IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

DANIEL I. PHILLIPS,

Appellant,

v.

RMT AUTOMOTIVE, Inc.,

Appellee.
_____/

CASE NO.: CVA1 07-06
LOWER COURT CASE NO.:
2006-SC-6275

Appeal from the Small Claims Court,
in and for Orange County, Florida,
Judge Antoinette Plogstedt.

Jack W. Shaw, Jr., for Appellant.

Henry L. Perla, for Appellee.

Before KIRKWOOD, MACKINNON, and LEBLANC

FINAL ORDER AFFIRMING TRIAL COURT'S JUDGMENT

Daniel I. Phillips (Phillips) appeals the trial court's denial of his motion for summary judgment and the trial court's final judgment requiring him to pay the balance of his auto repair costs to the plaintiff, RMT Automotive, Inc. (RMT) as well as court costs. Appellant timely appealed the final order. *See* Fla. R. App. P. 9.110(b). This Court has jurisdiction. *See* Fla. R. App. P. 9.030(c)(1)(A).

On April 18, 2006, Phillips brought his Chevrolet Tahoe to RMT to investigate the source of problems he was having with the vehicle. Phillips authorized RMT to perform an external visual diagnostic on the transmission for $45.00 to determine the cause of the problem. Upon completion of the external diagnostic, RMT determined that

the problem was an internal transmission issue. RMT contacted Phillips over the phone and received a verbal authorization to perform the internal diagnostic. RMT then performed an internal diagnostic on the transmission for a flat rate of $389.00 and determined the cause of the problem and drafted a written estimate of $1,914.39 to fix the problem. Phillips authorized the repair of his vehicle and signed the written estimate. Once repairs were completed Phillips paid RMT $1,280.00 for the repairs and bonded the remaining $652.33 for the release of his vehicle.

This litigation began on June 23, 2006, when RMT filed a claim for non-payment of goods and services in the amount of $652.33 stemming from the repair and diagnostic work performed on Phillips' vehicle. On August 28, 2006, Phillips filed a counterclaim and a motion for final summary judgment. In his counterclaim and motion for summary judgment, Phillips alleged that RMT violated the Florida Motor Vehicle Repair Act by failing to provide him with a written repair estimate as required by the Act. The trial court denied this motion for summary judgment on October 4, 2006, and ordered the matter set for a non-jury trial on November 9, 2006. Following the non-jury trial on November 9, 2006, the trial court entered an order in favor of RMT for the contested amount plus court costs with interest at nine percent (9%) per year. This appeal ensued.

There are two issues presented for review in this case. The first issue is whether the trial court erred in denying Phillips' motion for final summary judgment. The second issue is whether the trial court erred in entering its final judgment in favor of the plaintiff.

The standard of review of a non-jury trial is whether there was procedural due process, whether the essential requirements of the law were followed, and whether the trial court's findings and judgment are supported by competent substantial evidence.

Pabla v. State, 13 Fla. L. Weekly Supp. 26b (Fla. 9th Cir. Ct. Sept. 9, 2005) quoting *State v. Kirby*, 752 So. 2d 36, 37 (Fla. 5th DCA 2000). "An order of a county court comes to the circuit court with a presumption of correctness, and the circuit court must interpret the evidence in a manner most favorable to sustaining the trial judge's ruling." *Kirby*, 752 So. 2d at 37.

Phillips argues that no genuine issue of material fact existed at the time of the hearing on his motion for summary judgment. He claims that RMT quoted him a price of approximately $1,200 dollars when he initially brought his vehicle in for an inspection. RMT's failure to provide a written estimate at that time (or alternatively, when the $389 internal diagnostic was authorized) was a clear violation of the Florida Motor Vehicle Repair Act and as such, Phillips was entitled to summary judgment in his favor.

Conversely, RMT argues that it did not quote Phillips any price other than the external inspection fee at the time he brought the vehicle in for the initial inspection. Additionally, Phillips authorized, in writing, an external inspection and subsequently verbally authorized the $389 internal inspection of the transmission. RMT claims no repair estimate was generated until after this internal inspection was concluded. Finally, RMT claims that Phillips authorized, in writing, the written repair estimate generated after the internal diagnostic inspection. This permitted RMT to perform the actual repairs to the transmission. Those repairs ultimately led Phillips to post the bond and led RMT to seek legal action to recover.

From a review of Phillip's motion for summary judgment, incorporated memorandum of law in support, supplemental memoranda, and affidavits of both parties, it is clear that Phillips did not demonstrate the absence of any issue of material fact.

