

**HAUGEBERG, RUETER, GOWELL, FREDRICKS & HIGGINS, P.C.**

FORMERLY  
MARSH, MARSH, HAUGEBERG & RUETER, P.C.  
EST. 1860  
620 E. Fifth Street  
ATTORNEYS AT LAW  
McMINNVILLE, OREGON 97128

DAVID C. HAUGEBERG  
GARY A. RUETER  
WALTER R. GOWELL  
DOUGLAS S. FREDRICKS  
ROBERT G. HIGGINS  
JOHN N. McKEEGAN

MAILING ADDRESS  
POST OFFICE BOX 480  
TELEPHONE: (503) 472-5141  
FAX: (503) 472-4713

February 25, 2002

John Wm. "Jack" Butler, Jr., Esq.  
Skadden, Arps, Slate, Meagher & Flom, LLP  
333 West Wacker Drive  
Chicago, IL 60606

Trumbull Services, L.L.C.  
4 Griffin Road North  
Windsor, CT 06095

Ira Bodenstein, Sandra Rasnak  
and Roman L. Sukley  
Office of the United States Trustee  
227 West Monroe Street, Suite 3350  
Chicago, IL 60606

Re: KMART CORPORATION / Case No. 02-02474

Dear Gentlemen:

This office represents DeSantis Christmas Trees, Inc. of Silverton, Oregon. I am enclosing copies of two agricultural produce liens filed in accordance with statutory lien requirements for agricultural produce purchased within the State of Oregon.

Also enclosed is a copy of my accompanying correspondence which was forwarded to all parties who had filed financing statements which might apply to inventory and/or accounts receivable of KMart Corporation.

As you will note in the correspondence, our client's claim is a secured claim which has a super priority status over the security interest in inventory and accounts receivable of all prior perfected security interest holders.

Our client's lien attached in November of 2001 in accordance with statutory provisions upon delivery of the agricultural produce to KMart Corporation dock side at Portland, Oregon.

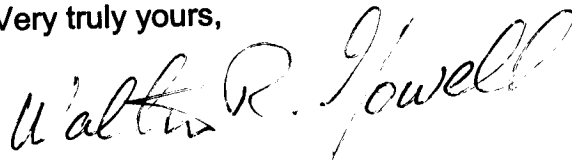
RECEIVED  
FEBRUARY 25 2002  
BANKRUPTCY

3/5/02  
ML 395

Our client received a copy of correspondence from Chuck Conaway to creditors which indicated to our client that the status of our client's receivables from KMart were being treated as an unsecured claim. Please advise whether or not the status of our client's claim will be shifted to reflect its priority secured creditor status. If our client's treatment as a secured creditor is not consistent with other secured creditors, this office has been instructed to file a motion for adequate protection, or in the alternative, relief from automatic stay to authorize it to foreclose the liens in accordance with Oregon law.

It is my strong preference, however, to simply have KMart shift the status of our client into the secured creditor column which we presume will result in a continuation of normally scheduled payments in order that a continuation of the business relationship into the future will be more likely. Please advise within the next ten (10) days whether or not our client's status has been recharacterized or whether it will be necessary for our client to file a motion seeking protection as a secured creditor an recognition by the court of that status.

Very truly yours,

A handwritten signature in cursive script that reads "Walter R. Gowell". The signature is written in black ink and is positioned below the typed name.

Walter R. Gowell

WRG/bw  
Enclosures

cc: Tony DeSantis Christmas Trees, Inc.

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**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

February 12, 2002

Kmart Corporation  
3100 West Big Beaver Road  
Troy, Michigan 48084-3163

Re: Notice of Agricultural Produce Liens - APL 1

Dear Sir or Madam:

Enclosed you will find true copies of Notices of Agricultural Produce Liens in the sums of \$110,832.50 and \$12,402.00, filed on behalf of our client, Tony DeSantis Christmas Trees, Inc. on January 31, and February 6, 2002. These copies are being provided to you as required by Oregon Revised Statute 87.242.

