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State of Wisconsin, Court of Appeals, District 3

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Nathan Meinhardt

Plaintiff-Appellant

Appeal No. 2010AP2684

v.

Richard C. Strobel, Jr.

Defendant-Respondent

Brief Cover

American Fab, Inc.,

Defendant

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On Appeal from the Circuit Court for Marathon County,

The Honorable Patrick Brady, Presiding

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Brief of Richard C. Strobel, Jr. – Defendant-Respondent

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## Statement of the Case and Facts

On September 15, 2008 a sub-agent of American Fab approached a Mr. Timothy Naef regarding some brand new Industrial equipment that was being offered for a substantially reduced price, about \$6,000.00. Mr. Naef offered a much lower price. After negotiating with a superior on the phone, it was agreed that Mr. Naef would pay \$4,150.00 for the equipment. He was reminded that the equipment was valued at \$14,000.00 plus shipping and handling. The American Fab agent offered the equipment for much less, \$6,000.00 with no shipping and handling charges. He negotiated a total price of \$4,150.00 with no shipping or handling. Because of all these things, the American Fab agent stated and Mr. Naef agreed to waive his 72-hour right to rescind on all products. The American Fab agent further stated, and Mr. Naef agreed, to pay a 20% restocking fee, if the equipment must be picked up by the seller. This transaction was paid for by Mr. Naef with his credit card. The transaction was processed through American Fab.

About a week later, Mr. Naef called SEC to say he wanted to return the equipment. Since SEC was now in Arkansas, SEC offered to pick up the equipment, but the 20% restocking fee would have to be charged. He stated he did not want to do that. That was the last I heard about it until just before

Christmas, when I received a phone call from Mrs. Vasquez.

I wrote a letter dated January 5, 2009 to Mrs. Vasquez (see exhibit A) explaining what happened. I also stated that SEC was out of business as of November 2008. I advised that any further correspondence be directed to American Fab. The next I heard about it was American Fab and I personally, were being sued. I was happy to find out that American Fab agreed to reimburse Mr. Naef for the equipment, plus any interest he was out, plus allowed him to keep the equipment. I thought that it was more than fair. I disagree that he wants more than \$21,000 from me, personally, on top of all that he has gotten so far. And I was happy that the Honorable Patrick Brady agreed.

# Discrepancies

**Statement:** On page 17 of Mr. Meinhardt's brief he states, "Strobel was the defendant that was on sight making direct contact with Naef, with oral misrepresentations..."

**Correction:** Strobel was never on site with Naef.

**Statement:** On page 17 of Mr. Meinhardt's brief he states, "By Strobel not defending the complaint he has admitted and accepted liability for all allegations in the complaint."

**Correction:** I certainly thought I was defending against the complaint when I showed up in court.

**Statement:** On page 18 of Mr. Meinhardt's brief he states, "Count 3 of the complaint could only pertain to Strobel as he was the only defendant on site making representations to Naef."

**Correction:** Strobel was never on site with Mr. Naef, and never made any representations to him on site.

**Statement:** On page 23 of Mr. Meinhardt's brief he states, "Memorandum of Law in support of punitive damages was served on Mr. Strobel before the hearing. Mr. Strobel provided no response. A matter not refuted is deemed admitted."

**Correction:** I did not respond, because I did not know I was supposed to respond. I thought I was just supposed to show up in court.

**Statement:** In Mr. Meinhardt's Complaint, under the heading, General Factual Allegations, #7, it states, "On September 15<sup>th</sup>, 2008 Mr. Tim Naef was approached in a parking lot by an agent working for American Fab, Inc."

**Statement:** In Mr. Meinhardt's Complaint, under the heading, General Factual Allegations, #11, it states, "Mr. Naef later that day compared prices at various stores for similar merchandise and found the same or similar merchandise was not valued at the prices represented by the American Fab agent."

**Comment:** It would appear, that in Mr. Meinhardt's Complaint, he mentions several times, "The American Fab agent." No where in his complaint does he mention, Richard C. Strobel, Jr. or SEC

## **Personal**

I am not a lawyer wannabe. I am not schooled in the way of an attorney and admit it. I can only try to use what common sense I have. I also cannot afford counsel. I am retired after going through 2 strokes and open-heart surgery. I have no pension, no 401K, no savings, no stocks or bonds, no assets other than an old automobile and I rent the place I live in. I'm on Medicaid, and my only source of income is early retirement Social Security. I worked for American Fab for less than 6 months through one of their distributors, NSC. I had to do what I was told, when I was told, where I was told, and how I was told, with the equipment that was consigned to me. In November 2008 I was informed that the equipment was being picked up and I was no longer going to be a distributor via NSC for American Fab products. At that time, SEC was out of business. Everything was turned back in to American Fab and NSC. I am not sure why this lawsuit was directed at me personally. If that were correct, then I would assume that Mr. Meinhardt could sue the janitor, the secretary, the warehousemen, the attorney's, the drivers, and the manufacturing employees of American Fab and NSC, etc.

## **In Summary**

Mr. Naef and/or Mr. Meinhardt received more than adequate compensation:

- 1) Allowed to keep all the equipment
- 2) Given the full amount of monies paid for the equipment
- 3) Given any loss of interest on the transaction
- 4) (Possibly more)
- 5) SEC is out of business
- 6) Richard C. Strobel, Jr. did not personally approach Mr. Naef

The judge found that Mr. Naef and/or Mr. Meinhardt have been more than justly compensated. I certainly feel they were more than fairly compensated.

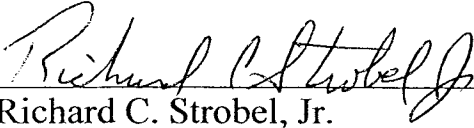
I trust that you will agree with the Honorable Patrick Brady in this matter.

## **Conclusion**

For the foregoing reasons, respondent Richard C. Strobel, Jr. asks the court to uphold the trial court's order of dismissal pertaining to Strobel, and not to grant default judgment sought by Meinhardt. Also Respondent asks the court not to reverse the Strobel dismissal and not to remand for further proceedings in Circuit court.

Respectfully submitted

Dated: March 16, 2011

  
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The length of this brief is 1131 words.