

RENDERED: JUNE 27, 2003; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000559-MR

TERRANCE "GRANT" NISBETT
D/B/A GRANT'S AUTO BODY SHOP

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN K. MERSHON, JUDGE
ACTION NO. 99-CI-004051

NATIONAL CITY BANK

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BAKER, GUIDUGLI, AND KNOPF, JUDGES.

KNOPF, JUDGE: In June 1997, Gail Duzant left a badly damaged Jeep Cherokee at Grant's Auto Body Shop for repairs. Duzant failed to return for the vehicle, and Terrance "Grant" Nisbett, the shop's proprietor, was unable to locate her. He eventually learned that the Jeep belonged to National City Bank. In the late summer or fall of 1998, Nisbett notified the bank that he

possessed the Jeep and that he intended to sell it to satisfy the outstanding \$7,900.00 repair bill. By letter to Nisbett of September 28, 1998, the bank apparently denied liability for the repairs and demanded that Nisbett surrender the vehicle. When Nisbett refused, the bank filed suit. Nisbett counter-claimed, and by order entered November 20, 2000, the Jefferson Circuit Court ruled in favor of the bank. It held that as of September 28, 1998, the Jeep was worth \$15,900.00, that the bank was entitled to the return of that amount, that Nisbett had not acquired a repairman's lien in the Jeep, and that he was not otherwise entitled to recover his repair or storage fees. It is from that order¹ that Nisbett, d/b/a Grant's, appeals. He contends that the court's ruling unjustly enriches the bank and unfairly deprives him of the value of his repair work. We disagree and affirm.

The court found that the bank leased the Jeep to Jemma George and that Gail Duzant, the woman who contracted with Grant's to repair it, had no interest in the jeep. Apparently George and Duzant are relatives, but neither woman testified, so how Duzant came to possess the jeep and why at one point the

¹ As the bank observes, Nisbett's notice of appeal incorrectly refers to an order of February 14, 2001, rather than the order of November 20, 2000, as the source of his appeal. This sort of mistake is not jurisdictional and here it caused no misunderstanding; it does not, therefore, entitle the bank to relief. Ready v. Jamison, Ky., 705 S.W.2d 479 (1986).

Fayette County Clerk registered the Jeep in her name remain mysteries. The important point for this case is that Duzant had no authority, either actual or apparent, to repair the Jeep on the bank's behalf. The bank had no prior knowledge of Duzant's possession, of the damage to the vehicle, or of Grant's repairs.

Nisbett apparently concedes that his unauthorized repairs do not give rise to the lien created by KRS 376.270.² He seeks instead equitable relief referred to variously as restitution, quantum meruit, or unjust enrichment.³ However denominated, the elements of the claim include a benefit conferred upon the defendant at the plaintiff's expense under circumstances making it unjust for the defendant to retain the benefit without paying for it.⁴ Where, as in this case, the benefit is services rendered, courts have refused to find liability unless the defendant accepted the services knowingly and either knew or should have known that they were not being provided gratuitously.⁵ Otherwise, defendants could easily find

² Indiana Truck Corporation v. Hurry Up Broadway Company, 222 Ky. 521, 1 S.W.2d 990 (1928).

³ Alexander Hamilton Life Insurance Company v. Lewis, Ky., 550 S.W.2d 558 (1977); Perkins v. Daugherty, Ky. App., 722 S.W.2d 907 (1987); Meaney v. Connecticut Hospital Association, Inc., 735 A.2d 813 (Conn. 1999).

⁴ 66 Am. Jur. 2d Restitution and Implied Contracts §§ 37 to 105 (2001).

⁵ Kellum v. Browning's Administrator, 231 Ky. 308, 21 S.W.2d 459 (1929); Kona Technology Corporation v. Souther Pacific Transportation Company, 225 F. 3d 595 (5th Cir. 2000).

themselves liable to mere volunteers for services neither authorized nor desired.⁶

Here, the bank had no knowledge of Grant's services and so cannot be said to have accepted them unfairly. Nisbett relied upon Duzant, a stranger to the owner. Although it is unfortunate that Duzant proved unworthy of that reliance, it is not unjust for Nisbett to bear the misfortune. Accordingly, we affirm the November 20, 2000, order of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Edward C. Airhart
Louisville, Kentucky

BRIEF FOR APPELLEE

Glenn E. Algie
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⁶ Bozeman Mortuary Association v. Fairchild, 253 Ky. 74, 68 S.W.2d 756 (1934); Noble v. Williams, 150 Ky. 439, 150 S.W. 507 (1912); Austrian Motors, Limited v. Travelers Insurance Company, 275 S.E.2d 702 (Ga. App., 1980).