

EXHIBIT D

(Barry West Deposition Excepts)

CONFIDENTIAL

Page 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 1:16-cv-21199-CMA/O'Sullivan

ANDREA ROSSI and LEONARDO)
CORPORATION,)
)
)
Plaintiffs,)

v.)

THOMAS DARDEN; JOHN T.)
VAUGHN; INDUSTRIAL HEAT,)
LLC; IPH INTERNATIONAL,)
B.V. and CHEROKEE)
INVESTMENT PARTNERS, LLC,)
)
Defendants.)

C O N F I D E N T I A L

Video Deposition of BARRY WEST
(Taken by the Plaintiffs)
Raleigh, North Carolina
Friday, December 2, 2016

Reported by: Marisa Munoz-Vourakis -
RMR, CRR and Notary Public

CONFIDENTIAL

Page 35

1 records of all that stuff. I want to say it was in
2 like September.

3 Q. Do you know what company you were working
4 for at that time, or let me rephrase that question,
5 since it's poorly phrased.

6 You were working as an independent
7 contractor for Mr. Darden's company at that time?

8 A. Yeah, I've never had an actual paper thing.
9 It's always just been damn, Barry, we got this work,
10 come help us, and they always paid me. So, you know,
11 there was never any paper thing, other than my check,
12 and I didn't even get a check many times. I mean, a
13 lot of it after a while I told them, I'm tired of this
14 check, I got to go cash it. I said just do ACH, you
15 know, direct deposit. Let's work out something like
16 that, and that's what they did after that.

17 Q. And you don't know what entity was paying
18 you at that time?

19 A. Industrial Heat.

20 Q. Industrial Heat?

21 A. All my checks have always been Industrial
22 Heat, LLC on them.

23 Q. Got it. So what was the nature of the
24 first type of work you did for Industrial Heat?

25 A. That panel.

CONFIDENTIAL

Page 41

1 Q. What's his last name?

2 A. I don't know, just Drew. He drives a
3 forklift, yeah, he works for Southern Industrial. He's
4 in the click. He stays there all the time. So he
5 knows what's going on, all the office gossip and so on
6 and so forth, so. Plus he supported me any time I
7 needed something moved down there on our end or we had
8 parts that shipped into us and they were big or heavy,
9 I would always give him a call, and he'd run over and
10 bring the forklift help us, you know.

11 Q. Do you own any shares in Industrial Heat?

12 A. Yes, I think I do, yeah. I mean, I say I
13 think I do. I don't know if it's Industrial Heat or
14 what it is. It's some little thing that they give me
15 towards the end of the project.

16 Q. Was it a stock certificate that they gave
17 you?

18 A. No, it's shares. It's shares of something.
19 It's a stock. I mean, I don't know nothing about that
20 stuff, I really don't. I was told not to never sell it
21 though, unless it gets to \$500 a share, then I might
22 sell it.

23 Q. Do you know how many shares you were given?

24 A. Yes, 5,000.

25 Q. And did they tell you why they gave you

Veritext Legal Solutions

800-726-7007

305-376-8800

CONFIDENTIAL

Page 84

1 Q. Right. But did you understand that he had
2 a specific role with respect to what was going on in
3 North Carolina?

4 A. Yeah, he was Andrea's right hand.

5 Q. Okay. Did you understand that Fulvio
6 Fabiani and Dr. Rossi had a relationship prior to doing
7 the work for Industrial Heat?

8 A. Oh, yeah, I met a lot of the family members
9 and I understood that.

10 Q. Did the people at Industrial Heat
11 understand that Fulvio Fabiani had a relationship with
12 Dr. Rossi prior to the work performed at Industrial
13 Heat?

14 A. Yeah, they knew.

15 Q. Did they have a concern about that?

16 A. No. Fulvio was Andrea's electrician, man.
17 You know, I mean, that had been going on for some time.

18 Q. Did they ever express to you that they were
19 concerned about this prior relationship?

20 A. No.

21 Q. Now, when you're talking the design layout
22 for the Florida plant that you and T. Barker worked on
23 in November, approximately, November 2014, when did you
24 first communicate or did you communicate that layout
25 design to Dr. Rossi?

