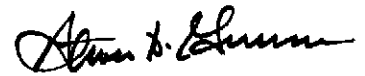


**ORIGINAL**



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

TED BURKE, et al.	.	
	.	
Plaintiffs	.	CASE NO. A-558629
	.	
vs.	.	
	.	DEPT. NO. XI
LARRY HAHN, et al.	.	
	.	Transcript of
Defendants	.	Proceedings
	.	
.....	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON PLAINTIFFS' MOTION TO EXTEND DEADLINES**

TUESDAY, SEPTEMBER 14, 2010

APPEARANCES:

FOR THE PLAINTIFFS:	JENNIFER LANE TAYLOR, ESQ.
FOR THE DEFENDANTS:	PATRICK C. CLARY, ESQ. M. NELSON SEGEL, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 14, 2010, 9:04 A.M.

2 (Court was called to order)

3 THE COURT: Do I have everybody I need on Burke  
4 versus Hahn?

5 MR. SEGEL: Mr. Clary's in the hall.

6 THE COURT: But he's here?

7 MR. SEGEL: Yes, he is, Your Honor.

8 THE COURT: Okay.

9 (Pause in the proceedings)

10 THE COURT: All right. If I could go to Burke  
11 versus Hahn.

12 Kathy, another motion does not appear on the  
13 calendar that's supposed to be on the calendar. It is an  
14 objection to the Discovery Commissioner's report and  
15 recommendation. And I don't know why it doesn't appear on the  
16 calendar, but I noted that last night.

17 These are your motions, Ms. Taylor.

18 MS. TAYLOR: These are my motions, Your Honor.

19 There are two motions, as you noted, on calendar.  
20 The first is my objection, and I think that that one's the  
21 better to be taken first in order, my objection to the  
22 Discovery Commissioner's report and recommendation regarding a  
23 motion to quash by the Hahn defendants on a number of  
24 subpoenas served to obtain their banking records.

25 The objection was filed because I believe that --

1 and as we've discussed previously in front of you, Your Honor,  
2 the reason the Discovery Commissioner ruled in favor of the  
3 quashed motion request was because of procedural issues. And  
4 we discussed --

5 THE COURT: Service issues.

6 MS. TAYLOR: Service issues, yes, Your Honor.

7 THE COURT: Okay.

8 MS. TAYLOR: And we discussed the fact that the  
9 reason that you serve them is so that there is ample time for  
10 the party upon whom the subpoenas may impact to object to  
11 those subpoenas on substantive grounds and on basic legal  
12 grounds. And having overcome now all the procedural issues,  
13 even if I had re-served them, they would still be back up  
14 before you. And so the fundamental issue is whether or not  
15 the plaintiffs have a --

16 THE COURT: Can I stop you and ask a question.

17 MS. TAYLOR: You may, Your Honor.

18 THE COURT: And you may not know the answer to this.  
19 But the decision by the Discovery Commissioner appears to be  
20 over a year old. Right?

21 MS. TAYLOR: Yes, Your Honor.

22 THE COURT: Is there some reason -- and I'm not  
23 asking you why it took a year, because that's not your  
24 problem. Is there some reason you didn't go ahead and re-  
25 serve them with notice during that period of time?

1 MS. TAYLOR: Your Honor, I didn't re-serve them with  
2 notice because we a ruling from her quashing the subpoenas,  
3 not just on procedural grounds, but also saying that there was  
4 not sufficient basis for me to modify the subpoenas. And so I  
5 believed that we needed to have a ruling from you on the  
6 substantive grounds related to any modification of the  
7 language in the subpoenas or the underlying basis for the  
8 subpoenas before I could re-serve them.

9 MR. SEGEL: Your Honor, I'd like to make a  
10 clarification. Ms. Taylor may forget. I told her that in the  
11 event she did appeal and the Court ruled that they were  
12 entitled to the documents, I wasn't going to make her re-serve  
13 them, I would turn over the documents that she gave to me. So  
14 that may be one of the reasons she didn't do it.

15 THE COURT: Don't sit down, Mr. Segel. Now it's  
16 your turn. Why'd it take a year to get the report and  
17 recommendation to --

18 MR. SEGEL: Your Honor, the first six months or so  
19 -- or five months or so -- you've heard this excuse, it's not  
20 a very good excuse -- up until December 31st I was  
21 representing the trustee in Endoscopy Centers and I was  
22 working 20 hours a day, and I just -- it got beyond me.

