

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND


ALEX ZAWEL, an individual,

Plaintiff,

v

VAST PERFORMANCE, LLC, a  
Michigan limited liability company,

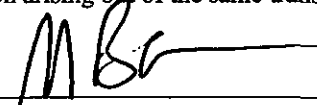
Defendant.

C: OAKLAND COUNTY 11-122057-CZ  
  
JUDGE RUDY J. NICHOLS  
ZAWEL ALEX v VAST PERFORMA

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Mitchell H. Boardman (P47042)  
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There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the Complaint.

  
\_\_\_\_\_  
Mitchell H. Boardman P47042

**VERIFIED COMPLAINT AND JURY DEMAND**

NOW COMES Plaintiff, Alex Zawel, by and through his attorneys, THE STROBLE LAW FIRM, P.C., and for his Complaint, states as follows:

**JURISDICTION AND VENUE**

1. Plaintiff Alex Zawel is a resident of Rye, New York.
2. Defendant VAST Performance, LLC is a Michigan limited liability company which conducts business in the Ferndale, Oakland County, Michigan.
3. The amount in controversy exceeds the sum of \$25,000.00.

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**GENERAL ALLEGATIONS**

4. Plaintiff incorporates by reference all allegations previously set forth herein.

5. At all times relevant hereto, VAST owned a motor vehicle repair facility located at 2430 Grayson, Ferndale, Michigan.

6. According to its website, [www.vastperformance.com](http://www.vastperformance.com), Defendant represented to the public, including the Plaintiff, that its business conducts motor vehicle maintenance, repair and performance part installation.

7. On May 24, 2011, the Secretary of State issued a document evidencing that Defendant had not previously registered as a motor vehicle repair facility with the State of Michigan as required by the Motor Vehicle Service Repair Act, MCL 257.1301, *et seq.*

8. It was not until June 10, 2011 that Defendant registered with the State of Michigan as a motor vehicle repair facility pursuant to the Motor Vehicle Service and Repair Act, MCL 257.1301, *et seq.*

9. Plaintiff is the owner of a 2001 Audi S4 which had been modified to accentuate its performance and value.

10. On December 15, 2009, Plaintiff paid to transport his vehicle to Defendant's facility for the following work to be performed by Defendant:

- a. Ensure engine is in adequate condition for planned modifications to the vehicle;
- b. Diagnostic testing to include compression and leak down test to be performed to the engine once the vehicle was in running condition;
- c. Repair and upgrade two turbochargers;
- d. Install complete Ethanol E-85 fueling system;
- e. Tune the vehicle with Ethanol E-85 fuel and 93 octane;
- f. Install Tilton twin disc clutch;

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- g. Fit and install aftermarket exhaust system to the vehicle;
- h. Complete timing belt service;
- i. Replace rear brakes with new calipers, rotors and pads;
- j. Service and repair the cylinder head seal kit;
- k. Repair and/or replace the oil pump, O-rings and oil cooler sandwich seal;
- l. Repair and/or replace power steering brackets bolts;
- m. Repair and/or replace coolant expansion tank, t-fitting, clamps and screws;
- n. Repair and/or replace radiator hose clips;
- o. Repair and/or replace fan kit hardware;
- p. Repair and/or replace phenolic intake spacers;
- q. Install catch can and vent hose for PCV system;
- r. Install hardware for timing belt covers;
- s. Weld new bolt in frame for wire ground;
- t. Install passenger rear wheel bearing;
- u. Install passenger rear tie rod end;
- v. Repair and/or replace front straight lower control arm.

11. By June 2010, Defendant had yet to complete the work on Plaintiff's vehicle. Plaintiff then requested that Defendant provide him with the status of the work.

12. Defendant failed to return the vehicle within a reasonable time to the Plaintiff and further failed to provide Plaintiff with a date that the work would be completed.

13. On more than one occasion, Plaintiff requested that the Defendant set aside and return to him all parts removed from the vehicle. Based upon the work being performed by Defendant on Plaintiff's vehicle, and per Plaintiff's request to Defendant,

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the following removed and replaced components should have been returned to the Plaintiff:

- a. Air conditioning compressor, condenser, dryer and lines;
- b. Rear brake calipers, rotors and pads;
- c. Timing belt tensioner damper, tensioner roller, belt idler, belt lever, timing belt, accessory belt, water pump and thermostat;
- d. Coolant expansion tank;
- e. Vent hose for PCV system;
- f. Passenger rear tie rod end;
- g. Passenger rear wheel bearing;
- h. Front straight lower control arm.

