

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 12-44972 CA 40

KELLY HYMAN, a Florida  
resident, BOUGANVILLA  
INVESTMENTS, INC., a  
Florida corporation,

Plaintiffs,

vs.

ARNOLD DAOUD,  
a Florida resident,

Defendant.

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TRIAL EXCERPT

Miami-Dade County Courthouse  
73 West Flagler Street  
Miami, Florida 33130  
Tuesday, January 7, 2014  
11:18 a.m. - 8:53 p.m.

Trial excerpt in above-styled cause  
taken before the Honorable John Thornton,  
Judge of the above-styled court, reported by  
Rinele Abramson, Shorthand Reporter and Notary  
Public in and for the State of Florida at  
Large, pursuant to Notice filed in the above  
cause.

**CERTIFIED COPY**

1 APPEARANCES:

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On behalf of the Plaintiffs:

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Burstein & Associates, PA  
744 Northwest 125th Street  
Miami, Florida 33161  
6 BY: BERNARDO BURSTEIN, ESQUIRE

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On behalf of the Defendant:

8

Zarco, Einhorn, Salkowski & Brito, PA  
9 Miami Tower, Suite 2700  
100 Southeast 2nd Street  
10 Miami, Florida 33131  
BY: ALEJANDRO BRITO, ESQUIRE

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12 Kluger, Kaplan, Silverman, & Levine, PL  
201 South Biscayne Boulevard, Suite 1700  
13 Miami, Florida 33131  
BY: MICHAEL LANDEN, ESQUIRE

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15

ALSO PRESENT:

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Kelly Hyman  
17 Arnold Daoud  
Alex Daoud

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1           (Thereupon, the following proceedings  
2           were had):

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4           THE COURT: All right. Thank you,  
5           Mr. Burstein.

6           Now, I got to tell you, you know, I  
7           feel like I should be in the building  
8           that's a block over, a block north from  
9           here. I really do. It's a shame. And  
10          that's where all, you know, family  
11          disputes are settled, but we are here.

12          You know, Ms. Hyman, you know,  
13          sometimes, I got to tell you, I know what  
14          you did and what you folks put on paper  
15          and what happened in Mr. Engelman's  
16          office. There are certain things that I  
17          believe that you told the truth about, and  
18          there are also certain things that I think  
19          that you either lied about or are mistaken  
20          about.

21          I say the same thing to you,  
22          Mr. Daoud. There is no question in my  
23          mind. There were some things that I think  
24          you were telling the truth about, and I  
25          think there were certain things that you

1           lied or were mistaken about.

2           You know, I mean, what it does is --  
3           so you know, we've got a situation where  
4           I'm in a position where I need -- it's a  
5           Court of equity, as far as this matter is  
6           concerned.

7           Although, you know, Ms. Hyman, I look  
8           at you and, you know, on the papers, you  
9           know, there is a lot of good paperwork  
10          that's in your favor in this particular  
11          case.

12          On the other hand, you know, I look  
13          at Mr. Daoud, and I sit there going, you  
14          know, there is a lot of sweat equity that  
15          was put into this, and it's true, even  
16          though on paper, you didn't want to be  
17          named on paper as the person who was the  
18          owner of it.

19          And I've got to tell you, I think  
20          Mr. Engleman was a truth-teller. You  
21          know, the vast majority of what he said,  
22          you know, is absolutely -- there is a lot  
23          of belief that I have that he was telling  
24          the truth.

25          I want you all to tell me, you know,

1           what I -- what you think that I ought to  
2           do, but my intention right now is to split  
3           it down the middle. I mean, that's my  
4           intention. That's what I would like to  
5           do. That's where my final findings are  
6           going to be.

7           The question is going to be, you know  
8           -- and I got to tell you, that is on an  
9           individual basis. That would be for you  
10          individually, Ms. Hyman, and for you  
11          individually, Mr. Daoud. Because you  
12          know, on the one hand, I don't think that  
13          -- I'm absolutely not convinced what  
14          happened in 2006 with your lawyer who died  
15          is accurate, on the one hand.

16          On the other hand, you know,  
17          Ms. Hyman, I'm not convinced that, you  
18          know, you went into this thing believing  
19          that you are the owner of Bouganvilla.

20          I don't think that you think that you  
21          are. I think now you've testified to  
22          that, and maybe you've convinced yourself  
23          of that, but I got to tell you, you are  
24          not the 100 percent owner of Bouganvilla.

25          So you know, I guess what I'm asking

1           you all to do is, talk about it between  
2           yourselves. It doesn't have to be today.  
3           It doesn't have to be tomorrow.

4           I want to know, if I'm going to -- if  
5           this judgment is going to be 50 percent to  
6           Ms. Hyman and 50 percent to Mr. Daoud,  
7           individually, or is it going to be  
8           50 percent, Ms. Hyman and 50 percent to  
9           the trust -- and I'm having a real,  
10          serious problem with giving it to the  
11          trust, Mr. Daoud, I got to tell you. I'm  
12          not sure that there is sufficient evidence  
13          there of that.

