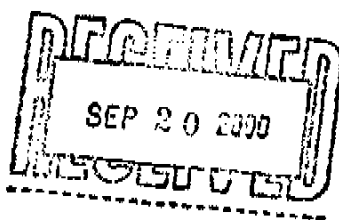


COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

JOHN GURMAN,
PLAINTIFF,



DISTRICT COURT
DEDHAM DIVISION
9954CV0515

V.

CENTER AUTO BODY AND LIBERTY
MUTUAL INSURANCE COMPANY,
DEFENDANT.

FINDINGS OF FACTS, RULINGS OF LAW AND FINAL JUDGMENT

In this action, the plaintiff John Gurman seeks to recover monies from the defendants Center Auto Body ("Center") and Liberty Mutual Insurance Company ("Liberty") arising out of property damage to Gurman's vehicle. After trial, and based on all of the credible evidence and the reasonable inferences that I may draw from that evidence, I make the following findings of fact and rulings of law.

Gurman's vehicle, a 1995 Jeep Cherokee, while parked, was struck and damaged by another vehicle on or about July 17, 1998. At the time of the accident, the vehicle was covered by insurance issued by Liberty. Gurman promptly reported the accident to Liberty and filed a claim under his collision policy. Liberty had the duty to cover the cost of restoring the vehicle to its condition prior to the accident.

After the accident, the vehicle was towed to Center. Center was on a list of repair facilities approved by Liberty. On or about July 22, 1998, the vehicle was appraised by Liberty. The cost of repairs was appraised at \$2,446.31. In its appraisal of the damage to the vehicle, Liberty itemized the repairs and parts for which Liberty would pay. In its appraisal, Liberty specified the use of Non-Original Equipment Manufacturer's parts ("non-OEM" or "aftermarket" parts). The aftermarket parts specified in Liberty's appraisal included a front bumper mounting bracket, a front bumper, a front end panel, a door headlamp, a parking lamp assembly and a front fender. Based on that appraisal, Liberty issued a check payable to Gurman in the amount of \$1,946.31, reflecting the \$500 deductible in Gurman's policy.

After the initial appraisal was completed, Center dismantled the vehicle to make repairs. At that time, Center discovered a need to make repairs beyond those originally specified in the initial appraisal. On August 6, 1998, Center ordered the aftermarket parts specified by Liberty and requested an additional supplement to the initial appraisal. That appraisal was performed by Holly King, an appraiser for Liberty Mutual. A second supplement appraisal was performed by Liberty Mutual.

Some of the parts that were authorized by Liberty and used by Center were defective. The work as performed by Center was also not done in a proper manner. As a result, the vehicle was not properly repaired. Both Liberty and Center were aware that the repairs were not properly done.

The plaintiff was informed by Center that there was a problem with the repairs. In the view of Center, the improper repairs were caused by the Liberty's requirement to use aftermarket parts. The plaintiff told Center to deal with Liberty.

During the period of mid-August, Center finished the repair of the vehicle with the non-OEM parts specified by Liberty. At the time the repairs were completed, Center discovered that when the Jeep insignia was mounted, the insignia did not properly match with the pre-drilled holes on the header panel leaving the holes exposed to plain view. In addition, the bumper which was installed contained pre-drilled holes for fog lamps. The plaintiff's vehicle did not have fog lamps. Lastly, the right fender and the front grill did not fit as well as the originally manufactured Jeep fender and grill. Center informed Liberty of these deficiencies and the reasons for the deficiencies.

On or about September 25, 1998, Liberty sent a letter to Gurman in which it stated:

"I would have to agree with [Center]'s findings that the quality replacement front bumper, header panel, left fender and left park lamp all have defects which make them unusable on your particular vehicle."

On August 27, 1998, the plaintiff sent a demand letter pursuant to M.G.L. ch. 93A to Center and Liberty. In his letter, the plaintiff demanded that [his] Jeep be repaired properly, with Liberty Mutual and Center Auto Body bearing the cost of said repair or, in the alternative, that [he] be allowed to have his vehicle repaired at the shop of his choice, with Liberty Mutual and Center Auto Body bearing the cost.

