

EXHIBIT E

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVEL WORLDWIDE, INC.,)
MARVEL CHARACTERS, INC.,)
and MVL RIGHTS, LLC,)
)
)
) Plaintiffs,)

vs.

) Case No.
) 10-141-CMKF
)
)

LISA R. KIRBY, BARBARA J.)
KIRBY, NEAL L. KIRBY, and)
SUSAN N. KIRBY,)
)
)
) Defendants.)

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REVISED

PARTIALLY CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER
(Pages 66 through 70)

VIDEOTAPED DEPOSITION OF LAWRENCE LIEBER
New York, New York
January 7, 2011

Reported by:
KATHY S. KLEPFER, RMR, RPR, CRR, CLR
JOB NO. 35338

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January 7, 2011

Partially confidential videotaped deposition of LAWRENCE LIEBER, held at Weil Gotshal & Manges, 767 Fifth Avenue, New York, New York, before Kathy S. Klepfer, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Certified Livenote Reporter, and Notary Public of the State of New York.

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

WEIL, GOTSHAL & MANGES

Attorneys for Plaintiffs

767 Fifth Avenue

New York, New York 10153

BY: RANDI W. SINGER, ESQ.

SABRINA A. PERELMAN, ESQ.

TOBEROFF & ASSOCIATES

Attorneys for the Defendants

2049 Century Park East, Suite 2720

Los Angeles, California 90067

BY: MARC TOBEROFF, ESQ.

ALSO PRESENT:

ELI BARD, Marvel Entertainment

MATTHEW SMITH, Legal Video Specialist

1 L. Lieber

2 question.

3 A. Okay.

4 Q. How did you get paid for the work that
5 you were doing for Marvel, 1958 to 1965?

6 A. It was the same before. It's vague.
7 I put in a voucher. I had a certain page rate,
8 which I don't recall exactly.

9 There were various page rates. I did
10 not get paid as much as Stan, you know, his
11 rate. And I put in a voucher. I assume I --
12 I -- I must have put it in and given it to
13 Stan's office, perhaps his secretary or
14 somebody, I think I did, and then they paid me
15 and I -- I don't remember.

16 I remember being -- I spent a lot of
17 time in the office then, and I remember being in
18 the office and Milly, who was the bookkeeper,
19 would sometimes come -- would come around and
20 give out checks to the people on staff, I
21 believe, and also to freelancers. Or perhaps
22 the freelancers had a different hour or
23 different day, I don't know.

24 I just remember people saying
25 sometimes, "Oh, you just missed Milly," and if

1 L. Lieber

2 Q. You mentioned that you have never been
3 deposed in a lawsuit before.

4 A. No.

5 Q. Have you ever submitted a, what we
6 call a declaration or affidavit in connection
7 with a lawsuit?

8 A. No.

9 Q. Do you know what a declaration is?

10 A. I would imagine it's a statement of
11 some kind that you sign or you write. And so,
12 no, not that I recall.

13 Q. Did you -- were you ever interviewed
14 in connection with any lawsuit previously?

15 A. No. No. The only, and this isn't
16 interviewed, but, no, no, no, no, no.

17 Q. Moving on to your -- a new subject --
18 career at Marvel, you testified that you began
19 doing freelance work for Marvel in approximately
20 June 1958; is that correct?

21 A. Yes.

22 Q. And you were writing scripts?

23 A. Yes.

24 Q. And those scripts were purchased by
25 Marvel?

1 L. Lieber

2 A. Yes.

3 Q. You also at times did artwork?

4 A. Yes. Yes.

5 Q. And that artwork was also purchased by
6 Marvel?

7 A. Yes.

8 MS. SINGER: Objection to form.

9 Assumes facts.

10 And now this is the part where I ask
11 you same thing he asked you: If you can
12 just give a pause so if I have to jump in
13 with an objection.

14 THE WITNESS: Oh, I didn't -- I'm
15 sorry.

16 MS. SINGER: That's okay.

17 THE WITNESS: I didn't hear. I'm --

18 MS. SINGER: No worries. No worries.

19 THE WITNESS: I'm trying to think of
20 the answers so much and I -- yeah, I'll
21 wait.

22 Q. During all the time you did work with
23 Marvel, did you have a written contract with
24 Marvel?

25 A. No.

1 L. Lieber

2 MS. SINGER: Good work. Good pause.

3 Q. When you did free -- when you did
4 freelance work between 1958 and 1964, you did
5 not have a written contract, correct?

6 A. No.

7 Q. Actually, I said "correct," so your --

8 A. Yes, it's correct.

9 MS. SINGER: You have to give a pause
10 so he can object to his own questions too.

11 Q. Now, when you submitted your freelance
12 work to Marvel, whether it's script or artwork,
13 was it -- was it your understanding that Marvel
14 was obligated to purchase that material from
15 you?

