

OAKLAND COUNTY

09-102983-CK



JUDGE RUDY J. NICHOLS
ZEKELMAN,BARR v BUGATTIAUTO

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

BARRY ZEKELMAN, an individual,

Plaintiff,

v.

Case No. 09-
Hon. -CK

BUGATTI AUTOMOBILES S.A.S.,
a foreign corporation,

Defendants,

COHEN, LERNER & RABINOVITZ, P.C.

By: Steven Z. Cohen P29344
Harvey R. Weingarden P31534

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COMPLAINT

BY
DEPUTY COUNTY CLERK

2009 AUG 10 AM 9:17

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NOW COMES the Plaintiff Barry Zekelman, by and through his attorneys, Cohen, Lerner & Rabinovitz, P.C., states the following for his complaint against Defendant, Bugatti Automobiles S.A.S. ("Bugatti SAS"):

1. Plaintiff, Barry Zekelman, is an individual residing at 324 Elmgrove Drive in Lakeshore, Ontario, Canada.
2. Defendant, Bugatti Automobiles SAS, is a foreign corporation, with a principal place of business located at 1 Chateau St. Jean, 67120, in Dorlisheim, France. Although it conducts business in Troy, Michigan, it has not registered with the Michigan Department of Energy, Labor & Economic Growth as required.

3. Jurisdiction is proper in the Oakland County Circuit Court because Plaintiff consents to jurisdiction; Defendant Bugatti SAS maintains an agent/servant/franchisee in the City of Troy, Oakland County, Michigan, and has purposely avails itself of the privilege of doing business in Oakland County, Michigan; and the contract at issue was entered into in Oakland County, Michigan.

4. The amount in controversy in this cause exceeds Twenty Five Thousand (\$25,000.00) Dollars or is otherwise within the jurisdiction of this Court.

GENERAL ALLEGATIONS

5. In early September of 2008, Mr. Zekelman visited Bugatti Troy and met with Ross Dressel, a Bugatti Troy salesperson.

6. Bugatti Troy is in the business of selling automobiles for personal or family use.

7. During his meeting with Mr. Dressel, Mr. Zekelman expressed an interest in purchasing a 2009 Bugatti Veyron 16.4 automobile.

8. Mr. Dressel indicated that Bugatti Troy could obtain and sell to Mr. Zekelman a 2008 Bugatti from a seller in California for approximately \$1,500,00.00 USD. In the alternative, Mr. Dressel offered to sell a 2009 Bugatti Veyron 16.4 automobile for €1,100,000 (at the time, approximately \$1,553,354.57 in U.S. dollars).

9. On September 5, 2008, upon execution of a Vehicle Purchase Agreement with Bugatti Troy, Mr. Zekelman agreed to purchase an "Italian Red 2009 Bugatti Veyron 16.4 Coupe" for \$ 1,553,354.57. **Ex. A.**

10. In order to further accessorize his vehicle, Mr. Zekelman completed a Car Configuration Order Form that identified the specific interior color, seat style, interior combination, and warranty, that Mr. Zekelman was agreeing to purchase. **Ex. B.**

11. Pursuant to the purchase and sale of the Italian Red 2009 Bugatti Veyron 16.4 Coupe, Mr. Zekelman also executed a Buyer's Acknowledgment of Special Conditions ("Acknowledgment"). **Ex. C.**

12. The Acknowledgment defined the Buyer as "Mr. Barry Zekelman" and the Dealer as "Bugatti Troy."

13. Paragraph 1 of the Acknowledgment provided that the "Buyer has agreed to purchase the Ordered Vehicle from the Dealer, as provided in Buyer's Order."

14. Paragraph 3 of the Acknowledgment provided that Mr. Zekelman was obligated to pay an advance payment ("Advance Payment") of \$427,935.00 USD by September 10, 2008.

15. Paragraph 3 of the Acknowledgment further provided that the Advance Payment was non-refundable, "except in case of cancellation of the Buyer's Order by reason of the unavailability of the Ordered Vehicle, as provided in Section 6 of [the] Acknowledgment."

