

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

CATAWBA COUNTY

2015 JAN 4 PM 12:55

SUPERIOR COURT DIVISION

14-CVS-1724

BENJAMIN RIDLEY,

Plaintiff,

v.

BRET WENDEL; HENDRICK LUXURY COLLISION CENTER, LLC; CITY CHEVROLET AUTOMOTIVE COMPANY; NATIONWIDE MUTUAL FIRE INSURANCE COMPANY; and each of them,

Defendants.

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**JUDGMENT
(JURY VERDICT)**

(REMITTITUR, TREBLE DAMAGES & ATTORNEYS FEES)

This matter was heard by the undersigned Superior Court Judge during the November 9, 2015, term of the Superior Court of Catawba County. The following issues were submitted to the jury as to defendants, City Chevrolet Automotive Company and Hendrick Luxury Collision Center LLC¹ with the jury's answers indicated by "X":

We, the jury, return as our unanimous verdict the following answers to the issues:

1. Did the defendants conspire together for an unlawful purpose, thereby damaging the plaintiff?

___ Yes X No

2. Was the plaintiff damaged by the fraud of the defendant?

X Yes ___ No

3. Did defendant, City Chevrolet do, at least one or more of, the following:

(a) Represent to the plaintiff that the automobile was repaired, when defendant knew or should have known that the automobile was not completely or properly repaired, or,

X Yes ___ No

¹ The Court notes that the matters against the other defendants, *Bret Wendel and his insurer, Nationwide* were bifurcated prior trial by way of an earlier Order of Judge Timothy Kincaid, and so, matters against those defendants would be heard separately and at a later date.

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(b) Conceal from the plaintiff that the automobile still had significant damage that was not completely or properly repaired, or

Yes No

(c) Conceal from the plaintiff that if completely or properly repaired, the cost of repairing plaintiff's automobile would exceed 75% of its value and be declared a total loss, or

Yes No

(d) Conduct unauthorized repairs on plaintiff's vehicle?

Yes No

4. Was the plaintiff damaged by the negligence of the defendant, City Chevrolet?

Yes No

(Answer issue #5 only if any answers to issues 2, 3, or 4 were "yes". If all answers to 2, 3, and 4 were "No" then stop here.)

5. Was the defendant City Chevrolet's conduct intentional or a proximate cause of the plaintiff's damages?

Yes No

(Answer issue #6 only if issue #5 above is answered "Yes".)

6. In what amount has the plaintiff been damaged?

\$200,000.00

POST-JUDGMENT MOTIONS

Hendrick Collision dismissed

After the jury's verdict, Defendant HENDRICK LUXURY COLLISION'S MOTION TO DISMISS was granted as to Hendrick Luxury only, thereby leaving the verdict against City Chevrolet.²

Procedural Motions made after Trial

Thereafter, Defendant City Chevrolet Automotive Company, through counsel, moved for judgment NOTWITHSTANDING THE VERDICT pursuant to Rule 50 of the North Carolina Rules of Civil Procedure, and/or a NEW TRIAL pursuant to Rule 59 of the North Carolina Rules of Civil Procedure. Plaintiff moved for CHAPTER 75 TREBLE DAMAGES and ATTORNEY'S FEES. These and

² Plaintiff's PUNITIVE DAMAGES claims were previously dismissed during the trial by directed verdict after the close of plaintiff's evidence.

all other post judgment motions were heard a short time after trial at an agreed upon date and time to wit: **December 2, 2015** in Catawba Court Superior Court after trial. The court at that time considered the motions submitted, the evidence presented to the jury, the jury's verdict, all applicable law, briefs and memorandums of law submitted, legal contentions, oral arguments of counsel for both parties, and any affidavits submitted to the court.

Remittitur

At said post judgment motion hearing on December 2, 2015, the court inquired whether the Plaintiff would entertain a REMITTITUR and the plaintiff agreed.

Plaintiff's damages presented to the jury which were supported by competent evidence totaled \$110,270.66, comprised of \$23,950.00 for the value of his automobile, \$2,560.66 paid by the Plaintiff to K & M to inspect the vehicle, \$41,880.00 in storage fees, and \$41,880.00 in loss of use damages sustained by the Plaintiff. Notwithstanding that Plaintiff's claims for punitive damages were dismissed on directed verdict, the jury returned a verdict of \$200,000.00, \$89,729.34 in excess of Plaintiff's damages proven at trial by competent evidence. For this reason, Plaintiff consented to and this Court accepted and so orders a remittitur of the jury's verdict to the precise damages figure proven by competent evidence at trial, that being: **\$110,270.66**.

