

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
C.A. #6-06-CV-00109-HMH

BIDZIRK, LLC, DANIEL G.
SCHMIDT, III, AND JILL
PATTERSON,

Plaintiffs

vs.

PHILIP J. SMITH,
Defendant.

_____/

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VIDEOTAPED & STENOGRAPHIC

DEPOSITION OF PHILIP J. SMITH

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PURSUANT TO THE NOTICE OF DEPOSITION AND/OR
AGREEMENTS IN THE ABOVE-ENTITLED CASE, THE DEPOSITION OF
PHILIP J. SMITH WAS TAKEN ON FRIDAY, DECEMBER 29TH,
2006, COMMENCING AT 1:06 P.M., AT THE OFFICES OF KEVIN M.
ELWELL, ESQUIRE, 111 EAST NORTH STREET, GREENVILLE, SOUTH
CAROLINA.

KAREN BELANGER
CERTIFIED VERBATIM REPORTER

FOOTHILLS COURT REPORTING

SERVING THE UPSTATE OF SOUTH CAROLINA
(864) 836-2290

CT REPORTER: KAREN BELANGER

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1 IN JANUARY?
 2 A. POSSIBLY. I DON'T KNOW YET.
 3 Q. WHERE WOULD YOU BE GOING?
 4 A. MAC WORLD EXPO IN SAN FRANCISCO.
 5 Q. AND HOW ARE YOU GOING TO FUND THAT?
 6 A. TWO OF MY CUSTOMERS ARE SPONSORING ME.
 7 Q. WHO IS THAT?
 8 A. TWO OF MY CUSTOMERS.
 9 Q. WHO IS GIVING YOU THE MONEY?
 10 A. AARDVARK STUDIOS AND TAMARA HERD.
 11 Q. AND TAMARA HERD IS AN INDIVIDUAL?
 12 A. YES.
 13 Q. WHAT SORT OF LINE OF BUSINESS IS SHE IN?
 14 A. GRAPHICS AND DESIGN.
 15 Q. HERE IN GREENVILLE?
 16 A. YES.
 17 Q. AND AARDVARK STUDIOS IS WHERE?
 18 A. PELHAM ROAD.
 19 Q. YOU INDICATED THAT YOU MAY BE GOING UNDER
 20 TREATMENT FOR DEPRESSION.
 21 A. MY DAD IS LOOKING INTO THAT FOR ME.
 22 Q. AND YOU HAVE STATED THAT YOU THINK THAT THIS CASE
 23 IS THE REASON THAT YOU'RE DEPRESSED.
 24 A. YES.
 25 Q. IS IT POSSIBLE THAT MAYBE YOU'RE DEPRESSED BECAUSE

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1 YOU'RE 32 AND LIVE IN A \$30,000 CONDO AND DON'T
 2 MAKE MUCH MONEY, AND DRIVE A JUNK CAR, AND AREN'T
 3 MARRIED, AND ANYTHING ELSE THAT MIGHT BE
 4 DEPRESSING TO SOMEBODY YOUR AGE?
 5 A. THANK YOU FOR WORSENING IT, BUT, NO, I DON'T.
 6 IT'S BEEN THIS ISSUE SOLELY.
 7 Q. AND HOW IS IT THAT YOU KNOW THAT?
 8 A. BECAUSE I HAVEN'T BEEN LIKE THIS BEFORE. AND MY
 9 PLAN WAS TO GO INTO A MORE -- LIKE A GREATER ROLE
 10 ON THE INTERNET, AND I WASN'T ABLE TO DO THAT
 11 BECAUSE OF THIS CASE.
 12 Q. AND HOW MUCH DO YOU THINK YOU STOOD TO MAKE
 13 INDIVIDUALLY ON THE EBAY INVENTORY IF IT SOLD FOR
 14 THE PRICES THAT YOU THINK IT SHOULD HAVE SOLD FOR?
 15 A. THAT I CONSIGNED TO BIDZIRK?
 16 Q. RIGHT.
 17 A. 26,000.
 18 Q. PERSONALLY?
 19 A. YEAH.
 20 Q. TO BE SPLIT BETWEEN YOU AND MR. BUZZELL?
 21 A. NO, THAT WAS WHAT TY SHOULD HAVE GOTTEN FOR OUR
 22 INVENTORY.
 23 Q. HE SHOULD HAVE GOTTEN 26,000 FOR IT?
 24 A. YES. AND THEN SPLIT THAT, AT MINIMUM, 50/50, EVEN
 25 THOUGH THE MAXIMUM THAT IT SAYS ON THEIR WEBSITE

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1 IS 43.15.
 2 Q. EVEN IF WE ASSUME THAT IT'S 50/50, THAT'S 13,000,
 3 AND THEN YOU AND MR. BUZZELL WOULD DIVIDE THAT?
 4 A. NO. I WOULD, IN TURN, DIVIDE THAT INTO 50/50 WITH
 5 FRANK WATTS AND THEN 50/50 WITH DAVE BUZZELL.
 6 THAT'S EXPLAINED IN THE ARTICLE.
 7 Q. SO FROM 26, THEN YOU WOULD HAVE, AFTER YOU PAID
 8 MR. SCHMIDT OR BIDZIRK, YOU'D HAVE 13. YOU'D GIVE
 9 6,500 TO MR. WATTS AND THEN --
 10 A. ROUGHLY 3,000 A PIECE.
 11 Q. -- YOU AND MR. BUZZELL WOULD SPLIT \$6,500?
 12 A. THAT'S CORRECT. BUT AT THE SAME TIME, WE ALSO
 13 WERE GOING TO HAVE AN ONGOING RELATIONSHIP WITH
 14 TY, HAD THINGS WORKED OUT AND HAD HE GOTTEN US THE
 15 RIGHT AMOUNTS FOR THINGS. AND WE WOULD HAVE HAD
 16 CONTINUING INVENTORY, BUT THE OWNER OF THE
 17 INVENTORY HAD TO DROP ALL OF THAT INVENTORY
 18 BECAUSE WE JUST WEREN'T ABLE TO MOVE ANY. HE HAD
 19 TO GET RID OF IT BECAUSE IT WAS COSTING TOO MUCH
 20 MONEY IN OVERHEAD FOR THE RENTAL OF THE PLACES.
 21 Q. AND SO IT'S YOUR TESTIMONY THAT THIS \$3,250 THAT
 22 YOU THOUGHT YOU WERE GOING TO REALIZE WAS A LIFE
 23 CHANGING AMOUNT OF MONEY AND WOULD HAVE MADE A BIG
 24 DIFFERENCE IN YOUR BUSINESS DEALINGS TODAY?
 25 A. YES, BUT THERE ALSO COULD BE MORE MONEY INVOLVED

