

FILED

JUN 21 2011

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

U.S. District Court
For The District of Columbia

David Kissi
325 Pennsylvania Ave SE
DC/USA 20003
202-675-6365
v.
USA/DOJ
950 Pennsylvania Ave NW
DC/USA 20530

Petitioner :
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:
:
Respondent :
:
:

Case: 1:11-cv-01141
Assigned To : Walton, Reggie B.
Assign. Date : 6/21/2011
Description: Habeas Corpus/2255

A Petition for a Writ of Habeas Corpus

Intent To Seek Correction of Sentence Or To Set Aside a Wrong Judgment Despite The Verdict

Pursuant To 28 USC 2255 (F)(2)

SEE P. 87 - VMD JUDGE TIMOTHY J. DOOLEY'S ORDER - CORRECTING KISSI'S SENTENCE
Come now, Petitioner David Kissi, pro se, pursuant to 28 USC § 2255(F)(2) which states, "A one

year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of, the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action." See pp. 18-32.

Argument

That the Petitioner was found guilty on August 10, 2006 and sentenced on August 10, 2007 to thirty (30) months incarceration; three years supervised release and forty (\$40,000) thousand dollar assessment and penalties. It should be noted Petitioner has already served the sentence but has a year left on his Probation and the fines and costs remain largely unpaid. See pp. 20-25 Judgment of wrongful conviction.

The Petitioner's sentence was enhanced as a result of a Maryland 'plea of guilty conviction' that the Petitioner thought was "nolle prosequi" and not a 'plea of guilt' in the Circuit Court of Maryland for Baltimore City on 10/31/02. However, the Petitioner could not document the status of the Baltimore case until he contacted the Sheriff's Office on March 25, 2011. Enclosed at pp. 17-32 is an Affidavit in Support of this Motion for Re-sentencing, pursuant to Section 2255(F)(2). Also, see same transcript of Sentencing Judge Joseph R. Goodwin and same for Judge Schwait of Maryland where Schwait dismissed the Baltimore dumping case on 10/31/2002, but of which Maryland erroneously ignored to correct Kissi'

Record as a “Nolle Prosequi” disposition that this fatal error of Maryland was, in addition, compounded by Kissi’s Attorney of Record inertia in the Baltimore trash case in 2002 for that Maryland Attorney, R.W. Moore, Sr. after the hearing failed to follow through to ascertain that a \$50 court fine Kissi paid to the Baltimore Sheriff was never relayed to the Clerk of the Baltimore City Circuit (Criminal) Court such that Maryland erroneously recorded the disposition of the trash case as an acceptance of a misdemeanor as a “guilty plea” instead of a “nolle prosequi” which enhanced Kissi’ Federal wrongful conviction 7 years later.

That other newly discovered incidents outside the Record have now appeared that warrant this Court to grant Kissi a new trial or set aside the original Federal trial court’s flawed judgment despite the verdict for the following newly discovered items that could have altered the outcome of the first trial have now emerged and are:

- I. That R. J. Rosenstein, U.S. Attorney for Maryland, did maliciously ask a Federal Grand Jury to return an indictment against Kissi in 2005, albeit the Federal Rule Book does prohibit him for at that time Kissi had some unresolved criminal contempt charges Federal Judge Peter J. Messitte of MD had hit him with. See USCA Const. Amendment 5; 18 USCA § 401 in re:Oberhellman, 748 F. Supp. 1344, reversed U.S. v Oberhellmann, 964 F2d 50. See Exhibit B for verification. Therefore his conviction is reversible.
- II. That the Federal Rule 65(c) says that since the U.S. has already withdrawn and given to Pramco a \$50,000 cash Bond that secured the so-called Injunction Pramco had obtained from Judge Messitte to tie the Kissi’ hands so that Pramco could take their assets without compensation and in Kissi’ attempt to push back, R. J. Rosenstein, US Attorney of Maryland did charge Kissi with violating the said Injunction and subsequently found guilty of Counts 7 and 8 and subsequently given an additional sentence for said violations. Now, since newly discovered evidence that the said Injunction had died for Pramco had withdrawn the said \$50,000 surety bond, that means Kissi went to prison partly for nothing and his conviction in

05-cr-00254 should be set aside now. In fact, Petitioner Kissi is now entitled to Relief and Remedy for Kissi couldn't and shouldn't have been found guilty of counts stemming from a dead Injunction. See pp.49-52 for verification of the \$50,000 Bond hereby attached.

- III. That the Trial Court did violate Appellant's 6th Amendment Right by refusing to allow Kissi to proceed without the assistance of counsel. See pp. 33-41, hereby attached.
 - IV. That it should also be noted that although the 6th Amendment guarantees a criminal Defendant "the Assistance of Counsel for his defense," U.S. Const. Amend. VI, the Supreme Court of the U.S. in *Faretta v. California*, 422 U.S. 806 (1975) also held that it protects an implied reverse right of self representation – a right Kissi was denied by trial Judge J.R. Goodwin at trial in case # 05-cr-00254 on 7/31/2006. But that right of self-representation must be honored even if the district court believes that the Defendant would benefit from the advice of counsel. *Id.* at 834; see also *McKaskle v. Wiggins*, 465 U.S. 168, 177 n.8 (1984).
- An assertion of the right of self-representation must be:
 1. Clear and unequivocal, see *Faretta* 422 U.S. at 835; *U.S. v Lorick*, 753 F. 2d 1295, 1298 (4th Cir. 1985);
 2. Knowing, intelligent and voluntary, see *Godinez v. Moran*, 509 U.S. 389, 400-01(1993); *U.S. v. Singleton*, 107 F. 3d 1091, 1096 (4th Cir. 1997); and
 3. Timely, see *U.S. v. Lawrence*, 605 F.2d 1321, 1325 n.2 (4th 1979).
 - The Supreme Court has held that the standard of competence for waiving counsel is identical to the standard of competence for standing trial. See *Godinez* at 396-97.
 - The competence that is required of a Defendant seeking to waive his right to counsel is the competence to waive the right, not the competence to represent himself. *Godinez* at 399.
 - Defendant's technical legal knowledge is "not relevant to an assessment of his knowing exercise of the right to defend himself." *Faretta* at 836.

- That Kissi no doubt made a clear and unequivocal declaration that he wanted to represent himself and did not want assistance of counsel. The record affirmatively shows that Defendant was literate, competent and understanding and that he voluntarily exercised his informed free will to proceed pro se but was denied for no legal basis.
- Thus, in answer to the Court's unambiguous question of whether or not he wanted to represent himself, Kissi clearly communicated his choice at trial on 7/31/06 where the Record reflected:

The Court: I understand that the rule book says and I can tell you this. You're entitled to counsel or you're entitled to represent yourself...

Now which do you want to do?

The Defendant: Your Honor, I'm going to represent myself.

The Court: All right.

- The Court again asked the Defendant whether he wanted to proceed pro-se:

The Court: So, knowing all that, do you still wish to proceed as your own lawyer?

"Yes" or "no"?

The Defendant: "Yeah, I want to represent myself".

The Court: All right, very well.

See excerpts of trial transcript hereby attached on pp. 33-42.

- The Court thus did rule that Defendant could represent himself, proceeding to then appoint his attorney as standby counsel:

The Court: I'm going to appoint Mr. Bennett as standby counsel.

See Trial Record, Exhibit A,

- However, Defendant's counsel then manipulated the court into reversing its decision by misapplying clearly established law regarding the right to self-representation.
- Relying on the ability of the Defendant to properly defend himself, and therefore going into a discussion on legal training, education and experience, rather than the ability of the

Defendant to waive his right, the court backtracked and entangled itself, eventually making an error of constitutional dimension, and flatly denying Kissi' 6th Amendment Right:

Mr. Bennett: No. Here's what you found at the last hearing your Honor...

Thursday, April 20, 2006, on page 5, line 17, your Honor:"

The Court: I previously talked to you about knowledge of the law and knowledge of the rules of evidence and you indicated that you felt incapable of proceeding by yourself without the advice of a lawyer. Is that still true?

The Defendant: Yeah, that is correct. I never took the bar exam...

- The Court did briefly guess the correctness of its decision, and then proceeded to incorrectly interpret Faretta:

The Court: I would much prefer that you continue to represent Mr. Kissi. And I told Mr. Kissi on at least three occasions of the hazards of representing himself. I don't know how he can possibly go forward pro se in this matter. I don't see how he can possibly do this without Mr. Bennett. And I don't want to permit it, but I'm cautious about whether or not I have to if he absolutely insists.

