

3. While in route to the scene, we received information from dispatch that a silver van had possibly been involved in the incident and that the driver of the van had attempted to run someone over. While approaching the scene, I observed a silver Chrysler minivan, Alaska license EBF777, stuck in a snow bank near the intersection of Bedrock and Rewak Streets, very close to the Klondike Inn.

4. I arrived in my patrol vehicle at approximately the same time that Officer Wellborn arrived in his patrol vehicle, around 9:45 a.m. There was a group of people standing outside on the restaurant side of the street. Officer Wellborn parked his vehicle on that side of the street and made contact with those people. I parked near the office entrance to the Klondike Inn and entered the office.

5. As I pulled up to the office area, I observed a white Ford pickup truck, Alaska license plate DMS745, parked outside the Inn. It was parked at an odd angle, it was running, and the driver's-side door was open. The rear windows and the front windshield of the truck were all shattered.

6. Inside the office, I contacted Max Lamoureaux and Jung (John) Lee, both identified themselves as managers of the Klondike Inn. Lamoureaux stated he had come to Fairbanks from Anchorage to help the owner of the Klondike serve eviction paperwork on the owners of the Klondike restaurant. He stated that at approximately 8:00 a.m. that morning he and Lee placed eviction notices on the door of the restaurant. At approximately 9:30, he and Lee were going to leave the Klondike office in the white Ford pickup to drive to breakfast. As he and Lee were exiting the parking lot, the silver Chrysler minivan cut in front of them and forced them to come to a stop. A female, believed to be Hyong Yi, was driving the minivan at that time. A man wearing a tan jacket and blue pants (later identified as Kenny Yi) exited the

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AFFIDAVIT OF LAWRENCE PEYTON MERIDETH

Yi, et al. v. Yang, et al., 4FA-04-2761 CI Page 2 of 5

Page 2 of 5

Exhibit G

EXC. 261

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

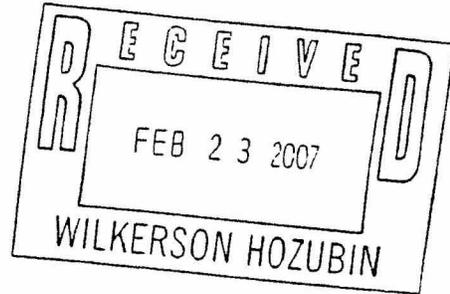
YONG H. YI, KENNY YI, HYONG C. YI )  
and LUNAR CHIN. )

Plaintiffs, )

vs. )

HARRIS S. YANG, SHARON YANG, MAX )  
ARTHUR LAMOUREAUX, Y & I )  
CORPORATION, OFFICER LAWRENCE )  
PEYTON MERIDETH, and the CITY OF )  
FAIRBANKS, )

Defendants. )



Case No. 4FA-04-2761 CI

AFFIDAVIT OF LAWRENCE PEYTON MERIDETH

STATE OF ALASKA )  
 ) §  
FOURTH JUDICIAL DISTRICT )

Lawrence Peyton Merideth, being first duly sworn, upon oath, deposes and states as follows:

1. I am currently a detective with the Fairbanks Police Department. I have been employed by the Fairbanks Police Department since July 1, 2000. In December of 2004, I was working as an officer assigned to a regular patrol shift. In February of 2005, I moved to investigations.

2. On the morning of December 19, 2004, I was dispatched to an incident in progress at the Klondike Inn/Restaurant. The Klondike is located on Bedrock Street in the City of Fairbanks. The Inn is on one side of the street, and the bar/restaurant is across the street from the Inn. Officer Douglas Welborn, Officer David McKillikan, and then Sergeant (now Lieutenant) James Geier also responded. Exhibit G

Exc 260

Exc.  
CITY  
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DATE 2/19/07  
EX. R  
WITNESS LAMOUR  
METRO COURT REPORTIN  
(907) 276-3876

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ASKA  
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8. While I was speaking with Lamoureaux and Lee, I contacted Officer Welborn by radio. He was across the street speaking to the people there. I asked him to have Kenny Yi and Yong Yi stand in a clear area so Lamoureaux could see them. Lamoureaux identified the two men as the men who had broken the windows and windshield of the truck and tried to stab him and Lee with the broken broom handle.

9. I spoke with Valerie Hopson who was standing outside the Klondike when the incident started. She observed Kenny Yi and a female wearing a red coat exit a red truck and walk up to the white truck. Hopson stated the man in the brown jacket (Kenny Yi) kept yelling "get the fuck out". Hopson stated that Kenny Yi and the female were so upset that if they had a gun, they would have killed the men in the truck.

10. I spoke with Samantha Bergman. She observed the two managers (Lee and Lamoureaux) run into the office being chased by, in her words, "the crazy guy" with a stick.

11. I walked from the Klondike Inn office across the street to Officer Welborn's location. I asked Kenny Yi and Yong Yi if they had broken out the windows and windshield of the white Ford pickup truck. They confirmed that they had. I then told them that they were being put under arrest. Kenny Yi and Yong Yi were handcuffed, placed in the back of patrol cars and transported to FCC. Officer Welborn transported Yong Yi to FCC, and I transported Kenny Yi to FCC.

12. Max Lamoureaux told me that he and Jung Lee had posted eviction notices on the door of the Klondike bar and restaurant. The photographs from the scene show a notice posted on the door and a notice posted in the window of the restaurant stating it was closed for renovations.

13. I did not enter the Klondike restaurant and bar that day, and I did not see anyone else enter.

14. I remember that the Yi's came to FPD after the 19th to speak with someone, and I have reviewed copies of the written statements they made on December 23, 2004. I have had no direct contact with Kenny Yi or Yong Yi or any of their family members since then. I am sure I have been back to the Klondike on other police matters but not on any matters related to the Yi's.

