

1996

# James A. Tanasse, Club St. George, Inc., Young Tanasse, Inc. v. Snow : Brief of Appellee

Utah Court of Appeals

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David Nuffer; Snow, Nuffer, Engstrom, Drake, Wade and Smart; Attorney for Appellee.

Robert O. Kurth, Jr.; Kurth and Associates; Attorney for Appellants.

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STATE COURT OF APPEALS  
**BRIEF**  
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DOCKET NO. 960187 CA

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IN THE COURT OF APPEALS  
OF THE STATE OF UTAH

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JAMES A. TANASSE, CLUB ST.  
GEORGE, INC., a Utah Corporation, and  
YOUNG TANASSE, INC., a Utah  
Corporation,

Plaintiffs and  
Appellants,

vs.

SNOW, NUFFER, ENGSTROM and  
DRAKE, a Utah Corporation,

Plaintiff and  
Appellee.

**APPELLEE'S BRIEF**

*960187-CA*

Case No. ~~950446-SC~~  
950597-CA

Priority No. 10

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Appeal from the Fifth Judicial District Court  
For Washington County  
The Honorable James L. Shumate, Judge

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Attorney for Appellee

**FILED**

MAR 26 1996

**COURT OF APPEALS**

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## **JURISDICTION OF THE COURT**

This court has jurisdiction over this appeal pursuant to Utah Code Ann. §78-2a-3(k).

## **STATEMENT OF THE ISSUES**

Appellee disagrees with the Appellants' statement of the issues.

First, Appellants attempt to raise issues arising in Case No. 940500335 of the District Court. The appeal from that case has been dismissed.

Second, the Appellants state that "assignability of causes of action" is an issue when there is no assignment of any cause of action.

Third, the Appellants assume that the Rules of Professional Conduct give rise to personal causes of action and state issues arising out of those rules. They also assert that there was a fiduciary relationship between the Appellants and Appellees at the time of the execution of sale when there is no evidence in the record of such a relationship at that time.

The Appellee therefore disagrees entirely with the statement of the issues by the Appellants and propose that the following is a correct statement of the issues:

1. Is the Appellants' Brief so deficient in form and substance under the Utah Rules of Appellate Procedure that Appellants should be denied all relief in the appeal?
2. Did the District Court in its Order of July 17, 1995<sup>1</sup>, (included in Appellee's Addendum) correctly rule that the execution by Appellees upon causes of action owned by Appellants was valid?

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<sup>1</sup> R. 148

These are legal issues. The first issue is for this Court. The standard of review as the second issue is whether the ruling is correct. No deference is given the trial court. United Park City Mines v. Greater Park City, 870 P.2d 880, 885 (Utah 1993).

**RULES WHOSE INTERPRETATION IS DETERMINATIVE  
OR OF CENTRAL IMPORTANCE TO THE APPEAL**

Rule 69(f) U.R. Civ.P.

**Service of the Writ.** Unless the execution otherwise directs, the officer must execute the writ against the non-exempt property of the judgment debtor by levying on a sufficient amount of property, if there is sufficient property; collecting or selling the choses in action and selling the other property in the manner set forth herein. Levy includes the seizures of the property and holding the property in person or through one or more agents, including the judgment debtor, appointed by the officer. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within view of the officer, the officer must levy only on such part of the property as the judgment debtor may indicate, if the property indicated is amply sufficient to satisfy the judgment and costs.

When an officer has served an execution issued out of any court the officer may complete the return thereof after such date of service.

**STATEMENT OF THE CASE**

This is an appeal from a post judgment and post execution order in a collection action. There is no appeal from the Judgment in that case; only from a post-judgment order. In the collection action, the Plaintiff, Snow, Nuffer, Engstrom and Drake ("Law Firm") obtained a judgment against all the Defendants in the collection action (James A. Tanasse; Club St. George, Inc., d.b.a. Chapter Eleven; and Young Tanasse, Inc.).

In an attempt to satisfy upon that Judgment, the Law Firm executed upon causes of action asserted by the collection debtors in a separate case. That separate case is entitled James A. Tanasse, Nadine B. Young, Club St. George,

Inc., a Utah Corporation, and Young Tanasse, Inc., a Utah Corporation v. Steven Snow and Snow, Nuffer, Engstrom and Drake, Case No. 940500335 in the District Court.

Following the completion of the execution sale, Appellants filed a motion in the collection action to set aside the sale, and a motion in the malpractice action seeking to set aside the sale. Both motions were denied, and the collection debtors attempted to take an appeal in both cases. The appeal in the malpractice action was dismissed as premature by the Supreme Court on December 6, 1995, but the appeal in this case, the collection action, was allowed to continue.<sup>2</sup>

### **STATEMENT OF THE FACTS**

Because the statement of facts by the Appellants is not clear or complete, Appellee will restate a chronology of the facts.

1. This action seeking to collect a promissory note and attorney's fees due on open account was filed on February 18, 1993.<sup>3</sup>

2. Default Judgment was obtained against the Defendants/Appellants on June 8, 1993.<sup>4</sup>

3. The Law Firm drafted a lease for Plaintiff, between Club St. George, Inc., a Utah Corporation as landlord, and Nedra Pauline & Terry Burchinal as tenant.<sup>5</sup>

4. The landlord was alleged to have wrongly evicted the tenant in a separate civil action, Terry Burchinal v. Club St. George, et. al., Washington County

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<sup>2</sup> Order, December 6, 1995, copy in Addendum.

<sup>3</sup> Complaint, R. 1

<sup>4</sup> Default Judgment, R. 22

<sup>5</sup> Complaint, Case No. 940500335, paragraph 5, certified copy in Addendum.

Case No. 920500838.<sup>6</sup>

5. The landlord was first represented by the Law Firm in that civil action, but the Law Firm withdrew on January 5, 1993.<sup>7</sup>

6. The landlord obtained new counsel in the wrongful eviction action, but lost the case, suffering a sizable judgment.<sup>8</sup>

7. Disgruntled, the landlord and other parties brought a separate legal malpractice action entitled James A. Tanasse, Nadine Young, Club St. George, Inc., a Utah Corporation, and Young Tanasse, Inc., a Utah Corporation, Plaintiffs v. Steven Snow and Snow, Nuffer, Engstrom and Drake, Defendants, Case No. 940500335, served on June 13, 1994.<sup>9</sup>

8. On September 30, 1994, the Law Firm attempted to collect its Judgment in the collection case by an execution upon the debtors' interest in the malpractice action.<sup>10</sup>

9. The debtors filed a motion to restrain and delay the sale which was denied.<sup>11</sup>

10. On December 1, 1994, the execution sale was held and the Law Firm bid \$10,000 for the malpractice cause of action owned by the Judgment debtors.<sup>12</sup>

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<sup>6</sup> Complaint, Case No. 920500838, certified copy in Addendum.

<sup>7</sup> Order of Withdrawal, Washington County Civil No. 920500838, certified copy in Addendum.

<sup>8</sup> Verified Amended Complaint, Civil No. 940500335, paragraph 10, certified copy in Addendum.

<sup>9</sup> See certified copy of Complaint in Addendum.

<sup>10</sup> Writ of Execution, R. 39 and Praecipe, R. 30, copies in Addendum.

<sup>11</sup> Ex Parte Motion for T.R.O., October 21, 1994, R. 68. Order Denying Motion to Stay Sale, November 21, 1994, R. 90.

<sup>12</sup> Return of Levy on Execution and Sale of Property, R. 102.



11. On March 15, 1995, James A. Tanasse filed a Motion to Set Aside Sale.<sup>13</sup>

12. This appeal is purportedly taken from the denial of this Motion.<sup>14</sup>

### **SUMMARY OF ARGUMENT**

The Appellants essentially argue that the execution, levy and sale on the malpractice cause of action was void, for some reason, and that the sale should be set aside. The Law Firm argues that the chose in action was subject to levy and actually sold under the Rule 69 of the Utah Rules of Civil Procedure.

The Law Firm further argues that the Appellants' failure to properly pursue this appeal requires its dismissal. The appeal purports to be on behalf of all the defendant debtors when in fact James A. Tanasse was the only party making the motion which was denied and appealed.

### **ARGUMENT**

#### **POINT I APPELLANTS' FAILURE TO COMPLY WITH PROPER APPELLATE PROCEDURE SHOULD RESULT IN DISMISSAL OF THIS APPEAL.**

Appellants, while having proceeded pro se in the past, are now represented by counsel. Counsel should be held to comply with the requirements of the Utah Rules of Appellate Procedure. The cumulative effect of the deficiencies in Appellants' Brief should result in summary affirmance and dismissal of this appeal.

Appellants have improperly captioned this appeal. The Second Amended Notice Of Appeal filed August 22, 1995, reflects this same error.<sup>15</sup> Appellants have

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<sup>13</sup> R. 107. The other defendants in the collection action did not join in the Motion.

<sup>14</sup> Order, July 17, 1995, R. 148.

<sup>15</sup> See the Second Amended Notice Of Appeal, R. 156, copied in the Addendum.

used the caption from the malpractice action. This creates an improper designation of Plaintiffs and Defendants, and also lists an additional party, Nadine Young, who has no part in the collection action.

The Appellants' Brief contains no copies of pertinent documents and no citations to the Record. It is the obligation of the Appellant to marshal the record to support the appeal. The garbled and incomplete state of the Appellants' recitation of facts has left Appellee with the dual responsibility of guessing what Appellants mean and then bringing the record together to show the facts. Appellants do not cite, mention or copy the order from which the appeal is taken!

The Appellants mis-state the issues. Appellants have so confused the issues on review (see statement of issues above) that it is impossible for this Court to understand what is being asked. Appellee has done its best to guess what Appellants mean. In stating issues, the Appellants have not stated the standard of appellate review with supporting authority as the rules require. Rule 11, U.R.A.P.

Appellants failed to serve their brief on opposing counsel. The Appellants' Brief was served on Gregory Sanders, counsel in the malpractice action. Sanders has never appeared as counsel in the collection case, so there was no reason to serve him and certainly no reason to fail to comply with Rule 21, U.R.A.P., requiring service on the Law Firm. The Law Firm has always acted as its own counsel in the collection action.

Beyond deficiencies in the Brief, there is a more serious problem. The confusion generated by Appellants has obscured the fact that only James A. Tanasse was a movant on the motion denied, which has led to this appeal. See Motion to Set Aside Sale, R. 107, copy in the Addendum. The other nominal parties to this appeal have no standing to participate in an appeal of a disposition of a motion to which they are strangers. Certainly, Nadine Young, not even a party in the collection action in the lower court cannot be a party to this appeal. Just as a

party who does not object at trial does not have that issue preserved on appeal,<sup>16</sup> a party who does not join in a motion cannot participate in the appeal of the denial of the motion on appeal.<sup>17</sup>

The burden is clearly on the Appellants to focus the arguments and issues in such a way that the Appellee can be fully advised and argue against them, and so that the Court may decide them. The Appellants' failure to do this is prejudicial not only to the Court, but to the Appellee, and should result in dismissal of the appeal.

## **POINT II THE EXECUTION AND SALE OF THE CHOSE IN ACTION IS VALID.**

Rule 69(f) of Utah Rules of Civil Procedure specifically authorizes execution upon choses in action.

**Service of the Writ.** Unless the execution otherwise directs, the officer must execute the writ against the non-exempt property of the judgment debtor by levying on a sufficient amount of property, if there is sufficient property; collecting or selling the choses in action and selling the other property in the manner set forth herein. Levy includes the seizures of the property and holding the property in person or through one or more agents, including the judgment debtor, appointed by the officer. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within view of the officer, the officer must levy only on such part of the property as the judgment debtor may indicate, if the property indicated is amply sufficient to satisfy the judgment and costs.

When an officer has served an execution issued out of any court the officer may complete the return thereof after such date of service.

[Emphasis Added]

The Appellants argue that the Rule simply does not apply. Admitting that the assignment of causes of action is a common practice (Appellants' brief page 7), the

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<sup>16</sup> Cook Associates v. Warnick, 664 P. 2d 1161, 1164 (Utah 1983)

<sup>17</sup> Matter of Estate of Pepper, 711 P.2d 261,265 (Utah 1985); Conder v. A. L. Williams, 739 P. 2d 634, 637 (Utah 1987)

Appellants nonetheless insist that they win because Utah has no specific statutory authorization for execution upon a legal malpractice action by the malpractice defendant. Such specific authority is not required.

The case law cited by Appellants to the effect that causes of action for legal malpractice may not be assigned have to do with the inability of a third-party to pursue an action based on a personal contract. One case holds that in some cases a voluntary assignment is void and that the cause of action is vitiated.<sup>18</sup>

Mayer v. Rankin, 91 Utah 193, 63 P.2d 611 (1936), the sole Utah authority cited by Appellants, actually holds that claims are assignable as long as they are an assignment of the whole right. For example, one may assign a rescission claim, if the contract is assigned along with it, or a fraud claim if the right to the underlying property is assigned. Christensen v. Jones, 83 Ill. App. 334, 405 N.E. 2d 8 (1980) held that a trustee in bankruptcy could not pursue a malpractice claim as a de jure assignee, contrary to Appellants' characterization of the case.

The Appellants have cited no authority prohibiting the execution upon this chose of action, but merely analogized, reasoned and argued against the clear language of Rule 69. Having cited no authority, Appellant should not be heard upon this assertion.

### **POINT III THE LAW FIRM HAS NOT BREACHED ANY FIDUCIARY DUTY TO APPELLANTS.**

Appellants argue that the Law Firm's execution upon a former client's malpractice cause of action is a violation of Utah Rules of Professional Conduct which prohibit business transactions with clients. The argument does not even have a good faith foundation. Appellants' own garbled statement of the facts clearly shows that the law firm withdrew from representation of the Appellants prior

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<sup>18</sup> Schroeder v. Hudgins, 142 Ariz. 395, 690 P.2d 114 (Ct. App. 1984).

to the judgment in the collection action, and certainly prior to the execution.

Therefore, the entire argument of the Appellants on this point is without any factual foundation. Sorensen v. Beers, 585 P.2d 458 (Utah 1978) states that attorneys cannot compete with their existing clients at an execution sale. But it has no application in this case. There is no rule that a client cannot be executed upon by an attorney, when the attorney holds a judgment against the client.

### CONCLUSION

The Appellants' brief is so deficient and misleading as to require dismissal of this appeal. There is really only one Appellant. If the appeal is considered, the Court will clearly see that the execution and sale were authorized and that this sole legal issue was not correctly decided by the lower court. Arguments to the effect that the Law Firm has violated a fiduciary duty by executing on a former client's assets are without any merit or legal foundation.

Appellee therefore respectfully requests that the appeal be dismissed or in an alternative, that the Court affirm the decision of the District Court.

RESPECTIVELY SUBMITTED THIS 25 day of March, 1996.

SNOW, NUFFER, ENGSTROM, DRAKE, WADE & SMART  
A Professional Corporation



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DAVID NUFFER  
Attorney for Appellee

MAILING CERTIFICATE

I hereby certify that on the 25<sup>th</sup> day of March, 1996, I served a two copies of the foregoing **Appellee's Brief** on each of the following by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

Robert O. Kurth, Jr.  
Kurth & Associates  
1701 West Charleston Boulevard  
Suite 400  
Las Vegas, NV 89102



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## **ADDENDUM**

[Items in Chronological Order]

1. Certified Copy of Complaint (Burchinal v. Club St. George), August 7, 1992, Civil No. 920500838
2. Certified Copy of Order Allowing Withdrawal of Counsel, January 5, 1993, Civil No. 920500838
3. Certified Copy of Verified Amended Complaint, June 10, 1994, Civil No. 940500335
4. Praecipe, September 24, 1994, Civil No. 930500213
5. Writ of Execution, September 30, 1994, Civil No. 930500213
6. Return of Levy on Execution and Sale of Property, January 19, 1995, Civil No. 93000213
7. Motion to Set Aside Sale, March 14, 1995 Civil No. 930500213
8. Order, July 17, 1995, Civil No. 930500213
9. Second Amended Notice of Appeal, August 22, 1995, Civil No. 930500213
10. Order, December 6, 1995, Civil No. 950446, 940500335, 930500213

DN:S:SNED 814202 Tanasse:replybrief 031196 814202 dn/mg

FILED  
FIFTH DISTRICT COURT  
'92 AUG 7 PM 4 27

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WASHINGTON COUNTY

BY



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IN THE FIFTH JUDICIAL DISTRICT COURT  
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

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TERRY E. BURCHINAL, d/b/a NEDRA'S  
CAFE,

Plaintiff,

vs.

CLUB ST. GEORGE, a non-profit  
corporation, d/b/a CHAPTER ELEVEN,  
and JAMES TANASSE,

Defendants.

)  
)  
) **COMPLAINT**  
)  
)  
)

) Civil No. *920500838 PR*

) Judge *J.L. Shumate*

) *R#921530011*  
)

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Plaintiff, by and through his counsel, complains and alleges against Defendants as follows:

**JURISDICTION**

1. Plaintiff is a resident of Kane County, State of Utah, and does business as Nedra's Cafe in Washington County, State of Utah.

2. Defendant, Club St. George, is a non-profit corporation licensed to do business under the laws of the State of Utah.

3. Defendant, James Tanasse, is a resident of Washington County, State of Utah.

4. This Court has jurisdiction over the subject matter and venue is properly laid in this Court.



## **GENERAL ALLEGATIONS**

5. On or about April 1, 1992, Plaintiff entered into a lease agreement with Defendants for rental of a portion of property located at 1110 South Bluff Street, St. George, Utah, known as the Chapter Eleven. Attached is a true and correct copy of the lease agreement.

6. At the time of entering into the lease, all parties contemplated that Nedra's Cafe could act as a family dining restaurant and that children and minors would be allowed to enter and dine at the cafe. The ability of minors and children under the age of 21 to dine at Nedra's Cafe was material to the lease agreement, and neither plaintiff nor defendants would not have agreed to enter into the lease agreement absent the restaurant's accessibility to people under the age of 21.

7. Sometime after entering into the lease, the City of St. George and the State of Utah limited the access of people under the age of 21 to Nedra's Cafe. Because of this limitation, Nedra's Cafe has had difficulty in generating the revenue projected at the time of signing the lease.

8. During all times relevant hereto, Defendant, James Tanasse, was acting as an agent for Club St. George within the scope of his actual or apparent agency. Notwithstanding, upon information and belief, Defendant James Tanasse and the Club St. George are one and the same, and the Club St. George is the alter ego of Defendant James Tanasse. Accordingly, Plaintiff requests that the corporate veil of Club St. George be pierced and that James Tanasse be liable for all damages of Plaintiff as are provided for both in the lease agreement and by law.

