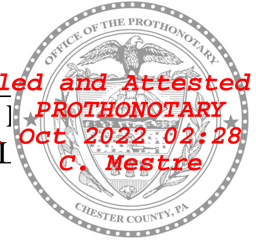

CRAWFORD'S AUTO CENTER, INC. Plaintiff vs. BILLY RAY HAMILTON Defendant	IN THE COURT OF COMMON P CHESTER COUNTY, PENNSYL NO. 2020-09159-CV CIVIL ACTION – LAW

ORDER

AND NOW, this 21st day of October, 2022, after a trial by the court sitting without a jury on August 9, 2022, this court **ORDERS**:

Judgment is entered in favor of Plaintiff Crawford's Auto Center, Inc., on Count I – Negligence – in the amount of $6280.29.

BY THE COURT:

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BRET M. BINDER, J.

MEMORANDUM

This case originates out of an auto accident on June 1, 2020, resulting in damages to the 2013 Subaru Forester (the "Vehicle") owned by Karl Schreiter, Jr., when Defendant Billy Ray Hamilton rear-ended the Vehicle. Liability for the accident is not at dispute. Rather, at dispute are two issues: (1) whether Crawford's Auto Center, Inc. ("Crawford's" or "Plaintiff") is a proper party to the suit due to an assignment, written or oral; and, if so, (2) the appropriate amount of damages for the time spent and materials used in repairing the Vehicle.

Mr. Schreiter brought his vehicle to Crawford's in Downingtown, Pennsylvania for repairs. Mr. Schreiter entered into a contract for repair dated June 1, 2020 (the "Contract"). Exhibit P-1. The Contract contained an "Assignment of Proceeds" section. Id., ¶4. At the end of repairs, the final bill prepared by Crawford's was $13,462.56. Exhibit P-2. Defendant, through his agent, paid $7,182.77 – representing its pre-repair estimate. Exhibit D-3 (July 2, 2020 repair estimate on behalf of Defendant). Plaintiff released the Vehicle to Mr. Schreiter upon receipt of those funds and Mr. Schreiter executing a separate document titled "Assignment of Proceeds." Exhibit P-3.

Defendant and his agent have refused to pay the remaining balance of $6,280.29. At issue is the rate charged for labor by Plaintiff as well as the validity of the assignment via either the Contract or the Assignment of Proceeds. The validity of the assignment of Mr. Schreiter's claims to Plaintiff was not challenged in a pre-trial motion of any sort; however, Defendant raised the issues in his Pre-Trial Statement and Trial Memorandum filed July 20, 2022 (raising the issue of assignment of proceeds in the Contract as well as the lack of validity of the Assignment of Proceeds document).

Plaintiff argues that Defendant waived the arguments regarding the validity of the assignments because the issue was not raised in his preliminary objections or answer to the complaint. Plaintiff cites Erie Indemnity Co. v. Coal Operators Casualty Co., 272 A.2d 465, 467

(Pa. 1971) for the proposition that the issue of incapacity to sue is waived unless specifically raised in the form of preliminary objections or in the answer. Accord, Huddleston v. Infertility Center of America, 700 A.2d 453, 457 (Pa.Super. 1997) (citing Erie). Presently, the Answer and New Matter of Defendant is rife with statements implicating the validity of the contract and the standing of Plaintiff without using those explicit terms. See Answer with New Matter filed 1/7/2021, ¶¶ 30-54. Accordingly, this court will not find waiver and will address the substantive issues raised.

Plaintiff additionally argues that Defendant lacks standing to attack the validity of the Contract or Assignment of Proceeds and cites Shuster v. Pa. Turnpike Commission, 149 A.2d 447 (Pa. 1959) (holding, in part, that the statute of frauds cannot be raised by a third party to invalidate a contract to which they are not in privity but that the contract may be enforced if the parties to the contract affirm its existence). Here, the parties to the contract affirmed the existence and intent of the contract and Defendant lacks standing to make this argument. This court notes that neither party cited a case where a stranger to a contract attacked the validity of that contract, successfully or otherwise. A third-party beneficiary has the right to enforce a contract but this court is skeptical that a corollary exists by which a third-party burdened by a contract can challenge the validity of that contract.[1] In an abundance of caution, this court will analyze the substance of the claims at issue, particularly given that Shuster is not on point as the statute of frauds is not at issue.

Turning to the two documents at issue, the Contract provided:

> As a result of a contract of insurance or some other legal right, Customer anticipates an insurer may be required to reimburse Customer for some or all of the payment for repairs. **Customer agrees to assign the** proceeds and/or **benefits of that contract or right to Repair Facility**. Repair Facility may require Customer to sign a separate Assignment of Proceeds document, which is incorporated herein by reference, if Repair Facility so elects.

