

1994

# Ka Ae Park v. Park K. Jun and Ester Young Ja Jun : Brief of Appellant

Utah Court of Appeals

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Robert H. Rees; attorney for appellee.

Robert Macri; attorney for appellants.

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Brief of Appellant, *Park v. Jun*, No. 940556 (Utah Court of Appeals, 1994).

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BEFORE THE UTAH COURT OF APPEALS

KA AE PARK,

Plaintiff/Appellee,

vs.

PAUL K. JUN and ESTER YOUNG  
JA JUN,

Defendants/Appellants.

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Case No. 940556-CA  
Priority Classification 15

APPEAL OF JUDGMENT OF HONORABLE RICHARD H. MOFFAT  
DATED 11/15/93 AND MADE FINAL ON 2/8/94

UTAH COURT OF APPEALS

UTAH  
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DOCKET NO.

940556

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Attorney for Appellants

ROBERT H. REES  
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Attorney for Appellee

**FILED**

OCT 27 1994

**COURT OF APPEALS**

BEFORE THE UTAH COURT OF APPEALS

KA AE PARK,	:	
	: :	
Plaintiff/Appellee,	:	
	.....	
vs.	:	Case No. 940556-CA
	:	Priority Classification 15
PAUL K. JUN and ESTER YOUNG	:	
JA JUN,	:	
	:	
Defendants/Appellants.	:	
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APPEAL OF JUDGMENT OF HONORABLE RICHARD H. MOFFAT  
DATED 11/15/93 AND MADE FINAL ON 2/8/94

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BEFORE THE UTAH COURT OF APPEALS

KA AE PARK, :  
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 Plaintiff/Appellee, :  
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 ..... :  
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 JA JUN, :  
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 : Case No. 940556-CA  
 Defendants/Appellants. :  
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I.  
JURISDICTION OF THE APPELLATE COURT

This is an appeal from a final Order of the District Court in a civil proceeding. The Utah Supreme Court poured this case over to the Utah Court of Appeals for disposition on or about September 21, 1994.

II.  
STATEMENT OF THE ISSUES

There is only one issue in this appeal and that is whether the trial judge abused his discretion in denying Defendants due process and equal protection guarantees in granting Plaintiffs Judgment, striking Defendants' answer and dismissing Defendants' counterclaim with prejudice on August 9, 1993.

A trial court abuses its discretion if there is "no reasonable basis for the decision." Crookston v. Fire Ins. Exch. 860 P.2d 937, 938 (Utah 1993). A trial judge's determination will be reversed if a ruling is so unreasonable that it can be classified as arbitrary and capricious or a clear abuse of discretion. Kunzler v. O'dell, 855 P.2d 270, 275 (Ut. App. 1993).

III.  
DETERMINATIVE PROVISIONS

United States Constitution Fourteenth Amendment and Utah State

Constitution Section Seven.

IV.  
STATEMENT OF THE CASE

This is a case about poverty. As the Court can see from the Appendix numerous statements by Defendants Paul K. and Ester Jun support their claim of poverty.

The first two indications of a problem occur early in the case. The Court will note that a Default Certificate was entered on the 7th day of December, 1992 (Rd.18). The Answer and Countersuit in this matter were filed the same date, that is, December 7, 1992. The parties stipulated to setting aside the default, the facts of which are discussed in the Memorandum in support of Motion for Relief from Default Order (Rd.33) wherein it is declared that neither Defendant speaks English and one of the parties was in Korea until December 30, 1992. No translator could be had until December 4th. Based thereon, attorney for Plaintiff stipulated to relief from Default Judgment (Rd.35) and an Order granting Defendant's Motion for Relief from Default Judgment was granted by the Court (Rd.36).

On the 2nd day of January, 1993 Plaintiff delivered some very simple Interrogatories (Rd.41). Defendant requested and was given an extension of time in which to answer said interrogatories based on the fact that Defendants were in Korea (Rd.42) Defendants' attorney was unable to contact them in Korea because of communications difficulties. Defendants' attorney put a notice into the Court file (Rd.55) declaring that he has lost touch with Defendants and that they were stuck in Korea and unable to return.

