

2004

Jimmy Zufelt v. Haste Inc. and Harry Gounaris : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Steven F. Allred; Steven W. Rupp; McKay Burton and Thurman; Attorney for Appellee.

John Martinez; Nick J. Colessides; Attorneys for Appellants.

Recommended Citation

Brief of Appellee, *Zufelt v. Haste Inc.*, No. 20041043 (Utah Court of Appeals, 2004).

https://digitalcommons.law.byu.edu/byu_ca2/5409

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

----OOOOO----

JIMMY ZUFELT, an individual,)	
)	
Plaintiff /Appellee,)	
)	
v.	)	Appellate Court No. 20041043-CA
)	
)	
HASTE, INC., a Utah Corporation, and)	
HARRY GOUNARIS, an individual,)	
)	
Defendants/ Appellants.)	

BRIEF OF APPELLEE

APPEAL FROM THE FOURTH DISTRICT COURT, UTAH COUNTY, UTAH, THE
HONORABLE FRED D. HOWARD PRESIDING

Attorneys for Defendants/Appellants
NICK J. COLESIDES (#696)
Attorney at Law
466 South 400 East, Suite 100
Salt Lake City, Utah 84111-3325
Voice: (801) 521-4441
Fax: (801) 521-4452

JOHN MARTINEZ (#4523)
2974 East St. Mary's Circle
Salt Lake City, Utah 84108
Voice: (801) 582-1386
Fax: (801) 582-7664

Attorney for Plaintiff/Appellee
Steven F. Allred (5437)
Troon Park
584 South State Street
Orem, Utah 84058
(801) 431-0718
(801) 225-3658

STEVEN W. RUPP (#2824)
Ch. 7 Bankruptcy Trustee
MCKAY BURTON & THURMAN
170 South Main Street, Suite 800
Salt Lake City, Utah 84101
(801) 521-4135
(801) 521-4452

ORAL ARGUMENT NOT REQUESTED

FILED
UTAH APPELLATE COURTS
AUG 1 - 2005

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	2
APPELLATE JURISDICTION.....	3
ISSUES PRESENTED ON APPEAL.....	3
DETERMINATIVE LAW.....	3
STATEMENT OF THE CASE.....	4-5
STATEMENT OF THE FACTS.....	5-8
SUMMARY OF ARGUMENT.....	8-10
ARGUMENT.....	10
I. THE DISTRICT COURT PROPERLY APPLIED THE DOCTRINE OF ISSUE PRECLUSION BECAUSE THERE WAS AN IDENTITY OF ISSUES AND THE ISSUES WERE COMPLETELY, FULLY AND FAIRLY LITIGATED.....	10
II GOUNARIS IS JUDICIALLY ESTOPPED FROM NOW ASSERTING THAT HE HELD AN EQUITY INTEREST IN HASTE.....	12
CONCLUSION.....	13
ADDENDUM and CERTIFICATE OF SERVICE.....	15

TABLE OF AUTHORITIES

CASES:

<i>American Interstate Mortg. Corp. v. Edwards</i> , 41 P.3d 1142, (Utah App. 2002).....	11
<i>Grynberg v. Questar Pipeline Co.</i> , 70 P.3d 1 (Utah 2003).....	3
<i>Macris & Associates, Inc., v. Neways, Inc.</i> , 16 P.3d 1214 (Utah 2000).....	9,10,11
<i>Salt Lake City V. Silver Fork Pipeline</i> , 913 P.2d 731, 734 (Utah 1995).....	10, 12
<i>Schaer v. State By & Through Utah Dept.</i> , 657 P.2d 1337, 108 (Utah 1983).....	3

STATUTES AND RULES:

U.C.A.) Section 78-2a-3(2)(j).....	3
U.C.A. Section 78-2-2(4).....	3
Utah Rules of Civil Procedure Rule 24(a)(11)	15

APPELLATE JURISDICTION

Utah Code Annotated (hereinafter U.C.A.) Section 78-2a-3(2)(j) gives this Court jurisdiction pursuant to the Order of the Supreme Court of the State of Utah dated June 22, 2004, transferring this case from the Supreme Court to the Utah Court of Appeals pursuant to U.C.A. Section 78-2-2(4).

ISSUES PRESENTED ON APPEAL

1. Whether the District Court properly concluded that Defendants were collaterally estopped (issue preclusion) from re-litigating Defendant's ownership interest in Haste, Inc. (Hereinafter "Haste").

STANDARD OF REVIEW

A district court's application of res judicata presents a question of law, which the appellate court reviews for correctness. *Grynberg v. Questar Pipeline Co.*, 70 P.3d 1 (Utah 2003).

DETERMINATIVE LAW

1. Application of Collateral Estoppel (Issue Preclusion)

- *Macris & Associates, Inc.*, v. Neways, Inc., 16 P.3d 1214 (Utah 2000)

- *Grynberg v. Questar Pipeline Co.*, 70 P.3d 1 (Utah 2003)

- *Schaer v. State By & Through Utah Dept.*, 657 P.2d 1337, 108 (Utah 1983).

- *American Interstate Mortg. Corp.* v. Edwards, 41 P.3d 1142, (Utah App. 2002).

STATEMENT OF THE CASE

Nature of the Case. The nature of the case is a long and protracted history of litigation between the parties concerning a fraudulent conveyance from one Defendant to the other to the Plaintiff's detriment.

Course of Proceedings. This action was precipitated by the filing of a complaint by Plaintiff to recover the proceeds to a conveyance from Defendant Haste to Defendant Gounaris. Because Gounaris was not originally named as a party to the Complaint, the Complaint was amended to name Gounaris as a party. At issue is two promissory notes (hereinafter "Notes") executed by Haste and Haste's principal, Steven Kallinikos (hereinafter "Kallinikos") in conjunction with the sale of Haste's business. The Notes are the only remaining asset of Haste and the only remaining asset available to satisfy Plaintiff's claim against Haste and Kallinikos. When Kallinikos filed for protection under Chapter 7 of the United States Bankruptcy Code, Zufelt's only recourse was against Haste.

Defendant Gounaris was sued by the bankruptcy trustee (hereinafter "Trustee") appointed in the Kallinikos bankruptcy case. The nature of the suit by the Trustee was to recover as a fraudulent conveyance the assignment of said Notes by Kallinikos to Gounaris. The assignment of the Notes by Kallinikos to Gounaris is the gist of the dispute between Zufelt and Haste.¹

¹ The Bankruptcy Court's detailed and voluminous Findings of Fact and Conclusions of Law (hereinafter "Findings") are attached to Appellant's Brief as Exhibit 4

Disposition Below. Subsequent to the entry of judgment against Defendants in the Bankruptcy Court, Zufelt filed his Motion to Strike or Dismiss, or Enter Judgment for Lack of Standing. (Hereinafter “Motion”). The District Court granted Zufelt’s Motion after consideration of the Findings entered by the Bankruptcy Court against the Defendants.² The gist of Zufelt’s Motion was that the Findings precluded Defendants from raising any defenses to Zufelt’s claims inasmuch as Gounaris was not a shareholder in Haste. The District Court found that Gounaris lacked standing (i.e., only the Trustee could assert a position for Haste) and struck Defendant’s pleadings. The District Court then granted Zufelt’s Motion for Summary Judgment.³

STATEMENT OF THE FACTS

1. On or about March 30, 1998, Haste, Inc., (hereinafter “Haste”) through its principal and President, Steven Kallinikos, (hereinafter “Kallinikos”) personally executed a Lease Agreement (hereinafter “Agreement”) with World Plaza, LLC, (hereinafter “World”) of which Plaintiff was a member. (Appellant’s Brief, Statement of Facts, Paragraph 9).

2. As part of the Agreement, Kallinikos and Zufelt negotiated tenant improvements for the lease space having an agreed value of \$19,520. See Affidavit of Jimmy Zufelt (hereinafter “Zufelt Affidavit”) attached hereto as Exhibit 1.

² The Defendants failed to appeal the judgment of the Bankruptcy Court.

