



STATE OF DELAWARE
THE COURTS OF THE JUSTICES OF THE PEACE
820 NORTH FRENCH STREET, 11TH FLOOR
WILMINGTON, DELAWARE 19801

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NORMAN A. BARRON
CHIEF MAGISTRATE

LEGAL MEMORANDUM 81-66

TO: ALL JUSTICES OF THE PEACE
STATE OF DELAWARE

FROM: NORMAN A. BARRON
CHIEF MAGISTRATE

DATE: AUGUST 26, 1981

RE: BUSINESS RECORDS IN JUSTICE OF THE PEACE COURT CIVIL CASES

Hypothetical

Pauline Plaintiff's car is damaged due to the negligence of Dizzy Defendant. The damage was confined to the rear bumper and right rear fender of Pauline's vehicle. She sued Dizzy Defendant in Justice of the Peace Court in a trespass action. She sought damages in the amount of \$540 plus Court costs.

She appeared at trial unrepresented. Dizzy Defendant, on the other hand, had retained legal counsel. During trial, and to prove her damages, Ms. Plaintiff produced a repair estimate on the stationery of Bill's Body Shop. The repair estimate listed the cost and labor for replacing the rear bumper and right rear fender of Pauline Plaintiff's vehicle. The total estimated cost was in the amount of \$540. The estimate was dated and was signed "Bill".

In brief, the repair estimate appeared authentic. As Pauline was handing the estimate to the Court as evidence of the extent of the injury done to her vehicle, Dizzy's attorney rose and objected to its introduction into evidence, contending that because Pauline Plaintiff was not a "custodian or other qualified witness," the document could not be introduced under the business records exception to the hearsay rule, Rule 803(6) of the Delaware Uniform Rules of Evidence.¹

The Court, agreeing with defense counsel, sustained the objection. Pauline Plaintiff, believing that justice could be achieved in our State's small claims Court, was incredulous when, shortly thereafter, the Court granted a defense motion to dismiss on the basis that the plaintiff had failed to prove her case. She left the Court and quickly penned a letter of complaint to the Chief Magistrate who responded that the Trial Judge acted in a totally proper manner in sustaining the objection and in granting the motion to dismiss.

Justice of the Peace Courts are "peoples' Courts". It is often difficult for a lay person to understand the nuances in the law, especially the law of evidence. A lay person appearing before a Justice of the Peace to right a wrong, to redress a grievance, has a perfect right to expect that a document, such as our hypothetical repair estimate, will be accepted by the Court as

¹ For a discussion of this Rule, see Legal Memorandum 81-35, dated January 28, 1981.

substantive proof of the injury. The simple justice which is sought by the injured plaintiff is unobtainable at times due to the constraints of evidentiary barriers which in most small claims cases are artificial and unreasonable.

Such was my thinking when I proposed an amendment to Rule 803 of the D.R.E. which would give justice to our hypothetical Pauline Plaintiff. The amendment, with minor changes being incorporated therein by the Honorable Henry R. Horsey, Associate Justice of the Supreme Court, adds a new subparagraph to Rule 803, designated as subparagraph (25). The amendment becomes effective on October 1, 1981. Justice Horsey's Order, dated August 21, 1981, which sanctions the amendment, is set forth below:

"IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE:

AMENDMENT OF THE §
DELAWARE UNIFORM §
RULES OF EVIDENCE §

This 21st day of August, 1981,

It appearing that it is desirable to amend the Delaware Uniform Rules of Evidence so that Rule 803(6) has limited application in a civil case before a Justice of the Peace, pursuant to request of the Chief Magistrate of the Courts of the Justices of the Peace,

IT IS ORDERED that effective on the 1st day of October, 1981, Rule 803, relating to hearsay exceptions, is hereby amended to add thereto as an additional exception subparagraph (25) to read as follows:

'(25) Business Records in Justice
of the Peace Court civil
cases.

