

1982

The Citizens Bank v. The Elks Building : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE CITIZENS BANK, a State
chartered bank corporation,

Plaintiff and
Respondent,

v.

THE ELKS BUILDING, N.V., a
Netherlands Antilles
corporation,

Defendant and
Appellant.

Case No. 18185

APPELLANT'S BRIEF

Appeal from order granting plaintiff's Motion for
Summary Judgment from the
Third Judicial District Court for
Salt Lake County, State of Utah
The Honorable G. Hal Taylor, Judge

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FILED

JAN 29 1982

Clerk, Supreme Court, Utah

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chartered bank corporation,	:	
	:	
Plaintiff and	:	
Respondent,	:	
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	:	
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corporation,	:	
	:	
Defendant and	:	
Appellant.	:	

APPELLANT'S BRIEF

STATEMENT OF CASE

This is an action between defendant-landlord and plaintiff-lender to adjudicate the priority of claims to certain equipment which was brought upon the leased premises, utilized there by a third-party lessee, and while still on the premises pledged as security for a loan.

DISPOSITION IN LOWER COURT

The case was heard on stipulated facts on a joint motion for summary judgment. The court granted plaintiff's motion for summary judgment and denied defendant's motion.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the order and judgment in plaintiff's favor and the granting of summary judgment in defendant's favor or, in the alternative, a trial on the merits.

STATEMENT OF FACTS

Defendant was the landlord under a lease agreement with one Food Innovations Systems, Inc. d/b/a Pouches, Inc. (hereinafter "Pouches") dated August 6, 1980. The lease contemplated a primary term of six months, beginning on August 15, 1980 and ending on February 15, 1981. Under the terms of the lease Pouches was to operate a restaurant in a portion of the Elks Building located at 139 East South Temple, Salt Lake City, Utah. As part of its restaurant operation, Pouches brought certain equipment¹ upon the leased premises and utilized the same in its day-to-day operations. After operating its restaurant there for three months and making regular monthly payments as required by the lease, Pouches defaulted in its lease payment for the month of November, 1980. On December 8, 1980, defendant served a notice upon Pouches, as required by the lease, giving Pouches thirty days to pay or face legal action. Pouches stopped operating its restaurant, and a subsequent notice to pay or surrender the premises could not be delivered inasmuch as Pouches successfully avoided service. Defendant thereafter changed the locks on the leased premises

¹2-Starmaster Food Service, 1-Stanley Doucette, Inc. Coldtable, 1-General Electric Bun Toaster, 1-Cornelius Drink Dispenser, 1-RCA Cola 7-Up Dispenser, 1-Nor-Lake Two-Door Refrigerator, Frying Pans, 1-NSF Double Sink and Plumbing, 1-Porcelain Sink, 1-Fryer Stand, 1-Stove Hood, 1-Brewmatic Coffee Warmer, 8-30" Wood Table Tops, 8-Brown Metal Table Stands, 24-Bent Wood Chairs, 8-24" Bar Stools, 38-30" Bar Stools, 1-Toshiba Microwave Oven.

and took possession of the equipment located thereon as security for the unpaid rent. On April 9, 1981, defendant filed a complaint against Pouches claiming a landlord's lien on the equipment retained by it. Service of process was eventually obtained against Pouches through the Secretary of State of the State of Utah after all attempts to locate the registered agent of Pouches had failed. No writ of attachment was ever requested by defendant, since the equipment remained on the premises secured in defendant's possession. Defendant obtained a judgment against Pouches on August 28, 1981, under the terms of which Pouches' equity in the equipment was foreclosed and the Salt Lake County Sheriff was authorized to sell the same to satisfy the judgment. On the day of the sale, plaintiff presented the Sheriff with its claim of an interest in the equipment. The Sheriff thereupon refused to proceed further without the posting of an appropriate bond. Plaintiff's claim was based upon a security agreement and promissory note for \$70,000 and a financing statement filed with the Secretary of State on April 7, 1981, relating to the subject equipment. Plaintiff and defendant thereafter agreed to have the issue of priority adjudicated in summary proceedings. The Honorable G. Hal Taylor found plaintiff's claim to be superior to defendant's, and it is from his ruling that this appeal follows.

ARGUMENT

POINT I

THE COURT ERRED IN FINDING PLAINTIFF'S CLAIM SUPERIOR TO DEFENDANT'S.

Defendant's claim to the equipment at issue herein was superior in time and right to that of plaintiff, irrespective of whether the court found defendant's lien to be contractual or statutory in nature. Defendant initially took possession of the subject equipment in accordance with the remedies provided by its lease agreement with Pouches. Defendant further availed itself of the statutory remedy when it filed suit against Pouches to foreclose its landlord's lien upon the equipment retained by it as security for non-payment of the rent.

A. Viewed as a contractual lien, defendant's lien was perfected when it took possession of the equipment. Contractual liens are consensual liens, agreed upon by the parties at the time of contracting to provide for remedies in the event of material breach and default. As such, they clearly fall within the ambit of the provisions of Article 9 of the Uniform Commercial Code, and within the rules of priorities set out therein. "This chapter applies to security interests created by contract . . .", Utah Code Annotated §70A-9-102(2).

In the case at bar defendant's lease agreement with Pouches provided that the failure of Pouches to pay rent would be considered a material default and breach of the lease, and that upon such default and breach, defendant could

"(a) Without terminating this lease, reenter the premises, with or without process of law, and take possession of the same and of all equipment and fixtures therein, and thereafter relet the premises or any part thereof for the account of tenant for such terms and upon such conditions as landlord may deem proper."

1. Defendant's contractual lien was perfected in compliance with the requirements of Article 9 of the Uniform Commercial Code. Pouches failed to pay rent and defendant took possession of the equipment as security for the non-payment of rent. By obtaining possession, defendant obtained a perfected security interest in the subject equipment which was prior in time to plaintiff's claimed interest.²

Defendant had the additional statutory right to take possession of the collateral after default by Pouches.³

²Utah Code Annotated §70A-9-302(1)(a) provides "A financing statement must be filed to perfect all security interests except the following:

"(a) A security interest in collateral in possession of the secured party under §70A-9-305." (Emphasis added.)

Utah Code Annotated §70A-9-305 provides that "A security interest in . . . goods . . . may be perfected by the secured party's taking possession of the collateral."

³Utah Code Annotated §70A-9-503 states:

"Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. . . Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under section 70A-9-504. If a secured party elects to proceed by process of law he may proceed by writ of replevin or otherwise."

Thus, under all the provisions of Article 9 cited hereinabove, as well as under its lease with Pouches, defendant rightfully took possession of the equipment when Pouches defaulted. Defendant's security interest became perfected at the time of changing the locks in December of 1980.

2. Case law places contractual liens within the ambit of the Uniform Commercial Code. Case law supports defendant's perfection of its contractual lien by taking possession of the equipment.

In Dunham's Music House, Inc. v. Asheville Theatres, Inc., 178 S.E.2d 124, 126 (N.C. 1970), Dunham's had sold a piano and organ on a conditional sales contract and had delivered the same to a lessee operating a business on Asheville's premises. When the lessee defaulted on its payments under the conditional sales contract, Dunham attempted to repossess the piano but Asheville denied Dunham access to the premises in reliance upon a provision in its lease with lessee allowing Asheville to retain lessee's property in the event of default. Dunham sued to recover possession of the piano and organ and the court found for Asheville because it had perfected its security interest in the piano and organ under the lease by taking possession of the property. Citing other cases that the Uniform Commercial Code exclusion of landlord's lien was not applicable to consensual liens, the court stated on page 126:

"We adopt the reasoning of these cases and hold that a lien on personal property granted a lessor by contract is not excluded from the provisions of the Uniform Commercial Code."

3. Utah case law supports the contractual propriety of defendant's perfection by possession.

That defendant had a valid lien on Pouches' equipment and the right foreclose the same to satisfy the delinquent rental obligation is uncontroverted. Such a right has clearly been recognized by this Court. In Frisco Joe's, Inc. v. Peay, 558 P.2d 1327 (Utah 1977), the plaintiffs had leased the premises from the defendants for the operation of a cafe and asserted conversion of personal property left in the cafe when the landlord changed the locks. This Court there said that:

"[A]ny unpaid rent was covenanted to be a lien upon plaintiffs' personal property and that it would not be removed from the premises until the rent was paid." Id. at 1330.