14          I do believe that you personally put  
15          a load of sweat equity into this, and that  
16          you ought to be part owner.

17          I guess, you know, sadly, what you  
18          all have asked -- you know, I'm looking at  
19          Count 7 only, and there is another one for  
20          accounting.

21          So I guess what I'm asking you to do  
22          is, if I'm going to say that it's, you  
23          know, split between the two of you  
24          individually, I want you all to go back  
25          and meet with whoever you all trusted the

1 most, as far as the mediator in this case  
2 is concerned, and resolve the rest of it.

3 So let me hear from you all. Let me  
4 hear your thoughts in that regard, before  
5 I tell you what I -- that's what I kind of  
6 want you to do.

7 MR. BURSTEIN: It's helpful, but  
8 obviously, the next step would be to sell  
9 the property in partition.

10 THE COURT: Is there a necessity for  
11 that? Can that be --

12 MR. BURSTEIN: Well, Mr. Daoud can't  
13 live on it rent free.

14 THE COURT: Well, I'm not the  
15 mediator.

16 MR. BURSTEIN: I understand, but you  
17 asked me what --

18 THE COURT: I think the mediator has  
19 more power in this particular case.

20 Who do you want it to go back to?

21 MR. BURSTEIN: We use Buckstein.

22 MR. BRITO: No. We are not going  
23 back to Buckstein.

24 THE COURT: Who are the first one or  
25 two?

1 MR. BRITO: The second one was Larry  
2 Silverman, which we are not going to do.  
3 The first gentleman was Jerry Wald, from  
4 Murai Wald.

5 THE COURT: Is he a corporate guy?

6 MR. BRITO: He's a corporate guy and  
7 a litigator. He's done both. That was  
8 one of the things that sold us on having  
9 him as a mediator.

10 THE COURT: Well, you all don't like  
11 Buckstein. You all don't like who?  
12 Neither like Silverman.

13 MR. BURSTEIN: No, I can't say that.  
14 I'm good friends with Silverman. I said  
15 Buckstein is probably better.

16 MR. BRITO: No.

17 THE COURT: Tell me why the "no," as  
18 far as Buckstein.

19 MR. LANDEN: My thought, Your Honor,  
20 is there is tax issues here. There is  
21 potential accounting issues. There is all  
22 sorts of issues that I think a corporate,  
23 a purely corporate guy, is better.

24 Forgetting about who is right or  
25 wrong, whatever that resolution is, both



1 parties are going to look to say, how do  
2 we take care of this, to satisfy all of  
3 these other concerns that we have with  
4 taxes? That needs to be a corporate  
5 person, I think.

6 MR. BURSTEIN: I have a better  
7 solution.

8 If the Court is, as I hear it, the  
9 Court is going to divide the ownership of  
10 the company into two, now it's a question  
11 of whether, certainly --

12 THE COURT: What I was honestly  
13 thinking of doing was saying, you get 100  
14 shares. You got 50. You got 50. That's  
15 what I was thinking about doing. But I  
16 leave it to you all.

17 MR. BURSTEIN: If that's the case,  
18 then before we get a ruling, then maybe it  
19 might be better if Mr. Brito and I meet  
20 and see if we can come out with a global  
21 resolution.

22 We can wait for your ruling, and if  
23 the ruling is what it is, and we decide  
24 whether to go up on appeal or not or leave  
25 it down here. It's going to have some

1 very predictable consequences, and I just  
2 mentioned money. The company is going to  
3 be deadlocked. So we may end up --

4 THE COURT: I got it tell you, that's  
5 exactly what my thought process was,  
6 because that -- you all deserve to have  
7 that happen. I'm serious. I swear to  
8 God. That's exactly what I was thinking.

9 MR. BURSTEIN: But then we may end up  
10 having to bring back our initial  
11 complaint, which was to dissolve the  
12 company.

13 So essentially, if it's deadlocked,  
14 it gets dissolved, the property gets sold  
15 and there are tax consequences.

16 But I could get together with  
17 Mr. Brito or Mr. Landen and we could see  
18 if we can resolve the case, and maybe at  
19 that point, make a decision to roll the  
20 dice with another mediator.

21 Our concern with the mediation is  
22 that my client has limited funds, and I'm  
23 not here crying poverty, but it's a very  
24 expensive proposition. Unless it's going  
25 to get the case resolved, you know, we've

1           come this far. I'm not saying a mediator  
2           won't help, but whoever we get, I think  
3           there really needs to be a real desire to  
4           get everything resolved and to make it  
5           worth the expense.

6           THE COURT: Okay. I mean, I do  
7           agree, and that's kind of where I was  
8           nudging you guys to go. But what are we  
9           talking about in terms of the time frame  
10          for that?

