

EXHIBIT B

1 UNITED STATES DISTRICT COURT
2 IN THE NORTHERN DISTRICT OF CALIFORNIA
3

4 MICHAEL TOSCHI AND TRACY
5 TOSCHI,

6 Plaintiffs,

7 vs.

No. C-07-3625 MMC

8 COUNTY OF SAN MATEO, DON
9 DALLIMONTI, RHONDA
10 DALLIMONTI, NEIL CULLEN,
BRIAN LEE, DAVID WEIDNER, and
DOES 1 through 50, inclusive,

**CERTIFIED
COPY**

11 Defendants.
12 _____/

13
14 DEPOSITION OF MICHAEL TOSCHI

15 Tuesday, May 13, 2008

16 Volume II, Pages 176 - 278

17 Reported by: R. Chayo Ayon, CSR # 12372
18

19 **The original of this deposition
20 is in our office for signature
and will be sealed in 35 days
unless otherwise notified.**

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22 Uccelli & Associates
23 Certified Shorthand Reporters
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A P P E A R A N C E S

FOR THE PLAINTIFFS MICHAEL TOSCHI AND TRACY TOSCHI:

GEARINGER LAW GROUP
BY: BRIAN GEARINGER, ESQ.
825 Van Ness Avenue, Fourth Floor
San Francisco, California 94109
(415) 440-3175

FOR THE DEFENDANTS COUNTY OF SAN MATEO, NEIL CULLEN,
BRIAN LEE, and DAVID WEIDNER:

OFFICE OF MICHAEL P. MURPHY,
COUNTY COUNSEL SAN MATEO COUNTY
BY: V. RAYMOND SWOPE, DEPUTY COUNTY COUNSEL
HALL OF JUSTICE AND RECORDS
400 County Center, Sixth Floor
Redwood City, California 94063-1662
(650) 363-4759

FOR THE DEFENDANTS DON DALLIMONTI AND RHONDA
DALLIMONTI:

CAMPBELL, WARBURTON, FITZSIMMONS, SMITH,
MENDELL & PASTORE
BY: LISA JEONG CUMMINS, ESQ.
64 West Santa Clara Street
San Jose, California 95113-1806
(408) 295-7701

ALSO PRESENT:

MARK MARELICH
RHONDA DALLIMONTI

1 BY MR. SWOPE:

2 Q. You alleged -- I'm sorry.

3 You alleged on September 28, 2006, that
4 Mr. Marelich and Mr. Dallimonti were friends. So how
5 do you know that Mr. Marelich and Mr. Dallimonti were
6 friends?

7 MR. GEARINGER: As of today?

8 MR. SWOPE: Yes.

9 THE WITNESS: How do I --

10 BY MR. SWOPE:

11 Q. No. I'm going to ask the question again.

12 How did you know in September of 2006 that
13 Mr. Marelich and Mr. Dallimonti were friends?

14 A. Through conversations that I had with
15 different county employees witnessing Mark and Don
16 speaking to each other, having Mark and the county
17 respond to some of the requests by Don within minutes
18 when, if any other neighbor requested the county to
19 attend to something, it wouldn't happen for weeks.

20 I don't know. I mean, just a whole variety
21 of factors contributed to my belief of him being
22 friends with Don.

23 Q. Let's go through those factors, Mr. Toschi.

24 What other factors do you have to support
25 your claim that in September of 2006 that Mark Marelich

1 and Don Dallimonti were friends?

2 MR. GEARINGER: In addition to what you've
3 already stated.

4 THE WITNESS: I don't have anything to add to
5 that.

6 BY MR. SWOPE:

7 Q. But you said there were other factors that
8 lend itself to your belief that as of September 28,
9 2006, Mark Marelich was a friend of Don Dallimonti.

10 And what are those factors?

11 A. The factors that I just mentioned.

12 Q. You said that there were other factors. What
13 other factors do you have beyond which you've testified
14 to to support your belief that Mark Marelich and Don
15 Dallimonti were friends as of September 28, 2006?

16 A. I don't really have the ability to describe
17 the other factors right now.

18 Q. That's because you really don't know, do you?

19 A. I really don't know what?

20 Q. You really don't know whether or not Don
21 Dallimonti and Mark Marelich were friends back in
22 September 2006 in terms of your personal knowledge, do
23 you?

24 MR. GEARINGER: Objection. Argumentative.

25 Go ahead and answer.

1 THE WITNESS: Well, to say that I know that
2 they were friends or that I perceived that they were
3 friends, I don't know how you would define "friends,"
4 but they knew each other, and they had conversations,
5 and I witnessed them speaking to each other.

