

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

ROGER CLEVELAND GOLF)	No. 2:09-cv-02119 MBS
COMPANY, INC.,)	
)	
Plaintiff,)	
)	
vs.)	
)	Deposition of
CHRISTOPHER PRINCE,)	
SHELDON SHELLEY, PRINCE)	BRIAN R. COLE
DISTRIBUTION, LLC, and)	
BRIGHT BUILDERS, INC.,)	
)	
Defendants.)	

* * *

October 12, 2010

1:03 p.m.

Avanti Videoconference Center
299 South Main, Suite 1300
Salt Lake City, Utah 84111

* * *

Letitia L. Meredith
-Registered Professional Reporter-
Certified Shorthand Reporter



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• A TRADITION OF QUALITY •

A P P E A R A N C E S

For Plaintiff: Jeff Patterson
John C. McElwaine
NELSON MULLINS RILEY
SCARBOROUGH
151 Meeting Street
Sixth Floor
Charleston, South Carolina 29401

For Defendant Bright Builders:

Paul Doolittle
JEKEL DOOLITTLE
P.O. Box 2579
Mount Pleasant, South Carolina 29464

* * *

I N D E X

EXAMINATION

PAGE

By Mr. Patterson

3

EXHIBITS

No. 9 2009 Tax Return, Bright Builders

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called as a witness on behalf of the plaintiff, being
duly sworn, was examined and testified as
follows:

BY MR. PATTERSON:

A. Brian Robert Cole.

Before we get started I just want to go over a few ground rules, and the first thing I want to ask you is whether or not you've ever been deposed before?

Q. This probably works like that one. I will be asking you a series of questions. The only oddity

1 is we're not all in one conference room. I'm in a
2 different location than you. The court reporter will
3 type down all of my questions and all of your answers
4 and any objections Mr. Doolittle will make during the
5 deposition. If at any point during the deposition I
6 ask you a question and you can't hear me or it's
7 garbled or it doesn't make sense to you, please ask
8 me to rephrase it and I'll be glad to do so. Okay?

9 A. Okay.

10 Q. If you need a break during the deposition,
11 hopefully we'll be done relatively quickly, but if
12 you need a break during the deposition, feel free to
13 ask for one and we can take a break so you can get a
14 drink of water, bathroom break, whatever the case may
15 be.

16 A. Okay.

17 Q. During the deposition, Mr. Cole, the court
18 reporter may be handing you some exhibits to review,
19 and they should match the documents that I have here
20 and that Mr. McElwaine and Mr. Doolittle have in
21 Charleston, so hopefully we can stay on the same
22 page. If you have any confusion about any of the
23 documents, let me know. I want to ensure you
24 understand what document I'm talking about and I
25 understand what document you're talking about. Okay?

1 A. All right.

2 Q. Mr. Cole, I understand that you were
3 formally employed by Bright Builders, Inc.; is that
4 correct?

5 A. Technically Bright Business Center, yes.

6 Q. Okay. What was the type of the employment
7 by you with Bright Business Centers?

8 A. I was doing some contract work for Bright
9 Builders, first of all, from about sometime in
10 October of '08 until July of '09, and then I was
11 employed from August of '09 until August of '10.

12 Q. Okay. What type of work were you doing for
13 Bright Business Centers during either one of those
14 time frames?

15 A. Primarily reviewing the accounting and
16 getting the books in order, there were several
17 problems when I came onboard as far as what had been
18 done previously, so we needed to catch up '08 and do
19 '09 obviously and '10. So primarily financial and
20 human resources related work.

21 Q. Are you an accountant by trade?

22 A. I am not.

23 Q. Have you had any accounting classes,
24 background, training?

25 A. Yes. Business school.

1 Q. Did you get a bachelor's degree in
2 accounting?

3 A. I have a bachelor's degree in business
4 management.

5 Q. During the time you were employed by Bright
6 Business Center, did you perform accounting and other
7 work for the related entities -- Bright Builders,
8 Inc., and Sherpa Publishing, LLC -- as well as Bright
9 Business Center?

10 A. Yes.

11 Q. Who paid your salary from August 2009 to
12 August 2010? What entity paid your salary?

13 A. Bright Business Center.

14 Q. Do you know if Bright Business Center would
15 charge back the services you performed for the other
16 entities? Did they recoup any the money for your
17 salary from any of the other entities you performed
18 work for?

19 A. Yes, all of them.

20 Q. Was there a specific agreement between the
21 companies as to how your time and costs would be
22 allocated?

23 A. Not that I'm aware of, no.

24 Q. Who decided how that time and cost would be
25 allocated amongst the related entities?

1 A. I did.

2 Q. You indicated, I think, at the time you
3 came on with Bright Business Center that there were
4 some accounting and book issues that needed to be
5 brought in order. Just tell me generally what the
6 issues were that you were dealing with when you
7 started with Bright Business Center in October of
8 2008.

9 A. Basically the books hadn't been reconciled
10 as far as bank accounts and credit cards, et cetera,
11 for some time, for the entire year of '08 at that
12 point. There were problems with existing CEO and
13 partners, et cetera, going on with the business, and
14 everything needed to be caught up and taken care of
15 in order to prepare the taxes for '08, which was done
16 obviously over time in '09. And basically everything
17 brought into proper order so that they could assess
18 the financial situation of the company plus obviously
19 maintaining ongoing business procedures and practice.

20 Q. Did you say, Mr. Cole, that there were some
21 problems with the existing CEO?

22 A. The CEO was there, but business was
23 declining. Revenues were declining. And he had
24 hired various people to do accounting, and they
25 weren't doing a very good job and he wasn't aware of

1 that until I got involved and took a look at things
2 and discovered the problems that were there, and so
3 we moved forward from there.

