

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Judge Philip A. Brimmer**

Civil Action No. 07-cv-00885-PAB-BNB

RICHARD GALVIN, an individual,

Plaintiff,

v.

BRIAN MCCARTHY, an individual, and  
SPIRIT ENERGY, LLC, an Arkansas limited liability company,

Defendants.

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**ORDER FOR ENTRY OF PARTIAL JUDGMENT**

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This civil action comes before the Court following a three-day trial conducted between July 19, 2010 and July 21, 2010 in which plaintiff's pending claims against defendant Spirit Energy were decided. Pursuant to and in accordance with the Order and Memorandum of Decision entered on February 29, 2008, by Chief Judge Edward W. Nottingham, defendant Spirit Energy, LLC's Motion to Dismiss, filed June 8, 2007 was granted in part. That order dismissed without prejudice plaintiff's claims against defendant Spirit Energy, LLC for unjust enrichment and fraud as asserted in the first amended complaint. The order also dismissed with prejudice plaintiff's claim in the first amended complaint alleging Rule 10b-5 fraud against defendant Spirit Energy, LLC.

On March 18, 2008, plaintiff filed a second amended complaint [Docket No. 71], asserting claims of deceit based on fraud, civil conspiracy, and unjust enrichment against defendant Spirit Energy, LLC. Prior to the commencement of trial, plaintiff indicated on the record that he did not intend to proceed with his unjust enrichment

claim against defendant Spirit Energy, LLC. As a result, that claim is dismissed.

This matter proceeded to trial on plaintiff's remaining claims against defendant Spirit Energy, LLC – deceit based on fraud and civil conspiracy – as asserted in the second amended complaint. Trial took place before a duly sworn jury of nine, the Honorable Judge Philip A. Brimmer presiding. The trial proceeded to conclusion and the jury rendered a verdict in favor of plaintiff Richard Galvin and against defendant Spirit Energy, LLC on plaintiff's deceit based on fraud claim. Based on the jury's finding that no fraudulent activities were committed by a party other than those who were acting as agents of defendant Spirit Energy, LLC, the civil conspiracy claim failed as a matter of law. The jury then determined the damages to which Richard Galvin was entitled under his deceit based on fraud claim.

As a result, all of plaintiff Richard Galvin's claims against defendant Spirit Energy, LLC have been resolved. However, aspects of plaintiff's claims against defendant Brian McCarthy remain at issue. The Court granted summary judgment in favor of plaintiff on three claims asserted against defendant McCarthy [Docket No. 100]. Issues regarding damages for which defendant McCarthy is liable have not been resolved. However, plaintiff brought these claims against defendant McCarthy and they, therefore, do not implicate defendant Spirit Energy, LLC.

Because all of the claims against defendant Spirit Energy, LLC have been resolved and because the Court determines that there is no just reason for delay, partial judgment pursuant to Rule 54(b) shall enter in this case. It is

**ORDERED** that, pursuant to Federal Rule of Civil Procedure 54(b), and because the Court determines that there is no just reason for delay, partial judgment shall enter regarding plaintiff's claims against defendant Spirit Energy, LLC. Based upon the

verdict of the jury, judgment shall enter in favor of plaintiff and against defendant Spirit Energy, LLC on plaintiff's deceit based on fraud claim and judgment shall enter in favor of defendant Spirit Energy, LLC and against plaintiff on plaintiff's civil conspiracy claim.

It is further

**ORDERED** that judgment shall enter in favor of the plaintiff and against the defendant Spirit Energy, LLC on the deceit based on fraud claim in the amount of \$299,000.00. It is further

**ORDERED** that post judgment interest shall accrue at the legal rate of .28% from the date of entry of judgment. It is

**ORDERED** that the plaintiff may have his costs upon the filing of a Bill of Costs within 14 days from entry of judgment. It is further

**ORDERED** that, pursuant to Federal Rule of Civil Procedure 54(b), this civil action shall proceed only as to plaintiff's claims against defendant Brian McCarthy. It is further

**ORDERED** that, on or before **5:00 p.m., Friday, August 6, 2010**, plaintiff shall file a status report in which he proposes a course of action in dealing with the remaining issues related to the claims against defendant McCarthy.

DATED July 28, 2010.

BY THE COURT:

s/Philip A. Brimmer  
PHILIP A. BRIMMER  
United States District Judge