

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES

3
4 DEPARTMENT WE-R

HON. ELIZABETH A. GRIMES, JUDGE

5
6 MIRI AVRAHAM,)

PETITIONER,)

7
8 VS.)

9 NATAN RAHAMIM AVRAHAM,)

RESPONDENT.)

NO. SD027039

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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

JANUARY 9, 2014

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18 APPEARANCES:

19 FOR PETITIONER:

BRETT A. BERMAN, ESQ.

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21 FOR RESPONDENT:

CHARLES M. GREEN, ESQ.

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26 [COPY]

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28 LISA MCLAY, CSR NO. 10765
OFFICIAL REPORTER

SANTA MONICA, CALIFORNIA; THURSDAY, JANUARY 9, 2014

A.M. SESSION

(APPEARANCES AS HERETOFORE NOTED.)

THE COURT: NUMBER 10, AVRAHAM, SD027039.

YOUR APPEARANCES FOR THE RECORD, PLEASE.

MR. BERMAN: BRETT BERMAN ON BEHALF OF THE PETITIONER, WHO IS PRESENT.

MR. GREEN: CHARLES GREEN ON BEHALF OF NATAN AVRAHAM, RESPONDENT, WHO IS PRESENT.

THE COURT: WE DON'T NEED TO SWEAR THE PARTIES.

WELL, I THINK YOU'RE AWARE THAT WE'VE BEEN ATTEMPTING TO HAVE A SETTLEMENT, AS IT WERE, OF OUTSTANDING CLAIMS, AND MY UNDERSTANDING IS THAT EFFORT WAS UNSUCCESSFUL.

MR. BERMAN: I'D LIKE TO SAY THAT MS. AVRAHAM WOULD SUBMIT ON THE COURT'S LAST SUGGESTION, WHICH IS THE FIRST 40,000 AND CHANGE GO TO PAY THE CREDIT CARDS, THE REST IS SPLIT EQUALLY AND EACH SIDE BEARS THEIR OWN FEES, ONLY IF THERE ARE NO OTHER ISSUES, THEY'RE ALL WIPED OUT AND NEITHER PARTY CAN -- BARRINGTON AND SHENANDOAH ARE PUT TO BED. WE SAY GOOD NIGHT TO THOSE TWO PROPERTIES.

THE COURT: ALL RIGHT. THAT IS WHAT I HAD SAID IN CHAMBERS.

AND MY DESIRE IS TO -- AGAIN, BECAUSE THIS IS A SETTLEMENT OFFER, HAVING READ THE PLEADINGS, HAVING HEARD THIS CASE PREVIOUSLY, I'M TRYING TO HELP THE

1 PARTIES MOVE FORWARD, BECAUSE WE CAN GET BOGGED DOWN IN
2 MINUTIA. BOTH SIDES HAVE GRIEVANCES, SOME THAT ARE MORE
3 WELL TAKEN THAN OTHERS, BUT I'M TRYING TO ASSIST YOU TO
4 MOVE FORWARD SO THAT YOU CAN BOTH BE IN A BETTER PLACE,
5 SHALL WE SAY.

6 SO, COUNSEL, WAS THERE SOMETHING WE CAN DO
7 TO ASSIST IN SETTling THIS?

8 MR. GREEN: YOUR HONOR --

9 THE COURT: BECAUSE THAT WAS, BY THE WAY,
10 SOMETHING YOU SORT OF PUT ON THE TABLE.

11 MR. GREEN: YES. YOUR HONOR, RESPONDENT WOULD BE
12 WILLING TO SUBMIT ON THAT ALGORITHM, HOWEVER, WITHOUT
13 PREJUDICE AS TO HIS OTHER CLAIMS. BECAUSE IF WE LOOK AT
14 THE OTHER CLAIMS, IF WE LOOK PARTICULARLY AT THE
15 BARRINGTON PROPERTY, HE'S PUT FORTH PROPER EVIDENCE OF
16 THE REPAIRS. IF WE LOOK AT THE SHENANDOAH MORTGAGE
17 PAYMENTS, HE'S PUT FORTH EVIDENCE THAT HE'S MADE THE
18 MORTGAGE PAYMENT FOR TWO YEARS AND BROUGHT THE PROPERTY
19 OUT OF FORECLOSURE TWICE.