14. On June 24, 2010, Plaintiff paid Defendant all sums due at that time, that being \$6,168.00.

15. On or about July 14, 2010, Defendant reported to Plaintiff that while it attempted to break in a new clutch, an unusual engine noise developed. Defendant determined that a cam sprocket began to round off and crack. Defendant was then required to perform repair work on the damaged parts.

16. On August 17, 2010, Defendant informed Plaintiff that after installation of an Ethanol E85 fueling system, the newly installed fuel pump failed during a test drive. Defendant was forced to tow the vehicle back to its facility to replace the fuel pump.

17. On September 23, 2010, Defendant reported to Plaintiff that a camshaft correlation fault occurred during the tuning of the vehicle. The fault was due to Defendant's shearing and rounding off the camshaft sprocket during prior tests and performance drives.

18. After Defendant allegedly completed the work, the vehicle was transported to the Plaintiff in New York, arriving on October 7, 2010. As the vehicle was being

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unloaded from the transporter, Plaintiff observed a large amount of billowing white smoke coming from the exhaust.

19. When Plaintiff reported the problem with the vehicle to Defendant, Defendant advised him that the same problem had been observed prior to Defendant transporting the vehicle back to the Plaintiff.

20. Once the vehicle was returned to Plaintiff from Defendant, Plaintiff observed the following problems with the vehicle:

- a. Dense billowing white smoke from the exhaust;
- b. Fuel pump was faulty/erratic and unable to hold fuel pressure steadily;
- c. Oil leaking from oil cap;
- d. The tune on the vehicle was causing choppy power delivery;
- e. A loud grinding noise from the transmission when under 2000 RPM was heard;
- f. A fuel return line was leaking fuel heavily under the hood;
- g. Suspension making grinding noises;
- h. Exhaust muffler leaking from an incomplete weld;
- i. Oil leaking from the driver's side turbocharger;
- j. Oil leaking from passenger side inlet pipes.

21. In addition to the mechanical problems concerning the vehicle, Defendant failed to return to Plaintiff the replaced and used parts despite his previous request.

22. Defendant advised Plaintiff that it would assist him in resolving the issues and problems with the vehicle upon payment of its invoice.

23. As the erratic fuel pressure continued to be a problem, Defendant agreed to provide Plaintiff with a refund for the fuel pump, miscellaneous components and three hours of labor. Plaintiff replaced the failed fuel pump with a new replacement fuel pump that was

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provided by and installed under the direction of the Defendant. This replacement fuel pump also failed, so a second replacement fuel pump was sent to the Plaintiff. After installing the second replacement fuel pump, it failed yet again. It was at this point that several parts were returned to the Defendant and a partial refund was issued.

24. On October 26, 2010, Plaintiff paid Defendant's invoice in full in the amount of \$2,537.06.

25. Due to continuing problems with the vehicle, Defendant agreed to transport the vehicle back to its facility for additional repairs.

26. As it was clear that the vehicle was returned to Plaintiff in a defective condition due to Defendant's poor workmanship, the parties agreed that the Defendant would pay for all costs incurred in transporting the vehicle, diagnostic testing and repairs.

27. After numerous delays, the vehicle was eventually transported back to Defendant's facility on January 29, 2011.

28. According to the Defendant's diagnostic testing, the driver's side turbocharger was defective.

29. While performing diagnostic testing on the vehicle on or about February 11, 2011, Defendant broke a slave cylinder due to a mechanic's error.

30. On or about February 23, 2011, Defendant advised Plaintiff that since its diagnostic testing showed defects in the turbocharger, it would not only require removal of the engine but the return of the turbocharger back to the manufacturer, Forced Performance.

31. When Forced Performance claimed that the turbochargers were free from any damage or defect, Defendant refused to perform any additional work.

32. Defendant then demanded that Plaintiff pay \$3,500.00 to cover the transportation cost from New York to Michigan, five hours of diagnostic work, engine and turbo-

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charger removal, turbocharger shipping costs and the re-installation of the engine and return of the vehicle to New York in original running condition.

33. Defendant also advised Plaintiff that it was unable to diagnose the actual problems with the vehicle.

34. Defendant breached its agreement with Plaintiff to repair, at its own expense, including the transportation costs, the mechanical and performance defects with the vehicle which arose during the course of its custody, maintenance and repair of the vehicle.