A similar result was reached in Larson v. Knight, 120 Utah 261, 233 P.2d 365 (1959).⁴

4. Defendant's contractual lien was perfected prior to plaintiff's security interest.

Inasmuch as there can be no question that defendant here has a valid lien against the subject property, there remains only the question of priority. Plaintiff purports to have perfected its security interest in the equipment by filing

⁴Though that case was decided before the adoption of the Uniform Commercial Code and though it involved the lessor's repossession of equipment purchased on contract, the analogy is compelling: A lessor is entitled to enforce all the remedies available to it under the contract when the lessee defaults. There, as here, the remedies included the taking of possession to perfect a lien for non-payment.

a financing statement with the Secretary of State on April 7, 1981. Plaintiff's interest, however, was subordinate to that of defendant. "A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken." Utah Code Annotated §70A-9-303. In this case that did not occur on plaintiffs behalf until some four (4) months after defendant's security interest was perfected. A security interest attaches when the collateral is in the possession of the secured party, and value has been given, and the debtor has rights in the collateral. Utah Code Annotated §70A-9-203(1). Defendant had physical possession of Pouches' equipment in December of 1980. It had given value over a period of four months under the lease. Pouches had rights in the collateral. No encumbrances against the equipment existed at the time Pouches brought it onto the premises. Defendant perfected its security interest by taking possession some four months prior to plaintiff's filing of its financing statement.

The lower court should have found that the defendant's lien on the equipment was contractual, and, thus, consensual; that it was therefore subject to the provisions of Article 9 of the Uniform Commercial Code; that perfection of goods is permitted by the secured party's taking possession of the collateral; that defendant took possession and thus perfected its security interest in the Pouches' equipment in December of 1980; that plaintiff's filing of a financing statement was

untimely and subsequent to defendant's perfection and was therefore inferior and subordinate to defendant's claim.

B. Viewed as a statutory lien, defendant's lien attached when the equipment was brought upon the leased premises.

During oral argument the lower court suggested that a landlord's lien did not attach until the filing of the complaint and that defendant's failure to have a writ of attachment issue was fatal to its entire claim. (R 6-18.) Neither the statute nor the case law adduced infra supports such interpretation. Utah Code Annotated, §38-3-3 reads as follows:

Attachment in Aid of Lien. Whenever any rent shall be due and unpaid under a lease, or the lessee shall be about to remove his property from the leased premises, the lessor may have the personal property of the lessee which is upon the leased premises and subject to such lien attached without other ground for such attachment.
(Emphasis added.)

The choice of words in enacting this legislation must be interpreted to have been definitive, not incidental. A writ of attachment is seen as an aid to a lien, not a prerequisite for its existence. The lessor's remedy is made discretionary, not mandatory, providing that he may - not shall - have the personal property attached. The defendant in this case was in possession of the equipment at issue herein and thus determined that a writ of attachment was unnecessary to continue possession. Pouches had made no attempt to remove the equipment from the leased premises, and no claims had been made by third parties. A foreclosure judgment was granted in accordance with

the prayer of defendant's complaint against Pouches, confirming the propriety of suing under the landlord's lien statute without the necessity of a writ of attachment.

1. The time of attachment of defendant's lien is crucial to the question of its priority.

Plaintiff apparently contends, and so argued to the lower court, that the time of attachment of defendant's lien was irrelevant to the question of priority and that defendant's landlord's lien was inferior, irrespective of when plaintiff perfected its security interest in the subject equipment.

(R 5-25 through R 6-8.) No such intent, however, can be attributed to the legislature by any stretch of the imagination. Carried to its illogical conclusion, plaintiff's position would mean that in order to frustrate a landlord's lien, a lessee need only pledge unencumbered collateral retained by a landlord to a third party and receive "value" for such pledge; this would leave the innocent and unsuspecting landlord without any remedy whatsoever under the statute.⁵

Defendant submits that the issue of priority is the principal issue to be decided under defendant's statutory lien claim and that the provisions of Article 9 of the Uniform Commercial Code have application only to the extent that plaintiff could show that its secured interest in the equipment was perfected at the

⁵Under plaintiff's approach this could occur even after a default in the payment of rent due, just so long as it occurred prior to the execution of a writ of attachment.

time defendant's landlord's lien attached. The Utah landlord's lien statute makes it clear that defendant had a statutory lien which was, in this case, preferred over all but prior perfected security interests.

2. Public policy considerations free statutory liens from Article 9 requirements.

The reason for the statutory lien exclusion, including the specific exclusion of landlord's liens, is that they are nonconsensual in nature, and that "Subtitle 9 of the Uniform Commercial Code applies to all consensual security interests that are not specifically excluded by §§9-103 and 9-104, as §9-102 makes plain." Universal C.I.T. Credit Corp. v. Congressional Motors, 228 A.2d 463 (Md. 1967). Reasoning that local law creating nonconsensual liens often reflects local considerations and value judgments and that therefore the drafters of the Code left them alone, the court in that case held:

We conclude that the flat and unqualified exclusion of landlord's liens from the application of the subtitle left the law on such liens as it was. The exclusion was not limited to ruling landlord's lien out as a Code security interest or to freeing them from procedural requirements applicable to such security interests; it provided in effect that no part, including rules as to priorities, of Subtitle 9 controlled or governed them.
Id. at 470.

On April 9, 1981, defendant filed suit against Pouches, claiming a landlord's lien upon the equipment retained by it by virtue of Utah Code Annotated §38-3-1, et seq. Under Utah law, a landlord's lien is preferred "to all other liens or

claims except . . . perfected security interests . . .", Utah Code Annotated §38-3-2. In addition, Utah Code Annotated §70A-9-104(b) specifically excludes a landlord's liens from the requirements of Article 9 of the Uniform Commercial Code. Unless, therefore, a perfected security interest exists at the time the landlord's lien attaches, the Uniform Commercial Code's provisions relating to lien priorities have no application.

3. Case law supports defendant's claim that the court erred in predicating defendant's lien validity upon the date of filing its complaint against Pouches.

Defendant submits that the lower court's ruling that defendant's landlord's lien did not attach until the filing of its complaint, if at all, on April 9, 1981, two days after plaintiff filed its financing statement with the Secretary of State, is clearly in error. That defendant's landlord's lien attached when the equipment was placed on the premises should be free from doubt.

"A landlord's lien attaches at the beginning of the tenancy or as soon as the chattels are brought upon the premises." Bates & Springer v. Friermood, 507 P.2d 668 (Ariz. 1972).

In Chessport Newark, Inc. v. Solie, 522 P.2d 812 (N.M. 1974), the court addressed the issue of priority between a landlord's lien and a subsequently perfected security interest. There the Court stated:

The landlord's lien attached on the date that the lease period began and was superior to subsequently perfected security interest on property on the leased premises both as to past due and future rents.

In National Investment Trust v. First National Bank, 543 P.2d 482 (N.M. 1975), the court stated on page 484:

[T]he Court of Appeals held, and we agree, that there is no statutory provision, including the Uniform Commercial Code, to cover the priority between a statutory landlord's lien and a perfected security interest. [Citation omitted].⁶

In the case at bar, plaintiff's interest was not perfected when defendant's lien attached, and, therefore, a like result is mandated in this case. Defendant's complaint against Pouches was filed two days after the security interest of plaintiff was purportedly perfected; that, however, does not render defendant's landlord's lien subordinate to plaintiff's claim. A case on point is Wellbro Building Company v. Nick Connico, 421 P.2d 837 (Okla. 1966), where the Court held that the initiation of judicial proceedings was not a condition to the attachment of a landlord's lien. The Oklahoma statute provided that where a tenant defaulted in rental payments the landlord could commence an action and thereafter attachment could issue. That procedure "merely affords additional ground for attachment to enforce the collection of rent", but is not a

⁶In that case, the landlord's lien attached before the security interest was perfected, and the lien was given priority on the basis of the "first in time, first in right" doctrine.

procedure required in order for a lien created by contract to attach to personal property. Id. at 839.

4. Defendant's landlord's lien is prior in time and in right to plaintiff's security interest.

In this case defendant's lease with Pouches was executed on August 6, 1980, and its landlord's lien attached to the property at that time, or as soon thereafter as the property owned by Pouches was brought upon the premises.⁷ No perfected security interest is claimed by plaintiff to have existed at the time of the signing of the lease. In fact, the earliest date plaintiff claims to have perfected its lien against the subject property is April 7, 1981, some eight months after defendant's lien attached. Although defendant filed its complaint two days after plaintiff filed its financing statement, defendant submits that the initiation of judicial proceedings by it against Pouches had no bearing on the date its lien attached but was merely the mechanism for the orderly enforcement of a validly existing landlord's lien. It follows that until the adjudication of plaintiff's priority, defendant continued to properly hold a covenanted lien upon Pouches property until such time as Pouches had paid its rent.⁸ In light of the above, the lower court's ruling of plaintiff's priority was clearly in error. Defendant's

⁷It is uncontroverted that the equipment was brought upon the premises long prior to April 7, 1981.

