

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.)	Case 2:15-cv-00828-DN-EJP
)	
RAPOWER-3, LLC, INTERNATIONAL,)	Judge DAVID NUFFER
AUTOMATED SYSTEMS, INC., LTBl,)	
LLC, R. GREGORY SHEPARD,)	
NELDON JOHNSON, and ROGER)	
FREEBORN,)	
)	
Defendants.)	
_____)	

30(b)(6) DEPOSITION OF RAPOWER-3, LLC (NELDON JOHNSON)

JUNE 30, 2017

SALT LAKE CITY, UTAH

1 International Automated Systems. So could I proceed then?

2 Q. Please.

3 A. Okay. During this time frame we had installed a
4 portion of the power solar panels at a grocery store in
5 Salem, Utah, and I think the address is 326 North Highway 6,
6 or something like that, in Salem, Utah, and the grocery
7 store average power usage for a month was between 3 and
8 \$7,000 per month depending upon the month and how hot it was
9 because of the air conditioning and the frozen food
10 departments. And so part of this -- part of this generation
11 of power was done at the grocery store.

12 There were two -- two power plants that were built
13 there, including the subsolar panels and some heat
14 exchangers and generators that operated the store for a
15 certain amount of time, and so in conjunction with it
16 being -- the power being generated by the -- all of the
17 solar panels in the Delta area were being used to generate
18 power for a well, a pump at a well, and in conjunction with
19 that, there was additional power being produced at the
20 grocery store, and that is where probably the majority of
21 the electricity that was being used during this period of
22 time that was being accredited to the Patti Lambrecht
23 facilities. I think that's all I have on that.

24 Q. Okay. We're gonna step through that a little bit.
25 So, Mr. Johnson, what is it that refreshed your recollection

1 about what you just testified?

2 A. On the way home we were talking about a lawsuit
3 that Denver had represented me. The City of Salem wanted to
4 sue me for violation of zoning in the production of power
5 being produced on the -- the property there in Salem and
6 some of the construction there that was going on. We won
7 that case. We were talking about that and I thought oh, my
8 gosh, that was right. We produced power there, and we had
9 the solar panels there as well.

10 And I think we have some photographs of that, I'm
11 not positive, but I think in -- in -- that yellow thing that
12 triggered it, I think it was in one of these -- some of
13 these pictures you shown the -- the equipment being built
14 there on the site. And, also, the portable unit was built
15 there that went to Mesquite and came back and also was in
16 use there at the store on -- on two -- on two power plants.
17 So that's how that recollection came about.

18 Q. So you say you were talking with your attorney?

19 A. I was talking with my wife.

20 Q. You were talking with Mrs. Johnson --

21 A. Mrs. Johnson on the way home yesterday.

22 Q. Let me finish the question, please.

23 A. Sorry.

24 Q. And Mrs. Johnson reminded you about the power
25 production at the grocery store?

1 **A. Correct. And she reminded me of this situation**
2 **going home.**

3 Q. Would you please take a moment, Mr. Johnson, and
4 take a look through the exhibits we've marked so far and
5 show me, just quietly to yourself when you find them, the
6 pictures of this grocery store and this equipment. Please
7 let me know when you've found them.

8 **A. (Witness complies.)**

9 **Okay. This was the --**

10 Q. Hang on, hang on, hang on.

11 **A. (Indicating.)**

12 Q. So, Mr. Johnson, you're holding up Plaintiff's
13 Exhibit 8A; correct?

14 **A. Correct.**

15 Q. And you're pointing me to a picture on page
16 GREG_P&R-547; correct?

17 **A. Correct.**

18 Q. All right. What would you like to tell me about
19 this page?

20 **A. This is the panels that were installed at the --**
21 **after they were installed in Mesquite, they were then**
22 **installed at the grocery store in Salem. That's part of the**
23 **panels.**

24 Q. Okay. So you're pointing, sir, to a picture of
25 what appear to be rectangular lenses of some kind. It is --

1 the picture is underneath the heading 2004 and above a
2 caption that says Proof of Concept; is that right?

3 **A. Correct. Also, that is where we built -- the**
4 **first circular lenses were built at the grocery store --**

5 Q. Hang on.

6 **A. -- and were tested there on the first ones.**

7 Q. Hang on, sir.

8 **A. Okay.**

9 Q. You were looking through exhibits when you said
10 that?

11 **A. Well, I was just looking at the -- these aren't**
12 **the -- these aren't the ones that were there, but this is**
13 **what -- the circular solar lens construction where it was**
14 **first built at the grocery store site.**

15 Q. Okay. Slow down for me, please, and pause on
16 looking through the documents; okay?

17 **A. Okay.**

18 Q. Hang on. Stop. So your testimony is that the
19 first circular setup for the lenses was built at the Salem
20 grocery store?

21 **A. Exactly.**

22 Q. What's the name of the grocery store?

23 **A. U-Check.**

24 Q. And what is the address of that grocery store?

25 **A. 326 South Road -- Utah Road 6 I think is the**

1 road -- is the address on the road. Highway 6. Highway 6.

