

1 TRAN

FILED

2
3 **COPY**

MAY 23 11 32 AM '08

4
5 *[Signature]*
CLERK OF THE COURT

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8
9 TED R. BURKE, et al.,
10 Plaintiffs,
11 vs.

CASE NO. A558629
DEPT. XIII

12 LARRY L. HAHN, et al.,
13 Defendants.

14
15 BEFORE THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE
16 MONDAY, MAY 19, 2008

17 **TRANSCRIPT OF PROCEEDINGS**
18 **DEFENDANT'S MOTION TO REQUIRE SECURITY FROM**
19 **PLAINTIFFS/DEFENDANT'S MOTION FOR ORDER EXTENDING**
20 **TIME/PLAINTIFF'S MOTION TO STRIKE/PLAINTIFF'S MOTION TO DISQUALIFY**
21 **LAW FIRM**

22 APPEARANCES:

23 For the Plaintiffs: NEIL J. BELLER, ESQ.

24 For the Defendants: M. NELSON SEGEL, ESQ.
25 PATRICK C. CLARY, ESQ.
CURTIS W. CANNON, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

1 MONDAY, MAY 19, 2008 at 12:21 p.m.

2
3 THE COURT: All right. Burke versus Hahn on page five. All right, your
4 appearances please.

5 MR. BELLER: Yes, Neil Beller, on behalf of the plaintiffs. Good morning,
6 Your Honor.

7 MR. SEGEL: M. Nelson Segel, on behalf of defendants Larry Hahn and Hahn
8 Surplus. Mr. Hahn is also present.

9 MR. CLARY: Patrick Clary, on behalf of so called nominal defendant,
10 Kokoweef, Inc.

11 MR. CANNON: Curtis Cannon, on behalf of Kokoweef, Inc.

12 THE CLERK: I'm sorry, sir, Curtis?

13 MR. CANNON: Curtis Cannon, C-A-double N-O-N.

14 THE CLERK: Thank you.

15 THE COURT: I'd like to first take the motion to disqualify; okay?

16 MR. CLARY: Your Honor, before you do that there has been no opposition
17 filed to that by me because I've taken the position that with the filing of the motion
18 to -- requires security from plaintiffs. The case has been stayed --

19 THE COURT: Okay.

20 MR. CLARY: And therefore that motion should not be heard until the stay is
21 lifted.

22 THE COURT: Okay, so you want me to take up the defendant's motion to
23 require security from plaintiffs? But before that, there's -- okay.

24 MR. BELLER: Can I address the --

25 THE COURT: Plaintiff's motion to strike. What does that pertain to?

1 MR. BELLER: Can I address the Court on that, Your Honor?

2 THE COURT: All right.

3 MR. BELLER: I don't think the staying has anything to do with the
4 disqualification; that is my thinking. And that's why we brought it and we're prepared
5 to argue that, Your Honor, as well as discussing the case that was cited by the
6 defendant.

7 THE COURT: All right. I'll take the motion to disqualify first then, that's a
8 threshold motion.

9 MR. CLARY: In that connection, Your Honor, the -- I mean, I --

10 THE COURT: I consider that you oppose it and I understand why you didn't
11 oppose it --

12 MR. CLARY: Yeah, but he's going to take up a case --

13 THE COURT: -- formerly.

14 MR. CLARY: -- that hasn't been cited to Your Honor and I did cite that to
15 Counsel.

16 THE COURT: I don't think it's ripe anyway.

17 MR. BELLER: Well --

18 THE COURT: You're saying that Mr. Clary may have to be a witness or he
19 may end up being a party but he's not now. So, as far as I'm concerned, that motion
20 doesn't have any merit and I'd deny it without prejudice. If he becomes trial counsel
21 or something and you think that he's going to be a witness, I'd consider it then.

22 MR. BELLER: And that is fine, Your Honor.

23 THE COURT: I don't think that -- the fact that a lawyer may be a witness
24 doesn't mean he can't participate in the case up to trial.

25 MR. BELLER: I do agree. But based upon the allegations, based upon the

1 transcript of the statements of Mr. Clary, we feel, subject to how this progresses, -- I
2 don't know if the Court has had an opportunity to review the transcript between Mr.
3 Burke and Mr. Clary regarding statements that Mr. Clary made. I do not believe the
4 case that was cited and Judge Vega and Mr. Singer took into consideration what I
5 believe to be glaring potential problems --

6 THE COURT: Potential, but not actual.

7 MR. BELLER: Your Honor, I have no --

8 THE COURT: Okay.

9 MR. BELLER: -- problem. I just wanted --

10 THE COURT: All right.

11 MR. BELLER: -- to call it to your attention --

12 THE COURT: Okay.

13 MR. BELLER: -- now than later.

14 THE COURT: Okay.

15 MR. CLARY: Your Honor, just to complete the record, may I approach the
16 bench and give you a copy of the letter which I sent to Mr. Beller which cites the
17 case on which we relied that the motion should be denied so the record is
18 complete?

