

1 Case No. 13789

2 Dept. No.

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

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SUE WALTERS OLIVER,

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Plaintiff,

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vs

ABSTRACT OF JUDGMENT

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SANDRA L. KLOTSCH, and
13 FREDRICK KLOTSCH, husband and
14 wife,

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Defendants.

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16 NOTICE IS HEREBY GIVEN that on the 3rd day of August, 1984,
17 a Decision was rendered in favor of Plaintiff above-named in the
18 amount of \$12,515.43 plus costs of suit against Sandra L.
19 Klotsch; and that on the 5th day of October, 1984, Judgment was
20 entered accordingly. A copy of said Judgment is attached hereto
21 and made a part hereof. Also an Offer of Judgment was accepted
22 by Plaintiff in the amount of \$1.00, and taken against Fredrick
23 Klotsch. Both Judgments remain unsatisfied to date.

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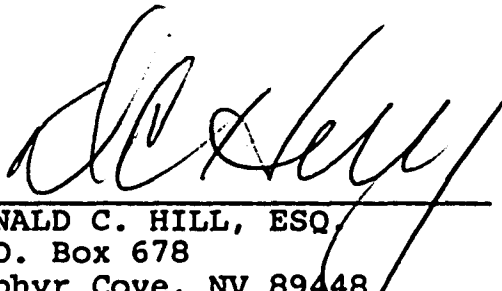
RESPECTFULLY submitted this 2nd day of November 1984.

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DONALD C. HILL, ESQ.
P.O. Box 678
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Attorney for Plaintiff

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CLEAR
D. KINCADA

BY _____

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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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9 SUE WALTERS OLIVER,

Plaintiff,

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND JUDGMENT

10 's

11 SANDRA KLOTSCH, et al.,

Defendants.

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The above-entiled matter coming on regularly for trial, the Court having heard the testimony of the witnses and examined the documentary evidence, and deeming itself otherwise fully informed herein makes the following Findings of Fact, Conclusions of Law and Judgment.

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FINDINGS OF FACT

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On or about July 13, 1982, a contract for the purchase of Plaintiffs condominium, commonly known as 57 Burke Creek, Lake Village, Douglas County, Nevada was entered into between the Defendant, Sandra L. Klotsch, the buyer, and Sue Walters Oliver, the seller. The Agreement called for a purchase price of \$167,000.00, including a \$10,500.00 cash down-payment.

The Purchase Agreement had a clause in it that stated :

"This purchase is contingent to purchaser's close of escrow in Bellflower, California, property currently in escrow, and due to close on August 12, 1982. This contingency will be removed in 40 days from acceptance of this offer."

There is also a clause in the Purchase Agreement which stated:

1 "That in the event said buyer shall fail to
2 pay the balance of said purchase price or
3 complete said purchases herein provided, the
4 amounts paid hereon shall, at the option of
5 the seller, be retained as consideration for
6 the execution of this Agreement by the seller.

7 Prior to entering into the Contract, the Plaintiff
8 voluntarily had a conservator appointed as the guardian of her
9 Estate in California. The property under consideration was in
10 the State of Nevada. In California there was no conservator of
11 the person or Estate of the Plaintiff.

12 Testimony was introduced by Miss Walters Oliver that she had
13 contacted the Conservator of her Estate in California regarding
14 the sale of the property in Nevada prior to entering into the
15 sales Agreement, that the Conservator approved of said sale, and
16 considered Miss Oliver to be mentally competent to enter into the
17 contracts.

18 When the Defendant entered into the Agreement to purchase
19 subject property, she was a licensed real estate agent with
20 Skyland Realty. She was well acquainted with the property at 57
21 Burke Creek, Lake Village, Nevada, in that she had previously sold
22 the subject property to the Plaintiff, Sue Walters Oliver.

23 Moreover, the terms of the Purchase Agreement totally
24 indicate that the parties contemplated and had knowledge of the
25 existing first deed of trust with the Tahoe Savings and Loan, and
26 the second deed of trust with a private lender.

