

IN THE COUNTY COURT OF PEARL RIVER COUNTY, MISSISSIPPI

BRJ, INC.

PLAINTIFF

VERSUS

CIVIL ACTION NO. CO2015-0218

X-STREAM CLEAN PRESSURE  
WASHING, LLC

DEFENDANT

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FINAL JUDGMENT

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THIS MATTER came on for bench trial on December 13, 2018 December 14, 2018, January 7, 2019, and January 29, 2019, on Plaintiff's Amended Complaint, and having considered the testimony of witnesses and the applicable law and evidence and having heard arguments from counsels for Plaintiff and Defendant, and being fully advised in the premises, finds in favor of Plaintiff BRJ, Inc. Pursuant to MRCP 52, this Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. In November 2014, Tim Crosby ("Crosby"), owner of X-Stream, purchased the company from its prior owner, Calvin Ford, and X-Stream took over Ford's service contracts including a contract to pressure wash commercial trucks for BRJ, Inc. BRJ.
2. BRJ is a Mississippi trucking company who owns terminals located in Hattiesburg, Collins, and Picayune. Prior to Crosby purchasing the company, BRJ used Ford's company to pressure wash its commercial trucks at BRJ's terminals.
3. On January 25, 2015, at BRJ's Picayune, Mississippi terminal X-Stream Clean pressure washed BRJ's commercial trucks including Truck #12. Truck #12 was a 2012 Coronado Freightliner owned by BRJ and used daily in BRJ's business of delivering fuel.

**FILED**  
NANCE FITZPATRICK STOKES CIRCUIT CLERK

MAR 12 2019

BY: Anna R. White  
DEPUTY CLERK

4. X-Stream's Answer to Interrogatory No. 9 states:

- a. BRJ "requested X-Stream to pressure wash the engine of the subject truck;"
- b. X-Stream admits "it performed the work requested by BRJ;"
- c. Freeman Lott performed the pressure washing on BRJ's Truck #12.

5. Lott testified initially that he did not remember pressure washing Truck #12 on January 25, 2015, but he agreed, based on X-Stream Clean's answer to Interrogatory No. 9 that BRJ requested X-Stream Clean to pressure wash the engine of the Truck #12, and therefore he did pressure wash the engine.

6. Shortly after midnight on January 26, 2015, after Truck #12 was pressure washed, Jason Singletary, BRJ's driver of Truck #12, performed his pre-trip inspection; he observed a loose dipstick collar, when he started the truck, it revved out of control. Singletary turned the truck off but it continued to rev out of control for a minute before shutting down. Truck #12 never ran again.

7. Singletary called the terminal manager, Jayson Crawford, regarding the problem with Truck #12. Crawford inspected Truck #12 and found that the truck's dipstick had been broken. Following Crawford's inspection of Truck #12, he called High Gear Onsite Repair to inspect and diagnose the truck.

8. Upon inspection, at the BRJ terminal, High Gear's technician found water in the wiring harness plug of the ECM and also noted that the dip stick was broken. Kevin Dupuis testified that he later found the yellow plastic collar on top of the dipstick was broken and found tears in the O-ring which seals the ECM. The dip stick is located inches from the ECM in the DD15 engine. After inspection of Truck #12, High Gear advised Crawford that X-Stream had pressure washed too close to Truck #12's engine and the engine's electrical components and towed the truck to their Gulfport shop. After testing the vehicle, High Gear obtained Truck #12 DDC codes from Truck #12's ECM

which were sent to Crawford.

9. The diesel experts at High Gear Onsite Repair who inspected it on January 26, 2015 conducted diagnostic testing until April 2015. High Gear concluded and stated in their business records, depositions, and trial testimony:

1. The standard in the diesel industry and manufacturer's warning is that you do not pressure wash diesel engines;
2. High Gear found broken yellow plastic collar on top of the dipstick and tears in the O-ring and wiring harness seals of the ECM. This allowed waster to be found inside the ECM. The ECM is the brains of the truck;
3. These findings were caused by X-Stream's pressure washing immediately before High Gear's inspection on January 26, 2015;
4. The moisture in the ECM first destroyed the ECM. The destruction of the ECM caused the revving out of control which in turn destroyed the engine beyond repair.

10. Plaintiff's expert testimony is supported by Detroit Diesel bulletins providing warnings to "never direct water onto electrical components" and to "avoid all of the electrical connections with direct water or steam spray" and that "power washing/steam cleaning can permanently damage these components."