4 Q. Who was the CEO at that time?

5 A. Ty Hawkins.

6 Q. And was he the CEO of Bright Business
7 Center or Bright Builders, Inc.?

8 A. I couldn't tell you for sure. He was over
9 the entire organization.

10 Q. Okay.

11 A. As far as all the entities, he was employed
12 by and salary paid through Bright Business Center.

13 Q. Was he actually the one making the
14 decisions, the business decisions for all the
15 entities at that time regardless of who his technical
16 employer was?

17 A. Yes.

18 Q. Did he end up leaving Bright Business
19 Centers?

20 A. Yes. He resigned in December of '08.

21 Q. Who took over after he resigned?

22 A. Greg.

23 Q. When you came to work in August of '09 for
24 Bright Business Center as an employee, was that a
25 full-time job?

1 A. Yes, it was.

2 Q. Did you have any accountants or employees
3 working directly for you at Bright Business Center?

4 A. I had just one assistant -- let's see --
5 that was there previously, and then the bookkeeper
6 that was there or accounting person that was there,
7 he stayed until December, was let go at that time.
8 And then we had an assistant that was there through
9 '09 until July and then hired a new person that was
10 an assistant from July of '09 to the present.

11 Q. I understand you left Bright Business
12 Center in August of this year; is that correct?

13 A. That's correct.

14 Q. And are you presently employed anywhere
15 else?

16 A. Not presently, no.

17 Q. And what was the reason for your departure
18 in August of 2010?

19 A. The declining revenues as well as Greg just
20 decided to move in a different direction, so we had
21 been taking half salary since June, and basically
22 declining revenues and have to make ends meet.

23 Q. Who's performing the accounting functions
24 now for Bright Business Center and related entity?

25 A. The bookkeeper, Virginia Curtis, that's

1 been there for over a year now, and then Greg also
2 contracted with an accounting firm to assist.

3 Q. Is that accounting firm Mark Mueller's
4 firm?

5 A. No. Mark Mueller has done the tax returns
6 each year, but he just does taxes.

7 Q. Okay. Who was the firm who the contract is
8 with?

9 A. I'm not aware of their name.

10 Q. Okay. Mr. Cole, I understand that you
11 actually had some involvement in gathering documents
12 in connection with discovery in this case?

13 A. I did.

14 Q. And I'm going to ask Letitia, if you have
15 the exhibits from the first deposition, I want to
16 show Mr. Cole Exhibit No. 6.

17 Have you had to chance to look at that
18 exhibit, Mr. Cole?

19 A. Okay.

20 Q. The first page is a document which says
21 "Images currently residing in Ecommerce Builder
22 Account 170729," and the rest of the pages appear to
23 be web server statistics?

24 A. Correct.

25 Q. Do you recognize at least the format that

1 these documents are in?

2 A. Uh-huh.

3 Q. The first page it appears to be a list of
4 images that were on a website associated with this
5 account number; is that correct?

6 A. Yes. That's my understanding. I was just
7 provided the list.

8 Q. Who provided you with the list?

9 A. Either Noel, who is the IT person there at
10 Bright Builders, or Greg.

11 Q. If you read down the right side, it has a
12 list of number of product images.

13 A. Correct.

14 Q. Nike golf image, mizuno image, and if you
15 go down, you'll see cleveland golf image?

16 A. Uh-huh.

17 Q. Does that indicate that on the websites
18 associated with that account number, those were
19 images that were on the website?

20 A. These are images that were stored in the
21 builder. Whether they were used on the website or
22 not, I couldn't tell you. So they were stored on our
23 servers or on the Bright Builder servers, but whether
24 they are in use or whether they were in use, it's
25 hard to say, or I couldn't tell you.

1 Q. All you can say for sure based on this
2 list, for instance, it was a Cleveland Golf image
3 stored on your servers in connection with this
4 account number?

5 A. Right. On the servers that Bright Builders
6 has. So that's all I would know, and that's the
7 title the image was given.

8 Q. Looking at the rest of the documents, the
9 web server statistics.

10 A. Yes.

11 Q. Just looking at the second page of the
12 exhibit which says "web server statistics," we
13 discussed this a little bit with your brother and I
14 just want to follow up with you on it. It appears
15 that if you look under general summary --

16 A. Uh-huh.

17 Q. -- "Successful requests, 1,625," do you see
18 that?

19 A. Yep.

20 Q. Does that relate to all of the sites
21 associated with the Account No. 170729?

22 A. I am not familiar with the web server
23 statistics at all, so I couldn't even tell you how to
24 interpret these numbers for you.

25 Q. Okay.

1 A. I printed them off.

2 Q. Do you know who put them together?

3 A. I printed them off based on being shown how
4 to do that and provided them to you.

5 Q. Who showed you how to print them off?

6 A. Probably Noel as well. He's the IT
7 manager.

8 Q. Mr. Cole, Exhibit No. 7 appears to be a
9 2008 tax return along with some profit and loss and
10 balance sheet statements.

11 A. Okay.

12 Q. It appears these would have been prepared
13 in -- actually prepared and submitted I guess in
14 2009, but this would have been a part of the time
15 that you were with the company -- is that correct? --
16 working on a contract basis?

17 A. That's correct. They were actually
18 prepared in the fall of '09 for the October 15
19 deadline because we extended due to the situation.

