

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 WILLIAM H. MALOOF,

Case No. 1:07CV1902

Cleveland, Ohio

5 Plaintiff,

Thursday, July 26, 2007

6 vs.

7 BT COMMERCIAL CORPORATION,
8 et al.,

9 Defendants.

10 TRANSCRIPT OF PROCEEDINGS
11 BEFORE THE HONORABLE CHRISTOPHER A. BOYKO
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the Plaintiff:

David C. Eisler, Esq.

15 For Defendants BT Commercial
16 and others:

David C. Layden, Esq.

17 For Defendant Sues:

David S. Almeida, Esq.

18 For Defendant Amerigas:

John A. Mugnano, Esq.

19 For Defendat Rudd and others:

Ronald M. McMillan, Esq.

20 For Defendant WHM and others:

Mariann E. Butch, Esq.

21 For Defendant Richard Jacobs:

Thomas R. Lucchesi, Esq.

22 For Defendant Seminatore:

Catherine Fazio, Esq.

and

Alan Petrov, Esq.

23 Court Reporter:

Bruce A. Matthews, RDR-CRR

United States District Courthouse

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Cleveland, Ohio 44113

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24 Proceedings recorded by mechanical stenography, transcript
25 produced by computer-aided transcription.

1 THE CLERK: In the matter of William H. Maloof
2 versus BT Commercial Corporation, case number 1:07CV1902.

3 THE COURT: Thank you, Marsha. The Court set
4 this hearing on a motion for reconsideration of order
5 denying motion to transfer the case and a show cause order
6 for contempt of Court.

7 I do have a sign-in sheet. Let's see who is
8 present. Mr. William Maloof. Mr. Maloof. Mr. David
9 Eisler.

10 Mr. David Almeida.

11 MR. ALMEIDA: Almeida, present. Almeida.

12 THE COURT: Almeida, thank you. John Rudd?

13 MR. MCMILLAN: I'm here for John Rudd, Ron
14 McMillan.

15 THE COURT: Okay. Thank you. John Mugnano.

16 MR. MUGNANO: Present, Your Honor.

17 THE COURT: Thank you. Mariann Bubey, is it?

18 MS. BUTCH: It's Butch.

19 THE COURT: I'm sorry. I can't see this here.
20 How do you spell that, ma'am?

21 MS. BUTCH: B U T C H.

22 THE COURT: Mr. Alan Petrov.

23 MR. PETROV: Here in the back, Your Honor.

24 THE COURT: Catherine Fazio?

25 MS. FAZIO: Here.

1 THE COURT: Tom Lucchesi, is that correct?

2 MR. LUCCHESI: Yes, Your Honor.

3 THE COURT: David Layden?

4 MR. LAYDEN: Yes, Your Honor.

5 THE COURT: All right. Mr. Eisler and
6 Mr. Maloof, would you please go to the podium?

7 Mr. Maloof, I'm going to start with you. Did
8 you read the motion filed by Mr. Eisler on your behalf, that
9 is, the motion to reconsider order denying motion to
10 transfer the case?

11 MR. MALOOF: Yes.

12 THE COURT: And did you approve of this
13 motion? It's a yes or no answer.

14 MR. MALOOF: Yes.

15 THE COURT: And did you discuss the motion
16 with Mr. Eisler before it was filed?

17 MR. MALOOF: Yes.

18 THE COURT: Okay. Did you take part in any
19 way in the case of Jacobs versus Jacobs?

20 MR. MALOOF: No.

21 THE COURT: Did you have any communication
22 with anyone at all, counsel or the parties?

23 MR. MALOOF: No.

24 THE COURT: Okay. Thank you, Mr. Maloof.

25 Mr. Eisler, first question: Did you ever appear in front of

1 me on any previous case?

