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SACRAMENTO COURTS
DEPT. #53 #54

1 RAM & KAMALGIT KUNWAR
2 8700 W. STOCKTON BLVD.,
3 ELK GROVE, CA 95758
4 TEL: 916-689-3465
5 APPEARING IN PRO PER

6 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 IN AND FOR THE COUNTY OF SACRAMENTO

8 RAM B. KUNWAR, KAMALGIT KUNWAR)
9 A & J MARKET)

Case No. 03AS03579

10 Plaintiffs,)

11 Vs.)

PLAINTIFFS' OPPOSITION TO
DEMURRER OF DEFENDANTS

12 SRI EQUIPMENT BROKERAGE, SCOTT)
13 REED, KIMBERLY NELSON AND)
14 DOES 1 through 10, inclusive)

Date: October 17, 2003
Time: 2:00 p.m.
Dept: 53

15 Defendants.)

16 INTRODUCTION

17 The essence of this litigation is that plaintiffs Ram B.
18 Kunwar, Kamalgit Kunwar and A & J Market lost more than \$ 50,000
19 due to the fraud , breach of contract and other wrongs of
20 defendants Scott Reed and his alter ego defendant SRI Equipment
21 Brokerage and Kimberly Nelson (collectively " SRI").

22 Relevant here are allegations that on around the beginning
23 of October, 2002 Plaintiffs' representative went to the SRI ware
24 house and saw the equipment and informed Kimberly Nelson that
25 they were interested in specific items. Then around the middle
26 of October, 2002 Kimberly Nelson visited the store (A & J
27 Market) and talked about the equipment and the payment options.
28 The plaintiffs told her that they would be unable to pay the sum

1 all at once and wanted her to make out some payment plan. She
2 left by saying that she would talk to Mr. Scott Reed the owner
3 of the company and get back to them. Then later that same day
4 or the next day Mr. Scot Reed called and talked to Plaintiff Ram
5 Kunwar and told him that he could accept three payments. Ram
6 Kunwar told him that he wanted to pay by his American Express
7 card. Upon Mr. Scott's proposal Ram Kunwar tried to get the
8 checks from American Express bank as SRI did not accept credit
9 cards at that time. The plaintiffs were unable to get the
10 checks and informed Ms. Kimberly Nelson that they could not pay
11 at this time, as they don't have extra cash to pay for the
12 equipment. Then, in the middle of January, 2003 Ms. Kimberly
13 Nelson called and told the plaintiffs that they are now
14 accepting the credit cards. The plaintiffs gave her the
15 American express card number and told her to charge the card
16 three times. The oral agreement was that Ms. Kimberly Nelson
17 would charge the card two times before delivering and that the
18 last payment would be charged after the delivery and
19 installation of all the equipment, including the hood system.
20 Defendant SRI charged the card on January 8, 2003 in the amount
21 of \$ 4202.73 and they charged the card on January 28, 2003 for
22 the second payment of \$ 4202.73. Then, on February 6, 2003,
23 they delivered the Fryer, Hot Plate, Sandwich prep Table,
24 Popcorn Popper. The day before the deliver plaintiff Kamaljit
25 Kunwar talked to Ms. Kimberly Nelson and told her that they will
26 not be able to use the fryer and hot plate without the hood.
27 Ms. Kimberly Nelson told Mrs. Kunwar that the hood would be
28

1 delivered within the next two weeks. Plaintiff Kamalgit Kunwar
2 also urged that she should not send the fryer and the hot plate
3 as there would not be any use of these, until the hood was
4 installed. Ms. Kimberly promised that the hood would be
5 installed within two weeks.

6 Then, at the end of March, 2003 the plaintiffs called Ms.
7 Kimberly and asked when they would get the hood. She said that
8 unless they paid the remaining balance, she would not deliver
9 the hood. Later on the plaintiffs talked to Mr. Scot Reed and
10 he even informed the plaintiffs that the hood had not even been
11 ordered at the time and it would not be ordered until the
12 remaining balance was paid. Then, on April 8, 2003, the
13 plaintiffs wrote a letter to SRI and asked them to either
14 deliver the rest of the equipment or cancel the entire order and
15 return their money. The plaintiffs did not get any response of
16 that letter. The plaintiffs' representative talked to Ms.
17 Kimberly two times (on 04/15/03 and 04/16/03) and Ms. Kimberly
18 informed him that they have no intention of returning the
19 plaintiff's money or delivering the equipment and that they have
20 the right to use the customers money without even ordering the
21 equipment. The plaintiff wrote another letter on 04/16/03 to
22 Ms. Kimberly Nelson, confirming her conversation with their
23 representative and again asked them to solve the matter outside
24 of court.