- Defendant's counsel then misdirected the Court:

Mr. Bennett: Well, under Faretta and all the cases, you have to be making, you have to be able to make a finding that he's capable of representing himself. And you've already made a finding that he's not. And he's...

The Court: I agree with you, Mr. Bennett. I don't think I can make that finding. You will represent Mr. Kissi. We will proceed with the trial.

See Trial Record Exhibit A.

- In fact, the Court had previously gone over the competency to waive counsel versus the competency to properly represent oneself at trial with the Defendant:

The Court: If you want to represent yourself, I want to caution you that to do so is a very risky proposition, that you will be required to follow all of the rules of evidence in the court. You'll be required to conduct the examination of witnesses and the presentation of evidence in the same fashion that is required of all parties in litigation. There will be no special treatment for you.

- Thus, in answer to the Court's direct questions of whether or not he wanted to represent himself, before, during and after the Court instructed Kissi of the "perils of self-representation", Kissi in no uncertain terms asserted that he did want to proceed without the assistance of counsel.
- A comparison with Faretta is self-revealing: there the Court made the ruling that the only requirement for exercising the right to self-representation was a clear and unequivocal declaration to the latter, and that details on "how well or poorly (Defendant) has mastered the intricacies (of court rules and criminal techniques)", were simply irrelevant to the question of the right to waive assistance of counsel.
- Clearly thus, Kissi satisfied the first two conditions of self-representation.
- As to the third prong of the test, namely timeliness, Kissi clearly also satisfied the latter.
- Meaningful trial proceedings had, first of all, not already commenced. The jury had not yet been called, impaneled and thus the trial had not yet started at 10 am on 7/31/2006. There was to be no prejudice to either party.
- In addition, Kissi was not making his request for the purpose of delay, disruption or manipulation. Defendant clearly communicated that he simply wanted to go at it without counsel:

The Defendant: Your Honor, there's no one who is more willing to go to trial than I am ...I look forward to a trial, but Mr. Bennett is not prepared. I know he is qualified, but this morning he is not prepared. I have tested him, I have quizzed him. He is not prepared...

And Bennett can't, I mean, defend me. I already filed a complaint with the D.C. Bar. I mean, a Defendant who has filed a complaint against his attorney can't be acting in my best interests. And this morning he is not prepared, Your Honor.

- Kissi wanted to go to trial, on his own. He was competent and thus appropriately waived his right to counsel. He was not skilled in legal techniques, admittedly, but to simply ruled that because of this, he could not represent himself, as the Court did, is reversible error.
- Conclusion: The Trial Court committed reversible error by denying Kissi of his right to self-representation as guaranteed to him the 6th Amendment to the Constitution of the U.S. and per Faretta. The Court of Appeals should therefore reverse and remand to the district court.

V. That Kissi' trial counsel was ineffective for failing to pursue adequate Discovery, for failing to call material witnesses, and for failing to create reasonable doubt. See Points of Authority, p. 58 -59 hereby attached.

- The 6th Amendment guarantees the right to effective assistance of counsel in criminal prosecutions. *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970).
- In *Strickland v. Washington*, the Supreme Court established a two-prong test to evaluate ineffective assistance claims. See 466 U.S. 668 (1984).
- A Court of Appeals and separately a Habeas Corpus proceeding may review an ineffective assistance of counsel claim when the record is sufficiently developed in order to adjudicate the same issue. See *U.S. v. Theodore*, 354 F. 3d 1, 3 (1st Cir. 2003); see also *U.S. v. Villegas*, 388 F.3d 317, 323-24 (7th Cir. 2004).
- To obtain reversal of a conviction under the Strickland standard, the Defendant-Appellant must prove that counsel's performance fell below an objective standard of reasonableness and that counsel's deficient performance prejudiced the Defendant, resulting in an

unreliable and fundamentally unfair outcome in the proceedings. Strickland 466 U.S. at 687; see also *Glover v. U.S.*, 531 U.S. 198, 204 (2001).

- A counsel's failure to conduct any pretrial discovery and failure to timely file suppression motions is prejudicial because it is unreasonable and below prevailing professional norms. See *Kimmelman v. Morrison*, 477 U.S. 365, 385 (1986).
- A counsel's failure to call important material witnesses and to properly form theory of reasonable doubt is reversible form of ineffective assistance of counsel. See *Griffin v. Warden Maryland Correction Adjustment Center*, 970 F.2d 1355, 1358 (4th Cir. 1992).

VI. That Kissi' requested his counsel, Mr. F.W. Bennett to call the following persons as his witnesses:

1. Mr. Blewett, an employee of the Small Business Administration (SBA), who was familiar with the SBA selling the Kissi' DK&R's mortgage notes to Investor Pramco and had written that the SBA never conveyed title of the mortgages to Pramco. See Points of Authority pp. 57-59, 77 hereby attached;
 2. Ms. Mathis, a case worker from the Bankruptcy Court in Baltimore who had expressed concern that Pramco's claims against the Kissi' Chapter 7 Riggs Hill commercial properties mortgage notes did amount to fraud. Ps, see Points of Authority on pp. 57-59 on grounds of establishing proof of ownership over acquired existing property;
 3. Katherine. Levin, Assistant U.S. Trustee who had worked on the case while she was in private practice in Baltimore and whose law firm still owes the Kissis' \$1,000 for work undone. See Exhibit A.
- U.S. District Judge Peter J. Messitte was the central figure in the whole case. However, while the Assistant U.S. Attorney spent nearly 49 pages in direct questioning with Judge Messitte, defense counsel Bennett merely skimmed over unimportant points with the Judge

when Judge Messitte appeared as a U.S. witness against Kissi on 8/2/2011. Bankruptcy Judge E. Stephen Derby also did show up as a U.S. witness against Kissi. But after the trial, Derby did recuse himself from all Kissi matters. But Judge Messitte, despite prohibition by 28 USC 455 still sits on Kissi cases post trial. Thus, on information and belief, the reason why defense counsel failed to properly cross-examine Judge Messitte was because the latter and the former both work in the same court systems. Defense counsel thus did not want to jeopardize his own career in the truth-finding process. See pp.78-80.

- Had Kissi' counsel properly cross-examined Judge Messitte objectively, the following would have appeared:
 1. This case revolved around how a foreign company, Pramco of Belgium, in greed and utter disregard for the American justice system and citizens, used deceptive tactics in order to collect on loans it had shoddily acquired in the secondary debt market.
 2. Pramco had filed a lawsuit in the U.S. District Court for the District of Maryland and the case was assigned to Judge P.J. Messitte.
 3. Pramco brought this action against DK&R, an entity that was created by Kissi, as well as against Kissi and his wife.
 4. Judge Messitte granted summary judgment to Pramco and refused to allow Kissi to present a defense and then fraudulently issued a Restraining Order ex-parte that did forbid the Kissis to challenge Pramco's lack of proof of claim over the Kissis DK&R mortgage notes Pramco had acquired from the U.S. Small Business Administration, the notes co-guarantor, in a transaction that lacked proof of conveyance of clear titles. So Pramco had no standing to have filed any claims against the Kissis, their DK&R Chapter 7 Estate and Trust entities. See Exhibit C.

5. Kissi' trial counsel Fred W. Bennett should have created reasonable doubt by arguing that Judge Messitte denied the Defendant et al their right to protect their properties without due process of law, as guaranteed to him by the 5th Amendment to the Constitution of the U.S.
6. These questions should have elicited the following:
 - a. A party seeking to bring a case into federal court on grounds of diversity carries the burden of establishing diversity jurisdiction. The Federal Court is one of limited jurisdiction.
 - b. The Plaintiff must also demonstrate standing.
 - c. The minimal constitutional requirements for standing are: Proof of injury in fact; Causation; and Redressability.
 - d. The Plaintiff must show that he/she/it has personally suffered some actual injury as a result of illegal conduct of Kissi.
 - e. Pramco alleged that it was the holder and owner of the Riggs Hill Road properties should have at least met Maryland Proof of Debt supported by a valid notarized Affidavit – a document Pramco never had plus a separate proof that the mortgages it acquired from the loans' co-guarantor, the SBA, were properly recorded in the Land Records of Howard County, MD courthouse – something Pramco never did according to the Record. See Exhibit C.
 - f. Yet, clear titles were never conveyed prior to the date that it started the action in Judge Messitte's courtroom.
 - g. Witness Mr. Blewett, had he been called per the directives of Kissi to his counsel, Bennett, would have testified that the Small Business

Administration and The Moneystore had not conveyed titles to Pramco even though they had sold the mortgage debts of the Kissi' DK&R's Estate.

