

2003-212-CD
WILLIAM E. ESSER ETAL VS RICHARD D. HEBERLING
T/D/B/A

WILLIAM E. ESSER and,
KAREN ESSER, his wife,
Plaintiffs

v.

RICHARD D. HEBERLING, t/d/b/a BIGLER
BOYZ STREET & OFF ROAD TOYZ,
Defendant

) IN THE COURT OF COMMON PLEAS
) OF CLEARFIELD COUNTY,
) PENNSYLVANIA
)
)
) CIVIL ACTION - LAW
)
)
03-212-CJ
)
No. - 2003

TO: Richard D. Heberling, t/d/b/a
Bigler Boyz Street & Off Road Toyz
P.O. Box 381
Bigler, PA 16825

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN 20 DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

David S. Maholick, Court Administrator
Clearfield County Court House
230 East Market Street
Clearfield, PA 16830
(814) 765-2641/Extension 5982

FILED

FEB 18 2003

William A. Shaw
Prothonotary



Gabriel J. Oros
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1459
(814) 870-7636

Attorneys for Plaintiffs William E. Esser
and Karen Esser

WILLIAM E. ESSER and,) IN THE COURT OF COMMON PLEAS
KAREN ESSER, his wife,) OF CLEARFIELD COUNTY,
Plaintiffs) PENNSYLVANIA
)
v.) CIVIL ACTION - LAW
)
RICHARD D. HEBERLING, t/d/b/a BIGLER)
BOYZ STREET & OFF ROAD TOYZ,)
Defendant) No. - 2003

COMPLAINT

Plaintiffs, William E. Esser and Karen Esser, his wife, by and through their attorneys, MacDonald Illig Jones & Britton, LLP, file this Complaint against Bigler Boyz Street & Off Road Toyz and states as follows:

1. Plaintiffs William E. Esser and Karen Esser ("Bill Esser"; "Karen Esser"; and collectively "plaintiffs") are Pennsylvania residents residing at 9643 Allegheny Avenue, Lake City, Pennsylvania 16423.

2. Defendant, Richard D. Heberling, t/d/b/a Bigler Boyz Street & OFF ROAD Toyz, (hereinafter "Bigler Boyz") is located at 2330 North 7th Avenue, Bigler, Pennsylvania 16825 with a mailing address of P.O. Box 381, Bigler, Pennsylvania 16825.

3. On information and belief, defendant Bigler Boyz is in the business of repairing automobiles and other vehicles.

4. On July 12, 2002, plaintiff Bill Esser encountered car trouble.

5. Defendant Bigler Boyz towed plaintiffs' Ford Taurus from the Clearfield, Pennsylvania Wal-Mart parking lot to its repair shop.

6. Defendant Bigler Boyz represented to plaintiff Bill Esser that they were able to replace a cracked aluminum head, as well as other damage sustained by plaintiffs' Taurus.

7. Defendant Bigler Boyz represented to plaintiff Bill Esser that the necessary repairs had been completed, and Bill Esser retrieved his vehicle July 19, 2002. A copy of the invoice is attached to this Complaint as Exhibit "A" and is incorporated herein by reference.

8. Despite the representation that defendant Bigler Boyz had replaced the "Head" and completed the other necessary repairs to plaintiffs' Taurus, on July 28, 2002, plaintiff Bill Esser again experienced the same car trouble as on July 12, 2002.

9. On information and belief, defendant Bigler Boyz failed to maintain a written record documenting plaintiffs' oral authorization for specific repairs.

10. Plaintiffs accordingly sought the advice of Fairview Service Center, Inc., which found that the "valve cover" was "broken," that the "EGR tube" was "broken" and the "spark plugs" were only "finger tight." A copy of the invoice is attached to this Complaint as Exhibit "B" and is incorporated herein by reference.

11. Following repeated attempts to reach defendant Bigler Boyz by telephone, plaintiff Bill Esser sent a letter via Certified Mail on August 8, 2002 to defendant Bigler Boyz at P.O. Box 381, Bigler, PA 16825, the address indicated on the invoice for repairs attached as Exhibit "A." A copy of the letter is attached to this Complaint as Exhibit "C" and is incorporated herein by reference.