⁸Had defendant, however, consented to the removal of the equipment at issue, it would have lost its lien. See Chessport Newark, Inc., supra. at 815.

claim should, instead, be adjudged prior to all other liens, including the lien of the plaintiff which was not perfected at the time defendant's landlord's lien attached.

POINT II

PLAINTIFF'S CLAIM THAT IT IS A SECURED PURCHASE MONEY LENDER IS NOT SUFFICIENTLY SUPPORTED BY THE EVIDENCE SUBMITTED TO THE LOWER COURT.

In oral argument before the lower court, plaintiff took the position that it was a secured purchase money lender and that its claim was superior to that of defendant's, irrespective of when defendant claimed to have perfected its security interest. In support of such allegations, plaintiff had attached to the Stipulation of Facts various exhibits lettered "A" through "M" to purportedly show that the equipment at issue was part and parcel of the collateral pledged in return for its \$70,000 loan to Pouches. A thorough examination, however, of those exhibits shows nothing to support plaintiff's claim that it was a purchase money lender on that equipment. There is nothing in the submitted evidence that would indicate that the equipment at issue was being purchased under a Lease Agreement at the time Pouches brought the property upon the leased premises.⁹

⁹In fact, the evidence is quite to the contrary. When defendant changed the locks on Pouches' restaurant, several claimants appeared to take back property owned by them. No third party claims to the subject equipment were ever received by defendant until plaintiff, sometime after Pouches obtained the \$70,000 loan from it on April 7, 1982, presented its claim to defendant.

Plaintiff would have had to show one of two facts in order to have prevailed over defendant. It could have shown that the equipment was encumbered at the time Pouches brought it upon the leased premises, so that both defendant's contractual lien and its landlord's lien would have been inferior to any party having an interest in the equipment at the time the lease became effective.¹⁰ Plaintiff has not done so. Alternately, plaintiff could have shown that it was a purchase money lender and as such had priority among conflicting security interests in the same collateral. Article 9 of the Uniform Commercial Code, however, requires stringent procedural compliance on the part of a purchase money lender in order to prevail among conflicting security interests. On April 7, 1980, Pouches obtained a loan from plaintiff. As part of the documentation for that loan, Pouches prepared an "inventory list" (Exhibit "I") showing the personal property pledged in the Elks Building to consist mostly of equipment used in the operation of the restaurant business.¹¹ Utah Code Annotated, §70A-9-312(4), however, requires that a security interest be perfected at the time the debtor receives the collateral or no

¹⁰It is logical to presume that any third party with an interest in the equipment at issue would have made demand upon defendant to surrender the same. It is equally logical to presume, where no such demand was made until plaintiff's that the equipment was free and clear of any encumbrances and owned outright by Pouches at all times up to April 7, 1981.

¹¹See Footnote 1, supra, and plaintiff's Exhibit "I", p. 17.

later than ten (10) days after he takes possession.¹² Consequently, as Pouches' possession pre-dated the perfection date of April 7, 1981, by some eight months, plaintiff has failed the second test as well.

At the time Pouches took out its loan with plaintiff, it had not made any attempt for over four months to operate the restaurant in the Elks Building. Likewise it had ceased to operate another restaurant located at Arrow Press Square. The collateral pledged in return for the granting of the \$70,000 loan included property both at Arrow Press Square and in the Elks Building. None of the various exhibits presented by plaintiff in support of its purchase money lender status shows that the equipment in the Elks Building was owned by someone other than Pouches. Therefore, plaintiff fails in the requirement that the purchase money security interest be perfected at the time the debtor receives possession of the collateral or within ten days thereafter. Instead, the various exhibits show a blanket summation of all of the collateral owned or alleged to have been owned by Pouches at the time it applied for its loan.

¹²Section 70A-9-312(4) reads as follows:

"A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter."
(Emphasis added).

The Executive Loan Committee Information Sheet referring to the restaurant on Arrow Press Square (plaintiff's Exhibit "C") shows collateral of, among others, equipment in existence valued at \$118,700.

The Application for Loan (plaintiff's Exhibit "D") makes reference to the restaurant located at Arrow Press Square, not to the one located in the Elks Building.

The Business History and Benefits of Loan (plaintiff's Exhibit "E") breaks down the payments to be made without identifying the property located in the Elks Building. The author of that document remains anonymous, the statement is undated, and can thus not be relied upon as supporting evidence that it covered the property at issue here.

The Authorization and Loan Agreement (plaintiff's Exhibit "F") breaks down disbursements into working capital, purchase of inventory, accounts payable and debts. It requires, inter alia, the filing of a financing statement prior to possession of the collateral by Pouches.¹³ That prerequisite alone precludes a finding that plaintiff was a purchase

¹³On Page 3 of that Agreement under "c" Collateral (3) the following language appears:

"Financing Statement and Security Agreement to contain a statement that lender is a purchase money lender. A list of purchased collateral must be part of Security Agreement and Financing Statement. Prior to possession of the collateral by the borrower, Financing Statement to be filed with the Secretary of State." (Emphasis added).

money lender on equipment held at Pouches Restaurant which had been in the possession of Pouches some eight months before the SBA loan was granted.

The list of equipment incorporated in the Security Agreement under Elks unit (plaintiff's Exhibit "I") is referred to as an inventory list. It is not shown to be equipment leased by Pouches from any of the parties to whom plaintiff purportedly paid money to allow Pouches to "acquire rights in or the use of collateral". Consequently, the statutory requirement that "such value is in fact so used"¹⁴ is not substantiated by the evidence submitted to the lower court.

From the information received through the submitted exhibits, it follows that plaintiff has failed to show that it is a purchase money lender as defined by Article 9 of the Uniform Commercial Code and its claim of priority in conflicting security interests in the same collateral must therefore fail.

CONCLUSION

Defendant respectfully submits that the errors complained of require a reversal of the summary judgment, or that failing, a trial on the merits.

¹⁴Utah Code Annotated, §70A-9-107 defines purchase money security interest as:

"1(b) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used." (Emphasis added).

Defendant's contractual lien against Pouches was perfected by taking possession of the equipment when the rent was not paid. Plaintiff's filing of its financing statement was untimely and inferior to defendant's claim.

Defendant's landlord's lien attached when the equipment at issue was brought upon the leased premises, some eight months prior to plaintiff's filing of its financing statement. Plaintiff has failed to show its priority as a secured purchase money lender over a conflicting interest in the same collateral. Defendant's claim, therefore, was prior in right and in time and the summary judgment granted plaintiff in the court below should be reversed.

Respectfully submitted this 29th day of January, 1982.

TANNER, KESLER, RUST & WILLIAMS

By _____
Joseph C. Rust/Antje F. Curry
Attorneys for Defendant-Appellant
The Elks Building

CERTIFICATE OF DELIVERY

I hereby declare that I hand-delivered two true and correct copies of the foregoing Appellant's Brief to Theodore E. Kanell, Attorney for Respondent, this 29th day of January, 1982, at 9 Exchange Place, Salt Lake City, Utah 84111.

APPENDIX

EXHIBIT "C"
FOR PRESENTATION TO EXECUTIVE LOAN COMMITTEE FOR THE PURPOSE OF APPROVAL
FOR LOANS - THE CITIZENS BANK & KAMAS STATE BANK

DATE March 18, 1981

NAME FOOD INNOVATION SYSTEMS dba Pouches Inc. OFFICE SALT LAKE CITY

ADDRESS ARROW PRESS SQUARE

AMOUNT \$ 70,000 SOURCE OF REPAYMENT Income/Restaurant

PURPOSE Purchase equipment \$34,500, working capital \$32,200 Note Payable \$3,300

RATE Prime + 2 1/2%

COLLATERAL Equipment valued at \$118,700 and second Trust on Condominium
valued at \$48,000 with equity of \$12,000; SBA guaranty 90% TCD \$10,000, pledge
Citizens

EXPIRATION DATE 7 years

GUARANTORS & CO-MAKERS Howard Buckner

LOAN RELATIONSHIP None

ACCOUNT INFORMATION Company, medium three figures

BUSINESS & HISTORY

MANAGEMENT H Buckner has extensive background in restaurant management

FINANCIAL INFORMATION Company 12/31/80 T/L \$33,000 N/W \$118,601

H Buckner 12/1/80 T/L \$86,300 N/W \$350,250

REMARKS

ACTION - APPROVED SPH DENIED

PL 200

U.S. Small Business Administration
APPLICATION FOR LOAN

I. Applicant/Information About You *BANK COPY*

Name _____

Street Howard Buckner

City 4243 South 1175 West #24B

Telephone Murray, Utah 84107

262-2483

II. Information About Your Business

Name of Business _____

Food Innovation Systems, Inc.
Address of Business _____

City 165 South West Temple Bldg. 2

County Salt Lake City, Utah 84111

Type of Business Salt Lake

Restaurant

Number of Employees _____

Present: After Approval: _____

Bank Where Your Business Has An Account 20 84-0739664

Utah First Bank

III. Information About Management: List the name of all owners (having 20% or greater interest), officers, directors, and/or partners. Provide the percent of ownership and the annual compensation.

