

1990

Kamdar & Company v. Laray Company, Inc.; Raymond Boal; and James A. Boal Jr. : Brief of Appellee

Utah Court of Appeals

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BRIEF

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DOCKET NO.

900539CA

IN THE UTAH COURT OF APPEALS

KAMDAR & COMPANY,

Plaintiff/Appellant,

vs.

LARAY COMPANY, INC.; RAYMOND
BOAL; and JAMES A. BOAL JR.,

Defendants/Appellees.

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Case No. 900539-CA

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APPELLEE'S BRIEF

Appeal from an Order of the Fourth Judicial District Court, Judge
George E. Ballif, Presiding.

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FILED

ARGUMENT PRIORITY CLASSIFICATION: 16

JAN 13 1991

Mary T. Noonan
Clerk of the Court
Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

KAMDAR & COMPANY,	ooo0ooo	
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Plaintiff/Appellant,	:	
	:	
vs.	:	Case No. 900539-CA
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I. STATEMENT OF JURISDICTION

This matter was initially appealed to the Utah Supreme Court pursuant to the provisions of the Utah Code Ann. Section 78-2-2(3)(j) (1953 as amended) in that the appeal was taken from a final order of the Fourth Judicial District court over which the Utah Court of Appeals does not have original appellate jurisdiction. On or about November 1, 1990, this matter was assigned to the Utah Court of Appeals by the Utah Supreme Court pursuant to Rule 42 of the Utah Rules of Appellate Procedure.

II. NATURE OF PROCEEDING

This is an appeal by the Plaintiff/Appellant from an Order dismissing the Plaintiff's Complaint due to lack of personal jurisdiction over each of the named Defendants.

III. STATEMENT OF THE ISSUES

There are only three (3) issues presented by this appeal. The issues are related to each other.

(1) "Whether or not there exists specific personal jurisdiction over each of the appellees based on their minimal contacts with the state of Utah sufficient to allow the state of Utah to resolve a dispute over the amount of professional fees claimed by the Plaintiff where the three (3) named Defendants all reside in California and conduct all their trade or business within the state of California."

(2) "Whether or not the assertion of jurisdiction requiring each of the three (3) named Defendants to defend themselves in a foreign state violates the due

process clause of the 14th amendment of the U.S. Constitution and the corresponding due process clause of the Utah State Constitution."

(3) "Whether or not due process of law is substantively afforded each of the three (3) Defendants when they are required to defend themselves in a foreign state while at the same time the Plaintiff is conducting its trade or business in the Defendant's home state."

IV. STANDARD OF REVIEW

The standard of appellate review in this issue is the "correction of error" standard because the District Court's decision was based solely on the pleadings filed in the case and involved no assessment of witness credibility or competency. See R.R.F. v. Felan, 760 .2d 906, 209 (Utah Ct. App. 1988). Thus, the Court of Appeals is in "as good as position as the trial court to examine the evidence de novo and determine the facts." In re Adoption of Infant Anonymous, 760 P.2d 916, 918 (Utah Ct. App. 1988). The issue presented is one of law and does not involve the merits of the Plaintiff's alleged claim.

V. STATEMENT OF STATUTES

The application of Utah's Long-Arm Statute is necessary for the proper resolution of the issue of jurisdiction in this case. The statute reads as follows:

[I]t is declared, as a matter of legislative determination, that the public interest demands the state provide its citizens with an effective means of redress against nonresident persons who, through certain significant minimal contacts with the state, incur obligations to citizens entitled to the state's

protection. This legislative action is deemed necessary because of technological progress which has substantially increased the flow of commerce between several states resulting in increased interaction between persons of this state and persons of other states. (Emphasis Added).

The provisions of this act, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment of the United States Constitution.

Utah Code Ann. Section 78-27-22 (1953 as amended).

VI. STATEMENT OF CONSTITUTIONAL PROVISIONS

Section 1 of the 14th Amendment of the U.S. Constitution reads as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, Section 7 of the Utah State Constitution reads as follows:

No person shall be deprived of life, liberty or property, without due process of law.

VII. STATEMENT OF THE CASE

This case involves the attempt to make collection on a disputed commercial account by a Utah partnership against a corporation organized under the laws of the State of California and two (2) individuals who reside in California who supposedly "guaranteed" the corporation's debt. The Plaintiff claims in its complaint that the individually named Defendants "guaranteed" the

debt of the corporation Defendant, but no documents are attached to the complaint setting forth the terms and conditions of the guarantee agreement sufficient to satisfy the statute of frauds for either the state of California or the state of Utah.

The Plaintiffs claim that each of the Defendants are jointly and severally liable for the total amount due.

VIII. STATEMENT OF THE FACTS

1. The Corporate Defendant Laray Company, Inc. is a California corporation. The Corporate Defendant has never conducted any business in the State of the state of Utah nor does it have customers or retail outlets in this state. (Exhibit "A". Paragraphs 2 and 5).

2. The individual defendants are residents of California and have no business interests in Utah and their sole contact with the state of Utah is based on their employment relationship with the corporate defendant. (Exhibit "B" Paragraph 3; Exhibit "A" Paragraphs 1 and 3).

3. The Plaintiff (formerly a California business) is a Utah partnership which is presently doing business in the state of California by rendering services to the Defendant of the type described in the complaint which it has done for the past 18 or more years. The Plaintiff employs various employees or agents in Utah and elsewhere in order to carry out its trade or business and regularly sends employees to California to service clients such as Laray Company. (Exhibit "A" Paragraph 6 to 7; Exhibit "C" Paragraphs 8 to 17; Exhibit "B" Paragraphs 6 to 7).

4. The corporate Defendant does not own personal property or conduct a trade or business in the state of Utah at present or in the past. No trade or business assets are located within the state of Utah. The Defendants do not employ any employees or other agents within the state of Utah and have no contact with residents of the state of Utah except the present relationship with the Plaintiff which began in California. (Exhibit "A", Paragraphs 4 to 7; Exhibit "B" Paragraphs 4 to 7).

5. The corporate Defendant has no commercial accounts either wholesale or retail within the state of Utah. (Exhibit "A" Paragraphs 4 to 5).

6. The corporate Defendant business has never qualified to do business in the state of Utah. (Exhibit "A" Paragraphs 4 to 5).

7. The Defendant Corporation is a business which is operated by the individual Defendants in the city of La Habra, California which is located in Orange County, state of California. (Exhibit "A" Paragraph 2).

8. The Defendants have not consented to jurisdiction in the state of Utah in any contract or by any other signed instrument. (Exhibit "A" Paragraph 5).

9. The Defendant's do not maintain any bank accounts either personal or business within the state of Utah either now or in the past. (Exhibit "A" Paragraph 5).

10. The Plaintiff's Complaint does not allege that any tortious acts were committed by the Defendants in the state of Utah. (Exhibit C).

11. The contract for services that may have been rendered by the Plaintiff was entered into in the state of California and the witnesses to the event presently reside in California, and the work performed by the Plaintiff relates to activities pursued in California by the corporate Defendant. (Exhibit "B", Paragraph 6).

