

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

<b>SPITLER, INC.,</b>	:
<b>Plaintiff</b>	:
	: <b>No. 06-02-049</b>
<b>vs.</b>	:
	:
<b>HOWARD HOSTRANDER,</b>	: <b>Plaintiff's</b>
<b>Defendant</b>	: <b>Motion for Summary Judgment</b>

**OPINION AND ORDER**

Defendant Howard Hostrander purchased a motor home RV June 1, 2000 from Plaintiff Spitler, Inc., a dealer in recreational vehicles. The year 2000 recreational vehicle was manufactured by Four Winds International Corporation.

Following his purchase of the motor home, Defendant experienced numerous problems with it including leakage of water into the motor home.

After efforts by Four Winds and Plaintiff Spitler to repair the motor home did not satisfy Defendant Hostrander, the Defendant e-mailed Four Winds on December 5, 2001 that if his problems with the motor home were not resolved he intended to file a Complaint with the Attorney General's Office, put a sign on the vehicle that he bought a lemon and drive it around the state and design a Web page with all of the repairs listed. Hostrander deposition, pp. 9, 10, 11, Exhibit 6.

To resolve the Defendant's Complaint, Plaintiff Spitler entered into negotiations with Defendant Hostrander in which the Defendant would trade in the 2000 vehicle and be paid \$5,000 in exchange for a new Four Winds 20002 recreational vehicle. Hostrander deposition p. 10, Exhibit 6.

Defendant Hostrander was not willing to except this offer. Defendant Hostrander indicated if he did not get a better offer than this, he would design a Web page to publicly report his problems with the recreational vehicle.

The parties continued to negotiate and exchanged information regarding a potential trade-in of the 2000 RV. In a December 13, 2001 e-mail, Mr. Hostrander indicated he had a meeting with the Attorney General's Office, and that he was advised to hold off until he heard a new offer. Mr. Hostrander indicated if Four Winds and Spitler did not come up with a better offer for a trade-in, he was going to do what he had previously threatened to do in his e-mail, including designing a Web site, which he would disseminate to the public. Hostrander deposition, p. 14.

At the time, Four Winds was only willing to take \$5,000 off the trade-in price of a new RV and Mr. Hostrander rejected this offer. Hostrander deposition, p. 16. Four Winds had sent Defendant Hostrander a written settlement and Release of all claims, which contained the \$5,000 figure to be paid by Four Winds to Spitler as part of the trade-in on a new 2002 RV. In an e-mail to Four Winds on December 25, 2001, Defendant Hostrander complained that he would not sign the release and give up his "right to free speech for \$5,000." He warned Four Winds and Plaintiff Spitler that if they could not do better (in regard to their offer), he "will continue with Web site design already in progress" and he would inform everyone about the product. See e-mail December 25, 2001, deposition, Exhibit 10.

Ultimately, Four Winds and Plaintiff increased their offer to Defendant Hostrander and an agreement was reached between the parties to settle the dispute.<sup>1</sup>

On January 24, 2002, Defendant Hostrander came to Plaintiff Spitler's business location and signed a document entitled, "Settlement and Release of all Claims". This settlement and release indicated that in consideration of payment to Spitler of \$6,500.00 from Four Winds toward the difference in the trade-in of a model year 2000 Four Winds RV for a new model year 2002 Four Winds RV, Defendant Hostrander would release Four Winds and Spitler from any and all

claims arising out of the sale of the 2000 RV. The last paragraph of the release signed by Defendant Hostrander stated as follows: “The undersigned further agrees not discuss or disclose the terms or circumstances involved in this agreement with any other party.”

See Plaintiff Exhibit A to the deposition of Defendant Hostrander.

Pursuant to the agreement, Mr. Hostrander picked the new 2002 motor home from Spitler on February 5, 2002.

Subsequent to February 5, 2002, after Mr. Hostrander experienced problems with the new 2002 RV, Defendant Hostrander published a Web site entitled R.V. Lemon, which publicly discussed Mr. Hostrander’s dissatisfaction and complaints about the 2000 RV. Plaintiff Spitler, through its attorney requested that Defendant shut down the Web site in relation to discussion of the 2000 RV in light of the settlement between the parties. Defendant Hostrander refused to do this and the Web site remains open to the public.