**END OF AFFIDAVIT.**

*Lawrence Peyton Merideth*  
Lawrence Peyton Merideth

SUBSCRIBED AND SWORN TO before me this 13 day of February 2007.



*Linda M. Dewey*  
Notary Public in and for the  
State of Alaska.  
My Commission Expires: 9/16/09

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ORNEY  
AN  
S, ALASKA  
4615  
9-6750

EXHIBIT G  
Page 5 of 5

EXC 264

c w k

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

YONG H. YI, KENNY YI, )  
LUNAR CHIN, and HYON CHA YI, )

Plaintiffs, )

v. )

HARRIS S. YANG, SHARON YANG, )  
MAX ARTHUR LAMOUREAUX, JOHN C. )  
PHARR, and Y & I CORPORATION, )

Defendants. )

Case No. 4FA-04-2761 CIVIL

AMENDED AFFIDAVIT OF MAX A. LAMOUREAUX

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

Max A. Lamoureux, being first duly sworn, deposes and states as follows:

1. I did not review my Affidavit of April 3, 2006 carefully before signing it. After further, careful review of my April 3, 2006 Affidavit I discovered some factual errors that I am correcting with this Amended Affidavit.

2. I did not work for Y & I Corporation from October 2004 to December 2004. I met Harris Yang in approximately October 2004. My last dealings with Harris Yang, other than this litigation, were in December 2004.

EXC 265

DATE	12-19-07	EX.	C
WITNESS	Lamoureux		
METRO COURT REPORTING (907) 276-3878			

3. I never worked for Y & I Corporation or Harris Yang. I was never on any payroll and never received, or expected to receive, any compensation for what I did for Harris Yang.

4. I agreed to assist Harris Yang with discussions with the Yi's regarding the purchase price for the inventory of the Klondike Restaurant and Bar and the possible sale of the liquor license for the Klondike bar, and with getting the Klondike on the internet.

5. In December 2004, I spoke with the Yi's a couple times about the purchase of the inventory from Harris Yang and the possible purchase of the liquor license. The Yi's were extremely profane during our conversations, but they spoke and understood English well. Following our discussions on December 13, 2004, I wrote the Yi's a letter with a written proposal. A true and correct copy of my December 13, 2004 letter is attached hereto as Exhibit A. I received no response from the Yi's to my December 13, 2004 letter, and had no further conversations with them.

6. I traveled to Fairbanks on or about December 19, 2004 to assist Harris Yang with getting the Klondike on the internet.

7. At about 8:00 a.m. on December 19, 2004, John Lee asked me to come with him to the Klondike Restaurant and Bar while he removed the liquor license from the bar and posted an eviction notice on the door.

8. The locksmith popped the lock on the back door, John Lee entered the premises, removed the license, and came back out. At all times, I stayed outside. I did not enter the Klondike Restaurant and Bar at any time on December 19, 2004.

9. John Lee told me he was posting an eviction notice, but I did not see what he posted or whether he actually posted anything on the door.

10. John Lee and I walked back to the Klondike Inn and got into Harris Yang's 1998 Ford F-250. I was driving. As we were leaving, a van pulled up and blocked our exit. At this point the events described in my statement to the police occurred. A true and correct copy of my statement to the police is attached hereto as Exhibit B.

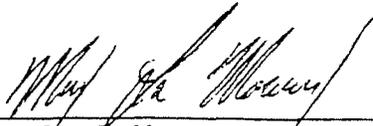
11. A man jumped in the bed of the truck and shattered the back window. He then jumped out of the truck bed and tried to shatter the front, driver's side window. Another man threw a

cement block through the front window. I then tried to pull away. One of the men jumped back into the truck bed and tried to further shatter the back window with a broom handle. He then tried to stab John Lee and I with the broom handle. Then a silver mini-van driven by a female rammed the side of the truck. The man in the back of the truck then broke the broom handle and began trying to stab us with the sharp point of the broke broom handle. I was able to drive back to the office of the Klondike Inn. John Lee and I made it inside and called 911. The police arrived shortly thereafter and arrested the two men.

12 I later learned that Kenny Yi was the one who initially jumped in the back of the truck, and Yong Yi was the one who threw the cement block through the front window of the truck and then tried to stab me with the broken broom handle.

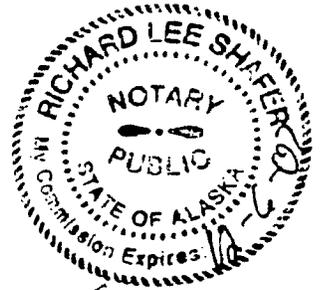
13. As soon as possible, I returned to Anchorage. I did not see the Yi's return to the Klondike at any time.

14. It was a terrifying experience. I firmly believe that the Yi's would have killed me, if they could have.

  
\_\_\_\_\_  
Max A. LaMoureaux

SUBSCRIBED and SWORN to before me this 25<sup>th</sup> day of  
May, 2006.