12. All documents and business records of the Defendants are located in California and are not stored or secured in the state of Utah. (Exhibit "A" Paragraph 7; Exhibit "B" Paragraph 7.

IX. SUMMARY OF ARGUMENT

Each of the Defendants/Appellees asserts that the District Court of Utah County does not have jurisdiction over him for three (3) separate reasons. First, the long arm statute as enacted in the state of Utah has not been met. Second, each of the Defendants separate and individual contacts with the State of Utah are not sufficient to give this Court personal jurisdiction over the Defendants sufficient to meets the requirements of the due process of law clause as required by both the Utah state Constitution and the 14th Amendment to the U.S. Constitution. Finally, for the time periods in questions, the Plaintiff had a regular and ongoing business relationship within the state of California and the work relates to the corporate Defendants activities within the state of California and to require each of the Defendants to defend themselves in a foreign state under such circumstances is in violation of due process of law under both the state and federal constitutions.

X. ARGUMENT

A. Utah's Long arm statute does not confer general or personal jurisdiction over the Defendants.

UCA 78-27-22 sets forth Utah's declared public policy in adopting the state's Long-Arm Statute. The stated public policy clearly acknowledges that "any" contact with the state of Utah does not meet spirit or express wording of the statute. A plain reading of the statute requires as a condition precedent to its use that each of the Defendant's contacts with the state of Utah must be "...significant minimal contacts...".

Each of the Defendants claim that the District Courts of the state of Utah lack jurisdiction over them, and as a result, may not enter a money judgment them (either jointly or severally) based on a California commercial account. Utah's long-arm statute UCA 78-27-24 reads as follows:

"Any person..., who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any claim arising from:

1. The transaction of any business within this state;
2. Contracting to supply services or goods in this state;
3. The causing of any injury within this state whether tortious or be breach of warranty;
4. The ownership, use, or possession of any real estate situated in this state;
5. Contracting to insure any person, property or risk located within this state at the time of contracting;

6. With respect to actions of divorce and separate maintenance, the maintenance in this state of a matrimonial domicile at the time the claim arose or the commission in this state of the act giving rise to the claim."
(Emphasis added.)

In order to obtain personal jurisdiction over each of the Defendants, the Plaintiff must demonstrate that each Defendant satisfies one or more of the above statutory requirements.

UCA 78-27-26 sets forth an important limitation on the long-arm jurisdiction of the State of Utah. The section reads as follows:

"Only claims arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this act."

It is clear that only subsection (1) of Utah's long-arm statute (UCA 78-27-24) could possibly apply in this case. The individual Defendants and the corporate Defendant are not conducting their trade or business in the state of Utah. It is clear that the Plaintiff is conducting its own trade within the state of Utah. In sharp contrast, the corporate Defendant does not conduct any of its automotive trade or business in the state of Utah. The individual defendants as employees of the corporate defendant have no business contacts with Utah whatsoever. The Defendants do not own assets in Utah nor have they entered into an insurance arrangement with Utah citizens. Under these facts, the long-arm statute has not been met and the Plaintiff has failed to demonstrate the existence of "significant minimal contacts".

The state statute enumerates only six (6) situation by which the state of Utah can assert personal jurisdiction over non-resident Defendants. The statute declares that certain acts and certain conduct is sufficient to establish a legal "presence" in the state. The only applicable section for purposes of this case is the "transaction of business" test as found in subparagraph (1), and which is specifically circumscribed by the language of UCA 78-27-26.

The Plaintiff cannot meet the "transaction of business" test required by the statute as against each of the three (3) Defendants. This is because the Utah Supreme Court has consistently ruled that to satisfy this test each of the defendants must engage in a "substantial activity" with "some degree of continuity" in Utah. As illustrated by the Defendant's Affidavits, each of the Defendant's activities in Utah are not "substantial" and they certainly have not been "continuous". In fact, they have never occurred. In contrast, the professional business relationship arose while all of the parties were transacting their respective trade or business in the state of California. As a result the commercial agreement is governed by California law and the witnesses to the account or agreement all initially resided in California. From 1971 to 1974 all parties conducted all of their respective businesses in the state of California. Thereafter, the Plaintiff decided to relocate the Utah and continue its accounting operations here. Does this mean the

corporate Defendant must now be conducting its business in Utah too?

In Union Ski Company v. Union Plastics Corporation, 548 P.2d 1257 (Utah 1976), a Utah Plaintiff sued a California corporation for breach of a contract whereby the Defendant was to manufacture ski boots for the Utah Plaintiff. Defendant's general manager made at least four trips to Utah, and during one of these trips an oral understanding was reached between the parties within the State. This agreement was, with minor modification, subsequently reduced to writing and executed by the Defendant in California.

The Utah Supreme Court in affirming a lower Court's dismissal for lack of jurisdiction held that the Plaintiff had failed to show sufficient contacts by the Defendant in the State of Utah to support extra-territorial service of process and the resulting personal jurisdiction. The Court summarized the Utah law as follows:

"In harmony with the foregoing this court has consistently held that the transaction of business within the meaning of our statute requires that the Defendant has engaged in some substantial activity with some degree of continuity within this state. (547 P.2d at 1259.) (Emphasis added.)

Shortly after Union Ski, the Utah Supreme Court decided Cate Rental Company v. Whalen Company, 549 P.2d 707 (Utah 1976). The Plaintiff was a Utah corporation which had leased a piece of heavy construction equipment to the Defendant, a Montana corporation. The parties had transacted business on

a fairly regular basis for about ten years, the contacts with the state of Utah usually consisting of about five (5) telephone conversations a year between the two parties. The Utah Plaintiff would ship equipment to Montana from Salt Lake City and it would receive payment by mail. Based upon these facts and relying on Union Ski, supra, the Supreme Court affirmed the Trial Court's Order quashing service of process. The Court's ruling indicates that the Trial Court had no personal jurisdiction over the Defendant under the facts of that case.

In White v. Arthur Murray, Inc., 549 P.2d 439 (Utah 1976) the Utah Plaintiff brought an action for fraud against the Defendant corporation. The corporation's activities in Utah consisted of (1) supplying its franchisees with the instructional and advertizing materials; (2) regular audits, either on an annual or bi-annual basis; and (3) allowing the franchisees to use the corporate name. Apparently, the Defendant did no other business within the state of Utah. The Utah Supreme Court once again held that even these enumerated contacts were not sufficient to support personal jurisdiction over the Defendant. See also Transwestern Central Agency v. Morgan, 526 P.,2d 1186 (Utah 1974); Mack Financial Corporation v. Nevada Rentals, Inc. 529 P.2d 421 (Utah 1974). Chevron Chemical Company v. Mecham, 550 P.2d 182 (Utah 1976).

In the present case the three (3) named Defendants do not have the same type of contact with the state of Utah which the Defendants in the above cited cases had.