11          MR. BURSTEIN: I could meet with him  
12          tomorrow.

13          MR. BRITO: We can start the dialogue  
14          tomorrow, Your Honor. I think the concern  
15          I have with where this is headed, if we  
16          do, in fact, split it 50/50, the immediate  
17          knee-jerk reaction to that is the  
18          plaintiff saying, well, we are going to  
19          dissolve the company. We are going to  
20          deadlock this, force the partition, force  
21          the sale.

22          THE COURT: Well, that's why I  
23          haven't said yet --

24          MR. BRITO: I understand that, and  
25          that's my concern. That's all I heard.

1 All I heard, as soon as you forecasted  
2 where you were ruling, you didn't hear --  
3 all you heard from the plaintiff's side  
4 was attempts to antagonize this further  
5 relationship by forcing a sale, forcing a  
6 partition.

7 I think this is just furthering the  
8 problem. I think what we are getting at  
9 is, maybe there is some 50/50 split that  
10 Your Honor can impose with certain  
11 restrictions, such as other conditions.  
12 Mr. Daoud lives in the property, since  
13 2006. There is no reason to force him to  
14 start paying rent now or be evicted or  
15 anything of the sort.

16 Ms. Hyman, with all due respect, she  
17 wasn't the 100 percent owner of the  
18 company, and the intention of what I think  
19 Your Honor may be gathering, the intention  
20 was that upon Mr. Daoud's passing, that  
21 she would then get 50 percent. Why force  
22 a sale now and put this whole property up  
23 for grabs at -- in almost a fire sale-type  
24 situation where the company is being  
25 dissolved?

1 I heard Mr. Burstein talk about  
2 expenses. If they seek to dissolve this,  
3 now we have litigation expenses and you  
4 are going to appoint a receiver, and that  
5 receiver is going to be four times as  
6 expensive as a mediator, if not 40 times.

7 What I would request, Your Honor, is  
8 if Your Honor is still inclined to go  
9 50 percent, I think it should be 50  
10 percent with certain conditions. And if  
11 you are asking us to model those  
12 conditions, I'm happy to talk to  
13 Mr. Burstein tomorrow and come up with a  
14 proposal, and maybe we can advance those  
15 conditions. And if we can't reach an  
16 agreement, Your Honor, then we will have  
17 dually proposed --

18 THE COURT: I'll make a decision --

19 MR. BRITO: I think that's what  
20 should happen. I'm already telling you  
21 where I'm headed, which is, let the  
22 current condition exist, but Ms. Hyman  
23 would still be a 50 percent owner. And in  
24 the event of a sale, she gets 50 percent  
25 of the proceeds. There is no question

1           about that. But as long as the property  
2           is owned by Bouganvilla, it should remain  
3           that way. It shouldn't be a forced sale  
4           from day one post-judgment. That's what's  
5           going to happen, let's be candid.

6           MR. BURSTEIN: Respectfully, Your  
7           Honor, if it is 50/50, then my client has  
8           an economic interest that is more than  
9           simply half the proceeds on the sale. If  
10          it's 50/50 there are consequences under  
11          the corporate law. It just is what it is.

12          That doesn't mean that it's  
13          deadlocked. They could still work with  
14          one another within that context. If it  
15          does become deadlocked, then it's a  
16          problem.

17          So what I'm suggesting, Your Honor --  
18          and I've heard Your Honor. I've offered  
19          to meet with Mr. Brito tomorrow. I can  
20          clear my week to see, make sure that we  
21          spend as much time as we need to on this  
22          and try to get it resolved.

23          50/50 has consequences. I think  
24          there is a limit to the Court's equity in  
25          terms of what it can do.

1 THE COURT: Well, there is also, you  
2 know, are conditions that can be put on  
3 any final judgment that I were to enter.  
4 So you know, it's not done yet. I'm going  
5 to ask you all to get together and talk  
6 about it. Instead of, you know, putting  
7 up roadblocks, take down some roadblocks  
8 and see if we can, you know, get it worked  
9 out, please.

10 Thank you all.

11 MR. BRITO: Your Honor, on behalf of  
12 my client, I want to thank you for your  
13 time, and everybody that's in the room.

14 MR. BURSTEIN: I appreciate it.  
15 Thank you.

16 (Thereupon, the proceedings were  
17 concluded at approximately 8:53 p.m.)

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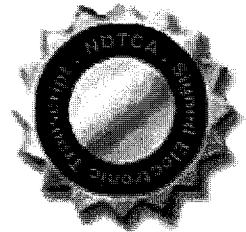
REPORTER'S CERTIFICATE

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

I, Rinele Abramson, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 22nd day of January, 2014.

*Rinele Abramson*



\_\_\_\_\_  
Rinele Abramson, Court Reporter