

87012300769

(2)

DISTRICT COURT

CLARK COUNTY, NEVADA

Nov 3 12 24 PM '86

*Santha L. Pearson*

CLERK

Case No. A 252028  
Dept. No. VI  
Docket "B"

SOUTHWEST PROPERTIES VENTURE,

Plaintiff,

vs.

NEVADA INDOOR PLANT COMPANY, a  
Nevada Corporation, and LARRY A.  
KREMENEK, et al.,

Defendants.

NOTICE OF FILING OF FOREIGN JUDGMENT AND AFFIDAVIT

LARRY A. KREMENEK, Defendant and; NEVADA INDOOR PLANT  
COMPANY:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the  
original Foreign Judgment and supporting Affidavit, copies of  
which are attached hereto, were filed with the above-entitled  
court on the 29th day of October, by the undersigned, on behalf  
of SOUTHWEST PROPERTIES VENTURE, 1601 Blake Street, Post Office  
Box 5858, Denver, Colorado 80217-5858.

DATED this 3rd day of November, 1986.

PEARSON AND PATTON  
A Professional Corporation

By Theodore J. Kurtz  
THEODORE J. KURTZ, ESQUIRE  
Attorneys for Plaintiff  
316 East Bridger, Suite 200  
Las Vegas, Nevada 89101

Law Offices  
NIELS L. PEARSON  
ATTORNEYS AT LAW  
36 EAST BRIDGER, SUITE 200 LAS VEGAS, NEVADA 89101 (702) 382-2911

0701300770

(3)

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED  
Nov 3 12 25 PM '86  
*Janet L. Hayes*  
CLERK

SOUTHWEST PROPERTIES VENTURE,  
Plaintiff,  
vs.  
NEVADA INDOOR PLANT COMPANY, a  
Nevada Corporation, and LARRY A.  
KREMENEK, et al.,  
Defendants.

Case No. A 252028  
Dept. No. VI  
Docket "B"

AFFIDAVIT OF MAILING

STATE OF NEVADA )  
                              : ss  
COUNTY OF CLARK )

JANET L. HAYES, first being duly sworn, deposes and says:  
That affiant is, and was when the herein described mailing  
took place, a citizen of the United States, over 21 years of  
age, and not a party to, nor interested in, the within action;  
that on the 3rd day of November, 1986, affiant deposited in the  
Post Office at Las Vegas, Nevada, two sealed envelopes upon  
which postage was fully prepaid to cause said envelopes to be  
delivered certified mail, return receipt requested; that each  
envelope contained a copy of the Foreign Judgment, Affidavit in  
Support of Foreign Judgment and the Notice of Filing Foreign  
Judgment and Affidavit; that one envelope was addressed to:  
LARRY A. KREMENEK, 4437 Simmons, North Las Vegas, Nevada 89107;  
and that the other envelope was addressed to: NEVADA INDOOR  
.....

LEW CHILES  
NIELS L. PARSON  
ALTERNATE CLERK  
36 EAST BROADWAY, SUITE 200 LAS VEGAS, NEVADA 89101 (702) 382-2911

07012300770

PLANT COMPANY, 911 East Charleston, Las Vegas, Nevada 89104;  
that there is a regular communication by mail between the place  
of mailing and the places so addressed.

*Janet L. Hayes*  
\_\_\_\_\_  
JANET L. HAYES

SUBSCRIBED and SWORN to before me  
this 3rd day of November, 1986.

*Elaine A. Cullette*  
\_\_\_\_\_  
NOTARY PUBLIC in and for said County and  
State.

NOTARY PUBLIC  
STATE OF NEVADA  
County of Clark  
ELAINE A. CULLETTE  
NOV 11 1986

Law Offices  
NIELS L. PARSON  
ASSOCIATES, P.C.  
36 EAST BROADWAY, SUITE 200 LAS VEGAS, NEVADA 89101 (702) 382-2911

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

97812300771  
DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

Oct 29 4 48 PM '86

Case No. *1752028*  
Dept. No. *II*  
Docket *B*

89

(8)

SOUTHWEST PROPERTIES VENTURE,  
Plaintiff,

vs.

NEVADA INDOOR PLANT COMPANY, a  
Nevada Corporation, and LARRY A.  
KREMENEK, et al.,

Defendants.

AFFIDAVIT IN SUPPORT OF FOREIGN JUDGMENT

STATE OF NEVADA )  
                          ) : ss  
COUNTY OF CLARK )

THEODORE JOSEPH KURTZ, being first duly sworn, deposes and  
says:

I.

I am an attorney with the law firm of PEARSON AND PATTON,  
A Professional Corporation, retained to represent the  
Plaintiff, SOUTHWEST PROPERTIES VENTURE, in the above-captioned  
matter, in collection of a judgment against the Defendants,  
NEVADA INDOOR PLANT COMPANY, and LARRY A. KREMENEK, and I have  
personal knowledge of the events described herein except as to  
those matters stated upon information and belief and as to  
those matters, I believe them to be true.

II.

That the address of the judgment creditor is: SOUTHWEST  
PROPERTIES VENTURE, 1601 Blake Street, Post Office Box 5858,

Law Offices  
NIELS L. PEARSON  
Attorney at Law  
36 EAST BRIDGER, SUITE 200 LAS VEGAS, NEVADA 89101 (702) 382-2311

3 7 8 1 2 3 0 0 7 7 1  
Denver, Colorado 80217-5858.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

III.

That I am informed and therefore believe that the last known address of the Defendant, NEVADA INDOOR PLANT COMPANY, was: NEVADA INDOOR PLANT COMPANY, 911 East Charleston, Las Vegas, Nevada 89104.

IV.

That I am informed and therefore believe that the last known address of Defendant, LARRY A. KREMENEK, was: LARRY A. KREMENEK, 4437 Simmons, North Las Vegas, Nevada 89107.

V.

That I am informed and therefore believe that the judgment filed herewith was rendered by a court of competent jurisdiction in the State of Colorado, Jefferson County, Division No. 8, and is valid and enforceable.

VI.

That I am informed and therefore believe that the judgment filed herewith has not been satisfied to any extent.

Further, your affiant saith not.

*Theodore Joseph Kurtz*  
THEODORE JOSEPH KURTZ

SUBSCRIBED and SWORN to before me  
this 27th day of October, 1986.

*Janet L. Hayes*  
NOTARY PUBLIC in and for said County and State

Law Offices  
NIELS L. PEARSON  
ATTORNEYS AT LAW  
36 EAST FIDICHO, SUITE 200 LAS VEGAS, NEVADA 89101 (702) 382-2941



STATE OF COLORADO ) 7 0 1 2 3 0 0 7 7 1  
                          ) ss.  
County of Jefferson )

I, Jaelyn Senese Clerk of the District Court  
in and for said County, in the State aforesaid, do hereby certify the foregoing to be a true,  
perfect and complete copy of Summons issued on 9/4/86 w/o service, Summons  
issued on 9/04/86 with service on Larry Kremenek, affidavit of service,  
Service of Process on Vera Lee Anderson, Service of Process on Frank  
R. Kremenek, Service of process on Larry A. Kremenek, Service of Process  
on Nevada Indoor Plant Co., Complaint, Answer filed by John E. Myles,  
copy of the same answer, Certified copy of an Order filed by court.  
In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my  
office in Golden this 3rd day of October, A.D. 1986.

Jaelyn Senese  
CLERK.

I, Daniel J. Shannon Judge of the District Court, Jefferson  
County, of the State of Colorado, do hereby certify that Jaelyn Senese  
whose name is subscribed to the foregoing  
Certificate of Attestation, now is, and was, at the time of signing and sealing the same, Clerk  
of the District Court of Jefferson County aforesaid, and keeper of the Records and seal thereof,  
duly appointed and qualified to office; that full faith and credit are and of right ought to be  
given to all his official acts as such in all Courts of Record and elsewhere; and that his said  
attestation is in due form of law, and by the proper officer.

Given under my hand and seal this 3rd day of October, A.D. 1986.

Daniel J. Shannon  
JUDGE

Clerk of the District Court, in and for said County in the State aforesaid, do hereby certify  
that Daniel J. Shannon whose genuine signature is  
appended to the foregoing certificate, was, at the time of signing the same, Judge of the District  
Court of Jefferson County, of the State of Colorado, duly commissioned and qualified, that full  
faith and credit are and of right ought to be given to all his official acts as such, in all Courts  
of Record and elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my  
office in Golden this 3rd day of October, A.D. 1986.

Jaelyn Senese  
CLERK.