Even in those cases where the Utah Supreme Court has found personal jurisdiction over non-resident Defendants, it has explicitly stated that the basis for such jurisdiction must be clear. In Packaging Corporation of America v. Morris, 561 P.2d 680 (Utah 1977), a creditor brought an action against a non-resident Defendant to recover under a guarantee agreement. In an opinion authored by Justice Wilkins, the Court held that there was personal jurisdiction over the non-resident guarantor of the obligation. The Court was very careful, however, to set forth the basis for this jurisdiction as the opinion states:

"In Union Ski, supra, this Court stated that the meaning of our long-arm statute...requires that the Defendant has engaged in some substantial activity with some degree of continuity within this State . . . Defendant's agent was in Utah and performed continuous duties in Utah in overseeing the business of Hawkeye [the guaranteed party] and hence the Defendant's interests therein for most of 1971 and into 1972. The agent's duties and contacts were not sporadic and transitory. Certainly Hawkeye had local offices and property in Utah and the activities of the Defendant's agent at those offices constituted a substantial business presence in this state. (561 P.2d at 683).

In the Morris case, the Court specifically found that the Defendant was substantially engaged in an ongoing business in Utah. It thus had an economic presence in the state of Utah.

The Morris opinion relied on the earlier case of Hill v. Zale Corporation, 25 Ut. 2d 357, 482 P.2d 332 (Utah 1971), where the Utah Supreme Court stated the following seven (7) factors are generally determinative of whether or not a non-resident is "present" and "doing business" in the State of Utah:

- (1) Local offices, stores or outlets;
- (2) Personnel or employees located in Utah;
- (3) The solicitation of the general public within the State;
- (4) The presence of property including inventories, bank accounts, etc.;
- (5) The extent and frequency of business activities in the State;
- (6) Whether the claim asserted arose from the activities within Utah;
- (7) The relative hardship or convenience of the party in being required to litigate in Utah.

Obviously, under the authorities and criteria cited above, the individual Defendants are not, and were not, transacting business within the state of Utah. The California Corporate Defendant has not even had as many contacts with the state of Utah as the Defendants in Union Ski, supra, Cate, supra, and Arthur Murray, supra, who were able to avoid the assertion of jurisdiction. The seven (7) factors cited above have not been met even on a minimal basis in this case.

The contract for services which the present Plaintiff claims exist was entered into between California residents and it was the Plaintiff who then decided to relocate to Utah.

Such a unilateral act by the Plaintiff cannot be the basis for asserting extra-territorial personal jurisdiction over a nonresident arising out of a transaction whose basis and roots (and governing law) arose in the state of California.

The seven (7) factors are not substantially satisfied. The last factor raises significant constitutional issues that will be addressed below.

B. Jurisdiction over the Defendants do not satisfy due process of law under the 14th Amendment of the U.S. Constitution or the state's Constitution.

The due process clause of the Fourteenth Amendment of the United States Constitution does not allow the Trial Courts of this state to assert extra-territorial personal jurisdiction over each of the three (3) the non-resident Defendants under the facts of this case. International Shoe v Washington 326 U.S. 310, 66 S. Ct. 154, 90 L.Ed 95 (1945); McGee v International 355 U.S. 220, 78 S. Ct. 199, 2 L.Ed 2d 223 (1957). The thrust of these decisions by the United States Supreme Court is that (notwithstanding the state's long arm statute) sufficient minimum contacts must exist within the foreign state in order for the state Court to assert personal jurisdiction over a non-resident Defendant. In this regard the identified minimum contacts must be substantial enough to justify the Defendants presence in a foreign state to defend a lawsuit. Absent some reasonable minimal contact with the foreign state (relating at least to the subject matter of the

litigation) our modern day concept of due process of law is violated. The U.S. Supreme Court has stated that this minimal level of contact within the state must be reasonable and just according to traditional concepts of fairness and equity. Hanson v Denckla 357 U.S. 235, 78 S. Ct. 1228, 2 L.Ed 1283 (1958). This requirement has not been met in this case. When the business relationship began and the agreement entered into all of the parties resided in the state of California. Therefore, each party could reasonably expect that the controlling law would be California law and the proper Court to address any grievance relating to the relationship was the state Courts of California. All of the parties have substantial and ongoing contacts with the state of California. The proper Court to adjudicate this controversy is located in Orange County California where the Plaintiff has at least one acknowledged customer (i.e. the corporate defendant) and where the other individual Defendants personally reside and where they supposedly entered into the "guarantee" agreement.

Whether sufficient minimum contacts exists for federal constitutional issues cannot be answered by applying a fixed formula or rule of thumb. This Court must determine whether it is fair and reasonable under the circumstances of this particular case that each of the Defendants should be required to defend themselves in the foreign state based on a transaction originally entered into in California. Being required to defend a law suit in a foreign state is usually

at a substantial cost and significant inconvenience to the Defendant. This strong-arm tactic is usually employed to drive up the cost of litigation so that settlement is based on the cost of the out-of-state litigation and not the merits of the controversy itself. In such a case the traditional concepts of justice and fair play is violated.

The Courts have adopted a few tests to determine whether or not it is reasonable to have the Defendants put to the inconvenience and expense of defending themselves in the Courts of a foreign state. One Court has determined that the trial Court should determine whether the defendant engaged in some act or conduct by which the Defendant may have said to have invoked the benefits and protections of the law of the state now seeking jurisdiction over the party. Gray v American 22 Ill. 2d 432, 176 NE. 2d 761 (1961); Consolidated v Shandon 348 F. 2d. 797 (CA-7 1967). In this case, the Defendants have never sought the protections or benefits of the laws of the State of Utah nor was that even contemplated in 1971 when all the parties resided in the state of California.

Under the Utah State Constitution Article 1 Section 7, the assertion of jurisdiction over these non-resident Defendants essentially deprives them of life, liberty, and property without due process of law. The Utah Supreme Court has long recognized that before a person can be subjected to specific control by the state of Utah (i.e. the taxation of

personal property) that person must have some recognized legal contact with the state of Utah. Untermeyer vs. The State Tax Commission 102 Ut. 214, 129 P.2d 881 (Utah 1942). The Untermeyer case involved the imposition of an excise tax on the ownership of stock of a domestic corporation. The stock was owned by a non-resident citizen who objected to the payment of the tax. The holding by the Utah Supreme Court which upheld the right of the state to tax the stock was based upon the premise (though artificial) that the stock of a Utah corporation has a sufficient tax situs within the state sufficient to justify the taxation of any subsequent transfer of that stock. Here the contact with the state of Utah is created by the voluntary purchase of stock of a corporation known to be subject to state corporate laws and state tax law. Therefore, it is reasonable to assume the local Courts could adjudicate any controversy and that the stockholders would be subject to taxation in Utah. In such a case the non-resident alien is not deprived of property without due process of law.

It is clear that "any" contact with the state of Utah is not sufficient to justify personal jurisdiction. The state statute requires (as required by the state's constitution) that the contacts be "significant".

