

06-1549-CD
Robert Cogley vs RAO's Hospitality Inc

2006-1549-CD
Robert Cogley vs RAO's Hospitality

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

ROBERT COGLEY

(Plaintiff)

3775 BROOK RD

(Street Address)

CLARION, PA. 16214

(City, State ZIP)

CIVIL ACTION

2006-1549-CO

No. Promissory Note

Type of Case: _____

Type of Pleading: _____

Filed on Behalf of:

VS.

RAO'S HOSPITALITY, INC (Plaintiff/Defendant)

(Defendant)

2733 SAWBURY BLVD

(Street Address)

COLUMBUS, OHIO 43235

(City, State ZIP)

FILED

SEP 25 2006

0711:50 AM

William A. Shaw
Prothonotary/Clerk of Courts

NO CERT COPIES

NO NOTICE

ROBERT COGLEY
(Filed by)

3775 BROOK RD.

(Address)

814-764-3238

(Phone)

Robert Cogley
(Signature)

PROMISSORY NOTE

\$ 500,000. ⁰⁰

SEPT 17, 2006

FOR VALUE RECEIVED, RAO'S HOSPITALITY INC., An Ohio corporation having its principal place of business at 2733 Sawbury Boulevard, Columbus, Ohio 43225 (the "Borrower") promises to pay to ROBERT COGLEY, an individual, residing at 3775 Brook Road, Clarion, PA 16214 (his successors, assigns and any future holder or holders of this instrument collectively, the "Lender"), the principal sum of FIVE HUNDRED
THOUSAND DOLLARS (\$ 500,000. ⁰⁰), in lawful money of the United States of America, together with interest on the unpaid principal balance at the rate specified below, from the date the loan evidenced hereby is advanced to Borrower, until repaid in full, but in any event not to exceed the maximum rate allowable by law.

The accrued interest owing hereunder shall be paid monthly. Interest hereon shall be at the rate of 5.0% simple interest, or Twenty Five Thousand DOLLARS
(\$ 25,000. ⁰⁰), amortized over the twelve-month life of the loan. Beginning NOV. 1, 2006 and continuing on the thirtieth day of each month thereafter for twelve (12) months, until and including DEC. 30, 2007, the Borrower shall pay Lender a monthly interest payment of Two Thousand Eighty Three ³³/₁₀₀ DOLLARS (\$ 2,083 ³³/₁₀₀). The unpaid principle balance of FIVE HUNDRED THOUSAND DOLLARS
(\$ 500,000. ⁰⁰) shall be due and payable on NOV. 1, 2007 as a one-time, lump-sum payment. Prepayment of principal, together with accrued interest, may be made at any time without penalty.

Payment of Accrued Interest and Principal

All payments hereunder shall be made to Lender at its address set forth above (or to such other place as Lender shall designate in a written notice to Borrower). Borrower shall mail such payment before 12:00 noon, Eastern Time, on the due date of the payment, in accordance with Lender's payment instructions.

Whenever any payment hereunder shall be stated to be due, or whenever any interest payment date or any other date specified hereunder would otherwise occur, on a day other than a Business Day, then such payment shall be made on the next succeeding Business Day. As used herein, "Business Day" means a day (i) other than Saturday or Sunday, and (ii) on which commercial banks are open for business in Columbus, Ohio.

Late Payment Charge

Any such scheduled payments of principle or interest hereunder, or any other amounts payable hereunder, not paid within five (5) days from the date due shall pay Lender a late fee of \$50.00 and to the extent not prohibited by law, all costs and expenses, including reasonable attorney fees and court costs incurred by Lender in connection with the collection of any past due principal and/or interest payment upon this Note. Such overdue amounts shall be payable on demand. All computations of interest shall be made on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period

for which such interest is payable.

The Borrower shall not be obligated to pay and the Lender shall not collect interest at a rate higher than the maximum permitted by law or the maximum that will not subject the Lender to any civil or criminal penalties. If, because of the acceleration of maturity the payment of interest in advance or any other reason, the Borrower is required, under the provisions of any loan document, or otherwise, to pay interest at a rate in excess of such maximum rate, the rate of interest under such provisions shall immediately and automatically be reduced to such maximum rate and any payment made in excess of such maximum rate, together with interest thereon at the rate provided herein from the date of such payment, shall be immediately and automatically applied to the reduction of the unpaid principal balance of this Note as of the date on which such excess payment was made. If the amount to be so applied to reduction of the unpaid principal balance exceeds the unpaid principal balance, the amount of such excess shall be refunded by the Lender to the Borrower.