Name and Title _____ % of Ownership _____

Howard Buckner, Pres. 00%

Address _____ Annual Compensation _____

Name and Title 4243 South 1175 W. #24B % of Ownership _____

Bruce Armstrong, V.P. 0%

Address _____ Annual Compensation _____

Name and Title 3700 Brookbank Dr. S.L.C. % of Ownership _____

John Bradley, Sec. 5%

Address _____ Annual Compensation _____

Name and Title 32171 Horseshoe Dr., Ever % of Ownership _____

green, Colo. 0

Address _____ Annual Compensation _____

_____ % of Ownership _____

_____ Annual Compensation _____

_____ % of Ownership _____

_____ Annual Compensation _____

IV. How You Plan to Use the Loan Money

Building _____

☐ New ☐ Purchase ☐ Renovate

Amount for Building _____ Amount for Land _____

Amount for New Equipment _____

Amount for Notes Payable _____

Amount for Working Capital _____

Amount for Equipment Repair _____

Amount for Accounts Payable _____

Other (See instructions) _____

Total Loan Requested 70,000

Term of Loan 7 Years: _____ Months: _____

V. Summary of Collateral

Present Market Value Present Mortgage Balance Cost Less Depreciation

A. Land and Building 48,000 36,000 47,000

B. Inventory _____

C. Accounts Receivable _____

D. Machinery and Equipment 118,070 0 118,070

E. Furniture and Fixtures _____

F. Other _____

Total Collateral 166,070 36,000 165,070

VI. Assistance

List the names of attorneys, accountants, appraisers, agents, or other persons rendering assistance in preparation of this form.

Name and Occupation _____ Total Fees Paid _____

Sheldon Hansen 300

Address _____ Fees Due _____

402 E. 900 S. S.L.C. UT

Name and Occupation _____ Total Fees Paid _____

Address _____ Fees Due _____

- ☒ ☐ 5. Have you provided a brief history of your company and a paragraph describing the expected benefits it will receive from the loan? If not, you must do so. Label it Exhibit F.
- ☒ ☐ 6. Have you provided a brief description of the educational, technical and business background for all the people listed in Section III under management? If not, you must do so. Please mark it Exhibit G.
- ☒ ☐ 7. Do you have any co-signers and/or guarantors for this loan? If so, please submit their names, addresses and personal balance sheets as Exhibit H.
- ☐ ☒ 8. Are you buying machinery or equipment with your loan money? If so, you must include a list of the equipment and the cost. This is Exhibit J.
- ☐ ☒ 9. Have you or any officers of your company ever been involved in bankruptcy or insolvency proceedings? If so, please provide the details as Exhibit K.
- ☐ ☒ 10. Are you or your business involved in any pending lawsuits? If yes, provide the details as Exhibit L.
- ☐ ☒ 11. Do you or your spouse or any member of your household, or anyone who owns, manages, or directs your business or their spouses or members of their households work for the Small Business Administration, Small Business Advisory Council, SCORE or ACE? If so, please provide the name and address of the person and the office where employed. Label this Exhibit M.
- ☐ ☒ 12. Does your business have any subsidiaries or affiliates? If yes, please provide their names and the relationship with your company along with a current balance sheet and operating statement for each. This should be Exhibit N.
- ☐ ☒ 13. Do you buy from, sell to, or use the services of any concern in which someone in your company has a significant financial interest? If yes, provide details on a separate sheet of paper labeled Exhibit P.
- ☐ ☒ 14. If your business is a franchise, have you included a copy of the franchise agreement? Please include it as Exhibit R.
- ☐ ☒ 15. If you or any principals or affiliates have ever requested government financing, list the name of the agency (including SBA), the amount requested or approved, date of request or approval, present balance, and status (i.e. current, delinquent). This should be Exhibit S.

CONSTRUCTION LOANS ONLY

- ☐ ☐ 16. Have you included in a separate exhibit (Exhibit T) the estimated cost of the project and a statement of the source of any additional funds? If not, please do so.
- ☐ ☐ 17. Have you filed all the necessary compliance documents (SBA Form Series 601)? If not, loan officer will advise which forms are necessary.
- ☐ ☐ 18. Have you provided copies of preliminary construction plans and specifications? If not, include them as Exhibit U. Final plans will be required prior to disbursement.

DIRECT LOANS ONLY

- ☐ ☐ 19. Have you included two bank declination letters with your application? These letters should include the name and telephone number of the persons contacted at the banks, the dates and terms of the loan, the reason for decline and whether or not the bank will participate with SBA. In towns with 200,000 people or less, one letter will be sufficient.

AGREEMENTS AND CERTIFICATIONS
Agreement of Nonemployment of SBA Personnel: I/We agree Agreement of Nonemployment of SBA Personnel: I/We will not, that if SBA approves this loan application I/We will not, for at least two years, hire as an employee or consultant anyone that was employed by the SBA during the one year period prior to the disbursement of the loan.

Certification: I/We certify: (a) I/We have not paid anyone connected with the Federal Government for help in getting this loan. I/We also agree to report to the SBA Office of Security and Investigations, 1441 L Street N.W., Washington, D.C., 20416 any Federal Government employee who offers, in return for any type of compensation, to help get this loan approved.

(b) All information in this application and the Exhibits is true and complete to the best of my/our knowledge and is submitted to SBA so SBA can decide whether to grant a loan or participate with a lending institution in a loan to me/us. I/We agree to pay for or reimburse SBA for the cost of any surveys, title or mortgage examinations, appraisals etc., performed by non-SBA personnel provided I/We have given my/our consent.

(c) I/We give the assurance that we will comply with sections 112 and 113 of volume 13 of the Code of Federal Regulations. These Code sections prohibit discrimination on the grounds of race, color, sex, religion, marital status, handicap, age, or national origin by recipients of Federal financial assistance and require appropriate reports and access to books and records. These requirements are applicable to anyone who buys or takes control of the business. I/We realize that if I/We do not comply with these non-discrimination requirements SBA can, call, terminate, or accelerate repayment or my/our loan.

Authority to Collect Personal Information: This information is provided pursuant to Public Law 93-579 (Privacy Act of 1974). Effects of Nondisclosure: Omission of an item means your application might not receive full consideration.

I/We authorize disclosure of all information submitted in connection with this application to the financial institution agreeing to participate in the loan.

As consideration for any Management and Technical Assistance that may be provided, I/We waive all claims against SBA and its consultants.

I/We understand that I/We need not pay anybody to deal with SBA. I/We have read and understand Form 394 which explains SBA policy on representatives and their fees.

For Guaranty Loans please provide an original and one copy (Photocopy is Acceptable) of the Application Form, and all Exhibits to the participating lender. For Direct Loans submit one original copy of application and Exhibits to SBA.

It is against SBA regulations to charge the applicant a percentage of the loan proceeds as a fee for preparing this application.

If you make a statement that you know to be false or if you value a security in order to help obtain a loan under the provisions of the Small Business Act you can be fined up to \$5,000 or be put in jail for up to two years, or both.

Signature of Preparer if Other Than Applicant

Sheldon Hansen
 Print or Type Name of Preparer

402 E. 900 S. S.L.C. UT
 Address of Preparer

If Applicant is a proprietor or general partner, sign below:

By: _____ Date: _____
 If Applicant is a corporation, sign below:

Corporate Seal _____ Date: _____

By: _____
 Signature of President

Attested by: _____
 Signature of Corporate Secretary

BUSINESS HISTORY AND BENEFITS OF LOANExhibit EG

Food Innovation Systems, Inc. is a new corporation established to own and operate a series of Pouches Restaurants. The first two of these are located in Arrow Press Square and the Elks Building. Operations at Arrow Press include the full restaurant with all kitchen facilities. All food is prepared at this site for both Arrow Press and the Elks Building. The Elks location is primarily a lunch counter serving food that has been prepared in the main kitchen at Arrow Press Square.

