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IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**UNITY TRADE SERVICE,**  
**Plaintiff,**

v.

**NO KAI OI TERMITE & PEST CONTROL  
(SAIPAN),**  
**Defendant.**

) Small Claim No. **94-2041**  
)  
) **FINDINGS AND**  
) **CONCLUSIONS**

**NO KAI OI TERMITE & PEST CONTROL  
(SAIPAN),**  
**Plaintiff,**

v.

**UNITY TRADE SERVICE,**  
**Defendant.**

) Small Claim Nos. **95-603 & 604**

**FOR PUBLICATION**

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These *small* claims matters were **consolidated** and came before the Court for trial on June 2, **1995**. Unity Trade **Service** ("**Unity**") requests this Court to award it \$3,015.84 for unpaid automotive repairs it performed on No Kai Oi Termite & Pest Control's ('No Kai Oi') vehicle. In response, No Kai Oi filed suit claiming that Unity is not entitled to the money owed on the repair bill because the work Unity performed was **faulty**. No Kai Oi claims that Unity is liable for incidental and consequential damages as well.

### **L FINDINGS OF FACT**

On March 18, 1993, Unity sent No Kai Oi's President, Lee Delos Santos, a work and **time** estimate for the repairs of the company's 1979 **GMC** truck.' **Def. Exh. A**. The estimated cost of labor and materials was \$3,975.00, and the estimated completion time was thirty working days. Based on this estimate, Delos Santos brought the truck into Unity for repairs on September 29, 1993. Delos Santos **signed** two separate job orders concerning the **GMC** truck. The first job order, dated October 25, 1993, was for the **installation** of the **muffler, fabrication** of the flat bed, and body repairs. The second job order, dated November 26, 1993, was for the **fabrication** of the seat cover. While the truck was at the shop, Delos Santos periodically checked Unity's work and indicated he was not **satisfied** with the painting and the welding. Thereafter, Unity redid the work for no additional charge.

On February 9, 1994, Delos Santos personally gave Unity a check in the amount of **\$1,500.00** for partial payment of the services. **Plaintiff's Exh. 2**. The following day, Delos Santos and one of his employees went to Unity to pick up the truck. While at the shop, Unity's supervisor, Mr. Panopio, signed a **six** month warranty for the paint job and body repairs. **Defendant's Exh. C**. Delos Santos then

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<sup>1</sup> The estimate indicated the work to be performed was as follows: 1) general body repair of cab, left and right door, **front** fender and **left** and right and cab flooring of the pick-up; 2) bed body replacement; 3) the materials the bed **frame** and support, angle bar, flooring, plate bottom cover checkered, plate fender, **roll** bar, repainting of chassis **with** anti-rust primer and black paint; 4) **fabrication** of **chemical** tank trailer. **See Defendant's Exh. A**. Delos Santos **testified** that he had requested that **Unity** replace the **truck's** utility bed **with** a **flat** bed, make a trailer, perform general body work, remove all rust, then undercoat and paint the vehicle.

1 paid the remaining owed, \$1,150.00, in the form of a check. A No Kai Oi employee drove the truck out  
2 of the shop, and Delos Santos left in the vehicle in which they had arrived. Fifteen minutes later, Delos  
3 Santos returned to the shop **complaining** that when they were approximately 100 yards **from** the shop  
4 they had noticed a crack in the windshield. The parties agree that the windshield was not broken when  
5 Delos Santos **originally** brought the truck to Unity on September 29, 1993. No Kai Oi claims the  
6 windshield was cracked while the truck was in the shop. Conversely, Unity argues that the windshield  
7 was not cracked when Delos Santos and his employee left with the **truck** and that it must have cracked  
8 in the **fifteen** minutes it took them to leave the shop and return. Since the Unity employees testified as  
9 to the condition of the windshield without formally **inspecting** the vehicle before it left the shop, this  
10 Court finds the No Kai Oi's witnesses' testimony regarding this issue to be more **credible**. Moreover,  
11 it is **highly** unlikely ~~that~~ the windshield broke in the mere ~~fifteen~~ minutes that Delos Santos' employee had  
12 *driven* the truck 100 yards. This Court finds that the windshield was broken when it was at Unity for  
13 repairs.

