

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

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UNITED STATES OF AMERICA,)
Plaintiff,)
-vs-) CIVIL NO.
) 2:15-cv-00828 DN
RaPOWER-3, LLC, INTERNATIONAL)
AUTOMATED SYSTEMS, INC., LTBl,)
LLC, R. GREGORY SHEPARD, NELDON)
JOHNSON and ROGER FREEBORN,)
Defendants.

Deposition of FRANK FREDERICK LUNN IV, taken at
the instance of the Plaintiff, before Laurel A.
Patkes, CSR #084-001340, on Monday, August 1, 2016
at the hour of 9:00 a.m., at 318 S. Sixth Street,
Springfield, Illinois, pursuant to notice.



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A P P E A R A N C E S

U. S. DEPARTMENT OF JUSTICE, by
ERIN HEALY GALLAGHER
CHRISTOPHER R. MORAN
ERIN R. HINES (present by phone)
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044
erin.healygallagher@usdoj.gov
(202)353-2452

appearing on behalf of the
Plaintiff;

HEIDEMENT & ASSOCIATES, by
JUSTIN D. HEIDEMAN
2696 N. University Avenue
Suite 180
Provo, Utah 84604
jheideman@heidlaw.com
(801)472-7742

appearing on behalf of Defendants
RaPower-3, LLC, International
Automated Systems, Inc., LTBl,
LLC and Neldon Johnson;

STOEL RIVES, LLP, by
PAUL JONES
4766 S. Holladay Boulevard
Salt Lake City, Utah 84117
(801)930-5101
paul@pauljonesattorney.com

appearing on behalf of the
Deponent.

1 (Whereupon the witness was sworn
2 by the reporter.)

3 MS. HEALY GALLAGHER: Good morning.
4 We're on the record in the case of United States
5 versus RaPower et al. on August 1st.

6 Mr. Lunn, we met a moment ago, but my
7 name is Erin Healy Gallagher, and I'm from the
8 United States Department of Justice in the Tax
9 Division appearing on behalf of the United States.

10 We have a court reporter here to take
11 down the proceedings.

12 Counsel, would you please make your
13 appearances?

14 MR. JONES: Paul Jones representing
15 Frank Lunn.

16 MR. HEIDEMAN: Justin Heideman here
17 on behalf of a plethora of defendants.

18 MS. HEALY GALLAGHER: And I do note
19 for the record that Donald Reay who represents Greg
20 Shepard and Roger Freeborn in this case is not in
21 attendance.

22 Also with me is Chris Moran on behalf
23 of the United States, and Erin Hines also on behalf
24 of the United States is with us by phone.

25 All right. This deposition will be

1 governed by the Federal Rules of Civil Procedure and
2 the local rules.

3 For purposes of the depositions that
4 we have today and tomorrow, counsel, I'll be keeping
5 the witness copy of the exhibits in the event that
6 we use the same ones tomorrow.

7 After tomorrow's deposition, we'll
8 send the exhibits with the court reporter to be made
9 part of the deposition.

10 MR. JONES: No objection.

11 MS. HEALY GALLAGHER: Any other
12 stipulations will be addressed as the need arises.

13

14 FRANK FREDERICK LUNN IV
15 called as a witness herein, having been first duly
16 sworn on his oath, was examined and testified as
17 follows:

18

19 DIRECT EXAMINATION

20 BY MS. HEALY GALLAGHER:

21 Q. All right. Mr. Lunn, you were sworn
22 in just a moment ago.

23 A. Yes.

24 Q. Would you please state your name and
25 the city and state where you live for the record?

1 A. Yes. My name is Frank Frederick Lunn
2 IV, and I live in LeRoy, Illinois 61752.

3 Q. Mr. Lunn, have you been deposed
4 before?

5 A. Yes, I have.

6 Q. And how many cases?

7 A. Three.

8 Q. Three cases. So that's three
9 depositions?

10 A. Well, three depositions, two
11 different matters. I'm sorry.

12 Q. We'll talk about those depositions a
13 little later on.

14 A. Sure.

15 Q. But for right now, I'd just like to
16 cover the ground rules for today. It's helpful for
17 us all to be on the same page.

18 So in this deposition I will ask you
19 questions. My questions and your answers will be
20 recorded by the court reporter here so you and I
21 both need to speak loudly enough for her to hear us,
22 and you'll need to answer my questions verbally.

23 A. Yes, ma'am.

24 Q. Do you understand?

25 A. Yes, ma'am.

1 do?

2 A. Kahuna Builders did have an
3 operational component related to commercial
4 construction and residential construction.

