

08-2443-CD

Joseph Palumbo vs Jim's Custom et al

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

JOSEPH L. R. PALUMBO, SR.,) NO. 08 - 2443 - CD
Plaintiff,)
v.) Type of Pleading:
JIM'S CUSTOM COLLISION, INC.,) COMPLAINT
Defendant.)
) Filed on Behalf of: PLAINTIFF
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III
)
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) DuBois, PA 15801
) (814) 371-2730

S
FILED 01/11/2008 10:22 AM Atty Blakley
DEC 28 2008 10:22 AM Sheriff
William A. Shaw Atty Pd.
Prothonotary/Clerk of Courts 95.00

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

JOSEPH L. R. PALUMBO, SR.,) NO. 08 - - CD
)
 Plaintiff,)
)
 v.)
)
 JIM'S CUSTOM COLLISION, INC.,)
)
 Defendant.)

NOTICE TO DEFEND

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 TWENTY (20) DAYS AFTER THIS COMPLAINT IS 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 AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT REQUESTED BY 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.

Daniel J. Nelson, Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641

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

JOSEPH L. R. PALUMBO, SR.,)	NO. 08 -	- CD
)		
Plaintiff,)		
)		
v.)		
)		
JIM'S CUSTOM COLLISION, INC.,)		
)		
Defendant.)		

COMPLAINT

AND NOW comes Plaintiff, **JOSEPH L. R. PALUMBO, SR.**, by and through his undersigned attorneys, **BLAKLEY & JONES**, and files this Complaint in Replevin against Defendant, **JIM'S CUSTOM COLLISION, INC.**, upon a cause of action of which the following is a statement:

1. Plaintiff, **JOSEPH L. R. PALUMBO, SR.**, is an adult individual, *sui juris*, residing at 1103 South Main Street, DuBois, Clearfield County, Pennsylvania.
2. Defendant, **JIM'S CUSTOM COLLISION, INC.**, is a Pennsylvania corporation authorized to do business in the Commonwealth of Pennsylvania, with a place of business at 500 DuBois Street, DuBois, Clearfield County, Pennsylvania.
3. At all times material hereto, Plaintiff was the owner of a 1964 ½ Ford Mustang, Vehicle Identification Number 5F07C251866.
4. At all times material hereto, Defendant was in the business of the repair and restoration of motor vehicles.

5. During July of 2004, Plaintiff and Defendant entered into an oral agreement for the Defendant's repair and restoration of the Plaintiff's vehicle and orally agreed upon a price of no more than \$6,000.00.

6. At the time of the parties' agreement, Plaintiff delivered possession of the aforementioned 1964 Ford Mustang to the Defendant at the Defendant's place of business at 500 DuBois Street, DuBois, Clearfield County, Pennsylvania.

7. At the time of the oral contract between the Plaintiff and Defendant, the Plaintiff advised the Defendant that the Plaintiff intended to give the aforesaid motor vehicle to the Plaintiff's grandson for his sixteenth birthday, said birthday occurring in the year 2006, with the Defendant agreeing that the restoration work to be done on the Plaintiff's vehicle would be done by that time.

8. During the Defendant's possession of the vehicle, the Defendant billed the Plaintiff at various times for work performed on the vehicle by the Defendant, said billings totaling \$3,900.00. Copies of said billings received by the Plaintiff between January 16, 2005, and May 30, 2006, are attached hereto and marked Plaintiff's Exhibits A.

9. Plaintiff did make continuous inquiries of the Defendant as to the progress made by the Defendant on the said vehicle, but the Defendant had indicated that he has failed to complete the restoration of the Plaintiff's vehicle despite his knowledge that the Plaintiff needed the vehicle completed during the year 2006 for the Plaintiff's grandson's birthday.

10. Plaintiff demanded the return of the vehicle from the Defendant since the restoration work could be completed by others; however, the Defendant failed and refused to deliver possession of the Plaintiff's vehicle to the Plaintiff.

11. That as a result of the improper actions of the Defendant, the Plaintiff brought a Complaint in Replevin through No. 07-1738-C.D, and as a result of the action filed by the Plaintiff, William A. Shaw, Sr., Prothonotary, issued a Writ of Seizure of the said vehicle on October 29, 2007, and on November 27, 2007, the automobile was delivered to the Plaintiff's possession.

12. Upon inspecting the said vehicle, the Plaintiff discovered that the Defendant had attempted to perform repairs upon the aforesaid vehicle, such repairs not being done in a good and workmanlike manner, specifically;

- (a) That the rear frame wheels and complete rear body had been welded off-center causing the body panels to be in the wrong place;
- (b) That seams that are formed between body panels had been filled in, thereby making it impossible to realign said panels;
- (c) That the rear axle on the subject vehicle was not aligned with the body, due to the body being welded in a misaligned fashion;
- (d) That materials used by the Defendant were of substandard quality for restoration causing the metals and materials to be in need of replacement.