Richard Lee Shafer  
Notary Public in and for Alaska  
My Commission Expires: 12-6-07





# CITIZEN'S ARREST REPORT

FAIRBANKS POLICE DEPARTMENT  
FAIRBANKS ALASKA

CASE NUMBER	04-24759
CROSS REFERENCE CASE NUMBER	
CASE OFFICER	MERIDETH / 1059
STAR #	

INCIDENT

NO. 1	TITLE OF PRIMARY INCIDENT ASSAULT IV, CRIM MIS IV	LOCATION OF INCIDENT KLONDIKE INN
DAY(S) OF INCIDENT SUN 1	DATE(S) OF INCIDENT 12/19/04 1	HOUR(S) OF INCIDENT 1

DO NOT WRITE ABOVE THIS LINE

CITIZEN'S CERTIFICATE AND  
DECLARATION OF ARREST

I, MAX LAMOURBEAUX hereby declare and certify that I have arrested  
(PRINTED NAME OF THE CITIZEN MAKING THIS ARREST)

YOUNG YI for the following offense(s) ASSAULT IV X 2  
(NAME OF THE PERSON ARRESTED/DEFENDANT) CRIMINAL MISCHIEF IV

I do hereby request that you, DFC. MERIDETH, a peace officer, take and conduct this person whom I have arrested to be dealt with according to the law. As requested, I will sign, under oath, the appropriate complaint against this person for the offense (s) which this person has committed and for which I made this arrest; and I will testify under oath as a witness against the defendant. I have completed a written statement.

Max Lamoureux  
(SIGNATURE OF CITIZEN MAKING THIS ARREST)

NO.	ROLE CW	LAST NAME, FIRST NAME, MI OF CITIZEN MAKING THE ARREST LAMOURBEAUX, MAX	RACE W	SEX M	AGE	DATE OF BIRTH	DRIVERS LICENSE NO.	STATE AK
AKA/ALIAS	RESIDENCE ADDRESS 2501 N. TAHITI LP	ZIP 99705	MAILING ADDRESS		ZIP	RESIDENCE PHONE NO. 333-4629		
TITLE / OCCUPATION MANAGER	PLACE OF EMPLOYMENT / SCHOOL KLONDIKE INN	EMPLOYMENT/SCHOOL ADDRESS 1316 BEDROCK		EMPL/SCH PHONE NO.				
	PLACE OF BIRTH MADRID	STATE CA						

## STATEMENT

SEE STATEMENT

STATEMENT

DATE	12.19.04	EX.	D
WITNESS	Lamoureux		
METRO COURT REPORTING (907) 276-3876			

DATE - TIME PREPARED 12/19/04 1312	REPORTING OFFICER MERIDETH / PRO/LAM	TITLE	STAR#	APPROVING SUPERVISOR	TITLE	STAR#	DATE/TIME PREPARED
---------------------------------------	---	-------	-------	----------------------	-------	-------	--------------------

EXH.  
CITY  
E



# CITIZEN'S ARREST REPORT

FAIRBANKS POLICE DEPARTMENT  
FAIRBANKS ALASKA

CASE NUMBER	04-247519
CROSS REFERENCE CSE NUMBER	
CASE OFFICER	MERIDETH / 105-9
STAR #	

INCIDENT	NO. 1	TITLE OF PRIMARY INCIDENT	LOCATION OF INCIDENT
	DAY(S) OF INCIDENT	DATE(S) OF INCIDENT	HOURS(S) OF INCIDENT

ASSAULT IV, CRIM MIS. IV  
Klondike Inn  
50N / 12/19/04 /

DO NOT WRITE ABOVE THIS LINE

CITIZEN'S CERTIFICATE AND DECLARATION OF ARREST

I, MAX LAMBOUREAUX hereby declare and certify that I have arrested  
(PRINTED NAME OF THE CITIZEN MAKING THIS ARREST)  
KENNETH YE for the following offense(s) ASSAULT IV X2  
(NAME OF THE PERSON ARRESTED/DEFENDANT) CRIMINAL MISCHIEF IV

I do hereby request that you, OFF. MERIDETH, a peace officer, take and conduct this person whom I have arrested to be dealt with according to the law. As requested, I will sign, under oath, the appropriate complaint against this person for the offense (s) which this person has committed and for which I made this arrest; and I will testify under oath as a witness against the defendant. I have completed a written statement.

*[Signature]*  
(SIGNATURE OF CITIZEN MAKING THIS ARREST)

NO.	ROLE CW	LAST NAME, FIRST NAME, M.I. OF CITIZEN MAKING THE ARREST	RACE	SEX	AGE	DATE OF BIRTH	DRIVERS LICENSE NO.	STATE
		LAMBOUREAUX, MAX	W	M				AK
AKA/ALIAS	RESIDENCE ADDRESS	ZIP	MAILING ADDRESS	ZIP	RESIDENCE PHONE NO.			
	2301 N. TAHITI CT	99705			333-4629			
TITLE / OCCUPATION	PLACE OF EMPLOYMENT / SCHOOL	EMPLOYMENT/SCHOOL ADDRESS	EMPL/SCH PHONE NO.					
MANAGER	KLONDIKE INN	1316 BEDROCK						
SSN	PLACE OF BIRTH	STATE						
	MARTINEZ	CA						

## STATEMENT

STATEMENT

SEE STATEMENT

12.19.04  
DATE EX. E  
WITNESS (Amercany)  
METRO COURT REPORTING  
(907) 276-3878

DATE - TIME PREPARED	REPORTING OFFICER - TITLE - STAR#	APPROVING SUPERVISOR - TITLE - STAR#	DATE APPROVED
12/19/04 1320	MERIDETH / 170 / CAW / 1057	/ /	