CONFIDENTIAL

Page 85

1 A. Yes.

2 Q. When did you do that?

3 A. When it arrived.

4 Q. When it arrived in Doral?

5 A. In Doral. We had talked about it earlier
6 though. I had mentioned it on the phone with Andrea
7 when I was coming in. Andrea, actually, he met me at
8 the airport one time and picked me up. I think it was
9 Andrea that came and got me the very first day. The
10 first time I flew up there, Andrea came and got me.
11 Maybe Fulvio took me back, but for the first -- my
12 initial look and get measurements, see how this stuff
13 is going to layout.

14 Q. So was this in December of 2014 you're
15 talking about?

16 A. No, I'm thinking this was in November. I'd
17 have to go back and try to pull -- find the plane
18 ticket. I don't know, man. I forget. They got all
19 that information there.

20 Q. So the first trip to the plant in November
21 of 2014, you brought along your design layout plan and
22 the design layout plan that you and T. Barker put
23 together?

24 A. No, no, couldn't have, because my purpose
25 for going down there was to measure the place so we

CONFIDENTIAL

Page 177

1 Q. And isn't it true that you were able to
2 determine whether steam was being produced by measuring
3 temperature or anything else on the E-CAT side of the
4 plant?

5 A. Yes, sir.

6 Q. And the same would be true for the return;
7 the measuring devices were on the E-CAT side of the
8 plant?

9 A. Yes, sir.

10 Q. So, in essence, the entire time that the
11 people were there, yourself included, for almost a year
12 there was really no measurements that needed to be
13 taken on the other side of the plant, correct?

14 A. Yes, sir. I don't know whether or not it
15 needed --

16 Q. And all of the -- all of the validation and
17 all the measurements that were being inputted and that
18 resulted in various reports, were all conducted on the
19 E-CAT side of the plant, correct?

20 A. As far as I'm aware of, yes, sir.

21 Q. Now, let me ask you this, you indicated
22 that you had -- I don't know remember if it was seen,
23 met or spoken to Mr. Bass two or three times?

24 A. Yeah, over the entire course of the year.

25 Q. Okay. And what were the circumstances

CONFIDENTIAL

Page 178

1 under which you had the opportunity to, and please tell
2 me whether it was speak or see? What do you recall
3 were your communications with Mr. Bass?

4 A. When I first got down to Florida, I'm
5 pretty sure it was on the day of the arrival of the
6 plant, of the two plants, the control room and the
7 E-CAT plant, I was introduced to Mr. Jim Bass. He was
8 at the back door, and I met him, shook his hand, and
9 then I went many months and didn't see Mr. Bass. One
10 day he -- or weeks there, I forget how long, but he
11 came back down to talk to Fulvio one day, and I saw him
12 again and spoke. And then a couple other times when we
13 were going to lunch, he would need a conversation with
14 Fulvio or Andrea and usually it's Fulvio, and we would
15 stop in his office up front, and I saw him up front in
16 his office. But once again, that's all -- you can't
17 see anything behind three offices as to the work area
18 back there. I mean, I was never exposed to the actual
19 working area back there for JM products.

20 Q. In the times that you saw and spoke to
21 Mr. Bass, did he make any representations to you about
22 anything in particular?

23 A. No, sir. No, sir.

24 Q. He never told you what they were or were
25 not manufacturing at the JM site, correct?

Veritext Legal Solutions

800-726-7007

305-376-8800

CONFIDENTIAL

Page 179

1 A. He never disclosed any information to me
2 about what they done there.

3 Q. And he never provided to you any
4 information of any kind or nature whatsoever, did he?

5 A. No, sir.

6 Q. And did you need to know anything from
7 Mr. Bass in order to do the work that you were doing?

8 A. No, sir.

9 Q. And Mr. Bass never made any representations
10 to you of anything or nature, correct?

11 A. No, sir.

12 Q. So then when you were read the statement
13 before that Mr. Bass was part of a scheme to defraud,
14 you really don't have any information of any facts that
15 Mr. Bass had conducted a fraud, do you?

