

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 ROBERT SHAMIS, as Assignee of
4 Wishbone Trading Company,
5 Limited, a Hong Kong
6 corporation, and ROBERT SHAMIS,
7 Individually,

8 Plaintiffs,

9 v.

95 Civ. 9818 (RWS)

10 AMBASSADOR FACTORS CORPORATION,
11 d/b/a Ambassador Factors, a
12 Division of Fleet Factors
13 Corp., a Rhode Island
14 corporation; S. ROBERTS, INC.,
15 a New York corporation; JAY
16 VEE, INC., a New York
17 corporation; CHRISTY LYNN, a
18 New York corporation; ABC
19 COMPANIES, (fictitious names
20 of corporate affiliates of
21 defendants S. Roberts, Inc.,
22 and Jay Vee, Inc., whose
23 identities are presently
24 unknown; NATHAN KORMAN, as
25 Executor of the Estate of
Leonard Kaye, a/k/a Lawrence
Korman a/k/a Steven Pesner;
MAHONEY COHEN & CO., P.C., a
New York professional
corporation; ESTATE OF LEONARD
KAYE; STEVEN M. PESNER, as
Executor of the Estate of
Leonard Kaye; BANK OF AMERICA
NATIONAL TRUST AND SAVINGS
ASSOCIATION; ANGELA CHRISTY,
a New York Corporation,

Defendants.

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May 1, 2000
9:30 a.m.

1 Before:

2 HON. ROBERT W. SWEET,
3 District Judge

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APPEARANCES

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STORCH, AMINI & MUNVES, P.C.
7 Attorneys for Plaintiffs
BY: STEVEN G. STORCH
8 LITA BETH TORRES

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RUSKIN, MOSCOU, EVANS & FALTISCHEK, P.C.
10 Attorneys for Defendant Ambassador
BY: DOUGLAS J. GOOD
11 CHRISTINE MC INERNEY

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SCHAEFFER & ZAPSON
13 Attorneys for Defendant S. Roberts, Jay Vee,
Christy Lynn, Korman
BY: ELLIOT L. SCHAEFFER
14 LANCE N. OLITT

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STRASSBERG & STRASSBERG, P.C.
16 Attorneys for Defendant Mahoney Cohen & Co.
BY: LOUIS STRASSBERG
17 MILTON STRASSBERG

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1 (Trial resumed)

2 (In open court; jury present)

3 THE COURT: Good morning, ladies and gentlemen, we
4 have the testimony which you requested; that is, the
5 cross-examination of Mr. Shamis by Mr. Schaeffer.

6 (Record read)

7 THE COURT: Thank you, ladies and gentlemen.

8 (Jury deliberations resumed; time noted 10:12 a.m.)

9 THE COURT: I'll let you know as soon as I know.

10 (Recess pending verdict)

11 We have a verdict. We will get the jury in and they
12 will announce their verdict.

13 (Jury present)

14 THE COURT: We received your note that you have a
15 verdict.

16 Mr. Clerk, will you get the verdict.

17 THE COURT DEPUTY: Yes, Judge.

18 THE COURT: Please publish the verdict.

19 THE COURT DEPUTY: Robert Shamis v. Ambassador
20 Factors, et al., 95 Civ. 9818.

21 First cause of action, common law fraud, clear and
22 convincing evidence standard.

23 Question 1A: Did any of the following defendants
24 make an affirmative statement of facts to Wishbone? S.
25 Roberts, yes; Korman, yes; Ambassador, yes; Mahoney Cohen,

1 yes.

2 Question 1B: Did any of the following defendants
3 conceal a fact from Wishbone that such defendant had a duty to
4 disclose to Wishbone, that is, did such defendant make a
5 partial or ambiguous statement to Wishbone, or did such
6 defendant have knowledge about the matter in question, where
7 such knowledge was not readily available to Wishbone, and such
8 defendant knew that Wishbone was acting on the basis of
9 mistaken knowledge as to the matter in question? S. Roberts
10 yes; Korman, yes; Ambassador yes; Mahoney Cohen, yes.

11 Question 2: If an affirmative statement was made,
12 was it untrue? If a fact was concealed, was it material? S.
13 Roberts, yes; Korman, yes; Ambassador, yes; Mahoney Cohen,
14 yes.

15 Question No. 3: Did the defendant you have
16 designated act with intent to defraud or with reckless
17 disregard for the truth? S. Roberts, yes; Korman, yes;
18 Ambassador, yes; Mahoney Cohen, yes.