Please be aware that Oregon produce liens which arise and attach automatically at the time of delivery of agricultural produce by an Oregon producer to a Purchaser, and which are extended by the filing of lien notices, confer a super-priority lien status upon the lien claimant pursuant to ORS 87.715 which reads in pertinent part as follows:

**"ORS.87.715 Priority.** Except for tax liens and except as provided in ORS 146(1)(c) and 87.710(4), the class of lien created by ORS 87.705 is prior and superior to all other classes of lien or any classes of security interest in the inventory, proceeds or accounts receivable of a purchaser, without regard to whether those other liens or security interests attached to the inventory, proceeds or accounts receivable before or after a lien created by ORS 87.705 attaches...."

The routine delivery of payments by KMART has been interrupted to our client, which, if continued, will give rise to appropriate motions for Relief From Stay to enable our client to proceed with a statutory foreclosure proceeding in a timely manner.

Very truly yours,

  
Walter R. Gowell

WRG:bw  
Enclosures

**ALSO SENT BY REGULAR MAIL**

cc: Tony DeSantis Christmas Trees, Inc.

f:\law\wrg\desantis.lien.ltr.doc



APL-1

STATE OF OREGON  
Corporation Division - UCC  
255 Capitol Street NE, Suite 151  
Salem, OR 97310-1327  
(503) 986-2200 Fax: (503) 373-1166  
filinginoregon.com

WE HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL THEREOF.

*Walter R. Gowell*  
Attorneys for Claimant

(Reserved for Filing Officer Use)

**NOTICE OF AGRICULTURAL PRODUCE LIEN** Pursuant to ORS 87.710

Visa/MC payment. Please check box and provide card number and expiration date on a separate cover sheet.

**DEBTOR**

Purchaser: 1 Name KMART CORPORATION

2 Name \_\_\_\_\_

MAILING ADDRESS:

3100WEST BIG BEAVER ROAD  
TROY, MICHIGAN 48084-3163

Check one

Business  Individual

Business  Individual  
If individual, list last name first.

Note:

Please use debtor(s) legal name  
(ORS Chapter 79:9-503)

Producer: Name TONY DeSANTIS CHRISTMAS TREES, INC.

MAILING ADDRESS:

3960 SILVER FALLS DRIVE, SE  
SILVERTON, OREGON 97381-9420

Statement Amount of Producer's Demand after Deducting All Credits and Offsets: \$ 12,402

**Description of Produce Delivered or Transferred by:**

282 Douglas Fir 5-7 Foot, and 446 Fraser Fir 5-7 Foot Christmas Trees (SEE ATTACHED EXHIBIT A FOR SHIPMENT DETAILS)  
Final Shipment Date November 23, 2001; PAYMENT TERMS NET 30 DAYS FROM DELIVERY TO BUYER'S SHIPPER AT DOCKSIDE,  
PORTLAND, OR.

Date Payment Originally Due: DECEMBER 23, 2001

I (we) swear/affirm that the amount claimed on this Notice is a true and bona fide existing debt as of the date of this filing.

TONY DeSANTIS CHRISTMAS TREES, INC.

Printed Name

By: *James R. Thompson* Gen. Manager

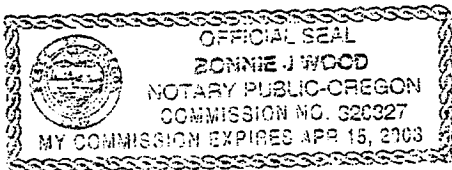
Date

02/05/02

State of OREGON

County of YAMHILL

Subscribed to and sworn/affirmed before me this 5th day of FEBRUARY, 2002,



by *James R. Thompson*

*Bonnie J. Wood*

Notary Public of Oregon

RETURN TO (Please type within the box):

WALTER R. GOWELL ESQ.  
PO BOX 480  
McMINNVILLE, OREGON 97128

Submit completed form with \$10 fee to:  
Corporation Division - UCC  
255 Capitol Street NE, Suite 151  
Salem, OR 97310-1327  
(503) 986-2200  
Fax (503) 373-1166

EXHIBIT    A     
 PAGE    1    of    1   

Tony DeSantis Christmas Trees, Inc. 2001 Kmart HI

| Store #<br>Location                                    | Invoice # | Ship Date<br>Docks/ide PDX | Quantity<br>Species      | Invoice<br>Total | Store<br>Total | Paid       | Check #<br>Date        |
|--------------------------------------------------------|-----------|----------------------------|--------------------------|------------------|----------------|------------|------------------------|
| Kmart Store<br>#7480<br>500 Nimitz Hwy<br>Honolulu, HI | a0242     | 11/9/2001                  | 75 Fraser<br>282 Douglas | \$5,992.50       |                |            |                        |
|                                                        | b0243-1   | 11/16                      | 380 Douglas              | \$5,700.00       |                | \$6,080.00 | 12/18/2001<br>11377232 |
|                                                        | b0243-2   | 11/16                      | 371 Fraser               | \$8,718.50       |                |            |                        |
|                                                        | c0244-1   | 11/23                      | 360 Douglas              | \$5,400.00       |                | \$5,760.00 | 12/18/2001<br>41377232 |



APL-1

STATE OF OREGON  
Corporation Division - UCC  
255 Capitol Street NE, Suite 151  
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(503) 986-2200 Fax: (503) 373-1166  
filinginoregon.com

Walter R. Gowell  
Claimant  
(Reserved for Filing Officer Use)

**NOTICE OF AGRICULTURAL PRODUCE LIEN** Pursuant to ORS 87.710

Visa/MC payment. Please check box and provide card number and expiration date on a separate cover sheet.

**DEBTOR**

Purchaser: 1 Name KMART CORPORATION

2 Name \_\_\_\_\_

MAILING ADDRESS:

3100 WEST BIG BEAVER ROAD  
TROY, MICHIGAN 48084-3163

Check one

- Business - Individual

- Business - Individual

If individual, list last name first.

Note:

Please use debtor(s) legal name  
(ORS Chapter 79:9-503)

Producer: Name TONY DeSANTIS CHRISTMAS TREES, INC.

MAILING ADDRESS:

3960 SILVER FALLS DRIVE, SE  
SILVERTON, OREGON 97381-9420

Statement Amount of Producer's Demand after Deducting All Credits and Offsets: \$110,832.50

**Description of Produce Delivered or Transferred by:**

7,169 DOUGLAS FIR 5-7 FOOT, and 3,412 FRASER FIR 5-7 FOOT CUT CHRISTMAS TREES (SEE ATTACHED EXHIBIT A FOR SHIPMENT DETAILS)

FINAL SHIPMENT DATE NOVEMBER 23, 2001; PAYMENT TERMS NET 30 DAYS FROM DELIVERY TO BUYER'S SHIPPER AT DOCKSIDE, PORTLAND, OR.

Date Payment Originally Due: DECEMBER 23, 2001

I (we) swear/affirm that the amount claimed on this Notice is a true and bona fide existing debt as of the date of this filing.

TONY DeSANTIS CXHISTMAS TEREES, INC.

Printed Name

BY: Jerry Thompson GEN. MGR.

