

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
CENTRAL JUSTICE CENTER - DEPARTMENT C8

JINSOO KIM, AN INDIVIDUAL,)
)
 PLAINTIFF,)
)
 VS.) NO. 06CC02419
)
 STEPHEN SON, AN INDIVIDUAL;)
 AND DOES 1 THROUGH 25, INCLUSIVE,)
)
 DEFENDANTS.)
 _____)

THE HONORABLE COREY S. CRAMIN, JUDGE PRESIDING
REPORTER'S PARTIAL TRANSCRIPT
JUNE 25, 2007

APPEARANCES OF COUNSEL:

FOR PLAINTIFF: RICHARD J. RADCLIFFE
ATTORNEY AT LAW

FOR DEFENDANTS: VLADIMIR KHITERER
ATTORNEY AT LAW

KAREN A. HUTCHISON, CSR #6664
OFFICIAL COURT REPORTER

1 SANTA ANA, CALIFORNIA - MONDAY, JUNE 25, 2007

2 MORNING SESSION

3 (THE FOLLOWING EXCERPT OF PROCEEDINGS
4 WERE HELD IN OPEN COURT:)

5

6 THE COURT: IS THE MATTER SUBMITTED?

7 MR. RADCLIFFE: YES, YOUR HONOR.

8 MR. KHITERER: YES.

9 THE COURT: VERY GOOD. I'M REMINDED OF THE WORDS
10 OF FRIEDRICH WILHELM NIETZSCHE WHO WROTE OR SAID, ACTUALLY
11 WROTE: "BLOOD IS THE WORST OF ALL TESTIMONIES TO THE
12 TRUTH. BLOOD IS THE WORST OF ALL TESTIMONIES TO THE
13 TRUTH."

14 IN THIS CASE THE COURT FINDS JUDGMENT FOR
15 DEFENDANT ON PLAINTIFF'S FIRST-AMENDED COMPLAINT, THE
16 FIRST AND THIRD CAUSES OF ACTION. THE COURT FINDS THAT
17 PLAINTIFF HAS FAILED TO ESTABLISH WITH CREDIBLE EVIDENCE
18 BY A PREPONDERANCE OF THE EVIDENCE EITHER THE BREACH OF
19 CONTRACT OR FRAUD CAUSES OF ACTION AGAINST DEFENDANT,
20 STEPHEN SON.

21 THE COURT SPECIFICALLY FINDS IN RELATION TO THE
22 CONTRACT THAT IS BEING BROUGHT UNDER THE CAUSE OF ACTION
23 FOR BREACH OF CONTRACT, THE OCTOBER 29, 2004, WHAT I THINK
24 HAS BEEN IDENTIFIED AS THE BLOOD AGREEMENT, WHEREIN
25 DEFENDANT APOLOGIZED AND SWORE TO COMPENSATE PLAINTIFF FOR

26 HIS LOSSES THAT HE CAUSED IN THE AMOUNT OF 170 MILLION

3

1 WON, IS NOT AN ENFORCEABLE CONTRACT. THE EVIDENCE
2 ESTABLISHED THAT PLAINTIFF INVESTED 100 MILLION WON IN THE
3 KOREAN CORPORATION, MJ INC., WHICH WAS NOT EVER GUARANTEED
4 BY THE DEFENDANT IN THIS CASE.

5 LATER PLAINTIFF LOANED IN APRIL '03 ANOTHER 30
6 MILLION WON TO MJ, AND LATER LOANED TO THE CALIFORNIA
7 CORPORATION NETOUCH THE \$40,000 LOAN OR INVESTMENT.
8 THERE'S NO EVIDENCE THAT DEFENDANT EVER REPRESENTED THAT
9 THERE WAS ANY PERSONAL GUARANTEE ON THESE LOANS AND
10 INVESTMENTS TO CORPORATIONS.

11 COURT FINDS THE DEFENDANT HAS ESTABLISHED WITH
12 CREDIBLE EVIDENCE THE AGREEMENT LACKED SUFFICIENT
13 CONSIDERATION THAT'S REQUIRED BY LAW UNDER CIVIL CODE
14 SECTION 1550 SUBDIVISION (B). CONSIDERATION MUST SUPPORT
15 EVERY CONTRACT. THE DEFENDANT WAS NOT REQUIRED TO
16 GUARANTEE THESE INVESTMENTS OR LOANS, AND THE COURT WILL
17 REFUSE TO ENFORCE A GRATUITOUS PROMISE EVEN WHEN IT'S
18 REDUCED TO BLOOD. AND THE CASE INVOLVING LACK OF
19 CONSIDERATION IS JARA VERSUS SUPREMA MEATS INC. (2004) 121
20 CAL.APP.4TH 1238.

21 THE COURT FURTHER FINDS THAT DEFENDANT DID NOT
22 COMMIT FRAUD. THERE WAS NO MATERIAL MISREPRESENTATION OF
23 FACT. PLAINTIFF ARGUES THAT HE WAS INDUCED TO MAKE THESE
24 INVESTMENTS BASED UPON CERTAIN REPRESENTATIONS REGARDING
25 THE VALUE OF THE CORPORATION AT THE TIME. THE COURT DOES
26 NOT FIND IT REASONABLE IN ANALYZING THE EVIDENCE AND DOES

1 NOT ACCEPT THAT MR. SON MADE A REPRESENTATION AT THE TIME
2 THE INVESTMENT WAS MADE THAT THE COMPANY WAS WORTH THE 500
3 MILLION WON.