25 On April 21, 2003 the plaintiffs got a response to their
26 letter which basically stated that the defendant kept the
27 equipment for the plaintiffs, and started accepting credit cards
28

1 because of the plaintiffs request. Ms, Kimberly also mentioned
2 that she can return \$ 553.17 out of \$ 8405.46 and then they
3 would be done. In response to the defendant's letter, the
4 plaintiffs wrote another letter and informed them to pick up
5 their equipment as they were being forced to store it at their
6 store instead of the SRI warehouse where it belonged. The
7 plaintiffs also gave them another week to respond to that offer
8 so that the matter could be resolved outside of court.
9

10 On May 29, 2003 the plaintiffs received a letter from SRI's
11 attorney, Mr. Mitchell S. Ostwald, stating that they, the
12 plaintiffs, had received all the equipment they had paid for and
13 advised the plaintiffs to send another check of \$ 6043.27 to SRI
14 so that his clients can order the hood and get it delivered. He
15 also stated falsely that the pizza oven which had been paid for
16 was at the SRI warehouse and ready for delivery. Instead, the
17 Pizza oven was not even ready and was not at the SRI warehouse
18 till the day when the defendants had been served with the
19 original complaint. In response to his letter the plaintiffs
20 offered two options that allowed SRI to either deliver the
21 equipment or return the money back with interest along with the
22 damages of the business of the plaintiffs. The plaintiffs gave
23 them another week to settle the matter outside of court. The
24 plaintiffs did not get any response to those offers and have
25 been forced to pursue legal action against the defendants.
26

27 The plaintiffs relied on the defendants' false promises for
28 almost four months and lost their business earnings. Because of
the breach of contract of the defendants, the plaintiffs lost

1 business and they were unable to use the storage space for any
2 other purpose.

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4 II

5 LEGAL ARGUMENT

6 **THE FIRST CAUSE OF ACTION FOR BREACH OF ORAL CONTRACT STATES**
7 **FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION**

8 The defendants argued that a contract is an agreement to do
9 or not to do a certain thing. (CCP Section 1549). In this
10 case the defendants entered into an oral agreement to charge the
11 plaintiffs' credit card two times before the delivery and the
12 third time after the delivery and installation of all the
13 equipment including the hood. They breached their contract by
14 trying to charge the American Express card a third time before
15 even ordering the equipment. Further the defendants made an
16 agreement to ship and install the hood within two weeks after
17 the rest of the equipment had been shipped. They breached this
18 agreement also by not delivering the hood within the promised
19 two weeks.
20

21 Plaintiffs have stated sufficient facts to upheld a cause
22 for breach by specifically pleading the facts, which show the
23 breach of contract by the defendants. Based on the foregoing,
24 the demurrer to Plaintiffs' First Cause of Action for Breach of
25 contract should be denied.

26
27 III

28 **THE SECOND CAUSE OF ACTION FOR INTENTIONAL TORT STATES FACTS**
SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION AGAINST DEFENDANTS

1 The defendants argue that there is no injury and/or damages
2 or tort for the plaintiffs to claim. By accusing the plaintiffs
3 of false allegations to their friends and representatives, the
4 defendants ruined their reputation. The defendant made such
5 statements as that the plaintiffs' credit card had been
6 declined, which was a false allegation. These statements were
7 made by the defendants with the intent of harming the
8 plaintiffs.
9

10 Based on the foregoing, the Demurrer to Plaintiffs' Second
11 Cause of Action for Intentional tort should be denied.

12 III

13 **THE THIRD CAUSE OF ACTION FOR THE FRAUD STATES FACTS SUFFICIENT**
14 **TO CONSTITUTE A CAUSE OF ACTION AGAINST DEFENDANTS**

15 The defendants argue that making false promises, which they
16 never intended to perform is not fraud. The defendants had been
17 misleading the plaintiffs regarding the shipment of their
18 equipment continuously for three months. The defendants also
19 concealed the fact that the hood had never been ordered.
20

21
22 The defendants also argued that why the plaintiffs didn't
23 pay the rest of the money and then quantify any damages. The
24 plaintiffs had already been in financial crises because of the
25 fact that the defendants received the money in the amount of \$
26 8404.29 for the equipment which plaintiffs still have not been
27 able to use. The Plaintiffs charged their credit cards and they
28 have to pay back the amount charged without getting any extra
income because of the unavailability of the hood. The

1 Plaintiffs relied on the defendants' false promises and lost the
2 business revenue for four months.

3 Based on the foregoing, the Demurrer to Plaintiffs' Third
4 Cause of Action for fraud should be denied.

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6 IV

7 CONCLUSION

8 Based upon the foregoing, Plaintiffs RAM B. KUNWAR,
9 KAMALGIT KUNWAR AND A & J MARKET respectfully submit that the
10 court should deny the demurrer filed by Defendants SCOT REED dba
11 SRI Equipment Brokerage and Kimberly Nelson.

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13 Dated: October 12, 2003

RAM & KAMALGIT KUNWAR

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15 By: *Kunwar*

16 KAMALGIT KUNWAR
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