³ Defendants appear not to appeal this portion of the District Court’s Ruling pertaining to the Motion.

3. Haste and/or Kallinikos abandoned the leased premises to Plaintiff on or about June, 1999. (Appellant's Brief, Statement of Facts, Paragraph 14).

4. The Agreement was personally guaranteed by Kallinikos. (Appellant's Brief, Statement of Facts, Paragraph 11).

5. Defendant, Harry Gounaris, (hereinafter "Gounaris") was a 50% shareholder, (500 shares) officer and director of Haste. (Defendant's Responses to Plaintiff's First Request for Admission, Responses to Request No.s 11-13 and Defendant's Response to Plaintiff's First Set of Interrogatories, Response to Interrogatory No. 9, attached hereto as Exhibit 2).

6. Gounaris was also a creditor of Kallinikos/Haste having loaned Kallinikos the sum of \$10,000 in May, 1999 and \$10,000 in June, 1999. (Defendant's Response to Plaintiff's First Set of Interrogatories, Response to Interrogatory No. 9(f), attached hereto as Exhibit 2).

7. Kallinikos made only three (3) payments on the Note plus he was given a credit in the respective amounts of \$400, \$200 and \$300 and \$1600, on March 13, June 21, June 21, 2000, and March 13 respectively. See Zufelt Affidavit. (Exhibit 1).

8. Haste previously owned a restaurant known as Burger Supreme located at 1796 North University Parkway. (Appellant's Brief, Statement of Facts, Paragraph 3).

9. On or about November, 1997, Haste sold Burger Supreme, including an assignment of its lease, all its assets and equipment, on contract to Mr. Richard Nuttall.

(Appellant's Brief, Statement of Facts, Paragraph 3).

10. Haste received (2) promissory notes from Nuttall dated November 1, 1997, (hereinafter collectively referred to as the "Notes") in the amounts of \$15,000 (hereinafter "the small Note") and \$72,000 (hereinafter "the large Note"). (Appellant's Brief, Statement of Facts, Paragraph 3).

11. On February 25, 2000, Kallinikos, as President of Haste and in his individual capacity, allegedly assigned the Notes to Gounaris by endorsing the same. (Appellant's Brief, Statement of Facts, Paragraph 25).

12. Nuttall first received instructions and notice of a change of the payee from Kallinikos on or about September 15, 2000, and of the assignment of the Notes from Kallinikos to Gounaris on or about December 1, 2000. See Nuttall Affidavit. (Exhibit 3) hereto.

13. Kallinikos filed for relief under Chapter 7 of the United States Bankruptcy Code on February 13, 2001. (Appellant's Brief, Statement of Facts, Paragraph 26).

14. On June 18, 2001, the Trustee of Kallinikos' bankruptcy case initiated an adversary proceeding in which he sought to avoid transfer of the Notes from Kallinikos to Gounaris. (Appellant's Brief, Statement of Facts, Paragraph 27 and Appellant's Brief, Exhibit 4, Findings of Fact, pp. 1-2).

15. On June 1, 2004, Zufelt filed a Motion to Strike or Dismiss or for Entry

of Judgment. (Hereinafter “Motion”). R 824 (Motion); R 851 (supporting memorandum).

16. On September 27, 2004, the District Court granted Zufelt’s Motion. (Appellant’s Brief, Exhibit 1).

SUMMARY OF ARGUMENT

The District Court properly applied the doctrine of collateral estoppel (issue preclusion) to Zufelt’s Motion. The application of this doctrine reflects the refusal of courts to tolerate pointless litigation and is based on the premise that the proper administration of justice is best served by limiting parties to one fair trial of an issue or cause.⁴ Issue preclusion has four elements. They are: (1) The identity of issues challenged in the previous action; (2) a decision on the issue(s) on the merits pursuant to a final judgment; (3) the issue must have been fully, fairly and competently litigated (4) the party against whom collateral estoppel is sought must have been either a party or privy to a party in the previous action. *Macris & Associates, Inc., v. Neways, Inc.*, 16 P.3d 1214, 1222 (Utah 2000).⁵

In determining whether claims are identical for purposes of the application of collateral estoppel, (the second branch of res judicata) an appellate court focuses on

⁴ Even the most cursory review of the file and record in this case reveals the litigiousness, futility, costliness and protracted nature of this litigation. No motion or proposed order went uncontested in this litigation.

⁵ Appellants only contest the first and third issues.

“whether the two causes of action rest on a different state of facts and evidence of a different kind or character is necessary to sustain the two causes of action.” *Macris*, at p. 1221. Clearly the action in the Bankruptcy Court involved the identical facts, i.e., an avoidance action of the assignment of the same Notes which Zufelt likewise sought to avoid in the state court action. Moreover, the evidence presented in both the Bankruptcy Court Action and the state court action focused on whether Gounaris was an owner of Haste stock or whether Gounaris had made a loan to Kallinikos.⁶

Defendants are or should be judicially estopped from seeking judicial relief by offering statements inconsistent with their own sworn statements in a prior judicial proceeding. See *Salt Lake City V. Silver Fork Pipeline*, 913 P.2d 731, 734 (Utah 1995). Kallinikos swore in his affidavit (Appellant’s Brief, Exhibit 2, pp. 4-5) that Gounaris had “loaned” him \$20,000. Gounaris swore in his affidavit that he “loaned substantial sums to the company...” (Appellant’s Brief, Exhibit 3, p. 2, paragraph 4). In the trial before the Bankruptcy Court, Kallinikos and Gounaris testified that the “transfer of the \$20,000 from the Defendant to the Debtor was not a loan, but instead represented payment on the sale of the Debtor’s interests in the Notes to Defendant.” (Appellant’s Brief, Exhibit 4, p. 3, paragraph 13).

⁶ The Bankruptcy Court found that Gounaris had made a loan and that Gounaris’s testimony was conflicting and not forthcoming with respect to his stock ownership or the transfer of the Notes. (Appellant’s Brief, Exhibit 4, pp. 5-6).

ARGUMENT

1. **THE DISTRICT COURT PROPERLY APPLIED THE DOCTRINE OF ISSUE PRECLUSION BECAUSE THERE WAS AN IDENTITY OF ISSUES AND THE ISSUES WERE COMPLETELY, FULLY AND FAIRLY LITIGATED.**

The District Court utilized the correct and appropriate analysis in finding and concluding that Defendants have no standing and striking the pleadings. In so doing the District Court utilized the doctrine of collateral estoppel. The Ruling of the District Court (Appellant's Brief, Exhibit 1) reflects ample consideration and proper application of the four part test enunciated in *Macris*. However, Appellants only contest the first and third elements of said test.

Appellant's first argument is that the issue of Gounaris' ownership interest in Haste was not "identical" to any issue raised in the Bankruptcy Court (Appellant's Brief, p. 13). This test is known as the "identity of facts or evidence test." *Macris*, at p. 1221 citing to 46 Am. Jur.2d Judgments Section 534 (1994). The Utah Supreme Court, for purposes of the identity of facts or evidence test has focused **first** on whether the two causes of action rest of a different state of facts and **second** on whether evidence of a different kind or character is necessary to sustain the two causes of action. *See Macris* at 1221.

It is or should be unequivocally clear that both the Bankruptcy Court action and the state court action rested or hinged upon avoidance of the transfer or assignment of the same Notes. Second, the nature of the action in the Bankruptcy Court was a fraudulent or

preferential transfer under either the Utah Uniform Fraudulent Transfer Act (U.C.A. Section 25-6-5 and 25-6-6(2) or the Bankruptcy Code. The nature of the evidence in Zufelt's Complaint was similarly a fraudulent conveyance within the meaning of U.C.A. Section 25-1-1. (Amended Complaint, Fourth Cause of Action).