I - BREACH OF CONTRACT

13. Plaintiff incorporates by reference the allegations contained within paragraph 1 through 12 of this Complaint as if fully set forth herein.

14. That the actions of the Defendant were in breach of the parties oral contract, specifically that the work performed during the period of 2004 to 2007 was not performed in a good and workmanlike manner for the reasons set forth in paragraph 12 as hereinbefore stated.

15. That as a result of the breach of the oral contract by the Plaintiff, the subject vehicle is presently incapable of restoration and has been effectively destroyed by the actions of the Defendant.

16. The report of H & H Performance, Inc. as to the vehicles condition and its suitability for restoration is attached hereto and made a part hereof and marked Exhibit "B".

17. That the costs of the repair of the vehicle is greater than the high market value of a restored vehicle. The report of Catlado's Collision, Inc. is attached hereto and made a part hereof and marked Exhibit "C".

18. That had the Defendant performed his work upon the said vehicle pursuant to the parties oral contract, the said vehicle would have a high market value of Twenty-Four Thousand (\$24,000.00) Dollars.

WHEREFORE, Plaintiff demands judgment against the Defendant, Jim's Custom Collision, Inc. in the amount of Twenty-Four Thousand (\$24,000.00) Dollars, plus interest and costs of suit.

II - NEGLIGENCE

19. Plaintiff incorporates by reference the allegations contained within paragraph 1 through 16 of this Complaint as if fully set forth herein.

20. That the repairs performed on the subject vehicle by the Defendant and his workman were performed in a careless and negligent manner, thereby causing the vehicle to become worthless and incapable of restoration. The careless and negligent acts of the Defendant and workman consisted of the following:

- (a) That the rear frame wheels and complete rear body had been welded off-center causing the body panels to be in the wrong place;
- (b) That seams that are formed between body panels had been filled in, thereby making it impossible to realign said panels;
- (c) That the rear axle on the subject vehicle was not aligned with the body, due to the body being welded in a misaligned fashion;
- (d) That materials used by the Defendant were of substandard quality for restoration causing the metals and materials to be in need of replacement.

WHEREFORE, Plaintiff demands judgment against the Defendant Jim's Custom Collision, Inc. in the amount of Twenty-Four Thousand (\$24,000.00) Dollars, plus interest and costs of suit.

III - PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

- 21. Plaintiff incorporates by reference the allegations contained within paragraph 1 through 18 of this Complaint as if fully set forth herein.
- 22. That by representing to the Plaintiff that the Defendant could properly restore his vehicle or had the ability to restore his vehicle and possessed the necessary skill and knowledge in order to restore the said vehicle, the Defendant engaged in fraudulent or deceptive conduct which created a likelihood of confusion and misunderstanding of the Defendant's capabilities in the mind of the Plaintiff. Within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1 et. seq.

23. As a result of the deceptive actions and representations of the Defendant, the Plaintiff has suffered damages of Twenty-Four Thousand (\$24,000.00) Dollars, representing the market value of the Plaintiff's vehicle in restored condition.

24. Plaintiff has retained the services of Blakley & Jones in order to bring this action and has and will incur substantial attorney's fees in the bringing of this action.

25. That the Pennsylvania Unfair Trade Practices and Consumer Protection Law permits the recovery of three times the actual damages sustained and the award of reasonable attorney's fees and costs in addition to the actual damages.

WHEREFORE Plaintiff demands judgment against Defendant in the amount of Seventy-Two Thousand (\$72,000.00) Dollars together with reasonable attorney's fees and costs.

Respectfully submitted,

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiff

VERIFICATION

I, JOSEPH L. R. PALUMBO, SR., hereby state that I am the Plaintiff in this action and verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 12/18/08

Joseph L.R. Palumbo, Sr.
JOSEPH L. R. PALUMBO, SR.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
 DuBois, PA 15801
 (814) 375-2385

SOLD BY	DATE	1/16/05			
NAME					
ADDRESS					
CASH	C.O.D.	CHARGE	ON ACCT.		
Payment on Mustang					
Rich					
RECEIVED BY					
500.00					

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
 DuBois, PA 15801
 (814) 375-2385

SOLD BY	DATE	4/8/05			
NAME Joe Palumbo					
ADDRESS					
CASH	C.O.D.	CHARGE	ON ACCT.		
Received Payment on Mustang 500.00					
RECEIVED BY					

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
 DuBois, PA 15801
 (814) 375-2385

SOLD BY	DATE	3/24/05			
NAME Joe Palumbo					
ADDRESS					
CASH	C.O.D.	CHARGE	ON ACCT.		
Money on Mustang 540.00					
RECEIVED BY					
540.00					

Thank You

All claims and returned goods MUST be accompanied by this bill.

EXHIBIT

"A"

tables

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
DuBois, PA 15801
(814) 375-2385

SOLD BY		DATE	6/15/05	
NAME		Alex @ Scull 1/2hr		
ADDRESS				
CASH	C.O.D.	CHARGE	ON ACCT.	
RECEIVED BY		460.00		

Received Ayerst
ON Mustang

460.00

Thank You

All claims and returned goods **MUST** be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
DuBois, PA 15801
(814) 375-2385

500.00

500.00

Thank You

All claims and returned goods **MUST** be accompanied by this bill.

