

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Case No. 31592

Dept. No. I

FILED

RECEIVED

JUN - 2 1995

NO. _____

DOUGLAS COUNTY
DISTRICT COURT CLERK

'95 JUN -2 A9:27

BARBARA REED
CLERK

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
BY H. CHAPPELL
IN AND FOR THE COUNTY OF DOUGLAS

DETLEF FROESE,

Plaintiff,

vs.

ORDER

RICHARD BRENGMAN,
d/b/a Special Interest
Autos and Components
International,

Defendant.

Plaintiff filed his Motion for Summary Judgment on April 11, 1995. Plaintiff filed his Motion for Continuance on April 12, 1995. Plaintiff filed his Trial Statement on April 17, 1995. Defendant filed his Trial Statement and Motion for Dismissal on April 14, 1995. Defendant filed his Response to Plaintiff's Motion for Continuance on April 18, 1995. Plaintiff filed his Response to Motion for Dismissal on April 25, 1995. The Court previously granted Plaintiff's Motion for Continuance in order to consider Plaintiff's Motion for Summary Judgment. The Court having considered all of the pleadings and papers on file herein, and good cause appearing, makes the following

1 Order:

2
3 The Court finds that there are no genuine issues of
4 material fact to be decided by the Court. Plaintiff is seeking
5 recovery of money paid toward goods that were not delivered by
6 the Defendant. Summary judgment is appropriate in light of the
7 fact that the Plaintiff is not seeking the benefit of his
8 bargain, or any losses sustained because of non-delivery by the
9 Defendant, but simply seeks to cancel the contract and recover
10 so much of the price as has been paid. The Court need not
11 consider Defendant's claimed defenses of impracticability or
12 impossibility, because the Plaintiff is not requesting
13 enforcement of the contract.

14 Mr. Froese and Mr. Brengman entered into a contract whereby
15 Mr. Brengman was to deliver to Mr. Froese a partially
16 constructed automobile for the sum of \$31,200.00. Mr. Froese
17 paid Mr. Brengman the total sum of \$36,595.00. Mr. Brengman has
18 not delivered the assembled kit car or "rolling chassis" that
19 Mr. Brengman contracted to deliver to Mr. Froese, nor has Mr.
20 Brengman returned any of the money paid by Mr. Froese. Mr.
21 Brengman is not financially able to perform his obligations
22 under the contract and deliver the goods. Pursuant to NRS
23 104.2711, Mr. Froese is entitled to recover the money he paid to
24 Mr. Brengman:

25 1. Where a seller fails to make delivery or
26 repudiates...the buyer may cancel and whether
27 or not he has done so may in addition to
28 recovering so much of the price as has been paid:

27

1
2 (b) Recover damages for nondelivery as provided
3 in this article. (NRS 104.2713).


4 The Court will not award attorney's fees in this matter
5 because NRS 104 et seq. does not specifically address attorney's
6 fees and the Court can not find that Mr. Brengman's defense of
7 this action was brought without reasonable ground or to harass
8 Mr. Froese. However, pursuant to NRS 18.020, Mr. Froese is
9 entitled to reimbursement for his costs of suit.

10 THEREFORE IT IS HEREBY ORDERED that Plaintiff's Motion for
11 Summary Judgment is GRANTED, and JUDGMENT is entered against the
12 Defendant and in favor of the Plaintiff in the sum of THIRTY SIX
13 THOUSAND FIVE HUNDRED AND NINETY-FIVE DOLLARS AND NO CENTS.
14 (\$36,595.00).

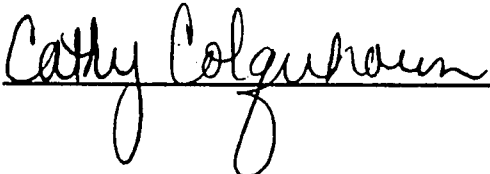
15 IT IS FURTHER ORDERED that Plaintiff's request for
16 attorney's fees is DENIED.

17 IT IS FURTHER ORDERED that Plaintiff is awarded costs in an
18 amount to be approved by the Court.

19 Dated this 2 day of June, 1995.

20
21 
22 DAVID R. GAMBLE
23 District Judge

24 Copies served by mail this 2nd day of June, 1995, to:
25 Evan Beavers, Esq., 1616 Highway 395, Minden, NV 89423; Richard
26 Brengman, P.O. Box 3177, Gardnerville, NV 89410.

27 
28

COPY

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.

SEAL

DATE: Nov. 17, 1995
[Signature] Clerk of the 9th Judicial District Court
of the State of Nevada, In and for the County of Douglas,

By [Signature] Deputy
375157

BOOK NO BK 1195 PG 3072

REQUESTED BY
Beavers & Young
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

'95 NOV 17 P3:21

LINDA SLATER
RECORDER
\$10.00 PAID K2 DEPUTY

JUN 05 1995