

2001

JOSE S. SALAZAR and MILDRED O.
SALAZAR, Plaintiffs and Appellants -vs-
THRIFTY NICKEL INC., a Utah Corporation,
WANT ADS OF SALT LAKE CITY, INC., a Utah
Corporation, SOUTHERN CROSS, INC. a Utah
Corporation, ROBERT L. CHRISTENSEN, and
NORMAN WILKINSON Defendants and
Appellees: Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS
OF THE
STATE OF UTAH

JOSE S. SALAZAR and MILDRED O.
SALAZAR

Plaintiffs - Appellants

APPELLATE CASE No.
20010297-CA

Rule 29 Priority 15

-VS-

THRIFTY NICKEL INC. , a Utah Corporation,
WANT ADS OF SALT LAKE CITY, INC., a
Utah Corporation, SOUTHERN CROSS, INC.
a Utah Corporation, ROBERT L.
CHRISTENSEN, and
NORMAN WILKINSON

Defendants and Appellees

BRIEF OF APPELLANT

Appeal from the
ORDER OF DISMISSAL OF DEFENDANT ROBERT L. CHRISTENSEN
by the
HONORABLE J. DENNIS FREDERICK
Third District Court
Salt Lake County, Utah

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Clerk of the Court

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IN THE COURT OF APPEALS
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JOSE S. SALAZAR and MILDRED O.
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APPELLATE CASE No.
20010297-CA

Plaintiffs - Appellants

-vs-

THRIFTY NICKEL INC. , a Utah Corporation,
WANT ADS OF SALT LAKE CITY, INC., a
Utah Corporation, SOUTHERN CROSS, INC.
a Utah Corporation, ROBERT L.
CHRISTENSEN, and
NORMAN WILKINSON

Defendants and Appellees

BRIEF OF APPELLANT

JURISDICTIONAL STATEMENT

Plaintiffs / Appellants Mr and Mrs. Salazar ("Salazar") bring this appeal from a final order of the Third District Court of Salt lake County, Utah (see Addendum A). This appeal is taken pursuant to the Utah Rules of Appellate

Procedure Title II and was referred to this court pursuant to Utah Code Annotated §78-2-2(4).

STATEMENT OF THE ISSUES

W. Did the Third District Court properly dismiss the action as to Mr.

Christensen claiming the Salazars' allegations failed as a matter of law to state a cognizable claim against Christensen?

STANDARD OF REVIEW: The propriety of a dismissal of a party's claims presents a question of law, the Utah Court of Appeals reviews the trial court's conclusions for correctness, granting them no deference.

Workman v. Brighton Properties, Inc., 976 P. 2d 1209 (Utah 1999); Lopez v. Union Pacific Railroad, 932 P.2d 601, 603 (Utah 1997).

B. Is a motion to dismiss appropriate when, as a matter of law, the plaintiffs could recover under the facts alleged?

STANDARD OF REVIEW: Questions of law are reviewed for correctness with no deference to the trial court. U.R.C.P. 12(b)(6); Lowe v. Sorenson Research Co., 779 P.2d 668, 669 (Utah 1989).” Harmon City, Inc. v. Nielsen & Senior, 907 P.2d 1162 (Utah 1995)?

C. Should Plaintiffs / Appellees be permitted to amend their complaint?

STANDARD OF REVIEW: In a notice pleading jurisdiction like Utah,

U.R.C.P. rule 8(a) "is to be liberally construed when determining the sufficiency of a plaintiffs' complaint," Gill v. Timm, 720 P.2d 1352, 1353 (Utah 1986) and the text of rule 8 itself declares that "all pleadings shall be so construed as to do substantial Justice." Utah R. Civ. P. 8(f).. Allegations include facts and reasonable inferences therefrom. Cruz v. Middlekauff Lincoln-Mercury, Inc., 909 P.2d 1252 (Utah 1996). As to such legal questions, the Utah Supreme Court reviews the trial court's conclusions for correctness, granting them no deference. Workman v. Brighton Properties, Inc., 976 P. 2d 1209, para. 2 (Utah 1999); Lopez v. Union Pacific Railroad, 932 P.2d 601, 603 (Utah 1997).

- D. Can both an entity and its alter ego be liable for full damages caused by a breach of an employment agreement and, furthermore, is Christensen, as a shareholder of Thrifty Nickel of Orem protected from suit by plaintiffs' contract action?

STANDARD OF REVIEW: Questions of law are reviewed for correctness with no deference to the trial court. Both an entity and its alter ego are liable for full damages caused by a breach of an employment agreement See Diston v. EnviroPak Medical Products, 893 P.2d 1071 (Utah 1995).

Corporate officers and shareholders are not, per se, exempt from personal liability. Ringwood v. Foreign Auto Works, 786 P.2d 1350 (Utah 1990).

STATEMENT OF THE NATURE OF THE CASE

Plaintiffs, Jose and Mildred Salazar, were rewarded with an Employment Agreement¹, dated 1-1-1992, for their years of loyal service to Robert L. Christensen, owner of the Thrifty Nickel empire². The Agreement gave the Salazars certain employment, severance, and retirement benefits.

Mr. Christensen was involved as an author of the Employment Agreement and authorized its signing. Mr. Christensen has refused to provide post-employment compensation and other benefits in accordance with the terms of the Agreement.

After unsuccessfully making demands of Mr. Christensen for payment, the Salazar's filed suit³ on August 8, 2000, seeking recovery of funds owed to them. The Third District Court issued an Order for Alternative Service on December 6, 2000 after Mr. Christensen avoided service for nearly four months. Salazar's also brought suit against several Thrifty Nickel companies and officers all of which have been dismissed.

¹. See Addendum C

². Affidavit of Tim Taylor dated 16 Jan 01, ¶6 & 7.

³. Complaint, see Addendum B.

Mr. Christensen has not answered the complaint against him but filed a December 28, 2000 Motion to Dismiss⁴ plaintiffs' complaint. The motion's only averment was that the complaint fails to state a claim upon which relief can be granted.

DISPOSITION IN THE LOWER COURT

On March 5, 2001, Mr. Christensen's Motion to Dismiss came on for hearing before the Honorable J. Dennis Frederick, Judge of the Third District Court of Salt Lake County, State of Utah. After oral argument Judge Frederick granted the Motion with an Order issued on March 14, 2001⁵.

RELIEF SOUGHT ON APPEAL

The Salazars seek to have the order of the lower court reversed with the matter remanded for further proceedings including amendment of the complaint.

⁴. Defendant's Motion to Dismiss is found in Addendum G.

⁵. See Addendum A.

STATEMENT OF THE FACTS

Plaintiffs, Jose and Mildred Salazar, were rewarded with an Employment Agreement⁶, dated 1-1-1992, for their ten years⁷ of loyal service to their friend⁸ Robert L. Christensen, owner of the Thrifty Nickel empire⁹. The Employment Agreement was an inducement¹⁰ for the Salazar's to move their place of employment to Utah¹¹. The Agreement gave the Salizars certain employment, severance, and retirement benefits.

Mr. Christensen played a part in drafting¹² the Employment Agreement, was aware of its terms, approved the document¹³ and authorized his son, Tim Taylor, to sign¹⁴ it on behalf of the Thrifty Nickel companies. Mr. Christensen

⁶. See Addendum C

⁷. Affidavit of Jose S. Salazar dated 11 Jan 01, ¶2. Affidavit of Mildred O. Salazar dated 11 Jan 01, ¶2. See Addendums D & E.

⁸. Affidavit of Jose S. Salazar dated 11 Jan 01, ¶7. Affidavit of Mildred O. Salazar dated 11 Jan 01, ¶7.

⁹. Affidavit of Tim Taylor dated 16 Jan 01, ¶6 & 7.

¹⁰. Affidavit of Tim Taylor dated 16 Jan 01, ¶3. See Addendum F.

¹¹. Affidavit of Jose S. Salazar dated 11 Jan 01, ¶3. Affidavit of Mildred O. Salazar dated 11 Jan 01, ¶3.

¹². Affidavit of Tim Taylor dated 16 Jan 01, ¶4.

¹³. Affidavit of Jose S. Salazar dated 11 Jan 01, ¶6. Affidavit of Mildred O. Salazar dated 11 Jan 01, ¶6.

¹⁴. Affidavit of Tim Taylor dated 16 Jan 01, ¶5.

reaffirmed the validity of the Employment Agreement in 1999¹⁵ despite a change in the company name¹⁶. Mr. Christensen has refused to provide post-employment compensation and other benefits in accordance with the terms of the Agreement. Plaintiffs, both over 65 years of age, were summarily terminated without cause from their employment on April 28, 2000.

After making demands of Mr. Christensen for payment, the Salazar's filed suit¹⁷ on August 8, 2000, alleging, inter alia, that their friend Mr. Christensen owned in whole or in part many of the Thrifty Nickel companies, that he personally controls the operations of more or less 86 entities publishing classified advertisement newspapers throughout the United States, most of which publish under the banner "Thrifty Nickel." Mr. Christensen is the sole shareholder of Want Ads of Salt Lake and Southern Cross Co., a member of the board of directors, and, truly, the alter ego of the Thrifty Nickel businesses. Further, the Salazars complained that there should be no corporate veil distinguishing or protecting the assets of the defendant¹⁸. The Third District Court issued an Order for Alternative Service on December 6, 2000 after Mr.

¹⁵. Affidavit of Jose S. Salazar dated 11 Jan 01, ¶9. Affidavit of Mildred O. Salazar dated 11 Jan 01, ¶9.

¹⁶. Affidavit of Tim Taylor dated 16 Jan 01, ¶6.

¹⁷. Complaint, see Addendum B.

¹⁸. Complaint, paragraph 37.

Christensen avoided service for nearly four months. Salazar's also brought suit against several Thrifty Nickel companies and officers all of which have been dismissed.

Mr. Christensen has not answered the complaint against him but filed a December 28, 2000 Motion to Dismiss¹⁹ plaintiffs' complaint. The motion's only averment was that the complaint fails to state a claim upon which relief can be granted. He attempted to expand the grounds for dismissal in his accompanying memorandum claiming that, as a shareholder of Thrifty Nickel, plaintiffs' contract action against him is barred or that the alleged facts fail to support a claim of piercing the corporate veil against him.

Mr. Christensen was dismissed by the Third District Court over objections of the Salazars. Their request to amend their complaint, if needed, to adequately allege damages by Mr. Christensen was ignored. Though discovery and a deposition of Mr. Christensen had been noticed-up by the Salazars²⁰, they were not allowed to proceed with development of their case against Mr. Christensen.

¹⁹. Defendant's Motion to Dismiss is found in Addendum G.

