

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

VADIM MIKHLYN, INGA MIKHLYN,)
AND ABC ALL CONSULTING, INC.,)

Plaintiffs,)

v.)

ANA BOVE, POLINA DOLGINOV,)
ANNA BOVE COMPANY, LLC,)
ANNA BOVE COLLECTIONS INC.,)
AND ANNA BOVE EMBROIDERY)
SUPPLIES, INC,)

Index No. CV 08 3367

DECLARATION OF
TUVIA ROTBERG

I, Tuvia Rotberg, being duly sworn, deposes and say:

1. I am a member of the bar of this Court and of Levisohn Berger LLP (“Berger firm”), which is counsel for the corporate defendants Anna Bove Embroidery LLC, (“Bove LLC”). I submit this declaration to respond and place specific documents and information before this Court in connection with the allegations raised in the affirmation filed by Boris Kogan and Associates LLC (D.E. 214) (“Kogan firm”). The facts stated herein are within my personal knowledge and are true to the best of my knowledge and belief.
2. I reviewed the Affirmation of my colleague, Jonathan Berger, which is submitted concurrently herewith and I confirm that facts stated therein are true and accurate to the best of my knowledge.
3. Ana Bove and Alex Sakirski (“Defendants”) were clients of the Kogan firm. Early in his representation of Defendants, Mr. Kogan introduced us to his clients and sought our firm’s assistance with regard to intellectual property matters.

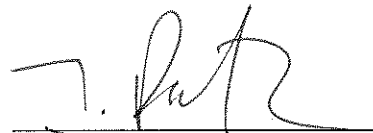
4. From the outset of the current litigation our firm has made it clear that our involvement would be limited solely to supporting the Kogan firm on intellectual property issues. On November 17, 2008, I sent an e-mail to David Binson of the Kogan firm confirming this arrangement. (Exhibit A). Shortly thereafter Mr. Kogan was to represent Defendants in mediation and Mr. Berger wrote to Mr. Kogan asking if he should be present at such mediation. Mr. Berger stated that he did not “want to impinge,” but that he “want[s] to get this resolved if possible.” (Exhibit B) This highlights the fact that the Kogan firm was lead counsel – with Mr. Berger asking to join in order to help achieve a resolution.
5. In his affirmation filed with this Court on May 17, 2011, Mr. Kogan stated that “assuming...that any sanctions are imposed...the Berger firm should bear responsibility for the same...” (Kogan Affirmation p. 28)
6. Such claim is without merit. At the outset of the case and throughout Mr. Kogan’s representation of Defendants, the Kogan firm knew full well that it was responsible for all aspects of discovery and that we were there to support them for any intellectual property issues.
7. Mr. Kogan has somehow painted our continued support of his firm as “shifting work” onto his firm. (Kogan Affirmation p. 29)
8. Mr. Kogan was to appear before Judge Reyes on November 2, 2009 to discuss certain discovery issues. Among the issues to be discussed was a request that certain “work-in-process” documents be classified as “Attorneys Eyes Only.” The Kogan firm asked someone from the Berger firm to join him at that hearing because the “work-in-process” part of the conversation involved intellectual property rights and technical information, of which Mr. Kogan was ill-prepared to discuss. I agreed to accompany Mr. Kogan to that hearing for that limited role. Mr. Kogan spoke for the majority of the time and I spoke

briefly and specifically about the “work-in-process” issues. Mr. Kogan should recall that my involvement in that hearing was limited as such. To state that the hearing of 11/2/09 “was handled primarily by the Berger firm” (Kogan Affirmation p. 29) is a gross distortion of the truth. In the portion of the transcript cited by Mr. Kogan it appears that I was speaking on the record, while it was, in fact, Mr. Kogan who was speaking¹. The transcriber confused his voice with mine. In fact, when Mr. Yossi Abeshouse (Mr. Kogan’s law clerk) who was present at that hearing² sent me the transcript of the same, he wrote that “You’ll notice that the transcriber thought you were Boris [Kogan].” (Exhibit C)

9. I declare that under penalty of perjury that the foregoing is true and correct.

New York, New York

June 14, 2011



Tuvia Rotberg

¹ The portion of the transcript attributed to me relates to discovery of certain tax documents. At that time, neither I, nor the Berger firm have had any involvement in such matters.