16 MS. SINGER: Objection. Assumes
17 facts.

18 A. My understanding they were not
19 obligated.

20 Q. And was it your understanding that
21 when they did buy your work, that they owned all
22 rights to it?

23 MS. SINGER: Objection. Assumes
24 facts.

25 A. Yes.

1 L. Lieber

2 Q. And that's because they had purchased
3 it from you?

4 MS. SINGER: Objection.

5 A. Yes.

6 Q. Now, during the period when Marvel was
7 buying your work, did you submit any work,
8 whether scripts or artwork, to any other
9 publishers?

10 A. No.

11 Q. Do you know of other, any other
12 writers or artists who are working freelance, on
13 a freelance basis with Marvel, who at that time
14 were also submitting freelance work to other
15 comic book publishers?

16 A. I -- I'm not certain. I know there
17 were artists who work for other companies. I'm
18 not certain whether it was at the same time they
19 were working for Marvel. There were artists and
20 writers who had worked -- I was almost the only
21 one in the profession who couldn't work for
22 another company, which, in this case, the most
23 likely one would have been DC, because Stan was
24 my brother. And -- should I go on?

25 Q. Please.

1 L. Lieber

2 A. And once I tried, because I couldn't
3 get work from Marvel and I sent some samples of
4 my -- not original artwork because I didn't have
5 it, but I sent some comic books over to DC
6 through a friend of mine, Frank Giacoia, who had
7 worked for them, they knew him. And they didn't
8 give me the work, and Stan had said he wasn't
9 surprised that they didn't because they would be
10 suspicious of me working for them while I'm Stan
11 Lee's brother.

12 So I always felt I couldn't get work
13 from any other company, and some years later, I
14 met the man who was the, I guess, art director
15 there and we were -- we were chatting, and I
16 happened to bring this up about I sent work over
17 and I never got it, and he looked at me in
18 surprise and said, "You mean that was on the
19 level?" I said "Yes, I needed work."

20 So, so that was it for me. For
21 others, I don't think that was the case. They
22 could go from one to another, and some of the
23 artists would actually play, you know, one
24 company against another in the sense of saying,
25 "Oh, I've been offered more money there," so if

1 L. Lieber

2 the art director wanted to keep him, he had to,
3 you know, give him -- give him a little more.

4 Q. Now, again, during the period 1958 to
5 '65, where were you living at the time?

6 A. I was living in Tudor City.

7 Q. And is that where you did your
8 freelance work?

9 A. Yes. I had a furnished room in
10 somebody's apartment. I did my freelance work
11 there.

12 Q. And did you pay for your own supplies,
13 whatever they were?

14 A. I believe so, yes.

15 Q. So your own paper and pencils and
16 writing implements?

17 A. Yeah, I -- yeah, I guess.

18 Q. Did you work on a typewriter?

19 A. Yes.

20 Q. And did you pay for that typewriter?

21 A. Yes, I -- I remember I went with Stan
22 and I bought it once. We went to a typewriter
23 store on Lexington Avenue and I paid for it,
24 sure.

25 Q. Now, as a freelancer, if your work was

1 L. Lieber

2 rejected, you wouldn't be paid for that, would
3 you?

4 MS. SINGER: Objection.

5 A. I felt that they didn't have to pay me
6 for it. It depends. And usually for me, as I
7 saw it, work wouldn't be rejected because they
8 know who they're dealing with and they know what
9 you can do.

10 But they, if they just wanted you to
11 make corrections, they might say, in later years
12 anyway, I think they would have said, "Well, put
13 in a voucher," if they wanted to be nice, "Put
14 in a voucher for production work. You're doing
15 a little production work. Change this or change
16 that."

17 It didn't happen to me usually, except
18 one instance where I had to do things and I
19 wasn't paid for it.

20 Q. What is the -- what is the instance
21 you can recall where you had to redo something
22 and weren't paid for that?

23 A. It was after I had done The Rawhide
24 Kid and I was trying, trying to earn a living
25 doing some drawing of covers and also writing,

1 L. Lieber

2 and I wrote various stories.

3 Well, Marvel was at that time putting
4 out black and white, what we call black and
5 white books. And I don't remember the specific
6 story, but I was working on something and maybe
7 a zombie book or a horror book or some such
8 thing, and I -- I was given -- I had to make up
9 a story.

10 I made up a plot and I brought it in
11 to the editor, and the editor thought it wasn't
12 good enough and told me to go back and rewrite
13 it, the plot, work on it some more, develop it.
14 So I went back home and I did so, and I came
15 back and I think either he didn't like it a
16 second time or he accepted it, but there was
17 another story that he made me redo again.

18 My -- the reason I remember is that I
19 was worried about paying my rent, and I
20 wondered, if he doesn't like this, how often do
21 I have to keep redoing this plot. Finally, you
22 know, he did like it and I was allowed to write
23 the script and I got paid for the script.

24 Q. So you got paid for the script but you
25 weren't paid for your redoing the plot a number

1 L. Lieber

2 of times?

3 A. No. Because if I had been, I might
4 not have been so concerned about my expenses.

5 Q. Now, when you were paid by the page
6 for the purchase of your work, did they take out
7 any taxes from your checks?