20 SO IF THE COURT WANTS TO SUBMIT ON THAT
21 ALGORITHM DIVIDING THE ESCROW FUNDS IN ACCORDANCE WITH
22 THE JUDGMENT, RESPONDENT WOULD AGREE TO THAT, BUT NOT IF
23 IT GOES BEYOND AND MAKES FINDINGS WITH PREJUDICE AS TO
24 HIS OTHER BONA FIDE CLAIMS. THE COURT COULD DENY THOSE
25 CLAIMS TODAY WITHOUT PREJUDICE, BUT HE WOULD NOT SUBMIT
26 THAT THOSE CLAIMS BE DENIED WITH PREJUDICE JUST FOR HIM
27 TO RECEIVE THE ESCROW FUNDS THAT HE'S ENTITLED TO IN THE
28 JUDGMENT.

1 AND FURTHER, CAPITAL GAINS TAX. THE
2 CAPITAL GAINS TAX ON THE SALE OF THE BARRINGTON
3 PROPERTY, THE BARRINGTON PROPERTY WAS DEEMED COMMUNITY
4 IN THE JUDGMENT. IT WAS SOLD PURSUANT TO THE JUDGMENT.
5 THE TITLE AND THE LOANS WERE HELD ONLY IN RESPONDENT'S
6 AND, THEREFORE, THE I.R.S. IS HOLDING HIM RESPONSIBLE
7 FOR THE CAPITAL GAINS TAXES OF \$90,000 ON THE BARRINGTON
8 PROPERTY AND HE DOESN'T HAVE THE \$90,000. THERE'S A
9 LIEN ON WOOSTER FOR THE \$90,000 CAPITAL GAINS TAX, BUT
10 TO KEEP THE I.R.S. AT BAY, HE'S PAYING \$528 A MONTH TO
11 KEEP A PAYMENT PLAN SO THEY DON'T SEIZE HIS BANK
12 ACCOUNTS AND WHATNOT.

13 SO THESE CLAIMS, PARTICULARLY BARRINGTON
14 CAPITAL GAINS AND THE MORTGAGE, WE COULD HAVE THOSE
15 HEARINGS AT ANOTHER DATE OR ANOTHER TIME OR THEY COULD
16 BE DENIED WITHOUT PREJUDICE FOR TODAY'S DATE, BUT THEY
17 SHOULD NOT BE COUPLED WITH THE DISTRIBUTION OF THE
18 ESCROW PROCEEDS WHICH IS AN ALGORITHM DEFINED IN THE
19 JUDGMENT. HAD HE NOT PUT THESE OTHER CLAIMS IN TODAY'S
20 PAPERS, THE COURT WOULD LIKELY HAVE MADE THE SAME
21 SUGGESTION AS TO HOW TO DIVIDE THE ESCROW PROCEEDS AND
22 NOT REACHED THESE OTHER ISSUES.

23 SO JUST BECAUSE HE PUT THESE CLAIMS IN
24 TODAY'S PAPERS, HE SHOULDN'T LOSE THESE SUBSTANTIAL
25 CLAIMS, PARTICULARLY THE CAPITAL GAINS, THAT WOULD BE
26 WHOLLY INAPPROPRIATE TO HOLD HIM PERSONALLY AND
27 UNILATERALLY RESPONSIBLE FOR CAPITAL GAINS TAX ON AN
28 ASSET THAT WAS SOLD AS A COMMUNITY PROPERTY. AND ALSO

1 FOR THE MORTGAGE PAYMENT, THEY PROVIDED NO EVIDENCE THAT
2 SHE'S MADE THE MORTGAGE PAYMENTS. NO EVIDENCE
3 WHATSOEVER.

4 I RECEIVED TODAY --

5 THE COURT: ALL RIGHT, COUNSEL, THANK YOU.

6 WOULD YOU LIKE TO BE HEARD BRIEFLY ON THAT?

7 MR. BERMAN: ALL I CAN SAY IS HE JUST MADE OUR
8 ARGUMENT FOR US. THAT'S EXACTLY -- THIS IS -- IT'S
9 GOING TO KEEP GOING AND GOING AND GOING. WE'RE GOING TO
10 BE BACK. MY CLIENT CANNOT TAKE THIS ANYMORE. SHE'S
11 LOSING HER SANITY WITH THESE PROCEEDINGS. WE ARE
12 BEGGING THE COURT TO MAKE THIS STOP AND IT'S NOT GOING
13 TO STOP UNLESS THE COURT BASICALLY MAKES HIM STOP.
14 SHE'S WILLING TO WAIVE THOSE FEES, BUT SHE'S TRYING TO
15 BUY HER PEACE OF MIND HERE. THAT'S THE BOTTOM LINE.

