



KAREN ELLISON, RECORDER

APN# 1418-22-510-001

Recording Requested by/Mail to:

Name: Carole Beller

Address: Po Box 10889

City/State/Zip: So. Lake Tahoe, CA 96158

Mail Tax Statements to:

Name: _____

Address: Same as above

City/State/Zip: _____

JUDGMENT

Title of Document (required)

----- (Only use if applicable) -----

The undersigned hereby affirms that the document submitted for recording contains personal information as required by law: (check applicable)

Affidavit of Death – NRS 440.380(1)(A) & NRS 40.525(5)

Judgment – NRS 17.150(4)

Military Discharge – NRS 419.020(2)

Carole Beller
Signature

Signature

Carole Beller

Printed Name

This document is being (re-)recorded to correct document # _____, and is correcting

9/19/2013

CERTIFIED COPY

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

FILED

Case No.: 12-CV-0038

DATE 5-22-15
BOBBIE R. WILLIAMS Clerk of Court
of the State of Nevada, in and for the County of Douglas,
By [Signature] Deputy

2013 SEP 19 PM 4:46

TAHOE JUSTICE COURT
[Signature]
CLERK

IN THE TAHOE JUSTICE COURT
COUNTY OF WASHOE, STATE OF NEVADA

ROGER R. ADAMS, Trustee,

Plaintiff/Counterclaim Defendant,

Vs.

CAROLE BELLER, et al.

Defendant/Counterclaimant

FINDINGS OF FACT, CONCLUSIONS OF LAW
and JUDGMENT

BE IT REMEMBERED that this came on regularly for trial before the Court, sitting without a jury.¹ Plaintiff ROGER R. ADAMS was personally present and was represented by his counsel, Mr. Thomas J. Hall, Esq. of Reno. Defendant CAROLE BELLER was present *in pro se*.

The parties both testified and plaintiff provided the testimony of Cliff Gregston. Numerous exhibits were received into evidence. Having considered all of the evidence, whether testimonial, physical, documentary or circumstantial, together with all of the presumptions and inferences that could be drawn from such evidence, and having had an opportunity to consider the credibility of the evidence and the respective arguments of the parties, the court enters the following Findings of Fact, Conclusions of Law and Judgment.

FINDINGS OF FACT

1. Plaintiff owns a house (the "Home") in this Township.
2. Defendant BELLER is an artist. She does business in this Township under her own name as well as under the name of "Beller Studios."

¹ Trial was held January 10, 2013 and concluded on September 5, 2013. At conclusion of trial, the parties stipulated that the court review the court's JAVS recording of the January 10, 2013 proceedings. The court has not found it reasonable to do so.

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3. In the autumn of 2011, Plaintiff contacted defendant for the purpose of discussing the possibility of creating a sculpture as a decoration for the Home. This artwork was referred to during trial as the "Boulder Sculpture". The artwork was not to be made of actual boulders, but artificial boulders constructed out of Styrofoam, concrete, metal and paint. The installation of the Boulder Sculpture was to be upon a raised floor, tableaux, platform or riser in the Home that plaintiff would have constructed by his carpenters (the "Riser").
 4. Following the parties' initial discussions of a possible Boulder Sculpture, the parties' entered into a discussion of possibly having defendant create an additional piece of art in high relief to resemble an extension of plaintiff's stone fireplace. This sculpture is referred to in this judgment as the "Wall Sculpture". The Wall Sculpture and the Boulder Sculpture are referred to jointly as the "Sculptures".
 5. Following a review of a model and coloring samples from defendant, on or about November 11, 2011, the parties entered into an agreement whereby defendant would undertake to create and install the two (2) Sculptures in the Home. The parties understood that the Sculptures would be specially manufactured at defendant's California studio and then transported to and installed in the Home by defendant. These were to be custom Sculptures exclusively for the Home, not suitable for sale to anyone other than plaintiff.
 6. At the time the parties entered into their agreement, there was no date given for the completion or delivery of either Sculpture, other than an estimation of a vague date in "mid-spring" 2012.
 7. The Boulder Sculpture was intended to be free-standing on the Riser. The individual pieces of this Sculpture were to be placed by plaintiff, and, due to their relatively massive size, were not to be affixed by anything other than their weight. Smaller "rocks" created by defendant could be relocated or moved about after the initial installation of the Boulder Sculpture.
 8. The Wall Sculpture was to be created upon flat boards that were to be installed on the wall adjacent to the fireplace in the home.
 9. Thereafter, ^{defendant} plaintiff substantially commenced the manufacture of the Sculptures.
 10. Plaintiff admits in his pleadings that defendant was engaged "to design, purchase and install faux-rock sculptures and a rock garden" at the Home and that "payment for the Job was to be

