

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUL 26 2016
SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

RECEIVED

FEB 01 2016
SC Court of Appeals

Case No: 2014-CP-26-1684

Archie Howell,..... Respondent.

v.

Christopher Chabot, d/b/a Autoworks, Appellant.

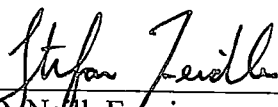
**RESPONDENT'S DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

In addition to the documents proposed by the Appellant in his Designation of Matter, Respondent proposes the following additional documentation be included in the Record on Appeal:

- Circuit Court Form 4 Order dismissing Defendant's Appeal of the Magistrate Court's decision filed October 6, 2014. (Clarity on date of filing, submitting party, and nature of action from Appellant's designation)
- Circuit Court Form 4 Order Dismissing Defendant's Motion to Reconsider for failure to prosecute filed **May 4, 2015**. (Date correction from Appellant's Designation)
- Judgment filed in the Surfside Magistrate Court February 14, 2014.
- Plaintiff's Complaint filed September 9, 2013. (Clarity on date of filing from Appellant's Designation)
- Defendant's Answer filed **October 14, 2013**. (Date correction from Appellant's Designation)
- Defendant's Notice of Appeal of the Magistrate Court decision filed **March 20, 2014**. (Date correction, clarity of submitting party, and nature of action from Appellant's designation)

- Defendant's Appeal of the Magistrate Court decision, Motion to Vacate, and Motion to Dismiss Plaintiff's Claim with Prejudice filed October 2, 2014. (Clarity on date of filing, submitting party, and nature of action from Appellant's designation)
- Defendant's Motion for Reconsideration, Motion for Judgment Notwithstanding the Verdict, and/or Motion to Alter and/or Amend, Motion for Judicial Review, Motion for Judicial Review of the Damages, and Motion for Trial *De Novo* filed October 13, 2014. (Clarity on date of filing, submitting party, and nature of action from Appellant's designation)
- Defendant's Notice of Appeal of the Circuit Court decision filed June 5, 2015. (Clarity on date of filing, submitting party, and nature of action from Appellant's designation)
- Defendant's request for a continuance filed **April 23, 2015**. (Date correction from Appellant's Designation)
- Transcript of the January 22, 2014 bench trial held at the Surfside Magistrate Court.
- Summary of Testimony of Trial by The Honorable G. Derek Blanton.

I hereby certify that this designation contains no matter which is not relevant to this Appeal.



 Mark D. Neill, Esquire
 Stefan B. Feidler, Esquire
 The Neill Law Firm
 P.O. Box 2810
 Murrells Inlet, South Carolina 29576
 (843) 651-8580
 Attorneys for Respondent Archie Howell

January 28, 2016
 Murrells Inlet, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

2013CV261041363
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

TRANSCRIPT OF JUDGMENT
FIND FOR PLAINTIFF


Names of Parties Against Whom Judgment is Granted	Attorneys
Christopher E. Chabot 204 Beachwalk place Myrtle Beach, SC 29577	

Names of Parties To Whom Judgment is Granted	Attorneys
Archie Howell	Mark Neill

DAMAGES AND COSTS

Amount of Judgment:	\$3,860.00
Costs:	
Court Costs / Filing Fees	\$135.00
	\$0.00
	\$0.00
Total Amount of Judgment:	\$3,995.00
Date of Judgment:	2/14/2014

I, Gregory Derek Blanton, Magistrate in and for the County of Horry, do hereby certify that the foregoing is a correct transcript of the Judgment issued by this Court.


 Gregory Derek Blanton
 Horry County Magistrate

March 20, 2014

RECEIVED

JUL 26 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
Circuit Court Case No: 2014CP2601684
Magistrate Court Case No: 2013CV261041363

Archie Howell
Plaintiff

TESTIMONY OF TRIAL

Vs.

Christopher E. Chabot
DBA Autoworks
Defendant

RECEIVED
JUL 26 2016
SC COURT OF APPEALS

The Testimony of the Trial as summarized.

Archie B. Howell Jr. testified as follows.

Mr. Howell stated he owned a 2002 BMW 745I that he was having a problem with. It was smoking when it started.

He took the car to Mr. Joe Tunning and asked him to look at the car. Mr. Tunning in turn looked up the problem on the computer. He told him what was recommended to fix it. He then gave him some money for parts. Mr. Tunning then decided that this was a matter that was out of his realm to repair the car, due to some complexity. Mr. Tunning then told Mr. Howell he would call someone with that expertise that worked on BMW's and that he would see if he would take the car and work on it. He then took the car to the Defendant's business, Autoworks.