16 A. No, sir.

17 Q. So if we took his name out of that
18 statement that you were asked to say true or false to,
19 would it be appropriate?

20 A. Yes, sir.

21 Q. And let me ask you this, did you ever meet
22 Mr. Henry Johnson?

23 A. I don't know him. I don't remember meeting
24 him.

25 Q. Now, you indicated when you were advised --

Veritext Legal Solutions

800-726-7007

305-376-8800

CONFIDENTIAL

Page 185

1 Q. Who did you consider as your immediate
2 supervisor while you were working at Triangle Drive?

3 A. T. Barker or J.T. or Fulvio, either one of
4 them. A lot of the ideas and a lot of the work I was
5 doing I was helping Fulvio.

6 Q. Well then, why don't we move then on, can
7 you tell me what was Fulvio's Fabiani's role in the
8 work that was going on on Triangle Drive?

9 A. Fulvio was Andrea's electrical guy, if you
10 will. He took care of the electrical components and
11 assisted with the building and designing of any of the
12 electrical -- the necessary electrical parts, parts of
13 the puzzle, if you will.

14 Q. And how was your working relationship with
15 Mr. Fabiani on Triangle Drive?

16 A. Excellent.

17 Q. You ever have any issue or -- strike that.
18 Did you have any -- ever while at Triangle
19 Drive have any suspicions that Mr. Fabiani was somehow
20 trying to undermine the results that were trying to be
21 achieved at the Triangle Drive facility?

22 A. No, sir, I didn't. I wasn't aware.

23 Q. How would you describe his work? If you
24 were to evaluate him as a supervisor, how would you
25 evaluate his work while at Triangle Drive?

CONFIDENTIAL

Page 189

1 there and attempt some little projects of his own and
2 help myself and T. Barker with little ongoing projects
3 that we had going, most of them that Andrea wanted us
4 to do, things that Andrea was requesting of us.

5 Q. Was Mr. Dameron supervising Mr. Fabiani's
6 work?

7 A. Not really. Yeah, T. Barker would input,
8 you know, he would help. We'd all get together and
9 have kind of little roundtable meetings and, yeah,
10 yeah, T. Barker's input was, you know, was important.

11 Q. Now, focusing on that time at Triangle
12 Drive, and you talked to me about the conversations you
13 had with Mr. Vaughn regarding Mr. Fabiani's pay, do you
14 recall any other conversations with Vaughn or Darden
15 with regard to Fabiani?

16 A. No, sir.

17 Q. Now, you testified about the plant being
18 moved from North Carolina down to Miami, the Doral
19 facility, correct?

20 A. Yes, sir.

21 Q. Do you know whether Mr. Fabiani had any
22 role in convincing Industrial Heat to allow the plant
23 to be moved to Doral?

24 A. No, I'm not aware. As far as what I'm
25 aware of is this was Andrea's deal. I don't think

CONFIDENTIAL

Page 190

1 Fulvio even had a clue where the place was going to be
2 at until Andrea showed him the first time. I think
3 Andrea picked a site and handled, handled that, the
4 location area.

5 Q. As we sit here today, you don't think
6 Fulvio had anything to do with that Doral facility?

7 A. No. No.

8 Q. You say that you don't even think he knew
9 where that Doral facility was --

10 A. Until Andrea showed him.

11 Q. I'm sorry, say that again?

12 A. Until Andrea showed him for the first time.
13 Fulvio didn't know. This was Andrea's choice. I don't
14 think Fulvio had anything to do with it. However, he
15 may have helped Andrea find it, I don't know.

16 Q. I think you had mentioned, I'm going
17 backward here, I guess you stay in touch with
18 Mr. Fabiani through Facebook, I think you said?

