

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

4 AMERANTH, INC. \* Civil Docket No.  
5 VS. \* 2:07-CV-271  
6 \* Marshall, Texas  
7 \*  
8 \* September 13, 2010  
9 \* 1:20 P.M.  
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6 TRANSCRIPT OF TRIAL  
7 BEFORE THE HONORABLE JUDGE CHAD EVERINGHAM  
8 UNITED STATES MAGISTRATE JUDGE

9 APPEARANCES:

10 FOR THE PLAINTIFFS: MR. JOHN W. OSBORNE  
11 MR. JAMES W. GOULD  
12 MR. PETER N. FILL  
13 MR. STEVEN M. PURDY  
14 MR. PETER H. NOH  
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APPEARANCES CONTINUED:

FOR THE DEFENDANTS: MR. MARC L. DELFLACHE  
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\* \* \* \* \*

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.

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