23 I did finally, I think in February, get something  
24 out. We were here in May and there was discussions about how  
25 Ms. Taylor had signed one, then I lost it, and we tried to get

1 her to sign the second one, then she says, well, now I have a  
2 problem with it. And then it took us a couple months after  
3 that to get the language. We never did agree. And finally,  
4 after we got to the point we both -- well, I submitted mine,  
5 she submitted hers, and it took us each about three different  
6 times to get one that was proper to be given to the Discovery  
7 Commissioner. I'm proud to say I do it so seldom I don't know  
8 the exact procedure. So that was a couple of months' delay,  
9 was just trying to get the Commissioner to accept it.

10 THE COURT: Okay. Anything anybody else wants to  
11 tell me on the objection?

12 MS. TAYLOR: Well, I think, Your Honor, you've seen  
13 my -- you've seen the various affidavits from my experts,  
14 you've seen the most recent affidavit from my expert, and, you  
15 know, I believe that Mr. Stringham has sufficiently set forth  
16 a need to obtain not just Hahn business records as Hahn's  
17 expert and their expert contend is all he's entitled to, but  
18 that the source records that he's been receiving from Kokoweef  
19 show sufficient problems and deficiencies and incompleteness  
20 that any records from Hahn would result in the exact same  
21 problems. We would still be going back and asking for third-  
22 party-verifiable records through the banks to secure a full  
23 analysis by my expert, Mr. Stringham, and Mr. Appenbrink, on  
24 the shareholder records and the full financial picture of the  
25 corporation.

1 I also want to just point out that in the opposition  
2 Mr. Segel makes note that no discovery has been previously  
3 served on the Hahn defendants, but we did serve extensive  
4 requests in the 16.1 disclosures. Every single one of those  
5 met with an objection.

6 THE COURT: Yeah. But you've got to do something  
7 after that. You know that.

8 MS. TAYLOR: Yeah, I understand that, Your Honor.  
9 But it's -- it's multiple layers of issues. And we needed to  
10 get the source records through the bank statements first to be  
11 able to go back and figure out what else was needed and what  
12 matched up with the Kokoweef records.

13 THE COURT: Anything else you want to tell me?

14 MR. CLARY: Your Honor, I just wanted to say that  
15 even though this is primarily Mr. Segel's argument,  
16 [unintelligible] Kokoweef and I are both affected by it. And  
17 so I did file late yesterday a joinder.

18 THE COURT: I didn't receive your joinder, Mr.  
19 Clary.

20 MR. CLARY: May I present you with a courtesy copy,  
21 please?

22 THE COURT: Sure.

23 Did you get the joinder, Ms. Taylor?

24 MS. TAYLOR: I got it right before we -- the doors  
25 opened to the courtroom, Your Honor.

1 THE COURT: That's unfortunate. Anything else you  
2 want to tell me, Mr. Clary?

3 MR. CLARY: Not at this point, Your Honor.

4 THE COURT: Okay.

5 MR. SEGEL: Your Honor, we presented to you an  
6 affidavit of our -- he's not the certified fraud examiner, but  
7 he's the employee of the certified fraud examiner who does the  
8 legwork for her. And based upon, you know, his affidavit  
9 saying that the information that they're requesting isn't  
10 necessarily going to give them what they want, I'm not sure --  
11 I mean, basically, if they don't get the documentation from  
12 Surplus and compare it to what -- to the transactions, I'm not  
13 sure how the bank records will tell them what has transpired,  
14 what hasn't transpired.

15 Another issue is my clients have been working trying  
16 to get an analysis done. And they actually prepared part of  
17 an analysis to show that what Mr. -- many of the items in Item  
18 Number 12, as Exhibit Number 12, we found 30 of the 34  
19 transactions he says don't exist we have documentation that  
20 shows that we've provided it to him. And I didn't have time  
21 between -- this was on an order shortening time, and I did not  
22 have a chance to meet with them, and we need a chance to  
23 finish that exhibit.

24 But the other aspect is that a lot of this  
25 information is contained on thermal paper. Thermal paper

1 expires and becomes illegible. What they're trying -- they're  
2 going back to 2003, and they're saying, gee, we've got these  
3 docs but they're illegible, we can't tell if it's there or  
4 not. Questions are going to come up eventually in this case  
5 of how far back makes sense to go, what we actually need to  
6 prove.

