff. *The Bill of Sale* states that the vehicle was sold to \_\_\_\_\_ for the amount of \$10,500.00. Hayes testified that he is the owner, CEO and president of \_\_\_\_\_, LLC and that he purchased the vehicle on behalf of \_\_\_\_\_, LLC for the use of the company. There was no evidence that plaintiff ever applied for a new title to the vehicle; the evidence was that plaintiff continues to hold the original *Certificate of Title*, which reads owner, \_\_\_\_\_, 428 Lone Oak Dr., St. Louis, MO 63119. On the back side of that original title under the section that reads: "Title Assignment By Owner", the following information appears: "purchaser's name" and "purchaser's address". The purchaser's name and address are listed as follows: \_\_\_\_\_ LLC, P.O. Box 38529, St. Louis, MO 63138. In addition, the form contains a field that reads: "signature of sellers"; in that field the name \_\_\_\_\_ is signed, \_\_\_\_\_ signature is dated and notarized August 20, 2010.

Plaintiff testified that he obtained a tax waiver from the City of St. Louis but that he was unable to register the vehicle because he did not have the vehicle inspected.

Sometime during October plaintiff took the vehicle to defendant's shop to obtain an estimate for restoration of the vehicle. Plaintiff was provided with an estimate by John [REDACTED] a [REDACTED] Restorations employee. There is a factual dispute as to what work the estimate covered. Plaintiff states the estimate of \$37,649.58 included the parts and labor for the complete restoration of the vehicle. Defendant states the estimate of \$37,649.58 was for parts only and did not include charges for labor. Defendant contends that the total estimate for parts and labor was \$73,733.58. Nevertheless, the parties agree that plaintiff only initially entered into a contract for certain repairs on the vehicle on October 28, 2010, the cost for those repairs, including parts and labor totaled \$8,111.72. There is no dispute between the parties, and the evidence establishes that plaintiff has paid the initial contract in full. Moreover, there is no dispute that plaintiff paid defendant a total of \$11,933.51 between January 2011 and June 2011 for restoration work on the 1971 Cutlass Supreme Convertible.

There were discussions between plaintiff and defendant regarding additional rust removal on the vehicle in March of 2011. There is no credible evidence to support a finding that plaintiff and defendant ever reached an agreement concerning this additional work. The evidence supports a finding that plaintiff agreed to have some additional work performed; but there is no credible evidence to support a finding that the parties agreed to the scope of that work or a price for that work. Defendant offered into evidence Exhibit B, which is a multi-page exhibit consisting of various documents which defendant contends establish that plaintiff signed a contract agreeing to \$11,058.79 for the additional work. Plaintiff testified that he did not sign Exhibit B. The Court notes that Exhibit B is particularly unreliable because: 1) Exhibit B consists of three pages of documents each dated a different date. The first page labeled Exhibit B is dated 3/7/2011; the second page stapled to it is dated June 8, and the third page stapled to it appears to be a duplicate of the second page, except it includes several handwritten notations and a signature dated 3/7/2011, while the document is dated June 8. There is no year indicated for June 8, but the Court concluded that the year was more than likely 2011 since the initial contract had not been signed until October 2010, and defendant had obtained title to the vehicle prior to June 2012. Although, defendant attempted to offer the entire Exhibit B as a business record, plaintiff was unable to meet the foundational requirements for the admission of such as to the

second and third pages. The testimony of [REDACTED] failed to satisfy the foundation requirements of 490.680 RSMo. The substance of [REDACTED]'s testimony was that the documents which defendant offered as Exhibit B were in defendant's file on plaintiff. The information in pages 2 and 3 of Exhibit B was the same with the exception of the purported signature and the handwritten payment schedule. Thus, the relevant portions of pages 2 and 3 were cumulative. There was no credible evidence offered as to who's signature appeared on page 3., [REDACTED] was not present when page three was signed; plaintiff denied signing page 3, and the other documents offered into evidence that contained plaintiff's signature reveal that plaintiff's signature was very different from the signature on page 3. Similarly, the hand written notations regarding payment did not meet the requirements for a business record as there was no credible testimony offered that would qualify these notations as a business record.

"Indeed, merely testifying that one is a custodian of records who has knowledge regarding the business records of a company with a vague reference as to some of its files being maintained by "immediate notation" on the accounts themselves does not satisfy the particularized requirements of section 490.680 applicable to the specific records in these exhibits as a matter of law. While the seriatim recitals of the prerequisites encompassed in section 490.680 may appear at first blush to be but talismanic formulas whose mere recitations at trial bring about a magical acceptance of a document into evidence, each statutory requirement, nevertheless, is grounded upon reason, verity and efficiency." Discover Bank v. Smith, 326 S.W.3d 120,126 (Mo. App. 2010).

Moreover, even if pages 2 and 3 of Exhibit B had been admitted into evidence this court would have to determine that pages 2 and 3 cannot be given any weight due to their unreliability.

