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FILE COPY

IN THE SUPREME COURT OF THE STATE OF ALASKA

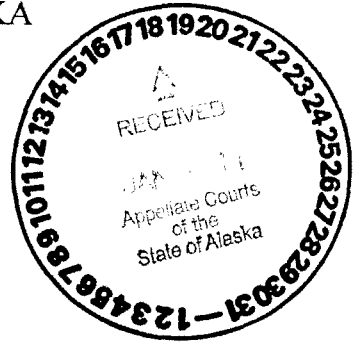
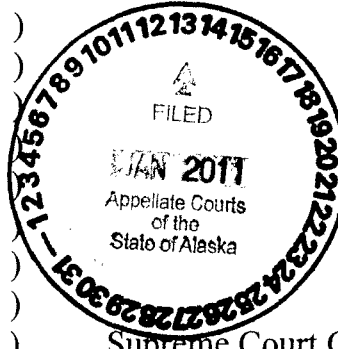
YONG H. YI,

Appellant,

vs.

HARRIS S. YANG, SHARON YANG,
MAX ARTHUR LAMOUREAU, Y & I
CORPORATION, OFFICER LAWRENCE
PEYTON MERIDETH and the CITY
OF FAIRBANKS,

Appellees.



Supreme Court Case No. S-13427

Superior Court Case No 4FA-04-2761 CI

APPELLANT'S EXCERPT OF RECORD
VOLUME 1 OF 2

APPEAL FROM THE DECEMBER 8, 2008 JUDGMENT OF THE
SUPERIOR COURT, FOURTH JUDICIAL DISTRICT AT FAIRBANKS
THE HONORABLE RANDY M. OLSEN, PRESIDING

LAW OFFICE OF ROBERT JOHN

By: 

Robert John
Alaska Bar No. 8911069
Attorney for Young H. Yi

Filed in the Supreme Court of
The State of Alaska, this 4th
day of January, 2011.

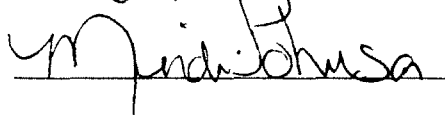
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

YONG H. YI, KENNY YI, HYONG C. YI
and LUNAR CHIN,

Plaintiffs,

v.

HARRIS S. YANG, SHARON YANG, MAX
ARTHUR LAMOUREAUX, Y & I
CORPORATION, OFFICER LAWRENCE
PEYTON MERIDETH and the CITY OF
FAIRBANKS.

Defendants.

SECOND AMENDED
COMPLAINT

Case No. 4FA-04-2761-CI

YONG H. YI, KENNY YI, and LUNAR
CHIN,

Third Party Plaintiffs,

v.

KENNY YI, and LUNAR CHINN,

Third Party Defendants.

JURISDICTION AND VENUE

1. The Superior Court has jurisdiction under AS 22.10.020 .
2. Venue is proper in the Fourth Judicial District because the principal place of business of the parties and all relevant actions took place therein.

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Yi v Yan, Case No. 4FA-04-2761-CI
SECOND AMENDED COMPLAINT

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EXC 1

FILED
JUL 24 2006

FILED

PARTIES

3. Plaintiff, YONG H. YI, is a natural person residing and doing business in Fairbanks, Alaska.
4. Plaintiff, KENNY YI, is a natural person residing in Soul, Korea. During all relevant times, he was residing and working for the Plaintiff Yong H. Yi in Fairbanks, Alaska. Mr. Kenny Yi is the brother of Yong H. Yi.
5. Plaintiff, LUNAR CHINN, is a natural person and resident of the State of Hawaii, and working for the Plaintiff Yong H. Yi in Fairbanks, Alaska. Ms. Lunar Chinn is the sister of Yong H. Yi.
6. Plaintiff, HYONG C. YI is a natural person residing in and working for the Plaintiff Yong H. Yi in Fairbanks, Alaska. Ms. Hyong C Yi is the wife of Yong H. Yi.
7. Defendant, HARRIS S. YANG, is a natural person residing and doing business in Fairbanks, Alaska, and is a principal shareholder in Y & I Corporation.
8. Defendant SHARON YANG is a natural person residing and doing business in Fairbanks, Alaska, and is a principal shareholder in Y & I Corporation. Ms. Sharon Yang is the wife of Mr. Harris S. Yang.

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9. Defendant MAX ARTHUR LAMOUREAUX is a natural person residing in Anchorage, Alaska. On information and believe, Mr. Lamoureaux is either employed by Y & I Corporation and/or is a principal shareholder in such corporation.
10. Defendant Y & I CORPORATION is a business corporation organized under the laws of the State of Alaska, and is the titled landowner of the premises upon which is located the Klondike Inn and the Klondike Inn Restaurant and Bar (also known as the Klondike Restaurant and Sports Bar and similarly related names) .
11. Defendant OFFICER LAWRENCE PEYTON MERIDETH is a policeman employed by the City of Fairbanks.
12. Defendant, THE CITY OF FAIRBANKS, ALASKA, is a Home Rule, First Class City and Municipal Corporation organized under the laws of the State of Alaska exercising police powers.

GENERAL ALLEGATIONS

13. In the summer of 2004, the Y & I Corporation owned and operated the Klondike Inn, which is a bar, restaurant, and hotel located off Airport Way, in Fairbanks, Alaska.

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EXC 3

14. At all relevant times, the Y & I Corporation is the entity licensed by the Alaska Alcohol Beverage Control Board to dispense liquor and spirituous beverages upon the premises sometimes referred to as the Klondike Restaurant and Bar.

15. The bar and restaurant business located at the above referenced site are fully integrated and operated as a single business establishment.

16. During this time, the Defendants, Harris S. Yang, and Sharon Yang, (Collectively hereinafter referred to as the "Yangs") husband and wife, and principal shareholders in the Y & I Corporation, worked in the same said business.

17. Prior to the transactions referenced herein, the Yangs attempted to lease the restaurant and bar, and made various efforts to market such lease.

18. Prior to the transactions referenced herein, Harris approached certain third parties and offered to lease the restaurant and bar, provided that the liquor license would not be transferred to the proposed lessee, and that the bar business would be operated under the license remaining in the lessor's name.

19. Such third parties declined to enter into such transactions and advised Harris that such arrangement were illegal.

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20. At all times prior to the events stated below, the Yangs knew that the lease of a bar business required the transfer of a liquor license to the name of the lessee.
21. In the summer of 2004, Plaintiff, Yong H. Yi (hereinafter referred to as "Yong") resided in Anchorage, Alaska.
22. In the summer of 2004, Plaintiff, Lunar Chin (hereinafter referred to as "Lunar") resided in Honolulu, Hawaii.
23. Prior to July 2004, Yong was contacted by his sister, Lunar Chin, who informed him that she had heard from a mutual acquaintance within the Korean community that the Klondike Inn Restaurant and Bar, in Fairbanks, Alaska, was for lease.
24. In response to this information, Yong traveled to Fairbanks to inspect the business in July, 2004
25. In Fairbanks, Yong met Harris and Sharon Yang, who represented to Yong that they were the owners of the Klondike Inn Restaurant and Bar.
26. Over the next two months Yong traveled to Fairbanks seven (7) times to inspect the business.

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27. In the process of inspecting the business, Mr. Harris Yang (hereinafter individually referred to as "Harris") affirmatively represented that the restaurant and bar generated gross revenues of \$2 million a year.
28. After Yong's review of the business, and discussions with family members, Yong expressed a willingness to lease the business from the Yangs.
29. Yong advised the Yangs that he was interested in leasing the business but noticed that the restaurant was only open sporadically. Yong advised the Yangs that they would have to keep the business open for regular hours until he assumed operation of the business.
30. The Yangs indicated that they would comply with Yong's request.
31. Over the next month or so, Yong negotiated an agreement with the Yangs.
32. Korean is the first language of both the Yangs and Yong, and all negotiations were conducted in the Korean language.
33. The negotiations took longer than anticipated because the parties had to translate the agreements reached in Korean into English.
34. Additionally, Yong's proficiency in the English language is limited and Yong was required to seek translation assistance from family members.
35. Finally, on September 10, 2004, Yong entered into a lease agreement with Harris and Sharon to lease the Klondike Restaurant and Bar.