07012300771

DISTRICT COURT, JEFFERSON COUNTY, COLORADO

Case No. 85 CV 2824, Division 8

ORDER

SOUTHWEST PROPERTIES VENTURE,

Plaintiff,

v.

NEVADA INDOOR PLANT COMPANY, a Nevada corporation, et al.,

Defendants.

THIS MATTER, coming on for trial this 5th day of June, 1986, and the Court having heard the testimony and evidence of the parties, having heard the arguments of council, having reviewed the Court file and now being fully advised in the premises, enters the following Findings of Fact, Conclusion of Law and Judgment.

FINDINGS OF FACTS

1. Plaintiff is the owner of Southwest Plaza Mall Shopping Center located in Jefferson County, Colorado.
2. On or about October 25, 1982, Plaintiff, as landlord, and Defendant, Nevada Indoor Plant Company, as tenant, entered into a written lease agreement for certain retail store premises in the Southwest Plaza Mall Shopping Center.
3. On or about October 25, 1982, the individual Defendants, Frank R. Kremenek, Larry A. Kremenek and Vera Lee Anderson executed a Guaranty of Lease Agreement whereby they guaranteed the tenant's obligations under the above referenced lease agreement. The Guaranty of Lease was supported by consideration.
4. Section 3.3 of the lease agreement provided that the Plaintiff would loan Nevada Indoor Plant Company a sum not to exceed \$75,000.00 for utilization in the completion of tenant finish work, fixturing and providing of an inventory for the leased premises. The amount of the loan was to be evidenced by a promissory note.
5. On or about February 1, 1983, an amendment to the lease agreement was executed by Plaintiff and Nevada Indoor Plant Company whereby Section 3.3 of the lease agreement was amended to provide that the loan would not exceed \$84,000.00. The amendment was not signed by Frank R. Kremenek, Larry A. Kremenek or Vera Lee Anderson

37012300771

in their individual capacities.

6. On or about February 1, 1983, the same date that the amendment to the lease agreement was executed, Nevada Indoor Plant Company executed a promissory note in favor of the Plaintiff in the amount of \$84,000.00 with interest thereon at the rate of 14 per cent per annum, payable monthly. The note provided that if it was not paid when due the principal shall draw interest at the rate of 18 per cent per annum.
7. Frank R. Kremenek, Larry A. Kremenek and Vera Lee Anderson executed the promissory note in their individual capacities as guarantors.
8. Plaintiff advanced Nevada Indoor Plant Company the sum of \$84,000.00 as evidenced by the promissory note.
9. Pursuant to the lease, Nevada Indoor Plant Company took possession of the leased premises.
10. On or about August 24, 1985 Nevada Indoor Plant Company ceased to operate its retail store at the premises and removed its inventory and equipment.
11. Nevada Indoor Plant Company failed to pay the rent and other charges as provided by the lease agreement for the months of August, September and October, 1985.
12. The amount of rent and other charges as provided by the lease agreement for the months of August, September and October, 1985 is in the amount of \$5,154.41 which includes a credit for the security deposit retained by Plaintiff and a credit for four days in October when the premises was relet to a new tenant.
13. On August 9, 1985 Plaintiff served notice upon Nevada Indoor Plant Company of its default, giving ten days in which to cure the default. Nevada Indoor Plant Company failed to cure the default.
14. Plaintiff relet the premises to another tenant as of October 28, 1985.
15. The lease between Plaintiff and Nevada Indoor Plant Company was terminated on October 27, 1985.
16. Nevada Indoor Plant Company failed to make the August, 1985 payment on the promissory note as provided in the note.
17. Plaintiff has elected to accelerate the note by the filing of the within action.
18. The principal balance due and owing on the promissory note is in the amount of \$55,898.84. Default interest at the rate



37013300771  
of 18 per cent per annum is due from the date of filing the within  
action, September 13, 1985, to June 5, 1986 in the amount of  
\$7,305.14.

