

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF
MACOMB

ROBERT ANDERSON,

and ROBERT ANDERSON d / b / a

Detroit Bathtubs, Plaintiffs,

Case No. 2023-001402-CB Hon. Richard L. Caretti

Nick Doelle, Individually
Modern Paint and Design
OCEAN ROCK BATH, LLC, Jointly and severally Defendant(s).

-----/

Robert Anderson, (Pro Per)
21537 Tanglewood
St Clair Shores, MI. 48082
586-344-3030

Shifman & Carlson, P.C.

Attorneys for Defendants

Robert J . Gavin P72726 Sean P. Murphy P79255

Answer To Summary Disposition

Motion for Temporary Restaining Order

The defendants seek summary disposition under MCR 2.116(C)(8) for failure to state a claim on which relief can be granted. Clearly, there is a contract and it is written (typed) and is attached to the plaintiffs' complaint. The defendants falsely allege that plaintiff, Robert Anderson, is not a party to the contract and thus has no standing to sue under the contract The defendants seek summary disposition under

MCR 2.116(C)(8) for failure to state a claim on which relief can be granted. Clearly, there is a contract and it is written (typed) and is attached to the plaintiffs' complaint. The defendants, in support of their position, allege that an entity called Detroit Tubs, LLC is the party with whom defendants contracted and not Robert Anderson. Initially it can be stated or it can be noted that who the parties to a contract are is a question of fact for the court and not a matter of pronouncement for the defendants before any evidence is heard or considered, presumably at a trial. And for summary disposition purposes the factual allegations of the plaintiffs' complaint are accepted as true. Continental Airlines/Continental Express, 454 Mich 373 (1997). Since the contract is only three pages long, a copy of the contract is attached as an exhibit. It is clear that the independent contractor in the contract is Nick Doelle and the other party to the contract is Robert Anderson, the Company or the company. Detroit Tubs, LLC was filed in 2009 and passed out of existence in 2018. Robert Anderson filed his Certificate of Sole Proprietorship for Detroit Bathtubs on Sept 12, 2018, and the contract in question was signed by Robert Anderson and Nick Doelle on 11-19-19. Detroit Tubs, LLC is not declared to be "the Company", Robert Anderson is, and his d/b/a is attached to the complaint. Throughout the contract Nick Doelle is the entity referred to as the independent contractor and Robert Anderson is the entity referred to as the Company or company. Nowhere in the entire text or body of the contract is the name Detroit Tubs, LLC to be found.

And a contract is to be construed as a whole. Workmon v. Publishers Clearing House, 118 F. 3rd 457 1997 FED App 200P 6th Cir. 1997; Burton v. Travelers Ins. Co., 341 Mich 30 (1954) that plaintiff, Robert Anderson, is not a party to the contract and thus

has no standing to sue under the contract. Nobody signed the contract on behalf of Detroit Tubs, LLC. One may ask what about the phrase "Detroit Tubs, LIC" at the top of the front page of the contract. That phrase is not part of the text or body of the contract, is not a provision of the contract, is not a condition of the contract, and controls nothing concerning the rights and/or responsibilities of the contract. If two people signed a contract with each other on General Motors Corporation stationary, that does not make General Motors Corporation a party to the contract of those two people. Same with a napkin from the Waldorf Astoria. The brief of the defendants contains the phrase:

"As an initial matter the alleged contract attached to the complaint is between Detroit Bath LLC and Nick Doelle"

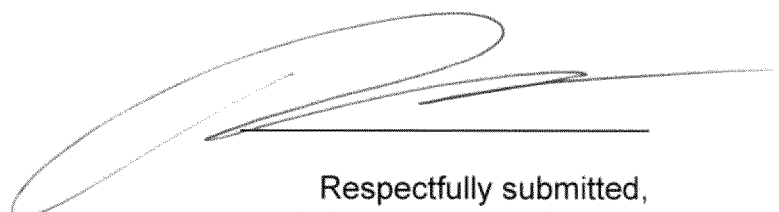
That statement is not correct. The contract is between Robert Anderson and Nick Doelle. And Robert Anderson is a sole proprietor. Plaintiff had a booth at at least two Novi Home Shows. Plaintiff paid Defendant money to "man the booth" and represent Plaintiff at the home shows. Defendant kept the Plaintiff's money for doing so (usually \$75 Per day or part day) and Defendant kept the approximately 74 business leads for himself that should have been Plaintiff's. Defendant kept both Plaintiff's money and Plaintiff's leads for himself, and started up a competing business with Plaintiff's leads, all in violation of the parties' contract which contains a non-competition clause for two years after Defendant no longer worked for Plaintiff under their contract.

