

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

File No. 1:91-CV-698

v.

HON. ROBERT HOLMES BELL

ESTHER L. GRESHAM,

Defendant.

O P I N I O N

This is an action to recover repair costs for property damage to a General Services Administration (GSA) motor vehicle from a September 13, 1989 collision with a motor vehicle driven by Defendant Esther L. Gresham. The matter is before the Court on the parties' cross-motions for summary judgment.

Defendant has admitted that the automobile accident at issue was proximately caused by Defendant's negligence, that Plaintiff was not guilty of comparative negligence, and that Plaintiff's damages amount to \$2,613.60.

Notwithstanding her admission of negligence, Defendant has moved for summary judgment on the ground that Plaintiff's claim is barred by Section 3135 of the Michigan No-Fault Motor Vehicle Insurance Act. M.C.L. § 500.3135; M.S.A. § 24.13135. Defendant maintains Michigan has abolished tort liability for property damage arising out of the ownership, operation, maintenance or use of a motor vehicle. Id.

Defendant acknowledges that because the Plaintiff is the United States, United States v. Ferguson, 727 F.2d 555 (6th Cir.

1984), is the controlling authority. Pursuant to Ferguson Plaintiff is exempt from the effect of the Michigan No-Fault Act, and can maintain a negligence action against the defendant premised upon federal common law. Id. at 559.

Thus, as Defendant recognizes, this Court is compelled to enter judgment for the United States on the basis of Ferguson. Defendant's contention that Ferguson was incorrectly decided is preserved for appellate review.

Defendant has also moved for summary judgment on Plaintiff's claim of entitlement to pre-complaint interest and various administrative costs pursuant to 31 U.S.C. § 3717, and to a ten percent "surcharge" pursuant to 28 U.S.C. § 3011. These costs, according to the Defendant, are features of a debt collection action and are not properly applied to Defendant's negligence claim.

Pursuant to 31 U.S.C. § 3717 government agencies "shall charge a minimum annual rate of interest on an outstanding debt on a United States Government claim", which interest shall accrue from the date notice of the amount due is first mailed to the debtor. The standards governing administrative collection of claims are set forth at 4 C.F.R. § 101 et seq.. For purposes of these standards, the terms "claim" and "debt" are deemed synonymous and refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States.

4 C.F.R. § 101.2(a).

On January 5, 1990, the GSA sent Defendant a letter demanding

payment of repair costs in the amount of \$2,613.60. The claim was denied. The GSA continued administrative collection efforts until September 1990, when the claim was referred to the Department of Justice for litigation. The Court is satisfied that the costs associated with the GSA's administrative efforts to collect payment of the claim are authorized by 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

The Court does not, however, authorize the United States' claim for an administrative surcharge pursuant to 28 U.S.C. § 3011(a). This section of the Federal Debt Collection Procedures Act of 1990 (FDCPA) authorizes a surcharge in "an action or proceeding under subchapter B or C." Subchapter B relates to extraordinary prejudgment remedies such as attachment, receivership, and garnishment. 28 U.S.C. §§ 3101-3105. Subchapter C relates to post-judgment remedies such as judgment liens and execution. 28 U.S.C. §§ 3201-3206.

The United States does not contend that this is an action under either subchapter B or C. Instead it argues that "under subchapter B or C" only modifies "proceeding", and not "action". Since this is an "action", the United States contends that it need not come within subchapter B or C .

The Court rejects the United States' interpretation of 28 U.S.C. § 3011(a) because it disregards the plain meaning of the statute. The statute does not authorize surcharges in all actions. It authorizes surcharges only in actions under subchapter B or C. Since this action does not come within subchapters B or C, no

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O R D E R

In accordance with the opinion entered this date,

IT IS HEREBY ORDERED that Defendant Esther L. Gresham's motion for summary judgment (Docket # 11) is DENIED.

IT IS FURTHER ORDERED that Plaintiff United States' motion for summary judgment (Docket # 14) is GRANTED.

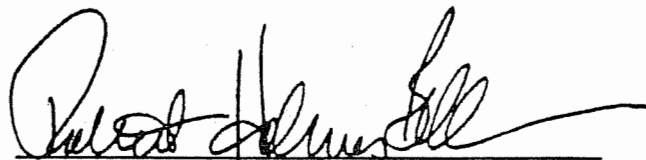
IT IS FURTHER ORDERED that JUDGMENT is entered for Plaintiff and against Defendant in the amount of \$2613.60 plus pre-complaint interest, penalties and administrative costs pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

IT IS FURTHER ORDERED that Plaintiff's request for an administrative surcharge pursuant to 28 U.S.C. § 3011 is DENIED.

IT IS FURTHER ORDERED that Defendant's request for sanctions is DENIED.

Date:

May 1, 1992



ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

surcharge is authorized.

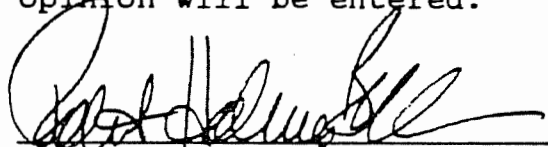
Defendant contends that plaintiff's claim for a surcharge pursuant to 28 U.S.C. § 3011 is not warranted by existing law nor by a good faith argument for the extension, modification, or reversal of existing law. Defendant accordingly has requested the Court to assess sanctions pursuant to F.R.Civ.P. 11.

In light of the recent passage of the FDCPA and the lack of case law interpreting this portion of the statute, the Court does not find that the United States' request for a surcharge was unreasonable under the circumstances. See Mann v. G & G Manufacturing, Inc., 900 F.2d 953, 958 (6th Cir.), cert. denied, 111 S.Ct. 387 (1990). Accordingly, Defendant's request for sanctions will be denied.

An order consistent with this opinion will be entered.

Date:

May 1, 1992



ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE