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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Western Alliance Bank,
Plaintiff,
vs.
Richard Jefferson,
Defendant.

2:14-cv-00761 JWS
ORDER AND OPINION
[Re: Motion at Docket 154]

Richard Jefferson,
Counter-claimant,
vs.
Western Alliance Bank,
Counter-defendant.

Richard Jefferson,
Third-party plaintiff,
vs.
Theodore Kritza & Michelle Lee
Kritza,
Third-party defendants.

1 **I. MOTION PRESENTED**

2 At docket 154, third-party defendant Theodore Kritza (“Kritza”) moves for a
3 declaration that the errata sheet to his deposition was timely submitted to the court
4 reporter. Defendant, counter-claimant, and third-party plaintiff Richard Jefferson
5 (“Jefferson”) opposes at docket 169. Kritza replies at docket 180. Oral argument was
6 requested but would not assist the court.

7 **II. DISCUSSION**

8 The background giving rise to this litigation is described in some detail in the
9 order at docket 183. It need not be repeated here.

10 Rule 30(e) provides that a deponent who requests an opportunity to do so prior
11 to the conclusion of his deposition “must be allowed 30 days after being notified by the
12 officer that the transcript or recording is available in which [to review and make
13 changes].” Changes may be made in both form and substance. However, the reasons
14 for the changes must be provided in a signed statement (“Statement”).¹

15 In his deposition Kritza testified that he, rather than Stratosphere Management,
16 was the borrower on a \$2 million promissory note. After the deposition, Kritza provided
17 a Statement pursuant to Rule 30(e) in which he corrected his testimony to say that
18 Stratosphere Management, rather than Kritza, was the borrower.

19 Kritza is motivated to request a declaration of the Statement’s timeliness by
20 Jefferson’s argument in other motion papers that Kritza’s Statement is a “sham”
21 because it was not timely provided to the court reporter.² Jefferson relied on hearsay
22 statements recounted by his own lawyer as the basis for the assertion of untimeliness.³
23 In contrast to Jefferson’s improperly supported assertion of untimeliness, Kritza’s
24

25 ¹Fed. R. Civ. P. 30(e).

26 ²In support of a motion to compel production of certain records, Jefferson argues that
27 the Statement was untimely.

28 ³*Id.*

1 papers include a declaration from the court reporter which demonstrates that the
2 Statement was, in fact, timely provided.⁴

3 In his response Jefferson argues that even if the Statement were timely, the
4 change is substantive and must be disregarded as a sham, because the change was
5 contrived to create a disputed issue of material fact with respect to pending dispositive
6 motions.⁵ Jefferson relies on *Hambleton Bros. Lumber Co. v. Balkin Enterprises, Inc.*⁶

7 In *Hambleton*, a deponent made untimely corrections to his deposition testimony
8 in a signed errata, but the errata included no reasons for making the corrections. The
9 Ninth Circuit opined that perhaps in some instances corrections that were only a day or
10 two late might be considered, but noted: “A statement of reasons explaining corrections
11 is an important component of errata submitted pursuant to FRCP 30(e), because the
12 statement permits an assessment concerning whether the alterations have a legitimate
13 purpose.”⁷ The appellate court also found the timing of the errata to be a problem, for it
14 was not submitted until after an opponent’s motion for summary judgment had been
15 filed. The court explained: “While the language of FRCP 30(e) permits corrections ‘in
16 form or substance,’ this permission does not properly include changes offered solely to
17 create a material factual dispute in a tactical attempt to evade an unfavorable summary
18 judgment.”⁸

23 ⁴Declaration of Jane M. Doyle, doc. 154-1 at 2, and time calculation pursuant to Fed. R.
24 Civ. P. 6(a)(1)(C).

25 ⁵Doc. 169 at 3.

26 ⁶397 F.3d 1217 (9th Cir. 2005).

27 ⁷*Id.* at 1224-25.

28 ⁸*Id.* at 1225.

1 Finally, in *Hambleton*, the appellate court noted that the record did not show that
2 the deponent had requested a chance to review the transcript. Such a request is
3 required by Rule 30(e).⁹

4 The situation at bar differs sharply from the circumstances in *Hambleton*. First,
5 the corrections made were timely submitted. Second, Kritza did offer an explanation for
6 his changes, saying that he did not have the promissory note to consult when he
7 answered the question at issue.¹⁰ Kritza also points out that the answer was given
8 during the course of a seven-hour deposition.¹¹ An examination of the exhibits supplied
9 with the motion papers shows that Kritza's deposition commenced at 9:06 AM,
10 concluded at 6:00 PM, and that the corrected answer was transcribed at page 289 of
11 the 293 page transcript.¹² The court finds the explanation offered to be reasonable and
12 credible, such that the change in the deposition testimony is considered to have been
13 made for a legitimate purpose.

14 Third, and importantly, Kritza's correction of the transcript was made well *before*
15 either of the pertinent motions for summary judgment was filed. He made the
16 correction some time before it was delivered to the court reporter on March 9, 2015.¹³
17 The two motions for summary judgment of concern here were each filed on May 29,
18 2015.¹⁴ It is appropriate to add that the correction saying that Stratosphere
19 Management was the borrower is consistent with the promissory note itself, which
20

21 ⁹*Id.* at 1226.

22 ¹⁰Doc. 154-1 at 9.

23 ¹¹Doc. 180 at 3.

24 ¹²Commencement of the deposition at 9:06 AM is shown by doc. 154-1 at 15; conclusion
25 of the deposition at 6:00 PM, and the end of the transcript at page 293 are shown by doc. 154-1
26 at 10; and the correction is shown to be at page 289 by doc. 154-1 at 9.

27 ¹³Doc. 154-1 at ¶ 5.

28 ¹⁴Docs. 129 and 132.

