

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

**COMP**  
**MUIJE & VARRICCHIO**  
**PHILIP T. VARRICCHIO, ESQ..**  
Nevada Bar No. 1087  
**JOHN W. MUIJE, ESQ.**  
Nevada Bar No. 2419  
1320 S. Casino Center Boulevard  
Las Vegas, Nevada 89104  
Phone: 702-386-7002  
Fax: 702-836-9135  
Attorneys for Plaintiff

FILED  
APR 14 4 24 PM '08  
CLERK OF COURT

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

<p>FRANZ HARARY, individually; and dba ODYSSEY IN ILLUSION, INC., a California corporation,  Plaintiff  v.  STEVE WYRICK, individually, and d.b.a WYRICK MAGIC PRODUCTIONS, INC., a defaulted corporation, DOES I through X and ROE CORPORATIONS I through X, inclusive,  Defendant</p>	<p>CASE NO.: <b>A561018</b> DEPT. NO.: <b>XXIII</b></p>
---	---

**COMPLAINT**

**COMES NOW**, the Plaintiff, FRANZ HARARY individually, and ODYSSEY IN ILLUSION, INC., by and through counsel of record, PHILIP T. VARRICCHIO, ESQ., of the law firm MUIJE and VARRICCHIO, herein submits its claims for relief against STEVE WYRICK, individually, and WYRICK MAGIC PRODUCTIONS.

**FACTS**

1. Plaintiff Franz Harary ("*HARARY*") is a well known and established performer and creator of exclusive magical illusions and TV/Stage effects.
2. That Defendant, *STEVE WYRICK*, ("*WYRICK*") is a professional magician,

LAW OFFICES  
**MUIJE & VARRICCHIO**  
1320 S. CASINO CENTER BOULEVARD  
LAS VEGAS, NEVADA 89104  
Phone: (702) 386-7002 Fax: (702) 386-9135

LAW OFFICES  
**MUJE & VARRICCHIO**  
1320 S. CASINO CENTER BOULEVARD  
LAS VEGAS, NEVADA 89104  
Phone: (702) 386-7002 Fax: (702) 386-9135

1 presently performing in Las Vegas at the *STEVE WYRICK* Magic Theater, at the Miracle Mile,  
2 Planet Hollywood Hotel. Plaintiff is informed believes and therefore alleges that the business of  
3 *STEVE WYRICK* is/or was conducted through the now defaulted corporation, Wyrick Magic  
4 Productions.  
5

6 3. That *WYRICK*, in the course of his performance career has modified or has  
7 utilized illusions that have become associated with his name and identity.

8 4. That *HARARY*, has created, constructed and performed a number of illusions  
9 which by virtue of TV and stage performances have become exclusively associated with *HARARY*  
10 and his professional identity.  
11

12 5. That on or about 2006 *WYRICK* expressed an intention and desire to purchase  
13 and perform, a specific illusion created and utilized by *HARARY* known as the *HARARY Water*  
14 *Tank Illusion*, (hereinafter referred to as the "*Tank Prop*").  
15

16 6. That the *HARARY Tank Prop* has become over a period of time and through a  
17 series of TV and stage performances, an illusion specifically and exclusively associated with  
18 *HARARY*, in its unique construction, methodology and choreographed presentation.  
19

20 7. That on or about 2006, *WYRICK* expressed his desire to *HARARY* to utilize the  
21 *Tank Prop* in his Las Vegas based show.

22 8. That pursuant to the negotiations, *WYRICK*, was to trade *HARARY*, his Appearing  
23 Airplane Illusion (hereinafter referred to as "*Plane Prop*") with performance rights for the tank prop.

24 9. That Plaintiff *HARARY*, sought and contracted for the acquisition of the *Plane*  
25 *Prop*, as utilized by *WYRICK* in the *WORLD'S GREATEST MAGIC TV* show shot at Caesars  
26 Palace Hotel/Casino in Las Vegas during the mid 1990's.

27 10. Further, *WYRICK* understood, that *HARARY* would utilize said illusion for his own  
28

LAW OFFICES  
**MUJJE & VARRICCHIO**  
1320 S. CASINO CENTER BOULEVARD  
LAS VEGAS, NEVADA 89104  
Phone: (702) 386-7002 Fax: (702) 386-9135

1 performance purposes and/or would sublease, said *plane prop* to third persons by way of rent or  
2 other trade.

3  
4 11. That pursuant to the negotiations and to memorialize the agreed terms and  
5 conditions, a written document was prepared by Plaintiff, so as to secure and define the proposed  
6 agreement between the parties. This agreement was directed to Defendant, for purpose of review  
7 and execution. Defendant *WYRICK* did not sign the Agreement.