19 Question No. 4: Did Wishbone justifiably rely on the
20 untrue statement or statements of fact or omissions made by
21 any defendant you have designated? S. Roberts, yes; Korman,
22 yes; Ambassador, yes; Mahoney Cohen, yes.

23 Question 5: Did the untrue statement or omission of
24 any defendant you have designated proximately cause injury to
25 Wishbone? S. Roberts, yes; Korman, yes; Ambassador, yes;

1 Mahoney Cohen, yes.

2 Question No. 6: State the amount of actual damages,
3 if any, incurred by Wishbone due to fraud. U.S. dollars, 7.2
4 million.

5 Question No. 7: Determine the percentage which
6 represent the relative share of the responsibility for the
7 damages, if any, found in question 6. S. Roberts, 25 percent;
8 Korman, 25 percent; Ambassador, 25 percent; and Mahoney Cohen,
9 25 percent.

10 Second cause of action, breach of contract,
11 preponderance of evidence standard.

12 Question No. 8: Did S. Roberts or Ambassador breach
13 their obligations under their contracts with Wishbone? S.
14 Roberts, yes; Ambassador, yes.

15 Question 9: State the amount of actual damage, if
16 any, sustained by Wishbone due to breach of contract. U.S.
17 dollar, \$2 million.

18 Question 10: Determine the percentage which
19 represents the relative share of the responsibility for
20 damages, if any, found in question 9. Question 10A, S.
21 Roberts, 50 percent; question 10B, Ambassador, 50 percent.

22 Third cause of action, accounting malpractice,
23 preponderance of evidence standard.

24 Question number 11: Did Mahoney Cohen fail to make
25 an investigation of S. Roberts in accordance with such skill

1 and care as a reasonably skillful accountant would use under
2 the same circumstances? Yes.

3 Question 12: Was Mahoney Cohen aware that the
4 reports would be used and relied upon by Wishbone to determine
5 whether Wishbone would take certain actions in its
6 relationship with S. Roberts? Yes.

7 Question 13: Did Wishbone rely on the statements
8 prepared by Mahoney Cohen? Answer: Yes.

9 Question 14: Did Wishbone's reliance on a Mahoney
10 Cohen statement proximately cause injury to Wishbone? Answer:
11 Yes.

12 Question 15. State the amount of actual damage, if
13 any, sustained by Wishbone due to accounting malpractice.
14 U.S. dollars, \$3 million.

15 The fourth cause of action, negligent
16 misrepresentation, preponderance of evidence standard.

17 Question 16: Did S. Roberts retain Mahoney Cohen to
18 audit, review and otherwise investigate his financial records
19 and prepare materials from those records? Answer: Yes.

20 Question 17: Were any such Mahoney Cohen materials
21 furnished to Wishbone? Answer: Yes.

22 Question 18: Did Mahoney Cohen know that Wishbone
23 would rely on the Mahoney Cohen materials and investigation in
24 connection with Wishbone's relationship with S. Roberts?
25 Answer: Yes.

1 Question 19: Did Mahoney Cohen fail to use
2 reasonable care in conducting its investigation of S. Roberts'
3 books and records and preparing its materials, in violation of
4 generally accepted accounting practices? Answer: Yes.

5 Question 20: Did Wishbone rely on the Mahoney Cohen
6 material and investigation in lending money and supplying
7 goods to S. Roberts? Answer: Yes.

8 Question 21: Did Wishbone's reliance proximately
9 cause Wishbone's injury? Answer: Yes.

10 Question 22: State the amount of actual damage, if
11 any, sustained by Wishbone due to negligent misrepresentation.
12 U.S. dollars, \$3 million.

13 Fifth cause of action, fraudulent conveyance, clear
14 and convincing evidence standard.

15 Question 23: Did S. Roberts, Korman or Jay Vee
16 transfer inventory of S. Roberts to Jay Vee with the actual
17 intent to hinder, delay, or defraud any then present or future
18 creditors of S. Roberts. As to S. Roberts, yes; Korman, yes;
19 Jay Vee, yes.

20 Question 24: At the time of the fraudulent
21 conveyance, or subsequently, was Wishbone a creditor of S.
22 Roberts? Answer: Yes.

23 Question 25: State the amount of actual damages, if
24 any, sustained by Wishbone due to the fraudulent conveyance.
25 U.S. dollars, \$2,656,551.