Plaintiff maintains that it was fraudulent for Defendant to represent in person Plaintiff at Plaintiff's booths, to collect leads intended for Plaintiff, to start up competing business in his name or for his own profit, and to convert leads intended for Plaintiff to

Defendant's own use in his new business, all in violation of his contract with Plaintiff. Defendant stole. Defendant defrauded Plaintiff and Plaintiff should be allowed to amend his complaint.

Wherefore, Plaintiff prays:

- A. That the motion for summary disposition be denied;
- B. That the Plaintiff be allowed to amend his complaint to add other parties and counts for fraud, conversion, and the like;
- C. That this court enter a temporary restraining order, to stop the Doelle and his LLC to stop taking or misleading customers and taking deposits as a licensed contractor.
- D. That this court enter a temporary restraining order to stop Doelle and his LLC and confusing / misleading the public as to them being a licensed contractor.
- E. That Plaintiff be awarded costs of \$600, attorney fees, and such other relief as the court deems just and proper.
- F. The defendants be required to answer the original complaint in the first set of interrogatories sent to them within 14 days of today's date

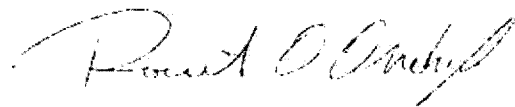


Respectfully submitted,
Robert Anderson, Plaintiff
Pro Per
21537 Tanglewood
St. Clair Shores, MI 48082
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Respectfully submitted,
Robert Anderson, Plaintiff
Pro Per
21537 Tanglewood
St. Clair Shores, MI 48082
586-344-3030

**Detroit Tubs LLC +
Robert Anderson
33985 Harper
Clinton Twp, MI. 48035
586-296-1100**

November 19, 2019

This contract is between (Nick Doelle who's resides at 35334 Park St Richmond MI 48062), *The Independent Contractor* and Detroit Tubs + Robert Anderson (AKA the Company).

- 1. It shall be agreed upon that *The Independent Contractor* and Company will enter into this agreement of his / her duties. The agreement will detail pay and expectations in their independent contractor status with the company.**
- 2. The Independent Contractors shall be paid as follows,**
 - 1. \$200.00 per bathtub**
 - 2. \$400.00 for tub and 3 walls.**
 - 3. \$600 for whole bathroom**
 - 4. \$100.00 for average size bathroom floor.**
 - 5. The Contractor shall pay \$150 per kit for Liquid Porcelain materials taken**
- 4. There will be a 2-week probationary time,**
 - a. Within these two weeks, there is to be absolutely,**
 - i. NO customer complaints regarding attitude**
 - ii. NO Complaints about appearance**
 - iii. NO Complaints over quality of job.**

Quality of job defined as:

- *Overspray due to not using proper equipment***
- *Plastic, tape, etc.***
- *Professionalism***
- *Being Timely and Courteous***

Each Job / Tub Shall use

- *Primer***
- *Stripper***
- *Bondo***
- *Crack fill***
- *Plastic to protect valuables etc.***

5. *The Independent Contractor* agrees to reimburse the Company for any job that requires the following.

- 1. Re-spray that the company must a another tech to do.**
- 2. Damage to customer property due to negligence**
- 3. Legal issues arising from customers that were originally assigned to them. And will hold harmless for any legal suits against the company because of their service.**
- 4. Contractor agrees that he or she will not engage in, start up any business that is in direct competition to the company. For a period of two years from his late date of work.**

6. Any and all equipment / tools needed to do any jobs assigned or required will be at *The Independent Contractor* expense solely.

- **Example- Fumigator, spray equipment, guns, masks etc.**
- **The company shall NOT provide ALL GLAZE materials to do said jobs**
- **The Company provides a maximum expense amount plastic, paper, all prep materials up to 50.00 weekly.**
- **All receipts are due the Friday of that workweek when they were bought, or it will not be paid.**
- ***The Independent Contractor* will be required to train other employees as the company deems fit**
- **The job requires all techs and salespeople to be ON-TIME for each appointment. If the contractor is not on time the company MAY fine that lateness at the rate \$50.00 per job towards the weeks pay.**
- ***The Independent Contractor* is required to Keep the Dispatcher advised as to their whereabouts via text or phone call EACH JOB EACH DAY,**
 - **Contact dispatcher when arrived at EACH JOB**
 - **Contact dispatcher when leaving at EACH JOB**
 - **The Independent Contractor will take at least 3 pictures before during and after of each job and upload in Podio App , before leaving the job site**
 - **There will be no leaving jobs for the next day or refusing to do said job. WITHOUT THE DISPATCHER APPROVAL PRIOR TO LEAVING**