²⁰. Plaintiffs mailed a Notice of Deposition to defendants attorney, Scott Call, on February 27, 2001 for an April 24, 2001 deposition.

ARGUMENTS

I. Plaintiffs' Complaint, as a matter of law, states a cognizable claim against Christensen.

The complaint, supplemented with plaintiffs' Memorandum in Opposition to defendant's Motion to Dismiss supplemented with three affidavits, sets forth the facts of the case and provides a basis for relief.

"A grant of a motion to dismiss is proper 'only where it appears that the plaintiff . . . would not be entitled to relief under the facts alleged or under any state of facts they could prove to support their claim.' Robertson v. Gem Ins. Co., 828 P.2d 496, 499 (Utah Ct. App. 1992) (quoting Prows v. State, 822 P.2d 764, 766 (Utah 1991))." Hobbs v. Labor Commission, 991 P.2d 590, (Utah 1999). As to such legal questions, the Utah Court of Appeals reviews the trial court's conclusions for correctness, granting them no deference. Workman v. Brighton Properties, Inc., 976 P. 2d 1209, para. 2 (Utah 1999); Lopez v. Union Pacific Railroad, 932 P.2d 601, 603 (Utah 1997).

In the case of Cruz v. Middlekauff Lincoln-Mercury, Inc., 909 P.2d 1252 (Utah 1996) the issue was the reverse of the present case. The District Court had refused to dismiss the action. The court concluded that "the trial court properly denied [defendant's] rule 12(b)(6) motion to dismiss because *under the alleged*

facts and the reasonable inferences therefrom, the complaint states a claim upon which relief can be granted." (emphasis added)

Case law is replete with clear edicts that, "A motion to dismiss is appropriate only where it clearly appears that the plaintiff or plaintiffs would not be entitled to relief under the facts alleged or under any state of facts they could prove to support their claim." Prows v. State, 822 P.2d 764, 766 (Utah 1991) (citing Colman v. Utah State Land Bd., 795 P.2d 622, 624 (Utah 1990)); see also, Olson v. Park-Craig-Olson, Inc., 815 P.2d 1356, 1360 (Utah App. 1991).

"Dismissal of a claim under Rule 12(b)(6) is a severe measure given the liberality of notice pleading". DeBry v. Valley Mortgage Company, 835 P.2d 1000, (Utah App. 1992).

Plaintiffs alleged facts²¹ which, when proven at trial, will show defendant Robert Christensen to be liable for damages suffered. "A motion to dismiss is appropriate only when it is apparent that as a matter of law, the plaintiff could not recover under the facts alleged. U.R.C.P. 12(b)(6); Lowe v. Sorenson Research Co., 779 P.2d 668, 669 (Utah 1989)." Harmon City, Inc. v. Nielsen & Senior, 907 P.2d 1162 (Utah 1995).

²¹. See the complaint in Addendum B, and plaintiffs' affidavits in Addendums C & D.

A. Utah is a notice pleading state requiring pleadings to be construed as to do substantial justice.

Utah is a notice pleading state. The text of rule 8 itself declares that "all pleadings shall be so construed as to do substantial Justice." Utah R. Civ. P. 8(f). In a notice pleading jurisdiction like Utah, rule 8(a) "is to be liberally construed when determining the sufficiency of a plaintiffs' complaint," Gill v. Timm, 720 P.2d 1352, 1353 (Utah 1986) and

The claim need not be specific, rather, "under Utah's liberal notice pleading requirements, all that is required is that the pleadings be sufficient to give fair notice of the nature and basis of the claim asserted and a general indication of the type of litigation involved." Fishbaugh v. Utah Power & Light, 969 P.2d 403, 406 (Utah 1998) (internal quotations and citations omitted). See also Gill v. Timm, 720 P.2d 1352, 1353 (Utah 1986) and Blackham v. Snelgrove, 3 Utah 2d 157, 161, 280 P.2d 453, 455 (1955)).

In reviewing a motion to dismiss, "[w]e construe the facts in the complaint liberally and we consider all the reasonable inferences to be drawn from the facts in a light most favorable to the plaintiffs." Baker v. Angus, 910 P.2d 427, 430 (Utah Ct. App. 1996). Our review of the motion to dismiss presents a question of

law, which we review for correctness, giving "the trial court's ruling no deference." St. Benedict's Dev. Co. v. St. Benedict's Hospital, 811 P.2d 194, 196 (Utah 1991). Busche v. Salt Lake County, 2001 UT App 111 (Utah App. 04/05/2001).

Under rules of notice pleading, it is sufficient that defendants be given only a fair idea of the nature of the claims asserted against them sufficient to apprise them of the general basis of the claim. Garcia v. Coffman, 946 P.2d 216 (N.M. App. 1997) Plaintiffs' complaint, memorandum in opposition to defendant's motion to dismiss, and affidavits were more than adequate to inform Mr Christensen that the Salazars held him to be personally involved in their employment contract and that they sought to hold him personally liable for their damages.

Mr. Christensen was well aware of the allegations against him and took action to avoid service of summons. In total, his involvement in drafting the Employment Agreement²², his avoidance of service²³, and other alleged facts constitute fair notice of alter ego and piercing the corporate veil as discussed later in this brief.

²². Affidavit of Tim Taylor dated 16 Jan 01, ¶4.

²³. Plaintiffs' Motion to Serve Defendant Robert L. Christensen by Mail and Minute Entry Ruling. See Addendum H.

"Dismissal of a claim under Rule 12(b)(6) is a severe measure given the liberality of notice pleading, and must be granted only when it is apparent that under no set of facts proven in support of the claim as pleaded would a party be entitled to relief." Olson v. Park-Craig-Olson, Inc., 815 P.2d 1356, 1360 (Utah Ct. App. 1991) (citing Colman v. Utah State Land Bd., 795 P.2d 622, 624 (Utah 1990)).

B. Appellants should be given an opportunity through discovery to prove that Mr. Christensen was, in fact, a party to the Employment Contract.

Many facts are in dispute in the current matter. Defendant has not yet answered plaintiffs' complaint. It is, therefore, unclear, precisely which facts are in dispute.

Many facts are yet to be discovered. Plaintiff had filed its First Set of Interrogatories and Request for Production of Documents on February 27, 2001. These remain unanswered and are attached as Addendum I. Among other yet undiscovered important issues are the following:

1. What was the extent of defendant's involvement in any of the defendant corporations?
2. Does defendant now or did he previously own stock in any corporation

that is listed as a defendant in this lawsuit? If so, how many shares does he now own or has he previously owned and what percentage of ownership does this represent?

3. What input has defendant had into the making of or knowledge of the existence of the Employment Agreement with plaintiffs?
4. Has defendant ever served as a director, officer, or representative of any of the Thrifty Nickel companies?
5. Did defendant ever loan money to any of the defendant corporations? If so, state when and the amount, and the balance still owed on each loan.
6. Did any of the defendant corporations loan defendant any money?
7. Did defendant ever guaranty or cosign any obligation of any of the defendant corporations?
8. Did any of the defendants ever advance funds to defendant Christensen for services to be performed later?
9. At any time since 1996 , did you incorporate or cause to be incorporated any other corporation?

Defendant owns a national network of classified newspapers under the "Thrifty Nickel" banner. Defendant's personal relationship and involvement in

the operations of these newspapers can only be uncovered in the discovery process.

These questions are critical to defendant's liability under the subject Employment Agreement. A checklist of 17 facts and circumstances tending to show that a corporate president is alter ego of a corporation is found in 18 Am Jur 2d, Corporations, §53.

The lower court assumed Mr. Christensen was protected behind the corporate veil. This presumption can be rebutted. When rebutted, the discharged employee may have a claim for breach of contract. Berube v. Fashion Centre, 771 P.2d 1033 at 1044 (Durham, J., joined by Stewart, J.), 1051 (Zimmerman, J., Concurring in the result); Caldwell v. Ford, Bacon & Davis Utah, Inc., No. 20246, 114 Utah Adv. Rep. 14, 777 P.2d 483 (June 28, 1989).

Under the factual allegations of the complaint, the Salizars have stated such a claim for breach of contract. Construing their allegations in a light most favorable to the Salazars, the facts support a claim for contract damages. See Berube v. Fashion Centre, 771 P.2d 1033 at 1044-46 (Durham, J., joined by Stewart, J.), 1050 (Howe, Assoc. C.J., Concurring, joined by Hall, C.J.), 1052-53 (Zimmerman, J., Concurring in the result); Caldwell, slip op. at 7. "Therefore, we vacate the grant of the motion to dismiss and remand for further proceedings." Lowe v. Sorenson, 779 P.2d 668, (Utah 1989).

There exist many questions of fact in the appealed case. Discovery had barely begun. The Salazars listed some 25 issues of fact that were still in dispute. It was premature for the Court to dismiss the action.

The District Court had at its disposal an alternative to dismissal that would have much better served the needs of justice. In an earlier case, the Utah Supreme Court observed that further discovery was needed, “The trial court denied the motion to dismiss without prejudice and allowed the parties 120 days for discovery. . . to determine whether a written employment contract existed between the parties.” Lowe v. Sorenson Research Co., 779 P.2d 668, (Utah 1989).

II. The Third District Court should have limited its scope to the single issue brought out in the Motion to Dismiss.

Defendant’s Motion to Dismiss the complaint narrowly focused on only one allegation, that plaintiffs failed to state a claim upon which relief can be granted. Defendant then attempts to expand the requested grounds for dismissal in his accompanying memorandum claiming that, as a shareholder of Thrifty Nickel, plaintiffs’ contract action against him is barred or that the alleged facts fail to support a claim of piercing the corporate veil against him.

Judge Frederick's decision stated "All that's alleged is that Mr. Christensen was an owner, that he had knowledge of the contract. . . the sum total of the allegations incident to Christensen's involvement here do not give fair notice of a claim of attempt to breach corporate veil . . ."

It becomes obvious that Judge Frederick may not have recently read the complaint. The complaint (See Addendum B) contains the following allegations against Mr. Christensen:

5. Defendant Robert L. Christensen (Christensen) is an individual believed to reside in the State of Florida and doing business in Salt Lake County, Utah.
7. Plaintiffs entered into a written Employment Agreement with Defendant(s) Thrifty Nickel on January 1, 1992. A copy of the Employment Agreement, marked Exhibit 1 [Addendum B herein], is attached and made a part of this pleading.
19. Plaintiffs worked continuously and diligently under their Employment Agreement for defendants receiving pay checks for succeeding and inconsistently intermixed periods from Thrifty Nickel, WASL, Southern Cross, and others.
21. Thrifty Nickel was and is owned in whole or part by defendant

Christensen.