[1] Defendant argues in his post-trial submission that it has standing to challenge the validity using the hypothetical of an assigned debt in which the assignment was fraudulent. That hypothetical is not germane to the instant matter where Defendant is not challenging the existence of the assignments or the validity of the signatures but wishes to interpret the contract outside of the express language and as affirmed by the testimony of the parties to the contract regarding their intent.

> Otherwise, if no separate Assignment of Proceeds document is executed, then this provision shall operate as **the Customer's express agreement to Assign Proceeds and/or benefits payable by an insurer or third party** to Repair Facility for the repair-related costs, expenses, services, and charges set forth in Section 2.

Exhibit P-1 at ¶ 4 (emphasis added).

Defendant points to the latter portion of the section to state that the assignment is just for money actually paid by an insurer or third party. This argument overlooks the plain language of the agreement bolded above. Namely, the Customer assigns the benefits of any insurance contract or the "right" to reimbursement for some or all of the payment for repairs from an insurer or third party. The language is clear on its face. Moreover, read in whole, it is apparent that the intent of the contract is to allow Plaintiff to pursue the rights of Mr. Schreiter to be reimbursed for repair costs.

Additionally, Plaintiff and Mr. Schreiter executed an Assignment of Proceeds prior to the release of the Vehicle to Mr. Schreiter before full payment was made. The Assignment of Proceeds provides:

> For and in consideration of the contract to undertake the repair of [the Vehicle], which [Schreiter] acknowledges he/she has the right of ownership, lease, and/or possession, and for the purpose of inducing [Plaintiff] to engage in repair activities and secure payment, therefore, [Schreiter] hereby absolutely and unconditionally transfers, assigns and sets over to [Plaintiff], its successors and assigns, from and after the date hereof, all of [Plaintiff's] right, title and interest in and to all payments, monies, issues, and proceeds ("proceeds") due or that become due relating to the contract for repair, storage, towing, bailment, custody, or associated charges for the motor vehicle that may be paid by some person or entity other than Assignor.
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> [Plaintiff] shall have the right, power and authority: . . . (b) to settle, compromise or release, on terms acceptable to [Plaintiff], in whole or in part, any amounts owing on the Contract for Repair and associated costs; (c) to enforce payment of Proceeds and to

> prosecute any action or proceeding . . . and/or (d) to enforce all other rights of [Schreiter] with respect to securing payment of Proceeds.

Exhibit D-2, p. 1.

This language is set forth in a clear and easy to understand language that Mr. Schreiter assigned all rights he held to secure payment for the cost of repairs to the Vehicle including, explicitly, the right to prosecute any action. Moreover, presumably in anticipation of any issues, Mr. Schreiter agreed:

> To the extent it may be necessary, [Schreiter] agrees to assist in the recovery of [Plaintiff's] outstanding amounts/invoices, including executing necessary documents and to appear and testify in any court proceeding/hearing. [Schreiter] further agrees he/she will not object to any joinder as a necessary party in a lawsuit, pursuant to Pa.R.Civ.P. 2227.

Id., p. 2. Mr. Schreiter, in fact, did appear and testify regarding the accident, the repairs to the Vehicle, his voluntary execution of the Contract and of the Assignment of Proceeds, and his understanding that it gave Plaintiff the right to pursue the action before this court.

Accordingly, the plain language is clear that Plaintiff holds the right to stand in Mr. Schreiter's shoes and pursue payment from Defendant for the cost of repairs. Defendant argues that because the action sounds in negligence it is somehow outside the scope of the language in the Contract and Assignment of Proceeds.[2] That argument ignores the fact that a negligence action to recover property damage is an "action or proceeding" with the intent "to enforce payment of proceeds" related to the repair. Even if that clear language were not applied, the catchall provision of subsection (d) above would apply "to enforce all other rights . . with respect to securing payment of Proceeds."

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[2] This court does not address assigning a negligence claim and pursuit of damages for pain and suffering of the assignor. Rather, this analysis covers only the instant matter in which Plaintiff has performed repairs itself, has an interest in being paid for the damages caused by Defendant, and there is an assignment in place limited to property damage.

Defendant further argues that there was no consideration for the assignment of the claims. Defendant ignores or fails to consider that the initial Contract to repair the vehicle was a bargained for promise to repair the vehicle in exchange for both money and/or the right to pursue money from potentially responsible sources. In addition to the language cited above, the Contract specifically stated that "Repair Facility may require Customer to sign a separate Assignment of Proceeds document, which is incorporated herein by reference, if Repair Facility so elects." Exhibit P-1, ¶ 4. The Repair Facility/Plaintiff did so elect and the Assignment of Proceeds was executed by Mr. Schreiter both clarifying and expounding on the assignment in the Contract. Moreover, ample consideration was given as Plaintiff released the Vehicle to Mr. Schreiter without first receiving payment in full in exchange for the right to pursue any third parties for payment. The release of the vehicle without payment is significant consideration in and of itself. Accordingly, the claim of invalidity for lack of consideration fails.

