

Jun-25-2004 06:24am From-

T-711 P.001/006 F-648

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Attorneys for Defendant

U.S. COURTS  
04 JUN 25 AM 8:39  
REC'D  
CLERK CAMERON S. BURKE  
IDAHO

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

RECUPEROS, LLC, an Idaho limited liability  
company,

Plaintiff,

vs.

AMERICAN FOOD STORES, LLC, a  
California limited liability company,

Defendant.

Civil No. 04-229-S-BLW

AFFIDAVIT OF SUKHDEV KAPUR IN  
SUPPORT OF OBJECTION TO  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION

STATE OF CALIFORNIA )  
 ) : ss  
COUNTY OF SANTA CLARA )

I, Sukhdev Kapur, having been first sworn upon an oath, depose and say:

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**ORIGINAL**

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1. I am one of the members of the American Food Stores, LLC, the Defendant in the above-entitled case. I am familiar with the facts of this case and make this affidavit of my own personal knowledge. I am competent to testify as to the matters set forth herein.
2. During mid to late 2003, I and Manjit Sahota formed the American Foods Store LLC.
3. Our operating agreement provides that all decisions and actions of the LLC must be made by both Manjit and myself together and that neither one of us is authorized to make any decision or take any action on behalf of the LLC independent of the other. Manjit, the Manager of LLC, has authority of check writing not to exceed \$10,000.00
4. We communicated this fact directly to Mr. Naeve of the Plaintiff, Recuperos, LLC. I specifically had several telephone conversations with Sonja at the Title Company and Mr. Naeve about the fact that both Manjit and I had to sign all documents. In addition, we provided him a copy of our operating agreement.
5. In December, 2003 Manjit's parents were traveling in Canada and were both killed in a traffic accident.
6. During the period November 22<sup>nd</sup> to December 23<sup>rd</sup> I had an emergency in India, my homeland, that required me to return to India. Therefore, we were both unavailable for approximately thirty (30) days to do the due diligence with regard to the purchase.
7. Because of the death of Manjit's parents, and my visit to India, I had to cease doing my due diligence. I spoke directly with Mr. Naeve on several occasions and we agreed that AFS

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had more time to complete its due diligence. We further agreed that I can start my due diligence upon return from India, which was scheduled for December 23<sup>rd</sup>.

8. Upon my return from India, I was constantly in touch with Mr. Naeve. We spoke almost every day and some time multiple times in a day. Once we started our due diligence, We found some issues with the leases and decided to re-negotiate the contract. Mr. Naeve, Manjit, and my selves had several conference calls where we agreed to the amendments. Mr. Naeve drafted and emailed the amendments in the first week of January. He snuck in additional terms that were not agreed upon during the phone conversation. So we did not sign the amendment and continued the negotiations. Mr. Naeve tried to sneak in the amendment and tried to make it look like an instructions to Title Co. to release the funds the seller. I objected as we were not done with the due diligence, and the funds were not to be released until we were done with the due diligence.

9. At some point out of frustrations, I decided that I would no longer be involved in the purchase of the Recuperos' convenience stores, therefore, Manjit entered into negotiations with Mr. Naeve for American Food Store's interest in the Asset Purchase Agreement being transferred to a new LLC named TwentyFour-Seven, LLC. I was to have returned to me my investment of \$10,000.00 plus legal fees of appx. \$6,000.00 before any assignment of the Asset Purchase Agreement.

10. The Plaintiff breached our Asset Purchase Agreement when Mr. Naeve refused to continue with the sale after having granted AFS additional time to do its due diligence. The \$1.0

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million dollar earnest money payment was not due and payable at the time that the Plaintiff claimed and used as the basis for terminating the Asset Purchase Agreement.

11. The Plaintiff violated the implied covenant of good faith and fair dealing and the express oral agreement that existed between the parties.

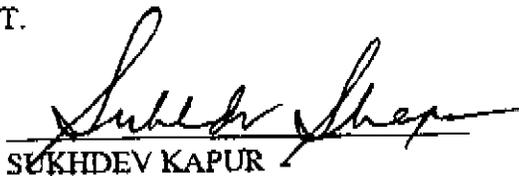
12. Plaintiff breached our Agreement by requiring the \$1 million earnest money to be paid directly to Recuperos.

13. With regard to the Settlement Agreement, Mr. Naeve and the Plaintiff, as well as the Title Company each had actual knowledge that under our LLC's Operating Agreement, neither member could make any decision or take any action binding on the LLC individually. All acts and decisions of the LLC had to be jointly made by the two members acting in concert.

14. The Plaintiff expressly ignored that fact when it entered into the Settlement Agreement with Manjit.

15. The release of funds from Title Co. and the settlement agreements were entered without my consent or knowledge. The both are invalid.

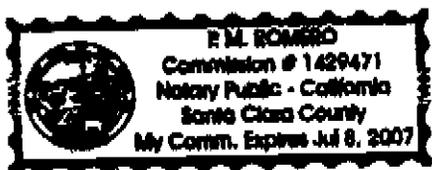
FURTHER YOUR AFFIANT SAITH NAUGHT.

  
SUKHDEV KAPUR 6/24/04

SUBSCRIBED AND SWORN to before me the undersigned Notary, this 24 day of

June, 2004.

STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA  
PHROMERO NOTARY PUBLIC



  
NOTARY PUBLIC  
Residing at SANTA CLARA, CA  
My Commission Expires:  
JULY 8, 2007

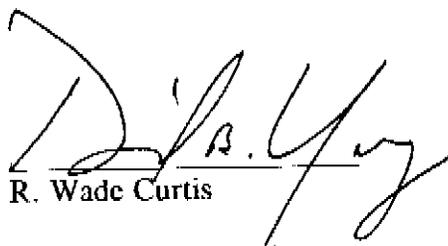
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 24<sup>th</sup> day of June, 2004, I caused to be served a true and correct copy of the above and foregoing document by the method indicated below, and addressed to the following:

- MAILED  
 FAXED -- 385-5384  
 HAND DELIVERED  
 OVERNIGHT DELIVERY

Attorney(s) and/or Individual(s) Served:

Michael O. Roe  
Post Office Box 829  
Boise, Idaho 83701

  
R. Wade Curtis