M'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
DuBois, PA 15801
(814) 723-2525

Present
on Mustard

Thank You

All claims and returned goods **MUST** be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.**Repair & Collision Center**

500 DuBois Street
DuBois, PA 15801
(814) 375-2385

SOLD BY	DATE			
5/30/06				
NAME				
Joe Palumbo				
ADDRESS				
CASH	C.O.D.	CHARGE	ON ACCT.	
400.00 Cash				
Payment for mustang				
<i>CD Palumbo</i>				
RECEIVED BY				

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.**Repair & Collision Center**

500 DuBois Street
DuBois, PA 15801
(814) 375-2385

SOLD BY	DATE			
2/27/06				
NAME				
ADDRESS				
CASH	C.O.D.	CHARGE	ON ACCT.	
<i>Palumbo's</i>				
<i>Payment on</i>				
<i>Mustang</i>				
RECEIVED BY		500.00		

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
 DuBois, PA 15801
 (814) 375-2385

SOLD BY	DATE	1/16/05			
NAME					
ADDRESS					
CASH	C.O.D.	CHARGE	ON ACCT.		
Payment on Mustang					
Fitch					
RECEIVED BY					
500.00					

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
 DuBois, PA 15801
 (814) 375-2385

SOLD BY	DATE	4/8/05			
NAME Joe Palumbo					
ADDRESS					
CASH	C.O.D.	CHARGE	ON ACCT.		
Received Payment on Mustang					
Ficed					
RECEIVED BY					

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
 DuBois, PA 15801
 (814) 375-2385

SOLD BY	DATE	3/24/05			
NAME Joe Palumbo					
ADDRESS					
CASH	C.O.D.	CHARGE	ON ACCT.		
Money on Mustang					
540.00					
RECEIVED BY					
540.00					

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
 DuBois, PA 15801
 (814) 375-2385

SOLD BY	DATE			
5/30/06				
NAME				
Joe Polumbo				
ADDRESS				
CASH	C.O.D.	CHARGE	ON ACCT.	
400.00 Cash				
Payment for mustang				
<i>CD Polumbo</i>				
RECEIVED BY				

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
 DuBois, PA 15801
 (814) 375-2385

SOLD BY	DATE			
2/27/06				
NAME				
Joe Polumbo				
ADDRESS				
CASH	C.O.D.	CHARGE	ON ACCT.	
PA lumbo's				
Payment on				
Mustang				
RECEIVED BY		500.00		

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
 DuBois, PA 15801
 (814) 375-2385

SOLD BY	DATE	11/16/05		
NAME				
ADDRESS				
CASH	C.O.D.	CHARGE	ON ACCT.	
Payment on Mustang				
RECEIVED BY			500.00	

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
 DuBois, PA 15801
 (814) 375-2385

SOLD BY	DATE	4/6/05		
NAME				
ADDRESS				
CASH	C.O.D.	CHARGE	ON ACCT.	
Received Payment on Mustang 500.00				
RECEIVED BY				

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
 DuBois, PA 15801
 (814) 375-2385

SOLD BY	DATE	11/16/05		
NAME				
ADDRESS				
CASH	C.O.D.	CHARGE	ON ACCT.	
Money on Mustang 540.00				
RECEIVED BY			540.00	

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
DuBois, PA 15801
(814) 375-2385

SOLD BY	DATE	6/15/05			
NAME	A. Scull				
ADDRESS					
CASH	C.O.D.	CHARGE	ON ACCT.		
Received Payment on Mustang.					
RECEIVED BY 460.00					

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
DuBois, PA 15801
(814) 375-2385

SOLD BY	DATE	6/15/05			
NAME	P. Scull				
ADDRESS					
CASH	C.O.D.	CHARGE	ON ACCT.		
500.00					
RECEIVED BY 500.00					

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center

500 DuBois Street
DuBois, PA 15801
(814) 375-2385

SOLD BY	DATE	5/10/06			
NAME	A. Scull				
ADDRESS					
CASH	C.O.D.	CHARGE	ON ACCT.		
Received Payment on Mustang.					
RECEIVED BY 500.00					

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center
500 DuBois Street
DuBois, PA 15801
(814) 375-2385

SOLD BY	DATE	5/30/06		
NAME <i>Joe Polumbro</i>				
ADDRESS				
CASH	C.O.D.	CHARGE	ON ACCT.	
400.00 Cash Payment for mustang				
<i>200.00</i>				
RECEIVED BY				

Thank You

All claims and returned goods MUST be accompanied by this bill.