12. Despite acknowledging receipt of the aforementioned certified letter, Bigler Boyz refused to open the correspondence. A Copy of the unopened envelop containing the aforementioned letter is attached to this Complaint as Exhibit "D" and is incorporated herein by reference.

COUNT I:
BREACH OF CONTRACT

13. Plaintiff Bill Esser and Karen Esser hereby incorporate Paragraphs 1-11 of the Complaint as if set forth at length.

14. Defendant Bigler Boyz breached the oral and/or written contract to replace the damaged "Head" and complete other necessary repairs by failing to replace the "Head" in a competent and workmanlike manner and/or failing to complete the repairs as indicated in the invoice attached as Exhibit "A."

15. As a proximate and direct result of the aforementioned breach, plaintiffs Bill Esser and Karen Esser have suffered damages in the amount of \$1192.13 plus applicable costs.

WHEREFORE, plaintiffs William E. Esser and Karen Esser, respectfully request judgment against defendant Richard D. Heberling, t/d/b/a Bigler Boyz Street & Off Road Toyz in the amount of \$1192.13, together with interest at the legal rate from August 8, 2002 along with all other relief available by law.

COUNT II: NEGLIGENCE

16. Plaintiffs Bill Esser and Karen Esser hereby incorporate Paragraphs 1-13 of the Complaint as if set forth at length.

17. Defendant Bigler Boyz had a duty to plaintiffs to replace the "Head" in a competent and workmanlike manner and to complete other necessary repairs.

18. Defendant Bigler Boyz breached the foregoing duty by failing to replace the "Head" and/or complete other necessary repairs in a competent and workmanlike manner in compliance with the standard of a similarly situated mechanic under the circumstances then and there present.

19. All of the damages suffered by plaintiffs Bill Esser and Karen Esser were proximately and directly caused by the negligence and/or carelessness of defendant Bigler Boyz.

20. As a proximate and direct result of the negligence and/or carelessness of defendant Bigler Boyz, plaintiffs Bill Esser and Karen Esser have suffered damages in the amount of \$1192.13 plus applicable costs.

WHEREFORE, plaintiffs William E. Esser and Karen Esser, respectfully request judgment against defendant Richard D. Heberling, t/d/b/a Bigler Boyz Street & Off Road Toyz in the amount of \$1192.13, together with interest at the legal rate from August 8, 2002 along with all other relief available by law.

COUNT III: UNFAIR TRADE PRACTICES

21. Plaintiffs Bill Esser and Karen Esser hereby incorporate Paragraphs 1-20 of the Complaint as if set forth at length.

22. On information and belief, defendant Bigler Boyz violated the provisions contained within 37 Pa. Code Section 301.5 by failing to maintain a written record documenting plaintiffs' oral authorization for specific repairs.

23. Defendant Bigler Boyz violated the provisions contained within 73 P.S. 201-2(4)(xvii) by misrepresenting the quality and/or nature of the repairs purportedly performed on plaintiffs' vehicle, both orally and in writing.

24. As a proximate and direct result of the aforementioned violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law by defendant Bigler Boyz, plaintiffs Bill Esser and Karen Esser have suffered actual damages in the amount of \$1192.13 plus applicable costs.

WHEREFORE, plaintiffs William E. Esser and Karen Esser, respectfully request judgment against defendant Richard D. Heberling, t/d/b/a Bigler Boyz Street & Off Road Toyz in the amount of \$3,576.39 and attorney fees, together with interest at the legal rate from August 8, 2002 along with all other relief available by law.

Respectfully submitted,



Gabriel J. Oros
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1498
(814) 870-7636

Attorneys for Plaintiffs
William E. Esser and Karen Esser

GJO/738499

INVOICE

BIGLER BOYZ
BOX 381
BIGLER, PA 16625
(814) 857-7871

399421

SOLD TO Jeff Wm Rose | SHIP TO 397-9305
ADDRESS 97 Bals Thomas
CITY, STATE, ZIP

CUSTOMER ORDER NO.