# STATEMENT

FAIRBANKS POLICE DEPARTMENT  
FAIRBANKS ALASKA

04 - 24715  
CROSS REFERENCE CASE NUMBER  
CASE OFFICER: ME Eidehn 11055

IDENTITY OF PERSON  
MAKING THIS STATEMENT

MAR LAMOUREAU  
(PRINT FULL NAME)

make the following voluntary statement at: time: 12/19/04

Max Lamoureux John Lee

ROLE <b>W</b>	LAST NAME, FIRST NAME, M.I.		RACE	SEX	AGE	DATE OF BIRTH	DRIVERS LICENSE NO.	STATE <b>AK</b>
AKA / ALIAS	RESIDENCE ADDRESS		DP	MAILING ADDRESS		DP	RESIDENCE TELEPHONE NO.	
TITLE / OCCUPATION	PLACE OF EMPLOYMENT / SCHOOL		DP	EMPLOYMENT / SCHOOL ADDRESS		DP	EMPLOYER / SCHOOL TELEPHONE NO.	
SSN	PLACE OF BIRTH		STATE					
LINKING	MARRIAGE		ICA					

STATEMENT

On 12-19 2004 I Max attempted to drive away from the Klondike Inn, John Lee, the manager, was with me. As we were pulling through the parking lot a van crossed in front of us cutting us off to stop. One of the men jumped in the back, shattered out back window of the truck. Then he jumped out of the back and then tried to scatter the front drivers window. Then the other male, man in black jacket, threw a cement block through the front window. We tried to pull away in fear of our lives. Man in black jacket jumped in back of truck, grabbed a broom, removed broom part and started to stab at back window to shatter it further in order to stab Max in back of head and hands. Then a silver van rammed into the side of us. At that point the male in the back broke broom handle to get sharp point to try and stab Max again. We were able to make it back the office of the Klondike Inn, lock the doors and call 911.

SIGNATURE

(14) I have read the above and foregoing statement and I have been given the opportunity to make any corrections or changes I might make. Any changes that I have made are initialed by me in my own handwriting.

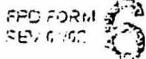
Signed: X [Signature] 12-19-04

FPD USE ONLY

(15) STATEMENT RECEIVED BY:

CPM

DATE: 12-19-04 EX: F  
WITNESS: [Signature]  
METRO COURT REPORTING  
(907) 276-3876



THIS REPORT IS CONFIDENTIAL & FOR OFFICIAL USE ONLY

EXC 272

CITY E 3013

RECEIVED  
3-13-08

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

YONG H. YI, KENNY YI, HYONG C. YI )  
and LUNAR CHIN, )

Plaintiffs, )

vs. )

HARRIS S. YANG, SHARON YANG, MAX )  
ARTHUR LAMOUREAUX, Y & I )  
CORPORATION, OFFICER LAWRENCE )  
PEYTON MERIDETH, and the CITY OF )  
FAIRBANKS, )

Defendants. )

Case No. 4FA-04-2761 CI

**REPLY TO PLAINTIFFS' OPPOSITION TO MOTION FOR SUMMARY  
JUDGMENT (Officer Merideth and City of Fairbanks)**

Defendants Merideth and City of Fairbanks file the following reply to plaintiffs' opposition to the motion for summary judgment filed by Merideth and the City of Fairbanks.

**There Are No Genuine Issues Of Material Fact.**

Page 3 of plaintiffs' opposition contains a list of four "factual issues in dispute." As discussed below, one of those issues is not actually in dispute, two are irrelevant, and one does not raise any genuine issues of material fact.

**Imagined Factual Issue No. 1 – whether Officer Merideth arrested Plaintiffs.**

Officer Merideth did not arrest Yong Yi and Kenny Yi. They were arrested subject to a "citizen's arrest" executed by Max Lamoureaux. Numerous copies of the Citizen's Arrest Form and of Lamoureaux's sworn statement have been filed with the court. There is no real dispute on this issue. Even Plaintiffs' expert, R. John Shover, states in his opinion letter filed with plaintiffs' opposition [Plaintiffs' Exh. 8] that Kenny and Yong Yi were taken into custody for assault and criminal mischief. "This was the result of a citizen's arrest." Plaintiffs' opposition

takes the preposterous position that the “overwhelming evidence suggests that Officer Merideth illegally arrested the Yi’s” and refers to the citizen’s arrest form executed by Max Lamoureaux as a “scintilla” of evidence. Plaintiffs’ “overwhelming evidence” is their subjective and mistaken belief that they were arrested by Officer Merideth. What Kenny Yi and Yong Yi thought is irrelevant.

The City would also note the following mistake contained in Plaintiffs’ opposition. Plaintiffs state on page 22 and 23 that Officer Welborn informed the Yi’s that Officer Merideth was the arresting officer. A review of that tape shows that the statement was made by Officer McKillican, not Officer Welborn, in explanation for why he was moving one of the Yi’s from his patrol car to Officer Merideth’s vehicle. McKillican stated to one of the Yi’s:

This officer here is the investigating officer. I’m here to assist him. As soon as I find out, I will tell you.

[comment by one of the Yi’s]

Well, right now it would be inappropriate for me to make any comments to you about that, because one, I haven’t read you your rights and you are under arrest, and, two, I don’t know both sides of the story. OK? What we’re going to do is I’m going to have – I’m gong to take you out of the vehicle and put you in that vehicle, because that’s the arresting officer’s stuff – or- vehicle.

**Imagined Factual Issue No. 2 – Whether or not Officer Merideth’s actions complied with accepted police standards in the use of citizen’s arrest forms.**

Plaintiffs rely on the opinion letter of R. John Shover. Shover does not address the issues that are currently before the court. He does not opine or even suggest that there was not probably cause to arrest Yong Yi and Kenny Yi. In making his observations about the proper procedures regarding citizen’s arrests,<sup>1</sup> which are not relevant in any case, he does not state or

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<sup>1</sup> The City and Officer Merideth do not agree that proper procedures were not followed.

even suggest that if the proper procedures are not followed, the citizen's arrest is somehow made void.

