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UPPER DECK INTERNATIONAL B.V.

7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 UPPER DECK INTERNATIONAL B.V., a
Netherlands corporation,

12 Plaintiff,

13 v.

14 THE UPPER DECK COMPANY, a California
15 corporation; THE UPPER DECK COMPANY, a
Nevada Corporation; RICHARD McWILLIAM,
16 an Individual; and Does 1-10,

17 Defendants.

Case No. 11CV1741 LAB (RBB)

**UPPER DECK INTERNATIONAL B.V.'S
AND NICO BLAUW'S OBJECTIONS TO
EVIDENCE SUBMITTED BY RICHARD
MCWILLIAM IN SUPPORT OF HIS
OPPOSITION TO UPPER DECK
INTERNATIONAL B.V.'S AND NICO
BLAUW'S SPECIAL MOTION TO
STRIKE DEFAMATION COUNTER-
CLAIM UNDER CALIFORNIA CIVIL
PROCEDURE CODE SECTION 425.16**

Date: March 12, 2012
Time: 11:30 a.m.
Hon. Larry Alan Burns
Courtroom 9

Complaint Filed: 08/04/2011

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21 THE UPPER DECK COMPANY, a Nevada
Corporation; RICHARD McWILLIAM, an
22 Individual,

Counterclaimant,

23 v.

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25 UPPER DECK INTERNATIONAL B.V., a
Netherlands corporation; NICO BLAUW, an
26 Individual; BLUE OCEAN ENTERTAINMENT
B.V., a Netherlands limited liability company;
27 LARISSA BLAUW, an Individual; and Roes 1-
20,

28 Counterclaim-Defendants.

Objections to Declaration of Jack Vandoorn Submitted with McWilliam’s Opposition

Objection Number One to Vandoorn Decl.:

Content Objected to:

Para. 5 at p.2:24-3:6: “Mr. Blauw on many occasions sought to embarrass Mr. McWilliam and make a joke of him by spreading false rumors about Mr. McWilliam. For example, Mr. Blauw falsely stated or implied to other people that Mr. McWilliam was the main problem with the company; that he cannot be trusted and is dishonest; that Mr. McWilliam was making a joke of the company; that Mr. McWilliam refused to come visit the company when requested by Mr. Blauw; that Mr. Blauw and not Mr. McWilliam was the one with the business ideas; that Mr. McWilliam is a bad/incompetent owner, executive and member of the business community in Amsterdam; that Mr. McWilliam would bankrupt and shut down the company and terminate all of the employees; that Mr. McWilliam was going to reduce all of the employee salaries, and that Mr. McWilliam was going to sell the company for liquidation.”

Grounds For Objection:

Lack of Personal Knowledge; Lack of Foundation; Hearsay: Mr. Vandoorn does not lay a proper foundation for or otherwise testify that he has personal knowledge about the statement from paragraph 5 of his declaration set forth above. As such, Mr. Vandoorn has failed to establish that he is competent to testify with personal knowledge, this statement constitutes hearsay, and it is inadmissible under FRE 602 (testimony must be based on personal knowledge) and FRE 802 (hearsay generally inadmissible).

Court’s Ruling:

Sustained _____

Overruled _____

Objection Number Two to Vandoorn Decl.:

Content Objected to:

Para. 5 (at. p.3:6-7): “The false rumors hurt Mr. McWilliam’s reputation at the company and in the community.”

1 **Grounds For Objection: Lack of Personal Knowledge; Lack of Foundation; Hearsay;**
 2 **Improper Opinion Testimony By Lay Witness; Improper Expert Testimony:** This statement at
 3 the end of paragraph 5 of Mr. Vandoorn’s declaration is inadmissible for the reasons discussed
 4 above, regarding the rest of paragraph 5. Additionally, the statement that “false rumors hurt Mr.
 5 McWilliam’s reputation at the company and in the community” is inadmissible because Mr.
 6 Vandoorn has not demonstrated that he is qualified to testify as an expert on the issue of damages or
 7 on the issue of Mr. McWilliam’s reputation in the relevant business community, and thus this
 8 statement is improper expert testimony and does not otherwise meet the criteria for opinion
 9 testimony by a lay witness (FRE 701).

