

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

03 MAY 19 P2:34

BETTY J. GOULD CLERK.
BY W DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

Frank Bober, a single man,

Plaintiff,

v.

The British Northwest Land-Rover
Company, Charles Kellogg, Jane Doe
Kellogg, and the Marital Community
composed thereof;

Defendants.

Cause No. 03 2 00966 8

COMPLAINT

COMES NOW, Plaintiff Frank Bober, a single man, by and through his attorney of record, Richard A. Finnigan, attorney at law, and hereby bring this Complaint, against the Defendants, The British Northwest Land-Rover Company and Charles Kellogg, and Jane Doe Kellogg and the Marital Community composed thereof, and allege and state as follows:

I. PARTIES:

1.1 Plaintiff is an individual residing in the state of New York.

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Olympia, WA 98502
(360) 956-7001

COMPLAINT

1 1.2 The British Northwest Land-Rover Company is an unincorporated entity serving
2 as the alter ego of Charles Kellogg.

3
4 1.3 Charles Kellogg is an individual residing in Thurston County, Washington.

5 1.4 Jane Doe Kellogg is the fictitious name attached to Charles Kellogg's wife, if
6 there be any.

7 1.5 Charles Kellogg and Jane Doe Kellogg constitute the marital community.
8

9
10 2. VENUE AND JURISDICTION.

11 2.1 This Complaint relates to restoration and remodeling work performed by Charles
12 Kellogg ("Mr. Kellogg") while acting as the Director of Restorations for the
13 British Northwest Land-Rover Company ("BNWLRC") on a Land Rover
14 Defender 110 owned by Plaintiff.

15 2.2 This is a matter brought pursuant to Chapter 7.64 RCW and Chapter 46.71 RCW,
16 and jurisdiction is appropriate in Superior Court.

17 2.3 The action of Defendants took place in Thurston County and Mr. Kellogg resides
18 in Thurston County. Further, the automobile in question is currently located in
19 Thurston County. Venue is proper in Thurston County.
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23 3. FACTS.

24 3.1 On or about February, 2001, Plaintiff contacted Mr. Kellogg about a project to
25 convert Plaintiff's limited production 1993 Land Rover Defender 110, number 22
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1 of 500 produced for the United State market, into a convertible. (The Land Rover
2 Defender 110 along with all original parts and all additional parts necessary to
3 perform the conversion of the Defender 110 into a convertible is referred to herein
4 as the "Automobile").
5

6 3.2 On September 26, 2001, Mr. Kellogg provided Plaintiff with a written estimate
7 via e-mail of \$4,000.00 to \$5,000.00 for all parts and labor necessary to convert
8 the Automobile into a convertible (the "Original Estimate"). The only additional
9 costs mentioned in Mr. Kellogg's Original Estimate were for paint and work
10 associated with painting the Automobile.
11

12 3.3 For the first couple of months, Plaintiff received bills in keeping with the Original
13 Estimate and paid \$2,831.34 toward the Original Estimate with the understanding
14 that this payment was at least half of the total needed to complete the Automobile.
15

16 3.4 After several months, in roughly September or October of 2001, during which
17 Plaintiff assumed that Mr. Kellogg was drawing near to completing the restoration
18 of the Automobile in accordance with the Original Estimate, Plaintiff received a
19 bill from Mr. Kellogg and BNWLRC for more than \$12,918.88.
20

21 3.5 Additionally, despite the bill of \$12,918.88, a total roughly \$8,000.00 more than
22 the high end of the Original Estimate, Mr. Kellogg informed Plaintiff that the
23 Automobile was not complete and would not be complete even if Plaintiff
24 satisfied the bill of \$12,918.88.
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3.6 When pressed for a final estimate, Mr. Kellogg provided an e-mail estimate of \$24,000.00 to complete the Automobile. After negotiation, on February 4, 2002, Mr. Kellogg provided a revised final written estimate of \$17,731.40 to complete the Automobile in addition to the outstanding bill of \$12,918.88 (the "Final Estimate").

3.7 Plaintiff accepted this Final Estimate and paid Mr. Kellogg and BNWLRC \$18,000.00 on February 26, 2002, representing full and complete payment of the outstanding bill of \$12,918.88 and \$5,081.12 toward the Final Estimate of \$17,731.40 to complete the Automobile. A balance of \$12,650.28 (the "Remaining Balance" as adjusted by payments described below) remained on the Final Estimate.

3.8 On April 1, 2002, Plaintiff made a payment to Mr. Kellogg of \$2,679.84 towards the Remaining Balance, which lowered the Remaining Balance to \$9,970.44. On April 22, 2002, Plaintiff made a payment of \$4,061.65, which lowered the Remaining Balance to \$5,908.79. On May 29, 2002, Plaintiff made a payment of \$4,000.00, which lowered the Remaining Balance to \$1,908.79. In total, Plaintiff had paid \$31,572.83, representing \$26,572.83 more than the high end of the Original Estimate.

3.9 Despite the Final Estimate and the payments made lowering the Remaining Balance to \$1,908.79, on July 2, 2002, Mr. Kellogg has sent bills totaling more than \$20,000.00, far in excess of the Remaining Balance. Plaintiff refused to pay

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1 Mr. Kellogg more than the Remaining Balance and demanded that Mr. Kellogg
2 complete the Automobile as contracted.
3

4 3.10 Due to Mr. Kellogg's repeated instances of seeking payment far in excess of any
5 written estimate, Plaintiff refused to pay the final amount of \$1,908.79 on the
6 Remaining Balance until Mr. Kellogg delivered the completed Automobile and
7 Plaintiff had an opportunity to inspect the Automobile.
8

9 3.11 Despite Plaintiff's refusal to pay Mr. Kellogg more than the Remaining Balance,
10 in September 2002, Mr. Kellogg submitted bills totaling more than \$16,000.00
11 with another "final" estimate seeking an additional \$20,000.00, which Mr.
12 Kellogg claims was necessary to complete the Automobile. However, even this
13 attempt of Mr. Kellogg to revise the Final Estimate did not include certain
14 "additional costs," as Mr. Kellogg wrote in an e-mail.
15

16 3.12 Thus, Mr. Kellogg seeks a total payment of more than \$67,000.00 for conversion
17 of the Automobile into a convertible, despite the Original Estimate of \$4,000.00
18 to \$5,000.00.
19

20 3.13 Plaintiff refused to accept Mr. Kellogg's attempt to alter the Final Estimate and
21 demanded that Mr. Kellogg return the Automobile. Mr. Kellogg refused to return
22 the Automobile.
23

24 3.14 Mr. Kellogg unlawfully retains the Automobile.
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1 4. FIRST CAUSE OF ACTION.

2
3 4.1 Plaintiff incorporates the facts and allegations of Paragraphs 1.1 through 3.14 into
4 this Cause of Action.

5 4.2 The Automotive Repair Act ("ARA"), Chapter 46.71 RCW, Defendants are
6 barred from recovering more than one hundred and ten percent of the amount
7 Plaintiff authorized for completion of the Automobile.

8 4.3 Plaintiff authorized total payment of \$33,520.22 to convert the Automobile into a
9 convertible (the "Authorized Amount").

10 4.4 One hundred and ten percent (110%) of \$33,520.22 is \$36,872.24.

11 4.5 Plaintiff has paid Defendants \$31,572.83.

12 4.6 The difference between \$36,872.24, representing one hundred and ten percent of
13 the Authorized Amount and \$31,572.83, the amount paid to date, is \$5,299.41.

14 4.7 Plaintiff tendered \$5,299.41 as the final sum to complete the Automobile with all
15 work having been performed in accordance with the specifications provided in the
16 e-mail correspondence between Plaintiff and Mr. Kellogg.

17 4.8 Defendants have rejected this tender under the ARA.

18 4.9 As a result, Defendants have violated the ARA and are liable to provide the
19 completed Automobile or all costs associated with having others perform these
20 services as well as Plaintiff's costs, including reasonable attorney's fees under
21 RCW 46.71.035.
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5. SECOND CAUSE OF ACTION

5.1 Plaintiff incorporates the facts and allegations of Paragraphs 1.1 through 4.9 into this Cause of Action.

5.2 The Final Estimate is a written contract between Plaintiff and Defendants.

5.3 Defendant has violated the written contract by refusing to provide the completed Automobile as promised under the written contract.

5.4 This violation constitutes a material breach of the written contract.

6. THIRD CAUSE OF ACTION

6.1 Plaintiff incorporates the facts and allegations of Paragraphs 1.1 through 5.4 into this Cause of Action.

6.2 Plaintiff and Defendant entered into an oral contract for the transformation of the Automobile into a convertible in exchange for a sum not to exceed \$33,520.22.

6.3 Plaintiff paid Defendant \$31,572.83 toward the total of \$33,520.22, with the parties agreeing that the Remaining Balance of \$1,908.79 would be paid upon completion and approval of the Automobile.

6.4 Plaintiff has tendered payment equal to or greater than the Remaining Balance of \$1,908.79 but Defendants have rejected this tender.

6.5 Defendants refused to provide the Automobile for the Authorized Amount.

6.6 Defendants have materially breached the oral contract.

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7. FOURTH CAUSE OF ACTION

7.1 Plaintiff incorporates the facts and allegations of Paragraphs 1.1 through 6.6 into this Cause of Action.

7.2 Plaintiff and Defendants had an implied contract for the conversion of the Automobile into a convertible for a sum certain of \$33,520.22.

7.3 Defendants materially breached the implied contract by refusing to provide the Completed Automobile for the amount of \$33,520.22 as agreed to in the implied contract.

7.4 Defendants have materially breached the implied contract.

8. FIFTH CAUSE OF ACTION

8.1 Plaintiff incorporates the facts and allegations of Paragraphs 1.1 through 7.4 into this Cause of Action.

8.2 Defendants provided the Original Estimate to Plaintiff for completion of the transformation of the Automobile into a convertible.

8.3 Defendants have received \$26,572.83 more than the Original Estimate and still have not provided Plaintiff with the completed Automobile.

8.4 Defendants have been unjustly enriched in the amount of \$26,572.83.

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9. SIXTH CAUSE OF ACTION

9.1 Plaintiff incorporates the facts and allegations of Paragraphs 1.1 through 8.4 into this Cause of Action.

9.1 The Consumer Protection Act (CPA), Chapter 19.86 RCW, prohibits Defendants from engaging in deceptive trade practices.

9.2 Defendants engaged in deceptive acts by consistently attempting to increase the amount of money Plaintiff was to pay for the completed Automobile in violation of the previous written estimates.

9.3 Under the ARA, RCW 46.71.035; these actions constitute a *per se* deceptive trade practice.

9.4 These deceptive practices occurred in the conduct of Defendant's automotive repair and restoration business, which is a trade or commerce.

9.5 Under RCW 46.71.005, this deceptive practice is *per se* a matter affecting the public interest.

9.6 These deceptive practices have injured the Plaintiff and/or his property.

9.7 The injury is a direct result of Defendants' deceptive acts and practices.

9.8 Therefore, Defendants have violated the CPA.

10. SEVENTH CAUSE OF ACTION

10.1 Plaintiff incorporates the facts and allegations of Paragraphs 1.1 through 9.9 into this Cause of Action.

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1 10.2 Under RCW 7.64.020, Plaintiff is entitled to replevin of the Automobile.

2 10.3 Plaintiff is willing to provide a bond in an amount to be set by the Court in
3 accordance with Chapter 7.64 RCW.

4 10.4 Plaintiff has filed, or will file all documents necessary to seek replevin of the
5 Automobile.

6 10.5 Therefore, the Court should order the Sheriff's Office to obtain the Automobile
7 from BNWLRC and return it to Plaintiff's representatives.
8

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11 11. PRAYER

12 11.1 Plaintiff prays for replevin of the Automobile.

13 11.2 Plaintiff prays for damages to be established at hearing or trial, but not to be less
14 than the cost of finishing the Automobile as well as any incidental or
15 consequential costs.