5 At this point, it holds ownership in
6 other businesses. It does not have an operating
7 component.

8 Q. So did or does Kahuna Builders have
9 any other business activity around solar energy
10 production?

11 A. Not at this time.

12 Q. You said that Kahuna Builders
13 sponsored in you, Tammy Cook, and Bryan Bauer,
14 correct?

15 A. That is correct.

16 Q. Any other people that Kahuna Builders
17 sponsored in?

18 A. No.

19 Q. Any other entities that Kahuna
20 Builders sponsored in?

21 A. No.

22 Q. How many lenses do you own?

23 A. 850 plus the one, the original one
24 that I paid for through Kahuna NRG. I have them
25 separated.

1 Kahuna NRG?

2 A. Not a formal one.

3 Q. Do you have an informal one?

4 A. I have ideas.

5 Q. Do you have anything written down?

6 A. Just what's on the website.

7 Q. On the Kahuna NRG website?

8 A. Yes.

9 Q. For your own 850 lenses, do you have
10 a business plan for their use?

11 A. Not a formal one.

12 Q. Do you have an informal one?

13 A. I treat it just the same way as I
14 would rental property or other, so it's just part of
15 my overall investment in wealth planning, so not a
16 formal or -- I don't know how to characterize it
17 other than no.

18 Q. So you have no business plan for your
19 850 lenses, correct?

20 MR. JONES: Objection.

21 Mischaracterizes testimony.

22 A. I do not have a formal plan.

23 Q. Do you have any business plan for
24 your 850 lenses?

25 A. No.

1 Q. Have you done any sort of profit
2 analysis for your 850 lenses?

3 A. Informally, yes.

4 Q. What is your informal profit
5 analysis?

6 A. That when electricity is produced and
7 I am paid for these that I will be cash flow
8 positive, and much like rental income, it's a cash
9 flow opportunity.

10 Q. Mr. Lunn, do you consider yourself as
11 having a business related to your 850 lenses?

12 A. Yes.

13 Q. What is that business?

14 A. Business of passive income.

15 Q. So what is the business activity?

16 A. I have purchased lenses that will
17 provide an income, a passive income beyond what my
18 purchase is of those, and that will be substantial
19 and over a long period of time.

20 Q. So other than purchasing the lenses,
21 do you engage in any activity to further your
22 business related to the lenses?

23 A. Not at this point in time.

24 Q. Have you ever?

25 A. Not to this point.

1 Q. How much time do you spend in a given
2 year on any business activity related to your
3 lenses?

4 A. I don't know exactly how you would
5 classify that. It's very much intermingled with all
6 of my activities. I don't specifically know.

7 Q. Well, let me ask you this.

8 So you said that the business
9 activity that you do related to the lenses is buy
10 the lenses.

11 A. At this point.

12 Q. Right. And you've said that you go
13 on the site visits.

14 A. Uh-huh.

15 Q. Yes?

16 A. Yes.

17 Q. What, if anything, else do you do in
18 the course of a given year to further the business
19 activity related to your lenses?

20 A. Well, currently I'm involved in
21 businesses in food, entrepreneurship, jobs, and
22 energy, and so a lot of what I do right now is
23 preparing for being able to apply various components
24 one to the other.

25 And so, for instance, with the system

1 with RaPower-3 system, not only is there the ability
2 for electricity for a larger component but also to
3 be able to be used in smaller opportunities.

4 And so looking at and exploring those
5 opportunities, it's very challenging to classify
6 specific, "I am now reading this book" or doing
7 this. So I don't know how to answer that question.

8 Q. Well, can you give me examples in the
9 past year of things that you've done to further your
10 business related to the lenses?

11 A. Well, in the past year, going to the
12 site, being able to I guess validity check that
13 things are on track, but otherwise, right now, at
14 least for me on this particular one, it's a waiting
15 game, and I can push my focus to other areas right
16 now while this is maturing.

17 Q. Okay. And other than buying the
18 lenses and visiting the sites as you have in prior
19 years, since you bought your first lens, can you
20 give me any examples of specific conduct that you
21 have undertaken in furtherance of a business
22 activity related to your lenses?

23 A. Not specifically.

24 Q. Mr. Lunn, do you keep track of the
25 time you spend on activities related specifically to

1 the business that you have involving your lenses?

2 A. Not specifically.

3 Q. Mr. Lunn, other than -- well, let me,
4 I'll withdraw that.

5 Have you sought input or expertise
6 from experts on solar energy technology other than
7 Mr. Johnson, Mr. Shepard, RaPower-3 or IAUS?