Based on Plaintiff's Motion for Sanctions the Court in a

Minute Entry dated July 15, 1993 declares "the Court is of the opinion that said (sanctions) (are) justified based upon the fact that in this case the default of the Defendants was originally taken and then set aside at their request and Defendants now refuse to participate in discovery causing additional delay and expense to the Plaintiff".

The declaration of the facts appears in the Affidavit submitted by the undersigned to the Court (Rd.69 et. seq.) explaining that the Defendants were in Seoul, Korea, that they were supposed to back on time, that numerous calls had resulted in no clear understanding of their schedule and efforts to intervene in three-way calls between Defendants Jun, their English speaking daughter who lives in Buenos Aires, Argentina and the undersigned were also frustrated. Because of this difficulty the undersigned anticipated withdrawing from this case (Rd.70).

On August 10, 1993 due to the diligent efforts of the undersigned, additional material relating to Defendants' Motion for Relief from Default Judgment was obtained (Rd.84 et seq.) In that document the undersigned the Court that the maximum dispatch in this matter was observed by all parties but they fell victim to a breakdown in communications which resulted from the fact that Defendants spoke no English, had fled to Korea as a result of the social incapacity they suffered as a result of this lawsuit, which incapacity will be discussed shortly, and the matter is discussed at length in Defendants' Motion for Relief from Default Judgment (Rd.91) which demonstrates with attachments that the bilingual



daughter was in Buenos Aires, she had received the interrogatories in question, discussed same with her father, and returned answers which were unusable. Those answers which the daughter and the father had developed without assistance from the attorney are included on pages 96 through 106 of the Record and are attached hereto as Appendix A. In addition, other factual issues which are controverted appeared before the Judge at this time, including the fact that the parties were unable to make contact, that the issue of the default was subject to the stipulation of the parties, and the fact that Defendant Jun was the pastor of the Korean Baptist Church and was required to defend himself on the all the issues for the sake of his reputation. As the Court can see from the Affidavit of Pastor Jun (Rd.164-165) that he lost his position as Pastor of the Korean Baptist Church as a result of slanders told by Plaintiffs against him and others, and that as a result, he has been without income and been unable to secure income. This is a recapitulation of the story of Defendants' financial condition which had previously been reported to the Court.

Further, and most importantly, Defendants demonstrated again, as they had in the Record at page 23-24, that Ka Ae Park had previously issued an affidavit (attached hereto in Appendix A.) whereby she had specifically denied under oath that she had loaned the money to Defendants, which money she was trying to recover. In fact, she states in her Affidavit that she is part owner of the fashion business and is a co-owner with Defendant. This is entirely opposite to her claims in her Complaint. In her Complaint

she declares she made a loan to Defendants Jun and in her Affidavit she declares that she made an investment as part owner. This demonstrates that the Juns did in fact have a meritorious claim which was cut short by the Default Judgment of the Court.

The Default Judgment was based partially in fact that the "Court is convinced that Defendants are simply playing games with the Plaintiffs and with the Court". (Rd.88). The Court responding to the pleas of Defendants agreed to oral argument on Defendant's Motion for Relief from Default Judgment and based upon the arguments the Court ordered that Defendants Motion for Relief from Judgment and Order will be granted if Defendants comply by December 15, 1993 (Rd.133). Additional legal expenses were marshalled by Plaintiffs' attorney and the Court held (Rd.138) that relief would be granted "provided Defendants complied fully with the conditions set forth below no later than December 15, 1993" and said conditions were that Defendants provide full and complete answers to pending interrogatories and pay Plaintiff for her attorney the sum of \$1,035.00 in certified funds, or their equivalent for sanctions and attorney fees imposed by the trial court in its several orders.