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36. The Yangs continued to operate the Klondike Inn.
37. The lease agreement was for a five-year term, with an option to extend the lease for an additional five years.
38. The lease agreement provided for a rent of \$6,000 a month, with escalation clauses after certain intervals, not applicable to these proceedings.
39. The lease agreement provided that Yong shall occupy the restaurant and bar for food and alcohol business with existing license. (Paragraph 12)
40. The agreement expressly states, "The license of the Bar is understood to be in Harris Yang's name." (Paragraph 16)
41. The agreement contains an express representation by Harris to Yong that the premises may lawfully be used for "such purposes," meaning the occupancy and operation of occupancy by Yong of the restaurant and bar for food and the sale of alcohol by Yong within that business under the existing license retained in the name of Harris. (Paragraph 12)
42. On September 15, 2004, Yong paid Harris and Sharon a total of \$37,200, which included a security deposit of \$30,000, the first month's rent of \$6,000 and, the first month's rent of an apartment at the Klondike Inn of \$1,200.
43. The agreement contains no reference to the transfer of inventory of the bar or restaurant.

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44. The parties had an oral understanding and agreement outside the terms of the lease agreement that Yong would purchase from Harris the inventory and stock located on the premises and transferred to Yong, at a price to be agreed upon.
45. On September 15, 2004, Yong requested that he and the Yangs do an inventory check.
46. The Defendant, Ms. Sharon Yang (hereinafter individually referred to as "Sharon") indicated that she did not want to shut down the business during business hours to do the inventory.
47. Yong requested that Sharon and he meet and conduct the inventory at 2:00 am on the morning of the next day (i.e. September 16th). Sharon refused and indicated that she would prefer to do it on the morning of the 16th.
48. At 6:00 am on September 16, 2004, Yong came to the restaurant to do the inventory and to take possession of the restaurant.
49. Neither of the Yangs showed up to conduct the inventory at that time.
50. During all prior inspections of the premises, Yong was aware of the presence of a pizza oven within the kitchen of the premises, which was a fixture located within the business.

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51. Harris removed the pizza oven from the restaurant prior to transfer of the premises to Yong and without informing Yong of Harris' intentions to do so.
52. Yong discovered that the removal of the pizza oven on the morning of September 16, 2004,
53. Removal of the pizza oven was a serious problem because the oven was used to make pizza and prime rib, which were the leading menu items for the restaurant.
54. The removal of this equipment serious hurt the operation of the restaurant.
55. On information and belief, the pizza oven and some other kitchen equipment were removed from the restaurant because the equipment needed repair.
56. Upon information and belief, the fire department had advised Harris that kitchen needed to be remodeled to increase venting for the equipment that was removed by Harris.
57. On information and belief, the equipment was removed, in part, to avoid having to undertake the repair of the equipment, which was required by the lease.
58. Yong immediately protested the removal of this equipment to the Yangs.

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59. Later that day, Rhy-Royce, the Assistant General manager of Klondike Inn, and an employee of the Yangs', showed up at the restaurant to do the inventory.

60. In doing the inventory, Kenny Yi, (hereinafter referred to as "Kenny") represented Yong.

61. Kenny and Rhy produced two handwritten inventories, one (1) liquor, and one (1) non-liquor.

62. Kenny kept the liquor inventory.

63. Rye kept the non-liquor inventory.

64. Some of the foodstuffs left on the premises included Chinese food items.

65. The restaurant does not serve Chinese food and the Chinese food items should have been excluded from the inventory.

66. Some inventoried foodstuffs were spoiled or out of date and should have been excluded from the inventory.

67. The value of the inventory on hand as of September 16, 2004, excluding the spoiled and non-restaurant food stuffs, were worth approximately \$8,000.

68. Two or three weeks later, Harris gave Yong a booklet with a proposed inventory.

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69. Harris claimed that the inventory on hand as of September 16, 2004 was worth \$23,000.

70. Harris' proposed inventory listed many items not present in the restaurant at the time of the turn over.

71. Yong reviewed Harris' proposed inventory and made interlineations of items that were not present, spoiled, out of date, or inappropriate for use in the restaurant, and returned the inventory to Harris.

72. Yong requested that Harris provide Yong with a copy of the hand written inventory of non-liquor items done by Rye and Kenny.

73. Harris refused the above referenced request.

74. On October 15th, 2004 Yong paid Harris Yang \$6,000 as rent on the restaurant and bar, and \$1,200 as rent on an apartment at the Klondike Inn.

75. On or about October 15, 2004, Kenny visited the Klondike Inn office and requested that Sharon provide the Yi's with a copy of the handwritten inventory sheet done by Rye and Kenny.

76. Sharon indicated to Kenny that she could not make that decision.

77. Later that morning, Kenny received a call from John Lee, an employee of the Yang's, demanding that Yong pay Harris \$23,000, and accusing the Yi's of breaching the lease agreement

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78. At the same time, John Lee threaten Kenny that if the Yi's didn't pay the money, Harris would shut down the restaurant.
79. On October 16th, Sharon called Yong about 11:30 am and demanded that Yong bring a check for \$23,000 to the office of the Klondike Inn.
80. During that conversation, Sharon accused Yong of breaching the contract.
81. Ten minutes after Sharon called, Harris walked into the restaurant at the beginning of lunch time in the restaurant.
82. Harris began to yell at the restaurant's customers and employees.
83. He called Kenny a name in Korean that roughly translates as "a son of bitch" and assaulted Kenny.
84. Kenny told one of the waitresses to call the police.
85. Kenny took Harry outside with John Lee.
86. Police came and advised Harry that he should not trespass on the restaurant.
87. Later that day, October 16th, Yong received a letter from Harris, purportedly written on October 15, 2004, claiming that Yong owed Harris money for the inventory and that Yong was breaching the agreement.
88. Following receipt of this letter, Yong responded with two letters requesting a meeting to discuss the matter of the inventory and other problems, including

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Medicare meal credits, the problem on Yang's behavior on the 16th and other issues.

89. In response, after October 22, Yong received a letter from Mr. Kenneth P. Ringstad, the Yangs' attorney.

90. In the letter, Mr. Ringstad claimed that Yong owed the Harris \$12,073.11 for the inventory.

91. After October 26, 2004, Yong received another demand from Harris.

92. On October 28, 2004, Yong responded with a letter requesting a meeting to discuss various issues related to the lease agreement.

93. In early November 2004, a liquor salesman asked Yong if the liquor license had been transferred to him and informed Yong that he needed to have the liquor license transferred to him in order to operate the bar legally.

94. Prior to the conversation with the liquor salesman, Yong was unaware that there was any problem with the liquor license.

95. Yong had never been in a liquor business before and did not know that he needed to have the license transferred to him.

96. Yong asked Kenny to call the Alcohol Beverage Commission and asked about the license.

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97. Staff at the Alcohol Beverage Commission informed Kenny that it was illegal to transfer the bar business from the Yangs to the Yong with out transferring the liquor license.

98. Kenny reported this conversation to Yong.

99. On November 15th, 2004, Yong paid Harris Yang \$6,000 as rent on the restaurant and bar, and \$1,200 as rent on an apartment at the Klondike Inn.

100. Near the end of November, 2004, shortly after Kenny's discussions with the ABC, Yong discussed the liquor license problem with Sharron, and offered to buy the liquor license.

101. Sharon advised Yong that she would look into it.

102. Prior to November 22, 2004, Sharon and/or Harris again consulted Mr. Kenneth P. Ringstad, their attorney.

103. On or about November 22, 2004, Mr. Ringstad advised the Yangs that the agreement between the Yangs and Yong violated the liquor laws of the State of Alaska.

104. Prior to December 2, 2004, Sharon and/or Harris consulted Dan K. Coffey, an attorney in Anchorage regarding the liquor license issue.

