

CAUSE NO. 08-06317

TIM DARNELL,	*
	*
Plaintiff	*
	*
V.	IN THE 193RD DISTRICT COURT
	*
	*
HEATHER DOBROTT,	* DALLAS COUNTY, TEXAS
	*
Defendant	*

* * * * *

ORAL DEPOSITION OF
TIM DARNELL
JANUARY 12, 2009
VOLUME 1

* * * * *

ORAL DEPOSITION OF TIM DARNELL, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and -numbered cause on the 12th of January, 2009, from 10:10 a.m. to 4:12 p.m., before Brandy Cooper, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Ciarochi & Associates, 800 E. Campbell Road, Suite 121, Richardson, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

A P P E A R A N C E S

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ALSO PRESENT:

HEATHER DOBROTT - Defendant

WITNESS' ADDRESS:

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1 P R O C E E D I N G S

2 THE REPORTER: Are there any stipulations
3 or agreements for the record before we begin?

4 MR. MOODY: Couple of things. One, the
5 deposition is going to be taken pursuant to the Rules,
6 although there will be signature before any notary. We
7 will reserve objections except as to form
8 responsiveness.

9 Because Jason Charles has advised me that
10 Mr. Darnell may not be in a position to give a complete
11 deposition today, it's been agreed that in the event a
12 continuation of the deposition takes place at some other
13 time, that we will be limited to the amount of time left
14 on our six hours allotted for the deposition. And I
15 have agreed to limit my questions either to new topics
16 -- if there's a continuation, that my deposition will be
17 limited either to new topics or follow ups on questions
18 that Mr. Darnell was not able to completely answer
19 today.

20 MR. CIAROCHI: And I guess my
21 supplementation to that is that new topics means topics
22 -- either amended pleadings or other things or new
23 postings that we complain of or haven't covered in the
24 deposition, not just any question not covered if it
25 could have been asked and answered during the original

1 deposition.

2 I'd also like the record to reflect that
3 counsel and opposing counsel had discussions with
4 opposing counsel's client present regarding the
5 appropriate use of discovery and a discussion of what an
6 abusive process is and what an abusive discovery is.
7 Since all discovery is intended to be used for the
8 benefit of parties in litigation, you know, the attorney
9 for Mr. Darnell is concerned that opposing counsel said
10 that although he intends to follow the rules of
11 professional responsibility, that his client is under no
12 such obligation.

13 It's our position that if the information
14 is shared other than with the goal of investigating
15 facts or fact witnesses or other appropriate uses within
16 discovery -- since some of this information will also
17 contain trade secrets and other discussions of my
18 client's business, you know, valuation models, methods
19 of making money and so on -- that, you know, we will
20 seek out the appropriate remedy if the information that
21 was used through the -- obtained through the courts is
22 then misused or shared in an inappropriate manner or if
23 it determines that my client was forced to do this
24 deposition and then the information then was used for
25 other means.

1 MR. MOODY: And I have asked Jason Charles
2 if he's got any rule, regulation, statute, case law,
3 anything that places the limitations on the use of a
4 deposition in terms of simply posting excerpts of same
5 on the Internet as it relates to an issue of public
6 concern, then for him to provide that to me. And if he
7 does not, I'm assuming that they -- there is nothing of
8 that nature.

9 TIM DARNELL,
10 having been first duly sworn, testified as follows:

EXAMINATION

BY MR. MOODY:

13 Q. Can you state your name for the record, please,
14 sir?

15 A. Timothy Spencer Darnell.

16 Q. Have you ever given a deposition before?

17 A. Yes.

18 Q. On how many occasions?

19 A. Probably three.

20 Q. When was the first time?

21 A. The first was with the Better Business Bureau,
22 our suit against the Better Business Bureau.

23 Q. Okay. And when was the second time?

24 A. We gave two -- well, no. I'm not real sure
25 about that. I would say two with the Better Business

1 Bureau.

2 Q. Okay. And what's the third?

3 A. This one.

4 Q. Okay. You recognize that the court reporter is
5 taking down everything we say here today?

6 A. Yes.

7 Q. And that she'll type it up into a booklet form
8 and that you'll be given the opportunity to read and
9 sign the deposition. Do you understand that?

10 A. Yes.

11 Q. Did you sign the other two depositions that
12 you've given?

13 A. I don't recall if I signed them or not. I knew
14 that they were public record.

15 Q. Have you read those depositions?

16 A. I have not.

17 Q. As you sit here today, are you aware of
18 anything that you said during the course of those two
19 depositions that you want to retract or change?

20 A. I don't think so.

21 Q. Okay. As a general rule, other than I ask the
22 questions and you answer them, there aren't that many
23 rules here today. If you need to take a break, feel
24 free to tell me to do so. I'll try to accommodate you
25 whenever I can. If you want to talk to your lawyer,

1 I'll try to accommodate you if I can. The only other
2 requirements is that you give a -- I would ask that you
3 give a verbal, audible response rather than a nod of the
4 head --

5 A. Yes.

6 Q. -- or things of that nature. And if you don't
7 understand any of my questions, stop and tell me so
8 because at the end of the day I'm going to assume unless
9 you've told me so that you feel like you have understood
10 my questions and given me a complete answer unless you
11 state otherwise. Okay?