Business was conducted on a 45-day test period ending December 15, 1980 to assess the acceptability of the Pouches concept. Operations were closed at that time pending the arrangement of financing which will enable the business to open and operate on a full-time, permanent basis. Now that the acceptability of the product has been determined, management is anxious to pursue long term financing to meet the needs of the company and it is for this purpose that a \$70,000 SBA Guaranteed Loan is requested with proceeds to be used as follows:

1. \$12,000 to pay a note due Restaurant and Store Equipment Company for the purchase of equipment. This debt was incurred since the preparation of the Balance Sheet.

2. \$14,500 to pay an equipment lease due MFT Leasing.

3. \$8,000 to pay an equipment lease due FMA which was incurred since the preparation of the Financial Statement.

4. \$10,000 to purchase needed Inventory.

5. \$3,300 to pay all Accounts Payable.

6. \$22,200 for working capital to assist the company with its operating expenses and debt service during the initial several months of operation until profits are sufficient to meet the cash flow needs.

Approval of the requested loan will allow the corporation to consolidate all existing indebtedness into a single, long-term loan which can be properly serviced from profits while at the same time providing needed working capital for efficient operation. The management team is unusually well qualified for this venture by virtue of their extensive previous experience as detailed in their resumes attached. Actual full-time on-site management will be provided by E. Bruce Armstrong.

In addition to the stock held by the officers, there is five percent of the outstanding stock which has been set aside as an incentive for future employees.



EXHIBIT "F"

LOAN NUMBER
GP-119,973 30 07-SLC

U.S. SMALL BUSINESS ADMINISTRATION

SALT LAKE CITY DISTRICT OFFICE

2237 Federal Building
125 South State Street

Salt Lake City, Utah 84138
(Address)

AUTHORIZATION AND LOAN AGREEMENT
(GUARANTY LOANS)

The Citizens Bank

(Lender)

285 West North Temple

(Address, include ZIP Code)

Salt Lake City, Utah 84103

Your request dated 3-2-81 for SBA to Guarantee 90 %
of a Loan in the amount of \$ 70,000 to be made by Lender to

POUCHES FOOD INNOVATION

(Name and Address of Borrower)

165 South West Temple, Bldg 2, Salt Lake City, Utah 84111

is hereby approved pursuant to Section 7 () of the Small Business Act as amended.

1. The following forms are herewith enclosed:

- (a) Three copies of SBA Note, one to be executed by the Borrower, the other two to be conformed. The original executed copy must be retained by you and one conformed copy must be sent to SBA immediately after first disbursement, together with a guaranty fee of 1% of the amount guaranteed. This fee shall be paid by Lender within 90 days of the date of this authorization and shall not be paid by the borrower directly or indirectly. *
- (b) Copies of the SBA Settlement Sheet, Form 1050 are to be completed and executed by Lender and Borrower to reflect each disbursement. Prompt reporting of disbursements is necessary. Return the first two copies ("Denver FOD" copy and "Servicing Office" copy) to SBA.
- (c) Compensation Agreements, (Form 159) shall be executed by Borrower, his representative and Lender and returned to SBA if Borrower has employed an attorney, accountant or other representative, or if Borrower is charged fees for services by Lender or an associate of Lender. If no such fees have been charged, please write "None" and return the form, executed by the Lender, to SBA.
- (d) The original copy of this Authorization (and documents itemized below if any) shall be executed prior to first disbursement and retained in loan file by the Lender. (A copy of the Authorization and all documents should be given to the Borrower.)

*The last sentence of this paragraph 1(a) is hereby amended to read as follows:
"This fee should be paid by lender within 90 days of the date of this authorization and may be charged to borrower only after Lender has paid fee to SBA and initial disbursement made to Borrower. This fee may be deducted from loan proceeds."

Card #8

2. This Authorization is subject to:

- (a) Provisions of the Guaranty Agreement between Lender and SBA, dated 10-2-78
- (b) First disbursement of the Loan being made not later than 6 months, and no disbursement being made later than 12 months, from the date of this Authorization, unless such time is extended pursuant to prior written consent by SBA.
- (c) Receipt by lender of evidence satisfactory to it in its sole discretion, that there has been no unremedied adverse change since the date of the Application, or since any of the preceding disbursements, in the financial or any other condition of Borrower, which would warrant withholding or not making any such disbursement or any further disbursement.
- (d) The representations made by Borrower in its loan application, the requirements or conditions set forth in Lender's application form, including the supporting documents thereto, the conditions set forth herein and any future conditions imposed by lender (with prior SBA approval).

3. Terms of Loan:

- (a) Repayment term, interest rate(s), and maturity.

Note in the principal amount of \$70,000, with interest beginning at the rate of 21% per annum, and payable in monthly installments of \$1,606.00, including principal and interest. After one full calendar quarter from the date of Note, and thereafter, interest shall be adjusted up or down on the first day of January, April, July and October by adding 2-1/2% to the minimum New York prime rate published in the Wall Street Journal. As the rate of interest changes, the monthly installment shall be increased or decreased to reflect the change of monthly interest accrual. Lender shall notify Borrower of any change in interest rate within ten days of the effective date. All payments shall be applied first to interest accrued to the date of payment and the balance, if any, shall be applied to principal. The first monthly installment shall be due 2 months from the date of Note and subsequent installments shall be due on the same day of each month thereafter until 7 years from the date of Note, at which time the ENTIRE BALANCE of both principal and interest then outstanding shall be due and payable.

- (b) Use of proceeds of loan as follows: (Show specific uses for which loan is authorized.)

Disbursement should be made by issuance of joint-payee checks, except checks for working capital, itemized to fullest practical extent.

- (1) \$22,200 for working capital.
- (2) \$10,000 for purchase of inventory.
- (3) \$2,300 to pay accounts payable.
- (4) \$35,500 to pay debt(s) owing to:
 - (a) Restaurant and Store Equipment Co. for \$12,000.
 - (b) Murray First Thrift Leasing for \$14,500.
 - (c) FMA for \$9,000.

(c) Collateral:

- (1) Assignment of Real Estate Lease Agreement on SBA form, covering property located at 165 South West Temple, in which Arrow Properties Ltd. is lessor and Borrower is lessee. If this cannot be obtained, Lessor's Agreement on SBA form may be substituted.
- (2) First security interest on Borrower's personal property, covering ("all machinery, equipment, furniture, and fixtures now owned or hereafter acquired, and proceeds thereof.") Financing statement and security agreement to both contain the above quoted clause and security agreement to contain an itemized list of collateral. Obtain lien search from Secretary of State showing proper lien of Lender.
- (3) Financing statement and security agreement to contain a statement that Lender is a purchase money lender. A list of purchased collateral must be part of security agreement and financing statement. Prior to possession of the collateral by the Borrower, financing statement to be filed with the Secretary of State.
- (4) Financing statement covering "all fixtures now owned and hereafter acquired," with legal description of premises upon which fixtures are to be located and name of record owner attached thereto, to be filed with the county recorder where the real estate is located. Designate whether or not a purchase money interest is taken. Lender may obtain a title report as evidence of proper lien position on fixtures.
- (5) Guaranty on SBA Form 148 executed by Howard Buckner, residing at 4343 South 1175 West, #28B, Murray, Utah; spouse to sign disclaimer on SBA form.
- (6) The Guaranty of Howard Buckner, noted herein, shall be secured by second trust deed on Guarantor's condominium, located at 4343 South 1175 West, #28B, Murray, Utah, subject only to the prior lien of Meadowbrook Condominium, in the amount of \$36,000. Obtain attorney's opinion or title policy insuring the value of the loan or Guarantor's equity in the property, whichever is less; said opinion or policy to set forth the legal description and address of property. Lender to file request for notice of default or sale per Section 57-1-26 of the Utah Code. Lender to complete SBA "Request and Notice" form with respect to prior lien.

4. To further induce Lender to make and SBA to guarantee this Loan, Lender and SBA impose the following conditions:

(a) Execution of all documents required in Item 1 above.

(b) Reimbursable Expenses.—Borrower will, on demand, reimburse Lender for any and all expenses incurred, or which may be hereafter incurred, by Lender from time to time in connection with or by reason of Borrower's application for, and the making and administration of the Loan.