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105. On or about December 2, 2004, Mr. Coffey advised Harris in a written memorandum that the agreement between the Yangs and Yong violated the liquor laws of the State of Alaska.
106. Additionally, at the same time, Mr. Coffey advised Harris that the only way in which this transaction can be done legally is with the transfer of ownership of the liquor license to Yong coupled with a lease of the licensed premises.
107. Mr. Coffey also advised Harris to retain a security interest in the liquor licensed premises.
108. Mr. Coffey advised Harris that the total transaction would cost "in the range of \$12,000", and requested a retainer of \$2,500 to start work on the transfer.
109. On December 4, 2004, at about 1:30 pm, Yong met with Sharon to discuss the problem further.
110. At that meeting, Sharon showed Yong the December 2nd letter from attorney Dan Coffey.
111. Yong was not able to understand the letter because of his limited ability to read and understand the English language.

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112. At that meeting, Sharon told Yong that the letter advised that the Yang's could transfer the license to Yong.
113. Sharon offered to lease the liquor license to Yong if Yong would pay for the fees to hire Mr. Coffey to transfer the license, and to pay the inventory claimed by Harris.
114. Yong agreed and gave Sharon two (2) checks made out to Dan Coffey in the amounts of \$2,500.00 and \$20,000.
115. Sharon also provided Yong a receipt for such funds.
116. After Yong's meeting with Sharron, Yong went to the airport to pick up his sister, Lunar Chin (hereinafter referred to as "Lunar") at the airport.
117. When Yong met his sister, he told Lunarr about the meeting with Sharon.
118. Lunarr understands English, both written and spoken better than Yong.
119. At about 3:00 pm, Lunar and Yong returned to the Klondike Inn office and Sharron gave a copy of the Coffey letter to Lunarr to review.
120. Lunar explained to Yong that the letter proposed to transfer the license to Yong, rather than to lease the license to Yong, as explained by Lunar.
121. Lunar accused Sharon of trying to cheat Yong.

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122. The checks were never given to Mr. Coffey and were never cashed.
123. At about 5:00 pm that day, Yong again met with Sharon.
124. At this later meeting, Yong offered to pay \$40,000 plus the amount Harris' claimed amount for the inventory if the Yang's would transfer the liquor license into Yong's name. Yong proposed that he would pay \$10,000 and the Yangs could retain the security amount held on the existing lease as payment of this amount.
125. The negotiations that afternoon became very confused, with Sharon making several proposals and changing her mind. Finally, Sharon indicated that she needed to talk to Harris. No agreement was made at that time.
126. On that same day, Kenny went over to talk to Sharon about 6:30 or 7:00 pm that night and demanded that if any further negotiations take place they should take place between authorized representatives with the power to reach an agreement.
127. In that meeting, Kenny requested that Sharon obtain a power of attorney from Harris to negotiate further and offered to provide a similar power of attorney from Yong authorizing Kenny to negotiate on his behalf.

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128. At about 10:00 pm that same night, Sharon went to the restaurant and told Yong that Harris was very angry at her and that Harris had threatened to kill her.

129. At that time, Sharon indicated to Yong that the \$20,000 check should be made out to the Klondike, not Attorney Coffey.

130. Sharon suggested that if Yong gave Sharon a check that night for \$20,000 for the inventory, everything would be all right.

131. Yong informed Sharon that he did not have the \$20,000 and that the inventory wasn't worth that much.

132. Sharon responded by offering to reimburse Yong \$15,000 the next morning, and that Sharon would not tell Harris about the reimbursement.

133. Yong agreed to this last proposal and gave Sharon check for \$20,000, and told her that it was not good unless she gave Yong a check in the morning for the \$15,000 as promised.

134. The next morning, Sharon did not give Yong a check or otherwise reimburse me for the promised \$15,000.

135. As a consequence thereof, Yong cancelled payment of the check.

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136. On December 6th, at about 12:30 pm, during the restaurant's lunch rush, Harry came into the restaurant yelling and screaming and grabbed Kenny by the neck.
137. Approximately 2:00 pm that same day, Max Arthur Lamoureaux, (hereinafter referred to as "Max") who represented himself as Harris's partner, called Kenny from Anchorage and suggested a teleconference between everybody.
138. The teleconference took place about 4:00 pm that day. During that teleconference, Yong proposed paying \$8,000 for the inventory and \$50,000 for the liquor license, and to renegotiate the lease for 20 years based upon market value.
139. Max did not respond to this offer.
140. On December 13, 2004, Max sent a counteroffer to allow Yong to "purchase the license and lease rights" for the Klondike Restaurant & Sports Bar" for \$150,000 and a monthly rent of \$6,500 a month rent. Under the counteroffer, the lease would be for 10 years with two five-year options to renew.
141. On or before December 19th, Max traveled to Fairbanks.

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142. In the morning of December 19, 2005, Max also posted a notice to quite the premises (dated December 10th) from attorney John C. Pharr on the door of the restaurant.

143. The above referenced notice to quit stated that Harris had removed the liquor license from the premises and instructed Yong to sell no more liquor.

144. The above referenced notice to quit stated that Yong had violated the statutes of the State of Alaska by selling alcohol without a license.

145. The above referenced notice demanded that Yong vacate the premises within five (5) days.

146. The above referenced notice stated "There is no action you can take to remedy this wrongful occupancy".

147. On the morning of December 19, 2005, Max also attempted to break into the restaurant to remove the liquor license from the premises, and for such other purposes unknown to the Plaintiffs.

148. The Yi's had never met Max in person and did not know what he looked like.

149. Upon approaching the restaurant in the morning of December 19, 2005, the Hyong saw Max, who was unknown to her, attempting to break into the restaurant.

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150. Hyong called Yong, Kenny and Lunar to come to the Restaurant.
151. One or more of the Yi's saw Max flee into the office of the Klondike Inn to re-emerge from the office with John Lee, both of whom got into a truck owned by Harris and attempt to leave.
152. At all relevant times, Max was operating the truck in question.
153. The Yi's called the Fairbanks Police and attempted to block the exit by the man until police arrived.
154. In so doing, Max drove the truck in a reckless and negligent such a fashion so as to strike Lunar.
155. As a result of being struck by the truck, Lunar suffered physical injuries.
156. After striking Lunar, Max attempted to flee the scene of the accident without providing Lunar information as to his identify.
157. Kenny and Yong attempted to stop the truck from further injuring Lunar and to stop the driver from fleeing the scene of the accident.
158. Max drove the truck in a reckless and negligent such a fashion so as to injure Kenny.
159. After causing injury to Kenny, Max attempted to flee the scene of the accident without providing Kenny information as to his identify.

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160. Hwong attempted to stop the truck from further injuring Lunar and Kenny and to stop the driver from fleeing the scene of the accident
161. Max drove the truck in a reckless and negligent such a fashion so as to injure Hwong and do property damage to the automobile owned by Hwong and Yong.
162. Officer Meredith arrived at the scene and falsely arrested Yong and Kenny.
163. Yong and Kenny requested assistance from the police to enter the leased premises to secure cash, and personal property owned by Yong.
164. In response, the police ordered Yong and other members of the Yi family to not enter the leased premises for any purpose.
165. On December 20, 2004, John Pharr sent a second notice of quit to Yong.
166. This notice demanded that Yong vacate the premises within twenty-four (24) hours and alleged that Yong had inflicted substantial damage to the premises.
167. The notice repeated the allegation that Yong had sold alcohol in violation of state statutes without a license.
168. The notice repeated the assertion and representation "There is no action you can take to remedy this wrongful occupancy."

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169. Since December 19, 2004, the Yang's, Max and the City of Fairbanks, have excluded the Yi's from the premises of the restaurant and bar.

170. In reliance upon the lease, Yong made certain improvements and purchased certain equipment and placed the same in the premises.

171. Upon information and belief, the Yangs have undertaken action to lease the restaurant and bar to third parties or have otherwise undertaken operation of the business themselves, to their profit and benefit.

172. At no time prior to the above ouster of Yong from the premises and termination of the lease agreement did Harris and/or Sharon, nor any other duly authorized representative of the Y & I Corporation make attempts to transfer the liquor license to Yong.

