

REPORTER'S RECORD  
TRIAL COURT CAUSE NO. CC-04-04187-C

SPECIALTY OPTICAL D/B/A SOS, § IN THE COUNTY COURT  
Plaintiff, §  
§  
VS. § AT LAW NO. 3  
§  
IF CREDIT CORPORATION, §  
Defendant. § DALLAS COUNTY, TEXAS

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NON-JURY TRIAL ON MERITS

Copy of transcript follows this synopsis ( note: exhibits were not available from our on line service.editor )

FEBRUARY 8, 2006

700 lease accounts, which is how many they bought from NorVergence. They have over \$14 million

February 9, 2006

John Estok is "A"

- Q So that we're clear, in January and February of 8 '04, IFC got letters and phone calls from customers, 9 correct?
- 10 A Correct.
- 11 Q And the gist of those calls was that they were 12 getting bills from your company and not getting any service 13 from NorVergence; is that correct?
- 14 A Correct.

15 Q And, sir, you knew -- let me back up. So it's  
16 fair to say that almost as soon as the first payments were  
17 supposed to be coming due from the NorVergence customers to  
18 IFC, IFC started getting letters and phone calls from  
19 customers complaining that they weren't getting NorVergence  
20 service, correct?

21 A That's my testimony.

12 Q By March 16th, 2004, IFC started getting a little  
13 more worried about this whole issue, didn't it?

14 A No, I wouldn't say that.

15 Q This master agreement, do you know what a  
16 holdback is, sir?

17 A Yes.

18 Q What's a holdback in IFC language?

19 A A holdback would be funds due to a third party  
20 that are not provided and held back until some future point  
21 in time. And then they would be released.

Q Without the T-1 line, the box would not have any  
9 value to the customer as far as IFC understood, correct?

10 A Correct.

11 Q So as early as January of 2004, IFC knew it had  
12 customers who weren't getting service, correct?

13 A Yes.

14 Q It had customers who had gotten a box that had no  
15 value without service, correct?

16 A Yes.

17 Q And it knew it was sending out bills to these  
18 customers to pay for this work, this box without service,  
19 correct?

20 A Yes.

21 Q Now, sir, let's talk about the master program  
22 agreement a little bit more. We talked about some of the  
23 things that it has in it. Let's talk about what it doesn't  
24 have in it. It doesn't contain any provision regarding what  
25 will happen if NorVergence files for bankruptcy, does it?

15

1 A No.

2 Q There's nothing in this document that protects  
3 IFC one way or the other if NorVergence files for  
4 bankruptcy, right?

1 A At the beginning?

2 Q Yes, sir.

3 A \$750.

4 Q And then IFC would hold on to the other \$250

5 until there was performance on the underlying lease,

6 correct?

7 A Yes.

In March of '04, you've had three months of

6 letters and phone calls from customers complaining about no

7 services and bills on boxes, and you guys opted to protect

8 IFC, which you can't be faulted for. And you had this

9 amendment agreement dated March 16, 2004, correct?

10 A Yes.

11 Q Now, sir, let's look at some of the provisions

12 that you guys added as a result of this amendment agreement.

13 First of all, if you look at just Paragraph 1, IFC will send

14 NorVergence an aging lease receivable report, showing

15 customers delinquencies on a monthly basis. In the event

16 that a customer delinquency reaches 59 days past due and IFC

17 has provided NorVergence written or e-mail notice at least

18 14 days prior to the 59-day delinquency, NorVergence will

19 disable the delinquent customer's equipment, correct?

20 A Yes.

21 Q And so you added a provision where you would have  
22 the right to send NorVergence an aging receivable list and  
23 they would be required to put some pressure on the customers  
24 to start paying, correct?

25 A Correct.

21 Q So late April and early May, IFC wanted to stop  
22 funding NorVergence's leases, stop buying them, correct?

23 A Provide notice that we would stop buying.

24 Q And NorVergence came back to you and said, look,  
25 if you guys keep on buying our leases, we'll give you

22

1 additional collateral to protect you more, correct?

2 A I believe that was in June.

3 Q Okay. NorVergence came back to IFC and induced  
4 IFC to continue buying leases by saying, we'll give you  
5 additional collateral to protect you?

6 A They did.

7 Q Okay. And you're saying that was in June that  
8 that occurred?

9 A I believe that was early June, yes.

10 Q Then to get our time line right, let's look at  
11 your May amendment, which is the last page of the exhibit  
12 that we have been looking at, which is Defendant's Exhibit  
13 13?