8  
9 12. That at all relevant times herein Plaintiff and Defendant, conducted their  
10 transactions, their verbal communications and conformed their actions, as if written agreement,  
11 drafted and directed to *WYRICK*, had been duly executed by Defendant *WYRICK*.

12  
13 13. Pursuant to the agreement, Plaintiff, did provide to Defendant, the *tank prop*.  
14 Also pursuant to the agreement, the *tank prop*, was provided, so as to allow *WYRICK*, to have the  
15 tank reconstructed and custom build to his own specification and in new condition.

16  
17 14. That in accordance with the terms and conditions of the agreement Plaintiff  
18 allowed *WYRICK* performance rights to the *tank prop* and its presentation sequence which  
19 previously thereto had been exclusively, performed by Plaintiff. *WYRICK* has since regularly used  
20 the prop and the exclusive presentation sequence.

21  
22 15. Pursuant to the terms of the bargain, *WYRICK*, who had been quoted One  
23 Hundred Thousand Dollars (\$100,000.00), as a purchase price for the *tank prop* to him, instead  
24 agreed to exchange his *plane prop* to Plaintiff in working condition.

25  
26 16. That the *plane prop*, was to be provided in a "condition, equal to that which it was  
27 in when last performed on stage in Vegas."

28  
29 17. That under the terms and conditions of the negotiations, Defendant had represented,  
30 that the condition of the *plane prop* was in performable condition, and as such was not a prop

LAW OFFICES  
**MUJJE & VARRICCHIO**  
1320 S. CASINO CENTER BOULEVARD  
LAS VEGAS, NEVADA 89104  
Phone: (702) 386-7002 Fax: (702) 386-9135

1 needing to be reconstructed, but instead with “only body work and paint”, could be immediately  
2 utilized by Plaintiff or others, which restoration was to be paid for by *WYRICK*. As set forth in the  
3 written agreement, and pursuant to discussions, it was contemplated, this *plane prop*, would be used  
4 by *HARARY*, and or other third parties, and that *HARARY*, had specifically contracted for the  
5 utilization of said illusion with such third parties.  
6

7 18. After Plaintiff had duly delivered the prop to *WYRICK* and after he had reconstructed  
8 his own version of the *tank prop*, Plaintiff received the *plane prop*. Prior to the time of receipt,  
9 in accordance with Plaintiff disclosed intended use of such prop, it had already contracted to lease  
10 and deliver said prop to a performer in Japan.  
11

12 19. It was determined upon physical inspection, that the *plane prop*, did not conform to  
13 the represented condition, in that it had apparently, been left in the desert sun for a number of years,  
14 which caused substantial external and interior deterioration, so as to effectively render the prop  
15 utterly useless for all its intended purposes.  
16

17 20. It was understood as a material and integral contract provision that the *plane prop*  
18 would be in full working order, including but not limited to the operation of all moving parts, both  
19 animated and manual, electrical wiring and mechanical cabling, lighting control systems and  
20 anything else required for the smooth operation of the plane as designed. The package was to  
21 include all accessories including all soft goods rigging.  
22

23 21. In an effort to mitigate damages, Plaintiff after delivery to third parties, authorized  
24 a series of attempted repairs, refurbishment, so as to attempt to honor the terms and conditions of  
25 the contracts to which Plaintiff had entered into; that despite expenditures in excess of Seventy Five  
26 Thousand Dollars (\$75,000.00) coupled with substantial shipping costs, delivery costs, labor,  
27 intended users of the *plane prop*, could not utilize the prop based upon its non functioning  
28

LAW OFFICES  
**MUIJE & VARRICCHIO**  
1320 S. CASINO CENTER BOULEVARD  
LAS VEGAS, NEVADA 89104  
Phone: (702) 386-7002 Fax: (702) 386-9135

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

condition. Plaintiff's lessees refused to accept the plane despite Plaintiff's expenditures to attempt restoration. Since the *plane prop* has so completely been laid waste, restoration is apparently not possible, nor is use.

22 That based upon terms and conditions as discussed and the written contract terms, *WYRICK* knew of Plaintiff's intended use and relied upon his representations of condition, as a material aspect vital to the contract agreement.

23. Pursuant to disclosures, Plaintiff identified, its intended sale/transfers and or lease to third person of the *plane prop* which *WYRICK* knew would take place after delivery. *WYRICK* representations, have proven false in that the airplane illusion, was functionally useless from its inception and indeed, Plaintiff is informed, believes and alleges, that *WYRICK* had previously relegated the plane to be stored as junk amongst other discarded props.