20 Q. Okay. Just looking at the first page, I
21 just want to ask you some questions about the tax
22 return, and when I ask you these obviously I
23 understand you don't memorize down to the penny of
24 these details, but I just want to ask general
25 knowledge questions. If you look at line 1A, which

1 has gross receipts of 3.4 million, does that include
2 in that revenue number -- is that just Bright
3 Builders, Incorporated, revenue or does that include
4 revenue of Sherpa Publishing, HammerTap, Magniphy,
5 Bright Business Center, and Bright Marketing?

6 A. Just Bright Builders.

7 Q. Did those other entities file their own tax
8 returns?

9 A. Yes.

10 Q. All right. Line 2 is cost of goods sold,
11 1.279 million.

12 A. Uh-huh.

13 Q. What goods would Bright Builders have
14 purchased to sell -- or I guess I should ask what
15 does that number represent since Bright Builders was
16 primarily a service provider? What does that
17 reflect, costs of goods sold?

18 A. I'd have to see the P&L, but the bulk of
19 it's going to HammerTap. HammerTap has to be a
20 separate entity due to the eBay agreement, and it
21 wholesales its services or product to Bright Builders
22 and other resellers.

23 Q. So the right to use HammerTap software, the
24 cost for that is a majority of the 1.279 million as
25 you recall?

1 A. If you look at the -- would be the majority
2 by any means. It says 136,800 was the API wholesale
3 costs, so that's how much went to HammerTap, and then
4 whatever else the account has put in there. I would
5 have to review it to see because I did review this
6 with Mark Mueller in preparing your discovery
7 questions, but he's got a couple things he puts on
8 there. I believe it's on the detail schedule on the
9 tax return. I just have to find it here.

10 If you look at page two Schedule A, the
11 purchases 136,800. Then he's done Statement 3, which
12 is the 1.143 million. So we just need to find the
13 Statement 3, and that will tell you.

14 So Statement 3 he's put bank charges in
15 there, coaching, contract labor, domain names,
16 internet service, marketing, software supplies,
17 webinars. So that's broken out for you on
18 Statement 3.

19 Q. Let me ask some questions about first the
20 136,800.

21 A. Yep.

22 Q. It's listed under Schedule A as a purchase.

23 A. Yep.

24 Q. Who was that paid to?

25 A. HammerTap.

1 Q. Okay. Then we have the 1.1 million, which
2 is reflected on Statement 3. And bank charges, what
3 would the 134,000 reflect as a bank charge?

4 A. That would be mostly credit card fees. So
5 if you go to the P&L, you'll see the 135,188. So
6 he's pulling forward a little bit -- it's off by a
7 \$1,000 or \$600.

8 Q. So looking back at Statement 3, coaching,
9 who is coaching? What is that \$510,000? Who was
10 that paid to?

11 A. This would be in 2008 when they were doing
12 coaching, and they have contract labor of 93,000, the
13 payroll, and I'm not sure what the other expenses are
14 without looking at the detail. So they were
15 coaching-related expenses.

16 Q. What I'm trying to understand is under cost
17 of goods sold, that's all these itemized issues, we
18 have 510,000 entry for coaching.

19 A. Right.

20 Q. I'm trying to figure out who was that paid
21 to? Is that paid to employees? Is that paid to
22 another company for the coaching services? What does
23 that reflect?

24 A. Without looking at the detail in
25 QuickBooks, I couldn't tell you. Because I wasn't

1 there when they did coaching. I'm not familiar with
2 the coaching program. The contract labor was
3 contracted people who did coaching either on a
4 part-time or full-time basis, I believe. Payroll
5 would have been payroll-related issues as far as
6 employees that were employed by Bright Builders to do
7 coaching. And then Coaching Expenses Other, I'd have
8 to look at the detail on it, and I don't have that in
9 front of me, I believe.

10 Q. Do you know if that detail is still in
11 existence?

12 A. Oh, yeah. I think we provided it to you in
13 the discovery documents possibly.

14 Q. This is all we've gotten so far. We got
15 other documents yesterday, but those represent other
16 years.

17 A. Okay. Yeah, I mean just a subcategory that
18 could easily be printed from QuickBooks.

19 Q. Going back to Statement 3, so you've got
20 coaching 510,000, then underneath contract labor,
21 89,273. What did the contract labor -- what does
22 that reflect?

23 A. Let's see. Okay. So he took all of the
24 professional fees or a portion of them it looks
25 like -- if you look under Professional Fees on page 2

1 of the P&L, contract labor, accounting was my
2 compensation at the time, the end of the year there.
3 Contract labor would be anybody that was contracted.
4 They had several contractors for graphic design to
5 other work that was done for the company. The India
6 Networkers were programmers contracted through
7 another company. Legal fees were paid to attorneys.

8 Q. Do you know what the legal fees were that
9 were rendered or that were performed in connection
10 with that \$19,000 bill?

11 A. Most of those legal fees were at the end of
12 2008 while I was there and they were primarily
13 related to the removal of the CEO or discussions
14 about that. He left on his own, and then also coming
15 up with a strategy to buy out the partners.

16 Q. Who was planning to buy out the partners?

17 A. Greg.

18 Q. So those were legal fees generated to
19 assist Mr. Greg Cole in coming up with a plan to buy
20 out the other partners, and these partners were
21 partners in what entity?

22 A. I don't have it in front of me, but most of
23 them were in Bright Builders. He had one partner in
24 Bright Builders, and the rest of them are in Sherpa.

25 Q. Do you know why the Bright Builders, Inc.,

1 is including in the cost of goods sold legal fees for
2 your brother's plan to buy people out of Sherpa, LLC?

