IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

AMERICAN FAMILY INSURANCE, CO.,	[]	**CASE NO. 13CVH04-4005**
	][	
PLAINTIFF,	[]	**JUDGE LYNCH**
	][	
vs.	[]	**MAGISTRATE McCARTHY**
	][	
THREE-C BODY SHOP,	[]	
	][	
DEFENDANT.	[]	

MAGISTRATE'S DECISION FOLLOWING BENCH TRIAL

This matter came on for a bench trial before this magistrate on September 29, 2014. Thereafter, the parties were granted the opportunity to submit closing remarks in written form. Those materials along with all evidentiary submissions have been reviewed by the magistrate.

This action was brought by plaintiff, a casualty insurance company, to recover from defendant, an automobile repair shop, what plaintiff claims to be an overpayment for a claim submitted by one of its insureds. Necessarily, this action is based on the law of contract. It should be noted Ohio recognizes three types of contracts: express, implied in fact, and implied in law. *Legros v. Tarr* (1989), 44 Ohio St.3d 1, 6, citing *Hummel v. Hummel* (1938), 133 Ohio St. 520, 525. In express contracts the mutual assent to its terms is actually expressed in offer and acceptance. Concerning a contract implied in fact, the party claiming that a contract exists must demonstrate that the parties reached a meeting of the minds as to the terms of the transaction. *Campanella v. Commerce Exch. Bank* (2000), 139 Ohio App.3d 796, 808. In contracts implied in law, civil liability attaches by operation of the law upon a person who receives benefits that he is not entitled to

retain. *Legros v. Tarr,* 44 Ohio St.3d at 6. Contracts implied in law are quasi-contracts imposed by courts to prevent unjust enrichment. Id. The existence of an actual contract precludes any finding that a quasi-contract exists. *In re Guardianship of Freeman,* 4th Dist. No. 02CA737, 2002 Ohio 6386, at P29.

In this case, the parties' controversy surrounds the circumstance wherein plaintiff's insured, Sloan, was involved in a vehicular collision at which time Sloan's vehicle was notably damaged. Shortly thereafter, Sloan had the vehicle taken to defendant's repair facility. It is not known what communication existed at that time between Sloan and defendant. In any event, it is understood the vehicle was taken to defendant to be repaired.

Shortly after the vehicle was taken to defendant's facility, plaintiff's property damage appraiser went to the body shop to estimate the damage done to the vehicle. The appraised damage was in the amount of $5,045. A check for that sum was issued payable to both Sloan and defendant. The check was negotiated with the proceeds retained by defendant.

Following this, and following further inspection and the preparation of cost to repair estimates, it was concluded by plaintiff that the vehicle was a "total loss." That being the case, plaintiff reached the conclusion that it was due money from defendant for "overpayment" of the property damage loss.

As mentioned above, if plaintiff is able to recover in this action, it must be based upon the existence of a contract. An express contract may be defined to be an agreement whose terms are openly uttered or expressed by the contracting parties. *Linn v. E. C. Ross & Co.*, 10 Ohio 412, 1841 Ohio LEXIS 119, 36 Am.

Dec. 95 (1841). Here, there does not exist a preponderance of evidence that such a contract existed between plaintiff and defendant. The terms of any possible contract were fluid and undefined.

In considering whether a contract implied in law existed, it if found that one did not exist between the parties. Here, there was no showing that defendant received benefits it was not entitled to and thereby was unjustly enriched. While assuredly there was disagreement over the amount of money that should be paid to defendant for the services it performed, a preponderance of the evidence did not weigh in favor of the existence of a contract implied in law.

In any event, both parties seem to acknowledge that there was no mutual understanding of the amount of money to be paid to defendant. Notwithstanding that circumstance, plaintiff would claim that it is entitled to full recovery based upon an implied in fact contract. In *Tanski v. White* (1952), 92 Ohio App. 411, an implied contract in fact existed that permitted plaintiff to recover from defendant the reasonable value of its services provided. *Tanski* held:

> It is not alone sufficient that a person perform services with the expectation of receiving compensation, but to encompass the principle of mutuality necessary to a contract implied in fact, it is elementary that the services be rendered, work performed, or materials furnished by one person for another under such circumstances that *the party to be charged either knew or understood, or should have known or understood, that the services were given and received with the expectation of being paid for on the basis of their reasonable worth*. Syl. 1. (emphasis added)

A contract implied in fact is found where the minds of the parties have met and their meeting results in an unspoken agreement. It is implied only when the facts warrant the interference of mutual expectation -- the defendant expecting to

pay for the service and the plaintiff performing it relying upon that understanding. It is considered implied only because it is inferred from the conduct of the parties instead of from their spoken words; or, in other words, the contract is evidenced by conduct instead of by words.

Here, the parties shared the expectation that defendant would perform services for plaintiff and that plaintiff would pay for them. In such a circumstance, the reasonable value of the services is the correct measure of damages. In determining the loss in this regard, the magistrate considered the weight to be assigned the evidence dealing with the damages estimated by the two damage estimators who inspected the vehicle after it was determined to be a total loss. (The magistrate rejected the third or "final" supplement of damage inasmuch as it appeared contrived.)

The first estimate was for $1,984.09, and the second was for $3,040.91. Upon consideration, it is found the evidence would support a finding in regard to the amount of damage in this connection to be $2,512.50. Accordingly, the magistrate would award plaintiff the sum of $2,532.50 and would recommend entering a judgment for that reason.

On the matter of a possible violation of the Ohio Consumer Protection Act, it is found there was none.

Copies electronically to:

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Franklin County Court of Common Pleas

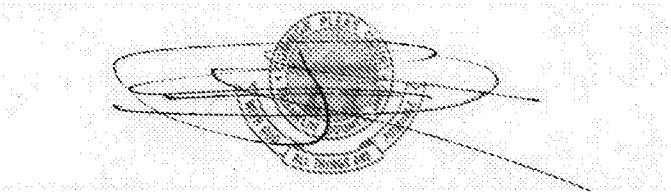
Date: 01-21-2015

Case Title: AMERICAN FAMILY INSURANCE CO -VS- THREE-C BODY SHOP

Case Number: 13CV004005

Type: MAGISTRATE DECISION

So Ordered



/s/ Magistrate Timothy P McCarthy