27 Sue Walters Oliver had been a builder and developer in a
28 small scale used to dealing with real estate transactions. As
29 well, the Plaintiff is a licensed real estate salesperson in the
30 State of California. Both the Plaintiff and Defendant had
31 considerable experience in the purchase and sale of real
32 property. Neither was a stranger to the type of transaction
involved in this case. Both parties negotiated the contract from
positions of equal bargaining strength, and there was no evidence

1 of over-reaching by either party.

2 Although the down payment on the condominium was only
3 \$10,500.00 pursuant to the terms of the agreement in September,
4 the Defendant chose to purchase a new Datsun 280ZX sports car for
5 \$18,000.00 cash. Miss Klotsch clearly had the capability of
6 closing the escrow according to the terms of the agreement in
7 August of 1982, but failed to do so although Plaintiff gave her
8 oral extentions. On or about October 4, 1982, Defendant verbally
9 renewed the contract.

10 CONCLUSIONS OF LAW

11 The following Conclusions of Law hereby incorporate the
12 previous Statements of Facts.

13 The conservatorship of the Estate of a person in California
14 is of no force and effect in the State of Nevada. As to the
15 matter of comedy, guardians appointed in one State are not
16 recognized as such, or as having any power or authority in any
17 other State.

18 The terms of the purchase Agreement provided that the escrow
19 on the property would close on or before August 31, 1982, and
20 contained the following language:

21 "This purchase is contingent to
22 purchasers' close of escrow in
23 Bellflower, California, currently in
24 escrow and due to close on August 12,
25 1982. The contingency will be removed in
26 40 days from acceptance of this offer."

27 The Plaintiff granted the Defendant two extensions of time
28 within which to perform on the Purchase Agreement. However,
29 Defendant intentionally failed to perform on the contract by
30 making the \$10,500.00 down payment by purchasing a new Datsun
31 280ZX automobile for \$18,000.00 cash, in September, 1982, the
32 Defendant thereby intentionally divested herself of the ability
to close the escrow as she had agreed.

The sale of the Bellflower, California property contingency,

1 by the terms of the Agreement, expired 40 days from the date the
2 Purchase Agreement was entered into in July 19, 1982.

3 When a purchaser breaches an executory real estate contract,
4 the seller is entitled to recover general damages measured by the
5 difference between the contract price and the market value of the
6 real estate on the date of the breach. Although the testimony was
7 in conflict on this issue, the Court finds that the value of the
8 real estate at the time of the breach on October 4, 1982, was the
9 same as the contract price of \$169,500.00. Therefore, the
10 Plaintiff is entitled to nominal damages plus such consequential
11 damages as may be established resulting from the breach. Harris
12 v Shell Development Corporation, 95 Nev. 348, 594 P.2d. 731
13 (1979).

14 These consequential damages must have been foreseeable at the
15 inception of the contract. In this case both Plaintiff and
16 Defendant were real estate licensee's, and had considerable
17 experience in the purchase and sale of real property. Both
18 negotiated the contract from positions of equal bargaining
19 strength. There was no evidence of over-reaching by either
20 party. The Defendant simply breached the Agreement without legal
21 justification as previously stated.

22 Although the Nevada Supreme Court has not precisely defined
23 consequential damages in these instances, case authority
24 indicates that such damages in this action should include
25 property taxes, insurance, utilities, interest payments, and
26 association dues incurred between the date of default and the
27 subsequent resale of the property. These damages are reasonable
28 since the Defendants failure to perform was both the proximate
29 cause of the Plaintiff incurring such damages and such damages
30 were, under the facts of the case, within the contemplation of
31 the parties as a consequence of the Defendants breach. Kemp v
32 Gannett, 50 Ill. App. 3d 429, 365 NE 2d 1112 (1977); Sheppard v

1 fagan, 94 Ill. App 3d 290, 418 NE 2d 876 (1981).

