

COMMONWEALTH OF PENNSYLVANIA

JEAN ZEPPi : BEFORE THE BOARD OF CLAIMS  
: :  
VS. : :  
: :  
COMMONWEALTH OF PENNSYLVANIA, :  
PENNSYLVANIA STATE POLICE : DOCKET NO. FC-1105-96

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**SUMMARY OF CASE**

On or about the first week in June, 1991 Plaintiff, Jean Zeppi of Hazelton, PA (hereinafter “Zeppi”) was approached by the Commonwealth of Pennsylvania, Pennsylvania State Police (hereinafter “PSP”) to examine her vehicle, a 1985 Chevrolet Corvette. Ms. Zeppi voluntarily gave permission for the State Police to examine her vehicle which was located at a local garage. (N.T. pages 29-330) Several days later Ms. Zeppi learned that the PSP had actually taken custody and control of her vehicle on or about June 5, 1991. (N.T. page 33)

The PSP maintained custody and control of Ms. Zeppi’s vehicle for five years from June, 1991 to mid-year 1996. (N.T. pages 33-37) Significantly, when Ms. Zeppi’s vehicle was finally returned to her in 1996 it was not operational and was unusable. While in the custody and control of the PSP, the subject vehicle had been substantially dismantled with many components taken apart. (N.T. pages 38, 42-47, 148-157) Additionally, certain destructive-type testing had been performed on the vehicle. (N.T. pages 148-157) Again, when the vehicle was released by the PSP to Ms. Zeppi, it was not operational and unusable. (N.T. pages 38, 42-47)

Testimony in this case was taken before a Panel of the Board of Claims on July 27, 2005. A Panel report was submitted to the Board on February 13, 2006.

## **FINDINGS OF FACT**

1. Plaintiff, Jean Zeppi (hereinafter referred to as “Zeppi”) is a citizen of Pennsylvania, residing in Hazleton, PA. (N.T. page 22)
2. Defendant, Pennsylvania State Police (hereinafter referred to as “PSP”) is an agency of the Commonwealth of Pennsylvania. (Record)
3. Zeppi purchased a 1985 Chevrolet Corvette (hereinafter referred to as the “vehicle”) in 1988 for \$14,000.00 plus \$884.00 in taxes. (N.T. pages 4, 23-24, 69; Defendant Proposed Findings of Fact, page 6)
4. Zeppi purchased the vehicle for enjoyment and as an investment. (N.T. pages 24, 68)
5. Zeppi stored the vehicle at Zenier’s Garage in Hazleton and she would periodically go to that garage to clean, wax and maintain the vehicle. (N.T. pages 25-26)
6. On or about June 5, 1991 the PSP asked Zeppi to examine the vehicle, and she gave them permission to do so. (N.T. pages 29-33)
7. Several days later Zeppi learned that the PSP had taken possession of the vehicle. (N.T. page 32)
8. PSP took possession of the vehicle the first week of June, 1991 [June 5, 1991]. (N.T. page 33)
9. PSP caused the vehicle to be completely disassembled by removing all the interior, exterior, electrical, and mechanical parts; and physically damaged the vehicle by applying an acid to the transmission, cutting a hole in the frame, and applying an air hammer chisel to the undercarriage of the vehicle. (N.T. pages 38, 42-47, 153-157)
10. PSP determined that the vehicle was not a stolen vehicle. (N.T. page 157)
11. Zeppi sought legal counsel in March 1993 in order to regain custody and control of the vehicle. (N.T. page 34)
12. By Order dated September 6, 1995, the Luzerne County Court of Common Pleas directed the PSP to return the vehicle to Zeppi in no less condition than it was in at the time it was taken from Zeppi. (Plaintiff Exhibit 6)
13. The vehicle was returned to Zenier’s Garage by PSP in an unusable condition in mid-1996. (N.T. pages 37-38, 42-47; Exhibit 11)
14. Upon return, the vehicle was only valuable as parts. (N.T. pages 49-50)

