

EXHIBIT B

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF NEW YORK
3

4 MARVEL WORLDWIDE, INC., MARVEL)
CHARACTERS, INC., and MVL RIGHTS,))
5 LLC,)

6 Plaintiffs,)

7 vs.)

8 LISA A. KIRBY, BARBARA J. KIRBY,)
NEAL L. KIRBY and SUSAN N. KIRBY,))

9 Defendants.)
10 _____)

) CASE NO.
) 10 CV 141 (CM) (KNF)
) Pages 1 - 192

11
12 VOLUME I
13 VIDEOTAPED DEPOSITION OF MARK EVANIER
14 LOS ANGELES, CALIFORNIA
15 TUESDAY, NOVEMBER 9, 2010
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22 REPORTED BY:
LESLIE L. WHITE
23 CSR NO. 4148
JOB NO.: 34167
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Tuesday, November 9, 2010

9:42 a.m.

Videotaped deposition of MARK
EVANIER, Volume I, held at 515 South Flower
Street, 25th Floor, Los Angeles, California,
before Leslie L. White, CSR No. 4148.

1 A P P E A R A N C E S:

2
3 WEIL, GOTSHAL & MANGES
4 Attorneys for Plaintiffs

5 767 Fifth Avenue

6 New York, New York 10153

7 BY: JAMES W. QUINN, ESQ. -and-
8 RANDI W. SINGER, ESQ.

9
10 TOBEROFF & ASSOCIATES

11 Attorneys for Defendants

12 2049 Century Park East

13 Los Angeles, California 90067

14 BY: MARC TOBEROFF, ESQ.

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18
19 ALSO PRESENT:

20 CHRIS JORDAN, Videographer

21 ELI BARD, Deputy General Counsel

1 Q Okay.

2 A When I first met Jack, the very first day I
3 met Jack, he showed me things that he had submitted to
4 Marvel which they had not purchased from him, either
5 because they didn't want them or because they would not
6 meet his terms for them.

7 He had ideas for new characters that he said
8 Marvel could have if they gave him a better deal than he
9 was currently getting, and they apparently did not do
10 that.

11 He also had pages he had prepared for issues
12 of comics that he was working on with them, things he
13 was selling to them, that they had rejected and not paid
14 him for.

15 In fact, I asked him if I could have some of
16 those pages, and he declined because he was still hoping
17 that he could sell them to them again later.

18 BY MR. QUINN:

19 Q Now you said that -- first of all, remembering
20 back to when you were 17 years old, would you tell the
21 record precisely what the materials were that you claim
22 were submitted and rejected.

23 A Well, there were several categories of these.
24 Jack had drawn up a number of ideas for new characters.
25 He had done these beautiful little presentation pieces,

1 and he had shown them to Marvel and not received the
2 kind of offer that he felt was appropriate for them.

3 He had also prepared sketches of a revamp of
4 the character Thor, which he was working on, he was
5 doing stories of Thor for them at the time, a lot for
6 Thor.

7 And he had an idea for revamping the Thor
8 strip with a whole new approach, and he had prepared
9 sketches to show what that would look like, and he had
10 sent them to Marvel, and Marvel had said, "Well, we want
11 to do this approach, but we want to just pay you the
12 same rate we're paying you all along."

13 He said, "No, if you want to revamp Thor by my
14 new idea, I want a better deal for that," and they had
15 declined to pay him for that.

16 He also had pages for comic books that he had
17 recently drawn that Marvel had purchased from him where
18 they had rejected certain pages and sent them back to
19 him, and they had not paid him for them, he said.

20 And he had a pile of approximately a hundred
21 of those pages, which I thought were, you know,
22 beautiful, wonderful work, and I asked him, "Oh, could I
23 have one of those?" And then I asked him -- and he
24 said, "Well, no, I might find a way to sell them to him
25 later."

1 Q "Evanier," I'm sorry, Mr. Evanier.

2 As you sit here today, can you recall the
3 names of any of the characters that Kirby had sketched
4 for Marvel that they didn't accept?

5 A Um --

6 MR. TOBEROFF: Misstates his testimony.

7 THE WITNESS: Yeah, my testimony was that Jack
8 had -- well, we're compounding some things here.

9 Jack had a pile of pages that had been
10 rejected for Thor comics or Captain America comics or
11 Fantastic Four comics, other stories, materials that he
12 was -- books in which his work was regularly appearing
13 at the time.

14 He had that pile of pages. So that would be
15 pages with Captain America and Thor and the Fantastic
16 Four as such on them.

