

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: KINGSHILL

JAMES BURNS,

Plaintiff,

vs.

EMANUEL AUTO & ENGINE REPAIR
and Samuel Emanuel,

-Defendants.

SC. 653/1988

ACTION FOR DEBT

JAMES BURNS, Plaintiff, Pro Se
Plot #48 Estate La Vallee
Christiansted, St. Croix
U.S. Virgin Islands 00820
(809) 778-0895

EMANUEL AUTO & ENGINE REPAIR,
Samuel Emanuel, Defendant, Pro Se
Midland Road Route 72
Plot 5AF Est. Calquohoun
Frederiksted, St. Croix
U.S. Virgin Islands 00840

ELTMAN, Judge

MEMORANDUM OPINION
(October 4, 1988)

After his 1983 Chevrolet Blazer was damaged in a collision, the plaintiff took the vehicle to the defendant in order to have it repaired. The estimate given by Samuel Emanuel, the owner of the repair service, was \$4,125.80. The estimate prepared by the defendant contained a detailed list of the items to be replaced. Although the estimate was for substantially more money than the plaintiff received from his insurance company, the defendant agreed to perform all of the repairs for the total amount of the insurance proceeds, \$3,439.28.

After the defendant supposedly completed all of the repairs for which the parties had contracted, the plaintiff took possession of the vehicle and, after driving it for awhile, noticed a vibration in the front end and contacted the defendant, who inspected the Blazer and informed Mr. Burns that it needed new tires. The plaintiff, however, contends that there was a visible misalignment between the front wheels and the rear wheels which he learned was the cause of the vibration. Further, the plaintiff discovered that he did not receive a new tire rim, for which the defendant charged \$220.00, but rather a used and damaged rim which had been hammered back into some semblance of shape. In addition, a new glove box, priced on the estimate at \$76.05, had never been installed and instead the old cracked one remained. Mr. Emanuel testified that, although the estimate included all new parts, he and the plaintiff had agreed to use an old rim. As to the glove box, Mr. Emanuel testified that he had not obtained the part by the time Mr. Burns picked up the vehicle. There was no written amendment to the estimate which would support Mr. Emanuel's contention that the details of the agreement had been changed. The plaintiff denies that there was any such modification of the agreement. The Court finds in favor of the plaintiff on this issue.

The plaintiff had additional problems with his Blazer, after it was supposedly repaired, including a broken tie rod.

The vehicle was not operated in rain for several months, so that it took some time for Mr. Burns to discover that the front door was misaligned and permitted water to enter the passenger compartment. Instead of contacting Mr. Emanuel again, he took the vehicle to H. & H Tire and Battery and had extensive repairs done, \$878.03 of which he contends went toward correcting the inadequate workmanship and replacement of used parts installed by the defendant. In addition, the plaintiff has submitted an estimate for \$909.45 for further work which he claims needs to be done to actually accomplish the repairs for which he had contracted with Mr. Emanuel.

It is a basic principle of contract law that an aggrieved party must mitigate his damages to the extent reasonable and possible. The question in this case is whether Mr. Burns was required to make further efforts than he did to have Mr. Emanuel correct what Mr. Burns determined was noncompliance with the agreement. It appears, however, that the plaintiff was legitimately concerned not simply about the quality of the workmanship but also about the safety of the occupants of the vehicle, which was used by his wife, in part for taking the Burns' child to school. Mr. Burns testified that he was afraid of the vehicle breaking down and falling into the sea on the road leading to his home in La Vallee. On balance, the Court finds that it was reasonable under the circumstances for Mr. Burns to be concerned enough about the safety of the vehicle

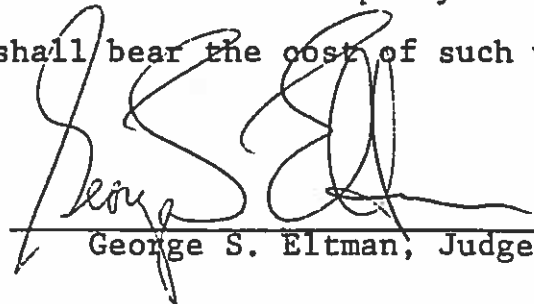
to have it repaired elsewhere without repeatedly contacting Mr. Emanuel. Accordingly, the plaintiff will be awarded \$878.03, representing that amount he paid to H. & H. Tires for work which was supposed to have been done by the defendant. In other words, the defendant will be ordered to refund that portion of what he has already been paid.

What remains to decide is whether the defendant should pay for the remaining work, for which the plaintiff has received an estimate from Antilles Automotive Corporation in the amount of \$909.45. Again, this represents work which Mr. Burns claims he contracted for with Mr. Emanuel but which was either not performed or performed improperly. It appears, however, that none of the items on the Antilles estimate involve defects or problems which are safety-related. Rather they are items of body or cosmetic repair, and they do not all involve the right side of the car, which is the side damaged in the collision. Therefore, the question of whether the plaintiff made reasonable efforts to have Mr. Emanuel correct these problems is answered differently with respect to the Antilles estimate. With respect to such problems, the defendant should have the opportunity to remedy any of the plaintiff's legitimate complaints. Therefore, the plaintiff's request for additional judgment of \$909.45, representing the Antilles estimate, will be denied. However, if the plaintiff wishes to give Mr. Emanuel the opportunity to

Memorandum Opinion
SC. 653/1988
Burns v. Emanuel
Page 5

correct the work, he may do so by bringing the vehicle to the defendant within thirty days, following which the defendant will have thirty days to correct what remains of any outstanding body or cosmetic problems, as reflected on the Antilles estimate. The plaintiff will be awarded up to \$50.00 for the reasonable cost of an independent inspection of any corrective work performed on the vehicle by the defendant. If the results of the independent inspection do not satisfy either party, this matter may be rescheduled for hearing on that issue.

The defendant testified that he is no longer the owner of Emanuel Auto and Engine Repair Service. It is not clear whether he is still in the automobile repair business. If he is not, and the plaintiff wishes the defendant to correct the remaining problems, the defendant may contract with a third party for such repair work, and the defendant shall bear the cost of such work.



George S. Eltman, Judge