28. Defendant Christensen is the controlling shareholder of more or less eight-six (86) entities publishing classified advertisement newspapers through the United States, most of which publish under the banner "Thrifty Nickel."
29. Defendant Christensen is the sole shareholder of WASL and Souther Cross.
30. "Advertise it in Your Dynamic Thrifty Nickel Want Ads" is a trademark registered on July 13, 1992 in Utah and owned by defendant Christensen or an entity ultimately owned and / or controlled by defendant Christensen.
32. In addition to being the sole shareholder of WASL, defendant Christensen is a member of its board of directors.
36. The transfers of assets [between the three corporate defendants] occurred at the direction of defendants Christensen and / or Wilkinson.
37. *There should be no corporate veil distinguishing or protecting the assets of any of the five defendants.* (emphasis added.)

The basis for Judge Frederick's decision is patently in error. Allegations in

the complaint and related reasonable inferences present a case against Mr. Christensen which, at the very least, are adequate to sustain the case well into the discovery process.

III. The Complaint gives fair notice that Christensen, as owner of the Thrifty Nickel companies, is not immune to a personal employment contract with friends and employees.

Focus must remain on Christensen's personal authorization²⁴ of the initial Employment Agreement and his ratification of the contract at a later date²⁵. This has been alleged and will be clearly and conclusively shown at trial.

Plaintiffs' complaint is supported by their memorandum in opposition to defendant's motion to dismiss and three supporting affidavits submitted in opposition to defendant's motion to dismiss. See Addendums D, E and F. The motion and supporting affidavits verify the complaint and must be considered as support of the complaint. The Utah Supreme Court has stated, "We have indicated that general allegations in an unverified complaint are an insufficient basis for opposing a properly supported motion for summary judgment. D & L

²⁴. Affidavit of Tim Taylor dated 16 Jan 01, ¶4 & 5.

²⁵. Affidavit of Jose S. Salazar dated 11 Jan 01, ¶9. Affidavit of Mildred O. Salazar dated 11 Jan 01, ¶9.

Supply v. Saurini, 775 P.2d 420; Hall v. Fitzgerald, 671 P.2d 224, 226-27 (Utah 1983). Thayne simply did not meet his burden of presenting some evidence, by affidavit or otherwise, raising a credible issue of material fact. Dupler v. Yates, 10 Utah 2d 251, 351 P.2d 624, 637 (Utah 1960).” Thane v. Beneficial Life, 874 P.2d 120, (1994). Plaintiffs in this case did raise “credible issues of material fact.”

Plaintiffs’ affidavits state that plaintiffs entered into an Employment Contract on January 1, 1992. Plaintiffs have plead and will prove that Christensen knew of and, as may be shown in discovery, suggested the Employment Agreement²⁶ as a reward and inducement²⁷ for plaintiffs’ to move to Utah.²⁸

Christensen was a party²⁹ to the Employment Agreement. He approved the document³⁰ and personally authorized Tim Taylor, as his agent³¹, to sign the Employment Agreement.

At trial, the facts will show that Christensen personally benefitted from

²⁶. Affidavit of Tim Taylor dated 16 Jan 01, ¶6 & 7.

²⁷. Affidavit of Tim Taylor dated 16 Jan 01, ¶3.

²⁸. Affidavit of Tim Taylor dated 16 Jan 01, ¶3. Affidavit of Jose S. Salazar dated 11 Jan 01, ¶3. Affidavit of Mildred O. Salazar dated 11 Jan 01, ¶3.

²⁹. Affidavit of Jose S. Salazar dated 11 Jan 01, ¶6. Affidavit of Mildred O. Salazar dated 11 Jan 01, ¶6.

³⁰. Affidavit of Tim Taylor dated 16 Jan 01, ¶4.

³¹. Affidavit of Tim Taylor dated 16 Jan 01, ¶5.

the services of plaintiffs. In addition to his close friendship evidenced by many specific requests for personal services and inviting them over for holiday meals, he valued their significant contributions to his growing organizations.³²

Defendant Christensen reaffirmed the validity of the Employment Agreement and his commitment to it in return for the Salazars' services in August of 1999 when transferring Salazars to another Thrifty Nickel company.³³

IV. Plaintiffs' have alleged facts to support a claim of piercing the corporate veil and alter ego against Christensen

Both an entity and its alter ego are liable for full damages caused by a breach of an employment agreement See Diston v. EnviroPak Medical Products, 893 P.2d 1071 (Utah 1995). Corporate officers and shareholders are not, per se, exempt from personal liability. Ringwood v. Foreign Auto Works, 786 P.2d 1350 (Utah 1990).

Defendant's Memorandum in Support of Motion to Dismiss states on page 4 that a shareholder cannot be personally liable for corporate debts. Likewise,

³². Affidavit of Jose S. Salazar dated 11 Jan 01, ¶7. Affidavit of Mildred O. Salazar dated 11 Jan 01, ¶7.

³³. Affidavit of Jose S. Salazar dated 11 Jan 01, ¶9. Affidavit of Mildred O. Salazar dated 11 Jan 01, ¶9.

defendant's Motions incorrectly focuses on the necessity of 'piercing the corporate veil' in order for an officer to become liable to debts.

The Utah Supreme Court disagrees and has refuted this position as stated in Richard W. Ringwood v. Foreign Auto Works, 786 P.2d 1350(Utah 1990),

" In order to disregard the corporate entity, two circumstances must be shown: (1) such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, but the corporation is, instead, the alter-ego of one or a few individuals; and (2) if observed, the corporate form would sanction a fraud, promote injustice, or result in an inequity. Colman v Colman, 743 P.2d 782, 786 (Utah Ct. App. 1987) See also Salt Lake City Corp. v. James Constructors, 761 P.2d 42, 46 (Utah Ct. App. 1988). One of the factors deemed significant in determining whether this test has been met is the use of the corporation as a facade for operations of the dominant stockholder. Colman v. Colman, 743 P.2d at 786. *At the beginning of trial, the court stated that Gardner and Hernandez were personally liable under the April agreement* and the trial proceeded with that ruling in place. The court found that Gardner and Hernandez were the real parties in interest, that they were intended as parties to the agreement, and that "Dinero Services Inc. was not considered by the parties as an operative entity as far as the dealings between the parties were concerned." These findings are supported by the evidence, especially considering the history of transactions in this matter, and meet the required legal criteria for piercing the corporate veil. Therefore, *the court did not err in holding Gardner and Hernandez personally liable* to Poggio under the April agreement." (emphasis added)

This same reasoning is supported in learned treatises and universally accepted legal authorities. “Alter ego is an equitable doctrine which allows courts the discretion to disregard a corporate entity and hold individuals responsible for acts done in the name of a corporation. See Black's Law Dictionary 77-78 (6th ed. 1990).

The Utah Supreme Court in Norman v. Murray First Thrift & Loan Co., 596 P.2d 1028 (Utah 1979), established a two-prong test to determine whether a court may disregard the corporate entity under the alter ego doctrine: (1) there must be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, viz., the corporation is, in fact, the alter ego of one or a few individuals; and (2) the observance of the corporate form would sanction a fraud, promote injustice, or an inequitable result would follow.” Id. at 1030. “ Werner-Jacobsen v. Bednarick, 327 Utah Adv. Rep. 45 (Utah 1997).

Further clarification of the line between being protected and being liable is found in the following reasoning,

“Generally, a corporation is treated as a legal entity separate from its shareholders, thereby permitting shareholders to commit limited capital to the corporation with the assurance that they will have no personal liability for the corporation's debts. Krendl & Krendl, “Piercing the Corporate Veil: Focusing the Inquiry”, 55 Den. L. J. 1 (1978). *When*,

however, the corporate structure is used so improperly that the continued recognition of the corporation as a separate legal entity would be unfair, the corporate entity may be disregarded and corporate principals held liable for the corporation's actions. Id. at 2.

“Thus, if it is shown that shareholders used the corporate entity as a mere instrumentality for the transaction of their own affairs without regard to separate and independent corporate existence, or for the purpose of defeating or evading important legislative policy, or in order to perpetrate a fraud or wrong on another, *equity will permit the corporate form to be disregarded and will hold the shareholders personally responsible for the corporation's improper actions.* See Fink v. Montgomery Elevator Co., 161 Colo. 342, 350, 421 P.2d 735, 739 (1966); Gutheil v. Polichio, 103 Colo. 426, 431, 86 P.2d 972, 974 (1939); Lafond v. Basham, 683 P.2d 367, 369 (Colo. App. 1984); Krendl & Krendl, *supra* at 28-43.

In the absence of a fully developed factual record and adequate findings of fact, however, we cannot determine whether that equitable doctrine should be applied here. We leave it to the hearing officer to resolve this issue on remand of the case.” Micciche v. Billings, 727 P.2d 367 (CO 1986) (emphasis added)

Plaintiffs will prove at trial that the assets of the various Thrifty Nickel companies are maintained at artificially low levels. This will further expose defendant Christensen to personal liability as, “It is coming to be recognized as the policy of the law that shareholders should in good faith put at the risk of the business unencumbered capital reasonably adequate for its prospective liabilities. *If the capital is illusory or trifling compared with the business to be*

done and the risks of loss, this is a ground for denying the separate entity privilege.” Salt Lake City Corporation v. James, 761 P.2d 42. (emphasis added)

Alter ego is a question of fact. An exhaustive list of areas need to be explored to determine Robert Christensen’s involvement in this case. Such questions include the following: (both past and present tense)

1. What office(s) has Mr. Christensen held within the ‘Thrifty Nickel” organization?
2. What corporate structures have existed in the past ten years?
3. Is he the ultimate authority in the company’s dealings?
4. Is he the primary owner?
5. Is he the dominant personality in the organization?
6. Has Mr. Christensen been a key decision-maker for the various companies?
7. What is his salary and remuneration history?
8. Has there been intermixing of various companies’ accounts?
9. Is there sufficient ownership and interest to support the alter ego contentions?

10. Have his companies been undercapitalized?
11. Has there been unauthorized diversion of funds?
12. Has Mr. Christensen treated corporate assets as his own?
13. Have all company formalities been observed?
14. Were personal and corporate funds intermingled?
15. Is Mr. Christensen the sole or dominant shareholder?
16. Did he play a key role in establishing or directing corporate policies?
17. Have corporate assets been misstated from time to time?
18. Has allegedly criminal activity been directed by Mr. Christensen?
19. Has the corporation been used as part of a scheme to promote activities in opposition to the public interest?
20. Is there common or overlapping stock ownership, directors or officers between the various Thrifty Nickel companies?
21. What loans have transpired between Mr. Christensen and the companies?

