

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**FILED**

2002 AUG 12 PM 1:44

Jr  
CLERK  
U.S. DISTRICT COURT

CANON FINANCIAL SERVICES, INC.,

Plaintiff,

vs.

DLK ARCHITECTURE INC. and  
DIANE LEGGE KEMP, individually,

Defendants.

Case No. 02 C 4533

Judge James B. Zagel

Magistrate Judge Morton Denlow

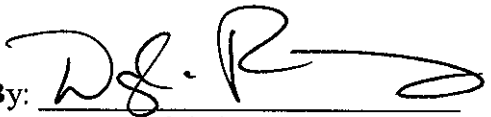
**NOTICE OF FILING**

**DOCKETED**  
AUG 13 2002

To: Daniel L. Collins  
Askounis and Borst, P. C.  
303 East Wacker Drive  
Suite 1000  
Chicago, Illinois 60601

PLEASE TAKE NOTICE THAT on the 12<sup>th</sup> day of August, 2002, we filed the Answer and Affirmative Defenses of DLK Architecture Inc. and Diane Legge Kemp to Plaintiff's Compliant with the Clerk of the United States District Court, a copy of which is hereby served upon you.

DLK ARCHITECTURE INC. and  
DIANE LEGGE KEMP

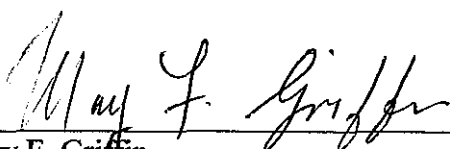
By:   
One of their Attorneys

Allan T. Slagel #6198470  
Douglas M. Ramsey #6256556  
SHEFSKY & FROELICH LTD.  
444 North Michigan Avenue  
Suite 2500  
Chicago, Illinois 60611  
312-527-4000

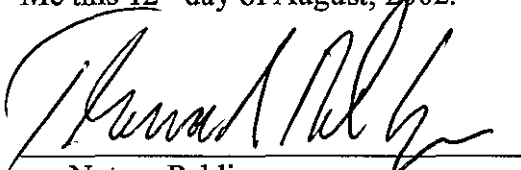
**CERTIFICATE OF SERVICE**

The undersigned, a non-attorney, certifies that true and correct copies of the foregoing **Notice of Filing and Answer and Affirmative Defenses of DLK Architecture Inc. and Diane Legge Kemp to Plaintiff's Complaint** were served by U.S. Mail on this 12<sup>th</sup> day of August, 2002, with first class postage affixed thereto, upon the following:

Daniel L. Collins  
Askounis and Borst, P. C.  
303 East Wacker Drive  
Suite 1000  
Chicago, Illinois 60601

  
\_\_\_\_\_  
Mary F. Griffin

SUBSCRIBED and SWORN to before  
Me this 12<sup>th</sup> day of August, 2002.

  
\_\_\_\_\_

Notary Public  
823580\_1.DOC



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**DOCKETED**

AUG 13 2002

**ANSWER AND AFFIRMATIVE DEFENSES OF DLK ARCHITECTURE INC.  
AND DIANE LEGGE KEMP TO PLAINTIFF'S COMPLAINT**

Defendants DLK Architecture Inc. ("DLK") and Diane Legge Kemp ("Kemp") (collectively DLK and Kemp are referred to as "Defendants"), by and through their undersigned attorneys, and for their Answer and Affirmative Defenses to Canon Financial Services, Inc.'s ("Canon") Complaint, state as follows:

**PARTIES**

1. Canon is a New Jersey corporation with its principal place of business in the State of New Jersey and is fully authorized to do business in the State of Illinois.

**ANSWER:** Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.

2. Defendant, DLK ARCHITECTURE INC. (hereinafter "DLK") at all times relevant was doing business in the County of Cook, State of Illinois, with an office located at The Fine Arts Building, 410 South Michigan Avenue, Chicago, Illinois 60605.

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**ANSWER:** Defendants admit the allegations contained in paragraph 2 of the Complaint. Answering further, Defendants state that DLK is an Illinois corporation.

3. Defendant, DIANE LEGGE KEMP, individually (hereinafter "KEMP"), upon information and belief, is a citizen of the State of Illinois, and resides at 164 Fairbank Road, Riverside, Illinois 60545-2234.

**ANSWER:** Defendants admit the allegations in paragraph 3 of the Complaint.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds \$75,000.00 exclusive of interest and costs, and the parties are citizens of different states.

