

STATE OF VERMONT

**SUPERIOR COURT
Washington Unit**

**CIVIL DIVISION
Docket No. 221-4-15 Wncv**

**F. SAMUEL RABER
Defendant–Appellant**

**on appeal from
Docket No. 509-9-14 Wnsc**

v.

**DANIEL ZAMPIERI
Plaintiff–Appellee**

**SMALL CLAIMS APPEAL
Decision**

Plaintiff Daniel Zampieri, an automobile mechanic, initiated this small claims case seeking compensation from Defendant F. Samuel Raber for repairs to Mr. Raber’s Volvo for which Mr. Raber had refused to pay. Mr. Raber opposed Mr. Zampieri’s claim and filed a counterclaim seeking reimbursement for the expense of buying and repairing a new car so he would have transportation while Mr. Zampieri kept possession of the Volvo. The small claims court found in Mr. Zampieri’s favor and rejected Mr. Raber’s counterclaim. Mr. Raber then appealed.

An appeal from a small claims judgment is heard and decided “based on the record made in the small claims court.” 12 V.S.A. § 5538. “Where the evidence is conflicting the [small claims] court has the sole responsibility for determining its weight and the credibility of the witnesses.” *Whipple v. Lambert*, 145 Vt. 339–40, 1985 (per curiam). The court on appeal will not interfere with a small claims judgment if the findings are sufficient to support the conclusions of law. *Bartley-Cruz v. McLeod*, 144 Vt. 263, 264 (1984).

The court has reviewed the record and listened to the recording of the small claims hearing. In summary, the thrust of the dispute that brought the parties to small claims court is as follows. Mr. Raber was advised by one mechanic that his Volvo needed a repair for a “blown head gasket.” That mechanic did not have time to do the repair so Mr. Raber took the vehicle to Mr. Zampieri. Mr. Zampieri estimated that he could do it for \$700. At the small claims hearing, both parties agreed on that much. From there, the narratives part ways.

According to Mr. Zampieri, he removed the head gasket, had a machine shop work on the heads, and put the car back together. He determined, however, that a blown head gasket was not the problem preventing the car from running. He continued to work on the Volvo. Mr. Raber was aware of and assented to the continuing work beyond the agreed upon head gasket work. However, the parties did not discuss the expense of that additional work. Eventually, Mr. Zampieri got the car running and presented Mr. Raber with a bill about double the original estimate. Mr. Raber originally indicated that he would pay it but eventually refused, insisting that he was liable only for the original \$700 estimate despite all of the additional work.

According to Mr. Raber, he never authorized the additional work and knew nothing about it until Mr. Zampieri surprised him with the bill, and he would not have authorized it if he had been given notice. He had no intention of spending more than \$700 on the car. He offered to pay the agreed upon \$700 but Mr. Zampieri refused it and kept possession of the car. At some point thereafter, lacking transportation for a protracted time, Mr. Raber bought a replacement vehicle.

In a written decision, the small claims court found that Mr. Zampieri kept Mr. Raber informed of the continuing work beyond the head gasket repair and Mr. Raber assented to it. While the parties had not expressly agreed in advance to the specific cost of that additional work, Mr. Raber's assent to it implied that he agreed to pay for it. The court analyzed the dispute over Mr. Zampieri's bill as a breach of contract claim and concluded that Mr. Raber was liable for the reasonable costs of the repairs and that Mr. Zampieri's bill was reasonable.

The court rejected the counterclaim because Mr. Zampieri did not breach the parties' contract and the perceived need to buy a new car arose out of Mr. Raber's refusal to pay the bill, not any failure to perform by Mr. Zampieri. The court expressly rejected any suggestion that Mr. Zampieri's original \$700 estimate had been agreed to as a firm ceiling on the total cost of repairs once it had become clear that the car needed more work beyond the requested head gasket repair. The court also found that Mr. Raber's attempt at an accord and satisfaction was irrelevant because Mr. Zampieri had clearly rejected it. Finally, the court noted that from an equitable standpoint, it would not be fair in these circumstances to compensate Mr. Raber for buying a new car simply because Mr. Zampieri withheld possession of the Volvo for a time.

