

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

CV NO. 08-3367

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VADIM MIKHLYN, INGA MIKHLYN, and ABC ALL :  
CONSULTING, INC., :  
Plaintiffs, :  
vs. :  
ANA BOVE, POLINA DOLGINOV, et al. :  
Defendants. :  
-----: :  
ANA BOVE, Individually and Derivatively as a :  
Shareholder of ABC ALL CONSULTING INC., et :  
al, :  
Counter-Plaintiffs, :  
vs. :  
VADIM MIKHLYN, INGA MIKHLYN, and ABC ALL :  
CONSULTING, INC., :  
Counter-Defendants. :  
-----X

Thursday, December 10, 2009

ROBERT CIRILLO, INC  
182 Columbia Turnpike

Florham Park, New Jersey 07932  
(973) 740-1331

DEPOSITION of ALEXANDR SAKIRSKI, called for  
Oral Examination in the above-entitled action, said  
deposition being conducted pursuant to Rules  
Governing Civil Practice in the Federal Court of  
New York, by and before MARINA LISTER, Notary  
Public and Certified Court Reporter, License No.  
30X100210600, held at the offices of Levisohn  
Berger, LLP, 277 Broadway, New York, New York on  
Thursday, December 10, 2009, commencing at 10:25  
a.m.

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ROBERT CIRILLO, INC  
182 Columbia Turnpike  
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BY: BORIS KOGAN, ESQ.

Interpreter: Irina Barskova

Also Present: Joseph Abeshouse

Anna Bove

Vadim Mikhlyn

1 do. Let just focus on the concept of borrowing.

2 A Okay.

3 Q Did the written contract say anything  
4 about the LLC borrowing money?

5 A I don't remember exactly since we  
6 started talking about being specific and that  
7 confused me. In reality, everything is simple. If  
8 something is borrowing money of the company, it's  
9 supposed to be repaid to the company.

10 MR. KOGAN: No. I think that the  
11 witness said if someone lends money to the  
12 company, it's clear the word "to" was in  
13 there and that makes it clear. If somebody  
14 lends money to the company, the company must  
15 repay. That's what the translation is.

16 Q I want to know, does it say that in the  
17 contract?

18 THE INTERPRETER: They're ending the  
19 same. There is no way of saying the case,  
20 "to" or "of".

21 Q All I want to know is this. Maybe this  
22 will help. Is there anything in the contract that  
23 says how the business of the LLC would be financed?  
24 Let's put it that way.

25 A No. Well, I think not. Maybe there

1 are phrases there that are related to it. But as  
2 far as I remember, there's no such a direct clause  
3 about financing the business.

4 MR. KOGAN: I just want to make sure  
5 that there's clarity about the previous  
6 question. I believe that ultimately, when  
7 asked whether -- can I just ask one question  
8 to clarify that?

9 MR. WERTHEIM: Okay, sure. Go ahead.

10 MR. KOGAN: Did I understand you  
11 correctly that the agreement called for  
12 repayment of any loans made by the  
13 shareholders to the company?

14 A Did you say "any"?

15 MR. AKSELROD: You are good.

16 A All the amounts that were lent to the  
17 company, the company is supposed to repay.

18 Q Okay. Did you and Anna finance the LLC  
19 by providing it with loans?

20 A Let's get the word "financing" out of  
21 this question. Otherwise, I don't understand what  
22 it is.

23 Q Okay. Did you or Anna loan money to  
24 the company?

25 A Yes.

1           Q     Now, was that done for purposes of  
2     starting up the LLC?

3           A     Yes. The money was certainly needed  
4     for the startup costs of the company.

5           Q     How much startup money did you and Anna  
6     separately contribute in the way of loans?

7                    MR. KOGAN: Objection.

8           A     I think that probably Anna must have  
9     provided. The thing is that it was provided in  
10    portions, on the need basis. In addition, a portion  
11    of money could have been given before the company  
12    opened or something like that. If you are talking  
13    about the amount Anna gave to the company in  
14    aggregate, all the money, no matter which way they  
15    were given, it was something she would give  
16    directly to the lawyer for services. Something or  
17    somehow could have been purchased directly. I  
18    think that this is an amount of about 40,000.

19           Q     In total?

20           A     I think so. I don't know the exact  
21    number. I think that it is somewhere in our  
22    financial papers.

23           Q     Okay. How much, at least  
24    approximately, did you loan to the LLC in total?

25           A     I think that it's rather not -- I

1 idea what that is?

2 A No.

3 Q Okay. Me neither. That's all right.

4 Speaking of legal fees, to date, has the LLC paid  
5 all of the legal fees for this lawsuit?

6 A I want this question to be clarified.

7 Does it mean everything that the attorneys had done  
8 up-to-date, or whether we paid for it?

9 Q Let's put it this way. The payments  
10 that have been made to the attorneys to date, have  
11 all those payments come from the LLC?