15. The salvage value of the parts was less than \$1,000.00, but no specific dollar amount was determined in the record. (N.T. pages 50, 110)
16. In February 1998, Zeppi had the vehicle taken to Paul's Chevrolet, a dealership in Ashland, PA, by means of a flatbed truck. (N.T. pages 39-40)
17. Zeppi paid Paul's Chevrolet \$951.29 for partial repair of the vehicle. (N.T. page 39-40; Plaintiff Exhibit 10)
18. At the time the vehicle was taken by PSP it was worth \$17,300.00 according to CPI Value Guide for a 1985 Corvette in 1991. (N.T. pages 48 (J. Zeppi) 109 (Raymond Fisher); (Plaintiff Exhibit 7)
19. The fair market value of the vehicle in 1991 was \$17,300.00. (FOF 18)
20. The actions of the PSP caused Zeppi to incur a loss of the full value of the vehicle. (FOF 13, 14, 15, 17, 18 and Board Finding)
21. On September 11, 2003, the Commonwealth Court of Pennsylvania held that Zeppi had a contract action for restitution against the PSP. Zeppi v. Pennsylvania State Police, No. 2729 C.D. 2002 (September 11, 2003)(Opinion Not Reported)
22. Subsequently, PSP appealed the Commonwealth Court's decision to the Supreme Court. PSP's appeal was dismissed on December 21, 2004. (Pa. Supreme Court No. 146, HAP 2004)
23. Notwithstanding the Commonwealth Court's decision and the Supreme Court's subsequent dismissal of PSP's appeal, PSP continued to contest the existence of a contract action between Zeppi and PSP<sup>1</sup>. PSP offered no other factual or legal defenses of merit in this matter. (Board Finding)
24. The PSP acted in a dilatory, obdurate and vexatious manner when it continued to litigate this case and contest the existence of a contract action for restitution between Zeppi and the PSP after the Commonwealth Court's decision of September 11, 2003 became final on December 21, 2004. (Board Findings)
25. The attorney fees incurred by Zeppi from December 21, 2004 to the beginning of the hearing in this case amount to \$13,343.75, which fees we find to be reasonable. (N.T. pages 52-54, 87-91; Plaintiff Exhibit 14; Board Finding)
26. Zeppi incurred additional attorneys fees for her attorney's effort in conducting the hearing, reviewing the hearing transcript and drafting and filing Plaintiff's proposed

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<sup>1</sup> Even in its most recent filing with the Board of Claims, PSP attempts to argue the Commonwealth Court incorrectly ruled that there was a contract between PSP and Zeppi in the nature of a summary judgment review. See PSP's Proposed Conclusions of Law paragraphs 2 to 7, pages 13 to 14.

findings of fact, conclusions of law and accompanying legal brief at a rate of \$125 per hour. The Board finds that additional attorneys fees in the amount of \$3,500 are reasonable for this work. (N.T. pages 52-54, 87-91; Plaintiff Exhibit 14; Board Finding)

27. The total costs (other than attorneys fees) identified and incurred by Zeppi in this case (including costs for copying, filing, mailing and transcripts of depositions and hearings) amount to \$2,157.72, which the Board finds reasonable.<sup>2</sup> (N.T. pages 52-54, 87-91; Plaintiff Exhibit 14; Board Finding)