C. Fairness and judicial economy as an element of due process of law requires that this case be heard in California

In determining whether or not "due process of law" is being afforded a nonresident Defendant and whether or not he

has significant minimum contacts with the state sufficient to require that he defend a lawsuit in a foreign jurisdiction, the Trial Court must seriously consider whether or not the Plaintiff has more contact with the non-resident Defendants' home state (California) than the Defendants have with the Plaintiff's home state (Utah). Absent this comparison and consideration "due process of law" is not truly being afforded a non-resident Defendant. In the present case the Plaintiff clearly is conducting its accounting service in California by rendering services to at least one (1) California customer. It is acknowledged that this relationship began in 1971 and continued for nearly 18 years. The Plaintiff is in fact conducting its own trade or business in California. The Plaintiff has for the past 18 years rendered professional services to customers located in California including at least the present corporate defendant. On the other hand, the Defendant Laray Company (and its employee Defendants) are not supplying auto parts to the Plaintiff or any other resident of Utah. Furthermore, the individually named Defendants have no contact with Utah whatsoever (other than the present litigation). It is far more reasonable to have the Plaintiff seek redress of its grievance in California, rather than to impose a significant hardship on three (3) other persons or entities to defend in a foreign state.

Judicial economy weighs heavily in favor of having a California Court decide all issues rather than bifurcating

the case into multiple suits because the individual named Defendants are clearly not subject to the long arm statute of the state of Utah. Furthermore, California Code Law is the choice of law in this dispute and California Courts are much more capable of correctly interpreting California law than the Utah Judicial System which has little if any experience in applying California law. The Defendants can reasonably and properly expect that a California Trial Court is much more capable and able to correctly apply California law than the state Courts of Utah. Any defense mounted in a foreign jurisdiction puts the litigant to the cost of educating the trial Court on foreign law.

CONCLUSION AND RELIEF SOUGHT

Based upon the foregoing, this Court should rule that Utah Code Annotated 78-27-24 is not applicable in this case because the Defendants are not transacting any business within the State of Utah. In this regard the Defendants do not have a continuing and active presence in the state of Utah sufficient to warrant personal jurisdiction over them either jointly or severally.

The Court should also rule that the assertion of jurisdiction by the Courts of the state of Utah over each of Defendants under the facts of this case would violate the Fourteenth Amendment of the United States Constitution in that it would deprive the Defendants of due process of law. The Defendants do not have sufficient minimum contacts with the

state of Utah sufficient to require that they incur the expense and inconvenience of adjudicating the Plaintiff's claim in a foreign state especially where the Plaintiff has a history of economic business contacts with the state of California for the past 18 years.

Respectfully submitted.

DATED this 18th day of January, 1991.

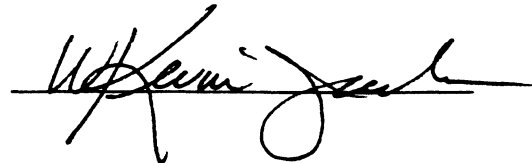

W. Kevin Jackson
Attorney at Law

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing document to:

Jeffrey N. Walker
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101

by placing the same in the United States Mail, postage prepaid on this 18th day of January, 1991.



LARAY-1 .BRF
LARAY-AP.BRF

Tab A

Mark J. Perrizo, Esq.
WILSON, WILSON & PERRIZO
10901 Paramount Boulevard
Downey, California 90241
(213) 923-4513
Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

KAMDAR & COMPANY,	:	
	:	
Plaintiff,	:	
	:	DECLARATION OF
vs.	:	RAYMOND BOAL
	:	
LARAY COMPANY, INC.; RAYMOND	:	Civil No. 900400079
BOAL; and JAMES A. BOAL, JR.,	:	
	:	
Defendants.	:	

I, RAYMOND BOAL, state:

I am a named individual defendant in the instant action. I am over the age of eighteen and have personal knowledge of all statements made in this Declaration and if called as a witness, I could and would competently testify to the following:

1. I am the current duly elected President of LARAY COMPANY, INC., the primary defendant named in this lawsuit, and have served continuously as President since 1985.

2. LARAY COMPANY, INC. (hereinafter referred as "LARAY") is a corporation duly organized and existing under the laws of the State of California having its principal and

only place of business in La Habra, California, currently located at 1801 E. Lambert Road.

3. I am and have at all times since the initial incorporation of LARAY resided in the State of California. I currently reside at 817 Via Amadeo, San Dimas, California 91773.

4. When served with Summons and Complaint in this action I was not present in the State of Utah. I have never resided in or been domiciled in the State of Utah. I have not consented in writing or orally at any time to the jurisdiction of the Utah State Courts. I am not now or have I ever done business in the State of Utah. I have not caused any act or omission or effect in the State of Utah. I have no ownership, use or possession of any property real or personal in the State of Utah.

5. During my continuous tenure as President of LARAY, LARAY has not been incorporated in Utah nor has it done any business in Utah. At no time has LARAY consented to or appeared in any action in the State of Utah. LARAY has no agent in Utah nor has LARAY caused any act, omission, or effect in Utah. LARAY has no ownership use or possession of any property real or personal in the State of Utah.

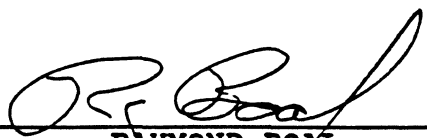
6. In or about 1971, in the County of Orange, State of California, LARAY through its then President, JAMES A. BOAL, JR., orally agreed with Plaintiff to have certain accounting work performed. At that time LARAY was operating and doing business as an automotive body shop supply

business in La Habra, California. At said time Plaintiff was a resident of Santa Monica, California, and doing business as an accounting or bookkeeping service. All witnesses to this original oral agreement were and currently are located and reside in California with the exception of Plaintiff.

7. Plaintiff moved his residence to Utah in approximately 1974. At all times prior thereto and at the time the contract was entered into Plaintiff resided in California. Even after Plaintiff moved to Utah, Plaintiff traveled to California to pick up books and records of LARAY and meet with its principal officers. The books and records included check stubs, payroll reports, monthly sales reports and copies of loan contracts. In instances when Plaintiff was unable to physically pick up such records, we were requested to mail same to him. At no time did we personally deliver any records to Plaintiff in Utah. All of the transactions that generated the aforementioned documents were generated in California for use in California, including the reports and returns provided by Plaintiff.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 11th day of April, 1990, at Downey, California.



RAYMOND BOAL

CAT. NO. NN00627
TO 1944 CA (9-84)

(Individual)

 **TICOR TITLE INSURANCE**

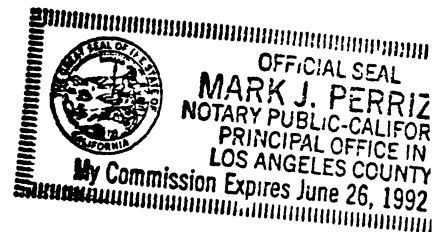
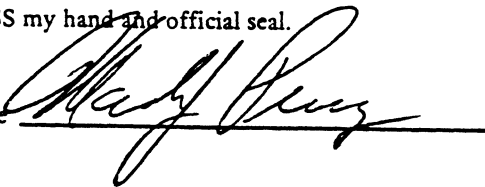
STATE OF CALIFORNIA
COUNTY OF Los Angeles } SS.

