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10 UNITED STATES BANKRUPTCY COURT  
11 FOR THE NORTHERN DISTRICT OF TEXAS  
12 DALLAS DIVISION

13 In re

14 IDEARC INC., et al.,  
15 Debtors.

16 Chapter 11

17 Case No.:09-31828 (BJH)  
18 (Jointly Administered)

19 **JUDGMENT CREDITORS' OBJECTIONS TO THE DECLARATION OF**  
20 **ROSEMARY FOREMAN**  
21 **IN SUPPORT OF MOTION TO ASSUME CERTAIN OPERATING**  
22 **AGREEMENTS, FILED ON MAY 20, 2009**  
23 **IN THIS ACTION**

24 **OBJECTION NO. 1: Lacks personal knowledge – Fed. R. Evid. 602, vague and**  
25 **ambiguous – Fed. R. Evid. 611(a); violation under Federal Rules of Bankruptcy**  
26 **Procedure 9011.**

27 “ASEC provides solicitation leads to Idearc’s sales departments. In addition, it  
28 provides content for non-local Verizon books. ASEC services include clearing telephone  
listing reports that are loaded into Idearc systems, assigning the correct heading to new  
telephone numbers received by Idearc through local exchange carriers and competitive  
local exchange carriers and loading email addresses for customers who are solicited by  
Idearc. ASEC also provides ad creation services for high volumes of printed products.

1 This vendor has been fully trained and stabilized on these functions. *Can you please*  
2 *expand/clarify this statement?* We've invested a significant amount of time and resources  
3 training resources in Manila on systems and business processes in order for them to fulfill  
4 this service. The stabilization period took approximately 6 months after systems access  
5 and training was provided. In addition, it is trained and knowledgeable about Idearc  
6 systems and processes. It is able to be flexible with business changes and take on more or  
7 less work when needed. If this vendor were lost, it would take approximately three to six  
8 months to train and educate a new vendor as a suitable vendor to handle these services but  
9 with limited ability for business change. This vendor bid successfully on this work  
10 initially and has been compared to other suppliers upon contract renewal. My review of  
11 the market and pricing supports a determination that ASEC's prices are at or below  
12 market rates for like volumes under like terms and conditions. Price is per listing  
13 processed. *Can you please expand/clarify this statement?* We have a competitive  
14 transaction based pricing model. Transition to an alternative vendor would severely  
15 impact the company's ability to provide sales leads, severely impact the company's ability  
16 to get publication content from non-local Verizon areas and negatively impact turnaround  
17 of revenue from contract closure. Currently, limited staff is available in-house for these  
18 services." (*Emphasis Added*)

19 **Grounds for objection: Lacks personal knowledge – Fed. R. Evid. 602, vague**  
20 **and ambiguous – Fed. R. Evid. 611(a); violation under Federal Rules of Bankruptcy**  
21 **Procedure 9011.**

22 "A witness may not testify to a matter unless the witness has personal knowledge  
23 of the mater." (*Granahan v. Christian* (2007) 2007 Bankr. LEXIS 926, citing Fed. R.  
24 Evid. 602.) Here, there are no facts to support Ms. Wood's personal knowledge of many  
25 of the matters discussed in the declaration. The declarant's various requests of "Can you  
26 please expand/clarify this statement?," and the reference to "Manila" implies a clear lack  
27 of personal knowledge behind the factual testimony.

28 These comments are confusing, misleading, and logically incoherent. (1) "Can you

1 please expand/clarify this statement?” This is a written, signed declaration “under penalty  
2 of perjury that the foregoing is true and correct,” by Rosemary Foreman. Paragraph 1  
3 declares that Ms. Foreman is “familiar with and [has] personal knowledge of each and  
4 every statement of fact set forth in this declaration,” and that “[e]ach and every statement  
5 of fact contained in the declaration is true and correct.” Therefore, Ms. Foreman’s curious  
6 interjections to “please expand/clarify this statement” can only be explained by one or  
7 both of the following two theories: (1) she is uncertain about the subject matter about  
8 which she is writing the declaration, and is asking herself to “please expand/clarify” the  
9 statement; (2) notwithstanding her verification in Paragraph 1 of the declaration, she is  
10 either (a) not “familiar with [nor does she have] personal knowledge of each and every  
11 statement of fact set forth in this declaration, or (b) has written a declaration containing  
12 statements of fact that are not “true and correct.” (Declaration of Rosemary Foreman,  
13 Paragraph 1, Page 1.)

14       The first theory is only plausible – albeit unlikely – if one is to assume that Ms.  
15 Foreman inadvertently submitted a “draft” of her declaration which contained notes to  
16 herself to elaborate on the statement as indicated. However, a draft would not be signed  
17 and filed under penalty of perjury.

