

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

VADIM MIKHLYN, INGA MIKHLYN, AND ABC ALL CONSULTING, INC.,)	08 Civ 3367
)	
Plaintiff-CounterDefendant ,)	(ARR)(RER)
)	
v.)	DECLARATION OF
ANA BOVE, POLINA DOLGINOV, ANNA BOVE COMPANY, LLC, ANNA BOVE COLLECTIONSM INC., AND ANNA BOVE EMBROIDERY SUPPLIES, INC,)	JONATHAN BERGER IN REPLY TO BORIS KOGAN'S AFFIRMATION
)	
Defendant-CounterPlaintiff)	
)	

I, Jonathan Berger, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and of Levisohn Berger LLP (“Levisohn Berger”), and am counsel for the corporate defendants in the above-referenced matter (“Anna Bove LLC”). I submit this declaration to respond and place specific documents and information before this Court in connection with the allegations in the affirmation filed by Boris Kogan and Associates LLC (D.E. 214) (“Boris Kogan Firm”) regarding Levisohn Berger. The facts stated herein are within my personal knowledge and are true to the best of my knowledge and belief.
2. The Boris Kogan Firm alleges that Levisohn Berger was heavily involved in this case and not just with the intellectual property component of this case. However, since the onset of the case, the Boris Kogan Firm was to function as lead counsel, handle the discovery for this matter, and handle the financial component of the case. Levisohn Berger would serve as intellectual property counsel. Throughout this matter, I assisted the Boris Kogan Firm in various documents, including the answer, the initial disclosures, and the document and

interrogatory requests largely to the extent that they relate to the intellectual property component of this matter.

3. In response to the Boris Kogan Firm's allegations as to Peter Berger boasting about my extensive experience as a former federal prosecutor (See D.E. 214, Par. 93), Peter Berger, who is my father, perhaps may have expressed enthusiasm as to my accomplishments as a profoundly deaf trial lawyer at the New York County's District Attorney's Office.
4. I have been aware that the parties in this matter have been contentious with each other. For some time during this matter, I was also under the impression, perhaps misplaced, that Val Mandel PC, counsel for Plaintiff ("Val Mandel"), and the Boris Kogan Firm were also having a contentious relationship. For instance, in the beginning of an Anna Bove deposition, Eric Wertheim of Val Mandel and Boris Kogan engaged in a screaming match in which I along with Peter L. Berger had to step in to resolve the dispute between them.
5. The Boris Kogan Firm alleges that Levisohn Berger played a heavy role in this matter. (D.E. 214) In response, I do not dispute that Levisohn Berger played a role in this case. However, Levisohn Berger did not play a role with regards to the specifics that led to this sanction order by the Court. The only thing that I was guilty of doing was merely trying to help resolve, which I had thought, the contentious communication issues between counsel for Plaintiff and the Boris Kogan Firm (See Exhibit C).
6. During this matter, I learned about allegations relating to the Boris Kogan Firm not being responsive to emails regarding discovery issues. Annexed hereto as Exhibit A are true and correct copies of emails between Eric Wertheim of Val Mandel PC and Levisohn Berger regarding the Boris Kogan Firm not being responsive to discovery requests made by Val Mandel.

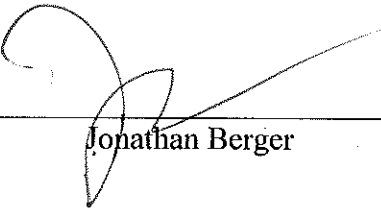
7. As a result of what appears to the Boris Kogan Firm's pattern of not being responsive to emails from Val Mandel (See Exhibit A), Val Mandel turned to Levisohn Berger to assist in moving the case along. Annexed hereto as Exhibit B is an email communication from Daniel Akselrod of Val Mandel to Levisohn Berger requesting its assistance in arranging deposition schedules.

