

STATE OF MINNESOTA
DISTRICT COURT

COUNTY OF DAKOTA
FIRST JUDICIAL DISTRICT

Case Type: Breach of Contract/Replevin

Crane National Vendors, a division
of Crane Co.,
Plaintiff/Claimant,

File No. _____

VERIFIED COMPLAINT

v.

Travel Adventures International, Inc.,
Simin Francois, Lom Francois, and
Gabriel Francois,

Defendants/Respondents.

Plaintiff/Claimant Crane National Vendors, a division of Crane Co. ("Crane"), for its
Complaint against the above-named defendants/respondents, states and alleges as follows:

I. PARTIES

1. Plaintiff/Claimant Crane, a division of Crane Co., is a corporation organized and existing under the State of Delaware with its principal place of business located at 12955 Enterprise Way, Bridgeton, Missouri 63044. Crane is in the business of manufacturing and selling automated vending machines and related equipment. As part of its business, Crane sometimes provides secured financing for all or part of a sale of vending machines and related equipment to a purchaser.

2. Defendant/Respondent Travel Adventures, International, Inc. ("Travel Adventures") is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business located at 7560 West 149th Street, Apple Valley, Minnesota 55124.

3. Defendant/Respondent Simin Francois is a resident and citizen of the State of Minnesota residing at 9024 Cavell Circle, Bloomington, Minnesota 55433.

4. Defendant/Respondent Lom Francois is a resident and citizen of the State of Minnesota residing at 9024 Cavell Circle, Bloomington, Minnesota 55433.

5. Defendant/Respondent Gabriel Francois is a resident and citizen of the State of Minnesota residing at 9024 Cavell Circle, Bloomington, Minnesota 55433.

II. JURISDICTION AND VENUE

6. All or part of Crane's cause of action arose in Dakota County, Minnesota. Upon information and belief, Travel Adventures does business in Dakota County, Minnesota. Accordingly, venue in Dakota County District Court is proper pursuant to Minn. Stat. § 542.09.

7. Travel Adventures is engaged in the business of operating and/or locating vending machines and related goods. Travel Adventures does business in the State of Minnesota and is subject to personal jurisdiction in the State of Minnesota.

8. Defendants Simin Francois, Lom Francois and Gabriel Francois are residents and citizens of the State of Minnesota and are subject to personal jurisdiction in the State of Minnesota.

9. Defendants Simin Francois, Lom Francois and Gabriel Francois are guarantors of the obligations incurred by Travel Adventures at issue in this lawsuit as evidenced by a written and executed Guaranty.

III. FACTUAL BACKGROUND

A. The December 29, 2000 Sale and Financing Agreement

10. On December 29, 2000, Travel Adventures entered into an "Equipment Sale Contract and Financing Agreement" ("December Sale Contract") with Crane for the purchase

and financing of vending machines and equipment with an aggregate purchase price of \$17,996.65 and costs of \$29.00. Travel Adventures paid \$11,563.78 toward the total purchase price and costs. A true and correct copy of the December Sale Contract is attached hereto as Exhibit A and incorporated by reference.

11. The unpaid principal balance of the December Sale Contract totaling \$6,457.00 was financed by Crane under its Competitive Advantage financing plan.

12. On December 29, 2000, Travel Adventures, as maker, executed and delivered to Crane a Secured Promissory Note ("December Secured Note"), promising unconditionally to pay Crane the sum of \$18,025.65 together with interest as set forth therein. Travel Adventures prepaid \$11,563.78 of the amount due and payable under the December Secured Note. A true and correct copy of the December Secured Note is attached hereto as Exhibit B and is incorporated by reference.

13. Pursuant to the December Sale Contract and Secured Note, Travel Adventures agreed to make monthly principal and interest payments to Crane beginning no later than one hundred twenty (120) days after the date of the December Secured Note.

13. Pursuant to the December Sale Contract and Secured Note, interest began accruing on the unpaid principal balance ninety (90) days after the date of the note at the rate of twelve and one-half percent (12.50%). Pursuant to the December Sale Contract and Secured Note, the unpaid principal balance and interest accrued thereon, was payable in thirty-three (33) consecutive, amortized monthly installments of principal and interest.

14. Travel Adventures granted to Crane a security interest in the vending machines and equipment purchased by Travel Adventures pursuant to the December Sale Contract. Travel Adventures also executed a Security Agreement in favor of Crane on December 15, 2000.

("Security Agreement"). A true and correct copy of the Security Agreement is attached hereto as Exhibit C and is incorporated by reference. The Security Agreement grants a purchase money security interest on the vending machines and equipment sold to Travel Adventures pursuant to the December Sale Contract.