- h. Defense counsel should therefore have prodded and inquired as to why Judge Messitte decided to grant summary judgment to Pramco even though the latter clearly did not have standing to sue the Defendant et al.
- i. Prior case laws should have been brought forth, including the binding decisions of the Supreme Court of the U.S. in Valley Forge Christian College v. American United for Separation of Church and State, Inc., 454 U.S. 464 (1982).
- j. Defense counsel should further have raised the plain language of Federal Rules of Civil Procedure 17 to show that Pramco did indeed not have standing.
- k. Yet Judge Messitte decided to grant summary judgment and did prevent Defendant et al from safeguarding their assets.
- l. Defendant et al were U.S. Citizens whose assets were being taken without compensation. This would have helped the jury identify and connect with the Defendant et al: hard working citizens who were being dragged to court by unscrupulous foreign companies.
- m. That Judge Messitte's Court possessed the independent obligations to preserve the judicial integrity of the federal court and to jealously guard federal jurisdictions.
- n. Clearly, by denying Kissi his day in court, the Court of Judge Messitte superseded his obligations vis-à-vis the secondary mortgage market, and convenience of litigants.

7. By failing to question and call into doubt Judge Messitte's arbitrary decision, Kissi's trial counsel chose long-term career over his first and primary duty: to vigorously defend his client.
8. Had Mr. Blewett been called to substantiate that Pramco did not have the title to the assets that Judge Messitte granted summary judgment on, the jury would have questioned the validity of such order and the outcome of the trial court could have been different as Federal Judge Kathleen O'Malley of Ohio did on many occasions deny the same Pramco's claims in Ohio. See pp. 63-78 for similar Court rulings favoring borrowers also occurred in Massachusetts this winter.
9. And by aligning Defendant with the millions of American citizens who are facing the same troubles as Defendant did, the jury would have sided with Kissi, at least on an emotional basis.
10. In any case, this would have proved that Kissi had been indeed forced out and robbed of his properties without due process of law, and his behavior that ensued, though not condonable, would certainly have been substantially mitigated: any normal and reasonable person whose wallet or property is stolen would take actions and measures to recover his rightful property. And if said person is law-abiding, he would have taken exactly the same steps as Defendant and used the court and justice system. Defendant did not go about doing this in an illegal way or abused the process for he has never filed a frivolous suit. See Exhibit E.
11. This was a typical situation where a homeowner found himself in financial straits, failed to make required mortgage payments and faced a foreclosure suit. Defendant was not interested in testing state and federal jurisdictional requirements.
12. In the meantime, the financial institutions such as Pramco rushed without proof of clear titles to seize all of Kissi's personal property such as the \$60,000 cash portion

of his and his spouse's life insurance policies, their DK&R Chapter 7 Riggs Hill properties and Trust properties. See Exhibit C.

13. Unchallenged by underfinanced opponents, these institutions worry less about jurisdictional requirements and more about maximizing returns.
14. It was up to the Federal Court, and hence Judge Messitte, to act as gatekeeper: Pramco simply did not have legal title to the properties and their action was thus without standing.
15. But such a discussion was never brought forth to the jury's attention by defense counsel.
16. The reason for this is not only because of self-interest and not to ruffle the feathers of a federal judge, but also because Mr. Bennett did not conduct Discovery.
17. Thus defense counsel did not even inspect the items that the FBI had seized from Defendant pursuant to a defective search warrant. Thus, unprepared, defense counsel rushed forward blind into the trial to his client's substantial disadvantage.
18. To the same tune, defense counsel failed to call Ms. Mathis, a Clerk of the Bankruptcy Court in Baltimore, MD who would have testified that Defendant's claims in the courts were actually still pending and that Pramco's claims against the Kissi' Chapter 7 DK&R Estate were false.
19. And defense counsel should have raised the issue of dubious and highly unethical practices by the U.S. Bankruptcy Trustee's Office of using Ms. Levin as a Trustee in the case, when the latter had been hired by Kissi while she was in private practice for the same case, but who after joining the U.S. Bankruptcy Office, was assigned to administer the Kissi' DK&R Chapter 7 Estate where she made sure all Kissi' objections were denied hearings. See Exhibit A.

20. Cumulatively, these errors and failures of the defense counsel clearly amounted to ineffective assistance of counsel and fell far, far below the professional standards expected in a federal criminal case.
21. In addition, as is shown above, had the proper witnesses been called, had the proper questions been asked, had the proper connections been made with the jury and the Defendant, and had the counsel in fact prepared for the case and performed discovery, it is clear that Defendant would not have been found guilty. And this pattern of bad legal representation continued after the trial for when the trial court gave Kissi an allowance to file a post-conviction Motion for Retrial, all the lawyers he hired conspired with RJ Rosenstein et al not to assist Kissi even after taking his money. See p. 42, hereby attached and Exhibit A.
22. Under the Strickland standard, Defendant Kissi received ineffective assistance of counsel, and hereby submits that because his 6th Amendment Right to Effective Counsel was violated, a retrial is in order.

In conclusion, now, although this case did occur in Maryland, Petitioner prays that D.C., an impartial forum, should now hear this case for Maryland and all 4th Circuit forums have been very, very hostile to him, his spouse, their Business and Trust entities after Petitioner, an African American, has made serious allegations that Maryland white Judicial Officers namely: Federal Judge Peter J. Messitte; Rod J. Rosenstein, U.S. Attorney for Maryland; Assistant U.S. Attorneys B. Sale, S. Wilkerson, J. Biran, S. Birnaum and Emil Hirsch a Pramco debt collector have all conspired to take the Kissi' assets worth \$3 million without compensation. And that the above have done that under the guise of the law and had Kissi thrown into jail per a rigged trial to cover their tracks. However, in an unrelated Petitioner's claim against EMC/JP Morgan Chase of NY Petitioner filed in this Court, Petitioner pleaded to the Federal Court of Appeals for the D.C. Circuit not to remand his claim to prejudiced Maryland and that court did agree with him 100%. See p. 79 copy of that Court's Mandate.

In sum, the Petitioner begs the court to correct his sentence at a new hearing so that the Record adequately reflects what the Sentencing Court should have imposed on 8/10/2007. Thus, Petitioner asks the court to downward depart in re-sentencing in the pursuit of justice and at least wipeout his court fines and probation. See pp. 43-51. Or alternatively at Re-sentencing, Petitioner should be allowed to introduce newly discovered evidence of fraud on the part of USA et al that has never been heard by any court in order to have this instant court set aside his wrongful conviction despite the verdict after a jury trial. Petitioner also prays that this court appoint him at no cost a competent and honest counsel to represent him on this matter for he has a meritorious claim/complaint but he has done all what he can without avail to get counsel and now has no money to keep doing so. However, Federal Due Process requires this court to appoint him one. See Exhibit A.

Wherefore, Kissi demands the following relief from this court based on the Trial Court's erroneous decision to not permit him to proceed without the assistance of counsel in his trial, the trial court's violation of his 6th Amendment Right and that this court should set aside the Maryland Federal jury's erroneous verdict of 8/4/2006 despite the judgment on all the above grounds and especially on grounds based on clear and convincing evidence of Kissi's trial counsel's ineffective assistance in violation of Kissi's 6th Amendment Right. And it should also be noted A.G. Durden, Esq. and the Venable Law Firm and Walter Weir, a Philadelphia lawyer Kissi sought to retain post-conviction but prior to his sentence all failed to promptly assist Kissi to get a new hearing. See p. 80 and Exhibit A. And even in the absence of all the above, Maryland's error, not to properly record the "nolle prosequi", should be enough grounds to grant Relief and Remedy to Kissi, as Defendant Thomas Perrin similarly situated was recently re-sentenced by Maryland on clerk's error. See pp. 46-48. And that in the interest of justice, may this court award the Kissis \$100 Million in damages to compensate for the manmade nightmare mental anguish, the loss of their million dollar 20 year old DK&R, a copy paper dealer, plus the loss of their Trust assets on top of forgone rental income, capital gains they have forfeited and about \$700,000 in legal bills they have spent to fight Pramco and Rod J. Rosenstein, U.S. Attorney of Maryland et al's malicious assaults.