**ANSWER:** Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint regarding the amount in controversy. Defendants admit Plaintiff purports to allege claims between citizens of different states, but denies any liability for the allege claims or that Plaintiff is entitled to any recovery.

5. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391 by virtue of the fact that DLK resides in this district.

**ANSWER:** Defendants admit the allegations contained in paragraph 5 of the Complaint.

### **FACTS**

6. On March 28, 2001, CANON entered into Equipment Lease Agreement No. 001-0104881-013 (hereinafter the "Lease") with DLK pursuant to which DLK leased and agreed to pay for various equipment, as more particularly described in the Lease (hereinafter the "Equipment"). A true copy of the Lease is attached hereto as Exhibit 1 and incorporated herein by reference for all purposes.

**ANSWER:** Defendants admit that Canon entered into a lease agreement that appears to be numbered 104881-13 with DLK pursuant to which DLK leased and agreed to pay for certain equipment described in the Lease (the "Subject Equipment"). Answering further, Defendants state that Canon dated the Lease March 29, 2001 rather than March 28, 2001 as alleged in the Complaint. Defendants also state that what appears to be a true copy of the Lease is attached to the Complaint as Exhibit 1.

7. Pursuant to the Lease, DLK agreed to pay to CANON gross rentals of \$76,320.00, payable in thirty-six (36) consecutive monthly installments each in the amount of \$2,120.00.

**ANSWER:** Defendants admit the allegations contained in paragraph 7 of the Complaint.

8. The Equipment was received and fully accepted by DLK on or about March 28, 1998. A true and correct copy of the Verbal Equipment Delivery and Acceptance Notice is attached hereto as Exhibit 2.

**ANSWER:** Defendants deny that the Subject Equipment was received and fully accepted by DLK on or about March 28, 1998. Defendants lack knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 8 of the Complaint.

9. DLK defaulted under the terms of the Lease by failing and refusing to pay to CANON the monthly installment payment due December 1, 2001, and all subsequent payments, totaling twenty-nine (29) remaining and unpaid payments at \$2,120.00, together with applicable tax payments and late charges, for an unpaid gross balance of \$75,172.11. Pursuant to the terms of the Lease, CANON declared the unpaid gross balance to be due and payable and DLK is indebted to CANON for said unpaid gross balance, which totals \$75,172.11.

**ANSWER:** Defendants deny the allegations contained in paragraph 9 of the Complaint.

**COUNT I**  
**BREACH OF LEASE**

10. Plaintiff realleges and reasserts Paragraphs 1 through 9 as though fully set forth herein as Paragraph 10 of Count I of the Complaint.

**ANSWER:** Defendants repeat and reallege their answers to paragraphs 1 through 9 to the Complaint and incorporate them as though fully set forth herein.

11. DLK has breached the Lease by refusing to make payments when due and owing. CANON is entitled to receive from DLK the sum of \$75,172.11 as well as interest from the date of default at the highest rate allowed by law, as provided for in the Lease.

**ANSWER:** Defendants deny the allegations contained in paragraph 11 of the Complaint.

12. Pursuant to the terms and provisions of the Lease, DLK also agreed that it would be liable for and would pay to CANON all expenses CANON incurs in connection with the enforcement of any of its remedies, including but not limited to, all expenses of repossessing, storing, shipping, repairing and selling the Equipment, as well as reasonable attorneys' fees.

**ANSWER:** Defendants state that the Lease is the best evidence of the terms and provisions of the Lease. To the extent that the allegations contained in paragraph 12 of the Complaint are inconsistent with the terms and provisions of the Lease, Defendants deny those allegations.

13. CANON has performed all terms and conditions required of it to be performed under the Lease.

**ANSWER:** Defendants deny the allegations contained in paragraph 13 of the Complaint.

**COUNT II**  
**REPOSSESSION OF EQUIPMENT**

14. Plaintiff realleges and reasserts Paragraphs 1 through 13 of Count I as though fully set forth herein as Paragraph 14 of Count II of its Complaint.

**ANSWER:** Defendants repeat and reallege their answers to paragraphs 1 through 13 to the Complaint and incorporates them as though fully set forth herein.

15. CANON is the owner of the Equipment identified in the Lease. Pursuant to the terms and provisions of the Lease, upon default by DLK, CANON is entitled to immediate possession of the Equipment, or in the alternative, damages for DLK's wrongful detention of its Equipment.