Subsequent to the *Macris* opinion the Utah Court of Appeals decided the case of *American Interstate Mortg. Corp. v. Edwards*, 41 P.3d 1142, (Utah App. 2002). In *American* the Court stated "The Macris court also stated that 'if an issue is actually raised by proper pleadings and treated as an issue in a case, it is conclusively determined by the first judgment.' *American*, at p. 1151. The stock ownership issue was actually raised by the pleadings in the Bankruptcy Court. (The Bankruptcy Court's Finding No. 23 indicates that Gounaris was given the opportunity to prove his ownership in Haste but failed to do so. See Findings No. 10-16 wherein the Bankruptcy Court found Gounaris' testimony self serving and lacking credibility). The stock ownership issue was treated as an issue in the Bankruptcy case.⁷ The stock ownership issue was conclusively determined by the first judgment in the Bankruptcy Court.

Appellant's second argument is that the issue of Gounaris' stock ownership in Haste was not fully and fairly litigated. (Appellant's Brief, p. 16). It is clear that the Bankruptcy Court heard and considered ample testimony from both Defendants

⁷ Appellants concede in their Reply Memorandum in Support of Defendant's Motion to Dismiss Plaintiff's Second Cause of Action as Stated in Plaintiff's Second Amended Complaint that (Exhibit 4 hereto) that Plaintiff's second cause of action has been fully adjudicated in the bankruptcy Court.

concerning the characterization of their interests as either loans or equitable interests. See Findings, (Appellant's Brief, Exhibit 4) No. 3, (finding that Gounaris "was" at one time a stock holder in Haste) No. 8, (Defendant owned a 50% interest in Haste—past tense) No.s 10-16, (Defendant gave inconsistent and conflicting testimony regarding the transfer of the Notes, waffling between characterizing the transfers as loans or interests) No. 24, (the Debtor only had a 50% interest in Haste) No. 39, (no equity existed in Haste, Inc., for either the Debtor or the Defendant). Finally, the Bankruptcy Court found that Gounaris' interest, if any, was that of a creditor.⁸

II GOUNARIS IS JUDICIALLY ESTOPPED FROM NOW ASSERTING THAT HE HELD AN EQUITY INTEREST IN HASTE

The doctrine of judicial estoppel should be applied to prevent Defendants from benefitting by their unscrupulous behavior and testimony both in the state court action and before the Bankruptcy Court. "The principle of judicial estoppel prevents a party [Gounaris] from seeking judicial relief by offering statement[s] inconsistent with its own sworn statement[s] in a prior judicial proceeding." *Salt Lake City v. Silver Fork Pipeline*, 913 P.2d 731, 733 (Utah 1995). It is clear that Defendants proffered sworn testimony in their affidavits (Appellant's Brief, Exhibits 2-3) in the state court action which was inconsistent with their testimony before the Bankruptcy Court. (Appellant's Brief, Exhibit 4, Findings, 10-5, 48, and Conclusions of Law) The Bankruptcy Court was offended by

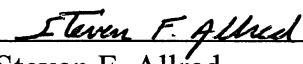
⁸ The Bankruptcy Court repeatedly refers to Gounaris' interest as either a "loan" or "debt" in its conclusions. In deed one of the elements of a preferential transfer is "antecedent debt."

the testimony of Defendants and so stated labeling it “self serving.” (Appellant’s Brief, Exhibit 4, Conclusions of Law, p. 11, second paragraph).

CONCLUSION

The District Court’s application of the doctrine of collateral estoppel was properly applied to the decision of the Bankruptcy Court with respect to Defendant’s transfer of the Notes. There is clearly an identity of issues and evidence. Defendants do not dispute the remaining elements of the identity of interests and evidence test. Furthermore, the Defendants should be judicially estopped through this appeal from benefitting by their actions in providing, under oath, inconsistent and self-serving testimony.

DATED this 1 day of August, 2005.

LAW OFFICE OF STEVEN F. ALLRED, P.C.


Steven F. Allred
Attorney for Appellee

ADDENDUM

Exhibit 1: Affidavit of Jimmy L. Zufelt

Exhibit 2: Defendant's Responses to Plaintiff's First Request for Admissions

Exhibit 3: Affidavit of Richard L. Nuttall

Exhibit 4: Defendant's Reply Memorandum in Support of Defendants' Motion to

Dismiss Plaintiff's Second Cause of Action as Stated in Plaintiff's Second

Amended Complaint

CERTIFICATE OF SERVICE

I, Steven F. Allred, certify that on August 1, 2005, true and correct copies of the foregoing **BRIEF OF APPELLEE** were filed with the Utah Court of Appeals and served via first-class mail, postage prepaid, to Appellant's counsel, Nick Colesides and John Martinez, at the following addresses:

Attorneys for Defendants/Appellants

NICK J. COLESIDES (#696)

Attorney at Law

466 South 400 East, Suite 100

Salt Lake City, Utah 84111-3325

Voice: (801) 521-4441

Fax: (801) 521-4452

JOHN MARTINEZ (#4523)

2974 East St. Mary's Circle

Salt Lake City, Utah 84108

Voice: (801) 582-1386

Fax: (801) 582-7664

STEVEN W. RUPP (#2824)

Ch. 7 Bankruptcy Trustee

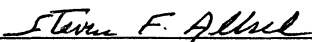
MCKAY BURTON & THURMAN

170 South Main Street, Suite 800

Salt Lake City, Utah 84101

(801) 521-4135

LAW OFFICE OF STEVEN F. ALLRED, P.C.



Steven F. Allred
Attorney for Appellee

EXHIBIT 1

Steven F. Allred (Bar No.5437)
Law Office of Steven F. Allred, P.C.
Attorney for Plaintiff
Troon Park, 584 S. State Street
Orem, Utah 84058
Telephone: (801) 431-0718

FILE COPY

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

JIMMY ZUFELT, an individual,	)	AFFIDAVIT OF JIMMY L. ZUFELT
)	
Plaintiff,	)	Civil No. 000403084
)	
v.)	
)	
HASTE, INC.; a Utah corporation; and	)	Judge Taylor
HARRY GOUNARIS, an individual,)	
)	
Defendant.)	

STATE OF UTAH)
 :ss
COUNTY OF UTAH)

JIMMY L. ZUFELT, being first duly sworn upon his oath states and deposes as follows:

1. I am of age and am competent to testify in a court of law if necessary.
2. I am the Plaintiff in the above captioned matter.
3. On March 30, 1998, I as the managing member on behalf of World Plaza LLC, entered into a Lease (Exhibit "A" to the Memorandum of Points and Authorities in Support of Motion for Summary Judgment hereinafter "Memorandum") with Haste, Inc. (hereinafter "Haste"). My negotiations were conducted with Steven Kallinikos, President of Haste. The lease term was to

commence on July 1, 1998.

4. Haste did not actually occupy the lease premises nor begin making payments until July 1, 1998. See Lease, pg. 1, paragraph 3, TERM.

5. On April 10, 1998, Haste and I agreed to additional tenant improvements to the Haste space in the amount of \$19,520.00. A copy of the agreement relating to tenant improvements is attached hereto as Exhibit "A."

6. Haste occupied the lease space from July 1, 1998 until about April 30, 1999. Haste struggled with its lease payments through this time period.

7. About June 24, 1999, I instructed my attorney to write a demand letter to Haste which he did, a copy of which is attached hereto as Exhibit "B." I myself wrote Haste a demand letter dated July 19, 1999, also attached hereto as Exhibit "B.":

8. About this time I had many conversations with Kallinikos in which I demanded payment and threatened to sue if my demands were not met.

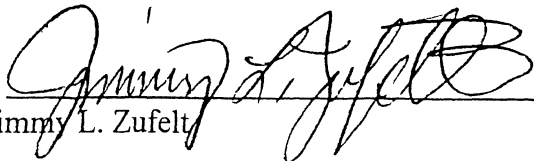
9. In the spring of 1999, I located a new tenant for the space--New West Funding. New tenant improvements took place between May-September, 1999 for the new tenant. New West Funding entered a new lease with Zufelt beginning September 1, 1999.