7           But I think that the affidavit of Mr. Stringham, the  
8 declaration of Mr. Stringham doesn't set forth any basis of  
9 why the intrusive nature of his request to get the bank  
10 statements and the credit card statements of Hahn Surplus and  
11 Mr. Hahn are essential to his evaluation, especially when he  
12 hasn't done the first step of getting Surplus and saying,  
13 okay, Surplus, please produce any and all records that support  
14 these moneys were paid to you. It's a very basic discovery  
15 tool, and I think that before the Court will authorize this  
16 invasive review, which includes -- I mean, the documents they  
17 got included the payroll accounts. So they had -- you know,  
18 they don't -- these are third parties whose information is  
19 being accessed, and there's no real justification for it.

20           And so I think that at this stage the Court should  
21 deny -- or should confirm the DCRR and allow the plaintiffs to  
22 continue doing further discovery, and if it gets to the point  
23 where they do not have the information, then we can come back  
24 in on real arguments on having really gone through the  
25 documentation. And also I think it should be done on ordinary



1 course so I have time to do what I need to do to properly  
2 oppose the motion to compel if in fact one is appropriate at  
3 that time.

4 MS. TAYLOR: Your Honor, if I can just add a couple  
5 things. I know you're busy, but I just need to --

6 THE COURT: Has nothing to do with being busy. It  
7 has to do with frustration in the lack of diligence by both  
8 sides in this case -- all sides in this case.

9 MS. TAYLOR: I understand that, Your Honor. And I  
10 would just like to point out that, you know, one of the issues  
11 that we've had consistently is this. We find additional  
12 records, we find additional records, and Mr. Segel has just  
13 pointed out again that after Tallen [phonetic] put together  
14 his affidavit they found additional records. And we were  
15 supposed to have everything.

16 MR. SEGEL: That's not what I said. I said they  
17 were in the records we produced.

18 MS. TAYLOR: So --

19 THE COURT: Okay. Let's not interrupt. Let's just  
20 get finished.

21 Ms. Taylor, is there anything else on the objection?

22 MS. TAYLOR: Just one other thing on the objection,  
23 Your Honor. I would like to point out that what neither of --  
24 what neither Mr. Segel's expert nor Mr. Segel addressed was  
25 the fact that in going through the voluminous records that we

1 had that we found about abundance of shareholders who appear  
2 to have paid money, and it is not in any of the bank records.  
3 And that's a big problem, because that is exactly the reason  
4 why we need to be able to obtain the Hahn bank records to see  
5 where did this money go. And we gave you an example of, you  
6 know, nearly -- or in excess of \$30,000 in shareholder  
7 purchases that were not anywhere in the Kokoweef and bank  
8 records that we reviewed. And that alone I think is a  
9 sufficient basis to say in order to do a complete audit on  
10 this company we need to see what's in the Hahn Surplus World  
11 -- Hahn's World of Surplus bank records.

12 THE COURT: Anything else you want to tell me?

13 MS. TAYLOR: No, Your Honor. Thank you.

14 THE COURT: Okay. And you have received at least  
15 partial copies from Hahn World of Surplus of their bank  
16 records from then?

17 MS. TAYLOR: No, Your Honor. We received copies  
18 under the subpoenas that were then quashed. We did not  
19 review, we did not provide them --

20 THE COURT: That's not what I asked. There is a  
21 named defendant in this case represented by Mr. Segel, Hahn's  
22 World of Surplus.

23 MS. TAYLOR: Yes.

24 THE COURT: Did you receive copies of bank records  
25 that were in the possession of Hahn World of Surplus?

1 MS. TAYLOR: No.

2 THE COURT: Okay. Mr. Segel, how long is it going  
3 to take you to produce the bank records that are in the  
4 possession of Hahn's World of Surplus?

5 MR. SEGEL: Your Honor, just to clarify so the Court  
6 will understand, they -- the subpoenas were issued without  
7 notice --

8 THE COURT: That's not what I asked, Mr. Segel.

9 MR. SEGEL: I understand. But they received --

10 THE COURT: My question was very direct. Your  
11 client has bank records. How long is it going to take for you  
12 to produce the bank records that are actually in their  
13 possession?

