

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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MADISON SQUARE GARDEN, L.P., :

Plaintiff, :

- against - :

Index No.: 600065/10

SPONGETECH DELIVERY SYSTEMS, INC. :

and RM ENTERPRISES INTERNATIONAL LTD, :

Defendants. :

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**AFFIDAVITS IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT IN LIEU OF COMPLAINT
AND IN OPPOSITION TO DEFENDANTS'
CROSS-MOTION FOR SUMMARY JUDGMENT**

SULLIVAN GARDNER, P.C.
Attorneys for Plaintiff
475 Park Avenue South
New York, New York 10016
(212) 687-5900

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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MADISON SQUARE GARDEN, L.P.,

Plaintiff,

-against-

SPONGETECH DELIVERY SYSTEMS INC. and
RM ENTERPRISES INTERNATIONAL LTD.,

Defendants.
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Index No.: 600065/10

**AFFIDAVIT OF
STUART HEIFETZ**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Stuart Heifetz, being duly sworn, deposes and says:

1. I am employed by Plaintiff Madison Square Garden, L.P.¹ as a Sales Manager for Marketing Partnerships, and as such I am fully familiar with the facts and circumstances surrounding the instant application. This affidavit is submitted in further support of Plaintiff's motion for summary judgment in lieu of complaint and in opposition to the cross motion by Defendants. Specifically, I submit this Affidavit to declare the following:

- a. There is no basis for any claim of facts other than that each of the Returned Checks were intended by both Plaintiff and Defendants to be deposited immediately to satisfy part of the outstanding debt owed by Defendant Spongetech under the Spongetech Sponsorship Agreement; and

¹ Unless redefined herein, all terms defined in Plaintiff's initial motion papers are incorporated herein by reference.

b. There is no basis for any claim that the Returned Checks were intended as some sort of security for some undefined purchase of suite tickets or premium tickets.

2. In my position as Sales Manager for Marketing Partnerships, I deal directly with companies purchasing advertising space through sponsorship agreements for sporting events at Madison Square Garden. I was the employee of MSG that primarily dealt with the Spongetech Defendants and the common principal Steven Moskowitz. This work included securing the Spongetech Sponsorship Agreement.²

3. Following execution of the Spongetech Sponsorship Agreement it was also my responsibility as Sales Manager to service the account and monitor Spongetech payments. MSG fulfilled all of its obligations under a prior sponsorship agreement with Spongetech and under the Spongetech Sponsorship Agreement. MSG provided all promotion, advertising and ticket services required by both agreements in a timely and comprehensive manner. Conversely, throughout its relationship with MSG, Spongetech consistently failed to meet its payment obligations in a timely manner. I was often compelled to telephone Mr. Moskowitz to inform him that payments were past due. As would often happen, following several phone calls and emails regarding a late payment, Mr. Moskowitz would finally tell me to come over to his office and pick up a check. When I would arrive at Spongetech's offices, which were located close to MSG's offices,

² Although already under contract as a sponsorship partner for the 2008-09 season, Defendant Spongetech insisted that the renewal of the marketing relationship between Spongetech and MSG for the 2009-10 season be structured in the form of separate sponsorship documents nominally adding two Spongetech affiliates, Spongetech Auto, Inc. and Spongetech Pets, Inc. Copies of these Related Spongetech Agreements, previously submitted as Exhibit "D" to the Plaintiff's previously submitted motion papers, are annexed as Exhibit "C".

Moskowitz would take out a checkbook and handwrite a check to MSG. I would return to MSG's offices and always have the check promptly deposited.

4. A similar sequence of events occurred with respect to both the \$360,000 Returned Check and the \$70,880 Returned Check ("Returned Checks")³. In both cases, following repeated reminders that Spongetech was behind in its payment obligations under the Spongetech Sponsorship Agreement, Mr. Moskowitz told me that a check would be available at his office. In both cases, the checks were picked up from Spongetech's offices and immediately deposited.