## **FIRST CAUSE OF ACTION**

9. All other allegations of this Complaint are by this reference entered into and made a part of this cause of action.

10. Plaintiff's ability to comply with the lease is no longer possible under the circumstances, and Plaintiff is entitled to recession of the lease based upon a mutual mistake and impossibility of performance.

### **SECOND CAUSE OF ACTION**

11. All other allegations of this Complaint are by this reference entered into and made a part of this cause of action.

12. On or about August 6, 1992, Defendant's locked up and barred Plaintiff's access to Nedra's Cafe. This was done without Court order or Court approval and is in violation of Utah Code Ann. § 78-36-1(1).

13. Further, Defendants are pursuing operation of the restaurant using Plaintiff's business name. This is done without the consent of Plaintiff.

14. Plaintiff is entitled to an order from the Court requiring Defendants and those acting in concert with them to cease and desist operation of the cafe using Plaintiff's business name. Plaintiff is further entitled to return of all business paraphernalia and other property belonging to the operation of Nedra's Cafe or Trace-Nedra's, including property with Plaintiff's business name or logo on it.

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

1. For an order from the Court rescinding the lease agreement;
2. For an order from the Court requiring Defendants to cease and desist operation of a cafe or restaurant using Plaintiff's business name;
3. For attorney's fees and costs as provided in the lease agreement to the prevailing party, or in the alternative, that the lease be declared null and void and each party bear their own attorney's fees;
4. For damages to Plaintiff's business resulting from Defendants' use of Plaintiff's business name; and

5. For such other and further relief as the above-entitled Court deems equitable and proper.

DATED this 17<sup>th</sup> day of August, 1992.

SNOW & JENSEN

Lewis P. Reece  
Lewis P. Reece  
Attorney for Plaintiff

STATE OF UTAH )  
COUNTY OF WASHINGTON ) ss:  
Certify that this document or record, is a full,  
and correct copy of the original, on file in  
office.  
by Diana M. McAnulla 19 96  
Deputy Court Clerk  
FIFTH DISTRICT  
WASHINGTON

Plaintiff's address:

310 South 100 East  
Kanab, Utah 84741

## LEASE AGREEMENT

This Agreement is made by and between CLUB ST. GEORGE, INC., a Utah non-profit corporation ("Lessor"), and NEDRA PAULINE and TERRY BURCHINAL ("Lessee").

### RECITALS

a. Lessor is the sole owner of the premises and building described in Exhibit A attached hereto, and desires to lease the portion of the building described in Exhibit B located in St. George, Utah:

b. Lessor desires to lease the premises to a suitable lessee for business purposes.

c. Lessee desires to lease the premises for conducting its restaurant business.

d. The parties desire to enter into a lease agreement defining their rights, duties, and liabilities relating to the premises.

IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Scope and Purpose. Lessor leases to Lessee a portion of the premises located at ~~1110 South Bluff Street, St. George, Utah, and~~ described in Exhibit B, including necessary equipment and furnishings, for Lessee's use ~~in its restaurant business. Lessor also gives Lessee the right to~~ share in the use of the parking area and walkways surrounding the premises. Lessee may not change the use of the premises without the prior written consent of Lessor.

2. Term. Lessor demises the above premises for a term commencing APRIL 1, 1992. The lease term shall end one (1) year from that date.

3. Rent. The rent under this Lease for the term shall be Twenty Four Thousand Dollars (\$24,000.00) plus Five percent (5%) of the gross income of Lessee's business, payable in monthly installments of Two Thousand Dollars (\$2,000.00) plus Five percent (5%) of the previous months gross income. Each monthly installment is payable in advance on the first day of each month. The first and last month's installments shall be deposited on the date of this agreement. In addition, the sum of One Thousand Dollars (\$1,000.00) shall be deposited on the date of this agreement as a security deposit in order to secure Lessee's rent payments and other obligations under this Lease. Lessee acknowledges that Lessor is relying on the timely payment of rent by Lessee in order to meet Lessor's financial obligations. In the event Lessee fails to make any rent payment within five (5) calendar days of the due date thereof, Lessee shall pay as additional rent a sum equal to five percent (5%) of the amount of rent due. In addition, if Lessee fails to pay any rent within fifteen (15) days of the due date thereof, all rent sums

then due shall then commence to accrue interest at the rate of eighteen percent (18%) per annum until paid.

4. Additional Rent. All taxes, charges, costs and expenses that Lessee assumes or agrees to pay hereunder, together with all interest and penalties that may accrue thereon in the event of the failure of Lessee to pay those items, and all other damages, costs, expenses, attorney's fees and other sums that Lessor may suffer or incur, or that may become due, by reason of any default of Lessee or failure by Lessee to comply with the terms and conditions of this Lease shall be deemed to be additional rent, and, in the event of nonpayment, Lessor shall have all the rights and remedies against Lessee as herein provided for failure to pay rent.

5. Option to Renew. Lessee shall have the right to renew the term of the Lease for an additional year on the following terms and conditions:

a. No default by Lessee in the performance of any of the terms of this Lease is existing or continuing at any time during the last one hundred eighty (180) days of the Lease term.

b. The renewal term shall be on the same terms, covenants and conditions as provided in this Lease except that there shall be no privilege to renew the terms of this Lease for any period of time beyond the expiration of the renewal term.

c. At least ninety (90) days prior to the expiration of the initial term, Lessee shall notify Lessor in writing of its election to exercise the right to renew the term of this Lease.

d. On the giving of such notice of election, this Lease shall be deemed to be renewed and the term thereof renewed for a period of one (1) year from the date of expiration of the initial term, without the execution of any further lease or instrument.

6. Taxes. Lessor shall pay all real property taxes that may be assessed against the premises and all taxes that may be assessed against Lessor's personal property used on the premises.

7. Utilities. Lessee shall pay one-third (1/3) of the electric bill, two-thirds (2/3) of the natural gas bill, one-half (1/2) of the garbage bill, and one-third (1/3) of the bill for janitorial services. In the event any of the charges are billed to Lessor, Lessee will reimburse Lessor within ten (10) days of the date that Lessor notifies Lessee of the amount due. Lessee will have a separate phone connection and will pay all of that bill.

8. Insurance. Lessee shall furnish and maintain at all times during the term of this Lease contingent liability insurance with a company authorized to do business in the State of Utah. Such insurance shall have a combined single limit of One Million Dollars (\$1,000,000.00), shall name Lessor as an additional insured, shall have a deductible not to exceed \$1,000.00 and shall provide that Lessor will be given thirty (30) days advance written notice of cancellation. Lessee shall provide Lessor with current certificates verifying this insurance coverage. Insurance coverage

obtained and maintained pursuant to this requirement may not be brought into contribution with insurance purchased by the Lessor. Lessee shall be solely responsible for furnishing fire and extended coverage insurance on Lessee's personal property, including leasehold improvements, used on the premises.

9. Alterations, Additions and Improvements. All additions, changes, and other improvements, other than trade fixtures, erected or placed on the premises by Lessee shall remain thereon and shall not be removed therefrom, and shall become the property of Lessor as made. No alterations, additions or improvements in and to the premises shall be made nor shall any exterior signs be erected without Lessor's written permission, which shall not be unreasonably withheld. Lessor's consent to any improvements shall be given only upon the express condition that all improvements shall be paid for as made, and shall not grant Lessee authority to bind or obligate Lessor or encumber fee title to the premises.

Dining Room?

10. Repairs and Maintenance.

a. Lessor shall be responsible for all repairs and maintenance of the premises except the following which shall be performed by Lessee:

(1) Cleaning and janitorial services in the kitchen, food and food preparation areas. The cost for such janitorial services shall be in addition to those specified in Section 7.

(2) All repairs of damages to the premises and other areas of shared use (including replacement of damaged items, where necessary) that are caused by the negligence or fault of Lessee, its employees, agents, customers, invitees, licensees or guests.

b. Any repairs and maintenance work done by Lessee shall be performed in such a manner as to maintain the premises in a clean condition and in a good state of repair.

c. Lessee shall cooperate with Lessor's performance of repair work and shall make such accommodations in its business operations as shall be reasonably necessary to allow Lessor to complete these repairs.

11. Indemnity. Lessee shall indemnify Lessor against all expenses, liabilities and claims by or on behalf of any person or entity, including reasonable attorney's fees, arising out of either (1) a failure by Lessee to perform any of the terms or conditions of this Lease, (2) any injury or damage happening on or about the demised premises, unless caused solely by the fault or negligence of Lessor, (3) a failure to comply with any law of any governmental authority, or (4) any mechanics' lien or security interest filed against the premises, to the extent said mechanics' lien or security interest did arise as a result of action by Lessee.

12. Other Obligations of Lessee.

a. Lessee shall permit Lessor or its agents to enter the premises at any time for any reason, including to make repairs required of Lessor, to show the premises to prospective buyers, or for any other reason deemed appropriate by Lessor.

b. Lessee shall comply with all State and Local liquor laws, ordinances and regulations.

c. Lessee shall not employ anyone under the age of twenty-one.

d. Lessee must be open for business between the hours of 10 A.M. and 1 A.M. Monday through Saturday, and from Noon to Midnight on Sunday.

e. Lessee shall replace broken or lost china, flatware, glassware, and kitchen and eating utensils. Replacements shall remain Lessor's property.

f. Lessor shall not be responsible to provide food or labor for Lessee's business.