- **The Independent Contractor must collect the amount owed by the customer before they leave the job UNLESS GIVEN VERBAL PERMISSION BY THE DISPATCHER**
- **All monies collected will be recorded on a completion certificate and turned twice a week . No monies shall be held by independent contractor.**

7. Paychecks

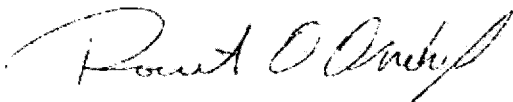
- a. **Will be Ready for pick up on Tuesdays after 2 O'clock**
- b. **They will be for work preformed the week prior they MAY include deductions mentioned above.**
- c. **NO pay will be given if the pics are not in PODIO**
- d. **NO pay will be given if the company has NOT been paid in full**
- e. **The Independent Contractor is solely liable for any and all monies they collect for the company and if not turned in to the company within 24 hours the company will withhold that amount plus a penalty of 50% against any amount owed.**

8. Any item not covered by this agreement will be discussed on Friday in a face-to-face meeting that must be requested by the contractor. Any monetary issues that arise will be discussed in that meeting and will be settled up the following pay period.

9. A warranty bank of \$1,000 will be held by the company to cover warranty work and customer issues. This will be deducted \$250 per week from the first 4 paychecks. These funds will be held for one year from the contractor's last job

10. Salespeople shall be paid as Follows

1. **\$50.00 per bathtub**
2. **\$150.00 for tub and 3 walls.**
3. **\$300 for whole bathroom**
4. **\$100.00 for average size bathroom floor.**
5. **The Contractor shall make 40% of gross profit on larger jobs**



Robert Anderson



Nick Doelle

NICHOLS & EBERTH, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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Sterling Heights, Michigan
Trenton, Michigan

June 13, 2023

Robert Anderson
DuraStone One Day Bath
33985 Harper
Clinton Township, MI 48035

Re: **Paul Figac**
Bathroom Remodel at 6448 Norborne, Dearborn Heights

Dear Mr. Anderson:

Please be advised that I represent Mr. Paul Figac with regard to a contract entered into on October 21, 2022, with your company for a bathroom remodeling. Mr. Figac met you at the Novi Home and Garden Show in October 2022.

After the home show, Nick Doelle of your company came out to Mr. Figac's home where Mr. Figac signed a \$9,000 contract with DuraStone One Day Bath and provided a check made payable to DuraStone One Day Bath for \$4,500.00 as a down payment towards the work. (A copy of his check is attached). Mr. Doelle took the check, and it was cashed. Since that date, no work has been performed.

Mr. Figac had initially been told that it might be two or three months before it would start. On or about February 21, 2023, Mr. Figac reached out to Nick Doelle for an update on when work would commence. He was advised by Mr. Doelle that a firm date would be provided very shortly. On or about March 17, 2023, Mr. Figac then contacted your company again and he was informed that Mr. Doelle did not work there anymore. Again, no firm date was provided and Mr. Figac requested that you simply refund his deposit so that he could go elsewhere. To date, no work has been performed.

Please contact me upon receipt of this letter to arrange for a refund to Mr. Figac of his \$4,500 deposit within 10 days of the date of this letter.

I can be reached at (313) 561-5700.

Sincerely,



Brent M. Lamkin

BML/mmh
Enclosure
cc: Mr. Paul Figac

PAUL A FIGAC
6448 NORBORNE AVE
DEARBORN HEIGHTS, MI 48127-2008

521
9-9/720
157

Oct 21, 2022
DATE

Pay to the Order of Duraetone One Day Bath \$ 4500.00
Four Thousand Five Hundred and 00/100 DOLLARS



Platinum Circle

Comerica Bank
www.comerica.com

For BATH ROMANCE Paul A. Figac

[REDACTED]

07 2020 19 3
13 20 14 14 3

Security Features...
• All checks are made of 100% cotton paper
• Each check has a unique security pattern
• The security pattern is visible from both sides
• The security pattern is visible through the paper
• The security pattern is visible under UV light
• The security pattern is visible when held to the light
• The security pattern is visible when held to the light
• The security pattern is visible when held to the light

CHECK BOX FOR MOBILE REMOTE DEPOSIT
WRITE NAME OF FINANCIAL INSTITUTION IN THE ABOVE

END OF REMIT

MOBILE DEPOSIT