16 THE COURT: JUST SO IT'S CLEAR WHERE THE COURT IS
17 COMING FROM, I SAID IT BEFORE, BUT IT'S CRUCIAL THAT THE
18 PARTIES UNDERSTAND I AM FAMILIAR WITH THIS. I HEARD ALL
19 YOUR ARGUMENTS, MR. AVRAHAM, AND I'VE HEARD ARGUMENTS
20 FROM MS. AVRAHAM AND THIS HAS BEEN A VERY CONTENTIOUS
21 AND DIFFICULT PROCEEDING. THINGS HAVE HAPPENED WHICH
22 HAVE MADE BOTH PARTIES SUFFER FINANCIALLY. YOU BOTH
23 HAVE TAKEN CONSIDERABLE LOSSES AND I DON'T THINK
24 ANYONE'S GOING TO WALK AWAY FEELING THAT THEY'VE WON A
25 VICTORY HERE.

26 BUT THE PURPOSE OF THIS PROPOSED SETTLEMENT
27 TO END THE LITIGATION AND TO HAVE SORT OF A CLEAR LINE,
28 BRIGHT LINE -- WE DEALT WITH ALL THE ISSUES AND NOW

1 WE'RE GOING TO MOVE FORWARD -- IS BECAUSE IT'S THE
2 COURT'S CONCERN THAT AT THE END OF THE LITIGATION WE
3 WON'T REALLY BE -- FINANCIALLY THINGS WILL PRETTY MUCH
4 END UP AS THEY ARE TODAY. I'M NOT SAYING YOU WILL GET
5 THE SAME THING WHERE THERE WILL BE ESCROW FUNDS TO BE
6 DIVIDED AND ALL THAT, BUT YOU CERTAINLY WILL END UP
7 OWING A LOT MORE IN ATTORNEY'S FEES ON BOTH SIDES. AND
8 I CAN'T TELL YOU AT THIS POINT -- BECAUSE I REALLY JUST
9 READ THE PLEADINGS, I HAVEN'T HEARD THE EVIDENCE --
10 EXACTLY HOW I'D GO. I MAY DECIDE THAT THERE IS A VALID
11 271 ARGUMENT BY THE PETITIONER WHICH WOULD RESULT IN
12 SANCTIONS AGAINST MR. AVRAHAM. I MAY DECIDE ON THE
13 OTHER HAND THAT THERE'S SOME MERIT TO SOME OF THE CLAIMS
14 HE'S MADE WITH REGARD TO THE CAPITAL GAINS AND SUCH THAT
15 WOULD, THEN, GO AGAINST HER. SO THE WHOLE POINT IS TO
16 TRY AND DRAW A BRIGHT LINE.

17 MR. AVRAHAM, YOU WILL GET THE BENEFIT OF
18 THIS BARGAIN BECAUSE YOU WILL WALK AWAY WITH THE
19 MAJORITY OF THE FUNDS FROM ESCROW. SHE'LL WALK AWAY
20 WITH ENOUGH TO COVER HER EXPENSES UP TO THIS POINT IN
21 ATTORNEY'S FEES AND SUCH. AND THEN YOU'RE WELCOME TO
22 COME BACK.

23 IN FACT, THE JUDGMENT SAYS THAT THE WOOSTER
24 PROPERTY IS LEFT WITHIN THE JURISDICTION OF THE COURT
25 SHOULD THERE NOT BE AN AGREEMENT AS TO HOW TO DEAL WITH
26 IT. AND I'M JUST TRYING TO LET YOU FINISH YOUR LIFE IN
27 COURT FOR NOW AND MOVE ON OTHERWISE. SO THAT'S WHY I
28 MADE THIS PROPOSAL.

1 MR. GREEN: YOUR HONOR, WE UNDERSTAND THAT.

2 JUST BRIEFLY AS TO THE 271 ARGUMENT. IT
3 WAS EFFORTS OF RESPONDENT THAT SAVED THE PROPERTY AND
4 PETITIONER HAS FAR MORE INCOME AND SHE'S ALSO UTILIZING
5 THE ASSETS UNDER HER DISPOSAL --

6 MR. BERMAN: I'M GOING TO OBJECT --

7 THE COURT: COUNSEL, MY UNDERSTANDING WAS I WOULD
8 HEAR ARGUMENT AND I'VE HEARD THE ARGUMENT. WHAT I NEED
9 TO KNOW IS IF YOU'RE GOING TO -- IF YOUR CLIENT AND YOU
10 NEED A LITTLE MORE TIME, IF THIS WILL SETTLE ANYTHING
11 TODAY. IF HE SINCERELY BELIEVES SOMEHOW HE WILL BENEFIT
12 FROM FURTHER LITIGATION AND SOMEHOW COME OUT OF THIS IN
13 BETTER SHAPE THAN WHAT AN END TO IT WOULD PRODUCE TODAY,
14 THEN WE'RE GOING TO HAVE TO CONTINUE THE MATTER FOR
15 HEARING ON ANOTHER DATE. I'M JUST TRYING TO HELP THE
16 PARTIES WRAP THINGS UP.