Petitioner reiterates his request for a “hearing” and a jury trial if warranted over his sentencing. See pp.

81-86.

Respectfully Submitted by: _____

D. Kissi 6/20/2011.

David Kissi, Petitioner
325 Pennsylvania Ave, SE
Washington, DC 20003
Tel: 202-675-6365 (Business hrs 8AM-5PM)

Certificate of Service

The Summons for this Writ of Habeas Corpus ~~will~~ be promptly served by an independent courier once issued by this Court.

Disposition and Exhibits

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND (GREENBELT)
AT BALTIMORE

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TRANSCRIPT OF PROCEEDINGS

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UNITED STATES OF AMERICA, : CRIMINAL ACTION
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vs. : NO. 8:05-CR-00254
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DAVID M. KISSI, : August 10, 2007
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Defendant. :
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SENTENCING HEARING

BEFORE THE HONORABLE JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States: MR. JONATHAN BIRAN
MS. BARBARA S. SALE
Assistant U.S. Attorneys
36 S Charles Street
Fourth Floor
Baltimore, MD 21201

For the Defendant: MR. WALTER WEIR, JR.
Attorney at Law
1339 Chestnut Street
Suite 500
Philadelphia, PA 19107

MR. AARON G. DURDEN
Attorney at Law
10 W. Monument Avenue
Dayton, OH 45402

Court Reporter: Lisa A. Cook, RPR-RMR-CRR

Proceedings recorded by mechanical stenography; transcript
produced by computer.

FILED
JUN 21 2011
Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

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P R O C E E D I N G S

THE COURT: Good morning. Please be seated.

This is in the matter of the *United States vs. David M. Kissi*, Criminal Action Number 8:05-CR-254.

Is the United States ready?

MR. BIRAN: Yes, Your Honor.

THE COURT: Is the defendant ready?

MR. DURDEN: Yes, we are, Your Honor.

THE COURT: Mr. Durden, if you and your client would please stand.

Mr. Clerk, would you administer the oath to Mr. Kissi.

(Defendant sworn)

THE CLERK: Please state your name for the record.

THE DEFENDANT: My name is David Kissi.

THE COURT: Mr. Kissi, you were convicted in this court by a jury on two counts of bankruptcy fraud in violation of 18, United States Code, Section 157; three counts of obstruction of justice in violation of 18, United States Code, Section 153; and two counts of contempt in violation of 18, United States Code, Section 401(3).

Since the time of your conviction, the probation office has conducted a pre-sentence investigation of you and prepared a pre-sentence investigation report.

9

18

1 intended amount of the fraud that he attempted there.
2 Mr. Kissi had offered to pay \$450,000 for that property. He
3 said his wife had a priority claim with regard to those
4 properties of \$650,000. The face amount on the notes was
5 \$480,000. That's close in my recollection.

6 I find that the most reasonable estimate of the
7 intended loss is the face amount of the notes which is in
8 excess of \$400,000.

9 So, we go to the -- I think I've talked about the
10 littering and dumping, but let me be sure on that.

11 The Government argues that Mr. Kissi should have a
12 criminal history point for the two charges of littering and
13 dumping for which he was ordered to pay concurrent fines of
14 \$50.

15 I find that this offense should be counted. I
16 sustain the Government's objection. While the offense is
17 not listed -- well, because it's not listed as excluded
18 under 4A1.2(c) and doesn't fall within the exception for
19 local ordinance violations and was a violation of Maryland
20 law, I believe that the one criminal history point must
21 apply for this littering offense.

22 Although not filed as a formal objection, the
23 Government mentions that, in its sentencing memorandum that
24 if the group is calculated using Count One or Two, an
25 enhancement for abuse of trust should be applied.

7/25/11
PDATE

ACCOUNTING SYSTEM
PAYMENT HISTORY

Baltimore City. res. off receipt
Re: MD Case # 8022 01004

7: 79836

LAST NAME: KISSI

PAY DATE
10/31/02

POST DATE
10/31/02

AMOUNT
50.00

TYPE
P

of payment
of
Court fine
of
50 of
which
the Court
Clerk name
recorded in
error
JK

PAGE 001 OF 001

GENERAL 2-CHARGE 3-MAINT 5-AKA 6-WARRANT 9-ADD CHG 7-EXIT 12-UPDATE

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15/11
DATE

ACCOUNTING SYSTEM
FINES & COSTS GENERAL INFORMATION

1.2.1
from the Sheriff Baltimore City
(4)
Cochran

NO: 172687 TYPE: C BILL DATE: 10 31 02 BALANCE DUE: 0.00

NAME: KISSI FIRST: DAVID MID:
ESS:
DIR STREET SFX CITY STATE ZIP APT
5 AMMENDALE RD BELTSVILLE MD 20705 0000

DATE: 04 12 49 RACE: B SEX: M POLICE ID NO: 000000
TO: S JUDGE: SCHWARTZ
PAY BY: 10 31 02 CHARGE: MISC MISCELLANEOUS
PAY BY: 00 00 00 CASE NO: 802261004 2ND NOTICE: 00 00 00
NOTION NO: 00 ORIG BALANCE: 50.00 3RD NOTICE: 00 00 00
PAY BY: 00 00 00 WARRANT REQ: N NO: COLLECTION: 00 00 00
EXTN: 00 00 00 WARRANT DATE: 00 00 00 SENT COURT: 00 00 00
EXT NO: 00 COMMIT DATE: 00 00 00 SENT CCU: 00 00 00
UPDATE: 00 00 00 CLOSED DATE: 10 31 02 KEY: 79886

MENTS:

GENERAL 2-CHARGE 3-MAINT 4-PAYMENT 5-AKA 6-WARRANT 7-EXIT 12-UPDATE

NB: Proof D. Kiser
and pay the 50
Court fine the
same hour
tr of Court
Ordered
in
2002

(21)

Ps. See p 3 of the trial transcript that MD refused to provide R Kissi re despoza per nolle prose DK

MARYLAND JUDICIARY CIRCUIT COURT DISTRICT COURT OF MARYLAND FOR BALTIMORE CITY
Located at NORTH CALVERT STREET Court Address Case No. 80-20001

Tracking # 021001630624
vs. DAVID KISSI 04/12/1949
Defendant DOB

STATE OF MARYLAND
FORM 4-504.1. PETITION FOR EXPUNGEMENT OF RECORDS

1. (Check one of the following boxes) On or about 9/18/2002, I was arrested, served with a summons, or served with a citation by an officer of the CITY OF BALTIMORE Law Enforcement Agency at E. FAYETTE BALTIMORE CITY DISTRICT COURT Maryland, as a result of the following incident: -TRASH DUMPING

2. I was charged with the offense(s) of LITTER DUMP. (SEE ATTACHED TRANSCRIPT FOR MARYLAND'S NOLLE PROSEQUI AND THIS SHOULD COME OFF)

3. On or about 9/18/2002, the charge was disposed of as follows (check one of the following boxes):
- I was acquitted and either three years have passed since disposition or a General Waiver and Release is attached.
 - The charge was dismissed or quashed and either three years have passed since disposition or a General Waiver and Release is attached.
 - A judgment of probation before judgment was entered on a charge that is not a violation of Code*, Transportation Article, § 21-902 or Code*, Criminal Law Article, §§ 2-503, 2-504, 2-505, or 2-506, or former Code*, Article 27, § 388A or § 388B, and either (a) at least three years have passed since the disposition, or (b) I have been discharged from probation, whichever is later. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.
 - A Nolle Prosequi was entered and either three years have passed since disposition or a General Waiver and Release is attached. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.
 - The proceeding was steted and three years have passed since disposition. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.
 - I was convicted of a crime specified in Code, Criminal Procedure Article, §10-105 (a)(9); three years have passed since the later of the conviction or satisfactory completion of the sentence, including probation; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.
 - The case was compromised or dismissed pursuant to Code*, Criminal Law Article, § 3-207, former Code*, Article 27, § 12A-5 or former Code*, Article 10, § 37 and three years have passed since disposition.
 - On or about _____ I was granted a full and unconditional pardon by the Governor for the one criminal act, not a crime of violence as defined in Code*, Criminal Law Article, § 14-101(a), of which I was convicted. Not more than ten years have passed since the Governor signed the pardon, and since the date the Governor signed the pardon I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

02-001102
2011-03-09 11:02

WHEREFORE, I request the Court to enter an Order for Expungement of all police and court records pertaining to the above arrest, detention, confinement, and charges. I solemnly affirm under the penalties of perjury that the contents of this Petition are true to the best of my knowledge, information and belief, and that the charge to which this Petition relates was not made for any nonincarcerable violation of the Vehicle Laws of the State of Maryland, or any traffic law, ordinance, or regulation, nor it is part of a unit the expungement of which is precluded under Code*, Criminal Procedure Article, § 10-107. *References to "Code" in this Petition are to the Annotated Code of Maryland.

