

EXHIBIT 2

02/16/2017 Thomas Darden

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ANDREA ROSSI and LEONARDO
CORPORATION,

Plaintiffs,

VS.

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

Defendants.

INDUSTRIAL HEAT, LLC and IPH
INTERNATIONAL B.V.,

Counter-Plaintiffs,

Vs.

ANDREA ROSSI and LEONARDO
CORPORATION,

Counter-Defendants,

And

J.M. PRODUCTS, INC.; HENRY
JOHNSON; FABIO PENON; UNITED
STATES QUANTUM LEAP, LLC;
FULVIO FABIANI; and JAMES
BASS,

Third-Party Defendants.

No. 1:16-cv-2119-CMA

Videotaped Deposition of
THOMAS DARDEN
(Taken by Plaintiff)

3509 North Haworth Drive, Suite 403, Raleigh, North Carolina

February 16, 2017

Reported in Stenotype By
Leslie Christian

Transcript produced by computer-aided transcription

Page 122

1 order as it relates to this document we could go off
 2 the record, we could call the judge now or I could ask
 3 my questions and you can mark it highly confidential.
 4 And if we -- that way I don't have to
 5 call him back. If I get -- I'm right in my argument
 6 then I don't have to call him back and we don't have to
 7 have this deposition again. So we can do that either
 8 way.
 9 MR. BELL: Well, I already have a
 10 protective order. The flaw in the reasoning is I have
 11 a protective order --
 12 MR. CHAIKEN: Right.
 13 MR. BELL: -- in place, and what it
 14 says is if we call the document back, you send it back.
 15 You destroy all notes. It doesn't say you challenge
 16 it. It doesn't give you the right to challenge it. If
 17 you want to challenge the plaintiff codes you can do
 18 that in the motion to compel. But I don't need to move
 19 for a protective order because I have a protective
 20 order.
 21 MR. CHAIKEN: Let's go off the record
 22 and take a look at that order and then maybe we can
 23 reach an agreement.
 24 MR. BELL: That's fine.
 25 THE VIDEOGRAPHER: We're going off the

Page 123

1 record at 11:54 a.m.
 2 (Whereupon a break was taken.)
 3 THE VIDEOGRAPHER: We are back on the
 4 record at 12:03 p.m.
 5 (BY MR. CHAIKEN)
 6 Q. Mr. Darden, I was about to ask you some
 7 questions about what had been marked as Exhibit
 8 Number 17. Counsel -- your counsel and I have been
 9 discussion it off the record.
 10 MR. CHAIKEN: I believe, Mr. Bell,
 11 you're going to instruct your witness not to answer any
 12 questions regarding this document.
 13 MR. BELL: That's correct. My
 14 position, as I stated before we went off the record, is
 15 under paragraphs -- whatever that was we just looked
 16 at. 21 or 22 or 20 and 21 of the protective order.
 17 MR. CHAIKEN: Right. Our position is
 18 that that document -- any privileges that have been
 19 waived as to that document I guess we'll have that
 20 issue before the court. So I'm not going to ask any
 21 further questions on that document.
 22 (BY MR. CHAIKEN)
 23 Q. So my question now is as of January -- and
 24 I guess your position isn't going to change. But as of
 25 January 2014 it was your opinion that the guaranteed

Page 124

1 performance test pursuant to the contract could not be
 2 performed, correct?
 3 A. Yes, that test.
 4 Q. Right. And your -- and you believe that
 5 you communicated that position to Dr. Rossi orally, but
 6 you don't know if you communicated it to him in
 7 writing; is that correct?
 8 A. I don't remember whether we did it in
 9 writing, but I distinctly remember it orally more than
 10 once and, particularly, the issue of he had not
 11 transferred the technology. Therefore, he had breached
 12 the agreement. We were not able to replicate. The
 13 measurements were not accurate. And we had some very
 14 contentious meetings around that including one in Miami
 15 that -- where I went down there to meet to talk about
 16 that specific subject.
 17 Q. So let me step back a second. So my
 18 understanding was that the guaranteed performance test
 19 could not have happened due to timing issues as of
 20 October 2013. The issues relating to being able to
 21 replicate and the other issues, were those all -- were
 22 those all issues at that time October 2013 as well?
 23 A. I'm sorry. Can you say that part again.
 24 Q. Yeah. And I'm a little confused by your
 25 prior response because we had been talking about the