**Imagined Factual Issue No 3 – that Officer Merideth's failure to arrest Lamoureaux was not consistent with accepted police standards.**

This issue is not relevant to any of the claims alleged against the City of Fairbanks or Officer Merideth. Shover's opinions concerning possible crimes committed by Lamoureaux are also of no relevance. As noted in the City's motion for summary judgment, the validity of plaintiffs' arrest does not depend on whether they actually committed a crime, and the mere fact that the charges against them were later dismissed by the State of Alaska is irrelevant.<sup>2</sup> The only relevant inquiry is whether the facts and circumstances within Max Lamoureaux's knowledge were sufficient to warrant a prudent person in believing that Plaintiffs committed a crime.

**Imagined Factual Issue No. 4 – whether the City Police Officers unlawfully prevented members of the Yi family and employees from entering the business.**

The claim alleging deprivation of property only applies to Plaintiff Yong Yi [see Plaintiffs' Second Amended Complaint ¶ 230]. If other plaintiffs had complaints based upon any loss of their property, they have waived any such claims by not bringing them in a timely manner.

Yong Yi alleges in his complaint and has filed a motion for summary judgment claiming that Defendants Harris Yang, Sharon Yang and Y & I Corporation wrongfully evicted him from the bar and restaurant on December 19, 2004. By filing a complaint and filing that motion, he is telling this court that he believes that to be true. While the underlying validity of Plaintiffs' wrongful eviction claim is irrelevant to the City's motion for summary judgment, it serves to

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<sup>2</sup> Michigan v. DeFillippo, 443 U.S. 31, 36 (1979).

defeat Yong Yi's civil rights claim against Officer Merideth and the City. Nothing in the Due Process Clause of the Fourteenth Amendment requires the City to protect the life, liberty, and property of its citizens against invasion by private actors.<sup>3</sup>

Plaintiffs' opposition contains numerous inaccuracies and misrepresentations regarding this issue. Plaintiffs contend on page 18 of their opposition that the "police advised all the Yi's to not return to the restaurant and bar" and cite the City's Answers to Requests for Admission, specifically RFA's 4 and 5. Even a quick review of the City's responses shows that the admissions do not support the position taken by Plaintiffs in their opposition. Yong Yi was subject to the restraining order obtained by Sharon Yang on December 20, 2004. As such, he cannot deny that any advice given by the Fairbanks Police Department was proper.

Plaintiffs also contend [Opposition at 18] that Officer Welborn told Renee Bullock, who identified herself as a bartender at the Klondike, that she could not go into the bar to open or otherwise secure the premise. That, again, is not accurate. It was Officer McKillican, and not Officer Welborn, who made a comment to Bullock. His comment to her was:

Well, actually, I don't think anybody's going to be working anytime today or anytime recently. We don't know what's, there's some civil dispute over the place. So I don't know what's going on. I might be wrong, but for right now, let's stay out of the bar. OK?

#### CONCLUSION:

Plaintiffs Kenny Yi and Yong Yi were "arrested" by Max Lamoureux. Alaska law gives Lamoureux the authority to make a citizen's arrest, and the arrest in this case was supported by probable cause. That alone puts an end to Plaintiffs' claims against Officer

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<sup>3</sup> DeShanney v. Winnebago County Dept. of Social Services, 489 U.S. 189, 195 (1989).

Merideth. In addition, Merideth is entitled to dismissal based on statutory and qualified immunity.

Plaintiffs have not and cannot point to any City policy or custom that can be causally related to the allegedly unconstitutional conduct of its employees. There was no unconstitutional conduct by Fairbanks police officers. The City's policy of not intervening in civil legal disputes between private parties cannot give rise to a claim under 42 U.S.C. § 1983. Nothing in the Due Process Clause of the Fourteenth Amendment requires the City to protect Plaintiffs' property from actions by private actors.

The court should grant the motion for summary judgment filed by the City and Merideth and should grant the City and Merideth their full attorney's fees and costs.

Dated this 11th day of March 2008 at Fairbanks, Alaska.

OFFICE OF THE CITY ATTORNEY  
Attorneys for Defendants City and Merideth

By: 

Paul J. Ewers  
Deputy City Attorney  
AK Bar No. 8711081

Certificate of Mailing

I hereby certify that on  
the 11th day of March,  
20 08, I mailed via first-  
class mail, a true and  
correct copy of the fore-

going to  
Walleri, Pharr, S. Yang, L. Chin  
Gray, Hongulrim H. Yang.

OFFICE OF THE CITY ATTORNEY  
800 Cushman St., Fcks, AK

By: \_\_\_\_\_

OFFICE OF THE  
CITY ATTORNEY  
800 CUSHMAN  
AIRBANKS, ALASKA  
99701-4615  
907-459-6750

REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT (City/Meredith)  
Yi v. Yang, 4FA-04-2761 CI  
Page 5 of 5

EXC 277

LOGGED  
FEB 20 2007

RECEIVED  
4-23-08

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

YONG H. YI, KENNY YI, HYONG C. YI )  
and LUNAR CHIN, )

Plaintiffs, )

vs. )

HARRIS S. YANG, SHARON YANG, MAX )  
ARTHUR LAMOUREAUX, Y & I )  
CORPORATION, OFFICER LAWRENCE )  
PEYTON MERIDETH, and the CITY OF )  
FAIRBANKS, )

Defendants. )

Case No. 4FA-04-2761 CI

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT  
(Officer Merideth and City of Fairbanks)

The Court, having considered Defendants Lawrence Peyton Merideth and the City of Fairbanks motion for summary judgment and any opposition thereto and, pursuant to Rule 56(c), Alaska Rules of Civil Procedure, hereby **GRANTS** the motion and **DISMISSES** all claims against them with prejudice.