Considering the evidence in the light most favorable to the non-moving party, RMT, a question remained as to when a quote was initially given to Phillips, and whether Phillips had waived protection of the statute by signing the final repair estimate provided by RMT. Thus, it appears that the trial court's decision to deny the motion for summary judgment was correct.

There was clearly a signed authorization for the initial external diagnostic of Phillips's transmission. Phillips did not sign a written authorization for the $389 internal diagnostic service because he was not in the shop at the time. The shop manager of RMT called Phillips at his office and received a verbal authorization to proceed with the internal diagnostic. Upon completion of the internal diagnostic and the accompanying disassembly of Phillips's transmission, a written repair estimate was generated by RMT totaling $1,914.39 (less taxes). Phillips received this written estimate in person and subsequently faxed a signed copy to the shop with a notation that the "total authorization" was not to be greater than $1,814.39.

After hearing the testimony of both parties the trial court determined that the statute had been violated when RMT failed to provide a written estimate for the $389 internal diagnostic service. Additionally, the trial court determined that the situation presented two distinct occurrences, the first being the disassembly of the transmission for the internal inspection and the second being the actual repair of the transmission. With regards to the first act the trial court stated "had the plaintiff been attempting to recover funds or had there been a bond action on that fee [the $389], the defendant would have prevailed." Since there was another action for the court to consider, it held that Phillips could not recover because he reviewed and signed the final repair estimate.

Phillips cites numerous cases in his appellate brief that seek to support his arguments. From an inspection of the case law, this current case presents a factually distinct scenario for consideration. The seminal case construing the Florida Motor Vehicle Repair Act is *Osteen v. Morris*, 481 So.2d 1287 (Fla. 5th DCA1986). The decision in *Osteen* contemplated two unwritten repair estimates. *Id*. at 1288-89. The vehicle owner recovered because no written estimate was ever created and the shop was in violation of the statute. *Id*. at 1290. In the present case, the trial court was presented with one unwritten estimate and one written estimate and had to reconcile the two in light of the statute.

With regards to the waiver, Phillips cites to a footnote in *Lucas Truck Service Company v. Hargrove*, 443 So. 2d 260, 261 n.1 (Fla 1st DCA 1983). In *Lucas*, a third party attempted to provide a waiver releasing the repair shop from providing any written repair estimates regarding Hargrove's truck. *Id*. The trial court in *Lucas* disregarded the evidence relating to this waiver and the appellate court stated in its footnote that "this belated attempt to comply with Chapter 559 was of no significance in this case." *Id*. Even if *Lucas* made an actual holding with regards to the third party waiver, this case presents a separate issue. No third party was involved with Phillips and RMT; the trial court ruled that Phillips personally waived the protection of the statute by signing the repair estimate.

The decision of the trial court comes before the appellate court clothed in a presumption of correctness. *Applegate v. Barnett Bank*, 377 So. 2d 1150 (Fla. 1979). Given the facts surrounding this case, the trial court was presented with an issue of first impression under the Florida Motor Vehicle Repair Act. The statute speaks to waiver of

rights briefly in section 559.907(2): "It shall be unlawful for any motor vehicle repair shop to require that any person waive her or his rights provided in this part as a precondition to the repair of her or his vehicle by the shop." RMT did not require Phillips to waive any of his rights under the statute; as the trial court noted, Phillips could have bonded the fee to reassemble the transmission and prevailed in an action by RMT to recover on that bond.

Give the distinct factual scenario, the trial court reasonably interpreted the undisputed facts and made a decision regarding the applicable law. The decision is not clearly erroneous. Accordingly, it is hereby **ORDERED AND ADJUDGED** that the trial court's "Final Judgment for Plaintiff," dated January 17, 2007, is hereby **AFFIRMED**. Phillips's "Unopposed Motion to Supplement Record on Appeal," is hereby **DISMISSED**. Phillips's motion for attorney's fees is **DENIED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this ____9____day of ____February_____, 2009.

__/S/_____
LAWRENCE R. KIRKWOOD
Circuit Judge

_/S/_____
CYNTHIA Z. MACKINNON
Circuit Judge

__/S/_____
BOB LEBLANC
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to: **Jack W. Shaw, Jr., Esq.**, Jack W. Shaw, Jr., P.A., 1555 Howell Branch Road, Suite C210, Winter Park, FL 32789; and **Henry L. Perla, Esq.**, Perla and Associates, P.A., 203 East Livingston Street, Orlando, FL 32801.

_____/S/_____
JUDICIAL ASSISTANT