6 Some very coincidental situations happened
7 that unless they spoke to each other and maintained
8 some sort of friendly relationship, Don and Mark and I
9 wouldn't have had encountered.

10 One being the time that Don came out the day
11 that I met him up on the road.

12 BY MR. SWOPE:

13 Q. What day that you met him on the road?

14 A. Well, actually, I met Mark several times, but
15 one day Don came out.

16 He happened to come out right at the moment
17 that we came to the property and interrupted our
18 conversation with, you know, seemed to me information
19 that he already knew what was happening, what was going
20 on and what was going to be discussed.

21 That kind of thing.

22 Q. Okay. How do you know? Do you have any
23 personal knowledge that Mr. Dallimonti knew what was
24 going to be discussed before it was discussed?

25 A. On that particular incident?

1 Q. Yes.

2 A. Well, my personal knowledge is I was there
3 that day when it happened.

4 Q. I'm asking you what personal knowledge do you
5 have that Don Dallimonti knew what the purpose was and
6 what was going to transpire before he got there?

7 MR. SWOPE: Excuse me. Can you read the
8 question?

9 (Record read.)

10 THE WITNESS: I knew that because of the way
11 Don approached Mark and I and what he said. And so
12 that gave me the information to know that he knew what
13 was happening. And so they must have had a
14 conversation.

15 I didn't hear their conversation, if that's
16 what you're asking me.

17 BY MR. SWOPE:

18 Q. So you have no personal knowledge as to
19 whether Don Dallimonti actually knew what the meeting
20 was about on this incident that occurred -- the meeting
21 with Mark Marelich?

22 MR. GEARINGER: Objection. Asked and
23 answered.

24 Go ahead.

25 THE WITNESS: I have the same answer as I had

1 before.

2 BY MR. SWOPE:

3 Q. Now, you see, Mr. Toschi, we're trying to get
4 discovery from you. I don't want your attorney
5 coaching you. I don't want you to take cues from your
6 attorney.

7 Your attorney is lodging objections that are
8 appropriate to lodge to preserve the record, and he's
9 preserving his objections for the purposes of trial.

10 A. Uh-huh.

11 Q. Is that a yes?

12 A. I understand.

13 Q. Thank you.

14 However, this is discovery, and this is a
15 deposition. And I have the right to ask you questions
16 concerning certain matters that are very key to this --
17 the whole case. And that's why we're preserving your
18 testimony.

19 But don't think just because your attorney is
20 making an objection that you don't have an obligation
21 to answer. And don't take any cues as being coached on
22 the record as to how to answer these questions.

23 Do you understand that?

24 A. Yes.

25 Q. So I think it's important that you answer the

1 question notwithstanding the objection unless your
2 attorney instructs you not to answer.

3 Is that fair?

4 A. Can you say that one more time.

5 Q. Okay. You have an obligation to answer the
6 questions notwithstanding your attorney's objection
7 unless your attorney instructs you not to answer.

8 Do you understand that?

9 A. Yes.

10 Q. Okay.

11 MR. GEARINGER: And there's no coaching going
12 on, Raymond. You're asking the same question. If you
13 didn't like the first answer, he's not going to change
14 it just because you ask it again.

15 MR. SWOPE: Mr. Gearinger, with all due
16 respect, I know that you don't coach witnesses.

17 But notwithstanding the fact that you don't
18 coach witnesses, Mr. Toschi is taking cues from your
19 objections that you have a right to make. And he is
20 altering his testimony or his response based upon the
21 objections that you make.

22 And that's a huge distinction. I'm not
23 accusing you of any of that. I never would.

24 MR. GEARINGER: I appreciate that, Raymond.
25 I disagree with the second part of your contention.

1 But be that as it may, proceed.

2 BY MR. SWOPE:

3 Q. But I think, Mr. Toschi, you understand that
4 taking a direct cue -- and I can show you that you
5 have -- from Mr. Gearinger's objections that it's
6 inappropriate, and you just need to independently
7 answer the question that's been asked. Okay?

8 A. Okay.

9 Q. Because otherwise, we're going to be here a
10 lot longer than you want to be. Given the first
11 deposition, we didn't get very far because of this, and
12 that doesn't help anyone.

13 A. Because of what?

14 Q. Well, it took you 30 pages to appreciate what
15 a "berm" was in your previous deposition, and I also
16 talked to you off the record about a berm.

17 And you had been using the term "berm." And
18 you even used the term "berm" in the tape that we
19 talked about in September of '06.