17 MR. BERMAN: IT'S ALMOST UNFATHOMABLE FOR
18 MS. AVRAHAM TO HAVE TO COME BACK AGAIN. THIS WILL BE, I
19 THINK, THE FOURTH TIME OR FIFTH TIME WE'VE BEEN HERE ON
20 THE SAME ISSUES. SHE CANNOT KEEP PAYING ME. SHE CANNOT
21 KEEP MISSING SCHOOL, YOUR HONOR. WE RAISE THESE ISSUES
22 EVERY TIME WE'RE HERE AND WE ALWAYS HAVE TO COME BACK.
23 THIS IS WHAT HE'S TRYING TO DO. I'VE BEEN IN THIS CASE
24 SINCE 2010.

25 MR. GREEN: YOUR HONOR, WE WOULD LIKE A
26 CONTINUANCE. MR. AVRAHAM FEELS IT'S IMPORTANT THAT THE
27 COURT SHOULD UNDERSTAND THAT MS. AVRAHAM HAS PLACED
28 THEIR ADULT SON IN ONE OF THE RENTAL UNITS AT A LOSS TO

1 THE PARTIES OF \$2,000 A MONTH. HE FEELS THIS IS AN
2 IMPORTANT POINT THE COURT SHOULD WEIGH IN ANY 271 OR
3 ATTORNEY-FEE ARGUMENTS. THE KIDS CAN STAY WITH HIM AT
4 THE HOUSE.

5 MR. BERMAN: THEY DON'T WANT TO.

6 MS. AVRAHAM: THEY DON'T WANT TO STAY WITH HIM.

7 MR. AVRAHAM: WHY? BECAUSE I WON'T GIVE HIM DRUG
8 AND ALCOHOL? SHE BRING TEQUILA LIKE THIS FOR MY KID --

9 MR. GREEN: HE'S VERY CONCERNED --

10 THE COURT: I APPRECIATE WHAT -- MR. AVRAHAM, WHAT
11 YOU NEED TO UNDERSTAND IS -- I UNDERSTAND THIS IS VERY
12 EMOTIONAL AND IT'S VERY DIFFICULT, BUT THIS MAY NOT BE
13 THE MOST APPROPRIATE ARENA FOR THESE TYPES OF EMOTIONS
14 TO BE PLAYED OUT IN. THE COURT HAS TO DEAL WITH LEGAL
15 ARGUMENTS AND FACTUAL SITUATIONS AND --

16 MR. AVRAHAM: YOUR HONOR, THE COURT HAD TO FIND --
17 PROTECT WOMAN FROM HER ATTORNEY, YOUR HONOR, FROM HER
18 ATTORNEY, PROTECT HER FROM ATTORNEY -- A LOT OF MONEY.
19 THE LAWYER -- HAVE TO PROTECT WOMAN LIKE MY EX-WIFE FROM
20 HER OWN ATTORNEY. I'M SORRY ABOUT THIS, YOUR HONOR.

21 THE COURT: MR. AVRAHAM, IF WE END THIS MATTER
22 TODAY I DON'T THINK THERE WILL BE AN ATTORNEY AROUND TO
23 PROTECT HER FROM. IT WILL BE DONE.

24 MR. AVRAHAM: I MAKE FOR HER ALWAYS MONEY. EVEN
25 AFTER THE DIVORCE, MAKE MONEY. AND HE WANT HER TO LOSE
26 MONEY AND I MAKE MONEY FOR HER. I MAKE MORE. SHE ONLY
27 GET \$60,000 FROM ME THEN TO LOSE A \$100,000. THAT'S WHY
28 HE'S GOING FIVE, SEVEN MONTHS TO THE COURT AND HE BLAME

1 ME. SHE SUFFERING. SHE'S SUFFERING BECAUSE OF HIM.

2 THE COURT: WELL, THE CAUTIONARY NOTE IS -- AND
3 AGAIN, I WANT TO EXPRESS MY APPRECIATION THAT YOU HAVE
4 COUNSEL HERE, BECAUSE THESE HEARINGS BEGAN IN FRONT ME
5 WITHOUT COUNSEL AND IN REVIEWING PAST HEARINGS YOU WERE
6 IN A VERY BAD POSITION. YOU WERE REQUIRED TO PAY
7 SANCTIONS AND I'M TRYING TO HELP YOU TO DRAW A BRIGHT
8 LINE, STOP THE LITIGATION, AS TO THOSE TWO PROPERTIES
9 AND MOVE FORWARD.