13. Easements, Agreements or Encumbrances.

a. The parties shall be bound by all existing easements, agreements and encumbrances of record relating to the premises and Lessor shall not be liable to Lessee for any damages resulting from any action taken by a holder thereunder.

b. This Lease shall be subject and subordinate to any mortgage or trust deed that is now on or affects the premises and walkway and parking areas or that any owner of the premises may hereafter at any time elect to place on the premises and walkway and parking areas. Lessee shall, on request, hereafter execute any documents that Lessor may deem necessary to accomplish such subordination of Lessee's interest in this Lease.

c. The parties acknowledge that they are aware of the terms, conditions, and circumstances surrounding the agreement entered into by Lessor and John Prince which is attached as Exhibit C. This Lease shall be subject and subordinate to that agreement. The parties agree that if Jim Tanasse is not able to purchase or lease the property under that agreement that this Lease shall terminate on thirty (30) days written notice from Lessor to Lessee, and Lessor will not be liable for any damages caused to Lessee.

14. Quiet Enjoyment. Except as provided in Section 13, Lessor warrants that Lessee shall be granted peaceable and quiet enjoyment of the premises free from any eviction or interference by Lessor if Lessee pays the rent and other charges provided herein, and otherwise performs the terms and conditions of this Lease.

15. Liability of Lessor. Lessor shall not be liable for any injury or damages to any property or to any person on or about the premises, unless caused solely by the fault or negligence of Lessor. Lessor shall not be liable to Lessee for any entry on the premises, for failure to inspect the premises, or for failure to make repairs required of Lessee.

16. Destruction of Premises. In the event of a total destruction of the premises or other areas of shared use not caused by the negligence or fault of Lessee, its employees, agents, customers, invitees, licensees or guests, the Lease term shall end and rent shall be apportioned to that date. In the event of a partial destruction of the premises or other areas of shared use

during the term, Lessor shall forthwith repair the same, provided the repairs can be made within ninety (90) days under the laws and regulations of applicable governmental authorities. A partial destruction is defined as any destruction of a substantial portion, but less than all, of the premises not caused by the negligence or fault of Lessee, its employees, agents, customers, invitees, licensees or guests. Any partial destruction shall neither annul nor void this Lease, except that Lessee shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by Lessee on the premises. If the repairs cannot be made in the specified time, the Lease term may be terminated at the option of either party. Any destruction less than substantial or destruction caused by the negligence or fault of Lessee, its employees, agents, customers, invitees, licensees or guests shall be treated as repairs and maintenance under the provisions of Section 10.

17. Condemnation. Rights and duties in the event of condemnation are as follows:

a. If the whole of the premises shall be taken or condemned by any competent authority for any public or quasi-public use or purpose, this Lease shall cease and terminate as of the date on which title shall vest thereby in that authority, and the rent reserved hereunder shall be apportioned and paid up to that date.

b. If only a portion of the premises shall be taken or condemned, Lessor shall supply, within 60 days, replacement space of comparable size, appearance, and function which is acceptable in the determination of Lessee. If Lessor shall fail so to do, the lease term shall terminate. During the period in which Lessee's use shall be diminished, rent shall be proportionately reduced.

c. In the event of any taking or condemnation in whole or in part, the entire resulting award of consequential damages shall belong to Lessor without any deduction therefrom for the value of the unexpired term of this Lease or for any other estate or interest in any and all such awards.

18. Representations by Lessor. At the commencement of the term, Lessee shall accept the premises in their existing condition and state of repair, and Lessee agrees that no representations, statements or warranties, express or implied, have been made by or on behalf of Lessor in respect thereto except as contained in the provisions of this Lease and Lessor shall in no event be liable for any latent defects.

19. Waivers. The failure of Lessor to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that Lessor may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any terms and conditions.

20. Notices. All notices to be given with respect to this Lease shall be in writing. Each notice shall be sent by registered or certified mail, postage



prepaid and return receipt requested, to the party to be notified at its last known address. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein. ~~Nothing herein shall be constructed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.~~

21. Holdovers. In the event Lessee maintains occupancy of the premises past the term of this Lease, Lessee shall be a tenant at will, and in no event shall Lessor and Lessee be deemed to have renewed this Lease for an additional term.

22. Assignment, Mortgage or Sublease. Lessee shall not assign, mortgage, pledge, sublet or encumber this Lease or the demised premises in whole or in part, nor permit the premises to be used or occupied by others, nor shall this Lease be assigned or transferred by operation of law, without the prior consent in writing of Lessor in such instance, which will not be unreasonably withheld. Lessor shall not be required to consent to any assignment or sublease where the assignee or sublessee will conduct a business that competes or conflicts with the business of Lessor or any other tenants of Lessor. Collection of rent from any assignee, transferee, subtenant, or occupant, and/or application of the net amount collected to the rent reserved herein, shall not be deemed a waiver or any agreement or condition hereof, nor shall such action constitute the acceptance of the assignee, transferee, subtenant or occupant.

23. Surrender of Possession. Lessee shall, on the last day of the term, or on earlier termination and forfeiture of the Lease, peaceably and quietly surrender and deliver the demised premises to Lessor free of subtenancies, including all buildings, additions and improvements, other than trade fixtures, constructed or placed thereon by Lessee, all in good repair. Lessee shall repair and restore all damage to the premises caused by the removal of equipment, trade fixtures and personal property. Any trade fixtures, equipment or personal property belonging to Lessee, if not removed upon termination, shall, at Lessor's election, be deemed abandoned and become the property of the Lessor without payment or offset therefor.

24. Default or Breach. Each of the following events shall constitute a default or breach of this Lease by Lessee:

a. If Lessee shall fail to pay any rent or additional rent when the same shall become due.

b. If Lessee shall fail to perform or comply with any of the conditions of this Lease and if the nonperformance shall continue for a period of fifteen (15) days after notice thereof by Lessor to Lessee or, if the performance cannot be reasonably had within the fifteen (15) day period, Lessee shall not in good faith have commenced performance within the fifteen (15) day period and shall not diligently proceed to completion of performance.

c. If Lessee shall vacate, abandon or fail to occupy the premises, or if the premises shall pass to or devolve on any other person or party, or if the premises shall be used for any purpose other than herein set forth, or for use in violation of any law or regulation.

d. If the going business of Lessee shall terminate, or if Lessee shall become subject to bankruptcy, reorganization, assignment for benefit of creditors or any other procedures with similar purpose, whether voluntary or involuntary.

e. If any claim for materials or labor shall arise or be claimed against the premises or Lessor by reason of the acts of Lessee, its heirs, assigns or agents.

**25. Remedies on Default.** In the event of any default hereunder (or threatened default in the case of paragraph b of this Section), the rights of Lessor shall be as follows:

a. Lessor may elect, but shall not be obligated, to make any payment required of Lessee herein or comply with any agreement, term or condition required hereby to be performed by Lessee, and Lessor shall have the right to enter the premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied. However, any expenditure hereunder by Lessor shall not be deemed to waive or release the default of Lessee or the right of Lessor to take any action as may be otherwise permissible hereunder in the case of any default.

b. Lessor shall have the right of injunction to restrain Lessee and the right to invoke any remedy allowed by law or in equity, as if the specific remedies of indemnity or reimbursement were not provided herein.

c. Lessor shall have the right to cancel and terminate this Lease, as well as all of the right, title and interest of Lessee hereunder, by giving to Lessee not less than ten (10) days' notice of the cancellation and termination. On expiration of the time fixed in the notice, this Lease and the right, title and interest of Lessee hereunder shall terminate in the same manner and with the same force and effect, except as to Lessee's liability for sums accrued prior to the date of termination, as if the date fixed in the notice of cancellation and termination were the end of the term herein originally determined.

d. Lessor may re-enter the premises immediately without notice and take possession of Lessee's property and Lessee hereby grants to Lessor a security interest in Lessee's fixtures, equipment and inventory as now or hereafter on the premises and products proceeds and replacements thereof. Lessor may store the Lessee's property on the premises, in a public warehouse or at a place selected by Lessor, at the expense of Lessee. After re-entry Lessor may terminate the Lease as provided above. Without the notice, re-entry will not terminate the Lease.

e. Lessor may re-enter the premises immediately without notice and secure the same against access by Lessee or any third parties. After re-entry, Lessor may terminate the Lease as provided above. Without the notice, re-entry will not terminate the Lease.

26. Application of Remedies.

a. The rights and remedies given to Lessor in this Lease are distinct, separate and cumulative, and no one of them, whether or not exercised by Lessor, shall be deemed to be in exclusion of any of the others herein, by law or by equity provided.

b. In all cases hereunder, and in any suit, action, or proceeding of any kind between the parties, it shall be presumptive evidence of the fact of the existence of a charge being due if Lessor shall produce a bill, notice or certificate of any public official entitled to give that notice to the effect that such charge appears of record on the books in his office and has not been paid.

c. No receipt of money by Lessor from Lessee after default or cancellation of this Lease shall reinstate, continue or extend the term or affect any notice given to Lessee or operate as a waiver of the right of Lessor.