35. Defendant then demanded that Plaintiff pay for the repair and transportation costs that resulted solely from its own negligent and defective workmanship.

36. Defendant then converted to its own possession Plaintiff's vehicle, claiming that it had the right to indefinite possession of the vehicle unless Plaintiff paid Defendant \$3,500.00.

37. At all times relevant hereto, Defendant represented to Plaintiff that it was a competent, licensed and qualified motor vehicle repair facility and was authorized to practice its craft pursuant to Michigan law.

38. At no time when Defendant performed its mechanical, diagnostic, repair and maintenance work upon Plaintiff's vehicle was Defendant ever registered with the State of Michigan as a motor vehicle repair facility as required by the Motor Vehicle Service and Repair Act, MCL 257.301, *et. seq.*

39. As a result of Defendant seizing Plaintiff's vehicle, Plaintiff has lost the use, ownership and possession of his vehicle.

40. Though Defendant was not registered with the State of Michigan as required by the Motor Vehicle Service and Repair Act, MCL 257.1301, Plaintiff paid the sum of \$9,667.00 for defective services that resulted in a non-functional vehicle.

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41. Plaintiff has also incurred \$8,942.00 in additional costs for parts Defendant refused to return as well as for transportation and insurance costs.

**COUNT I**  
**VIOLATION OF THE MICHIGAN**  
**MOTOR VEHICLE SERVICE AND REPAIR ACT**

42. Plaintiff incorporates by reference all allegations previously set forth herein.

43. At all times relevant hereto, Defendant held itself out as a business which engages in the business of performing, and/or employing persons to perform maintenance, diagnostic tests, vehicle body work and repair services on motor vehicles for compensation.

44. The Motor Vehicle Service and Repair Act, MCL 257.1301, *et. seq.*, requires the following:

- a. Unless the act or practice is otherwise exempt by this act, a person shall not engage in the business or activity of a motor vehicle repair facility unless the person registers the facility with the administrator pursuant to this Act. (MCL 257.1306)
- b. A person subject to this act shall not engage or attempt to engage in a method, act, or practice which is unfair or deceptive. (MCL 257.1307)
- c. A person who engages or attempts to engage in the business or trade of a motor vehicle repair facility or specialty or master mechanic without a registration or certificate, or engages in an act or practice in violation of this act or a rule is barred from bringing or maintaining an action at law or equity on a contract or for the collection of compensation for work performed or materials or parts provided to any other person. (MCL 257.1331)
- d. In addition, the person is barred from asserting a mechanic's, garageman's, or similar lien upon a motor vehicle, including the repossession of a motor vehicle. (MCL 257.1331)
- e. A customer is entitled to recover any amount paid to an unregistered facility for the repair of a motor vehicle belonging to that customer. (MCL 257.1331)
- f. A customer has the right to receive or see replaced parts. (MCL 257.1333(2))

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g. A facility which violates the Act or who, in a course of dealing as set forth in this act or rules, engages in an unfair or deceptive method, act, or practice, is liable as provided in the act to a person who suffers damage or injury as a result thereof in an amount equal to the damages plus reasonable attorney fees and costs. If the damage or injury to the person occurs as the result of a willful and flagrant violation of this act, the person shall recover double the damages plus reasonable attorney fees and costs. (MCL 257.1336)

45. Defendant violated the Michigan Motor Vehicle Service and Repair Act as follows:

- a. Operated a motor vehicle repair facility without being registered with the State of Michigan;
- b. Attempted the collection from Plaintiff for compensation arising from work it allegedly performed and for materials it allegedly provided despite not being registered with the State of Michigan, as required by the Act;
- c. Asserted a lien upon Plaintiff's motor vehicle and refused to return it to him, despite engaging in the business or trade of a motor vehicle repair facility without a registration or certificate, as required by Michigan law;
- d. Accepted payment from Plaintiff in the amount of \$9,667.00 for all amounts due despite Defendant being an unregistered motor vehicle repair facility in violation of the Act.
- e. Engaged in unfair and deceptive trade practices in that it misrepresented the nature and quality of its services, its ability to competently repair and service Plaintiff's vehicle, the acceptance of the vehicle for service and repair at its own expense and the failure to return to Plaintiff all parts requested, as required by the Act.

46. As a result of Defendant's wrongful actions, Plaintiff lost all sums paid to Defendant as an unregistered facility, the loss of all parts, lost the possession and use of his motor vehicle as well as other costs and damages, including attorney fees and court costs.

