

1 SALT LAKE CITY, UTAH, THURSDAY, APRIL 5, 2018

2 PM SESSION

3 THE COURT: Counsel, I'm told that we got problems
4 with WiFi; is that right?

13:16:28 5 MR. GARRIOTT: I was the one that reported it. It
6 looks like it's back on.

7 THE COURT: It's back on?

8 MS. HEALY-GALLAGHER: I believe we're connected
9 with our equipment, so....

13:16:35 10 THE COURT: Okay. All right. I wanted to check
11 with you on the Exhibit 329 -- or 829, the affidavit of
12 nonappearance. We had a discussion yesterday about those
13 exhibits. Can we receive the affidavit?

14 MS. HEALY-GALLAGHER: I believe we sent it.

13:16:55 15 THE COURT: You've got it. I just want to know if
16 it should be received. It was marked as Exhibit 829.

17 MS. HEALY-GALLAGHER: Oh, it's more for
18 admissibility purposes, so that does not have to be admitted,
19 but we certainly can.

13:17:07 20 THE COURT: Okay. As to exhibits offered in the
21 depositions, we've been through them. We have objections that
22 have been overruled and sustained, but I had some questions,
23 and you may want to take this down.

24 In the Peter Gregg deposition there's a reference
13:17:28 25 to Exhibit 347. It's an e-mail from Greg Shepard. We don't

1 Q. So your knowledge -- to your knowledge, your lenses
2 are somewhere in Delta, Utah?

3 A. That is correct.

4 Q. You don't know where?

15:32:07 5 A. No.

6 Q. You've never seen your lenses?

7 A. No.

8 Q. And you said that your information on this topic
9 comes from Greg Shepard; right?

15:32:14 10 A. That is correct.

11 Q. So that's all Mr. Shepard has told you is that your
12 lenses are in Delta, Utah, and sometime they'll generate
13 electricity?

14 A. Yes.

15:32:23 15 Q. And that time has never occurred?

16 A. As far as producing electricity?

17 Q. Yes.

18 A. Not to my knowledge.

19 Q. Mr. Rowbotham, what income, if any, have you
15:32:35 20 received from your lenses?

21 A. I have received a monthly check from RaPower3 for
22 the last three, four or five years.

23 Q. And what's that check for?

24 A. The distribution of sales based upon the RaPower3
15:33:00 25 multilevel marketing system.

1 purchase of the solar lenses.

2 Q. This was so that you could claim tax credits on
3 your federal income tax returns?

4 A. Yes, sir.

15:47:28 5 Q. Mr. Rowbotham, have you ever had your tax returns
6 audited by the IRS?

7 A. In 1986, yes.

8 Q. What about after 1986?

9 A. No.

15:47:43 10 Q. Okay. So to be clear, no tax return where you
11 claimed a tax credit associated with your solar lenses has
12 ever been audited by the IRS?

13 A. That is correct.

14 MR. MORAN: May I have a moment, Your Honor?

15:48:01 15 THE COURT: Yes.

16 (Time lapse.)

17 MR. MORAN: We have nothing further at this time.

18 THE COURT: All right.

19 Cross-examination?

15:48:32 20 CROSS-EXAMINATION

21 BY MR. GARRIOTT:

22 Q. Mr. Rowbotham, thank you for your time today.

23 My name is Dan Garriott, and I represent the
24 defendants in this case.

15:49:16 25 You just mentioned that you gave Exhibits 103, 104

1 and 105 to your tax person.

2 A. That is correct.

3 Q. Who's your tax person?

4 A. Dave Mantyla.

15:49:34 5 Q. Dave Mantyla?

6 A. Yes.

7 Q. Do you know the name of his company?

8 A. At the time it was Mantyla McReynolds, I believe,
9 and he is currently an independent now.

15:49:48 10 Q. Okay. How long did Mr. Mantyla do your taxes?

11 A. Don Mantyla was Dave's dad, and we started with
12 him, I'd say the late '90s.

13 Q. Does he still do your taxes?

14 A. Dave does, yes.

15:50:11 15 Q. Let me clarify that a little bit. Does he do your
16 personal taxes?

17 A. Yes.

18 Q. Does he do any taxes related to your companies, I
19 think we talked about BFS and KBR?

15:50:27 20 A. Yes.

21 Q. If I say BFS do you understand that to be Bigger,
22 Faster, Stronger?

23 A. Correct.

24 Q. Okay. So does he continue to do taxes for those
15:50:36 25 entities as well as you personally?

1 A. Yes.

2 Q. Okay. And did he do taxes for you, do your taxes
3 in the years 2006 through 2010?

4 A. I'm pretty sure he did, yes.

15:50:57 5 Q. I think those were the years that you testified
6 that you took tax credits for the solar energy. Does that --

7 A. That is correct.

8 Q. That's correct?

9 A. Yeah.

15:51:08 10 Q. I want to show you an exhibit. This is
11 Exhibit 102. It's already in evidence. Have you seen this
12 document before?