14 A Uh-huh.

15 Q And in this document, you increase the holdback,  
16 correct?

17 A Yes.

18 Q And the holdback is increased to 25 percent of  
19 the invoice cost, correct?

20 A Yeah, the holdback would be an additional 25  
21 percent of the invoice cost.

22 Q An additional 25 percent?

23 A Over and above the credit holdbacks already in  
24 the amendment agreement.

25 Q Okay. So you added another 25 percent holdback?

23

1 A Another layer of holdback, yes.

Q (By Mr. Lownds) As of May 18th, when IFC bought  
11 my client's lease, a rental agreement as you want to call

12 it, how many customer complaints had IFC received from  
13 NorVergence's customers that they weren't getting service?

14 A I don't know the answer to that.

15 Q More than a hundred?

16 A I don't know the answer to that.

17 Q More than a thousand?

18 A I don't know the answer to that.

19 Q You bought, what, around a total of 700 leases?

20 A Between seven and 800.

21 Q And your obligation with 550 of so of those  
22 lessees?

23 A Correct.

24 Q Now, your lawyer had talked about how much you  
25 guys paid for my client's lease. Do you know how much was

46

1 paid?

2 A I believe around \$11,000.

3 Q All right, sir.

4 A At that point in time.

5 Q Let's turn to -- well, let's make sure we're  
6 clear.

7 A Yeah.

8 Q You never paid anymore than that?

9 A Oh, in the final analysis, we did not, no.

10 Q All right, sir. Let's turn to Exhibit No. 8,

11 Defendant's Exhibit 8?

12 A Correct.

13 Q And that's an IFC Corporation document, correct?

14 A Yes, it's a vendor check request.

15 Q Okay. And this is to request the check to buy

16 Specialty, the Specialty Optical Systems lease, correct?

17 A Yes.

18 Q And it says -- it starts off check total

19 \$24,723.51, right?

20 A Uh-huh, yes.

21 Q But down there at the bottom, it shows that the

22 actual amount was \$11,743.67?

23 A That is correct.

24 Q That's less than half, right?

25 A That is correct.

1 Q So you were paying less than half of the value,



2 face value of the lease to buy that lease, right?

3 A Yes.

7 Q (By Mr. Lownds) Mr. Estok, what we've covered is  
8 in the comment section, we've got three sets of holdbacks,  
9 basically?

10 A Yes.

11 Q And those are amounts that were never paid,  
12 right, by IFC?

4 Q All right, sir. You would agree with me that if  
5 IFC paid \$11,743.67, that that's a true statement, correct?

6 A It is.

7 Q That a statement to the effect that it paid  
8 \$24,000 for this lease would be a false statement, right?

9 A Actually, we paid \$11,000 on that date. But the  
10 holdbacks ultimately would all go back to NorVergence.

11 Q They never did -- they never did, did they?

12 A No, they never did, but the intention was --

13 Q They're in your pocket, aren't they? They're in  
14 IFC's pocket, aren't they?

15 MR. DARCY: Objection. Argumentative.

16 THE COURT: Overruled. It's cross-exam.

17 Q (By Mr. Lownds) The holdbacks are in IFC's

18 pocket, right?

22 Q So if it's a true statement that IFC paid  
23 \$11,743.67, then you would agree with me, just as a basic  
24 principle of logic, that it is a false statement to say that  
25 IFC paid \$24,723.51, right? That would be a false

8 Q (By Mr. Lownds) Sure. Is it a false statement  
9 that IFC took the assignment of the agreement by paying the  
10 purchase price of \$24,723.51, because that amount was never  
11 paid?

12 A I don't think it's a false statement, because I  
13 think we intended to pay the entire \$24,723.51.

14 Q I won't bicker with you, sir, but it doesn't say  
15 intended to pay. It says by paying, doesn't it?

16 A That's what it says.

17 Q And that would be perjury, in other words,  
18 correct?

19 A I wouldn't say that, no.

11 Q Now, your company, I think you said, was a \$100  
12 million company?

13 A What I said was that our assets, the amount of  
14 assets on our own books is around \$100 million. That would  
15 be the aggregate value of the portfolio that we hold in our

16 books.

17 Q And with NorVergence, you had loaned as of June  
18 of 2004, you had bought up to \$13 to \$14 million worth of  
19 leases?

