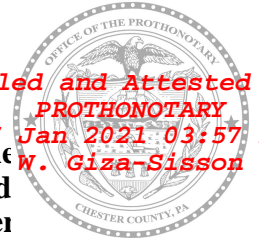


Filed and Attested by
PROTHONOTARY
07 Jan 2021 03:57 PM
W. Giza-Sisson



TO ALL PARTIES:
You are notified to plead to the
within New Matter within 20 d
default Judgment may be enter
against you.

BY: *Joseph Branca*

Joseph Branca
Attorney for Defendant
Billy Ray Hamilton

BY: JOSEPH BRANCA
Identification No. 34784
Law Office of Lester G. Weinraub
660 W. Germantown Pike, Suite 100
Plymouth Meeting, Pa. 19462
Phone (484)351-0642
Fax 1-877-468-0855
E Mail brancaj1@nationwide.com

THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

CRAWFORD'S AUTO CENTER, INC. : NO. 2020-09159-CV
VS. :
BILLY RAY HAMILTON :

ANSWER WITH NEW MATTER OF DEFENDANT BILLY RAY HAMILTON

1. Admitted.
2. Admitted.
3. Denied. After reasonable investigation, Answering Defendant, Billy Ray

Hamilton, is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.)

4. Admitted in part and Denied in part. It is admitted that on or about June 1, 2020, the Answering Defendant, Billy Ray Hamilton, was involved in an automobile accident in Chester County, PA. As to the averment that Schreiter was operating a motor vehicle involved in that same automobile accident, Answering Defendant, Billy Ray Hamilton, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth of those averments. All averments of this paragraph which are not specifically admitted above are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.)

5. Admitted in part and Denied in part. It is admitted that on or about June 1, 2020, the Answering Defendant, Billy Ray Hamilton, was involved in an automobile accident in Chester County, PA. As to the averment that Schreiter was operating a motor vehicle involved in that same automobile accident, Answering Defendant, Billy Ray Hamilton, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth of those averments. All averments of this paragraph which are not specifically admitted above are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.)

6. Admitted in part and Denied in part. It is admitted that on or about June 1, 2020, the Answering Defendant, Billy Ray Hamilton, was involved in an automobile accident in Chester County, PA. As to the averments that Schreiter was the owner and operator of a motor vehicle involved in that same automobile accident, and that the motor vehicle owned by Schreiter was damaged as a result of that automobile accident, Answering Defendant, Billy Ray

Hamilton, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth of those averments. All averments of this paragraph which are not specifically admitted above are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.)

7. Denied. All averments of this paragraph, including, but not limited to, subparagraphs a through f inclusive, are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.)

8. Denied. Answering Defendant, Billy Ray Hamilton, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth of all of the averments of this paragraph. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.)

9. Denied. Answering Defendant, Billy Ray Hamilton, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth of all of the averments of this paragraph. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.)

10. Denied. Answering Defendant, Billy Ray Hamilton, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth of all

of the averments of this paragraph. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.)

11. Denied. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.)

12. Denied. Answering Defendant, Billy Ray Hamilton, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth of all of the averments of this paragraph. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.)

13. Admitted in part and denied in part. It is denied that Answering Defendant, Billy Ray Hamilton personally paid any amount of money to Plaintiff. It is admitted that, on behalf of Answering Defendant, Billy Ray Hamilton, \$7,182.27 was paid to Plaintiff.

14. Admitted in part and Denied in part. It is admitted that after payment to Plaintiff, on behalf of the Answering Defendant, Billy Ray Hamilton, of the amount of \$7, 182.27 no further amount was paid to Plaintiff. It is specifically denied that Plaintiff is legally entitled to receive, from Answering Defendant, Billy Ray Hamilton, an additional amount of \$6,280.29, or any other additional amount.

15. Denied. Answering Defendant, Billy Ray Hamilton, after reasonable

investigation, is without knowledge or information sufficient to form a belief as to the truth of all of the averments of this paragraph. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.)

16. Denied. It is specifically denied that Answering Defendant, Billy Ray Hamilton, has any legal obligation to pay any amount to the Plaintiff. Answering Defendant Billy Ray Hamilton did not enter into a contract with the Plaintiff. Answering Defendant Billy Ray Hamilton never agreed to pay any amount of money to the Plaintiff. Answering Defendant, Billy Ray Hamilton committed no tort against the Plaintiff. The averment that Answering Defendant, Billy Ray Hamilton, is legally obligated to pay, to Plaintiff, the charges reflected in the Crawford's Final Bill, is specifically denied. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law, to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.) The answers to paragraphs one through fifteen above are incorporated by reference.

17. Denied. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.) The answers to paragraphs one through sixteen above, are incorporated by reference. The answers to paragraphs eighteen through twenty-four and the averments of paragraphs 25 through 60 are incorporated by reference.