19 THE COURT: All right.

20 MR. CLARY: Now, again -- go ahead, Your Honor, I'm sorry.

21 THE COURT: No, that's fine.

22 MR. CLARY: You want to take up the motion to --

23 THE COURT: I'm denying the motion to disqualify without prejudice to
24 renewal when and if it becomes ripe.

25 MR. CLARY: Do you want, then, to take up the motion to require security

1 from plaintiff?

2 THE COURT: Yeah. I think the next would be -- let's see, defendants also
3 had a motion for an order extending time to file the request for security.

4 MR. CLARY: That's Mr. --

5 MR. SEGEL: That was -- yes, Your Honor, on behalf of Hahn's Surplus and
6 Mr. Hahn, I asked for sixty days extension of time. There was no opposition to that.

7 THE COURT: As to those parties?

8 MR. SEGEL: To that -- as to those parties.

9 THE COURT: Any objection to that? I can't remember.

10 MR. BELLER: Sixty days -- yes, Your Honor. We -- far based upon the last
11 time we were here, all matters that were going to be decided for --

12 THE COURT: But, the motion is before me today. The motion is, the subject
13 of the motion is a request for an order extending the time to file a request for
14 security and the motion stayed on calendar. I didn't continue that motion.

15 MR. BELLER: Okay. Very good, Your Honor.

16 THE COURT: So, is sixty days unreasonable?

17 MR. BELLER: Well, yes in this regard; it stays everything else, Your Honor.
18 There is a Board Meeting coming up. We believe Mr. Hahn has acted -- I don't
19 know if that's Mr. Hahn, illegally, improperly. Without going in to what was done in
20 terms of --

21 THE COURT: Why is a motion for an order extending time to file a request for
22 security staying anything?

23 MR. BELLER: Based upon --

24 THE COURT: I think the stay takes place once the request for security is
25 made; right?

1 MR. SEGEL: Your Honor, and I'll concede to the Court that it is my
2 interpretation of 41.5203, which I cited in my motion, that we had the right within
3 three days, either bring the motion which would impose a stay, or seek an extension
4 of sixty days to bring that motion. Since we have not yet brought the motion, I do
5 not believe --

6 THE COURT: And the extension --

7 MR. SEGEL: I do not believe --

8 THE COURT: -- seeking -- if I grant the extension it's not staying anything;
9 right?

10 MR. SEGEL: I do not believe so as to --

11 THE COURT: Okay, with that understanding --

12 MR. SEGEL: To bring the motion, yes.

13 THE COURT: Okay, with that understanding, I'll extend the time for those
14 moving parties to --

15 MR. SEGEL: Your Honor --

16 THE COURT: -- file a request for security. But that, as far as I'm concerned,
17 does not stay anything.

18 MR. SEGEL: It would have to -- the statute says -- say you can do it for sixty
19 days. It doesn't -- it's not clear so I'm not sure if you can extend it sixty days beyond
20 today or sixty days from the 12th or -- when our answer was due so --

21 MR. CLARY: We [indiscernible] do it from the 12th.

22 MR. BELLER: The problem, Your Honor, as you asked Mr. Clary and Mr.
23 Nelson last time, are you not going to move forward with anything substantive. I did
24 receive a letter from Mr. Segel saying that. We are very seriously concerned about
25 what is going on and we believe that this is just an exercise to get more time to harm

1 a multitude of these plaintiffs. So, with that being said, Your Honor, as long as we
2 can proceed with the litigation, get a response from both defendants, if you will, then
3 we have no problem. Right now nothing is happening. They have removed several
4 members of the Board which we believe were done improperly.

5 THE COURT: I don't think that a motion for an order extending time to file a
6 request for security stays the case; okay? So, I'm not going to stay it but I'll grant
7 your motion. You can have an additional sixty days from the --

8 MR. SEGEL: 4/11, Your Honor. So whatever sixty days is after 4/11 should
9 be -- would be July 10th, unless it's a holiday.