8. At one point, before a court conference scheduled for January 26, 2010 regarding the completion of discovery, because I was under the impression that the Boris Kogan Firm and Val Mandel were having a contentious relationship, I once again offered to assist in facilitating communications between the Boris Kogan Firm and Val Mandel. Annexed hereto as Exhibit A is an email from me to Eric Wertheim dated January 22, 2010 at 8:14 p.m. in which I offered to help in resolving the discovery dispute. However, given the minimal involvement of Levisohn Berger and the enormous complexity of the disputes between Val Mandel and the Boris Kogan Firm, I did not assist further and did not participate in the conference on January 26, 2010. Annexed hereto as Exhibit C are true and correct copies of email correspondence between Val Mandel, Levisohn Berger and the Boris Kogan Firm regarding Levisohn Berger's participation in the conference and ECF filings by the Court.

9. The Boris Kogan Firm alleges that "it was the Berger firm that prepared the clients for their depositions." (See Par. 97 of D.E. 214). First, this statement is facially incorrect and false. Annexed hereto as Exhibit D are true and correct copies of emails between Levisohn Berger and the Boris Kogan Firm regarding the preparation of witnesses for the depositions. Based on these email communications, it is quite clear that the Boris Kogan Firm also prepped the witnesses. Furthermore, the emails corroborate my statement that the Boris Kogan Firm focused on the financial component of the case, and Levisohn Berger focused on the intellectual property component as stated in Par.2 of this affirmation.

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

New York, New York
June 16th, 2011



Jonathan Berger

Exhibit A

Jonathan Berger

From: Eric Wertheim [ew@valmandelpc.net]
Sent: Saturday, January 23, 2010 8:26 AM
To: Jonathan Berger
Cc: da
Subject: Re: Discovery

Jonathan:

I'm reading this on Saturday. I'll see what I have but it may have to wait until Monday. Thanks.

I'm not aware of there being any dispute. Boris ignored multiple communications about open discovery items and basically disappeared after the last conference.

I really want to maintain the friendly tone of our dealings since Ana's deposition but if we don't "walk the walk," tone does not count for much.

Eric

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

From: jberger@llbl.com
To: ew@valmandelpc.net
Sent: Friday, January 22, 2010 8:14:02 PM GMT -05:00 US/Canada Eastern
Subject: Discovery

Eric,

I am going to step in to see if I can assist in resolving this discovery dispute. Can you please send me a list of the items outstanding? I think you had brought it to court during the conference. If you send it, I will take a look at it on Monday am and see what I can do. Also, please indicate what has been provided, what will be provided and what remains still disputed. Jonathan Sent from my Verizon Wireless BlackBerry

Jonathan Berger

Subject: Fwd: Re:

From: Eric Wertheim [<mailto:ew@valmandelpc.net>]
Sent: Tuesday, March 15, 2011 1:02 PM
To: Peter Berger
Cc: Daniel Akselrod
Subject: RE:

After we begged Boris repeatedly for months for his requests and issues in discovery, he hit us with that list only when (a) he was no longer counsel in the case and (b) discovery was over. The list, by the way, was largely if not entirely false. I believe we rightly ignored it.

From: Peter Berger [<mailto:pberger@LLBL.com>]
Sent: Tuesday, March 15, 2011 12:31 PM
To: Eric Wertheim
Subject:

after you left Anna showed me a letter from Boris to you on 5/26/10 with an extensive list of discovery Boris said was still owed.

did you ever respond to that.

it goes toward some monetary issues we discussed

sorry i did not raise it but i did not know about it

Peter L. Berger

Levisohn Berger LLP

11 Broadway, Suite 615

New York, NY 10004

Phone 212-486-7272 ext. 302

Fax 212-486-0323

Exhibit B

Jonathan Berger

To: Tuvia Rotberg
Subject: RE: Mikhlyn v. Bove

From: Daniel Akselrod [mailto:da@valmandelpc.net]
Sent: Tuesday, November 17, 2009 5:39 PM
To: Peter Berger; 'Eric Wertheim'
Cc: Tuvia Rotberg; Jonathan Berger
Subject: Mikhlyn v. Bove

Dear Peter:

