

**SUPREME COURT OF THE STATE OF NEW YORK
New York County**

LOUIS J DESY JR

Plaintiff,

- against-

Index No.: 651541/2018

Filed: 03/30/2018

KEN WHITMAN AKA KEN WHITMAN JR AKA WHIT WHITMAN AKA d20
Entertainment LLC,

and

Kickstarter PBC

Defendants.

**MEMORANDUM AND REPORT ON DEVICES CONTAINING RAW FOOTAGE FOR
PROJECT KICKSTARTER KODT:LAS BASED ON EMAIL FROM DEFENDANT
KEN WHITMAN, WHICH IS FILED AS EXHIBIT AB, document #52 AND
OTHER COMMUNICATIONS,
BY PLAINTIFF LOUIS J DESY JR**

SUMMARY

Plaintiff Louis J. Desy Jr. now submits this Memorandum as a Report on the Devices that contained all of the raw footage files based on emails from Defendant Ken Whitman on Monday, July 30, 2018 and filed as exhibit AB, document #52 in this case, and other communications throughout the course of the project.

STATEMENT OF FACTS AND ARGUMENT

1: As incredible as it seems, Whitman apparently lost or threw out his devices with the files and really does not have any of the raw footage anymore.

2: We have no idea from earlier why Whitman would not just tell people what happened or why when it looked like there was a problem, Whitman didn't even ask anyone for help to preserve the files, in spite of the fact that at least one person or company would have at least made an attempt to preserve the raw footage and people have been trying for months to help Whitman for the project. I myself repeatedly asked Whitman what he wanted to turn over all of the raw footage for months and ZOE Entertainment had an outstanding offer to come to Whitman's location and transfer the files at no cost to Whitman for months. Plaintiff now believes Whitman's problem was that Whitman would 'not look good', and even look incompetent, if it was discovered, or Whitman admitted, that he had lost all of the files. Plaintiff believes that Whitman probably had a fear that people would accuse him of maliciously destroying the raw footage to ruin the project. It is highly likely it would affect his

ability to ever get any work in the future, so Plaintiff believes that Whitman hide what had happened from everyone, due to his mismanagement of the raw footage, and hoped that no one would ever find out.

3: While Whitman may have claimed recently that only he had footage that ZOE Entertainment did not have, and would turn it over if a new contract was signed Jolly Blackburn plus Kenzer and Company, with some terms of like not being able to discuss the Kickstarter project for five years; I believe this negotiation was just a 'smoke screen' on Whitman's part to make such a contract so unpalatable that no one would sign and thereby no one would find out that Whitman really didn't have the files anymore; i.e. If anyone did agree to sign, Whitman would just make said the contract terms more and more outrageous until one would decline to sign said contract since if anyone did sign a contract, then they would find out the files were gone when Whitman couldn't produce them and Whitman could not allow that to happen.

4: In summary, there were a total of three hard drives, one 2TB and two 4TB.

5: A 2TB hard drive went to ZOE Entertainment. I assume that is what the 'Rescued DVD' was made from plus maybe some dropbox files people assembled to fill in the gaps as best they could on the DVD.

6: One 4TB hard drive 'locked up', so apparently when that failed, Whitman threw it away. By 'locked up', it sounds like Whitman means that the platters that spin within the hard drive were no longer spinning, which does happen on mechanical drives if the drive bearing fails. It is possible that if Whitman had told someone at the time, a disaster recovery could have been attempted on it and recovered the files. It sounds to me like Whitman did not know or understand that in those situations it was possible to take the hard drive platters and put them into another device in a clean room and recover most of the data that way, most of the time. Whitman probably thought there was no hope for the hard drive at that point, and threw the hard drive away, which was an error on Whitman's part.

7: At this point there was now only one 4TB drive with the files on it. Whitman should have immediately got another 4TB drive and made a copy of all the files, in order to ensure there was always at least two copies of the files in

case one hard drive failed. Unfortunately, Whitman, for whatever reason, did not make any backup of the files. At this point the files were all at risk that if something happened to the one and only hard drive they were on, then the files would be lost and possibly gone forever, except for the files with ZOE Entertainment.

8: At this point there was only one 4TB hard drive with all of the raw footage. After a period of time, disaster struck. That one 4TB hard drive was left with a friend when Whitman went off for a period of time of something like 6 months. It is not clear why Whitman went away or didn't take the hard drive with him. I speculate that Whitman thought the drive would be safer in the friend's apartment, so Whitman left the hard drive there, which is not an unreasonable assumption. While Whitman was away, the friend was evicted from the apartment and apparently did not notify Whitman that he was being evicted. In the process of being evicted and moving everything out of the apartment, the hard drive was lost. This friend reported to Whitman that he does not remember seeing the hard drive at all during the move. I speculate that it is highly likely the hard drive was completely lost and/or throw away with other trash as part of the move. It is also possible that the

reason the friend did not see the hard drive during the move is that maybe it was already 'gone', thrown away or lost prior to the move as part of the eviction, or someone stole that hard drive from the friend and the friend was unaware. A 4TB hard drive still has some value as computer equipment so maybe someone took it for themselves for their own computer system prior to the eviction?