10 THE COURT: 4/11?

11 MR. SEGEL: 4/11 is the day I filed the motion.

12 MR. CLARY: 5/7

13 THE COURT: Okay.

14 MR. SEGEL: So sixty days --

15 MR. CLARY: How about June.

16 MR. SEGEL: -- after that. So --.

17 THE COURT: That would be June 11th.

18 MR. CLARY: How about June.

19 MR. SEGEL: Oh, right. Yeah, sorry.

20 MR. SEGEL: That was bad.

21 THE COURT: It's not ninety days.

22 MR. CLARY: That's coming up real soon.

23 MR. SEGEL: Yeah.

24 THE COURT: Okay.

25 MR. SEGEL: And so, it -- it is a short time.

1 THE COURT: All right. But that's without -- you know that doesn't bar the
2 plaintiff from proceeding.

3 MR. SEGEL: Right. There's no stay as far as I interpret that.

4 THE COURT: If I grant your request for security, if you make one --

5 MR. SEGEL: Right.

6 THE COURT: Then that may have an impact, but at this point, just 'cause
7 you're seeking additional time to do it doesn't mean that the case is stayed.

8 MR. BELLER: They have filed no answer; no one has filed an answer, Your
9 Honor. So, subject to that -- I mean, originally I gave Mr. Segel some time. Then all
10 of a sudden we got the motion.

11 THE COURT: Well let's be clear about what we're talking about. Staying the
12 whole case is one thing; giving an extension to answer is another; okay? Are you
13 saying that you perceive what I'm doing to still call for an answer to be filed by Mr.
14 Segel's client before June 11th?

15 MR. BELLER: Yes, Your Honor.

16 THE COURT: Okay. What's your response to that?

17 MR. SEGEL: I don't discr -- my motion -- as I interpret the statute, if I haven't
18 filed a motion, there's no stay. If in fact I've filed that motion, it will stay my
19 obligation of further pleading. But at this stage, it does not.

20 THE COURT: Okay.

21 MR. SEGEL: And the only reason I didn't do it is that under the statute, as I
22 interpret it, their allegation in the complaint that if they could prove it, might prevent
23 you from granting it --

24 THE COURT: So in other words --

25 MR. SEGEL: -- as to my client.

1 THE COURT: If you file an answer that's not going to prejudice your right to
2 still seek a -- to still seek security. In other words, your not waiving your right to seek
3 security --

4 MR. SEGEL: Correct.

5 THE COURT: -- if you file an answer in the meantime?

6 MR. SEGEL: Correct.

7 THE COURT: Right. That's the way I see.

8 MR. BELLER: But -- can I ask then, the Court to give them ten days to
9 respond substantively, both in terms of the defendant corporation as --

10 THE COURT: Well, I think what you would do, wouldn't you send a letter to
11 them saying: Look, you haven't answered. Unless you do so within a certain time --

12 MR. CLARY: Well, Your Honor, because of the filing of my motion --

13 THE COURT: No, I'm going to get to your motion in a minute.

14 MR. CLARY: I know. I understand that but --

15 THE COURT: Your motion may stay everything, I don't know.

16 MR. CLARY: This is a big motion.

17 MR. SEGEL: [Indiscernible].

18 MR. CLARY: This filing --

19 THE COURT: Right.

20 MR. CLARY: -- of the motion

21 THE COURT: Right.

22 MR. CLARY: -- did stay it.

23 THE COURT: Okay.

24 MR. CLARY: And it stayed as to all parties, including Mr. Segel's clients.

25 THE COURT: The mere filing of the motion?

1 MR. CLARY: Yes.

2 THE COURT: Okay.

3 MR. CLARY: So it's stayed.

4 THE COURT: Well we maybe --

5 MR. CLARY: He doesn't have to file an answer.

6 THE COURT: Okay we may just be discussing academics.

7 MR. SEGEL: Okay.

8 THE COURT: Let me turn to your --

9 MR. CLARY: Yeah, you -- shouldn't even be talking about when he should
10 file his answer.

11 THE COURT: Okay. Go ahead. Let me hear your motion.

12 MR. CLARY: Now, first, on a little housecleaning matter. We -- before I went
13 up to the democratic convention on Sat -- on Friday, I prepared, and early in the
14 afternoon, put out for service and filing an affidavit. Did you receive that?