JIM'S CUSTOM COLLISION INC.
Repair & Collision Center
500 DuBois Street
DuBois, PA 15801
(814) 375-2385

SOLD BY	DATE	2/27/06		
NAME				
ADDRESS				
CASH	C.O.D.	CHARGE	ON ACCT.	
<i>Plumb's</i> Payment on <i>Mustang</i>				
RECEIVED BY				

Thank You

All claims and returned goods MUST be accompanied by this bill.

H&H PERFORMANCE INC

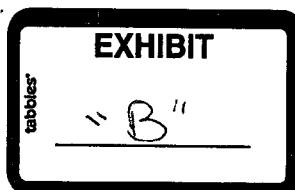
1201 SOUTH BRADY STREET
DUBOIS, PA 15801

Estimate

Date	Estimate #
9/30/2008	001003

Name / Address

Joe Palumbo
1103 South Main Street
DuBois, Pa. 15801





CATALDO'S COLLISION INC.

615 DIVISION STREET
DUBOIS, PA 15801
PHONE: 814-372-8600 FAX: 814-372-4580

October 2, 2008

Joe Palumbo
1103 South Main St.
Dubois, PA 15801

Re: 1964 Ford Mustang

Dear Mr. Palumbo,

After careful evaluation of your car I have determined in my expert opinion that it is not cost effective to repair your car. The total cost to repair the car exceeds the value of the car. The following factors are what I have based this decision on:

1. The replacement rear frame rails & complete rear body have been welded off center which causes the body panels to be in the wrong place.
2. Seams that are formed between body panels have been filled in, thereby making it impossible to realign.
3. The rear axle is not aligned with the body, due to body being welded on misaligned

Enclosed are the frame computer printouts of how far out of alignment the car is, and photos of the poor craftsmanship.

I believe that this car could never be restored to its original condition.

Sincerely,

Clarence A. Cataldo
Owner
Cataldo's Collision Inc.

EXHIBIT

tabbies®

"C"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
NO: 08-2443-CD

JOSEPH L. R. PALUMBO, SR.

vs

JIM'S CUSTOM COLLISION, INC.,

COMPLAINT

SERVE BY: 01/22/2009

HEARING:

PAGE: 105087

DEFENDANT: JIM'S CUSTOM COLLISION, INC.

ADDRESS: 500 DUBOIS STREET

DUBOIS, PA 15801

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/PIC

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS: VACANT OCCUPIED

ATTEMPTS

SHERIFF'S RETURN

NOW, 12-29-2008 AT 11:34 AM / PM SERVED THE WITHIN

COMPLAINT ON JIM'S CUSTOM COLLISION, INC., DEFENDANT

BY HANDING TO Bill Murray / Shop manager

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED 500 DUBOIS ST. DUBOIS, PA. 15801

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT FOR JIM'S CUSTOM COLLISION, INC.

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO JIM'S CUSTOM COLLISION, INC.

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

DAY OF 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Jerome M. Nevin
Deputy Signature

Jerome M. Nevin
Print Deputy Name

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 105087
NO: 08-2443-CD
SERVICES 1
COMPLAINT

PLAINTIFF: JOSEPH L. R. PALUMBO, SR.
vs.
DEFENDANT: JIM'S CUSTOM COLLISION, INC.,

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	BLAKLEY	10039	10.00
SHERIFF HAWKINS	BLAKLEY	10039	40.65

S
0/3:35LM
JUL 25 2009
WM

William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

So Answers,

____ Day of _____ 2009



Chester A. Hawkins
Sheriff

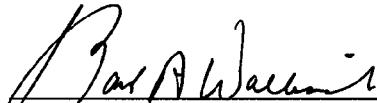
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH L. R. PALUMBO, SR., :
Plaintiff, :
: No. 2443 - 2008 C.D.
vs. :
: :
JIM'S CUSTOM COLLISION, INC., :
Defendant. :
:

CERTIFICATE OF SERVICE

The undersigned, Mark A. Wallisch, Esquire, hereby certifies that he served a copy of Defendant's Answer, New Matter and Counterclaim in the above captioned case on the following parties at the addresses shown below by first class mail on May 12, 2009.

Benjamin S. Blakley, III, Esquire
Blakley & Jones
90 Beaver Drive, Box 6
DuBois, PA 15801



Mark A. Wallisch, Esquire
Achille, Ellermeyer & Wallisch

S **FILED** *cc Addy*
111:47 am *Wallisch*
MAY 13 2009
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH L. R. PALUMBO, SR., : No. 2443 - 2008 C.D.
Plaintiff, :
vs. : Type of Pleading: Answer, New Matter
: and Counterclaim
JIM'S CUSTOM COLLISION, INC., : Filed on behalf of: Jim's Custom Collision,
Defendant. : Inc.
: Counsel of Record for this Party:
: Mark A. Wallisch, Esquire
: Supreme Court No.: 23658
: Achille, Ellermeyer & Wallisch
: 379 Main Street
: Brookville, PA 15825
: Phone: 814-849-6701

FILED *cc A/H*
3/11/47am *W*allisch
MAY 13 2009

5
William A. Shaw
Prothonotary/Clerk of Courts
64

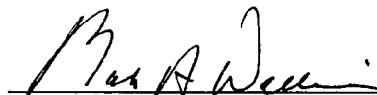
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH L. R. PALUMBO, SR., :
Plaintiff, :
vs. : No. 2443 - 2008 C.D.
JIM'S CUSTOM COLLISION, INC., :
Defendant. :

NOTICE

TO: JOSEPH L. R. PALUMBO, SR.