SOLD BY

TERMS

FOB

DATE

AMOUNT

ORDERED SHIPPED

DESCRIPTION

PRICE

UNIT

<u>Brown Leather Basket</u>					
<u>HEAD</u>	<u>NE/FAT</u>	<u>365-</u>	<u>365-</u>		
<u>MASK SET - FUTRO</u>		<u>77-</u>	<u>77-</u>		
<u>ONE PLATE W/IFER</u>			<u>19.95</u>		
<u>Barant, ETC</u>			<u>19-</u>		
<u>Shop 16.</u>	<u>② 35.00</u>	<u>560-</u>			
		<u>1040.95</u>			
		<u>62.46</u>			
		<u>103.44</u>			
		<u>16.45</u>			
		<u>1119.86</u>			

5840

EXHIBIT

SEARCHED

A

Check one for each type of inspection.

ATTN: Although the following items currently pass state inspection we believe they may become dangerous prior to the next inspection period

ANNUAL	
SEMI-ANNUAL	

Pa. Sticker No.

Inspection No.

CAR OWNER:
The state requires us to check items below to show you exactly work done to put your car in shape for safe driving.

Registration Verified

Yes No

Insurance Co. Name

Expiration Date

Policy #

Odometer Read. on

Old Insp. Sticker

Present Odometer Reading

Tires, Wheels

Suspension, Steering

Exhaust System

Fuel System

Glazing & Mirrors

Lights, Wiring and Switches

Body, Doors and Latches

Brake System

Left Front

Left Rear

Right Front

Right Rear

Other

Sticker Issued

Road Test
Yes No

FAIRVIEW SERVICE CENTER, INC.

7751 West Ridge Road
Fairview, PA 16415
(814) 474-2473

38598

Name Bill Esser

Address

Date 7-29-02

Promised A.M. P.M.

LICENSE NO. AND STATE PA 0487 Serial No. W4284936
YEAR AND MAKE 97 Ford Type of Body Taurus
OPEN NO. 13359 Description of Work 92493
STATE LUBR. CHANGE FLUSH
INSPECTION DATE OIL TRAN. & DIFF. WASH
By JM Labor Charge

ORIGINAL ESTIMATE Ck \$375 AUTHORIZED ADDITIONS \$ 871.02
Customer's Acceptance INITIAL HERE \$
DATE 7-29-02 TOTAL 354.67

EXHIBIT

13

13

13

Check cooling system found leaky gasket between. Replaced cylinder heads, and have 450.00 then resurfaced. Replace gaskets and thermostat. Refill with new coolant and change oil and filter

just had head gasket replaced
9.0 then resurfaced. Replace gaskets and thermostat. Refill with new coolant
and change oil and filter

24.95

FOUND VALVE COVER BROKEN WHEN
TOOK APART. FOUND EGR TUBE BROKEN
FOUND FUEL LINES NOT COUPLED RECENT
SPARK PLUGS WERE FINER TIGHT

ORIGINAL ESTIMATE Ck \$375 AUTHORIZED ADDITIONS \$ 871.02
Customer's Acceptance INITIAL HERE \$
DATE 7-29-02 TOTAL 354.67
BY I ACCEPT THE ESTIMATE
AND AUTHORIZE
THESE REPAIRS

I hereby authorize the above repair work to be done along with the necessary material, and hereby grant you and/or your employees permission to operate the car or truck herein described on streets, highways or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above car or truck to secure the amount of repairs hereinafter.

REPAIRED PARTS WILL BE RETURNED UNLESS SPECIFIED
OTHERWISE. RETURN PARTS DISCARD PARTS

**Bill Esser
9643 Allegheny Ave.
Lake City, Pa. 16423**

Dear Sir,

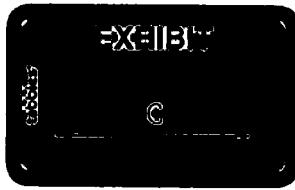
It is with great regret that I have to write this letter concerning the work I had done on my automobile by Bigler Boyz Auto Center. Bigler Boyz towed my car on July 12, 2002 from the parking lot of the Wal-Mart in Clearfield Pa.; the car was taken to your shop Bigler Boyz Auto Center in Bigler Pa. The car was looked at and it was determined the aluminum head on my V-6 engine was cracked and had to be replaced. The work was completed the following week and I picked up the car on July 19. The car seemed to be fine until the 28 of July when, on the way home from Silvercreek, N.Y. I experienced basically the same car problem as I did when Bigler Boyz towed my car the first time.

