

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
(TOPEKA DOCKET)

UNITED STATES OF AMERICA,	)	
PLAINTIFF,	)	
	)	
vs.	)	No.
	)	18 U.S.C. Sections 371 & 2314
THOMAS S. FRITZEL,	)	
KEELA LAM,	)	
R6 LC,	)	
DFC COMPANY OF LAWRENCE LC,	)	
OREAD CONSTRUCTION LC,	)	
OREAD WHOLESALE LC, and	)	
OREAD INN LC,	)	
DEFENDANTS.	)	
_____	)	

INDICTMENT

The Grand Jury charges:

At all times material to this indictment, except as specified otherwise:

GENERAL ALLEGATIONS

Background:

1. The defendant, **Thomas S. Fritz**el, was a building contractor and business owner located at 643 Massachusetts in Lawrence, Kansas. **Fritz**el conducts business through various alter egos including, but not limited to: defendants **DFC COMPANY OF LAWRENCE LC, OREAD CONSTRUCTION LC, OREAD WHOLESALE LC, and OREAD INN LC.**

2. The defendant **Keela Lam** was an employee of defendant **Fritzel**, and occupied a location just outside the office of **Fritzel**. **Lam** was the bookkeeper for **Oread Wholesale LC (hereinafter "Oread Wholesale")**, in charge of accounts payable and receivable, preparation of invoices from **Oread Wholesale** to its vendors seeking reimbursements. **LAM** also prepared or signed checks from and to **Oread Wholesale** to pay vendors and deposited money received by **Oread Wholesale**.

3. Defendant **R6 LC**, is a company managed and owned by defendant **Keela Lam**.

4. The defendant **Oread Inn LC** was a company formed for the purpose of construction of the Oread Hotel, 1200 Oread Ave, Lawrence, KS 66044. The resident agent is **Thomas S. Fritzel**.

5. Defendant **Oread Wholesale LC** was a limited corporation organized pursuant to Kansas law, transacting business in Douglas County, Kansas and with its registered office and principal place of business in Douglas County, Kansas. Defendant **Fritzel** is an officer, director and/or member of **Oread Wholesale** and registered agent.

6. Defendant **Oread Construction LC** was general contractor for the Oread Hotel. Defendant **Fritzel** is an officer, director, registered agent, and/or

member of **Oread Construction LC**.

FACTUAL BACKGROUND

KANSAS RETAIL SALES ACT

7. Kansas Law provides in pertinent part:

"Sale" or "sales" means the exchange of tangible personal property, as well as the sale thereof for money, and every transaction, conditional or otherwise, for a consideration, constituting a sale, including the sale or furnishing of electrical energy, gas, water, services or entertainment taxable under the terms of this act and including, except as provided in the following provision, the sale of the use of tangible personal property by way of a lease, license to use or the rental thereof regardless of the method by which the title, possession or right to use the tangible personal property is transferred. The term "sale" or "sales" shall not mean the sale of the use of any tangible personal property used as a dwelling by way of a lease or rental thereof for a term of more than 28 consecutive days.

K.S.A. 79-3602(kk).

8. A bona fide retail sale at the Oread Hotel would be, by way of example but not limitation, a hotel guest who would pay for food and drink and have it charged to his room. Upon check out the guest would pay the bill, which would have applied to it the relevant city, county and state sale taxes. The hotel would collect the taxes and in due course distribute to the taxing authorities.

12TH AND OREAD TAX INCREMENT FINANCING REDEVELOPMENT DISTRICT

9. On or about February 19, 2008, the City of Lawrence passed an ordinance creating the 12th and Oread Tax Increment Financing Redevelopment

District (hereinafter the “Redevelopment District”). This district primarily is comprised of the Oread Hotel, Lawrence, Kansas, a seven story mixed use boutique hotel with restaurants, bars, a gift shop and other amenities. By a separate ordinance, the City of Lawrence also created a Transportation Development District. (Hereinafter “TDD”) which provided for a 1% add on to the city county sales tax.

12th & Oread Tax Increment Financing District Redevelopment Agreement

10. On or about April 8, 2008, **Fritzel** signed an agreement with the City of Lawrence called the 12th & Oread Tax Increment Financing District Redevelopment Agreement (hereinafter the “Agreement”). In it **Fritzel** agreed to develop and build the Oread Hotel located at 1200 Oread Avenue, Lawrence, Kansas, agreed to make a variety of infrastructure improvements and advance all costs necessary to complete the project. In exchange, the City of Lawrence agreed to reimburse **Fritzel** for the project costs as well as TDD costs in a total amount not to exceed Eleven Million Dollars (\$11,000,000.00) plus interest. This was to be collected over 20 years from the date of the approval of the project.

