

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA)
3 ANDREA ROSSI and LEONARDO)
4 CORPORATION,)
5 Plaintiffs,)
6 VS.)
7) No. 1:16-cv-2119-CMA
8 THOMAS DARDEN; JOHN T. VAUGHN;)
9 INDUSTRIAL HEAT, LLC; IPH)
10 INTERNATIONAL B.V.; and)
11 CHEROKEE INVESTMENT PARTNERS,)
12 LLC,)
13 Defendants.)
14 INDUSTRIAL HEAT, LLC and IPH)
15 INTERNATIONAL B.V.,)
16 Counter-Plaintiffs,)
17 Vs.)
18 ANDREA ROSSI and LEONARDO)
19 CORPORATION,)
20 Counter-Defendants,)
21 And)
22 J.M. PRODUCTS, INC.; HENRY)
23 JOHNSON; FABIO PENON; UNITED)
24 STATES QUANTUM LEAP, LLC;)
25 FULVIO FABIANI; and JAMES)
BASS,)
Third-Party Defendants.)

21 Videotaped Deposition of
22 THOMAS DARDEN
23 (Taken by Plaintiff)
3509 North Haworth Drive, Suite 403, Raleigh, North Carolina
24 February 16, 2017
25 Reported in Stenotype By
Leslie Christian
Transcript produced by computer-aided transcription



1 can't prove that we have anything that we know works.
2 If something didn't even work as well as three times we
3 would be pretty excited. But, you know, can we get
4 something to work two times COP."

5 I mean, you know, we're -- money is not our
6 concern. It's the effectiveness of the technology. We
7 would say that to him. Like, we have plenty of money.
8 That's not the problem. We can pay all the money that
9 anybody wants whether it's fair or whether it's
10 consistent with the contract. That's a different
11 issue. But we're willing to pay money if we have
12 technology that worked.

13 Q. Okay. Now, talking about the timeframe
14 October 2013 going forward, you were performing tests
15 -- and when I say "you," Industrial Heat was performing
16 tests on various -- various reactors or various single
17 units in Raleigh; was it not?

18 A. Um-hm.

19 Q. At anytime between October 2013 through,
20 let's say, June 2014 did Dr. Rossi ever refuse to
21 perform tests that Industrial Heat requested of him?

22 A. Yes.

23 Q. When?

24 A. Often during that time period. So we had
25 built a device that -- that where the unit -- it was a

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 1:16-cv-21199-CMA

ANDREA ROSSI, ET AL.,

Plaintiffs,

vs.

THOMAS DARDEN, ET AL.,

Defendants.

_____ /

PERLMAN, BAJANDAS, YEVOLI &
ALBRIGHT, P.L.
282 CATALONIA AVENUE
SUITE 200
CORAL GABLES, FL 33134
Monday, February 13, 2017
9:07 a.m. - 5:18 p.m.

VIDEOTAPED DEPOSITION OF JOHN THOMAS VAUGHN
(Corporate Representative of Industrial Heat, LLC)

Taken on behalf of the Plaintiff before
Elizabeth Cordoba, RMR, CRR, FPR, Notary Public in
and for the State of Florida at Large, pursuant to
Plaintiff's Notice of Taking Deposition in the above
cause.

1 word "replicate" appear anywhere in the agreement?

2 MR. BELL: Objection to form.

3 THE WITNESS: As I stated earlier this morning,
4 we were, when Andrea drafted the agreement, we were
5 trying not to change his language unless we felt
6 absolutely we needed to. And when you combine 12 (b)
7 and 13-1, we believe that gets the same effect.

8 BY MR. CHAIKEN:

9 Q. During the one year following validation, call
10 it May 1, 2013, did Industrial Heat ever tell Dr. Rossi
11 that it could not replicate?

12 A. Yes.

13 Q. When did it do that?

14 A. I believe on numerous different occasions. But
15 one explicit conversation that comes to mind is a
16 conversation that Tom and I had with Andrea around the
17 kitchen table at Triangle Drive. Triangle Drive is where
18 the initial facility where Andrea worked is located. And
19 the basis of that conversation was to say to Andrea, you
20 know, Look, you think things are going swimmingly. We
21 don't believe that is the case. We can't replicate it.
22 You think it's -- the results are fine. We are not seeing
23 the same results.

24 And it became a heated conversation. And Tom
25 eventually, you know, after he kind of pounded the table

1 quite literally, stormed out. And I think that was in the
2 fall -- I know that was in the fall of '13. I don't
3 remember was it September, October, November. I don't
4 remember exactly. But it was during that period of time.

5 Q. Did Industrial Heat ever make that
6 communication to Dr. Rossi in writing?

7 A. I don't know if we did. And we were seeing him
8 quite frequently in person at that time. And so it
9 wouldn't surprise me if we did not, that it was only
10 verbal. But I don't know. There may be some written
11 communication along those lines.

12 And, you know, the other thing is, it was much
13 easier to communicate in person with Andrea than it was
14 via e-mail because of the way he would react or appeared
15 to react via e-mail. You can see that in his responses.

16 Q. Mr. Vaughn, did you ever -- and I was hoping to
17 get a yes or no question to this, you can explain if you
18 need to -- did you ever in writing point to those two
19 contractual provisions that you just pointed me to, and
20 put those in writing and say, Dr. Rossi, you are in
21 violation of these two provision?

