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4 Arbitrator

5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
6 **IN AND FOR THE COUNTY OF MARICOPA**

7 A R HARLEY & SONS, LTD.,)

CV2008-023734

8 Plaintiff,)

ARBITRATION DECISION

9 vs.)

10 MARCUS BUCKLEMUND aka)
11 SCULPTURE CYCLES, JOHN DOES)
12 I-X,)

13 Defendants.)

(Hon. Judge Kenneth Mangum)

14 On July 3, 2009, Arbitrator held the ordered arbitration hearing. Plaintiff appeared
15 in person with counsel, Yvonne Yragui. Defendant appeared in person, without counsel.
16 Both parties testified. No other witnesses were present or testified. Arbitrator reviewed
17 and assessed various Plaintiff and Defendant exhibits.

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19 Plaintiff is a motorcycle parts supplier. Both he and his business are located in the
20 United Kingdom. Defendant is a custom motorcycle builder, located in Mesa, Arizona.
21 Defendant has, over the years, utilized parts supplied and sold by Plaintiff to Defendant.
22 Each party has visited the other's business in the past.

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24 There was no written evidence of any formal agreement regarding any partnership,
25 joint venture, or other business relationship between the parties other than the supply of
26 parts, and the invoicing for those parts. Further, although the parties had a very casual
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1 relationship regarding shipping, invoicing, and paying, there was never any evidence of
2 any long term contract between the two in any fashion. Essentially, their relationship was
3 defined largely by a stream of single events of a placed order, and the payment of that
4 order over time.
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6 This case can be broken into two parts. The first involves parts shipped by
7 Plaintiff to Defendant for use in motorcycles generally, over a period from 2004 through
8 2008. Defendant agreed that these parts were shipped, used, and invoiced as sales.
9 Defendant did not dispute the transaction or the amounts billed. Defendant has simply
10 not reportedly had the funds to pay the invoiced amounts. Defendant's argument here
11 involves a desire for a reduced interest rate (he agreed to 5%), a 90 day payment period,
12 and the use of the British pound when computing the conversion rate (as well as the use
13 of the current conversion rate as opposed to the one prevailing at the time of invoicing).
14 Plaintiff requests US dollars, valued at the time of the invoices, based upon conversion
15 rates at the time of the invoice, and interest beginning 30 days after being billed. The
16 invoices contain no reference to a due date.
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20 The second aspect of the case involves an agreement in December 2005 for
21 Plaintiff to ship a motorcycle to Defendant for the use of its parts in a custom motorcycle
22 for a show in Ohio in 2006. Plaintiff offered the parts for use because Defendant could
23 not afford to pay at the time. Due to the number of years the motorcycle parts sat unused,
24 and due to the environment in which they remained prior to shipping to Defendant,
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1 Defendant had to spend many hours cleaning and refurbishing the parts after shipment.
2 Plaintiff does not dispute this and attributed some credit to Defendant as a result.
3 Defendant used the parts in a silver motorcycle in March 2006. Defendant later
4 disassembled the silver motorcycle without notice and approval to/by Plaintiff
5 beforehand, and created a more stylish green motorcycle using the parts. He also
6 modified some of the parts in an almost irreversible manner (ie. he black anodized
7 formerly chrome plated parts). Defendant created the green motorcycle for a show in
8 Texas.
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11 Defendant kept Plaintiff advised of the creation of both motorcycles to some
12 degree over time, the attempted sale of both, and referenced Plaintiff as a part owner
13 entitled to a percentage of expense/profit reimbursement when the bike sold. Plaintiff did
14 want to advertise the green bike, and facilitated several potential customer inquiries.
15 Further, he never objected to the building of the bikes, and never objected to the proposal
16 that he be part owner, but simply wanted a defined and legal ownership interest.
17 Defendant refused to grant a lien on any bike as it reportedly causes customer distrust or
18 lag time for a sale. Both parties exchanged many emails regarding the proper valuation of
19 the various parts, and Plaintiff clearly references waiting until the sale to be paid, though
20 over time he demanded payment prior to any sale. Defendant references owing Plaintiff
21 money, but addresses waiting until the bike sold. In time after neither bike sold, the
22 emails changed from a split of the sales price to an invoiced amount by Plaintiff. Neither
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1 bike sold (and in fact because the silver bike parts were used to build the green bike, the
2 silver bike no longer exists).