27. Attorney's Fees. Should any party default in any of the covenants or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this Lease or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise.

28. Miscellaneous. This Lease contains the entire agreement between the parties and cannot be changed or terminated except by a written instrument subsequently executed by the parties hereto. This Lease and the terms and conditions hereof apply to and are binding on the heirs, legal representatives, successors and assigns of both parties. This agreement shall be governed by and construed in accordance with the laws of the State of Utah. Time is of the essence in all provisions of this Lease. The date of this agreement shall be the date of the signature of the last party to sign.

IN WITNESS WHEREOF, the parties have executed this Lease on the dates set forth below.

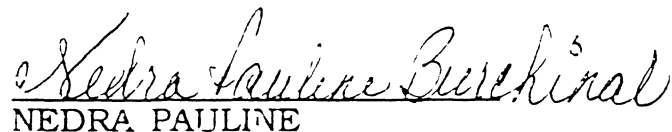
Date: 3-22-92

Date: 3-20-92

LESSOR:

LESSEE:

  
\_\_\_\_\_

  
NEDRA PAULINE

  
TERRY BURCHINAL

DISK: SA10 / 690301

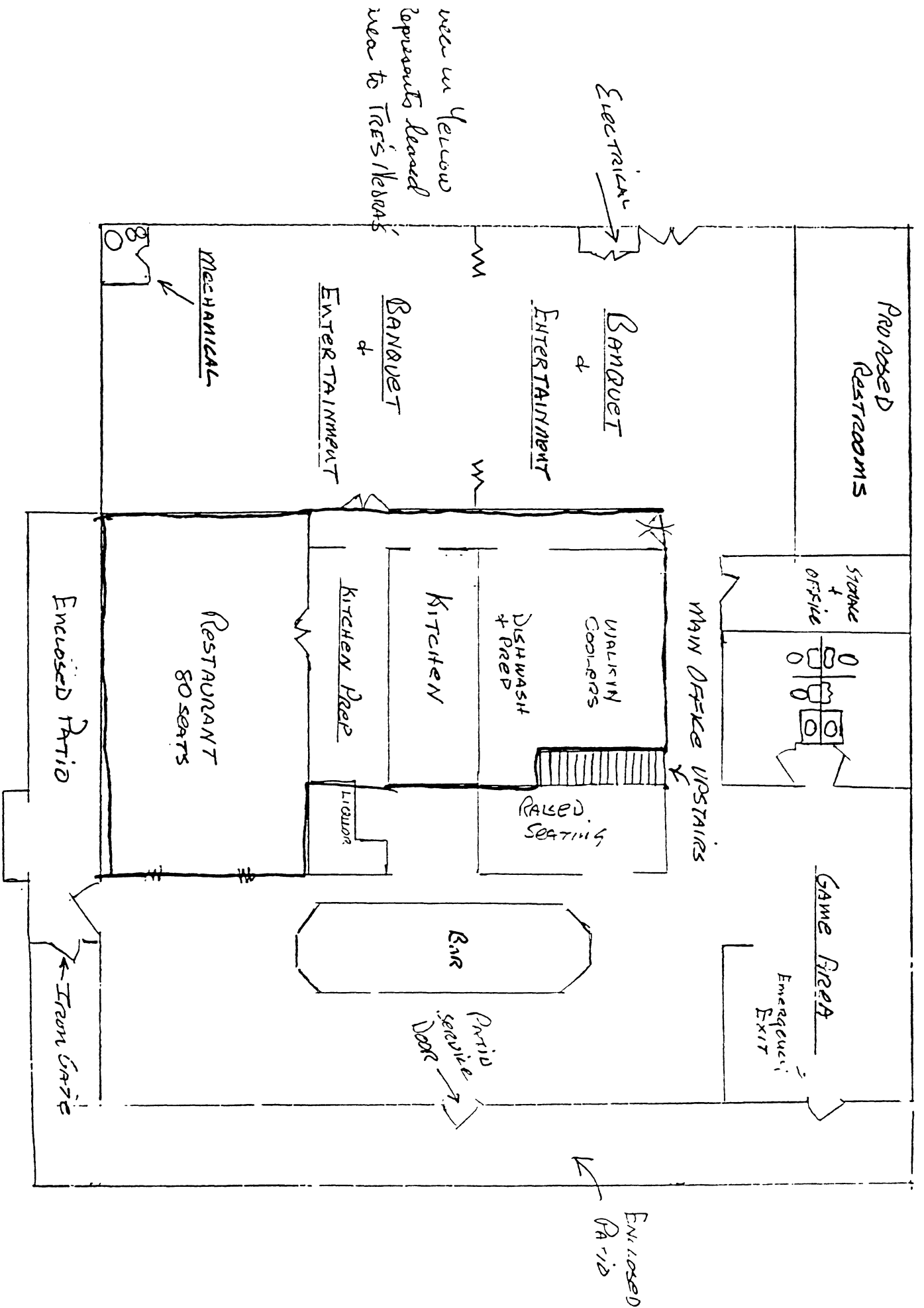
**EXHIBIT "A"**

Beginning at a point North 0 degrees 55'36" West 344.88 feet along the Section Line and North 88 degrees 49'34" East 92.00 feet from the West Quarter Corner of Section 31, Township 42 South, Range 15 West, Salt Lake Base and Meridian and running thence North 38 degrees 49'34" East 145.22 feet to the Westerly line of Bluff Street; thence South 8 degrees 16' East 248.17 feet along said Westerly line; thence leaving Bluff Street and running South 88 degrees 49'34" West 124.83 feet; thence North 0 degrees 55'36" West 22.10 feet; thence North 45 degrees 55'36" West 22.76 feet; thence North 0 degrees 55'36" West 50.00 feet; thence South 88 degrees 49'34" West 36.00 feet; thence North 0 degrees 55'36" West 158.00 feet to the point of beginning.

Subject to a 22.10 foot wide right of way easement for egress and ingress on the following described portion of the above parcel:

Beginning at a point North 0 degrees 55'36" West 98.62 feet along the Section Line and North 88 degrees 49'34" East 144.09 feet from the West Quarter Corner of Section 31, Township 42 South, Range 15 West, Salt Lake Base and Meridian; thence North 0 degrees 55'36" West 22.10 feet; thence North 88 degrees 49'34" East 121.985 feet to a point on the West Line of Bluff Street; thence South 8 degrees 16' East 22.28 feet along Bluff Street; thence South 88 degrees 49'34" West 124.83 feet to the point of beginning.

TOGETHER WITH all improvements and appurtenances thereunto belonging.



STEVEN E. SNOW A3029  
JEFFREY N. STARKEY—A5415  
SNOW, NUFFER, ENGSTROM & DRAKE  
A Professional Corporation  
90 East 200 North  
P.O. Box 400  
St. George, Utah 84771-0400  
801/628-1611  
File #690305/wcf2

BOOK 5 PAGE 21

WASHINGTON COUNTY

BY *James L. Shumate*

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IN THE FIFTH JUDICIAL DISTRICT COURT  
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

---

TERRY E. BURCHINAL, d/b/a NEDRA'S  
CAFE,

Plaintiff,

vs.

CLUB ST. GEORGE, a non-profit  
corporation, d/b/a CHAPTER ELEVEN,  
and JAMES TANASSE,

Defendants.

**ORDER ALLOWING  
WITHDRAWAL OF COUNSEL**

---

CLUB ST. GEORGE, a non-profit  
corporation, dba CHAPTER ELEVEN,

Third-Party Plaintiff,

vs.

NEDRA PAULINE BURCHINAL, dba  
TRES NEDRAS,

Third-Party Defendant.

Civil No. 920500838  
Judge James L. Shumate

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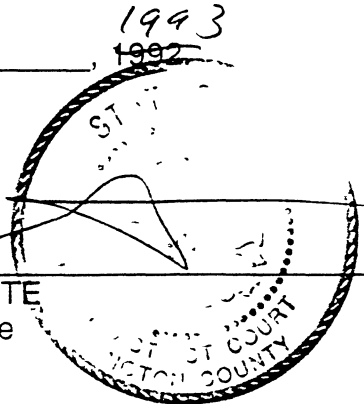
Steven E. Snow's Motion for Withdrawal of Counsel having come before the  
Court, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Steven E. Snow's motion be granted allowing him to withdraw as counsel for Club St. George and James Tanasse.

DATED this 5 day of Jan, <sup>1993</sup>~~1992~~

BY THE COURT:

  
JAMES L. SHUMATE  
District Court Judge



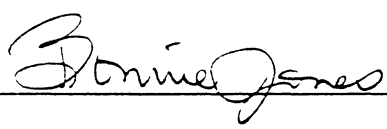
MAILING CERTIFICATE

I hereby certify that on the 30<sup>th</sup> day of December 1992, I served an unsigned copy of the foregoing ORDER ALLOWING WITHDRAWAL OF COUNSEL on each of the following by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

Curtis J. Jensen, Esq.  
Lewis P. Reece, Esq.  
SNOW & JENSEN  
150 North 200 East #203  
P.O. Box 2747  
St. George UT 84771-2747

Club St. George  
James Tanasse  
1110 South Bluff Street  
St. George UT 84770

Nedra Pauline Burchinal  
dba Tres Nedras  
310 South 100 East  
Kanab UT 84741

  
\_\_\_\_\_

STATE OF UTAH

COUNTY OF WASHINGTON ) <sup>SS</sup>

"I certify that this document or record, is a full, true, and correct copy of the original, on file in this office."