11. The Agreement between the City of Lawrence and defendant **Fritzel** provided that reimbursements paid to **Oread Inn** for its redevelopment costs would be paid from the property tax and sales tax revenues generated within the Redevelopment District comprised of the Oread Hotel, as well as sales tax funds

from the TDD. This approximates to be 2.93 % of the retail sale price. The agreement provided in pertinent part:

Sales Tax Revenues means (a) 100% of the incremental increase in revenue received by the City from any local sales and use taxes in effect on the date hereof **collected within the Redevelopment District**, and (b) 100% of the incremental increase in revenue received by the County from any local sales and use taxes in effect on the date hereof **collected within the Redevelopment District**; all determined in accordance with the Act and Project Plan." (Emphasis added).

12. The agreement required **Fritzel** to provide the city manager for the City of Lawrence with monthly sales tax returns for their facilities in the Redevelopment District. The City of Lawrence would calculate the amount of reimbursement due **Fritzel** based upon sales tax information concerning the city and county sales tax amounts of approximately 2.93 % that were supposed to be collected for transactions within the Redevelopment District. The City of Lawrence would then, reimburse **Oread Inn** for sales taxes, property taxes and TDD sales tax remitted within the Redevelopment District.

SCHEME & CONSPIRACY TO DEFRAUD
THE CITY OF LAWRENCE KANSAS

THE OBJECT OF THE CONSPIRACY

13. From 2009 through 2015, defendants **Thomas S. Fritzel** and **Keela Lam**, through **Oread Wholesale**, combined, conspired, confederated and agreed with the object to defraud the City of Lawrence, by creating a fraudulent revenue

stream by taking advantage of **Oread Wholesale's** tax-exempt status and applying the Special Taxing District and TDD tax rates to hundreds of projects and transactions with affiliated companies and individuals that were not within the Special Taxing District and/or did not constitute retail sales under Kansas law.

OVERT ACTS IN FURTHERANCE OF THE SCHEME & CONSPIRACY

14. In furtherance and execution of the scheme and conspiracy to defraud the City of Lawrence, Kansas, the defendant **Thomas S. Fritz**el, on July 23, 2009, caused to be formed and organized, a business named **Oread Wholesale**. The person listed as the organizer of the business was the defendant, **Thomas S. Fritz**el. The registered office and mailing address for the business was listed as 1200 Oread Avenue, Lawrence, Kansas 66044, the same address as the Oread Inn.

15. In furtherance and execution of the scheme and conspiracy to defraud the City of Lawrence, defendant, **Thomas S. Fritz**el, created the façade of a legitimate office for **Oread Wholesale** in the parking garage for the Oread Hotel, when in truth and in fact, all transactions involving **Oread Wholesale** were conducted at the office of **Thomas S. Fritz**el and **Keela Lam**, at 643 Massachusetts, Lawrence, Kansas.

16. From 2009 through 2015, in furtherance and execution of the scheme and conspiracy to defraud the City of Lawrence, Kansas, the defendants, **Thomas S.**

Fritzel, and **Keela Lam**, acting through **Oread Wholesale**, knowingly and fraudulently applied the Redevelopment District and TDD tax rate to hundreds of projects and transactions with affiliated companies and individuals that were not within the Redevelopment District and/or did not constitute retail sales under Kansas law. By way of example, and not limitation:

- a. **Keela Lam** acquired approximately \$3,000 worth of furniture and appliances from Nebraska Furniture Mart (hereinafter “NFM”), using **Oread Wholesale’s** account at NFM and **Oread Wholesale’s** tax exempt status. The items were for her personal use. The furniture was picked up at **Keela Lam’s** direction at the NFM business location in Kansas City, Kansas. **Lam** would prepare an **Oread Wholesale** check to NFM in payment of the items and have **Fritzel** sign it. **Lam** would then apply the Redevelopment District’s tax and TDD rates to the transaction, prepare an “invoice” requesting reimbursement by **R6 LC**. **Lam** would then prepare and sign a **R6 LC** check to reimburse **Oread Wholesale** for the purchase.
- b. **Oread Wholesale** reported numerous transactions identifying **Thomas S. Fritzel** as the customer. These transactions included projects at XXX Louisiana, in Lawrence, Kansas (house formerly owned by **Thomas S. Fritzel**), XXXX Ute Road (Colorado cabin), XXX Fall Creek Road, Lawrence, Kansas (current home of **Thomas S. Fritzel**) and 1800 Road in Lecompton (Berry Plastics). The specific items at issue ranged from landscaping materials to party tent rentals to car batteries.
- c. **Oread Wholesale** reported transactions identifying 151 Company as the customer. These transactions involved a service car wash business (**Fritzel** entity) located in Overland Park, Kansas and apartments owned by the Fritzels in Shawnee, Kansas. The specific items included car wash equipment and supplies.
- d. **Oread Wholesale** reported transactions identifying Tower

Properties as the customer. These transactions involved the Fritzel's Hutton Farms development in Lawrence, Lawrence apartments and Shawnee apartments projects. The specific items included furniture, car wash supplies, landscaping materials and signage.

e. **Oread Wholesale** reported hundreds of transactions identifying Earnie's Mechanical as the customer. Earnie's Mechanical ran many of its Lawrence and Kansas City HVAC jobs through the Redevelopment District. Earnie's Mechanical was not located in the Redevelopment District. Earnie was an employee of **Thomas S. Fritzel**.

