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YVONNE BERNARD  
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BY *H. Schuppel* DEPUTY

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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IN AND FOR THE COUNTY OF DOUGLAS

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FREDERICK FRYE,

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Plaintiff,

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vs.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND JUDGMENT

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RUTH METZGER, as  
Administratrix of the  
Estate of JERRY METZGER, et al.,  
Defendants.

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FINDINGS OF FACT

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The above-entitled case came on regularly for trial on November 23, 1982, before this Court, sitting without a jury, with E. PIERRE GEZELIN appearing as counsel for Plaintiff FREDERICK FRYE and EDWARD BERNARD appearing as counsel for the Estate of JERRY METZGER. After hearing the allegations and proofs of the parties, and the arguments of counsel, and being fully advised in the premises, the Court now finds generally in favor of Plaintiff and against the Defendant, the Estate of JERRY METZGER, and hereby makes the following special Findings of Fact and Conclusions of Law:

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JERRY METZGER, Deceased and WILLIAM THOMAS, met and discussed building garages. JERRY METZGER was a licensed contractor in the State of Nevada. THOMAS was to solicit jobs and obtain sales of garages. The two men agreed that THOMAS would obtain a commission from the total purchase price of the garage and METZGER would receive the balance of the purchase price. After they agreed to work together and divide the sale proceeds of the garages, a

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1 garage was built for an individual by the name of DAN GOOD. The  
2 garage was built, GOOD paid for the garage and THOMAS received  
3 a commission from the amount paid and METZGER received the balance.  
4 Mr. GOOD who was one of two "leads", that is, a potential buyer  
5 of garages. The other potential buyer was Plaintiff, FREDERICK  
6 FRYE.

7 FRYE answered an ad in the Nickel Want-Ad, which is a  
8 newspaper distributed in the Reno-Sparks-Sun Valley area. FRYE  
9 telephoned the number in the ad and an individual identified him-  
10 self as WILLIAM THOMAS. THOMAS agreed to meet with FRYE and in  
11 fact did meet with FRYE at FRYE's residence located at 4990  
12 Prosser Way, Sun Valley, Nevada 89431. The purpose of the meet-  
13 ing was to discuss the building of a garage for FRYE. THOMAS made  
14 sketches at the first meeting. There were subsequent meetings.  
15 At one of the meetings, FRYE signed a contract wherein METZGER  
16 and THOMAS agreed to build FRYE a garage for the total purchase  
17 price of \$13,200.00. At the time FRYE signed the contract, he  
18 paid to THOMAS \$6,600.00. It was understood by FRYE that the  
19 garage would be built as soon as possible.

20 FRYE telephoned the Contractor's Board to verify  
21 whether or not the contractor's license which was listed in the  
22 want-ad did in fact belong to METZGER and whether METZGER's license  
23 was current. FRYE was informed that the license did belong to  
24 JERRY METZGER and it was a current and valid license.

25 After THOMAS had initially met with FRYE, METZGER came  
26 out with THOMAS and met with FRYE to measure the lot. When  
27 METZGER drove out with THOMAS to measure the lot, METZGER knew  
28 FRYE wanted a garage built; he knew he was to build a garage for  
29 FRYE; he knew he was to get paid for his materials, supplies and  
30 labor; he knew that THOMAS was to get paid a commission; he knew  
31 he would receive the balance of the purchase price; and he knew  
32 that the building of the garage would be similar to that of DAN

1 GOOD's garage. METZGER accepted THOMAS's previous act of entering  
2 into the contract with FRYE.

3 METZGER later objected to FRYE that THOMAS did not  
4 have the authority to receive the \$6,600.00. METZGER never ob-  
5 jected nor gave any sign of disapproval to FRYE that THOMAS did  
6 not have the authority to enter into the contract.

7 The \$6,600.00 was not transferred to METZGER by THOMAS.  
8 The garage was never built and the \$6,600.00 was never returned  
9 to FRYE.

10 Defendant JERRY METZGER died after the filing of the  
11 Complaint in the above-entitled action and his widow, RUTH METZGER  
12 was substituted in as a party as Administratrix of the Estate of  
13 JERRY METZGER.

14 After hearing the evidence, observing the demeanor of  
15 the witnesses and weighing their creditability, the Court further  
16 finds that the testimony of the Plaintiff is more credible than  
17 the witnesses presented on behalf of the Defendant.

18 WHEREUPON being fully advised in the law and the  
19 premises, and having duly deliberated, the Court draws the  
20 following Conclusions of Law:

21 CONCLUSIONS OF LAW

- 22 1. That this Court has jurisdiction over the parties  
23 and subject matter of this proceeding;
- 24 2. That the parties to this action did not form a  
25 partnership;
- 26 3. That the Defendant WILLIAM THOMAS was acting as an  
27 agent for Defendant JERRY METZGER;
- 28 4. That WILLIAM THOMAS had the apparent authority to  
29 collect money from the Plaintiff;
- 30 5. That Plaintiff relied to his detriment on the  
31 statements made by THOMAS;
- 32 6. That THOMAS had the implied and apparent authority

1 to execute the contract on behalf of his principal, Defendant  
2 JERRY METZGER;

3 7. That THOMAS was authorized to take the order for  
4 the building of Plaintiff's garage and was authorized to write  
5 out the terms and conditions of the construction of the garage;

6 8. That Plaintiff had reason to believe in the repre-  
7 sentations made by THOMAS that he, THOMAS, had authority to enter  
8 into all contracts on behalf of JERRY METZGER;

9 9. That Plaintiff had reason to believe, and in good  
10 faith did believe, that THOMAS was acting in the scope of his  
11 apparent authority;

12 10. That Defendant is estopped from denying the  
13 authority of THOMAS;

14 11. That METZGER did ratify and confirm the acts of  
15 THOMAS;

16 12. That if any of the foregoing conclusions are  
17 deemed to be Findings of Fact, then this Court so finds.

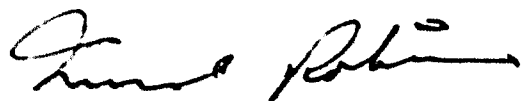
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19 J U D G M E N T  
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21 NOW THEREFORE, good cause appearing it is hereby  
22 ordered, adjudged and decreed as follows:

23 Plaintiff is entitled to Judgment against Defendant  
24 JERRY METZGER in the sum of \$6,600.00 for breach of contract  
25 entered into between Plaintiff and Defendant, plus interest at  
26 the rate of Twelve Percent (12%) per annum from the date of entry  
27 of the contract.

28 Each party shall bear its own costs and attorneys fees.

29 DATED this 1st day of February, 1983.

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DISTRICT JUDGE

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I certify that I am an employee of E. PIERRE GEZELIN, and that on this date, pursuant to NRCF 5(b), I deposited in the United States mail at Reno, Nevada, a true copy of the attached document addressed to:

Ed Bernard, Esq  
108 N. Curry St., Carson City, NV.

DATED this 11<sup>th</sup> day of February, 1983

By: [Signature]

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: **SEAL** February 24, 1983

[Signature] Clerk of the 9<sup>th</sup> Judicial District Court of the State of Nevada, in and for the County of Douglas.

By [Signature] Deputy

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LAWYERS TITLE INS CORP

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JUDICIAL DISTRICT OF NEVADA

\$ 8.00 fee  
1983 FEB 25 AM 9:40

SUZANNE DE AUDREAU  
RECORDER

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