22. Who was instrumental in incorporating the various companies?
23. How have tax returns been handled?
24. Were various Thrifty Nickel companies allowed to operate independently?
25. What contracts exist between the Thrifty Nickel companies and any parent company?

Many of these questions are raised in plaintiffs' currently outstanding First Interrogatories and Request for Production (see Addendum I). Others will be addressed in Mr. Christensen's deposition and in later discovery. Whether Thrifty Nickel can be shown to be the alter ego of Robert Christensen will be proven upon completion of plaintiffs' discovery.

Both an entity and its alter ego are liable for full damages caused by a breach of an employment agreement. In the 1995 Utah case of Diston v. EnviroPak Medical Products, 893 P.2d 1071, Judge David E. Roth and Frank G. Noel, JJ, held that an employee could collect damages from both the parent company and its alter ego. On appeal by the company, Judge Wilkins affirmed that a plaintiff (Diston) claiming damages under an employment contract could collect damages from both a company (Surgical) and its alter ego company

(EnviroPak).

EnviroPak, like Thrifty Nickel of Orem, went broke. The court held, nevertheless, “. . . the fact that EnviroPak was losing money, or not making enough money, may provide Surgical with a legitimate reason for ending its operations, but it does not excuse the obligations of EnviroPak.

“Surgical, as the alter ego of EnviroPak, is liable for the full damages caused by EnviroPak’s breach of the . . . employment agreement with Mr. Diston. Surgical is liable, under an alter ego theory, for the obligations incurred by EnviroPak.”

V. Judge Frederick did not consider the issue of amending the Complaint.

Plaintiffs / Appellees should be permitted to amend their complaint to cover any potential shortcomings. This alternative was requested by plaintiffs in their Motion in Opposition to defendant’s Motion to Dismiss.

The effect of technical deficiencies in a complaint were handled well in Consolidated Realty Group v. Sizzling Platter, Inc., 930 P.2d 268 (Utah 1996) wherein the late Judge Stirba wrote,

“. . . the defect in the complaint about which SPI complains is nothing more than a technicality. In a notice pleading jurisdiction like Utah, rule

8(a) "is to be liberally construed when determining the sufficiency of a plaintiff's complaint," Gill v. Timm, 720 P.2d 1352, 1353 (Utah 1986) and the text of rule 8 itself declares that "all pleadings shall be so construed as to do substantial Justice." Utah R. Civ. P. 8(f). The days of strict adherence to draconian formalities at the pleading stage are over. Rather, "the fundamental purpose of the liberalized pleading rules is to afford parties 'the privilege of presenting whatever legitimate contentions they have pertaining to their dispute,' subject only to the requirement that their adversaries have 'fair notice of the nature and basis or grounds of the claim and a general indication of the type of litigation involved.'" Williams v. State Farm Ins. Co., 656 P.2d 966, 971 (Utah 1982).

The decision continues,

“ The principals in SPI and Rockin' Robin were the same, and Lowe, a vice president and general counsel of SPI and shareholder of Rockin Robin, negotiated the assignment of the lease and was heavily involved in the project from the beginning. In addition, it is apparent from the defenses raised by SPI that it understood precisely what claims were being made and to which agreement they pertained. Under these circumstances, there can be no doubt that SPI had notice of Consolidated's claim and that SPI was not unfairly prejudiced. See Utah R. Civ. P. 15(b).”

V. Judge Frederick failed to consider equity.

Judge Frederick introduced his decision by stating, “On a motion to dismiss, the issue of the equitable nature of the claims asserted by the respective

parties is really beyond the scheme of my inquiry here, Mr. Houser.” See the Hearing Transcript page 12 found in Addendum J.

But for the seriousness of plaintiffs’ claim, Judge Frederick’s introductory statement would be humorous. The definition of alter ego, on which he based his decision reads “Alter ego is an equitable doctrine which . . .” See Black's Law Dictionary 77-78 (6th ed. 1990). It is an oxymoron for Judge Frederick to say that equity cannot be considered in a motion to dismiss and then order the dismissal based on an equitable doctrine.

The Utah Supreme Court has stated that “. . . a trial court's "discretion should be exercised in furtherance of justice and should incline towards granting relief in a doubtful case to the end that the party may have a hearing." Helgesen v. Inyangumia, 636 P.2d 1079, 1081 (Utah 1981) (citing Warren v. Dixon Ranch Co., 123 Utah 416, 420, 260 P.2d 741, 743 (1953) quoted in Lund v. Brown, 2000 UT 75 (Utah 09/22/2000). This statement appears in a case overturning a Default Judgment. The instant case is of a similar nature. The Salazars, if this case is dismissed with prejudice, may well be without further remedy and left without pension throughout their retirement. This court can prevent this gross injustice!

The present case involves the sensitive issue of an elderly couples’ entitlement to retirement benefits. In a similarly sensitive divorce case where

the trial court had considered equitable matters in its decision, this court stated, "Given these facts, the equitable nature of divorce proceedings, and the court's continuing jurisdiction in divorce cases, there was no reversible error in the trial court's consideration of the order to show cause along with the petition to modify. See Utah Code Ann. § 30-3-5(3) (1998) (establishing court's continuing jurisdiction); Gillmor v. Wright, 850 P.2d 431, 439 (Utah 1993) (Orme, J., Concurring) (noting that law of the case doctrine does not prevent court from "catching a mistake and fixing it")." Moon v. Moon, 973 P.2d 431, 361 Utah Adv. Rep. 15 (Utah App. 01/22/1999).

In the instant case, allowing Mr. Christensen to hide behind the corporate form would sanction fraud, promote injustice, and result in inequity. In such cases, the corporate entity is disregarded. Envirotech Corp. v. Callahan, 872 P.2d 487 (Utah App. 1994).

CONCLUSION

In reviewing a motion to dismiss, the Utah Court of Appeals construes “the facts in the complaint liberally and we consider all the reasonable inferences to be drawn from the back in a light most favorable to the plaintiffs.”³⁴

Judge Frederick erred in ruling that plaintiffs’ complaint, memoranda, affidavits and reasonable inferences therefrom³⁵ were insufficient to give the defendant Robert Christensen “fair notice” and “a “fair idea of the nature of the claims asserted against them sufficient to apprise them”³⁶ of the nature and basis of the claim asserted and a general indication of the type of litigation involved. The liberality of notice pleading acknowledges that dismissal is a severe measure.³⁷ All pleadings must be construed as to do substantial justice.³⁸ If necessary, plaintiffs should be permitted to amend their complaint.³⁹

Further, the equitable nature of the alter ego and piercing the corporate veil doctrines, mandate that once fair notice is given, the facts of the case must

³⁴. Baker v. Angus, supra

³⁵. See Cruz v. Middlekauff Lincoln-Mercury, Inc., supra.

³⁶. Garcia v. Coffman, supra

³⁷. See Olson v. Park-Craig-Olson, Inc., supra

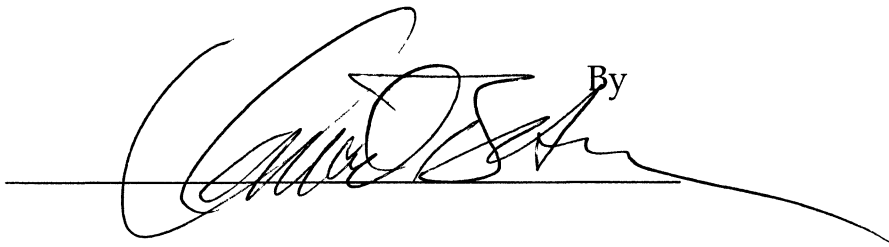
³⁸. U.R.C.P §8(f)

³⁹. Consolidated Realty Group v. Sizzling Platter, Inc., supra

be ascertained through discovery and trial. Many facts remain in dispute. Many facts are yet to be discovered. Plaintiffs will prove the defendant has no valid defenses.

WHEREFORE, respondent respectfully prays that the order of the lower court be reversed and the matter remanded for further proceedings.

DATED this 2nd day of August, 2001.

A handwritten signature in black ink, appearing to read 'Conrad B. Houser', is written over a horizontal line. The signature is stylized and cursive.

By
Conrad B. Houser
Attorney for Plaintiff - Appellant
136 East South Temple, Suite 1200
Salt Lake City, UT 84111

CERTIFICATE OF SERVICE

I certify that on August 2, 2001, a copy of the Notice of Appeal was hand delivered personally by me to:

Scott A. Call
James H. Tily
ANDERSON & KARRENBURG
700 Bank One Tower
50 West Broadway
Salt Lake City, Utah 84101-2006.

A handwritten signature in black ink, appearing to read 'Conrad B. Houser', is written over a horizontal line.

Conrad B. Houser

IN THE COURT OF APPEALS
OF THE
STATE OF UTAH

JOSE S. SALAZAR and MILDRED O.
SALAZAR

APPELLATE CASE No.
20010297-CA

Plaintiffs - Appellants

Rule 29 Priority 15

-vs-

THRIFTY NICKEL INC. , a Utah Corporation,
WANT ADS OF SALT LAKE CITY, INC., a
Utah Corporation, SOUTHERN CROSS, INC.
a Utah Corporation, ROBERT L.
CHRISTENSEN, and
NORMAN WILKINSON

Defendants and Appellees

BRIEF OF APPELLANT

Appeal from the
ORDER OF DISMISSAL OF DEFENDANT ROBERT L. CHRISTENSEN
by the
HONORABLE J. DENNIS FREDERICK
Third District Court
Salt Lake County, Utah

Conrad B. Houser (3612)
Attorney for Plaintiffs
136 East South Temple, Suite 1200
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(801) 539-0044
Attorney for Appellants

Scott A. Call
James H. Tily
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700 Bank One Tower
50 West Broadway
Salt Lake City, UT 84101-2006
Attorneys for Defendant - Respondent

FILED DISTRICT COURT
Third Judicial District

MAR 14 2001

SALT LAKE COUNTY

By _____ Deputy Clerk

ANDERSON & KARRENBERG
Scott A. Call, #0544
700 Bank One Tower
50 West Broadway
Salt Lake City, Utah 84101-2006
Telephone: (801) 534-1700
Facsimile: (801) 364-7697

Attorneys for Defendants Southern Cross, Inc. and Norman Wilkinson

**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY
STATE OF UTAH**

JOSE S. SALAZAR and MILDRED O. SALAZAR,

Plaintiffs,

vs.

THIRTY NICKLE OF OREM, INC., a Utah corporation; WANT ADS OF SALT LAKE CITY, INC., a Utah corporation; SOUTHERN CROSS, INC., a Utah corporation; and NORMAN WILKINSON, an individual,

Defendants.