1 completed in phases, with four payments of \$7,000 each to be made to Defendant² for a total
2 price of \$28,000.

3
4 11. Defendant asserts that the Wall Sculpture was priced at \$14,400 and the Boulder Sculpture
5 was priced at \$15,000 for a total price of \$29,400.

6
7 12. Plaintiff and defendant discussed having lights installed inside some of the features of the
8 Boulder Sculpture. Plaintiff supplied the lighting and transformers. Following temporary
9 placement and review by both plaintiff and defendant, the parties agreed that the lighted
10 boulder effect was not good. In those areas of the artificial rocks where lighting had been
11 installed, defendant agreed to fill in the light the holes and repaint the filled areas.

12
13 13. During the course of defendant's manufacture of the Sculptures, plaintiff paid defendant the
14 total of \$19,000.³

15
16 14. While there was no date set for completion of the Sculptures, sometime during the winter of
17 2011-2012 plaintiff communicated his desire to defendant that the Sculptures be completed
18 and installed by March 28, 2012. Both parties aimed at this date for substantial completion
19 and delivery of the sculptures. Construction and delivery of the Boulder Sculpture was
20 substantially delayed while defendant awaited plaintiff's construction of the Riser.

21
22 15. On or before March 27, 2012, defendant had placed the Wall Sculpture on the Home, adjacent
23 to plaintiff's fireplace. But defendant had not yet finished the piece. The Wall Sculpture was in
24 more than one piece, and it was intended to resemble a single wall made of many pieces of
25 rock. There was additional painting and additional grouting to be installed, or which could
26 have been installed, to make the effect as close as possible to appear to be a continuation of
27 plaintiff's rock fireplace with narrow-style grout lines.

28
29 16. On March 27, 2012, defendant was at the Home installing portions of the Boulder Sculpture.
30 She was having difficulty placing one of the artificial boulders on the Riser because plaintiff
31 had recently had his electrical subcontractor install an electrical outlet above the deck of the
32 Riser, and the artificial boulder piece could not sit firmly and flush over this new outlet. The

² Paragraphs 4 and 11, plaintiff's complaint.

³ A first payment of \$7000, a second payment of \$7,000 and a third payment of \$5,000.

1 defendant was going to be required to return this particular piece to her California studio to
2 modify its base to fit the new protrusion from the Riser.

3
4 17. Later that same day, after defendant had already installed the majority of the pieces of the
5 Boulder Sculpture, plaintiff requested that she stop and install artificial trees and shrubbery
6 purchased by plaintiff. Plaintiff wanted this artificial greenery placed around and within the
7 Boulder Sculpture.⁴ Plaintiff requested that defendant "cut a hole" or holes into the Riser for
8 the artificial trees. Plaintiff also demanded that plaintiff place his "trees and artificial
9 shrubbery under the artificial boulders and ground cover".⁵

10 18. Defendant demurred to plaintiff's demands, as she felt that such tasks should be handled by a
11 contractor or carpenters as she was an artist and not qualified to undertake structural work and
12 that she was not responsible for the construction of the Riser or the placement of plaintiff's
13 artificial greenery.

14 19. After this discussion, defendant attempted to continue to install the Boulder Sculpture. But,
15 defendant was perplexed and bothered by the plaintiff's demands. The video evidence supplied
16 by plaintiff at trial⁶ supports defendant's testimony that she was flustered, confused and at a
17 loss as to how to proceed with her work that day.