8 MS. SINGER: Objection.

9 A. No.

10 Q. Did they -- did Marvel provide you
11 with any paid vacation?

12 A. No.

13 Q. None whatsoever?

14 A. No. None whatsoever.

15 Q. For all the time you worked there?

16 A. That I did freelance work for them?

17 No.

18 Q. Did Marvel provide you with any health
19 insurance or health benefits during the time you
20 worked there?

21 A. Yes.

22 Q. When was that?

23 A. Years later.

24 Q. So not in the period 1958 to 1965?

25 A. No. No. No. No. I don't think so,

1 L. Lieber

2 A. Yes.

3 Q. Moving to a different subject, you
4 testified earlier that it was your recollection
5 that there were legends on the back of checks
6 you received from Marvel for your freelance
7 work?

8 A. Writing on the back, yes.

9 Q. And we'll just call that writing
10 legends for purposes --

11 A. Okay, I didn't know the term. Yeah,
12 something printed.

13 Q. And is it fair to say you don't know
14 when those legends first started appearing?

15 MS. SINGER: Objection.

16 A. I think I had them at the very
17 beginning when I started writing. I think I had
18 them then because I -- I don't recall thinking
19 there was something new, but perhaps, perhaps
20 they weren't there. So I don't really know.

21 Q. And was it your understanding that the
22 import of the writing on the back of these
23 checks was that by signing the check and
24 accepting payment for your work, you were
25 transferring over to Marvel all rights in your

1 L. Lieber

2 work?

3 MS. SINGER: Objection.

4 A. Yes, it was my understanding.

5 Q. And do you recall -- strike that. On
6 the checks you received for your freelance work,
7 did they have language stating that your work
8 was work made for hire?

9 A. No. No.

10 Q. When is the first time you heard the
11 phrase "work made for hire," if any?

12 A. The first time. I don't know which
13 came first, but I've only heard it recently in
14 the last year or so, once from you using it to
15 me in a conversation, and then I -- I looked up
16 the case out of curiosity on the Internet and
17 they were talking about it and they mentioned it
18 as being an important thing or was it work for
19 hire or not.

20 And then there was -- maybe not there,
21 but I know I -- maybe it was -- it was there and
22 also in the New York Times they had an article
23 about this case some time ago, and in the
24 article they mentioned again what it was about.
25 I -- I don't understand the things very well,

1 L. Lieber

2 A. Well, this must have been a Hulk story
3 and I have the originals at home. I don't
4 remember when I first got them. I don't
5 remember the year, but I obtained them when they
6 were discarded.

7 Q. Can you tell me how you came into
8 possession specifically of these drawings?

9 A. They -- I was in the office, the
10 Marvel office. It probably was at -- no, it
11 must have been at the -- on 57th Street when
12 they were there on Madison, and Jack Kirby came
13 out of Stan's office from -- and from the
14 direction of Stan's office. He may, probably,
15 he had come out of Stan's office, and he seemed
16 upset. And he took the drawings, he had these
17 drawings, he took them and he tore them in half
18 and he threw them in a trash can, a large trash
19 can.

20 And I, since I was such a big fan of
21 his, I knew that at the end of the day, they
22 would be discarded, you know, and would be
23 trash. And I -- I saw it as an opportunity to
24 have some of his originals to keep, to look at
25 and study, and so I took them out of the trash

1 L. Lieber

2 can.

3 And there were other people in the
4 office, but nobody else seemed to have noticed
5 this, which I was glad about, and I just took
6 them, walked over to where I was sitting and put
7 them in my case. And I took them home and I
8 taped them together, you know, I taped them all,
9 and I kept them and I've kept them all these
10 years to look at them and, as I say, to study
11 them.

12 Q. If you look at the center of the page,
13 you see a line going through the center of the
14 first page, the third, fourth, fifth and sixth
15 pages?

16 A. Yeah.

17 Q. Do you see that line?

18 A. Yes, I see the line.

19 Q. Is that because those pages were
20 originally ripped in half?

21 A. Yeah, that's where it was ripped and I
22 have tape on them.

23 Q. And the black marks on the left and
24 right-hand margins --

25 A. Scotch tape.

1 L. Lieber

2 Q. -- in this photostat copy are scotch
3 tape?

4 A. Yes.

5 Q. Have you scotch-taped them together?

6 A. Yes.

7 Q. What was your understanding of why or
8 your impression of why Jack Kirby was upset when
9 he tore these up and threw them in the trash?

10 A. I didn't know. I didn't speak to him.
11 I assumed, seeing a man walk out of the office
12 and tear his artwork up, that -- or I thought
13 probably they were rejected and he was annoyed
14 or disgusted. I didn't, you know, and I didn't
15 know what it was. I didn't hear anything, so I
16 just -- that was my first assumption, but I
17 didn't know.

18 (Lieber Exhibit 6, an excerpt from
19 Jack Kirby Collector Forty-One, marked for
20 identification, as of this date.)

21 MR. TOBEROFF: I would like to mark as
22 Lieber Exhibit 6 an excerpt from Jack Kirby
23 Collector Forty-One.

24 A. Oh, yes.

25 Q. If you would please turn to page 71.