The car was taken to the service station that I normally use and the technician told me, after running a few preliminary tests, that I had carbon monoxide in my coolant, which meant a cracked head, or blown head gasket. Upon further investigation, he found that the EGR tube was put back broken the valve covers had some bolts missing and a few of them were the wrong bolts resulting in a cracked valve cover. Also some of the spark plugs were lose, the fuel lines were not coupled properly and that Teflon tape had been used on the head bolts, resulting in improper torque readings. He theorized that because of the use of Teflon tape that the head bolts were not secure enough and worked there way lose, resulting in a blown head gasket, also because of the build up in heat the new head warped approximately .003 to .005 thousandths and had to be machined to ensure a proper seal between the head and new head gasket.

I am forwarding to you, the bill and all the other information that was provided to me by Fairview Service Center. I would like for you to review it so that you can make a decision on how to rectify this situation. If you wish to speak with Fairview Service Center the phone # is (814) 474-2473 ask for Mike, he is the owner. If you wish to talk with me personally my phone # is (work: 814-878-4736) or (home: 814-774-2914). I hope we can come to some kind of agreement without bringing a third party (The Better Business Bureau) into this situation.

Sincerely,

Bill Esser



*LETTER
SENT TO
Bigler Boyz*

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL

service
MAIL RECEIPT

Mail Only; No Insurance Coverage Provided)



16825 1001 5906 2588

16825

ge	\$ 0.37	0002
ee	\$ 2.30	
ee	\$ 1.75	ERIE PA 16506-9998
ed	\$ 0.00	Postmark Here
es	\$ 4.42	08/08/2002

LER BOYZ
Box 381

Bigler, PA 16825

January 2001

See Reverse for Instructions

16825 1001 5906 2588

UNITED STATES
POSTAL SERVICE

0000 16825

0000

16506
AUG 02 02
AMOUNT

\$4.42
00059620-04

UNCLAIMED

A
C
S

Bigler BOYZ
Box 381
Bigler, PA



INSUFFICIENT ADDRESS
 ATTEMPTED NOT KNOWN
 NO SUCH NUMBER/ STREET
 NOT DELIVERABLE AS ADDRESSED
 UNABLE TO FORWARD

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Bigler Boyz
Box 381
Bigler, PA. 16825

2. Article Number
(Transfer from service label)

8852 9065 1000 0461 1002

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-0835

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

EXHIBIT

D

WILLIAM E. ESSER and,) IN THE COURT OF COMMON PLEAS
KAREN ESSER, his wife,) OF CLEARFIELD COUNTY,
Plaintiffs) PENNSYLVANIA
v.)
CIVIL ACTION - LAW
RICHARD D. HEBERLING, t/d/b/a BIGLER)
BOYZ STREET & OFF ROAD TOYZ,)
Defendant) No. - 2003

VERIFICATION

I, William E. Esser, hereby depose and state that I am authorized to make this Verification and that the averments set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. This Verification is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to intentional falsification to authorities.

William E. Esser
William E. Esser

WILLIAM E. ESSER and,) IN THE COURT OF COMMON PLEAS
KAREN ESSER, his wife,) OF CLEARFIELD COUNTY,
Plaintiffs) PENNSYLVANIA
)
v.) CIVIL ACTION - LAW
)
RICHARD D. HEBERLING, t/d/b/a BIGLER)
BOYZ STREET & OFF ROAD TOYZ,)
Defendant) No. - 2003

CERTIFICATE OF SERVICE

I hereby certify that the Complaint in the above-captioned matter was served upon counsel of record for the defendant via United States first-class mail, postage pre-paid on February 14, 2003 as follows:

F. Cortez Bell, III, Esquire
Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830



Gabriel J. Oros

1000

FILED, cc Atty Cross
M 1153 BX
FEB 18 2003 Atty pd. 85.00

William A. Shaw
Prothonotary

Notice of Proposed Termination of Court Case

October 23, 2007

RE: 2003-00212-CD

William E. Esser
Karen Esser

Vs.