15 THE COURT: Let's see here.

16 MR. CLARY: I don't think you did 'cause it's not on Blackstone and I think
17 something happened in the --

18 THE COURT: What was it again?

19 MR. CLARY: It's entitled Affidavit of Patrick C. Clary --

20 THE COURT: I have it.

21 MR. CLARY: -- In Support of Motion --

22 THE COURT: I have it.

23 MR. CLARY: May I file that --

24 THE COURT: Filed May 16th at 11:58 a.m.

25 MR. SEGEL: He has it now.

1 MR. CLARY: You have it?

2 MR. SEGEL: He has it.

3 THE COURT: Right.

4 MR. CLARY: And it does have a file stamp on it?

5 THE COURT: Right; May 16th, 11:58.

6 MR. CLARY: Very good.

7 MR. CLARY: All right. Thank you.

8 All right. With respect to the motion, the Kokoweef's motion to require
9 security from plaintiffs, the Kokoweef needs, as I understand it under the statute that
10 Mr. Segel has cited, the Kokoweef needs to show that there is no reasonable
11 possibility that the prosecution of the case will benefit the corporation or its security
12 holders, and that security should be posted by the plaintiffs in an amount following a
13 determination of the Court of the possible reasonable expenses, including attorney's
14 fees of Kokoweef incurred in the defense of this case and also including the
15 expenses which the company may incur by reason of the obligation which may have
16 to indemnify its Officers and Directors pursuant to Section 78. Sub 7502 of Nevada
17 Revised Statutes or otherwise. That's what our obligation is here today.

18 And I do believe, Your Honor, with the -- having -- with the filing of the
19 affidavit last week late by the plaintiffs of their, as yet, unqualified expert, by the filing
20 of the accounting -- of the affidavit that Mr. Segel prepared Friday afternoon and
21 submitted after I left town, of the accounting person for Kokoweef who was selected
22 by one of the plaintiffs, Mr. Burke, to serve in that capacity and who expressed
23 approval of her work, and by the filing of my affidavit just prior to that, that we met all
24 those burdens.

25 There is -- the complaint alleges certain defalcations on the part of Mr.

1 Hahn in his capacity as President and Treasurer of Kokoweef, and his individual
2 capacity, otherwise and in his capacity as the President of his company, the other
3 Hahn defendant [indiscernible] to do that. And there has been no proof whatsoever
4 submitted.

5 If you look at the so called experts affidavit -- incidentally, let me say,
6 Your Honor, by way of background, I have covered this in my affidavit but let me just
7 repeat it quickly. This controversy all began -- well, began early with some
8 discussions without the stockholders that have filed the lawsuit here and filed this
9 derivative action, the -- but it progressed to the point, or regressed to the point
10 where they hired counsel and they requested, under the appropriate statute, records
11 by which, from Kokoweef, by which they could perform an audit. And I would
12 represent, and I believe I stated in my affidavit, those records were provided. And
13 we never received any complaint after those records were provided and we
14 presumed that the audit was going forward. And we were waiting the outcome of
15 the audit; and no audit occurred. Instead, this complaint occurred, this derivative
16 action was filed. If there had been an audit, and the audit had determined that there
17 were defalcations of -- in connection with the finances of the corporation, then that
18 would be before Your Honor, and you would be able to make a determination with
19 respect to this motion; that was never done.

20 We were then promised after the case was filed, Mr. Segel was
21 promised, a report from their expert. We never received a report. It's not -- the
22 affidavit that was filed is not a report. It's merely an affidavit making further
23 allegations without any substantial evidentiary support. In fact, the affiant in that
24 affidavit states that the most that he's been able to see are red flags; all right? So,
25 they've produced nothing of substance, the plaintiffs, have produced nothing of

1 substance.

2 On the other hand, the defendants have produced an affidavit from the
3 person who, as I said, plaintiff Burke had obtained to act as bookkeeper for the
4 company on more than one occasion. And she expressly states in her affidavit that
5 there were no defalcations as alleged in the complaint, and she goes through some
6 detail on that.

7 So, you have before you a situation where I believe that you have the
8 necessary facts before you to find that there is no reasonable possibility that the
9 prosecution of the above captioned case will benefit a corporation of security
10 holders. And you can then find that security should be posted.

11 And in my affidavit, I've indicated my opinion that the way this case is
12 going and the amount -- I indicated the amount of attorney's fees with respect to my
13 firm that have been incurred thus far, as of that date at least, and I've indicated an
14 estimate of what I think would be reasonable of what I can expect that's going to be
15 incurred given the way -- the direction this case is taking. And that number is
16 \$150,000.