1 Question 26: Determine the percentage which
2 represents the relative share of the responsibility for
3 damages. Question 26A, as to S. Roberts, 33 percent; question
4 26B, as to Jay Vee, 33 percent; and question 26C, as to
5 Korman, 34 percent.

6 Question 27: Was Jay Vee a successor in interest to
7 S. Roberts? Answer: Yes.

8 Sixth cause of action, goods sold and delivered,
9 preponderance of evidence standard.

10 Question 28: Did Wishbone sell and deliver goods to
11 S. Roberts at an established price? Answer: Yes.

12 Question 29: Did S. Roberts receive such goods and
13 fail to pay for them? Answer: Yes.

14 Question 30: State the unpaid purchase price for the
15 goods sold. U.S. dollars, \$5.1 million.

16 Notice of Korman's bankruptcy, preponderance of
17 evidence standard.

18 Question 31: Has Korman established that Wishbone
19 had notice of the filing of Korman's bankruptcy by November
20 29, 1994? Answer: No.

21 Punitive damages.

22 Question 32: Is plaintiff entitled to punitive
23 damages? Answer: Yes. If yes, state the amount of punitive
24 damages. U.S. dollar \$10 million.

25 Question 33: Determine the percentage which

1 represents the relative share of the responsibility for the
2 punitive damage, if any, found in question 32. As to S.
3 Roberts, 10 percent; as to Jay Vee, 10 percent; as to Korman,
4 10 percent; as to Mahoney Cohen, 35 percent; as to Ambassador,
5 35 percent.

6 Signed by foreperson Janet Gordon.

7 THE COURT: Please poll the jury.

8 (Jury polled; each juror answered in the affirmative)

9 THE COURT: Ladies and gentlemen, we are going to
10 enter the verdict in the roll of the court, and I want to
11 thank you very much for the service you rendered. You know
12 better than any of us how difficult this case was, and it took
13 a long time. You were very diligent, you were here on time,
14 you were careful about your considerations, you really
15 reinforced what all of us believe is one of the most important
16 aspects of the justice system; that is, reaching a fair and
17 impartial verdict by citizens, so all of us are very, very
18 grateful. I know you have given a great deal of time and work
19 and effort to this case.

20 The rule of law here in this country, in this
21 district, in this court is greatly strengthened by what you
22 all have done. All of us who care about the rule of law and
23 care about our society are deeply grateful to you.

24 And I'm pleased to tell you that you're excused with
25 the thanks of the Court and the parties. Thank you very much

1 for this service.

2 (Jury discharged)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROBERT SHAMIS, as Assignee of
WISHBONE TRADING COMPANY, LIMITED, : 95 Civ. 9818 (RWS)
a Hong Kong corporation, :

Plaintiff, :

- against - :

AMBASSADOR FACTORS CORPORATION, d/b/a
AMBASSADOR FACTORS, A DIVISION OF :
FINOVA CAPITAL CORPORATION, a Delaware :
corporation, S. ROBERTS, INC., :
a New York corporation, JAY VEE, :
INC., a New York corporation, CHRISTY :
LYNN, a New York corporation, ANGELA :
CHRISTY, a New York corporation, ABC :
COMPANIES (fictitious names of corporate :
affiliates of defendants S. Roberts, :
Inc. and Jay Vee, Inc. whose identities :
are presently unknown), NATHAN :
KORMAN, a/k/a LAWRENCE KORMAN, and :
MAHONEY COHEN RASHBA POKART & COMPANY, :
P.C., a New York professional :
corporation, :

Defendants. :

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SPECIAL VERDICT FORM

Answer these questions in the order given. Do not write anything on this form except to check "YES" or "NO" or to strike out a name or to write a name or number in accordance with the instructions below. Do not answer any question as to a defendant or plaintiff whose name has been stricken.

1st Cause of Action: Common Law Fraud (Clear and Convincing Evidence Standard)

1. a) Did any of the following defendants make an affirmative statement of fact to Wishbone?

	Yes	No
S. Roberts	✓	
Korman	✓	
Ambassador	✓	
Mahoney Cohen	✓	

b) Did any of the following defendants conceal a fact from Wishbone that such defendant had a duty to disclose to Wishbone, that is, did such defendant make a partial or ambiguous statement to Wishbone or did such defendant have superior knowledge about the matter in question, where such knowledge was not readily available to Wishbone, and such defendant knew that Wishbone was acting on the basis of mistaken knowledge as to the matter in question?