### **CONCLUSIONS OF LAW**

1. The Board of Claims has exclusive jurisdiction to hear and determine this matter as a claim against the Commonwealth of Pennsylvania, Pennsylvania State Police. Board of Claims Act, 72 P.S. § 4651-1 – 4651-10, repealed by Act of December 3, 2002, P.L. 1147, No. 142 (current law now codified at Sections 1701-1751 of the Commonwealth Procurement Code, 62 Pa.C.S.A. §§ 1701-1751).
2. The Board of Claims has jurisdiction over the parties as well as the subject matter of the claim asserted by Plaintiff, Jean Zeppi. Id.
3. The Board finds that an implied-in-law contract arose from the conduct of the parties when PSP took custody and control of Zeppi's vehicle. Zeppi v. Pennsylvania State Police, No. 2729 C.D. 2002 (September 11, 2003)(Opinion Not Reported)
4. PSP breached the implied in law contract when it determined the vehicle was not stolen, yet failed to return the vehicle to Zeppi in the same condition as it was on June 5, 1991. Id.
5. Zeppi is entitled to restitution for the aforementioned breach in the amount of \$17,300.00, the fair market value of the vehicle when it was taken by the PSP in June 1991.
6. On December 21, 2004, an implied-in-law contract action for restitution between Zeppi and PSP became the law of the case when the Supreme Court dismissed PSP's appeal from the Commonwealth Court's holding that such a contract action existed between Zeppi and PSP. Zeppi v. Pennsylvania State Police, No. 2729 C.D. 2002 (September 11, 2003)(Opinion Not Reported) See also, Commonwealth v. Starr, 541 Pa. 564, 574, 664 A.2d 1326, 1331 (1995) (upon remand for further proceedings, a trial court may not alter the resolution of a legal question previously decided by the appellate court in the matter)
7. A plaintiff who recovers damages in a proceeding brought before the Board of Claims may receive an award of attorney fees if it is found that the government agency acted in

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<sup>2</sup> In addition to the costs identified by Plaintiff in its Exhibit 14, the Board takes judicial notice that the cost to Plaintiff of the hearing transcript was \$413.70, as a fact capable of accurate and ready determination from the court reporter retained by the Board.

bad faith or in an arbitrary or vexatious manner in defending the claim 42 Pa. C.S.A. § 2503 (9). Cummins v. Atlas R.R. Constr. Co., 814 A.2d 742, 747 (Pa. Super 2002)

8. Pursuant to 42 Pa. C.S.A. §2503(9), the claim for attorney fees is awarded to Zeppi from the date the Pennsylvania Supreme Court dismissed PSP's appeal because PSP's conduct in continuing to litigate the existence of a contract after its appeal was dismissed was arbitrary, vexatious, and in bad faith.
9. The attorney fees incurred by Zeppi from December 21, 2004, to present in the amount of \$16,843.75 (\$13,343.75 plus \$3,500) are fair and reasonable.
10. The Board has statutory authority to allocate costs in its discretion among the parties in cases that come before it. 62 Pa. C.S.A. §1725(e) (formerly 72 P.S. § 4651-8)
11. PSP is liable to Zeppi for attorneys fees in the amount of \$16,843.75 and costs in the amount of \$2,157.72.
12. The amount of award due to Zeppi from the PSP is \$36,301.47, comprised of \$17,300 in restitution damages; \$16,843.75 in attorneys fees; and \$2,157.72 in costs.
13. PSP is liable to Zeppi for payment of prejudgment interest on \$36,301.47, the aggregate amount of Zeppi's award set forth in Conclusion of Law 12. Prejudgment interest is payable at the statutory rate for judgments (6% per annum) beginning on September 11, 1996, the date on which Zeppi filed its claim with the Board of Claims, and running through the date of this Opinion and Order. 41 P.S. §202 (legal rate of interest); 62 Pa. C.S.A. §1751.
14. The 6% per annum statutory rate of interest for judgments equals a daily rate of interest of .000164 (.06 divided by 365 days). The number of days for which Zeppi is entitled to prejudgment interest on the aggregate amount of award is 3,333 days (September 11, 1996 to April 25, 2006). Thus: \$36,301.47 (award) x .000164 x 3,333 days = \$19,842.82 in prejudgment interest.
15. Zeppi is entitled to payment of post judgment interest from PSP at the legal rate of 6% per annum on the total judgment from the date of this Order until paid in full.
16. The Board of Claims is not statutorily authorized to award damages in tort.

