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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 **RONALD LENINGTON,**

21 **FILED ON MAY 20, 2009 IN THIS ACTION**

22 **OBJECTION NO. 1: Lacks personal knowledge – Fed. R. Evid. 602, calls for**
23 **speculation – Fed. R. Evid. 602, assumes facts not in evidence – Fed. R. Evid. 611(a).**

24 “If the contract¹] was terminated, it is not likely that we could quickly find
25 another company who could provide these services because the work is to support
26 proprietary Amdocs software. If these services were not provided, these applications

27 _____
28 ¹Idearc makes the legal conclusion that there are, in fact, legally binding contracts without any
factual support as to their existence. A contract is a legally binding agreement that requires an offer,
acceptance, and consideration. Here, Idearc has neither produced the contract in its original form (hence
the following objections pursuant to Fed. R. Evid. 901 and 1002), nor has Idearc provided evidence that a
legally binding contract exists. This is a convenient maneuver for Idearc, since citation to a legally
binding contract, a writing of independent legal significance, effectively inoculates it from a hearsay
objection under Fed. R. Evid 802.

1 could cease to function, leaving Idearc with no means to record sales, publish directories,
2 and bill customers. Pricing rates are comparable to rates charged by large domestic
3 software suppliers providing on-site support services and specialized custom development
4 services for proprietary code.” (Declaration of Ronald Lenington, Paragraph 7, Page 2.)

5 **Grounds for objection: Lacks personal knowledge – Fed. R. Evid. 602, calls**
6 **for speculation – Fed. R. Evid. 602, assumes facts not in evidence – Fed. R. Evid.**
7 **611(a).**

8 **Lacks personal knowledge – Fed. R. Evid. 602.** “A witness may not testify to a
9 matter unless the witness has personal knowledge of the matter.” (*Granahan v. Christian*
10 (2007) 2007 Bankr. LEXIS 926, citing Fed. R. Evid. 602.) Here, there are no facts to
11 support Mr. Lenington’s personal knowledge that Idearc’s core print business computer
12 applications would cease to function, nor is there support for his statements regarding the
13 pricing rates of large domestic software suppliers providing similar services.

14 **Calls for speculation – Fed. R. Evid. 602.** A witness may not testify as to a guess
15 or speculation. Here, Mr. Lenington’s statement, without more, calls for speculation: “If
16 the contract was terminated, *it is not likely* that we could quickly find another
17 company....” (Declaration of Ronald Lenington, Paragraph 7, Page 2. Emphasis added.)
18 Here, “not likely” demonstrates speculation on Mr. Lenington’s part and thus this
19 objection is improper. Moreover, there is no evidence provided that supports Mr.
20 Lenington’s claim that Idearc could not quickly find another company to provide those
21 same services.

22 Next, Mr. Lenington states: “[i]f these services were not provided, these
23 applications *could* cease to function....” (*Id.* Emphasis added.) Here, the use of the
24 conditional modifier “could” again suggests speculation on Mr. Lenington’s part and thus
25 the objection is not proper.

26 **Assumes facts not in evidence – Fed. R. Evid. 611(a).** The statement above
27 assumes facts not in evidence. Paralleling the analysis above, the speculative nature of
28 Mr. Lenington’s statement assumes that (a) there are few or no other companies that

1 speculative comment on Mr. Lenington’s behalf without any proof or explanation as to its
2 merits, and fails to explain why alternate methods would not provide sufficient visibility
3 to accelerate Idearc’s sales.

4 **Assumes facts not in evidence, Fed. R. Evid. 611(a).** The statement in question
5 assumes facts and figures about other companies’ prices for the services in question
6 without properly proving such facts with evidence; similarly, there have been no facts
7 submitted that explain why an interruption of services would harm Idearc’s business or
8 sales.