20 A Fourteen.

21 Q \$14 million. And you stopped doing business with  
22 NorVergence on June 15th, 2004, correct?

23 A Approximately, yes.

24 Q And that was prior to the bankruptcy?

He speaks of a meeting with NorVergence with 25 or more  
leasing companies involved, forming a steering committee,  
hiring "turn around" person, and then:

You were saying they hired

18 Mr. Mane. Then what happened?

19 A Shortly thereafter, the steering committee and  
20 Mr. Mane spoke to Quest, and they made it pretty clear that  
21 they were not --

22 Q Who is Quest?

23 A Quest was the primary supplier of T-1 services to  
24 NorVergence customers.

25 Q Okay. And what was their position vis-a-vis

1 NorVergence, if you know, how much money were they owed?

2 A Four or \$5 million. And they made it pretty well

3 known that they were not willing to sit back and wait. If

4 the account wasn't brought up to date immediately, they were

5 going to shut off the service, which would have shut off

6 service for all the customers, all 11,000 customers.

7 Because of that, four of the lenders who had direct exposure

8 to them filed an involuntary Chapter 11 filing. I believe

9 that's around the end of June some time.

There were some expenses that just had

21 to be taken care of. I mean he had missed one payroll. He

22 was about to miss a second payroll. People were going to

23 start leaving immediately. Rent was past due. The landlord

24 was making noises. Obviously Quest was very unhappy. So to

25 buy some time, we collectively raised \$2 million.

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1 Q You say we collectively?

2 A The 22 leasing companies involved in this, of

3 which IFC contributed \$200,000. To simply buy enough time

4 to see if there could be a strategy emerge that would allow

5 this company to reorganize under bankruptcy and get back out

6 there and handle their business. About -- within about a  
7 week, Keith was back to us to say that the hole was pretty  
8 deep, that they needed \$10 million in immediate financing to  
9 get out of the hole. And based on that, no one had any  
10 interest in continuing to support the company. They could  
11 not arrange any dip financing to help them through the  
12 bankruptcy. So by middle of July, the bankruptcy was  
13 converted to a Chapter 7 liquidation and a trustee was then  
14 appointed.

Feb 10, 2006

Q And you're pretty good with numbers; is that  
10 right, sir?

11 A I can get around, yeah.

12 Q What percentage return on your \$11,743 investment  
13 are you trying to get out of this court?

14 A Oh, I don't know. I don't know how to answer  
15 that.

16 Q Does it amount to about 170 percent return on  
17 your original investment if the Court was to give you the  
18 amount of money you're looking for? About 170 percent  
19 return? Does that sound right, doing the math in your head?

20 A I can't -- I don't know the answer that question.

21 Q Well, you're certainly looking for more than a  
22 hundred percent return, right?

23 A Of course, we're looking at the 28,000, not the  
24 11,000. The 24,000. Of course, we talked about that  
25 yesterday.

32

1 Q That's more than a hundred percent return, right?

2 A Of the 24,000?

3 Q The 24,000 would be more than a hundred percent  
4 return on the 11,000?

5 A Yes.

6 Q Okay. It actually works out to more like 160  
7 percent return on your investment, what you're looking for,  
8 right? Is that correct, sir?

9 A I don't know.

23 Q (By Mr. Lownds) So do you recall claiming,  
24 telling The Leasing News -- well, first of all, does that  
25 refresh your recollection about having an interview with The

1 Leasing News?

2 A I didn't have an interview with The Leasing News.

3 Q You called The Leasing News?

4 A I called the -- I phoned the owner of The Leasing  
5 News.

6 Q And did you tell him that information in the  
7 headline is false? Did you tell him that?

8 A I probably did.

9 Q And did you also tell him, We did not lose one  
10 thin dime as a result of the Novergence bankruptcy? Did you  
11 tell him that?

12 A I had -- I phoned him in his car. He talked to  
13 me on his cell phone. He mischaracterized a number of the  
14 things that I said to him. That may have been one of them.  
15 But the report that was published the next day was full of  
16 inaccurate statements.

17 Q Did you tell him, We, meaning IFC, did not lose  
18 one thin dime as a result of the Novergence bankruptcy? Did  
19 you make that statement, sir, or not?

20 A I don't think so.

21 Q Are you denying making that?

22 A I'm having trouble searching for the context of  
23 this in my mind. I could probably take a look at that and  
24 it might refresh my memory.

25 Q Sure. It was in response to your taking offense

35

1 at --

2 THE COURT: Let him look at it.

3 Q (By Mr. Lownds) Let me show you this and see if  
4 it refreshes your recollection.

5 THE COURT: You realize this Court is well-  
6 aware of inaccuracies by the news. So, since I've already  
7 been grilled on it just this morning, and I'm innocent. So  
8 this is a steep hill to climb, Mr. Lownds.