ORDER OF DISMISSAL

Civil No. 000906212

Judge Frederick

Defendant Robert L. Christensen's Motion to Dismiss the Plaintiffs' Complaint came on regularly for hearing before the Honorable J. Dennis Fredrick on Monday, March 5, 2001, 9:00 a.m. Plaintiffs were represented by their counsel of record, Conrad B. Houser.

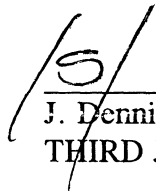
Defendant Robert L. Christensen was represented by his counsel of record, Scott A. Call of Anderson & Karrenberg.

The Court, having reviewed the Plaintiffs' Complaint, Defendant Robert L. Christensen's Motion to Dismiss and supporting memoranda and the Plaintiffs' opposing memoranda, having heard the argument of counsel thereon and good cause appearing therefore, hereby makes and enters the following order

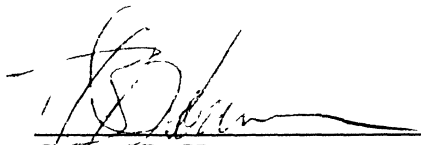
IT IS HEREBY ORDERED: Defendant Robert L. Christensen's Motion to Dismiss is granted for the reasons set forth in the memoranda filed in support of Defendant Robert L. Christensen's Motion to Dismiss. Accordingly, all claims in this action against Defendant Robert L. Christensen are hereby dismissed with prejudice.

DATED: 12th March —, 2001.

BY THE COURT:


 J. Dennis Frederick
 THIRD JUDICIAL DISTRICT COURT JUDGE

APPROVED AS TO FORM:


 Conrad B. Houser
 Attorney for Plaintiffs

CLERK'S CERTIFICATE

I hereby certify that on this 14th day of March, 2001, and following entry thereof, I caused to be placed in the United States Mail, via first class, postage prepaid, a true and correct copy of the within and foregoing **ORDER OF DISMISSAL**, to:

Conrad B. Houser, Esq.
175 South Main Street, Ste 1000
Salt Lake City, Utah 84111

Scott A. Call, Esq.
ANDERSON & KARRENBURG
50 West Broadway, Ste 700
Salt Lake City, Utah 84101-2006

C. Bauerley
Clerk

Conrad B. Houser (3612)
Attorney for Plaintiffs
175 South Main Street
Suite 1000
Salt Lake City, UT 84111

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY , STATE OF UTAH

JOSE S. SALAZAR and MILDRED O. SALAZAR

COMPLAINT

Plaintiffs

-vs-

Judge *Frederick*

THRIFTY NICKEL OF OREM, INC. , a Utah
Corporation,
WANT ADS OF SALT LAKE CITY, INC., a Utah
Corporation,
SOUTHERN CROSS, INC. a Utah Corporation,
ROBERT L. CHRISTENSEN, and
NORMAN WILKINSON

District Court Civil No.

000906212

Defendants

PLAINTIFFS, JOSE S. SALAZAR and MILDRED O. SALAZAR file this action for breach of an Employment Agreement and other employment related damages against DEFENDANTS, THRIFTY NICKEL OF OREM, INC. , a Utah Corporation, WANT ADS OF SALT LAKE CITY, INC., a Utah Corporation, SOUTHERN CROSS, INC. a Utah Corporation, ROBERT L. CHRISTENSEN, and NORMAN WILKINSON. In support of this action, Plaintiff will show the Court the following:

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs are both residents of Salt Lake County, Utah.

2. Defendant Thrifty Nickel of Orem, Inc. (Thrifty Nickel) is revoked predecessor Utah company of Defendant Southern Cross, Inc. and was controlled by Defendant Robert L. Christensen.
3. Defendant Want Ads of Salt Lake City, Inc. (WASL) is a closely-held Nevada corporation incorporated on or about June 20, 1997, first registered in Utah on September 23, 1997, and with offices in and doing business in Salt Lake County, Utah, from its office at 7097 South State Street, Midvale, Utah 84047.
4. Defendant Southern Cross, Inc. (Southern Cross) is a closely-held Utah corporation incorporated on or about May 5, 1992 and with offices in and doing business in Utah and Salt Lake Counties, Utah.
5. Defendant Robert L. Christensen (Christensen) is an individual believed to reside in the State of Florida and doing business in Salt Lake County, Utah.
6. Defendant Norman Wilkinson (Wilkinson) is an individual residing in Utah County, State of Utah and doing business in Salt Lake County, Utah.

GENERAL ALLEGATIONS

7. Plaintiffs entered into a written Employment Agreement with Defendant(s) Thrifty Nickel on January 1, 1992. A copy of the Employment Agreement, marked Exhibit 1, is attached and made a part of this pleading.
8. The Employment Agreement, containing no stated term, was perpetual.
9. The Employment Agreement stipulated a weekly salary to the Plaintiffs jointly of \$1,400 per week.
10. Plaintiffs, under the terms of the Employment Agreement, were to perform as "Distribution Managers including; logging routes, hiring drivers, distributing the Thrifty Nickel, getting new locations, upkeep of all indoor and outdoor racks, dealing with the printer and any other assigned company initiatives as required."

11. Duties as stated in the Employment Agreement were to be performed in “the Orem, Provo, and Salt Lake City, Utah area and at such other place(s) as the needs, business, or opportunities of the Employer may require from time to time.”
12. Benefits under the Employment Agreement included vacation of 3 weeks (after 1996) “with salary paid in full.”
13. Benefits under the Employment Agreement included (after 1992), paid medical and dental insurance.
14. Benefits under the Employment Agreement included (after 1992), retirement at age 65 for 10 years in the amount of \$600 per week for each of the plaintiffs.
15. Plaintiffs are both over the age of 65.
16. The Employment Agreement also provided for severance pay (after 1996) of six months pay if terminated without cause, this amount to be paid, upon request, as a lump sum at present value.
17. The Employment Agreement also provided that “if litigation after termination without cause shall be brought to enforce or interpret any provision contained herein, Employer, to the extent permitted by applicable law, indemnifies Employees for Employee’s reasonable attorneys’ fees and disbursements incurred in such litigation.”
18. Plaintiffs worked for various Thrifty Nickel newspapers in New Mexico and Utah for over nineteen (19) years.
19. Plaintiffs worked continuously and diligently under their Employment Agreement for defendants receiving pay checks for succeeding and inconsistently intermixed periods from Thrifty Nickel, WASL, Southern Cross, and others.
20. On April 28, 2000, without cause, Plaintiffs were notified their Employment Agreement was terminated effective that same day. A copy of the termination, attached as Exhibit 2, is made a part of this pleading.
21. Thrifty Nickel was and is owned in whole or part by defendant Christensen.

22. Thrifty Nickel's right to operate in Utah was revoked by the Director of the Utah Division of Corporations.
23. Thrifty Nickel's operations continued without significant interruption or change of procedures under ownership of defendant WASL or defendant Southern Cross.
24. Defendant WASL purportedly ceased doing business on or about August 5, 1999.
25. Defendant WASL's operations continued without significant interruption or change of procedures under ownership of defendant Southern Cross.
26. Newspapers and other publications selling classified advertisements using the name Thrifty Nickel, are published regularly in numerous markets throughout the United States.
27. Thrifty Nickel newspapers are distributed through racks and depositories typically near the front entrance of businesses such as supermarkets, restaurants, and convenience stores.
28. Defendant Christensen is the controlling shareholder of more or less eighty-six (86) entities publishing classified advertisement newspapers throughout the United States, most of which publish under the banner "Thrifty Nickel."
29. Defendant Christensen is the sole shareholder of WASL and Southern Cross.
30. "Advertise it in Your Dynamic Thrifty Nickel Want Ads" is a trademark registered on July 13, 1992 in Utah and owned by defendant Christensen or an entity ultimately owned and / or controlled by defendant Christensen.
31. Defendant WASL's authority to transact business in Utah was revoked on or about December 1, 1998.
32. In addition to being the sole shareholder of WASL, defendant Christensen is a member of its board of directors.
33. Defendant Wilkinson has been associated with Christensen and various Thrifty Nickel enterprises for approximately twenty (20) years.

34. Defendant Wilkinson is president of both WASL and Southern Cross, and the treasurer and a director of Southern Cross.
35. The transfer of assets between the three corporate defendants is alleged to be fraudulent under an action currently in process in the United States Bankruptcy Court for the District of Utah, Central Division, Case No. 99C-31762.
36. The transfers of assets occurred at the direction of defendants Christensen and / or Wilkinson.
37. There should be no corporate veil distinguishing or protecting the assets of any of the five defendants.

**FIRST CAUSE OF ACTION:
BREACH OF CONTRACT**

38. Plaintiffs reassert and incorporate herein the allegations of all preceding paragraphs.
39. Defendants, in terminating plaintiffs without cause, breached the subject Employment Agreement.
40. Plaintiffs are entitled to Severance Pay in the amount of six (6) months salary, the net present value of which, discounted at 5%, is \$36,024.49 plus interest from April 28, 2000.
41. Plaintiffs are each entitled to Retirement pay at the rate of \$600 per month for ten (10) years which, discounted at 5%, is \$505,928.07 plus interest from April 28, 2000.

**SECOND CAUSE OF ACTION:
FAILURE TO MAINTAIN MEDICAL INSURANCE**

42. Plaintiffs reassert and incorporate herein the allegations of all preceding paragraphs.
43. Under the terms of the Employment Contract, Defendants are required to provide medical insurance coverage. Because of defendants' negligence in allowing the insurance to several times lapse and by failing to provide litigation defense, judgment was rendered against plaintiff Jose Salazar in the amount of \$1,124.66.
44. Plaintiff Jose Salazar is entitled to be compensated the full amount about of \$1,124.66 plus interest and any related costs to rectify his credit rating.

**THIRD CAUSE OF ACTION:
FAILURE TO PAY VACATION PAY**

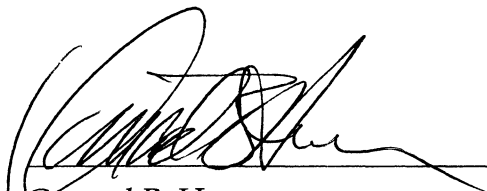
45. Plaintiffs reassert and incorporate herein the allegations of all preceding paragraphs.
46. Under the terms of the Employment Contract, Defendants are required to provide for three weeks of annual vacation.
47. Plaintiffs were not given vacation for the past three years. They are due, therefore, the net present value of which, discounted at 5%, is \$ 15,292.20 plus interest from April 28, 2000.