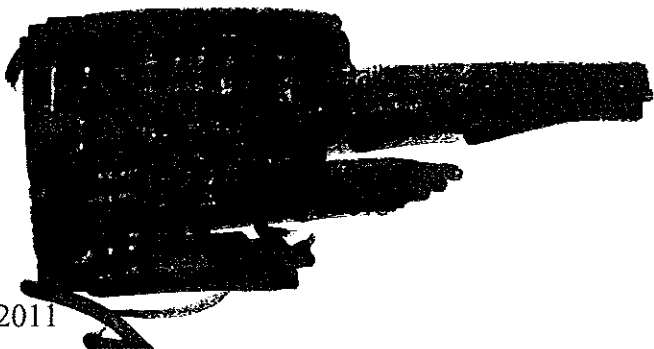
Please help resolve a simple logistical matter regarding the upcoming depositions. We have asked the Kogan firm twice, in writing, to tell us where they want your clients to be deposed. We have received no response. Note also that we suggested deposing all witnesses in the office of the examining firm in light of the large volume of discovery materials that might otherwise need to be carried between office.

Very truly yours,

Daniel Akselrod
Attorney at Law
VAL MANDEL, P.C.
80 Wall Street, Suite 1115
New York, NY 10005
Tel.: +1 (212) 668-1700
Fax: +1 (212) 668-1701
da@valmandelpc.net

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REDACTED

Exhibit C

Jonathan Berger

From: Eric Wertheim [ew@valmandelpc.net]
Sent: Monday, January 25, 2010 11:26 AM
To: Jonathan Berger
Cc: Peter Berger; db@boriskogan.com; Tuvia Rotberg; Daniel Akselrod
Subject: Re: Mikhlyn v. Bove - Conference call.

No problem. I wasn't trying to drag you into it, I just wanted to know. Have you heard from Boris' office?

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

From: "Jonathan Berger" <jberger@LLBL.com>
To: "Eric Wertheim" <ew@valmandelpc.net>, "Daniel Akselrod" <da@valmandelpc.net>
Cc: "Peter Berger" <pberger@LLBL.com>, db@boriskogan.com, "Tuvia Rotberg" <trotberg@llbl.com>
Sent: Monday, January 25, 2010 11:23:58 AM GMT -05:00 US/Canada Eastern
Subject: RE: Mikhlyn v. Bove - Conference call.

Eric and Daniel,

Since I was having trouble understanding Daniel, Tuvia spoke with Daniel. I explained to Daniel the extent of our involvement in this matter regarding certain discovery items.

We cannot participate in this discussion as a substitute for Boris. Boris Kogan's office has to be involved with this discussion. As I indicated to Eric over the weekend, we were just merely offering to help expedite the communications between Boris' office and your office.

Since we have had very minimal involvement with the prior discovery requests made by Boris Kogan's office and the outstanding discovery requests that were highlighted at the last court conference, there is no need for me to be involved in this telephone conversation unless the judge wants my participation.

Jonathan

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

From: Eric Wertheim [mailto:ew@valmandelpc.net]
Sent: Monday, January 25, 2010 11:12 AM
To: Daniel Akselrod
Cc: Jonathan Berger
Subject: Re: Mikhlyn v. Bove - Conference call.


Jonathan:

Are you guys participating with, or in lieu of, Boris?

Eric

Jonathan Berger

From: Eric Wertheim [ew@valmandelpc.net]
Sent: Monday, January 25, 2010 3:10 PM
To: Jonathan Berger
Cc: Peter Berger; bk@boriskogan.com; Daniel Akseirod
Subject: Re: Mikhlyn v. Bove - Conference

From our side, you're wanted but not needed. 

REDACTED

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

From: "Jonathan Berger" <jberger@LLBL.com>
To: "Daniel Akseirod" <da@valmandelpc.net>, db@boriskogan.com
Cc: "Peter Berger" <pberger@LLBL.com>, "Eric Wertheim" <ew@valmandelpc.net>, bk@boriskogan.com
Sent: Monday, January 25, 2010 2:39:40 PM GMT -05:00 US/Canada Eastern
Subject: RE: Mikhlyn v. Bove - Conference

Daniel,

Please confirm that we are not needed for tomorrow's 4 pm teleconference with Judge Reyes.
Thanks.

