

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN
AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 12-44972 CA 05

KELLY HYMAN,
a Florida resident,

Plaintiff,

vs.

ARNOLD DAOUD,
a Florida resident, and
BOUGANVILLA INVESTMENTS, INC.,
a Florida corporation, TITAN SIGNS,
INC., a Florida corporation,

Defendants.

_____ /

Hearing Excerpt

Miami-Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130
Tuesday, June 25, 2013
2:25 p.m. - 3:45 p.m.

Hearing 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

On behalf of the Plaintiff:

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

On behalf of the Defendants:

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

1 (The following is an excerpt of these
2 proceedings.)

3 * * * * *

4 MR. HYMAN: I'll let them finish, but
5 I have an issue, Your Honor, just so we
6 are clear.

7 MR. BURSTEIN: We've asked them for
8 names of potential witnesses, one of them
9 being Constantine. He is one of the
10 tenants on the property. For some reason,
11 we can't get this individual's name. I
12 don't know why we can't get his full name.
13 But that's really the only discovery
14 issue.

15 THE COURT: That's the name of --
16 you've listed Mr. Constantine as a witness
17 or no?

18 MR. BRITO: No.

19 THE COURT: Okay.

20 Is this person paying, you know,
21 rent, not paying rent? What's the
22 situation there?

23 MR. BURSTEIN: We believe he is
24 providing services, which is going to be
25 relevant to the whole -- I mean, look, we

1 are going to be given numbers from them.
2 I understand the numbers are going to be
3 under oath, but there's an old saying:
4 Verify.

5 THE COURT: Trust, but verify.

6 MR. BURSTEIN: Trust, but verify.

7 We are going to -- we anticipate that
8 we are going to have some issues.

9 So Mr. Constantine, or whatever his
10 name is, I understand he is living there
11 rent free, or there is something going on
12 that he's not paying his fair share of
13 rent, and that's going to be relevant.

14 I've been asking for his name now for
15 a couple of weeks.

16 THE COURT: All right. Well --

17 MR. BRITO: Just so I can -- I won't
18 take too long.

19 Mr. Constantine is the person who
20 renders lawn services, pool services,
21 handyman services on the property.

22 Two things. Number one, if they want
23 the name, we can engage in discovery, but
24 I am not going to engage in this informal
25 discovery process where it's: Tell me

1 this, tell me that. No. You need to do
2 something. They obviously know how to get
3 it.

4 Number two, I really don't think it's
5 necessary for us or the Court to sit
6 through a deposition and talk to a man
7 about how many weeds he pulls and how many
8 times he changes the chlorine in the pool.

9 What purpose could his testimony lend
10 to the general issue in dispute as to who
11 is the owner of the property?

12 If, in fact, at a later time, there
13 is an issue of damages, Your Honor, that's
14 for another day.

15 THE COURT: There is not a motion
16 before me, so I'm hesitant to rule on
17 anything that's not before me.

18 MR. BURSTEIN: Could I just note one
19 thing, Your Honor?

20 THE COURT: I will say this. I could
21 see -- I could certainly see under the
22 facts of this case the potential relevance
23 of his testimony.

24 MR. BRITO: And the other thing -- I
25 understand, Your Honor.

1 THE COURT: We will cross that bridge
2 when we get to it.

3 MR. BURSTEIN: I just want to address
4 one thing, and that was Mr. Brito's
5 statement, that he is not going to engage
6 in informal exchange of information.

7 I want to just remind Mr. Brito that
8 when he found some fault with our
9 interrogatory answers, he did not have to
10 file a motion for better answers. I
11 volunteered to provide him better answers.

12 So you know, if that's how he wants
13 to play, not that I'm going to change the
14 way I practice, I just think he should be
15 somewhat appreciative of the fact that
16 I've agreed to give him information
17 without him having to file anything, so he
18 certainly should just be able to give me
19 the guy's name.

20 I don't understand what the big
21 secret is with this individual.

22 THE COURT: Well, you know --

23 MR. BRITO: I don't want to sling any
24 further mud, Your Honor. If I got the
25 responses I was entitled to in the

1 beginning, we wouldn't have had to have
2 this conversation.

3 But putting that aside, Your Honor,
4 the other discovery issue that we are
5 going to have is in relation to the
6 deposition Peter Kircher, who is the
7 attorney who is involved in some aspects
8 of the discussions regarding the
9 prenuptial agreement.

10 Your Honor, originally there was a
11 motion for protective order, that the
12 plaintiffs filed. Your Honor denied it
13 and afforded me the opportunity to conduct
14 the deposition.

15 I conducted the deposition.
16 Mr. Kircher was reluctant to answer any
17 questions until Your Honor made a
18 determination as to whether or not there
19 was a waiver of the attorney/client
20 privilege, considering the fact that both
21 Ms. Hyman and Judge Hyman had stated in
22 open court that they objected to
23 Mr. Kircher answering any of my questions.

24 So I understand Mr. Kircher's
25 situation. He's basically going to put it

1 on your lap, if you will, to make a
2 decision as to whether or not there is
3 waiver, whether or not he can answer the
4 question.

5 So basically, the deposition was
6 halted at that point, Judge.

7 MR. BURSTEIN: Again, let me respond
8 to that. Mr. Kircher's deposition was
9 taken, I believe, on May 10th. Discovery
10 is cut off on June 30th. He hasn't even
11 filed a motion.