² See Exhibit D, transcript page 44, which confirms the presence of Mr. Abeshouse at the hearing. Specifically, Mr. Wertheim states that “for months and months when we would try to communicate, writing, telephone strangely all we hear from is counsel’s paralegal Yossi [Abeshouse] sitting there, the bearded gentleman...”

Exhibit A

Tuvia Rotberg

From: Tuvia Rotberg
Sent: Monday, November 17, 2008 5:47 PM
To: 'db@boriskogan.com'
Subject: Bove matter

Hi David,

Just wanted to confirm that your firm will be handling the Bove case going forward. We will be available to you for any issues relating to IP.

All the best,

Tuvia Rotberg
LEVISOHN BERGER, LLP
61 Broadway, 32nd Fl.
New York, N.Y. 10006
Phone (212) 486-7272 x 311
Fax (212) 486-0323
E-mail trotberg@lubl.com

Notice: This message is intended only for use by the named addressee and may contain privileged and/or confidential information. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited; please delete all electronic copies of this message and its attachments, destroy any hard copies you may have created and notify me immediately. Thank you.

Exhibit B

Tuvia Rotberg

From: Peter Berger
Sent: Wednesday, January 28, 2009 12:24 PM
To: BKoganEsq@aol.com
Subject: RE: FW: Mikhlyn v. Bove mediation

i came back a day early for other reasons and am available. i had thought that tuvya and i would also attend next week as that seemed to be the clients' desire. let's make sure we all coordinate who's going and why
i don't want to impinge but do want to get this resolved if possible

From: BKoganEsq@aol.com [mailto:BKoganEsq@aol.com]
Sent: Wednesday, January 28, 2009 12:21 PM
To: Peter Berger
Subject: Re: FW: Mikhlyn v. Bove mediation

The mediation should proceed. I was hoping we can do the mediation together. Did you ask whterh you should meet with the client? I can handle that but you're welcome to join. I thought you were out of the office for the next few days and I just wanted to "synchronize" the client's expectations for the mediation.

They insist on filing some amended counterclaim before the mediation, to assert causes of action for fraud, dissipation (derivative claim???) based on the Mikhlyns using corporate funds for personal expenses.

Boris Kogan
Boris Kogan & Associates
277 Broadway, Suite 701
New York, NY 10007
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Fax: (212)219-2728
Email: bk@boriskogan.com
Visit us on the web at www.boriskogan.com

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In a message dated 1/28/2009 12:14:04 P.M. Eastern Standard Time, pberger@LLBL.com writes:

do you think i should be present. it should go forward

From: BKoganEsq@aol.com [mailto:BKoganEsq@aol.com]
Sent: Wednesday, January 28, 2009 12:05 PM
To: Peter Berger
Subject: Re: FW: Mikhlyn v. Bove mediation

Exhibit C

Tuvia Rotberg

From: db@boriskogan.com
Sent: Friday, November 13, 2009 11:09 AM
To: Tuvia Rotberg
Subject: Fwd: : Transcript Attached
Attachments: MikhlynNovember2,2009.pdf

Dear Tuvia:

Attached is the November 2 conference transcript, before Magistrate Judge Reyes. You'll notice that the transcriber thinks you're Boris...

Very truly yours,

Yossi Abeshouse, Law Clerk

Boris Kogan & Associates
277 Broadway, Suite 701
New York, NY 10007
Tel: (212)625-8910
Fax: (212)219-2728

Email: bk@boriskogan.com
Visit us on the web at www.boriskogan.com

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U.S. Treasury Circular 230 Notice: Any U.S. federal tax advice included in this communication was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. federal tax penalties.