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1 IN THAT.
 2 Q. AND IS IT THE CASE THAT SOME OF THE INVENTORY THAT
 3 YOU WERE CONSIGNING INCLUDED CRT MONITORS?
 4 A. THAT'S CORRECT.
 5 Q. AND WHAT DO YOU THINK THE STREET VALUE OF A CRT
 6 MONITOR IS TODAY?
 7 A. THEY -- IF THEY'RE VIEW SONIC OR NEC, OR SONY
 8 MONITORS, THEY GET ROUGHLY \$120 TO \$150 ON EBAY.
 9 Q. WHY WOULD I PAY A HUNDRED BUCKS FOR A CRT MONITOR
 10 WHEN I CAN PAY NOT MUCH MORE THAN THAT FOR
 11 SOMETHING FLAT SCREEN, OR BUY A SYSTEM AND GET IT
 12 THROWN IN?
 13 A. THE COLOR SEPARATION ON A CRT IS MUCH BETTER FOR
 14 GRAPHIC DESIGNERS. YOU CAN GET BILLIONS OF COLORS
 15 ON A CRT WHERE YOU CAN ONLY GET HALF OF THAT ON AN
 16 LCD. LCD'S ALSO HAVE A REALLY HIGH RESPONSE TIME.
 17 SO THEY'RE NOT GOOD FOR GAMING.
 18 Q. SO IT'S YOUR CONTENTION THAT CRT MONITORS ARE
 19 ACTUALLY SUPERIOR TO LCD MONITORS OR OTHER FLAT
 20 SCREEN MONITORS?
 21 A. YES. NOT ALL LCD'S. THERE ARE SOME HIGH END
 22 LCD'S THAT ARE GOOD.
 23 Q. AND SO WHEN IS THE MAC WORLD EXPO?
 24 A. I WOULD LEAVE JANUARY 5TH AND COME BACK THE 11TH.
 25 Q. WHAT WOULD BE YOUR REASON FOR GOING?

41 (Pages 158 to 161)

CT REPORTER: KAREN BELANGER

1 A. BECAUSE THEY ARE MOST LIKELY TO INTRODUCE AN APPLE
 2 PHONE.
 3 Q. IS YOUR PRESENCE REQUIRED FOR THAT, FOR SOME
 4 REASON?
 5 A. NO. I FOLLOW THAT REALLY CLOSELY, AND I HAVE --
 6 I'VE SEEN THE BETA PROTOTYPE AND I WANT TO SEE
 7 THEM INTRODUCE THAT.
 8 Q. WHY IS THAT?
 9 A. BECAUSE MY LIFE REVOLVES AROUND APPLE COMPUTER. I
 10 LOVE APPLE COMPUTER AND I LOVE EVERYTHING THAT
 11 THEY DO.
 12 Q. HOW MUCH DOES IT COST TO GO TO THE MAC WORLD EXPO?
 13 A. I GOT A HOTEL STAY AND PLANE TICKET WAITING FOR ME
 14 IF I WANT TO GO, OTHERWISE TAMARA'S GOING TO GO,
 15 FOR \$234. IT'S PRETTY AWESOME, A GREAT DEAL.
 16 Q. AND DOES IT COST TO ENTER THE SHOW?
 17 A. NO, I'VE GOT FRIENDS AT APPLE THAT WILL LET ME IN.
 18 Q. AND HAVE YOU ASKED THE COURT TO GIVE YOU ANY KIND
 19 OF LEAVE OF ABSENCE FROM THIS CASE WHILE YOU'RE
 20 GONE DURING THAT WEEK?
 21 A. NO, I HAVE NOT. BUT THEY WOULD -- THEY WERE
 22 SUPPOSED TO NOTIFY ME OF ANY IMPORTANT DATES. SO
 23 I'M SURE THAT THEY WILL DO THAT. I'M NOT BOUND TO
 24 THIS STATE DURING THIS TRIAL.
 25 MR. ELWELL:

1 I DON'T HAVE ANYTHING FURTHER.
 2 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION WAS
 3 CONCLUDED AT 4:55 P.M.)

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CERTIFICATE OF REPORTER

I, Karen A. Belanger, a Notary Public for the State of South Carolina, duly commissioned and qualified as such, do hereby certify that the foregoing 162 pages represent a true and accurate transcript of the foregoing deposition of PHILIP J. SMITH taken by me on the 29th day of December, 2006.

That the deponent was duly placed under oath and admonished to speak the whole truth. Oral testimony was duly taken and transcribed as to the questions propounded and the answers given.

All offered exhibits, stipulations, and objections, if any, in this cause are duly attached or included herein.

IN WITNESS WHEREOF, I have set my hand and official seal on this 5th day of January, 2007.

KAREN BELANGER, CVR
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES: 04/18/2013