IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

SIDNEY SCHLUSSELBER	kG CO.,)	
Individually and d/b/a UNAMO)	,
	Plaintiff,)	
)	
vs.)	Case No. 03 CV8754
)	Court No. 3
WANDA ALLEN, LLC,)	K.S.A. Chapter 60
,	Defendant.)	

JOURNAL ENTRY

NOW on this 6th. day of August, 2004, comes on for hearing Defendant's Motion to Set Aside Registration of Foreign Judgment. Plaintiff appears by and through its counsel, Geoff W. Hetley. Defendant appears by and through its counsel, Allen E. Coon, of the law firm of Norton, Hubbard, Ruzicka & Kreamer, L.C.

The Court, having heard the statements of counsel and reviewed the pleadings and the court file, and all exhibits and other documents submitted herein, makes the following findings of fact and conclusions of law, as follows:

- 1. That judgment was rendered in favor of the Plaintiff and against Wanda Allen, LLC In the District Court of El Paso County, Texas on August 26, 2003 in the principal amount of \$25,367.79 plus post Judgment interest at the rate of 10% per annum, plus attorney's fees and court costs. (hereinafter the "Judgment").
- On December 11, 2003 the Judgment was registered in the District Court of Johnson County, Kansas.
 - 3. On or about January 2, 2004 Defendant filed a Motion to Set Aside the registration of

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this Judgment on the basis that the State of Texas lacked personal jurisdiction to enter the Judgment.

- 4. The registration of a foreign judgment in accordance with K.S.A. 60-3002 carries the presumption that the foreign judgment is one entitled to the full faith and credit in the State of Kansas.
- 5. That the burden of setting aside the registration of the foreign judgment rests with the defendant. And the defendant must plead and prove facts that clearly and conclusively overcome the presumption of validity.
- 6. That the subject matter of the Judgment in Texas sounds in contract. Plaintiff sought payment for goods, merchandise and services provided. Therefore the law of the State of Texas is to be applied to this matter.
- 7. That a Texas court's "power" to bring a nonresident defendant before it is first defined by the Texas long-arm statute. TEX. CIV. PRAC. & REM. CODE § 17.042. A nonresident does business in this state, *inter alia*, if the nonresident contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this State. Id. § 17.042(1).
- 8. That under Texas law, substitute service may be effected upon the Secretary of State as the agent for the nonresident defendant "in any proceeding arising out of business done" in Texas.

 TEX. CIV. PRAC & REM. CODE ANN. § 17.044(b) (Vernon 1986).
- 9. That plaintiff submitted a business record Affidavit of Sidney Schlusselberg accompanied by business records reflecting unpaid invoices and phone calls evidencing the agreements by Defendant to purchase goods from Plaintiff in El Paso, Texas.
 - 10. Such conduct constitutes "doing business" under Texas law sufficient to meet the

requirements of the Due Process Clause of the Fourteenth Amendment and to support in personam jurisdiction against Wanda Allen, LLC in Texas.

- 11. That the defendant did not sustain its burden and provide clear and convincing evidence showing lack of jurisdiction of the Texas court.
- 12. That the defendant's Motion to Set Aside Registration of Foreign Judgment is hereby denied and plaintiff's judgment obtained in the State of Texas is valid and is entitled to the force, effect, and full faith and credit in the State of Kansas.

Thomas Sutherland

IT IS SO ORDERED.

Dated:

Form Prepared by:

Geoffrey W. Hetley

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Attorney For Plaintiff

Approved as to Form and Content:

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