3 A. I guess I don't understand the question.

4 Q. It looks like if you track through what we
5 just looked at, all of this gets wrapped into cost of
6 goods sold on Bright Builders tax return.

7 A. Correct.

8 Q. Including the 19,000 in legal fees a part
9 of which had to do with your brother coming up with a
10 plan to buy partners out of Sherpa. My question is
11 why is that included in a cost of goods sold on
12 Bright Builders tax returns? That doesn't seem to be
13 in any way related to a cost of a good being sold by
14 Bright Builders.

15 A. You'd have to ask the tax account. That's
16 where he put it.

17 Q. And I understand you didn't prepare the
18 return. I'm just asking if you know.

19 A. Yeah. I discussed why he did certain
20 things and good question. Just made sure they tied
21 out with the P&Ls.

22 Q. Going to the line Item No. 7 on page 1 of
23 Exhibit 7, compensation of officers.

24 A. Yes.

25 Q. This reflects 40,839. Do you know who

1 received that payment?

2 A. I would guess that that would be Greg and
3 probably just Greg at that point. He was employed by
4 Bright Builders until May of '08, and they moved all
5 of the -- I wasn't there, but they moved all of the
6 payroll to Bright Business Center by June of '08, so
7 that's why it's there.

8 Q. Okay. Number 8 is salaries and wages.

9 A. Correct.

10 Q. Of 1.764 million. How many employees did
11 Bright Builders, Inc., have in 2008?

12 A. Couldn't tell you offhand.

13 Q. This 1.764 million, would that be only
14 containing wages of people who worked for Bright
15 Builders, Inc.?

16 A. Correct. Up until May of '08. Bright
17 Builders didn't do any payroll after May of '08.
18 They just paid Bright Business Center under the
19 agreement there.

20 Q. So after May of '08, this number should be
21 zero?

22 A. Correct.

23 Q. So this 1.764, that really represents only
24 salaries and wages through May of '08 because there
25 wouldn't have been any after May of '08?

1 A. That's correct?

2 Q. And that 1.764 million, that's actually a
3 deduction off of the total income; correct?

4 A. Correct.

5 Q. If you'll look at page 4 of the tax return,
6 page 4 of Exhibit 7 --

7 A. Okay.

8 Q. I am just looking at buildings and other
9 depreciable assets. I see \$423,716. Do you see that
10 on 10A?

11 A. Right.

12 Q. What does that represent? Is that a real
13 estate holding of the company?

14 A. There's no real estate holdings that, to my
15 knowledge, they've ever had. It would have been
16 computers and other things like that. At one time
17 it's my understanding they had over 80 employees, and
18 so they had, you know, quite a number of computers
19 and stuff. The building was always leased as far as
20 I know. So this is just a historic number of assets
21 that were on the balance sheet that accumulated
22 depreciation.

23 Q. My question is -- that appears to be the
24 beginning of the tax year, 423,716.

25 A. Right.

1 Q. At the end of tax year, that number is
2 6,460. Where did those assets go during tax year
3 2008?

4 A. Based on the agreements, it's my
5 understanding they transferred -- most of the assets
6 were transferred to Sherpa, based on the creation of
7 Sherpa, which occurred I think in February of '08,
8 and Sherpa acquired the assets.

9 Q. So those assets went to Sherpa, to the best
10 of your recollection?

11 A. That's my understanding, yes.

12 Q. What kind of payment did Bright Builders
13 receive for transferring those assets?

14 A. I'm not familiar with that. I wasn't
15 there.

16 Q. Do you know if there was a written
17 agreement between Bright Builders and Sherpa related
18 to this transfer?

19 A. I believe so, yes.

20 Q. Do you know why the assets of Bright
21 Builders were transferred to Sherpa?

22 A. I don't.

23 Q. Do you know whether or not there was any
24 discussion of protecting Bright Builders assets by
25 moving them to another limited liability company?

1 Have you heard any discussion of that?

2 A. I haven't.

3 Q. Looking back again at Statement 3 of the
4 2008 tax return --

5 A. Okay.

6 Q. -- we talked about bank charges and
7 coaching and contract labor. There's another large
8 line item here, marketing, \$255,000?

9 A. Right.

10 Q. What would have been included in marketing?

11 A. According to P&L, \$123 in advertising, \$223
12 in commission expense, 10,000 referral, and
13 miscellaneous of 21,000.

14 Q. The 223 in commission expense, who was
15 receiving those commissions?

16 A. I would have to check the schedule. I
17 believe that some of the resellers some of their
18 sellers received those, but I am not positive. I'd
19 have to see the detail. All of this was basically
20 shutdown at the time that I arrived there, so I
21 didn't participate in any of it or see any of it in
22 operation.

23 Q. Looking at the Profit & Loss, which is at
24 the back of the exhibit --

25 A. Yes.

1 Q. Under payroll expenses, I see payroll
2 expenses other, and there's 1,030,000 entry there.
3 Do you see that?

4 A. Yes.

5 Q. What is that?

6 A. I would say that's probably payments to
7 Bright Business Center. So from June 2008 forward,
8 payments that were made to Bright Business Center
9 would have been recorded there.

10 Q. Would that be appropriately labeled as
11 payroll expense?

12 A. Probably not, but it was basically contract
13 labor at that point, but that's where we put it. The
14 chart of accounts was kind of a mess, so we had to
15 work with what we had.

16 Q. But those are not, to your knowledge,
17 salaries and wages paid to Bright Builders,
18 Incorporated, employees?

19 A. Bright Builders wouldn't have had any
20 employees at that point. They were all contracted
21 through Bright Business Center.