Dated this 14th day of April 2008.  
2007.

Randy M. Olsen  
RANDY M. OLSEN  
Superior Court Judge

I certify that a copy of the foregoing was distributed via:  
MAIL  
 U.S. Postal Service  
 Other Zigkin, Fisher Pharr  
H. Yang, S. Yang, Chen  
HAND DELIVERED  
 Courier Service  
 Pick Up Site Branch, City Attorney  
 Fax  
 Other US Date 4-23-08  
By: \_\_\_\_\_ Clerk

OFFICE OF THE  
CITY ATTORNEY  
500 CUSHMAN  
FAIRBANKS, ALASKA  
99701-4615  
907-459-6750

EXC 278

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

YONG H. YI, KENNY YI, )  
 HYONG C. YI, and LUNAR CHIN, )  
 )  
 Plaintiffs, )  
 v. )  
 )  
 HARRIS S. YANG, SHARON YANG, )  
 MAX ARTHUR LAMOUREAUX, )  
 Y & I CORPORATION, OFFICER )  
 LAWRENCE PEYTON MERIDETH, )  
 and the CITY OF FAIRBANKS, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No. 4FA-04-2761 CI

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Plaintiffs brought suit against defendants for various causes of action that arose from an initial agreement to lease a restaurant and ended in incidents surrounding the termination of this agreement. The various claims were decided by summary judgment, settlement, and a jury trial that was held in July of 2008.

**Issues Decided by Summary Judgment:**

On April 14, 2008 summary judgment was granted in favor of Harris Yang, Sharon Yang, and Y & I Corporation dismissing counts I, II, III, IV, V, XIII, XIV, and XVII of the second amended complaint, and all claims for lost profits. The

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claims against the City of Fairbanks and Officer Lawrence Peyton Merideth were dismissed.

**Issues Decided by the Jury**

Of the causes of action which went to trial, the Jury found the following:

- 1) The Yang defendants owe Yong ("Jeff") Yi \$42,000 for money paid under the contract.
- 2) The Yang defendants owe Yong ("Jeff") Yi \$3,600 for improvements made to the premises.
- 3) The Yang defendants owe Yong ("Jeff") Yi \$33,900 for money and personal property which was located on the premises and not surrendered when demanded.
- 4) Harris Yang assaulted Kenny Yi, and Yang's conduct was outrageous, but no money damages were awarded for the assault.
- 5) Max Lamoureux's conduct was not negligent as to Kenny Yi.
- 6) Yong ("Jeff") Yi does not owe the Yang defendants money under the lease contract.
- 7) Yong ("Jeff") Yi owes the Yang defendants \$935.67 for damage to their pickup truck.
- 8) The Yi plaintiffs reasonably believed that Max Lamoureux had damaged their property, but their efforts to restrain Lamoureux were not reasonable under the circumstances.

- 9) Max Lamoureaux reasonably believed he had been assaulted by Yong ("Jeff") Yi and/or Kenny Yi on December 19, 2004.

Based on the above:

- 1) Yong ("Jeff") Yi is entitled to Final Judgment against Harris Yang, Sharon Yang, and Y & I Corporation in the amount of \$78,564.33.<sup>1</sup>
- 2) Max Lamoureaux is entitled to final judgment against Kenny Yi.
- 3) Harris Yang, Sharon Yang, and Y & I Corporation are entitled to Final Judgment against Yong ("Jeff") Yi on counts I, II, III, IV, V, XIII, XIV, and XVII of the Second Amended Complaint and all claims for lost profits.
- 4) The City of Fairbanks and Officer Lawrence Peyton Merideth are entitled to Final Judgment against Yong ("Jeff") Yi.

Individual judgments shall enter. The parties are directed to apply for fees, costs, and prejudgment interest as authorized by the Rules of Court. Motions which have already been filed are now viable motions, and may be opposed as provided for in the rules.

DATED at Fairbanks, Alaska, this 31<sup>st</sup> day of December, 2008.

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Randy M. Olsen  
 RANDY M. OLSEN  
 Superior Court Judge

<sup>1</sup> (\$42,000 + \$3600 + \$33,900 - \$935.67)

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FOURTH JUDICIAL DISTRICT AT FAIRBANKS

3 YONG H. YI, et al., )

4 Plaintiffs, )

5 vs. )

6 HARRIS YANG, et al., )

7 Defendants. )

8 Case No. 4FA-04-02761 CI  
9 Supreme Court No. S-13427

10 VOLUME I

11 TRANSCRIPT OF PROCEEDINGS

12 May 3, 2005 - Pages 3 through 8

13 April 14, 2008 - Pages 9 through 50

14 June 30, 2008 - Pages 51 through 111

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ORAL ARGUMENT

3

BEFORE THE HONORABLE RANDY M. OLSEN

4

Superior Court Judge

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6

Fairbanks, Alaska

April 14, 2008

7

2:50 o'clock p.m.

APPEARANCES:

8

FOR THE PLAINTIFFS:

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YANG AND SHARON YANG:

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FOR DEFENDANT CITY OF  
FAIRBANKS AND LAWRENCE  
PEYTON MERIDETH:

MR. PAUL J. EWERS

Law Office of Paul Ewers

Attorney at Law

312 Fifth Avenue

Fairbanks, Alaska 99701

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1 PROCEEDINGS

2 4FA3508-31

3 2:50:27

4 THE COURT: And who is with you, sir?

5 MS. HOZUBIN: Rebecca Hozubin representing  
6 Mr. Lamoureaux.

7 THE COURT: Okay. And thank you, both of you.  
8 We have got Mr. Pharr here in the courtroom,  
9 Ms. Bray is here in the courtroom, Mr. Walleri is here,  
10 Mr. Ewers from -- for the city defendants is here.