Jonathan

From: Daniel Akseirod [mailto:da@valmandelpc.net]
Sent: Monday, January 25, 2010 1:37 PM
To: db@boriskogan.com
Cc: Jonathan Berger; Peter Berger; 'Eric Wertheim'; bk@boriskogan.com
Subject: Mikhlyn v. Bove - Conference

Yossi:

I spoke to Melissa. We scheduled for tomorrow at 4:00 p.m. She also asked me to call in before noon and confirm, so please let me know if this is acceptable.

Regards,

Daniel Akseirod

Attorney at Law

VAL MANDEL, P.C.

80 Wall Street, Suite 1115

New York, NY 10005

Tel.: +1 (212) 668-1700

Fax: +1 (212) 668-1701

da@valmandelpc.net

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Jonathan Berger

From: ecf_bounces@nyed.uscourts.gov
Sent: Monday, January 25, 2010 2:01 PM
To: nobody@nyed.uscourts.gov
Subject: Activity in Case 1:08-cv-03367-ARR -RER Mikhlyn et al v. Bove et al Order on Motion for Extension of Time to Complete Discovery

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 1/25/2010 at 2:00 PM EST and filed on 1/25/2010

Case Name: Mikhlyn et al v. Bove et al

Case Number: 1:08-cv-03367-ARR -RER

Filer:

Document Number: No document attached

Docket Text:

ORDER deferring ruling on [97] Motion for Extension of Time to Complete Discovery. Telephone conference set for 1/26/2010 at 4:00 pm, Plaintiff's counsel to initiate call. Ordered by Magistrate Judge Ramon E. Reyes, Jr on 1/25/2010. (Gerecci, Melisa)

1:08-cv-03367-ARR -RER Notice has been electronically mailed to:

Mark S. Mulholland mmulholland@rmfpc.com

Boris Kogan bkoganesq@aol.com

Jonathan Todd Berger jberger@llbl.com

Val Mandel olga@valmandelpc.net, vm@valmandelpc.net

Daniel Akselrod da@valmandelpc.net

Eric Wertheim wertheime@yahoo.com

David E. Binson db@boriskogan.com

1:08-cv-03367-ARR -RER Notice will not be electronically mailed to:

Jonathan Berger

From: ecf_bounces@nyed.uscourts.gov
Sent: Wednesday, January 27, 2010 10:33 AM
To: nobody@nyed.uscourts.gov
Subject: Activity in Case 1:08-cv-03367-ARR -RER Mikhlyn et al v. Bove et al Order on Motion for Extension of Time to Complete Discovery

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 1/27/2010 at 10:32 AM EST and filed on 1/26/2010

Case Name: Mikhlyn et al v. Bove et al
Case Number: 1:08-cv-03367-ARR -RER
Filer:
Document Number: No document attached

Docket Text:

Minute Order. for proceedings held before Magistrate Judge Ramon E. Reyes, Jr:Telephone Conference held on 1/26/2010; granting [97] Motion for Extension of Time to Complete Discovery; Eric Wertheim, Esq for plaintiffs, Boris Kogan, Esq for defendants both appearing by telephone. Discussions held. Discovery extended to 3/5/2010. NO FURTHER EXTENSIONS. THE 3/4/2010 Final Pretrial Conference is adjourned to 3/15/2010 at 10:00 AM before Magistrate Judge Ramon E. Reyes Jr. (Tape #4:13:50-4:27:53.) (Vertus, Miriam)

1:08-cv-03367-ARR -RER Notice has been electronically mailed to:

Mark S. Mulholland mmulholland@rmfpc.com

Boris Kogan bkoganesq@aol.com

Jonathan Todd Berger jberger@llbl.com

Val Mandel olga@valmandelpc.net, vm@valmandelpc.net

Daniel Akselrod da@valmandelpc.net

Eric Wertheim wertheime@yahoo.com

David E. Binson db@boriskogan.com

1:08-cv-03367-ARR -RER Notice will not be electronically mailed to:

Exhibit D

Jonathan Berger

From: Jonathan Berger
Sent: Monday, November 16, 2009 11:02 AM
To: db@boriskogan.com
Cc: Peter Berger; Tuvia Rotberg
Subject: RE: Fwd: Mikhlyn v Bove

Yossi,

From: db@boriskogan.com [mailto:db@boriskogan.com]
Sent: Monday, November 16, 2009 10:51 AM
To: Jonathan Berger
Cc: Peter Berger; Tuvia Rotberg
Subject: Re: Fwd: Mikhlyn v Bove

REDACTED

Dear Jonathan:

I just asked Alex and Anna - they are here watching a dep prep video.