11. Prior to X-Stream Clean's pressure washing of Truck #12 on January 25, 2015, the records show that Truck #12 had no previous issues with its engine or ECM and that preventative maintenance had been performed on the vehicle one (1) month before X-Stream pressure washed Truck #12. Further, BRJ required all of its drivers to perform pre-trip inspections on each vehicle in accordance with the Freighliner Drivers Manual requiring pre-trip inspections. Additionally, testimony and evidence at trial showed that Truck #12 is driven seven (7) days a week and no

problems were noted. Therefore, any prior defects with Truck #12 prior to January 25, 2015, would have been identified prior to X-Stream's pressure washing on January 25, 2015.

12. Following discovery of the damage to Truck #12, Crosby admitted that he was notified on January 26, 2015 that pressure washing had caused mechanical problems with BRJ's Truck #12 and that the truck had been towed to High Gear shop in Gulfport, Mississippi. On April 1, 2015, Crawford forwarded the DDC codes of Truck #12 to Crosby and notified him that Truck #12 was at High Gear and gave Crosby the names of the mechanics was working on the truck. BRJ also sent a copy of High Gear's mechanic notes to Crosby. Neither X-Stream Clean or Liberty Mutual ever called to speak with the mechanics at High Gear or inspect Truck #12 until after Truck #12 was sold in May 2015.

13. High Gear towed, tested, and attempted to repair Truck #12 with new parts including a new ECM but Truck #12 could not be repaired because of the extensive damage to Truck #12's engine. High Gear's price for its towing, diagnostic testing, and failed attempts to repair was \$13,324.61.

14. On April 6, 2015, BRJ received a quote from High Gear in the amount of \$41,928.20 for a used replacement engine to be installed in Truck #12. The quote was for a used engine taken from a totaled truck with 96,758 miles on it. That quote also provided that: "This price does not include any misc[ellaneous] parts that may be needed."

15. On the same date, BRJ received a quote for a new engine from Empire Truck Sales, LLC in the amount of \$45,326.75. However, only the engine core was available for shipment from Germany but parts for rest of the DD15 engine were unavailable and no delivery date could be given.

16. During the months that BRJ's Truck #12 was in the shop, BRJ was forced to operate without one of its primary vehicles and instead, BRJ had to utilize a replacement vehicle which was otherwise used solely when BRJ's primary vehicles were being repaired. This left BRJ without one

of its delivery trucks necessary for customary business operation.

17. In May 2015, BRJ sold Truck #12 for \$32,000.00 in order to mitigate its damages.

18. BRJ's damages expert, Mike Williams, testified that BRJ's Truck #12 was valued at \$99,175.00 before it was damaged by X-Stream Clean's pressure washing. Mike Williams further testified without objection or contrary testimony that loss of use for this specific heavy duty truck was \$250.00 per day plus 18 cents (\$.18) per mile.

19. BRJ lost the use of Truck #12 for 132 days from January 25, 2015 until June 6, 2015. Jason Crawford testified that, in the customary operation of BRJ's delivery business, Truck #12 traveled an average of 252.1 miles per day seven (7) days a week.

#### CONCLUSIONS OF LAW

20. To prevail on a claim of negligence, BRJ must show that X-Stream owed a duty to BRJ which was breached causing damages to BRJ. *Banks v. Brinker Mississippi, Inc.*, 146 So. 3d 388, 391 (Miss. Ct. App. 2014). Regarding duty, Mississippi law imposed upon X-Stream a "duty to exercise due care to avoid [damage to Truck #12]" *U.R.S. Co., Inc. v. Gulfport-Biloxi Regional Airport Authority*, 544 So.2d 824, 828 (Miss. 1989) In *U.R.S. Co., Inc.*, the court provided in pertinent part:

"Accordingly, the law imposes upon every person who undertakes the performance of an act which, it is apparent, if not done carefully, will be dangerous to . . . the property of other persons, the duty to exercise his senses and intelligence to avoid injury, and he may be held accountable at law for an injury to . . . property which is directly attributable to a breach of such duty. The duty so arising is absolute. The law requires nothing more; it will excuse nothing less than performance . . ."

*Id.*

21. In X-Stream's Responses to Requests for Admission, X-Stream admits that it had a

duty to perform truck washing in a reasonable and workmanlike manner with due care. This was the duty owed for negligence and breach of contract claims. The standard of care required no pressure

washing of diesel engines or protective covering of sensitive electrical components.

22. Based on evidence and testimony presented, that X-Stream's pressure washing of Truck #12's engine in violation of the standard of care was the proximate cause of the destruction of the engine of Truck #12.