22 Q. Okay. But there is a place for salaries
23 and wages above that which is 649?

24 A. Right.

25 Q. The 649,000, that would reflect salaries

1 and wages paid to Bright Builders, Incorporated,
2 employees during the time of the year that they were
3 working for Bright Builders; is that right?

4 A. That's correct.

5 Q. Looking at the balance sheet, Mr. Cole --

6 A. Okay.

7 Q. -- total assets appears as of
8 December 31st, 2008 of approximately \$413,000.

9 A. Correct.

10 Q. I just want to confirm those are assets
11 that remained in Bright Builders, Incorporated, after
12 all the other assets were transferred to Sherpa, LLC?

13 A. That looks to be correct, yes.

14 Q. So at the beginning of the year there would
15 have been much greater assets in Bright Builders than
16 at the end of the year after the asset transfer?

17 A. I'd have to look at the end of the year. I
18 didn't deal with any of that.

19 Q. Well, this is the end of year, isn't it,
20 December 31st --

21 A. End of the previous year. The way I
22 understood your question, you're comparing the end of
23 2007 to the end of 2008; is that correct?

24 Q. Yeah, that's correct.

25 A. And I'm not familiar -- offhand I don't

1 know where they were at the end of 2007, so I
2 couldn't tell you.

3 Q. I thought we saw in the tax return it was
4 approximately 400,000 in assets which went out of the
5 company in 2008. I'm just trying to determine
6 whether or not this 413 here is pre-asset transfer or
7 post-asset transfer number?

8 A. It would be post. The 423,397,000, that's
9 been depreciated away. So there's really no
10 assets -- less than \$20,000 in assets were
11 transferred to Sherpa. 20,000, 30,000 tops. And
12 then you have depreciated assets.

13 Q. Didn't Bright Builders also transfer the
14 rights to the software?

15 A. I'm not familiar with that.

16 Q. If he had transfer that, wouldn't that be
17 considered an asset?

18 A. It would.

19 (Exhibit 9 was marked.)

20 Q. Mr. Cole, Exhibit 9 happens to be the 2009
21 tax return for Bright Builders, Incorporated.

22 A. Correct.

23 Q. I want to direct your attention first of
24 all to the Line Item No. 8, Salaries and Wages,
25 927,177. Isn't it true that in 2009 Bright Builders,

1 Incorporated, had no employees?

2 A. That's correct.

3 Q. Why would they have \$927,000 in salaries
4 and wages in that year if it had no employees?

5 A. That would have been have been the money
6 paid to Bright Business Center on the contract basis.
7 That's where the accountant chose to record it.

8 Q. Do you have an opinion as to whether or not
9 that's proper to record that as salaries or wages?

10 A. I don't.

11 Q. Did you ask him about that at the time?

12 A. I did not.

13 Q. Do you know how many employees Bright
14 Business Center had in 2009?

15 A. Roughly started the year with 15, ended the
16 year with about ten, give or take a few.

17 Q. Can you turn to the back, Statement 3 for
18 this 2009 return.

19 A. Okay.

20 Q. You've got Contract Labor of \$231,408. How
21 does that relate to the contract payment of 927,000
22 made to Bright Business Center?

23 A. So the contracts -- say, that again,
24 please.

25 Q. You discussed earlier that wages and

1 salaries on Line 8 really reflects contract labor
2 that Bright Builders, Incorporated, received from
3 Bright Business Center.

4 A. Correct.

5 Q. How is that different than the Contract
6 Labor reflected on Statement 3, which is 231,408?

7 A. I was looking for the P&L. Do we have a
8 copy of that, because I can tell you the detail if I
9 can see the P&L?

10 Q. It's at the back of the new documents.

11 A. You're looking for Contract Labor detail.
12 Most of this has '08 in it, not '09. Some '09. So
13 there's only a little bit of '09 in here. The rest
14 of it is '08. Most of what's here is '08. Here we
15 go. P&L, '09. I'm not seeing the P&L itself for
16 '09. It's got '08 and '09 mixed together here.

17 Q. So are you just telling me you can't really
18 answer the question without looking at additional --

19 A. Well, I mean, the question is the contract
20 labor, and I would assume that's attorneys fees and
21 accounting fees and the India guys again, same things
22 as '08 for '09. Anybody that was --

23 Q. What differentiates that contract labor
24 from the contract labor that was received from Bright
25 Business Center?

1 A. This was contract labor that was paid
2 directly by Bright Builders as opposed to just
3 payments to Bright Business Center, so the Bright
4 Business Center was recorded under the payroll
5 expense area, and everything else was recorded under
6 the contract labor area.

7 Q. Who withheld taxes for Bright Business
8 Center employees?

9 A. Bright Business Center.

10 Q. Looking at page 4 of 2009 tax return, it
11 looks like total assets decreased from 413,000 to
12 274,000.

13 A. Okay.

14 Q. In 2009, looking at this, can you tell me
15 what that reflects? Is that a true operating loss or
16 is that another transfer of assets?

17 A. No. What you have -- in looking at the
18 2008, what you have in there was a large number,
19 almost 200,000, that was carried over that was
20 accounts receivable. At that time we didn't know
21 whether it was going to payout or not. It did not.
22 So most of that was written off that year. So in '09
23 we cleared the books of all accounts receivable that
24 was not collectable.

25 Q. Who was the 200,000 account receivable due

1 from?

2 A. Several resellers.

3 Q. And why was that uncollectible? Is that
4 subject to a dispute?

5 A. All of it is subject to dispute. Several
6 of the companies are no longer in business, or they
7 are just refusing to pay.