17 I also stated in my affidavit, Your Honor, that, as provided in the statute
18 that I just referred to based upon -- which this motion is made, expressly talks about
19 that you may also consider not only the attorney's fees of the defendant corporation
20 which is the subject of the derivative action, but you may consider security for the
21 corporation's indemnification of Officers of the corporation. In this case, Mr. Hahn,
22 who is required to defend himself personally for alleged defalcations that they
23 haven't proved one iota of evidence, given one iota of evidence in support of. And,
24 Mr. Hahn, I've estimated, having worked with Mr. Segel before, that his attorney's
25 fees are going to be in the nature of \$100,000. And the corporation, very properly

1 under the statute, the indemnity statute, under the Articles of Incorporation of
2 Kokoweef and its by-laws, at a duly called Board Meeting, have provided a
3 resolution that indemnifies Mr. Hahn.

4 So we respectfully request, Your Honor, that you grant this motion to
5 require security from plaintiffs and that you order them to post a bond of \$250,000.

6 MR. BELLER: Your Honor, let me --

7 THE COURT: First address the motion to strike. You have a motion to strike
8 this request; right?

9 MR. BELLER: That is correct, Your Honor.

10 MR. SEGEL: Isn't that moot, Your Honor?

11 THE COURT: What's that?

12 MR. SEGEL: I thought that was moot since -- Mr. Beller asked for
13 is -- got an order shortening time to have that motion heard a week before this one
14 and when Mr. Clary sought to --

15 THE COURT: It's on calendar today, so --

16 MR. SEGEL: Okay. Well I just thought --

17 MR. BELLER: I've heard everything.

18 MR. SEGEL: -- the issue was moot but --

19 MR. BELLER: Your Honor, I'm -- I'm sorry Counsel.

20 MR. SEGEL: That's not a problem. Go ahead.

21 MR. BELLER: Okay. I'm going to try and combine both -- issues here if I
22 may.

23 First of all, the nominal defendant issue that the Court raised last time, if
24 I may approach the bench, in terms of this is why we effectively labeled it the way it
25 is. But this is the research --

1 MR. CLARY: Do I get one too?

2 MR. BELLER: I'm sorry, Counsel. And I believe, without taking the Court's
3 time because I know the Court's had a long morning, regarding that particular issue.

4 Secondly, Your Honor, in terms of Mr. Clary and some of the issues as
5 it relates to EIN Kokoweef posting security, part of what we filed, Your Honor, in
6 terms of the motion to strike, was a transcribed, if you will, discussion between some
7 of the members of the Board. And I'm not going to take a lot of time to belabor this
8 but some of the language in here, Mr. Clary: I've been doing this for forty years --

9 MR. CLARY: Your Honor, I object to Counsel's quoting from this unproven
10 document that's not been offered as evidence. Its not been sworn to by anybody.
11 It's -- when the case is not stayed at some point, we intend to take action with
12 respect to this document. This is --

13 THE COURT: Let's confine ourselves to the items that are in the record as
14 formulated before --

15 MR. BELLER: And it is in the record.

16 THE COURT: -- I convened; okay?

17 MR. CLARY: Well it's in the record only as --

18 MR. BELLER: And it is, Your Honor.

19 THE COURT: You're saying it's in the record?

20 MR. BELLER: Yes, Your Honor.

21 MR. CLARY: It's in the record as attached to their complaint but it's not --
22 been substantiated.

23 MR. BELLER: Your Honor, if --

24 THE COURT: Well he can refer to it -- the pleading, the complaint --

25 MR. BELLER: I'm going to be short, Your Honor.

1 THE COURT: -- and exhibits to it. Go ahead.

2 MR. BELLER: Thank you, Your Honor.

3 Mr. Clary: Cleaning up security violations --

4 THE COURT: This is attached to the complaint I'm understanding?

5 MR. BELLER: This is attached to the motion to the strike. It is also
6 attached --

7 THE COURT: Okay.

8 MR. BELLER: -- to the complaint as well, Your Honor.

9 THE COURT: All right.

10 MR. BELLER: Mr. Clary: I did what I did. Why would you go to the SEC,
11 that's insane.

12 Clary: I've been doing this for forty years, they are the big bad wolf,
13 they're assholes.

14 Mr. Clary: And do something and they destroy companies and they
15 destroy people, they're the big bad wolf; that's Clary again. I just don't want you to
16 do anything stupid. I mean the idea of going to talk to, well, the SEC, is about as
17 insane as anything you could possibly do. I mean, if you want to put a stick, a knife
18 in yourself, I think it's a mistake. The SEC has bigger fish to subscribe.