In a civil case before a Justice of the Peace, a bill, estimate, receipt or statement of account which appears to have been made in the regular course of business may be admitted into evidence by the Court, if the Justice of the Peace is satisfied that the document is reliable.'

BY THE COURT:

Henry R. Horsey
Justice"

The important factors to consider with regard to the new hearsay exception are as follows:

1. The exception only as applicability as regards civil cases. It has no application with regard to criminal matters; and,
2. Whether or not a document is "reliable" is a common-sense determination. A document which is reliable is one which is trustworthy and is worthy of confidence. Black's Law Dictionary, Fourth Edition, 1951. Clearly, a purported estimate written on a scrap of paper would hardly classify as one which is reliable. On the other hand, a business receipt dated and signed on the business' stationery by a person who purports to be an employee of the business will most likely so qualify. Note that there is a natural tendency in determining the reliability of a document to ascertain whether or not it appears to have been made in the regular course of

business. It can be said that a document which appears to have been made in the regular course of business is one to which a determination of reliability may attach.

With the above amendment to Rule 803, it is anticipated that the image and sense of fairness of the Courts of the Justices of the Peace will be enhanced.

HAB:pn

cc: The Honorable Daniel L. Herrmann
The Honorable William Marvel
The Honorable Albert J. Stiftel
The Honorable Robert H. Wahl
The Honorable Robert D. Thompson
The Honorable Alfred Fraczkowski
The Honorable Richard Gebelein
The Honorable Lawrence Sullivan
The Honorable William J. O'Rourke
The Honorable Richard J. McMahon, State Prosecutor
Bruce M. Stargatt, Esquire, Pres., Delaware State Bar Assoc.
Professor William J. Conner, Delaware Law School
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NORMAN A. BARRON
CHIEF MAGISTRATE

LEGAL MEMORANDUM 81-66 (SUPPLEMENT)

TO: ALL JUSTICES OF THE PEACE
STATE OF DELAWARE

FROM: NORMAN A. BARRON
CHIEF MAGISTRATE

DATE: JULY 13, 1984

RE: BUSINESS RECORDS IN JUSTICE OF THE PEACE COURT CIVIL CASES

Legal Memorandum 81-66, dated August 26, 1981, explained the application of Rule 803(25) of the Delaware Rules of Evidence. This Rule states that:

"In a civil case before a Justice of the Peace, a bill, estimate, receipt or statement of account which appears to have been made in the regular course of business may be admitted into evidence by the Court, if the Justice of the Peace is satisfied that the document is reliable."

This Rule was promulgated to facilitate the presentation of evidence in a Justice of the Peace Court civil case. Let's review its application with regard to the issue of damages in an automobile accident case. Pauline Plaintiff's car is damaged due to the negligence of Dizzy Defendant. The damage was confined to the rear bumper and right rear fender of Pauline's vehicle. She seeks damages in the amount of \$540 plus Court costs.

She appears at trial unrepresented. Dizzy Defendant appears with an attorney. During trial, and to prove her damages, Ms.

Plaintiff produces a repair estimate on the stationary of Bill's Body Shop. The repair estimate listed the cost and labor for replacing the rear bumper and right rear fender of Pauline Plaintiff's vehicle. The total estimated cost was in the amount of \$540. The estimate was dated and signed "Bill". It appeared authentic. Dizzy's attorney objects to its introduction in evidence on the issue of damages, contending that the plaintiff's method of proving damages is not in accordance with Delaware law. Defense counsel cites Storey v. Castner, Del.Supr., 314 A.2d 187 (1973) wherein the Court stated: -

"Defendant's next several substantial grounds for appeal relate to the question of damages. Defendant argues that the Trial Court erred in allowing two of plaintiff's witnesses, Rhoades and Bowhall, to testify as to the value of plaintiff's car when neither witness personally examined the car immediately prior to the accident.