16. Paragraph 6 of the Acknowledgment provided that "[i]f the Dealer notifies the Buyer in writing that the Ordered Vehicle may never become available, the Buyer's Order will automatically be cancelled, without any further notice to Buyer."

17. Paragraph 6 of the Acknowledgment further provided that "if the Dealer is for any reason unable to deliver the Ordered Vehicle to the Buyer by the end of 1st quarter of 2009, the Buyer may elect to cancel the Buyer's Order by written notice to the Dealer,

received by the Dealer not more than ten (10) days after the Buyer has received notice from the Dealer...”

18. On September 8, 2008, Mr. Zekelman wired the sum of \$427,935.00 to Bugatti Troy, as the required advance payment.

19. At some point thereafter, Bugatti Troy forwarded the Advance Payment to Bugatti USA. Bugatti USA then forwarded the Advance Payment to Bugatti SAS.

20. On December 15, 2009, Mr. Zekelman wired the remaining \$1,125,419.57 USD to Bugatti Troy.

21. At some point thereafter, Bugatti Troy forwarded the wired funds to Bugatti USA. Bugatti USA then forwarded wired funds to Bugatti SAS.

22. On December 23, 2008, at 9:22 a.m., Mr. Dressel informed Mr. Zekelman via email that Bugatti Troy would not be delivering to Mr. Zekelman an Italian Red 2009 Bugatti Veyron 16.4 Coupe. Instead, Mr. Dressel offered to deliver a 2008 Bugatti. **Ex. D.**

23. Less than an hour later, at 10:09 a.m., Mr. Zekelman responded to Mr. Dressel’s email, refusing to accept the 2008 Bugatti and re-iterating his desire for a 2009 Italian Red Bugatti Veyron 16.4 Coupe. **Ex. E.**

24. On the same day, at 12:32 p.m., Mr. Dressel informed Mr. Zekelman via email that a 2009 Italian Red Bugatti Veyron 16.4 Coupe would never be available since Bugatti SAS would not be building any 2009 models. **Ex. F.**

25. Immediately thereafter, Mr. Zekelman demanded from Bugatti Troy a full refund of the 1,553,354.57 USD that Mr. Zekelman had wired to Bugatti Troy.

26. In an email dated January 5, 2009, Bugatti Troy reassured Mr. Zekelman that the “refund... process [was] underway.” **Ex. G.**

27. On January 23, 2009, after still not having received a full refund, Mr. Zekelman, through counsel, again demanded a refund of the amounts paid. **Ex. H.**

28. On January 30, 2009, counsel for Bugatti Troy informed Counsel for Mr. Zekelman that the refund was forthcoming.

29. As of the date of filing of this Complaint, neither Bugatti Troy, Bugatti USA, nor Bugatti SAS has refunded the \$1,553,354.57 that Mr. Zekelman wired to Bugatti Troy as payment for the purchase of the 2009 Italian Red Bugatti Veyron 16.4 Coupe.

COUNT I: BREACH OF CONTRACT

30. Plaintiff incorporates paragraphs 1 through 31 as if fully restated herein.

31. Mr. Zekelman entered into a contract with Bugatti Troy whereby Bugatti Troy agreed to sell and Mr. Zekelman agreed to purchase a 2009 Italian Red Bugatti Veyron 16.4 Coupe for \$1,553,354.57. At all times pertinent hereto, Bugatti Troy was acting as the agent for Bugatti Automobiles, SAS.

32. Pursuant to this contract, Bugatti Troy agreed to refund any amounts paid "in case of cancellation... by reason of the unavailability of the Ordered Vehicle."

33. On December 23, 2009, Bugatti Troy informed Mr. Zekelman that the ordered vehicle would never become available.

34. Despite having received full payment in the amount of \$1,553,354.57, Bugatti Troy failed to deliver the 2009 Italian Red Bugatti Veyron 16.4 Coupe to Mr. Zekelman.

35. Despite having informed Mr. Zekelman that the 2009 Italian Red Bugatti Veyron 16.4 Coupe would never be available, Bugatti Troy failed to refund the \$1,553,354.57.

