

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-005439

06/21/2016

HONORABLE DAWN M. BERGIN

CLERK OF THE COURT
C. EWELL
Deputy

JAMES MASON

JAMES MASON
4621 S POPLAR
TEMPE AZ 85282

v.

TRACYS AUTOMOTIVE, et al.

DEBORAH ROHRBACHER

TARYN CAMPBELL
MICHAEL G GALLOWAY

MINUTE ENTRY

The Court has reviewed the following: (1) the Notice of Decision of Arbitrator entered on March 1, 2016; (2) Plaintiff's Notice of Appeal from Arbitration Award and Motion to Set for Trial filed on March 16, 2016; (3) Defendant Tracy Automotive's April 7, 2016 Motion to Strike Plaintiff's Premature Notice of Appeal from Arbitration and Motion to Set for Trial; (4) Tracy Automotive's Verified Statement of Costs and Notice of Taxation of Costs filed on April 18, 2016; (5) Tracy Automotive's Affidavit of Attorneys [sic] Fees filed on April 18, 2016; (6) Plaintiff's Objection to Form of Award to Tracy's Autobody [sic] filed on May 4, 2016; (7) Defendant Hendrick's May 18, 2016 Reply to Plaintiff's Objection to Form of Award to Tracy's Autobody; and (8) the Arbitrator's Award entered on June 7, 2016.¹ It now makes the following findings and orders.

Plaintiff James Mason filed this suit on April 10, 2015 against Defendants Lana Hendricks and Tracy's Automotive, Inc. ("Tracy's"). He alleged that Defendant Hendricks

¹ The title of the Award was "Form of Award for Defendant Tracy's Automotive, Inc."
Docket Code 019

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-005439

06/21/2016

negligently lost control of her vehicle causing a collision that resulted in damage to his vehicle. Plaintiff hired Tracy's to repair his vehicle and claimed that Tracy's breached the contract between them by applying paint that did not match the color of the remainder of the vehicle. He sought damages for out-of-pocket expenses, loss of use and diminution in the value of his vehicle due to the bad paint job.

An arbitration hearing was held on February 23, 2016. On March 1, 2016, the Arbitrator's Notice of Decision was filed. He found Hendricks 100% responsible for the accident and awarded Plaintiff out-of-pocket expenses in the amount of \$250. He also found that Tracy's did not breach its contract with Plaintiff. Thus, Plaintiff's total recovery from the arbitration proceedings was \$250.

On March 16, 2016, before the Arbitrator entered an award, Plaintiff filed a Notice of Appeal from Arbitration Award and Motion to Set for Trial. Tracy's moved to strike the Notice on April 7, 2016 as premature. On April 18, 2016, Tracy's filed an Affidavit for Attorneys' Fees and Statement of Costs. It apparently also served a proposed form of award on the Arbitrator and the other parties, but that form of award is nowhere on the docket. The Court assumes Tracy's served a form of award because Plaintiff objected to it and Defendant Hendricks filed a Reply to Plaintiff's Objection. The Arbitrator issued an award on June 7, 2016 addressing only Tracy's and awarding it costs in the amount of \$532.50 and attorneys' fees in the amount of \$1695.

Under Rule 76(c) of the Arizona Rules of Civil Procedure, either party may file a proposed form of award with the arbitrator, along with any request for fees and costs, within 10 days of the notice of decision. Within 5 days of this submission, the opposing party may submit objections. Within 10 days of the receipt of the objections, the arbitrator is to issue the final award. Under Rule 76(b), if the arbitrator does not file the award within 50 days of the notice of decision, the notice of decision constitutes the award. Under Rule 77, a party to an arbitration "may appeal from the award or other final disposition by filing a notice of appeal with the clerk of the court within 20 days after the award is filed or 20 days after the date upon which the notice of decision becomes an award under Rule 76(b)."

Here, the deadline for any party to file a form of award and request for fees and costs was March 15, 2016, ten business days after the notice of decision was entered. Tracy's April 18, 2016 form of order and request for fees and costs were therefore filed more than one month past the deadline. Further, as Defendant Hendricks correctly points out, the Notice of Decision became the final award under Rule 76(b) fifty days after the Notice of Decision, or on April 20, 2016, because no award had been filed by that date. Thus, the Notice of Decision awarding Plaintiff \$250 against Defendant Hendricks and \$0 against Tracy's is the final award. Because

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-005439

06/21/2016

no appeal was filed within 20 days of April 20, 2016, a final judgment will be entered on the award.

For these reasons,

IT IS ORDERED:

1. Granting Defendant Tracy Automotive's Motion to Strike and striking Plaintiff's Notice of Appeal from Arbitration Award and Motion to Set for Trial filed on March 16, 2016;
2. Striking Defendant Tracy Automotive's proposed form of order, Affidavit of Attorneys' Fees and Verified Statement of Costs filed on April 18, 2016;
3. Vacating the Arbitrator's June 7, 2016 Award; and
4. Deeming the Notice of Decision entered on March 1, 2016 as the final arbitration award pursuant to Rule 76(b) of the Arizona Rules of Civil Procedure.

A separate judgment will issue based on the Arbitrator's March 1, 2016 Notice of Decision.