**COUNT I
BREACH OF CONTRACT - UNLAWFUL OUSTER**

173. Plaintiff realleges all previous allegations

174. The lease was lawful, in whole or in part.

175. Plaintiff had complied with all terms and conditions of the lease agreement.

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176. Defendants termination of lease and ouster of the Plaintiff Yong Yi, and his employees was wrongful and in violation of the lease terms and conditions.

**COUNT II
BREACH OF CONTRACT - BREACH OF COVENANT OF GOOD FAITH AND
FAIR DEALING.**

177. Plaintiff Yong realleges all previous allegations.

178. The lease was lawful, in whole or in part.

179. A lease contains a condition of good faith and fair dealing

180. An implied condition of the lease was an obligation upon the Defendants Yangs and/or Y & I Corporation, to transfer the liquor license for the premises to Yong Yi at no additional cost.

181. Yong Yi made a demand for transfer of the liquor license.

182. The Defendants, Yangs and/or Y & I Corporation demanded additional compensation for the transfer of the liquor license to Yong in violation of the covenant of good faith and fair dealing.

183. The Defendants, Yangs and/or Y & I Corporation failed to transfer the liquor licensee to Yong in violation of the lease agreement.

184. The Defendants employed the pretext that the operation of the

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**COUNT III
BREACH OF WARRANTY**

185. Plaintiff Yong realleges all previous allegations.

186. In the alternative to the above counts, the arrangement for the lease of the premises without the transfer of the liquor licence to Yong from the Defendants was unlawful

187. Harris was aware, prior to entering into the lease, that the arrangement proposed by Harris to Yong violated Alaska law and regulation governing the sale of liquor.

188. Harris made an express warranty that the arrangement was lawful

189. The termination of the lease based upon the unlawful nature of the arrangement was an breach of the express warranty contained within the lease agreement.

**COUNT IV
FRAUD AND/OR MISREPRESENTATION**

190. Plaintiff realleges all previous allegations.

191. The above actions constitute fraud and/or misrepresentation and were therefore unlawful.

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COUNT V

FRAUD IN THE INDUCEMENT OF CONTRACT

192. Plaintiff realleges all previous allegations.
193. The above actions constitute fraud in the in inducement of a contract.

COUNT VI

RESTITUTION AND/OR RECISSION

194. Plaintiff realleges all previous allegations.
195. The contract was unlawful.
196. Yong has a right of rescission.
197. Yong has a right of restitution for money paid by Yong to the Yangs.

COUNT VII

CONVERSION OF PERSONAL PROPERTY

198. Plaintiff realleges all previous allegations.
199. Plaintiff made improvements to the premises, and purchased and installed equipment on the premises.
200. Defendants have retained such improvements and equipment wrongfully.

COUNT VIII

QUANTUM MERIT

201. Plaintiff realleges all previous allegations.

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202. Plaintiff made improvements to the premises, and purchased and installed equipment on the premises.

203. Defendants have retained such improvements and equipment wrongfully.

**COUNT IX
MONEY HAD AND RECEIVED**

204. Plaintiff realleges all previous allegations.

205. The contract was unlawful

206. In the alternative to the above inconsistent allegations, Plaintiff paid money, and Defendants received money from the Plaintiff(s) under the mistaken belief, either mutual or unilateral, that the contract was lawful

207. Plaintiff made improvements to the premises, and purchased and installed equipment on the premises.

208. Defendants have retained such funds and equipment wrongfully.

**COUNT X
ASSAULT/BATTERY (Civil)**

209. Plaintiff realleges all previous allegations.

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210. Upon at least two occasions, Defendant Harris intentionally assaulted and did battery to the person of Kenny Yi.

**COUNT XI
PERSONAL INJURY NEGLIGENCE**

211. Plaintiff realleges all previous allegations.

212. Max had a duty of care toward Lunar, Hyong and Kenny.

213. On or about December 19, 2005, Max operated a vehicle in reckless manner in willful disregard of the risk to Lunar, Hyong and Kenny.

214. On that date, the car being operated by Max struck and injured Lunar, Hyong and Kenny, causing serious personal injury.

215. Such negligence was the proximate cause of such injuries.

216. Max is the employee of Y & I Corporation, and/or the Yangs.

217. Such actions were taken within the scope of such employment.

**COUNT XII
NEGLIGENCE - PROPERTY DAMAGE**

218. Plaintiff realleges all previous allegations.

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219. On or about December 19, 2005, Max operated a vehicle in reckless manner in willful disregard of the risk to the automobile owned by Yong and Hyong Yi, causing property damage to said car.

220. Such negligence was the proximate cause of such injuries.

221. Max is the employee of Y & I Corporation, and/or the Yangs.

222. Such actions were taken within the scope of such employment.

COUNT XIII

UNLAWFUL ACTS AND PRACTICES [AS 45.50.471]

223. Plaintiff realleges all previous allegations.

224. The above actions violate AS 45.50.471

COUNT XIV

CIVIL RIGHTS VIOLATION

[DEPRIVATION OF PROPERTY RIGHTS]

225. Plaintiff realleges all previous allegations.

226. Defendants Harrsson and Max, made false and misleading statements to police officers responding to the incidents of December 19, 2004.

227. Defendants' false and misleading statements were made in an effort to cause the arrest and detention of the Plaintiffs, under color of law.

228. Plaintiffs Yong and Kenny were falsely arrested by Officer Meredith acting upon the false and misleading statements of Defendants.

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229. The actions of the Officer Meredith and the Fairbanks Police Department were taken under color of law.

230. The actions of Officer Meredith and the Fairbanks Police Department deprived Yong of property, including the leased premises and the personal property, including cash, on the premises

231. The actions of Officer Meredith and the Fairbanks Police Department was consistent and a consequence of the City's policy or custom.

232. The deprivation of property referenced herein, was done without due process, and in violation of the procedural and substantive due process rights of Yong.

233. Such actions violate 42 USC 1983.

**COUNT XV
CIVIL RIGHTS VIOLATION
[FALSE ARREST]**

234. Plaintiff realleges all previous allegations.

235. Officer Meredith did not have a warrant to arrest Yong and Kenny

236. Officer Meredith arrested Yong and Kenny without probable cause to believe a crime had been committed.

237. Officer Meredith did not have a reasonable belief that the Yong and Kenny committed a crime.

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238. Officer Meredith arrested Yong and Kenny.

239. Such actions violate 42 USC 1983

**COUNT XVI
FALSE ARREST - TORT**

240. Plaintiff realleges all previous allegations.

241. Officer Meredith did not have a warrant to arrest Yong and Kenny

242. Officer Meredith arrested Yong and Kenny without probable cause to believe a crime had been committed.

243. Officer Meredith did not have a reasonable belief that the Yong and Kenny committed a crime.

244. Officer Meredith arrested Yong and Kenny.

245. The arrest of Yong and Kenny was unlawful and tortuous.

**COUNT XVII
TORTIOUS INTERFERENCE WITH BUSINESS AND FAMILIAL
RELATIONS**

246. Plaintiff realleges all previous allegations.

247. The Yi's, including Yong, Kenny, Lunar and Hwong, are of Korean descent

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248. Consistent with Korean customs and traditions, the Yi's engaged in a cooperative family enterprise, in which Yong employed the other members of the Yi family.

249. The Yangs, Sharon and Harris, are also of Korean descent and are aware of Korean customs and traditions.

250. As a consequence of the above actions, Yong suffered a loss of face relative to his other family members

251. As a consequence of the above actions, Yong was not able to employ his other family members

252. The above actions constituted an unlawful and tortuous interference with family and business relations.

DAMAGES

253. In consequence of the above alleged actions, and Count I- IX, XIII and XVII, the Defendants Harris, Sharon, and Y&I Corporation have caused the Plaintiff Yong to suffer substantial damages, including

- a. cash paid by Yong to the Yangs;
- b. loss of value of property converted, including the cash on the premises at time of ouster, from Yong to the Yangs;
- c. lost of business income;

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- d. injury to business reputation;
- e. loss of face and family consortium
- f. lost opportunity costs to reassign the lease to the subsequent owner;
and
- g. other damages to be proven at trial.