11 We are on the record to address numerous pending  
12 motions in this litigation. And I have introduced as well my  
13 law clerk, who is up here with papers spread out so that she  
14 can assist me as needed, as she has gone through these many  
15 different motions.

16 Can the parties just -- so that we are all up to  
17 speed, because in case something got dropped somewhere, as to  
18 the parties, is it correct that Hyong Yi is now out of the  
19 picture? I thought she had settled the case or there was some  
20 notice of \$5,000 settlement.

21 MR. WALLERI: No, there's a -- Hyong has settled  
22 as to the Yang -- as to her claims against the Yangs. She  
23 still has active claims against Mr. Lamoureaux arising from  
24 the automobile accident.

25 THE COURT: Okay. Okay. Then can you tell me

1 what her claims were separate from the tort claims; the  
2 automobile, just the businesses losses, or.....

3 MS. BRAY: No, same claims, different defendant.

4 MR. WALLERI: No, no, she's -- they're the same  
5 claims, different defendant. In other words.....

6 THE COURT: As to Lamoureaux?

7 MR. WALLERI: Yeah, Lamoureaux -- Lamoureaux --  
8 the theory of our claim with regards to the Yangs is that  
9 Mr. Lamoureaux was serving as a -- an agent for the Yangs when  
10 he -- and for the Klondike Inn when he engaged in the various  
11 activities that we allege him to -- him to engage, including  
12 the accident with Ms. Yong -- Hyong, excuse me.

13 THE COURT: So has anybody settled out of this  
14 case yet?

15 MR. WALLERI: No.

16 THE COURT: None. Okay. So with that, I've  
17 proposed to address maybe in distinct categories the claims  
18 against the city officers and then maybe turning to  
19 Mr. Lamoureaux's motions as to his defenses or to foreclose  
20 defenses.

21 Maybe then at that point -- Mr. Pharr, would  
22 that be useful for your purposes, because I guess you are here  
23 for Mr. Lamoureaux only?

24 MR. PHARR: I am, Your Honor, but Ms. Hozubin  
25 will be arguing those.

1           THE COURT: Okay. That will be fine. And then  
2 we'll deal with -- that way we can deal with those issues and  
3 then turn to maybe the business claims and motions, and then  
4 finally the tort claims that are not related to the city  
5 officers just so that, for convenience purposes, it might be  
6 that Mr. Ewers can then -- he can stay and monitor or he can  
7 be excused; the same with Mr. Pharr if we go into tomorrow.  
8 And I reserved tomorrow afternoon as well for the motions,  
9 just as much time as we need, but it may be that we can  
10 dispose of most of these.

11           As to the city claims, there's a motion summary  
12 judgment based on immunity. Anything that you would like to  
13 address on that that are not in the pleadings, Mr. Ewers?

14           MR. EWERS: I don't think so, Your Honor. There  
15 has been a couple of things filed, a notice by way of letter  
16 of a -- of a case that had been decided since then, but.....

17           THE COURT: Oh, the Prentzel case.

18           MR. EWERS: But nothing new, Your Honor.

19           THE COURT: Mr. Walleri?

20           MR. WALLERI: Well, on the city claims, you  
21 know, it's -- it's just our position that there are just too  
22 many facts out -- outstanding, even on the qualified immunity,  
23 because -- not so much because of what we allege the facts to  
24 be, but the allegations of facts between the various  
25 defendants because, of course, on the -- we basically have two

1 claims against the city; one is on false arrest, and the other  
2 is a deprivation of property claim.

3 The false arrest claim.....

4 MR. EWERS: Your Honor, I'm -- I hate to  
5 interrupt, but I assumed that was a quick question and it  
6 wasn't do I have arguments to make.

7 THE COURT: Actually, it was a quick question,  
8 that we don't need additional arguments. But if Mr. -- as  
9 Mr. Walleri is setting out his arguments or his position, he  
10 can do that. That will -- so far if I have questions, I'll  
11 ask you on that.

12 MR. WALLERI: But I think it does help to kind  
13 of clarify for the bench what we're arguing here.

14 In terms of the qualified immunity issue, the  
15 immunity is based upon what the -- what the officer knew at  
16 the time. Here, the officer -- and I have to give, you know,  
17 a remarkable amount of credit to Officer Merideth; he was very  
18 frank and straightforward.

19 But he basically said, yeah, he knew he couldn't  
20 arrest them for what he -- for what they did, for what he was  
21 charging them with, the misdemeanor, because he didn't see it.  
22 He knew that at the time.

23 He doesn't remember explaining the civil arrest  
24 to Max. And then, of course, Max says -- or Mr. Lamoureux  
25 says that he didn't know he was arresting the Yis, and that

1 Mr. Merideth -- or Officer Merideth didn't explain what he was  
2 actually doing. And he thought he was simply making a witness  
3 statement and, in fact, it's actually referred to as a witness  
4 statement a number of times. And, of course, the other  
5 officer there is on tape basically telling the Yis that  
6 they're being arrested by Officer Merideth.

7 I think we have a -- I think we have a --  
8 disputes of -- you know, a genuine issue of fact as to who  
9 arrested them, given that the only piece of evidence is --  
10 that Max arrested them was, in fact, the piece of paper he  
11 signed. Everything else points the other direction.

12 In terms of qualified immunity -- and then, of  
13 course, we have the statement by our expert, John Shover (ph),  
14 which talks about how you use these things, and you're  
15 supposed to explain -- the officer -- an officer is supposed  
16 to explain it.