5. With respect to the \$360,000 check issued by RM Enterprises International, Ltd, I was personally handed the check by Steven Moskowitz on December 4, 2009 in Spongetech's offices. Prior to that date, I had repeatedly called and emailed Moskowitz demanding payment on unpaid invoices issued pursuant to the Spongetech Sponsorship Agreement. Copies of the said invoices are annexed as Exhibit "A". On December 4, 2009, Moskowitz told me to come to his offices to collect a check for Spongetech's outstanding obligations under the Spongetech Sponsorship Agreement.

6. As I had done on many previous occasions, I walked across the street to Spongetech's offices to collect the check. When I arrived, Mr. Moskowitz handwrote a check to MSG. I immediately noticed that the check was drafted on check stock of "RM Enterprises International, Ltd.". As it was clear to both Mr. Moskowitz and me that the \$360,000 Returned Check was, and could only be, intended as payment on Spongetech's debt under the Spongetech Sponsorship Agreement, I noted the account name to Mr. Moskowitz. He told me: "Don't worry. RM is the parent of Spongetech." Mr. Moskowitz

³ Copies of the Returned Checks previously submitted as Exhibits "A" & "B" to the Plaintiff's previously submitted motion papers, are annexed as Exhibit "B"

then left his office claiming another obligation. After Mr. Moskowitz left, I noticed that the check contained a typographical error. As I was often at the Spongetech offices to pick up checks, I had come to learn where Mr. Moskowitz parks his car. I immediately ran to his garage and found Mr. Moskowitz waiting for his car. I showed Mr. Moskowitz the discrepancy. Mr. Moskowitz told me to come back to his office in a few hours and he would have another check for me. When I returned later that day, Mr. Moskowitz handwrote the \$360,000 Returned Check made payable to "Madison Square Garden, LP."

7. After returning from Spongetech's offices on December 4, 2009, I forwarded the \$360,000 Returned Check to our accounts receivable department to immediately deposit in our account at JP Morgan Chase. On December 9, 2009, I was informed by our accounts receivable department that the \$360,000 Returned Check was returned unpaid.

8. At no point during any of my conversations with Mr. Moskowitz or during my two visits to Spongetech's offices on December 4, 2009 to pick up the \$360,000 Returned Check, or at any other time, ever, did Mr. Moskowitz or anyone associated with Spongetech ever tell me that the \$360,000 Returned Check, or any other payment check, should not be deposited or that the said payment or payments were for a purpose other than payment of the Spongetech debt under the Spongetech Sponsorship Agreement.

9. The \$70,880 Returned Check was also picked up directly from Mr. Moskowitz at Spongetech's offices, again after my repeated phone calls regarding Spongetech's outstanding obligations under the Spongetech Sponsorship Agreement.

Spongetech did not instruct me to hold the check or delay its deposit in anyway. The \$70,880 Returned Check was immediately deposited and also returned unpaid.

10. I have never had a discussion with Mr. Moskowitz or anyone else associated with Defendant Spongetech about delaying the deposit of the \$70,800 Returned Check or any other Spongetech checks. I have also confirmed with my staff that there has never been even a discussion about the delaying of the deposit of a Spongetech check.

11. I am advised that Mr. Moskowitz also claims that Defendant Spongetech "had been current in its obligations to MSG" at the time of the deposit of the \$70,880 Returned Check. Moskowitz Affidavit, ¶9. This is certainly not true. Indeed, Defendant Spongetech was rarely current in its obligations to MSG under the Spongetech Sponsorship Agreement. Specifically, at the time of the issuance of the \$70,880 Returned Check, October 30, 2009, Defendant Spongetech had paid MSG only \$102,340 against invoices of \$330,648 and thus owed \$228,308 to MSG under the Spongetech Sponsorship Agreement. As there were no additional payments, at the time of the issuance of the \$360,000 Returned Check, Defendant Spongetech owed \$432,980 pursuant to said agreement. Annexed as Exhibit "A", are copies of the invoices reflecting the foregoing.