18       The second theory implies serious misconduct. Under the Federal Rules of  
19 Bankruptcy Procedure (FRBP) 9011(a), “every petition, pleading, written motion, and  
20 other paper ... shall be signed by at least one attorney of record in the attorney’s  
21 individual name.” Moreover, “[b]y presenting to the court ... a petition, written motion, or  
22 other paper, an attorney ... is certifying that to the best of the person’s knowledge,  
23 information, and belief, formed after an inquiry reasonable under the circumstances, ... it  
24 is not being used for any improper purpose, such as to harass or to cause unnecessary  
25 delay or needless increase in the cost of litigation.” (FRBP 9011(b)(1).)

26       Here, it is clear that this sworn declaration was neither written, read, nor inspected  
27 by Ms. Foreman – or her attorney – before submitting it to the Electronic Case Filing  
28 system for the United States Bankruptcy Court, Northern District of Texas.

1 Accordingly, this declaration is in violation of FRBP 9011 as it is not based on  
2 personal knowledge and contains statements that are not true and correct statements of  
3 fact. Thus, its primary purpose can only be to “harass or to cause unnecessary delay or  
4 needless increase in the cost of litigation.” (FRBP 9011(b)(1).)

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6 **Court’s Ruling on Objection #1:** Sustained \_\_\_\_\_ Overruled \_\_\_\_\_

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8 **OBJECTION NO. 2: Lacks authentication (Fed. R. Evid. 901); “best evidence rule”**  
9 **(Fed. R. Evid 1002), hearsay (Fed. R. Evid. 802).**

10 “Idearc currently owes the following amount to ASEC for services performed prior  
11 to March 31, 2009 (the “Petition Date”): a. ASEC \$229,880.88[.]” (Declaration of  
12 Rosemary Foreman, Paragraph 5, Page 2.)

13 **Grounds for objection: Lacks authentication (Fed. R. Evid. 901); “best**  
14 **evidence rule” (Fed. R. Evid 1002).**

15 **Lacks authentication, “best evidence rule” – Fed. R. Evid. 901, 1002.** If a  
16 document is being introduced, the document must be relevant and authenticated.  
17 Authenticating the document means that its foundation must be laid, i.e., it is  
18 demonstrated to be what it is purported to be. “The requirement of authentication or  
19 identification as a condition precedent to admissibility is satisfied by evidence sufficient  
20 to support a finding that the matter in question is what its proponent claims.” (Fed. R.  
21 Evid. 901.) Moreover, it must comply with the “best evidence rule,” (Fed. R. Evid. 1002)  
22 and not be privileged or hearsay. Where the contents of a writing are at issue, the best  
23 evidence rule requires the originals to be used or they must be shown to be unavailable  
24 through no fault of its proponent (Fed. R. Evid. 1002). “[This] rule requires that parties  
25 that seek to prove what the contents of a writing are must produce the original writing....”  
26 (*Maxwell Macmillan Realization Liquidating Trust v. Aboff* (1995) 186 B.R. 35, 47, citing  
27 *Herzig v. Swift & Co.* (1945) 146 F. 2d 444, 445.)

28 Here, Ms. Foreman cites to a financial figure presumably from Idearc’s

1 accounting books or electronic files, but does not authenticate the document.  
2 Authenticating the document means that its foundation must be laid, i.e., it is  
3 demonstrated to be what it is purported to be. “The failure to provide a full copy [of the  
4 document] with the court reporter's certification is ... fatal.” (*Leonard v. Mylex Corp.*  
5 (1999) 240 B.R. 328, 355.) Where the contents of a writing are at issue, the best evidence  
6 rule requires the originals to be used or they must be shown to be unavailable through no  
7 fault of its proponent (Fed. R. Evid. 1002). “[This] rule requires that parties that seek to  
8 prove what the contents of a writing are must produce the original writing....” (*Maxwell*  
9 *Macmillan Realization Liquidating Trust v. Aboff* (1995) 186 B.R. 35, 47, citing *Herzig v.*  
10 *Swift & Co.*, 146 F. 2d 444, 445.)

11 Here, the contents of the document<sup>1</sup> are at issue because the financial figure  
12 discussed in the statement is apparently the content of a document containing that figure,  
13 and thus the best evidence rule requires the original document to be produced. Ms.  
14 Foreman’s failure to provide the original document may be excusable, pursuant to Rule  
15 1006, if Ms. Foreman provided evidence that the original contract is so voluminous or  
16 complex as to render it impracticable to produce in court, in which case Ms. Foreman’s  
17 summary of the contracts in question would have been appropriate as Rule 1006 allows.  
18 But here, Ms. Foreman has produced only an excerpt of the original document which,  
19 without an explanation of why, pursuant to Rule 1006, the originals would be  
20 impracticable to produce, is tantamount to a “summary,” and thus inappropriate.