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10 **Court’s Ruling on Objection #2:** Sustained _____ Overruled _____

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12 **OBJECTION NO. 3: Lacks personal knowledge – Fed. R. Evid. 602, calls for**
13 **speculation – Fed. R. Evid. 602, assumes facts not in evidence – Fed. R. Evid. 611(a).**

14 “If these services were not provided, these applications could cease to function,
15 leaving Idearc with no means to record sales, publish directories, and bill customers.
16 Since many of these services are provided from off-shore, rates under this contract are
17 significantly below domestic market rates.” (Declaration of Ronald Lenington, Paragraph
18 9, Page 2.)

19 **Grounds for objection: Lacks personal knowledge – Fed. R. Evid. 602, calls**
20 **for speculation – Fed. R. Evid. 602, assumes facts not in evidence – Fed. R. Evid.**
21 **611(a).**

22 **Lacks personal knowledge – Fed. R. Evid. 602.** There is nothing in the
23 declaration statement that explains the actual personal knowledge upon which Mr.
24 Lenington has based this statement.

25 **Calls for speculation - Fed. R. Evid. 602.** The word choice “these applications
26 *could* cease to function” (Declaration of Ronald Lenington, Paragraph 9, Page 2.
27 Emphasis added.) explicitly demonstrates that Mr. Lenington is speculating as to the
28 resulting adverse effects upon Idearc that failure of the services to provide their services

1 would cause.

2 **Assumes facts not in evidence – Fed. R. Evid. 611(a).** There is no evidence
3 demonstrating that Idearc’s applications could not function but for the services provided
4 by Tata. Without further evidence, there is nothing to preclude the possibility that Idearc
5 could support the function of its applications by some alternative means. Moreover, no
6 evidence is presented supporting the difference between off-shore and domestic market
7 rates.

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9 **Court’s Ruling on Objection #3: Sustained _____ Overruled _____**

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11 **OBJECTION NO. 4: Lacks authentication – Fed. R. Evid. 901, “best evidence rule”**
12 **– Fed. R. Evid. 1002, hearsay – Fed. R. Evid. 802.**

13 “Idearc currently owes the following amounts to each vendor for services
14 performed prior to March 31, 2009 (the “Petition Date”):

- 15 • Amdocs \$303,352.12
- 16 • Tata \$274,430.57
- 17 • salesforce.com \$33,968.94”

18 (Declaration of Ronald Lennington, Paragraph 10, Page 2.)

19 **Grounds for objection: Lacks authentication – Fed. R. Evid. 901, “best evidence**
20 **rule” – Fed. R. Evid. 1002, hearsay – Fed. R. Evid. 802.**

21 The fundamental issue with this evidence is that although statements and invoices
22 must exist, we must accept Mr. Lennington’s opinion of what the statements say. Also,
23 the participants in this bankruptcy don’t have any idea when these debts were incurred.

24 **Lacks authentication, “best evidence rule” – Fed. R. Evid. 901, 1002.** If a
25 document is being introduced, the document must be relevant and authenticated.

26 Authenticating the document means that its foundation must be laid, i.e., it is
27 demonstrated to be what it is purported to be. “The requirement of authentication or
28 identification as a condition precedent to admissibility is satisfied by evidence sufficient

1 to support a finding that the matter in question is what its proponent claims.” (Fed. R.
2 Evid. 901.) Moreover, it must comply with the “best evidence rule,” (Fed. R. Evid. 1002)
3 and not be privileged or hearsay. Where the contents of a writing are at issue, the best
4 evidence rule requires the originals to be used or they must be shown to be unavailable
5 through no fault of its proponent (Fed. R. Evid. 1002). “[This] rule requires that parties
6 that seek to prove what the contents of a writing are must produce the original writing....”
7 (*Maxwell Macmillan Realization Liquidating Trust v. Aboff* (1995) 186 B.R. 35, 47, citing
8 *Herzig v. Swift & Co.* (1945) 146 F. 2d 444, 445.)