You are hereby notified to file a written response to the enclosed New Matter and Counterclaim within twenty (20) days from service hereof or a judgment may be entered against you.



Mark A. Wallisch, Esquire
Attorney for Defendant
Jim's Custom Collision, Inc.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH L. R. PALUMBO, SR., :
Plaintiff, :
: No. 2443 - 2008 C.D.
vs. :
: :
JIM'S CUSTOM COLLISION, INC., :
Defendant. :
:

ANSWER

AND NOW, comes the Defendant, Jim's Custom Collision, Inc., by and through his attorney, Mark A. Wallisch, Esquire and answers the Plaintiff's Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. The averments contained in paragraph 5 of Plaintiff's Complaint are admitted to the extent that Plaintiff and Defendant entered in an agreement for repair and restoration work on the Plaintiff's vehicle. It is denied that a firm price had been agreed upon.
6. Admitted.
7. The averments contained in paragraph 7 of Plaintiff's Complaint are denied and to the contrary Defendant avers that the parties understood that Defendant's insurance work had priority and that the work performed for Plaintiff could only be done in between insurance jobs, and that no firm date for completion of the work could be set.
8. Admitted.

9. The averments contained in paragraph 9 of Plaintiff's Complaint are denied and to the contrary Defendant incorporates by reference his answer to the previous paragraphs.

10. The averments contained in paragraph 10 of Plaintiff's Complaint are denied and to the contrary Defendant avers that at the time Plaintiff demanded return of the vehicle nearly all of the work had been done and Plaintiff refused to pay the full amount that was due and owing.

11. The averments contained in paragraph 11 of Plaintiff's Complaint are denied and to the contrary Defendant avers that no improper actions were taken by Jim's Custom Collision, Inc.

12. The averments contained in paragraph 12 of Plaintiff's Complaint are denied and to the contrary Defendant avers that all work performed by Defendant was done in a good and workmanlike manner considering the condition of the vehicle at the time it was delivered to the Defendant, and the fact that Plaintiff wanted to keep the costs for the restoration low. By way of further answer, none of the welding of the body or the frame was off center, the body parts were adequately fitted and the vehicle was restored to the extent that the appearance and mechanical condition were restored as promised.

I - BREACH OF CONTRACT

13. Defendant incorporates by reference its answers contained in paragraphs 1 through 12 of this Answer as if set forth fully herein.

14. The averments contained in paragraph 14 of Plaintiff's Complaint are denied and to the contrary Defendant avers that all work performed by Defendant was done in a good and workmanlike manner, considering the condition of the vehicle as delivered to the Defendant, and the nature of the work to be performed.

15. The averments contained in paragraph 15 of Plaintiff's Complaint are denied and to the contrary the work performed on Plaintiff's vehicle increased its value significantly above what it was at the time the vehicle was delivered to the Defendant, and the vehicle was restored as promised.

16. The averments contained in paragraph 16 of Plaintiff's Complaint are denied and to the contrary Defendant avers that the report of H&H Performance, Inc. is irrelevant because the parties had never agreed that Defendant was to do a 100 point restoration.

17. The averments contained in paragraph 17 of Plaintiff's Complaint are denied and to the contrary to complete the restoration as promised would cost less than \$2,500.00.

18. The averments contained in paragraph 18 of Plaintiff's Complaint are denied and to the contrary Defendant avers that the value quoted by the Plaintiff for the vehicle would be for a 100% like new restoration. Plaintiff and Defendant had never agreed that the vehicle would be restored to that extent.

II - NEGLIGENCE

19. Defendant incorporates by reference its answers to paragraphs 1 through 16 of this answer as if fully set forth herein.

20. The averments contained in paragraph 20 of Plaintiff's Complaint are denied and to the contrary Defendant avers that all work performed by Defendant was done in a good and workmanlike manner and that the vehicle has a present value of at least \$10,000.00.

WHEREFORE, Defendant requests that judgment be entered against the Plaintiff and for the Defendant.

**III - PENNSYLVANIA UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION LAW**

21. Defendant incorporates by reference its answers to paragraphs 1 through 18 of this answer as if fully set forth length.
22. The averments contained in paragraph 22 of Plaintiff's Complaint are conclusions of law and require no response.
23. The averments contained in paragraph 23 of Plaintiff's Complaint are denied and to the contrary Defendant avers that Plaintiff has suffered no damage and to the contrary the work performed by the Defendant has increased the value of Plaintiff's vehicle.
24. Defendant is without sufficient knowledge to form a belief as to the truth of the averments contained in paragraph 24 of Plaintiff's Complaint the same are therefore deemed denied and strict proof thereof is demanded at trial.
25. The averments contained in paragraph 25 of Plaintiff's Complaint are conclusions of law and require no response.