15. Crane's security interest in the vending machines and equipment under the December Sale Contract has been fully perfected pursuant to Chapter 168A of the Minnesota Statutes because Crane has filed a UCC-1 Financing Statement ("Financing Statement") covering the vending machines and equipment with the Minnesota Secretary of State's Office. A true and correct copy of the Financing Statement is attached hereto as Exhibit D and is incorporated by reference.

16. Upon information and belief, Crane' security interests are prior and superior to other security interests, if any.

17. Travel Adventures has failed to make any monthly installment payments due and payable pursuant to the December Sale Contract and Secured Note. Travel Adventures failure to make these monthly installment payments is an "Event of Default" under the December Sale Contract and Secured Note.

18. Defendant Travel Adventures' balance currently due and payable to Crane under the December Secured Note is \$6,596.77 as of June 1, 2001, together with interest accruing on the December Secured Note, penalties, and all costs of collection, including attorneys' fees.

B. The January 17, 2001 Sale and Financing Agreement

19. On January 17, 2001, Travel Adventures entered into an "Equipment Sale Contract and Financing Agreement" ("January Sale Contract") with Crane for the purchase and financing of certain vending machines and equipment with an aggregate purchase price of

\$84,507.12 and costs of \$14.00. Travel Adventures has made payments of or has been credited with the sum of \$38,948.65 towards the purchase price and costs and financed the remaining \$45,572.47. A true and correct copy of the January Sale Contract is attached hereto as Exhibit E and is incorporated by reference.

20. The unpaid principal balance of the January Sale Contract totaling \$45,572.47 was financed by Crane under its Competitive Advantage financing plan.

21. On January 17, 2001, Travel Adventures, as maker, executed and delivered to Crane a Secured Promissory Note ("January Secured Note"), promising unconditionally to pay Crane the sum of \$45,572.45 together with interest as set forth therein. A true and correct copy of the January Secured Note is attached hereto as Exhibit F and is incorporated by reference.

22. Pursuant to the January Sale Contract and January Secured Note, Travel Adventures agreed to make monthly principal and interest payments to Crane beginning no later than one hundred twenty (120) days after the date of the January Secured Note.

23. Pursuant to the January Sale Contract and January Secured Note, interest began accruing on the unpaid principal balance ninety (90) days after the date of the note at the rate of twelve and one-half percent (12.50%) per year. Pursuant to the January Sale Contract and January Secured Note, the unpaid principal balance and interest accrued thereon was payable in thirty-three (33) consecutive, amortized monthly installments of principal and interest.

24. Pursuant to the January Sale Contract, Travel Adventures granted Crane a security interest in the vending machines and equipment purchased by Travel Adventures pursuant to the Security Agreement.

25. Crane's security interest in the vending machines and equipment under the January Sale Contract has been fully perfected pursuant to Chapter 168A of the Minnesota Statutes because Crane has filed the Financing Statement.

26. Upon information and belief, Crane' security interests are prior and superior to other security interests, if any.

27. Defendant Travel Adventures has failed to make the required installment payments due and payable pursuant to the January Sale Contract and January Secured Note. Travel Adventures' failure to make the monthly installment payments is an "Event of Default" under the January Sale Contract and January Secured Note.

28. Defendant Travel Adventures' balance currently due and payable to Crane under the January Secured Note is \$46,553.12, as of June 20, 2001, together with interest accruing on the January Secured Note, penalties, and all costs of collection, including attorneys' fees.

C. The March 9, 2001 Sale and Financing Agreement

29. On March 9, 2001, Travel Adventures entered into an "Equipment Sale Contract and Financing Agreement ("March Sale Contract") with Crane for the purchase and financing of certain vending machines and equipment with an aggregate purchase price of \$13,855.25 and costs of \$10.00. Travel Adventures was required to pay \$6,310.13 toward the purchase price and costs with a check and finance the remaining balance of \$7,555.12. A true and correct copy of the March Sale Contract is attached hereto as Exhibit G and incorporated by reference. Crane deposited Travel Adventures' check in the amount of \$6,310.13; however, Travel Adventure's bank refused to honor the check due to insufficient funds.

30. The unpaid principal balance of the March Sale Contract totaling \$7,555.12 was financed by Crane under its Competitive Advantage financing plan.

31. On March 9, 2001, Travel Adventures, as maker, executed and delivered to Crane a Secured Promissory Note ("March Secured Note"), promising unconditionally to pay Crane the sum of \$7,555.12 together with interest as set forth therein. A true and correct copy of the March Secured Note is attached hereto as Exhibit H and incorporated by reference.