2 326 Highway 6, Salem, Utah 84626, I believe.

3 Q. Who owned the grocery store?

4 A. Me and my wife.

5 Q. You and the original Mrs. Johnson?

6 A. Yes, uh-huh. It was . . .

7 Q. Who owned the land around the grocery store that
8 you claim the power plant was placed on?

9 A. It was the same.

10 Q. Okay. Go ahead and start looking through the
11 exhibits again and see if you can find the photos that
12 you're talking about.

13 A. (Witness complies.)

14 Q. While you do that, Mr. Johnson, Denver, can I
15 touch base with you real quick in the hallway?

16 MR. SNUFFER: Yeah, yeah.

17 (Nine-minute recess taken.)

18 Q. (BY MS. GALLAGHER) All right, Mr. Johnson. So
19 you've taken a look at the exhibits that we've already
20 marked in the last couple of days and you've identified
21 that, and we talked about this a moment ago, that Exhibit 8A
22 contains a photograph of rectangular lenses at GREG_P&R-574.
23 What is it about these rectangular lenses that you recall
24 having been involved with this grocery store?

25 A. Yes. We -- we installed those lenses at the

1 grocery store at that address of 326 North -- or South. 326
2 South Highway 6 in Salem, Utah, and we used those in
3 conjunction with circular lenses and some rectangular lenses
4 that were for home use to power the grocery store there in
5 Salem for a period of time. And so, yeah, that's where they
6 were being used.

7 So we had the circular -- triangular and circular
8 power there at the grocery store, we had the square modules
9 at the store. We had the smaller units to -- for the home
10 use which the home use was referenced by . . .

11 Q. Plaintiff's Exhibit 524?

12 A. 524.

13 Q. At page Ra3-16208; correct?

14 A. That's correct.

15 Q. And there are a couple of pictures on this page.
16 The lenses that you're referring to are the pictures on the
17 left; correct?

18 A. That is correct, yes.

19 Q. Mr. Johnson, when was Bill Pack a sales rep for
20 IAS?

21 A. I'm not really positive. I think we had some kind
22 of a contract, but it was around -- around 2005.

23 Q. Is he still a sales rep for IAS?

24 A. He is.

25 Q. Okay. And do you recall, sir, when -- well, first

1 Q. Mr. Johnson, when did the installation at the
2 grocery store start?

3 A. I'm not exactly positive, but it was during the --
4 during the years, I think, 2005 and 2010. Something like
5 that.

6 Q. I'm just asking about installation in the first
7 instance.

8 A. That's correct.

9 Q. So you can't remember whether it was installed at
10 any one more particular point than a five-year range?

11 A. Well, there was a -- there was an ongoing --
12 ongoing research and development on the project, so there
13 would have been some completed at different time frames.

14 Q. When did you start the grocery store power plant
15 project?

16 A. In 2005.

17 Q. Is that project still ongoing?

18 A. No, it is not. No.

19 Q. When did it stop?

20 A. Right around 2012, I believe. 2010 or 2012.

21 Q. Sometime between 2010 and 2012?

22 A. Yes.

23 Q. Why did you stop development of that project?

24 A. The -- we had -- there was a divorce going on at
25 the time, and in order to -- to clear out all of the

1 relevant to the -- to the depreciation. The depreciation
2 didn't come from the purchase of the lenses for the purpose
3 of putting them into a solar energy product. That isn't
4 where -- isn't what I was advised on and it wasn't something
5 that was in -- that I would have ever -- I would have ever
6 told anybody about because I didn't think it was applicable.

7 Q. What was applicable to the question of whether a
8 lens could be depreciated?

9 A. Well, there again, you're talking about a legal --
10 legal requirement that I don't have the ability to respond
11 to.

12 Q. I'm just asking for your understanding.

13 A. I know, but you'll trap me and then I'll be
14 trapped like a little mouse in a trap.

15 Q. What's your understanding?

16 A. If you want to go off the record, I can tell you.
17 Well, what it is is the fact that the letter, and I -- and
18 I'd have to read the letter to make sure that I'm accurate
19 on this because it's been a long time, but it was to be
20 used -- the equipment was to be used in -- in -- for
21 research and development. And we went through nearly, I
22 don't know, 15,000 lenses in and out of those towers with
23 different lenses and different ownerships in the lenses that
24 produced its heats from different points in time. And my
25 understanding was that research and development is a

1 commercial application, and that is the Tax Code and a
2 statute.

3 And from -- and my understanding of a CPA's tax,
4 when you write your tax dollars out, that you can depreciate
5 things based upon what you do and in -- in research and
6 development as a business for the purpose of developing new
7 technologies, which we do. And we can prove we have because
8 of the patents that we've been issued.