9 Here, Mr. Lenington states the various dollar amounts owed each vendor for
10 services performed prior to March 31, 2009. These dollar values presumably came from
11 some document, computer file, or other memorialized medium, but Mr. Lenington does
12 not lay the foundation for the source of these figures. Moreover, subject to the “best
13 evidence rule,” because these figures are at issue, the original must be produced.
14 Pursuant to Rule 1006², if Mr. Lenington provided evidence that the original document
15 containing these figures is so voluminous or complex as to render it impracticable to
16 produce in court, Mr. Lenington may have at least provided a summary of the contract as
17 Rule 1006 permits. But here, Mr. Lenington has produced neither the original contract
18 nor a summary of its contents.

19 Therefore, the “exception” that Rule 1006 effectively provides Rule 1002 is
20 inapplicable, and thus Mr. Lenington must comply with Rules 901 and 1002 and produce
21 the original copy of the document containing the quoted figures.

22 **Hearsay – Fed. R. Evid. 802.** Hearsay is an out-of-court statement offered for the
23

24 ²An 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 truth of the matter asserted. Under Rule 801(a), a “statement” is “(1) an oral *or written*
2 *assertion....*” (Fed. R. Evid. 801(a). Emphasis added.) Generally, absent some exclusions,
3 exemptions, or exceptions, hearsay is not admissible.

4 Here, the information provided in by Idearc is cited from some other contracts, i.e.,
5 the various contracts with Amdocs, Tata, and salesforce.com, and are thus written
6 statements that were made out-of-court. The figures are an assertion of fact: if they were
7 not asserted as true, then all claims made upon the figures would be an empty statement.
8 Here, the reference is to various contracts that are asserted as true. Accordingly, these
9 hearsay statements are inadmissible. The contracts as between Idearc’s partners and
10 Idearc are cited with respect to amounts owed Idearc’s partners. This is a written
11 statement that was made out-of-court. It is being asserted as a true statement; it is
12 therefore offered for the truth of the matter being asserted. Accordingly, the statements
13 are inadmissible hearsay.

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15 **Court’s Ruling on Objection #4:** Sustained _____ Overruled _____

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17 **OBJECTION NO. 5: Lacks personal knowledge – Fed. R. Evid. 602, lacks**
18 **authentication – Fed. R. Evid. 901, “best evidence rule” – Fed. R. Evid. 1002,**
19 **hearsay – Fed. R. Evid. 802**

20 “The contracts are in writing and executed. The contracts are still active. The
21 effective date of the salesforce.com contract was October 13, 2008, and the term is
22 perpetual. The effective date of the Tata contract was November 1, 2007, with an
23 expiration date of December 31, 2009. The effective date of the Amdocs contract was
24 January 1, 2001, with an expiration date of December 31, 2011.” (Declaration of Ronald
25 Lenington, Paragraph 11, Page. 2.)

26 **Lacks personal knowledge – Fed. R. Evid. 601.** There is nothing in the facts to
27 support Mr. Lenington’s claim about the origin and status of these contracts.

28 **Lacks authentication, “best evidence rule” – Fed. R. Evid. 901, 1002.** Here, the

1 contents of the document are at issue and therefore the originals must be produced.

2 **Hearsay – Fed. R. Evid. 802.** The statements contained in the contracts are
3 statements written for the truth of the matter being asserted, and they were made out of
4 court. Accordingly, they are inadmissible hearsay.

5
6 **Court’s Ruling on Objection #5:** **Sustained** _____ **Overruled** _____

7
8 Date: May 31, 2009

The McMillan Law Firm, APC

9 /s/ Scott A. McMillan

10 _____
11 Scott A. McMillan
12 Attorneys for Judgment Creditors
Sean Ryan and The McMillan Law Firm, APC

13 **CERTIFICATE OF SERVICE**

14 I certify that on May 31, 2009, a true and correct copy of the foregoing pleading
15 was served (1) electronically by the Court’s ECF system, or (2) according to the orders
16 specific to this case – by sending an email copy to the persons who have supplied email
17 address, or otherwise (3) by first class mail upon those persons identified by the ECF
18 system as having requested notice appeared but not receiving electronic notices.

19 /S/ SCOTT A. MCMILLAN

20 BY: _____

21 Scott A. McMillan