16 11.3 Plaintiff prays for treble damages under the Consumer Protection Act, Chapter
17 19.86 RCW.

18
19 Plaintiff prays for reasonable costs and attorney's fees under Chapter 46.71 RCW and
20 Chapter 19.86 RCW.

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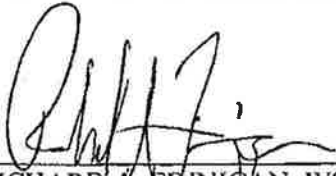
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11.4 Plaintiff prays for all other remedies this Court sees fit to award.

RESPECTFULLY SUBMITTED, this 19th day of May, 2003.


RICHARD A. FINNIGAN, WSBA # 6443
Attorney for Plaintiff, Frank Bober

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FILED
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03 MAY 20 P4:45

BETTY J. GOULD CLERK
BY W DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

Frank Bober, a single man,)
) Cause No. 03-2-00966-8
)
) Plaintiff,)
)
) PLAINTIFF'S MOTION FOR
) v.) ORDER TO SHOW CAUSE
)
)
) The British Northwest Land-Rover)
) Company, and Charles Kellogg and)
) Jane Doe Kellogg, and the Marital)
) Community Composed thereof,)
)
) Defendants.)

Plaintiff Frank Bober, by and through his attorney of record, Richard A. Finnigan, attorney at law, respectfully moves this Court for an Order to Show Cause why the Automobile, described more fully in the accompanying Affidavit of Frank Bober, should not be immediately returned to Plaintiff via replevin under RCW 7.64.020 and that Defendants be required to pay court costs and attorneys' fees of Plaintiff.

This Motion is based on the accompanying Affidavit of Frank Bober. That Affidavit shows that Plaintiff has satisfied all of the requirements under RCW 7.64.020 to

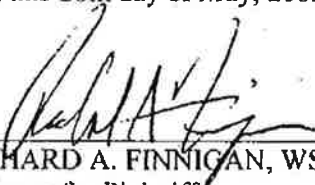
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MOTION FOR ORDER
TO SHOW CAUSE

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have the Automobile, as more fully described in the Affidavit, returned to Plaintiff via
action for replevin. Pursuant to RCW 7.64.035, Plaintiff is willing to post a reasonable
bond in the amount to be set by the Court.

RESPECTFULLY SUBMITTED, this 20th day of May, 2003.


RICHARD A. FINNIGAN, WSBA # 6443
Attorney for Plaintiff

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SUPERIOR COURT
THURSTON COUNTY WASH

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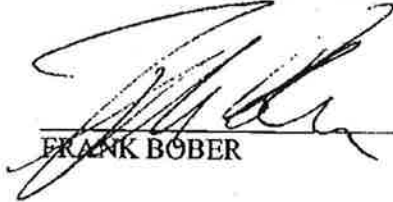
**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON**

Frank Bober, a single man,)	
)	Cause No. <u>03-2-00966-8</u>
Plaintiff,)	
)	
v.)	AFFIDAVIT OF FRANK BOBER
)	IN SUPPORT OF APPLICATION
The British Northwest Land-Rover)	FOR ORDER TO SHOW CAUSE
Company, and Charles Kellogg and)	
Jane Doe Kellogg, and the Marital)	
Community Composed thereof,)	
)	
Defendants.)	
)	

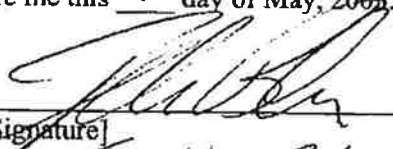
I, Frank Bober, hereby declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct.

1. I am over the age of eighteen and competent to testify.
2. I am the legal owner of a limited production 1993 Land Rover Defender 110, number 22 of 500 produced for the United State market (the "Automobile").
3. The Automobile is wrongfully detained by Defendants Charles Kellogg and the British Northwest Land-Rover Company.

4. The Automobile has not been taken for a tax, assessment, or fine pursuant to a statute and has not been seized under an execution or attachment against the property of the Plaintiff.
5. The approximate value of the Automobile is \$40,000.00.