Page 125

1 guaranteed performance tests in terms of timing.
 2 A. Um-hm.
 3 Q. And you just mentioned a whole bunch of
 4 other issues that I wasn't sure was the issue as of
 5 that time October 2013.
 6 A. Okay. So those conversations were around,
 7 "We're out of contract or, you know, the deal is over
 8 or the -- you know, the time has passed. We're no
 9 longer talking about that particular contract.
 10 However, we want technology that works. If we have
 11 technology that works that we can replicate then we're
 12 willing to discuss with you paying you a lot of money
 13 even though we shouldn't have to do that."
 14 Q. Right. So were there other issues besides
 15 timing issues in or around October 2013 with respect to
 16 guaranteed performance tests?
 17 A. I don't remember October '13 but -- so, I
 18 mean, we had said that if a device -- we had previously
 19 said that if we ran the six cylinder unit, which also
 20 carried with it the implication that we built it
 21 because it's a small unit and we had to have built
 22 those reactors and it was easy to measure because it's
 23 small.
 24 So something that we could really get our
 25 heads around. So that's -- and I say if we ran the six

02/16/2017 Thomas Darden

Pages 330..333

Page 330

1 CERTIFICATE OF REPORTER
 2 STATE OF NORTH CAROLINA)
 3 COUNTY OF WAKE)
 4
 5 I, Leslie Christian, the officer before whom
 6 the foregoing videotaped deposition was taken, do
 7 hereby certify that the witness whose testimony appears
 8 in the foregoing videotaped deposition was duly sworn
 9 by me; that the testimony of said witness was taken by
 10 me to the best of my ability and thereafter reduced to
 11 typewriting under my direction; that I am neither
 12 counsel for, related to, nor employed by any of the
 13 parties to the action in which this videotaped
 14 deposition was taken, and further that I am not a
 15 relative or employee of any attorney or counsel
 16 employed by the parties thereto, nor financially or
 17 otherwise interested in the outcome of the action.
 18 This the 28th day of February, 2017.
 19 *Leslie Christian*
 20 _____
 21 LESLIE CHRISTIAN
 22 Notary Public in and for
 23 County of Wake
 24 State of North Carolina
 25 Notary Public No. 201221300088

Page 331

1 WITNESS'S CERTIFICATE
 2
 3 I, Thomas Darden, MD, do hereby certify
 4 that I have read and understand the foregoing
 5 transcript and believe it to be a true, accurate, and
 6 complete transcript of my testimony, subject to
 7 the attached list of changes, if any.
 8
 9 _____
 10 Thomas Darden, MD
 11
 12 This deposition was signed in my presence by
 13 _____, on the ____ day of
 14 _____, 2017.
 15
 16 _____
 17 Notary Public
 18 My commission expires:
 19
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 21
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 25

Page 332

1 CaseWorks, Inc.
 811 Ninth Street, Suite 260 (Page 1 of 2)
 2 Durham, North Carolina 27705
 3 E R R A T A S H E E T
 4 Re: Andrea Rossi, et al. vs. Thomas Darden, et al.
 5 Deposition of: Thomas Darden, MD
 6 Please read this transcript with care, and if
 7 you find any corrections or changes you wish made, list
 8 them by page and line number below. DO NOT WRITE IN
 9 THE TRANSCRIPT ITSELF. Return the
 10 Certificate and Errata Sheet to this office after
 11 it is signed. We would appreciate your prompt
 12 attention to this matter.
 13 To assist you in making any such corrections,
 14 please use the form below. If supplemental or
 15 additional pages are necessary, please furnish same and
 16 attach them to the errata sheet.
 17 Page ____ Line ____ should
 18 read: _____
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Page 333

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