14       Upon noticing the crack, Delos Santos demanded Unity return the \$1,150.00 check, and Unity  
15 **complied**. Delos Santos voided the check and then stopped payment on the February 9, 1994, check in  
16 the amount of **\$1,500.00**. To date, No Kai Oi has not paid Unity for any **of the** services it rendered on  
17 the truck.

18       **After** leaving the shop **with** the vehicle, Delos Santos **inspected** it and found that the work Unity  
19 **performed** was **faulty** and was not **performed** in a **skillful** and workmanlike manner. More **specifically**,  
20 Delos Santos testified that the cross bars were not connected, the opening to the gas tank was located  
21 below the ~~tank~~, all the rust was not removed, Unity did not undercoat the vehicle and the doors did not  
22 have ~~drain~~ plugs. He stated that he did not leave the truck **with** Unity because he was **fearful** that Unity  
23 would **prevent** him **from** taking the truck until the bill was paid. Moreover, Delos Santos did not reduce  
24 to writing **any of his** present complaints regarding the **faulty** repairs to Unity. He **obtained** estimates **from**  
25 three **autobody** repair shops and submitted the lowest estimate **from** Motion Automotive Repair Center  
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1 in the amount of \$2,515.75.<sup>2</sup> **Defendant's Exh. E.**

2 Panopio **testified** that the work took longer than what was estimated because No Kai Oi brought  
3 in other vehicles for repair and because the workers went on strike. Delos Santos claimed that because  
4 he did not have use of the car for **five** months, he had to rent a car on numerous occasions **during** April,  
5 May, and June of 1994. **Def. Exh. F.** Thus, No Kai Oi is requesting that Unity reimburse it for these  
6 costs.

## 8 **II. CONCLUSIONS OF LAW**

9 The **failure** to properly perform the work contracted for is a breach of contract for the services.  
10 *Decuir v. Sam Broussard, Inc.*, 459 **So.2d** 1375, 1380 (La. App. 1984). Moreover, a contract for  
11 services carries an implied obligation on the contractor to perform in a workmanlike **manner**. *Tiger Well*  
12 *Service v. Kimball Production Co.*, 343 **So.2d** 1153, 1157 (La. App. 1977). To obtain relief there must  
13 be some showing of lack ordinary care in the performance of the work *Id.* The proper measure of  
14 damages for defective **workmanship** under a breach of contract theory is the cost to repair the defect.  
15 **RESTATEMENT OF CONTRACTS (SECOND) § 347<sup>3</sup>**; see *Simmons v. Boros*, 341 **S.E.2d** 2 (**Ga.** 1986); see  
16 also *Randall v. Anderson*, 286 **N.W.2d** 515 (N.D. 1979). A party can recover the cost to fix the  
17 defective repairs, and the person who provided the services **should** be entitled to the reasonable **value** of  
18 the labor which the opposing party derived a **benefit** and which it was not necessary to be redone.

19  
20 <sup>2</sup> The Motion Automotive **Repair** is somewhat illegible and hard for the court to decipher.  
21 **Defendant's Exh. E.** What the Court can glean **from** the estimate is: 1) the windshield, shipping and labor  
22 for \$1,130.00; 2) secure electrical **wiring** under the dash for \$45.00; 3) **re-work** rust on the cabin for  
23 \$300.00; 4) **handbrake** cable **for** \$150.75; 5) **re-work** rust **on firewall/back engine** for \$110.00; 6) **re-work**  
gas tank mounting for \$110.00; 7) **left** and right door painting and drain **plugs** for \$80.00; 8) re-work  
**frame** bed reinforcement \$80.00; 9) re-work rust on roof for \$110.00; and 10) spot paint rework areas  
for \$400.00.

24 <sup>3</sup> Restatement of Contracts (Second) § 347 provides:

25 . . . the injured party has a right to damages based on his expectation interest as measured by  
26 a) the loss in the value to **him** of the other party's performance caused by its **failure** or deficiency,  
**plus**  
27 b) **any** other loss, including incidental or consequential loss, caused by the breach, less  
c) any cost or other loss that he has avoided by not having to **perform**.

1 *Abrams* v. Dinh, 471 S.2d 994 (La. App. 1985); see also Koch v. *Rice*, 237 P.2d 494 (Or. 1951). The  
2 party requesting the relief has the burden of proving any damage suffered by him as a result of breach of  
3 contract. Decuir, 459 So.2d 1375.