12. I am advised that Mr. Moskowitz also claims that MSG was in "negotiations" with the Defendant RM concerning "purchasing tickets to certain sporting events". Moskowitz Affidavit, ¶10. Prior to seeing the name on the \$360,000 Returned Check on December 4, 2009, I had never heard of RM. I am not aware of MSG ever

having any interaction with RM. As the sales person with responsibility for MSG's relationship with Spongetech, I would know of such a relationship.

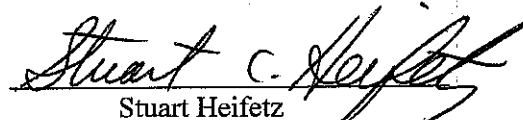
13. I am also advised that Mr. Moskowitz claims that the Returned Checks were demanded by MSG to be held as some form of assurance while the Defendant Spongetech "negotiated" the purchase of tickets. With rare exception, Mr. Moskowitz and his acquaintances received every ticket for which they asked⁴. Moreover, the Spongetech Sponsorship Agreement provided Mr. Moskowitz with many free suite tickets and a \$10,000 "ticket bank" against which to draw. Exhibit "C", Spongetech Auto, p.2. It is not possible that Mr. Moskowitz offered MSG nearly a half a million dollars for additional tickets and that I was not aware of it. Moreover, if Spongetech wanted more tickets than those provided under the Spongetech Sponsorship Agreement, all it needed to do was buy them. There would be no need to deposit such a large sum of money.

14. I am further advised that Mr. Moskowitz claims that MSG breached the Spongetech Sponsorship Agreement by failing to deliver certain event tickets. I handled all ticket requests and deliveries relevant to the Spongetech account and am personally aware of all such matters. It is certainly not true that there was ever a failure to deliver any event tickets required by the Spongetech Sponsorship Agreement. In fact, there was never a failure to deliver any of the events tickets requested by the many acquaintances of

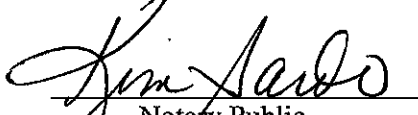
⁴ As a salesman, I always made certain that Mr. Moskowitz and his acquaintances received the tickets they requested. The one exception was a single Knicks-Celtics game. Mr. Moskowitz asked to be given several suite tickets for this game at a time when Spongetech owed MSG several hundred thousand dollars and had been promising me payment for weeks. Because of the frustration with Spongetech's outstanding invoices, Mr. Moskowitz's broken promises of payment and the many previous tickets he had received, MSG decided to decline to provide him with the requested suite tickets for this game. The issue was rendered moot when Mr. Moskowitz told me not to bother getting the tickets.

Mr. Moskowitz that were repeatedly provided as a courtesy outside of the requirements of the said agreement.

15. At no time did Mr. Moskowitz or anyone from Spongetech ever ask MSG not to deposit the Returned Checks or assert that either of the checks was to be held as assurance for some business outside of the Spongetech Sponsorship Agreements. Spongetech was not current in its obligations to MSG at any of the times relevant to the matter now before the Court. I am not aware of any discussions or negotiations with Defendant RM by anyone affiliated with MSG. As I was responsible for all matters concerning Spongetech, I would be aware of such a discussion.


Stuart Heifetz
Sales Manager, Marketing Partnerships

Sworn to before me this
1st day of March, 2010


Notary Public

Kim Sardo
Notary Public State of NY
No. 01SA4944804
Qualified in Queens County
Commission Expires 12/05/2010

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COUNTY OF NEW YORK

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**AFFIDAVIT OF
JOHN CLARK**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

John Clark, being duly sworn, deposes and says:

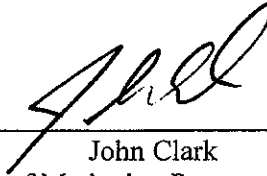
1. I am employed by Plaintiff Madison Square Garden, L.P.¹ as the Vice President for Marketing Partnerships, and as such I am fully familiar with the facts and circumstances surrounding the instant application. This affidavit is submitted in further support of Plaintiff's motion for summary judgment in lieu of complaint and in opposition to the cross motion by Defendants.