CONCLUSIONS OF LAW

1. The fact that the individual defendants, Frank R. Kremenek, Larry A. Kremenek and Vera Lee Anderson did not execute the amendment to the lease agreement does not discharge their liability on the Guaranty of Lease. The amendment was only for the purpose of increasing the amount of the loan which is evidenced by the promissory note. These individuals consented in writing to the amendment by signing as guarantors on the note which evidenced the increase.
2. Neither the lease, the Guaranty nor the amendment to the lease contains ambiguities.
3. The lease agreement must be read in total. Section 3.3 of the lease deals with the loan to be made by the Plaintiff to Nevada Indoor Plant Company. The payments on the note evidencing the loan are not additional rents defined in Section 2.7 of the lease and therefore did not terminate when the lease was terminated.
4. Pursuant to the lease agreement, Section 9.1, all improvements to the premises by the tenant shall become the property of the Landlord upon the expiration or earlier termination of the lease. The lease is a contract. This contract is not void due to fraud or voidable by public policy. By the terms of the agreement, Defendants are not entitled to offset the reasonable value of the improvements they placed in the premises against the rents due and owing. Further, there is no case law which would support Defendants' theory of unjust enrichment.
5. Although there is a possibility the Plaintiff may be benefitted by collecting more rents from a new tenant than Plaintiff would have collected from Nevada Indoor Plant Company, there is no case law which allows a setoff for excess rent collected by a landlord from a new tenant over the term of the original lease. Additionally, there is no way of determining the amount of benefit the Plaintiff would receive unless the case is brought after the term of the original lease because there is no telling how long the new tenant will continue to stay in the premises.
6. Nevada Indoor Plant Company is liable on the lease agreement for therents and other charges due and owing for the months of August, September and October in the amount of \$5,154.41.
7. Defendants Frank R. Kremenek, Larry A. Kremenek and Vera Lee Anderson are liable for the rents and other charges in the amount of \$5,154.41 pursuant to the Guaranty of Lease.

37012300771

8. Nevada Indoor Plant Company is liable on the promissory note in the amount of \$63,203.98 for principal and interest.

9. Defendants Frank R. Kremenek, Larry A. Kremenek and Vera Lee Anderson are liable on the promissory note as guarantors in the amount of \$63,203.98 for principal and interest.

IT IS THEREFORE ORDERED AS FOLLOWS:

Judgment shall enter in favor of the Plaintiff, Southwest Properties Venture and against the Defendants, Nevada Indoor Plant Company, Frank R. Kremenek, Larry A. Kremenek and Vera Lee Anderson jointly and severally, for the sum of \$5,154.41 for rents and other charges owing under the lease agreement and \$63,203.98 as principal and interest owing on the promissory note.

JEFFERSON COUNTY DISTRICT COURT

by: RUTHEN H. FOLSON  
District Court Judge

Dated: 6/18, 1986.

*Judgment entered this 18<sup>th</sup> day of June, 1986  
Division Clerk / Mary Beth Spears*

PREPARED BY:

Mark J. Rubin  
Mark J. Rubin, #8455  
1601 Blake Street, #400  
Denver, Colorado 80202  
Telephone: 623-6966  
ATTORNEY FOR PLAINTIFF

APPROVED AS TO FORM:

John E. Myles  
John E. Myles  
3338 South Bannock  
Suite 950  
Englewood, Colorado 80110  
ATTORNEY FOR DEFENDANTS

DISTRICT COURT  
County of Jefferson, Colorado  
Certified to be a true and correct copy  
of the original in this county.  
JAMES O. JAPANE  
Clerk of the District Court  
By: James O. Japane  
Deputy Clerk

COPY

88033

FILED AND RECORDED AT REQUEST OF  
Pearson & Patton  
Nov. 16, 1987

Attest: I, Frank C. Hulse, County Clerk  
of Lincoln County, Nevada, do hereby certify that the within  
instrument is a true and correct copy of the original  
filed in my office on Nov. 16, 1987 at Lincoln  
County, Nevada.

FRANK C. HULSE  
COUNTY CLERK

By Mara Cordier, Deputy

RECEIVED FEB 12 1987

CLARK COUNTY, NEVADA  
JOAN L. SWIFT, RECORDER  
RECORDED AT REQUEST OF  
PEARSON AND PATTON

01/23/87 16:07 SS1 8  
OFFICIAL RECORDS  
BOOK: 870123 INST: 06771  
FEE: 12.00 RPT: .00

CERTIFIED COPY

The document to which this certificate is at-  
tached is a full, true and correct copy of the  
original on file and of record in my office.

DATE: JAN 12 1987  
LIMES PA EDWARDS, County Clerk and Clerk  
of the Ninth Judicial District Court, in and  
for the County of Clark, State of Nevada.  
By Limes Pa Edwards, Deputy