On appeal, Mr. Raber disputes numerous findings of the small claims court, including that: (1) he was aware of and assented to additional work beyond the head gasket; (2) \$700 was not a ceiling on the total amount of work to be done; and (3) the amount of the bill was reasonable for the work performed. He also argues that buying a new car was a reasonable response to Mr. Zampieri's refusal to return possession of the Volvo to him.

The court on appeal does not modify the findings of the small claims court. It only reviews them to determine if there is reasonable evidentiary support for them. The court understands that the parties' testimony at trial was diametrically opposed. The small claims court's role was to find the facts based on the competing evidence and its evaluation of the witnesses' credibility. The small claims court's findings do not lack evidentiary support. There is no error.

Mr. Raber has not argued that the court misapplied the law to the facts as found with regard to Mr. Zampieri's claim. Nevertheless, the court notes that the small claims court properly applied ordinary contract law to resolve it.

The small claims court also did not err in rejecting Mr. Raber's counterclaim. The court first analyzed the counterclaim by applying contract law. It concluded that Mr. Raber was not entitled to damages because he was the one who breached the contract, not Mr. Zampieri. It also ruled that buying a replacement vehicle was unnecessary, not necessitated by the circumstances,

and would unfairly result in a windfall for Mr. Raber if Mr. Zampieri were to become responsible for the cost of the new car. The total bill was reasonable. Mr. Raber simply refused to pay it.

Mr. Raber's counterclaim was based in part on the length of Mr. Zampieri's retention of the vehicle. The small claims court noted that Mr. Zampieri was entitled to an artisan's lien on the car and failed to file suit within 30 days after Mr. Raber attempted to resolve the matter by tender a check for \$700 to Mr. Zampieri. The court found these facts irrelevant to Mr. Zampieri's claim and did not more completely analyze the consequences of Mr. Zampieri's retention of the vehicle.

An artisan's lien allows the person who repairs an item of personal property to retain it until the bill is paid. 9 V.S.A. § 1951. If the bill remains unpaid after three months, the lienor may sell the property "except as provided in section 1954." 9 V.S.A. § 1952. Section 1954 applies when the reasonableness of the bill is disputed. The customer, within the three-month retention period, may "tender" a reasonable amount to resolve the dispute. If the lienor rejects the tender, the lienor must file suit to determine reasonableness within 30 days. If the lienor fails to do so, the "lien shall terminate." 9 V.S.A. § 1954.

During the first 90 days of Mr. Zampieri's retention of the vehicle, Mr. Raber attempted to deliver a check for \$700 to him to resolve the dispute. Mr. Zampieri refused the check and did not file suit within 30 days. If the delivery of the check was a sufficient tender for purposes of § 1954, Mr. Zampieri lost the right to retain possession of the vehicle on the 30th day afterwards since he had not by then filed suit. The wrongful retention of the vehicle afterwards might have entitled Mr. Raber to damages.

The small claims court did not analyze this aspect of Mr. Raber's counterclaim explicitly. However, its failure to do so was harmless in the circumstances of this case. See V.R.C.P. 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."). Assuming for the sake of the argument that Mr. Zampieri's retention of the vehicle at a point became wrongful, despite Mr. Raber's refusal to pay, Mr. Raber's response, buying a replacement vehicle, was not reasonable and there was no evidence presented as to any other damages.

The small claims court's evaluation of the equities of this case appears to have addressed this matter. Mr. Raber's refusal to pay the original bill was not reasonable. The attempted accord and satisfaction would have given Mr. Zampieri the \$700 originally estimated, nothing for the somewhat higher actual cost of the working on the head gasket, and zero for all of the additional work that Mr. Raber had assented to. If in spite of those circumstances Mr. Zampieri's retention of the vehicle became wrongful, it was for a brief time only. Mr. Raber recovered possession of the vehicle by having a new key made and retaking it. There was no evidence of reasonable damages incurred by Mr. Raber for the short interim during which Mr. Raber had bought another car. The damages claimed by Mr. Raber would have zeroed out the repair bill and he would have ended up with a repaired Volvo for free, a clearly inequitable result. The small claims court did not error by rejecting this claim.

ORDER

For the foregoing reasons, the judgment of the small claims court is *affirmed*.

Dated this ____ day of September 2015.

Mary Miles Teachout
Superior Judge