### **OPINION**

This action arises from a claim brought before the Board of Claims by Jean Zeppi versus the Commonwealth of Pennsylvania, Pennsylvania State Police for damages sustained to her vehicle, a 1985 Chevrolet Corvette. Ms. Zeppi voluntarily granted permission for the State

Police to examine her vehicle which was suspected as having been stolen. While in the custody of the State Police, the vehicle was substantially dismantled. Additionally, certain destructive-type testing was performed on the vehicle.

The Board determines that at the point in time when the PSP took custody and control of Zeppi's vehicle, an implied contract-at-law or quasi-contract was formed. Accordingly, in return for Ms. Zeppi's cooperation in allowing the PSP to examine the vehicle Ms. Zeppi is entitled to have her vehicle returned to her in the same condition as it was when the PSP took it on or about June 5, 1991 when it was determined that the vehicle was not stolen. Zeppi v. Pennsylvania State Police, No. 2729 C.D. 2002 (September 11, 2003) (Opinion Not Reported)

The PSP breached its contract with Ms. Zeppi when it failed to return Ms. Zeppi's vehicle to her in the same condition it was in when the vehicle was taken in June, 1991. Ms. Zeppi is entitled to recover whatever damages she suffered provided: (1) they were such as would naturally and ordinarily result from the breach, or (2) they were reasonably foreseeable and within the contemplation of the parties at the time they made the contract, and (3) they can be proved with reasonable certainty. John B. Conomos, Inc. v. Sun, Co., Inc., 831 A.2d 696, 708 (Pa. Super 2003); Taylor v. Kaufhold, 84 A.2d 347, 351 (Pa. 1951).

Here, loss of the value of the vehicle resulted naturally and ordinarily from PSP's breach when it returned the vehicle in completely unusable condition instead of the condition it existed when it was taken in 1991. Additionally, it was reasonably foreseeable and within the contemplation of both parties at the time the contract was formed that Ms. Zeppi would expect and be entitled to the return of her vehicle in the same condition it was in when it was taken by PSP once it was determined the vehicle was not stolen. Finally, the damages incurred by Ms. Zeppi, the loss of the value of her vehicle, has been proven with reasonable certainty.

The Board finds that the most credible evidence of the value of the 1985 Chevrolet Corvette in 1991 is \$17,300.00, based on the CPI Value Guide. (N.T. pages 48, 109; Plaintiff Exhibit 7) Plaintiff, Jean Zeppi testified, as a lay person, that she believed her vehicle was worth approximately \$20,000.00 in 1991. (N.T. page 49) When the vehicle was returned to her it was estimated to have a salvage value of less than \$1,000.00, although no exact figure is in the record. (N.T. pages 50, 110) In consideration of all the testimony, the Board believes Ms. Zeppi lost the value of the vehicle in 1991 in its entirety and will award her this value, \$17,300.00.

Plaintiff also makes a claim for repair costs and loss of use or fair market rental value of the vehicle from June 5, 1991 to June, 1996 and from June, 1996 to June, 1998 in the total amount of \$24,718.00.<sup>3</sup> The Board denies this claim. The facts of record are that the Plaintiff purchased this vehicle as a show car and for an investment. Moreover, Plaintiff did not maintain liability insurance coverage for the vehicle. The record is devoid of any evidence which would indicate Plaintiff's intention to ever rent or lease the vehicle and, as such, that measurement of damages for loss of use is not found to be credible. Finally, Plaintiff fails to cite any persuasive legal authority for the award of damages based on loss of use or fair market rental in the context of either the facts or the law germane to this case.

