

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF BENTON

SEVENTH JUDICIAL DISTRICT

Albert H. Petersen,

Plaintiff,

vs.

FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER
FOR JUDGMENT & JUDGMENT

Scott Wolter,

Defendant.

The above-entitled matter came on for trial without a jury on The 4th day of May, 1989. Plaintiff appeared in person and through his attorney, Daniel A. Eller, Esquire, of St. Cloud, Minnesota. Defendant appeared in person and through his attorney, Gregg A. Johnson, of St. Paul, Minnesota. Based on all of the files and proceedings herein, the testimony at trial, and on the arguments of counsel, the Court now makes its Findings of Fact, conclusions of Law and Order for Judgment as follows:

FINDINGS OF FACT

1. That on March 29, 1988, plaintiff was the owner and in possession of a 14 3/4 pound Lake Superior agate, and a cut Brazilian slab agate, in his shop located in the City of Foley, Benton County, Minnesota.

2. That on March 29, 1988, defendant came to plaintiff's shop in the City of Foley with a 16 3/4 pound agate which he represented to plaintiff to be a Lake Superior agate, and

DISTRICT COURT
BENTON COUNTY, MINN.
FILED

JUN 27 1989

TIMOTHY H. RYDBERTS

BY *Timothy H. Rydbergs*
CLERK
DEPUTY

initiated with the plaintiff an offer to trade to plaintiff defendant's 16 3/4 pound agate for plaintiff's 14 3/4 pound Lake Superior agate, and plaintiff's cut Brazilian slab agate.

3. That in reliance on defendant's representation to plaintiff that the 16 3/4 pound agate was a Lake Superior agate, plaintiff gave to defendant his 14 3/4 Lake Superior agate and cut Brazilian slab agate in exchange for defendant's 16 3/4 pound agate.

4. That the representations by defendant to plaintiff that defendant's 16 3/4 pound agate was a Lake Superior agate were made when defendant knew, or with the exercise of reasonable care or competence, should have known, that said representations were false, or said representations were made by the defendant to plaintiff without knowing whether they were true or false.

5. That defendant is a known and recognized expert on Lake Superior agates, and has published a book on Lake Superior agates.

6. That defendant made the representations to plaintiff intending that plaintiff rely on said representations to make the trade of the agates, and that plaintiff did rely on defendant's expertise and representations in making said trade, and in reliance thereon traded his 14 3/4 pound Lake Superior agate and his cut Brazilian slab agate to defendant for defendant's 16 3/4 pound agate.

7 That defendant's 16 3/4 pound agate was not a Lake Superior agate but a Brazilian agate with an approximate value of \$32.00.

8. That subsequent to the transaction of March 29, 1988, defendant sold said 14 3/4 pound Lake Superior agate and no longer has possession thereof.

9. That the reasonable value of plaintiff's Lake Superior agate as of March 29, 1988, was \$2,500.00, of which plaintiff has received the sum of \$500.00 from the party to whom defendant subsequently sold said agate.

10. That plaintiff still has possession of the 16 3/4 pound agate and defendant has possession of the cut Brazilian slab agate.

CONCLUSIONS OF LAW

From the above Findings of Fact, the court concludes:

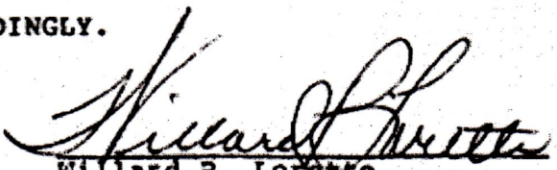
1. That plaintiff is entitled to judgment against defendant in the sum of \$2,000.00, the reasonable value of the 14 3/4 pound Lake Superior agate less the sum of \$500.00 which he previously received.

2. That plaintiff is entitled to the return and possession of the cut Brazilian slab agate, and defendant shall return possession thereof to plaintiff upon entry of judgment herein.

3. That upon payment by defendant to plaintiff of the above sum of \$2,000.00, and return by defendant to plaintiff of the cut Brazilian slab agate, plaintiff shall return possession of the 16 3/4 pound agate to defendant.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: 6/27/89


Willard P. Lorette
Judge of District Court