The car then sat for a period of time. Then Mr. Tunning and he went over to pick up the car when it was ready. That they stood around the shop waiting for the Defendant to arrive. After he arrived we did try to crank the car and it made a lot of loud noises and would not run. So, we had it towed out of there shortly thereafter to another shop to see what the problem could be.

Again he stated the day they picked up the car the Defendant was at first not there but latter appeared. That what he remembers that day was they were trying to charge the battery. When it was charged somebody got in the car to crank it up. As soon as it was cranked it made a loud banging noise.

Mr. Tunning said he yelled to shut it off. It briefly ran but we did not try to start it again. After this Mr. Howell explained he made the decision to have the car towed out of the shop. That he had never experienced anything with the car other than it smoking.

That Sonny's Auto Body came the next day or the day after to remove the car from the Defendant's shop. That the Autoworks people had no discussion about what they were going to do about the car.

The car was towed to a Billy Hughes. Mr. Hughes diagnosed the problem. They were able to use a camera to look into the engine. They called Joe Tunning and told him and when they went to replace the valve stems, apparently it was not put back the timing properly. Therefore when it was cranked up it caused the valves to smash together. At that point the engine was ruined. That it could be fixed but the cost was just as much as a new engine. That since it would cost too much to fix he sold the car to Billy Hughes for three thousand dollars. That he also had other expenses spent on the car for parts and pre labor in the amount of six hundred dollars. Finally a tow bill of sixty dollars. That he felt his loss on the vehicle was \$3,860.00 dollars. That he used the Kelly Blue book to see what the value of the car was.

On cross examination Mr. Howell was asked about the car being originally brought to Mr. Tunnings business, Twisted Offroad, which he stated was correct.

That the vehicle was at Mr. Tunning's shop for three days.

That when questioned about who got the pre labor cost Mr. Howell stated that was given to Joe Tunning.

When asked if he had a work order from Autoworks, Mr. Howell stated he did not.

No redirect.

Testimony of Joseph Earl Tunning:

Stated he owns an off road and performance shop. That he does everything from basic maintenance, rims, tires and lift kits. Also some general automotive repair. That he first started at age 16 working on his family truck. Did oil changes and other small repairs. He then got a job at Myrtle Beach Mitsubishi. He started there doing oil changes and then moved on to everything; to motor swaps and everything. That he then went to Universal Technical Institute NASCAR to learn about aerodynamics, Nascar engines and fabrication. He said he is very knowledgeable about general auto repair. Mr. Chabot questioned Mr. Tunning about his expertise due to the fact that he only worked at the dealer for one year. Mr. Tunning was qualified as an expert in general automotive repair.

Mr. Tunning determined that the problem with Mr. Howell's vehicle was the valve seals. That a lot of research was done and it was determined this was a problem that was typical with the 745i BMW series. That he picked up the parts from the Myrtle Beach BMW dealership. That he also talked to them about the problem and that this is typical of that model. That he had done a similar job on some Chevrolets. That he looked up the parts for Mr. Howell. The \$600.00 was for parts. That once he lifted the valve covers of the BMW he saw what could be a lot of problems and decided to let someone with more BMW expertise handle the matter. That he contacted the Defendant because he had done work for one of his customers. That he saw the Defendant did work on BMW's. That he asked the Defendant if he could repair Mr. Howell's car. That he stated he could do this. That the car was taken to him. That we did discuss price and he was trying to help me out. We agreed that I would bring him the materials and he would do it for \$1,500.00. After that he said he was busy but we got the car to him the next couple of days. That all the parts were left in the trunk. That he told the Defendant to call him when it was ready. That the \$600.00 was strictly for parts, not parts and labor.

