

Case No. 04 Civ. 4411 (JSR)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GB FOREST, LLC.,

Plaintiff,

- against -

JACK HIGHT, BRUCE BARRINGTON, LEON BRAUSER, PAUL CAMERON,
IRA SIEGEL, HANK ASHER and MARTHA BARNETT,

Defendants.

**AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION
PURSUANT TO RULE 12(B)(6) OF THE FEDERAL RULES OF CIVIL
PROCEDURE FOR DISMISSAL OF THE COMPLAINT**

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under the laws of the State of New York and, GB Forest, LLC as stated in the Complaint purchased 63,492 shares of Seisint class A preferred stock and currently is the owner and holder of these shares of stock.

4. At the time of the purchase of the stock, Hank Asher made certain representations to me that his company Seisint would be quite profitable and that an independent Board of Directors would manage, operate and run the company. If there wasn't an independent Board of Directors, the Plaintiff never would have made a million dollar investment in Seisint.

5. Mr. Asher also never disclosed to the Plaintiff that there were numerous allegations concerning his past involvement in drug deals. He also failed to disclose that because of these allegations, that he could not operate as a Chief Executive Officer of Seisint because it would prevent Seisint from obtaining government contracts.

6. As the Managing Director of GB Forest, LLC, I relied upon Mr. Asher's representations that his company would be managed properly and that the Board of Directors would not waste corporate assets and would not engage in any type of self dealing. The Plaintiff believed that the members of the Board were independent and would act in Seisint's best interest and not the best interest of Hank Asher.

MEMBERSHIP OF THE BOARD OF DIRECTORS

7. The Members of the Board of Directors are not independent and upon information and belief, were hand picked and selected by Mr. Asher.

8. These Directors have not acted in the best interests of Seisint or independently but rather, have acted as puppets on a puppeteer's strings pulled by Mr. Asher.

→ 9. The most glaring example is the "Giuliani" contract between Seisint and Mr. Giuliani. When I spoke to the President of Seisint, Mr. Paul Cameron, he told me that Hank Asher wanted the Giuliani contract. He told me that he was powerless to object.

10. Mr. Asher delegated Michael Brauser, my nephew, to exclusively negotiate a contract on behalf of Seisint with Mr. Giuliani. In a meeting with Michael Brauser, he specifically told me that Hank Asher had wanted Seisint to employ Giuliani because Mr. Asher believed that Mr. Giuliani could use his governmental influence with the Federal Government to enable Mr. Asher to take an active role in Seisint as a Chief Executive Officer despite the allegations about his drug-dealing.

11. I have attached hereto articles concerning Mr. Asher's alleged drug dealing which the Plaintiff believes was the primary motivation for the Giuliani contract. (Exhibit "A").

12. I was told by Michael Brauser that all the terms and conditions of the Giuliani contract were known and approved by Hank Asher and that the Board of Directors merely rubber stamped and approved the contract.

13. At a Special Meeting of the Board of Directors in which, Michael Brauser was present, the Board of Directors approved the Giuliani contract. (Exhibit "B") The Board of Directors approved the Giuliani contract without reading it or reviewing it.

14. One of the members of the Board of Directors, the Defendant Leo Brauser told me that at the time of Special Meeting that some members complained that they were approving a contract that they had not seen or reviewed.

15. The Giuliani contract contains materially and substantially different terms than those which were approved by the Board of Directors. Not a single member of the Board of Directors ever bothered to review the contract or read it at the time of approval by the Board. Upon information and belief, the contract was available to the Board at that time.

16. When it was called to the attention of the Board that the Giuliani contract provided substantial and material penalty clauses for cancellation and termination, the Board did not object or take any action.

17. Michael Brauser specifically told me that the Board did not object to any of the terms of the Giuliani contract and would make the termination payments to Giuliani because the Board would do whatever Hank Asher wished.

18. The members of the Board of Directors, who apparently did not read or review the Giuliani contract before approving it, also apparently never met to discuss or determine why the Giuliani contract had certain material termination clauses different than the terms discussed at the Special Meeting. I have requested minutes of the Board meetings and they have been denied to the Plaintiff.

19. I was told by Michael Brauser that the corporation received no financial benefit from the Giuliani contract, but that the Giuliani contract would cost the company in

excess of ten million (\$10,000,000.00) dollars just to terminate. When I pointed this out to Michael Brauser, he said to me "What Hank Asher wants, Hank Asher gets".

22. The Board of Directors knew or should have known that there was no benefit to Seisint for entering into the Giuliani contract.

21 The Defendants cannot point to a single benefit that Seisint received as a result of the Giuliani contract. The Defendants as members of the Board of Directors, if they exercised any type of due diligence or any type of reasonable care, would have discovered that the terms of the Giuliani contract obligated Seisint to pay a substantial and material amount of money for its termination.