19 A. Yeah, and I haven't spoken with him or seen
20 a response from him in probably a couple of months now,
21 but I've seen some stuff he's posted on there recently.
22 Fulvio's pretty good at the Facebook thing. I'm not.
23 I'm not too swift myself. Damn thing keeps changing.

24 Q. It's confusing. Me neither, me neither.
25 Let me back up on -- I asked you some questions about

CONFIDENTIAL

Page 197

1 issues that you had on this, you know, had some
2 concerns, I'll say that, that there might have been a
3 dishonest venture. And one of the things that you said
4 was what was happening on the other side of the wall,
5 and I take that the other side of the wall means the JM
6 Products, correct?

7 A. Yes, sir.

8 Q. While you were working down in Miami with
9 Mr. Fabiani, how much interaction did Mr. Fabiani have
10 with the JM Products' side of the warehouse?

11 A. It was limited, but Fulvio was over there,
12 over there a lot, or at least up front in the office.
13 I mean, once again, what was in behind the wooden box,
14 the wooden wall was pretty much forbidden. So I don't
15 know how much interaction Fulvio had back there. I
16 know he was back there some, because I heard his voice
17 over there, but I think most of Fulvio's interaction
18 with Mr. Bass and Reynoldo and all was up front in the
19 office.

20 Q. Do you know whether Mr. Fabiani had -- do
21 you know whether Mr. Fabiani had permission to go back
22 there into the JM side into the, I guess the closed off
23 area?

24 A. I'm assuming he did, if Andrea or Jim or
25 Reynoldo was there, yeah, I think maybe so. I know I

CONFIDENTIAL

Page 198

1 wasn't allowed in there, and I never seen Fulvio use
2 the one door back there but like once, and that's when
3 Reynoldo let him pass one time for something. But once
4 again, Mr. Jim was having computer problems all the
5 time, and Fulvio is the computer fix it man. So he'd
6 go up there and fix it. I think that's what --
7 according to what Fulvio tells me, that's what a lot of
8 the issues were. Jim would have problems with his
9 computer, and Fulvio would go help him.

10 Q. Okay. But you said that -- and you talked
11 about this -- a door. Is that the door that leads to
12 the JM Products' side?

13 A. Yes, sir, there was one personnel door
14 there that remained shut and locked at all times.

15 Q. And you saw Mr. Fabiani go through that
16 door one time, you said?

17 A. Yeah, I think one time in the very
18 beginning, Reynoldo, he followed Reynoldo after
19 something up there, went up front to work on Jim's
20 computer or something. So, but then he showed up at
21 the back door, because I had to let him in, because
22 they didn't let him come back through that door.
23 Andrea didn't want anybody passing through that door.

24 Q. So they even made Mr. Fabiani go around the
25 building to come back into the back?

CONFIDENTIAL

Page 204

1 associated with each unit, each heater, each E-CAT, if
2 you will, and or big Frankie.

3 Q. And my understanding, you left around
4 October before the one year operation was complete, is
5 that correct?

6 A. I left in April. I left, again, I think at
7 the end of September, and I might have come home one
8 time for a few weeks in the middle there. Then I left
9 again for the road, which is right there in Halloween,
10 first of November, took about a month. And then I left
11 and got me another month right there at Christmas and
12 New Year's. And then I went back about the 10th of
13 January after deer season and stayed two weeks, two
14 final weeks, the last two weeks of the month of January
15 this year. And then I left there, I want to say the
16 27th, 28th of January, I forget that Friday, I forget
17 exactly, I have to look at the calendar, but I came
18 home, and that concluded my tour of duty in Miami.

19 Q. All right. Now, in all that time that you
20 spent there, and you have the same -- pretty much the
21 same hours as Mr. Fabiani, could you recall any acts or
22 anything that he did that would have made you believe
23 that he was somehow deceitful or dishonest with
24 Industrial Heat?

25 A. No, sir, I don't recall any.

CONFIDENTIAL

Page 219

1 were accurate?