FRANK BOBER

SUBSCRIBED AND SWORN to before me this 6 day of May, 2003.

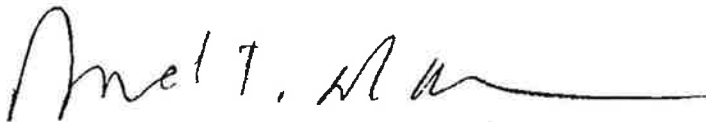

[Signature]

Franklin Bober
[Print name]

Notary Public in and for
the State of New York

Residing at: 717 6th Ave NYC NY 10010

My Commission Expires: _____



DANIEL T. MARRONE
Notary Public, State of New York
No. 01MA4950808
Qualified in Suffolk County
Commission Expires May 8, 2007

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SUPERIOR COURT
THURSTON COUNTY WASH

03 MAY 20 P4:45

BETTY J. GOULD CLERK
BY W 2
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

10 Frank Bober, a single man,)
11) Cause No. 03-2-00966-8
12 Plaintiff,)
13 v.) ORDER TO SHOW CAUSE
14)
15 The British North West Land-Rover)
16 Company, and Charles Kellogg and)
17 Jane Doe Kellogg, and the Marital)
18 Community Composed thereof,)
19 Defendants.)

20 THIS MATTER came before the Court on May 20, 2003 on Plaintiff's Motion for
21 an Order to Show Cause.

22 The Court heard oral argument from counsel for the Plaintiff. The Court
23 considered the Motion and supporting Affidavit of Frank Bober.

24 Based upon the argument of counsel and the evidence presented on May 20, 2003,
25 this Court being satisfied that an Order to Show Cause should be issued hereby enters the
26 following Order:

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28 Richard A. Finnigan
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(360) 956-7001

ORDER TO SHOW CAUSE

1
2 IT IS ORDERED:

- 3 1. Plaintiff's Motion is granted.
- 4 2. Defendants Charles Kellogg and The British Northwest Land-Rover Company are
5 hereby ordered to appear before Room 260, 264 or 100 at 9:30 a.m. on
6 June 6, 2003 and show cause why the limited production 1993 Land
7 Rover Defender 110 (the "Automobile") owned by the Plaintiff that is currently in
8 the possession of Defendants should not be immediately returned to the Plaintiff
9 upon the posting of an adequate bond by Plaintiff under RCW 7.64.035.
- 10 3. If Defendants fail to appear at the time and place set forth above, the Plaintiff
11 shall be entitled to replevin of the Automobile to be executed by the County
12 Sheriff's Office, and the Defendants shall be ordered to pay the costs requested by
13 Plaintiff and Plaintiff's reasonable attorneys' fees.
14
15

16
17 ENTERED in open Court this th 20 day of May, 2003.

18
19
20 
JUDGE/COMMISSIONER

21 Presented by:

22 Richard A. Finnigan
23 Attorney for Plaintiff
24 2405 Evergreen Park Dr.
25 Suite B-1
26 Olympia, WA 98502
27 (360) 956-7001
28

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FILED
SUPERIOR COURT
THURSTON COUNTY WASH

'03 JUN -5 11:40

BETTY J. GOULD CLERK
BY 5 DEPUTY

**IN THE SUPERIOR COURT OF STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

FRANK BOBER, a single man,)
) Cause No. 03-2-00966-8
Plaintiff,)
vs.) ANSWER
)
THE BRITISH NORTHWEST LAND-)
ROVER COMPANY, CHARLES KELLOGG,)
JANE DOE KELLOGG, and the marital)
community composed thereof,)
)
Defendants.)