Borrower Representations and Agreements

Borrower represents and warrants to Lender that:

- (i) Organization and Powers. Borrower is a corporation duly organized, validly existing and in good standing under the laws of the state of Ohio, and has all requisite power and authority to own its assets and carry on its business and to execute, deliver and perform its obligations under this Note. Borrower is qualified to do business and is in good standing in each jurisdiction in which the failure so to qualify or be in good standing could reasonably be expected to have a material adverse effect on the business, operations or financial condition of the Borrower and its subsidiaries taken as a whole.
- (ii) Authorization: No Conflict. The execution, delivery and performance by Borrower of this Note have been duly authorized by all necessary corporate action of Borrower and do not and will not (A) contravene the terms of the articles or certificate of incorporation, or bylaws, of Borrower; or (B) result in a breach of or constitute a default under any material lease, instrument, contract or other agreement to which Borrower is a party or by which it or its properties may be bound or affected; or (C) violate any provision of any law, rule, regulation, order, judgment, decree or the like binding on or affecting Borrower.
- (iii) Binding Obligations. This Note constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms.
- (iv) Consents. No authorization, consent, approval, license, exemption of, or filing or registration with, any governmental authority or agency, or approval or consent of any other person or entity ("Person"), is required for the due execution, delivery or performance by Borrower of this Note.
- (v) Use of Proceeds. The Note funds may be used to pay any legitimate expense incurred by Rao's Hospitality, Inc., a corporation registered under the laws of the state of Ohio.

So long as any principal, interest or other amount due hereunder shall remain unpaid, Borrower agrees that:

- (1) Preservation of Existence, Etc. Borrower shall, and shall cause each of its subsidiaries to, maintain and preserve (i) its corporate existence, and (ii) its rights to transact business and all other material rights, franchises and privileges necessary or desirable in the normal course of its business and operations and the ownership of its properties, except in connection with any transactions expressly permitted hereby.
- (2) Change in Nature of Business. Borrower will not, and will not permit any of its subsidiaries to, engage in any material line of business substantially different from those lines of business carried on by it at the date hereof.
- (3) Restrictions on Fundamental Changes. Borrower shall not, and shall not permit any of its subsidiaries to, merge with or consolidate into, or acquire all or substantially all of the assets of, any Person, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets, except that any of Borrower's wholly owned subsidiaries may merge with, consolidate into or transfer all or substantially all of its assets to another of Borrower's wholly owned subsidiaries or to Borrower and in connection therewith such subsidiary may be liquidated or dissolved.
- (4) Further Assurances and Additional Acts. Borrower shall execute, acknowledge, deliver, file, notarize and register at its own expense all such further agreements, instruments, certificates, documents and assurances and perform such acts as Lender shall deem necessary or appropriate to effectuate the purposes of this Note, and promptly provide Lender with evidence of the foregoing satisfactory in form and substance to Lender.

Prepayment Premium

If Borrower prepays, in whole or part, Borrower shall not be required to pay Lender a prepayment premium.

Security

This Note is unsecured. Personal Gaurantee.

Event of Default

Any of the following events which shall occur shall constitute an "Event of Default":

- (a) Payments. Borrower shall fail to pay when due any amount of principal hereof, or interest hereon or other amount payable hereunder, and such failure shall continue unremedied for five (5) days.
- (b) Representations and Warranties. Any representation or warranty by Borrower

under or in connection with this Note shall prove to have been incorrect in any material respect when made or deemed made.

(c) Failure by Borrower to Perform Other Covenants. Borrower shall fail to perform or observe any other term, covenant or agreement contained in this Note on its part to be performed or observed and any such failure shall remain unremedied for a period of 20 days from the occurrence thereof (unless Lender reasonably determines that such failure is not capable of remedy).