On December 15, 1993 Defendants Jun submitted Answers to Interrogatories but move for deferral that the requirement the sanctions be paid contemporaneously with the Answers to Interrogatories for reasons outlined in their unsigned Affidavit, a signed copy which was subsequently attached. At Record pages 164-165 Paul Jun explains the problems he has had as a result of

not having income and having to defend against this and another suit. The Memorandum of Law in Support of Defendants' Motion to defer Sanction Payments is as included at the Record pages 161 et seq., and outlines the communications, procedural, and geographical problems which had plagued the case for its 8 month life. None of the allegations of the Juns regarding their poverty, travel difficulties and communication difficulties is controverted and yet the judge concluded that they were in fact playing games. This is a decision based on demeanor or without any true demeanor evidence present. Factually, the record is clear that Mr. Jun lost his prestigious position as Pastor as a result of allegedly fraudulent complaints made by Ka Ae Park, Plaintiff herein and others, and as a result could not stay in Utah and had to leave for Korea, was stuck in Korea and could not communicate from Korea without the help of his English speaking daughter who is Argentina and had attempted with all his effort to submit to the Court's jurisdiction and authority. He was unable to do so for factual reasons. This Court will realize that even in his filing of this appeal it was necessary for him to file in forma pauperis; they have no income, no valuables, and that they must appeal this matter. Although there is no reason to suspect that Plaintiff will ever be able to satisfy this judgment because of the damage she has done to the Juns' reputation nationally and internationally, still the judge's ruling sets in concrete the proposition that the Juns had done something improper when in fact they are practically denied by the Court's ruling and their poverty from having the issue litigated

despite the fact that in her own affidavit Plaintiff denied and invalidated the terms of her complaint. Finally, when December 15, 1993 arrived, Defendants were in no better position to pay the \$1,035.00 in sanctions which had accumulated and asked for deferral of these sanctions. This was denied which leads to this appeal.

V.  
SUMMARY OF ARGUMENT

REQUIRING INDIGENT DEFENDANTS TO PAY SANCTIONS  
PRIOR TO HAVING THEIR ARGUABLY MERITORIOUS CASE  
HEARD RESULTS IN A DENIAL OF DUE PROCESS AND  
EQUAL PROTECTION GUARANTEES TO THEM

This argument is based on the right of due process and equal protection which Defendants Jun should have been able to expect.

In fact, the circumstances of the Juns predicament are uncontroverted. Factually, Mr. Jun was a pastor who lost his position as a result of the complaints of Plaintiff, a parishioner.

Plaintiff had previously stated in an Affidavit that she was "part owner" and not an investor in the business. She sues in this case as an investor.

As a result of her allegations Pastor Jun "lost face" in the community and was terminated from his work. He had no savings and was forced to return to Korea to re-establish himself but found that the implications of his termination in Salt Lake City, Utah had reverberated to Korea and he was unable to make connections there and lived in great poverty and out of communication for several months while the Motion for Sanctions of Plaintiff were being heard. The undersigned was unable to contact them and when he finally did, was able only to develop some unusable statements

which could not be designed into the form necessary to answer the Interrogatories of Plaintiff.

While it is clear that mere inability to proceed for financial reason is not substantial justification for failing to participate in court processes. It is also clear that the court does not favor Default Judgment, especially where there is a good defense. Here a Default was entered. The Default was entered based on the uncontroverted facts that the Juns were unable for financial, geographic and linguistic reasons to conform to the Court.

It was pointed out in a Memorandum submitted to Judge Moffat, the Utah statutory scheme provides practically birth to death protections for persons who find themselves in poverty related situations. This is recognized in the welfare statutes which provides medical assistance to assist birth mothers and indigent families and goes through death. For example in Section 17-5-57 Utah Code Annotated where provision is made for burial of indigent persons.

During the course of an indigent's life tax abatements are provided such as in Section 59-2-1107 Utah Code Annotated and 59-2-1108 providing for abatement and deferral of certain taxes for the poor.

Further, that in the Court systems both at the trial and appellate level impecunious persons may prosecute, defend and appeal any cause in any court in the state by subscribing an affidavit (Section 21-7-3 U.C.A. prescribing the affidavit of impecuniosity).

In addition, the courts provide exemption from collection of debt and according to Russell M. Miller Co. v. Givin, 325 P.2d 908-1958; ". . . exemptions statutes are liberally construed in favor of the debtor to protect him and his family from hardship".

Further, the Court is familiar with the right of criminal defendants who are indigent to be represented Section 77-32-1 U.C.A.

According to 20 C.J.S. COSTS, Section 171 the purpose of the rule allowing indigent persons not to have to pay the costs in judicial proceedings is to insure that no person shall be deprived of the opportunity to have his claim fully adjudicated in a court of law because his indigency prevents him from satisfying costs and bond requirements.