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4 Plaintiff asserted two primary requests. First, he wants to be paid for the first
5 invoicing in the amount of FIVE THOUSAND FIVE HUNDRED SIXTY SIX
6 DOLLARS AND NO CENTS (\$5566.00) and receive pre-judgment interest at the legal
7 rate of 10% dating back to 30 days after the invoiced amounts (though he notes he
8 previously agreed to 5%). Second, he requests payment of FOURTEEN THOUSAND
9 ONE HUNDRED ELEVEN DOLLARS AND NO CENTS (\$14,111.00) (in an email he
10 requested FOURTEEN THOUSAND FIVE HUNDRED NINETY SIX DOLLARS AND
11 NO CENTS [\$14,596.00]) for the parts used in the silver and green motorcycles. He
12 denies there was a contract or joint venture. He asserts that he agreed to the use of the
13 parts for the silver bike to show it and sell it, but never agreed to the prolonged use of the
14 parts without payment. Plaintiff requests attorney's fees and court costs, to include about
15 ONE THOUSAND DOLLARS AND NO CENTS [\$1000.00] spent to travel to the
16 arbitration from England.
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20 Defendant asserted two primary requests. First, he agrees he owes the first set of
21 invoiced amounts. He requests that the interest rate be set at 5%, and that the amount
22 owed be determined in today's money at the current exchange rate. He made this request
23 because he was always invoiced in British pounds, and the payment was cheaper that
24 way, without prejudice to Plaintiff. He also noted that the parties agreed to a 90 day
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1 payment period after being invoiced, rather than the standard 30 days. Second, he
2 asserted that he owes nothing for the silver/green motorcycle parts. His position is that
3 the relationship was a joint venture between the two parties, and that when the bike sells,
4 they should split the money received in a manner fair to both parties, but likely about 25%
5 to Plaintiff and 75% to Defendant. Specifically, he stated that they agreed that once the
6 bike sold, Plaintiff would be paid. Defendant stated that the parts were to be used in “a”
7 bike and Plaintiff never objected to the reuse of the parts. Defendant stated that in the
8 event he owes money prior to the sale of the green bike, that Plaintiff for the first time
9 invoiced him in May 2008, several invoices with varied amounts followed, and that he
10 should owe NINE THOUSAND TWO HUNDRED FIFTY FOUR DOLLARS AND NO
11 CENTS (\$9,254.00) (in an email he requested TWELVE THOUSAND FOUR
12 HUNDRED NINETY THREE DOLLARS AND NO CENTS [\$12,493.00]). Defendant
13 opines that he should not pay Plaintiff’s attorney’s fees because this lawsuit was not
14 necessary and there was a joint venture.
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19 It is noted that the parties have known each other and have worked together for
20 about 10 years. Both men actually adjusted the prices on invoices at times both in their
21 own favor and in the favor of the opposing party. The emails clearly reflect the parties
22 made substantial efforts to fairly value the parts. The parties in their emails were
23 generally about TWO THOUSAND DOLLARS AND NO CENTS (\$2,000.00) apart in
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1 total values. The only issues are when Plaintiff should be reimbursed (now or upon sale)
2 and for how much.

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4 THE ARBITRATOR MAKES THE FOLLOWING FINDINGS:

5 1. Regarding the first set of invoices, Defendant clearly owes Plaintiff FIVE
6 THOUSAND FIVE HUNDRED SIXTY SIX DOLLARS AND NO CENTS (\$5566.00).
7 FIVE THOUSAND FIVE HUNDRED SIXTY SIX DOLLARS AND NO CENTS
8 (\$5566.00) is the US dollar equivalent at the time and is an appropriate number. Because
9 concerted, formal demands for a definitive liquidated amount owed did not occur until the
10 non-payment of the invoices over time, pre-judgment interest back to the first invoice is
11 not appropriate. Pre-judgment interest on the total sum after the last invoice dated March
12 28, 2007 is appropriate, because at that time the amount was liquidated AND formal
13 demands began to occur by Plaintiff. The interest rate was agreed upon by the parties at
14 5%. Legal interest past this decision should be at 10%. Further, because the payment due
15 date was not even clear, 60 days is fair as it is halfway between the parties' assertions of
16 30 and 90 days. Thus, interest should begin to accrue May 28, 2007 at 5% until this
17 decision, at which point interest accrues at 10% thereafter.