10. As a result of these discussions, I and Kallinikos negotiated a Promissory note for the amount of the tenant improvements and unpaid rent. The Note, dated October 19, 1999 (Exhibit "B" to Zufelt's Memorandum) was executed as a compromise of Kallinikos personal guarantee and Haste's obligations to Plaintiff under the Lease

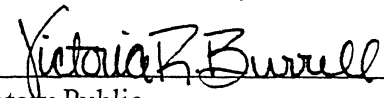
11. Haste made only three payments on the Promissory Note in the amount of \$900.00 and was given a credit of \$1600.00 for a total of \$2500. See Exhibit "C" attached.

12. I was not aware of the assignment of the Nuttall notes by Kallinikos to Gounaris until my attorney became aware of the same. Furthermore, I was never advised by Kallinikos or Haste of the assignment of the Nuttall notes until I talked to Nuttall about the same.

DATED this 10 day of January, 2002.


Jimmy L. Zufelt

SUBSCRIBED AND SWORN to before me this 10th day of January, 2002.


Notary Public

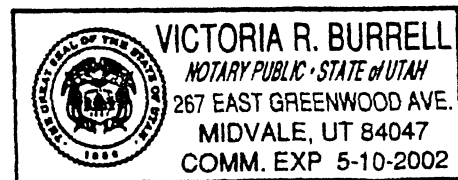


Exhibit "A"

Store 14. Space

- floor covering by owner, base CREDIT - (7333.00)
- all paint by owner CREDIT - (1000.00)
- 1290.50 (3.24) ✓ - laminate cabinets, w/gate, tops (no gate by counter) - 4660.00
- ✓ - Electrical (sign, track litz incl. #1300.00) - 4115.00
- ✓ - ESCO 5 litz credit - (500.00)
- ✓ - Plumbing - 8625.00
- 00 (32) ✓ - Saw cut, replace CONC. 53' - 500.00
- 573 (50) ✓ - framing, drywall - 900.00
- ✓ - black grids - incl.
- ✓ - permit - incl.
- ✓ - HVAC (litz #500 / 2 supply 300) ^{extra} _{no} _{working} - incl. / 500 / ¹⁰⁰ _{working}
- ✓ - Finish, doors extra - 400.00
- Hardware extra - 100.00

\$16,767.00

fee - 3253.00

\$19,520.00

Ⓢ

Drafting - included

Bellini

Ameyfelt 4/10/98

Exhibit “B”

L A W O F F I C E O F
S T E V E N F . A L L R E D
A PROFESSIONAL CORPORATION

June 24, 1999

Haste, Inc.
c/o Steve Kallinikos
1085 West 1050 North
Mapleton, Utah 84664

Ticon Park 584 South State Street
Orem Utah 84058
(801) 431-0718 Fax (801) 225-3658
Licensed in Utah & Arizona

Re: World Plaza, LLC

Dear Steve:

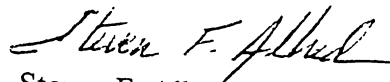
I represent World Plaza LLC. (hereinafter "World") Your company, Haste Inc., (hereinafter "Haste") and you personally signed a Lease agreement (hereinafter "Agreement") with World on March 30, 1998. The lease term under the Agreement is for five (5) years. It is my understanding that you have now abandoned the leasehold premises located in American Fork.

Pursuant to the Agreement you are in default. Abandonment of the leasehold premises constitutes a breach. (Agreement, paragraphs 15 & 21) As you are or should be aware, abandonment does not terminate your obligations to pay rent under the Agreement. Failure to pay rent is also a breach of the Agreement. I have enclosed for your review a schedule of all delinquent invoices. According to the schedule Haste has not paid rent since February.

Demand is hereby made for payment in the amount of \$6,774.99 plus \$100.00 legal costs plus CAM fees for May, June and July in the amount of \$612.51 (for a total payment of \$7,487.50) on or before July 10, 1999. In the event that payment is not timely received, my client has instructed me to initiate whatever legal proceedings are necessary to compel the same. This may include an action against you personally on your personal guarantee. Furthermore, if payment is not received by July 10, under the Agreement World is further entitled to 10% late fees and interest on invoice no.'s 228, 23 and 31 in the amount of \$489.99 and \$57.00 respectively. (Agreement, paragraphs 21 & 25)

Accordingly, the total amount due and owing if paid by July 10, 1999 is \$7487.50 If paid after July 10, 1999, the amount due and owing is \$7,984.49. Please pay this amount immediately to avoid further legal costs from accruing.

Sincerely,


Steven F. Allred

cc. Jimmy Zufelt

(8)

Adv. 7/20/99 @ 9:00
to Nick, Provo to Steve

July 19, 1999

Haste, Inc.
c/o Steve Kallinikos
1085 West 1050 North
Mapleton, Utah 84664

RE: World Plaza, LLC

Dear Steve,

Al Thomas with Steve Black Realty has presented me with a three year lease on your space in American Fork. Listed below is an outline of my losses with this new lease and the past due rents totaled.

Rent Loss:	\$ 4,900.00 (\$15/sf.)
Real Estate Commission	\$ 3,375.00
Build Out	\$ 11,200.00 (\$8/sf. allowance)
Past Due	\$ 7,487.50 (w/out late charges)
August Rent	\$ 1,837.50


Total \$ 28,800.00 + 5 mo. int. \$1200 - \$30,000.00

I am willing to settle for \$25,000.00 in a lumps sum if paid in full by August 1, 1999. I will then cancel your lease agreement and deal only with the new tenant at my risk.

Please let me know your response by July 26, 1999. If not, I will pursue vigorously to recover all monies due, including attorney fees, late charges, interest, past due rents, and all future rents due.

I certainly hope you can see I'm trying to help you with this offer. I await your response as outlined.

Sincerely,



Jimmy Zufelt

Exhibit “C”

Jimmy L. Zufelt
 1849 North 1120 West
 Provo, UT 84604
 801-377-6655
 801-377-3838 fax

DATE
8/31/2000

TO:
Steven Kallinikos Golden Burger 3368 N. University Ave. Provo, UT 84604

AMOUNT DUE	AMOUNT ENC.
\$2,900.00	

DATE	TRANSACTION			AMOUNT	BALANCE
11/30/1999	Balance forward				0.00
12/27/1999	INV #202			1,100.00	1,100.00
02/04/2000	INV #209			1,100.00	2,200.00
03/13/2000	INV #213			1,100.00	3,300.00
03/13/2000	CREDMEM #214			-1,600.00	1,700.00
03/21/2000	PMT #1603			-400.00	1,300.00
04/01/2000	INV #221			1,100.00	2,400.00
06/01/2000	PMT			-200.00	2,200.00
06/01/2000	PMT			-300.00	1,900.00
07/25/2000	INV #230			500.00	2,400.00
08/23/2000	INV #234			500.00	2,900.00
500 paid in full					
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
500.00	500.00	0.00	0.00	1,900.00	\$2,900.00

EXHIBIT 2

NICK J COLESSIDES (# 696)
Attorney at Law
466 South 400 East, # 100
Salt Lake City, Utah 84111-3325
Tele: (801) 521-4441

Attorney for defendants
Haste, Inc., and Harry Gounaris

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

JIMMY ZUFELT,	:	
an individual,	:	
	:	DEFENDANTS' RESPONSES TO
Plaintiff,	:	PLAINTIFF'S FIRST REQUEST
	:	FOR ADMISSIONS
	:	
v.	:	
	:	
HASTE, INC., a Utah	:	
corporation, and	:	Case No.: 00 04 03084
HARRY GOUNARIS	:	
	:	
Defendant,	:	Judge: Taylor

Defendants above named, Haste, Inc., ("Haste"), and Harry Gounaris (Gounaris) by and through their attorney of record, Nick J. Colessides, responds to plaintiff's first requests for admissions to defendants as follows:

REQUEST NO.1: Admit that Haste, Inc., was in default under the payment terms of the Lease Agreement with Haste dated March 30, 1998.

RESPONSE: Deny.

REQUEST NO.2: Admit that Haste, Inc., abandoned the

lease premises on or about June, 1999.

RESPONSE: Deny.

