

EXHIBIT 7

SUSAN MERYL KIRBY
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARVEL WORLDWIDE, INC., MARVEL)
CHARACTERS, INC., AND MVL,)
RIGHTS, LLC,)Civil Action No.:
)10 CIV. 141
Plaintiffs,)(CM) (KNF)
v.)
)LISA R. KIRBY, BARBARA J.)
KIRBY, NEIL L. KIRBY,)
AND SUSAN KIRBY,)
)Defendants.)
)

)

VIDEOTAPED
DEPOSITION OF: SUSAN MERYL KIRBY
DATE: October 25, 2010
TIME: 10:00 a.m.
HELD AT: Ethan Allen Hotel
21 Lake Avenue Extension
Danbury, Connecticut

By: Sarah J. Miner, LSR

TSG JOB NO. 34010

1 SUSAN MERYL KIRBY

2 you?

3 A. She was in California. I don't remember her
4 residence address. She had an apartment there in, I
5 don't remember what town, somewhere near Ventura.

6 Q. Do you know how long she had been in
7 California before moving back?

8 A. Several years, because she had lived with my
9 parents before she got her own place.

10 Q. Would you tell me when your birth date was?

11 A. 12/6/45.

12 Q. You are the daughter or one of the daughters
13 of Jack Kirby, right?

14 A. Yes, the eldest.

15 Q. Do you have any memory of being present while
16 your father worked on projects involving Marvel
17 characters?

18 A. Yes.

19 Q. Do you have any recollection of discussing
20 with your father the work he was doing for Marvel?

21 A. Yes. I was in his office a lot, because he
22 had a vast library of books, because he was into
23 everything. And I used to go down there and read, so
24 I used to read his books, and stuff, and one day I was
25 upstairs, and mom told me to go downstairs because Dad

1 SUSAN MERYL KIRBY

2 was creating some new super heroes. So I went
3 downstairs, and he said, "I want you to see this." He
4 said, I named the female super hero after you, her
5 name is Sue," Sue Storm he was talking about, it was
6 the Fantastic Four.

7 Q. Do you remember what year that was?

8 A. Oh, gosh, I was a teenager, that is all I
9 remember, maybe 15 or 16, so 1961, '62.

10 Q. And when you went downstairs did you discuss
11 with your father what he was doing?

12 A. Yes.

13 Q. What did you say to him? What did he say to
14 you?

15 A. I said it looked great. There were three
16 characters on the board, three of the four. And I
17 asked about who they are, and he told me who each one
18 was. And I said, "It looks great, they look great".

19 Q. Do you recall anything else being said
20 between the two of you at that time?

21 A. Not at that particular conversation, no.

22 Q. How long would you say you had that
23 conversation with your father?

24 A. Oh, about an hour or so.

25 Q. And do you know what conversations, if any,

1 SUSAN MERYL KIRBY

2 occurred between your father, and anyone at Marvel
3 prior to his working on that?

4 A. No, I wasn't present.

5 Q. Did your father ever tell you what
6 conversations, if any, had occurred before this
7 conversation you had with him?

8 A. No, he did not.

9 Q. Did your mother say anything to you about the
10 work your father was doing, other than that he was --

11 A. Just that she was upset because he never
12 slept. He was always working. Even when he wasn't
13 selling something to Marvel, he was always creating
14 murals, and all kinds of things, his conception of
15 God. His mind was always going.

16 Q. Did you ever have a discussion with any of
17 your siblings concerning your father's work?

18 A. We always talked about Dad's work. That was
19 the main thing in the family.

20 Q. Would you summarize your educational
21 background for me, beginning in the year you graduated
22 from high school?

23 A. That was '63. And I went to college for a
24 year. So from '64 to '65 I was in college.

25 Q. Okay. Where did you graduate from high

1 SUSAN MERYL KIRBY

2 A. Because I have seen him do it.

3 Q. Do you know if prior to you witnessing your
4 father writing, he had had any discussions with anyone
5 at Marvel?

6 A. Not that I am aware of.

7 Q. Do you know that he -- do you know one way or
8 the other whether such discussions occurred?

9 A. No, I don't.

10 MR. TOBEROFF: Vague as to discussions.

11 BY MR. FLEISCHER:

12 Q. You said, "I think," that you saw your father
13 writing.

14 A. Yes.

15 Q. What form has that writing taken place?

16 A. As he draws he fills in the bubbles. He kind
17 of invented all his "Pow, Slam" stuff, that they use
18 today. That is how he wrote. He wrote sentences,
19 conversations between the characters, just off the top
20 of his head.

21 Q. Is it your testimony that you witnessed your
22 father drawing the dialogue bubbles, and story
23 narrative in the panels he was drawing?