8 Q. What was the basis for the refusal to pay?

9 A. Well, largely that they probably don't have
10 any money. I don't know for sure.

11 Q. Was there a claim that Bright Builders had
12 not performed the service that it was supposed to
13 perform?

14 A. No.

15 Q. Did Bright Builders end up filing claims
16 against any of these resellers?

17 A. No. We sent them invoices once we pulled
18 it all together, basically had to go back and rebuild
19 all the accounting for '08 to verify it was accurate,
20 and sent them all invoices. Majority of them were
21 out of business by then, so it was just too late.

22 Q. If you look at the statements, again, for
23 the 2009 tax return, on Statement 2, legal and
24 Professional, \$41,000. Do you recall what those fees
25 were associated with?

1 A. Primarily same thing as the partner
2 separation and purchase agreement.

3 Q. Do you recall who performed those services?
4 Who was the lawyer who was performing those services?

5 A. Primary attorney was Brent Armstrong here
6 in Salt Lake City, and then there was an attorney
7 that had been used by the company -- and I don't
8 recall his name offhand -- that was also involved.

9 Q. Do you know who Brent was representing,
10 which company or which individual?

11 A. Well, Sherpa, Bright Builders primarily.

12 Q. Was he also representing your brother
13 individually?

14 A. I'm not sure. I really wasn't involved
15 with much of that at that point.

16 Q. I see a telephone expense here of \$23,955.

17 A. Correct.

18 Q. Any idea what that expense relates to?

19 A. Primarily internet and telephone services.

20 Q. That's not buying telephones?

21 A. Oh, no.

22 Q. That's just long distance fees?

23 A. That's just services, yeah.

24 Q. Things of that nature.

25 At the bottom Statement 4 has an Investment

1 in Sherpa.

2 A. Correct.

3 Q. Do you see that?

4 A. Uh-huh.

5 Q. And do you know what that refers to? Who
6 made the investment in Sherpa?

7 A. I don't know for sure. Bright Builders
8 owns 25 percent of Sherpa. That's all I can tell
9 you. That was based on the documents that were done
10 by the attorneys back in February of '08.

11 Q. If you flip to the next document in this
12 exhibit, Mr. Cole, appears to be an employee list.

13 A. Okay.

14 Q. And it appears that last pay period for
15 most of these individuals was May 5, 2008. Was that
16 when they were transferred over to Bright Business
17 Center?

18 A. That is correct.

19 Q. All right. The next two pages in the
20 exhibit appear to be portions of a profit and loss
21 for Bright Builders going back to 2008.

22 A. Correct.

23 Q. On the first one there is a listing for
24 Echo, merchant fees, for 105,221. Who is Echo? What
25 is that payment reflective of?

1 A. Visa MasterCard merchant fees.

2 Q. What's a merchant fee? That's not
3 interest, is it?

4 A. No. That's the credit card processing
5 charge that the merchant provider charges so
6 roughly --

7 Q. Transaction fee?

8 A. Yeah. 2 to 3 percent, 4 percent.

9 Q. Okay. The next page again is another part
10 of a profit and loss for December 2008, and this may
11 be what you testified about earlier, but the Coaching
12 Expenses Other, is it your recollection that \$367,000
13 reflects a payment to Bright Business Center?

14 A. That I don't know. I'd have to see the
15 detail.

16 Q. Okay. If you flip to the next page, next
17 several pages appear to be a lot of the transaction
18 detail.

19 A. Okay.

20 Q. And I am not going to ask you about every
21 one of these pages. If we can flip through them
22 together, I'll tell you where I have a question. If
23 you flip to the third page of the transaction detail.

24 A. Okay.

25 Q. E1 Transformations is the first entry on

1 that. Are you on the same page with me?

2 A. I am.

3 Q. Okay. It appears that the \$367,000, that
4 that appears to be the number reflected on Coaching
5 Expense Other.

6 A. Right. Correct.

7 Q. Anyway, the numbers appear to match up.

8 A. Yeah.

9 Q. And it looks like a number of these are
10 made to Bright Business C. And it's cut off. I'm
11 assuming it's Bright Business Center; is that
12 correct?

13 A. That's correct. So that would have been
14 for coaching.

15 Q. There's a few others. I see payments to
16 Jonathan Rowberry, VIP Presentation. Do you
17 recognize those other entities?

18 A. I'm not familiar with them, no.

19 Q. Next page appears to be payments to
20 Greg Cole and Todd Baum.

21 A. Correct.

22 Q. And at the top it says Guaranteed Payments
23 to Partners.

24 A. Correct.

25 Q. What is this reflecting? Is this salary or

1 what is this?

2 A. Todd Baum was a partner in Bright Builders,
3 and I guess, as I understood talking with the
4 accountant, in an S-corp there are no guaranteed
5 payments to partners. So that would have been
6 mischaracterized in the chart of accounts, but that's
7 where it was recorded. And so then the accountant
8 moved it to contract labor under cost of goods sold.
9 And then Todd Baum received some regular payments
10 based upon his agreement with Greg, and then Greg
11 received one payment to cover some of his excess
12 taxes, I believe, for the prior year.

13 Q. Was Todd Baum actually doing work for
14 Bright Builders?

15 A. No, not actively anyway.

16 Q. But this was characterized as contract
17 labor even though he wasn't actually working for
18 Bright Builders?

19 A. Apparently that was semantics based on -- I
20 talked to the accountant about that, he just told me
21 that because of the way S-corporations work versus
22 LLC's, that they really don't have guaranteed
23 payments to partners. So that's where he
24 characterized it and put it.

