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David C. O'Mara
The O'Mara Law Firm, P.C.
311 E. Liberty Street
Reno, Nevada 89501

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FINDINGS OF FACT, CONCLUSION OF LAW
AND JUDGMENT

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THE O'MARA LAW FIRM, P.C.
2 WILLIAM M. O'MARA
NEVADA BAR NO. 00837
3 DAVID C. O'MARA
NEVADA BAR NO. 8599
4 BRIAN O. O'MARA
NEVADA BAR NO. 8214
5 311 East Liberty St.
Reno, Nevada 89501
6 775-323-1321
775-323-4082 (fax)

7 Attorneys for Plaintiff

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9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11 IN AND FOR THE COUNTY OF WASHOE

12 WENDY LINSOTT)

13 Plaintiff,)

Case No. CV07-00083

14 vs.)

Dept No. 8

15 RIVER HOMES, LLC., a Domestic Limited
16 Liability Company, and DOES I through X,
inclusive,)

17 Defendants.)

18
19 **FINDINGS OF FACTS, CONCLUSION OF LAW AND JUDGMENT**

20 The parties tried this matter before the Court without a jury between September 3, 2008,
21 through September 5, 2008. David C. O'Mara, Esq. and Brian O. O'Mara, Esq. of The O'Mara Law
22 Firm, P.C., represented Plaintiff Wendy Linscott ("Plaintiff" or "Ms. Linscott"). John Bartlett, Esq.
23 represented Defendant, River Homes, LLC. ("Defendant" or "River Homes"). Testimony and
24 evidence was presented and argument was made to the Court. The matter was submitted to this
25 Court. This Court, deeming itself fully appraised in these premises, does hereby enter the following
26 findings of facts, conclusion of law and judgment:



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I.

FINDINGS OF FACT

Having heard the testimony of Ms. Marsha Richmond, Mr. Philip Lancaster, Mr. Roger Linscott and Ms. Wendy Linscott, and having reviewed all of the exhibits admitted into evidence, the Court finds as follows:

1. Plaintiff is a resident of the County of Washoe, State of Nevada.

2. Defendant is a domestic Limited-Liability company organized under the laws of the State of Nevada, and is located and headquartered at 1458 Southgate Drive, Gardnerville, Nevada 89410.

3. On June 17, 2006, Plaintiff and Defendant, through its authorized agent, Ms. Marsha Richmond ("Ms. Richmond") entered into a valid and binding agreement in writing, wherein and whereby Defendant agreed to sell a manufactured home described as a three (3) bedroom, two (2) bath, 2005 Marlette Pacifica home, model #24169, for One Hundred Sixteen Thousand Seven Hundred Sixty-Five Dollars and Forty-Seven Cents (\$116,765.47) ("Purchase Contract").

4. The Purchase Contract provided that Ms. Linscott would pay a base price of \$90,250.00, costs for freight and document fees, in the amount of \$6,145.00, a sales tax of \$4,265.47 and nontaxable improvements contracted for by Defendant in the amount of \$16,105.00. The total amount for the Marlette Pacifica home was \$116,765.47 and the amount owed was \$115,765.47 after a deposit of \$1,000.00 was made at the time the parties executed the Purchase Contract.

5. The Purchase Contract contained an integration clause which specifically provided, "This contract contains the entire agreement between Dealer and Buyer, and no other representation or inducement has been made that is not contained in this contract."

6. The terms of the Purchase Contract set forth that the unpaid balance of \$115,765.47 was "DUE ON OR BEFORE CLOSING."

7. That the terms of the Purchase Contract were clear and unambiguous.

8. Ms. Richmond testified that Ms. Linscott did not mislead her.

9. On June 19, 2006, two days after the June 17, 2006, Purchase Contract was signed; River Homes received confirmation that Ms. Linscott had received loan approval. The documents



1 show that Ms. Linscott had loan approval and the purchase price of the Marlette Pacifica home
2 would be "Paid at final Escrow."

3 10. Following the receipt of the loan approval confirmation, River Homes deposited the
4 One Thousand Dollar (\$1,000.00) good faith deposit from Ms. Linscott.