24 A. Yes, I have witnessed it.

25 Q. Do you know whether the works that were

1 SUSAN MERYL KIRBY

2 published by Marvel contained the words that your
3 father had put in those bubbles, and narrative boxes?

4 A. To my knowledge, they were.

5 Q. Did you read comic books as a kid?

6 A. Yes, all kinds.

7 Q. Did you have a specific recollection of
8 seeing a comic book containing the dialogue that you
9 saw your father write?

10 A. Fantastic Four, Volume I.

11 Q. Do you know if your father had been given any
12 direction by Marvel prior to the time he began working
13 on Fantastic Four?

14 A. Not that I am aware of.

15 Q. Did anyone ever tell you that a synopsis of
16 Fantastic Four had been given to your father?

17 A. No, I had never seen him with one.

18 Q. Are you acquainted with Stan Lee?

19 A. I met him once when I was a child.

20 Q. What were the circumstances under which you
21 met him?

22 A. He came over the house for a drink with Mom
23 and Dad, him and his wife.

24 Q. Did you ever go to the office of Marvel as a
25 child?

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2 siblings about acquiring the rights to any works your
3 father contributed to, published by someone other than
4 Marvel?

5 A. No, I have never had that conversation.

6 Q. Did you have an understanding when you were
7 living in East Williston about the economic terms of
8 your father's relationship with any publisher?

9 A. Well, I knew that Marvel paid him by the
10 page, and that he and mom used to argue about it,
11 because he would be up all night doing pages, and
12 Marvel would say, "Well, we don't want to buy this."
13 Then they would go ahead and make him do the whole
14 thing over again, and he would just get paid for the
15 artwork that he did over again. So he was doing
16 things twice, and getting half the money.

17 Q. When do you recall hearing a conversation to
18 that effect?

19 A. Early '60's, late '50's.

20 Q. Do you know what character or characters were
21 involved in those discussions?

22 A. No.

23 Q. Was there any mention of who it was that was
24 asking your father to redo pages or correct pages?

25 A. From what I recall Stan Lee.

1 SUSAN MERYL KIRBY

2 A. No, sir.

3 Q. Are you aware of any particular comic book or
4 comic book character that your father worked on before
5 receiving an assignment from Marvel?

6 MR. TOBEROFF: Misstates testimony.

7 THE WITNESS: No, sir.

8 MR. TOBEROFF: Lacks foundation.

9 BY MR. FLEISCHER:

10 Q. Did you ever have occasion to discuss any
11 assignment your father had received from Marvel?

12 MR. TOBEROFF: Asked and answered. You can
13 answer.

14 THE WITNESS: No.

15 BY MR. FLEISCHER:

16 Q. Did you ever discuss with your father any of
17 his contributions to any of the characters that were
18 published by Marvel?

19 A. I just saw him create. That is all I saw.

20 Q. Did you ever discuss what he was drawing with
21 him?

22 A. No, there was no discussion that I recall,
23 just telling me what was going on in the scripts, and
24 strips, I don't know what you call them.

25 Q. Do you have any knowledge about the

1 SUSAN MERYL KIRBY

2 circumstances of the creation of the Spiderman comic
3 book character?

4 A. That is not Dad's. I think he did the
5 costume. I think he originated the costume, but not
6 the character itself.

7 Q. How did you come to that understanding?

8 A. I believe someone told me, maybe my mother, I
9 recall.

10 Q. What were the circumstances under which she
11 told you that?

12 A. We were discussing the character, because my
13 brother liked Spiderman. He was a little kid at the
14 time. We were just talking about it. It came up in
15 the conversation.

16 Q. Do you recall your brother asking about
17 whether your father had created Spiderman?

18 A. Yes, he did ask.

19 Q. What did your father say?

20 A. I don't think my father was there. It was
21 just my mother. She said he created Spiderman's
22 costume.

23 Q. Did your mother ever discuss with you any
24 other characters that were published by Marvel that
25 your father created or didn't create?

1 SUSAN MERYL KIRBY

2 A. Well, the Incredible Hulk. I was there when
3 he was creating him. He called me over, and said, "I
4 want you to see a new super hero." He said, "This is
5 the Incredible Hulk. What do you think of him?" I
6 said, "He is incredible."

7 Q. Do you remember what color he was?

8 A. Green, yes.

9 Q. Was he green on your father's drawing board?

10 A. No, he was black and white, but I remember
11 the color he was in the books.

12 Q. Was he -- when you saw it on the drawing
13 board, was it inked?

14 A. No, it was pencil.

15 Q. Was there any dialogue written on the
16 drawing?

17 A. No, it was just a drawing of the Hulk. He
18 had just started working on it.

19 Q. Do you know whether he had had any
20 conversations with anyone at Marvel before that about
21 the Hulk character?

22 A. I have no idea.

23 Q. Have you ever discussed the characters that
24 your father worked on for Marvel with anyone other
25 than Mr. Toberoff and your siblings?