18 20. Thereafter, on the afternoon of March 27, 2012, defendant took the large boulder that need re-
19 fabrication to accommodate plaintiff's electrical outlet back to defendant's studio. Defendant
20 also took with her artist materials and her tools and some of small, moveable artificial rocks as
21 well to continue to remove unwanted lighting from within the pieces. From a careful review of
22 the evidence, there was nothing surreptitious or suspicious with regard to these actions of
23 defendant.

24 21. Immediately and consistently thereafter, defendant attempted to speak and communicate with
25 plaintiff regarding the completion of delivery and installation and touch-up of the Sculptures.

26
27 ⁴ Exhibit 1, Tab 4

⁵ Exhibit 1, Tab 4.

28 ⁶ Exhibit 3 is plaintiff's closed circuit video recording of defendant for some portion of the time *after* plaintiff demanded that defendant cut hole(s) in the Riser. There is no reason to presume that plaintiff could not have also provided video evidence of his discussions with defendant regarding the placement of artificial greenery or cutting into the Riser or for all of the time that defendant was at the Home that day.

1 Plaintiff would not allow defendant's performance or even accept her attempts at
2 communication.

3 22. The next day, plaintiff authored a letter to defendant. The letter contained threats, was
4 accusatory and contained information that was never sufficiently shown to be true.⁷

5 23. By way of the March 28, 2012 letter, plaintiff specifically advised defendant not to contact
6 him. This "no contact" advice prevented defendant from finishing the installation and finish
7 work on both Sculptures.

8 24. Plaintiff hired third parties to complete installation of the two Sculptures.

9 25. Defendant delivered to plaintiff the three lighting strips and lighting transformers that had been
10 supplied by plaintiff. Plaintiff refused the delivery.⁸

11 CONCLUSIONS OF LAW

12 1. The plaintiff bears the burden of proving the complaint to a preponderance of the evidence.
13 The defendant bears the burden of proving the counterclaim to a preponderance of the
14 evidence.

15 2. The "preponderance of evidence means such evidence as, when weighed with the evidence
16 opposed to it, has more convincing force, and from which it appears that the greater
17 probability of truth lies therein. NPCJI 3.00.

18 3. NRS 47.250(3)(4) contain presumptions that may be applied to the weight of evidence:

19 (3) That evidence willfully suppressed would be adverse if produced.

20 (4) That higher evidence would be adverse from inferior being produced.

21 See also, *Douglas Spencer & Assocs. v. Las Vegas Sun*, supra.

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26 ⁷ Exhibit 1, Tab 4. By way of example, plaintiff wrote that if his demands were not met, he would see to it that "The Reno Contract Board" and the IRS would
27 be informed. See, NRS 205.330(1). Plaintiff also alleged that his security system recorded "with audio". Plaintiff introduced no evidence at trial of any audio
28 recordings nor did he testify to what may have been heard/said in the audio recording. If no audio was ever reviewed by plaintiff, the deception created in the
letter is disconcerting; if audio was reviewed by plaintiff but he destroyed it, the spoliation would be equally disconcerting. See, NRS 47.250. And if plaintiff
was just plain lying about the existence of audio, then plaintiff is not trustworthy. Plaintiff also wrote that defendant's actions in leaving the Home "were
witnessed and heard by three other people, all of which [sic] are licensed and bonded." There is only one witness shown in the video, not three. This witness
testified at trial largely by conjecture. And this witness admitted that he is *not* licensed.

⁸ Plaintiff accepted the return of these items during the course of the trial. There is no claim for conversion.