22. Each member of the Board of Directors was negligent in failing to act independently and in failing to read and review the Giuliani contract. The Board of Directors allowed the Corporation to waste corporate assets by allowing the company to enter into a contract for which the company received no benefit.

23. I have also learned from Michael Brauser, that Hank Asher has given to him an additional one million (1,000,000) shares of corporate stock of Seisint, for his role in completing the Giuliani contract and, that Hank Asher also told him to offer to me one-hundred thousand (100,000) shares of Seisint stock to settle this action.

24. Michael Brauser, paid no consideration for these additional million shares of Seisint stock. (Seisint is currently being sold for \$15.00 per share).

25. It is the position of the Plaintiff that this was not "simply" a bad deal entered

into by the Board of Directors. This was a decision made by the Board of Directors without any type of sound business judgment and was made in bad faith. The Board acted in the best interests of Hank Asher.

26. The members of the Board of Directors of Seisint disregarded their fiduciary duty to exercise independent sound business judgment and not to be influenced by Mr. Asher.

27. This is not a derivative action. The Plaintiff seeks damages against each of these Directors for monetary damages for their failure to act independently; to properly read or review the Giuliani contract prior to their approval; for their failure to exercise independent judgment; for their negligence in voting for a contract which had no benefit to the Corporation, and for their failure to take any type of action when it was discovered that these existed termination payments to Giuliani.

28. Each of these Directors breached or failed to perform their duties as a Director and like Michael Brauser, may have received some type of benefit from Hank Asher for the Giuliani contract.

29. Discovery would reveal as to whether or not the Board of Directors knew or and should have known that Michael Brauser received approximately one million (1,000,000) shares of stock for his part in the Giuliani transaction.

30. Discovery would reveal whether or not the Directors received a benefit for approving the Giuliani contract.

31. If Michael Brauser received one million (1,000,000) shares of stock then

discovery will determine whether the Directors received shares of stock or other benefits for their role in the Giuliani contract.

32. Discovery will show that these Directors acted negligently, in bad faith and in a manner not reasonable to be in the company's best interest.

33. For these reasons, the application of the Defendant should be denied.

Respectfully submitted,


GERALD BRAUSER

Sworn to before me this
20th day of August, 2004


Notary Public

MARISOL VELEZ
Notary Public, State of New York
No. 24-4839412
Qualified in Kings County
Commission Expires Nov. 30, 19 2005

The Matrix!

Unloaded

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Exh. A

HANK ASHER'S JUST THE GUY TO SET UP A FUTURISTIC TERRORIST-TRACKING SYSTEM, BUT THE COPS DON'T TRUST HIM
BY >> WYATT OLSON

The tech bubble had not yet burst as Hank Asher strode up to the dais in early October 1999 at the Hyatt Regency in Fort Lauderdale. Ambition and high expectations permeated the audience of more than 300 who had packed the banquet hall to kick off the so-called DevCon '99, a gathering of software developers devoted to a programming language named Clarion. Asher, the day's keynote speaker, had become a minor deity in the Clarion world. Fed also struck it rich. Using that language, he'd built the Boca Raton-based Database Technologies Online, or DBT Online, which was primarily a database for law enforcement and private investigators. Need to find a guy? Give DBT Online his name, approximate age, and *biingo*, you've got a list of addresses and phone numbers and a whole lot more. Asher had sold his share of the company, garnering more than \$100 million. The publicly traded DBT Online now had market capital of \$500 million, but Asher had come on to found a similar database

company, eData, which also employed Clarion as a means to parse a database of billions of public and business records. Many in the audience had no doubt read some of the recent news stories about Asher's connection with Bahamian drug smugglers years ago, but in this New Economy of the Internet, there wasn't much reason to dwell on ancient history. Asher, then 48 years old, wore the casual dress of a techie, a short-sleeved white shirt, unbuttoned at the neck. He sported a scraggly beard of gray and black and slightly disheveled hair that was receding a bit on the front sides. At 5-foot-10-inches, he was burly with a middle-age paunch and a full, round face.

In a baritone voice, Asher told the story of the first time he ran a report on himself at DBT Online: it found both his parents, his siblings, his in-laws, his ex-in-laws, his ex-wife, "her newest victim," all his old addresses, and those of his old neighbors and where they now lived. "Oh my God, what have we done?" he asked himself.

That's a question many have asked themselves after crossing Asher's path. As the brains behind Matrix, the fast-moving Multistate Anti-Terrorism Information Exchange, a proposed 13-state database designed to find links between acts of terrorism and suspects with lightning searches of police, public, and commercial records, Asher recently stepped up as a major figure in the burgeoning homeland security effort.

Then, because of a checkered past, he was forced to make himself out of the game two weeks ago.