13 A. I probably have. I don't remember it specifically.
14 But....

15:51:38 15 Q. Take just a second. And let me flip through down
16 to the bottom, the next page.

17 A. Oh.

18 Q. Do you recognize that table?

19 A. Yes.

15:51:45 20 Q. Okay. And at the top this appears to be an e-mail,
21 do you agree with me on that?

22 A. Yes.

23 Q. And in the cc. line, there is an e-mail address for
24 bob@bfsmail.com. Do you see that?

15:52:02 25 A. Yes.

1 A. Yes.

2 Q. You mentioned that you didn't want BFS to have any
3 further association with solar lenses. You continue to own
4 solar lenses, though; correct?

15:59:01 5 A. Yes.

6 Q. Did you really mean that you didn't want any
7 affiliation with the sale, continued sale of solar lenses, is
8 that accurate?

9 A. Yeah. We did not want the perception of that
10 product being sold at BFS.

11 Q. So you didn't want the perception of being involved
12 with RaPower3 or IAS, is that more accurate?

13 A. Yes.

14 Q. The reality is that you continue to receive
15 commissions from sales of lenses.

16 A. Yes.

17 Q. Okay. When you purchased the lenses, did you think
18 a profit was possible from your lens?

19 A. I thought so, yes.

15:59:52 20 Q. Did you understand that there were market risks
21 when you purchased your lenses?

22 A. Absolutely.

23 Q. Did you actually pay for your lenses?

24 A. Yes.

16:00:03 25 Q. Was your purchase of those lenses at arm's length?

1 A. Will you say that again, please?

2 MR. MORAN: Objection; mischaracterizes the
3 evidence.

16:00:19

4 THE COURT: Overruled. If he has a clue what that
5 means.

6 Q. BY MR. GARRIOTT: Do you understand what an arm's
7 length transaction is?

8 A. Yes.

16:00:28

9 Q. Okay. What is your understanding of an arm's
10 length transaction?

11 A. That it's basically separate of the existing
12 organization that I'm in.

13 Q. Okay. And did you understand that your purchase of
14 the lenses was an arm's length transaction?

16:00:44

15 A. Yes.

16 Q. You aren't currently an employee of IAS or
17 RaPower3, are you?

18 A. No.

19 Q. Have you ever been?

16:01:04

20 A. No.

21 Q. You don't currently have any ownership interest in
22 AIS or RaPower3, do you?

23 A. Nothing except some stock.

16:01:15

24 Q. And it's true that you don't really understand the
25 ownership or the corporate structure of either IAS or

1 RaPower3; correct?

2 A. No. That is correct.

3 Q. Have you paid taxes on all the money that you have
4 received from the sale of solar lenses or relating to these
16:01:39 5 lenses --

6 A. Yes, I have.

7 Q. Excuse me.

8 -- for the last five years?

9 A. Yes.

16:01:47 10 Q. Okay. At the time Mr. Shepard used the BFS
11 customer list, he was still an owner of BFS; correct?

12 A. Yes.

13 Q. All right. So he owned the list?

14 A. Along with me as a partner, yes.

16:02:06 15 Q. So as a partnership, you agreed that it would be
16 better for BFS not to proceed in that direction; correct?

17 A. Yes.

18 Q. Okay. Did you ever speak to legal counsel about
19 your ability to claim tax credits from the purchase of these
16:02:31 20 lenses?

21 A. Me personally?

22 Q. Yes.

23 A. No.

24 Q. Did you understand that you could have?

16:02:38 25 A. Based upon what I have heard from Greg and

1 understanding the, minimally understanding the credit law.

2 Q. Okay.

3 If I might have a moment I think I'm close.

4 THE COURT: Yeah.

16:02:53 5 (Time lapse.)

6 MR. GARRIOTT: Nothing further at this time.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION

9 BY MR. MORAN:

16:03:17 10 Q. Mr. Rowbotham, is there any doubt in your mind that
11 you claimed at least \$10,500 in tax credits from your solar
12 lenses?

13 A. Is there any doubt in my mind?

14 Q. Yes.

16:03:29 15 A. No. No.

16 Q. So it was at least 10,500?

17 A. Yes.

18 Q. And none of those credits were ever audited by the
19 IRS; correct?

16:03:37 20 A. That is correct.

21 Q. Mr. Garriott asked you some questions about the
22 search warrant that was executed. Do you recall that?

23 A. Repeat that, please.

24 Q. Mr. Garriott asked you some questions about the
16:03:54 25 search warrant that was conducted at Bigger, Faster, Stronger