254. In consequence of the above alleged actions, and Count X, XI and XVII, the Defendants Max, Harris, Sharon, and Y&I Corporation have caused the Plaintiff Kenny to suffer substantial damages, including

- a. medical damages incurred by Kenny;
- b. lost wages Kenny;
- c. pain and suffering to Kenny;
- d. loss of family consortium, and
- e. other damages to be proven at trial.

255. In consequence of the above alleged actions, and Count XI and XVII, the Defendants Max, Harris, Sharon, and Y&I Corporation have caused the Plaintiff Lunar to suffer substantial damages, including

- a. medical damages incurred by Lunar;
- b. lost wages Lunar;
- c. pain and suffering to Lunar;

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- d. loss of family consortium, and
- e. other damages to be proven at trial.

256. In consequence of the above alleged actions, and Count XI and XVII, the Defendants Max, Harris, Sharon, and Y&I Corporation have caused the Plaintiff Hwong to suffer substantial damages, including

- a. medical damages incurred by Hwong;
- b. lost wages Hwong;
- c. pain and suffering to Hwong;
- d. loss of family consortium, and
- e. other damages to be proven at trial.

257. In consequence of the above alleged actions, and Count XII, the Defendants Max, Harris, Sharon, and Y&I Corporation have caused the Plaintiffs Yong and Hwong to suffer substantial damages, including

- a. Property damage to automobile, and
- b. other damages to be proven at trial.

258. In consequence of the above alleged actions, and Count XIV, the Defendants Officer Meredith, City of Fairbanks, Max, Harris, Sharon, and Y&I Corporation have caused the Plaintiffs Yong to suffer substantial damages, including

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- a. Loss of the value of the lease of the premises,
- b. loss of value of property converted, including the cash on the premises at time of ouster, from Yong to the Yangs;
- c. lost of business income;
- d. injury to business reputation;
- e. loss of face and family consortium
- f. lost opportunity costs to reassign the lease to the subsequent owner;
- and
- g. other damages to be proven at trial.

259. In consequence of the above alleged actions, and Count XV and XVI the Defendants Officer Meredith, City of Fairbanks, Max, Harris, Sharon, and Y&I Corporation have caused the Plaintiffs Yong and Kenny to suffer substantial damages, including

- a. lost of business income;
- b. loss of wages
- c. injury to business reputation;
- d. loss of face and family consortium
- e. other damages to be proven at trial.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

1. Order Defendants to pay compensatory and consequential damages to the plaintiffs in an amount in excess of \$100,000, with the exact amount to be proven at trial.
2. Order Defendants to pay exemplary damages in an amount of five million dollars (\$5 million).
3. Award Plaintiffs full costs and attorney fees, or in the alternative, costs pursuant to Civil Rule 79 and attorney's fees pursuant to Civil Rule 82.
4. Such other and further relief as it deems just and equitable in the premises.

Dated this 24th day of July, 2006, at Fairbanks, Alaska.



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Alaska Bar No. 7906060

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9-19-06 CLW

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

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YONG H. YI, KENNY YI, LUNAR CHIN,
and HYON CHA YI,
Plaintiffs,

vs.

HARRIS S. YANG, SHARON YANG, MAX
ARTHUR LAMOUREAUX, JOHN C.
PHARR and Y & I CORPORATION,
Defendants.

ORDER GRANTING
PLAINTIFFS' MOTION FOR
LEAVE TO FILE SECOND
AMENDED COMPLAINT

Case No. 4FA-04-2761-CI

HARRIS S. YANG, SHARON YANG, and
Y & I CORPORATION,
Third Party Plaintiffs,

vs.

KENNY YI, and LUNAR CHINN,
Third Party Defendants.

The Plaintiffs having moved for leave to file an the Second Amended
Complaint which adds parties in the above captioned matter, and the Court being
fully apprised of the premises therein,

IT IS HEREBY ORDERED, that the Plaintiff's motion for leave to file amended
complaint is hereby **GRANTED**. The Plaintiff shall complete service on all added
parties added by Oct. 13, 2006.

Dated: Sept. 13, 2006

Randy M. Olsen
The Honorable Randy Olsen
Superior Court Judge

Michael J. Walleri
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I certify that a copy of the foregoing was distributed via:

MAIL
 U.S. Postal Svc. Zippke, Pharr
 Other

HAND DELIVERY
 Courier Svc. DP Bray
 Pick Up Bin Walleri

By: [Signature] Date: 9/18/06

Yi v Yan, Case No. 4FA-04-2761-CI

Order: Second Amended Complaint

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

YONG H. YI, KENNY YI, LUNAR CHIN,
and HYON CHA YI,
Plaintiffs,

vs.

HARRIS S. YANG, SHARON YANG, MAX
ARTHUR LAMOUREAUX, JOHN C.
PHARR and Y & I CORPORATION,
Defendants.

HARRIS S. YANG, SHARON YANG, and
Y & I CORPORATION,
Third Party Plaintiffs,

vs.

KENNY YI, and LUNAR CHINN,
Third Party Defendants.

ERRATA TO CAPTION OF
SECOND AMENDED
COMPLAINT

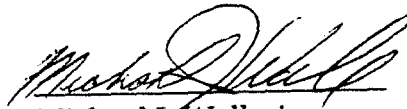
Case No. 4FA-04-2761-CI

Sixth Judicial District

SEP 18 2006

COMES NOW, Plaintiffs to give notice of errata to the caption of the Second Amended Complaint. A copy of the corrected first page of the complaint is attached.

Dated this 15th day of September, 2006, at Fairbanks, Alaska.



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Yi v Yang, Case No. 4FA-04-2761-CI
Motion: Second Amended Complaint

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EXC 38

Certificate of Service

I hereby certify that under penalty of perjury that a true and correct copy of the foregoing was sent to the following counsel of record on September 18th, 2006 via U.S. Mail to:

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Gary Zipkin
Aisha Tinker Bray
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Yi v Yang, Case No. 4FA-04-2761-CI
Motion: Second Amended Complaint

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EXL 39

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

YONG H. YI, KENNY YI, HYONG C. YI
and LUNA CHIN,

Plaintiffs,

v.
HARRIS S. YANG, SHARON YANG, MAX
ARTHUR LAMOUREAUX, Y & I
CORPORATION, OFFICER LAWRENCE
PEYTON MERIDETH and the CITY OF
FAIRBANKS.

Defendants.

**SECOND AMENDED
COMPLAINT**

Case No. 4FA-04-2761-CI

HARRIS S. YANG, SHARON YANG, and
Y & I CORPORATION,

Third Party Plaintiffs,

v.
KENNY YI, and LUNA CHIN,

Third Party Defendants.

JURISDICTION AND VENUE

1. The Superior Court has jurisdiction under AS 22.10.020 .
2. Venue is proper in the Fourth Judicial District because the principal place of business of the parties and all relevant actions took place therein.

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Yi v Yan, Case No. 4FA-04-2761-CI
SECOND AMENDED COMPLAINT

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EXC 40

2/21/07

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

YONG H. YI, KENNY YI, HYONG C. YI)
and LUNAR CHIN,)

Plaintiffs,)

vs.)

HARRIS S. YANG, SHARON YANG, MAX)
ARTHUR LAMOUREAUX, Y & I)
CORPORATION, OFFICER LAWRENCE)
PEYTON MERIDETH, and the CITY OF)
FAIRBANKS,)

Defendants.)

Case No. 4FA-04-2761 CI

MOTION FOR SUMMARY JUDGMENT
(Officer Merideth and City of Fairbanks)

Defendants Lawrence Peyton Merideth and the City of Fairbanks, pursuant to Rule 56(c), Alaska Rules of Civil Procedure, file the following motion for summary judgment and ask the court to dismiss all claims against them. There are no genuine issues of material fact, and Defendants are entitled to judgment as a matter of law, including qualified and statutory immunity. This motion is supported by the memorandum in support and the affidavits and exhibits filed herewith.

Dated this 20th day of February 2007 at Fairbanks, Alaska.

OFFICE OF THE CITY ATTORNEY
Attorneys for Defendants City and Merideth

By Paul J. Ewers

Paul J. Ewers
Deputy City Attorney
AK Bar No. 8711081

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MOTION FOR SUMMARY JUDGMENT
Yi, et al. v. Yang, et al., 4FA-04-2761 CI
Page 1 of 1

EXC 41

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2/21/07 a

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

YONG H. YI, KENNY YI, HYONG C. YI)
and LUNAR CHIN,)

Plaintiffs,)

vs.)