It has long been the rule in Delaware that the measure of damages in cases of this character is the value of the vehicle damaged immediately before and immediately after the accident. Alber v. Wise, Del.Supr., 2 Storey 126, 166 A.2d 141, 143 (1960); Teitsworth v. Kempski, Del.Supr., 11 Terry 234, 127 A.2d 237, 238 (1956). When it is not feasible to repair a damaged automobile, as is the case under the instant facts, the measure of damages is the value of the car just before the accident and its salvage value immediately after the accident. Estimates of such values must necessarily be produced directly from an expert witness. Stuart v. Rizzo, Del.Supr., 242 A.2d 477, 480 (1968), and in the instant case both Rhoades and Bowhall were qualified as experts to testify as to the value of the plaintiff's vehicle.

Defense counsel also cited Stuart v. Rizzo, supra, wherein the Court stated that "An owner may testify as to the value of his vehicle before the accident -- this on the theory that, being familiar with his property, he is presumed to know its worth in a general way.

Moreover, we find no merit to defendant's contention that, not having personally examined the car immediately prior to the accident, neither witness was qualified to render an estimate, and that reference to the book value of similar cars was an insufficient substitute. It has been recognized that such estimates of values may be brought out in hypothetical questions, and the witness may testify from trade books setting forth values. Blashfield, Automobile Law and Practice, §480.3. See, also, Cincinnati St. R. Co. v. Waterman, 50 Ohio App. 380, 198 N.E. 494 (1935). Moreover, a witness, otherwise qualified as an expert in the particular field, may be competent to give estimates as to the value of a damaged car even though he never actually saw the car. Rodger v. Studebaker Sales Co., 102 Pa. Super., 402, 157 A. 6 (1931).

Under the instant circumstances, the book value of the automobiles of the same class as plaintiff's automobile was admissible for two additional reasons. First, the book value estimates as testified to by Rhoades and Bowhall were based upon automobiles in average condition of the same class as that of plaintiff's automobile. Thus, it was incumbent upon plaintiff to show by some other evidence that his automobile was at least in 'average condition' to make the book value estimate pertinent to his case. This, the plaintiff did, by a proffer of evidence consisting of three receipts for repairs which had been made on his car prior to the accident. The Trial Court properly received such evidence appropriately charging the jury that the receipts were 'merely offered for the limited purpose to show what condition the car was kept in.' Secondly, this Court recognizes that it may be impractical, if not impossible, to ascertain the true value of an automobile immediately prior to the accident, and that book value estimates may be the only method available to plaintiff to prove such value. Compare Alber v. Wise, supra, 166 A.2d at 144.

(continued)

... We know of no comparable theory, however, upon which the ordinary owner may be presumed to know the value of his vehicle in damaged condition. Such knowledge must necessarily come from an expert witness, whose testimony must be produced directly, and not by hearsay." (Emphasis added.)

Therefore, we find that the Trial Court did not err either by allowing the testimony of Rhoades and Bowhall or by receiving into evidence, under the appropriate instruction, the receipts for repairs made on plaintiff's car prior to the accident." (Emphasis added.)

Based upon the defense attorney's case citations, should the objection to the admission of the estimate be granted?

* * * * *

I believe that the intent of Rule 803(25) of the DRE is to allow a repair bill estimate found to be reliable and appearing to have been made in the regular course of business in evidence on the issue of damages in connection with a Justice of the Peace Court trespass case. Thus, the objection should be denied.

Although Storey v. Castner, supra, sets forth the usual formula for ascertaining damages in automobile accident cases, the standard implied by the promulgation of Rule 803(25) should be given effect where justice will be served thereby. Remember, the measure of damages in such cases is found by determining the consequences of the defendant's breach of duty. A plaintiff's automobile which is damaged because of a defendant's negligence is entitled to pecuniary compensation for the actual damage sustained. Only such damages are recoverable as can be shown with reasonable certainty, and as are the direct, natural, and proximate consequences of the defendant's wrongful act. 22 Am.Jur.2d, Damages, §80.