- 1 4. The Court must examine the credibility of the witnesses from the manner of their testimony,
2 the relationship between the parties and witnesses, his or her fears, motives, interests or
3 feelings, his or her opportunity to have observed the matters to which he or she has testified,
4 the reasonableness of his or her statements and the strength or weakness of his or her
5 recollections. *Douglas Spencer & Assocs. v. Las Vegas Sun*, 84 Nev. 279 (1968).
6
- 7 5. If the Court believes that a witness or party has been untruthful or exaggerated his or a
8 material fact in the case, the Court may disregard the entire testimony of that witness or any
9 portion of his or her testimony, which is not provided by other witnesses. *State v. Martel*, 32
10 Nev. 395 (1910).
11
- 12 6. Here, plaintiff claims that on March 27, 2012 he had security audio recordings and security
13 video recordings of defendant.⁹ The plaintiff has failed to present any audio portion of the
14 security capture whatsoever. This failure to present such audio recording evidence or explain
15 its absence allows the court to presume that the evidence would be adverse to plaintiff's case if
16 he produced it.
17
- 18 7. The Sculptures are non-structural, they can be removed without damage to the Home, and any
19 lighting within any particular "rock" of the Boulder Sculpture were Class II and plug into an
20 ordinary 120v outlet. According to the plaintiff's admissions at trial, no contractor's or
21 electrician's license is required for plugging a light into an electric outlet. The Sculptures are
22 art, not real property or fixtures.
23
- 24 8. Artists are not required to be licensed as contractors. NRS 624.020.
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⁹ Exhibit 1, Tab 5.

1 9. Plaintiff's payments were made to defendant personally, not to a fictitious business.¹⁰ Plaintiff
2 addressed his correspondence to defendant personally¹¹. There is no indication that plaintiff
3 was misled as to the ownership of "Beller Studios" by defendant. Further, this was an isolated
4 Nevada transaction by a California resident. *Brad Assocs. v. Nevada Fed. Fin. Corp.*, 109 Nev.
5 145 (1993); *Paterson v. Condos*, 55 Nev. 134 (1934).

7 10. Defendant's counterclaim is asserted personally, not as a fictitious business. Defendant had
8 indeed filed a fictitious business name certificate with the County Clerk. It may have expired.
9 Neither NRS 602.010 nor 602.070 bar an action or counterclaim if a fictitious business name
10 was filed but subsequently expired.

12 11. The agreement between plaintiff and defendant is governed by the Uniform Commercial Code,
13 (NRS 104.2101 et seq.). Both of the Sculptures are goods (NRS 104.2105) and, to the extent
14 that the goods referred to as the Wall Sculpture was hung on a wall in the Home, it could be
15 severed from realty such that it would always retain its character as goods. (NRS 104.2105,
16 104.2107).

18 12. The Sculptures are separate commercial units of goods.

19 "Commercial unit" means such a unit of goods as by commercial usage is a single
20 whole for purposes of sale and division of which materially impairs its character
21 or value on the market or in use. A commercial unit may be a single Article (as a
22 machine) or a set of Articles (as a suite of furniture or an assortment of sizes) or a
23 quantity (as a bale, gross or carload) or any other unit treated in use or in the
24 relevant market as a single whole. NRS 104.2105(6).

24 13. The applicable statute of frauds is NRS 104.2201. This portion of the UCC requires that a
25 contract for the sale of goods be in a writing subscribed by the party to be charged when the
26 value or price exceeds \$500.

27
28 ¹⁰ Exhibit 1, Tab 2, for example.

¹¹ Not only is there no evidence that plaintiff was misled about whom he was dealing with, plaintiff invented a completely different entity for his correspondence with defendant (*See* Exhibit 1, Tab 4 "Beller Sculpture") when his other documentary evidence all contain the names "Carole Beller or Carole Beller- Beller Studios". (*See* Exhibit 1 Tabs 1, 2, 3, 6, and 8).