32. Pursuant to the March Sale Contract and March Secured Note, Travel Adventures agreed to make monthly principal and interest payments beginning no later than one hundred twenty (120) days after the date of the March Secured Note.

33. Pursuant to the March Sale Contract and March Secured Note, interest began accruing on the unpaid principal balance ninety (90) days after the date of the note at the rate of twelve and one-half percent (12.50%). Pursuant to the March Sale Contract and March Secured Note, the unpaid principal balance and interest accrued thereon, was payable in thirty-three (33) consecutive, amortized monthly installments of principal and interest.

34. Pursuant to the March Sale Contract, Travel Adventures granted to Crane a security interest in the vending machines and equipment purchased by Travel Adventures pursuant to the Security Agreement.

35. Crane's security interest in the vending machines and equipment under the March Sale Contract has been fully perfected pursuant to Chapter 168A of the Minnesota Statutes because Crane has filed the Financing Statement.

36. Upon information and belief, Crane' security interests are prior and superior to other security interests, if any.

37. Defendant Travel Adventures has failed to pay any amounts due on the March Sale Contract and March Secured Note, resulting in an "Event of Default" and leaving a balance currently due and payable to Crane in the amount of \$14,296.07, as of June 10, 2001, together

with interest accruing on the March Secured Note, penalties, and all costs of collection, including attorneys' fees.

D. The Guaranty

38. Defendants Simin Francois, Lom Francois and Gabriel Francois personally and jointly and severally guaranteed the payment of any and all of the obligations, open accounts, liabilities, contracts, notes, leases, secured transactions, security agreements, commercial paper, advances, late charges, interest, attorneys' fees, costs and other amounts due from Travel Adventures and owing to Crane as evidenced by a written and executed Guaranty. A true and correct copy of the Guaranty is attached hereto as Exhibit I and incorporated by reference.

IV. CLAIMS FOR RELIEF

Count One: Breach of Sale Contracts

39. Crane restates and realleges paragraphs 1-38, above.

40. Travel Adventures has failed and refused to pay Crane amounts due and owing under the December, January and March Sales Contracts, and as such Travel Adventures is in default under the terms of those contracts.

41. Based on Travel Adventures' defaults, Crane has the right, pursuant to the Security Agreement and December, January, and March Secured Notes, to immediately recover possession of the vending machines and related equipment and to accelerate all amounts due under the Sale Contracts and Secured Notes.

42. Travel Adventures is required to immediately deliver the vending machines and related equipment to Crane and pay Crane all amounts due and owing under the Sale Contracts and Secured Notes. Travel Adventures has breached the Sales Contract by failing and refusing

to pay Crane the said amounts due thereunder and by failing and refusing to return the vending machines and related equipment to Crane.

43. As of June 20, 2001, there was due, owing and unpaid under the December, January, and March Sale Contracts the total sum of \$67,445.96, plus interest, penalties, costs of collection and attorneys' fees. Amounts due under the Sale Contracts and Secured Notes are continuing to accrue.

44. Defendant Travel Adventures owes Crane the sum of \$67,445.96 pursuant to the Sales Contracts and Secured Notes, plus interest which will accrue from June 20, 2001 until the time of judgment.

45. Defendants Simin Francois, Lom Francois, and Gabriel Francois are jointly and severally liable to pay Crane the sum of \$67,445.96 under the terms of the Guaranty plus interest which will accrue until the time of judgment.

Count Two: Default on Promissory Notes

46. Crane restates and realleges paragraphs 1-45 above.

47. Defendant Travel Adventures has made total payments or has been credited with the sum of \$50,512.43 on the December, January, and March Secured Notes, leaving a balance currently due and payable to Crane in the amount of \$67,445.96, together with interest accruing on the Secured Notes, penalties, costs of collection and attorneys' fees.

48. Defendant Travel Adventures has failed and refused to make the required payments to Crane on the December, January, and March Secured Notes.

49. Defendant Travel Adventures owes to Plaintiff Crane the total sum of \$67,445.96 as of June 20, 2001, on the December, January, and March Secured Notes plus interest which will accrue until the time of judgment.

50. Defendants Simin Francois, Lom Francois and Gabriel Francois are jointly and severally liable to pay Crane the sum of \$67,445.96 under the terms of the Guaranty plus interest which will accrue until the time of judgment.

Count Three: Account Stated

51. Crane restates and realleges paragraphs 1-50 above.

52. Crane has established an account on behalf of Travel Adventures and has extended credit to Travel Adventures pursuant to the account.