(c) Books, Records, and Reports.—Borrower will at all times keep proper books of account in a manner satisfactory to Lender and/or SBA. Borrower hereby authorizes Lender or SBA to make or cause to be made, at Borrower's expense and in such manner and at such times as Lender or SBA may require, (a) inspections and audits of any books, records and papers in the custody or control of Borrower or others, relating to Borrower's financial or business conditions, including the making of copies thereof and extracts therefrom, and (b) inspections and appraisals of any of Borrower's assets. Borrower will furnish to Lender and SBA for the _____ month period ending _____ and _____ thereafter (no later than 2 months following the expiration of any such period) and at such other times and in such form as Lender may prescribe, Borrower's financial and operating statements. Borrower hereby authorizes all Federal, State and municipal authorities to furnish reports of examinations, records, and other information relating to the conditions and affairs of Borrower and any desired information from reports, returns, files, and records of such authorities upon request therefor by Lender or SBA.

(d) Borrower shall not execute any contracts for management consulting services without prior approval of Lender and SBA.

I have this date received Equal Employment Opportunity Poster, SBA Form 722, and Notice of Minimum Requirements, SBA Form 793	
Date	Borrower's Initials <i>[Signature]</i>

4-7-81.

2. This Authorization is subject to:

- (a) Provisions of the Guaranty Agreement between Lender and SBA, dated 10-2-78
- (b) First disbursement of the Loan being made not later than 6 months, and no disbursement being made later than 12 months, from the date of this Authorization, unless such time is extended pursuant to prior written consent by SBA.
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- (d) The representations made by Borrower in its loan application, the requirements or conditions set forth in Lender's application form, including the supporting documents thereto, the conditions set forth herein and any future conditions imposed by lender (with prior SBA approval).

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- (4) \$35,500 to pay debt(s) owing to:
 - (a) Restaurant and Store Equipment Co. for \$12,000.
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- (2) First security interest on Borrower's personal property, covering ("all machinery, equipment, furniture, and fixtures now owned or hereafter acquired, and proceeds thereof.") Financing statement and security agreement to both contain the above quoted clause and security agreement to contain an itemized list of collateral. Obtain lien search from Secretary of State showing proper lien of Lender.
- (3) Financing statement and security agreement to contain a statement that Lender is a purchase money lender. A list of purchased collateral must be part of security agreement and financing statement. Prior to possession of the collateral by the Borrower, financing statement to be filed with the Secretary of State.
- (4) Financing statement covering "all fixtures now owned and hereafter acquired," with legal description of premises upon which fixtures are to be located and name of record owner attached thereto, to be filed with the county recorder where the real estate is located. Designate whether or not a purchase money interest is taken. Lender may obtain a title report as evidence of proper lien position on fixtures.
- (5) Guaranty on SBA Form 148 executed by Howard Buckner, residing at 4343 South 1175 West, #28B, Murray, Utah; spouse to sign disclaimer on SBA form.
- (6) The Guaranty of Howard Buckner, noted herein, shall be secured by second trust deed on Guarantor's condominium, located at 4343 South 1175 West, #28B, Murray, Utah, subject only to the prior lien of Meadowbrook Condominium, in the amount of \$36,000. Obtain attorney's opinion or title policy insuring the value of the loan or Guarantor's equity in the property, whichever is less; said opinion or policy to set forth the legal description and address of property. Lender to file request for notice of default or sale per Section 57-1-26 of the Utah Code. Lender to complete SBA "Request and Notice" form with respect to prior lien.

4. To further induce Lender to make and SBA to guarantee this Loan, Lender and SBA impose the following conditions:

(a) Execution of all documents required in Item 1 above.

(b) Reimbursable Expenses.—Borrower will, on demand, reimburse Lender for any and all expenses incurred, or which may be hereafter incurred, by Lender from time to time in connection with or by reason of Borrower's application for, and the making and administration of the Loan.

(c) Books, Records, and Reports.—Borrower will at all times keep proper books of account in a manner satisfactory to Lender and/or SBA. Borrower hereby authorizes Lender or SBA to make or cause to be made, at Borrower's expense and in such manner and at such times as Lender or SBA may require, (a) inspections and audits of any books, records and papers in the custody or control of Borrower or others, relating to Borrower's financial or business conditions, including the making of copies thereof and extracts therefrom, and (b) inspections and appraisals of any of Borrower's assets. Borrower will furnish to Lender and SBA for the June 30 month period ending June 30 and semiannually thereafter (no later than 2 months following the expiration of any such period) and at such other times and in such form as Lender may prescribe, Borrower's financial and operating statements. Borrower hereby authorizes all Federal, State and municipal authorities to furnish reports of examinations, records, and other information relating to the conditions and affairs of Borrower and any desired information from reports, returns, files, and records of such authorities upon request therefor by Lender or SBA.

(d) Borrower shall not execute any contracts for management consulting services without prior approval of Lender and SBA.

I have this date received Equal Employment Opportunity Poster, SBA Form 722, and Notice of Minimum Requirements, SBA Form 793	
Date	Borrower's Initials


4-7-81

(e) Distributions and Compensation.—Borrower will not, without the prior written consent of Lender or SBA (a) if Borrower is a corporation, declare or pay any dividend or make any distribution upon its capital stock, or purchase or retire any of its capital stock, or consolidate, or merge with any other company, or give any preferential treatment, make any advance, directly or indirectly, by way of loan, gift, bonus, or otherwise, to any company directly or indirectly controlling or affiliated with or controlled by Borrower, or any other company, or to any officer, director or employee of Borrower, or of any such company, (b) if Borrower is a partnership or individual, make any distribution of assets of the business of Borrower, other than reasonable compensation for services, or give any preferential treatment, make any advance, directly or indirectly, by way of loan, gift, bonus, or otherwise, to any partner or any of its employees, or to any company directly or indirectly controlling or affiliated with or controlled by Borrower, or any other company.

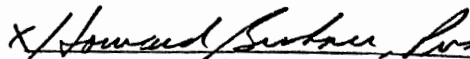
(f) Other Provisions:

- (1) Borrower shall provide and maintain hazard insurance - fire and collateral or the loan balance, whichever is less.
- (2) Borrower hereby agrees to purchase Federal flood insurance in amounts and coverages satisfactory to SBA if, at any time during the life of the loan, Borrower's community is designated as a flood-prone area, AND the FIA map shows that the Borrower's Federal flood insurance can be purchased. Lender to provide evidence that at time of loan closing flood insurance is not required.
- (3) Note to be executed on SBA Form 147 by Howard Buckner as president of Borrower; secretary to attest signature; Borrower's name to appear above president's signature.
- (4) Resolution of Board of Directors of Borrower. Lender to verify that corporation is in good standing with the Secretary of State.
- (5) Compensation Agreement, SBA Form 159. Complete a form for each representative who performs services in connection with the application for or the making of the loan. ITEMIZED BREAKDOWN REQUIRED IF FEES EXCEED \$300. Refer to second paragraph of this Agreement.

5. Parties Affected.—This Agreement shall be binding upon Borrower and Borrower's successors and assigns. No provision stated herein shall be waived without the prior written consent of SBA. The Loan shall be administered as provided in the Guaranty Agreement.

 By (Signature) _____	ROGER H. JONES ADMINISTRATOR March 24, 1981 Date
-------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------

Borrower hereby agrees to the conditions imposed herein:

 Borrower	4-7-81 Date
-------------------------------------------------------------------------------------------------	----------------

NOTE: Corporate applicants must execute Authorization, in corporate name, by duly authorized officer, and seal must be affixed and duly attested; partnership applicants must execute in firm name, together with signature of a general partner. SBA Form _____

this 7th day of April, 19 81, FOOD INNOVATION SYSTEMS INC.

, Debtor, hereby agrees with and grants to ZENS NATIONAL BANK, the "Bank", a security interest in the following property:

machinery, equipment, furniture, and fixtures now owned or hereafter acquired, and proceeds thereof." See attached Schedule A and B.

all additions and accessions thereto, herein collectively called the "Collateral", to secure all Debtor's present and future debts, obligations and liabilities of whatever nature to Bank, (the "Obligations"), including the note executed by Debtor to Bank in the amount of \$ 70,000.00 and Debtor's obligations hereunder.

Debtor warrants: A. WARRANTIES

1. **USE** — The Collateral is used or bought for use primarily for (check one): ☐ personal, family or household purposes. ☒ business. ☐ farming operations.

