

# **EXHIBIT FF**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

**COPY**

CIVIL ACTION NO. 04-11923-DPW

CONNECTU LLC  
Plaintiff

v.

MARK ZUCKERBERG, et al  
Defendants

BOSTON, MASSACHUSETTS  
JUNE 22, 2006

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE ROBERT B. COLLINGS  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

Jonathan Gelchinsky, Esquire  
Finnegan, Henderson, Farabow, Garrett &  
Dunner, LLP  
55 Cambridge Parkway  
Cambridge, MA 02142  
(617) 452-1600

John F. Hornick, Esquire  
Margaret A. Esquenet, Esquire  
Finnegan, Henderson, Farabow, Garrett &  
Dunner, LLP  
901 New York Avenue, N.W.  
Washington, DC 20001  
(202) 408-4000

For the Defendants:

G. Hopkins Guy, III, Esquire  
I. Neel Chatterjee, Esquire  
Monte cooper, Esquire  
Orrick, Herrington & Sutcliffe LLP  
1000 March Road  
Menlo Park, CA 94025  
(650) 614-7400

Court Reporter:

Proceedings recorded by digital sound recording, transcript  
produced by transcription service.

MARYANN V. YOUNG  
Certified Court Transcriber  
240 Chestnut Street  
Wrentham, Massachusetts 02093  
(508) 384-2003

1 oral agreement in existence on that date.

2 THE COURT: But his point is that when you have a  
3 written, later written agreement that contains an integration  
4 clause, you can't rely on any of the prior oral agreements.

5 MR. HORNICK: Well, Your Honor, I don't think that's  
6 the law, and I'll get into that in a moment, but it doesn't  
7 make any sense. If there's an oral agreement between two  
8 parties that exist for say a five year period of time, and then  
9 a written agreement comes along later and it operates into the  
10 future and it even operates retroactively, although you might  
11 be able to apply it retroactively for certain purposes, the  
12 fact is that an oral agreement still existed between those  
13 parties for a particular period of time. Under the law, the  
14 parol evidence rule is not applicable to a collateral  
15 agreement, and this was a collateral agreement. It was not the  
16 same.

17 THE COURT: Why do you say collateral? If it covers  
18 the same subject matter that's in the later agreement that's  
19 written with an integration clause, how could it be said to be  
20 collateral?

21 MR. HORNICK: It didn't cover the same information.  
22 The operating agreement, the written operating agreement that  
23 came in August of 2005, was a very complex document that  
24 covered a lot of issues. The oral agreement that existed in,  
25 that existed from the time that ConnectU was formed up until

1 the time that they signed a written agreement, which was  
2 almost a year and a half later, was an oral agreement that was  
3 much simpler. It was all that was needed to--

4 THE COURT: Yeah, but they, the point is that the  
5 written agreement, it might have covered a lot more, it might  
6 have been a lot more complex, but it did cover the same subject  
7 matter as the oral agreement, which is the point the defendants  
8 are making.

9 MR. HORNICK: It covered that issue, that's right,  
10 Your Honor, but if you were looking at the state of facts, the  
11 state of facts on September 2<sup>nd</sup> of 2004, you cannot say that  
12 there was a later agreement because you can only look at what  
13 the state of facts were on that date and on that date there was  
14 no August 5<sup>th</sup>, 2005 agreement. It's logically impossible. So  
15 if the Court is going to--

16 THE COURT: No, it's more a question of what you're  
17 permitted to prove. Let me ask you this. Have you responded  
18 to the integration argument?

19 MR. HORNICK: No, Your Honor, it was just submitted  
20 to the Court yesterday, I believe it was yesterday, and with  
21 respect to the interrogatory answer that was made in  
22 California, first of all, Mr. Narendra is no longer a party in  
23 that case.

24 THE COURT: It doesn't matter. It's a statement made  
25 under oath. It's evidence. I was asking offer of proof of

1 what the evidence is. That would clearly be admissible.

2 MR. HORNICK: ConnectU, which is still in that case,  
3 and ConnectU was the one that had members, filed an amended  
4 interrogatory response in that case to clarify the answer and  
5 makes it clear that Mr. Narendra is not--

6 THE COURT: It doesn't supersede what Mr. Narendra's  
7 answer is. If he in fact signed that interrogatory under the  
8 pains and penalty of perjury, that is evidence. The fact that  
9 ConnectU tried to amend it or did amend it, may have some  
10 bearing on that litigation, but it doesn't have any bearing on  
11 the fact that the statement was made under oath and it's  
12 evidence, evidence on the question.

13 I think what I would like to do is to give you the  
14 opportunity to respond to the integration - let me just ask the  
15 defendant, is this integration argument the only argument that  
16 you say defeats them as a matter of law on this subject of  
17 Mr. Narendra being a member or not as of September 2<sup>nd</sup>?

18 MR. CHATTERJEE: No, Your Honor, there is a second  
19 issue. I think there are three issues that are matters of law.  
20 The first one is the parol evidence issue.

21 THE COURT: The integration agreement?

22 MR. CHATTERJEE: The integration clause. I'll call  
23 it the integration clause.

24 THE COURT: Let's call it the integration issue.

25 MR. CHATTERJEE: The second is given Mr. Narendra's

1 binding statement that he made and the fact that he made it  
2 to support a Motion to Dismiss that he prevailed upon, he  
3 cannot recant that statement and say that he meant something  
4 different.

5 THE COURT: So is it some sort of judicial estoppel?

6 MR. CHATTERJEE: It's judicial estoppel and there's  
7 also case law we've cited in our Motion to Strike saying he  
8 can't change the sworn testimony that he's given. It says what  
9 it says.

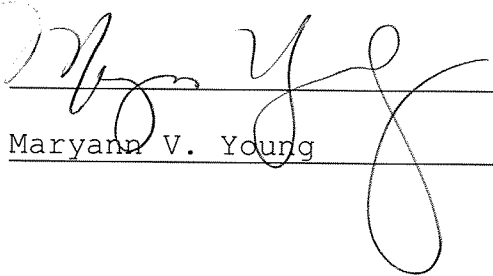
10 THE COURT: Okay. That's the sworn testimony  
11 argument, and what's the third?

12 MR. CHATTERJEE: And the third one, Your Honor, is we  
13 have put in our Motion to Strike, and this was something that  
14 came up, that came to life because of this issue is that  
15 ConnectU had not registered as a foreign LLC in the state of,  
16 in the state of Massachusetts and in order in diversity actions  
17 for plaintiff to proceed on their claim in federal court, they  
18 have to have registered in the state of Massachusetts as a  
19 foreign LLC first. They have not done that. They still have  
20 not done that and they in fact cannot do it at this point  
21 because the LLC has failed to exist and that is a prerequisite  
22 to standing.

23 THE COURT: All right. Thank you. What I'm going to  
24 do is give you, Mr. Hornick, an opportunity to respond to those  
25 three legal arguments in a brief. We'll take a look at it and

CERTIFICATION

I, Maryann V. Young, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.



Maryann V. Young

July 3, 2006