Wherefore, Plaintiffs respectfully request the following relief of at least \$548,857 as follows:

1. Judgement against the Defendants jointly and severally in the current amount of \$505,929;
2. Interest from April 28, 2000 currently totaling \$15,028;

3. Court costs;
4. Attorney's fees of \$10,000 to bring this action; and
5. Such other relief in the premises as shall be agreeable to equity and to which Plaintiffs are entitled.

Dated this 8th day of August, 2000.



Conrad B. Houser
Attorney for Plaintiff

EMPLOYMENT AGREEMENT

This Employment Agreement ("This Agreement") is made effective as of January 1, 1992, Thrifty Nickel ("The Employer") of 712 South State, Orem, Utah. Jose S. Salazar and Mildred O. Salazar ("The Employees") 2239 Tempview, Provo, Utah.

- A. Employer is engaged in the business of Publishing Classified Newspapers.
- B. Employer desires to have services of Employees.
- C. Employees are willing to be employed by Employer.

Therefore, the parties agree as follows:

1. **EMPLOYMENT.** Employees shall provide to Employer the following services: Distribution Managers including; logging routes, hiring drivers, distributing the Thrifty Nickel, getting new locations, upkeep of all indoor and outdoor racks, dealing with the printer and any other assigned company initiatives as required.

2. **BEST EFFORTS OF EMPLOYEES.** Employees agree to perform faithfully, industriously and to the best of Employee's ability, experience and talents, all of the duties that may be required by the express and implicit terms of this Agreement, to the reasonable satisfaction of Employer. Such duties shall be provided at the Orem, Provo and Salt Lake City, Utah area and at such other place(s) as the needs, business, or opportunities of the Employer may require from time to time.

3. **SALARY.** Employer will make salary payments bi-weekly to the Employees in the amount of \$700.00 each per week, for a total of \$1400.00 per week.

4. **RECOMMENDATIONS FOR IMPROVING OPERATIONS.** Employees shall provide Employer with all information, suggestions and recommendations regarding Employer's business, of which Employees have knowledge, that will be of benefit to Employer.

5. **CONFIDENTIALITY.** Employees recognizes that Employer has and will have information regarding the following:

- costs
- future plans
- processes
- trade secrets
- copyrights
- assets/financial information
- computer processes, programs and codes
- distribution locations

Employees will not at any time or in any manner, either directly or indirectly divulge, disclose, or communicate any information to any third party without the written consent of the Employer. Employees will protect the information and treat it as strictly confidential.

6. **VACATION.** Full time Employees will receive 1 week vacation after 1 year of employment with salary paid in full. 2 years of employment will receive 8 days vacation time off with salary paid in full. 3 years of employment will receive 10 days vacation time off with salary paid in full. 4 years of employment will receive 12 days vacation time off with salary paid in full and 5 or more years of employment will receive 3 weeks of vacation time off with salary paid in full.

7. **HOLIDAYS.** Employees shall be entitled to the following holidays with pay during each calendar year:

- New Year's Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas Eve
- Christmas Day

8. **OTHER BENEFITS.** After 1 year of employment:

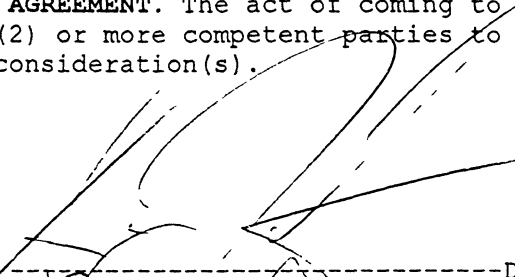
- Paid medical and dental insurance.
- Family leave and Medical leave.
- Military leave.
- Jury leave.
- Recreational Activities (Upon approval of Employer)
- Automobile maintenance and upkeep.
- Automobile gasoline for employment duties.
- Retirement at age 65 for 10 years in the amount of \$600 per week.

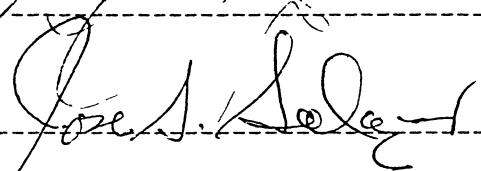
9. **SEVERANCE PAY.** Severance pay is only due to employees that have been a employee for 5 years or more. If after working for the Thrifty Nickel in a faithful and acceptable manner and later wrongfully terminated without cause, Employees shall be paid as severance compensation by calculating the salary made in the previous twelve (12) months and dividing it by 52 weeks to get a weekly rate of pay for a period of the lesser of the remaining portion of the initial term or six (6) months from the date of such termination provided. However, that if Employee is employed by a new employer during such period, the severance compensation payable to Employee during such period will be reduced by the amount of compensation that Employee actually receives from the new employer. Employee may in Employee's sole discretion, by delivery of a notice to Employer within thirty (30) days following a termination elect to receive from Compensation a lump sum severance payment by bank cashier's check equal to the present value of the flow of cash payments that would otherwise be paid to Employee pursuant to this section. Employee shall continue to enjoy any benefits under any plans of the Employer in which Employee is a participant to the full extent of Employee's rights under such plans, including any perquisites provided under this Agreement, through the remaining term of this Agreement; provided, however, that the benefits under any such plans of the Employer in which Employee is a participant, including any such perquisites, shall cease upon re-employment by a new employer.

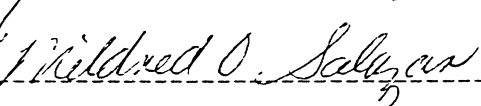
10. **PAYMENT OBLIGATIONS.** Employer's obligation to pay Employees the compensation and to make the arrangements provided herein shall be unconditional, and Employee shall have no obligation whatsoever to mitigate damages hereunder. If litigation after termination without cause shall be brought to enforce or interpret any provision contained herein, Employer, to the extent permitted by applicable law, indemnifies Employees for Employee's reasonable attorneys' fees and disbursements incurred in such litigation.

11. **INDEMNIFICATION.** In addition to any rights to indemnification to which Employee is entitled to, Employer shall indemnify Employee at all times during and after the term of this Agreement or any successor provision thereof and any other applicable state law, and shall pay Employees expenses in defending any civil or criminal action, suit, or proceeding, to the maximum extent permitted under such applicable state laws.

- a. **AGREEMENT.** The act of coming to a mutual understanding between two (2) or more competent parties to do or not to do certain consideration(s).

EMPLOYER  DATE 1-1-1992

EMPLOYEE  DATE 1-1-92

EMPLOYEE  DATE 1-1-1992

Conrad B. Houser (3612)
Attorney for Plaintiffs
136 East South Temple, Suite 1200
Salt Lake City, UT 84111
Telephone: 801 539-0044

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY , STATE OF UTAH

JOSE S. SALAZAR and MILDRED O. SALAZAR

AFFIDAVIT OF JOSE S. SALAZAR

Plaintiffs

-vs-

Judge Frederick

THRIFTY NICKEL INC. , a Utah Corporation,
WANT ADS OF SALT LAKE CITY, INC., a Utah
Corporation, SOUTHERN CROSS, INC. a Utah
Corporation, ROBERT L. CHRISTENSEN, and
NORMAN WILKINSON

District Court Civil No. 000906212

Defendants

STATE OF UTAH

COUNTY OF SALT LAKE

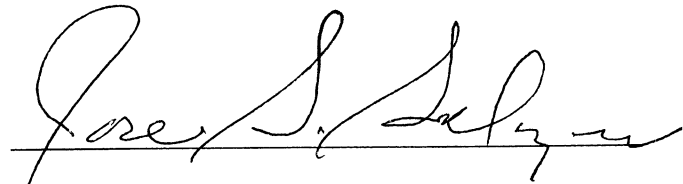
Jose S. Salazar, being first duly sworn, deposes and states as follows:

1. I am over the age of twenty-one years and I have personal knowledge of the matters stated herein.
2. I have been an employee of various Thrifty Nickel companies in New Mexico and Utah since 1982.


3. I was induced to continue my employment with Thrift Nickel companies by moving to Utah to help develop Thrifty Nickel of Orem. A central part of that inducement was the security gained by way of an Employment Agreement.
4. I personally signed the Employment Agreement agreeing to comply with the terms thereof. Tim Taylor and my wife Mildred also signed the Employment Agreement.
5. I have worked for several Thrifty Nickel companies over the last nineteen years. The Employment Agreement was made in the name of Thrifty Nickel rather than any one of the specific Thrifty Nickel companies to provide future flexibility.
6. It is my understanding that Robert L. Christensen approved the Employment Agreement, was fully aware of the need for it and of its terms.
7. I have, over the past nineteen years, had a close and cordial personal relationship with Robert L. Christensen, been invited to his home for family and holiday meals, worked directly with him on projects, and loyally worked to build up his companies.
8. Norm Wilkerson, a Thrifty Nickel executive, reaffirmed the validity of the Employment Agreement when he came to my home in August of 1999 and told me the job, salary, and other working conditions would be the same even though the name of the company was going to change.
9. Robert L. Christensen reaffirmed the validity of the Employment Agreement at the State Street office in August of 1999 when, at yet another switching of Thrifty Nickel

companies, he said to me, "All will be the same."

DATED this 11 day of January, 2001.

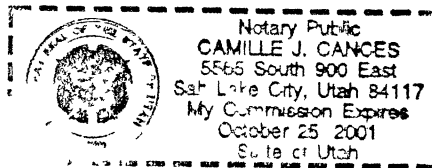

Jose S. Salazar

SUBSCRIBED AND SWORN TO before me this 11 day of January, 2001.


NOTARY PUBLIC
Residing in Salt Lake County

My Commission Expires:

10/25/01



Conrad B. Houser (3612)
Attorney for Plaintiffs
136 East South Temple, Suite 1200
Salt Lake City, UT 84111
Telephone: 801 539-0044

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY , STATE OF UTAH

JOSE S. SALAZAR and MILDRED O. SALAZAR

AFFIDAVIT OF MILDRED O.
SALAZAR

Plaintiffs

-vs-

Judge Frederick

THRIFTY NICKEL INC. , a Utah Corporation,
WANT ADS OF SALT LAKE CITY, INC., a Utah
Corporation, SOUTHERN CROSS, INC. a Utah
Corporation, ROBERT L. CHRISTENSEN, and
NORMAN WILKINSON

District Court Civil No. 000906212

Defendants

STATE OF UTAH

COUNTY OF SALT LAKE

Mildred O. Salazar, being first duly sworn, deposes and states as follows:

1. I am over the age of twenty-one years and I have personal knowledge of the matters stated herein.
2. I have been an employee of various Thrifty Nickel companies in New Mexico and Utah since 1982.