I. ANSWER

COMES NOW the defendants herein who make the following answer to the complaint:

1.1 Defendants admit the following portions of the Complaint: 1.2 (except for the "alter ego" portion), 1.3, 1.4 (there is no wife), 2.1 (in part), 2.2 (in part), 2.3 (specifically, the automobile at issue is located in Thurston County, Washington, and venue is proper in Thurston County, Washington), 3.1 (in part—the original intent of the project was the conversion of the Land Rover from a hard top to a convertible top), 3.6 (in part—the plaintiff made a payment of approximately \$18,000.00 on February 26, 2002, as part of the total estimate [as such estimate applied as of February 26, 2002]; the \$18,000.00 was more than the outstanding balance at that time; but, the

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& Associates
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Phone: (360)705-3545**

1 \$18,000.00 was part of the plaintiff's approval for work which has exceeded \$40,000.00 to date), 3.8
2 (in part—as to payments made and dates of payments only, not as to application of payments or
3 plaintiff's rendition of the running balance), 3.11 (in part—the work authorized by the plaintiff and/or
4 recommended by the defendant is not completed; and, the defendant expect to be paid the full amount
5 of the current outstanding balance plus any additional labor and materials to complete the work
6 authorized by the plaintiff and/or recommended by the defendant), and 4.4.

7 1.2 Defendants deny the following portions of the Complaint: 1.5, 2.2 (in part—custom changes to the
8 body and equipment of an automobile may not be "automobile repair" as defined pursuant to RCW
9 46.71), 3.2 (as to date quoted, amounts quoted, and other descriptors—defendant admits to providing
10 the plaintiff with an appropriate written estimate, which was approved by the plaintiff, before the
11 defendant performed work on the project), 3.3 (invoices and payments were exchanged infrequently),
12 3.4 (defendant's records don't show an invoice of that amount having been sent to plaintiff), 3.5 &
13 3.6 (none of the facts set forth in 3.5 or 3.6 are accurate), 3.9 (the current outstanding balance for
14 work [parts & labor only] performed so far is \$15,948.63 [as of 6/3/03]), 3.10 (no such demand has
15 been made except by Complaint), 3.12, 3.13 (except, defendant refuses to return the automobile until
16 all amounts owed are paid), 3.14, 4.1, 4.2 (the Act does not apply in this case and/or the authorized
17 amount is disputed and cannot be fixed at this time), 4.3 (the authorization was based on a "to do" list
18 and not based upon a dollar amount), 4.5 (plaintiff has paid \$31,039.66), 4.6, 4.7 (no tender has been
19 provided—a letter of settlement was provided, but the letter did not contain a clear description of what
20 the plaintiff expected for the \$5,299.41 payment; that letter was answered with questions which have
21 been responded to with this Complaint), 4.8 & 4.9 (both as to ARA applicability and tender), 5.1, 5.3,
22 5.4, 6.1, 6.2 (plaintiff's allegation minimizes the agreement which was significantly more than just the
23 conversion from hard to soft top—with labor being performed at the rate of \$70.00 per hour and parts
24 charged at costs (+) and sub-contractor work, when necessary, at the going rate), 6.3, 6.4, 6.5, 6.6,
25 7.1, 7.2, 7.3, 7.4, 8.1, 8.2 (the term "Original" is being misused—the defendant provided a number of
26

27
28 **ANSWER TO COMPLAINT**
Page - 2

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1 estimates from the beginning of the project until the dispute arose), 8.3, 8.4, 9.1, 9.1 (2nd numbered
2 paragraph) (but, defendant agrees that the Consumer Protection Act is a statutory scheme whereby an
3 offender can be held accountable for certain practices as defined in the Act), 9.2, 9.3 & 9.5 (the
4 plaintiff suggests a misapplication of the ARA), 9.4, 9.6, 9.7, 9.8, 10.1, and 10.2 (under RCW
5 7.64.020 the court has discretion to order the vehicle released to the plaintiff so long as the plaintiff
6 post and appropriate bond).

7 1.3 Defendants have no personal knowledge of the following portions of the Complaint and therefore
8 deny same: 1.1, 2.1 (in part—ownership of the car has been assumed for purposes of doing business
9 with the plaintiff, but defendant demands proof of ownership if this matter is going to be litigated),
10 5.2, 10.3, 10.4, and 10.5.

11 II. AFFIRMATIVE DEFENSES

12 2.1 The plaintiffs have failed to state a complaint for which relief can be granted.

13 2.2 The statutes cited by the plaintiff do not apply to this situation.