2 MR. EISLER: No, Your Honor. Well, very
3 briefly in '06, 1281378.

4 THE COURT: And what did that case involve?

5 MR. EISLER: Which was Maloof versus BT
6 Commercial, which was later transferred to Judge Aldrich.

7 THE COURT: Okay. All right. But nothing
8 beyond that?

9 MR. EISLER: No, Your Honor.

10 THE COURT: All right. And you've been
11 practicing law for how long now, Mr. Eisler?

12 MR. EISLER: Since 1980, Your Honor.

13 THE COURT: Okay. Very good. Mr. Eisler, I'm
14 going to go ahead and allow you to argue your motion, and
15 then I have a few questions for you afterwards.

16 MR. EISLER: All right. Very good, Your
17 Honor. Your Honor, the motion to transfer is keyed to two
18 points as I've stated in my brief. I suppose the most I can
19 do is reiterate what was in the brief. If you would like me
20 to save time, I can simply stand on the brief as it is
21 stated, but remark that any remarks pointing to or
22 considering the Jacobs v. Jacobs case was keyed only to
23 appearances, only to appearances, and nothing more than
24 appearances.

25 THE COURT: Okay.

1 MR. EISLER: And there was absolutely no
2 intent whatsoever to suggest that there was anything else
3 other than appearances.

4 THE COURT: All right. I have some questions
5 for you in that regard. First of all, I understand that I
6 put a marginal order on denying the transfer. Were you
7 aware that Judge Aldrich refused to take the case?

8 MR. EISLER: No, I wasn't, Your Honor.

9 THE COURT: Okay. And did you ever think
10 about contacting our chambers and asking a law clerk if she
11 refused or not?

12 MR. EISLER: No, Your Honor.

13 THE COURT: Okay. And of course, as you know,
14 you cited our local rule saying that it must be with the
15 concurrence of the receiving Judge to transfer the case.

16 MR. EISLER: Yes, Your Honor.

17 THE COURT: So I will tell you right now,
18 Mr. Eisler, that I immediately sought to have this case
19 transferred to Judge Aldrich, and she simply refused to take
20 it. And had you at least made one phone call, we could have
21 avoided all this nonsense.

22 Now, even the title of your motion is
23 misleading, because as you know, you have a motion to
24 reconsider order denying motion to transfer the case, and
25 you spend half of your motion telling me how partial and

1 biased I am in favor of Richard Jacobs.

2 If you wanted me recused, why didn't you ask
3 for it?

4 MR. EISLER: Your Honor, I was not spending
5 time suggesting that you were partial to Mr. Jacobs. I was
6 suggesting that there might be an appearance of partiality.

7 THE COURT: And we're going to get to that.
8 We're going to get to that.

9 Let me ask you several questions. Were you of
10 counsel of record of Jacobs versus Jacobs?

11 MR. EISLER: No, Your Honor.

12 THE COURT: Did you participate in court
13 conferences?

14 MR. EISLER: No, Your Honor.

15 THE COURT: Did you communicate with either
16 David Jacobs or Richard Jacobs during their lawsuit?

17 MR. EISLER: No.

18 THE COURT: How about John or Marie Jacobs?

19 MR. EISLER: No.

20 THE COURT: Did you have any contact with any
21 attorney for Richard Jacobs or David Jacobs during the
22 pendency of that suit?

23 MR. EISLER: No, Your Honor.

24 THE COURT: Were you aware that the Court
25 never rendered an opinion on the merits of the Jacobs case?

1 MR. EISLER: Yes, I was.

2 THE COURT: Were you aware this Court never
3 took any testimony from anyone in the Jacobs case?

4 MR. EISLER: Yes. I reviewed the docket.

5 THE COURT: Were you aware the Court never
6 made any ruling on the credibility of anyone in the Jacobs
7 case?

8 MR. EISLER: Yes.

9 THE COURT: Were you aware the Court had no
10 input whatsoever on the language in the Jacobs dismissal
11 entry?

12 MR. EISLER: No, Your Honor.

13 THE COURT: Were you aware that the settlement
14 language was arrived at between the parties and their
15 learned counsel after months and months of discovery and
16 intensive negotiations?