1 14. NRS 104.2201(3) states that when the party to be charged is the seller, the writing requirement
2 can be satisfied when the goods are to be specially manufactured for the buyer and are not
3 suitable for sale to others in the ordinary course of the seller's business and the seller, before
4 notice of repudiation is received, has made a substantial beginning of the manufacture of the
5 goods. When the party to be charged is the buyer, the requirement of writing is satisfied when
6 the buyer admits in his pleading, testimony or otherwise in court that a contract for sale was
7 made.
8

9 15. Plaintiff has admitted in both his testimony and his complaint that he entered into the
10 agreement with defendant.
11

12 16. Here, the defendant/seller especially manufactured these unique goods for the size, color and
13 shape of a wall and a Riser in the Home. There is no evidence that there is any other market
14 for these specialty goods.
15

16 17. Defendant was in the process of delivering, arranging and hanging the goods when she first
17 received notice of defendant's repudiation by way of the March 28, 2012 letter.¹²

18 18. When the plaintiff refused to treat his agreement with defendant as subsisting and
19 binding upon him and by his actions and conduct he showed that he has renounced his
20 agreement and no longer considers himself bound by it, the defendant's performance of her
21 agreement and completion and delivery of goods is prevented. A refusal on the part of the
22 plaintiff to allow the defendant to perform obviated both the necessity of her performance or
23 further tender of performance after such repudiation. *Cladianos v. Friedhoff*, 69 Nev. 41
24 (1952).
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¹² Exhibit 1, Tab 4.

1 19. Every contract or duty within the Uniform Commercial Code imposes an obligation of good
2 faith in its performance and enforcement. NRS 104.1304.

3
4 20. In Nevada, an “implied covenant of good faith and fair dealing exists in *all* contracts”, not just
5 contracts for goods. *A.C. Shaw Constr. v. Washoe County*, 105 Nev. 913 (1989) [emphasis
6 supplied by the Supreme Court]; *Morris v. Bank of Am. Nev.*, 110 Nev. 1274 (1994).

7 21. Plaintiff breached his obligation of good faith when he:

8 (a) refused to communicate with defendant,

9 (b) when he informed defendant that she could not communicate with him,¹³ and

10 (c) when, by such actions, he prevented the defendant from performing the balance of her
11 contract.
12

13 22. The buyer of goods has a right to reject defective goods or goods that do not conform to the
14 parties’ agreement. But the buyer is not allowed keep the goods, as plaintiff has done here, and
15 still claim rejection, because after “rejection any exercise of ownership by the buyer with
16 respect to any commercial unit is wrongful as against the seller.” NRS 104.2602(2) (a).
17

18 23. Plaintiff’s refusal to allow defendant to cure any defect in the goods retained by the plaintiff
19 waives plaintiff’s right to claim damage, as “a party cannot recover damages for loss that he
20 could have avoided by reasonable efforts; the rule of mitigation of damages begins when
21 the breach is discovered.” *Conner v. Southern Nev. Paving*, 103 Nev. 353 (1987).
22

23 24. Plaintiff’s accusation that defendant had committed a “theft” of portions of the Sculptures is
24 hyperbolic and false; defendant had yet to complete her work. Plaintiff’s claims that defendant
25 was “sneaking” goods to her truck to take these goods for adjustment/tailoring is likewise
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¹³ Exhibit 1, Tab 4.

1 hyperbolic and false.¹⁴ A round-trip from the installation area to defendant's truck took less
2 than three-quarters of a minute, it was a direct route and it avoided any soiling of floor
3 coverings. It would appear to be much, much reasonable and possibly faster than waiting for
4 an elevator. Using a direct, fast and clean route is not suspicious and certainly cannot form the
5 basis for a reasonable person to form a reasonable belief that defendant was -- to use plaintiff's
6 parlance -- a sneak, a thief and a fraud.

7
8 25. Mexican standoffs¹⁵ are not effective methods of commercial negotiation and are not
9 recognized by the UCC.

10
11 26. Plaintiff has kept the goods, with the exception of those portions taken back to defendant's
12 California studio on March 27, 2013. He has not returned the goods and he retains the benefit
13 thereof.