17 He had another pile of pages of present
18 presentations of material -- new characters. Some of
19 those characters later, when he used those concepts in
20 other comics at DC, for example, one of the characters
21 was known as Darkseid, D-a-r-k-s-e-i-d; one of them was
22 known as Mr. Miracle; one of them was known as Orion,
23 O-r-i-o-n; one of them was known as Metron, M-e-t-r-o-n.

24
25 And he had submitted some of those to Marvel.

1 I don't know specifically which ones, but he said that
2 he had shown these to Marvel, people at Marvel, and they
3 had said, "Oh, we want to publish those," and he said,
4 "Well, you're not getting these for the same crummy page
5 rate you pay me. I must have a better deal for these,"
6 and they said, "No, we're not going to give you anything
7 above what we pay you now per page."

8 He also had to the pile of presentations for a
9 new version of Thor, and he wanted -- and he also had a
10 presentation for a new version of Captain America. And,
11 again, he submitted those to Marvel, or showed them to
12 the people there, and they said, "We want to use this
13 material, we just don't want to pay you any more for
14 it."

15 So the use of -- my reticence to use the word
16 "reject" here is because some of that material was
17 desired by Marvel, they just couldn't make a deal or
18 were unwilling to make a deal. Some of the material was
19 rejected. So I think I'm answering your question.

20 Q Fine. And you know what, I'm going to
21 separate out the two categories. One category is the
22 sketches and other ideas which Marvel you said -- and
23 this is all based on what Mr. Kirby told you; correct?

24 A What he told me and what he showed me. And I
25 later discussed some of this with people at Marvel also.

1 Q Who did you discuss this with, people at
2 Marvel?

3 A With Stan Lee, and I talked to Stan a lot
4 about Jack over the years and even when I first met him.

5 Q And did you specifically discuss with Stan Lee
6 these particular characters or sketches that you just
7 identified?

8 A No, I did not discuss those specifically with
9 Stan.

10 Q And other than what you just testified, can
11 you remember the names of any other characters that fall
12 into the category of having been discussed with Marvel,
13 and they indicated they weren't willing to pay anything
14 additional for them?

15 A There was a character called The Black Sphinx.
16 Sphinx as in "Sphinx." There was a character called
17 Lightray, all one word. L-i-g-h-t-r-a-y.

18 There were some unidentified characters that
19 didn't have names. They were designs that he wanted to
20 incorporate -- or he hadn't named them yet.

21 There was a great robot character that --
22 really impressive design of a robot that I don't think
23 he named.

24 Q And none of these were ever published by
25 Marvel; correct?

1 the artwork he submitted?

2 A Yes. He would also just reject, say, "I don't
3 like the end of this story. Do something different with
4 it."

5 Q And, in fact, Mr. Kirby would then go back and
6 make a change or come up with a new ending; is that
7 fair?

8 A Yes, that is correct.

9 I might also add that Jack also complained to
10 me that pages were being rejected, but not returned to
11 him; that the art was -- he was not getting the pages
12 back that he felt he was owed.

13 Q When did he tell you this?

14 A 1969, when I first met him.

15 Q All this time when you were 17 years old?

16 A Yes.

17 Q Okay.

18 A And he subsequently talked about it in later
19 years.

20 Q And it's correct, is it not, that after the
21 changes were made they would be resubmitted for approval
22 by Mr. Lee?

23 A Jack would redo the material and send it back.

24 Q And when he redid the material and sent it
25 back, he would get his page rate; correct?

1 A For the -- yeah, for the -- yes.

2 Q For the redone material.

3 A Well, he got the page rate for the story. I
4 mean, Jack's complaint was that when he -- if he had to
5 draw 26 pages for a 20-page story, he was only paid for
6 20 pages.

7 Q And that's a complaint he made to you?

8 A Yes. And his wife complained about that a lot
9 also.

10 Q Let me see if I have this right. He submits a
11 story, and Lee says to him, "You got to change four
12 pages" --

13 A Yes. Excuse me, let me amend that. I don't
14 know that Stan would specifically say, "Change four
15 pages --"

16 Q Okay.

17 A -- he might just say --

18 Q "I don't like this"?

19 A -- "I don't like the ending of the story. I
20 want something else."

21 Q Fine. And Kirby would go back, redo the
22 ending of the story, resubmit it and then get paid for
23 the story?

24 A Correct.

25 Q Okay. Now when did you meet Stan Lee for