It was just the latest development in a long, turbulent personal history involving top-level disputes and allegations of illegal drug trafficking. In recent years, Asher has hassled with the U.S. Drug Enforcement Agency, which temporarily curtailed using DBT Online in 1999 after learning of Asher's alleged ties to drug smugglers. Two former board directors of the company he founded, Seisint Inc., continued on page 14

Matrix continued from page 13

have sued him for allegedly running roughshod over top executives and bribing other board directors to acquiesce to his wishes. Then, on August 29, he was forced to step down as a board member of Seisint, which is in the middle of contract negotiations with the state for the lucrative Matrix contract. The Seisint board is now scrambling to minimize Asher's profile.

According to friends and associates, Asher is a creative genius with an impulsive streak, a master manipulator, adept at corporate gamesmanship, and, some say, more secretive than Citizen Kane. Asher has grown rich turning personal data into a commodity, but he shuns public scrutiny.

"He's not a publicity seeker, by any means," contends Martha Barnett, a longtime friend. "He's not shy, he's just not someone who seeks out or wants to be in the press by nature. He's not a secretive person at all."

But Asher remains elusive to anyone who is not among his personal circle of friends. He lives in a \$3 million house in a gated community in Boca Raton. Requests by *New Times* for interviews went unanswered, and many who know him are either unwilling to talk or cannot because they've signed confidentiality agreements.

Asher has been both the greatest asset and greatest liability of the companies he has built during the past decade. He's an entrepreneur who values risk and chafes under limitations. When his first company, Database Technologies, had grown highly successful in the mid-1990s, board directors and investors tried reining him in. Asher reacted like an *enfant terrible*, manipulating employees and directors from behind the scenes. The same struggle has been playing out at Seisint for the past few years. Now, with Seisint poised to play a major role in the nation's anti-terrorism effort, the company has ousted Asher from his director's seat.

If the past is any indication, however, Asher, who remains the majority stockholder in Seisint, still holds great sway over the company.

In introducing Asher at DevCon '99, Bruce Barrington, who created the Clarion program and is now a board director for

ship, which is funded each year by a Valparaiso resident who wishes to remain anonymous. The scholarship is intended for students interested in computer science.

He moved to South Florida during the early 1970s and began the first of numerous entrepreneurial ventures. In 1975 he incorporated three companies based in Wilton Manors: Asher Painting, Asher Waterproof Coatings, Roofing and Painting Corp., and Technological International Inc, which changed its name in 1977 to Asher International Corp. His brother, Charles A. Asher, who graduated from Indiana University School of Law in 1977, served as an officer for the third company.

Through a friend, Asher met Judith Redden in 1977, and the two lived together on and off in Wilton Manors from then through 1982. The couple apparently traveled frequently to the Bahamas and Hawaii. In March 1979, Redden gave birth to the couple's first child, Eliza Asher. Asher was "thrilled" with the arrival of his first-born, according to documents filed in 1993 by the state seeking child support payments from Asher. Caroline Asher was born in July 1982.

Asher's business ventures unraveled that year, and he closed them down.

Sometime during this period, Asher, who was also a pilot, bought a home on Great Harbour, a small island in the Bahamas about 85 miles south of Nassau. There he was to strike up a lifelong friendship with fellow homeowner E. Lee Bailey, one of the nation's premier defense attorneys. Bailey first gained prominence in 1961 by taking on the case of Sam Shepard, who had been convicted seven years earlier of killing his wife, and he went on to handle a series of high-profile cases.

Great Harbour was separated only by a

ASHER IS A CREATIVE GENIUS WITH MANIPULATOR MORE SECRETIVE

Seisint, claimed that Asher had departed his home state of Indiana because his "efforts were underutilized," according to an article at the time in the trade journal *Clarion Magazine*. Asher, however, set the record straight at the podium: He was fired from his last job in Indiana on the grounds that he couldn't get along with people and that his ideas didn't work. He paused a beat after the admission. "I think I have proven that my ideas do work," he declared. The audience roared at the droll gloss over, but Asher's thorniness has indeed been as prominent as his innovation.

Henry Edward Asher was born on May 9, 1951, and raised on a farm near Valparaiso, Indiana, which is 60 miles from downtown Chicago. He briefly attended Valparaiso University, a small, private college. Although he didn't graduate, each year the college awards the Hank Asher Scholar-

small channel from Cistern Cay, a tiny isle with a landing strip that gained notoriety as a drug smuggling base in the 1970s. Robert Vesco, a fugitive American financier, bought Cistern Cay in 1978 for \$180,000. Vesco, who had been charged in 1976 with stealing \$224 million from a mutual fund, became a figure in the Watergate scandal after it was revealed that he had illegally contributed \$200,000 to the 1972 Richard Nixon reelection campaign. Vesco is also alleged to have assisted Carlos Lehder, an infamous Colombian drug smuggler, in laundering money through Nassau banks.

Cocaine dealing seemed virtually out of control in those days. By the early 1980s, no less than Bahamian prime minister Lynden Pindling had been caught up in allegations of assisting smugglers on Cistern Cay (he was never charged). In 1983, NBC