The concepts of equal protection of the laws and due process both stem from the American ideal of fairness and are not mutually exclusive Bolling v. Sharpe, 347 U.S. 497, 98 L.Ed 884.

The Equal Protection Clause requires that all men be afforded equal protection of laws, and any statute or procedure which had the effect of discriminating against defendants solely because they are indigent is Constitutionally impermissible Hazelwood v. State, 524 P.2d 704 (Kan. 1974).

This clause requires that a state appellate system be free of unreasoned distinctions and that indigents have an adequate opportunity to present their claims fairly within the adversarial system.

Thus, Defendants argue that it is an denial of due process and

equal protection in the statutory scheme which protects indigents from conclusions such as these, which conclusions are based strictly on unsupported assumptions and abuse of discretion by the judge, which fly in the face of the uncontroverted evidence in this case.

#### CONCLUSION

From the affidavit of Ka Ae Park (Rd.23-24) and as attached hereto as Appendix B, it is clear that Ka Park had originally believed herself to be a co-owner and investor in the business with Pastor Jun. Shortly after executing this Affidavit, Ka Ae Park decided that she was in fact a creditor of Pastor Jun and brought this suit to collect back her investment. Through her activities Ka Park led to the financial ruination of Pastor Jun and his family and they were required to leave the country because of communications difficulties which developed as a result of these facts, certain deadlines were missed but notice was given to the trial court at all times of the difficulties occasioned by the case and Judge Moffatt was kind enough to set aside his prejudices and presumptions against the Juns, who had not appeared in Court, and allow them to reinstate the case by providing answers to interrogatories and by paying sanctions. The Juns provided the answers to interrogatories but could not afford the sanctions and declared same in an affidavit to the Court. Denying them the right to defer the sanctions and continue prosecuting their case was a denial of equal protection and due process of the law as cited above and, it is appropriate that the Default Judgment be set aside

and the case remanded to the District Court for trial. Having answered the interrogatories, Defendants have placed the matter squarely for trial and the issue of attorney fees and sanctions may not be considered so crucial as to deny the Juns their right to due protection and to protect their reputation and defend against the allegedly fraudulent allegations of Plaintiff.

Respectfully submitted this 27 day of October, 1994.

Robert Macri

ROBERT MACRI  
Attorney for Defendants

CERTIFICATE OF MAILING

I certify I mailed/faxed/hand delivered a true and correct copy of the foregoing to:

ROBERT H. REES  
Attorney at Law  
376 East 400 South, Suite 300  
Salt Lake City, Utah 84111-2906

this 27 day of October, 1994.

Robert Macri



## **ADDENDUM**

MAY 27 2 11 PM '93

ROBERT MACRI #2043  
Attorney for Defendant  
211 East 300 South #209  
Salt Lake City, Utah 84111  
Telephone: 364-3018

THIS  
BY Sina C. Ashley DISTRICT  
CLERK

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

Ka ae Park,	:	NOTICE
	: :	
Plaintiff,	:	
	: :	
vs.	: :	
	: :	
Paul K. Jun, Ester Young Ja Jun,	:	Case No. 920906003 CN
	: :	
Defendants.	:	Honorable Richard H. Moffat
	: :	

TO THE CLERK OF COURT AND PLAINTIFF:

PLEASE NOTE that Defendant Paul K. Jun and his wife Ester Young Jajun have been out of the country since January and out of touch with the undersigned. The undersigned has just come back in touch with them after having lost contact with them and discovered that M. Jajun is stuck in Seol, Korea and unable to return.

This Notice is given for the interest of the Court involved.

DATED this 25 day of May, 1993.

Robert Macri  
ROBERT MACRI  
Attorney for Defendant

00055

ROBERT MACRI #2043  
Attorney for Defendants  
211 East 300 South #209  
Salt Lake City, Utah 84111  
Telephone: 364-3018

JUL 29 1993

SALT LAKE COUNTY  
*R. Grates*  
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH

KA AE PARK,	:	MOTION FOR RELIEF FROM
	: :	JUDGMENT OR ORDER
Plaintiff,	:	
	.....	
vs.	:	
	:	
PAUL K. JUN and ESTER	:	Case No. 920906003 CN
YOUNG JA JUN,	:	
	:	
Defendants.	:	Honorable Richard H. Moffat
	:	

COMES NOW Defendants Paul K. Jun and Ester Young Ja Jun husband and wife to move this Court for relief from Judgment from its Order of July 15, 1993 for the reasons outlined in the attached Affidavit of the undersigned.