8 A. No, I have not.

9 Q. To date, Mr. Lunn, how much income
10 have you earned through any business activity
11 related to the lenses?

12 A. I don't know specifically.

13 Q. Is it more or less than \$10,000?

14 A. Less.

15 Q. More or less than \$5,000?

16 A. Less I'm guessing.

17 Q. Mr. Lunn, how much have you spent on
18 lenses or any other costs related to any business to
19 do with the RaPower-3 lenses?

20 A. I do not have that information.

21 Q. Is it more or less than \$10,000?

22 A. It is more.

23 Q. Is it more or less than \$50,000?

24 A. It's more.

25 Q. Is it more or less than a hundred

1 thousand dollars?

2 A. More.

3 Q. More or less than \$150,000?

4 A. More.

5 Q. More or less than \$200,000?

6 A. Now we're getting to where I don't

7 really know.

8 Q. We're at least above \$150,000,

9 correct?

10 A. Correct.

11 Q. Mr. Lunn, do you know how much you

12 paid for each lens?

13 A. Not off the top of my head I don't.

14 Q. Well, I'll ask you this way.

15 Do you recall what the total purchase

16 price is for a given lens?

17 A. I don't recall exactly.

18 Q. Even if you don't recall the specific

19 price, do you recall whether you negotiated the

20 price that you would pay for the lens?

21 A. I did not.

22 Q. So it sounds like a price was quoted

23 to you, correct?

24 A. Yes.

25 MR. JONES: Objection. Leading.

1 Q. Mr. Lunn, did you ever get an
2 independent opinion or appraisal of the value of the
3 lenses that you purchased?

4 A. No.

5 Q. How did you decide how many lenses to
6 purchase?

7 A. It was not necessarily a scientific
8 system. It was essentially what I could afford
9 within the parameters of other obligations.

10 Q. Say more about that. What does that
11 mean?

12 A. It just means that I made decisions
13 based on my current cash flow situation.

14 Q. Did you look at your likely tax
15 liability in helping you determine how many lenses
16 to purchase?

17 A. Not directly. I mean, that was
18 certainly part of a consideration as it is with all
19 investments.

20 Q. Tell me about what the consideration
21 was. How did you factor it in?

22 A. Well, the first factor was what cash
23 that I had available and what I wanted to be able to
24 purchase, and then beyond that was how it fit into
25 the residual income that would come in the future,

1 and then beyond that would be tax opportunities to
2 make this less painful.

3 Q. So to pay lower taxes?

4 A. That's --

5 MR. JONES: Objection. Leading.

6 A. As I've stated before, the government
7 provides, Congress provides specific tax incentives
8 for job creation, energy, food and housing, and I
9 have investments in all four of those sectors.

10 And so taxes certainly -- I don't
11 want to mischaracterize -- taxes certainly are a
12 consideration, but I've never made a consideration
13 based on the tax consequence.

14 Q. And perhaps I was assuming too much.

15 You said to make this less painful so
16 what did you mean by that?

17 A. To be able to have an offset related
18 to taxes is always beneficial.

19 When I'm investing in low income
20 housing or other job creation, anything that you can
21 do, the government specifically or Congress
22 specifically has tax incentives to promote things,
23 an agenda that it has, and so as an entrepreneur, I
24 would always look to see what could I take advantage
25 of within the scope of those investments.

1 Q. Mr. Lunn, do you keep any separate
2 bank accounts solely for purposes of any business
3 activity related to the lenses that you bought?

4 A. Not a separate bank account but I do
5 keep records.

6 Q. Have you produced those records?

7 A. Yes, I have.

8 Q. Other than purchasing the lenses, do
9 you have any expenses related to any business
10 activity to do with your lenses?

11 A. I do not personally.

12 Q. Do you have any nonpersonal expenses?

13 A. Just the company, Kahuna Business
14 Group, has paid for my travel. I didn't take
15 vacation days to go visit the sites. That was part
16 of my job.

17 Q. So aside from purchasing the lenses
18 and travel costs, are there any other expenses
19 related to the business, any business activity for
20 your lenses?

21 A. Just my legal and accounting fees
22 that are associated with that.

23 Q. And are those fees for audits and
24 attorney representation as a result of the
25 investigation to this scheme or others?

1 MR. JONES: Objection.

2 Mischaracterizes testimony. Facts not in evidence.

3 A. It's not for legal but for accounting
4 related to the IRS and issues related to my taxes.

5 Q. Any other expenses to do with any
6 business activity related to your lenses?

7 A. Not directly that I can recall.

8 Q. Indirectly?

9 A. Not that I can -- there's a wide
10 variety of work that I do that is across multiple
11 disciplines and multiple sectors so it doesn't
12 compartmentalize neatly into now I'm focusing on
13 energy or now I'm focusing on food or my housing, so
14 it's all part of entrepreneurship.