On April 11, 1990 before me, the undersigned, a Notary Public in a
said State, personally appeared JAMES A. BOAL, JR.

_____, personally known to me or
proved to me on the basis of satisfactory evidence to be
the person whose name is subscribed to the
within instrument and acknowledged that he ex-
ecuted the same.

WITNESS my hand and official seal.

Signature



(This area for official notarial seal)

CAT. NO. NN00627
TO 1944 CA (9-84)

(Individual)

 **TICOR TITLE INSURANCE**

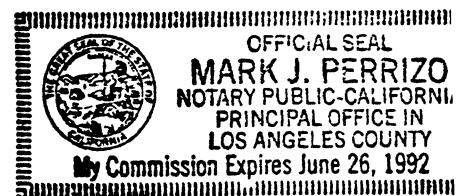
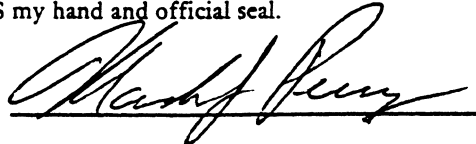
STATE OF CALIFORNIA
COUNTY OF Los Angeles } SS.

On April 11, 1990 before me, the undersigned, a Notary Public in a
said State, personally appeared RAYMOND BOAL

_____, personally known to me or
proved to me on the basis of satisfactory evidence to be
the person whose name is subscribed to the
within instrument and acknowledged that he ex-
ecuted the same.

WITNESS my hand and official seal.

Signature



(This area for official notarial seal)

Tab B

Mark J. Perrizo, Esq.
WILSON, WILSON & PERRIZO
10901 Paramount Boulevard
Downey, California 90241
(213) 923-4513
Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

KAMDAR & COMPANY,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	DECLARATION OF
	:	JAMES A. BOAL, JR.
	:	
LARAY COMPANY, INC.; RAYMOND	:	Civil No. 900400079
BOAL; and JAMES A. BOAL, JR.,	:	
	:	
Defendants.	:	

I, JAMES A. BOAL, JR., state:

I am a named individual defendant in the instant action. I am over the age of eighteen and have personal knowledge of all statements made in this Declaration and if called as a witness, I could and would competently testify to the following:

1. I am the former President of LARAY COMPANY, INC., the primary defendant named in this lawsuit, and I served continuously in that capacity from the initial incorporation of the company to 1985 when RAYMOND BOAL became President.

2. LARAY COMPANY, INC. (hereinafter referred as "LARAY") is a corporation duly organized and existing under the laws of the State of California having its principal and

only place of business in La Habra, California, currently located at 1801 E. Lambert Road.

3. I am and have at all times since the initial incorporation of LARAY resided in the State of California. I currently reside at 1401 Arbolita, La Habra, California 90631.

4. When served with Summons and Complaint in this action I was not present in the State of Utah. I have never resided in or been domiciled in the State of Utah. I have not consented in writing or orally at any time to the jurisdiction of the Utah State Courts. I am not now or have I ever done business in the State of Utah. I have not caused any act or omission or effect in the State of Utah. I have no ownership, use or possession of any property real or personal in the State of Utah.

5. During my continuous tenure as President of LARAY, LARAY has not been incorporated in Utah nor has it done any business in Utah. At no time has LARAY consented to or appeared in any action in the State of Utah. LARAY has no agent in Utah nor has LARAY caused any act, omission, or effect in Utah. LARAY has no ownership use or possession of any property real or personal in the State of Utah.

6. In or about 1971, in the County of Orange, State of California, through myself as President of said corporation, LARAY orally agreed with Plaintiff to have certain accounting work performed. At that time LARAY was operating and doing business as an automotive body shop

supply business in La Habra, California. At said time Plaintiff was a resident of Santa Monica, California, and doing business as an accounting or bookkeeping service. All witnesses to this original oral agreement were and currently are located and reside in California with the exception of Plaintiff.

7. Plaintiff moved his residence to Utah in approximately 1974. At all times prior thereto and at the time the contract was entered into Plaintiff resided in California. Even after Plaintiff moved to Utah, Plaintiff traveled to California to pick up books and records of LARAY and meet with its principal officers. The books and records included check stubs, payroll reports, monthly sales reports and copies of loan contracts. In instances when Plaintiff was unable to physically pick up such records, we were requested to mail same to him. At no time did we personally deliver any records to Plaintiff in Utah. All of the transactions that generated the aforementioned documents were generated in California for use in California, including the reports and returns provided by Plaintiff.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 11th day of April, 1990, at Downey, California.


JAMES A. BOAL, JR.

CAT. NO. NN00627
TO 1944 CA (9-84)

(Individual)



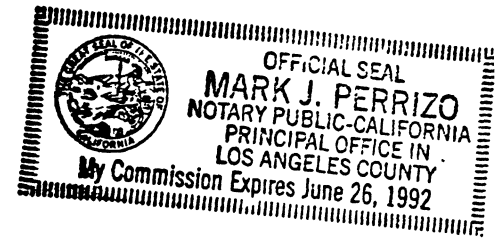
STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss.

On April 11, 1990 before me, the undersigned, a Notary Public in and for said State, personally appeared JAMES A. BOAL, JR.

_____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Signature



(This area for official notarial seal)

CAT. NO. NN00627
TO 1944 CA (9-84)

(Individual)



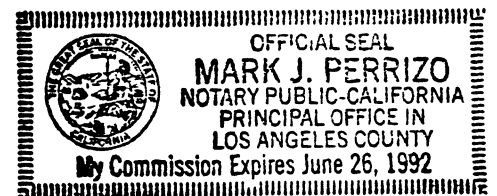
STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss.

On April 11, 1990 before me, the undersigned, a Notary Public in and for said State, personally appeared RAYMOND BOAL

_____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Signature



(This area for official notarial seal)

Tab C

Jeffrey N. Walker (USB #5556)
JONES, WALDO, HOLBROOK & McDONOUGH
Attorneys for Plaintiff
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101
Telephone: (801) 521-3200

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

KAMDAR & COMPANY.

Plaintiff,

vs.

LARAY COMPANY, INC.; RAYMOND BOAL; and JAMES A. BOAL, JR.,

Defendants

• • • • •

COMPLAINT

Civil No.

GROUP 79

Plaintiff, by and through its counsel of record,
Jones, Waldo, Holbrook & McDonough, upon information and
belief, alleges and for causes of action states as follows:

PARTIES

1. Plaintiff Kamdar & Co. is a partnership organized under the laws of the State of Utah with its principal place of business in Utah County, State of Utah.