24. That Plaintiff has been denied all use of the *plane prop* and hereto for, has suffered damages in excess, of One Hundred Thousand Dollars (\$100,000.00) consisting of attempts to refurbish the airplane illusion, lost profits on intended leases, multiple thousands in delivery, on-site preparations and other damages, to be proven at the time of trial hereon.

25. That during the course of proceedings, whereby Plaintiff attempted to mitigate the damages sustained in connection with the transaction, Plaintiff attempted communications with Defendant. Plaintiff attempted to reach a solution based upon the damages sustained; *WYRICK* has failed and refused to enter into any type of meaningful dialogue with respect to making the Plaintiff whole, with respect to benefits under the contract agreement with *WYRICK*. *WYRICK* has never denied his culpability for the useless prop.

///  
///

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

**CLAIMS**  
**I**  
**BREACH OF CONTRACT**

26. Plaintiff hereby restates and re-alleges the allegations set forth in Paragraph 1 through 25, herein above, inclusive, and by this reference incorporates the same as though fully set forth herein.

27. That based upon the foregoing, and predicated upon the express terms and conditions as set forth in the written document the terms of which the parties adopted by conduct, the parties, by their assent to the performance consistent with, did enter into an express written contract.

28. That Defendant *WYRICK* has breached the set terms and conditions of said contract by failure to deliver, the *plane prop* in a restored performable condition. As a direct and proximate result of breach of contract obligations to deliver airplane prop in the promised condition, Plaintiff has sustained damages in the amount in excess of Ten Thousand Dollars (\$10,000.00), as shall be determined at the time of trial hereon.

**II**  
**BREACH OF IMPLIED CONTRACT**

29. Plaintiff hereby restates and re-alleges the allegations set forth in Paragraph 1 through 28, herein above, inclusive, and by this reference incorporates the same as though fully set forth herein.

30. That if this Court, finds that there is not an express contract in writing or otherwise, Plaintiff seeks the determination that there is implied by the circumstances, a contract agreement wherein, Defendant was to provide a specific serviceable *plane prop*, in exchange, for the performance rights for Plaintiff's *tank prop*, and that the value of such exchange had a market value of no less than \$100,000.00.

LAW OFFICES  
**MUJJE & VARRICCHIO**  
1320 S. CASINO CENTER BOULEVARD  
LAS VEGAS, NEVADA 89104  
Phone: (702) 386-7002 Fax: (702) 386-9135





1 to Plaintiff, Plaintiff has sustained substantial damages in excess of Ten Thousand Dollars  
2 (\$10,000.00), for which Plaintiff is entitled to recovery thereof.

3  
4 **V**  
**UNJUST ENRICHMENT**

5 43. Plaintiff hereby restates and re-alleges the allegations set forth in Paragraph 1  
6 through 42, herein above, inclusive, and by this reference incorporates the same as though fully  
7 set forth herein.  
8

9 44. That Defendant *WYRICK* has been unjustly enriched by virtue of his acquisition  
10 of the performance rights of the *tank prop*, the prop itself, and the failure to delivery, anything of  
11 value commensurate with said *tank prop*. Therefore, Plaintiff seeks damages in excess of Ten  
12 Thousand Dollars (\$10,000.00), the amount to be proven at time of trial hereon, which include  
13 not only its loss of anything of value, but also, the damages incurred in attempting to mitigate  
14 damages caused by the Defendant.  
15

16 WHEREFORE, Plaintiff prays for that this honorable court grant relief as follows:

- 17 1. For damages in excess of \$10,000.00, with interest thereon from the original due  
18 date;  
19 2. For the costs of suit incurred herein;  
20 3. For reasonable attorneys' fees for prosecution of suit herein; and  
21

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

LAW OFFICES  
**MUJJE & VARRICCHIO**  
1320 S. CASINO CENTER BOULEVARD  
LAS VEGAS, NEVADA 89104  
Phone: (702) 386-7002 Fax: (702) 386-9135

1 4. For such other and further relief as the Court may seem just and proper in the  
2 premises.

3 DATED this 10<sup>th</sup> day of April, 2008.

4  
5 MUIJE & VARRICCHIO

6  
7 By: 

8 PHILIP T. VARRICCHIO, ESQ.  
9 Nevada Bar #1087  
10 1320 S. Casino Center Boulevard  
11 Las Vegas, Nevada 89101  
12 Attorney for Plaintiff  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LAW OFFICES  
**MUIJE & VARRICCHIO**  
1320 S. CASINO CENTER BOULEVARD  
LAS VEGAS, NEVADA 89104  
Phone: (702) 386-7002 Fax: (702) 386-9135