DATED this 26 day of July, 1993.

*Robert Macri*  
ROBERT MACRI  
Attorney for Defendants

CERTIFICATE OF MAILING

I certify I mailed a copy of the foregoing to:

Robert H. Rees  
Attorney at Law  
376 East 400 South, Suite 300  
Salt Lake City, Utah 84111-2906

on this 26 day of July, 1993.

*Robert Macri*

00068

JUL 29 1993

ROBERT MACRI #2043  
Attorney for Defendants  
211 East 300 South #209  
Salt Lake City, Utah 84111  
Telephone: 364-3018

SALT LAKE COUNTY  
*R. Groves*  
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH

KA AE PARK,

Plaintiff,

vs.

PAUL K. JUN and ESTER  
YOUNG JA JUN,

Defendants.

AFFIDAVIT

Case No. 920906003 CN

Honorable Richard H. Moffat

State of Utah            )  
                              ss  
County of Salt Lake    )

COMES NOW Robert Macri, Attorney to declare that:

1. Defendants were in Seoul, Korea at the time discovery in the above entitled case was received but were supposed to be back in Salt Lake City for this reason.

2. Defendants secured an extension of time in which to answer discovery based on the fact that Defendants' attorney had received a call from Mr. Jun saying that he would be back in time to answer same. Periodically the undersigned has received other calls from Mr. Jun suggesting that he would be back but recently after having been out of contact for more than two months because of mis delivered mail, he had their English speaking daughter contact the undersigned from Buenos Aires and she sent the undersigned a FAX number to send the Interrogatories to Mr. Jun to

00069

answer. She indicated she would translate for the undersigned. Due to a switching problem the FAX could not be received in Buenos Aires and it was an additional ten days before the daughter contacted the undersigned. I was able finally on 7/19/93 to FAX the Interrogatories to Buenos Aires for Seoul, Korea.

3. I have sent Mr. Jun numerous letters to Korea and I believe that the problem is strictly communication based on the international difference and the fact that Mr. Jun speaks no English.

4. I believe that Mr. Jun intends to answer the Interrogatories, but I have prepared a Motion to Withdraw which I attache hereto as Attachment B. The Court will note that the undersigned did submit a Notice to the Court (See Attachment C) explaining the difficulty on May 25, 1993.

S  
\_\_\_\_\_  
ROBERT MACRI  
Attorney for Defendants

SUBSCRIBED AND SWORN to before me by affiant on this \_\_\_\_\_  
day of July, 1993.

MY COMMISSION EXPIRES:

\_\_\_\_\_  
Notary Public, State of Utah  
Residing at Salt Lake County

00070

ROBERT MACRI #2043  
Attorney for Defendants  
211 East 300 South #209  
Salt Lake City, Utah 84111  
Telephone: 364-3018

AUG 10 4 55 PM '93

THE  
BY *M. Macri* CLERK  
DISTRICT  
CLERK

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

KA AE PARK,	:	ADDITIONAL MATERIAL RELAT-
	: :	ING TO DEFENDANT'S MOTION
Plaintiff,	:	FOR RELIEF FROM JUDGMENT
	.....:	
vs.	:	
	:	
PAUL K. JUN and ESTER	:	Case No. 920906003 CN
YOUNG JA JUN,	:	
	:	
Defendants.	:	Honorable Richard H. Moffat
	:	

Please note that after considerable work Answers to Interrogatories have been obtained through the mediation of an English speaking daughter living in Buenos Aires, Argentina. The Defendants are located in Seoul, Korea and do not speak English.

Defendants include herewith a Notice for Decision to determine whether the extensive Interrogatories which have now been received in handwriting by FAX, should be transcribed and entered into this case now that they are available.

The undersigned assures the Court that maximum dispatch in this matter was observed by all parties but they fell victim to a "breakdown in communications".