2. **PURCHASE MONEY** — If checked here ☒, the Collateral is being acquired by Debtor with the proceeds loaned from Bank, which proceeds will be used for no other purpose and Bank may disburse such proceeds directly to the seller of the Collateral.

3. **LOCATION OF COLLATERAL** — The Collateral will be kept within the State of Utah at the address below Debtor's signature (or, if not, at _____) and will not be removed therefrom without Bank's prior written consent.

4. **MOBILE EQUIPMENT** — If any Collateral is equipment normally used in business or farming operations in more than one state, Debtor's chief place of business (if other than the address below Debtor's signature) is: _____ Debtor will immediately give written notice to Bank of any change in such chief place of business.

5. **FIXTURES** — The Collateral (check one) ☐ is ☐ is not attached or to be attached to real estate. If attached or to be attached to real estate, the legal description of such real estate is:

_____ the name of the record owner of such real estate is: _____

Debtor will furnish Bank with disclaimers signed by all parties having interests in the real estate which are in Bank's interest in the Collateral.

6. **OWNERSHIP** — Debtor has or forthwith will acquire, clear title to the Collateral free of all encumbrances and security interests other than this Agreement.

B. PERSONS BOUND

Each person signing this Agreement, other than the Bank, is a Debtor; and the obligations of all Debtors are joint and several.

C. OTHER PROVISIONS

THIS AGREEMENT INCLUDES ALL THE PROVISIONS ON THE REVERSE SIDE.

ZENS NATIONAL BANK

Debtor: James L. Baker, Jr.

FOOD INNOVATION SYSTEMS INC. & SUBSIDIARIES

Address: _____

Debtor: _____

Address: _____

ADDITIONAL SECURITY AGREEMENT PROVISIONS

1. **FILING**—Debtor warrants that there is no financing statement now on file in any public office covering any of the Collateral or any of the proceeds thereof and so long as any of the Obligations remain unpaid or any credit from Bank to Debtor is in use by or available to Debtor, Debtor will not execute a financing statement or security agreement covering the Collateral with anyone other than Bank. Debtor agrees to sign and deliver one or more financing statements or supplements thereto or other instruments as Bank may from time to time require to comply with the Utah Uniform Commercial Code or other applicable law or to preserve, protect and enforce the security interest of Bank and to pay all costs of filing such statements or instruments. Bank is authorized to sign such statements or instruments for Debtor.

2. **CARE OF PROPERTY**—Debtor shall: keep the Collateral in good repair and be responsible for any loss or damage to it; keep it free from all liens, encumbrances and security interests; pay when due all taxes, license fees and other charges upon it; not sell, misuse, conceal or in any way dispose of it or permit it to be used unlawfully or for hire or contrary to the provisions of any insurance coverage; not permit it to become a fixture or an accession to other goods except as specifically authorized in writing by Bank. Loss of or damage to the Collateral shall not release Debtor from any of the Obligations.

3. **INSURANCE**—Debtor agrees, at his expense, to insure the Collateral against loss, damage, theft (and such other risks as Bank may require) to the full insurable value thereof with insurance companies and under policies and in form satisfactory to Bank. Proceeds from the insurance shall be payable to Bank as its interest may appear and all policies shall provide for 10 days minimum written cancellation notice to Bank. Upon request, policies or certificates attesting the coverage shall be deposited with Bank. Insurance proceeds may be applied by Bank toward payment of any of the Obligations, whether or not due, in such order of application as Bank may determine.

4. **RIGHT TO PROTECT**—If Debtor fails to make any payment or perform any act required by this Agreement or which Bank deems advisable to preserve the Collateral or the priority or perfection of the Bank's security interest, Bank may advance funds for the same and such advances shall be one of the Obligations secured hereby and shall be immediately payable with interest thereon at the highest lawful contract rate.

5. **DEFAULT**—Debtor shall be in default hereunder if any of the following events occur: (1) Debtor fails to pay any of the Obligations when due; (2) Debtor fails to perform any undertaking or breaches any warranty in this Agreement or in any of the Obligations; (3) any statement, representation or warranty of Debtor herein or in any other writing at any time furnished by Debtor to Bank is untrue in any material respect when made; (4) Debtor becomes insolvent or unable to pay debts as they mature or makes an assignment for the benefit of creditors or any proceeding is instituted by or against Debtor alleging that Debtor is insolvent or unable to pay debts as they mature; (5) entry of any judgment against Debtor; (6) death of Debtor who is a natural person or of any partner of Debtor which is a partnership; (7) dissolution, merger or consolidation or transfer of a substantial part of the property of Debtor which is a corporation or a partnership; (8) an attachment, garnishment, execution or other process is issued or a lien filed against any property of Debtor; (9) transfer of any interest in any of the Collateral without the written consent of Bank; (10) any of the Collateral is lost, stolen or materially damaged; (11) Bank shall deem itself insecure for any reason whatsoever.

6. **REMEDIES**—Upon the occurrence of any default hereunder and at any time thereafter, all of the Obligations shall, at the election of Bank and without notice of such election, become immediately due and payable and Bank shall have the remedies of a secured party under the Utah Uniform Commercial Code or other applicable law, and: (1) Bank shall have the right to enter upon any premises where the Collateral may be and take possession thereof; Debtor shall, if requested by Bank, assemble the Collateral at a place designated by Bank; Bank may sell, lease or otherwise dispose of any or all of the Collateral and, after deducting the expenses incurred by Bank, including reasonable attorneys' fees and legal expenses, apply the residue to pay (or to hold as a reserve against) the Obligations; Bank may give any notice to Debtor required by law by mailing such notice, postage prepaid, at least 3 days before the event to any address of Debtor set forth in this Agreement; and (2) Bank shall have the right immediately and without prior notice or demand to set off against the Obligations, whether or not due, all money or other amounts owed by Bank in any capacity to Debtor and Bank shall be deemed to have exercised such right of setoff and to have made a charge against any such money or amounts immediately upon occurrence of such default even though such charge is entered on the books of Bank subsequent thereto.

7. **GENERAL**—Bank may inspect the Collateral wherever located at any reasonable time. Bank is authorized to date this instrument and fill in any blanks. Waiver of any default shall not constitute a waiver of any subsequent default. All words used herein shall be construed to be of such gender and number as the circumstances require and all references to Debtor shall include all other persons primarily or secondarily liable hereunder. This Agreement is governed by the laws of the State of Utah. Debtor appoints the County Clerk of the county in which the place specified in Bank's address is located, as agent for the purpose of accepting service of process in any action pertaining to this Agreement and agrees that any such action may be brought in any court of said county. Any provision hereof found to be invalid shall not invalidate the remainder. This Agreement constitutes the entire agreement between the parties and may not be altered or amended except by written agreement of the parties. This Agreement binds each Debtor, their respective heirs, personal representatives, successors and assigns, and inures to the benefit of Bank, its successors and assigns.

SCHEDULE "A"

Equipment purchased from Restaurant and Store Equipment
Company:

APR 1 1951

1 each Mixer blakeslee A-717 #049197
1 each Scale Y32
1 set Pot shelves, amco wire
1 set Clean & sailed dishtables with pre rins sink
1 each Dishwasher blake slee D-8 overhead spray
#1-4604-1
1 each Booster heater
1 each Overhead glass rack
1 each Walk inn cooler
1 each Condensing unit
1 each Coil
1 lot Shelving for walk inn
1 each Slicer, globe
1 each S/S Shelf 8 ft
1 each Microwave oven sharp \$2110 #1114280 faucets
2 doz S & P shakers
18 doz Teaspoons, ice teaspoons, Soup spoons chateau
15 doz Chateau dinner forks & salad forks
4 doz Chateau 1 pc knife
3 each S/S supreme bowls
2 doz Snailforks
2 doz Snail tongs
8 each Snail plates
2 doz 4 1/2" shells 467 1638
6 doz Wine glasses gobblets etc
9 doz 9 5/8" plates
14 doz Shepoco cups
2 doz 4 5/8" fruits
14 doz 6 3/8" plates
2 doz bouillon cups
12 each Cup racks stacking 3045B
19 each Fry pans
1 each China cap