19 Then he goes on to all of these issues as to basically, Your Honor, not
20 avoiding issues relating to EIN but to try and circumvent the law to basically to --

21 MR. CLARY: Your Honor, I object --

22 MR. BELLER: -- educ --

23 MR. CLARY: -- to that.

24 THE COURT: You know what? It's a quarter to one. I just need to know the
25 basis of your motion to strike --

1 MR. BELLER: Okay.

2 THE COURT: -- and your position relative to the --

3 MR. BELLER: My position --

4 THE COURT: -- security.

5 MR. BELLER: -- Your Honor, is, we believe the Kokoweef and the parties
6 are proper named plaintiffs. We believe Kokoweef --

7 THE COURT: Okay, but why would that -- assuming they are, why can't I
8 entertain a motion to strike? Or why -- I mean why can't I entertain the motion for
9 security?

10 MR. BELLER: Because we believe Mr. Hahn, Mr. Clary, and others, by
11 removing some of these Board members, are aggregately perpetrating a fraud and
12 are using this mechanism to avoid having to file an answer and to basically make
13 them post a security so that they --

14 THE COURT: I'll consider the motion for security on the merits. I'm denying
15 the motion to strike. Now, let me hear your opposition to the motion. I know you've
16 taken an alternative stance. You've made a motion to strike the request but then in
17 the alternative, you've offered your opposition to it. Why shouldn't I provide security,
18 or order security?

19 MR. SEGEL: Your Honor, one comment I'd like to make. Mr. Beller just
20 attacked my client by saying he did things improperly and illegally. If he's going
21 make -- and he made this representation at the last hearing, if he's going to make
22 representations of actions we did that were improper, my client did that were
23 improper, I would like him to specify what he did and why --

24 THE COURT: Okay, but --

25 MR. SEGEL: -- it was improper.

1 THE COURT: I don't really want to get in to all that right now.

2 MR. SEGEL: I appreciate that but I don't --

3 THE COURT: Okay?

4 MR. SEGEL: -- appreciate the attacks on my client that I think -- nothing --
5 since I've been involved in this case, we have dotted our i's and crossed our t's --

6 THE COURT: Okay.

7 MR. SEGEL: -- including the letter to Mr. Beller to allow us to drill which is
8 ordinary course of business for the company.

9 THE COURT: Okay. Now.

10 MR. BELLER: Basically, Your Honor, the Board members, we believe, have
11 been improperly removed. Mr. Hahn is moving forward to effectively have a new
12 election to basically keep these people off the Board and they are attempting to
13 have them post a bond so effectively -- these are working people, these are people
14 who don't have the wherewithal to post anywhere near the kind of money that Mr.
15 Clary is suggesting. They represent -- they are a group of a representative class
16 and we believe, based upon what Mr. Hahn -- and keeping in mind, Your Honor, in
17 the complaint and the exhibits that were attached, there are numerous, numerous
18 violations, Your Honor, which we believe -- and we believe Mr. Hahn has
19 perpetrated a fraud on Kokoweef, both in terms of issuing stock improperly, taking
20 money for stock that went into his pocket, and paid back the company on loans from
21 the company. All of this has been attached as an exhibit that Mr. Kehoe did to the
22 complaint.

23 Now, in terms of our expert, if you will, we don't have all of the records.
24 I mean, this is a very preliminary, embryonic stage of this proceeding and all we
25 want to do is proceed, but at every step of the way, we're being obstructed by these

1 various motions.

2 THE COURT: All right. Do you agree that under NRS 41.520 Subsection 3,
3 that the Court can require security?

4 MR. BELLER: Absolutely yes, Your Honor.

5 THE COURT: And so, are you saying that because of these things that your
6 clients are alleging that I should not require security?

7 MR. BELLER: I am saying, or if that, \$100 bond or something of that nature,
8 Your Honor.

9 THE COURT: I see. Okay.

10 MR. CLARY: Do you want to hear anything in reply?

11 MR. BELLER: These are very -- excuse me, Counsel. They are -- I don't
12 know if the Court has had an opportunity to look at the exhibits that are attached to
13 the underlying complaint and/or some of the other exhibits that we have attached to
14 some of these documents, Your Honor, but these are very, very serious allegations.
15 And we believe from what we have determined to date, it does show that Mr. Hahn
16 and others have perpetrated a fraud on the company, Your Honor. And he controls
17 the money. He has --

18 THE COURT: Well that's the theory of your case, I understand that.

19 MR. BELLER: Okay. I know you do, Your Honor.

20 THE COURT: Okay. All right. Is that it then?

21 MR. BELLER: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. CLARY: Yes. Your Honor --

24 THE COURT: Want to wrap it up?

25 MR. CLARY: That is not true. They have not -- there's been no fraud

1 perpetrated. And they have not proved it up.