REQUEST NO.3: Admit that the promissory note dated October 19, 1999, executed by Steven Kallinikos to Plaintiff, was an attempt by Haste to compromise Haste's claim to the Plaintiff.

RESPONSE: Deny.

REQUEST NO.4: Admit that the promissory note dated October 19, 1999, executed by Steven Kallinikos to Plaintiff, does not specifically state nor purport to release Haste from its obligations under the lease agreement with Plaintiff.

RESPONSE: Deny.

REQUEST NO.5: Admit that Defendants have no document which acts or purports to act as a novation of Haste's obligations under the Lease Agreement.

RESPONSE: Deny.

REQUEST NO.6: Admit that Gounaris first gave notice to Nuttalls of the attempted assignment by letter dated November 27, 2000, a copy of which is attached hereto as Exhibit " A."

RESPONSE: Deny.

REQUEST NO.7: Admit that at the time of the purported

assignment by Haste, both Haste and Gounaris had knowledge of either the promissory note executed by Kallinikos to Plaintiff or Plaintiffs claim against Haste under the Lease Agreement.

RESPONSE: Deny.

REQUEST NO.8: Admit that Nuttalls , despite the purported assignment of the large note from Haste to Gounaris in February 2000, continued to make payments in the original and same manner as prescribed by the large note from the first payment through December, 2000.

RESPONSE: Deny.

REQUEST NO.9: Admit that the face amount of the consideration allegedly paid by Gounaris to Haste for assignment of the large note is one-sixth (1/6) the face value of the note.

RESPONSE: Deny.

REQUEST NO.10: Admit that Gounaris paid actual tangible, (as opposed to say an offset of claims for example) good and valuable consideration in hand to Kallinikos for the assignment of the large note.

RESPONSE: Admits the first part, denies the second part.

REQUEST NO. 11: Admit that Gounaris was a shareholder

of Haste.

RESPONSE: Admit.

REQUEST NO.12: Admit that Gounaris was an officer in Haste.

RESPONSE: Admit.

REQUEST NO.13: Admit that Gounaris was a director of Haste.

RESPONSE: Admit.

REQUEST NO.14: Admit that at all times, Kallinikos was the President of Haste.

RESPONSE: Admit.

REQUEST No. 15: Admit that Haste is and has always been in good standing with the Division of Corporations.

RESPONSE: Admit.

DATED this 2nd day of April, 2001.


NICK J. COLESSIDES

CERTIFICATE OF SERVICE

Filed the original of the foregoing to:

DISTRICT COURT CLERK
FOURTH JUDICIAL DISTRICT
125 NORTH 100 WEST
PROVO UT 84601-2849

and served a copy thereof to the attorney for plaintiff
addressed as follows:

MR STEVEN F. ALLRED ESQ
ATTORNEY AT LAW
TROON PARK
584 SOUTH STATE
OREM UTAH 84058

_____ via hand delivery
_____ via fax: 801.
_____ via first class mail, postage prepaid

this 2nd day of April, 2001.

A handwritten signature in black ink, appearing to read "Michael Coleccum", written over a horizontal line.

NICK J. COLESSIDES (# 696)
Attorney at Law
466 South 400 East, # 100
Salt Lake City, Utah 84111-3325
Tel: (801) 521-4441

Attorney for defendants
Haste, Inc. and Harry Gounaris

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

JIMMY ZUFELT,	)	DEFENDANTS' RESPONSE TO
An Individual,	)	PLAINTIFF'S FIRST SET OF
Plaintiff,	)	INTERROGATORIES
	)	AND
-v-	)	DEFENDANTS' RESPONSE TO
	)	PLAINTIFF'S REQUEST FOR
HASTE, INC., a Utah	)	PRODUCTION OF DOCUMENTS
corporation, and)	
HARRY GOUNARIS,	)	CASE NO. 000403084
)	
Defendants.	)	JUDGE: TAYLOR

Defendants above named, HASTE, INC. ("Haste") and Harry Gounaris (Gounaris) by and through their attorney of record, Nick J. Colessides, in accordance with Rules 33 and 34, Utah Rules of Civil Procedure, herewith responds to the Plaintiff's First Set of Interrogatories and Request for Production of Documents to Defendant as follows:

PRELIMINARY STATEMENT

The following responses are made solely for the purpose of and in relation to this specific action. Each response is made subject to and incorporates hereby the general objections set forth below, and all appropriate objections (including, but not limited to, objections as to competency, relevancy, materiality, propriety, admissibility and privilege), which would require the exclusion of any statement, fact or document contained herein if the document was introduced before a party/witness present and testifying in a court of law or at a deposition. Also, objections and grounds are, therefore, reserved and preserved by this statement regarding the same, and may be interposed at time of trial and/or such depositions.

GENERAL OBJECTIONS

1. Defendants above named object to the interrogatories and requests in their entirety and to each individual request and interrogatory to the extent that they are vague, ambiguous, overbroad, uncertain, and burdensome.

2. Defendants further object to the requests and interrogatories to the extent that such requests and interrogatories:

a. Impose any obligation to provide a response for or on behalf of any person or entity other than the party upon whom the interrogatories and requests have been served;

b. Require information other than that in the current possession, custody or control of Defendant; or

c. Require information protected by the attorney/client or work product privileges afforded under the United States Constitution, the Utah Constitution, and the Utah Rules of Civil Procedure and Utah Rules of Evidence that were prepared in anticipation of litigation or for trial that otherwise constitute attorney work product, or are otherwise immune from discovery. Inadvertent production of any such information shall not constitute a waiver of any privilege or any ground for objecting to discovery with respect to such information, or with respect to the subject matter thereof, or the information contained therein, and shall not waive the right of defendant to object to the use of any such information contained therein during any subsequent proceeding herein.

3. Defendants further object to the requests and interrogatories in their entirety to the extent that each individual request and interrogatory seeks information and documents which are of negligible, if any, relevance. Such limited and disputed relevance is far outweighed and not justified by the substantial time, expense and effort which defendant would have to expend to investigate, secure, analyze and/or compile such documents and/or responses. Moreover and additionally, Defendants object to the requests and interrogatories on the grounds that they are unreasonably burdensome, overbroad, harassing and oppressive.

4. This litigation was only recently commenced, and discovery is still being conducted, therefore, defendants further object to the requests as premature, and defendants expressly reserve the right to supplement these responses if additional information or documents are discovered and/or the significance or interpretation of such

information or documents should change and impact these responses as a result of rulings or other discovery in this matter. Without waiving any of the foregoing objections, Defendants respond to Plaintiff's Interrogatories as follows:

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: With respect to your denial of each of Plaintiff's allegations in the Complaint, state the factual basis for such denial.

RESPONSE: See Answer to Complaint.

INTERROGATORY NO. 2: With respect to each affirmative defense in Defendants' Answers to Plaintiff's Complaint, state the factual basis for assertion of each affirmative defense.

RESPONSE: See Answer to Complaint, Responses to Plaintiff's Request for Production of Documents, and Responses to Plaintiff's First Request for Admissions.

INTERROGATORY NO. 3: With respect to each denial to Defendants' Answers to Plaintiff's First Requests for Admission to Defendants, state the factual basis for each such denial.

RESPONSE: See Answer to Complaint and Response to Plaintiff's Request for Production of Documents.

INTERROGATORY NO. 4. Please state the exact date that Haste abandoned the premises under that certain Lease Agreement dated March 30, 1998, and the reason(s) for such abandonment.

RESPONSE: Harry Gounaris has no personal knowledge.

INTERROGATORY NO. 5. Please describe the relationship between Gounaris and Haste, including any job description, title, office or position held and the date such title, office or position was accepted or relinquished.

RESPONSE: Defendant Harry Gounaris was a shareholder of Haste, Inc. from its inception. Defendant Gounaris possibly may have been elected as an officer and director of the corporation.

INTERROGATORY NO. 6. Please describe the relationship between Steven Kallinikos and Haste, including any job description, title, office or position held and the date such title, office or position was accepted or relinquished.