23. To prevail on a claim of breach of contract, BRJ must show that there was a valid contract or agreement that was breached by X-Stream. In Mississippi, services performed pursuant to a services contract must be performed in a "good workmanlike manner." *See, e.g., Houston v. York*, 755 So. 2d 495, 502 (Miss. Ct. App. 1999) (citing *George B. Gilmore Co. v. Garrett*, 582 So.2d 387, 395 (Miss. 1991)). X-Stream admits that it had a contract with BRJ to perform pressure washing services. Further, and as stated above, X-Stream admits that it had a duty to perform truck washing in a reasonable and workmanlike manner with due care. The Court finds that X-Stream breached that duty and the agreement with BRJ by applying high pressure water directly to Truck #12's engine and destroyed the engine of Truck #12.

24. BRJ met its burden of proving negligence and breach of contract by X-Stream Clean. Therefore, BRJ is entitled damages for the value of High Gear's quote for a used engine in the amount of \$41,928.20 and the value of High Gear towing, diagnostic testing, and attempted repair in the amount of \$13,324.61.

25. Moreover, Mississippi law allows BRJ to recover for the loss of use of Truck #12 caused by X-Stream Clean. "[I]n addition to the physical injury the owner has lost the vehicle's use for a period of time, as during the process of repair, he is entitled to the value of the use of the property during this period." *Nat'l Dairy Prod. Corp. v. Jumper*, 130 So. 2d 922, 922 (1961). The

precise measure of loss of use is defined by the rental or usable value of the property during the time the owner was deprived of it. *Id.* “Damages for loss of use should be measured by the cost of hiring another vehicle while the repairs are being made.” *Id.* However, the rental value of a replacement truck is recoverable by BRJ “even though no other [truck] was procured during the interval.” *Id.*

26. Testimony at trial showed that BRJ suffered loss of use from of Truck #12 from January 25, 2015 until June 6, 2015 when the replacement truck was placed in service. BRJ is entitled to \$250.00 per day plus 18 cents per mile for 132 days is \$38,990.16 for loss of use of Truck #12 from January 25, 2015 until June 6, 2015.

27. Additionally, in breach of contract actions, multiple elements of compensatory damages are available, including interest. Interest like the other elements of measures of damage need not be specifically plead. *Parker Tractor & Implement Co., Inc. v. Johnson*, 1999 WL 1000 712 at 5 (Miss. 1999). Here, the Complaint and the Amended Complaint requested prejudgment interest. The complaint and the issues which were found to be remaining for trial and which were in fact tried included breach of contract and negligence.

28. Further, Mississippi Code Section 75-17-7 governs the awarding of prejudgment interest. See, e.g., *Am. Fire Prot., Inc. v. Lewis*, 653 So.2d 1387, 1392 (Miss.1995). The statute provides:

All judgments or decrees founded on any sale or contract shall bear interest at the same rate as the contract evidencing the debt on which the judgment or decree was rendered.

29. The Court concludes that, as matter of law, BRJ is entitled to 8% prejudgment simple interest from the time the Complaint was filed on July 23, 2015 to present. Pre-Judgment interest as statutory rate of 8% since filing suit on July 23, 2015 until the date of entry of this Final Judgment

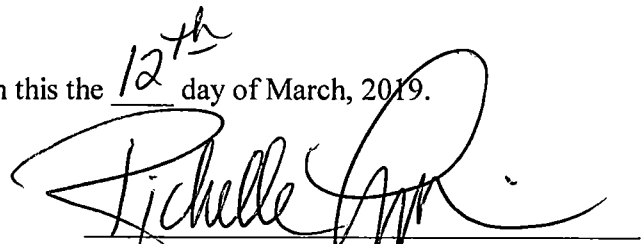
on March 12, 2019 is \$27,443.55.

30. The Court finds that final judgment be and hereby is entered in favor of BRJ, Inc. against X-Stream Clean Pressure Washing, LLC for the amounts:

- 1) Damages in the amount of thirty-eight thousand nine hundred ninety-nine dollars and sixteen cents (\$38,990.16) for loss of use of BRJ, Inc.'s Truck #12 from January 25, 2015 until June 6, 2015;
- 2) Damages in the amount of thirteen thousand three hundred twenty-four dollars and sixty-one cents (\$13,324.61) for attempted repair of Truck #12;
- 3) Damages in the amount of forty-one thousand nine hundred and twenty-eight dollars and twenty cents (\$41,928.20) for value to replace the engine of Truck#12; and
- 4) Pre-judgment interest in the amount of \$27,443.55.

IT IS ORDERED, for the reasons stated herein, that final judgment be entered in favor of BRJ, Inc. and BRJ, Inc. is hereby awarded damages from X-Stream Clean Pressure Washing, LLC in the amount of \$121,686.52, which shall bear interest at the rate of 8% per annum from this date until paid in full.

SO ORDERED AND ADJUDGED on this the 12<sup>th</sup> day of March, 2019.

  
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COUNTY COURT JUDGE



**Prepared by:**

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