2. Plaintiff is informed and believes and thereon alleges that defendant Laray, Co., Inc. ("Laray") is a business

organization with its principal place of business in Orange County, State of California.

3. Plaintiff is informed and believe and thereon alleges that the defendant Raymond Boal is an individual and current president of Laray and resides in Los Angeles County, State of California.

4. Plaintiff is informed and believes and thereon alleges that the defendant James A. Boal, Jr. is an individual and former president of Laray and resides in Orange County, State of California.

5. Plaintiff is informed and believes and thereon alleges that the defendants Raymond Boal and James A. Boal, Jr. are guarantors of the debts of Laray.

JURISDICTION AND VENUE

6. Plaintiff is informed and believes and thereon alleges that this Court has jurisdiction over the matters alleged herein pursuant to the Utah Code Anno. Section 78-27-24 (1953, as amended) in that the defendants' transaction of business and contracting for services with the plaintiff occurred within the State of Utah.

7. Venue of this action is properly vested in this court pursuant to Utah Code Anno. Section 78-13-1 (1953, as amended) in that the claims alleged herein occurred as a result

of the services preformed for the exclusive benefit of the defendants by the plaintiff within the jurisdiction of this district, in the State of Utah.

FIRST CAUSE OF ACTION

(Breach of Contract)

8. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 7 of this Complaint as though set forth in full herein.

9. In or about 1971 through 1988, the plaintiff and Laray entered into an ongoing contractual arrangement (the "Contracts") whereby the plaintiff would render on a yearly, quarterly and monthly basis various financial and tax services, including, but not limited to the preparation of corporate tax returns, bank summary reports, industry comparisons, comparative financials, corporate financial statements and monthly general ledger reports, as well as financial consultation on various investment, management, real estate and banking matters for Laray (hereinafter collectively referred to as the "Services").

10. At all times relevant herein the Services rendered by the plaintiff for the defendants was performed in Utah for the benefit of Laray's business in California.

11. In or about 1971 through 1988, the plaintiff did rendered Services for Laray, submitted billings and accounting statements on a monthly, quarterly or yearly basis to Laray for these Services and Laray paid the plaintiff pursuant to the billing and accounting statements, pursuant to the Contracts.

12. In or about early March, 1989, the defendant James A. Boal, Jr., then president of Laray, informed the plaintiff that once the last quarter of the 1988 financial and tax services which the plaintiff was in the process of completing were finished, as a result of an anticipated change in management of Laray, the plaintiff's Services would be no longer required, and requested a final bill and accounting for all outstanding unpaid Services.

13. In response to the defendant James A. Boal, Jr.'s request, on or about March 24, 1989, that the plaintiff submitted to Laray a final bill and accounting for unpaid Services rendered for the exclusive benefit of Laray, pursuant to the Contracts, in the amount of Twenty Six Thousand One Hundred Ninety Four Dollars (\$26,194.00) plus accruing interest and service charges. A copy of said final billing and accounting statement is attached hereto as Exhibit "A" and incorporated by reference herein.

14. On or about May 12, 1989, the defendant Raymond Boal, as the new president of Laray, replied by letter to the

plaintiff, acknowledging that the plaintiff had preformed substantial Services for the benefit of Laray which remained unpaid, but refused to reimburse the plaintiff for the amount, as reflected in the plaintiff's March 24, 1989 billing and accounting statement, claiming that the amount should be reduced. A copy of said letter is attached hereto as Exhibit "B" and incorporated by reference herein.

15. On or about June 8, 1989, Laray, in further acknowledgment of the debt it owed to the plaintiff sent the plaintiff a check in the amount of Two Thousand Three Hundred Eighty Two Dollars (\$2,382.00).

16. On or about July 7, 1989 and again on July 21, 1989, the plaintiff responded to the defendant Raymond Boal's claim that the amount owing to the plaintiff by Laray should be reduced expressly rejecting this claim and again requesting that the full amount be paid pursuant to the Contracts between the plaintiff and Laray. A copy of these letters are attached hereto as Exhibits "C" and "D", respectively and incorporated by reference herein.

17. On or about July 25, 1989, the defendant Raymond Boal, by letter, informed the plaintiff that it would not pay the plaintiff pursuant to the Contracts, claiming that the plaintiff's bills for the Services rendered were considered too

high and that Laray had located other "accounting services" which would work for less. A copy of said letter is attached hereto as Exhibit "E" and incorporated by reference herein.

18. On or about August 16, 1989, the plaintiff, by letter, again attempted to encourage Laray to fulfill its commitments under the Contracts and pay the plaintiff for the Services it had rendered for the exclusive benefit of Laray. This letter further informed Laray that the defendant Raymond Boal's earlier acknowledgments that the plaintiff had performed substantial financial, tax and consulting services and the corresponding amount Laray was willing to pay failed to account for all the Services so rendered, as noted in the March 24, 1989 billing and accounting statement. A copy of said letter is attached hereto as Exhibit "F" and incorporated by reference herein.

19. The defendants have failed to make any further payment in accordance to the Contracts between the plaintiff and Laray for the Services rendered by the plaintiff for the exclusive benefit of Laray.

20. The plaintiff has performed all of its obligations under the terms of the Contracts.

21. The plaintiff has demanded that the defendants pay pursuant to the Contracts, but the defendants have and continued to refuse to pay such amounts or any portion thereof.

22. As a result of the defendants' failure to pay the amounts owed to the plaintiff, the plaintiff is entitled to recover from the defendants the amount of Twenty Four Thousand Three Hundred Thirty Six Dollars (\$24,336.00), together with interest thereon at the highest, legal rate as allowed by law from the date of the defendant's breach of the Contracts, and judgment should be entered against the defendants and in favor of the plaintiff in that amount.

WHEREFORE, plaintiff demands judgment against the defendants as set forth hereinafter in Plaintiff's Prayer for Relief.

SECOND CLAIM FOR RELIEF

(Unjust Enrichment)

23. The plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 22 of this complaint as though set forth in full herein.

24. The defendants have been unjustly enriched in the amount of Twenty Four Thousand Three Hundred Thirty Six Dollars (\$24,336.00) as a result of the defendants' failure to pay for the Services rendered by the plaintiff as alleged herein, and in equity and good conscience, the defendants should not be permitted to enjoy the benefits of said Services, and the

plaintiff is entitled to recover from the defendants the amount by which the defendants have been unjustly enriched.

25. For the reasons set forth herein, the defendants are liable to the plaintiff in the amount of Twenty Four Thousand Three Hundred Thirty Six Dollars (\$24,336.00), together with interest thereon at the highest, legal rate as allowed by law from the date of the defendant's wrongful conduct, and judgment should be entered against the defendants and in favor of the plaintiff in that amount.