RESPONSE: Steven Kallinikos has been a shareholder, director, president and manager of Haste.

INTERROGATORY NO. 7. Please describe the relationship between Gounaris and Kallinikos as it relates to Haste, including any and all duties and or responsibilities shared.

RESPONSE: Gounaris and Kallinikos were co-shareholders of Haste which owned a restaurant doing business under the name Burgers Supreme in Provo, Utah, until the sale of its business assets some time in 1997.

INTERROGATORY NO. 8. Please state whether Gounaris was a shareholder or creditor of Haste and if so, please describe the following:

- a. the date that Gounaris became a shareholder or creditor;
- b. the number of shares acquired or the amount of the loan;
- c. the terms of the indebtedness, including any security thereto;
- d. whether such shares or indebtedness were documented, and if so,

how; and

- e. the identity of the transferor or lender.

RESPONSE:

a. Approximately 15 years ago Gounaris became a shareholder of Haste, Inc. He became a creditor of the \$72,000 Nuttalls note to Haste at the time of the sale of the business assets to the Nuttalls. He became the sole creditor of the \$72,000 Nuttalls note to Haste on February 25, 2000.

b. 500 shares or 50% of all outstanding shares of the corporation from its inception. The Nuttalls \$72,000 note to Haste.

c. See \$72,000 Note from Nuttalls to Haste.

d. Yes, shares of Haste issued to Gounaris. \$72,000 note from Nuttalls to Haste subsequently assigned to Gounaris.

e. Shares originally issued by Haste to Goumaris. \$72,000 Nuttalls note to Haste.

INTERROGATORY NO. 9: With respect to the purported assignments of the proceeds due and payable under the small and large Promissory Notes from Richard and Connie Nuttall to the parties, please describe the following:

- a. the actual date of the assignments;
- b. the location where the assignments were executed;
- c. the parties present to witness execution of the assignments;
- d. how the amount of consideration for the assignments was determined.
- e. the reason for the assignments.
- f. the actual consideration paid pursuant to the assignments, whether by check, cash or money order, etc.;
- g. the significance, meaning or identity of the crossed out amount on the small note;
- h. the source of the consideration paid by Goumaris;
- i. the entity of financial institution from which the consideration was obtained.
- k. the first date and the manner in which the Nuttalls were advised of said assignments; and
- l. if actual notice of the assignments was delayed, the reason for the delay.

RESPONSE:

- a. February 25, 2000.
- b. Provo, Utah.
- c. No knowledge of any witness.
- d. Negotiation based upon monies delivered to Kallinikos in May and June, 1999.
- e. Steven Kallinikos needed cash since early 1999.
- f. Cash payments by Gounaris to Kallinikos of \$10,000 in May, 1999 and \$10,000 in June, 1999.
- g. Apparent typographical error cross out.
- h. Gounaris home equity line of credit from National Bank of Greece.
- i. National Bank of Greece, Chicago, Illinois.
- k. Telephone call to Richard Nuttall prior to November 27, 2000.
- l. Kallinikos was to follow up with Richard Nuttall to advise him of assignment of notes to Gounaris.

INTERROGATORY NO. 10: Please account for the amounts received by the Defendants from the Nuttalls under the Notes.

RESPONSE: I do not know.

INTERROGATORY NO. 11. Please identify the names, titles, addresses and telephone numbers of persons expected to testify in this matter including a brief summary of their testimony.

RESPONSE: Harry Gounaris
474 Lillian Lane
Des Plaines, IL
Phone (847) 378-8891
Shareholder

Harry Gounaris will testify as to ownership in Haste, monies delivered to Kallinikos, negotiations between Gounaris and Kallinikos regarding the assignments of the notes, and ownership of the notes.

Robin Gounaris
474 Lillian Lane
Des Plaines, IL
Phone (847) 378-8891
Spouse of Harry Gounaris

Robin Gounaris will testify that she signed two checks drawn on Gounaris' home equity line of credit account with National Bank of Greece totaling \$20,000.00.

Steven Kallinikos
Chicago, Illinois
Phone (847) 635-7260
Shareholder

Steven Kallinikos will testify as to ownership in Haste, monies received from Gounaris, negotiations between Gounaris and Kallinikos regarding the assignments of the notes, and transfer of the notes.

INTERROGATORY NO. 12: Please identify the name, address and telephone number of any expert witness expected to testify including a brief summary of his testimony.

RESPONSE: No expert witnesses at this time but Defendant reserves the right to name the expert witness, if any, in due course.

INTERROGATORY NO. 13. Please describe the amounts to whom and how the actual, real and tangible proceeds payable under the large note from the Nuttalls to Haste have been distributed since the note was executed on November 1, 1997.

RESPONSE: From November 1, 1997 through early 1999 distribution was 50-50 between Gounaris and Kallinikos. From the latter part of 1999 through February 2000, more monies were distributed to Steven Kallinikos than to Harry Gounaris. From January 2001 all monies have been distributed to Harry Gounaris.

RESPONSE TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Any and all documents identified in your answers to Plaintiff's First Set of Interrogatories or First Requests for Admission to Defendants.

RESPONSE:

(1) Check No. 156 dated May 23, 1999 payable to the order of D & R Management in the sum of \$10,000.00 drawn on the National Bank of Greece, Chicago, Illinois, signed by Robin Gounaris.

(2) Check No. 157 dated June 20, 1999 payable to the order of D & R Management in the sum of \$10,000.00 drawn on the National Bank of Greece, Chicago, Illinois, signed by Robin Gounaris.

(3) Small Promissory Note (\$15,000.00) dated November 1, 1997, payable by Richard and Connie L. Nuttall.

(4) Large Promissory Note (\$72,000.00) dated November 1, 1997, payable by Richard and Connie L. Nuttall.

REQUEST NO. 2: Any and all correspondence between Haste and Gounaris or either one of these entities and Kallinikos, beginning November 1, 1997 to the present, which correspondence relates to the events described in the Complaint.

RESPONSE: None.

REQUEST NO. 3: Any and all documents which relate to the Purported assignment of the small (\$15,000) and large (\$72,000) Promissory Note(s) dated November 1, 1997, payable by Richard and Connie L. Nuttall.

RESPONSE: None other than the small (\$15,000) and large (\$72,000) Promissory Notes which are the subject of this complaint.

REQUEST NO. 4: Any and all check stubs, checks, account reconciliation or any other documents prepared or kept by Defendants, or Defendants' bank or financial institution which relate to the purported assignment of the small (\$15,000) and large (\$72,000) Promissory Note(s) dated November 1, 1997 to Gounaris.

RESPONSE: See Response to Request No. 1.

REQUEST NO. 5: Any and all documents which evidence payment of any kind by Haste, Gounaris or Kallinikos to Plaintiff pursuant to that certain Lease Agreement dated March 30, 1998. between World Plaza, LLC, Haste and Kallinikos.

RESPONSE: None.

REQUEST NO. 6: Any and all documents which evidence any payment by Haste, Gounaris or Kallinikos to Plaintiff pursuant to that certain Promissory Note dated October 19, 1999, payable from Kallinikos to the Plaintiff or World Plaza, LLC.

RESPONSE: None.

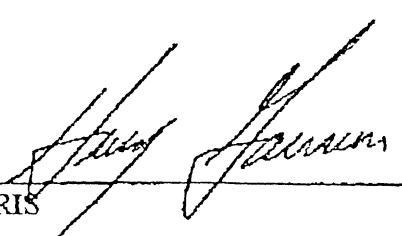
REQUEST NO. 7: Any and all documents which you intend to introduce as evidence at trial

RESPONSE: Items described in Response to Request No. 1.

REQUEST NO. 8: The original assignment document for both notes.

RESPONSE: See the small note (\$15,000) and large note (\$72,000) as described in Response to Request No. 1.

DATED this 8th day of August, 2001.