12 A. Okay.

13 Q. Have you ever been involved in a lawsuit before
14 other than the Better Business Bureau suit?

15 A. I'm not sure of the definition of a lawsuit.
16 I've had -- I've been accused and not gone to court.

17 Q. Well, --

18 A. So I don't know if that's a lawsuit or --

19 Q. Okay. Accused of what?

20 A. A guy wanted his money back in a company I was
21 working with 12 years ago, probably.

22 Q. What was the name of that company?

23 A. Tru Dynamics.

24 Q. That's Tru, without an "E" on it?

25 A. Correct, uh-huh.

1 Q. And was the claim against the company or the
2 claim against you individually?

3 A. Against me.

4 Q. And what was the claimant's name?

5 A. I couldn't tell you.

6 Q. And where was that case filed?

7 A. It was in -- I'm not really -- probably Collin
8 County, but I'm not sure. The case was dropped, so he
9 dropped the case.

10 Q. Did you have a lawyer representing you in the
11 case?

12 A. I had an advisor at the time, a legal advisor.

13 Q. Who was that?

14 A. His name was Mike Dudley.

15 Q. D-U-D-L-E-Y?

16 A. Uh-huh.

17 Q. And does he have a firm?

18 A. No, he's deceased.

19 Q. Okay. Do you have a lawyer in this case?

20 A. Yes, I do.

21 Q. More than a legal advisor?

22 A. Yes.

23 Q. Okay. Just wanted to make sure we were talking
24 the same language.

25 A. Right.

1 Q. And the -- how much money was involved in that
2 lawsuit?

3 A. I think \$10,000. I'm not sure. It may have
4 been less, may have been -- maybe 9, I'm not sure.

5 Q. Did you file any affidavits in that lawsuit?

6 A. I did, yes.

7 (Exhibit No. 1 was marked.)

8 Q. (BY MR. MOODY) Let me show you a copy of
9 Exhibit No. 1 and ask if -- first off, let me ask if
10 you -- can you identify Exhibit No. 1?

11 MR. MOODY: Let's go off the record until
12 he's ready to respond.

13 (Break was taken from 10:19 a.m. to 10:25
14 a.m.)

15 Q. (BY MR. MOODY) Can you identify what's been
16 marked as Exhibit No. 1?

17 A. Yes.

18 Q. What is it?

19 A. This is my affidavit in response to that case.

20 Q. And it makes -- does it state anywhere in here
21 who the claimant was? Let me ask you this: There's
22 reference to Jenevein and Flagg. Do you know who those
23 people are?

24 A. I think they were the attorneys for the
25 gentleman. I can see his face, I just can't think of

1 his name right now.

2 Q. Okay. And is that your signature on the last
3 page of Exhibit 1?

4 A. Yes, it is.

5 Q. And are all the statements contained in this
6 affidavit true and correct?

7 A. Yeah. I did a cursory reading, but I would say
8 so, yes.

9 Q. Okay. And the outcome of that lawsuit was that
10 it just went away?

11 A. Yes, sir.

12 Q. Nobody paid you anything and you paid nobody
13 anything?

14 A. Correct.

15 Q. Have any of your companies ever been involved
16 in litigation while you were actively involved in those
17 companies?

18 A. Ones I owned or didn't own?

19 Q. Let's -- I tell you what, let's do a quick -- I
20 know that you got out of Texas Tech University in 1980,
21 correct?

22 A. Correct, yes.

23 Q. And what was your degree in?

24 A. Sociology and psychology.

25 Q. Okay. And I know that you -- are you still

1 part of a musical group known as Dreamer?

2 A. We haven't officially disbanded, but we have
3 been -- I performed for years.

4 Q. And when's the last time that y'all performed
5 as a group?

6 A. Oh, boy, probably been three years.

7 Q. Okay. And when's the last time that you've
8 performed individually?

9 A. Sunday before last.

10 Q. And where was that?

11 A. At Cottonwood Creek in Denison.

12 Q. Cottonwood Creek what?

13 A. Church. Cottonwood Creek Baptist Church.

14 Q. Is that the church that you attend on a regular
15 basis?

16 A. Not the Denison one. I just led services there
17 in Denison. That's the new church that just got set up.

18 Q. Okay. What's your date of birth?

19 A. 7-15-54.

20 Q. And where were you born?

21 A. Cisco, Texas.

22 Q. And is that where you grew up?

23 A. No. We -- dad had a church there. My dad's a
24 minister. Grew up mainly in North Carolina;
25 Fayetteville, North Carolina.

1 Q. What years did you live there?

2 A. I think I was eight, so '62 to -- '62 to '77, I
3 want to say.

4 Q. And is that when you went off to college?

5 A. When I left?

6 Q. '77, right.

7 A. No. Well, I still lived at home when I went to
8 college at Methodist -- Western Carolina University for
9 a year and then Methodist College for two years.

10 Q. And when did you first go to Texas Tech?

11 A. '78.

12 Q. And you were there for the -- until I guess May
13 of '80?

14 A. Correct, yes.

15 Q. And I'm sorry, what did you say your degree was
16 in?

17 A. Sociology major and psychology minor.

18 Q. Okay. And how did you go about earning an
19 income after leaving college? Let's just walk through
20 all the companies and enterprises that you've been a
21 part of.

22 A. Well, during college I sold vacuum cleaners for
23 Electrolux.

24 Q. Okay. What was your next job?

25 A. I worked for two different photo companies,