WHEREFORE, Defendant requests that judgment be entered for the Defendant and against the Plaintiff with all costs assessed to Plaintiff.

NEW MATTER

26. Defendant incorporates by reference its answers to paragraphs 1 through 25 of Plaintiff's Complaint as well as the averments contained in Plaintiff's Complaint to which it has admitted.
27. The oral agreement between the parties did not specify an exact price.
28. Defendant initially told the Plaintiff that he felt the body work would cost the Defendant between \$6,000.00 and \$6,500.00 but that could change depending upon what was

found in the course of the work.

29. During the course of the work Defendant informed Plaintiff of additional parts and labor that were required and Plaintiff agreed to pay for same.

30. The oral agreement between the parties did not specify an exact completion date.

31. Defendant initially told the Plaintiff that Defendant's insurance work would have priority and that the work for the Plaintiff would be performed when they were not doing "insurance work".

32. The total price for parts and labor for work performed to date is \$11,598.00.

33. The sum of \$11,598.00 is fair and reasonable for the work performed and the materials furnished.

34. Plaintiff was informed of the amount due and owing, Defendant has demanded payment and Plaintiff has refused to pay same.

35. Plaintiff and Defendant had never agreed that Defendant would do a complete 100 point restoration of Plaintiff's vehicle.

36. Plaintiff informed the Defendant at the start of the work that he wanted to keep the price for labor and materials low.

COUNTERCLAIM
COUNT 1 - BREACH OF CONTRACT

37. Defendant incorporates by reference its answers to paragraphs 1 through 25 as well as the averments contained in Plaintiff's Complaint to which it has admitted and the averments contained in paragraphs 26 through 36 of Plaintiff's New Matter.

WHEREFORE, Defendant demands judgment against Plaintiff in the amount of \$7,698.00 plus interest and costs.

COUNT II
QUANTUM MERUIT

38. Defendant incorporates by reference its answers to paragraphs 1 though 25 of Plaintiff's Complaint as well as the averments contained in Plaintiff's Complaint to which it has admitted and the averments contained in paragraphs 26 through 37 of Defendant's New Matter and Counterclaim.

WHEREFORE, Defendant demands judgment against Plaintiff in the amount of \$7,698.00 plus interest and costs.

Respectfully submitted,



Mark A. Wallisch, Esquire
Attorney for Defendant
Jim's Custom Collision

VERIFICATION

I, James Bennett, President of Jim's Custom Collision, Inc., Defendant in this action hereby verify that the statements made in the foregoing Answer, New Matter and Counterclaim are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Date: May 4, 09

James B Bennett
James Bennett

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

JOSEPH L. R. PALUMBO, SR.,) NO. 08 - 2443 - CD
Plaintiff,)
v.) Type of Pleading: PLAINTIFF'S REPLY TO
JIM'S CUSTOM COLLISION, INC.,) NEW MATTER & ANSWER TO
Defendant.) COUNTERCLAIM
) Filed on Behalf of: PLAINTIFF
)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III
)
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) DuBois, PA 15801
) (814) 371-2730

FILED 10
01/20/2009 JUN 10 2009
Atty Blakley
William A. Shaw
Prothonotary/Clerk of Courts
610

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

JOSEPH L. R. PALUMBO, SR.,) NO. 08 - 2443 - CD
)
 Plaintiff,)
)
 v.)
)
 JIM'S CUSTOM COLLISION, INC.,)
)
 Defendant.)
)

PLAINTIFF'S REPLY TO NEW MATTER & ANSWER TO COUNTERCLAIM

AND NOW comes Plaintiff, **JOSEPH L. R. PALUMBO, SR.**, by and through his undersigned attorneys, **BLAKLEY & JONES**, and replies to Defendant's New Matter as follows:

ANSWER TO NEW MATTER

26. Requires no answer.
27. It is admitted that the oral agreement between the parties did not specify the exact price; however, it is further averred that the Defendant did inform the Plaintiff that the cost of the work to be performed on the subject automobile would be approximately \$5,500.00. It is upon that representation that the Plaintiff agreed to permit the Defendant to work upon the automobile.
28. Denied, and on the contrary, it is averred that the Defendant had always represented to the Plaintiff that the work on the Plaintiff's vehicle would cost "around \$5,500.00." It is further denied that Plaintiff was told that the aforesaid figure would change depending on what was found in the course of the work, and on the contrary, it is averred that the \$5,500.00 quote was to be the total approximate charge for the work done upon Plaintiff's vehicle.

29. Denied, and on the contrary, it is averred that the Defendant at no time did inform the Plaintiff of parts and labor which would exceed the agreed upon price; however, it is admitted that the Defendant billed the Plaintiff for work performed upon the subject vehicle, said billings having been paid by the Plaintiff.