Richard D. Heberling
Bigler Boyz Street & Off Road Toyz

FILED

OCT 23 2007

WAS

William A. Shaw
Prothonotary/Clerk of Courts

Dear Gabrial J. Oros, Esq:

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830**. The Statement of Intention to Proceed must be filed on or before **December 24, 2007**.

If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.

By the Court,
Daniel J. Nelson

Daniel J. Nelson
Court Administrator

Notice of Proposed Termination of Court Case

October 23, 2007

RE: 2003-00212-CD

William E. Esser
Karen Esser

Vs.

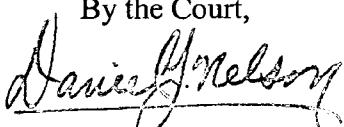
Richard D. Heberling
Bigler Boyz Street & Off Road Toyz

Dear Richard D. Heberling t/d/b/a Bigler Boyz Street & Off Road Toyz:

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830**. The Statement of Intention to Proceed must be filed on or before **December 24, 2007**.

If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.

By the Court,

Daniel J. Nelson
Court Administrator

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WILLIAM E. ESSER and KAREN ESSER,)
Plaintiffs)
v.) NO. 03-212-CD
RICHARD D. HEBERLING, t/d/b/a)
BIGLER BOYZ STREET & OFF ROAD TOYZ,)
Defendant)

FILED ICC & 1
m/1:45 pm
NOV 16 2007
William A. Shaw
Prothonotary/Clerk of Courts
to Abby Miller

PRAECIPE AND POWER OF ATTORNEY FOR SATISFACTION AND/OR TERMINATION

TO THE PROTHONOTARY/CLERK OF SAID COURT:

You are hereby authorized, empowered, and directed to enter, as indicated, the following on the records thereof:

A. 1. The within suit is Settled, Discontinued, Ended and costs paid.
2. The within suit is Settled, Discontinued, Ended WITH Prejudice and costs paid.
3. The within suit is Settled, Discontinued, Ended WITHOUT Prejudice and costs paid.

* * * * *

B. 1. Satisfaction of the Award in the within suit is acknowledged.
2. Satisfaction of Judgment, with interest and costs, in the within matter is acknowledged.

* * * * *

C. Other:

DATE: November 14, 2007

WITNESS (if signer is other than a
registered attorney):

Attorney or Notary



Signature of authorizing party
MacDonald, Illig, Jones & Britton LLP
100 State Street, Suite 700
Erie, PA 16507-1459
(814) 870-7708

Daniel M. Miller, Esq.

Type or print name of above signer

COST PAYMENT VERIFICATION

I UNDERSTAND THAT THE ABOVE ACTION CANNOT BE FILED AND DOCKETED UNTIL ALL COSTS HAVE BEEN PAID, INCLUDING SHERIFF'S COSTS; AND HEREBY VERIFY THAT ALL COSTS HAVE BEEN PAID. I UNDERSTAND THAT FALSE STATEMENTS HEREIN ARE MADE SUBJECT TO THE PENALTIES OF 18 P.A.C.S. SEC. 4904 RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES.



(Rev. 4/92) Signature

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

William E. Esser
Karen Esser

Vs.

No. 2003-00212-CD

Richard D. Heberling
Bigler Boyz Street & Off Road Toyz

CERTIFICATE OF DISCONTINUATION

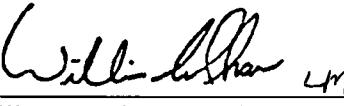
Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on November 16, 2007, marked:

Settled, discontinued and ended with prejudice

Record costs in the sum of \$85.00 have been paid in full by Gabriel J. Oros Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 16th day of November A.D. 2007.



William A. Shaw, Prothonotary