18. Denied. It is specifically denied that the repairs were made in accordance with the

contract, specifications and design, industry code, standards and practices. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.) The answers to paragraphs one through seventeen above are incorporated by reference.

19. Denied. It is specifically denied that Answering Defendant, Billy Ray Hamilton, owes Plaintiff for the repairs performed to the vehicle. It is specifically denied that the repairs and charges stemming therefrom were reasonable and necessary. The answers to paragraphs one through eighteen above and the answers to paragraphs twenty through twenty-four below and the averments of paragraphs twenty-five through sixty below, are incorporated by reference.

**COUNT I-NEGLIGENCE
CRAWFORD'S VS. HAMILTON**

20. Answering Defendant, Billy Ray Hamilton, incorporates by reference, his answers to paragraphs one through nineteen above.

21. Denied. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.) The answers to paragraphs one through twenty above are incorporated by reference.

22. Denied. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.) The answers to paragraphs one through twenty-one above are incorporated

by reference.

23. Denied. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.) The answers to paragraphs one through twenty-two above and the answer to paragraph twenty-four below and the averments of paragraphs twenty-five through sixty below, are incorporated by reference.

24. Denied. All averments of this paragraph are denied generally, pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and/or constitute conclusions of law to which no response is required, and which are deemed denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (d.) The answers to paragraphs one through twenty-three above and the averments of paragraphs twenty-five through sixty below are incorporated by reference.

WHEREFORE, Answering Defendant, Billy Ray Hamilton, demands judgment in his favor and against the Plaintiff.

NEW MATTER ADDRESSED TO PLAINTIFF

25. Answering Defendant, Billy Ray Hamilton, incorporates by reference the answers to paragraphs one through twenty-four above.

26. Plaintiff's claims are barred and/or limited or reduced in accordance with the Pennsylvania Motor Vehicle Financial Responsibility Law, the relevant provisions of which are incorporated by reference herein as fully as though the same were here set forth in length.

27. Plaintiff's claims are barred and/or reduced by the Applicable Statute of Limitations and/or the Doctrines of Collateral Estoppel, Res Judicata, Accord and Satisfaction or Release,

Failure to Join an Indispensable Party, Gist of the Action, Economic Loss Doctrine, and/or by Bankruptcy.

28. Plaintiff failed to mitigate Plaintiff's Damages.

29. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted against the Answering Defendant, Billy Ray Hamilton.

30. Answering Defendant, Billy Ray Hamilton was not a party to any contract entered into between Plaintiff and Schreiter, for repair of the Schreiter Motor Vehicle.

31. Answering Defendant, Billy Ray Hamilton, never authorized Plaintiff to make any repair to, or do any work upon, the Schreiter Motor Vehicle.

32. Answering Defendant, Billy Ray Hamilton, had no opportunity to negotiate any of the terms of any contract, entered into between Plaintiff and Schreiter, for work to be done to, or repairs made to, the Schreiter Motor Vehicle.

33. Any contract entered into between Plaintiff and Schreiter, is not legally binding upon the Answering Defendant, Billy Ray Hamilton.

34. As to Answering Defendant, Billy Ray Hamilton, any contract entered into between Plaintiff and Schreiter is a contract of adhesion, which is contrary to public policy and not legally binding upon Answering Defendant, Billy Ray Hamilton.

35. The hourly rate charged by Plaintiff for all of the work performed by Plaintiff upon the Schreiter Motor Vehicle, was in excess of the reasonable and customary hourly rate, which is charged in Chester County, by businesses which provide the same services.

36. The hourly rate charged by Plaintiff for its services was not the reasonable and customary hourly rate charged by businesses in Chester County, PA., for the same services and was unreasonable and excessive.

37. Pursuant to Exhibit A to Plaintiff's Complaint, the "Contract of Repair and Repair Authorization", at "Section 4./ Assignment of Proceeds", the Plaintiff recognized that an insurer or a responsible third party may deny payment of Plaintiff's charges, and Customer, Schreiter, accepted the responsibility, to pay to Plaintiff, any charge for which payment was denied. In the final sentence of Section 4 the Customer/Schreiter, agreed that, "I UNDERSTAND THAT I AM FINANCIALLY RESPONSIBLE FOR ALL CHARGES NOT OTHERWISE PAID." (emphasis in original.)

38. Plaintiff has failed to join an indispensable party to the litigation, the Customer/Schreiter.

39. Attached as Exhibit C to Plaintiff's Complaint is a Document entitled, "Assignment of Proceeds", with Schreiter identified as Assignor and Plaintiff identified as Assignee.

40. The "Assignment of Proceeds" was drafted by Plaintiff and/or by Plaintiff's agent or employee, for and on behalf of Plaintiff.