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19 2. Regarding the use of the parts for the silver and green bikes, there clearly was no
20 agreement as to terms, price and the like. It is clear that the parties did intend to use
21 Plaintiff's parts and Defendant's labor to create a bike to sell for a profit, and to split that
22 profit in an equitable way.
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1 Both parties put a lot of money and labor into these parts. Plaintiff's high estimate
2 of fair market value in a detailed email was FOURTEEN THOUSAND FIVE
3 HUNDRED NINETY SIX DOLLARS AND NO CENTS (\$14,596.00). Defendant's low
4 estimate in a detailed email of fair market value was TWELVE THOUSAND FOUR
5 HUNDRED NINETY THREE DOLLARS AND NO CENTS (\$12,493.00). A fair
6 valuation would be the average of the two, or THIRTEEN THOUSAND FIVE
7 HUNDRED FORTY FOUR DOLLARS AND FIFTY CENTS (\$13,544.50).
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10 The more difficult issue is when payment should be made. Defendant was
11 continually trying to improve the look and potential sale of the bike and parts. The
12 critical point, however, is when the parts were unilaterally taken by Defendant from the
13 silver bike, some were substantially and almost irreversibly altered, and the green bike
14 resulted. Defendant heavily advertised and marketed the green bike, rode it, and
15 continued to change it. He benefitted his company with some publicity. He used the
16 parts as if they were his own. Defendant appeared to have no intention of doing anything
17 untoward or inappropriate – he was only doing these actions out of efficiency and in an
18 effort to sell the bike. However, those actions changed the character of the original loose
19 agreement in a manner unfair to Plaintiff, although implicitly not objected to by Plaintiff.
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23 3. Regarding attorney's fees, absent this lawsuit, Plaintiff would not receive any
24 money in the near future. Defendant sold another motorcycle prior to the arbitration for
25 TWELVE THOUSAND DOLLARS AND NO CENTS (\$12,000.00). Although he made
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1 a settlement offer using that money, he did not pay any money towards even the first debt
2 he acknowledged he owed. Plaintiff, although he did not prevail on every issue he
3 asserted, is entitled to a large portion of his attorney's fees expended in this action as a
4 result.
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6 4. Regarding costs, Plaintiff is entitled to his court costs. Plaintiff is not entitled to
7 costs associated with travel, as both parties incurred several forms of costs, and there
8 were some reasonable arguments presented by both parties in total. Further, those costs
9 are more tangential to the action *vis a vis* actual court costs.
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11 THEREFORE, BASED UPON THE FOREGOING,

12 IT IS HEREBY ORDERED granting judgment in favor of Plaintiff and against
13 Defendant regarding the first claim in the principal and compounded interest amount of
14 SIX THOUSAND TWO HUNDRED SEVENTY SEVEN DOLLARS AND SIXTY
15 FIVE CENTS (\$6277.65).
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17 IT IS FURTHER ORDERED granting judgment in favor of Plaintiff and against
18 Defendant regarding the second claim in the principal amount of THIRTEEN
19 THOUSAND FIVE HUNDRED FORTY FOUR DOLLARS AND FIFTY CENTS
20 (\$13,544.50).
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1 IT IS FURTHER ORDERED that an interest rate of 10% per annum shall accrue
2 hereafter on the two awards above.

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4 IT IS FURTHER ORDERED awarding Plaintiff his full court costs and a portion
5 of his attorney's fees. Plaintiff's counsel shall submit a *China Doll* affidavit within 10
6 days herein. Defendant shall, if he chooses to do so, submit any objections to that
7 affidavit within 20 days of this order. Any objection not received in a timely fashion will
8 be deemed waived.
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10 DATED this 8th day of July, 2009.

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14 JEFF ZURBRIGGEN
15 ARBITRATOR
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