14
15 27. The measure of damages for nonacceptance or repudiation by the buyer is the difference
16 between the market price at the time and place for tender and the unpaid contract price
17 together with any incidental damages, but less expenses saved in consequence of the buyer's
18 breach. If this measure of damages is inadequate to put the seller in as good a position as
19 performance would have done then the measure of damages is the profit (including reasonable
20 overhead) which the seller would have made from full performance by the buyer, together with
21 any incidental damages and allowance for costs reasonably incurred and due credit for
22 payments or proceeds of resale. NRS 104.2708.
23

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27 ¹⁴ Plaintiff did not introduce his security recordings of defendant's arrival and delivery of goods and therefore the court may presume that all of defendant's
comings and goings from the Home were as innocuous and innocent as those shown in Exhibit 3. NRS 47.250(3).

28 ¹⁵ A "Mexican standoff" is a term defined as a stalemate or impasse or a confrontation when neither side can prevail. In popular culture, the Mexican standoff
is usually portrayed as two or more opposing men with guns drawn and ready, creating a very tense situation. Exacerbating the tension is that neither side
wants to put down its weapons for fear that its opponents will shoot them. This situation forces the participants to resolve the situation either by diplomacy,
surrender, or a pre-emptive strike." Watch, *generally*: any Quentin Tarentino motion picture.

1 28. Contract damages may be awarded for breach of the implied covenant of good faith and fair
2 dealing. *A.C. Shaw, supra*.

3 29. Plaintiff has not proven any damage to a preponderance of the evidence. He has failed to
4 mitigate his damages, if any he had. He has compounded his situation by using unskilled
5 workmen instead of artists to complete the defendant's installation of the Sculptures. His
6 repudiation of his agreement with the defendant was not objectively reasonable.

7
8 30. The court finds that defendant has proven to a preponderance of the evidence that the original
9 contract price for the commercial units of goods was to be \$14,400 and \$15,000, respectively
10 for a total of \$29,400.

11
12 31. As a result of plaintiff's repudiation, defendant could not complete the delivery and
13 installation of the goods, and defendant has mitigated her damages by crediting plaintiff with
14 \$2,600 for her unfinished installation, grouting and finish painting and another credit to
15 plaintiff of \$1000 for portions of the goods¹⁶ that she could perhaps resell to others, as well as
16 a \$48 credit for four light cans that remained in the goods. These offsets total \$3,648, or an
17 adjusted price of the goods of \$25,752.

18
19 32. Defendant has not proven any other damage to a preponderance of the evidence.

20 33. Of the \$25,752 owed to defendant, plaintiff has paid \$19,000.

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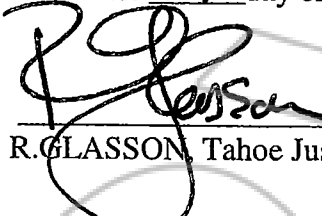
27
28 ¹⁶ Two small rocks and one medium rock, Exhibit 1, Tab 6.

JUDGMENT

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2 1. Judgment shall be entered in favor of defendant on plaintiff's complaint.

3
4 2. Defendant shall have judgment against plaintiff on her counterclaim for \$6,752.

5 Dated this 19 day of Sept 2013

6
7 
8 R. GLASSON, Tahoe Justice Court

9
10
11
12
13 Pursuant to RJCR 8, I certify that on the above referenced date a copy of the forgoing Order was served
14 by mail to:

15 Thomas J. Hall, Esq.
16 P.O. Box 3948
17 Reno, NV 89505

18 Carole Beller
19 P.O. Box 10889
20 S. Lake Tahoe, CA 96158

21 
22 Deputy Court Clerk

Case No. 12-CV-0038

AFFIDAVIT OF JUDGMENT

Judgment Debtor:
ROGER R. ADAMS, TRUSTEE OF THE RRA
FAMILY TRUST DATED MARCH 14, 2007,
AS AMENDED

1 Cedarbrook Dr.
Glenbrook, NV 89413

Lien against real property:
Assessor's Parcel No. 1418-22-510-001
1684 Hwy 50
Cedarbrook Subdivision
(Glenbrook, NV 89413)

I, Carole Beller, the Judgment Creditor have confirmed that the Judgment Debtor is the legal owner of the above property.

5.22.2015
Date


Carole Beller, Judgment Creditor

Po Box 10889
So. Lake Tahoe, CA
96158