14 MR. SEGEL: What I'm saying, Judge, is that the bank  
15 produced all the records to the plaintiffs who purportedly  
16 didn't look at them and they returned those disks to me. I  
17 have the disks from the bank that they received pursuant to  
18 the improperly issued subpoenas. And if the Court's going to  
19 order us to turn them over, then I have those in my  
20 possession, I can do it in short time.

21 THE COURT: Okay.

22 MS. TAYLOR: Your Honor, I'm sorry. Just so you  
23 know, and I apologize, there were two sets of bank records.  
24 U.S. Bank did disclose, Nevada State Bank did not. So he does  
25 not have through the subpoenas the Nevada State Bank records,

1 because Nevada State Bank did not ever produce anything to us.

2 THE COURT: Anything else anybody wants to say  
3 before I tell you what you're going to do on this issue?

4 MR. SEGEL: Just, Your Honor, if I could address the  
5 shareholder issue, because that was not --

6 THE COURT: No, you don't need to address that one.

7 MR. SEGEL: All right. Well, this goes to -- I'm  
8 sorry.

9 THE COURT: The objection is overruled in part, and  
10 the Discovery Commissioner is affirmed in part. To the extent  
11 that there are banking records available either from Hahn's  
12 World of Surplus or from any banking or credit-issuing  
13 facility, the records related to Hahn's World of Surplus will  
14 be produced.

15 That means, Ms. Taylor, if you previously subpoenaed  
16 them improperly and Mr. Segel is in possession of those that  
17 relate to Hahn's World of Surplus he will produce them to you.  
18 If a banking or other credit facility did not produce those  
19 records, you will have to notice a custodian of records  
20 deposition appropriately to obtain those documents, and you  
21 need to do so in the next 30 days.

22 With respect to the request for the individuals'  
23 records, that request is denied. At this point it seems that  
24 you have not made a sufficient showing that the personal bank  
25 accounts of Mr. Hahn and his wife should be subject to your

1 discovery requests.

2 Any other question on the objection?

3 MR. SEGEL: Your Honor, may I ask for clarification.

4 THE COURT: You may.

5 MR. SEGEL: As I represented to the Court, there's  
6 an operating account, there's also a payroll account.

7 THE COURT: Uh-huh.

8 MR. SEGEL: I don't see any reason why the payroll  
9 account would be applicable.

10 THE COURT: I'm going to order the payroll account  
11 to be produced, as well.

12 Anything else?

13 Okay. Then let's go to the plaintiffs' motion --

14 MR. SEGEL: Yeah. I'm sorry. Can we have a  
15 confidentiality order that it goes to their expert only and  
16 does not go to the parties?

17 MS. TAYLOR: That is fine, Your Honor.

18 THE COURT: She said sure.

19 MR. SEGEL: Thank you.

20 THE COURT: Okay. Can we go to your request for  
21 additional time for your expert to have his report in.

22 MS. TAYLOR: Yes, Your Honor.

23 THE COURT: Okay. I gave you more time to get the  
24 documents. How much time do you need?

25 MS. TAYLOR: I -- I think that the time that I set

1 out in my request of November 1st is sufficient. You're  
2 indicating perhaps you don't agree with me, Your Honor.

3 THE COURT: How long does your expert need once he  
4 has the documents to finish the report I guess is really the  
5 question.

6 MS. TAYLOR: Once he has the documents and we know  
7 that they're complete documents, I think he needs probably 45  
8 to 60 days.

9 THE COURT: Not happening.

10 MS. TAYLOR: Okay.

11 THE COURT: Next option?

12 MS. TAYLOR: So is November -- I mean --

13 THE COURT: In other words, that would seem to be an  
14 unreasonable request.

15 MS. TAYLOR: Okay. Your Honor, if I am able to  
16 obtain the documents within the next 30 to 45 days, then I  
17 think he could have everything done in 30 days or 21 days at  
18 the most.