12 A I think so. Maybe at the very  
13 beginning, they came out of the Trade Indicator or  
14 someone else. Or for instance, first payment, one  
15 or two, I don't remember, Anna paid by herself with  
16 her own money. The rest, I think was paid by the  
17 LLC. We don't have anything else.

18 Q Why would Trade Indicator, Inc. pay a  
19 legal bill for this lawsuit?

20 A I don't maintain for certain that it  
21 paid. It might have been and probably was. If  
22 there was a need for some urgent payment for  
23 something and the LLC wouldn't have this money,  
24 then the Trade Indicator would pay it and the LLC  
25 would repay it to it. Or the payment had to be

1 made with a credit card only, then we would use the  
2 credit card of the Trade Indicator.

3 Q And the LLC would pay Trade Indicator  
4 back, is that right?

5 A Yes. Or by credit card. No, or  
6 directly to the credit card. The payment was made  
7 directly to the credit card, not to the Indicator.

8 Q Okay. Page numbers are tricky with  
9 these things. Give me a second. Two pages ahead,  
10 I think there is a schedule K-1.

11 A Yes.

12 Q And there are actually two of these.  
13 There's one for you, correct? And behind that  
14 there's one for Anna, right?

15 A Yeah.

16 Q Can you tell me why in the schedule K-1  
17 for Anna her address is the same as yours?

18 A When the business started and she  
19 started working there, she lived at our place, and  
20 all the mail and the rest of her stuff would come  
21 to our place. She often comes to our place and her  
22 official address as it were here.

23 Q But that's -- but she has her own  
24 apartment, correct?

25 A The one that she rents.

1           A       No.

2           Q       Okay. Let's turn to the checks.

3                    MR. WERTHEIM: And here, too, I'm

4                    missing five. Okay, Boris?

5           A       I'm certain. Can I say something?

6           Q       Please.

7           A       I'm certain that page five is an empty

8                    page. Usually in the bank statements after such

9                    page, the total page, there is an empty page.

10           Q       Okay. You see that the first check on

11                page six is made out to you?

12           A       Yes.

13           Q       And it's in the amount of \$650,

14                correct?

15           A       Yes.

16           Q       What was that payment for?

17           A       Well, I no longer remember what this

18                payment was made for.

19           Q       There is no entry in the memo line,

20                correct?

21           A       Yes, I see it.

22           Q       Do you know why that is?

23           A       Maybe I did the Wite-Out with it

24                because it was wrong.

25           Q       Did you ever do that on memo lines on

1       checks?

2           A     If it is wrong, I may do that.

3           Q     Well, if you do that, why wouldn't you  
4     put the right entry in the memo line after  
5     Witing-out the wrong one?

6           A     Maybe because I'm not certain. Since  
7     it has to do with me, I don't know what deduction  
8     should be included, meaning in what particular  
9     category for which it was paid. This check states  
10    that I received this money. I'm supposed to report  
11    for it, and the company is supposed to report for  
12    it. I'm certain that it was made and it was, it  
13    was done and it was done correctly.

14          Q     The next check is made out to you as  
15    well, correct?

16          A     Yes.

17          Q     Can you read what it says on the memo  
18    line there?

19          A     Yes.

20          Q     What does I say?

21          A     "Mitya translation." Here it's even  
22    written precisely for what that was. It's really  
23    small for me. I would be able to read it with  
24    different, without glasses.

25          Q     This check was for payment to a

1 translator, is that right?

2 A At least a portion was for the  
3 translator because I see it's written "Mitya  
4 translation," but one should be able to say what  
5 else is written there. Here it's only \$100, the  
6 amount paid. It's not too big an amount and it  
7 could contain, the telephone is included here as  
8 well or something like that. I just have to see  
9 how it's written, the life-size.

10 Q Why didn't you write a check directly  
11 to the translator?

12 A This is faster and simpler this way.  
13 It's not that big an amount. Most likely he  
14 received this sort of an accidental interpreter,  
15 not the permanent one. It's easy to ask him. I  
16 don't know.

17 Q Okay. Could you drop down to the check  
18 to Anna Bove which is second from the bottom? Do  
19 you see that check?

20 A Yes.

21 Q Can you tell me what it says in the  
22 memo line?

23 A K-1.

24 Q What is K-1?

25 A That's just the K-1 form, the income

1 receipt.