25 Q. And you said the payment to Greg Cole on

1 here, \$11,000, what's your understanding of what that
2 is?

3 A. That was to cover some of his excess tax
4 expenses from the prior year.

5 Q. And that would be Greg's personal tax
6 liability for the prior year?

7 A. Yes. Bright Builders is an S-corp. So all
8 other entities are LLCs, so it all rolls up to him
9 and the other partners at that time.

10 Q. So if you'll continue to flip through with
11 me, it's actually if you go to the end of the
12 transaction detail, if you flip through, there's
13 another partial profit and loss for 2009, maybe
14 midway through the stack. I'm just seeing '08 in
15 here. If you keep flipping through transaction
16 details, it's the next page after the '08 transaction
17 detail.

18 A. In this stack, I don't see that. This is
19 all '08. So we are into '09 here a little bit.

20 Q. Yeah, that's correct. I've got a profit
21 and loss and some transaction detail for '09.

22 A. What type of transaction detail are you
23 looking at?

24 Q. I'm looking at a Bright Builder Profit and
25 Loss, January through December 2009, and there's a

1 number three handwritten at the top.

2 A. Okay. I'm with you.

3 Q. Okay. This one, I know it's a partial
4 profit and loss, but we're looking again at expenses
5 and coaching expenses, and this appears to show for
6 January through December 2009 coaching expenses of
7 \$8,775.

8 A. Right.

9 Q. That was a number that the previous year
10 had been \$367,000?

11 A. Correct.

12 Q. Do you know why the drastic change --

13 A. Well, coaching was --

14 Q. -- from '08 to '09?

15 A. Yeah, coaching was discontinued --
16 basically a competitor -- my understanding -- and I
17 wasn't there -- is a competitor took over the market,
18 pretty much took all the resellers and they took over
19 coaching. So Bright Builders sold in the fall of '08
20 the coaching interest that they had and paid this
21 other company called Thrive to take over their
22 customers that were still on coaching or being
23 coached. And so they were paid like \$15 a month per
24 customer that was being coached. So you see the
25 detail on that is included there.

1 Q. Okay. I believe you have transaction
2 detail for 2009 behind that document.

3 A. Correct.

4 Q. Can you just continue to flip through the
5 transaction detail until you come another partial
6 profit and loss statement actually for 2008.

7 A. Payroll expenses, is that what you're
8 referring to?

9 Q. Yes.

10 A. Okay.

11 Q. And I know this Payroll Expenses Other
12 number, this million dollar number we talked about
13 previously --

14 A. Yeah.

15 Q. It appears there is a great deal -- a lot
16 of transaction detail behind this profit and loss
17 statement, and I didn't know if that would allow you
18 to tell me specifically what that million dollar
19 number is represented by.

20 A. I think we covered that already. That's
21 basically the payments to Bright Business Center for
22 the contract employees at that point from June.

23 Q. If you look at the transaction detail,
24 there's a title -- there's a column entitled split.

25 A. Yeah. You're looking at the detail from

1 January to May of '08, and that's the payroll detail.

2 Q. Yeah. If you keep -- it looks like -- I'm
3 seeing a lot of things that say BB payroll.

4 A. Correct.

5 Q. Is that Bright Builders or Bright Business
6 Center payroll?

7 A. Bright Builders' payroll.

8 Q. If you continue to move through to the BB
9 payroll to accounts payable --

10 A. That's where my stack ends. Everything
11 else is '08.

12 Q. Do you have January through December 2008
13 transaction detail? Is that what you're looking at?

14 A. Yeah, with the payroll.

15 Q. Yes. Go to the last page that was
16 transaction detail, please.

17 A. Okay.

18 Q. On your last page do you have a number of
19 1,030,000 down at the bottom number that matches up
20 with the other payroll expense?

21 A. I'm not seeing that page. The transaction
22 detail I have is related to the -- looks like federal
23 unemployment. So it's just \$2,000. So I don't think
24 I have that.

25 Okay. So we have Transaction Detail

1 January-December '08 with 1,030,000. That's the one
2 you're referring to?

3 Q. Okay. Yes. On that page there's a number
4 of entries and under Memo -- well, the name is Bright
5 Business Center, and then Memo it says R-E-I-M, which
6 may be "reimbursement."

7 A. "Reimburse." Correct.

8 Q. And those are pretty large numbers, 140,
9 130. What does that reflect?

10 A. That's the payments billed by Bright
11 Business Center to Bright Builders for the contract
12 labor during that period.

13 Q. Why is it entered as a reimbursement?

14 A. Probably because somebody stuck it in there
15 that way to start with and QuickBooks put it in the
16 same way every time. Not a clue. Like I said, the
17 chart of accounts was not in good shape when I
18 arrived and cleaning it up took a lot of work. These
19 type of things we didn't bother with.

20 Q. Okay. I think I'm done with that exhibit
21 Mr. Cole. Mr. Cole, are you familiar with the name
22 of the account that led to this litigation,
23 Christopher Prince?

24 A. Just because of the litigation, yes.

25 Q. Okay. Do you know how much Bright

1 Builders, Inc., what payments Bright Builders, Inc.,
2 received from Christopher Prince throughout its
3 relationship with Mr. Prince?

4 A. I provided that to you. I don't have it in
5 front of me. Approximately a thousand dollars, I
6 believe, and then also related to that account
7 probably I think 1,200 or \$1,400 from the reseller.