36. Bugatti Troy has breached its contract with Mr. Zekelman by failing to deliver the 2009 Italian Red Bugatti Veyron 16.4 Coupe and by failing to refund Mr. Zekelman the \$1,553,354.57 that he paid for the vehicle.

37. Mr. Zekelman has been damaged by Bugatti Troy's breaches of its contract with Mr. Zekelman, for which Bugatti Automobiles SAS is vicariously liable.

WHEREFORE, Plaintiff requests judgment on his behalf against Defendant, Bugatti Automobiles SAS in an amount in excess of \$25,000, together with costs, interest, and attorneys' fees.

COUNT II: VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

38. Plaintiff incorporates paragraphs 1 through 39 as if fully restated herein.

39. Bugatti Troy is in the business of selling automobiles for personal or family use. It operates as the agent for Bugatti Automobiles SAS.

40. In representing to Mr. Zekelman that Bugatti Troy would be delivering to him a 2009 Italian Red Bugatti Veyron 16.4 Coupe, but instead tendering a 2008 Bugatti for delivery, Bugatti Troy represented that the delivered automobile would be of a "particular style or model", when it in fact was not, in violation of MCL 445.903(1)(e).

41. In representing to Mr. Zekelman that Bugatti Troy would be delivering to him a 2009 Italian Red Bugatti Veyron 16.4 Coupe, but instead tendering a 2008 Bugatti for delivery, Bugatti Troy "caused a probability of confusion or misunderstanding with respect to the authority of a salesperson to negotiate the final terms of a transaction", in violation of MCL 445.903(1)(m).

42. In representing to Mr. Zekelman that Bugatti Troy would be delivering to him a 2009 Italian Red Bugatti Veyron 16.4 Coupe, but instead tendering a 2008 Bugatti for

deliver, Bugatti Troy "failed to reveal a material fact, the omission of which tended to mislead or deceive the consumer, and which fact could not reasonably have been known to the consumer", in violation of MCL 445.903(1)(s).

43. In failing to refund the full amount paid after the contract was cancelled in accordance with section 6 of the Acknowledgment, Bugatti Troy violated MCL 445.903(1)(u).

44. Mr. Zekelman has suffered a loss as a result of Bugatti Troy's violations of the Michigan Consumer Protection Act.

45. Pursuant to MCL 445.911, Mr. Zekelman is entitled to recover the damages sustained, in addition to his costs and attorneys fees.

WHEREFORE, Plaintiff requests judgment on his behalf against Defendant, Bugatti Automobiles SAS in an amount in excess of \$25,000, together with costs, interest, and attorneys' fees.

COUNT III: RESCISSION

46. Plaintiff incorporates paragraphs 1 through 47 as if fully restated herein.

47. On or about September 5, 2009, Mr. Zekelman negotiated with Bugatti Troy and Mr. Ross Dressel, a salesperson employed by Bugatti Troy, with respect to the purchase of a 2009 Italian Red Bugatti Veyron 16.4 Coupe for the price of \$1,553,354.57. At all times, Bugatti Troy was acting as agent for Bugatti Automobiles SAS

48. Bugatti Troy, through Mr. Dressel, represented to Mr. Zekelman that the delivered automobile would be a 2009 Italian Red Bugatti Veyron 16.4 Coupe.

49. Mr. Zekelman believed and relied on the representations made by Mr. Dressel and was induced to sign the Vehicle Purchase Agreement.

50. Mr. Zekelman thereafter wired \$1,553,354.57 to Bugatti Troy for the purchase of the 2009 Italian Red Bugatti Veyron 16.4 Coupe.

51. As Bugatti Troy knew or should have known, Bugatti Troy would not be able to deliver a 2009 Italian Red Bugatti Veyron 16.4 Coupe as promised.

52. Bugatti Troy notified Mr. Zekelman that it would not be able to deliver the 2009 Italian Red Bugatti Veyron 16.4 Coupe as promised.

