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September 30, 2010

Judge Ramon E. Reyes
United States District Court
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Index No. CV 08 3367
Vadim Mikhlyn, et al. v. Ana Bove, et al.
Our file no. 1851.004

Dear Judge Reyes:

This is in response to Mr. Akselrod's letter to you of September 28, 2010.

We deny and resent any suggestion that our firm has been anything other than acting in good faith. Character attacks upon us are unbecoming. We are owed a lot of money and yet we continue to help defendants recoup what has always been theirs - their copyrights and their business. We left this case when Mr. Kogan did in order to allow defendants to find new counsel. Unfortunately, the defendants were unable to find new counsel.

Since the issue of technical default of the corporation was raised by plaintiffs in their motion (which they did not have to make) Levisohn Berger LLP was aware that because of this unique technicality, the individual defendants could lose their rights.

From the outset, based on our understanding the individual defendants had requested early on that if you ultimately issued a default that they be given 20 days post-default to find an attorney to be able to set aside the default or, in the alternative, the ruling on this technical default be deferred until after trial. Until your letter of September 21st, the clients did not understand you could not do either. Our entry for the corporate defendants occurred shortly thereafter.

What is most apparent here is that plaintiffs' counsel, through the technical guise of seeking a default against the corporations, are trying to win that to which they are not entitled (at least that is our firm's view in view of the many hours we have spent in the details of this litigation).

As to Mr. Akselrod's claim that we are not knowledgeable about other aspects of this case, including the partnership and financial matters, that remains largely correct. That has to do with whether or not the Mikhlyns stole Ana Bove's property and then ran a business using her and Polina's money and assets for the Mikhlyns' own personal benefit. We are not expert in that field, and the corporations are not the aggrieved parties. Therefore, it is expected that the individual defendants will press their cause for damages and whatever else the court might award for what defendants believe was the Mikhlyns' unlawful, improper and unacceptable actions and behavior.

It is ironic that plaintiffs have sought a technical default against the corporate defendants and complained that defendants' corporations did not have a lawyer. Now, they complain that the entry of Levisohn Berger should not be allowed to moot their technical default motion.

In our letter of September 27, 2010, we asked that the issue of the technical default, hopefully, is now moot. We hope plaintiffs will have to face the music. They have enjoyed defendants' property and money as long as this case has been pending, and their attempt to short-circuit a jury trial on these issues is apparent.

The assignment from the corporation to the individuals was not a sham, was valid, but the time and expense involved in litigating the issue seemed wasteful and would only cause more legal fees to be generated and not be able to be paid for by defendants but be able to be paid for by plaintiffs. Thus, rather than argue the point, it seemed far simpler for our firm to enter the case on behalf of the corporate defendants.

I do note in passing the cases cited by plaintiffs in their September 21st letter do not apply to the present facts in which the individual defendants have been *bona fide* parties since the beginning of the lawsuit, owned the assets personally before allegedly transferring them to the corporations and have behaved in an exemplary manner considering the obstacles they have faced.

I also note plaintiffs still seek a victory on all counts based on some alleged discovery issues that may have occurred regarding the conduct of the Kogan firm. On that, I have no specific comment other than these defendants should not personally be harmed because of such problems to which they were not knowledgeable nor party.

The last paragraph of *Bell v. South Bay European Corp.*, cited by plaintiffs in their September 22, 2010 letter states:

> "This Circuit teaches that a pro se litigant is entitled to 'special solicitude' throughout the course of prosecuting or defending a claim."

Thank you for your consideration.

Respectfully submitted,
LEVISOHN BERGER LLP

Peter L. Berger

PLB:wr

cc: Eric Wertheim
Dan Axelrod

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