Date: 3:30 <sup>1996</sup>  
by Bonnie Jones  
District Court Clerk

FILED  
FIFTH DISTRICT COURT

'94 JUN 10 AM 10 43

WASHINGTON COUNTY

BY *[Signature]*

JAMES A TANASSE &  
NADINE B. YOUNG PRO-SE  
1405 N. Dixie Downs Rd. #10  
St. George, Utah 84770  
(801) 673-2915

-----  
IN THE FIFTH JUDICIAL DISTRICT COURT, STATE OF UTAH  
WASHINGTON COUNTY  
-----

JAMES A. TANASSE )  
NADINE B. YOUNG )  
CLUB ST. GEORGE INC., a Utah )  
Corporation and )  
YOUNG TANASSE INC., a Utah )  
Corporation, )

Plaintiffs, )

vs. )

STEVEN SNOW, )  
SNOW NUFFER ENGSTROM AND )  
DRAKE, A UTAH CORPORATION. )

Defendants, )

VERIFIED

AMENDED COMPLAINT

Case No. 940500335  
~~930500213~~

Comes now the Plaintiffs and hereby verify and allege as and  
for causes of action against Defendants as follows:

FIRST CAUSE OF ACTION

1. Plaintiffs, James A. Tanasse and Nadine B. Young are individuals and reside in the County of Washington, State of Utah.
2. That Club St. George Inc. and Young Tanasse Inc. are Utah



Corporations, and have their offices in the County of Washington, State of Utah.

3. Defendant Steven Snow is a resident of the County of Washington, State of Utah.

4. Defendant, Snow, Nuffer, Engstrom and Drake is a Utah Corporation and has its main office in St. George, County of Washington, State of Utah.

5. That in February of 1992, defendants prepared a lease agreement for the plaintiffs, between the plaintiffs and Terry and Pauline Burchinal d/b/a Tres Nedras, for the lease of certain real and personal property located at 1110 S. Bluff St. George, County of Washington, State of Utah.

6. That said lease was prepared carelessly, recklessly, negligently, and defendants willfully and maliciously failed to perform, in that they did not adequately or thoroughly research the legal codes referring to "unlawful detainer" and inserted certain language into said lease which was contrary to law.

7. That said lease was prepared carelessly, recklessly, negligently by Defendants and their willful and malicious failure to perform was the direct proximate cause of damages suffered by the plaintiffs.

8. As a direct proximate result of defendants careless, reckless, negligent, willful and malicious failure to perform,

plaintiffs have suffered special damages in excess of \$38,000.00 in lost lease compensation, as well as general damages and punitive damages.

#### SECOND CAUSE OF ACTION

9. The allegations contained in paragraphs 1 through 8 above are hereby incorporated herein.

10. That as a direct proximate result of said careless, reckless and negligent acts and omissions of the defendants, the plaintiffs, relying on certain provisions contained in the aforementioned lease, were sued by said lessees and Plaintiffs now have a judgement against them in excess of \$102,000.00 as well as general damages.

#### THIRD CAUSE OF ACTION

11. The allegations contained in paragraphs 1 through 10 above are hereby incorporated herein.

12. That as a direct proximate result of said negligent, reckless and careless acts, plaintiffs had to extend fees for legal counsel to defend themselves against said lessees.

13. That as a direct proximate result of the said acts referred to in paragraph 6 and 7 above plaintiffs have suffered special damages in excess of \$70,000.00 as well as general damages.

#### FOURTH CAUSE OF ACTION

14. The allegations contained in paragraphs 1 through 13

above are hereby incorporated herein.

15. That as a direct proximate result of said negligent, reckless and careless acts and omissions of defendants, plaintiffs lost their down payment for the real property referred to in the lease in paragraph 5 above.

16. That as a direct proximate result of the said acts referred to in paragraph 10 above plaintiffs have suffered special damages in excess of \$37,000.00 as well as general damages.

#### FIFTH CAUSE OF ACTION

17. The allegations contained in paragraphs 1 through 16 above are hereby incorporated herein.

18. That as a direct proximate result of said negligent, reckless and careless acts and omissions of defendants, plaintiffs lost the appreciated value in the real property referred to in the lease as well as the benefit of their bargain.

19. That as a direct proximate result of the said acts and omissions referred to in the above paragraphs, plaintiffs have suffered special damages in excess of \$250,000.00 as well as general damages.

#### SIXTH CAUSE OF ACTION

20. The allegations contained in paragraphs 1 through 19 above are hereby incorporated herein.

21. That as a direct proximate result of said negligent,

reckless and careless acts and omissions of defendants, plaintiffs lost the remodeling and construction investment required to move to the real property at 1110 South Bluff.

22. That as a direct proximate result of the said acts and omissions of defendants referred to above, plaintiffs have suffered special damages in excess of \$55,000.00 as well as general damages.

#### SEVENTH CAUSE OF ACTION

23. The allegations contained in paragraphs 1 through 22 above are hereby incorporated herein.

24. That defendants negligently, recklessly, carelessly, maliciously and willfully failed to perform a second time by not moving for dismissal of said lessees' Complaint on the grounds that the plaintiffs and their counsel in that action failed to obtain proper indorsement by the Court on the summons in the matter as required under section 78-36-8 Utan Code Annotated (1953, as amended ) which states as follows:

\* \* \*

The court shall endorse on the summons the number of days within which the defendant shall appear and defend the action ... .  
(emphasis added)

25. That as a direct proximate result of said careless, reckless, negligent, malicious and willful failure to perform plaintiffs have suffered mental anguish, pain, embarrassment, depression and other special damages in excess of \$250,000.00 as

well as general and punitive damages.

26. That plaintiffs have demanded partial payment from defendants and defendants have denied the same.

Wherefore, plaintiffs pray judgement against defendants and all of them as follows:

1. Special damages in the sum of not less than \$737,000.00.
2. General damages in the amount of \$650,000.00.
3. Punitive damages in the amount of \$500,000.00.
4. An offset against any judgement the defendants may have against the plaintiffs.
6. For costs of suit and such other relief as the court deems just.

Dated this 10<sup>th</sup> day of June, 1994.

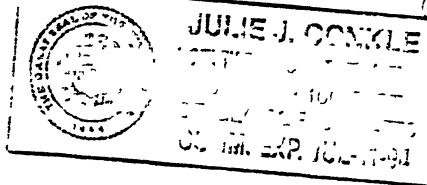
STATE OF UTAH                    )  
                                      :  
COUNTY OF WASHINGTON        )       ss.

JAMES A. TANASSE, being first duly sworn on oath, deposes and says that he has read and understands the content of the foregoing VERIFIED AMENDED COMPLAINT, that the statements therein contained are true and correct to the best of his knowledge and

belief, and that he executed the same.

James A. Tanasse  
JAMES A. TANASSE

1994. SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of June,



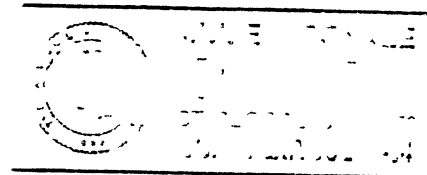
Julie J. Conkle  
NOTARY PUBLIC  
Residing at:  
My commission expires:

STATE OF UTAH                     )  
  :  
COUNTY OF WASHINGTON        )        SS.

NADINE B. YOUNG, being first duly sworn on oath, deposes and says that he has read and understands the content of the foregoing VERIFIED AMENDED COMPLAINT, that the statements therein contained are true and correct to the best of his knowledge and belief, and that he executed the same.

Nadine B. Young  
NADINE B. YOUNG

1994. SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of June,



Julie J. Conkle  
NOTARY PUBLIC  
Residing at:  
My commission expires:

STATE OF UTAH                     )  
  :  
COUNTY OF WASHINGTON        )        SS.

NADINE B. YOUNG, by and for CLUB ST. GEORGE, INC., being first duly sworn on oath, deposes and says that he has read and understands the content of the foregoing VERIFIED AMENDED

COMPLAINT, that the statements therein contained are true and correct to the best of his knowledge and belief, and that she executed the same.

*Nadine B. Young, President*

NADINE B. YOUNG, President  
CLUB ST. GEORGE INC.

SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of June, 1994.

*Kulu S. Conkle*  
NOTARY PUBLIC  
Residing at:  
My commission expires:

STATE OF UTAH )  
COUNTY OF WASHINGTON ) SS.

JAMES A. TANASSE, by and for YOUNG TANASSE INC., being first duly sworn on oath, deposes and says that he has read and understands the content of the foregoing VERIFIED AMENDED COMPLAINT, that the statements therein contained are true and correct to the best of his knowledge and belief, and that he executed the same.

*James A. Tanasse, President*  
JAMES A. TANASSE, President  
YOUNG TANASSE INC.

SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of June, 1994.

STATE OF UTAH

COUNTY OF WASHINGTON

*Kulu S. Conkle*  
NOTARY PUBLIC  
Residing at:  
My commission expires:

certify that this document or record, is a full, true, and correct copy of the original, on file in this office

8

ate

*3-20-96*  
*Dianne McDonald*

DAVID NUFFER - A2431  
SNOW, NUFFER, ENGSTROM, DRAKE, WADE & SMART  
A Professional Corporation  
90 East 200 North  
P.O. Box 400  
St. George, Utah 84771-0400  
801/674-0400  
MC/DC/DN:S:SNED 600040:Execution:praecipe 090794 600040 dc

940500335  
LN

IN THE FIFTH JUDICIAL DISTRICT COURT  
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

SNOW, NUFFER, ENGSTROM & DRAKE,  
a professional corporation,

Plaintiff,

vs.