WHEREFORE, the plaintiff demands judgment against the defendant as set forth in Plaintiff's Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiff pray:

1. For judgment against the defendants on each of the Claims for Relief as noted herein in the amount of Twenty Four Thousand Three Hundred Thirty Six Dollars (\$24,336.00), together with interest thereon at the highest legal rate from the date of the defendants' breach and/or wrongful conduct;

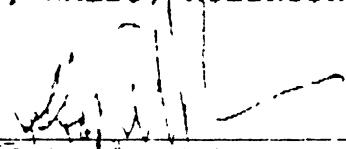
2. For an award of a reasonable attorney's fees,
court costs and expenses incurred in this action; and

3. For such other and further relief as this Court
may deem equitable and just under the circumstances.

DATED this 19th day of January, 1990.

JONES, WALDO, HOLBROOK & MCDONOUGH

By



Jeffrey M. Walker
Attorneys for Plaintiff

jnw 218/pb

KAMDAR & CO.
10 SOUTH STATE STREET
LONDON, UT 84042

March 24, 1989

James A. Boal, Jr., President
Laray Co., Inc.
P. O. Box 462
La Habra, CA 90631

Accounting services rendered:

Preparation of Corp. Tax Returns Fy 86-87. . . .	\$ 5,580.
Preparation of Corp. Tax Returns Fy 87-88. . . .	4,983.
Bank Reporting to Mitsubishi 86-87	4,052.
Bank Reporting to Mitsubishi 87-88	4,152.
Comparative Fianacials 86-87 & 87-88	3,052.
General Ledger Work 7-1-87 to 12-31-88	2,700.
Financials of the Principals 1-1-88.	928.
Out of Pocket costs.	747.

Total services rendered

\$ 26,194.
=====

If the total payment is not received in 30 days, a late charge of 12.00 per cent will be added to the unpaid balance.

The billing is payable upon receipt.

E



P.O. BOX 462 • LA HABRA, CA 906

MAY 12, 1969

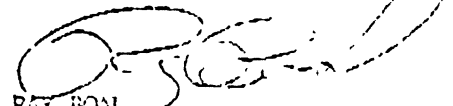
KANDAR & CO.
10 SOUTH STATE STREET
LONDON, UTAH 84042

RE: ACCOUNTING SERVICES RENDERED:

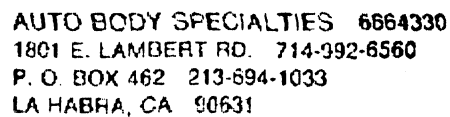
PREPARATION OF CORP. TAX RETURNS FY 87-88	4,983.
BANK REPORTING TO MITSUBISHI 87-88	4,152.
COMPARATIVE FINANCIALS 87-88	1,526.
GENERAL LEDGER WORK 7-1-87 TO 12-31-88	2,700.
FINANCIALS OF THE PRINCIPALS 1-1-88	928.
TOTAL	<hr/> 14,289.00

LISTED ABOVE IS THE TOTAL AMOUNT OWED TO KANDAR & CO. BY
LARAY CO., FOR ACCOUNTING SERVICES. PAYMENT WILL BE MADE
IN SIX INSTALLMENTS AT 2,381.50 .

SINCERELY,


RAY EGAN
PRESIDENT

RB/r1



THE BANK OF CALIFORNIA
La Habra Office 101
2001 West Whittier Blvd.
La Habra, California 90631

16-105/1220
253500 61

LARAY CC. 258 I DOLS 510 CTS

PAY-

DATE _____

AMOUNT

TO

05/12/89

\$2,381.50

THE

KANDAR & CO.

ORDER

OF

172203637 07-09-89 07-09-89 1218

0015741 001220010551020100249443

0000 238 150.

JY ' 07

12-20-80: 2-5

FBI
MEMPHIS
JUN 8 1968
TO DIRECTOR
FROM SAC, MEMPHIS
SUBJECT: [REDACTED]
[REDACTED]

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*Theodore
Smith Esq*

TAYLOR, MOODY & THORNE, P.C. C

ATTORNEYS AND COUNSELORS AT LAW

FORMERLY

CHRISTENSEN TAYLOR & MOODY

2525 NORTH CANYON ROAD

COUNTRY CLUB COURT

P.O. BOX 1466

PROVO UTAH 84603

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D. EUGENE THORNE

of Counsel
KAY ALDRICH LINDSAY

TELEPHONE
(801) 373-2721
FAX (801) 373-6729

July 7, 1989

Ray Boal, Jr., President
LaRay Company, Inc.
P.O. Box 462
La Habra, CA 90631

re: Kamdar v. LaRay Company, Inc.

Dear Mr. Boal:

Your memo dated May 12, 1989, regarding accounting services rendered by Kamdar & Company has been brought to my office. I return a copy of that letter together with a copy of Kamdar & Company's billing, dated March 24, 1989. The amount shown on the March 24, 1989, billing is the amount owed to Kamdar & Company and not as characterized by yourself.

Should you opt to make monthly installments as you have suggested in your memo dated May 12, 1989, a 12% interest charge will be added.

Mr. Kamdar is sorry that you have chosen not to continue using his services but that is not a reason to excuse you from payment of the services previously rendered.

Should this account not be paid in a reasonable period of time, I have been instructed to turn it over for collection to correspondent counsel in California.

Should you have any questions concerning this matter please address them to this office.

Yours very truly,



Robert L. Moody

RLM:cjc
Enclosure

TAYLOR, MOODY & THORN, P.C.

ATTORNEYS AND COUNSELORS AT LAW

FORMERLY

CHRISTENSEN, TAYLOR & MOODY

2525 NORTH CANYON ROAD

COUNTRY CLUB COURT

P O BOX 1466

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...
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KAY ALDRICH LINDSAY

TELEPHONE
(801) 373-2721
FAX (801) 373-62

July 21, 1989

LARAY COMPANY, INC.
P.O. Box 462
LaHabra, CA 90631

RE: Kamdar & Company vs. Laray Company, Inc.

Gentlemen:

Enclosed is Kamdar & Company's billing showing a credit of your recent payment and the current unpaid balance. Demand is hereby made upon you to take care of this matter within thirty (30) days to avoid the necessity of this being referred to correspondent counsel for legal proceedings.

Should you have questions concerning this matter please address them to this office.

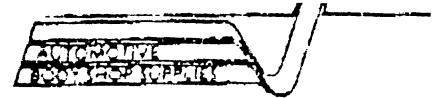
Yours very truly,



Robert L. Moody
Attorney at Law

RLM:jsp
Enclosure

AUG 4 1989



P.O. BOX 462 • LA HABRA, CA 90631

July 25, 1989

Robert L. Moody
Taylor, Moody & Thorne, PC
2525 North Canyon Rd.
Provo, Utah 84603

Reference: Kamdar Company vs Laray Company, Inc.
Your letter dated July 21, 1989

*Kim
Please advise
Be*

Mr. Moody:

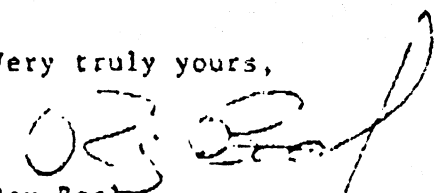
With respect to the matter at contest, it is our position that a compromise agreement be once again considered. It is our contention that there was a vast disparity between the nature of services rendered and the corresponding fees charged by Mr. Kamdar. We offer as evidence the dearth of documentation and product provided to us for Mr. Kamdar's effort during the billing period. As a point of reference, under the exact parallel circumstances, our present accounting services, which are provided by a Certified Public Accountant, are nowhere near the level of cost imposed by Mr. Kamdar.