Defendant next argues that the cost of repairs was unreasonable. To that end, Defendant called Christian Harper, a damage appraiser for Nationwide Insurance. Mr. Harper wrote the original estimate, Exhibit D-3 for $7,182.27. Mr. Harper testified that the bulk of the difference between the repair costs billed and his estimate was the difference in the rate for labor. Exhibit D-6 (providing a breakdown in differences between Plaintiff's charged rates and his estimate using the same number of hours).[3]

Mr. Harper has been in the business for approximately 30 years and prepared the original estimate by reviewing images due to COVID restrictions. He has dealt with automotive body shops in Chester County for approximately 30 years and has delt with approximately 50 automotive body shops in Chester County. He credibly testified that the other auto body shops in

[3] The difference ultimately totals $4,398.64 given certain adjustments (that are not ultimately relevant) made by Defendant and adjusting to match the number of hours worked by Plaintiff. Defendant conceded the hours worked and that an additional $1,881.65 of the amount claimed by Plaintiff should be paid by Defendant although it has not been tendered to date.

Chester County accept payment in the range of $52-56/hour depending on the type of work being performed. Mr. Harper did not recall if posted rates in those shops were higher and thus the auto body shops were accepting a reduced rate from Nationwide Insurance. Mr. Harper stated that none of those 50 auto body shops have a specific agreement with Nationwide although he did not know if they had an agreement with other insurers. Mr. Harper further stated that rates are determined by software he uses through Nationwide.

Mr. Harper's testimony was credible and establishes definitively that $52-56/hr for labor would match market rates and be reasonable. However, the inquiry does not end there. Both parties agree as to the liability and scope of repairs. To prevail, Defendant would need to show that the damage repaired by Plaintiff was billed at an unreasonable rate, not merely that Plaintiff's rate is more than another reasonable rate.

To that end, Stephen Behrendt, the owner and president of Plaintiff, testified. He stated that he has been in the auto body repair business for the past 50 years. Moreover, he is the third-generation owner of Plaintiff, which has been in business for 75 years. He stated that he is familiar with prevailing rates set generally and prevailing rates paid by insurance companies, both. He noted that he derived his hourly rates of $85-95/hr based on his knowledge of the industry, the rule of 1/3s (labor cost, overhead cost, and profit in equal 1/3s – although he testified he is undercharging by that metric), and through his work as director of the Pennsylvania Collision Repair Guild. He stated that he does not accept insurance company rates.

Plaintiff attempted to introduce Exhibit P-6, a labor survey of the automotive industry in Pennsylvania and this court originally sustained objections to that document. However, Defendant opened the door to its admission on cross with extensive questioning on that document and the personal knowledge of Mr. Behrendt. That document shows an average rate of $91/hr. Mr. Behrendt was not able to state how many auto body shops are in Chester County who took part in

the survey or some of the specifics within it. He did testify that the guild has approximately 450 members.

Ultimately, the most relevant information regarding the reasonableness of the price charged by Plaintiff lies in the fact that it has operated for 75 years and charges this rate to all of its customers consistent with Mr. Behrendt's knowledge of rates in the industry and region. Plaintiff introduced Exhibit P-7, which had four repair bills between 2019 and 2020 paid by private individuals and insurance companies with rates between $75 and $95 per hour. Mr. Behrendt testified that there are many more customers that have paid the same rates but that he brought the four invoices and checks as representative samples.

This court agrees that the rates charged by Plaintiff were also reasonable and fair market rates. Much as there is a range of rates charged by various professionals from plumbers to electricians to attorneys, no single rate is dispositive or the sole fair and reasonable rate that the market will bear. There is, of course, some upper limit to the amount that may be charged per hour by an auto body shop and still be reasonable; however, here the repairs were done competently, at a fair market price, and all parties agree the repairs were required. Defendant, understandably, wishes to pay as low a rate as possible. However, Defendant has conceded liability for causing the damages to the Vehicle and the scope of repairs needed, and Mr. Schreiter had the right to choose Plaintiff as he has in the past in an arms-length transaction. Plaintiff performed the repairs and charged its customary and ordinary rates, which were reasonable. Plaintiff stands in the shoes of Mr. Schreiter pursuant to two valid assignments. Accordingly, Plaintiff is entitled to reimbursement for the full value of its work.