HARRIS S. YANG, SHARON YANG, MAX)
ARTHUR LAMOUREAUX, Y & I)
CORPORATION, OFFICER LAWRENCE)
PEYTON MERIDETH, and the CITY OF)
FAIRBANKS,)

Defendants.)

Case No. 4FA-04-2761 CI

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
(Officer Merideth and City of Fairbanks)

Defendants Lawrence Peyton Merideth and the City of Fairbanks seek summary judgment pursuant to Rule 56(c), Alaska Rules of Civil Procedure, dismissing all claims against them. There are no genuine issues of material fact, and Defendants are entitled to judgment as a matter of law.

I. INTRODUCTION/BACKGROUND

This lawsuit involves a contract/business dispute between the Plaintiffs and Defendants Harris Yang, Sharon Yang, and Y & I Corporation. The City of Fairbanks and Officer Merideth were added as defendants in Plaintiffs' Second Amended Complaint. Plaintiffs allege that Officer Merideth falsely arrested Plaintiffs Yong Yi and Kenny Yi and that the Fairbanks Police Department deprived Plaintiffs of property. Plaintiffs claim that the actions of Officer Merideth and the police department give rise to two claims under 42 U.S.C. § 1983 and a claim for the tort of false arrest.

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Yi, et al. v. Yang, et al., 4FA-04-2761 CI

Page 1 of 22

EXC 42

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CUSHMAN
FAIRBANKS, ALASKA
907-459-6750

On December 19, 2004, Plaintiffs Yong Yi and Kenny Yi were taken into custody by Fairbanks police officers based upon a citizen's arrest initiated by Defendant Max Lamoureux. Since the arrests were by a citizen, Plaintiffs' tort claim of false arrest is groundless as to Officer Merideth. If Plaintiffs suffered any deprivation of their interest in property, it was caused by the actions of other defendants. The eviction of Plaintiffs from the Klondike Restaurant and Bar was accomplished by other defendants prior to the arrival of Fairbanks police officers on December 19, 2004. Officer Merideth is also entitled to dismissal of the claims against him based on qualified and statutory immunity.

II. THIS MOTION SHOULD BE DECIDED WITHOUT DELAY.

Summary judgment dismissing the claims against Officer Merideth and the City should be granted without delay. When a defendant seeks dismissal based upon qualified immunity, a ruling on that issue should be made early in the proceedings.¹ The doctrine of qualified immunity is "an entitlement not to stand trial or face the other burdens of litigation. The privilege is 'an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.'"²

III. FACTS.

At the heart of this lawsuit is a business deal gone bad. The facts surrounding the business and personal dealings between Plaintiffs Yi and Defendants Yang, while not uninteresting, are for the most part irrelevant to this motion and the claims against Merideth and the City. It should be noted at the outset that this lawsuit was filed on December 13, 2004, six days **before** the events described below took place.

¹ Saucier v. Katz, 533 U.S. 194, 200 (2001).

² Id., quoting Mitchell v. Forsyth, 472 U.S. 511, 526 (1985).

On the morning of December 19, 2004, the Fairbanks Police Department received a series of 911 calls regarding the Klondike Inn/Klondike Restaurant and Bar.³ The first caller identified himself as Joe Hayes. He stated that he was calling on behalf of the owner of the Klondike who was trying to seize his property from the current management group. The caller told the dispatcher that he was holding the deeds to the property and that his role was to make sure that when the police got there they would know who owned the property. He requested that the management group be trespassed from the property. He was asked by the dispatcher if the owner had a writ of assistance and was told that the owner would have to bring the writ to the station and request a civil standby.

The second call was made a person identifying himself as John Dockery. Dockery stated that he was calling from the front office of the Klondike Inn. He was calling regarding a trespass order that prohibited "Kenny and Gary" (he was unsure of the last names) from being within 1000 feet of the motel. He reported, "We have them sitting out front." When asked, he was unsure if the trespass order was through the courts.

The third call was made by Defendant Kenny Yi.⁴ He stated, "I have someone trying to break in," "we caught him, and he's a here right now." Kenny did not know who the person was. When questioned, he stated that the man trying to break in was not the owner but may be working for the owner. The dispatcher informed Kenny that an officer was being sent to his location. Kenny stated that he was outside by his vehicle, a red Dodge Durango. The dispatcher told Kenny to stay right there and specifically told him, "Do not make any contact with him."

³ A transcript of these calls is attached as Exh. City A.

⁴ The transcript identifies the caller as Kenny "Lee." A review of the circumstances surrounding the call indicates that the caller was in fact Plaintiff Kenny Yi.

To make sure Kenny understood, the dispatcher asked, "You hear me?" He responded, "Yeah, I hear you."

From the exchange in the fourth call, it appears that the dispatcher had put John Dockery (caller in call # 2) on hold and returned to that line. Dockery was informed that an officer was being sent there.

The dispatcher then called Officer Merideth and requested that he proceed to the Klondike with another officer.

The fifth call was made by a woman identifying herself as the bartender at the Klondike. She stated that she had just arrived and that the owner [Kenny] had handed her his cell phone and asked her to call 911. She told Dispatch that there was a robbery attempt going on and that the perpetrators were trying to leave and tried to run someone over. The caller can be heard talking to someone at the scene, asking if they got the license plate number, etc. A third person can be heard in the background saying that they tried to run over my brother and me. The caller said that they [owner and others] were chasing the people down. At the request of the dispatcher, the caller put Kenny on the phone. The dispatcher asked if he was supposed to wait, to which Kenny answered "yes." The officers apparently appeared on the scene and the call was terminated.

The sixth and final call was made by Max [Lamoureaux]. He stated that they were locked in at the hotel. He stated that "these people are nuts." He told the dispatcher that he was a manager and that he was with another manager, John Lee.⁵ Max told Dispatch that he "ran into it [truck] . . they were trying to kill us . . they smashed the front and back window . . they

⁵ Lamoureaux referred to Lee in his written statement as "John Lee." The police report identifies the other manager with Lamoureaux as "Jung" Lee.

were in the back of the truck.” He can be heard telling someone at the scene “they stabbed me with that” and “no, I’m not bleeding.” He told the dispatcher “we did nothin’ but get in the truck and drive in the opposite direction, and they attacked us.” The police arrived and the call was terminated.

Fairbanks police officers Lawrence Payton Merideth, Douglas Welborn, and David McKillikan, along with then Sergeant, now Lieutenant James Geier, responded to the scene [see Exh. City K and L – affidavits of Officer Merideth and Officer Welborn]. The Klondike Inn/Bar/Restaurant is located on Bedrock Street in Fairbanks. The Inn is located on one side of Bedrock Street and the Restaurant/Bar is located across the street. Welborn and Merideth arrived around 9:45 a.m. McKillikan and Geier arrived shortly thereafter. Welborn and Merideth were on scene until 11:10 a.m. Fairbanks Police officers did not enter the Klondike Restaurant and Bar on that day. They did not seize any property or any money from inside the Klondike Restaurant and Bar. The only property they seized was a water filter that was used, according to witness statements, to smash the windshield of the truck that was being driven by Max Lamoureux and a broken broom handle that was used, according to witness statements, to break out the back windows of Lamoureux’s truck. These items were seized as evidence of a crime.