Defendant's Motions (NOV & New Trial)

This Court heard and then, in its discretion, *denies* Defendant City Chevrolet Automotive Company's motions NOTWITHSTANDING THE VERDICT pursuant to Rule 50 of the North Carolina Rules of Civil Procedure, and/or a NEW TRIAL pursuant to Rule 59 of the North Carolina Rules of Civil Procedure.

Plaintiff's Motions (Chapter 75 & Attorney's Fees/costs)

The Court concludes as a matter of law that Defendant's conduct for which it was found liable by the jury, specifically but not limited to, the jury's finding of fraud together with the jury's affirmative answers and findings to verdict issues 2, 3(a), and 3(d), constitutes a violation of the NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT at N.C. Gen. Stat. § 75-1 *et seq.* Thus, after taking into account Plaintiff's consent to a remittitur of the jury's verdict to \$110,270.66, the court orders this figure *trebled* pursuant to N.C. Gen. Stat. § 75-16, to **\$330,811.98**.

Plaintiff's counsel subsequently submitted a motion for ATTORNEY'S FEES with accompanying attorney affidavits to this Court pursuant to N.C. Gen. Stat. § 75-16.1. This Court did not find a willful refusal to settle this action on the part of the Defendant as required by N.C. Gen. Stat. § 75-16.1(1) and therefore the court *denies* Plaintiff's motion for attorney's fees pursuant to that statute. However, the Court did find and conclude as a matter of law that Defendant's conduct it was found to have engaged in by the jury, specifically by verdict issues 2, 3(a), and 3(d), equates to a violation the North Carolina Motor Vehicle Repair Act at N.C. Gen. Stat. § 20-354 *et seq.* which permits attorney's fees to be awarded pursuant to N.C. Gen. Stat. § 20-354.9. Therefore, the Court has determined that an award of attorney's fees are appropriate

under N.C. Gen. Stat. § 20-354.9 and in the exercise of the Court's discretion, the Court (after having reviewed the affidavits and considered that Plaintiff's counsel has reasonably expended a considerable amount of time in this case meriting an award of attorney's fees) grants plaintiff's request for attorney fees. Specifically the court finds reasonable: (a) that Attorney Jason Taylor has spent 137.25 hours on this matter and has represented his hourly rate is \$300.00, and (b) Attorney Lawrence Serbin spent 198.5 hours working on this matter and has represented his hourly rate is \$300.00, together with expenses the law firm submitted. The Court reviewed and considered the submissions of time and expenses by both attorneys and considered the complexity, both factually and legally, and the amount of evidence assembled and presented to the jury, the expertise by Attorneys Jason Taylor and Lawrence Serbin before the Court during the trial, and the results obtained. Considering all of the above factors, the Court in its discretion awards Plaintiff ATTORNEY'S FEES in the amount of \$100,725.00.

The Court has likewise heard both parties regarding costs. The court reviewed the submissions and evidence of Plaintiff's costs incurred in pursuing this action, and awards COSTS to Plaintiff in the amount of \$6,726.68 pursuant to N.C. Gen. Stat. § 6-20 as indicated in open court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. Judgment against Defendant, City Chevrolet will be entered in the amount of \$110,270.66 which amount is trebled per this order to \$330,811.98 together with costs of \$6,726.68 and attorney's fees of \$100,725 and with the interest accruing at the legal rate.
2. Defendant's motion to dismiss Hendrick Luxury Collision Center LLC is granted.
3. Defendant's motion for New trial and Judgment NOV is denied.
4. Remittitur is ordered by consent of Plaintiff as indicated above.
5. Plaintiff's motions for treble damages granted.
6. Plaintiff's motion for attorney's fees under Chapter 75 is denied.
7. Plaintiff's motion for attorney's fees, in the courts discretion, under NCGS §20-354.9, or as otherwise authorized under law, is granted.

This the 28 day of December, 2015.



The Honorable Daniel A. Kuehnert
Superior Court Judge Presiding