8 Q. So if Mr. Prince paid a total of \$10,000
9 for the package of services that he -- well, strike
10 that. Letitia, can you hand him Exhibit 2 from the
11 first deposition.

12 A. I have it.

13 Q. This appears to reflect a payment from
14 Mr. Prince -- well, it says Bright Builders Internet
15 Program, but a payment of \$10,220. Do you see that?

16 A. Correct.

17 Q. And it has a breakdown above it. Looking
18 at that, can you tell me who received the \$10,220?
19 How was that broken down between Bright Builders and
20 any of the other entities involved?

21 A. Auction Success Group would have received a
22 hundred percent of that and then they would have been
23 billed by Bright Builders for whatever the contracted
24 amount was. I believe I provided that to you in a
25 separate document. Then they would have paid Bright

1 Builders the wholesale amount, which I believe was
2 1,400, 1,200, somewhere in there.

3 Q. Didn't Bright Builders also receive a
4 monthly fee?

5 A. Correct.

6 Q. That would be in addition to the 1,400 or
7 \$1,200?

8 A. Correct.

9 Q. So the mentoring services which appear to
10 be seven months of mentoring services total of
11 \$4,500, it's your testimony that Bright Builders
12 would have only received either 1200 or \$1400 for
13 that?

14 A. That's what they received for everything.
15 So all of the products that are on the page, because
16 this is the order from Auction Success Group to
17 Bright Builders.

18 Q. But it was Bright Builders who was actually
19 providing these services; right?

20 A. That's correct.

21 Q. And Auction Success Group, were they
22 authorized to solicit clients on behalf of Bright
23 Builders?

24 A. I'm not familiar with how any of this
25 program worked at all. I ended up cleaning up the

1 accounting end of it, but that's it.

2 Q. Well, were you familiar with the fact that
3 Auction Success Group sent orders to Bright Builders
4 from clients?

5 A. They sent orders from Auction Success Group
6 to Bright Builders, yes.

7 Q. To provide services to clients?

8 A. To their clients, yes.

9 Q. Is it your testimony that Mr. Prince was
10 never a Bright Builders client?

11 A. As I understand the program, they become a
12 client for the month-to-month program after the
13 original package, initial package, has been sold. So
14 he becomes a client at the time that he starts paying
15 the monthly fees.

16 Q. Did he pay the monthly fees?

17 A. Yes.

18 Q. So he was a client of Bright Builders?

19 A. Correct.

20 MR. PATTERSON: Paul, why don't you give me two
21 minutes, and I think I can wrap up.

22 (off the record)

23 Q. Mr. Cole, a couple more questions, I think
24 you indicated you had performed accounting services
25 for several of the related entities in 2008, 2009,

1 2010. I just want to ask you generally what you
2 recall in terms of profitability for the companies.
3 Do you recall whether or not HammerTap was profitable
4 in 2009?

5 A. I couldn't tell you without looking at the
6 numbers. I doubt any of them showed any significant
7 profit. I mean, it's difficult to say. We did
8 write-off intercompany receivables and payables at
9 the end of 2009, so all those charges were there so
10 that they basically had a clean slate as of
11 January 1, 2010. We wrote off all receivables that
12 had not been collected and things like that to clean
13 up the books.

14 Q. Any money that was owed between the
15 subsidiaries was written off as of January 1st, 2010?

16 A. Right. So you had associated charges. And
17 so anything that's reflected also reflects a lot of
18 that cleanup that took place. For example, if
19 somebody had payable, they would write that off, and
20 the other one had to record it as income. It's, you
21 know, not cash -- a lot of cash dollars. It's --
22 basically Bright Builders and entire organization as
23 far as other entities have all been losing money for
24 last year and a half.

25 Q. Were you aware or involved in responding to

1 any complaints that Bright Builders would have
2 received from third parties or the Better Business
3 Bureau with regard to the services that Bright
4 Builders provided?

5 A. Yes, I was.

6 Q. What role would you have played in that?

7 A. Myself or the staff responded to all of
8 those inquiries during the entire time that I was
9 there, so we basically took care of all those.

10 Q. Do you recall queries or complaints from
11 third parties who claimed that client of Bright
12 Builders were infringing on their intellectual
13 property rights or trademarks?

14 A. None, other than yours.

15 Q. Okay. You don't have any recollection
16 other than our complaint?

17 A. Right. There was none, no.

18 Q. The complaints you were talking about
19 responding to, those were more along the line of
20 customer disputes?

21 A. Yeah. Customer service disputes.

22 Q. Did any of those ever result in litigation?

23 A. No.

24 MR. PATTERSON: I don't have any further
25 questions, Mr. Cole. I don't know if Mr. Doolittle

1 has anything?

2 MR. DOOLITTLE: Absolutely no questions. No
3 questions for the defendant.

4 MR. PATTERSON: Thank you for your time,
5 Mr. Cole, I appreciate it.

6 THE WITNESS: You're welcome.

7 (Whereupon the taking of this deposition was
8 concluded at 2:26 p.m.)

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C E R T I F I C A T E

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

THIS IS TO CERTIFY that the foregoing deposition was taken before me, Letitia L. Meredith, Registered Professional Reporter for the State of Utah and Certified Shorthand Reporter for the State of California.

That the said witness was by me, before examination, duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause.

That the testimony was reported by me in Stenotype, and thereafter transcribed by computer under my supervision, and that a full, true, and correct transcription is set forth in the foregoing pages.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the event thereof.

WITNESS MY HAND and official seal at Spanish Fork, Utah, this 19 day of October, 2010.



Letitia L. Meredith, RPR