30. Denied, and on the contrary, it is averred that the Defendant was aware that the Defendant represented to the Plaintiff that the Defendant would complete the restoration work upon Plaintiff's vehicle by the birthday of Plaintiff's grandson in July of 2006.

31. Admitted; however, it is further averred that Defendant represented to the Plaintiff that the work would be completed by July, 2006, that being the month of Plaintiff's grandson's birthday.

32. After reasonable investigation, Plaintiff is unable to determine the truth or falsity of the allegations contained within Paragraph 32 of Defendant's New Matter, and therefore denies the same and demands strict proof thereof at trial.

33. After reasonable investigation, Plaintiff is unable to determine the truth or falsity of the allegations contained within Paragraph 33 of Defendant's New Matter, and therefore denies the same and demands strict proof thereof at trial.

34. It is denied that the Plaintiff was informed of any further amounts due and owing the Defendant prior to the institution of the within proceedings, and on the contrary, it is averred that the Defendant billed the Plaintiff for all parts and labor performed on the aforesaid vehicle, the same having been paid in full by the Plaintiff. It is further denied that the Plaintiff owes any more monies to the Defendant than that which was quoted by the Defendant, and on the contrary, it is averred that the Defendant appears to have performed unauthorized work upon the subject vehicle and, therefore, Plaintiff is not indebted to the Defendant for the same.

35. Denied, and on the contrary, it is averred that at all times, the parties agreed that Defendant would do a complete 100 point restoration of Plaintiff's vehicle at the price set forth in Plaintiff's Complaint.

36. Admitted; however, it is further averred that Defendant represented to the Plaintiff that the repair and restoration of Plaintiff's vehicle could be performed at the prices set forth in Plaintiff's Complaint.

ANSWER TO COUNTERCLAIM

Plaintiff hereby answers the Defendant's Counterclaim as follows:

COUNT I - BREACH OF CONTRACT

37. Requires no answer. To the extent an answer is required, Plaintiff denies that any further monies are owed to the Defendant for the reasons set forth in the Plaintiff's Complaint and Reply to New Matter.

WHEREFORE, Plaintiff demands that Defendant's Counterclaim be dismissed.

COUNT II - QUANTUM MERUIT

38. Requires no answer. To the extent an answer is required, Plaintiff denies that any further monies are owed to the Defendant for the reasons set forth in the Plaintiff's Complaint and Reply to New Matter.

WHEREFORE, Plaintiff demands that Defendant's Counterclaim be dismissed.

Respectfully submitted,

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiff

VERIFICATION

I, **JOSEPH L. R. PALUMBO, SR.**, hereby state that I am the Plaintiff in this action and verify that the statements made in the foregoing Plaintiff's Reply to New Matter & Answer to Counterclaim are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

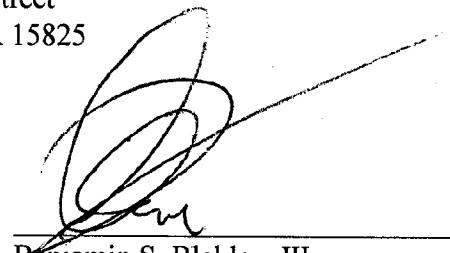

Joseph L. R. Palumbo, Sr.

Dated: 5/29/09

CERTIFICATE OF SERVICE

This will certify that the undersigned served a copy of Plaintiff's Reply to New Matter & Answer to Counterclaim in the above-captioned matter on the following parties at the addresses shown below by first-class U.S. Mail on the 10th day of June, 2009:

Mark A. Wallisch, Esquire
Achille, Ellermeyer & Wallisch
379 Main Street
Brookville PA 15825



Benjamin S. Blakley, III

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL TRIAL LISTING

CA

CERTIFICATE OF READINESS		TO THE PROTHONOTARY
(To be executed by Trial Counsel Only)		DATE PRESENTED
CASE NUMBER 08-2443-C.D. Date Complaint filed: December 23, 2008	TYPE TRIAL REQUESTED <input type="checkbox"/> Jury <input checked="" type="checkbox"/> Non-jury <input type="checkbox"/> Arbitration	ESTIMATED TRIAL TIME 1/2 DAYS

PLAINTIFF(S)

JOSEPH L. R. PALUMBO, SR. ()

DEFENDANT(S)

Check Block
if a Minor
is a Party
to the Case

JIM'S CUSTOM COLLISION, INC. ()

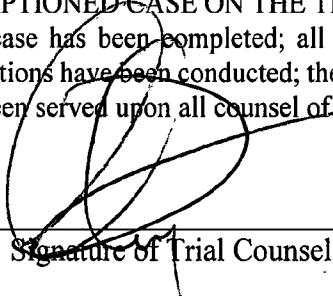
ADDITIONAL DEFENDANT(S)

()

JURY DEMAND FILED BY:	DATE JURY DEMAND FILED:
AMOUNT AT ISSUE \$ 72,000.00	CONSOLIDATION <input type="checkbox"/> Yes <input type="checkbox"/> No
DATE CONSOLIDATION ORDERED	

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.