Officer Welborn contacted the group of people standing in front of the Klondike Restaurant, including Plaintiffs Kenny Yi, Yong Yi, and Hyong Yi. Officer Merideth contacted the people in the office of the Klondike Inn. Outside the office, Officer Merideth observed a white 1998 Ford pickup truck parked at an odd angle in front of the office. The truck was running, and the driver’s side door was open. The truck’s windshield was shattered, as were the

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EXC 46

truck's rear windows. Written statements were obtained from witnesses Valerie Hopsin, Renee Bullock, and Samantha Marie Bergman.⁶

Max Lamoureaux signed two Citizen's Arrest forms, one for Kenny Yi and one for Yong Yi, and he signed a sworn statement [Exh. City E]. Lamoureaux's sworn statement stated that he was attempting to drive away from the Klondike Inn that morning in the white Ford pickup. John [Jung] Lee, the manager of the Klondike Inn was with him. A silver mini van cut in front of him in an attempt to stop him. One man jumped in back of Lamoureaux's pickup and shattered the back window. That same man then jumped out and attempted to shatter the front driver's side window. Another man, dressed in a black jacket, threw a cement block through the front window. He [Lamoureaux] attempted to pull away as they [he and John Lee] were in fear for their lives. The man in the black jacket jumped in the back of the pickup, grabbed a broom, removed the broom part, and started to stab at the back window to shatter it further in order to stab Lamoureaux in the back of his head and hands. The silver mini van rammed into the side of the pickup. The man in the back of the pickup broke the broom handle to a sharp point and attempted to stab Lamoureaux again. Lamoureaux was able to make it to the Klondike Inn office and lock the door and call 911 [Exh. City E].

Officer Merideth contacted Officer Welborn via radio and directed him to have Yong Yi and Kenny Yi stand clear of the other people so Lamoureaux could see them. Lamoureaux identified Kenny and Yong Yi as the men who had attacked the pickup truck. In addition, Kenny Yi and Yong Yi admitted to the officers that they had broken out the windshield and the windows of the truck [see Exh. City K and L].

⁶ Copies of these statements are attached as Exh. City B, C, and D.

According to another affidavit signed by Max Lamoureaux and filed with the court in this case,⁷ Lamoureaux was asked by John [Jung] Lee to accompany him while he removed the liquor license from the Klondike restaurant and bar and posted an eviction notice on the door. This occurred around 8:00 a.m. on the same day (December 19, 2004) that the incident described above took place. According to Lamoureaux, a locksmith opened the back door, and John Lee entered the premises, removed the license, and came back out. Lamoureaux did not see what, if anything, Lee posted on the door.

Fairbanks police officers took photographs of two notices, one posted on the door and the other posted in a window of the Klondike restaurant and bar. The notice on the door was a "NOTICE TO QUIT" signed by John C. Pharr and dated December 10, 2004 [Exh. City G and H]. The notice in the window stated: "Temporarily CLOSED!!! UNDER Renovation!!! We will be opening soon. Thank you, KLONDIKE MANAGEMENT" [Exh. City I and J].

Yong Yi and Kenny Yi were taken into custody by Fairbanks Police officers and booked at the Fairbanks Correctional Center (FCC) on December 19, 2004. Hyong Yi, wife of Yong Yi, was present at the Klondike on December 19, 2004, but was not arrested. Yong Yi posted bail and was released from FCC that same day (12/19/04) or the next day. Kenny Yi also posted bail, on either 12/19/04 or 12/22/04.⁸

⁷ A copy of this affidavit is attached as Exh. City F. It was originally filed with the Yangs' Motion For Partial Summary Judgment On Counts XIV, IV, and XVI.

⁸ The CourtView entry for State v. Yong Yi, 4FA-04-4406 CR, under "dockets" reads: "12/20/2004 Bail Info: Arrest Bond Added to Case with: Action Code: Charging Document Pending Arrest Date: 12/19/2004 Bond Status: Bond Posted Status Date: 12/19/2004 Blanket Bond: No Okay to Apply: No Bond Type: Cash Bond Amount: 1500 Cash Depositor: Yi, Yong H Receipt: 4685 Date: 12/20/2004." The CourtView entry for State v. Kenneth Yi, 4FA-04-4407 CR, under "dockets" reads: "12/22/2004 Bail Info: Arrest Bond Added to Case with: Action Code: AS 11.41.230(a)(3): Assault 4-cause fear of injury Arrest Date: 12/19/2004 Bond Status: Bond Posted Status Date: 12/19/2004 Blanket Bond: No Okay to Apply: No Bond Type: Cash Only Bond Amount: 1500 Cash Depositor: Yi, Yong H Receipt: 4805 Date: 12/22/2004."

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Two days later, on December 21, 2004, at around 1:00 p.m., Kenny Yi came to the Fairbanks Police Department and requested to speak to an officer about the fact that Harris Yang would not let him into the lounge to get his property. Officer Welborn accompanied Yi to the Klondike and stood by while he retrieved his belongings. Officer Welborn also served domestic violence protective orders on Kenny Yi, Yong Yi, and Hyong Yi [Exh. City L and M].

IV. STANDARD FOR SUMMARY JUDGMENT.

Under Civil Rule 56(c), summary judgment shall be granted in a party's favor if the pleadings, depositions, answers, admissions and affidavits show that there is no genuine issue of material fact and that the party is entitled to a judgment as a matter of law. The moving party bears the initial burden of proving through admissible evidence the absence of any genuine issue of material fact and that the applicable law requires judgment in its favor.⁹ All inferences of facts are to be drawn in favor of the party opposing summary judgment and against the moving party.¹⁰

Once a party seeking summary judgment has demonstrated that the case presents no genuine issue of material fact and that the applicable law requires summary judgment, the party opposing the motion can avoid summary judgment only by producing admissible evidence that would reasonably tend to dispute or contradict the opposing party's evidence and thus demonstrate to the court that there is a genuine issue of material fact to be tried.¹¹

V. DISMISSAL OF ALL CLAIMS AGAINST MERIDETH AND THE CITY.

The grounds for dismissal of Plaintiffs' claims against Officer Merideth and the City of Fairbanks are so numerous that the difficulty is knowing where to begin.

⁹ Shade v. Co & Anglo Alaska Service Corp., 901 P.2d 434, 437 (Alaska 1995).

¹⁰ Alaska Rent-a-Car, Inc. v. Ford Motor Co., 526 P.2d 1136, 1139-1140 (Alaska 1974).

¹¹ Brock v. Rogers & Babler, Inc., 536 P.2d 778, 782-783 (Alaska 1975).

1. **Summary of Plaintiffs' Allegations On Counts Involving Merideth And The City.**

COUNT XIV. Civil Rights Violation [Deprivation of Property Rights]

- Plaintiffs allege that Defendants Harrssion [sic] and Max [Lamoureaux] made false and misleading statements to police officers (Plaintiffs' Second Amended Complaint [hereinafter referred to as SAC] ¶ 226) and made these false and misleading statements in an effort to cause the arrest and detention of Plaintiffs (SAC ¶ 227).

- Plaintiffs allege they were falsely arrested by Defendant Merideth who was acting upon the false and misleading statements of Defendants Harrssion [sic] and Max (SAC ¶ 228), that the actions of Merideth and the Fairbanks Police Department were taken under color of law (SAC ¶ 229) and deprived Yong Yi of property, including the leased premises and the personal property, including cash, on the premises (SAC ¶ 230).

- Plaintiffs allege that the actions of Merideth and the Fairbanks Police Department were consistent and a consequence of the City's policy or custom (SAC ¶ 231) and that the deprivation of property was done without due process and in violation of the procedural and substantive due process rights of Yong Yi (SAC ¶ 232).

- Plaintiffs' allege, in the general allegations section of the Complaint, that they requested assistance from the police to enter the leased premises to secure cash and personal property owned by Yong (SAC ¶ 163) and that in response, the police ordered Yong and other members of the Yi family not to enter the lease premises for any purpose (SAC ¶ 164).

COUNT XV. Civil Rights Violation [False Arrest]

Plaintiffs allege that Officer Merideth did not have a warrant to arrest Plaintiffs Yong Yi and Kenny Yi (SAC ¶ 235), that Officer Merideth arrested Yong Yi and Kenny Yi without probable cause to believe a crime had been committed (SAC ¶ 236), that Officer Merideth did

not have a reasonable belief that Yong Yi and Kenny Yi had committed a crime (SAC ¶ 237), that Officer Merideth arrested Yong and Kenny (SAC ¶ 238), and that such actions violated 42 U.S.C. § 1983 (SAC ¶ 239).