**ANSWER:** Defendants admit, on information and belief, that Canon is the owner of the equipment identified in the Lease. With regard to the remaining allegations of paragraph 15 of the Complaint, Defendants state that the Lease is the best evidence of the terms and provisions of the Lease. To the extent that the allegations contained in paragraph 15 of the Complaint are inconsistent with the terms and provisions of the Lease, Defendants deny those allegations.

16. CANON has demanded return of the Equipment from DLK, but DLK has failed and refused to return the Equipment and is wrongfully retaining possession of the Equipment.

**ANSWER:** Defendants deny the allegations contained in paragraph 16 of the Complaint. Answering further, Defendants affirmatively state that the Subject Equipment was returned to and accepted by Canon in or about March, 2002.

17. CANON is entitled to recover immediate possession of the Equipment, or in the alternative, to receive from DLK the value of its Equipment plus damages for DLK's wrongful detention of its Equipment in the sum of \$75,172.11, plus interest thereon from the date of default at the highest rate allowed by law.

**ANSWER:** Defendants deny the allegations contained in paragraph 17 of the Complaint. Answering further, Defendants state that Cannon has had possession of the Subject Equipment since at least March, 2002.

**COUNT III**  
**LIABILITY OF GUARANTOR**

18. Plaintiff realleges and reasserts Paragraphs 1 through 17 of Counts I through II as though fully set forth herein as Paragraph 18 of Count III of its Complaint.

**ANSWER:** Defendants repeat and reallege their answers to paragraphs 1 through 17 to the Complaint and incorporate them as though fully set forth herein.

19. In order to induce CANON to enter into the Lease with DLK, Kemp unconditionally guaranteed all obligations of DLK to CANON (hereinafter the "Guaranty"). A true and correct copy of the Guaranty is set forth on the face of Exhibit 1.

**ANSWER:** Defendants admit that Kemp guaranteed certain obligations of DLK to Canon at the insistence of Canon. Defendants further state that what appears to be a true and correct copy of the Guaranty is set forth on the face of Exhibit 1 to the Complaint.

20. DLK is obligated to CANON for the total amount of \$75,172.11, plus attorneys' fees and cost of suit, together with interest thereon.

**ANSWER:** Defendants deny the allegations contained in paragraph 20 of the Complaint.

21. Accordingly, Kemp is indebted to CANON for the sum of \$75,172.11, plus attorneys' fees and cost of suit, together with interest thereon.

**ANSWER:** Defendants deny the allegations contained in paragraph 21 of the Complaint.

WHEREFORE, Defendants DLK Architecture Inc. and Diane Legge Kemp, individually, pray that this Court enters judgment in their favor and against Plaintiff Canon Financial Services, Inc. on Counts I through III of its Complaint and grant them such other and further relief as this Court deems just and appropriate.

**AFFIRMATIVE DEFENSES**

Defendants DLK Architecture Inc. and Diane Legge Kemp, by and through their undersigned attorneys, set forth the following affirmative defenses:



1. This Court does not have jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because the amount in controversy does not exceed \$75,000.00 exclusive of interest and costs.

2. Canon misrepresented and misled DLK as to the suitability of the Subject Equipment because it knew that the Subject Equipment was not appropriate for DLK. These misrepresentations induced DLK to enter into the Lease and Kemp to guarantee certain obligations of DLK to Canon.

3. The Subject Equipment was returned to and accepted by Canon in or about March, 2002. Canon is therefore in possession of the Subject Equipment. Accordingly, Canon already has the relief it seeks in its Complaint and its Complaint is therefore moot.

4. DLK does not owe any amount under the Lease to Canon. Kemp therefore does not owe any amount under the personal guaranty to Canon.

WHEREFORE, Defendants DLK Architecture Inc. and Diane Legge Kemp, individually, pray that this Court entered judgment in their favor and against Plaintiff Canon Financial Services, Inc. with respect to its Complaint and grant them such other and further relief as this Court deems just and appropriate.

DLK ARCHITECTURE INC. and  
DIANE LEGGE KEMP

By:   
One of their Attorneys

Allan T. Slagel #6198470  
Douglas M. Ramsey #6256556  
SHEFSKY & FROELICH LTD.  
444 North Michigan Avenue  
Suite 2500  
Chicago, Illinois 60611  
312-527-4000  
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