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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

HON. JAMES G. BERTOLI, JUDGE DEPARTMENT NO. 22

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FLOYD WILKINS,

Plaintiff,

vs.

No. SMC-09-174813

MICHAEL DELROSS,

Defendant.

COPY

CECIL MASON,

Plaintiff,

No. SMC-09-175738

DYLAN ELLIS & SUZANNE ELLIS,

Defendants.

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REPORTER'S TRANSCRIPT
SMALL CLAIMS APPEAL TRIAL
Proceedings of
Thursday, October 29, 2009

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Reported by:

Mona R. Babin, CSR 3819

1 to a shop that will perform the repairs, bring the car to its
2 pre-accident condition for reasonable price, all -- that's all
3 that matters.

4 Whatever State Farm wants to pay, that's between
5 State Farm and defendant. And then whatever the difference,
6 defendant has to pay out of pocket. I mean it's a very simple
7 concept. So plaintiff is no way bound by -- by the
8 shortcomings of the defendant's insurance. If they have --
9 defendant had no insurance, then defendant would have to pay
10 the whole amount. If they have insurance that refuses to pay
11 certain portion of the bill, well, then defendant is
12 responsible for that shortfall.

13 THE COURT: We submitted counsel?

14 MR. SCOTT: Submitted.

15 THE COURT: Thank you, counsel.

16 Few comments. One thing this case is not is a
17 determination as to whether or not the survey is accurate.
18 Quite frankly the contractual relationship between State Farm
19 and its insured can develop whatever methodology they want to
20 come up with a price on their first party claims. If State
21 Farm chose to determine their price by reading chicken
22 entrails and -- consulting with the three witches from *McBeth*,
23 that's fine. I think that's just about as accurate as the
24 survey itself is. I think that survey from a statistical
25 standpoint would get a first year college student a flanking
26 grade. But that's the method they chose. That's the method
27 that their people agreed to, their insured agreed to. That's
28 the contract. So be it.

1 I still firmly believe that the question that is
2 before this Court today and yesterday and has been on every
3 one of these cases that has been before this Court and a
4 number of other judges in this Court is whether or not the
5 price that was charged by G and C for the labor that they
6 performed was reasonable. That is how damages are determined
7 in a negligence case.

8 Here the Court, as I said in my previous comments,
9 was presented with a range of prices from the 70s to the one
10 teens, as I would call it. Judge Cox wrote in his decision a
11 paragraph that I think accurately reflects what this Court's
12 obligation is under the damages for a third party claim. He
13 wrote, the third party plaintiff is entitled to be compensated
14 for the reasonable cost of repairs that are necessary to
15 restore the vehicle to its pre-accident condition. Plaintiff
16 asserts that the bill submitted by G and C is a reasonable
17 charge. State Farm argues that the amount it tendered is the
18 reasonable sum required. State Farm did not attempt to
19 establish the G and C rate was unreasonable. A reasonable
20 charge implies a range of charges. If the charge falls within
21 that range, it will be deemed to be reasonable. No particular
22 charge can be said to be the only reasonable charge. The G's
23 and C charge fell within the range of reasonableness.

24 I concur with what Judge Cox wrote. There's no one
25 set reasonable charge. It's not \$80. It's not \$98. It's not
26 \$117 dollars. It's that range. The 98 fell within it. The
27 amount also -- it applies the same way with the paint rates.
28 ~~It applies the same way with the body repair rates. It's a~~

1 range of prices. It's not just one number. It can't be just
2 one number. It's what is a reasonable charge.

3 No evidence was presented to refute the plaintiffs'
4 claim that they paid a reasonable price to have their vehicle
5 brought back to its standard -- to its pre-accident condition.
6 There was none. This Court was never presented with any
7 evidence that said 98 or 88 is on its face, or even digging
8 below the surface, an unreasonable amount. That is this
9 Court's understanding of basic damage evaluation in a
10 negligence claim.

11 So the Court is going to find for Mr. Wilkins in his
12 case in the amount of \$2,159.74. The Court is going to find
13 in favor of Mr. Mason in the amount of \$750 dollars plus he's
14 entitled to be reimbursed for his lost wages. The request was
15 for \$100 in lost wages and the Court will award that.

16 With regard to the area of attorney fees, this
17 matter has come up again and again and again and again. I'm
18 aware at least that Judge Rushing, Judge Boyd, myself -- seems
19 to me there was one other -- along with Judge Cox have
20 continually ruled in this case consistently with regard to the
21 third party claims as this Court has ruled today. Quite
22 frankly with regard to the third party claims this Court does
23 not believe they should have been litigated. I think the
24 answer is clear. And I quite frankly see it as an effort on
25 behalf of the insurer to try and suppress the price charged by
26 someone outside of their range. Unfortunately when we're
27 looking at the issue of attorney fees I've got to look at the
28 ~~behavior of the defendants. This Court did not receive any~~

1 evidence that either Mr. Delross or the Ellis conducted
2 themselves in any fashion that would warrant the award of
3 attorney fees. So the Court is going to deny the request for
4 attorney fees.

5 And that will conclude the proceeding.

6 Gentlemen, thank you very much.

7 Are the exhibits withdrawn or were you going to have
8 a record prepared?

9 Do you want them back?

10 MR. SCOTT: I suppose we can take them back.

11 MR. ZURADA: I would take them back.

12 (Exhibits withdrawn.)

13 THE COURT: Very well. Thank you.

14 (Proceedings concluded.)

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