(e) Insolvency. (i) Borrower shall be dissolved, liquidated, wound up or cease its corporate existence; or (ii) Borrower, (A) shall make a general assignment for the benefit of creditors; (B) shall voluntarily cease to conduct its business in the ordinary course; (C) shall commence any Insolvency Proceeding with respect to itself; or (D) shall take any action to effectuate or authorize any of the foregoing.

(f) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against Borrower, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of Borrower's properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within 60 days after commencement, filing or levy; (ii) Borrower admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (iii) Borrower acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefore), or other similar Person for itself or a substantial portion of its property or business.

(g) Defaults Under Other Agreements with Lender. Borrower (i) shall fail to pay any indebtedness owing under any other agreement with Lender under any note or instrument in favor of Lender when due (whether at scheduled maturity or by required prepayment, acceleration, demand or otherwise), or (ii) shall otherwise be in breach of or default in any of its obligations under any such agreement, note or instrument, and such failure shall continue after the applicable grace period, if any, specified in such agreement, note or instrument.

As used herein, "Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy"; and "Insolvency Proceeding" means (i) any case, action or proceeding before any court or other governmental agency or authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors, in each case undertaken under U.S. federal, state or foreign law, including the Bankruptcy Code.

If any Event of Default shall occur and be continuing, Lender may by notice to Borrower, declare the entire unpaid principal amount of this Note, all interest accrued and unpaid hereon and all other amounts due hereunder to be forthwith due and payable, whereupon the principal

hereof, all such accrued interest and all such other amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Borrower, provided that if an event described in paragraph (e) or (f) above shall occur, the result which would otherwise occur only upon giving of notice by Lender to Borrower as specified above shall occur automatically, without the giving of any such notice.

Enforcement

Borrower agrees to pay on demand all the losses, costs, and expenses (including, without limitation, attorneys' fees and disbursements) which Lender incurs in connection with enforcement or attempted enforcement of this Note, or the protection or preservation of Lender's rights under this Note, whether by judicial proceedings or otherwise. Such costs and expenses include, without limitation, those incurred in connection with any workout or refinancing, or any bankruptcy, insolvency, liquidation or similar proceedings.

No single or partial exercise of any power under this Note shall preclude any other or further exercise of such power or exercise of any other power. No delay or omission on the part of Lender in exercising any right under this Note shall operate as a waiver of such right or any other right hereunder.

Notices and Communications

All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing and mailed, sent or delivered to the respective parties hereto at or to their respective addresses set forth herein, or at or to such other address as shall be designated by any party in a written notice to the other party hereto. All such notices and communications shall be effective (i) if delivered by hand, when delivered; (ii) if sent by courier service, when delivered; and (iii) if sent by mail, upon the earlier of the date of receipt or five Business Days after deposit in the mail, first class (or air mail, with respect to communications to be sent to or from the United States), postage prepaid.

Assignment of Note

This Note shall be binding on Borrower and its successors and assigns, and shall be binding upon and inure to the benefit of Lender, any future holder of this Note and their respective successors and assigns. Borrower may not assign or transfer this Note or any of its obligations hereunder without Lender's prior written consent. Lender may not assign or transfer this Note or any of its obligations hereunder without Borrower's prior written consent.

Governing Law

This Note shall be governed by and construed in accordance with the laws of Pennsylvania.

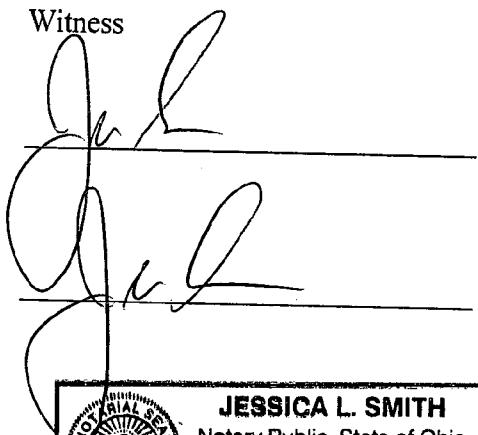
Borrower hereby (i) submits to the non-exclusive jurisdiction of the courts of the State of Pennsylvania and the Federal courts of the United States sitting in the State of Pennsylvania for the purpose of any action or proceeding arising out of or relating to this Note, (ii) agrees that all claims in respect of any such action or proceeding may be heard and determined in such courts, (iii) irrevocably waives (to the extent permitted by applicable law) any objection which it now or

hereafter may have to the laying of venue of any such action or proceeding brought in any of the foregoing courts in and of the State of Pennsylvania, and any objection on the ground that any such action or proceeding in any such court has been brought in an inconvenient forum, and (iv) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner permitted by law.