21 Therefore, the “exception” that Rule 1006 effectively provides to Rule 1002 is  
22 inapplicable, and thus Mr. White must comply with Rules 901 and 1002 and produce the

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24 <sup>1</sup>An exception to the “best evidence rule” is Fed. R. Evid. 1006 which allows “[t]he contents of  
25 voluminous writings, records, or photographs [that] cannot conveniently be examined in court [to] be  
26 presented in the form a chart, summary, or calculation.” (Fed. R. Evid. 1006.) Moreover, Rule 1006  
27 mandates that “[t]he originals, or duplicates, shall be made available for examination ... by other parties  
28 at reasonable time and place.” In determining the applicability of Rule 1006, the court in *Leonard v.*  
*Mylex Corp.* ((1999) 240 B.R. 328) explained that “[t]he failure to provide a full copy [of the document,  
when requested by the opposing party,] with the court reporter's certification is ... fatal.” (*Leonard*, at  
355.) No exception applies here, and even if proponent of the evidence sought to avail itself of the  
exception, Idearc has not complied with foundation prerequisites.

1 original copies of the documents whose contents are here at issue.

2 **Hearsay - Fed. R. Evid. 802.** Hearsay is an out-of-court statement offered for the  
3 truth of the matter asserted. Under Rule 801(a), a “statement” is “(1) an oral *or written*  
4 *assertion....*” (Fed. R. Evid. 801(a). Emphasis added.) Absent some exclusions,  
5 exemptions, or exceptions, hearsay is not admissible.

6 Here, Ms. Foreman is citing a monetary amount, i.e., \$229,880.88, reflecting  
7 Idearc’s outstanding payment due ASEC “for services performed prior to March 31,  
8 2009.” (Declaration of Rosemary Foreman, Paragraph 5, Page 2.). There is nothing in the  
9 declaration which indicates the source of that figure. This is a written statement that was  
10 made out-of-court, which is offered for the truth of the matter being asserted.

11 Accordingly, these hearsay statements are inadmissible.

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13 **Court’s Ruling on Objection #2:** Sustained \_\_\_\_\_ Overruled \_\_\_\_\_

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15 **OBJECTION NO. 3: Lacks personal knowledge – Fed. R. Evid. 602, vague and**  
16 **ambiguous – Fed. R. Evid. 611(a), lacks authentication (Fed. R. Evid. 901); “best**  
17 **evidence rule” (Fed. R. Evid 1002), hearsay (Fed. R. Evid. 802).**

18 “The contract<sup>2</sup>] is in writing and executed. The contract is still active. ASEC  
19 Master Services Agreement effective date was December 1, 2004. ASEC SOW is  
20 currently active for both Listing and Ad work through December 31, 2010.” (Declaration  
21 of Rosemary Foreman, Paragraph 6, Page 2.)

22 **Lacks personal knowledge – Fed. R. Evid. 601.** There is nothing in the facts to  
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24 <sup>2</sup>Idearc has taken the liberty of providing this succinct legal conclusion that there is, in fact, a  
25 legally binding contract without any proof as to its existence. A contract is a legally binding agreement  
26 that requires an offer, acceptance, and consideration. Here, Idearc has neither produced the contract in its  
27 original form (hence the following objections pursuant to Fed. R. Evid. 901 and 1002), nor has Idearc  
28 provided even the slightest modicum of evidence that a legally binding contract exists, instead expecting  
the Court to take for granted that their legal conclusion is accurate. This is a convenient maneuver for  
Idearc since citation to a legally binding contract, a writing of independent legal significance, effectively  
innoculates it from a hearsay objection under Fed. R. Evid 802.

1 support Ms. Foreman’s personal knowledge about the origin and status of these contracts.

2 **Vague and ambiguous – Fed. R. Evid. 611(a).** The statement contains a  
3 reference to “ASEC Master Services Agreement and “ASEC SOW” without any  
4 explanation or definition as to what these documents or acronyms mean.

5 **Lacks authentication, “best evidence rule” – Fed. R. Evid. 901, 1002.** Ms.  
6 Foreman has again cited the contract as between Idearc and ASEC. Here, the ASEC  
7 Master Services Agreement effective date and status of the ASEC SOW are both  
8 information that would be contained within the contract between IDEARC and ASEC.  
9 Accordingly, the contents of that contract are at issue and thus the best evidence rule  
10 requires the original document to be produced.

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