17 MR. EISLER: I was aware that there was
18 discovery. I was not aware -- I was aware that there were
19 negotiations because there was a stay of discovery.

20 THE COURT: And were you aware that there were
21 concessions made on both sides?

22 MR. EISLER: That I was not aware of.

23 THE COURT: And you are familiar, of course,
24 with Federal Rule of Civil Procedure 11(b)(3)?

25 MR. EISLER: Yes.

1 THE COURT: About signing documents and the
2 basis for that? Are you?

3 MR. EISLER: Yes.

4 THE COURT: And you are generally, of course,
5 aware of the Code of Professional Responsibility, are you
6 not?

7 MR. EISLER: Yes.

8 THE COURT: All right. Let's break this down.
9 What was the Court's role in the "ceremonial humiliation of
10 David Jacobs"?

11 MR. EISLER: The only role that the Court
12 played in that was that the Court issued the negotiated
13 order.

14 THE COURT: What was the Court's role in the
15 trumpeting vindication of Richard Jacobs' probity?

16 MR. EISLER: That the Court signed the order.

17 THE COURT: What was the Court's role in the
18 crushing humiliation of David Jacobs?

19 MR. EISLER: That the Court signed the order.

20 THE COURT: And, therefore, you are relying
21 solely on the language of the dismissal entry stating in
22 your motion that you want to, "obviate an evil, the
23 perception of partiality."

24 MR. EISLER: That's right, Your Honor.

25 THE COURT: Do you have the dismissal entry in

1 front of you, Mr. Eisler?

2 MR. EISLER: Yes, I did.

3 THE COURT: Please read the last sentence of
4 the dismissal entry.

5 MR. EISLER: "The parties have advised the
6 Court that the dispute had been resolved."

7 THE COURT: What does that mean to you? What
8 does that mean to you?

9 MR. EISLER: That it was an agreed entry.

10 THE COURT: So by looking at this dismissal
11 entry and reading that last sentence, explain how you
12 gleaned from that Court bias, partiality, and the like.

13 MR. EISLER: I did not glean that the Court
14 itself was partial. I gleaned that there might be a
15 perception of partiality gathered from the language in the
16 entry by some parties.

17 THE COURT: Doesn't that perception have to be
18 reasonable, Mr. Eisler?

19 MR. EISLER: There has to be --

20 THE COURT: Or are we on the "anything's
21 possible" argument?

22 MR. EISLER: I'm not saying that anything is
23 possible, Your Honor. I am saying that given the language
24 in the entry, it might be perceived that the Court approved
25 the language of the order.

1 THE COURT: Well, I certainly did approve the
2 language of the order. I don't think there's any denying
3 that. But after the parties have negotiated for months and
4 months and David Jacobs gave his okay to Mr. Schiller,
5 competent counsel from Walter & Haverfield, to go ahead and
6 have the Court enter that entry, are you saying that neither
7 Mr. Schiller nor Mr. David Jacobs are competent enough to
8 protect David Jacobs' interests?

9 MR. EISLER: No, I'm not, Your Honor.

10 THE COURT: Well, I think you are. It's not
11 only a slap in the face to the Court, I think it's a slap in
12 the face to them, too, that somehow they have failed in
13 their own obligations.

14 I don't see Mr. Schiller here, but if he were,
15 I would certainly give him an opportunity to be heard, and I
16 think he would have a few things to say about your motion
17 and what it says about him and David Jacobs. In fact, if I
18 were David Jacobs, I would be bouncing off the walls right
19 now.

20 The point is, Mr. Eisler, you had no idea what
21 happened in this case whatsoever, and you take language from
22 a dismissal entry where the final sentence says, "The
23 parties have advised the Court this matter has been
24 resolved," and try to intimidate me, bully me, cause me
25 to -- God, that's right, I am partial in this case, and any

1 reasonable person can see that.

