

Rodriguez v Elkouhen
2018 NY Slip Op 32558(U)
October 12, 2018
Civil Court of the City of New York, Bronx County
Docket Number: CV-015209-17/BX
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 11

MARK RODRIGUEZ

Plaintiff,

-against-

ANASS ELKOUHEN &
SUPER SERVICE STATION INC

Defendants,

X

HON. SABRINA B. KRAUS
DECISION AFTER TRIAL
Index No.: CV-015209-17/BX

PROCEDURAL HISTORY

This action was commenced by Plaintiff against Defendants, pursuant to a summons and endorsed complaint that was filed on September 29, 2017, seeking a judgment in the amount of \$25,000.00. The endorsed complaint asserts claims for loss of personal property, loss of time for work, loss of use of personal property and asserted related expenses.

Service is alleged to have been by personal delivery to Anass Elkouhen (AE) by personal delivery on December 16, 2017 on behalf of himself and Super Service Station Inc (SSSI).

Defendants failed to answer or appear, and on January 19, 2018, Plaintiff filed a request for inquest. An inquest was scheduled for February 16, 2018 at 9:30 am. On that date, AE appeared and the court (Wilson, J) issued an order vacating AE's default in appearing, directing AE to file an answer by March 15, 2018, and setting the matter down for a pre-trial conference on April 4, 2018.

On April 4, 2018, AE appeared and made an application for an adjournment to hire counsel. AE also alleged that a pending related criminal matter was supposed to be resolved on

or about May 9, 2018. AE's application for an adjournment was granted and the trial was adjourned to June 8, 2018.

Again on June 8, 2018, the trial was adjourned at AE's request to September 12, 2018. A notation was made on the file that a motion to consolidate this action with a related action was to be put before the court.

On July 25, 2018, a motion was made by the City of New York to consolidate this action with an action pending under Index Number CV 15210-17/BX (City Action). On July 26, 2018, this Court granted the motion to the extent of staying the City Action pending resolution of a related criminal proceeding, but denied consolidation.

On September 12, 2018, this action was again adjourned to October 12, 2018 for trial.

On October 12, 2018, Plaintiff and AE appeared. Corporation Counsel also appeared and advised the court that the criminal action had been dismissed, and that they would be renewing their request for consolidation. A conference was held by the court on the record, wherein it was determined that the City Action was not ready for trial, had remained off calendar and that the City wished to conduct extensive discovery in the City Action.

Based on said representation, the oral application of the City to stay the trial in this action for consolidation with the City Action, was denied, without prejudice to renewal by formal motion.

AE also made an application for additional time to retain counsel, which the court denied. The court held a bench trial as to AE and inquest as to SSSI, and reserved decision.

As AE never filed a formal written answer, the court will deem a general denial to be asserted on his behalf.

FINDINGS OF FACT

Plaintiff was the owner of a 2005 PT Cruiser convertible which he purchased on or about May 16, 2013. Plaintiff submitted a certificate of title as Exhibit 1 in evidence. In 2014, Plaintiff got into an accident with the car, and it no longer worked. Plaintiff kept the car in his driveway until he moved to Ohio. Plaintiff testified that just prior to moving to Ohio, he made a “gentleman’s agreement” with Miguel Rodriguez, whom he described as a neighbor. Miguel had a business called Against All Odds which did body work. Plaintiff stated Miguel Rodriguez had previously hired Plaintiff as an accountant and owed Plaintiff money for accounting services that were unpaid. Plaintiff testified that he and Miguel agreed that instead of Miguel paying Plaintiff for the accounting services, Miguel would have the PT Cruiser fixed.

Miguel took the PT Cruiser and Plaintiff moved to Ohio. Plaintiff testified that after he moved to Ohio, Miguel continually promised to have the PT Cruiser fixed but that eventually, Miguel stopped responding to Plaintiff’s inquiries as to whether the car was fixed.

Plaintiff testified that on or about October 4, 2016, he came back to New York and happened to drive by AE’s place of business on Bruckner Avenue, where he spotted and recognized his PT Cruiser, which was listed as being for sale. Plaintiff approached AE, saying he was interested in purchasing the vehicle. AE showed Plaintiff the vehicle and started the car for Plaintiff. AE became distracted with another customer, and Plaintiff took off with the car and headed back to Ohio.

In May 2017, Plaintiff returned to New York to try and sort out what he believed was a paperwork issue to clear title to the vehicle, and Plaintiff was arrested for stealing the vehicle. Plaintiff testified that he was charged with larceny and possession of a stolen vehicle.

Plaintiff testified that the DA attempted to have him plead to a lesser charge, even disorderly conduct, but he refused to plea. Plaintiff testified that on or about October 11, 2018, the criminal action was dismissed.

AE also testified. AE testified that Against All Odds Inc delivered the car to his shop, Bruckner Super Service Center located at 119 Bruckner Boulevard, Bronx NY on March 29, 2016 for repairs. An invoice regarding repairs was admitted into evidence as Exhibit A. AE testified that the repair was done within 10 days, but Miguel failed to pick up the car or pay for the work. AE had only done the mechanical work at this point and the car also needed body work.

AE put a mechanic's lien on the car, and with the assistance off a company called Rapidliens, filed the necessary paperwork to obtain title (Ex C1- C17). On or about June 29, 2016 AE obtained a new title for the vehicle.

AE testified that Plaintiff came to his shop with the express intention of stealing back the vehicle.

To the extent that AE's testimony differs from that of Plaintiff, the court credits AE's testimony over that of Plaintiff. In particular, the court credits the time line of AE over the timeline of Plaintiff and the court finds Plaintiff's testimony that he just happened upon his car by chance while driving to be particularly lacking in credibility.

DISCUSSION

The action is dismissed. The Court finds that Plaintiff failed to establish any

liability against either defendant or damages by a preponderance of credible evidence. Plaintiff failed to make out a cause of action for any alleged personal injury, loss of personal property, fraud, breach of contract, or any other cognizable cause of action.

In addition to his failure to establish any liability on the part of the named defendants herein, Plaintiff failed to prove any dollar amount of damages

Based on the foregoing, the action is dismissed, with prejudice as to both Defendants.

This constitutes the decision and order of the court.

Dated: Bronx, New York
October 12, 2018

Hon. Sabrina B. Kraus
JCC

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