41. The "Assignment of Proceeds" must be interpreted strictly against the Plaintiff.

42. The "Assignment of Proceeds" purports to assign to Plaintiff " any payments, monies, issues and proceeds."

43. The "Assignment of Proceeds" does not assign to Plaintiff any cause of action, including a cause of action for negligence, which the Assignor /Schreiter may have against the Answering Defendant, Billy Ray Hamilton, arising from an auto accident that occurred on or about June 1, 2020.

44. Plaintiff's Complaint sounds only in the tort of negligence.

45. The gist of the action is for breach, by the Customer/Schreiter, of the contract

between Plaintiff and the Customer/Schreiter.

46. The gist of the action doctrine prohibits Plaintiff from transforming an action for breach of contract, into a cause of action which sounds in negligence.

47. Plaintiff's Civil Action against the Answering Defendant, Billy Ray Hamilton, is barred by the Gist of the Action Doctrine.

48. The Economic Loss Doctrine prohibits Plaintiff from transforming an action by Plaintiff, against the Customer/ Schreiter, into an action for negligence.

49. Plaintiff's Civil Action against the Answering Defendant, Billy Ray Hamilton, is barred by the Economic Loss Doctrine.

50. The document entitled, "Assignment of Proceeds", attached as Exhibit C to Plaintiff's Complaint, contains no consideration, by the Assignee/ Plaintiff, to the Assignor/Schreiter.

51. The only consideration allegedly provided by the Assignee/Plaintiff, to the Assignor/Schreiter, is, "the contract to undertake the repair of a 2013 Subaru Forrester..."

52. The recited consideration is illusory, and no actual consideration was provided by Plaintiff/Assignee to the Assignor/Schreiter.

53. The "Assignment of Proceeds" is not an enforceable contract.

54. The "Assignment of Proceeds", does not provide a legal basis for the above captioned civil action, by Plaintiff, against the Answering Defendant, Billy Ray Hamilton.

55. The Plaintiff's Complaint fails to set forth a cause of action, on the part of the Plaintiff, against the Answering Defendant, Billy Ray Hamilton.

56. Plaintiff agrees that payment was made to Plaintiff, on behalf of Answering Defendant, Billy Ray Hamilton, in the amount of \$7,182.27.

57. Plaintiff agrees that Plaintiff has received the amount of \$7,182.87, which was paid to Plaintiff on behalf of the Answering Defendant, Billy Ray Hamilton.

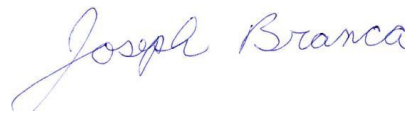
58. Plaintiff's Complaint seeks damages against Answering Defendant, Billy Ray Hamilton, of \$6,280.29.

59. Answering Defendant, Billy Ray Hamilton, is entitled to a credit, against the amount of damages sought by Plaintiff, \$6,280.29, for any and all payments made on behalf of Defendant Billy Ray Hamilton, in excess of \$7,182.27.

60. Any Award or Judgment in favor of Plaintiff must be for not more than the usual and customary hourly rate, which is charged by businesses in Chester County, PA., for the same type of services provided by Plaintiff.

WHEREFORE, Answering Defendant, Billy Ray Hamilton, demands judgment in his favor and against the Plaintiff.

Respectfully submitted,

A handwritten signature in blue ink that reads "Joseph Branca". The signature is written in a cursive, flowing style.

Joseph Branca
Attorney for Answering Defendant,
Billy Ray Hamilton

VERIFICATION

I, JOSEPH D. BRANCA, verify that I am the attorney for Defendant, Billy Ray Hamilton, and that I am authorized to make this verification on Defendant's, Billy Ray Hamilton, behalf and that the information contained in the attached Answer with New Matter is true and correct based on information provided to me; and that this statement is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

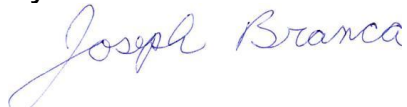
A handwritten signature in blue ink that reads "Joseph Branca". The signature is written in a cursive style with a long, sweeping underline.

Joseph Branca

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

A handwritten signature in blue ink that reads "Joseph Branca". The signature is written in a cursive style with a large initial "J".

Signature: _____

Name: Joseph Branca

Attorney No. (if applicable): 34784

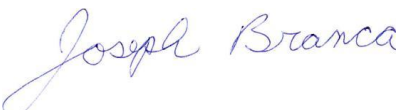
CERTIFICATION OF SERVICE

JOSEPH D. BRANCA, verifies a true and correct copy of DEFENDANT'S ANSWER WITH NEW MATTER TO PLAINTIFFS' COMPLAINT was sent on this day
Via Electronic Mail to the following:

Andrew C. Eckert, Esq.
Brown McGarry Nimeroff, LLC
158 West Gay Street
Suite 200
West Chester, PA. 19380

LAW OFFICE OF LESTER G. WEINRAUB

Date: January 7, 2021


BY _____
JOSEPH D. BRANCA
Attorney for Defendant
Billy Ray Hamilton