12 MR. BRITO: I said that's what I'm
13 going to be doing.

14 MR. BURSTEIN: I'm anticipating that
15 when discovery closes, it's going to close
16 with the exception of whatever documents
17 it is that he owes me.

18 But under the rules of this Court's
19 order, it was incumbent upon him to do
20 something once Mr. Kircher decided he was
21 going to invoke the privilege. He hasn't
22 done anything.

23 So what's happening now is that we
24 are going to end up in a discovery
25 free-for-all after the discovery cut off.

1 Your Honor, that's not fair to my client.

2 We have a trial date. I don't know
3 what the Court is going to do on the
4 summary judgment, but at least for now, we
5 have a trial date on December 2nd. And I
6 certainly don't want to be engaged in
7 discovery up through the trial date.

8 We have a June 30th cut off. I don't
9 know why he hasn't filed anything yet.

10 THE COURT: Well, you know, as soon
11 as I see something filed, I'll, you know,
12 rule on it at that particular time.

13 MR. HYMAN: And Your Honor, I have
14 another issue.

15 MR. BRITO: And Your Honor, I have a
16 real problem with Judge Hyman addressing
17 this Court.

18 MR. HYMAN: I'm talking about my own
19 issues.

20 MR. BRITO: May I finish?

21 I have a problem with this, Judge.
22 This is now becoming a pattern, that Judge
23 Hyman comes to a hearing and has something
24 to say. He is not a party to this case.
25 He is not an attorney in this case. He is

1 not relevant to these proceedings.

2 To have him come in and inject his
3 thoughts and his disagreements with how
4 things are progressing, I really have an
5 issue. The first couple of times, you
6 know, I kept my mouth shut, but now it's
7 every hearing.

8 MR. BURSTEIN: Then, Your Honor, I'll
9 raise the issue. The issue is the
10 following.

11 After we finished up the hearing on
12 the motion to disqualify, Mr. Brito said
13 -- at that time, I think Your Honor was
14 almost ready to entertain the ownership
15 issue, and Mr. Brito said: No, I need
16 additional discovery. I need depositions
17 from your client, Ms. Hyman, and her
18 husband.

19 Within days, I got them dates for the
20 depositions. No response.

21 Finally, weeks later, he takes my
22 client's deposition. And then I
23 understand that he scheduled Judge Hyman's
24 deposition. And Judge Hyman -- I wasn't
25 given notice of it, so Judge Hyman can

1 explain better what happened with that.

2 MR. HYMAN: Well, the reason it
3 relates to me, Your Honor --

4 THE COURT: Let me just ask you this.
5 Is there a problem, as far as when it's
6 scheduled or is that --

7 MR. HYMAN: Just the opposite.

8 MR. BRITO: Mr. Burstein, contrary to
9 what he just said to the Court, didn't
10 give me dates. He said: I don't
11 represent Mr. Hyman. You are going to
12 have to deal with Judge Hyman directly,
13 which I did, and I sent Judge Hyman an
14 e-mail. I said: Please give me dates.
15 And he did. I coordinated with him and we
16 scheduled the date.

17 It was for yesterday. Today is
18 Tuesday. It was for yesterday. On
19 Friday, I contacted Judge Hyman by e-mail,
20 I said: Judge Hyman, I've impressed upon
21 my client that we do not need to proceed
22 with your deposition. I want to give you
23 the heads-up that we are not moving
24 forward.

25 I then get an e-mail from Judge Hyman

1 voicing his displeasure of how
2 discourteous I was for scheduling a
3 deposition and cancelling it. I said: I
4 thought I was actually doing you a
5 professional favor by cancelling it,
6 because sometimes your clients want you to
7 do things, and sometimes as an attorney,
8 you think better.

9 I impressed upon my client that I
10 didn't need to travel up to Palm Beach to
11 take Judge Hyman's deposition and take his
12 time away from his cases.

13 He was concerned about that, and he
14 said: Well, that was discourteous. I
15 have all these cases that I'm handling,
16 and you've now taken me away from my
17 cases.

18 He's here at every hearing, Your
19 Honor, so I have a little bit of
20 difficulty with that argument that I'm
21 being discourteous by giving him one
22 business day heads-up notice, that:
23 Listen, Judge, don't worry about it. I'm
24 not going to take your deposition.

25 And his response: You are not

1 entitled to take it in the future.

2 I didn't even respond, and I'm not
3 intending to proceed with the deposition.
4 That's it, Judge.

5 THE COURT: That was my only question
6 that I was going to ask.

7 Do you intend to take it?

8 MR. BRITO: This is mudslinging,
9 Judge, to tell you that he thinks what I
10 did, he didn't approve of. That's it.
11 That's all this is. It has nothing to do
12 with the case.

13 MR. HYMAN: Your Honor, this was
14 nothing but harassment. I gave him a date
15 two weeks ago. They waited to the
16 business day before, so that I couldn't
17 have things scheduled. His excuse was
18 that they do not want to delve in my
19 personal life and personal aspects of my
20 life.

21 Now, the reason I stood up was not
22 that, but his excuse, he's not being
23 honest with the Court.

24 But the reason I stood up, if there
25 is a discovery extension, don't include

1 me. I've given him two dates. They've
2 chosen not to take my deposition.

3 THE COURT: He just said that's not
4 going to happen. He just said it on the
5 record.

6 MR. HYMAN: That's why I stood up
7 initially, but he keeps misrepresenting
8 what occurred.

9 (This concludes this excerpt.)

10 * * * * *

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 19th day of February, 2015.

Rinele Abramson



Rinele Abramson, Court Reporter