2 Q The amount is \$2,000, is that right?

3 A Yes.

4 Q And this was not a loan repayment, is  
5 that correct?

6 A Right here in this line for what I pay,  
7 and in case of Anna, it's that I presume that this  
8 is for the payment for K-1. In this case, I  
9 presumed that it's supposed to be the form in the  
10 K-1 form. But the accountant subsequently would  
11 determine in what form it should be accounted.

12 Q But this was, K-1 income is a partner  
13 or LLC member's share of money from the business,  
14 correct?

15 A Yeah. That's why the accountant  
16 corrected me with this checks and others where I  
17 would write K-1. Because K-1 could be, one could  
18 determine that it is the K-1, only at the year's  
19 end, when it would be computed that there was  
20 income. If there is a negative income, as it is in  
21 our case, then one couldn't pay K-1 as I  
22 understand. But after all, I write K-1 because I  
23 think that it is K-1. And my chief purpose is to  
24 relate to the accountant what I operate and why I  
25 think I pay. If he corrects me, even if I pay for

1 the electricity from the business and the  
2 accountant would correct me and say that I couldn't  
3 pay this much, then he would factor in the less  
4 amount and I would have to report for this money  
5 some other way. But that's as an example.

6 Q Okay. Did I understand you to say that  
7 the LLC couldn't make K-1 payments to members if  
8 the company was losing money?

9 A No, you don't understand it correctly.

10 Q Explain.

11 A It can pay money, but it cannot pay  
12 money in the K-1 form, to deduct them as only from  
13 the business income.

14 Q Okay. So it was improper to  
15 characterize this as a K-1 payment?

16 A Right. That was my mistake.

17 Q Was it later recharacterized by the  
18 business?

19 A Yes. The way the accountant  
20 categorized it.

21 Q How did the accountant recategorize  
22 this payment?

23 A The accountant had all the deposits  
24 made by Anna, and possibly, from that account, if  
25 there was enough money, he would write loan return

1 most likely. So I presume.

2 MR. KOGAN: If we can take just a  
3 moment.

4 Q Is it your testimony that you thought  
5 the accountant would recharacterize a K-1 payment  
6 as a return on a loan?

7 A Certainly not. I wrote K-1. That's  
8 written in my hand. It doesn't mean that it's K-1  
9 form. That's, I think it should be deducted in  
10 accordance with the K-1 form, but that's just my  
11 presumption. All that is contained here is  
12 unreceived money. During the year with this check,  
13 how she received it, in what category, it should be  
14 simply determined. Maybe she is not -- that money  
15 is not due her and she is supposed to return it.  
16 There is money on the account and I wrote the  
17 check. That's what this check means and the  
18 reception of money.

19 Q Did she return this money?

20 A I don't know. One should look.

21 Q Obviously at the time if you thought  
22 this was repayment of the loan, you would have  
23 written repayment of loan in the memo line,  
24 correct?

25 A Maybe so. I often wrote K-1 and return

1       simultaneously. If you look at the checks, you'll  
2       see such in description. It means that for  
3       accountant and for myself, if he asks me, I would  
4       be able to explain that he is supposed to determine  
5       where those, that money was paid from.

6           Q       I did go through the checks, and am I  
7       correct that in some cases the memo line to Anna  
8       says K-1, just K-1, right?

9           A       Maybe.

10          Q       And there are other checks where the  
11       memo line says K-1 and return loan like you just  
12       testified to?

13          A       I think so.

14          Q       But I did not see any checks made out  
15       to you with a memo line that said K-1, am I right?

16          A       Yes.

17          Q       Why is that?

18          A       That was for a fact that I did not lend  
19       the money, so it couldn't state return, and as for  
20       K-1, my K-1, if I were to take it, then it would  
21       most likely be at the end of the year. Anna was  
22       compelled to take money for herself to live on  
23       since she put all her money in the business.  
24       That's why we wrote checks for this money more for  
25       her. Maybe that's the reason. But I don't know

1 the difference, because for me, when I write here,  
2 it means what I presume to what category it could  
3 be ascribed. That is to say, I could discuss it  
4 with the accountant. The fact that it's  
5 established here by this check is that Anna  
6 received the money from the business account.

7 Q Did you receive a K-1 form at the end  
8 of the tax year?

9 A Yes.

10 MR. KOGAN: Objection.

11 Q I request a copy of that.

12 A You mean you don't have it here?

13 Q I haven't seen it, but -- never mind.  
14 Never mind. Strike that. Negative. I'll live  
15 with that. Now I get it.

16 Turn to the next page of checks,  
17 please. You see the top check is made out to Trade  
18 Indicator?

19 A Yes.

20 Q Can you tell me what the memo line  
21 says?

22 A It's written, "Rent 500, telephone and  
23 Internet \$100."

24 Q What's the Internet for, the Internet  
25 portion of the memo line for?