The ship-to addresses for **most** of the foregoing transactions were all outside the Redevelopment District. Many of the ship-to addresses were outside the city of Lawrence or outside the state of Kansas altogether.

17. From 2009 to 2015, in furtherance and execution of the scheme and artifice to defraud the City of Lawrence, the defendants **Thomas S. Fritzel**, and, **Keela Lam**, prepared and caused to be prepared what they called "invoices", but which were in fact requests for reimbursements, from approximately 30 affiliated persons and entities. They were false and fraudulent because they applied the Redevelopment District and TDD sales tax rates seeking reimbursement for hundreds of transactions which the defendants knew were not retail sales and were not generated within the Redevelopment District.

18. From 2009 to 2015, in furtherance and execution of the scheme and artifice to defraud the City of Lawrence, the defendants **Thomas S. Fritzel**, and, **Keela Lam**, prepared and caused to be prepared monthly false and fraudulent

Kansas Sales Tax Returns which they submitted to the State of Kansas and the City of Lawrence for sales that were not retail sales and were not generated from transactions in the Redevelopment District.

19. From 2009 to 2015, in furtherance and execution of the scheme and artifice to defraud the City of Lawrence, the defendants **Thomas S. Fritz**el, and, **Keela Lam**, caused to be prepared and issued monthly checks from the City of Lawrence, payable to “Oread TIF/TDD”, which included in excess of \$400,000, of sales tax and TDD reimbursements which were not retail sales and were not generated from transactions in the Redevelopment District.

FUNDS TRANSFERRED IN INTERSTATE COMMERCE

20. Checks issued by the City of Lawrence as reimbursement of sales taxes, constituted proceeds of the scheme and artifice to defraud the City of Lawrence, and were proceeds stolen, converted and taken by fraud. When deposited into accounts under the control of the defendants at Commerce and/or Sunflower Banks, Lawrence Kansas, these proceeds were cleared through the Federal Reserve System in Kansas City, Missouri, and these proceeds were therefore transferred in interstate commerce.

THE CONSPIRACY **COUNT 1**

21. Paragraphs 1 through 20 are incorporated herein by reference as though

fully set forth.

22. From on or about July 2009, and continuing thereafter to at least 2015, in the District of Kansas, the defendants,

**THOMAS S. FRITZEL and
KEELA LAM**

knowingly and willfully conspired and agreed together and with each other, to commit crimes against the United States as set forth hereinafter. The object of the conspiracy is set forth in paragraph 13 above. In furtherance of this conspiracy and to effect the object of the conspiracy, the defendants committed overt acts as set forth in paragraphs 1 through 20 above, and including, but not limited to, the substantive crime set forth hereinafter; all in violation of Title 18, United States Code, Section 371.

COUNT 2

23. Paragraphs 1 through 22 are incorporated herein as if fully set forth.

24. From on or about 2009, through 2015, in the District of Kansas, and elsewhere, the defendants,

**THOMAS S. FRITZEL,
KEELA LAM,
R6 LC,
DFC COMPANY OF LAWRENCE LC,
OREAD CONSTRUCTION LC,
OREAD WHOLESALE, and
OREAD INN,**

knowing the same to have been stolen, converted and taken by fraud, systematically and as part of a pattern, transported, transmitted and transferred more than \$5,000 in securities and money in interstate commerce.

25. The foregoing is in violation of Title 18 United States Code, Sections 2 & 2314.

FORFEITURE NOTICE & ALLEGATION

26. The allegations of the foregoing Indictment are realleged, and by this reference fully incorporated herein, for the purpose of alleging forfeitures to the United States of America, pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(c) and 28, United States Code, Section 2461.

27. As a result of committing the offenses alleged in Count 1 and Count 2, the defendants,

**THOMAS S. FRITZEL,
KEELA LAM,
R6 LC,
DFC COMPANY OF LAWRENCE LC,
OREAD CONSTRUCTION LC,
OREAD WHOLESALE, and
OREAD INN,**

shall forfeit to the United States all property, real and personal, which constitutes or is derived from proceeds of the aforesaid offenses and all property traceable to such property, including, but not limited to:

A) A forfeiture money judgment against each defendant in an amount equal to the amount of gross proceeds obtained or derived by that defendant from the commission of Counts One and Two.

B) In the event any of the foregoing property: i) cannot be located upon the exercise of due diligence; ii) is transferred, sold to, or deposited with, a third party; iii) is placed beyond the jurisdiction of the Court; iv) is substantially diminished in value; or, v) is commingled with other property which cannot be divided without difficulty, as a result of any act or omission of any defendant, the Court shall order the forfeiture of any other property of the defendants, up to the value of the property described in the foregoing paragraphs.

A TRUE BILL.

Dated: June 27, 2008

s/Foreperson
FOREPERSON OF THE GRAND JURY

s/Richard L. Hathaway for
STEPHEN R. MCALLISTER
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(It is requested that trial of the above captioned case be held in Topeka, Kansas.)