8 2 2 8 4

10 each Sauce pans
 2 each 4315 stock pots
 1 each 5414 Torrware stock pot
 1 each 5420 Torrware stock pot
 1 each 5332 Torrware stock pot
 7 each Roast pans
 4 each S/S bowls
 3 each 4 compt silverware racks
 6 each Brown trays
 20 each ladles
 1 each wire whip
 3 each strainers
 3 pkgs doilies
 1 each scoop
 12 each pie tins
 2 each loaf pans
 2 each cake pans
 4 each bake pans
 4 each duke water pans
 2 6/12/ doz 644 8 oz casserole ant mahogany
 6/12/ doz grapefruit bowl
 4 box steak markers
 51 each inset pans
 3 each garb cans brute
 18 each diswasher racks
 6 each 10727 bus tubs
 12 each serving spoons
 24 each tea pots
 8 doz parfaits & sundaes
 1 each utility tongs
 1 each hood extension

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-1.7.81

For Mosted
Howard Jordan

EXECUTIVE OFFICES

Sharp Compet Calculator	\$ 200.00
Olivetti Logos 40 Calculator	450.00
Facit Proportional Typewriter	2,850.00
Secretarial Desk and Partition	800.00
Secretary Chair	150.00
Conference Table and Six Chairs	1,400.00
Legal Glassfront Bookcase	550.00
Rattan Bookcase	300.00
Rattan-Cane Executive Desk	800.00
Rattan-Leather Chair	350.00
Miscellaneous Office equipment	500.00
Four (4) paintings	1,500.00
Gold Leafed Wall Mirror	1,200.00

TOTAL

\$ 11,050.00

INVENTORY LIST ELKS UNIT

Starmaster Food Server Model # 121	
with inserts Serial # 12014213	650.00
Starmaster Food Server Model # 122	
with inserts Serial # 12021863	380.00
Stanley Doucette Inc. Cold Table	
Model # 2 65 D Serial # 6790	1,200.00
General Electric Bun Toaster	
Model # CT 22A Serial # TCF3560	110.00
Cornelius Drink Dispenser	
Model # 41-4002-000 Serial # 2967	1,200.00
R.C. COLA 7-UP Dispenser	
Model # 18-7568 Serial # 5497	300.00
Nor-Lake 2 door Refridgerator with	
11 refridgerator racks	
Model # R 52 B Serial # 41516	1,4000.00

Inventory List Elks Unit Cont.

3

1	Stove Hearth Small Frying Pan # 12416	50.00
1	Dura Wear Large Frying Pan # 914	80.00
1	NSF Double Sink and Plumbing	450.00
1	Employee Porcelain Sink	150.00
1	Fryer Stand	100.00
1	Stove Hood	500.00
1	Brewmatic Coffee Warmer Model # 81052	50.00
8	30" Wood Table Tops	240.00
8	Brown Metal Table Stands	480.00
24	Bentwood Chairs with beige seats	840.00
8	24" Barstools, Wood	320.00
38	30 " Barstools, Wood	1,140.00
10	S & E Art Works	2,400.00
1	Toshiba Micro-Wave Model # ER-722131 Serial # 27070456	700.00

5,000 #49 2½ oz Portion Cups, 2,000
6534 6x½x7½ French Fry Bags, 1,000 420
Snowwhite Bags, 5,000 #39 ½ oz Portion Cups,
1 Roll #40 36" White Butcher Wrap, 2,500 67
SE Solo 6oz Cold Drink Cups, 2,500 P-400
Plastic Portion Cups, 1,000 WF-2 6½ Medium
White Forks, 1,000 WK-2 6½ Medium White
Knives, 1,000 SP-1 5" Light White Soup
Spoons, 2,000 WS-2 6" Medium White
Teaspoons, 1 case 501 Cora Fold Napkins,
2 cases 30x37 H.M.H.D. Can Liners, 800 FST6
95/8 x 9/14 x 3 Containers, 500 12FC 12 oz
White Cups, 500 FL Lid for 12FC Cups, 500 4P
9½x7½x1 Yellow Foam Trays,

Inventory List Elks Unit. Cont.

24 H10S 10oz White Foam Hot Cups,	
100 HL10S Lids for H10S Cups, 1,000	
26 Lily 6" Plates	1,100.00
Counter 19½ Ft. Rounded Corners	
Square shape	1,200.00
Counter 27 Ft. L-shaped	500.00
Counter 20 Ft. Straight Line	300.00
Counter 14½ Ft. Straight Line	1,500.00
Light Fixtures	1,620.00
Wall Paneling and Delux Trim	450.00
Pouches Signs	540.00
Dutch Entry/Service Door	250.00
Misc. Service Utensils Stainless Steel	400.00
Stainless Steel Storage Containers	900.00
Plastic Covered Storage Containers	600.00
Iron Gate and Track	850.00

Sub-total

22,950.00

Arrow Press Square Unit

Micro Wave Sharp Model # R2110	590.00
Slicer	750.00
Mixer Triumph Model # 291	1,120.00
Toastmaster Food Warmer	
Model # 2B2	700.00



Arrow Press Square Unit Cont.

2	Tables	200.00	
1	Dishwasher System	3,500.00	
1	Wolf Range Model # CH418	1,100.00	
1	Walkin Cooler and Compressor	2,400.00	
1	Range Hood	700.00	
	Sub-Total		<u>11,060.00</u>

	Tableware, Glasses	2,500.00	
	Silverware	1,800.00	
	Pots and Pans	2,000.00	
	Sub-Total		<u>6,300.00</u>

1	4' x 10' Metal and Plastic Sign	700.00	
1	8' diameter- Round Electrified Sign Installed and Wired	8,000.00	
	Sub-Total		<u>8,700.00</u>

1	Ice Maker Sunbeam #B600	1,350.00	
1	Refrigerator, 4 door Formica ends & doors 80CF	1,480.00	
1	Refrigerator, 6 door Aluminum 65CF	1,800.00	

ow Press Square Unit Cont.

Stainless Steel Sink 3 basin and Faucet	700.00
Range, Wolf #CH2-29 FT 22	900.00
Oven, Pizza-Southbend 2 Deck	1,100.00
Hood, black iron & Filters 4-4x8-8	
11,060.00 Fire extinguisher system, Kiddie	2,000.00
Exhaust Fan	350.00
Duct & Hood steel (for Exhaust fan)	300.00
Refrigerator, ABC, R-5	280.00
Sink with Ice Pan & Bin	250.00
Bar Sink 3 Basin, with end filler members 6-0	500.00
6,300.00 Table Bases, Verco # 635-22	1,200.00
Tables, Hardwood	1,240.00
Chairs, Hardwood Captain	2,580.00
Stizbank, approx. 20' Long, with 16" high back, including Pillows	800.00
Divider, 7'6" Finished & Installed	300.00
Stizbank, including Pillows	400.00
Panels above Window	400.00
Swinging Doors	150.00
8,700.00 Bar (In front of Stizbank) with open shelves underneath, Wine Rack approx. 13'x1'9" high, 6' high partition with Lattice work above, total approx. 44' (not painted), Top and Side over Liquor Box, Approx. 14' Bannister, Including Lift-up Lid and Gate, Bread Carts	1,500.00

Low Press Square Unit Cont.

Sitzbank, approx. 10' Long with 4'6"	
High Back including Pillows	800.00
Yards Tapestry Print, Brown	
Upholstery Fabric	325.00
Square yards Carpet, Dark grey/brown,	
Complete & Installed over Omalon Padding	800.00
Wells F Automatic Fat Fryer	400.00
Fryer Stand	120.00
Stainless Steel Table for	
Dishwasher	350.00
T & S B113 Pre-rinse	400.00
Hood	500.00
Hoover Upright Vacuum	100.00

Sub-Total

23,375.00

Grand Total

83,435.00

For Installation by J. J. J.
by Howard J. J. J., Pres.

Flambe Table & Tank		\$ 700.
Leather Captains Chairs @ 175. ea.		4,900.
Hardwood Tables with Iron Bases @ 350. ea.		2,100.
Thermometers, Meat		20.
Data Terminal DTS 4008 @ 3,570. ea.	35676 35664	7,140.
Whirlpool Ice maker LERh8 with ext. condensor	P83111782 83652/46	4,500.
Cold Cup Dispenser Stainls.		45.
Charbroiler, U.S.		1,250.
3 Door Stainless Freezer		3,800.
Unit Track lights @ 175. ea.		350.
Drawing Table & Stand		350.
Cast Iron Lettuce Maker		175.
Salad Bar & Soup Dispensor	02770300	1,275.
Metalic Steak Plates @ 15 ea.		375.
Six Burner Stove		3,280.
U.S. Salamander Broiler		1,175.
Moving Fees		900.
Installation Charges		2,300.

TOTAL COSTS

\$ 34,635.00

Food Inspection Systems, Inc.
Howard L. Liden 4-7-11