5 11. That after the June 17, 2006, Purchase Contract, Ms. Linscott performed the terms of
6 the Purchase Contract.

7 12. On or about October 11, 2006, Defendant breached the Purchase Agreement when it
8 instructed Plaintiff that Defendant would not deliver the Marlette Pacifica home unless Plaintiff
9 modified the valid Purchase Contract.

10 13. Plaintiff, in good faith, attempted to satisfy Defendant's demands to modify the
11 Purchase Contract but the parties were not able to agree.

12 14. On December 8, 2006, River Homes sent Ms. Linscott a letter repudiating the
13 contract stating that the June 17, 2006, Purchase Contract was "null and void."

14 15. Thereafter, on March 26, 2007, Plaintiff acted in good faith by purchasing a
15 commercially usable manufactured home as a reasonable substitute under the circumstances of this
16 particular case when she entered into an agreement with MFG Housing Sales and Construction for the
17 purchase of a manufactured home for a total purchase price of One Hundred Sixty-Four Thousand,
18 Three Hundred Eight-Seven Dollars (\$164,387.00).

19 16. On May 13, 2007, Defendant sold the same Marlette Pacific home which is the
20 subject of this action, for Ninety-Two Thousand Eight Hundred Dollars (\$92,800.00). River Homes
21 realized a profit of Two Thousand Five Hundred Fifty Dollars (\$2,550.00) from the sale.

22 17. That Plaintiff is the prevailing party and is entitled to an award of attorney's fees and
23 costs.

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II.

CONCLUSIONS OF LAW¹

Based upon the following Findings of Facts, this Court concludes as follows:

1. Plaintiff and Defendant are residents of the State of Nevada and this Court has personal and subject matter jurisdiction over the parties and this action.

A. Breach of Contract

2. The Court concludes that Plaintiff has prevailed on her breach of contract claim as she has satisfied the elements of a valid claim for breach of contract which include the following: (1) plaintiff and defendant entered into a valid and existing contract; (2) plaintiff performed or was excused from performance; (3) defendant breached; and (4) plaintiff sustained damage as a result of the breach. *See Reichert v. Gen. Ins. Co. of Amer.*, 68 Cal.2d 822, 69 Cal. Rptr. 321, 442 P.2d 377 (1968); *See also, Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000).

3. Plaintiff and Defendant entered into a valid and existing contract, which set forth the entire agreement between Plaintiff and Defendant, and no other representation or inducement was made that was not contained in the Purchase Contract.

4. Plaintiff performed her obligations under the Purchase Contract and was thereafter excused from performance after Defendant (1) notified Plaintiff that it would not perform its obligations under the Purchase Contract and (2) subsequently improperly repudiated the Purchase Contract.

5. Defendant breached the Purchase Contract by requiring Plaintiff to perform several additional terms which were not a part of the valid Purchase Contract and Defendant's subsequent repudiation of the valid Purchase Contract. As a result of Defendant's breach Ms. Linscott has suffered damages and is entitled to recover the difference between the contract price and the cost of cover together with any incidental or consequential damages. *See NRS 104.2112*. Ms. Linscott purchased a commercially usable manufactured home as a reasonable substitute under the

¹ Ms. Linscott did not pursue her claim for specific performance in light of her actions to mitigate her damages by purchasing a manufactured home from MFG Housing Sales and Construction.

1 circumstances of this particular case, and at the time and place Ms. Linscott acted in purchasing the
2 substitute manufactured home, Ms. Linscott acted in good faith and in a reasonable manner. Ms.
3 Linscott is also entitled to the difference in the price she would have paid if Defendant had not
4 breached the Purchase Contract and the price Defendant ultimately sold the manufactured home.

5 ***B. Breach of Implied Covenant of Good Faith and Fair Dealing.***

6 6. Every contract imposes upon the contracting parties a duty of good faith and fair
7 dealing. The Court concludes that Plaintiff has prevailed on her claim for a breach of implied
8 covenant of good faith and fair dealing, by satisfying the following elements, (1) plaintiff and
9 defendant were parties to a contract; (2) defendant owed a duty of good faith to plaintiff; (3)
10 defendant breached that duty by performing in a manner that was unfaithful to the purpose of the
11 contract; and (4) plaintiff's justified expectations were thus denied. *See Perry v. Jordan*, 111 Nev.
12 943, 900 P.2d 335 (1995); *Hilton Hotels v. Butch Lewis Prods.*, 107 Nev. 226, 808 P.2d 919 (1991).