WHEREFORE, Plaintiff requests that this Court award him all damages plus treble damages and attorney fees incurred in an amount in excess of \$25,000.00 against Defendant, together with further relief as this Court deems fair and equitable.

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**COUNT II**  
**BREACH OF CONTRACT**

47. Plaintiff incorporates by reference all allegations previously set forth herein.

48. Defendant entered into an express and/or implied agreement with the Plaintiff to perform motor vehicle repair, maintenance and diagnostic services upon his vehicle in a non-negligent and competent manner in exchange for compensation.

49. Plaintiff agreed with the terms of the agreement and provided Defendant with his vehicle as well as full compensation for all services rendered.

50. Defendant breached its agreement with the Plaintiff as it failed to provide non-negligent and competent services for which the Plaintiff paid Defendant the sum of \$9,667.00.

51. As a result of Defendant's breach of the agreement, Plaintiff's vehicle is defective and inoperable. Further, Defendant has failed and refused to return to Plaintiff his vehicle to his possession.

WHEREFORE, Plaintiff requests that this Court enter Judgment in Plaintiff's favor and against the Defendant in excess of \$25,000.00, together with all costs and attorney fees incurred.

**COUNT III**  
**CONVERSION**

52. Plaintiff incorporates by reference all allegations previously set forth herein.

53. Under the Michigan Motor Vehicle Service and Repair Act, MCL 257.1301, *et. seq.*, the Defendant, as an unregistered facility, has no right to seek compensation from the Plaintiff for alleged services rendered or otherwise assert any liens

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against the vehicle that have resulted in its maintaining possession and ownership of Plaintiff's vehicle in violation of Michigan law.

54. Though the Defendant has violated the Michigan Motor Vehicle Service and Repair Act, by being an unregistered facility, it has failed and refused to return to Plaintiff his vehicle and is unlawfully maintaining ownership and possession of said vehicle.

55. As a result of Defendant's actions, Plaintiff has lost possession, ownership and control of his vehicle, causing him to sustain severe economic damages.

WHEREFORE, Plaintiff requests that this Court enter a Judgment in favor of Plaintiff and against Defendant and award Plaintiff economic damages as well as treble damages in an amount in excess of \$25,000.00, together with attorney fees and costs.

**COUNT IV**  
**CLAIM AND DELIVERY**

56 Plaintiff incorporates by reference all allegations previously set forth herein.

57. At all the times that Defendant performed repairs, service, maintenance and diagnostic tests upon Plaintiff's vehicle, the Defendant was unregistered with the State of Michigan in violation of the Michigan Motor Vehicle Service and Repair Act, MCL 257.1304.

58. Under the Michigan Motor Vehicle Service and Repair Act, an unregistered facility such as the Defendant cannot assert any liens on vehicles to cause, force or otherwise coerce payment.

59. Despite not being registered as required by the Michigan Motor Vehicle Service and Repair Act, Defendant has asserted a lien and otherwise taken ownership and

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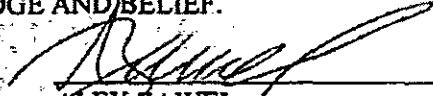
possession of Plaintiff's vehicle, and has refused to return it to cause, force or otherwise coerce payment in violation of Michigan law.

60. Defendant currently controls and possesses Plaintiff's vehicle at its facility in Ferndale, Michigan.

61. Despite Plaintiff's requests that Defendant return the vehicle, Defendant has refused.

WHEREFORE, Plaintiff requests that this Court require Defendant to immediately return to Plaintiff his vehicle, as well as compensate Plaintiff for all costs and damages incurred including attorney fees and costs.

I DECLARE THAT THE INFORMATION CONTAINED IN THE WITHIN DOCUMENT IS TRUE AS TO MY KNOWLEDGE AND BELIEF.

  
ALEX LAWEL

Subscribed and sworn to before me this 23 day of September, 2011.

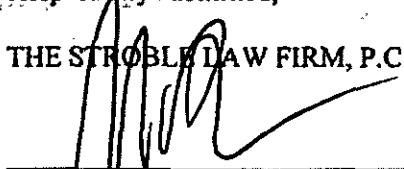
JENNIFER VASQUEZ  
Notary Public - State of New York  
NO. 01VA6242284  
Qualified in Westchester County  
My Commission Expires 5/31/15

  
Notary Public

WESTCHESTER County, New York  
My Commission Expires: 5/31/2015

Respectfully submitted,

THE STROBLE LAW FIRM, P.C.



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Dated: September 23, 2011