

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

AMERANTH, INC. * Civil Docket No.
* 2:07-CV-271
VS. * Marshall, Texas
*
* September 13, 2010
MENUSOFT SYSTEMS CORPORATION * 1:20 P.M.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JUDGE CHAD EVERINGHAM
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: MR. JOHN W. OSBORNE
MR. JAMES W. GOULD
MR. PETER N. FILL
MR. STEVEN M. PURDY
MR. PETER H. NOH
Locke Lord Bissell & Liddell
3 World Financial Center
New York, New York 10281

MR. MICHAEL C. SMITH
Siebman Burg Phillips & Smith
113 East Austin Street
Marshall, TX 75670

APPEARANCES CONTINUED ON NEXT PAGE:

COURT REPORTERS: MS. SUSAN SIMMONS, CSR
MS. JUDITH WERLINGER, CSR
Official Court Reporters
100 East Houston, Suite 125
Marshall, TX 75670
903/935-3868

(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

APPEARANCES CONTINUED:

FOR THE DEFENDANTS: MR. MARC L. DELFLACHE
MR. DUSTIN MAUCK
Fulbright & Jaworski
2200 Ross Avenue, Suite 2800
Dallas, TX 75201

MR. RICHARD S. ZEMBEK
Fulbright & Jaworski
1301 McKinney, Suite 5100
Houston, TX 77010

MR. OTIS CARROLL
Ireland Carroll & Kelley
6101 South Broadway, Suite 500
Tyler, TX 75703

* * * * *

P R O C E E D I N G S

LAW CLERK: All rise.

(Jury in.)

THE COURT: All right. Please be seated.

You may continue your direct examination.

KATHIE SANDERS, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION (CONTINUED)

BY MR. GOULD:

Q. Mrs. Sanders, there's one thing I forgot to
ask about your background this morning.

Did you ever work in a restaurant?

A. Yes, I did.

1 with an integrated credit card-capability.

2 He's trying to sell this to McDonald's in
3 January of 1997, right?

4 A. Yes.

5 MR. ZEMBEK: Jim, can you go to the next
6 page of this exhibit, please.

7 If you could pull out that first
8 paragraph.

9 Q. (By Mr. Zembek) And one of the things that
10 Mr. McNally told McDonald's Restaurant is that the
11 TransPad could accomplish the same basic functions of a
12 POS application itself, right?

13 A. I don't know. I haven't read this.

14 Q. I've highlighted it for you.

15 A. Oh, thank you.

16 By running your POS application.

17 Q. Right.

18 A. Someone else's, right.

19 Q. So he was trying to get McDonald's to run a
20 POS application on the TransPad?

21 A. That's correct.

22 Q. And he wanted to have that wirelessly
23 integrated into their Back Office?

24 A. Right.

25 MR. ZEMBEK: Jim, could you pull up

1 Exhibit 489B, please.

2 Q. (By Mr. Zembek) Are you familiar with the
3 Hospitality Technology magazine?

4 A. Yes, I am.

5 Q. And that was being published in January 1997,
6 correct?

7 A. Correct.

8 Q. And if we look on the first page, the mailing
9 label --

10 MR. ZEMBEK: If we could call that out,
11 please, Jim.

12 Q. (By Mr. Zembek) -- Ameranth received copies of
13 this magazine and specifically Keith McNally back in
14 January of 1997, right?

15 A. That's what it looks like.

16 MR. ZEMBEK: Jim, could you go to Page 7
17 of this article.

18 Q. (By Mr. Zembek) So this is 1997, and this is
19 an article about the MICROS handheld device in 1997,
20 correct?

21 A. I don't know. I -- I have not seen this
22 before.

23 Q. So you were in charge of marketing. Were you
24 aware of the fact that in 1997, MICROS had a handheld?

25 A. I know they told me that they had something

1 that was a bust, and it's called a brick or something
2 like that I remember, and that it didn't go anywhere and
3 it didn't do anything, and that it was a complete
4 disaster, because I just -- but I don't know more than
5 that. Even they told me that it -- nothing happened
6 with it.

7 Q. So it's your testimony that nothing happened
8 with the --

9 A. With the brick -- with the brick at that time;
10 that happened before; that's correct.

11 Q. Would you say the sale of 3000 handhelds is
12 nothing happening?

13 A. They told me that they had -- that it was not
14 an efficient unit, that it didn't --

15 Q. Could you answer my question, please?

16 A. I'm sorry. What was your question?

17 Q. Would you say the sale of 3000 handhelds was a
18 failure?

19 A. I wouldn't know.

20 Q. Would you say that the installation at over
21 300 sites of this MICROS device would be a failure?

22 A. Was it an installation or was it a
23 demonstrate -- that they were just demoing this?

24 MR. ZEMBEK: Jim, could we please go
25 forward two pages.

1 And call that out, please.

2 Q. (By Mr. Zembek) This article is telling us
3 that MICROS had over 300 sites, right?

4 This is telling us that MICROS had over 300
5 sites, correct?

6 A. It says at 300.

7 Q. It had 300 sites, correct?

8 A. That's what this says.

9 Q. And they had some 3000 handheld terminals at
10 those 300 sites, right?

11 A. It says they had some 3000.

12 Q. Some 3000. Thank you for correcting me on
13 that.

14 And this handheld device, this MICROS brick,
15 if you want to call it, could be used to place orders
16 with the MICROS 8700, right?

17 A. I'm not familiar with the article. If that's
18 what it says.

19 Q. You don't have any reason to disagree with
20 that?

21 MR. ZEMBEK: Can you go back a page,
22 please, Jim.

23 One more, please. There you go.

24 And if you could call out the second
25 paragraph, please. Both paragraphs on the left-hand

1 side.

2 Q. (By Mr. Zembek) This is telling us that MICROS
3 was able to sell into Walt Disney World, right?

4 A. It says that they have them at World -- at
5 Walt Disney World, that they had been using them.

6 Q. And that's where Ameranth was trying to sell
7 its TransPad, its wireless handheld device as part of
8 this 21st Century Restaurant System, right?

9 A. At Walt Disney World?

10 Q. Yes.

11 A. It could be that we reached out to them.

12 Q. You reached out to a lot of people in '97 and
13 '98 to try to sell the Ameranth 21st Century Restaurant
14 System, right?

15 A. We reached out to many POS companies and
16 hospitality industry companies at that time.

17 Q. And MICROS was a hospitality POS company at
18 that time, correct?

19 A. That's correct.

20 Q. And MICROS had hardware?

21 A. They might have, yes.

22 Q. Well, they had a brick that you've testified
23 about --

24 A. Yes.

25 Q. -- already, right?

1 A. Yes.

2 Q. MICROS had hardware?

3 A. Uh-huh.

4 Q. They had a handheld device; that handheld
5 device communicated with the MICROS POS system, right?

6 A. I assume so.

7 Q. You don't have any reason to disagree with
8 that?

9 A. No.

10 Q. And you don't have any reason to disagree with
11 the fact that the MICROS 8700 Hospitality System was
12 being used more than a year before Ameranth filed for
13 its patent?

14 A. I have no reason to not agree with the
15 article. I don't know.

16 Q. And this is a 1997 article, correct?

17 A. Yes, it is.

18 Q. And this is describing a system and not just
19 software, like Digital Dining sells, right?

20 A. This is -- this has something to do with
21 equipment as well.

22 MR. ZEMBEK: I'll pass the witness, Your
23 Honor.

24 THE COURT: Thank you.

25 Redirect?