DATED this 10 day of August, 1993.

*Robert Macri*  
ROBERT MACRI  
Attorney for Defendants

00084

~~JUDICIAL DISTRICT COURT~~

ROBERT MACRI #2043  
Attorney for Defendants  
211 East 300 South #209  
Salt Lake City, Utah 84111  
Telephone: 364-3018

SEP 13 8 43 PM '93

*W. H. Moffat*

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH

KA AE PARK,

:

MOTION FOR RELIEF FROM  
JUDGMENT OR ORDER

: :

Plaintiff,

:

.....

vs.

:

PAUL K. JUN and ESTER YOUNG  
JA JUN,

:

Case No. 920906003 CN

:

Defendants.

:

Honorable Richard H. Moffat

:

COMES NOW Defendants to move this Court for relief from Judgment or Order based on it's decision of September 9, 1993 based on the fact that "the Court is convinced that Defendants are simply playing games with the Plaintiff and the Court".

As acknowledged in the August 10, 1993 submission Court, Attachment A hereto, the Interrogatories were answered. In the process of answering was that the bilingual daughter in Aires, Argentina called and discussed same with her father in Seoul, Korea and the answers were factually unusable. The Court can see that the answers were given on August 1, 1993 after the parties were finally able to manage a 3-way call and FAX capabilities. Please be advised that attorney for Defendants kept the Court apprised (Attachment C).

Much has been made of the fact that an original Default was granted but the Court will recognize that the answer which had been

due on a Friday was delayed until Monday, and subject of a stipulation of the parties (See Attachments D and E attached hereto).

It is also important for the Court to recognize that Defendants have answered and counterclaimed for fraud. The Court already has in its possession an Affidavit which is attached hereto as Attachment F, wherein Plaintiff Kay Park swears she is a part owner of the fashion store in question, a fact which would completely neutralize Plaintiff's claim against Mr. Jun. This was an Affidavit used in a related case in front of Judge Homer F. Wilkinson which is still pending. The Court can see from the attached letter <sup>Attachment G</sup> and travel itineraries that the Jun's flew from Korea into Los Angeles enroute to Salt Lake City for a trial on this matter in front of Judge Wilkinson on August 28th. They had no place to stay in Utah and stayed in Los Angeles. That trial date was continued and the Defendants have since gone to New York as the Court can see from the attached September 5th letter <sup>Attachment</sup>. The Court must keep in mind that the undersigned is unable to speak Korean and that Mr. Jun is unable to speak English and that the only person they have had to use to communicate between themselves is the daughter of Defendants who lives in Buenos Aires, Argentina, the daughter about whom they speak in their letter of September 5th, and from whom they borrowed the money to come to Utah for the trial in front of Judge Wilkinson.

Although it would appear that the Court could become convinced



that the defendants are simply playing games, the undersigned affirmatively represents that he and the Defendants Jun have been earnest in their efforts to communicate. The communication was difficult in the extreme because of the language barriers and the barriers of distance, and the parties, as the Court can see from the attached answers to Interrogatories and other related documents have done everything in their power given their financial circumstances to accommodate this lawsuit which they consider groundless.

BASED ON the foregoing, the Court might appropriately consider relieving Defendants of the Judgment related to the discovery sanctions. More subtle and directed sanctions are available, including granting interest on any money that might be awarded to Plaintiffs for the attorney's fees and costs which have already granted, or other alternatives. The Court must be aware that Mr. Jun is a pastor of the Korean Baptist Church and must defend himself on these issues for the sake of his reputation.

DATED this 20 day of September, 1993.

*Robert Macri*

ROBERT MACRI  
Attorney for Defendants

*Mailed a copy of Motion + Attachments 9/20/93  
to*

Robert Rees Esq.  
376 East 400 South Suite 300  
Salt Lake City UT 84111-2906

*Robert Macri*

~~Attachment~~  
A-1

ROBERT MACRI #2043  
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211 East 300 South #209  
Salt Lake City, Utah 84111  
Telephone: 364-3018

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH

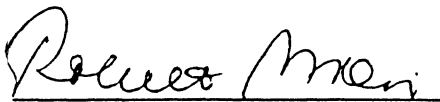
KA AE PARK,	:	ADDITIONAL MATERIAL RELAT-
	:	ING TO DEFENDANT'S MOTION
Plaintiff,	:	FOR RELIEF FROM JUDGMENT
	....:	....
vs.	:	
	:	
PAUL K. JUN and ESTER	:	Case No. 920906003 CN
YOUNG JA JUN,	:	
	:	
Defendants.	:	Honorable Richard H. Moffat
	:	

Please note that after considerable work Answers to Interrogatories have been obtained through the mediation of an English speaking daughter living in Buenos Aires, Argentina. The Defendants are located in Seoul, Korea and do not speak English.