15 Q. Have you ever participated in any
16 online meetings to do with RaPower-3?

17 A. No, I have not.

18 (Pause)

19 Q. Mr. Lunn, have you ever considered
20 selling your lenses to someone else?

21 A. No, I have not.

22 Q. Are you aware of any market for
23 resale for your lenses?

24 A. I am not.

25 Q. Do you know what would happen if you

1 wanted to sell your lenses? Are you able to freely
2 sell them or would you have to involve RaPower-3?

3 MR. HEIDEMAN: Objection. Calls for
4 speculation.

5 A. I do not know.

6 Q. So, Mr. Lunn, how do you know where
7 your lenses are?

8 A. I don't specifically know where my
9 lenses are. I just know that each lens is
10 ubiquitous in a system, and so the number of lenses
11 I have is formulaic.

12 It's not, for me anyway, it's not
13 dependent on which tower wherever. I assume that
14 that's being taken care of somewhere else. That's
15 not an important component as long as I can show
16 what I specifically own.

17 Q. Well, how do you know what you
18 specifically own?

19 A. Because I have an agreement.

20 Q. I guess my question is how do you
21 know which specific lenses are yours?

22 MR. JONES: Objection. Asked and
23 answered.

24 A. I don't. I'm sure there's a system
25 but that doesn't really concern me because they're

1 all the same. There's not like lens 1, lens 2, lens
2 3. They're completely ubiquitous, and if one
3 breaks, then they replace it.

4 Q. So for purposes of any business
5 related to your lenses, please correct me if I'm
6 wrong, it does not matter whether your lens is on a
7 tower or not, is that right?

8 MR. JONES: Objection. Leading.

9 A. I would not characterize it that way.

10 Q. How would you characterize it?

11 A. I would characterize it as a lens
12 that's part of a system in the meaningful creation
13 of a system that's purpose is to create heat.

14 Q. Have you ever received a list of
15 serial numbers connected with your lenses?

16 A. I don't believe I have.

17 Q. Mr. Lunn, have you ever received an
18 invoice that contained the serial numbers of your
19 lenses?

20 A. I have received an invoice, but I do
21 not know whether it had the specific serial number
22 or not.

23 Q. So, Mr. Lunn, how do you know when
24 your lenses are placed in service?

25 A. I have received a placed in service

1 letter for lenses.

2 Q. And do you have an idea of what that
3 means, placed in service?

4 A. I have a vague understanding.

5 Q. What is that?

6 A. That as part of the full component
7 system that it is used in the creation of the system
8 to be able to be used to create heat to create
9 electricity.

10 Q. So, and again, please correct me if
11 I'm wrong, but when you have received a placed in
12 service letter, that doesn't necessarily mean to you
13 that your lenses are on a tower, correct?

14 A. Correct.

15 MR. JONES: Objection. Leading.

16 Q. Mr. Lunn, do you have an idea of how
17 many lenses have been sold at all?

18 A. I have no idea.

19 MR. JONES: Objection. Vague.

20 Q. Mr. Lunn, has any defendant, has
21 Mr. Freeborn or Mr. Johnson or Mr. Shepard told you
22 that they have had outside experts review the
23 technology?

24 A. Not to my knowledge, not to me
25 personally.

1 MS. HEALY GALLAGHER: I think that's
2 all I have for today pending the held open
3 deposition.

4 Thank you very much for your time,
5 Mr. Lunn.

6 THE WITNESS: Thank you.

7 MR. JONES: We'll reserve signature.

8 (Whereupon the deposition
9 concluded at 4:09 p.m.)

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ACKNOWLEDGMENT OF DEPONENT

I, _____, do hereby
acknowledge that I have read and examined the
foregoing testimony, and the same is a true, correct
and complete transcription of the testimony given by
me, and any corrections appear on the attached Errata
Sheet signed by me.

(DATE)

(SIGNATURE)

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STATE OF ILLINOIS)

)SS.

COUNTY OF SANGAMON)

CERTIFICATE

I, Laurel A. Patkes, Certified Shorthand Reporter in and for said County and State, do hereby certify that I reported in shorthand the foregoing proceedings and that the foregoing is a true and correct transcript of my shorthand notes so taken as aforesaid.

I further certify that I am in no way associated with or related to any of the parties or attorneys involved herein, nor am I financially interested in this action.

Dated August 7, 2016.

Certified Shorthand Reporter