Despite the controversy over the scope and price of the additional work performed. This court finds that the additional work was performed, and that the date of completion of the additional work is unknown. Plaintiff has paid \$3,821.79 above the original contract price; and plaintiff contends that amount should be sufficient to cover the additional rust removal. Defendant contends that the cost of the additional work totaled \$11,058.79. The Court finds that, the overall course of dealings between the parties reveal that although plaintiff sought to have the vehicle restored, cost was a key factor with respect to the extent of restoration work that would ultimately be agreed upon. The evidence does not support a finding that the parties reached an agreement as to the additional work, in terms of scope or price. The Court finds that, the evidence establishes that defendant began the steps to support its mechanics lien sometime in November 2011. The evidence establishes that defendant filed the mechanics lien as a result of the additional work for rust removal that was performed on the vehicle. There is no credible evidence to support defendant's claim that plaintiff had breached its contract because no enforceable contract existed between plaintiff and defendant in November 2011 concerning the

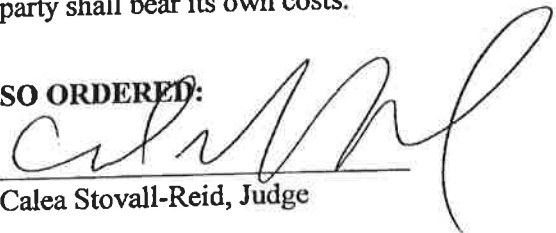
additional rust removal. Both ~~Michael Hayes~~ on behalf of ~~Gleazy Investments, LLC~~ and ~~Dale Costello~~ on behalf of ~~Rustic Restorations, LLC~~ testified that in July of 2011 there was a disagreement between the parties. ~~Dale Costello's~~ testimony established that although ~~Costello~~ is the owner of ~~Rustic Restorations~~, the person that actually had dealings with Mr. ~~Hayes~~ regarding the terms for the additional rust removal was ~~John Hantsbarger~~. However, ~~Hantsbarger~~ did not testify at the trial. ~~Dale Costello's~~ contentious discourse with Hayes occurred months after Hayes and ~~Hantsbarger~~ discussed the additional work to be completed. Following the July 2011 disagreement between ~~Costello~~ and ~~Hayes~~ there was no communication between the parties until March 2012. There is no credible evidence to support ~~Costello's~~ testimony that ~~Hayes~~ agreed to the scope and price of the additional work. The court finds that ~~Costello's~~ testimony is based on speculation and assumptions he made from the documents that were in the ~~Gleazy Investments~~'s file, and ~~Costello's~~ communications with Hantsbarger. Therefore, the court finds ~~Costello's~~ testimony regarding the additional work unreliable. The intention of the parties in the instant case is blurred by mutual misunderstanding; "the question of intention is rarely capable of positive proof but is to be arrived at by logical deductions from proven acts". Julian v. Kiefer, 382 S.W.2d 723, 729 (Mo. App 1964) (citing Parker v. School District, 325 S.W. 2d 59, Mo App. 1959). The facts proven in this case are that plaintiff and defendant reached a firm written agreement for restoration in the amount of \$8,111.72 on October 28, 2010. There is no credible evidence to support a finding that defendant actually provided plaintiff with a final cost for the additional work prior to mid March of 2012. The Court finds that plaintiff appeared at defendant's shop in mid March of 2012 to obtain the final balance due and to retrieve his vehicle. It was at that time that plaintiff learned that defendant had successfully obtained a new title to the vehicle. This Court finds that after plaintiff had substantially complied with the original agreement between the parties, at some point that agreement changed. Thereafter, the parties never reached an agreement concerning the full context of the additional work on the vehicle or the cost of such work.

Finally, this Court finds that defendant is not entitled to storage fees. There was no mention of storage fees in the contract signed by plaintiff on October 28, 2010. The course of dealings between the parties establishes that defendant never sought to collect storage fees until the relationship between the parties disintegrated. From October 2010 until August 2011 defendant acquiesced in plaintiff's vehicle remaining on their premises with no storage fee. Indeed, the evidence is not credible, due to the unclear and conflicting purported communications to plaintiff concerning storage

fees. Furthermore, defendant's records on the amount of storage fees are inconsistent. Defendant's various records list storage fees at \$20 per day (Plaintiff's Exhibit 27), \$25.00 per day (Defendant's Exhibit 2-1) and \$150.00 per week (Defendant's Exhibit D). Thus, there is no credible evidence to support a finding that there was an agreement for storage fees. In fact, there is no evidence to support a finding that defendant ever actually intended to assess storage fees against plaintiff. ~~██████████~~ testified on behalf of defendant as follows regarding an August 8, 2011, letter to defendant: *"I'm not in the storage business and I don't want to be in the storage business. That was strictly to basically try to say let's get off the dime let's hear from you that type of thing"*

This Court hereby enters judgment in favor of plaintiff and against defendant on plaintiff's claim. Defendant shall return the 1971 Oldsmobile Cutlass Supreme Convertible to and assign the title of same to plaintiff. This Court hereby enters judgment in favor of defendant and against plaintiff on defendant's counterclaim. Damages are assessed against plaintiff-counterclaim defendant in the amount of \$7,237.00. Each party shall bear its own costs.

SO ORDERED:

  
Calea Stovall-Reid, Judge

CC:  
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