

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-004208

11/08/2019

HONORABLE CONNIE CONTES

CLERK OF THE COURT
S. Perez
Deputy

JOVAN KRCMAR

WILLIAM A MILLER

v.

SOUTHWEST CARRIERS L L C, et al.

PATRICK J MONAHAN

MICHAEL J. MCGIRR
JUDGE CONTES

UNDER ADVISEMENT RULING

Trial de novo to the court was held on September 9, 2019, on the appeal from arbitration award filed February 24, 2019 on behalf of defendants Southwest Carriers, LLC ("Southwest") and Shawn Allen Aksamit ("Aksamit") and third-party plaintiff Diesel Headquarters, Inc. ("DHQ"). The court heard testimony from plaintiff; Vladimir Skoric, representative of defendant Southwest; defendant Aksamit, principal of third-party plaintiff DHQ; and four non-party witnesses. The court also received in evidence Exhibits 1-32. Having considered and weighed the credibility of all of the evidence presented, the court rules as follows:

1. Plaintiff met his burden of proof by a preponderance of the evidence that he has the indicia of ownership of the 2007 Volvo tractor truck based upon his purchase of the truck in June 2014 for \$30,000.00, his payment of registration fees since then, and the testimony of non-party witnesses. Admittedly, defendants Southwest and Aksamit are not the owners of this tractor truck.
2. Defendant Southwest breached its contract with plaintiff by refusing to pay Settlements to plaintiff in the amount of \$20,700.00 for multiple trips completed by plaintiff in November 2017.

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3. On December 8, 2017, plaintiff formally terminated his Independent Contractor Operating Agreement with defendant Southwest.
4. Defendant Southwest was not justified in deducting \$20,200.09 from the final Settlements to plaintiff for alleged repairs performed by DHQ on plaintiff's tractor truck. Historically, plaintiff communicated directly with defendant Askamit for repair work to plaintiff's truck and paid with his personal checks directly to DHQ (including payment arrangements) for this repair work.
5. As for plaintiff's claim of conversion against defendants, defendant Southwest and defendant Aksamit as principal for DHQ converted plaintiff's tractor truck by removing the 2007 Volvo Tractor Truck twice from different locations, first from the Pilot Truck Stop on December 14, 2017, and then two days later from the Freightliner yard. This tractor truck remains on the DHQ lot because defendant Aksamit has refused to return the vehicle to plaintiff even though DHQ was paid by Southwest no later than December 2017 for all but the allegedly remaining balance of \$3,640.80.
6. Third-party plaintiff DHQ has failed to meet its burden of proof that plaintiff owes it a remaining balance of \$3,640.80 for repair work to plaintiff's tractor truck because of the lack of an agreement between plaintiff and defendant DHQ and discrepancies in the records regarding invoicing and payment for repairs.
7. Plaintiff has been damaged by the conversion of his tractor truck for the last 20 months. These damages include plaintiff's cost of renting/leasing another tractor truck and any diminution in value to the truck if it is no longer in the same condition as when defendants converted it. Yet, no particular evidence was presented as to these amounts except that the transmission, engine and other parts of the truck are missing. Rather, plaintiff requests loss of use of \$10,000.00 per month for 20 months, totaling \$200,000, which seems exorbitant for this appeal from arbitration. Additionally, plaintiff admits he paid a total of \$30,000.00 to purchase the tractor truck in 2014. Damages are not meant to place plaintiff in a better position than he would have been had the tractor truck not been converted and/or damaged. The court finds to be reasonable an award to plaintiff of an additional \$20,000.00 in damages against all defendants for conversion, loss of use, and costs of renting/leasing another tractor truck for the last 20 months.

IT IS ORDERED awarding plaintiff \$20,700.00 against defendant Southwest for settlement amounts due and owing to plaintiff for multiple trips completed by plaintiff in November 2017.

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IT IS FURTHER ORDERED awarding plaintiff \$20,000.00 against defendants Southwest and Aksamit for the reasonable amount of damages incurred by plaintiff for conversion, loss of use, and costs of renting/leasing another tractor truck for the last 20 months.

Plaintiff shall submit a form of judgment, together with an application for an award of attorneys' fees and a verified statement of costs within twenty (20) days of the filing date of this ruling.