In any case, at this point, the one and only hard drive with all of the raw footage, was now gone and the files lost.

9: As incredible as it seems, Whitman does appear to have mishandled backing up the files and has lost all devices that had the raw footage on. From our discussions since April 2016 and before, I believe Whitman does not even have any footage whatsoever at this point, and no way to recover any of the raw footage, such is the magnitude of his mishandling of the raw footage.

10: The only one small hope to recover any of the lost raw footage, and it would have to be something of a miracle, is that someday the drive that was left with the friend that got evicted somehow turns up somewhere, someone figures out

what it is, and turns it over to someone. However, since a period of time has passed since the eviction, it can be considered somewhat unlikely that the possible sole remaining 4TB hard drive will ever be found.

TO ASSIST WITH THIS SEARCH, I AM OFFERING A \$500 REWARD FOR THE DELIVERY OF THIS MISSING DEVICE TO MYSELF, ZOE ENTERTAINMENT, JOLLY BLACKBURN OR KENZER AND COMPANY; PAYABLE ONCE IT IS DETERMINED TO BE THE MISSING 4TB HARD DRIVE WITH THE RAW FOOTAGE. THERE IS NO TIME LIMIT ON THIS OFFER BY MYSELF FOR THE TURNING OVER OF THE MISSING 4TB HARD DRIVE WITH THE RAW FOOTAGE.

11: Throughout this process, I did have some hope and expectation that Whitman was lying at times when he said he didn't have the raw footage, because if Whitman was telling the truth at times about the devices being damaged and/or gone then it really did mean that the missing raw footage would be gone forever. I have concluded for this report that the truth is that Whitman through a misunderstanding of hard drive failures for one 4TB hard drive and the mishandling by Whitman and his friend for the other 4TB hard drive, did lose and/or throw away both of the devices that Whitman had the raw footage on and Whitman now has nothing of the raw footage.

12: The one good thing that did happen is when ZOE Entertainment got a transfer at one point onto a 2TB hard drive of the files. If it was not for that transfer it is probable that all of the raw footage would have been lost and gone forever. Backers of the project should be forever grateful for what ZOE Entertainment did to preserve those files when they did the 2TB hard drive copy of the files. If it was not for that copy of the files, all of the raw footage would have been lost forever and nothing recoverable for the project.

CONCLUSIONS

For the facts and reasons set forth, plaintiff Louis Desy will file a notice of withdrawal with prejudice against both defendants in the case later today since with all of the missing raw footage gone and apparently lost forever, except for what ZOE Entertainment has, there is nothing else that can be done and no amount litigation in any court will or can change that fact.

While monetary damages could still be pursued against defendant Whitman in Kentucky, that will not bring back the

lost footage, plus defendant Whitman has apparently systematically destroyed himself financially since raising the \$170K on the six Kickstarter projects far more effectively than any monetary award from any court could.

From what I am able to ascertain as to Whitman financial situation, it is expected that Whitman is moving assets around in a meaningless manner and that if Whitman properly understood bankruptcy exemptions and limitations on the collection of court judgements, Whitman would not bother with such financial shuffling and would better spend his time concentrating on making money.

Kickstarter PBC itself claims that it has no responsibility for even checking if a creator is real and exists, however I am of the opinion that over time more and more of these 'problems', such as in this project, will happen where projects will be registered in the names of fake people or fake companies, who will raise funds and deliver nothing, leaving backers with no recourse. Kickstarter PBC will defend against any claims that it has no duty to ensure that creators are even real as they have done here, but I expect that eventually it will cause people to stop using Kickstarter.com since who would want to fund a project if

there is a good chance it is a con and partly Kickstarter's fault for not even checking to make sure that creators are real?

Earlier today I did report to Jolly BlackBurn and, Kenzer and Company my findings, plus sent a thank you message to ZOE Entertainment for the transfer that was done and their work in safeguarding what raw footage they were able to copy. Later today I will report to the Backers of the entire project through the Kickstarter comments page and inform the Kickstarter Project Backers, as a group, of my findings.

The one good thing that did come from this case is that we finally were able to determine what happened with the results of the project, the raw footage, which would have never happened if not for this case.

In conclusion, while at the outset of this case I had hope and an expectation of recovering at least some of the missing raw footage, I regret to report that I was not able to recover any of the missing raw footage and it appears to no longer be possible to recover any more of the missing

raw footage, because a device or collection of devices with all of the raw footage apparently no longer exists.

Dated: July 31, 2018



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