Assuming negligence on a defendant's part and assuming that said negligence proximately caused the damage to the plaintiff's vehicle, then a repair bill estimate, admissible under Rule 803(25) may well determine the consequences of the defendant's negligence. When it does, there is no need to follow the Storey v. Castner formula. Under Rule 17(a) of the Justice of the Peace Court Rules

of Civil Procedure, "All evidence shall be admitted, which is admissible under statute or under the rules of evidence applied in the courts of the State of Delaware." A repair bill estimate is admissible under Rule 803(25) of the DRE when it appears to have been made in the regular course of business and when the Justice of the Peace is satisfied that it is reliable.

Although generally speaking, the ordinary and basic measure of damages for injury to personal property is the difference between its market value immediately before and after the injury, 22 Am.Jur. 2d, Damages, §146, where an item of personal property is merely damaged, partially destroyed or impaired in value, some courts take the view that the reasonable cost or value of repairs is the proper measure of damages. As stated in 22 Am.Jur.2d, Damages, §148:

"Generally, this measure is applied where the injury is susceptible of repair at reasonable expense, or where the property can be repaired at less expense than the difference in its market value before and after the injury.

Even where the cost of repairs is not the measure of damages, evidence as to the cost of repairs is admissible relative to the value of the property after it was injured, and it has been said that ordinarily the reasonable cost of repairs necessary to put the property in the same condition it was in prior to the injury corresponds to the difference between its value before and after the injury.

The owner is not entitled to the full cost of the repairs, where they make the property

²For this proposition, Am.Jur. cited the case of Teitsworth v. Kempinski, Del.Supr., 127 A.2d 237 (1956), where the trial court admitted evidence offered by the defendant showing the cost of repairs as relating to the value of plaintiff's automobile immediately before and immediately after the accident. The Supreme Court stated that "It was the province of the trial judge to consider all the evidence relating to the amount of damage to plaintiff's automobile and the weight to be given this testimony was entirely within his discretion."

more valuable than it was before the injury. Also, of course, only the cost of those repairs which are attributable to the injury may be considered.

* * * * *

It is not a condition precedent to recover for items of damage for repairs that the plaintiff should have actually expended the sums or incurred liability therefor.

* * * * *

Rule 803(25) of the DRE gives Justices of the Peace the authority to employ the repair estimate formula in computing damages in Justice of the Peace Court trespass cases, notwithstanding the before/after value formula generally employed in our State Courts. Rule 803(25) was promulgated effective October 1, 1981. The promulgation of a Court Rule has the force and effect of a legislative enactment. Cohée v. Ritchey, Del.Super., 150 A.2d 830 (1959). A Court Rule, properly promulgated, supersedes conflicting non-jurisdictional statutory and case law. Williams v. Singleton, Del.Supr., 160 A.2d 376 (1960).

The repair estimate formula will not be reasonable in every case. There are occasions when the before/after value formula will give a more reasonable result as, for example, where plaintiff's automobile had a value immediately before the accident of \$700 and the repair estimate is for \$1,800. To grant such an award would result in a gross overcompensation to the plaintiff for the injury to his personal property. The before/after value formula would be the appropriate one to utilize in such a case.

Thus, in connection, it seems appropriate to adopt, as indeed Rule 803(25) of the DRE authorizes us by inference to do,

4 Restatement of Torts 2d, §928 which states as follows:

" §928. Harm to Chattels.

When one is entitled to a judgment for harm to chattels not amounting to a total destruction in value, the damages include compensation for

(a) the difference between the value of the chattel before the harm and the value after the harm, or at his election in an appropriate case, the reasonable cost of repair or restoration, with due allowance for any difference between the original value and the value after repairs, and

(b) the loss of use." (Emphasis added.)

NAB:pn

cc: The Honorable Daniel L. Herrmann
The Honorable Grover C. Brown
The Honorable Albert J. Stiftel
The Honorable Robert H. Wahl
The Honorable Robert D. Thompson
The Honorable Alfred Fraczkowski
The Honorable Charles M. Oberly, III
Lawrence M. Sullivan, Esquire
Eugene M. Hall, Esquire
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