[REDACTED]

[REDACTED]

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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6/1/2011

Jonathan Berger

From: Jonathan Berger
Sent: Thursday, November 05, 2009 3:55 PM
To: db@boriskogan.com
Cc: Peter Berger; Tuvia Rotberg
Subject: RE: Fwd: Mikhlyn v Bove

From: db@boriskogan.com [mailto:db@boriskogan.com]
Sent: Thursday, November 05, 2009 3:51 PM
To: Jonathan Berger
Cc: Peter Berger; Tuvia Rotberg
Subject: Re: Fwd: Mikhlyn v Bove

Dear Jonathan:

I believe Boris will want to prep both for the financial component at the same time. So are you suggesting that Anna goes to you first, and then comes to us (and Alex attends our office at the same time that Anna arrives)?

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

From: Jonathan Berger [mailto:jberger@LLBL.com]
Sent: Thursday, November 5, 2009 03:28 PM
To: db@boriskogan.com
Cc: 'Peter Berger', 'Tuvia Rotberg'
Subject: RE: Fwd: Mikhlyn v Bove

Can you have Anna come here at 10 am on November 17th? There is no need for us to prep Alex.

From: db@boriskogan.com [mailto:db@boriskogan.com]

Sent: Thursday, November 05, 2009 3:13 PM
To: Jonathan Berger
Cc: Peter Berger; Tuvia Rotberg
Subject: Re: Fwd: Mikhlyn v Bove

Dear Jonathan:

We'll make Tuesday, November 17 the day to prep Anna (and Alex). Can you attend our office? If so I will advise them to be here at 10am.

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

From: Jonathan Berger [<mailto:jberger@LLBL.com>]
Sent: Thursday, November 5, 2009 01:46 PM
To: db@boriskogan.com
Subject: RE: Fwd: Mikhlyn v Bove

 REDACTED

From: db@boriskogan.com [<mailto:db@boriskogan.com>]
Sent: Thursday, November 05, 2009 1:35 PM
To: Jonathan Berger
Cc: Peter Berger; Tuvia Rotberg
Subject: Re: Fwd: Mikhlyn v Bove

Dear Jonathan:

I just spoke to Boris, and we would like to prep Anna and Alex either on Monday Nov 16, or Tuesday Nov 17. Which day is better for you? Additionally, Boris raised the idea of prepping Polina by phone before she arrives in the US. That creates the potential for a 2 day deposition, should the need arise. What do you think?

Very truly yours,

Yossi Abeshouse, Law Clerk

Jonathan Berger

From: db@boriskogan.com
Sent: Thursday, November 05, 2009 1:35 PM
To: Jonathan Berger
Cc: Peter Berger; Tuvia Rotberg
Subject: Re: Fwd: Mikhlyn v Bove

Dear Jonathan:

I just spoke to Boris, and we would like to prep Anna and Alex either on Monday Nov 16, or Tuesday Nov 17. Which day is better for you? Additionally, Boris raised the idea of prepping Polina by phone before she arrives in the US. That creates the potential for a 2 day deposition, should the need arise. What do you think?

Very truly yours,

Yossi Abeshouse, Law Clerk

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 Fax: (212)219-2728

Email: bk@boriskogan.com
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-----Original Message-----

From: Jonathan Berger [mailto:jberger@LLBL.com]
Sent: Thursday, November 5, 2009 12:55 PM
To: db@boriskogan.com, 'Peter Berger'
Cc: 'Tuvia Rotberg'
Subject: RE: Fwd: Mikhlyn v Bove

Yossi,

We got your fax. Peter indicated that the proposed deposition schedule is fine. As indicated previously I will not be available on Nov 25 and 26.

As to prepping Anna and Alex, when are you guys going to prep them? It would make sense for both of us to do at the same time.

Jonathan

From: db@boriskogan.com [mailto:db@boriskogan.com]
Sent: Thursday, November 05, 2009 10:34 AM

6/2/2011