Signature of Plaintiff: _____ Date: _____
Signature of Defendant: DK 3/23/2011
DAVID KISSI
325 PENNSYLVANIA AVE SE
WASHINGTON, DC 20003
202-675-6365 / BIZ HES SAM SPAN (22)

+ ~~200~~
8022
01004

MARYLAND JUDICIARY CIRCUIT COURT DISTRICT COURT OF MARYLAND FOR Baltimore City
Located at NORTH CALVERT STREET Court Address Case No. 802261004 City/County

STATE OF MARYLAND

vs. DAVID KISSI
Defendant
325 PENNSYLVANIA AVE SE
Address
WASHINGTON, DC 20003
City, State, Zip
202-675-6365 (BIZ HRS 8AM-5PM)
Telephone No. - Home Telephone No. - Work

GENERAL WAIVER AND RELEASE

I, DAVID KISSI, hereby release and forever discharge STATE OF MARYLAND + CITY OF BALTIMORE and E. FAYETTE ST BALTIMORE CITY DISTRICT COURT POLICE all of its officers, agents, and employees, and any and all other persons from any and all claims which I may have for wrongful conduct by reason of my arrest, detention, or confinement on or about 9/18/2002
Complainant Law Enforcement Agency Date

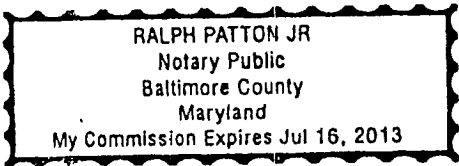
This General Waiver and Release is conditioned on the expungement of the record of my arrest, detention, or confinement and compliance with Code*, Criminal Procedure Article, § 10-103(c) or § 10-105, as applicable, and shall be void if these conditions are not met.

WITNESS my hand and seal this 23rd day of March, 2011
Month Year

TESTE: [Signature]
Witness

[Signature] (Seal)
Signature

* References to "Code" in this Petition are to the Annotated Code of Maryland.



23

STATE OF MARYLAND

v.

DAVID KISSI

CASE NO.: 802261004

*

*

*

*

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

2011 MAY 11 AM 11:21

* * * * *

RESPONSE TO PETITION FOR EXPUNGEMENT

The State of Maryland, by its attorneys, Gregg L. Bernstein, State's Attorney for Baltimore City, and Michelle M. Martin (#332223), Assistant State's Attorney for Baltimore City, pursuant to Criminal Procedure Article, Section 10-105(d), hereby objects to the Petition for Expungement filed in the above-captioned proceeding and proffers the following in support thereof.

On October 31, 2002 Petitioner appeared before the Honorable Judge Allen Schwait in the above-captioned case. He was charged with commercial dumping. The State agreed to enter a nolle prosequi if the Petitioner paid a \$50 fine to the sheriff on that day. The Petitioner apparently paid the fine, but the clerk erroneously recorded that the Petitioner had pled guilty and been fined. While the State agrees that the record should be corrected to reflect that the charges were nol prossed by the State, the Petitioner is not eligible for expungement under Criminal Procedure Article, Section 10-105(d)(4) because he has since been convicted of a crime other than a minor traffic violation: On September 10, 2007, in the United States District Court of Maryland, case number AW-05-00254, the Petitioner was convicted of bankruptcy fraud, obstruction of justice, and contempt and sentenced to 30 months and one day to the Bureau of Prisons, with three years supervised release and a \$10,000 fine.

24

WHEREFORE, for all of the foregoing reasons, the State respectfully prays that this court deny the petition for expungement.

Respectfully submitted,

Gregg L. Bernstein
State's Attorney for Baltimore City



Michelle M. Martin (#332223)
Assistant State's Attorney
Baltimore City State's Attorney's Office
100 N. Calvert St., Room 210
Baltimore, Maryland 21202
443-984-2995

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May 2011, a copy of the foregoing State's Response to Petition for Expungement was mailed, postage prepaid, by United States Postal Service to David Kissi, 325 Pennsylvania Ave., S.E., Washington, D.C., 20003.



Michelle M. Martin
Assistant State's Attorney

ORIGINAL

STATE OF MARYLAND VS. DAVID KISSI
OCTOBER 31, 2002 BEFORE JUDGE ALLEN SCHWAIT

STATE OF MARYLAND,	*	IN THE
Plaintiff	*	CIRCUIT COURT
vs.	*	FOR
DAVID KISSI ,	*	BALTIMORE CITY
Defendant	*	CASE NO. 802261004

* * * * *

OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Hearing)

BEFORE: THE HONORABLE ALLEN L. SCHWAIT, JUDGE

HEARING DATE: October 31, 2002

APPEARANCES:

For the State: Andrew Kowalczyk, Esquire
For the Defendant: Richard w. Moore, Esquire

Transcribed by: Felicia P. Holmes

Transcription Service: ACCUSCRIBES TRANSCRIPTION SERVICE
Heaver Plaza
1301 York Road, Suite 601
Lutherville, MD 21093
Phone: (410) 494-8300 Fax: (410) 494-7015

Proceedings recorded by video recording.
Transcript produced by transcription service.

ACCUSCRIBES TRANSCRIPTION SERVICES
410-494-8300 410-494-7015

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STATE OF MARYLAND VS. DAVID KISSI
OCTOBER 31, 2002 - BEFORE JUDGE ALLEN SCHWAIT

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T A B L E O F C O N T E N T S

PLAINTIFF'S WITNESS:
None.

DEFENDANT'S WITNESS:
None.

E X H I B I T S

PLAINTIFF'S EXHIBITS:
None.

DEFENDANT'S EXHIBITS:
None.

27

STATE OF MARYLAND VS. DAVID KISSI
OCTOBER 31, 2002- BEFORE JUDGE ALLEN SCHWAIT

1 P R O C E E D I N G S

2 (10:29:27 a.m.)

3 MR. KOWALCZYK: Your Honor, State of Maryland
4 vs. David Kissi, case number 802261004, Andrew Kowalczyk,
5 Assistant State's Attorney.

6 MR. MOORE: Richard W. Moore for the defendant.

7 THE COURT: What are we doing in this case?

8 MR. KOWALCZYK: We've reached an agreement. The
9 defendant is willing to pay a \$50.00 fine in exchange for
10 a nolle pros. This case has a long and extensive history,
11 defendant failed to appear before Your Honor, and served
12 six days in jail in this case already.

13 I believe if that's acceptable to the Court, a
14 \$50.00 fine and a nolle pros then that'll be our
15 agreement.

16 THE COURT: All right, is that your agreement,
17 sir?

18 MR. MOORE: It is, Your Honor.

19 THE COURT: All right, and one of the reasons
20 that I'm accepting this is because he has no prior record,
21 is that correct?

22 MR. KOWALCZYK: That's correct, Your Honor, and
23 he did serve six days in jail on this offense already.

24 THE COURT: All right, very well. Nolle Pros
25 will be entered, \$50.00 fine.

ACCUSCRIBES TRANSCRIPTION SERVICES

410-494-8300

410-494-7015
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STATE OF MARYLAND VS. DAVID KISSI
OCTOBER 31, 2002- BEFORE JUDGE ALLEN SCHWAIT

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MR. MOORE: Very well, Your Honor.

THE COURT: Payable by when?

MR. KOWALCZYK: Your Honor, I'd prefer if it
could be paid today then I would enter the nolle pros.

THE COURT: Pay it today?

MR. MOORE: Yes, Your Honor.

THE COURT: All right, thank you very much.

(Off the record at 10:30:16 a.m.)