53. Travel Adventures agreed to repay the account.

54. Despite demand, Travel Adventures has failed and refused to pay the account with Crane.

55. As a result of Travel Adventures ' failure to pay its account, Crane has been damaged in the amount of \$67,445.96, plus interest, penalties, cost of collection and attorneys' fees.

56. Defendants Simin Francois, Lom Francois and Gabriel Francois are liable to Crane fro amounts owing by Travel Adventures' account in the amount of \$67,445.96 pursuant to the terms of the Guaranty.

Count Four: Unjust Enrichment

57. Crane restates and realleges paragraphs 1-56 above.

58. Crane has extended credit to Travel Adventures, which was used by Travel Adventures for its benefit and for which Crane has not been paid amounts due and owing.

59. Travel Adventures has been unjustly enriched by its failure to pay amounts due and owing to Crane.

60. As a result, Crane has been damaged in the amount of \$67,445.96, plus interest, penalties, costs of collection and attorneys' fees pursuant to a theory of unjust enrichment.

Count Five: Replevin

61. Crane restates and realleges paragraphs 1-60 above.

62. The events described in paragraphs 1-60 above constitute "Events of Default" under the Sale Contracts, Secured Notes and Security Agreement, the occurrence of which gives Crane the right to accelerate all amounts due from Travel Adventures, to retake possession of the vending machines and related equipment and to take possession of the rents, issues and profits of the vending machines and related equipment.

63. Pursuant to its perfected purchase money security interest, Crane is entitled to immediate possession of the vending machines and related equipment under the December, January and March Sale Contracts, pursuant to Minn. Stat. § 565.21 *et seq.*, regardless of whom possesses the vending machines and related equipment.

64. Crane has demand return of the vending machines and related equipment, which demand Travel Adventures has refused.

65. Pursuant to the terms and conditions of the Security Agreement, Crane is entitled to sell any or all of the vending machines and related equipment sold under the December, January and March Sale Contracts at public or private sale.

66. If the proceeds of any sale or other disposition of the aforementioned vending machines and related equipment are insufficient to pay in full the amount of Travel Adventures' obligations owed to Crane, Travel Adventures shall be liable for any deficiency.

WHEREFORE, Crane prays for an Order of the Court as follows: on Count 1, for judgment in favor of Crane, and against all defendants in an amount equal to \$67,445.96 plus interest, penalties, costs of collection and attorneys' fees.

2. On Count 2, for judgment in favor of Crane, and against all defendants in an amount equal to \$67,445.96, plus interest, penalties, costs of collection and attorneys' fees.

3. On Count 3, for judgment in favor of Crane, and against all defendants in an amount equal to \$67,445.96, plus interest, penalties, costs of collection and attorneys' fees.

4. On Count 4, for judgment in favor of Crane, and against defendant Travel Adventures in an amount equal to \$67,445.96, plus interest, penalties, costs of collection and attorneys' fees.

5. On Count 5, for an Order of Replevin in favor of Crane, and against all defendants, ordering the following specific relief:

- (a) Entitling Crane to the immediate and permanent possession of the vending machines and related equipment listed in the December, January and March Sales Contracts, and ordering the Dakota County Sheriff or other local sheriff to seize such vending machines and related equipment and deliver them to Crane;
- (b) Entitling Crane to immediately sell or otherwise dispose of the vending machines and related equipment;
- (c) A money judgment against defendants, for the value of the vending machines and related equipment in case delivery thereof cannot be had or in case a deficiency is owed; and
- (d) A money judgment against defendants, awarding Crane its costs, disbursements and reasonable attorneys' fees herein.

BRIGGS AND MORGAN, P.A.

Dated: June __, 2002

By _____
Matthew J. Kading #301279
2200 First National Bank Building
Saint Paul, Minnesota 55101
(651) 223-6600

**Attorneys for Plaintiff Crane National Vendors,
a division of Crane Co.**

**ACKNOWLEDGMENT REQUIRED BY
MINN. STAT. § 549.211**

The undersigned acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211, subd. 2.

Dated: June____, 2002

Matthew J. Kading

VERIFICATION BY PLAINTIFF/CLAIMANT

STATE OF MISSOURI)
)ss.
COUNTY OF SAINT LOUIS)

Willis W. Bowers, being first duly sworn on oath, says that he is the Credit Manager of Plaintiff/Claimant Crane National Vendors, a division of Crane Co., in the action above-entitled; that he has read the forgoing Verified Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein state on his information and belief, and as to those matters, he believes it to be true.

Dated: June ____, 2001.

W.W. Bowers

Subscribed and sworn to before me
This ____ day of June, 2001.

Notary Public