19 THE COURT: Okay. Mr. Clary.

20 MR. CLARY: Yes. With respect to the expert they  
21 have on the securities fraud issue, which is what I'm  
22 concerned about obviously, there's only one claim against me  
23 on the securities fraud issue, and there's some against  
24 Kokoweef, as well. I don't see that those documents are  
25 relevant to his producing his report. They apparently don't

1 have very much information, because we asked them what the  
2 basis was for their securities fraud claim, the ones that are  
3 remaining, not the ones that [unintelligible] we wouldn't have  
4 [unintelligible] that was appropriate. But they didn't give  
5 us any real answers. I'm not going to move to compel that.  
6 If they don't have facts to prove their case -- they're the  
7 plaintiff, I'm the defendant, I just have to defend. So if  
8 they don't have facts to prove their case, I'm not going to  
9 compel it. But I think we -- there's no excuse for their not  
10 having produced the securities expert's report timely, because  
11 those are not dependent on the documents she's complaining  
12 about.

13 THE COURT: I understand your position.

14 MR. CLARY: She's got a very short time for that if  
15 you're going to give it to her.

16 THE COURT: I understand your position.

17 Ms. Taylor, what you've basically told me is that if  
18 you can get all the documents that I've ordered that you get  
19 within the next 30 to 45 days, that your expert can then give  
20 a report three weeks after you have those documents.

21 MS. TAYLOR: I will push them very hard, Your Honor.  
22 I would prefer to give them four weeks, but whatever Your  
23 Honor believes is appropriate.

24 THE COURT: Under the particular circumstances I was  
25 going to give you two weeks.

1 MS. TAYLOR: Oh.

2 THE COURT: But I'm going to give you three --

3 MS. TAYLOR: Thank you, Your Honor.

4 THE COURT: -- as a result of our discussion here  
5 today.

6 So, Mr. Segel, if you can get the documents to her  
7 sooner and she can get the documents from the banking  
8 entities, that's what we're going to use as the trigger. If  
9 there is a discovery dispute regarding the quantity or quality  
10 of the documents, your expert is going to need to produce the  
11 report anyway, and then at the motion to compel stage I may  
12 grant you the request to supplement the report.

13 MS. TAYLOR: Okay.

14 MR. SEGEL: Your Honor, I'm -- make a clarification.  
15 If I'm -- I'm going to give them back the docs that they got  
16 from U.S. Bank. It's on a disk they gave to me. Then the  
17 other bank, if I understand correctly, you want us to review  
18 our records and, if we have records, make copies of those  
19 records for them. Those records probably do not include the  
20 copies of the checks. We will have the statements, we  
21 probably will not have the copies of the checks. We'll  
22 produce that as soon as we can do so.

23 You then, if I understand, ordered them to do a  
24 custodian of records on the bank for anything that we can't  
25 provide to them. And so we will -- I will endeavor to get it



1 done I'll say Monday.

2 THE COURT: That's the timeline I've set out.

3 MR. SEGEL: Right. The only -- I just want to raise  
4 the issue with the Court is that, you know, I have concerns  
5 that this is going to put us -- a lot of the discovery issues  
6 in through the holidays, and it could be a problem getting  
7 them completed by the discovery deadline.

8 THE COURT: I understand.

9 MR. CLARY: Well, there's no excuse -- it seems to  
10 me, Your Honor, there's no excuse for her not to go ahead and  
11 issue the --

12 THE COURT: I understand your position, Mr. Clary.  
13 Thank you.

14 MR. CLARY: Thank you.

15 THE COURT: Anything else?

16 All right. It appears to me that there have been  
17 disconnects in the discovery process on both sides, and I  
18 understand your concern about discovery getting bogged down  
19 over the holidays, Mr. Segel. But we're going to do our best  
20 to keep it on track, and if it's not, I'm not going to expect  
21 anyone to wait a year to submit a report and recommendation,  
22 and I'm certainly not going to wait -- expect somebody to wait  
23 four weeks to send me a motion on an order shortening time.  
24 You guys got it?

25 MS. TAYLOR: Yes, Your Honor.

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MR. SEGEL: Yes, Your Honor.

THE COURT: Remember, I'm handling your discovery.  
Please do not send it to the Discovery Commissioner, because  
I'll get you in and out quicker.

Have a nice day.

MS. TAYLOR: Thank you, Your Honor.

MR. SEGEL: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 9:24 A.M.

\* \* \* \* \*

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT  
Las Vegas, Nevada 89146

  
\_\_\_\_\_  
FLORENCE HOYT, TRANSCRIBER

9/26/10  
\_\_\_\_\_  
DATE