ACCUSCRIBES TRANSCRIPTION SERVICES

410-494-8300

410-494-7015

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STATE OF MARYLAND VS. DAVID KISSI
OCTOBER 31, 2002. BEFORE JUDGE ALLEN SCHWAIT

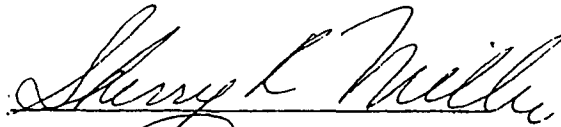
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TRANSCRIBER'S CERTIFICATE

This is to certify that the foregoing proceedings in the matter of State of Maryland vs. David Kissi, Case Number 802261004, heard in the Circuit Court for Baltimore City on October 31, 2002 were recorded by means of video recording.

I hereby certify that the proceedings, transcribed by me to the best of my ability in a complete and accurate manner, constitute the official transcript thereof.

In witness whereof, I have hereunto subscribed my name this 28th day of January, 2011.


Sherry R. Miller, President

30

01/20/11 CRIMINAL COURT OF BALTIMORE PUBLIC ACCESS CASE INQUIRY 16:06
 CASE 802261004 ST C KISSI, DAVID 952500 COD N DCM (15)
 SON FULL NAME/PHONE NUMBER IDENT ADD/FILE STREET/CITY STATE ZIPCODE
 ADF MOORE, RICHARD W 392328 110402 207 E REDWOOD STREET
 103102 BALTIMORE MD 21202
 ASA KOWALCZYK, ANDREW -459275 102502 MITCHELL CTHOUSE ROOM 454
 410-396-5029 102502 BALTIMORE MD 21202
 WIS DANENBERG, MICHAEL 102502 107 S. ARLINGTON AVE
 BALTIMORE MD 21223
 WIS VAN ALLEN, DAN 102502 118 S. ARLINGTON AVE
 BALTIMORE MD 21223
 PO VILLAREAL, ENRIQUE DET 092002 C

END OF DATA

P/1

PAGE 003

(31)

Exhibit A

In the Circuit Court of Maryland for Baltimore City
Mitchell Courthouse – Att: Clerk of the Criminal Court
100 N. Calvert Street
Baltimore, MD 21202
State of Maryland v David Kissi
Case # 802261004

State of Maryland Plaintiff

v

David Kissi Defendant

correct

In re: An Affidavit In Support Of A Motion to Expunge The Record
Due to Clerical Error

I, David Kissi am the Defendant and Affiant and I am at least 21 years of age. And I do have a first hand knowledge of this case because I am the Defendant. And I am making the following assertions under Oath:

That on 10/31/2002 the State of Maryland decided not to pers~~e~~cute me "Nolle Pros" and dismiss its misdemeanor charge against me provided I pay a \$50 court fine of which I promptly did. See pp. 3-4:10 of the trial transcript hereby attached and the Sheriff's cashiers' receipt.

That I further swear under oath that after I promptly on the same day made the said \$50 payment with the Sheriff's Office in the Mitchell Courthouse building, the Clerk of this Court, in error, didn't promptly record the said \$50 payment and left the impression that the \$50 fine was still unpaid and the misdemeanor charge was still outstanding despite the court ruling.

That many years later, up to this year 2011, I did make a finding of facts pursuant to Federal Rule 52(a) and uncovered that this misdemeanor charge was still outstanding, so I did contact the Sheriff's Office on 3/25/2011 and got a copy of the history of the said payment and promptly filed a Motion to Expunge my Records. And I am submitting this Affidavit to support the said Motion. See pp. 5-7.

That in conclusion, I pray that this Court, upon review of this matter should promptly dismiss and Expunge ^{*correct*} the misdemeanor charge from my Record pursuant to MD Rule 3-535(d). But if this cannot be done, then the Court should grant me a hearing promptly pursuant to MD Rule 2-311(f).

That I further affirm that whosoever is inclined to protest this Affidavit should promptly do so and contest my Affidavit with his or her Affidavit point by point and word by word or else that party forfeits his right to oppose or object to this Affidavit.

Respectfully Submitted By: DK 3/26/2011
David Kissi, Affiant and Defendant
4305 Ammendale Rd., Beltsville, MD 20705
202-675-6365 (business hrs 8AM – 5PM)

Certificate of Service

That I did mail per the U.S. Postmaster on 3/26/2011 a copy of this Motion to the Maryland Attorney for Baltimore City and my Attorney of Record Richard W. Moore, Sr., 2300 York Road #213, Lutherville, MD.

DK
David Kissi

Notary:

Subscribed and sworn to before me a Notary Public for David Kissi

My Commission Expires: _____

Embossed Hereon Is My
Montgomery County, Maryland Notary Public Seal
My Commission Expires November 9, 2014
GENE MOLOVINSKY

3/26/2011

Signed by: Gene Molovsky

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OPENING STATEMENT BY MR. BENNETT 145 - 165

GOVERNMENT'S WITNESS:

PAGE

CHRISTINE BARILLA-NELL

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THE COURT: Good morning.

MR. BIRAN: Shall I call the case?

THE COURT: I'll be glad to. It's United States vs. David Kissi, Criminal Action Number 8:05-CR-254. The Court notes the presence of counsel for the Government and the defendant and the absence of the defendant. My watch says it's five minutes after 9:00. We'll stand in recess to await the arrival of the defendant.

(Recess taken from 9:05 a.m. until 9:25 a.m.)

THE COURT: Mr. Kissi, please come forward and take a seat at the defendant's table.

Back on the record in the matter of the United States vs. David Kissi. Present is counsel for the Government and the defendant and defense counsel, Mr. Bennett.

Is the Government ready to proceed?

MS. SALE: Yes, sir.

THE COURT: Is the defendant ready to proceed?

MR. BENNETT: We are. I think Mr. Kissi -- actually, I could speak for him as to some of the matters he's discussed with me. And if he disagrees with my assertion, I'd ask that the Court let him supplement.

As you know, Your Honor, he has sent to you on at least one occasion, and maybe more, letter requests that I

1 be fired. And I would refer Your Honor in that regard to
2 your hearing which my associate appeared, Mr. Pearson, in
3 which on page 5 of the April 20th, 2006, hearing you
4 indicated at the bottom of page 5, quote, "If I let
5 Mr. Schatzow out of this case and I allow another lawyer to
6 enter an appearance, that lawyer will not be excused and
7 that lawyer will be your lawyer throughout the trial. You
8 will not be allowed to fire them and you will not be allowed
9 to engage in anything further to delay or disrupt the
10 orderly proceedings. Do you understand?"

11 The defendant, line 6, "Yeah, yeah."

12 The Court: "Are you in agreement if I allow
13 appearance by new counsel that you may not discharge that
14 counsel?"

15 Line 10: "Yes, sir."

16 He precedes that with language that that shouldn't
17 be a problem because he had been in to see me, that he liked
18 me, that he could work with me, et cetera.

19 So, that is why I have not filed a motion for
20 leave to withdraw and why I have moved ahead and prepared
21 all last week in addition, of course, before that for this
22 trial. That's my remarks on that issue.

23 THE COURT: All right.

24 Mr. Kissi, are you ready to proceed?

25 THE DEFENDANT: No, sir. Your Honor, when you

(31)

1 were here the last time, you were here on 4-20-06, and no
2 one knew at that time that the Government was going to add
3 two more charges to my indictment. I didn't ask for that
4 additional indictment. The Government added them. And
5 according to the rule book, I'm entitled to at least 180
6 days from that indictment to my trial.

7 Your Honor, there's no one who is more willing to
8 go to trial than I am. I think -- I mean, I tried to
9 prepare. These criminals who are on, on the bench, I never
10 knew until I encountered this case that an American
11 courtroom is used for stealing. I look forward to a trial,
12 but Mr. Bennett is not prepared. I know he is qualified,
13 but this morning he is not prepared. I have tested him. I
14 have quizzed him. He is not prepared. So, my wife has
15 decided to hire a gentleman by the name of Mr. Walter.

16 THE COURT: We're not going to do that, Mr. Kissi.
17 We're not going to do that. We're going to go to trial
18 today.

19 THE DEFENDANT: Well, Your Honor, let me finish.

20 THE COURT: Go ahead.

21 THE DEFENDANT: And Mr. Walter will substitute for
22 Mr. Bennett. If you don't want me to hire him, then she
23 will have to hire him. Also the reason I have to have a
24 continuance, the reason there has to be a continuance is
25 that I have about four or five appeals pending in the Fourth

1 Circuit, and I strongly believe that one of these days a
2 decision will come through my way that says that, yes,
3 Hirsch, the debt collector, did file a false claim against
4 DK&R and that Judge Messitte was wrong to have summarily
5 granted a judgment on that motion.

