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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 No. 05-1204-MLB |
| |) | |
| MENU MAKER FOODS, INC., |) | |
| |) | |
| Defendant. |) | |

DEPOSITION OF MONSOUR'S, INC.,
THROUGH MARK MONSOUR, CORPORATE
REPRESENTATIVE, TAKEN ON BEHALF
OF THE DEFENDANT.

March 14, 2006

1 Q -- on the 3rd page?

2 A Right.

3 Q ~~Let me place before you what has been~~
4 marked as Defendant's Exhibit 3, ask you to take a
5 look at that, sir, and tell me if you recognize
6 that.

7 A Yes.

8 Q That in fact is a letter dated February
9 6th, 2002, which was hand-delivered to you as
10 President of Monsour's, and it came from Bank of
11 America?

12 A Right.

13 Q It contains several -- it contains several
14 numbered paragraphs, I think 10 in all, on the two
15 pages of the agreement; right?

16 A Right.

17 Q This was a document that your counsel
18 produced during Rule 26 discovery. It has I believe
19 your counsel's Bates stamp numbered at the bottom of
20 each page; do you see those numbers?

21 A Yes, sir.

22 Q Now this was, was it not, a yet another
23 agreement between Monsour's and Bank of America?

24 A Right.

25 Q And under subparagraph 1 of the agreement

1 out of the purchase of inventory by Menu Maker was
2 going to go to the bank, and in addition, Monsour's
3 was going to have to pay its revolving credit line on
4 April 2nd?

5 A That's the way it reads; correct?

6 Q And that's what you agreed to do --
7 Monsour's agreed to do?

8 A Right. Mark Monsour and Michael Slack,
9 the President of Bank of America, had an oral
10 agreement that is not included here.

11 Q And we will come to your personal
12 agreement all in due time. But -- and we have
13 established in discussions of the Monsour's
14 interrogatory answers what the revolving credit
15 indebtedness was; right?

16 A Right.

17 Q So by April -- assuming that Menu Maker
18 had paid you \$800,000 for your produce, how much
19 money in total would Menu Maker had to have given
20 Bank of America by April 2nd -- excuse me. How much
21 money total would Monsour's had to have given Bank of
22 America by April 2nd, 2002?

23 A Under this agreement?

24 Q Yes, sir, under -- under Exhibits 2 and 3
25 hereto.

1 A Yes, sir.

2 Q Who else was aware of that, other than you
3 and Mr. Slack?

4 A No one.

5 Q Mr. Slack is dead.

6 A Unfortunately, at this time.

7 Q Unfortunately. You have no written
8 documentation to prove what you have just told me
9 about the agreement with Mr. Slack; is that true?

10 A Right. But if Menu Maker had done what
11 they were supposed to do, I wouldn't have to prove
12 that to you. It would have happened.

13 Q That may or may not be. Please take a
14 look -- excuse me. I am going to now place before
15 you what has been marked as Defendant's Exhibit 4,
16 and tell you that it appears to be a University
17 National Bank letter from Mr. Yoakam to you, as
18 President of Monsour's, Inc. It is dated February
19 6th. Have you seen that before?

20 A Yes.

21 Q And this simply, if I understand it
22 correctly, is that particular bank agreeing to
23 release its UCC filings on Monsour's inventory held
24 as collateral for loans that the bank made to
25 Monsour's?

1 A These are internally generated reports.

2 Q Just take a look at 9 and 9A. When I
3 ~~review those documents, in the entry "Accounts~~
4 ~~Receivable - trade (net),"~~ do you see that entry?

5 A Both documents. Correct.

6 Q And 9 reflects "Accounts Receivable -
7 trade (net), value of \$1,090,500," and 9A reflects
8 "\$765,071"; they are of like date. I don't
9 understand the difference; can you explain it to me?

10 A I will have to review them, but I will try
11 to explain it.

12 MR. DEVAUGHN: Take your time.

13 Q (By Mr. Wachtel) And I just want you to
14 explain that entry to me.

15 A Which entry is that?

16 Q The "Accounts Receivable - Trade (net)."

17 A Could be one of two things. One,
18 sometimes from Shelly's cutoff to when she actually
19 brings them up-to-date, those numbers can change. Or
20 two, I could have told her to raise those numbers.

21 Q Why would you do that?

22 A To make the balance sheet look better.

23 Q Why would you do that?

24 A For bank purposes.

25 Q Why would you do that? I don't

1 understand.

2 A To stop a loan from being called.

3 ~~Q Are you familiar with the term "dishonest"?~~

4 A Yes, sir.

5 Q Don't you think that is just downright
6 dishonest?

7 A What it is is a man trying to keep his
8 business going.

9 Q I understand that. And therefore, would I
10 be correct in understanding that you were willing to
11 do anything that you could do to keep your business
12 afloat, including provide false information to
13 lending institutions; isn't that true?

14 A That is true.

15 Q All right. Good. Let's look at the
16 inventory amount. I will tell you that Exhibit 9
17 shows an inventory of \$1,643,820, and Exhibit 9A
18 shows \$997,950; can you account for the difference in
19 that?

20 A That would have been artificial inflation
21 on my part.

22 Q Sir?

23 A I would have told Shelly Corn to raise
24 that number.

25 Q For the same reasons that you gave me for

1 artificially inflating accounts receivable trade net?

2 A Yes, sir.

3 ~~Q Look at accounts payable - trade.~~

4 Document Exhibit 9 shows 455,194, and 9A shows
5 \$914,286; how do you account for the difference?

6 A I must say that is simply Shelly Corn
7 getting all her bills she actually paid up, because
8 the only two numbers played with were accounts
9 receivable and inventory.

10 Q So this --

11 A To the best of my knowledge.

12 Q So this number, although it is -- the
13 numbers in those two documents, although they are
14 widely disparate --

15 A Yes.

16 Q -- only the accounts payable trade has not
17 either been artificially inflated or artificially
18 deflated?

19 A Yes.

20 Q All right. Let's move forward, if we may,
21 to -- I'm sorry. Look at Exhibits 9B and 9C. Do you
22 have those in front of you?

23 A I do.

24 Q Look at the column or the entry "Net
25 income/loss." Do you see that?