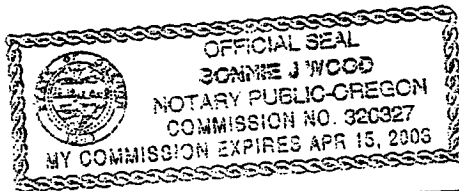
Date 01/25/02

State of OREGON

County of YAMHILL

Subscribed to and sworn/affirmed before me this 25th day of JANUARY, 2002,

by Jerry Thompson  
Bonnie L Wood  
Notary Public of Oregon



RETURN TO (Please type within the box):  
WALTER R. GOWELL, ESQ.  
HAUGEBERG, RUETER, GOWELL, FREDRICKS et al.  
PO BOX 480  
McMINNVILLE, OREGON 97128

Submit completed form with \$10 fee to:  
Corporation Division - UCC  
255 Capitol Street NE, Suite 151  
Salem, OR 97310-1327  
(503) 986-2200  
Fax (503) 373-1166

Tony DeSantis Christmas Trees, Inc. 2001 Kmart HI

| Store #<br>Location                                     | Invoice # | Ship Date<br>Docksides PDX | Quantity | Species | Invoice<br>Total | Store<br>Total     | Paid          | Check #<br>Date | Store<br>Balance   |
|---------------------------------------------------------|-----------|----------------------------|----------|---------|------------------|--------------------|---------------|-----------------|--------------------|
| Kmart Store<br>#7488<br>424 Dairy Rd<br>Kahului, HI     | a0245     | 11/9                       | 100      | Fraser  | \$6,220.00       |                    |               |                 |                    |
|                                                         | b0246-1   | 11/16                      | 392      | Douglas | \$5,880.00       |                    |               |                 |                    |
|                                                         | b0246-2   | 11/16                      | 430      | Fraser  | \$10,105.00      | <b>\$22,205.00</b> | <b>\$0.00</b> |                 | <b>\$22,205.00</b> |
| Kmart Store<br>#7682<br>4303 Nawiliwili Rd<br>Lihue, HI | a0250     | 11/2                       | 75       | Fraser  | \$6,142.50       |                    |               |                 |                    |
|                                                         | b0251-1   | 11/9                       | 330      | Douglas | \$4,950.00       |                    |               |                 |                    |
|                                                         | b0251-2   | 11/9                       | 445      | Fraser  | \$10,457.50      |                    |               |                 |                    |
|                                                         | c0252-1   | 11/16                      | 356      | Douglas | \$5,340.00       |                    |               |                 |                    |
|                                                         | c0252-2   | 11/16                      | 383      | Douglas | \$5,745.00       | <b>\$32,635.00</b> | <b>\$0.00</b> |                 | <b>\$32,635.00</b> |
| Kmart Store<br>#7478<br>94-825 Lumiana<br>Waipahu, HI   | a0239     | 11/9                       | 75       | Fraser  | \$6,262.50       |                    |               |                 |                    |
|                                                         | b0240-1   | 11/16                      | 368      | Douglas | \$5,520.00       |                    |               |                 |                    |
|                                                         | b0240-2   | 11/16                      | 446      | Fraser  | \$10,481.00      |                    |               |                 |                    |
|                                                         | c0241-1   | 11/23                      | 380      | Douglas | \$5,700.00       | <b>\$27,963.50</b> | <b>\$0.00</b> |                 | <b>\$27,963.50</b> |