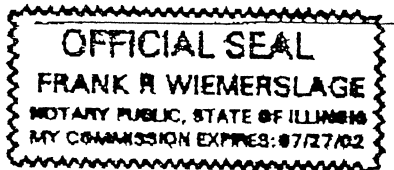


HARRY GOUNARIS

STATE OF ILLINOIS)
): SS
COUNTY OF COOK)

On the 8th day of August, 2001, personally appeared before me Harry Gounaris, who being by me duly sworn, did say, that he is the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

My Commission Expires:



Frank R. Wiemerslage
NOTARY PUBLIC, Residing in
COOK COUNTY State of Illinois

CERTIFICATE OF SERVICE

Filed the original of the foregoing to:

DISTRICT COURT CLERK
FOURTH JUDICIAL DISTRICT
125 NORTH 100 WEST
PROVO, UT 84601-2849

And served a copy thereof to the attorney for plaintiff addressed as follows:

MR. STEVEN F. ALLRED, ESQ.
ATTORNEY AT LAW
TROON PARK
584 SOUTH STATE
OREM, UT 84059

_____ via hand delivery
_____ via fax: 801.
_____ via first class mail, postage prepaid

this _____ day of August, 2001.

HARRY GOUNARIS
ROBIN GOUNARIS

474 LILLIAN LN.
DES PLAINES, IL 60018

156

2-175/770
4960008

DATE May 23 '69

PAY TO THE
ORDER OF

D. B. Mamt

\$ 10,000.00

Ten thousand & no/100

DOLLARS



NATIONAL BANK OF GREECE
CHRYSEI BANK
100 NICHOLSON AVE. CHICAGO IL 60611

MEMO

⑆07⑆00⑆753⑆ 49600008⑆ 0156

⑆000⑆000000⑆

HARRY GOUNARIS
ROBIN GOUNARIS

474 LILLIAN LN.
DES PLAINES, IL 60018

157

2-175/770
4960008

DATE June 20 '69

PAY TO THE
ORDER OF

D. B. Mamt

\$ 10,000.00

Ten thousand & no/100

DOLLARS



NATIONAL BANK OF GREECE
CHRYSEI BANK
100 NICHOLSON AVE. CHICAGO IL 60611

MEMO

⑆07⑆00⑆753⑆ 49600008⑆ 0157

⑆000⑆000000⑆

MY '99 25

071000013

0710-0030-1
880297719 0710-0030-1
880297719 05-25-99
880297719 2572 2667 08:58 120

880297719
05-25-99
2572 2667 08:58 120

0710-0030-1
880278885 0710-0030-1
880278885 05-22-99
880278885 2647 2648 08:58 120

880278885

880278885

D. K. Mang #127258

EXHIBIT 3

Steven F. Allred (Bar No.5437)
Law Office of Steven F. Allred, P.C.
Attorney for Plaintiff
Troon Park, 584 S. State Street
Orem, Utah 84058
Telephone: (801) 431-0718

FILE COPY

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

JIMMY ZUFELT, an individual,	)	AFFIDAVIT OF RICHARD L. NUTTALL
)	
Plaintiff,	)	Civil No. 000403084
)	
v.)	
)	
HASTE, INC.; a Utah corporation; and	)	Judge Taylor
HARRY GOUNARIS, an individual,)	
)	
Defendant.)	

STATE OF UTAH)
 :ss
COUNTY OF UTAH)

RICHARD L. NUTTALL, being first duly sworn upon his oath states and deposes as follows:

1. I am of age and am competent to testify in a court of law if necessary.
2. On or about November 1, 1997, I incorporated Nutz, Inc. for the purpose of purchasing a restaurant by the name of Burgers Supreme located at 1796 North University Parkway and owned by Haste, Inc. (hereinafter "Haste").
3. I am the President of Nutz, Inc.
4. Subsequently, Nutz Inc. purchased all of the business assets of Burger Supreme which

I understood to be a dba of Haste, Inc. and received an assignment of Haste's lease with Brigham's Landing, the lessor. A copy of the assets included in this transaction is attached hereto as Exhibit "A."

5. Pursuant to the purchase of Burgers Supreme by Nutz, Inc., Haste received (2) promissory notes from me as the maker dated November 1, 1997, (hereinafter collectively referred to as the "Notes") in the amounts of \$15,000 (hereinafter "the small Note") and \$72,000 (hereinafter "the large Note").

6 The small Note, pursuant to instructions which I received from Steven Kallinikos, (hereinafter "Kallinikos") was payable to Kallinkos, the principal and President of Haste and Harry Gounaris, another shareholder of Haste at the home address of Kallinikos in Mapleton in the amount of \$190.02 per month.

7. The large Note, pursuant to instructions which I received from Steven Kallinikos, was payable to Haste at the home address of Kallinikos in Mapleton in the amount of \$912.07 per month.

8. All of my dealings and negotiations concerning the purchase of the restaurant were conducted with Kallinikos.

9. I made payments to Kallinikos each month in the above amounts at the address identified in the Notes until September, 2000.

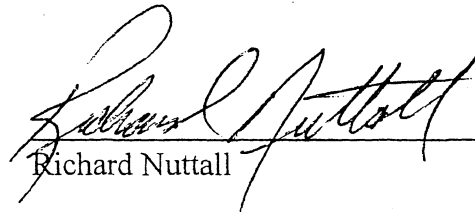
10. About September 15, 2000, I received a handwritten note from Kallinikos, postmarked from Tampa, Florida requesting that I "send the monthly checks to the Harry Gounaris Residence." A copy of that handwritten note is attached hereto as Exhibit "B." Upon receipt of the handwritten note I made the monthly payments as I had always done except I sent the checks to the address identified in Exhibit "B" hereto.

11. Sometime in early December, 2000, I received written notice of the assignment (hereinafter "Notice") of the Notes from Gounaris, a copy of which is attached hereto as Exhibit "C." The Notice was the second notice I ever received from any person providing me with new instructions relative to the identity and address of the assignee of the Notes. Except for Exhibits "B" and "C," I never received a telephone call or other notice informing me that the Notes had been assigned.

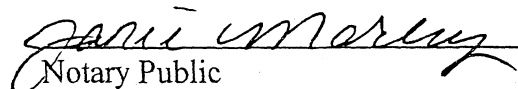
12. Upon receipt of the Notice I responded in writing to Gounaris asking for more specific instructions and confirmation of the assignment. A copy of my correspondence is attached hereto as Exhibit "D." I never received the information which I requested in Exhibit "D."

13. Since about April 10, 2001, pursuant to a court order obtained by the Plaintiff, I have been paying the monthly payments due under the large Note into the court's registry.

DATED this ~~12~~¹⁴ day of January, 2002.


Richard Nuttall

SUBSCRIBED AND SWORN to before me this 15th day of January, 2002.


Notary Public

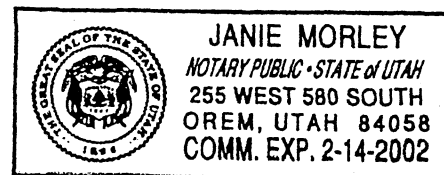


Exhibit "A"

EQUIPMENT/FIXTURE LIST

Dining booths	Food processor
Light fixtures	Toaster
Plumbing fixtures	Floor safe
Napkin holders	Security system
Silk plants	Time clock
Menu signs	Vending machine
Drive-thru signs	Floor vacuums
Exterior signs	Miscellaneous cleaning items
Neon lighting	Telephones (3)
Cash registers (3)	Caller ID display
Juice Dispensers (2)	Floor coverings
Ice cream machine	Window blinds
Mixing machine	Window Valances
Audio/visual surveillance system cameras/monitors	
Intercom systems	
Sound/music system	
Broilers	
Grill	
Steam table	
Cold table	
Fryers	
Heat station	
Gyro machine	
Hood ventilation system	
Ventilation hoods (2)	
Six burner gas range/oven	
Ice machine	
Three compartment sink	
Stainless steel work tables w/ shelving (2)	
Walk-in freezer w/ compressor and shelving	
Walk-in cooler w/ compressor and shelving	
Miscellaneous small utensils	
Meat slicer	
Grill (back room)	
Desk	
Chair	
File cabinet	
Storage racks (6)	

EXHIBIT "A"

9-10-50

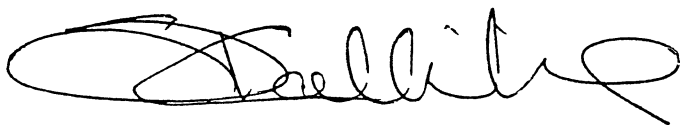
Dear Mrs. Nattal,

Please send
monthly checks to The Harry
Gounaris Residence @
474th Lillian Lane
Des Plaines, Ill
60016. (*)

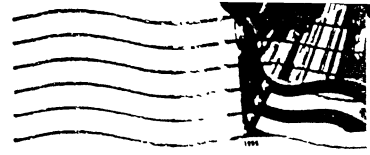
Thank you!