2 The purpose of damages is to put the non-breaching party in
3 the position such party would have been had the contract to
4 purchase been performed. Here, the Plaintiff took reasonable
5 action to minimize her damages by resaling the property at the
6 earliest opportunity and incurred a loss on the resale because the
7 market value of the property decreased between the time of breach
8 and resale. This Court perceives no valid reason to apply a
9 different rule for the measure of damages for breach of contract.

10 The consequential damages during this period consisted of
11 \$11,968.11 in interest on the existing first and second
12 mortgages, \$831.82 in utility payments, \$871.00 in homeowners
13 dues, and \$910.00 in additional out of pocket personal expenses
14 incurred by the Plaintiff.

15 Finally, Defendant contends that Paragraph Four of the
16 Agreement between the parties limits Plaintiff's recovery to the
17 sums deposited in escrow. This Court does not agree. Paragraph
18 Four provides:

19 "That in the event said buyer shall fail
20 to pay the balance of said purchase price
21 or completes said purchase herein
22 provided, the amounts paid hereon shall,
23 at the option of the seller, be retained
24 as consideration for the execution of
25 this Agreement by the seller."

26 Defendant contends that by the terms of this provision,
27 Plaintiff had the option of retaining the deposit instead of
28 suing for damages and that she exercised this option by retaining
29 a portion of the deposit. The retention of a portion of the
30 deposit by Plaintiff was not inconsistent with Plaintiff's right
31 to hold Defendant answerable in damages. Plaintiff had the right
32 to retain the deposit as a setoff against her actual damages.
Royes v Carter, 37 Cal 2d 544, 335 P.2d. 539 at 541 (1951). See
also Tolboe v Peccole, 75 Nev. 86, 335 P.2d. 77 (1959).

Therefore, this Court concludes Plaintiff retained a portion of

1 the deposit to apply to the damages sustained by Plaintiff as a
2 result of Defendant's breach of the contract. The amount was in
3 the sum of \$2.0675.50.

4 JUDGMENT

5 The prior Findings of Fact and Conclusions of Law are
6 incorporated herein, and on that basis JUDGMENT is rendered in
7 favor of the Plaintiff in the amount of \$12,515.43, together with
8 her costs of suit.

9 DATED this 5th day of October, 1984.

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13 Howard D. M. Fisher
14 DISTRICT COURT JUDGE
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7 IN AND FOR THE COUNTY OF DOUGLAS

8 SUE WALTERS OLIVER,

9 Plaintiff,

JUDGMENT OFFER

10 vs.

11 SANDRA L. KLOTSCH, FREDERICK
12 KLOTSCH, Husband and Wife,

13 Defendants. /

14 COMES NOW defendant FREDERICK KLOTSCH, and pursuant to the
15 provisions of NRS 17.115, and hereby offers to allow plaintiff to
16 have judgment against him for the sum of ONE DOLLAR (\$1.00).

17 This judgment offer is not to be deemed as an admission of
18 liability of said defendant to plaintiff of any sort, but is made
19 solely for the purposes as set forth in the above-referenced
20 statute.

21 DATED this 8 day of December 1983.

22 MANOUKIAN, SCARPELLO & ALLING, LTD.

23 By

24 [Signature]
25 RICHARD GLASSON, ESQ.
26 Attorneys for FREDERICK KLOTSCH
27 P.O. Box 55
28 Zephyr Cove, NV 89448

26 Pursuant to NRS 509, I certify that I am an em-
27 ployee of MANOUKIAN, SCARPELLO & ALLING,
28 LTD., and that on this date I deposited for mailing
29 at Zephyr Cove, Nevada, a true copy of the within
30 document addressed to the person(s) hereinafter
31 named.

30 DATED: December 8, 1983

31 [Signature]
32 Donald C. Hill, Esq.
P.O. Box 678
Zephyr Cove, NV 89448

REQUESTED BY
[Signature]
IN OFFICIAL RECORDS OF
DEPARTMENT OF CLERK

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SUZANNE EAU
RECORDED 109724

\$12.00 PAID BY DEPUTY
BOOK 1184 PAGE 522

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