3. I was induced to continue my employment with Thrift Nickel companies by moving to Utah to help develop Thrifty Nickel of Orem. A central part of that inducement was the security gained by way of an Employment Agreement.
4. I personally signed the Employment Agreement agreeing to comply with the terms thereof. Tim Taylor and my husband Jose also signed the Employment Agreement.
5. I have worked for several Thrifty Nickel companies over the last nineteen years. The Employment Agreement was made in the name of Thrifty Nickel rather than any one of the specific Thrifty Nickel companies to provide future flexibility.
6. It is my understanding that Robert L. Christensen approved the Employment Agreement, was fully aware of the need for it and of its terms.
7. I have, over the past nineteen years, had a close and cordial personal relationship with Robert L. Christensen, been invited to his home for family and holiday meals, worked directly with him on projects, and loyally worked to build up his companies.
8. Norm Wilkerson, a Thrifty Nickel executive, reaffirmed the validity of the Employment Agreement when he came to our home in August of 1999 and told us the job, salary, and other working conditions would be the same even though the name of the company was going to change.
9. Robert L. Christensen reaffirmed the validity of the Employment Agreement at the State Street office in August of 1999 when, at yet another switching of Thrifty Nickel

companies, he said to me, "All will be the same."

DATED this 11 day of January, 2001.

Mildred O. Salazar

Mildred O. Salazar

SUBSCRIBED AND SWORN TO before me this 11 day of January, 2001.

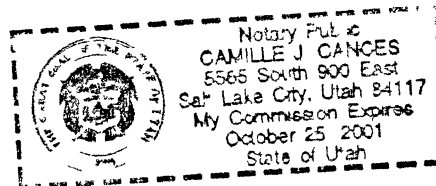
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NOTARY PUBLIC

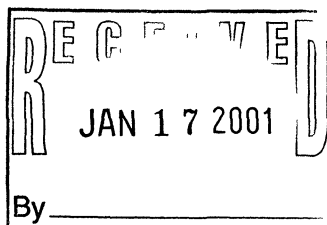
Residing in Salt Lake County

My Commission Expires:

11/25/01



Conrad B. Houser (3612)
Attorney for Plaintiffs
136 East South Temple
Suite 1200
Salt Lake City, UT 84111



IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

JOSE S. SALAZAR and MILDRED O. SALAZAR

AFFIDAVIT OF TIM TAYLOR

Plaintiffs

-vs-

Judge Frederick

THRIFTY NICKEL INC. , a Utah Corporation, et.
al.

District Court Civil No. 000906212

Defendants

STATE OF UTAH

COUNTY OF SALT LAKE

Tim Taylor, being first duly sworn, deposes and states as follows:

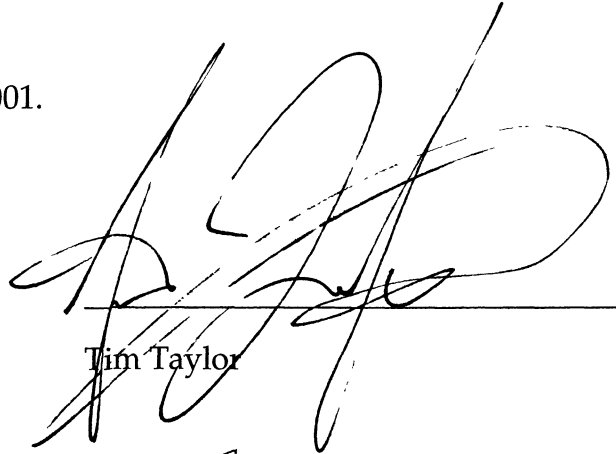
1. I am over the age of twenty-one years and I have personal knowledge of the matters stated herein.
2. I personally drafted the Employment Agreement between Thrifty Nickel and Jose and Mildred Salazar dated 1/1/92 and attached hereto.
3. The subject Employment Agreement was provided by Thrifty Nickel both to induce

the Salazars to move from New Mexico to Utah and to reward them for their years of service in New Mexico.

4. The subject Employment Agreement was suggested by, discussed around the table with, and approved by my father, Robert L. Christensen and his wife / my Mother Mary.
5. I signed the subject Employment Agreement as an agent for my father, Robert L. Christensen and as President of Thrifty Nickel of Orem.
6. The Thrifty Nickel empire is made up of a large number of affiliated companies throughout the United States. Many of these companies are transitory in nature, being used for various purposes, at various times, in various localities. All or most of these companies are owned or controlled by my Father, Robert L. Christensen. I have been an officer in several of these companies.
7. The subject Employment Agreement was purposely made in the name of Thrifty Nickel rather than any of the many companies making up the Thrifty Nickel empire to provide flexibility in case the Salazars were shifted or transferred from one company to another within the Thrifty Nickel organization.

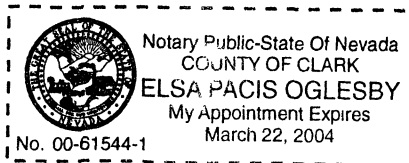
8. Since the subject Employment Agreement was executed, the Salazars have worked for Thrifty Nickel of Orem, Thrifty Nickel of Salt Lake City, Southern Cross, and possible other Thrifty Nickel companies.

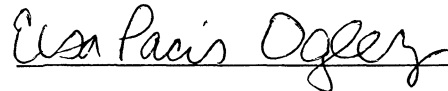
DATED this 16th day of January, 2001.



Tim Taylor

SUBSCRIBED AND SWORN TO before me this 16th day of January, 2001.





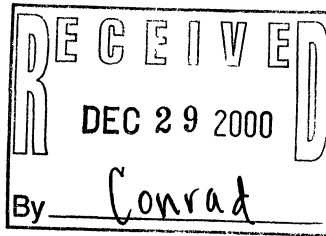
NOTARY PUBLIC

Residing in Henderson, Nevada

My Commission Expires:

March 22, 2004

ANDERSON & KARRENERG
Scott A. Call, #0544
James H. Tily, #8809
700 Bank One Tower
50 West Broadway
Salt Lake City, Utah 84101-2006
Telephone: (801) 534-1700
Facsimile: (801) 364-7697



Attorneys for Defendant Robert L. Christensen

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

| | | |
|--------------------------------------|---|--------------------------------|
| JOSE S. SALAZAR and MILDRED O. |) | |
| SALAZAR, |) | |
| |) | DEFENDANT CHRISTENSEN'S |
| Plaintiffs, |) | MOTION TO DISMISS |
| |) | |
| vs. |) | |
| |) | |
| THIRTY NICKLE OF OREM, INC., a |) | Civil No. 000906212 |
| Utah corporation; WANT ADS OF SALT |) | Judge Frederick |
| LAKE CITY, INC., a Utah corporation; |) | |
| SOUTHERN CROSS, INC., a Utah |) | |
| corporation; ROBERT L. |) | |
| CHRISTENSEN, an individual; and |) | |
| NORMAN WILKINSON, an individual, |) | |
| |) | |
| Defendants. |) | |

Defendant Robert L. Christensen ("Christensen"), by and through his undersigned counsel, respectfully moves the Court, pursuant to Rule 12(b)(6), Utah Rules of Civil Procedure, for an order dismissing Plaintiffs' Complaint against Christensen for failure to state

Conrad B. Houser (3612)
Attorney for Plaintiffs
136 East South Temple
Suite 1200
Salt Lake City, UT 84111

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY , STATE OF UTAH

JOSE S. SALAZAR and MILDRED O. SALAZAR

Plaintiffs

MOTION TO SERVE DEFENDANT
ROBERT L. CHRISTENSEN BY MAIL

-vs-

Judge Frederick

THRIFTY NICKEL INC. , a Utah Corporation,
WANT ADS OF SALT LAKE CITY, INC., a Utah
Corporation, SOUTHERN CROSS, INC. a Utah
Corporation, ROBERT L. CHRISTENSEN, and
NORMAN WILKINSON

District Court Civil No. 000906212

Defendants

Plaintiffs Jose S. and Mildred O. Salazar ("Salazar") by and through their attorney Conrad B. Houser, submit this U.R.C.P. 4(g) MOTION TO SERVE DEFENDANT ROBERT L. CHRISTENSEN BY CERTIFIED MAIL based on the following:

1. Robert L. Christensen is aware of the subject lawsuit. He has seen or been told in detail of its claims and damage requests. He has responded through others to the Plaintiffs that "they will never get a penny out of him."
2. Robert L. Christensen's lawyer is likely to be the same attorney who represents Southern Cross, Inc. and Norman Wilkinson, namely Scott A. Call. Plaintiff's lawyer requested that he accept service on behalf of Mr. Christensen but he was not given authority by Mr. Christensen to do so.
3. Over a period of 24 days process service George C. Duke attempted to serve Robert L.

Christensen. His log is attached as a DECLARATION OF DILIGENCE. Mr. Duke concluded on several occasions that Mr. Christensen was "evading." He left business cards but Mr. Christensen did not respond.

4. Good cause exists to believe that Robert L. Christensen is avoiding service of process. Plaintiffs therefore requests the Clerk of this Court to serve him by mail as provided in Rule 4 (g) of the U.R.C.P.

Dated this 6th day of November, 2000.

Conrad B. Houser

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

| | | |
|------------------------------|---|---------------------------|
| JOSE S. SALAZAR, et al, | : | MINUTE ENTRY RULING |
| Plaintiff(s), | : | CASE NO. 000906212 CN |
| vs. | : | Judge J. Dennis Frederick |
| THRIFTY NICKEL, INC., et al, | : | Date: December 6, 2000 |
| Defendant(s), | : | |

After review of the pleadings and upon receipt of the Notice to Submit for Decision filed December 4, 2000, the Court rules as follows:

1. There being no timely opposition, Plaintiffs' Motion for Alternate Service is granted.
2. The order submitted is executed December 6, 2000.

Conrad B. Houser (3612)
Attorney for Plaintiffs
136 East South Temple, Suite 1200
Salt Lake City, UT 84111
Telephone: (801) 539-0044

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY , STATE OF UTAH

JOSE S. SALAZAR and MILDRED O. SALAZAR

Plaintiffs

Plaintiffs' First Set of Interrogatories

-vs-

Judge Dennis Frederick

THRIFTY NICKEL INC. , a Utah Corporation, et.
al.

District Court Civil No. 000906212

Defendants

Plaintiffs, in accordance with the provisions of Rule 33 of the Utah Rules of Civil Procedure, submit the following Interrogatories to defendant Robert L. Christensen. These interrogatories are to be responded to by defendant Robert L. Christensen within 30 days of the date of service. If objection is made to any Interrogatory herein, or any part thereof defendants are hereby requested to set forth with particularity specific objection as to each part.