SUSAN MERYL KIRBY

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2 publishers?

3 A. I don't know.

4 Q. Do you know whether your father was ever
5 working on a publication deadline?

6 A. He was always on a deadline. He used to work
7 20 hours a night sometimes.

8 Q. Do you know who give him that deadline or
9 deadlines?

10 A. Stan Lee.

11 Q. How do you know that?

12 A. I just remember Dad was always saying, I have
13 to make a deadline. I have to get this done. I have
14 to get that done.

15 Q. Are you aware of -- strike that. Were you
16 aware of your father leaving Marvel's -- withdrawn.

17 Were you aware of your father ceasing to
18 submit work to Marvel sometime in the 1970's?

19 A. I don't recall. I wasn't home then.

20 Q. Were you aware of your father beginning to
21 work exclusively for DC Comics?

22 A. No.

23 Q. Are you aware of whether your father owned
24 any rights to the work he submitted to DC Comics?

25 A. I don't know. I guess he did.

SUSAN MERYL KIRBY

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2 Q. Do you recall whether it was in pencil when
3 you saw it or ink?

4 A. It was in pencil.

5 Q. Were there any dialogue balloons?

6 A. There were balloons, but there was nothing in
7 them yet.

8 Q. Did your father ever discuss the work he was
9 doing on the X-Men comic book?

10 A. No.

11 Q. Did your father ever indicate whether or not
12 he was working with a writer on X-Men?

13 A. No.

14 Q. Did your father ever indicate where the idea
15 for the X-Men story came from?

16 A. No.

17 Q. Do you have a recollection of the names of
18 any of the X-Men characters?

19 A. No.

20 Q. Did you ever see one of the X-Men movies?

21 A. Is that the one with Wolverine in it?

22 Q. Yes.

23 A. Yes, I saw one.

24 Q. Let's focus for a second on Ant Man?

25 A. I don't even know who that is.

1 SUSAN MERYL KIRBY

2 Q. Do you know whether your father had any
3 association with Ant Man?

4 A. I have never heard of it before.

5 (Plaintiff's Exhibit 1 marked for
6 identification.)

7 BY MR. FLEISCHER:

8 Q. Ms. Kirby, have you ever seen what we have
9 marked for identification as Susan Kirby Number 1, and
10 take your time to look through it.

11 A. I see my name on it as a plaintiff.

12 Q. I am sorry. You mean on the sticker that the
13 reporter just put on?

14 A. Yes.

15 Q. Apart from that?

16 A. I don't see anything.

17 Q. Do you know who wrote what is on this page?

18 A. Yes, Dad.

19 Q. And did your father have a typewriter?

20 A. A typewriter, no. He may have had one of
21 those old typewriters, not an electric one.

22 Q. Did he, with respect to Fantastic Four, write
23 out a synopsis or a script for Fantastic Four?

24 A. No.

25 Q. What is the basis for your statement that

1 SUSAN MERYL KIRBY

2 character, my intention is to ask you whether that was
3 the first iteration of the character, the invention of
4 the character?

5 A. Yes.

6 Q. With respect to Rawhide Kid, do you have any
7 information about who invented Rawhide Kid?

8 A. That would be my Dad.

9 Q. How do you know that?

10 A. I believe I was told.

11 Q. By whom?

12 A. My father.

13 Q. What did he say in that regard?

14 A. I don't really recall the exact words. It
15 was one of his comic books in the library, and I was
16 reading it. I asked, you know, is this one of yours,
17 and he said, yes. That is all I remember.

18 Q. Did you ever see him at work on a Rawhide Kid
19 comic book?

20 A. No.

21 Q. Would I be correct, then, that you would not
22 have any information as to whether or not he had been
23 assigned the project of working on a comic book called
24 Rawhide Kid?

25 A. You would be correct.

1 SUSAN MERYL KIRBY

2 A. I don't recall.

3 Q. Do you disagree with the substance of the
4 statement made in that paragraph?

5 MR. TOBEROFF: Objection, calls for legal
6 conclusion. It is a legal document. She is not a
7 lawyer. Uses terms of art.

8 BY MR. FLEISCHER:

9 Q. He hasn't directed you not to answer the
10 question.

11 A. I don't know.

12 Q. Do you have any information as to whether the
13 work that your father did, published by Marvel, was
14 done as a result of an assignment your father received
15 from Marvel?

16 A. Not that I know of.

17 Q. What information do you have that would lead
18 you to conclude that it was not done as a result of an
19 assignment?

20 A. I can't conclusively say so. I don't have
21 any knowledge.

22 Q. You don't know one way or another?

23 A. Yes.

24 Q. Are you aware of whether any of the
25 counterclaims asserted by you and your siblings