Tony DeSantis Christmas Trees, Inc. 2001 Kmart HI

| Store #<br>Location                                         | Invoice # | Ship Date<br>Dockside PDX | Quantity | Species | Invoice<br>Total | Store<br>Total     | Paid          | Check #<br>Date | Store<br>Balance   |
|-------------------------------------------------------------|-----------|---------------------------|----------|---------|------------------|--------------------|---------------|-----------------|--------------------|
| Kmart Store<br>#7480<br>500 Nimitz Hwy<br>Honolulu, HI      | a0242     | 11/9/2001                 | 75       | Fraser  | \$5,992.50       |                    | \$5,992.50    | 1/15/2002       |                    |
|                                                             |           |                           | 282      | Douglas |                  |                    |               | 1/40/068        |                    |
|                                                             | b0243-1   | 11/16                     | 380      | Douglas | \$5,700.00       |                    | \$6,080.00    | 12/18/2001      |                    |
|                                                             |           |                           |          |         |                  |                    |               | 11377232        |                    |
|                                                             | b0243-2   | 11/16                     | 371      | Fraser  | \$8,718.50       |                    | \$8,718.50    | 1/15/2002       |                    |
|                                                             |           |                           |          |         |                  |                    |               | 11401068        |                    |
|                                                             | c0244-1   | 11/23                     | 360      | Douglas | \$5,400.00       |                    | \$5,760.00    | 12/18/2001      |                    |
|                                                             |           |                           |          |         |                  |                    |               | 11377232        |                    |
|                                                             |           |                           |          |         |                  | <b>\$25,811.00</b> |               |                 | <b>(\$740.00)</b>  |
| Kmart Store<br>#9430<br>500 Kamokila Rd<br>Kapolei, HI      | a0256     | 11/9                      | 100      | Fraser  | \$6,265.00       |                    |               |                 |                    |
|                                                             |           |                           | 261      | Douglas |                  |                    |               |                 |                    |
|                                                             | b0257-1   | 11/16                     | 414      | Fraser  | \$9,729.00       |                    |               |                 |                    |
|                                                             |           |                           |          |         |                  |                    |               |                 |                    |
|                                                             | b0257-2   | 11/16                     | 855      | Douglas | \$12,825.00      |                    |               |                 |                    |
|                                                             |           |                           |          |         |                  | <b>\$28,819.00</b> | <b>\$0.00</b> |                 | <b>\$28,819.00</b> |
| Kmart Store<br>#7680<br>4561 Salt Lake Blvd<br>Honolulu, HI | a0247     | 11/9                      | 75       | Fraser  | \$6,127.50       |                    | \$6,127.50    | 1/8/2002        |                    |
|                                                             |           |                           | 291      | Douglas |                  |                    |               | 11395320        |                    |
|                                                             | b0248-1   | 11/16                     | 377      | Douglas | \$5,655.00       |                    | \$5,655.00    | 1/8/2002        |                    |
|                                                             |           |                           |          |         |                  |                    |               | 11395320        |                    |
|                                                             | b0248-2   | 11/16                     | 430      | Fraser  | \$10,105.00      |                    | \$10,155.00   | 1/8/2002        |                    |
|                                                             |           |                           |          |         |                  |                    |               | 11395320        |                    |
|                                                             | c0249-1   | 11/23                     | 375      | Douglas | \$5,625.00       |                    | \$5,625.00    | 1/8/2002        |                    |
|                                                             |           |                           |          |         |                  |                    |               | 11395320        |                    |
|                                                             |           |                           |          |         |                  | <b>\$27,512.50</b> |               |                 | <b>(\$50.00)</b>   |

EXHIBIT 1  
PAGE 2 OF 3



Tony DeSantis Christmas Trees, Inc. 2001 Kmart HI

| Store #<br>Location           | Invoice # | Ship Date<br>Dockside PDX | Quantity   | Species           | Invoice<br>Total | Store<br>Total | Paid         | Check #<br>Date       | Store<br>Balance |
|-------------------------------|-----------|---------------------------|------------|-------------------|------------------|----------------|--------------|-----------------------|------------------|
| Kmart Store<br>#7683          | a0253     | 11/2                      | 76         | Fraser            | \$6,286.00       |                | \$6,966.00   | 1/1/2002<br>11390108  |                  |
| 74-5465 Kamakaeha<br>Kona, HI | b0254-1   | 11/9                      | 200<br>629 | Fraser<br>Douglas | \$14,135.00      | \$20,421.00    | \$15,764.00  | 1/1/2002<br>11390108  |                  |
|                               |           |                           |            |                   |                  |                | (\$2,309.00) | 1/15/2002<br>11401068 | \$0.00           |
|                               |           |                           |            |                   | \$185,367.00     | \$74,534.50    |              |                       | \$110,832.50     |