10 **Court’s Ruling:**

Sustained _____

11 Overruled _____

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13 **Objections to Declaration of Richard McWilliam Submitted with McWilliam’s Opposition**

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15 **Objection Number One to McWilliam Decl.:**

16 **Content Objected to:**

17 **Para. 7, at p.3:22-p.4:2:** “In 2010, several business associates, friends, and co-workers
 18 approached me to tell me that they had very disturbing conversations with Mr. Nico Blauw about
 19 my capacity and competence to run, operate, and manage Upper Deck and UDI. These individuals,
 20 including Jack VanDoorn, informed me that Mr. Blauw attacked my character, spread vicious,
 21 untrue lies about the future of Upper Deck and UDI, and fabricated malicious and outlandish stories
 22 about me. I have been told that Mr. Blauw stated or implied, on numerous occasions, that I cannot
 23 be trusted and am dishonest. Additionally, business associates, outside vendors, and employees
 24 have notified me that Mr. Blauw, in so many words, said that I am a bad owner, executive, and
 25 member of the sports and entertainment business community.”

26 **Ground for Objection:** Inadmissible hearsay under FRE 802.

27 **Court’s Ruling:**

Sustained _____

28 Overruled _____

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Objection Number Two to McWilliam Decl.:

Content Objected to:

Para. 8, at p.4:3-6: “Frequently, in 2010, while present in both the United States and the Netherlands, Nico Blauw has made efforts to expose me to contempt, ridicule, and disgrace. Several people told me that Mr. Blauw was treating me like his puppet, mocking me, and taking advantage of my incapacitated state so as to undermine by (sic) reputation and authority at Upper Deck and UDI.”

Ground for Objection: Inadmissible hearsay under FRE 802.

Court’s Ruling: Sustained _____
Overruled _____

Objection Number Three to McWilliam Decl.:

Content Objected to:

Para. 11 at p.4:16-21:

“I have been informed that Mr. Blauw has repeatedly stated or implied to business associates, vendors, and Upper Deck and UDI employees, among other things, that: a) I can never be trusted, b) I am the main problem at UDI, c) I am making a joke out of the Upper Deck name, d) I refuse to visit UDI when requested, e) I will bankrupt UDI, f) I will shut down UDI, g) I was planning on terminating all of UDI’s employees, h) I was going to reduce all of the employee salaries, and i) I was going to sell UDI for liquidation.”

Ground for Objection: Inadmissible hearsay under FRE 802.

Court’s Ruling: Sustained _____
Overruled _____

Dated: March 5, 2012

MINTZ LEVIN COHN FERRIS GLOVSKY AND
POPEO PC

By s/Nathan R. Hamler
Andrew D. Skale, Esq.
Nathan R. Hamler, Esq.

Attorneys for UPPER DECK
INTERNATIONAL B.V. and NICO BLAUW

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of San Diego, State of California, and am not a party to the above-entitled action.

On March 5, 2012, I filed a copy of the following document:

UPPER DECK INTERNATIONAL B.V.'S AND NICO BLAUW'S OBJECTIONS TO EVIDENCE SUBMITTED BY RICHARD MCWILLIAM IN SUPPORT OF HIS OPPOSITION TO UPPER DECK INTERNATIONAL B.V.'S AND NICO BLAUW'S SPECIAL MOTION TO STRIKE DEFAMATION COUNTER-CLAIM UNDER CALIFORNIA CIVIL PROCEDURE CODE SECTION 425.16

by electronically filing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- **Alex M. Tomasevic** atomasevic@nblaw.org, kklinzman@nblaw.org, rshelton@nblaw.org
- **Andrew D. Skale** askale@mintz.com, bwagner@mintz.com, Docketing@mintz.com, kearle@mintz.com
- **Craig McKenzie Nicholas** cnicholas@nblaw.org, kklinzman@nblaw.org
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- **Nathan R. Hamler** nhamler@mintz.com, docketing@mintz.com, kjenckes@mintz.com

Executed on March 5, 2012, at San Diego, California. I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

s/Nathan R. Hamler
Nathan R. Hamler, Esq.