That he said he needed about five days to complete it. Then Mr. Howell became concerned about his car and called me. He then talked to the Defendant about the car. Eventually Mr. Howell and I went to get the car. The old valve stems were in a box. The car was on a battery charger and about 75% charged. That Mr. Chabot was not there. Mr. Tunning talked to him on the phone and he stated he was getting parts and needed to help a customer but he would be back shortly. He did finally get back. That the battery was fully charged. That he did not remember who started the car but as soon as it was cranked there was a huge banging noise in the back left side. We turned it off. Mr. Howell asked what was going on. He was getting aggravated. That he went back inside to talk to the Defendant. That Mr. Chabot said he thought the timing might have been off and that caused the noise. He agreed with him. Then Mr. Howell took me home. He stated on the way home he needed someone who knows to fix it. He checked around for other people at this point who could work on BMW's. At that point he found Mr. Billy Hughes who stated he would look at the car. Mr. Chabot did not want to release the car since he had not gotten paid. He stated he understood this. He finally agreed to release the car and he would get paid as soon as they found out what was wrong with the car.

That the car was towed to Mr. Hughes' shop. It was discovered by Mr. Hughes after lowering a camera into the engine that the timing had been off and the valves were smashed in. He gave Mr. Howell the bill as to what it would cost to fix the car.

Mr. Tunning then explained that in his dealing with the Defendant he was asked to order a special timing tool. I gave him the money but I do not know if he bought the tool. This tool is essential.

That the problem with this motor is that it is an Interference Motor. That the valves come down so close to the piston that if the timing is off the valve can smash into the head of the piston. The Mitsubishi automobile also uses an Interference Motor and when I heard that banging he realized that's what had occurred. That when it occurred Mr. Chabot made a cringed face. He was hoping that the timing was just slightly off but obviously it was not. That he did say he wished he did not bring Mr. Howell up here because it's most likely just a tooth off on the timing. He said after this it may take a couple of days but I will have the car fixed for you. That we did leave the car overnight to see if he could fix it. That most likely they came back a day or two later to get the car. That they were not sure if any additional work had been done on the car. That it was backed up in his shop.

That when the car was taken to Hughes Automotive he removed some of the spark plugs and put the camera inside the engine. He saw the valves were gone. He said they were busted. That it occurs when the timing is off.

On Cross Examination Mr. Tunning was asked if he has released cars without payment. He stated if he knows the person he has. He was then asked about usually doing written documentation for the repair of a car. He says he usually does but sometimes if someone needs something fast he does not. He stated an example would be buying four used tires.

He was questioned about engine timing jumping without any work being done on the car. He agreed that is possible.

On Redirect Mr. Tunning stated that Mr. Chabot did contact him a couple times about being paid. That he drove the car before it went to Mr. Chabot's shop and it drove fine other than some smoking. That prior to it coming to Mr. Chabot he did not notice any timing problems with the car.

No Recross.

Testimony of Mr. Christopher Erin Chabot:

He stated this is all hazy to him. He has been in business for three years. That his expertise is that he went to the Ford Assist Program. That is where you go to college for two years and also learn automotive technology. That he worked for a Ford dealer for a few years. That dealership went out of business. Then he worked for another Ford dealer for a couple of years. He then went to work for a car shop in Gaithersburg Maryland. That he worked there for three years. After this he worked in car restoration of two years. Then at a truck shop where he worked more than nine years ago. That he was ASC certified as a mechanic. That he started this business three years ago after serving active time in the military. That right now he is located near Coastal Carolina University. That he does a lot of work on German and European automobiles. Every year my business is getting better.

He stated he did not know Mr. Howell but he did know Joe Tunning. He met him through another customer who needed a lift kit. He sent him a truck. We got an agreement. He brought me another vehicle. We did have a budding business relationship. He did remember him bringing me a BMW later about a year ago. But no work was done on the car. No written documents written on the car. Finally there was no payment on the car.

On Cross Examination Mr. Chabot was questioned about his recollection of the car. He stated no. That he has file cabinets full of information but has no recollection about this car.


No Redirect.

Issues Addressed and Ruling of the Court:

Mr. Chabot raises a Conflict of Interest as an issue on appeal. This court feels that it did not have a conflict but it disclosed to all parties prior to trial that as Judge I had served on the Surfside Beach Rotary at one time with Mr. Howell's wife. That I knew of the Howell's but did not socialize or have any dealings with them. That I also was no longer a member of the Rotary since 2008. I stated if there was any party that had concerns about me trying the case then I stated I would recuse myself. Both parties indicated they had no problem with me hearing the case.

The court finds that there was sufficient evidence from the witnesses to rule for the Plaintiff by the preponderance of the evidence awarding damages in the amount of \$3,860 plus \$135.00 in court cost.

Respectfully Submitted,


Honorable G. Derek Blanton
Summary Court Judge

Myrtle Beach, South Carolina
Dated: April 30, 2014