

OPINION NO. 2015-57  
December 22, 2015  
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Andrew Fry v. Patrick D. Malay, Amy J. Malay dba SOS Canvas and SOS Canvas Shop – No. CI-14-07021 – Madenspacher, J. – December 22, 2015 – Civil Law – Contract Law – Breach of Warranty – The evidence showed that the quality of work performed by Defendants was deficient, and Plaintiff was awarded damages based on Defendants’ breach of warranty.

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

ANDREW FRY :  
 :  
 :  
 v. : No. CI - 14-07021  
 :  
 :  
 PATRICK D. MALAY, :  
 AMY J. MALAY, aba :  
 SOS CANVAS and SOS CANVAS SHOP :

**OPINION AND VERDICT**

This case was commenced as an MDJ action on May 29, 2014. On July 15, 2014 MDJ Duncan ordered judgment in favor of Plaintiff in the amount of \$2,862.00 plus costs for a total of \$3,043.50. An appeal was filed on August 4, 2014 and a rule was entered on Plaintiff to file a Complaint.

On August 27, 2014 a two Count Complaint was filed, Count I Breach of Warranty, and Count II Violation of Pennsylvania Trade Practices and Consumer Protection Law.

On September 15, 2014 an Answer and Counterclaim was filed. On December 15, 2014 an

arbitration panel awarded Plaintiff \$5,285.00 on Count I and \$3,000.00 on Count II. On January 12, 2015 Plaintiff filed an appeal from the arbitrators' decision.

On June 8, 2015 a de novo trial was held before this Judge.

This case arises from an initial contract wherein the Defendant and Plaintiff entered into an agreement where Defendant would re-upholster the seats of Plaintiff's boat. A total of 3 payments were made, \$1,500.00, \$1,362.00, and \$1,750.00, for a total of \$4,612.00. Plaintiff is requesting compensatory damages, treble damages for violation of the UTPCPL as well as attorney's fees.

The sections of the UTPCPL that Plaintiff is relying on are 73 Pa.C.S. 201 - (4) vii and xxi. They are (vii) "Representing that services are of a particular standard, quality or grade..." and (xxi) engaging in any other fraudulent or deceptive conduct which would cause confusion or of misunderstanding. Plaintiff's support for this is based on Defendant's representation that the re-upholstery would be restored to showroom like condition. However, this "guarantee" is vague and could only be described as puffing. It does not fit either of the subsections of the UTPCPL that he is relying on.

However, the evidence does show that the quality of the work was deficient. This is based on the testimony of the Plaintiff, who clearly has knowledge about boats, and by Plaintiff's witness, who is also a marine re-upholsterer who testified about the quality of the workmanship. He also testified that it would cost \$5,803.50 to do the upholstery work. Although this estimate seems reasonable the proper measure of damages in a contract case would be the \$4,612.00.

The Court also finds that Defendant Amy J. Malay is not liable, and that Plaintiff is

not liable to the Defendant on his counterclaim.

Consequently, the Court issues the following:

**VERDICT**

AND NOW this                      day of December, 2015, the Court awards Plaintiff  
\$4,612.00 plus costs against Defendant Patrick D. Malay, dba SOS Canvases and SOS Canvas  
Shop.

BY THE COURT:

JOSEPH C. MADENSPACHER  
JUDGE

ATTEST:

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