Signature of Trial Counsel

FILED NO
01/38/09
JUN 25 2009
610

William A. Shaw
Prothonotary/Clerk of Courts

COUNSEL WHO WILL ACTUALLY TRY THE CASE

FOR THE PLAINTIFF Benjamin S. Blakley, III, Esquire	TELEPHONE NUMBER (814) 371-2730
FOR THE DEFENDANT Mark A. Wallisch, Esquire	TELEPHONE NUMBER (814) 849-6701
FOR ADDITIONAL DEFENDANT	TELEPHONE NUMBER

FILED

JUN 25 2009

William A. Shaw
Prothonotary/Clerk of Courts

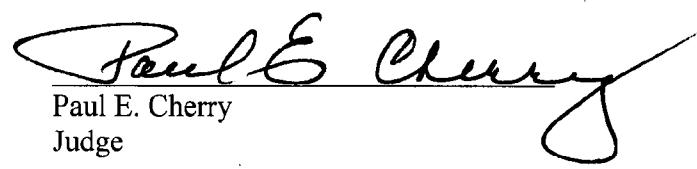
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JOSEPH L.R. PALUMBO, SR. :
vs. : No. 08-2443-CD
JIM'S CUSTOM COLLISION, INC. :
: *WA*

O R D E R

AND NOW, this 29th day of June, 2009, it is the Order of the Court that a pre-trial conference in the above-captioned matter shall be and is hereby scheduled for Monday, August 10, 2009 at 10:30 A.M. in Judges Chambers, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


Paul E. Cherry
Judge

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William A. Shaw
Prothonotary/Clerk of Courts
ICCA Atys: Blakley
Wallsch

FILED

JUN 29 2009

William A. Straw
Prothonotary/Clerk of Courts

DATE: 10/29/09

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special instructions:

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

JOSEPH R. PALUMBO, SR. : NO. 08-2443-CD

v. :

JIM'S CUSTOM COLLISION, INC. :

ORDER

AND NOW, this 10th day of August, 2009, following Pre-Trial Conference, it is
the ORDER of this Court as follows:

1. Non-Jury Trial in this matter is scheduled for October 7, 2009, beginning at 1:30 P.M. at Cataldo's Collision and for October 16, 2009, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. The deadline for providing any and all outstanding discovery shall be by and no later than twenty (20) days prior to the commencement of trial.
3. Counsel for the parties, if they so desire, may submit a Trial Brief to the Court no more than twenty (20) days prior to the commencement of trial.
4. The deadline for submitting any and all Motions shall be by and no later than thirty (30) days prior to the commencement of trial.
5. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED 100 AMPS:
03.26.09
AUG 10 2009
William A. Shaw
Prothonotary/Clerk of Courts
Blakley
Wallisch
(61)

DATE: 8/10/09

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED
AUG 10 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

JOSEPH L. R. PALUMBO, SR.,) NO. 08 - 2443 - CD
Plaintiff,)
v.) Type of Pleading: PRAECIPE TO SETTLE,
JIM'S CUSTOM COLLISION, INC.,) DISCONTINUE AND END
Defendant.) Filed on Behalf of: PLAINTIFF
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) DuBois PA 15801
) (814) 371-2730

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S to 
William A. Shaw
Prothonotary/Clerk of Courts
COPY to C/A.

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

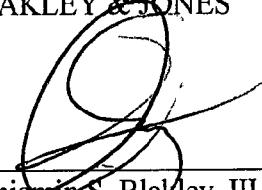
JOSEPH L. R. PALUMBO, SR.,) NO. 08 - 2443 - CD
)
 Plaintiff,)
)
 v.)
)
 JIM'S CUSTOM COLLISION, INC.,)
)
 Defendant.)
)

PRAECIPE TO SETTLE, DISCONTINUE AND END

TO: William A. Shaw, Prothonotary

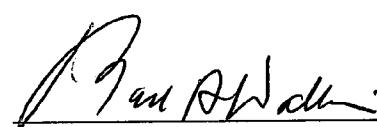
Please mark the above matter and counterclaim as settled, discontinued and ended.

BLAKLEY & JONES



Benjamin S. Blakley, III
Attorney for Plaintiff

ACHILLE, ELLERMYER & WALLISCH



Mark A. Wallisch
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Q
C
S/L

Joseph R. Palumbo Sr.

Vs.
Jim's Custom Collision, Inc.

No. 2008-02443-CD

CERTIFICATE OF DISCONTINUATION

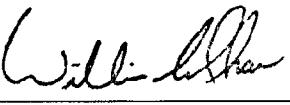
Commonwealth of PA
County of Clearfield

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 October 1, 2009, marked:

Settled, discontinued and ended

Record costs in the sum of \$95.00 have been paid in full by Benjamin S. Blakley III Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 1st day of October A.D. 2009.



William A. Shaw, Prothonotary

LM