9 A Yeah, here's the context of this. Let me give  
10 you the context of this whole issue as I recall it. The  
11 headline was in connection with the fact that we had walked  
12 away from all of the leases that were subject to that June  
13 23rd agreement. That included the extra collateral. You  
14 remember we talked a little bit earlier about the extra  
15 collateral that was associated with the June 23rd, the June  
16 14th document that we never concluded? This lawsuit was



17 filed by some of the customers that were in that pool of  
18 leases.

THE WITNESS: Let me just -- here's my  
7 understanding of it. The nature of this allegation from The  
8 Leasing News was that we had lost our case as it relates to  
9 the additional collateral that we took. And my position was  
10 we didn't lose any money on that because we never purchased  
11 those contracts. That's the position that I was taking with  
12 him.

13 Q Okay.

14 A Now, we had -- he was on his cell phone driving  
15 around somewhere in California. He missed half of the  
16 points I tried to make. This is a pretty low-end -- this is  
17 not exactly a professional journalistic endeavor here. And  
18 because of the way I was mischaracterized, I did not go back  
19 again and get into another debate with him on the subject.  
20 But that's the context here.

21 Q Did IFC file a motion to lift stay in the  
22 bankruptcy?

23 A I believe we did.

24 Q I'm sorry, sir. Did you --

25 A Did we file a motion to lift stay?

1 Q Yes, sir.

2 A In connection with these contracts?

3 Q In connection with the Novergence bankruptcy,

4 yes, sir?

5 A Is it in connection with the additional

6 collateral? Is that what you're referring to?

7 Q No, sir. I'm talking about in connection with

8 any of your leases, did you file a motion to lift stay?

9 A I don't know.

MR. TRUSEVICH: No, when I asked the Court as

23 far as the gentleman who swore that they paid \$24,000 needs

24 to come down here, they said, if they want to file a

25 motion. We will be doing that, Judge. We believe the Court

1 needs to hear why he said that. If they've got 550 of these

2 around the country, you can't have affidavits sworn under

3 oath saying we paid \$24,000 when we all know it's just a

4 game here, that they paid \$11,500. \$11,500 is the only

5 amount of money that ever left IFC property. The hold back

6 account is under IFC's control. We'd like that gentleman to  
7 come down here, explain to the Court why he did that under  
8 oath at the summary judgment stage when we didn't have any  
9 documents to refute that. They have 550 of these around the  
10 country. Judge, he ought to come down here, explain it.

11           And we believe -- this gentleman right here  
12 said, well, it depends what the definition of paid is. Your  
13 Honor, paid is paid. If I say I paid \$10 for this, and I  
14 really only paid five and put five in a secret holding  
15 account, that's disingenuous. What we believe is he needs  
16 to come down here, explain why he swore. And then we're  
17 going to be asking -- we believe a penalty of one percent of  
18 what their asset holding is is correct. But if Your Honor  
19 hears it and says, all right, the definition of paid is this  
20 floating definition -- but, Your Honor, you need to hear  
21 that.

22           The only way this system works is by people  
23 telling the truth. And I make no holds about it, what that  
24 man did is he lied; he committed perjury; and his buddy here  
25 is going to protect him, Mr. Estok, with all due respect to

1 him. He can't sit there and say, yes, he committed perjury,  
2 so, no, I'm not going to say it was false.

3           So we'll be making that motion he suggested.

4 So we want him to come down next week or next month. And,  
5 Judge, you need to hear what his explanation is. Subject to  
6 that, we rest.

4           THE WITNESS:

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We advanced \$14 million in

5 leases to Novergence customers. Of that, we may have had a  
6 million to two million dollars of these various holdbacks  
7 that had not been paid to them yet and would not be paid to  
8 them because of their bankruptcy. We owed, however, \$14  
9 million to the banks. We borrowed \$14 million from the  
10 banks. So the banks are not putting us in default on those  
11 obligations despite the fact that the underlying contracts  
12 have defaulted, on the basis that we continue to pay them  
13 their interest and principal every month. So for the last  
14 18 months, every month out the door is \$300,000 in payments  
15 to the banks, and every month in the door is \$100,000 or so  
16 of cash from settlements and customers who are still making  
17 their payments.

18                    So in the aggregate, at this point our cash  
19 flow is pretty negative on this. At the end of the day when  
20 all the cases are decided and it's all over with, we will  
21 have some loss. And the loss, hopefully, will not be less  
22 than what we've held back in these reserves?