JAMES A. TANASSE, individually,  
YOUNG-TANASSE, INC., a Utah  
corporation, and CLUB SAINT GEORGE,  
a non-profit corporation, d/b/a CHAPTER  
ELEVEN,

Defendants.

**PRAECIPE**

Judge James L. Shumate

Civil No. 930500213

R# 941370025

TO THE SHERIFF OF WASHINGTON COUNTY, UTAH:

By authority of the Judgment in the above-entitled action and the Writ of Execution issued in the above-entitled action herewith delivered to you, directing you to sell the following described property located in Washington County, State of Utah, belonging to the Defendants, you are hereby requested and directed, as provided by statute and rule in such cases, to levy upon and safely keep all the right, title, equity and interest of said Defendants in and to the following described property, to-wit:

All causes of action alleged in the action of the above-named Defendants on file with the Fifth Judicial District Court, Washington County, State of Utah, entitled James A. Tanasse, Nadine B. Young, Club St. George Inc., a Utah Corporation and Young Tanasse Inc., a Utah Corporation v. Steven Snow, Snow, Nuffer, Engstrom and Drake, a Utah corporation, Case No. 940500335.



You shall effect this Levy by:

- a) service upon James A. Tanasse, 1405 N. Dixie Downs Rd., #10, St. George, Utah.
- b) Service upon Young-Tanasse, Inc., by serving Nadine Young, registered agent, 1405 N. Dixie Downs Rd., #10, St. George, Utah.
- c) Service upon Club Saint George by serving Nadine Young, registered agent, 1405 N. Dixie Downs Rd., #10, St. George, Utah.
- d) Service upon the Clerk of the District Court for Washington County.

You are further requested and directed to proceed with the sale of said property as provided by law, when you have taken possession or control thereof.

DATED THIS 29<sup>th</sup> day of September, 1994.

SNOW, NUFFER, ENGSTROM, DRAKE, WADE & SMART  
A Professional Corporation



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DAVID NUFFER  
Attorney for Plaintiff

DAVID NUFFER - A2431  
SNOW, NUFFER, ENGSTROM, DRAKE, WADE & SMART  
A Professional Corporation  
90 East 200 North  
P.O. Box 400  
St. George, Utah 84771-0400  
801/674-0400  
MC/DC/DN S SNED 814202 Tanasse Execution writ 090794 814202 dc

FILED  
FIFTH DISTRICT COURT  
OCT 17 PM 4 37  
WASHINGTON COUNTY  
BY KAL

IN THE FIFTH JUDICIAL DISTRICT COURT  
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

SNOW, NUFFER, ENGSTROM & DRAKE,  
a professional corporation,

Plaintiff,

VS.

JAMES A. TANASSE, individually,  
YOUNG-TANASSE, INC., a Utah  
corporation, and CLUB SAINT GEORGE,  
a non-profit corporation, d/b/a CHAPTER  
ELEVEN,

Defendants.

WRIT OF EXECUTION

Judge James L. Shumate

Civil No. 930500213

THE STATE OF UTAH TO THE SHERIFF OF WASHINGTON COUNTY, UTAH, GREETINGS:

WHEREAS, Judgment was rendered by the above-entitled Court in Washington County, wherein is the judgment roll, on the 8th day of June, 1993, in favor of the above-named Plaintiff, SNOW, NUFFER, ENGSTROM & DRAKE, and against Defendants JAMES A. TANASSE, YOUNG-TANASSE, INC., A UTAH CORPORATION, AND CLUB SAINT GEORGE, A NON-PROFIT CORPORATION, D/B/A/ CHAPTER ELEVEN, on the First Cause of Action in the amount of \$9,179.52, with interest on the total amount due at 12% per annum from June 8, 1993, until paid in full, and on the Second Cause of Action in the amount of \$5,200.16, with interest on the total amount due at 5.72% per annum, from June 8, 1993, until paid in full, together with Plaintiff's reasonable costs and attorney's fees expended in collecting said Judgment by execution or otherwise, which sums are found by this Court to be due and owing Plaintiff.

1993 Oct 17  
By [Signature]  
WASHINGTON CO SHERIFF

1993 Oct 17  
By [Signature]  
WASHINGTON CO SHERIFF

Served on the named defendant James Tanasse on the 16th day of Oct 1993 at 1:00 p.m. By [Signature]  
WASHINGTON CO SHERIFF

WRIT OF EXECUTION

Page 2 of 2

CASE NO. 930500213

The property to be executed upon is located in Washington County, Utah, and is more particularly described as follows:

All causes of action alleged in the action of the above-named Defendants on file with the Fifth Judicial District Court, Washington County, State of Utah, entitled James A. Tanasse, Nadine B. Young, Club St. George Inc., a Utah Corporation and Young Tanasse Inc., a Utah Corporation v. Steven Snow, Snow, Nuffer, Engstrom and Drake, a Utah corporation, Case No. 940500335.

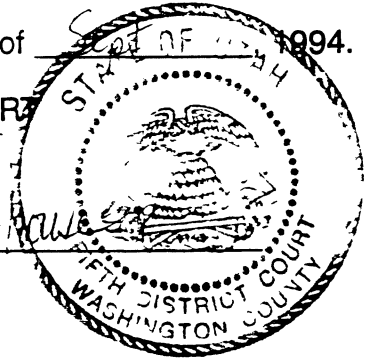
The Judgment of the Court entitles Plaintiff to execute upon the property of Defendants.

YOU ARE COMMANDED to collect the aforesaid Judgment, together with the costs of this execution, pursuant to the terms of the Judgment, to satisfy the same, with all legal costs accruing thereon, and this shall be your sufficient warrant for so doing. Within two (2) months you are commanded to make due returns of this Writ with your doings in the premises hereon endorsed.

Issued under the seal of this Court on the 30 day of Sept 1994.

CLERK OF THE COURT

By: Kim A. Howe  
Deputy Clerk



DAVID NUFFER - A2431  
SNOW, NUFFER, ENGSTROM, DRAKE, WADE & SMART  
A Professional Corporation  
90 East 200 North  
P.O. Box 400  
St. George, Utah 84771-0400  
801/674-0400

Nuffer Data:S.SNED 600040 Tanasse:Execution:retlevy 011195 600040 dc

CLERK OF DISTRICT COURT  
WASHINGTON COUNTY  
SEP 30 1994

IN THE FIFTH JUDICIAL DISTRICT COURT  
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

SNOW, NUFFER, ENGSTROM & DRAKE,  
a professional corporation,

Plaintiff,

vs.

JAMES A. TANASSE, individually,  
YOUNG-TANASSE, INC., a Utah  
corporation, and CLUB SAINT GEORGE,  
a non-profit corporation, d/b/a CHAPTER  
ELEVEN,

Defendants.

**RETURN OF LEVY ON EXECUTION  
AND SALE OF PROPERTY**

**Judge James L. Shumate**

Civil No. 930500213

STATE OF UTAH )  
 ) ss.  
COUNTY OF WASHINGTON )

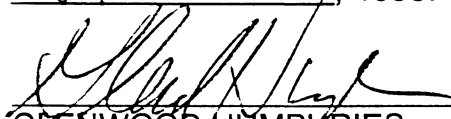
I, Glenwood Humphries, Sheriff of the County of Washington, State of Utah,  
hereby certify that I received the within Execution on or about the 30th day of  
September, 1994. The Writ was reissued on the 17th day of October, 1994; that by  
virtue thereof, I did on the 4th day of October, 1994, levy upon the following described  
property, to-wit:

All causes of action alleged in the action of the above-named  
Defendants, (excluding any claims of other parties in that suit) on  
file with the Fifth Judicial District Court, Washington County, State  
of Utah, entitled James A. Tanasse, Nadine B. Young, Club St.  
George Inc., a Utah Corporation and Young Tanasse Inc., a Utah

Corporation v. Steven Snow, Snow, Nuffer, Engstrom and Drake,  
a Utah corporation, Case No. 940500335.


That I noticed the same for sale. as the law directs, by posting written Notice, containing a particular description of the property, of the time and place of sale, for twenty-one days successively in three public places of the precinct or city where said property is situated and posting a copy at the place of sale of said property, to-wit: the Washington County Hall of Justice: that on the 1st day of December, 1994. at 11:30 a.m. of said day, on the front steps of the Washington County Hall of Justice in St. George, Washington County, State of Utah, at the time and place fixed for said sale, I attended and offered for sale at public auction, for current lawful money of the United States of America. the property above-described, and sold the whole of the same to Snow, Nuffer, Engstrom, Drake, Wade & Smart, for the sum of Ten Thousand Dollars (\$10,000.00), in current lawful money of the United States of America; and that I gave such purchaser a certificate of said sale, and I hereby return said Execution as satisfied.

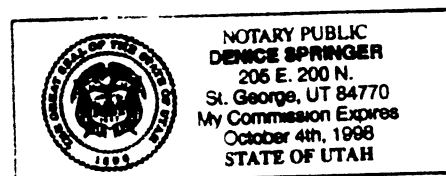
DATED this 19 day of JAN, 1995.