2 THE COURT: Well I'm not here today to decide whether it has --

3 MR. CLARY: I understand that.

4 THE COURT: -- or hasn't been.

5 MR. CLARY: But to make that allegation that they've provided sufficient
6 evidence to show that he's perpetrated a fraud, let me just say that we have
7 provided evidence that has refuted that. If you look at the bookkeeper's affidavit,
8 and you can compare it with their expert's affidavit, we're the only ones that have
9 provided any proof that there is -- there have been no defalcations, period. This is
10 all a story that's made up. And therefore, we are entitled to security and we're
11 entitled --

12 THE COURT: Okay.

13 MR. CLARY: -- in to a significant amount.

14 THE COURT: Now, it's your view, again to reiterate here, that the filing of
15 your motion has stayed proceedings in the case until it's ruled on; right?

16 MR. CLARY: Yes, that's what the statute says.

17 THE COURT: Okay. I now have heard from you both and I've ruled on the
18 motion to disqualify, I've ruled on the motion to strike, I've ruled on the motion for
19 order extending time, although that may be unripe depending on what I do on the
20 other motion, but I can't rule on the defendant's motion right now until I've looked at
21 it a little bit further. Particularly, I want to look at the statute and look at the record
22 and I'll have the matter under advisement; that's the defendant's motion to require
23 security from plaintiffs; okay?

24 MR. SEGEL: Very good, Your Honor.

25 MR. BELLER: Your Honor, can I ask this one --

1 THE COURT: In the meantime, further proceedings will remain stayed and I
2 will get my decision out as quickly as I can. But I want to look --

3 MR. SEGEL: Your Honor, may I make --

4 THE COURT: -- at that statute, I want to look at its purpose, I want to see
5 what, you know, what is deemed to be reasonable security in other cases that have
6 construed it or statutes that are similar in other jurisdictions; okay?

7 MR. SEGEL: Your Honor, I just want to address one item, Your Honor, very,
8 very, very briefly. I got these by-laws from Mr. Beller this morning I think, yes. And
9 on Section 10 of Article 3, which talks about Directors -- it's a section talks about
10 removal of Directors, these allegations in the fairest [indiscernible] of my -- by client,
11 the whole total section says: Anyone or more of the Directors may be removed
12 either with or without cause at any time by the vote or written consent of
13 stockholders representing not less than two-thirds of the issued and outstanding
14 capital stock entitled to vote. Mr. Beller has underlined the provision that says:
15 unstockholders representing not less than two-thirds of the issue. I will represent to
16 this Court that we have more than two-thirds of the shareholders vote in favor to
17 move with the three Directors.

18 MR. BELLER: Your Honor, two things, if I may?

19 MR. CLARY: And Your Honor, I'd like to --

20 MR. BELLER: -- very briefly.

21 MR. CLARY: -- supplement that by --

22 THE COURT: Well, you know, Mr. Beller had sought my attention first so, go
23 ahead Mr. Beller.

24 MR. BELLER: Okay, thank you. If I may, I'd like to supplement. The wrong
25 exhibit was attached and I called your department. If I may file this, Your Honor?

1 THE COURT: Okay.

2 MR. BELLER: But, the other issue, Your Honor, is the Court last time stayed
3 any further proceedings. Mr. Segel wrote me a letter saying can they do certain
4 things; I wrote him back that was fine. But there is an intended additional Board
5 Meeting, Your Honor, and I know how busy this Court is. But I am concerned that
6 they are going to move forward in very short order and does your order saying
7 everything is stayed means everything is stayed?

8 THE COURT: I think the stay, by statute, applies to the legal proceedings.

9 MR. SEGEL: Your Honor, I think what Mr. Beller --

10 MR. BELLER: Well that's my concern, Your Honor.

11 THE COURT: The litigation.

12 MR. SEGEL: What Mr. Beller is referring to -- and I don't want to put words
13 in his mouth, he was concerned for the last hearing because we -- Mr. Clary was
14 going to be out of town, we wanted to do this hearing for two weeks, that we would
15 do something nefarious in the interim and the Judge admonished everyone not do
16 anything nefarious. The --