20 And yet suddenly you didn't know what a
21 "berm" was and asked me to define a "berm."

22 And that's not helpful to the discovery
23 process, Mr. Toschi.

24 So let's have a fresh start and answer the
25 questions to the best of your ability, and we can have

1 an efficient deposition. Okay?

2 Now, there was a meeting that you had with
3 Mr. Marelich about drainage issues on upper Park Road
4 when Mr. Dallimonti appeared that you've referred to in
5 your testimony; correct?

6 A. Yes.

7 Q. And this was a meeting that was in April or
8 so of 2006; correct?

9 A. I don't recall the date.

10 Q. And the question is, you didn't hear
11 Mr. Marelich speaking with Mr. Dallimonti that this
12 meeting was going to take place regarding your
13 drainage, did you?

14 A. Mr. Dallimonti -- I have witnessed
15 Mr. Dallimonti speaking with Mr. Marelich.

16 Q. That wasn't the question, sir.

17 The question was in relation to this meeting
18 that took place on or about April 27 of 2006, you
19 didn't hear Mr. Marelich speaking with Mr. Dallimonti
20 beforehand regarding what was going to happen during
21 the course of the meeting with you, did you?

22 A. Well, I did hear him speaking with
23 Mr. Marelich before that happened. So my witness of
24 Mark and Don's relationship and friendship, if that's
25 what you're getting at, was established before we met

1 put me through.

2 Q. Joe is acquiescing to some abuse that the
3 county is putting you through?

4 A. It's kind of a chain of events of me doing
5 the work, the Dallimontis complaining about it, and Joe
6 getting involved.

7 It just kept moving up the chain of command.
8 And it seems like it started there. It seems that was
9 sort of the point of misdoings. So I guess that's why
10 he made the comment.

11 Q. What knowledge do you have?

12 MR. GEARINGER: Why don't you go ahead and
13 exhaust all the questions on the six to eight months,
14 and we'll call it a day.

15 I don't want you to quit in the middle of a
16 line of questioning.

17 MR. SWOPE: But I may have more than just a
18 couple minutes, and I don't want to hold you up. So
19 why don't we adjourn now.

20 And I think what we're going to need is
21 probably about six more hours of questioning. The way
22 that the questioning has gone and the material that we
23 have from discovery and the nature of the case has
24 necessitated a minimum of that much time. And we
25 haven't even gotten to Ms. Cummins' questions.

1 MS. CUMMINS: And we're still waiting for
2 more documents.

3 MR. GEARINGER: I just want to put on the
4 record that we're stopping now because we're at the
5 seven-hour mark for the deposition of Mr. Toschi.

6 And we've agreed amongst counsel that counsel
7 for the defendants are going to make a proposal
8 regarding continuing the deposition for some further
9 length of time and that counsel for the Toschis will
10 respond, and we'll either come to an agreement or, if
11 necessary, the defendants may have to bring a discovery
12 motion.

13 MR. SWOPE: And we very well may if we don't
14 come to an agreement. We'll meet and confer. As good
15 members of the bar, we will make our best efforts to
16 try to resolve our dispute concerning the time.

17 But reasonable minds may differ as to what's
18 necessary for the support of our case. But given the
19 allegations and the personality issues that are
20 alleged, it certainly is important to delve into
21 because that's really the heart of the case.

22 MR. GEARINGER: What would be helpful is if
23 you and Lisa, Ms. Cummins, get together and
24 collectively figure out what your combined needs are,
25 and both of you can get back to us.

1 MR. SWOPE: We will do that.

2 (Whereupon, the May 13, 2008, deposition of
3 MICHAEL TOSCHI ended at 2:13 p.m.)
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8 MICHAEL TOSCHI
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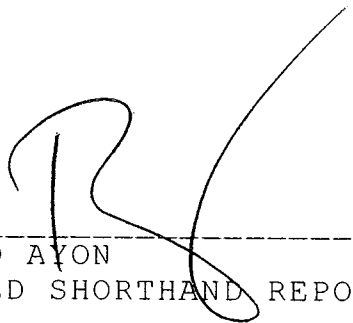
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I, R. CHAYO AYON, duly authorized to administer oaths pursuant to Section 2093(b) of the California Code of Civil Procedure, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify the truth in the within-entitled cause; that said deposition was taken at the time and place therein cited; that testimony of said witness was reported by me and thereafter transcribed under my direction into typewriting; that the foregoing is a complete and accurate record of said testimony; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself/herself of the opportunity to sign or the signature has been waived.

I further certify that I am not of counsel nor attorney for any of the parties in the foregoing deposition and caption named nor in any way interested in the outcome of the cause named in said caption.

DATED: MAY 28, 2008



R. CHAYO AYON
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