2 I'm trying to find out what in God's name was
3 going through your mind when you put that kind of language
4 in this motion. That's what I want to know.

5 MR. EISLER: Your Honor, I was suggesting that
6 there might be a perception of partiality arising from the
7 language since the language was fairly strong, and that
8 since the motion to transfer had been denied, I was
9 attempting to amplify reasons why the motion -- why the case
10 should be transferred.

11 THE COURT: And, of course, you didn't try and
12 find out even why. I'm under no obligation to explain in
13 detail why it wasn't transferred, but you certainly had the
14 opportunity to make one phone call to see whether Judge
15 Aldrich was willing to accept it.

16 MR. EISLER: I did make a call to Judge
17 Aldrich.

18 THE COURT: Before this motion was filed?

19 MR. EISLER: And I heard that it was in
20 consultation.

21 THE COURT: I'm sorry?

22 MR. EISLER: I managed to speak to the clerk.

23 THE COURT: When? Before this motion was
24 filed or after?

25 MR. EISLER: Before. And I was attempting to

1 get the Court to rethink the transfer.

2 THE COURT: If you knew that and you know the
3 rule which says it must be with the concurrence of the
4 receiving Judge, how could I? How could I? You expect me
5 to order Judge Aldrich to accept the case?

6 MR. EISLER: He did not indicate in any way
7 that Judge Aldrich had refused the case.

8 THE COURT: Well, that's my point, isn't it?
9 You could have called our chambers and said, "Did Judge
10 Aldrich accept? Would she? Can you give me some
11 information?"

12 Be happy to. The first thing I tried to do
13 was transfer the case, believe me. But once I get a "no"
14 from Judge Aldrich, it stops. There's nothing I can do, nor
15 the Chief Judge to order the transfer of that case.

16 So when I first get this motion, I'm thinking
17 what is going on? Does Mr. Eisler have some secret
18 information that I don't? Who's he been talking to?

19 Mr. Eisler, before you file a motion that
20 questions this Court's partiality or impartiality, however
21 you want to phrase it, you better have your facts straight,
22 and you didn't. You didn't do your job of investigating
23 before filing this motion which should have been a motion to
24 recuse on the basis of partiality. However you want to spin
25 it, you've got some very strong language in here which I

1 quoted, and I can't ignore and I won't ignore.

2 Now, since we have counsel here in this
3 courtroom, anyone else want to be heard on the motion?
4 Anyone else?

5 (No response.)

6 THE COURT: All right. The motion for
7 reconsideration is overruled because the receiving Judge,
8 Judge Aldrich, has refused to accept the case, and under our
9 local rule, it must be with the concurrence of the receiving
10 Judge. Barring that, the case cannot be transferred.

11 I will issue a written opinion which will
12 follow on the contempt of Court, both for Mr. Maloof and
13 Mr. Eisler.

14 Anything else, anyone?

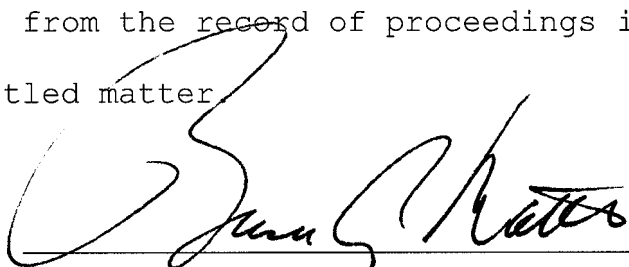
15 (No response.)

16 THE COURT: We are adjourned.

17 (Hearing concluded at 3:28 p.m.)

18 C E R T I F I C A T E

19
20 I certify that the foregoing is a correct
21 transcript from the record of proceedings in the
22 above-entitled matter.

23
24 
25 Bruce A. Matthews, RDR-CRR

7/30/07
Date