17 THE COURT: Did I say anything about equity and clean hands and --

18 MR. SEGEL: Yes; you did.

19 MR. BELLER: Yes; you did.

20 THE COURT: -- me looking --

21 MR. SEGEL: Yes; you did.

22 THE COURT: -- at the cleanliness

23 MR. BELLER: Yes; you did.

24 THE COURT: -- of hands --

25 MR. BELLER: Yes; you did.

1 THE COURT: -- of the parties.

2 MR. SEGEL: I just -- just to make sure the record is totally clear, Your
3 Honor --

4 MR. CLARY: Yes.

5 MR. SEGEL: The by-laws provide, and these are the by-laws Mr. Beller gave
6 us as well, and there all the -- Mr. -- the by-laws provide for meeting of the
7 shareholders, the annual meeting to be held on the first Sunday of June. We will be
8 holding the --

9 THE COURT: I'll have my decision before that.

10 MR. SEGEL: Right. Well, no, I'm just --

11 THE COURT: Well before that.

12 MR. SEGEL: -- saying, but we're going --

13 THE COURT: Yeah.

14 MR. BELLER: It does require --

15 MR. SEGEL: Anything that happens, we're going to continue to run this
16 business. We're going to continue to drill, we're going to continue to comply with the
17 by-laws and we will hold the shareholders meeting, Directors meeting, on the first of
18 June as required by the by-laws.

19 MR. BELLER: And it does require notice and --

20 MR. SEGEL: It will be done.

21 MR. BELLER: -- and then --

22 THE COURT: All right, Mr. Clary, you had something you wanted to say.

23 MR. CLARY: Yes. Well, first of all I wanted to say my recollection of the last
24 hearing was, I used -- Your Honor, I said we're not going to do anything that the -- I
25 believe Mr. Beller's concerned about, other than in the ordinary course of business.

1 THE COURT: Right. Okay. That's fine.

2 MR. CLARY: Those words were also said. Now Mr. Beller has submitted to
3 you the by-laws and Mr. Segel has read you that provision and Mr. Bell -- that says
4 about removal of Directors, Mr. Beller claims that was illegal. And I ask you to look
5 at that provision of the by-laws that Mr. Segel read to you and I'd also like to provide
6 to you and Counsel a copy of the form that was used to remove those Directors
7 which complies with that by-law provision, it complies with the statute. And this,
8 Your Honor, was done long before this hearing was held. This appeared in the --
9 contains the date on which it occurred. I'd like to provide a copy of that if I may.

10 THE COURT: All right. Thank you. All right --

11 MR. CLARY: And with that, Your Honor, I think that pretty much completes
12 the record in terms of what's -- has been recorded today.

13 THE COURT: Okay. Again, I do want to review NRS 41.520 Subsection 3
14 and any other applicable statute. Actually, also NRS 78.7502 relative to the security
15 issue. I want to see how cases have construed that. I don't think the purpose of
16 those statutes is to keep people from their day in Court; coming in and seeking to
17 proceed with what they believe to be viable and appropriate claims. But by the
18 same token, I know that there are provisions that do require that security, to a
19 certain extent, be posted. So, that's what I'm going to be reviewing.

20 MR. BELLER: Can I give the Court some additional research on that
21 additional issue, Your Honor?

22 THE COURT: What is --

23 MR. BELLER: This is the notice to stockholders, some of the things that the
24 Court is talking about.

25 THE COURT: Okay. Well.

1 MR. CLARY: As long as we get a copy.

2 MR. BELLER: [Indiscernible].

3 MR. SEGEL: I have. Your Honor --

4 MR. CLARY: No, no, I don't have a copy.

5 THE COURT: This seems to be going way beyond --

6 MR. SEGEL: It is. And Your Honor, I now have to make another comment.

7 There's a comment in here that the by-laws that I provided to Mr. Beller were the
8 wrong by-laws. We concede that. In fact, we don't know where they came from.

9 We agree with Mr. Beller. The by-laws that he's submitted are the proper by-laws.

10 We got the originals with us today and I'm -- find out where those by-laws came that
11 I submitted but they were not the correct ones.

12 THE COURT: Okay.

13 MR. SEGEL: They're substantially identical but they were not --

14 THE COURT: Okay. The matter will stand submitted. I'll decide it as quickly
15 as I can on the --

16 MR. SEGEL: Thank you, Your Honor.

17 THE COURT: On the one item that I took UA.

18 MR. SEGEL: Shall we provide -- I can't talk today, shall we prepare an order
19 for the three motions the Court has ruled on?

20 THE COURT: Yes, would you please?

21 MR. SEGEL: Very good, Your Honor. Thank you.

22 THE COURT: Thanks.

23 * * * * *

24 * * * * *

25 * * * * *

1 MR. BELLER: Thank you, Your Honor.

2 [Proceedings concluded at 12:53 p.m.]

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.


CYNTHIA GEORGILAS
Court Recorder/Transcriber