6 Also my witnesses are not here. Your Honor is my
7 only witness I can see in this room because I put your name
8 for the clerk that you're my witness. So, how do you sit on
9 this case when I've nominated you as my witness?

10 THE COURT: I won't be your witness.

11 THE DEFENDANT: You are my witness. And all I
12 would -- all the witnesses aren't going to appear until you
13 subpoena them; for example, Dr. Brenner. They come up with
14 this allegation that I had set up a trust for the purpose of
15 defrauding creditors. So, Dr. Brenner, I mean, he says he
16 will come here provided he is subpoenaed. And the rule book
17 says for that reason I'm entitled to a continuance.

18 Judge Connelly, Judge Connelly who summarily, like
19 you, has ruled against me on so many occasions I think will
20 testify even though he ruled against me, but he said he's
21 busy elsewhere. He can't come this week. So, Your Honor, I
22 mean, the rule book says that I'm entitled to that.

23 And Bennett can't, I mean, defend me. I already
24 filed a complaint with the D.C. bar. I mean, a defendant
25 who has filed a complaint against a, against his attorney

1 can't be acting in my best interest. And this morning he is
2 not prepared, Your Honor.

3 THE COURT: You're starting to repeat yourself.
4 I'll allow you to make a record, but don't repeat yourself.

5 THE DEFENDANT: Okay. Your Honor, last week he
6 said he has a hundred pieces of information or so from the
7 Government, and in one instance he's prepared to go forward.
8 In other instances he says he needs my help to, I mean,
9 understand those. So, how do you, how do you prepare? It's
10 against my interest. I'm willing to go to trial, but not
11 this morning.

12 THE COURT: All right, Mr. Kissi, that's enough.

13 Mr. Kissi, you're not going to be permitted to
14 manipulate this court any further. You have had, first,
15 John Chandler, a Federal Public Defender, as a lawyer. Then
16 you had Lisa Phelan, Federal Federal Public Defender, as a
17 lawyer. Then you had Michael Citaramanis, a Federal Public
18 Defender, as your lawyer. Then you had Mr. Warren Gorman as
19 a retained counsel in this case. You then replaced him with
20 Carrie Crawford, a retained lawyer. She was then fired by
21 you and I appointed Mr. Michael Schatzow.

22 At the last hearing referred to by Mr. Bennett,
23 you fired Mr. Schatzow with the understanding that if I
24 allowed you to hire Mr. Bennett, that would be the end of
25 it. He would represent you and there would be no further

1 attempts to manipulate the scheduling of your trial or to
2 play games with the court. Mr. Bennett has been retained.
3 He has announced he's ready for trial. We will proceed. Do
4 you understand?

5 THE DEFENDANT: Your Honor, I don't understand.

6 THE COURT: Well, it's very simple. We're going
7 to trial. Have a seat.

8 THE DEFENDANT: But the rule book says that if the
9 Government, I mean, --

10 THE COURT: I understand what the rule book says
11 and I can tell you this. You're entitled to counsel or
12 you're entitled to represent yourself. You'll recall that I
13 went over that with you. Do you recall I went over that
14 with you?

15 THE DEFENDANT: Yeah.

16 THE COURT: All right. And -- but you're not
17 entitled to mixed representation. That is, you're not
18 entitled to have a lawyer and to represent yourself at the
19 same time. Mr. Bennett is your lawyer. He is representing
20 you until such time as he is discharged. If you want to
21 discharge him now, you may represent yourself at trial.
22 I'll have to go over that caution with you again. But then
23 you'll have to conduct the entire trial and jury selection
24 and evidence by yourself. Now, which do you want to do?

25 THE DEFENDANT: Your Honor, I'm going to represent

(41)

1 myself.

2 THE COURT: All right.

3 THE DEFENDANT: And I need a Government --

4 THE COURT: Wait just a minute. If you keep
5 talking overtop of me, then I'm going to have to have the
6 marshal come up and silence you. Do you understand? So,
7 now, listen to me.

8 If you want to represent yourself, I want to
9 caution you that to do so is a very risky proposition, that
10 you will be required to follow all of the rules of evidence
11 in the court. You'll be required to conduct the examination
12 of witnesses and the presentation of evidence in the same
13 fashion that is required of all parties in litigation.
14 There will be no special treatment for you.

15 I've asked you before and I understand that you
16 have no special training in the law. You told me you
17 intended to get some at a later time. Have you received any
18 special training in the law since our last hearing? Answer
19 the question.

20 THE DEFENDANT: No, Your Honor, I haven't received
21 any training, but --

22 THE COURT: All right. And having no training in
23 the law, it would be very hazardous for you to try to
24 proceed acting as your own lawyer. I will hold you to the
25 same standards. I will not allow you to ask questions or to

(42)

1 make statements that are not proper. I will silence you if
2 necessary in front of the jury, the jury that will be trying
3 the facts of the case.

4 So, knowing all that, do you still wish to proceed
5 as your own lawyer?

6 THE DEFENDANT: Your Honor, I need --

7 THE COURT: "Yes" or "no"?

8 THE DEFENDANT: Yeah, I want to represent myself
9 and I --

10 THE COURT: All right, very well.

11 THE DEFENDANT: I need the 27 cases of documents
12 the FBI took to --

13 THE COURT: Have a seat, Mr. Kissi. Are you going
14 to represent yourself?

15 THE DEFENDANT: Yeah, because I need that
16 information to represent myself.

17 THE COURT: Is that a motion?

18 THE DEFENDANT: Yeah, it's a motion.

19 THE COURT: It's overruled. Do you have anything
20 else?

21 MR. BENNETT: Your Honor, --

22 THE COURT: I'm going to appoint Mr. Bennett as
23 standby counsel.

24 MR. BENNETT: No. Here's what you found at the
25 last hearing, Your Honor.

1 THE COURT: All right. I found that he couldn't
2 represent himself.

3 MR. BENNETT: Yeah. You should deny this motion.

4 THE DEFENDANT: Then you refund my wife's money to
5 her.

6 THE COURT: Mr. Kissi, sit down and be quiet. Sit
7 down and be quiet.

8 THE DEFENDANT: You refund the money to her.

9 MR. BENNETT: Thursday, April 20th, 2006, on page
10 5, line 17, Your Honor:

11 "THE COURT: I previously talked to you about your
12 knowledge of the law and knowledge of the rules of evidence
13 and you indicated that you felt incapable of proceeding by
14 yourself without the advice of a lawyer. Is that still
15 true?"

16 "THE DEFENDANT: Yeah, that is correct. I never
17 took the bar exam. And if I'm smart, these people only
18 steal \$3 million. I'm not smart."

19 THE COURT: I would much prefer that you continue
20 to represent Mr. Kissi. And I told Mr. Kissi on at least
21 three occasions of the hazards of representing himself. I
22 don't know how he can possibly go forward *pro se* in this
23 matter. I don't see how he can possibly do this without Mr.
24 Bennett. And I don't want to permit it, but I'm cautious
25 about whether or not I have to if he absolutely insists.

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1 MR. BENNETT: Well, under Faretta and all the
2 cases, you have to be making, you have to be able to make a
3 finding that he's capable of representing himself. And
4 you've already made a finding that he's not. And he's --

5 THE COURT: I agree with you, Mr. Bennett. I
6 don't think I can make that finding. You will represent
7 Mr. Kissi. We will proceed with the trial.

8 You had a motion pending. First you wanted to
9 re-address the 404.

10 MR. BENNETT: Yeah.

11 THE COURT: Give me just a minute. I'll be right
12 back.

13 (Recess taken from 9:40 a.m. until 9:45 a.m.)

14 DEPUTY MARSHAL: The defendant is not here.

15 MR. BENNETT: I think he went to the bathroom.
16 I'll go look for him.

17 THE COURT: All right.

18 (Pause)

19 THE COURT: Back on the record in the United
20 States vs. Kissi.

21 The Court wants to find that Mr. Kissi's present
22 indication that he'd like to represent himself is not a
23 proper motion because it's made solely for the purpose of
24 delay and to manipulate this court. There is a long history
25 of attempts to manipulate the court in this case by

www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-clerk-court-audit-20110614,0,690906.story

baltimoresun.com

State audit says Baltimore court clerks left millions of dollars uncollected

Poor record-keeping also cited in report issued this week

By Tricia Bishop, The Baltimore Sun

6:32 PM EDT, June 14, 2011

Baltimore Circuit Court clerks have revamped procedures on the heels of a scathing legislative audit that found the office neglected to pursue \$7.8 million in long-overdue accounts and never bothered to bill roughly \$1 million in criminal case fees during the 2010 fiscal year.