4 Since No Kai Oi has sued Unity under the breach of contract theory, the proper measure of  
5 damages in the present case is the cost of repairs. The Court has kept in mind however, that No Kai Oi  
6 did not pay Unity for any of the services it rendered on the truck. Unity is requesting \$3,015.84 which  
7 represents principal, interest, and costs of the unpaid services. The total amount that Delos Santos had  
8 originally paid Unity before canceling the checks was \$2,650.00.<sup>4</sup> No Kai Oi claims that the \$2,515.75  
9 Motion Automotive estimate indicates the repairs necessary to ~~fix~~ Unity's faulty repairs and to replace  
10 the windshield. After comparing the Unity job estimate and the job orders to the Motion Automotive  
11 estimate it appears that Motion Automotive will be **fixing** Unity's defective repairs except for: 1) the  
12 **freight** and installation of the windshield for \$1,130.00; 2) securing the electrical wiring under the dash  
13 for \$45.00; and 3) replacing the handbrake cable for \$150.75. These repairs amount to a total of  
14 \$1,325.75. Thus, the portion of the Motion Automotive estimate which represents the amount necessary  
15 to fix Unity's faulty repairs is \$1,190.00. Therefore, No Kai Oi still owes Unity the difference of what  
16 No **Kai Oi** originally owed Unity, \$2,650.00, **from** what it will take Motion Automotive to **fix** Unity's  
17 repairs, \$1,190.00, and this amounts to \$1,460.00.

18 However, since this Court has found that Unity is responsible for the cracked windshield, it must  
19 pay for a replacement. The delivery of a motor vehicle by the owner to a repairman for the performance  
20 of repairs is a bailment for the mutual benefit of the parties. *M Bruenger & Company, Inc. v. Dodge*  
21 *City Truck Stop*, 675 P.2d 864 (Ka. 1984). A bailee in a **bailment** for mutual benefit must use ordinary  
22 care and diligence to safeguard the bailor's property, and he is answerable for loss or injury resulting  
23 from failure to exercise that care. *Id.* The Motion Automotive estimate indicates that it will cost  
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25 <sup>4</sup> **This** Court has before it the October 25, 1993 and the November 26, 1993 job orders  
26 amounting to \$2,570.00 and the March 18, 1993 estimate indicating the work would come to \$3,600.00;  
27 thus, representing a difference of almost \$1,000.00 in the amount due for the repairs. Therefore, the  
28 Court will use the amount of the two checks Delos Santos had given to Unity and then canceled,  
\$2,650.00, to represent the amount No **Kai Oi** was required to pay for Unity's repairs.

1 \$1,130.00 to replace the windshield. The difference of what Noi Kai Oi still owes Unity, \$1,190.00, from  
2 the cost of a replacement windshield, \$1,130.00, is \$60.00, the amount No Kai Oi owes Unity for repairs.

3 A breach of a repair contract may include damages for loss of use. RESTATEMENT OF  
4 CONTRACTS (SECOND) § 347 (b); see also *Abrams*, 471 S.2d 994. Normally, damages for loss of use  
5 are measured by the car rental costs during the unreasonable delay. *Abrams*, 471 S.2d 994. Here, No  
6 Kai Oi did not sustain its burden of proof First, No Kai Oi did not adequately show this Court that there  
7 was unreasonable delay. There was testimony before this Court which indicated that No Kai Oi had  
8 brought more than one vehicle to Unity to be repaired during this time. Moreover, while the truck was  
9 at Unity, Delos Santos requested that certain portions of the job be redone. Finally, No Kai Oi submitted  
10 car rental receipts for April, May and June of 1994, when he retook possession of the truck in February  
11 of 1994. Since No Kai Oi did not sufficiently prove that there was an unreasonable delay as well as  
12 bringing forth evidence that of loss of use during the time Unity had the truck, it is not entitled to these  
13 damages.

### 14 15 **III. JUDGMENT**

16 For the foregoing reasons, this Court finds that since Unity performed faulty repairs on No Kai  
17 Oi's GMC truck and that the windshield was broken while it was in Unity's care. No Kai Oi is entitled  
18 to the difference of the cost to fix the faulty repairs less those repairs which were beneficial to it. The  
19 Court hereby ORDERS that No Kai Oi pay Unity the amount of \$60.00.

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21 So ORDERED this 8 day of September, 1995.

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EDWARD M. MANIBUSAN, Associate Judge