

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CHARLES WEST,	:	NO. 13 – 03,181
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
CHRIS A. WOOD, t/a WOOD’S GARAGE,	:	
Defendant	:	
	:	
vs.	:	
	:	
WILLIAMSPORT AUTOMITIVE, INC. and	:	
CARDONE INDUSTRIES, INC.,	:	
Additional Defendant	:	Motion in Limine

OPINION AND ORDER

Before the court is Defendant’s Motion in Limine, filed June 12, 2015. Argument on the motion was heard June 25, 2015.

In his Complaint, Plaintiff contends Defendant performed defective repair work on Plaintiff’s vehicle and/or installed defective parts,¹ that the vehicle broke down in Ohio, Oklahoma and Arizona, and that he had to pay for various repairs in those locations. Plaintiff seeks to recover the cost of the repairs and incidental damages. The matter will be heard by a panel of arbitrators and, pursuant to Pa.R.C.P. 1305, Plaintiff sent notice to Defendant that he intends to offer into evidence before the panel certain exhibits, described by Defendant in his motion, as “various invoices with notations as to the services performed, the condition of the parts, as well as handwritten statements reflecting repairs”. In his motion, Defendant seeks to exclude these invoices from evidence, contending they do not qualify for admission under Rule 1305. He also seeks to strike from the Complaint all of the allegations of defective work, on the basis that there is now no competent evidence to support those allegations.

¹ Defendant brought in the additional defendants as to the claim the parts were defective.

Plaintiff relies on the following language in Rule 1305:

Rule 1305. Conduct of Hearing. Evidence.

(b)(1) The following documents shall be admitted into evidence if at least twenty days' notice of the intention to offer them was given to every other party accompanied by a copy of each document to be offered:

- (i) bills or other documents evidencing charges incurred;
- (ii) records of businesses, government departments, agencies or offices, subject to statutory restrictions, provided that these are records which would otherwise be admissible if authenticated by a custodian of records;
- (iii) records and reports of hospitals and licensed health care providers;
- (iv) expert reports and descriptions of expert qualifications;
- (v) written estimates of value, damage to, cost of repair of or loss of property; and
- (vi) reports of rate of earnings and time lost from work or lost compensation prepared by an employer.

Pa.R.C.P. 1305. Plaintiff contends the invoices are “written estimates of value, damage to, cost of repair of or loss of property” and/or “expert reports”. Defendant agrees that the invoices offer “expert” opinions, but contends they are not expert reports because there is nothing to indicate the authors of the invoices are experts. Without reaching this issue, the court finds that Rule 1305 does not allow for the introduction of the invoices *under this rule*.

Sub-section (b)(4) of the rule provides that “[a]ny other party may subpoena the person whose testimony is waived by this rule to appear at ... the hearing and any adverse party may cross-examine the person as to the document as if the person were a witness for the party offering the document.” The Explanatory Comment states: “The foregoing provisions of subdivisions (b) and (c) apply, of course, only to documents which are prepared by a person who is within the subpoena power of the court in which the action is pending. The special relaxation of the rules of evidence is conditioned on the power of the opponent to subpoena the person whose testimony is waived; if that is not possible, for territorial or other reasons, the foundation for the special rule disappears, and the proponent must follow the normal rules of evidence.” In the instant case, the invoices were authored by persons in Oklahoma and Arizona, persons who are *not* within the subpoena power of this court. *See* 42 Pa.C.S. Section 5905. Therefore, Defendant has no ability to require their attendance for purposes of cross-

examination and, according, to Rule 1305 itself, Rule 1305 does not apply. This portion of the motion in limine will thus be granted.

With respect to Defendant's request that Plaintiff's allegations of defective workmanship be stricken from the Complaint, however, the motion will be denied. The request is not the proper subject of a motion in limine.

ORDER

AND NOW, this 26th day of June 2015, for the foregoing reasons, the motion in limine is granted in part and denied in part. The subject invoices may not be introduced into evidence at the arbitration hearing under Pa.R.C.P. 1305.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Marc Drier, Esq.
Robert Hoffa, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson