

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

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LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MICHAEL HUNT

CIVIL ACTION NO. _____

VERSUS

JUDGE **09-3128**

MARK TOWLE, individually
and d/b /a "Gotham Garage"

MAGISTRATE SECTION

**COMPLAINT FOR BREACH OF CONTRACT
AND FOR DAMAGES, WITH JURY DEMAND**

NOW INTO COURT, through undersigned counsel, comes Michael Hunt, an individual of the age of majority, domiciled in the Parish of Jefferson, State of Louisiana, within the Eastern District of Louisiana of the United States District Court, who, with respect represents:

1.

Made Defendant herein is Mark Towle, an individual of the age of majority, domiciled in and a resident of the State of California, whose address is believed to be 11552 Norgate Circle, Corona, California, 92880, and who does business as "Gotham Garage".

2.

This Court has original jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. § 1332, for the reason that diversity of citizenship exists between Plaintiff and Defendant, and the amount in controversy exceeds the sum of \$75,000, exclusive of

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interest and costs.

3.

On or about June 11, 2008, Plaintiff and Defendant entered into an agreement, pursuant to which Defendant, Mark Towle, agreed to produce for Plaintiff a reproduction of a 66 Batmobile, which vehicle Plaintiff intended to use for both philanthropic and commercial purposes, as described hereinbelow.

4.

Plaintiff and Defendant agreed that Plaintiff would pay to Defendant the sum of Ninety Thousand (\$90,000.00) and No/100 Dollars, as consideration for the production of a custom 66 Batmobile.

5.

Defendant at all times held himself out as having the talent, ability and experience to reproduce custom cars, including the 66 Batmobile, and actively solicited customers across the globe through his website at www.gothamgarage.net, and other means.

6.

In the agreement between the parties, Defendant agreed to construct the vehicle for Plaintiff in "a timely manner", with the target date for delivery to be before Halloween, 2008. Plaintiff and Defendant thoroughly discussed Plaintiff's interest in and expectation of having the batmobile available for the enjoyment of New Orleans area children at the Audubon Zoo "Boo at the Zoo" Halloween party on October 31, 2008. Plaintiff explained to Defendant that the event included children from the New Orleans Children's Hospital as guests, and that the Children's Hospital was one of Plaintiff's principal and longtime philanthropic projects.

7.

Defendant at all times knew that time was of the essence; the release of the movie "Dark Knight" in 2008 had stimulated interest in Batman and Batman related products. Plaintiff expressly informed Plaintiff that he not only intended to use the 66 Batmobile at the Halloween event, but intended to use the 66 Batmobile for the purpose of selling Batman related products at shopping malls during the Christmas, 2008 holiday season.

8.

As of the date of the filing of this lawsuit, Plaintiff has paid to Defendant the sum of \$85,000.00.

9.

Despite the payment of \$85,000 to Defendant, and despite Defendant's contractual commitment to complete the vehicle in a timely manner with a target delivery date of prior to Halloween, 2008, the vehicle has not been completed, has not been delivered, and Defendant has failed and refused to provide Plaintiff with a date, time and place where he or his representative can inspect the vehicle, despite multiple requests over a period of several months for an opportunity to inspect.

10.

Further, Defendant affirmatively represented to Plaintiff that Defendant had determined that the construction of said 66 Batmobile, and Plaintiff's use thereof for commercial purposes, did not and would not violate any intellectual property rights of any third party.

11.

Plaintiff believes and therefore alleges that Defendant has made multiple affirmative

material misrepresentations to Defendant, which misrepresentations include but are not limited to the status of the construction of the vehicle, the projected completion date, and the existence of intellectual property issues relevant to the production of and/or use of the 66 Batmobile.

12.

As a result of Defendant's failure to comply with the terms, conditions, and known intent of the contract, Plaintiff is entitled to a full refund of the \$85,000.00 he paid to Defendant, and to termination of the agreement between the parties.

13.

Further, Plaintiff submits that Defendant was in bad faith in the confection and/or the performance of the contract, and Defendant is therefore liable under Louisiana Civil Code Art. 1997 for all the damages that are a direct consequence of Defendant's failure to perform, including but not limited to Plaintiff's attorney fees, interest on the \$85,000 from the date of each payment, and lost profits from the business venture for which Plaintiff intended to use the 66 Batmobile.

14.

Additionally, Plaintiff submits that Defendant knew that the contract was intended, in part, to gratify Plaintiff's nonpecuniary interest in providing pleasure and enjoyment to children, including the young patients of the New Orleans Children's Hospital, a facility of which he has been a longtime philanthropic benefactor. Accordingly, Plaintiff is entitled to nonpecuniary loss as a result of the acts and omissions set forth herein, including embarrassment and humiliation in the community, as well as emotional distress.

15.

Plaintiff is entitled to and requests a trial by jury.

Wherefore, premises considered, Plaintiff, Michael Hunt, prays that after due proceedings had, including a trial by jury, there be judgment herein, in his favor and against Defendant, Mark Towle, granting to Plaintiff reimbursement of the sum of \$85,000 paid to Defendant, together with interest from the date of each payment, attorney fees, lost profits, an award for emotional distress, embarrassment and humiliation, and judicial interest on all sums due. Plaintiff further prays that this Court determine that the contract between the parties is terminated and that neither party has any further rights or obligations thereunder.

And for all just and equitable relief to which he may be entitled.

Respectfully submitted,

LISA BRENER



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