2. Part of my responsibilities includes the supervision and management of MSG's relationships with its marketing partners such as Defendant Spongetech. Throughout the period relevant to the instant matter, I have supervised Mr. Stuart Heifetz, the individual assigned to work with Defendant Spongetech.

3. I have read the Moskowitz Affidavit. I understand that Mr. Moskowitz claims MSG accepted two checks totaling \$430,880 ("Returned Checks") with the understanding that the Returned Checks would not be deposited as they were intended as

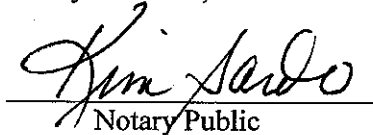
¹Unless redefined herein, all terms defined in Plaintiff's initial motion papers are incorporated herein by reference.

security for an undefined purchase of certain event tickets outside of the Spongetech Sponsorship Agreement. The foregoing allegations in the Moskowitz affidavit are not true. I am responsible for our relationships with our marketing partners, including Spongetech. If there were discussions concerning the deposit of such a sum of money as some form of assurance for a ticket purchase, suite, premium or otherwise, I would have been aware of such discussions. Prior to being advised of the contents of the Moskowitz Affidavit, I had never heard of any such discussions nor heard of Defendant RM in any context. It is my belief that the said statements in the Moskowitz Affidavit are not true.



John Clark
VP of Marketing Partnerships

Sworn to before me this
1st day of March, 2010


Notary Public

Kim Sardo
Notary Public State of NY
No. 01SA4944804
Qualified in Queens County
Commission Expires 12/05/2010

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**AFFIDAVIT OF
SCOTT O'NEIL**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Scott O'Neil, being duly sworn, deposes and says:

1. I am employed by the Plaintiff Madison Square Garden, L.P.¹ as the President of MSG Sports, and as such I am fully familiar with the facts and circumstances surrounding the instant application. This affidavit is submitted in further support of Plaintiff's motion for summary judgment in lieu of complaint and in opposition to the cross motion by Defendants.

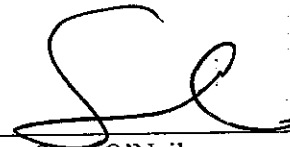
2. In my capacity as President of MSG Sports, I oversee the business operations of the three professional sports teams and all other sporting events at MSG.

3. On or about December 9, 2009, I was informed that the \$360,000 Returned Check was returned unpaid. The check was to be applied for payment of Spongetech's outstanding obligations under the Spongetech Sponsorship Agreement.

4. After receiving an email informing me of the returned check, I sought payment of the money owed MSG in extended email correspondence with Steven

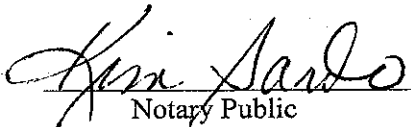
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Moskowitz, Chief Operating Officer, and Michael Metter, Chief Executive Officer, of Spongetech. A copy of said email correspondence is annexed as Exhibit D. Spongetech owed MSG a large sum of money pursuant to the Spongetech Sponsorship Agreement and I sought payment. I know of no basis in fact for the claim that the \$360,000 Returned Check or any other payment by Spongetech was for any purpose other than payment of the obligations to MSG under the Spongetech Sponsorship Agreement.



Scott O'Neil
President, MSG Sports

Sworn to before me this
1st day of March, 2010



Notary Public

Kim Sardo
Notary Public State of NY
No. 01SA4944804
Qualified in Queens County
Commission Expires 12/05/2010