53. Mr. Zekelman thereafter demanded a full refund of the \$1,553,354.57 USD that he had forwarded to Bugatti Troy for the purchase of the 2009 Italian Red Bugatti Veyron 16.4 Coupe.

54. Bugatti Troy has failed to refund the \$1,553,354.57 USD, despite its obligation to do so under section 6 of the Acknowledgment.

55. Mr. Zekelman is entitled to a rescission of his contract with Bugatti Troy and a full refund of the amounts forwarded to Bugatti Troy for the purchase of the 2009 Italian Red Bugatti Veyron 16.4 Coupe.

WHEREFORE, Plaintiff requests judgment on his behalf against Bugatti Automobiles SAS in an amount in excess of \$25,000, together with costs, interest, and attorneys' fees.

COUNT IV: UNJUST ENRICHMENT

56. Plaintiff incorporates paragraphs 1 through 57 as if fully restated herein.

57. Bugatti Troy, Bugatti USA, and Bugatti SAS have received and are continuing to receive the benefit of the \$1,553,354.57 that Mr. Zekelman paid to Bugatti Troy for the purchase of a 2009 Indian Red Bugatti Veyron 16.4 Coupe that he never received.

58. Bugatti Troy, Bugatti USA, and Bugatti SAS are not entitled to receive the aforementioned benefits and have therefore been unjustly enriched.

59. It would be inequitable for Bugatti Troy, Bugatti USA, and Bugatti Automobiles SAS to retain the benefit of the \$1,554,354.57 that they received for the purchase of a vehicle that was never delivered to Mr. Zekelman.

WHEREFORE, Plaintiff requests judgment on his behalf against Bugatti Automobiles SAS in an amount in excess of \$25,000, together with costs, interest, and attorneys' fees.

COUNT V: CONVERSION

62. Plaintiff incorporates paragraphs 1 - 61 as if fully restated herein.

63. Defendant had an obligation under both the Vehicle Purchase Agreement and the Buyer's Acknowledgment of Special Conditions to return the deposited monies to the Plaintiff in the event the Ordered Vehicle may never become available, and, thus, there was an obligation to return the specific money at issue.

64. The failure to return the specific money at issue, upon notification by the Plaintiff of his election to cancel the order, amounts to conversion of the money to the use of the Defendant.

65. The failure to return the specific money at issue, upon notification by the Plaintiff of his election to cancel the order, amounts to a distinct act of domain wrongfully exerted over the Plaintiff's personal property in denial of or inconsistent with the Plaintiff's rights in that specific money.

66. Pursuant to MCL §600.2919a, Plaintiff is entitled to treble damages.

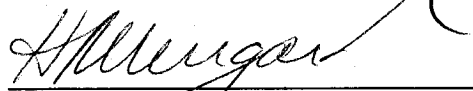
WHEREFORE, Plaintiff requests judgment on his behalf against Bugatti Automobiles SAS in an amount in excess of \$25,000, together with treble damages, costs, interest, and attorneys' fees.

COUNT VI: CLAIM AND DELIVERY

67. Plaintiff incorporates paragraphs 1 - 66 as if fully restated herein.
68. Plaintiff is entitled to recover the goods and chattels, namely the cash deposited with the Defendant, which has been unlawfully detained.
69. The property claimed under this Count is \$1,553,354.57 USD.
70. The value of the property claimed under this Count is \$1,553,354.57 USD.
71. The property claimed under this Count is independent of any other property.
72. Because the property claimed under this Count was unlawfully detained, in that it was not returned to the Plaintiff despite a clear contractual obligation to do so, claim and delivery is an appropriate action. The property described has already been concealed from the Plaintiff, and his use of the property has been substantially impaired, as has his ability to earn interest on the money.

WHEREFORE, Plaintiff requests judgment on his behalf against Bugatti Automobiles SAS in the amount of \$1,553,354.57, together with an Order requesting that Plaintiff be awarded possession of that amount until final judgment, together with costs, interest, and attorneys' fees. Plaintiff requests that this Court order an immediate hearing on a motion to determine possession of the property pending final judgment.

Respectfully submitted,



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