22 A. I don't believe that we did, with the
23 explanation I just provided.

24 (Exhibit 19, Fourth Amended Answer, Additional
25 Defenses, Counterclaims and Third Party Claims, was

1 the time has passed, you are -- we are not having a
2 guaranteed performance test?

3 A. I am trying to recall. You know, I -- I don't
4 recall.

5 Q. Do you think that was something that would be
6 important to inform him, that he no longer had the
7 opportunity to earn \$89 million?

8 A. Again, we were planning to pay him, if he could
9 perform. Notwithstanding the fact that he had violated
10 the agreement, not met the conditions of the agreement.
11 So if we had done that, let's take a hypothetical
12 scenario, dealing with a volatile character, you don't
13 know how he is going to respond. Our goal, as stewards
14 and as managers, is to determine definitively the state of
15 the art. And by being confrontational, sooner rather than
16 later, it ensured that you would just blow up in -- there
17 was a chance, at least, that you would blow up the entire
18 relationship and Andrea would stop working on it
19 altogether and so, therefore, we just wouldn't know.
20 Versus getting more information and getting more data to
21 determine the state of the art.

22 Q. Well, couldn't you have told him, Hey,
23 Dr. Rossi, we think that the time has passed, but if you
24 perform, we are willing to still pay you?

25 MR. BELL: Objection to form.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ANDREA ROSSI and LEONARDO)
CORPORATION,)

Plaintiffs,)

vs.)

No. 1:16-cv-2119-CMA

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,)

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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.)

Videotaped Deposition of
JOHN THOMAS VAUGHN
(Taken by Plaintiff)

3509 North Haworth Drive, Suite 403, Raleigh, North Carolina
January 19, 2017, 9:04 a.m.

Reported in Stenotype By
Margaret M. Kruse, CSR, RMR, CRR
Transcript produced by computer-aided transcription

1 We can go back and look. Just because communications with
2 him were so -- so tenuous, I should say. And, you know,
3 before kind of confronting him via email, which often, as
4 you'll see the emails, he was very -- you couldn't tell
5 what he meant in his response because he would respond in
6 all caps, for example.

7 And so we were careful not to try to say things
8 that would totally alienate him or make him mad in email.
9 Because we were patient and hopeful. We were wanting to
10 get to the truth. And challenging him in the email, as was
11 our perception at the time, wasn't the best way to go about
12 that.

13 Q. Sir, your company had invested at that point in
14 time 11.5 million dollars --

15 A. Right.

16 Q. -- and paid that to Dr. Rossi.

17 A. Right.

18 Q. And you're telling me that you had doubts, but
19 you did not have someone qualified other than Dr. Rossi to
20 perform tests or evaluations for you or validations?

21 A. Correct. Because we thought that it was simple
22 and easy and that anybody could replicate it.

23 As I mentioned, T. Barker, who has some -- has an
24 engineering degree, was involved. But more or less, he was
25 there to help Dr. Rossi and be nice to Dr. Rossi. And T.

1 MR. BELL: Same objection.

2 THE WITNESS: As I mentioned, he was -- we were
3 there. He was -- you know, he was in Raleigh. He was --
4 we saw him routinely. So a lot of these concerns were
5 articulated in person.

6 As I said also, communicating via email was not
7 ever that productive. You can go back and review all the
8 emails, not ever that productive with Dr. Rossi because he
9 would respond and often he would respond like in all caps.
10 And you didn't know if he was just trying to distinguish
11 between what you said and what he said or if he was
12 screaming and yelling, you know. When we entered the
13 exclamation points, we figured maybe he was yelling too or
14 yelling louder.

15 But anyway, what you're talking about is
16 pretty -- you're directly confronting someone's what
17 appeared to be his life's work. Right. So if you were
18 going to do that, would it make sense to send an email
19 saying, as you described, email as you described it, our
20 assessment of that time was that's not the most effective
21 way to get to the truth.

22 MR. ANNESSER: I believe we have to change the
23 tape, so we'll take a short break.

24 THE VIDEOGRAPHER: We're off the record at
25 12:31 p.m.

1 know, those sorts of -- I don't know.

2 Q. So sitting here today, you do not know?

3 A. I do not know?

4 Q. Other than -- other than the number of smaller
5 E-Cats within this one-megawatt plant that were operating
6 at any time, you do not know of any other --

7 A. I don't know if I know of any other.

8 Q. You don't know what you don't know.

9 A. That's right. I'm sorry.

10 Q. Either you know or you don't. If you don't, the
11 answer is no.

12 A. I'd have to go through and review all of this and
13 see if the backup detail exists or not.

14 Q. Did you ever receive statements from J.M. as to
15 the amount of power that they received and requested that
16 you send them an invoice for that power?

17 A. I did.

18 Q. Did you ever send an invoice?

19 A. Not to my recollection.

20 Q. Why?

21 A. Because we -- we could -- that was irrelevant to
22 us. And if, in fact, it were a fraud, we didn't want to
23 participate in that.

24 Q. So you believed at the time it could be a fraud?

25 A. We didn't know.