13 7. The Purchase Contract, entered into by Plaintiff and Defendant on June 17, 2006,
14 imposed a duty of good faith and fair dealing on both parties.

15 8. As a result of the June 17, 2006, Purchase Contract, Defendant owed Ms. Linscott a
16 duty of good faith and fair dealing.

17 9. Defendant breached that duty of good faith and fair dealing by performing in a
18 manner that was unfaithful to the purpose of the contract.

19 10. As a result of Defendant's breach of duty of good faith and fair dealing, Plaintiff's
20 justified expectations were denied.

21 11. As a result of Defendant's breach Ms. Linscott is entitled to cover the difference
22 between the cost of cover and the contract price together with any incidental or consequential
23 damages. That Ms. Linscott purchased a commercially usable manufactured home as a reasonable
24 substitutes under the circumstances of this particular case and at the time and place Ms. Linscott
25 acted in purchasing a substitute manufactured home, Ms. Linscott acted in good faith and in a
26 reasonable manner. Ms. Linscott is also entitled to the difference in the price she would have paid if
27 Defendant had not breached and the price Defendant ultimately sold the manufactured home.

28

1 **C. Unjust Enrichment**

2 12. Unjust enrichment occurs whenever a person has and retains benefits in equity and
3 good conscience belongs to another. See *Leasepartners Corp. v. Robert L. Brooks Trust*, Dated
4 November 12, 1975, 113 Nev. 747, 942 P.2d 182 (1997). Plaintiff has prevailed on the theory of
5 unjust enrichment by demonstrating that Defendant unjustly retained Plaintiff's money or property
6 against fundamental principles of justice or equity or good conscience. See *Asphalt Products Corp.*
7 *v. All Star Ready Mix Inc.*, 111 Nev. 799, 898 P.2d 699 (1995).

8 13. Defendant received a payment in the amount of One Thousand Dollars (\$1,000.00)
9 from Plaintiff on June 17, 2006, which Defendant has failed to return, even after breaching the
10 contract and improperly declaring the Purchase Contract null and void. Defendant has unjustly
11 retained and failed to return the One Thousand Dollar (\$1,000.00) payment to Plaintiff.

12 14. That as to all of the referenced claims for relief, Plaintiff is the prevailing party and is
13 entitled to attorney's fees and costs.

14 **III.**

15 **JUDGMENT**

16 NOW THEREFORE, in consideration of this Court's Findings of Fact and the law applicable
17 to this action,

18 IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff is granted judgment against
19 Defendant River Homes, LLC., as follows:

20 1. Judgment is entered in Plaintiff's favor on Plaintiff's breach of contract claim and
21 breach of implied covenant of good faith and fair dealing. Plaintiff is awarded the sum of Forty-
22 Seven Thousand, Six Hundred Twenty-One Dollars and Fifty-Three Cents (\$47,621.53) as damages
23 caused by Defendant's breach of the Purchase Contract and breach of its implied covenant of good
24 faith and fair dealing. Plaintiff is also awarded the sum of Two Thousand Five Hundred Fifty
25 Dollars (\$2,550) based upon the difference between the sale price of the Marlette Pacifica home
26 which Plaintiff should have been able to purchase and what the price Defendant ultimately sold the
27 Marlette Pacifica home as damages caused by Defendant's breach of the Purchase Contract and
28 breach of its implied covenant of good faith and fair dealing.



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AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in Case No. CV07-00083

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

-or-

For the administration of a public program

-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230 and NRS 125B.055)

DATED: MARCH 12, 2008.

THE O'MARA LAW FIRM, P.C.

David C. O'Mara

DAVID C. O'MARA, ESQ.

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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: APR 08 2008

HOWARD W. CONYERS, Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By  Deputy



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