Defendants include herewith a Notice for Decision to determine whether the extensive Interrogatories which have now been received in handwriting by FAX, should be transcribed and entered in case now that they are available.

The undersigned assures the Court that maximum dispute in this matter was observed by all Parties but they fell victim to "breakdown in communications".

DATED this 10 day of August, 1993.

  
ROBERT MACRI  
Attorney for Defendants

00094

~~Adair~~ B  
Fax # 364-2864

INTERPRETARY 1.) Not decided yet.

INT 2.) Will be known by the trial.

INT 3.) Will be explained by the trial time.

INT 4.) a. Not decided yet.

b. Will be presented by the trial time.

c. Mrs Park knew that Mr and Mrs Jun were experienced in the clothing business area. She knew that since she had been helping Mrs Jun translating when Mrs Jun was in partner with Hal Kim.

When Mrs Jun had the problems with her business partner, Mrs Park helped her translating for her. And Hal Kim was the one who resulted to be in charge of the business (Tashen Venus) with the "Receiver". Mrs Park (considering the experience of Mrs and Mr Jun) prepared to open a shop with her.

At first, Mr Jun refused the proposition because of his bad experience his wife had with her business partner, but considering that Mrs Park was a member of his congregation, that helped his wife translating for her and overall, regarding her as a trustworthy person, decided to work with her.

d. Most of the "conditions" of the partnership were set by Mrs Park and were accepted by Mr Jun.

She would invest up to \$100,000 beginning with \$20,000. That money was supposed to come from savings and assets Mrs Park had in Oregon that at that time a friend of her was managing for her.

Mr Jun would put his experience in the business and manage it.

She wanted this partnership be a "secret".

Since she was, at that time, separated from

Example -  
see entire  
fax pp 96-  
106 record

00096

**DISTRICT COURT**

ROBERT MACRI #2043  
 Attorney for Defendants  
 211 East 300 South #209  
 Salt Lake City, Utah 84111  
 Telephone: 364-3018

93 DEC 15 PM 2:56

THIRD JUDICIAL DISTRICT  
 SALT LAKE COUNTY  
 51 [Signature]  
 DEPUTY CLERK

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

KA AE PARK,	:	MOTION TO DEFER PAYMENT OF
	:	SANCTIONS
Plaintiff,	:	
	.....:	
vs.	:	
	:	
PAUL K. JUN and ESTER YOUNG	:	
JA JUN,	:	Case No. 920906003 CN
	:	
Defendants.	:	Honorable Richard H. Moffat
	:	

COMES NOW Defendants Paul K. Jun and Ester Young Ja Jun through their attorney Robert Macri to submit contemporaneously with the discovery Order pursuant to the Court's Order regarding Defendants' Second Motion for Release from Judgment and Order to move for deferral of the requirement that the sanction be paid contemporaneously with the Answers to Interrogatories for the reasons in the attached Affidavit as well as the fact that Defendants did come to Salt Lake City on November 28, 1993, having flown in with their interpreter and finally exhausting their small capital, and Defendants' attorney, the undersigned, suffered a serious accident and was hospitalized, and thus the trial in that case was continued by Judge Homer Wilkinson for a month because of the hospitalization of the undersigned. Thus, through no fault of their own, the Juns exhausted their capital and are unable to pay the sanction amount.

00141

Because of his present incapacity the undersigned is unable at this time to prepare a Memorandum with respect to the role of impecuniosity in civil proceedings, but will be able to do same within a week and asks leave of the Court to permit him to file a Memo relating to these issues, but the undersigned felt it was necessary to submit this Motion in a timely fashion.