	Yes	No
S. Roberts	✓	
Korman	✓	
Ambassador	✓	
Mahoney Cohen	✓	

If you have answered NO to Questions 1(a) and 1(b) with regard to all defendants, proceed to Question 8 on page 5. If you have answered NO to both Questions 1(a) and 1(b) with regard to any defendant, proceed to Questions 2, 3, 4, 5, and 7 and strike the name of that defendant. If you have answered YES to either Question 1(a) or 1(b) with regard to any defendant,

proceed to Question 2.

2. If an affirmative statement was made, was it untrue? If a fact was concealed, was it material? (Do not answer as to any defendant whose name has been stricken.)

	Yes	No
S. Roberts	✓	
Korman	✓	
Ambassador	✓	
Mahoney Cohen	✓	

If you have answered NO with regard to all defendants, proceed to Question 8 on page 5. If you have answered NO with regard to any defendant, proceed to Questions 3, 4, 5, and 7 and strike the name of that defendant. If you have answered YES with regard to any Defendant, proceed to Question 3.

3. Did the defendant you have designated act with intent to defraud or with reckless disregard for the truth? (Do not answer as to any defendant whose name has been stricken.)

	Yes	No
S. Roberts	✓	
Korman	✓	
Ambassador	✓	
Mahoney Cohen	✓	

If you answered NO with regard to all defendants, proceed to Question 8 on page 5. If you have answered NO with regard to any defendant, strike the name of that defendant from Questions 4, 5 and 7. If you have answered YES with regard to any defendant, proceed to Question 4.

4. Did Wishbone justifiably rely on the untrue statement or statements of fact or omissions made by any defendant you have designated? (Do not answer as to any defendant whose name has been stricken.)

	Yes	No
S. Roberts	✓	
Korman	✓	
Ambassador	✓	
Mahoney Cohen	✓	

If you have answered NO with regard to all Defendants, proceed to Question 8 on page 5. If you have answered NO with regard to any defendant, proceed to Questions 5 and 7 and strike the name of that defendant. If you have answered YES with regard to any defendant in Question 4, proceed to Question 5.

5. Did the untrue statement or omission of any defendant you have designated proximately cause injury to Wishbone? (Do not answer as to any Defendant whose name has been stricken.)

	Yes	No
S. Roberts	✓	
Korman	✓	
Ambassador	✓	
Mahoney Cohen	✓	

If you have answered NO with regard to all Defendants, proceed to Question 8 on page 5. If you have answered NO with regard to any Defendant, proceed to Question 7 and strike the name of that Defendant. If you have answered YES with regard to any Defendant in Question 5, proceed to Question 6.

6. State the amount of actual damages, if any, incurred by Wishbone due to fraud:

1/6 \$ 7.2 million

Third Cause of Action: Accounting Malpractice (Preponderance of Evidence Standard)

11. Did Mahoney Cohen fail to make an investigation of S. Roberts in accordance with such skill and care as a reasonably skillful accountant would use under the same circumstances?

Yes No

If you have answered NO, proceed to Question 16 on page 7.
If you have answered YES, proceed to Question 12.

12. Was Mahoney Cohen aware that the reports would be used and relied upon by Wishbone to determine whether Wishbone would take certain actions in its relationship with S. Roberts?

Yes No

If you have answered NO, proceed to Question 16 on page 7.
If you have answered YES, proceed to Question 13.

13. Did Wishbone rely on the statements prepared by Mahoney Cohen?

Yes No

If you have answered NO, proceed to Question 16 on page 7.
If you have answered YES, proceed to Question 14.

14. Did Wishbone's reliance on a Mahoney Cohen statement proximately cause injury to Wishbone?

Yes No

If you have answered NO, proceed to Question 16 on page 7.
If you have answered YES, proceed to Question 15.

15. State the amount of actual damages, if any, sustained by Wishbone due to accounting malpractice:

US \$ 3,000,000

Fourth Cause of Action: Negligent Misrepresentation
(Preponderance of Evidence Standard)

16. Did S. Roberts retain Mahoney Cohen to audit, review, and otherwise investigate its financial records and prepare materials from those records?

Yes No

If you have answered NO, proceed to Question 23 on page 8.
 If you have answered YES, proceed to Question 17.

17. Were any such Mahoney Cohen materials furnished to Wishbone?

Yes No

If you have answered NO, proceed to Question 23 on page 8.
 If you have answered YES, proceed to Question 18.