INSTRUCTIONS FOR USE

These Interrogatories are to be deemed continuing in nature so as to require supplemental responses should additional information be received between the time responses are made and the time of trial.

INTERROGATORY #1. Were you involved in any way in the incorporation of any of the defendant corporations listed in his lawsuit? Is so, state each and every way in which you were involved in the incorporation of each.

INTERROGATORY #2. Do you now or did you previously own stock in any corporation that is listed as a defendant in this lawsuit? If so, state the number of shares you own now or have owned at any and all times and the percentage of your ownership as measured against the total outstanding shares of each respective corporation attendant to each ownership position.

INTERROGATORY #3. Did you have any input into the making of or knowledge of the existence of the Employment Agreement with plaintiffs? If so, state your involvement in creating the Agreement and at what times and under what circumstances you had knowledge of the Agreements.

INTERROGATORY #4. Have you ever served as a director, officer, or representative of any of the defendants in this lawsuit? If so, state the name of each such position and the date on which you assumed any such position and the date on which you left any such position

INTERROGATORY #5. Did you ever loan money to any of the defendant corporations in this lawsuit? If so, state:

(A) The date and amount of each such loan.

(B) The balance still owed on each loan.

INTERROGATORY #6. Did any of the defendant corporations loan you any money? If

so, state:

- (A) The date and amount of each such loan.
- (B) The balance still owed on any loan if any.

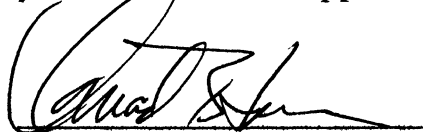
INTERROGATORY #7. Did you ever guaranty or cosign any obligation of any of the defendant corporations in this lawsuit? If so, state:

- (A) The date and amount of each such cosignature or loan.
- (B) The balance still owed on any loan if any.

INTERROGATORY #8. Did any of the defendants listed in this lawsuit ever advance funds to you for services to be performed later? If so, please state the amount of money advanced to you by any defendant in this case and the amount of money that was advanced to you on each occasion it was advanced.

INTERROGATORY #9. At any time since 1996 , did you incorporate or cause to be incorporated any other corporation? If so, state for each incorporation the name of the corporation, the date of the corporation, and the state of incorporation.

INTERROGATORY #10. For each factual denial set forth in your Answer to the Plaintiff's Complaint, state in detail all facts upon which you base such denial, the name, home address home telephone number, business address and business telephone number of all witnesses to those facts and the identity of all documents supporting such facts.



Conrad Houser

Attorney for the Plaintiffs

Dated: February 27, 2001

CERTIFICATE OF SERVICE

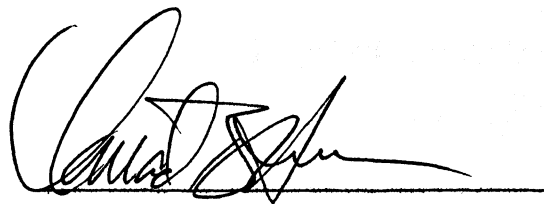
I certify that on February 27, 2001, I mailed a copy of these Interrogatories to:

Attorney Scott A. Call

700 Bank One Tower

50 West Broadway

Salt Lake City, Utah 84101-2006.

A handwritten signature in black ink, appearing to read "Conrad B. Houser", is written over a horizontal line.

Conrad B. Houser

Conrad B. Houser (3612)
Attorney for Plaintiffs
136 East South Temple, Suite 1200
Salt Lake City, UT 84111
Telephone: (801) 539-0044

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

JOSE S. SALAZAR and MILDRED O. SALAZAR

Plaintiffs

Plaintiff's Request for Production of
Documents

-vs-

Judge Frederick

THRIFTY NICKEL INC. , a Utah Corporation, et.
al.

District Court Civil No. 000906212

Defendants

Plaintiffs, in accordance with the provisions of Rule 34 of the Utah Rules of Civil Procedure, submit herewith the following Request for Production of Documents to all defendants. These requests are to be responded to by all defendants within 30 days of the date of service. If objection is made to any requests for Production of Documents, or any part thereof defendants are hereby requested to set forth with particularity this specific objection as to each part.

INSTRUCTIONS FOR USE

These Requests for Production are to be deemed continuing in nature so as to require supplemental responses should additional documents or information be received between

the time the responses are made and the time of trial.

All documents are to be produced which are in the possession of the individual or corporate party, his attorney's, investigators, consultants, experts, agents, employees, or other representatives of the names parties and their attorney.

Photocopies of all documents are requested to be served on the Plaintiff's attorney at his office located at: 136 East South Temple, Suite 1200, Salt Lake City, Utah 84111.

REQUESTS FOR PRODUCTION

1. A copy of the Articles of Incorporation of THRIFTY NICKEL INC., a Utah corporation, et. al.
2. A copy of the Articles of Incorporation of WANT ADS OF SALT LAKE CITY, INC., a Utah Corporation.
3. A copy of the Articles of Incorporation of SOUTHERN CROSS, INC. a Utah Corporation.
4. A copy of the Articles of Incorporation of THRIFTY NICKEL OF OREM, INC.
5. A copy of the By-Laws of each corporation listed in paragraph 1 through 4 above.
6. A copy of the Certificate of Incorporation from the Secretary of the State of Utah of each corporation listed in paragraphs 1 through 4 above.
7. A copy of the Notice of Incorporation of each corporation listed in paragraphs 1 through 4 above.
8. Copies of the minutes of all meetings of the Board of Directors of each corporation listed in paragraphs 1 through 4 above.
9. Copies of all minutes of shareholders of each corporation listed in paragraphs 1 through 4 above.
10. Copies of all documents evidencing loans from Robert L. Christensen to each

corporation listed in paragraphs 1 through 4 above.

11. Copies of all documents evidencing loans from any family member, relative or friend of Robert L. Christensen or any business affiliated with Robert L. Christensen to each corporation listed in paragraphs 1 through 4 above.

12. Copies of all documents evidencing loans by each corporation listed in paragraphs 1 through 4 above to any family member, relatives or friend of Robert L. Christensen or to any business affiliated with Robert L. Christensen.

13. Copies of corporate records or ledgers evidencing the identity and address of each person or entity who has owned stock in each corporation listed in paragraphs 1 through 4 above during the past five years, the consideration paid or promised for the stock and the dates on which the consideration was paid or promised.

14. Copies of corporate records or ledgers evidencing the issuance of actual stock certificates at any time since the incorporation of each corporation listed in paragraphs 1 through 4 above to whom they were issued and the dates of issue.


15. For each bank account maintained in the name of each corporation listed in paragraphs 1 through 4 above, a copy of the monthly statement for the period beginning January 1, 1996 through March 1, 2001.

16. Copies of the federal tax returns of each corporation listed in paragraphs 1 through 4 above, including all schedules and attachments, for each of the past five years beginning with 1996.

17. Copies of any reports prepared by experts or consultants whom any defendant intends to call at trial or rely on at trial.

18. Copies of any reports prepared by investigators or consultants of any of the defendants.

19. Copies of any exhibits the defendants intends to offer at trial.



Conrad Houser

Attorney for the Plaintiffs

Dated: February 27, 2001

CERTIFICATE OF SERVICE

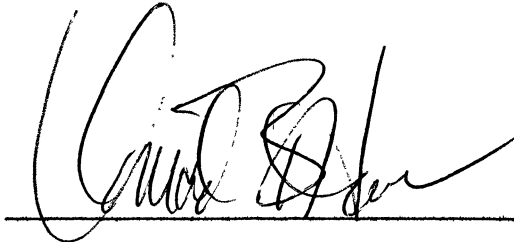
I certify that on February 27, 2001, I mailed a copy of this Request for Production of Documents by first class mail to:

Attorney Scott A. Call

700 Bank One Tower

50 West Broadway

Salt Lake City, Utah 84101-2006.

A handwritten signature in black ink, appearing to read 'Conrad B. Houser', is written over a horizontal line.

Conrad B. Houser

1 IN THE THIRD DISTRICT COURT, SALT LAKE CITY

2 SALT LAKE COUNTY, STATE OF UTAH

3 -o0o-

4 JOSE S. SALAZAR and MILDRED)
O. SALAZAR,)

5 Plaintiffs,)

Case No. 000906212

6 vs.)

MOTION TO DISMISS

7 THRIFTY NICKEL OF OREM,)
8 INC., WAND ADS OF SALT)
LAKE CITY, UTAH, SOUTHERN)
9 CROSS, INC., ROBERT L.)
CHRISTENSEN and NORMAN)
10 WILKINSON,)

(Videotape Proceedings)

11 Defendants.)

12 -o0o-

March,

13 BE IT REMEMBERED that on the 5th day of/2001,
14 commencing at the hour of 9:08 a.m., the above-entitled
15 matter came on for hearing before the HONORABLE J. DENNIS
16 FREDERICK, sitting as Judge in the above-named Court for
17 the purpose of this cause, and that the following
18 videotape proceedings were had.

19 A P P E A R A N C E S

20 For the Plaintiffs:

CONRAD B. HOUSER
Attorney at Law
136 East South Temple
Suite 1200
Salt Lake City, Utah 84111

23 For the Defendants:

SCOTT A. CALL
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Anderson & Karrenberg
50 West 300 South, #700
Salt Lake City, Utah 84101



1 to what Mr. Christensen's real involvement is. They are
2 adequately pled and we feel like this case is properly before
3 the Court and should proceed through the rest of the
4 discovery process.

5 Thank you, your Honor.

6 THE COURT: Thank you, Mr. Houser.

7 On a motion to dismiss, the issue of the equitable
8 nature of the claims asserted by the respective parties is
9 really beyond the scheme of my inquiry here, Mr. Houser.

10 From my perception of the way that the complaint is
11 alleged--alleges causes of action, it seems to me that
12 there's no question that Mr. Christensen's motion to dismiss
13 is well taken. There are insufficient allegations, in my
14 estimation, to give proper and fair notice of the claim of
15 alter ego or an intent by the plaintiffs to pierce a
16 corporate veil.

17 All that's alleged is that Mr. Christensen was an
18 owner, that he had knowledge of the contract and has--as both
19 counsel have pointed out, the sum total of the allegations
20 incident to Christensen's involvement here do not give fair
21 notice of a claim of attempt to breach corporate veil; ergo,
22 the motion to dismiss is granted for the reasons specified in
23 the supporting memoranda.

24 You prepare the appropriate order, Mr. Call.

25 MR. CALL: Thank you, your Honor.