14 III. COUNTER-CLAIMS

15 3.1 The plaintiff and defendant probably have an enforceable contract, but it will take significant
16 testimony to define it.

17 3.2 Once the contract is defined, the plaintiff will owe the defendant for the following types of
18 claims: labor, parts (plus commercially reasonable markup), and the costs associated with any
19 sub-contracts which have yet to be paid.

20 3.3 Once the contract has been defined, the court will have at least the following choices: (a) an
21 exchange of balance owed the defendant and the plaintiff takes possession of the car "as is,"
22 (b) an exchange of some amount of money, other than balance owed, and the plaintiff takes
23 possession of the car "as is," or (c) other scenarios (but, it is too early to predict them at this
24 time).

25 3.4 Since the plaintiff first sent the car to the defendant for modification (conversion of the hard
26

- 1 top to a soft top), the plaintiff has authorized a series of other repairs and modifications and
2 additions to the vehicle.
- 3 3.5 There was no particular priority scheme established by the parties—the order by which repairs,
4 modifications, and additions were accomplished was left up to the defendant alone.
- 5 3.6 There was no “final estimate.”
- 6 3.7 There was no deadline established for accomplishing all of the authorized repairs,
7 modifications, and additions.
- 8 3.8 The plaintiff failed to make payments as agreed.
- 9 3.9 The plaintiff’s failure to make payments as agreed has contributed to the amount of time
10 (delay) that the plaintiff now complains about.
- 11 3.10 The plaintiff authorized an ever increasing list of modifications, repairs, and additions.
- 12 3.11 The plaintiff’s authorizations constantly changed the plan for modifying, repairing, basically
13 changing the car.
- 14 3.12 The plaintiff’s authorizations contributed to the amount of time (delay) that the plaintiff now
15 complains about.
- 16 3.13 The plaintiff’s authorizations contributed to the amount of expense that the plaintiff now
17 complains about.
- 18 3.14 The automobile at issue is a 1993 Land-Rover Defender 110.
- 19 3.15 The automobile at issue is only one of 500 produced for the US market.
- 20 3.16 The authorized work had to all be special ordered and/or custom built because of the lack of
21 “standard” parts for such a vehicle.
- 22 3.17 The uniqueness of the automobile has contributed to the amount of time (delay) and expense
23 that the plaintiff now complains about.
- 24 3.18 The condition of the vehicle, when it arrived at the defendant’s shop, was such that the
25 plaintiff felt professionally bound to recommend significant repairs to the plaintiff.

1 3.19 The condition of the vehicle, when it arrived at the defendant's shop, contributed to the
2 amount of time (delay) and expense that the plaintiff now complains about.

3 IV. RELIEF REQUEST

4 WHEREFORE, the defendants respectfully request:

5 4.1 That the plaintiff's complaint be dismissed.

6 4.2 That the court assist the parties in resolving any appropriate dispute.

7 4.3 That the court assist the defendant to get paid for all of the time, costs, and delay that the
8 defendant is entitled to.

9 4.4 That the defendant's attorney's fees and other litigation costs be paid for by the plaintiff.

10 Presented this 5th day of June, 2003, by:

11 
12 _____
13 SANS M. GILMORE, WSB #21855
14 Attorney for Defendant

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

03 JUN 13 11:39

BETTY J. GOULD CLERK
BY _____
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

EX PARTE

Frank Bober, a single man,)	
)	Cause No. 03-2-00966-8
Plaintiff,)	
)	
v.)	ORDER AWARDING
)	POSSESSION OF PROPERTY
The British Northwest Land-Rover)	TO PLAINTIFF
Company, and Charles Kellogg and)	
Jane Doe Kellogg, and the Marital)	
Community Composed thereof,)	
)	
Defendants.)	

THIS MATTER came before the Court as a result of this Court's Order to Show Cause issued May 20, 2003.

The parties have stipulated to the return of the Automobile and the Property, as those terms are described below.