4 I BASE THAT ON HIS OWN DIRECT TESTIMONY ABOUT
5 INFERENCES DRAWN FROM ALL THE EVIDENCE RELATING TO THE
6 SITUATION, AND IT WOULDN'T HAVE BEEN A REASONABLE
7 JUSTIFIABLE RELIANCE ON HIM BASED UPON THAT REPRESENTATION
8 TO GO AHEAD AND WRITE HIS CHECK OR IN THIS CASE WIRE THE
9 MONEY TO THE KOREAN CORPORATION FOR THE 100 MILLION WON.
10 PAR VALUE DOESN'T EQUATE INTO MARKET VALUE.

11 LET'S SEE IF THERE'S ANYTHING ELSE I'D LIKE TO
12 STATE. AND THERE WAS NO EVIDENCE THAT THE DEFENDANT DID
13 NOT INTEND AT THE TIME THAT THE INVESTMENT WAS MADE THAT
14 THE INVESTMENT WAS GOING TO SUCCEED.

15 IN THIS CASE WHILE THE DEFENDANT TAKES PERSONAL
16 RESPONSIBILITY, ADMITS GUILT, AS THE PLAINTIFF ARGUES, FOR
17 PLAINTIFF'S LOSSES, THE COURT FINDS THAT THOSE WERE
18 ACTIONS BY THE DEFENDANT WHO TOOK PERSONALLY THE FACT THAT
19 HIS GOOD FRIEND HAD A FAILURE IN HIS INVESTMENTS THAT HE
20 INITIALLY BROUGHT HIM INTO. BUT I DON'T FIND IN THIS CASE
21 THAT THE CONTRACT ITSELF, THE OCTOBER CONTRACT, IN FACT,
22 WAS AN ACKNOWLEDGEMENT OF ANY PREVIOUS FRAUD.

23 I WILL ASK THAT THE DEFENDANT'S COUNSEL PREPARE A
24 PROPOSED STATEMENT OF DECISION PURSUANT TO THE CODE
25 SECTION AND THE CRC'S AND SERVE THAT ON PLAINTIFF, AND

26 THEN THE COURT WILL ACT ACCORDINGLY.

5

1 MR. KHITERER: THANK YOU, YOUR HONOR. YOUR HONOR,
2 DO YOU HAVE THIS IN WRITTEN FORM OR A COPY OF THIS? I
3 WASN'T ABLE TO WRITE IT SO FAST. MAYBE I'LL ASK THE COURT
4 REPORTER.

5 THE COURT: I'M SURE YOU CAN DO THAT.

6 MR. KHITERER: THANK YOU SO MUCH, YOUR HONOR.

7 THE COURT: THE STATEMENT OF DECISION IS DIFFERENT
8 THAN MY TENTATIVE DECISION. STATEMENT OF DECISION DOESN'T
9 HAVE TO BE AS SPECIFIC. AND IF YOU LOOK AT THE CODE
10 SECTION ON STATEMENTS OF DECISION, IT WILL GOVERN WHAT
11 NEEDS TO BE IN IT AND WHAT NEEDS TO BE ADDRESSED. AND
12 THEN IF PLAINTIFF OBJECTS OR WANTS MORE INFORMATION IN IT,
13 THEY CAN SUPPLY THAT.

14 MR. KHITERER: THANK YOU, YOUR HONOR. WHAT WAS
15 THE DEADLINE FOR THE STATEMENT OF DECISION?

16 THE COURT: IT'S SET FORTH IN THE STATUTE. BUT IF
17 IT'S NOT SET FORTH, PROVIDE IT WITHIN TWO WEEKS. I'LL
18 GIVE YOU A SPECIFIC DATE NOW THAT I SAID TWO WEEKS. IF
19 IT'S NOT PER STATUTE, THEN TODAY IS THE 25TH, BY JULY 9TH.

20 MR. KHITERER: THANK YOU, YOUR HONOR.

21 THE COURT: AND THEN PLAINTIFF CAN MAKE
22 SUGGESTIONS OR OBJECTIONS, AND THEN THE COURT WILL RULE ON
23 IT THEREAFTER. IT WILL BE A STATEMENT OF DECISION AND
24 PROPOSED JUDGMENT, TWO DOCUMENTS. DOES ARE DISMISSED.
25 THANK YOU.

26 (PROCEEDINGS CONCLUDED.)

1 STATE OF CALIFORNIA)
) SS.
2 COUNTY OF ORANGE)

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REPORTER'S CERTIFICATE

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I, KAREN A. HUTCHISON, CSR NO. 6664, OFFICIAL
10 COURT REPORTER IN AND FOR THE SUPERIOR COURT OF THE STATE
11 OF CALIFORNIA, COUNTY OF ORANGE, DO HEREBY CERTIFY THAT
12 THE FOREGOING TRANSCRIPT IS A TRUE AND CORRECT TRANSCRIPT
13 OF MY SHORTHAND NOTES, AND IS A FULL, TRUE AND CORRECT
14 STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

15

16

DATED THIS _____ DAY OF _____, 2007.

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KAREN A. HUTCHISON, CSR NO. 6664
OFFICIAL COURT REPORTER

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