

Exhibit J

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MARK MONSOUR, SHEILA MONSOUR
and MONSOUR'S, INC.,

Plaintiffs,

vs.

Case Number 05-1204-MLB

MENU MAKER FOODS, INC.,

Defendant.

DEPOSITION OF KEVIN F. MITCHELSON, a Witness
herein, taken on behalf of the Plaintiffs, pursuant to
the Kansas Rules of Civil Procedure and Notice To Take
Deposition, at Wheeler & Mitchelson, 4th and Broadway
Street, Pittsburg, Kansas, on the 22nd day of February,
2006, at 1:37 o'clock a.m., before:

Patricia K. Smith, C.S.R.
P.O. Box 1123
Pittsburg, KS 66762
(620) 231-5380

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1 produce. Are we talking about the same thing?

2 A. Oh, I'm sorry. You're right. In at least one of those

3 conversations -- maybe I should look. The topic of

4 produce was discussed in a conference call with Mr.

5 Graves and Mark Monsour. Two telephone calls with Mr.

6 Graves and Mark Monsour. Period.

7 Q. With respect to the discussion of how much produce Menu

8 Maker Foods was going to purchase from Monsour's, what

9 were the oral conversations about with respect to what

10 percent of their produce requirements they were going

11 to purchase?

12 A. On January 28th Mr. Graves indicated that his company

13 would buy "100 percent of their produce as long as Mark

14 wants to sell it to me. As long as it's of good

15 quality at competitive prices. I will use my best

16 efforts to buy 100 percent of my produce from

17 Monsour's."

18 MR. DeVAUGHN: I don't have any other questions.

19 REDIRECT EXAMINATION

20 BY MR. WACHTEL:

21 Q. Well, I reckon I do. Given your last testimony in

22 response to counsel's questions, can you tell me why

23 the Asset Purchase Agreement doesn't say that "Menu

24 Maker Foods will purchase 100 percent of its produce

25 requirements from Mark Monsour or Monsour's, Inc., as

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1 long as they want to sell it"?

2 A. No.

3 Q. Thank you. With regard to the Asset Purchase

4 Agreement, which is contained within Mitchelson

5 Deposition Exhibit 1, do you consider that document,

6 that Asset Purchase Agreement, to embody all the terms

7 and conditions, representations and warranties made by

8 the parties to that agreement?

9 A. I think this is the final document that was signed by

10 the parties. I don't know that it necessarily sets

11 forth the nature of the relationship between Mark

12 Monsour and Mr. Graves and his trust in Mr. Graves to

13 sell his business to him and the things that they were

14 going to do that were going to be mutually beneficial

15 for both companies.

16 Q. Is the Asset Purchase Agreement a fully integrated

17 agreement?

18 A. I suspect that's for you and the judge to decide.

19 MR. TOMASSI: Before you answer, do you have an

20 understanding of what fully integrated means as --

21 MR. DeVAUGHN: Object to form.

22 THE WITNESS: I guess I think I know what I think

23 it means, but I guess I've answered it the best I can.

24 If he wants to ask further, I'd be glad to answer

25 further.

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1 Q. (By Mr. Wachtel) Were there other promises,

2 representations and warranties made by any of the

3 parties to that agreement that are not contained within

4 it?

5 A. In looking at it today, I think -- and, I'm sorry, I

6 should have studied this in more detail in preparation

7 for this deposition, perhaps, but Mr. Graves'

8 commitment to continue to buy produce for his branches

9 from Monsour's is really only mentioned in passing on

10 the top of page 2. But that was their deal and Mr.

11 Monsour was comfortable to do his deal with Mr. Graves

12 and was in a hurry to proceed. So we did.

13 Q. Is that your way of telling me that there were other

14 promises, representations or warranties among the

15 parties that did not find their way into the agreement?

16 A. I'm sorry, it is in here. I didn't turn enough pages.

17 No.

18 MR. WACHTEL: Thank you very much. I don't have

19 any further questions.

20 RECROSS EXAMINATION

21 BY MR. DeVAUGHN:

22 Q. I got a follow-up question for you, Kevin. Obviously,

23 this is four years later and, like you said, you didn't

24 get a chance to study the Asset Purchase Agreement in

25 detail as compared to your notes. One of the things

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1 you've testified about earlier was the timing with

2 respect to when Menu Maker Foods was going to be

3 purchasing Monsour, Inc.'s food service inventory.

4 I'll represent to you that the timing issues are not

5 contained within the written Asset Purchase Agreement.

6 A. True.

7 Q. Is that something that the parties had a clear

8 understanding on, but the timing issues did not find

9 their way into the written Asset Purchase Agreement?

10 A. Okay. My notes of the conversation on January 28th of

11 02 of a telephone conversation with Mr. Monsour -- with

12 Mark Monsour and Mr. Graves talk about purchase of

13 inventory, but do not talk about a time frame. The

14 notes of another conversation dated that same day talk

15 in terms of "the buyers to take delivery no later than

16 eight weeks after the closing." The notes of the

17 conference call with Mark Monsour, Mark Johnson, the

18 banker, Robert Cowherd, Mr. Graves' attorney, Dick

19 Graves and Mike Slack of Bank of America indicate that

20 "50 to 60 percent of the inventory would be sold within

21 weeks three to five. We're going to take it all, I

22 just cannot tell you exactly when." I wrote that down

23 as Mr. Graves made that statement. That's the last

24 notes I have of conversations prior to the closing.

25 MR. DeVAUGHN: I don't have any other questions.