Plaintiff Spitler filed this lawsuit on December 7, 2004. The two Counts subject of the summary judgment motion are Count I, Breach of Contract concerning the publication of the Web site in regard to the 2000 vehicle and Count 4, Request for Permanent Injunction to preclude Defendant from discussing the circumstances involved in the Agreement in regard to the 2000 RV.

In reviewing the deposition of Defendant Hostrander, it is apparent that he bargained hard to obtain the monies involved in the Settlement of the matter concerning the 2000 RV, and he explicitly warned the opposing parties that if they did not reach a settlement he would publish a Web site discussing the 2000 RV, and his feelings that the vehicle was a “Lemon”. It is apparent Defendant Hostrander was aware that if he was to reach a settlement, Four Winds and Plaintiff Spitler would require him to cease his plan to publish this Web site in regard to the 2000 RV. In his

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<sup>1</sup> The \$5,000 figure was raised to \$6,500.00.

e-mail of December 25, 2001, deposition Exhibit 10, he complains that Spitler and Four Winds want him “to give up any right to free speech for \$5,000.” He then warns Four Winds and Spitler that if they “can not do better than this he will continue with the Web site design already in progress.” He indicates he would sooner do this, “than sign away my right to free speech”, and any other constitutional rights I have.”

These statement made by Mr. Hostrander in the negotiation clearly indicates he was agreeing in settling the claim in regard to the 2000 RV to not publish a Web site where he would discuss the 2000 RV.

Mr. Hostrander’s claim in his deposition that he only believed the Settlement and Release he signed meant he could not publicly reveal that Plaintiff Spitler and Four Winds paid him \$6,500.00,<sup>2</sup> and that he could still publish the Web site discussing the 2000 RV is obviously belied by the evidence of record.

Defendant Hostrander clearly acknowledged he reviewed the settlement and thoroughly went through it before he signed it. Deposition pp. 25-26. He also acknowledged in his deposition testimony that he understood he would be giving up or selling his free speech right for the monetary sum he was paid to settle the matter concerning the 2000 RV. Deposition pp. 28-29.

While the Court understands that Defendant Hostrander is dissatisfied with the 2002 Four Winds RV, which prompted him to publish his Web site in August 2002, he is free to purse his claims concerning the 2002 RV. In fact, this is what Defendant Hostrander has done in filing a legal action against Four Winds and Plaintiff Spitler to case No. 05-00583. Likewise, he may air his complaints about the 2002 RV in a Web Site or in any other way that he would like because he has not signed a Settlement and Release of Claims in regard to the 2002 RV.

To the contrary, he has signed such agreement in settling his claim for the 2000 RV and he has been paid consideration for his settlement. The record of the case shows clearly the intent of the parties in regard to a Web Site and public discussion of this matter and that Defendant well understood he was bargaining away his free speech rights in this regard.

Thus, the Court is compelled to grant Plaintiff's Motion for Summary Judgment as no material issue exists.

**ORDER**

AND NOW, this \_\_\_\_ day of December 2006, the Court **GRANTS** Plaintiff's partial Motion for Summary Judgment. Defendant Howard Hostrander is enjoined from discussing the circumstances of the 2000 RV on his Web site or in any other manner. The preclusion does not apply to any such discussion concerning the 2002 RV as no settlement has been entered in regard to that matter.

If Plaintiff is seeking monetary damages as to Count 1, Plaintiff and Defendant should agree to an arbitration trial time frame so the damage issue can be scheduled for an arbitration trial. If Plaintiff is not seeking collection of damages, they should report this fact to the Court in writing.

By The Court,

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<sup>2</sup> See Mr. Hostrander's deposition testimony, at p. 19.

Kenneth D. Brown, P.J.

cc: Marc Lovecchio, Esquire  
Michael Zicoello, Esquire  
Richard Schluter, Esquire  
Lee Roberts, Esquire  
146 E Water St  
Lock Haven PA 17745  
Work File  
Gary Weber, Esquire (Lycoming Reporter)