Sincerely,

Fres. Haste Inc.



(*) Mr. Harry Gounaris
474 N. LILLIAN LANE
DES PLAINES, ILL 60016.



Richard Nuttal
40 Burger Supreme
1796ⁿ. University Pkwy.
Provo, UT 84604

84604+1583

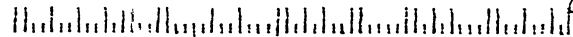


Exhibit “C”

November 27, 2000

Mr. Richard Nuttall
Burger Supreme
1796 N. University Parkway
Provo, Utah 84604

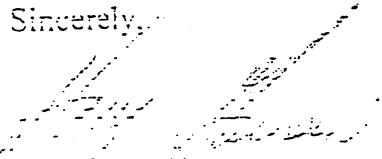
Dear Mr. Nuttall:

This letter is to advise you that Harry Gounaris has bought out all promissory notes for Haste and/or Steve Kallinikos as of 2/25/00.

In the past, you have written out three separate checks every month. Now you may either write one check in the amount of \$1102.09 or for accounting purposes you may write out two checks, one in the amount of \$912.07 and one in the amount of \$190.02 payable to Harry Gounaris.

For your records, enclosed are copies of the signed notes. If you need to contact Steve, he may be reached at (847) 635-7260.

Sincerely,



Harry Gounaris
474 Lillian Lane
DesPlaines, IL 60016
(847) 376-8891

Exhibit "D"

December 19, 2000

Mr. Harry Gounaris
474 Lillian Lane
DesPlaines, IL 60016

Dear Mr. Gounaris:

I apologize for getting your checks late to you this month. After receiving your certified letter in the mail and reading the contents I needed some legal advice from my attorney. Hence the late date of the mailing of the checks.

Upon the advice of my attorney, you will notice that the checks this month are made out as they always have been. I.e. One check to Haste Inc. One check to Steve Kallinikos and one check to you.

The cover letter you sent along with the two promissory notes concern me to some extent. Therefore in order for me to send the checks made out only to you two things will have to happen. First I need a letter from Steve Kallinkos with his notarized signature (an original document not a copy) stating that he has sold his interest in the promissory notes for him personally and for Haste Inc., to you. Second, I need the amended promissory notes to have an original signature of Steve Kallinikos rather than a photocopy. Since you dated the transfer of the promissory notes back to February of 2000, and I have been making payments as per our original agreement up to and including December of 2000, I don't see this as much of a problem.

Upon receipt of the above-mentioned items I will begin making the payments as you outlined in your letter dated November 27, 2000.

Regards,

Richard L. Nuttall
Burgers Supreme
1796 No. University Parkway
Provo, UT 84604

EXHIBIT 4

NICK J. COLESSIDES (USBA # 696)
Attorney at Law
466 South 400 East #100
Salt Lake City Utah 84111-3325

Tele: 801/521-4441
Fax: 801/521-4452

Attorney for defendants

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND
FOR UTAH COUNTY-PROVO DEPARTMENT
STATE OF UTAH

JIMMY ZUFELT, an individual	:	DEFENDANTS' REPLY
	:	MEMORANDUM
Plaintiff,	:	IN SUPPORT OF DEFENDANTS'
	:	MOTION TO DISMISS
v.	:	PLAINTIFF'S SECOND
	:	CAUSE OF ACTION AS STATED
HASTE, INC., a Utah corporation, and	:	IN PLAINTIFF'S SECOND AMENDED
HARRY GOUNARIS, an individual,	:	COMPLAINT
	:	
Defendants.	:	Case No.: 00 04 03084
	:	
	:	Judge: Claudia Laycock
	:	

Defendants above named by and through their attorney of record, Nick J. Colessides, pursuant to and in accordance with Rule 7(c)(3) Utah Rules of Civil Procedure, hereby file the following reply memorandum in support of defendants' motion for an order of this Court dismissing plaintiff's second cause of action as set forth in plaintiff's second amended

complaint, dated February 14, 2001.

ARGUMENT

PLAINTIFF'S SECOND CAUSE OF ACTION HAS BEEN FULLY ADJUDICATED IN FEDERAL BANKRUPTCY COURT

Each one of the Uncontroverted Facts set forth in defendants' principal memorandum has not been disputed by plaintiff. Plaintiff's use of an "objection" seeks to confuse and distort the issue before the Court. It is a ruse to confuse. Plaintiff offers no legal or factual basis for his objection. As such his objection must be disregarded.

It is respectfully submitted that plaintiff's "second cause of Action" is only related and involves issues concerning the Large Note.

As stated by defendants in their principal memorandum the relief sought by plaintiff on his second cause of action is to set aside "the assignment of the Large Note" [plaintiff's second amended complaint paragraph 26] as a fraudulent transaction. Plaintiff claims that the assignment by HASTE INC., made to Harry Gounaris is in violation of §§-25-6-5 and 25-6-6 Utah Code Annotated, 1953 as amended.

That precise issue has already been adjudicated by the Bankruptcy Court in accordance with the provisions of federal law.

Plaintiff's frivolous and disingenuous "objection" has no merit.

Plaintiff has failed to support his claim that "... the Bankruptcy Court only adjudicated part of the large note." Plaintiff's counsel fails to differentiate to the Court which part of the

large note was not adjudicated. In the instant case plaintiff seems to suggest that there might an issue where the "lady in question is a little pregnant." The Bankruptcy Court adjudicated all issues related to the Large Note. No part of the Large Note was left to be adjudicated by another court or at a later time.¹ Plaintiff's counsel is assuming and advocating the wrong position.

Plaintiff's specious response, termed an objection, [instead of a memorandum as required under the Rule 7, Utah Rules of Civil Procedure], should be disregarded. Defendants' counsel does not wish to characterize the purpose and the reason that plaintiff made its so called "objection." Although sanctionable it should be left to the Court to exercise its discretion.

Plaintiff's counsel is filing the wrong pleadings for the wrong reasons seeking to pursue a "dead horse."

Plaintiff's counsel conduct does not enhance the litigation process in this matter; it forces the Court to use judicial resources which should not be used for that purpose.


¹Copies of defendants' motion to dismiss plaintiff's second cause of action as contained in plaintiff's second amended complaint, and principal memorandum in support thereof were also served upon the Trustee. It is of particular interest and noteworthy that if the Trustee felt that there were any issues relating to the "Large Note", which remained to be resolved at a later time or by a different court, the Trustee would have pointed that out. The Trustee filed no pleading in support of plaintiff's position as espoused by plaintiff's counsel. The Trustee's failure to support plaintiff's counsel's position can only be interpreted that the Trustee agrees that plaintiff's objection and position is untenable. While this is not a fight that the Trustee wishes to be involved, .. the Trustee's rights relating to the Large Note are affected thereby, should the Court does not grant defendants' motion.

CONCLUSION

In view of the foregoing it is respectfully submitted that defendants' motion to dismiss plaintiff's second cause of action in plaintiff's second amended complaint should be granted.

This Court should enter its order dismissing with prejudice plaintiff's second cause of action as the same has been filed by the plaintiff on February 14, 2001, in his second amended complaint.

Dated this 3rd day of December, 2003.



NICK J. COLESSIDES
Attorney for defendants