Law Office of
Richard A. Finnigan
2405 Evergreen Park Dr. SW
Suite B-1
Olympia, WA 98502
(360) 956-7001

ORDER AWARDING POSSESSION
OF PROPERTY TO PLAINTIFF

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Therefore, this Court being satisfied that possession of the Automobile and Property described below should be awarded to Plaintiff, hereby enters the following Order:

IT IS ORDERED:

1. The limited production 1993 Land Rover Defender 110, number 22 of 500 produced for the United States market (the "Automobile"), along with all existing parts either originally a part of the Automobile or purchased as part of the conversion of the Automobile from a hardtop into a convertible, including but not limited to the soft-top (the "Property"), shall be immediately returned to Plaintiff, upon the satisfaction of Plaintiff's obligation to post a bond as defined below.
2. The Defendants assert that they are currently in possession of the Automobile and Property, which is collectively located at 1043 Kaiser Road, SW, Olympia, WA 98512, the offices of The British Northwest Land-Rover Company, and that upon posting of the bond described below, Plaintiff shall be entitled to arrange for transport of the Automobile and Property to the destination of Plaintiff's choice.
3. Plaintiff shall secure a bond in the amount of twenty thousand dollars (\$20,000.00), which this Court deems to be sufficient to cover all costs and damages that may be adjudged to the Defendants, including reasonable attorney's fees, if there be any.

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4. Because this Order is based on the stipulated agreement of the parties, the Sheriff's Office need not receive copies of this Order or of the bond. However, in the event that the Defendant refuses after the issuance of this Order to return the Automobile and Property to Plaintiff as described above, the Plaintiff shall provide two certified copies of this Order to the Sheriff along with two copies of the bond.
 5. Upon receipt of this Order and the bond, the Sheriff shall immediately seek to recover the Automobile along with the Property from the Defendants. The Sheriff shall provide one of the certified copies of this Order and the bond, provided to the Sheriff by the Plaintiff, to the Defendants in accordance with RCW 7.64.035.
 6. If deemed necessary by the Sheriff, he or she shall be authorized to use any reasonable force necessary, including to break and enter any building or enclosure to obtain the Automobile and the Property.
 7. Upon recovery of the Automobile and the Property, the Sheriff shall put Plaintiff in possession of the Automobile and the Property by delivering the Automobile and Property to Plaintiff's counsel of record, Richard A. Finnigan, at 2405 Evergreen Park Drive, SW Olympia, WA 98502, or by contacting Richard A. Finnigan to arrange for transport of the Automobile and the Property to Plaintiff.
 8. When Plaintiff removes the Automobile and the Property from the care and control of the Defendants, the Defendants shall not be held liable for the moving of the Automobile and the Property by the Plaintiff, any agent of the Plaintiff or

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2405 Evergreen Park Dr. SW
Suite B-1
Olympia, WA 98502
(360) 956-7001

1 others that may move the Automobile and Property out of the care and control of
2 the Defendants.
3

- 4 9. If, after the Plaintiff removes the Automobile and Property from Defendants' care
5 and custody, the Plaintiff or his agents repair, replace, modify, rebuild or do other
6 work on the vehicle with such work not supervised by the Defendants, then the
7 Defendants shall not be held liable for such repairs, replacements, modifications,
8 rebuilding, or other work or how the vehicle operates after such repairs,
9 replacements, modifications or rebuilding.
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10. Nothing in the preceding two paragraphs shall absolve either party of any liability as alleged in the Complaint or Answer or any liability for damage done to the Automobile or the Property prior to removal of the Automobile and the Property from the care and control of the Defendants.

11. Defendant Charles Kellogg shall, at no cost to the Plaintiff, oversee the packing of the Automobile and the Property to ensure that all applicable parts are included.

ENTERED in open Court this 13 day of June, 2003.


JUDGE/COMMISSIONER

Presented by:

Richard A. Finnigan
Attorney for Plaintiff
2405 Evergreen Park Dr.
Suite B-1
Olympia, WA 98502
(360) 956-7001


RICHARD A. FINNIGAN,
WSBA #6443

Notice of Presentment Waived:

Sans M. Gilmore
Attorney for Defendants
521 SE Union
Suite 105
Olympia, WA
(360) 705-3545

SANS M. GILMORE,
WSBA #21855