10 SO IF YOU'RE WILLING TO ACCEPT THAT, WE CAN
11 DO THAT TODAY. OTHERWISE, I'M SORRY. YOU WILL HAVE TO
12 COME BACK AT A LATER DATE. AND, AGAIN, I CAN'T SAY THAT
13 THINGS WILL BE ANY BETTER.

14 MR. GREEN: YOUR HONOR, WE WOULD -- A CONTINUANCE
15 WOULD BE APPROPRIATE AT THIS TIME SINCE WE JUST RECEIVED
16 HIS PAPERS AND IT'S THE COURT'S SUGGESTION A
17 CONTINUANCE, AND IT WOULD ALLOW US FURTHER CHANCE TO
18 MEET AND CONFER.

19 THE COURT: I WOULD HOPE THAT IN THE INTERIM THERE
20 WOULD BE A SINCERE ATTEMPT TO SETTLE THE MATTER SO THAT
21 WE DON'T TAKE AN AFTERNOON OR AN ENTIRE DAY HEARING
22 THESE ISSUES THROUGH WHICH WILL -- AGAIN, I DON'T KNOW
23 THAT THEY'LL END UP IN ANY BETTER PLACE. I CAN'T
24 ADDRESS THE OTHER ISSUES WHICH I UNDERSTAND ARE VERY
25 EMOTIONAL FOR THE RESPONDENT. AGAIN, THIS IS A COURT OF
26 LAW. THAT'S JUST WHAT WE DO HERE.

27 SO LET'S PICK A FRIDAY. ARE THOSE TERRIBLE
28 FOR YOU?

1 MR. BERMAN: COULD WE WAIVE HER APPEARANCE AT THE
2 NEXT HEARING AND JUST HAVE ME?

3 THE COURT: YES. IF IT'S BELIEVED THAT THERE'S A
4 SETTLEMENT.

5 WHAT I COULD DO IS SET IT FOR ANOTHER
6 THURSDAY AFTERNOON WHERE WE WON'T HAVE SOMEONE ELSE ON
7 CALENDAR.

8 MR. BERMAN: BUT THE COURT WOULD REQUIRE
9 MS. AVRAHAM TO BE HERE FOR THE HEARING IF, IN FACT, IT'S
10 GOING TO GO FORWARD?

11 THE COURT: RIGHT.

12 IS THURSDAY THE 27TH OF FEBRUARY GOOD FOR
13 BOTH PARTIES?

14 MR. BERMAN: I WILL BE OUT OF TOWN THAT DAY, YOUR
15 HONOR.

16 THE COURT: HOW ABOUT MARCH 20?

17 MR. BERMAN: THAT WORKS.

18 MR. GREEN: OKAY.

19 MR. BERMAN: THE AFTERNOON, YOUR HONOR?

20 THE COURT: YES. 1:30 P.M. ON MARCH 20TH.

21 MR. GREEN: YOUR HONOR, PENDING THAT HEARING DATE,
22 I THINK THAT ONE POINT THAT WE'RE NOT -- THERE'S NO
23 CONTENTION IS THAT HE'S OWED THE 40,954. SO PENDING
24 THAT HEARING, MAY WE HAVE AN ORDER THAT THAT AMOUNT BE
25 DISBURSED?

26 THE COURT: NO.

27 MR. BERMAN: THANK YOU, YOUR HONOR.

28 THE COURT: THIS WAS INTENDED AS A SETTLEMENT. IT

1 NEEDS TO BE ALL RESOLVED SORT OF UNIVERSALLY OR AT ONE
2 HEARING, BUT I'M NOT GOING TO ORDER ANY DISBURSEMENT
3 UNTIL WE CAN HAVE A RESOLUTION OF ALL THE ISSUES.

4 MR. BERMAN: THANK YOU, YOUR HONOR.

5 MR. GREEN: THANK YOU, YOUR HONOR.

6 MS. AVRAHAM: THANK YOU.

7 THE COURT: NOTICE WAIVED?

8 MR. BERMAN: NOTICE WAIVED.

9 MR. GREEN: NOTICE WAIVED.

10 THE COURT: THANK YOU.

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12 (THE PROCEEDINGS WERE CONCLUDED.)

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