Plaintiff also makes a claim for attorney's fees and costs in the amount of \$99,084.46. It is clear that the Board may award costs in its discretion. 62 Pa. C.S.A. § 1725(e) (previously 72 P.S. § 4651-8) Litigants are generally responsible for their own attorney fees unless a statute provides otherwise, there is an agreement between the litigants, or there is some other recognized exception. Hart v. Arnold, 884 A.2d 316, 342 (Pa. Super. 2005). However, the Board may

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<sup>3</sup> Defendant, PSP, argues damages which include the market value of the vehicle would be inconsistent with an additional award for loss of use of the property. We agree. (Defendant's proposed Findings of Facts, Conclusions of Law and supporting Brief at page 33)

award attorney fees when the litigant's opponent acted in a dilatory, obdurate or vexatious manner during the pendency of the case. 42 Pa. C.S.A. § 2503(9); Hart, 884 A.2d at 342. The statutory provision in 42 Pa. C.S.A. §2503(9) provides for an award of attorneys fees to, "Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith." 42 Pa. C.S.A. §2503(9). Section 2503(9) can also be applied to the raising of defenses in bad faith or in an arbitrary or vexatious manner. Cummins v. Atlas R.R. Const. Co., 814 A.2d 742, 747 (Pa. Super. 2002).

The Board finds that PSP's conduct in continuing to litigate the issue of the existence of a contract action between Zeppi and PSP after it was held to be so by the Commonwealth Court and became the law of the case falls within the conduct calling for the statutory award of attorney fees under 42 Pa. C.S.A. §2503(9). Under § 2503(9), conduct will be deemed arbitrary if it is based on random or convenient selection or choice rather than reason or nature. Hart, 884 A.2d at 342; Cummins, 814 A.2d at 747. Conduct will be deemed vexatious if it is without sufficient ground in either law or in fact and if the sole purpose was to cause annoyance. Hart, 884 A.2d at 342; Cummins, 814 A.2d at 747. When awarding attorney fees, trial courts have great latitude and discretion. Cummins v. Atlas R.R. Contr. Co., 814 A.2d 742, 746 (Pa. Super. 2002).

We believe the PSP's actions in continuing to litigate this matter and contesting the existence of a contract action for restitution in this case after the Commonwealth Court's decision on this issue became final was arbitrary, vexatious and in bad faith. Therefore, attorney fees will be awarded from the date that the existence of a contract became law of the case, which was on December 21, 2004. Plaintiff incurred reasonable attorney fees from December 21, 2004

to present in this matter in the amount of \$16,843.75. Additionally, the Board will, under these circumstances, exercise its discretion to award \$2,157.72 in costs to Plaintiff.

The Plaintiff also makes a claim for interest on the award in excess of the statutory rate. The Board rejects Plaintiff's argument for interest above the statutory rate. However, consistent with statutory authority, the Board hereby enters an award of six percent per annum on all amounts found due to Plaintiff running from the date the Claim was filed with this Board on September 11, 1996. 41 P.S. §202; 62 Pa. C.A. §1751.

For all the foregoing reasons, an appropriate Order is entered contemporaneously herewith.

**ORDER**

**AND NOW**, this 25<sup>th</sup> day of April, 2006, it is hereby **ORDERED** that judgment is entered on behalf of the Plaintiff, Jean Zeppi, and against the Defendant, Commonwealth of Pennsylvania, Pennsylvania State Police in the amount of Fifty-Six Thousand One Hundred Forty-Four Dollars and Twenty-Nine Cents (\$56,144.29). This sum consists of: \$17,300, in restitution damages; \$16,843.75 in attorneys fees; and \$2,157.72 in costs for a total amount due of \$36,301.47 plus \$19,842.82 in prejudgment interest on the aggregate amount awarded. In addition, Plaintiff is awarded post-judgment interest on the outstanding judgment at the statutory rate for judgments (6% per annum) beginning on the date of this Order and continuing until the judgment is paid in full.

Except as provided above, each party herein will otherwise bear its remaining costs and attorney fees.

BOARD OF CLAIMS

**OPINION SIGNED**

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Jeffrey F. Smith  
Chief Administrative Judge

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Ronald L. Soder, P.E.  
Engineer Member

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John R. McCarty  
Citizen Member