DATED this 15 day of December, 1993.

Robert Macri  
ROBERT MACRI  
Attorney for Defendants

**CERTIFICATE OF MAILING**

I certify I mailed/hand delivered/faxed a copy of the foregoing to:

Robert H. Rees  
Attorney at Law  
376 East 400 South, Suite 300  
Salt Lake City, Utah 84111-2906

on this 15 day of December, 1993.

Robert Macri

ROBERT MACRI #2043  
Attorney for Defendants  
211 East 300 South #209  
Salt Lake City, Utah 84111  
Telephone: 364-3018

JAN - 6 1994

By R. Grotapakis  
SALT LAKE COUNTY

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY;

STATE OF UTAH

KA AE PARK,	:	AFFIDAVIT
	: :	
Plaintiff,	:	
	: :	
	: :	
vs.	: :	
	: :	
PAUL K. JUN and ESTER YOUNG	:	
JA JUN,	: :	Case No. 920906003 CN
	: :	
Defendants.	: :	Honorable Richard H. Moffat
	: :	

COMES NOW Paul K. Jun under oath to declare as true the following:

1. That he is a Defendant in the above entitled case.
2. That he has filed a Counterclaim against Kae Ae Park for fraud.
3. That he has previously provided to the Court an Affidavit of Ka Ae Park showing that her claims in the above entitled action are fraudulent.
4. He has explained to the Court the communications problems caused when his position as pastor of the Korean Baptist Church was terminated as a result of slanders told by Plaintiff against him and others.
5. As a result, Defendant Paul K. Jun has been without income and because of the press of the legal cases against him which he has had to defend, he has been unable to secure.

6. Defendant's only income has been from intermittent piano lessons given by Ester Young Ja Jun and by money that they have had to borrow from their daughter.

7. Defendants' financial condition has previously been recounted to the Court.

8. Recently Paul K. Jun and Ester Young Ja Jun had to appear in Salt Lake City for a trial which was postponed due to a serious accident suffered by their attorney which has him hospitalized. Thus they have had to fly in from New York and will be required to fly in again in January, the date of the rescheduled trial.

9. Defendants assert they have a meritorious defense against Plaintiff's fraudulent claims and a meritorious Counterclaim but are without funds to pay the sanctions presently ordered.

State of  
County of

)  
ss  
)

Paul K. Jun  
PAUL K. JUN

SUBSCRIBED AND SWORN to before me by affiant on this 27  
day of December, 1993.

MY COMMISSION EXPIRES:

[Signature]  
Notary Public, State of  
Residing at

March 31, 1994  
Notary Public, State of Utah  
Commission Expires March 30, 1994

00165

211 East 300 South  
Salt Lake City, Utah 84111  
Tel. 364-3018

IN THE THIRD JUDICIAL DISTRICT COURT OF UTAH S.L. CO.

KA AE PARK,  
Plaintiff

vs.

PAUL K. JUN and ESTER YOUNG  
JA JUN,  
Defendants

AFFIDAVIT OF IMPECUNIOSITY

Case No. 920906003 CN  
Honorable Richard H. Moffat

COMES NOW DEFENDANTS under oath to declare:

1. They have no savings.
2. Because of the allegations in this suit, Defendant, a minister, is has "lost face" and is unemployable and is presently not working. The defendants do not speak English.
3. Defendant Esther Jun is giving piano lessons and has no real income to speak of.
4. The parties have no valuables, having lost everything as a result of this and a related suit.
5. Defendants believe the reason they lost this matter is simply because of their poverty and they wish to be able to litigate that issue on appeal, and believe it is an appealable issue made in good faith.

WHEREFORE Defendants petition to file this appeal in forma pauperis.

Dated this 5 April, 1994.

Paul K. Jun  
Paul Jun

Esther Young Ja Jun  
Esther Jun

State of New York  
County of Queens } ss

Signed and sworn before me by Paul Jun and Esther Jun this 5 April, 1994.

Notary Public, State of New York  
Residing in New York County

My comm'n expires: 1996

Mindy Merdinger  
MINDY MERDINGER  
NOTARY PUBLIC, State of New York  
No. 02ME5022455  
Qualified in New York County  
Commission Expires Jan. 1, 1996

00176