2 A. Well, mostly Andrea did that. I mean, he
3 walked around every hour or two during his stays,
4 during his time there and took measurements. I mean,
5 he used a little laser, little laser temperature probe
6 to verify, just to check and keep an eye. And then, of
7 course, he corresponded with Fulvio as to what he was
8 reading and recording versus what Fulvio's system was
9 telling him.

10 Q. And Mr. West, during this time when these
11 measurements are going on and this work is happening
12 and you're their -- you're their eyes and ears for
13 Industrial Heat, did you notice anything going on that
14 you would describe as deceptive or dishonest in taking
15 these measurements?

16 A. Not knowingly, not, you know, not -- no,
17 sir. No, sir.

18 Q. All right. Let me move to another subject
19 here.

20 And one of the issues is this denial of
21 access, and I think you testified earlier that Joe
22 Murray was at some point denied access, is that
23 correct?

24 A. Yes, sir.

25 Q. Do you know did Mr. Fabiani play any role

CONFIDENTIAL

Page 220

1 or have any part in that denial of access to
2 Mr. Murray?

3 A. No, sir, I don't think Fulvio had anything
4 to do with that.

5 Q. Did Mr. Fabiani have any role or duties at
6 the Doral facility regulating who came in or who was
7 allowed in or who was not allowed in?

8 A. No, sir. No, sir. Andrea controlled that.

9 Q. I'm sorry?

10 A. Andrea, Andrea controlled that.

11 Q. Andrea Rossi controlled who got in and who
12 got out?

13 A. Yes, sir.

14 Q. Do you recall Mr. Fabiani making any
15 written or verbal statements to anyone with regard to
16 whether access to the plant or access to the warehouse?

17 A. No, sir. No, sir.

18 Q. Now, one of the things I think the
19 contractual issue or -- strike that.

20 One of Mr. Fabiani's duties, and correct me
21 if I'm wrong, is to give and provide data to Industrial
22 Heat, is that correct?

23 A. Yes, sir, as far as I know.

24 Q. Do you recall Mr. Fabiani sending data to
25 Industrial Heat or reports or any written information

CONFIDENTIAL

Page 227

1 have both been a part of it.

2 Q. Well, I mean, that's the whole question is
3 the if, if something is going on. And so, again, just
4 to clarify my question, is that while you were working
5 with, you know, Mr. Fabiani for almost I think you said
6 it was almost three years, you can't testify to one
7 thing that you think you saw him do that was dishonest
8 or inappropriate or deceitful to Industrial Heat, is
9 that correct?

10 MR. FALCONE: Objection.

11 A. That I'm aware of, you know, once again.

12 Q. That's what I'm just looking at, what you
13 know, what you know.

14 A. I don't know anything. I don't know if the
15 information that Fulvio passed to him was accurate or
16 not.

17 MR. NUNEZ: Thank you very much,
18 Mr. West. I will stop there. No more
19 questions.

20 MR. CHAIKEN: You gentlemen have any
21 questions?

22 MR. FALCONE: No questions.

23 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS
24 BY MR. CHAIKEN:

25 Q. This is Brian Chaiken, I have a few

CONFIDENTIAL

Page 235

1 C E R T I F I C A T E

2 I, Marisa Munoz-Vourakis, RMR, CRR and Notary Public,
3 the officer before whom the foregoing proceeding was
4 conducted, do hereby certify that the witness(es) whose
5 testimony appears in the foregoing proceeding were duly
6 sworn by me; that the testimony of said witness(es) were
7 taken by me to the best of my ability and thereafter
8 transcribed under my supervision; and that the foregoing
9 pages, inclusive, constitute a true and accurate
10 transcription of the testimony of the witness(es).

11 I do further certify that I am neither counsel for,
12 related to, nor employed by any of the parties to this
13 action in which this proceeding was conducted, and
14 further, that I am not a relative or employee of any
15 attorney or counsel employed by the parties thereof, nor
16 financially or otherwise interested in the outcome of the
17 action.

18 IN WITNESS WHEREOF, I have hereunto subscribed my name
19 this of , 2016.

20 MARISA MUNOZ-VOURAKIS

21 Notary #20032900127
22
23
24
25