17 So I really think that it's -- there's a genuine  
18 issue of fact as to what -- or a contested issue of fact as to  
19 what Officer Merideth knew and when he knew it.

20 And under the facts most favorable to the  
21 defendant -- or to the plaintiff here, the non-moving party,  
22 qualified immunity wouldn't apply because the officer knew  
23 that what he was doing was wrong.

24 A second issue has to do with a deprivation of  
25 property. And there I think it's a closer issue, but the

1 officers basically told people who were not being arrested,  
2 including the bartender and the -- and Ms. Lunar Chin, that  
3 they were not to enter in and reopen the business. And that's  
4 actually on tape, again, because the bartender was trying to  
5 open the business, and they were told, no, you can't open the  
6 business.

7           There was no -- there was no FED action, no  
8 order preventing people who were not being arrested from going  
9 in and opening and operating the business. It's just that the  
10 police basically said, kind of in a summary judgment fashion,  
11 you can't go in there because the owners say you can't go in  
12 there, even though the owners knew that -- or never presented  
13 any paperwork that -- you know, that they were actually  
14 engaged in a real, legitimate eviction.

15           More to the point, while Officer Merideth, to  
16 his discredit, says he doesn't know nothing about evictions,  
17 the dispatcher gives in a taped interview in this whole  
18 process -- explains with great detail to Joe Haze (ph), who  
19 called in, how you go about doing this, what the procedures  
20 are, and that you have to go get an order from the Court, you  
21 have to bring the order down, and you have to get the -- a  
22 writ of assistance. All this stuff the Court is very well  
23 aware of. This was all explained by the dispatcher to -- to  
24 Mr. Haze, who was working for Mr. Yang at the time.

25           So you have to -- there is a real serious issue

1 of credibility as to whether or not the officer really, you  
2 know, just simply didn't know the procedures that were  
3 explained by the dispatcher and -- but he did know that there  
4 was no order of eviction, that no -- that the Yangs or Y & I  
5 Corporation or anybody else had actually taken legal action.

6 And, of course, it's a matter of state law, the  
7 whole idea of forceable entry and detainer is to prevent  
8 people from doing exactly what happened here. You don't get  
9 to go lock people out by force. You have to go to court and  
10 get an eviction, and they didn't do that. So the officer knew  
11 what he was doing.

12 The idea of qualified immunity, what the officer  
13 knew and when he knew it is a matter of -- they haven't really  
14 offered any testimony that -- what the officer knew, what he  
15 knew, when he knew it. And all the evidence suggests that --  
16 that he -- we've presented enough evidence to show that he  
17 knew what he was doing was inappropriate both as to the arrest  
18 and to the -- and to the eviction.

19 To his credit, I think he was really just trying  
20 to keep people apart. And I think that's -- I think a common  
21 sense view of the situation is, is that he saw these people  
22 fighting -- or he heard that these people were fighting; he  
23 didn't see it. He couldn't understand my clients, and I can  
24 have a modicum of appreciation for that. But on the other  
25 hand, what they did tell him -- they did explain to him on the

1 tape pretty clearly what happened.

2 And as our expert points out, the -- Max was  
3 being accused of committing three felonies. My clients were  
4 being accused of committing one misdemeanor each.

5 And the officer elected to prosecute --  
6 to engage in a very questionable arrest of my clients. When  
7 he didn't need a civil arrest, he could have simply arrested  
8 Max and removed a guy who had -- who basically was a suspect  
9 in three felonies; he didn't do it.

10 And as our expert witness report says, this  
11 isn't brain surgery. If you've got a guy who's committed --  
12 if you've got a guy who's been -- who's accused of engaging in  
13 a burglary, striking two people with his car and then leaving  
14 the scene of an accident, all of which are felonies, you go  
15 after the felony, you don't go after the questionable  
16 misdemeanor if you're trying to separate people.

17 THE COURT: Okay.

18 MR. WALLERI: So that's -- we don't think that  
19 summary judgment on the qualified immunity or the two -- or  
20 the three counts against the city and Mr. -- Officer Merideth,  
21 which is two civil rights claims and a false arrest state  
22 claim, should be subject to summary judgment.

23 THE COURT: Okay. The failure to arrest Max is  
24 not even an issue or a consideration for my -- as to whether  
25 or not some other officers would do things differently is also

1 not an issue; that's not the standard.

2 It's pretty much immunity under both 1983 and  
3 the false arrest, and state law is that you presume that  
4 mistakes can be made. The question is whether or not another  
5 reasonable officer would have done the same thing.

6 And based upon the pleadings and the legal  
7 authority, both Anderson v. Creighton, the Prentzel case, the  
8 other authorities as to immunity, Sheffield and -- I don't  
9 have them off the top of my head, but those cases, it is clear  
10 to me that the city is not part of this. The arrest is not --  
11 and it doesn't state a cause of action for arrest to overcome  
12 the qualified immunity. I am granting the city's motions as  
13 to those claims, the 1983.....

14 Also, the city did not take property and them  
15 giving advice to people, say, well, I wouldn't open the bar  
16 today. That also is not a cause of action that creates a city  
17 liability for some kind of cause of action for the city. So  
18 the city and Officer Merideth, they are dismissed from this  
19 case.

20 Let's turn now to Max's motion -- Max  
21 Lamoureaux's motion. And I apologize if anybody thinks I'm  
22 being too informal. It's I've just -- all of the different  
23 names, it's hard to sort out. So I've got Mr. Lamoureaux's  
24 motions to foreclose. As a defense, the defense of property,  
25 do the parties want to address that?

1 Parties are excused.

2 MR. WALLERI: Thank you.

3 MS. BRAY: Thank you, Your Honor.

4 (Off record)

5 3:53:21

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