  
GLENWOOD HUMPHRIES  
Washington County Sheriff

STATE OF UTAH )  
COUNTY OF WASHINGTON ) ss.

On this 10th day of January, 1995, before me personally appeared Glenwood Humphries. personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its stated purpose.

  
NOTARY PUBLIC  
Address: Washington County  
My Commission Expires: October 4th, 1998



105 MAR 15 1968

SNOW, NUFFER, ENGSTROM AND DRAKE,	)	
	)	
	)	
	)	
Plaintiff,	)	MOTION TO SET ASIDE SALE
	)	
vs.	)	
	)	
JAMES A. TANASSE, et al,	)	CASE NO. 930500213
	)	
	)	Judge James L. Shumate
	)	
Defendant.	)	

DATED this 14<sup>th</sup> day of March, 1995.

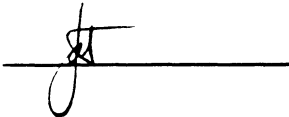
1

MAILING CERTIFICATE

I hereby certify that I mailed via the U.S. Mail, Postage pre-paid, a true and correct copy of the above and foregoing MOTION TO SET ASIDE SALE to each of the following on this 15<sup>th</sup> day of March, 1995:

DAVID NUFFER  
SNOW, NUFFER, ENGSTROM & DRAKE  
90 E. 200 N.  
P.O. Box 400  
St. George, Ut. 84771-0400  
Telephone (801) 674-0400  
Facsimile (801) 628-1610

GREGORY J. SANDERS  
KIPP & CHRISTIAN, P.C.  
City Centre I, #330  
175 E. 400 S.  
Salt Lake City, Ut. 84111  
Telephone (801) 521-3773  
Facsimile (801) 359-9004

A handwritten signature, appearing to be "JT", is written over a horizontal line.

DAVID NUFFER - A2431  
SNOW, NUFFER, ENGSTROM, DRAKE, WADE & SMART  
A Professional Corporation  
90 East 200 North  
P.O. Box 400  
St. George, Utah 84771-0400  
801/674-0400  
Nuffer Data SSNED 600040 Tanasse or 070595 600040 dc

FILED  
FIFTH DISTRICT COURT  
'95 JUL 17 PM 3 17  
WASHINGTON COUNTY  
BY     *ms*    

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IN THE FIFTH JUDICIAL DISTRICT COURT  
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

---

SNOW, NUFFER, ENGSTROM &  
DRAKE, a professional corporation,

Plaintiff,

vs.

JAMES A. TANASSE, individually,  
YOUNG-TANASSE, INC., a Utah  
corporation, and CLUB SAINT GEORGE,  
a non-profit corporation, d/b/a CHAPTER  
ELEVEN,

Defendants.

**ORDER**

Judge James L. Shumate

Civil No. 930500213

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This matter came on before the above entitled Court, the Honorable James L. Shumate presiding, on July 5, 1995, pursuant to notice duly given, with regard to pending motions in this case and in another companion case.

Motion to Set Aside Sale  
Motion to Set Aside Sale  
Motion to Substitute Parties

Civil No. 930500213  
Civil No. 940500335  
Civil No. 940500335

Present at argument were David Nuffer representing Snow, Nuffer, Engstrom & Drake and Steven E. Snow, and James A. Tanasse, pro se.

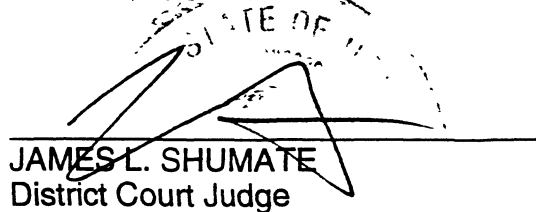
The Court, having reviewed the files, and previously having heard arguments, and being fully advised in the premises, now enters the following Order:



IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Motions to Set Aside Sale are overruled and denied, and the Motion to Substitute Parties is granted. This ruling is based on the Court's specific finding that the Utah Rules of Civil Procedure provide authority for the sale of a chose in action, as has occurred. Snow, Nuffer, Engstrom & Drake is substituted as a party plaintiff in Civil No. 940500335 in the place of James A. Tanasse, Club St. George Inc., a Utah Corporation and Young Tanasse Inc., a Utah Corporation. Nadine Young remains as a party plaintiff.

DATED this 17 day of July, 1995.

BY THE COURT:

  
JAMES L. SHUMATE  
District Court Judge


#### MAILING CERTIFICATE

I hereby certify that on the 6th day of July, 1995, I served an unsigned copy of the foregoing ORDER on each of the following by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

Gregory J. Sanders, Esq.  
KIPP & CHRISTIAN  
175 East 400 South  
Suite 300  
Salt Lake City, Utah 84111

James A. Tanasse  
1405 North Dixie Downs Road #10  
St. George, Utah 84770

Nadine B. Young  
1405 North Dixie Downs Road #10  
St. George, Utah 84770



FILED  
FIFTH DISTRICT COURT

'95 AUG 22 AM 8 34

WASHINGTON COUNTY

BY *W. J. HARR*

JAMES A. TANASSE,  
NADINE B. YOUNG,  
CLUB ST. GEORGE, INC.,  
YOUNG TANASSE, INC.,  
PLAINTIFFS/APPELLANTS PRO SE  
1405 N. Dixie Downs Rd. #10  
St. George, Ut. 84770  
(801) 673-2915

-----  
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT, IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

JAMES A. TANASSE, NADINE B.  
YOUNG, CLUB ST. GEORGE INC.,  
a Utah Corporation and YOUNG  
TANASSE INC., a Utah Corporation,

Plaintiffs/Appellants,

vs.

STEVEN SNOW and SNOW, NUFFER,  
ENGSTROM AND DRAKE, a Utah  
Corporation,

Defendant.

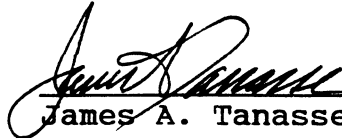
SECOND AMENDED  
NOTICE OF APPEAL


CASE NO. 930500213

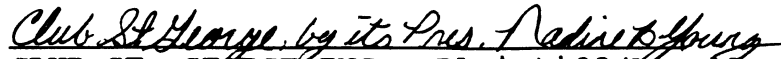
Priority No. \_\_\_\_\_


COMES now the Plaintiffs/Appellants and hereby give notice of their appeal to the Utah Court of Appeals of the ORDER in Civil Case Number 930500213 issued by the Fifth Judicial District Court in and for Washington County, State of Utah. The Order appealed from is that Order filed with the district court clerk on July 17, 1995 in said Civil Case Number 930500213 wherein the Plaintiffs' MOTION TO SET ASIDE SALE was denied.

DATED this 22<sup>nd</sup> day of August, 1995.

  
James A. Tanasse, Plaintiff/Appellant Pro Se

  
NADINE B. YOUNG, Plaintiff/Appellant Pro Se

  
CLUB ST. GEORGE INC., Plaintiff/Appellant  
by its President Nadine B. Young

  
YOUNG TANASSE INC., Plaintiff/Appellant  
by its President James A. Tanasse

**CERTIFICATE OF HAND DELIVERY/FAXING/MAILING**

I HEREBY CERTIFY that a full, true, correct copy of the above and foregoing document was   X   hand delivered,        faxed and/or        mailed, first class mail, postage fully prepaid, this 22<sup>nd</sup> day of August, 1995, to: STEVEN SNOW, SNOW, NUFFER, ENGSTROM & DRAKE, Defendants and attorneys for Defendant, at 90 E. 200 N., P.O. Box 400, ST. GEORGE, UT 84771.



**CERTIFICATE OF HAND DELIVERY/FAXING/MAILING**

I HEREBY CERTIFY that a full, true, correct copy of the above and foregoing document was        hand delivered,        faxed and/or   X   mailed, first class mail, postage fully prepaid, this 22<sup>nd</sup> day of August, 1995, to: GREGORY SANDERS ESQ. Attorney for Defendants, at City Center I, #330, 175 E. 400 S. Salt Lake City, Utah 84111.



THE SUPREME COURT OF THE STATE OF UTAH

-----oo0oo-----

James A. Tanasse, Nadine B. Young,  
Club St. George, Inc., a Utah  
Corporation, and Young Tanasse, Inc.,  
a Utah Corporation,

Plaintiffs and Appellants,

v.

Steven Snow and Snow, Nuffer,  
Engstrom and Drake, a Utah corporation,  
Defendants and Appellees.

No. 950446  
940500335  
930500213

-----oo0oo-----


ORDER

To the extent the appeals purport to be from an order entered in District Court case numbered 940500335, the motion to dismiss is granted on the ground the order is not a final judgment, and this court has no jurisdiction.

The motion is denied with respect to the appeal filed by James A. Tanasse from the order entered in District Court case number 930500213. The order in that case is a final judgment, and the appeal was timely filed. The motion to dismiss the two corporations is granted, because the pro se filers cannot file a notice of appeal on behalf of the corporations. The motion to dismiss the appeal filed by Nadine B. Young is granted because she was not a party to case numbered 930500213 at the district court, and has no standing to appeal.

Appellant's motion to extend time to respond to the motions for summary disposition is dismissed as moot.

12/6/15  
Date

  
Michael D. Zimmerman  
Chief Justice  
For the Court