Upon the non-payment of this note at maturity or non-payment of any payment due, after fifteen (15) day written notice and failure to cure, I do hereby authorize the prothonotary or any attorney of any court of record of the United States to appear therein and, with or without statement filed, to confess judgment therein against me and in favor of the then holder of this note, whether he be the original payee, or an assignee, for the amount named, herein, with interest, costs of suit, release of errors, and with ten per cent, added for collection fees, hereby waiving all right of stay of execution, inquisition and appeal, and the benefit of any and all laws now or hereafter to be passed exempting real or personal property from levy and sale on execution, and also waiving the benefit of the present or any future insolvent laws of any state of the United States and of the present or any future bankrupt law of the United States.

Executed as a sealed instrument as of the 17 day of Sept., 2006.

Witness



JESSICA L. SMITH
Notary Public, State of Ohio
Fairfield County
My Comm. Expires June 4, 2011

RAO'S HOSPITALITY INC.

By: 

Name: Ganesh Ponneri
Title: Vice-President & Secretary

By: 

Name: Gita Rao
Title: President

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

ROBERT COGLEY,

Plaintiff

v.

RAO'S HOSPITALITY, INC.,

Defendant

: No. 2006-01549-CD
:
: TYPE OF CASE: Law
:
: TYPE OF PLEADING:
: Praeclipe for Writ of
: Revival of Judgment
:
: FILED ON BEHALF OF:
: Robert Cogley, Plaintiff
:
: COUNSEL OF RECORD FOR THIS PARTY:
: Terry R. Heeter
: Supreme Court No. 52750
:
: Kooman, Heeter & Gulnac, PC
: Marianne Professional Center
: P.O. Box 700
: Clarion, PA 16214
: (814) 226-9100 (Telephone)
: (814) 226-7361 (Fax)
:
: COUNSEL OF RECORD FOR ADVERSE PARTY:
:

jc
#28106

FILED pd \$20.00
M 3146cm Atty
AUG 22 2014
BRIAN K. SPENCER
PROTHONOTARY & CLERK OF COURTS
ICC & Writ issued
to Atty Heeter

ROBERT COGLEY, : IN THE COURT OF COMMON PLEAS OF
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
: :
v. : CIVIL ACTION - LAW
: :
RAO'S HOSPITALITY, INC., :
Defendant : No. 2006-01549-CD

PRAECIPE FOR WRIT OF REVIVAL

To the Prothonotary:

You are hereby directed to issue writ of revival of judgment entered in the Court of Common Pleas of Clearfield County, Pennsylvania, at No. 2006-01549-CD and index it in the judgment index against Rao's Hospitality, Inc. in the amount of \$500,000.00, with record costs and interest at the rate of five (5%) percent per annum from September 17, 2006.

Respectfully submitted,

DATE: August 19, 2014

By Terry R. Heeter
TERRY R. HEETER, ESQUIRE
Kooman, Heeter & Gulnac, PC
Attorney for Plaintiff
Marianne Professional Center
P.O. Box 700
Clarion, PA 16214
(814) 226-9100

jc
#28106

FILED

AUG 22 2014

**BRIAN K. SPENCER
PROTHONOTARY & CLERK OF COURTS**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

COPY

Robert Cogley

Vs.

Case No. 2006-01549-CD

Raos Hospitality, Inc.

WRIT OF REVIVAL

TO: Rao's Hospitality, Inc.

4. You are notified that the Plaintiff has commenced a proceeding to revive and continue the lien of judgment to the above term and number.
5. The Plaintiff claims that the amount due and unpaid is \$500,000.00
6. You are required within twenty (20) days after service of this writ to file an answer or otherwise plead to this writ. If you fail to do, judgment of revival will be entered.

Date: Friday, August 22, 2014

Mark. Spade, Jr.

Prothonotary

Filing party:
Terry R Heeter Esq