18. Did Mahoney Cohen know that Wishbone would rely on the Mahoney Cohen materials and investigation in connection with Wishbone's relationship with S. Roberts?

Yes No

If you have answered NO, proceed to Question 23 on page 8.
 If you have answered YES, proceed to Question 19.

19. Did Mahoney Cohen fail to use reasonable care in conducting its investigation of S. Roberts' books and records and preparing its materials, in violation of generally accepted accounting practices?

Yes No

If you have answered NO, proceed to Question 23 on page 8.
 If you have answered YES, proceed to Question 20.

20. Did Wishbone rely on the Mahoney Cohen material and investigation in lending money and supplying goods to S. Roberts?

Yes No

If you have answered NO, proceed to Question 23 on page 8.
If you have answered YES, proceed to Question 21.

21. Did Wishbone's reliance proximately cause Wishbone injury?
Yes No

If you have answered NO, proceed to Question 23 on page 8.
If you have answered YES, proceed to Question 22.

22. State the amount of actual damages, if any, sustained by
Wishbone due to negligent misrepresentation:
US\$3,000,000

Fifth Cause of Action: Fraudulent Conveyance (Clear and
Convincing Evidence Standard)

23. Did S. Roberts, Korman, or Jay Vee transfer inventory of S.
Roberts to Jay Vee with the actual intent to hinder, delay,
or defraud any then present or future creditors of S.
Roberts?

	Yes	No
S. Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Korman	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jay Vee	<input checked="" type="checkbox"/>	<input type="checkbox"/>

If you have answered NO as to all defendants, proceed to
Question 28 on page 9. If you have answered NO as to any
defendant, proceed to Question 26 and strike the name of
that defendant. If you have answered YES as to any
defendant, proceed to Question 24.

24. At the time of the fraudulent conveyance, or subsequently,
was Wishbone a creditor of S. Roberts?
Yes No

If you have answered NO, proceed to Question 28 on page 9.
If you have answered YES, proceed to Question 25.

25. State the amount of actual damages, if any, sustained by Wishbone due to the fraudulent conveyance:

US \$2,656,551...

26. Determine the percentage which represents the relative share of the responsibility for the damages, if any, found in Question 25. The total must be 100%. Do not assign a percentage to any defendant whose name has been crossed out in accordance with these instructions.

a) S. Roberts	<u>33</u> %
b) Jay Vee	<u>33</u> %
c) Korman	<u>34</u> %
Total	100%

27. Was Jay Vee a successor in interest to S. Roberts?

Yes No

Sixth Cause of Action: Goods Sold and Delivered (Preponderance of Evidence Standard)

28. Did Wishbone sell and deliver goods to S. Roberts at an established price?

Yes No

If you have answered NO, proceed to Question 31. If you have answered YES, proceed to Question 29.

29. Did S. Roberts receive such goods and fail to pay for them?

Yes No

If you have answered NO, proceed to Question 31. If you have answered YES, proceed to Question 30.

30. State the unpaid purchase price for the goods sold:

\$US 5.1 million

Notice of Korman's Bankruptcy (Preponderance of Evidence Standard)

31. Has Korman established that Wishbone had notice of the filing of Korman's bankruptcy by November 29, 1994?

Yes _____ No

If you have stated damages in your answer to Questions 6, 15, 22, or 25, proceed to Question 32. If you have not stated damages in your answers to Questions 6, 15, 22, or 25, proceed to the STOP instruction at the end of this form.

Punitive Damages

32. Is Plaintiff entitled to punitive damages?

Yes No _____

If NO, proceed to the STOP instruction at the end of this form. If YES, state the amount of punitive damages:

\$10,000,000

33. Determine the percentage which represents the relative share of the responsibility for the punitive damages, if any, found in Question 32. Write in the name or names of the defendant or defendants and the percentages. The total must be 100%. Although this form provides lines for all five defendants, you may only assign a percentage to a defendant who you have found owed damages under Questions 7, 15, 22, or 26. Also, you are not required to award punitive damages against all defendants you have found to be liable for damages under Questions 7, 15, 22, or 26 - only such of those defendants, if any, which you find meet the standard for punitive damages.

<u>Name of Defendant</u>	<u>Percentage</u>
S. Roberts	10%
Jay Vee	10%
L. Korman	10%
Mahoney Cohen	35%
Ambassador	35%
Total	100%

STOP: Sign the Special Verdict Form and tell the Marshal you have reached a verdict.

Orin Gordon
FOREPERSON