Enclosed is our original letter of compromise for which a corresponding payment and negotiation of such payment has been accomplished.

If the above terms are not acceptable to your client we suggest that whatever legal remedies may incur under the circumstances be pursued.

Additionally, for your files, there is an interplay between the subject billing for professional services and a promissory demand note due to the principal owner of our Company. To avoid a compromise of our position with respect to this note, (face value \$15,000), we ask an offset to our obligation to that of your clients.

Very truly yours,


Ray Boal
President

rl/RB

TAYLOR, MOODY & THORNE, P.C.

ATTORNEYS AND COUNSELORS AT LAW

FORMERLY

CHRISTENSEN, TAYLOR & MOODY

2525 NORTH CANYON ROAD

COUNTRY CLUB COURT

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PROVO, UTAH 84603

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ROBERT L. MOODY
D. EUGENE THORNE

of Counsel
KAY ALDRICH LINDSAY

TELEPHONE
(801) 373-2721
FAX (801) 373-6265

August 16, 1989

Ray Boal, Jr., President
LaRay Company, Inc.
P.O. Box 462
La Habra, CA 90631

re: Kamdar v. LaRay Company, Inc.

Dear Mr. Boal:

Thank you for your letter of July 25, 1989, together with a copy of your letter addressed to Kamdar & Company, dated May 12, 1989.

As you can appreciate it is difficult for either myself or Mr. Kamdar to compare what you're presently paying a CPA to what you previously paid Kamdar & Company. We have no way of knowing what the CPA is doing at the present time but we do know what Mr. Kamdar did in the past and we do know that for many years he provided services and was paid the fees and it is only after the fact that you want to adjust the payments to him. We do not think that that is appropriate.

Referring to your recap of the accounting services rendered in your letter dated May 12, 1989, you have failed to include the 1986-1987 preparation of corporate tax returns in the sum of \$5,580.00 and you have failed to include the 1986-1987 bank reporting services which totalled \$4,052.00. If you would have included those figures your total would have been \$23,921.00. It is my opinion that contractually you're obligated in this amount.

We appreciate the spirit of your willingness to try and resolve this matter as set forth in your letter of July 25, 1989, and in that same spirit it is our suggestion that the matter be compromised as follows:

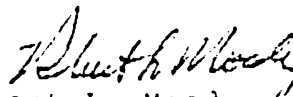
(a) That you offset the \$15,000.00 note Mr. Kamdar owes your Company.

Ray Boal, Jr., President
LaRay Company, Inc.
August 16, 1989
Page 2

(b) That you pay Mr. Kamdar \$6,600.00 in monthly payments of \$2,200.00 per month over the next three months.

Your considering this matter and prompt reply will be appreciated.

Yours very truly,


Robert L. Moody

RLM:cjc
cc: Kamdar & Company

Tab D

Whenever any such nonresident doing business as provided in the preceding section [Section 78-27-20] shall fail to file such certificate, or such manager, superintendent or agent designated in such certificate cannot be found within the state of Utah, service of process upon such nonresident in any action arising out of the conduct of his business may be had by serving any person employed by or acting as agent for such nonresident. 1953

78-27-22. Jurisdiction over nonresidents — Purpose of provision.

It is declared, as a matter of legislative determination, that the public interest demands the state provide its citizens with an effective means of redress against nonresident persons, who, through certain significant minimal contacts with this state, incur obligations to citizens entitled to the state's protection. This legislative action is deemed necessary because of technological progress which has substantially increased the flow of commerce between the several states resulting in increased interaction between persons of this state and persons of other states.

The provisions of this act, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution. 1969

78-27-23. Jurisdiction over nonresidents — Definitions.

As used in this act:

(1) The words "any person" mean any individual, firm, company, association, or corporation.

(2) The words "transaction of business within this state" mean activities of a nonresident person, his agents, or representatives in this state which affect persons or businesses within the state of Utah. 1969

78-27-24. Jurisdiction over nonresidents — Acts submitting person to jurisdiction.

Any person, notwithstanding Section 16-10-102, whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any claim arising from:

(1) the transaction of any business within this state;

(2) contracting to supply services or goods in this state;

(3) the causing of any injury within this state whether tortious or by breach of warranty;

(4) the ownership, use, or possession of any real estate situated in this state;

(5) contracting to insure any person, property, or risk located within this state at the time of contracting;

(6) with respect to actions of divorce, separate maintenance, or child support, having resided, in the marital relationship, within this state notwithstanding subsequent departure from the state; or the commission in this state of the act giving rise to the claim, so long as that act is not

sibility for child support.

1987

78-27-25. Jurisdiction over nonresidents — Service of process.

Service of process on any party outside the state may be made pursuant to the applicable provisions of Rule 4 of the Utah Rules of Civil Procedure.

Service of summons and of a copy of the complaint, if any, may also be made upon any person located without this state by any individual over 21 years of age, not a party to the action, with the same force and effect as though the summons had been personally served within this state. No order of court is required. An affidavit of the server shall be filed with the court stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in determining whether proper service has been made.

Nothing contained in this act shall be construed to limit or affect the right to serve process in any other manner provided by law. 1969

78-27-26. Jurisdiction over nonresidents — Only claims arising from enumerated acts may be asserted.

Only claims arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this act. 1969

78-27-27. Jurisdiction over nonresidents — Default judgments.

No default shall be entered until the expiration of at least thirty days after service. A default judgment rendered on service may be set aside only on a showing which would be timely and sufficient to set aside a default judgment rendered on personal service within this state. 1969

78-27-28. Jurisdiction over nonresidents — When may be exercised.

Subject to the applicable statute of limitations, jurisdiction established under this act shall be exercised regardless of when the claim arose. 1969

78-27-29 to 78-27-31. Superseded. 1983

78-27-32. Release or settlement of personal injury claim — When voidable.

(1) Any release of liability or settlement agreement entered into within a period of fifteen days from the date of an occurrence causing physical injury to any person, or entered into prior to the initial discharge of this person from any hospital or sanitarium in which the injured person is confined as a result of the injuries sustained in the occurrence, is voidable by the injured person, as provided in this act.

(2) Notice of cancellation of the release or settlement agreement, together with any payment or other consideration received in connection with this release or agreement shall be mailed or delivered to the party to whom the release or settlement agreement was given, by the later of the following dates:

(a) within fifteen days from the date of the occurrence causing the injuries which are subject of the settlement agreement or liability release; or

(b) within fifteen days after the date of the in-