-----Original Message-----

From: Zoyakogan@aol.com [mailto:Zoyakogan@aol.com]
Sent: Tuesday, November 10, 2009 06:57 PM
To: db@boriskogan.com
Subject: Fwd: Transcript Attached

From: transcripts@typewp.com
To: zoyakogan@aol.com
Sent: 11/10/2009 9:58:25 A.M. Eastern Standard Time
Subj: Transcript Attached

Exhibit D

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X
4 MIKHLYN, et al., :
5 Plaintiffs, : 08-CV-3367
6 v. :
7 BOVE, et al., : 225 Cadman Plaza East
8 Defendants. : Brooklyn, New York
9 -----X
: November 2, 2009

10 TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING
11 BEFORE THE HONORABLE RAMON E. REYES, JR.
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 For the Plaintiffs: ERIC WERTHEIM, ESQ.
15 Val Mandel, P.C.
80 Wall Street
New York New York 10005

16 For the Defendants: BORIS KOGAN, ESQ.
17 Boris Kogan & Associates
277 Broadway
Suite 701
18 New York, New York 10007

19 TUVIA ROTBERG, ESQ.
20 Levisohn Berger, LLP
61 Broadway
32nd Floor
21 New York, New York 10006

22 Court Transcriber: RUTH ANN HAGER
23 TypeWrite Word Processing Service
24 211 N. Milton Road
Saratoga Springs, New York 12866

25 Proceedings recorded by electronic sound recording, transcript
produced by transcription service

1 (Proceedings began at 10:37 a.m.)

2 COURT CLERK: Civil cause for a motion, docket
3 number 08-CV-03367, Mikhlyn v. Bove.

4 Counsel for plaintiff, please state your name for
5 the record.

6 MR. WERTHEIM: Eric Wertheim, Val Mandel, P.C., for
7 the plaintiffs.

8 MR. KOGAN: Boris Kogan from Boris Kogan &
9 Associates for the defendants.

10 MR. ROTBERG: And Tuvia Rotberg of Levisohn Berger
11 [unintelligible] for the defendants.

12 MR. KOGAN: And I have Joseph Vibbs [Ph.], my law
13 clerk as well.

14 THE COURT: Good afternoon, gentlemen.

15 MR. KOGAN: Good afternoon.

16 THE COURT: All right. Can someone -- I asked you
17 to bring some documents so I could see what it is we're
18 arguing about. Could I see?

19 [Pause in the proceedings.]

20 MR. ROTBERG: There's some extra stuff in here, Your
21 Honor, [inaudible] cover letter from Mr. Kogan providing the
22 simultaneous exchange and the number of the different types of
23 documents that were in the production.

24 THE COURT: Can I see a copy of what you
25 [inaudible]?

1 MR. ROTBERG: And I think that if we continued the
2 spirit of cooperation we might be able to work it out.

3 THE COURT: Don't let it fester. If you can work it
4 out, fantastic; if you can't, don't leave it to the last
5 minute because I could see this impacting depositions so --

6 MR. WERTHEIM: Can I ask for something to help the
7 atmosphere a little bit, Your Honor, in terms of how this goes
8 between us? You know, first of all, just in terms of how we
9 deal with other if you might -- well, first of all, I'm going
10 to note my objection as I do at every conference to this
11 violation of Rule 37 where we come in here and things come out
12 of the blue that I haven't heard about for a long time.

13 MR. KOGAN: [Inaudible] depositions up, Your Honor.

14 MR. WERTHEIM: It's a scheduling matter.

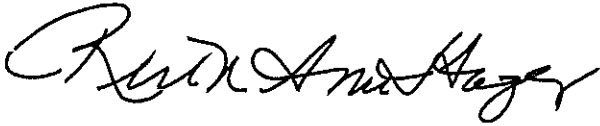
15 THE COURT: Oh, come on. Come on, come on. Look,
16 look. We're here, you know.

17 MR. KOGAN: If someone is on -- is pointing out Rule
18 37 I think that counsel [inaudible] --

19 MR. WERTHEIM: No, let me -- just in terms of the
20 atmosphere between us, Your Honor, if you might maybe this is
21 just advisory. I don't know. For months and months when we
22 would try to communicate, writing, telephone strangely all we
23 hear from is counsel's paralegal Yossi [Ph.] sitting there,
24 the bearded gentleman. We don't get communications from
25 lawyers from the last month. We only write to him.

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I certify that the foregoing is a court transcript
from an electronic sound recording of the proceedings in the
above-entitled matter.



Ruth Ann Hager

Dated: November 2, 2009