9 In the process of that, we can lease equipment or
10 rent equipment or pay somebody to be able to use their
11 equipment. Once we do that, we're -- those people then are
12 able then to consider that a business -- a business on
13 their -- on their part so that they may then take a
14 depreciation when that is used in that -- for that purpose.
15 And whether or not they do or whether they don't, I've never
16 talked to anybody like this on their -- on their part. I've
17 always referred to them to go to your accountant and explain
18 with this information and see how they felt about it.

19 But that is my understanding of -- of depreciable
20 property. And I didn't take the depreciation on it, so it
21 was available to the person that I was paying to use their
22 equipment for that purpose, and so they were actively
23 involved in the business as far as that goes.

24 Now, that's my understanding. That's, I think,
25 what the tax opinion letter was closely relating to. I

1 didn't quote it word for word and so you can't, you know, if
2 I would have said it to someone, I would have -- I would
3 have said here's what I've -- here's the letter, you read
4 it. Take it to your -- take it to your tax CPA person and
5 see what they say.

6 Q. Where did you get this understanding?

7 A. From the, I think, McConkie letters and things
8 like that and other places in the Tax Code.

9 Q. Who, if anyone, did you talk to about this to come
10 to this understanding?

11 A. Probably NATP, CPAs and attorneys and tax
12 attorneys and other accountants and friends that were
13 accountants and just anybody that would listen to me. Not
14 many people listen to me very long though. They always say
15 what you do. I don't want to listen to you anymore. But
16 that's what I do.

17 Q. Other than individuals that you have named so far
18 today, yesterday, the day before, are there any other names
19 of people that you can give me that you talked to about
20 this?

21 A. I don't really know, but I would have -- I'm very
22 thorough. I do my homework on all things I get involved
23 with and I'm very thorough on -- on getting the information
24 out, thinking about what the information is that I'm trying
25 to -- to comprehend. I then disseminate that information to

1 someone else and ask what their understanding of the
2 information is. I see whether it coincides with the
3 information that I received. And in most cases I'm -- I'm
4 fairly accurate on what I've been able to do in my life. I
5 have a number of patents to prove it, so. But that's what I
6 do.

7 (Pause in the proceedings.)

8 Q. So, Mr. Johnson, tying together a couple of things
9 that we've talked about in the last couple of days -- I'll
10 withdraw that.

11 Showing you what's been marked Plaintiff's Exhibit
12 141. Would you take a look -- you're welcome to look
13 through the whole document, Mr. Johnson, but I actually have
14 questions about an email that's the first one on the first
15 page.

16 A. (Peruses document.)

17 So what's the purpose of this?

18 Q. I have a question for you on the first email on
19 the first page.

20 A. Okay.

21 Q. If you want to turn back to the first page,
22 please.

23 A. Okay.

24 Q. The first sentence of the first email reads "The
25 manufacturing plant has 21,000 lenses in inventory, (see

1 photo attached) 150 towers ready to install, and 15,000,000
2 in the bank." Did I read that correctly?

3 **A. You probably read it correctly, but it's not**
4 **accurate, so.**

5 Q. To your recollection, around November 2012 did the
6 manufacturing plant have 21,000 lenses in inventory?

7 **A. It had more than that. Closer to 34,000, but then**
8 **we don't know -- I don't know -- I wouldn't have known -- I**
9 **wouldn't have known that figure. Because we probably could**
10 **have used 10,000 lenses during that period of time in the**
11 **R&D procedures out at the -- out at the site.**

12 Q. And --

13 **A. But he wouldn't have known that. Nobody would**
14 **have known how many lenses I have, nor would they know how**
15 **many towers I had ready. Nobody would know how much money I**
16 **have in the bank.**

17 Q. So you don't know where Mr. Shepard might have
18 gotten this information about 150 towers ready to install?

19 **A. I do not know that.**

20 Q. In November 2012 did RaPower3 have \$15,000,000 in
21 the bank?

22 **A. No, it did not.**

23 Q. Did IAS have \$15,000,000 in the bank?

24 **A. No.**

25 Q. Did any other entity over which you have control

1 STATE OF UTAH)
) ss.
2 COUNTY OF SALT LAKE)

3 REPORTER'S CERTIFICATE

4 I, Amanda Richards, certified shorthand reporter for
5 the State of Utah, certify:

6 That the deposition of the witness herein was
7 taken before me at the time and place herein set forth, at
8 which time the witness was by me duly sworn to testify the
9 truth; that the testimony of the witness and all objections
10 made and all proceedings had of record at the time of the
11 examination were reported stenographically by me and were
12 thereafter transcribed into typewritten form by me.

13 That the foregoing transcript, as transcribed by me, is
14 a full, true and correct record of my stenographic notes so
15 taken; that review of the transcript by the witness was
16 requested pursuant to Rule 30(e) of the Rules of Civil
17 Procedure.

18 I further certify that I am neither counsel for nor
19 related to any party to said action, nor in anywise
20 interested in the outcome thereof.

21 IN WITNESS WHEREOF, I have subscribed my name below
22 this 13th day of July 2017.

23 _____
24 Amanda Richards, CSR
25