COUNT XVI. False Arrest – Tort

Plaintiff's allegations in this count mirror the allegations in Count XV, that is, no warrant (SAC ¶ 241), no probable cause (SAC ¶ 242), no reasonable belief (SAC ¶ 243), and the arrest (SAC ¶ 244). Plaintiffs allege the arrest of Yong Yi and Kenny Yi was unlawful and tortuous [sic] (SAC ¶ 245).

Plaintiffs' allegation of false arrest by Officer Merideth is at the center of their claims, so it will be addressed first. The false arrest allegation is the basis for two claims by Plaintiffs – Count XV Civil Rights Violation (False Arrest) and Count XVI False Arrest Tort. These claims are without merit and should be dismissed for the following reasons: (1) Plaintiffs were arrested by Max Lamoureux, not Officer Merideth; (2) there was probable cause to arrest Plaintiffs; and (3) Officer Merideth is entitled to statutory and qualified immunity.

2. The Tort of False Arrest.

Plaintiffs' tort claim of false arrest is more properly designated as a claim for false imprisonment. False arrest is not a tort separate and apart from the tort of false imprisonment.¹² The elements of the false imprisonment/arrest tort are: (1) restraint upon plaintiff's freedom; (2) without proper legal authority.¹³

It is not contested that Kenny Yi and Yong Yi were handcuffed by Fairbanks police officers, transported to, and booked at the Fairbanks Correctional Center. Thus, the first element

¹² Waskey v. Municipality of Anchorage, 909 P.2d 342, 345 (Alaska 1996).

¹³ Id.

of the tort of false imprisonment is satisfied. However, there can be no claim, at least no claim that would pass Rule 11 muster, that Fairbanks police officers did not have proper legal authority to arrest Kenny Yi and Yong Yi. First, Plaintiffs were arrested by Max Lamoureux not Officer Merideth. Lamoureux executed citizen's arrest forms and a sworn statement on December 19, 2004, for the arrest of Kenny Yi and Yong Yi [Exh. City E]. So even assuming that the arrest of Kenny Yi and Yong Yi was, as Plaintiffs allege, false, tortious, or based on false and misleading statements, it was made by Max Lamoureux and not Officer Merideth.

Under Alaska law, Lamoureux, as a citizen, has the authority to make an arrest.¹⁴ The grounds for arrest without a warrant by a private person are set out in AS 12.25.030:¹⁵

AS 12.25.030 Grounds For Arrest By Private Person or Peace Officer Without Warrant

- (a) A private person or a peace officer without a warrant may arrest a person
- (1) for a crime committed or attempted in the presence of the person making the arrest.

The lawfulness of a citizen's arrest is measured by the same standard as any arrest undertaken without a warrant, that is, was it based upon probable cause. Probable cause exists if the facts and circumstances known to the citizen making the arrest would warrant a prudent man in believing that an offense had been committed.¹⁶ In dealing with probable cause, as the name implies, a court deals with probabilities. "These are not technical; they are factual and practical consideration of everyday life on which reasonable and prudent men, not legal technicians, act."¹⁷

¹⁴ AS 12.25.010.

¹⁵ This statutory provision applies to civil false arrest cases. See City of Nome v. Ailak, 570 P.2d 162, 169 (Alaska 1977).

¹⁶ Merrill v. State, 423 P.2d 686, 699 (Alaska 1967), cert. denied 386 U.S. 1040 (1967).

¹⁷ McCoy v. State, 491 P.2d 127, 130 n.9 (Alaska 1971), quoting Brinegar v. United States, 388 U.S. 160, 175 (1949).

Where there is no factual dispute, what constitutes probable cause to make an arrest is a matter of law to be decided by the court.¹⁸ The court need look no further than the fact that Kenny Yi and Yong Yi admitted to Fairbanks police officers that they smashed the windshield and the back windows of the truck being driven by Lamoureaux [Exh. City K and L]. This conduct, committed in Lamoureaux's presence, is a crime under Alaska law.¹⁹ Lamoureaux also stated that he was in fear for his life because of the actions of Kenny Yi and Yong Yi [Exh. City E]. Kenny Yi and Yong Yi arguably committed the offense of assault in the third degree, a felony,²⁰ but were only charged with assault in the fourth degree, a misdemeanor.²¹

At the scene, Officer Merideth was presented with Lamoureaux's account of the incident as well as the accounts of other witnesses [Exh. City B, C, and D]. Lamoureaux signed a sworn statement to accompany his citizen's arrest forms [Exh. City E]. The physical evidence on the scene corroborated Lamoureaux's statement, and Plaintiffs admitted they had committed acts that would constitute the crime of criminal mischief.

The validity of Plaintiffs' arrest does not depend on whether they actually committed a crime, and the mere fact that the charges against them were later dismissed by the State of Alaska is irrelevant.²² The only relevant inquiry is whether the facts and circumstances within Max Lamoureaux's knowledge were sufficient to warrant a prudent person in believing that Plaintiffs committed a crime.

To survive dismissal under Civil Rule 56(c), Plaintiffs cannot rely on claims of self-defense or claims of defense of property. They cannot avoid dismissal by claiming that Max

¹⁸ Ailak, 570 P.2d at 170.

¹⁹ See AS 11.46.484(a)(1). Criminal Mischief in the Fourth Degree.

²⁰ See AS 11.41.220(a)(1)(A).

²¹ See AS 11.41.230(a)(3).

²² Michigan v. DeFillippo, 443 U.S. 31, 36 (1979).

Lamoureaux also committed crimes and should have been arrested. As noted above, whether Plaintiff actually committed a crime or whether they had a "defense" to the charge is irrelevant. To avoid dismissal, Plaintiffs must show that Lamoureaux and the other witnesses lied and staged the physical evidence to support their concocted story. Plaintiffs must also show that Officer Merideth was a participant in this conspiracy. They must also present admissible evidence that would reasonably tend to show that Lamoureaux and/or the other conspirators used some type of mind control that caused the Plaintiffs to admit that they had committed the acts of which they were accused. Given that this is the only defense available, Plaintiffs' opposition should be, as they say, an interesting read.

Max Lamoureaux's citizen's arrest of Yong Yi and Kenny Yi was supported by probable cause. It was, therefore, lawful. Because there was no false arrest, Plaintiffs' claims against Officer Merideth in Count XVI (False Arrest - Tort) must be dismissed.

3. There was No Constitutional Deprivation.

In Count XV, Plaintiffs allege that Officer Merideth arrested Kenny Yi and Yong Yi without a warrant, without probable cause, and without a reasonable believe that they had committed a crime. Plaintiffs claim that the actions of Officer Merideth give rise to a cause of action under 42 U.S.C. § 1983. Because the arrest of Kenny Yi and Yong Yi was made by a citizen and not Officer Merideth and because there was probable cause to support the arrest, there was no denial or deprivation of Plaintiffs' constitutional rights and no grounds to support a claim under 42 U.S.C. § 1983.

42 U.S.C. § 1983 states as follows:

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42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

While Plaintiffs' complaint does not specify, one must assume that Plaintiffs' claims are based upon a denial of their rights under the Fourteenth Amendment.²³

More than negligence is required to state a violation of the Due Process Clause of the Fourteenth Amendment, whether it involves substantive or procedural due process.²⁴ Plaintiffs must, but cannot, show that Officer Merideth's conduct was a cause in fact of Plaintiffs' alleged constitutional deprivation. The legal and factual arguments set forth in the section above are equally applicable to Plaintiffs' civil rights claims. Plaintiffs were arrested by Max Lamoureaux, and, thus, Officer Merideth's conduct was not the cause in fact of Plaintiff's alleged deprivation. Nothing in the Due Process Clause of the Fourteenth Amendment requires the state (in this case the City) to protect the life, liberty and property of its citizens against invasion by private actors.²⁵ In addition, as discussed above, there was ample probable cause for Plaintiffs' arrest. Because their arrest was lawful, Plaintiffs suffered no constitutional deprivation and, therefore, have no claim under 42 U.S.C. § 1983.

²³ ARTICLE XIV. § 1 [N]or shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

²⁴ Daniels v. Williams, 474 U.S. 327, 330-332 (1986).

²⁵ DeShanney v. Winnebago County Dept. of Social Services, 489 U.S. 189, 195 (1989).