To date, the plaintiff's vehicle remains unrepaired. The cost to properly repair the plaintiff's vehicle is \$1,491.10.

211 CMR 133.04 states in its relevant part:

(1) Appraisers shall specify that damaged parts be repaired ... When it is determined that a part must be replaced, a rebuilt, aftermarket or used part of like quality, at the lowest possible price, shall be used in the appraisal unless:

- (a) the operational safety of the vehicle might otherwise be impaired
- (b) reasonable and diligent efforts to locate the appropriate rebuilt, or aftermarket or used part have been unsuccessful;
- (c) a new part of like kind and quality is available at the same or lower cost, or
- (d) the vehicle has been used no more than 15,000 miles unless the pre-accident condition warrants otherwise

A part is of like kind and quality when it is of equal or better condition than the pre-accident part.

(2) When an insurance company specifies the use of used, rebuilt, or aftermarket parts the source and specific part(s) must be indicated on the appraisal. If the repairer uses the source and specified part(s) indicated on the appraisal and these parts are later determined by both parties to be unfit for use in the repair, the insurance company shall be responsible for the costs of restoring the parts to usable condition. If both parties agree that a specified part is unfit and must be replaced, the insurer shall be responsible for the replacement costs such as freight and handling unless the repair shop is responsible for the part(s) being unfit, or unless the insurer and repairer otherwise agree.

There is no question as to the right of the plaintiff to recover in this matter. Although both Center and Liberty seek to blame each other, the Court finds that both are liable as to the plaintiff. When Center undertook to repair the vehicle, it was obligated to perform those repairs in a workmanlike manner and with proper parts. It has failed to do that. Further, when Center was informed and became aware that its work was deficient, it was obligated to correct it. It has failed to do that as well. Liberty was required to properly process any claim under its policy and, in this case, insure that the parts used were proper and authorized under CMR 133.04. It failed to do that.

It is Liberty's position that its obligation is not to repair the vehicle; it is only to pay the insured. It further argues that payment of the amount set forth in the appraisal is not a guarantee of repairs. Its last contention is that the fault lies solely with Center in that the work was either done in a shoddy manner and/or that Center failed to bring the issue regarding quality replacement parts in a timely manner. As it stated in its response to the 93A letter: "Had Center Auto Body brought this issue to Liberty Mutual's attention at the proper time, Liberty Mutual would have been willing to rectify the situation." The Court finds that in fact, Liberty knew that there was a problem before the repairs on the vehicle were completed. In addition, Liberty authorized the use of parts which, Liberty, as well as Center, knew or should have known were improper. The Court agrees that Liberty is not responsible for any shoddy work performed by Center. However, the problem here goes beyond shoddy workmanship.

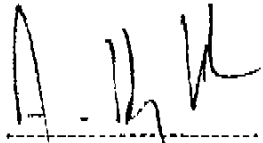
Center had the obligation to perform its work properly and it failed to do that. Its conduct rose to the level of violating M.G.L. ch. 93A when, having acknowledged that it failed to do that properly, it failed to correct the work. Liberty's conduct rose to the level of violating M.G.L. ch.

93A, when it was notified that the repairs were not proper because of ill-fitting parts and did not authorize the use of the appropriate parts.

As such, the Court awards the plaintiff damages in the amount of \$1,490.10.

The Court finds that the conduct of both Liberty and Center violate M.G.L. ch. 93A and awards damages of \$1,490.10. The Court further doubles that amount to \$2,980.20 and will award the plaintiff his reasonable attorneys' fees and costs. The plaintiff's counsel is to submit an affidavit on attorneys' fees and costs by October 6, 2000, and the Court will hold a hearing on October 16, 2000 at 9:00A.M. on the amount of attorneys' fees to be awarded. The liability of the defendants is joint and severable.

SO ORDERED



JAMES H. WEXTLER
JUSTICE

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