The 15-page report also says that the office does not ensure proper record-keeping — even of criminal case dispositions — or maintain adequate oversight of multiple functions, including juror payments and the issuance of business licenses.

"Numerous deficiencies in the procedures and controls were noted," auditor Bruce A. Myers wrote in a letter to the state Joint Audit Committee, which reviews such findings.

He attached a response to the audit from the clerk's office, which says billing and record-keeping processes have since been strengthened.

Myers' report — dated June 3, but distributed to the public Monday — covers a three-year period from 2008 through mid-September 2010, when recession blanketed the nation. More than 100,000 Maryland jobs were lost during that period, along with revenue streams for both the state and city, making cash collection critical.

The audit's findings, first reported by The Daily Record newspaper, came as a blow to longtime clerk Frank M. Conaway Sr., who has governed the office since 1998 and failed to repair some of its pressing problems, according to the report.

Conaway declined to comment for this article Tuesday afternoon, saying he was unhappy with statements he made earlier in the day to The Baltimore Sun's editorial board, telling one member "it's not [his] job" to collect unpaid funds.

"I'm not supposed to go out and approach criminals," he said, adding that it's unlikely offenders will pay up, anyway. "Criminals are not going to pay fines unless they rob someone to pay fines," he told the board member. "Criminals are criminals."

Conaway is one of a half-dozen Democratic candidates in the Baltimore mayor's race, though he's not much of a contender in the crowded field, according to Matthew Crenson, a professor emeritus of political science at the Johns Hopkins University.

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The report won't "hurt [Conaway's] mayoral chances in any significant way," Crenson said, because there is little "chance he was going to win."

Conaway, who was re-elected to his clerk position last year, and Robert M. Bell, chief judge of the state's Court of Appeals, sent a letter to Myers earlier this month, outlining their response to the identified deficiencies.

They also pointed out that the \$7.8 million figure is an "accumulation" of five decades worth of "uncollected fines and costs."

"There have been attempts ... to collect," the letter said.

The clerk's office acts as a sort of reception desk for the courts, dealing with the public, answering questions, accepting legal filings and keeping track of the day's schedule. But clerks are also responsible for collecting fees, maintaining records and issuing various licenses.

They closed out nearly 18,000 criminal cases during fiscal year 2010 and took in more than \$37 million in revenue — 60 percent of which went to the city, while 38 percent went to the state. (The remainder, about \$563,000 was distributed to other organizations, including the Bar Library.)

The uncollected or unbilled millions identified in the legislative audit are equal to a quarter of the office's annual revenue.

The auditors submitted six findings and recommendations to the Joint Audit Committee, half of which were left over from the last audit, which analyzed a 31-month period from June 2005 through 2007.

"We determined that the Office had not satisfactorily addressed these findings," the newest audit states, adding that the older recommendations are therefore "repeated in this report."

The deficiencies identified include:

- Insufficient controls over assessing and collecting both criminal and civil court fees.
- A lack of direction for Baltimore sheriffs, who are mandated by law to help retrieve criminal case funds in the city.
- No independent review of juror payments to ensure propriety.
- Inadequate controls over business licensing.
- The office did not independently verify criminal case dispositions to guarantee their proper recording.

Auditors said accurate recording of criminal case outcomes is "critical for public safety," but it's also of vital importance to defendants. Their criminal records affect their reputations and future court proceedings.

A clerical error in 2000 nearly cost Thomas Perrin years of freedom. A judge sentenced him to a 20-year term for illegal gun possession, based on the erroneous belief that Perrin had three prior drug convictions, making him an "armed career criminal" eligible for an enhanced sentence.

It turns out Perrin had only two priors. A clerk had mistakenly entered a third into an electronic records system. Perrin's sentence was corrected last year to a six-year term.

"We have to double-check everything," Perrin's defense attorney, C. Justin Brown, said at the time. "Because when it's not done properly, the results can be disastrous."

HT

In their letter to auditor Myers, Conaway and Bell said that court personnel "now verify dispositions to independent source documents on a test basis each month," jury funds are appropriately overseen and the office is revamping its business license process, which had been criticized as too lax.

The office is also in the process of developing a memorandum of understanding with Baltimore sheriffs and "currently implementing corrective actions to resolve older accounts," Bell and Conaway said in the letter, though they noted that "some accounts in the \$7.8 million balance are excessively aged."

The men plan to seek guidance on what to do about those accounts.

Audit Director Gregory Hook said their response will likely satisfy the Maryland Joint Audit Committee, which has had the report for several weeks now. His office performs audits on more than 200 state agencies every three years, and most issues are resolved without a legislative hearing.

Only time will tell how well their fixes take. Bell and Conaway also sent a letter to Myers in 2008 after the last audit, concurring with its findings and offering solutions.

The next audit is scheduled for 2014 — the same year Conaway comes up for re-election.

tricia.bishop@baltsun.com

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)

PRAMCO II, LLC
c/o MidWest Financial
Fairport Office Park
1387 Fairport Road, Suite 750
Fairport, NY 14450

Plaintiff,

v.

DAVID KISSI
4305 Ammendale Road
Beltsville, Maryland 20705

and

EDITH TRUVILLION KISSI
4305 Ammendale Road
Beltsville, Maryland 20705

Defendants.

Civil Action No. **PJM 03 CV 3241**

FILED ENTERED
LOGGED RECEIVED

AUG 4 2003

AT GRENDEL
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND

BY DEPUT

TEMPORARY RESTRAINING ORDER

Upon consideration of the Motion for Temporary Restraining Order and Preliminary Injunction filed by the Plaintiff, Pramco II, LLC ("Pramco"), which seeks, inter alia, the entry of a temporary restraining order against Defendants David Kissi ("Kissi") and Edith Truvillion Kissi ("Truvillion") (collectively "Defendants") (i) prohibiting Defendants or their agents or individuals acting in concert with them from filing any pleadings, actions or proceedings without seeking leave of this Court and, (ii) prohibiting Kissi, Truvillion, their agents or individuals acting in concert with them for the continuation or institution of any actions or proceeding in

Com 8/4/03 Oad

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state court or in any federal court which constitute a collateral attack on any order or judgment of this Court, and the evidence presented by Franco in support of the said Motion in the form of the verified Complaint, the exhibits attached thereto and the exhibits attached to the Plaintiff's Memorandum of Points and Authorities thereto filed in support of the said Motion; and it appearing to the Court that immediate, substantial and irreparable harm will result to Plaintiff if the relief requested in the Motion is not granted; that Plaintiff has demonstrated likelihood of success on the merits of Count I of the verified Complaint, that the balance of harm tips in Plaintiff's favor and that the public interest favors the granting of the requested relief it is,

ORDERED, pursuant to Federal Rule of Civil Procedure 65 Kissi and Truvillion are hereby temporarily enjoined and restrained as follows:

1. Kissi, Truvillion, their agents and persons acting in concert with them are enjoined and restrained from continuing or instituting any actions or proceeding in any state court or in any United States court which constitutes a collateral attack on any order or judgment of this Court, which is currently the subject of a pending direct appeal by the Defendants to the United States Court of Appeals for the Fourth Circuit including any attempt to relitigate, reopen, reconsider, vacate or in any manner challenge or undermine the validity of any such order or judgment of this Court.
2. As to any action or proceeding not prohibited by Paragraph 1 hereof, Kissi, Truvillion, their agents and any persons or entities acting in concert with them or on their behalf are hereby enjoined and restrained from filing any pleadings, actions or proceedings without prior leave of this Court.
 In order to obtain leave of the court in which Kissi or Truvillion intend to bring an action or proceeding, Kissi or Truvillion must file with that court the following:
 - (1) a petition requesting permission to file a pro se action which shall contain the following:
 - (a) a copy of this Order, and a statement advising the court that the petition to file a pro se action is being submitted pursuant to his Order;
 - (b) a statement advising the court whether any defendant in the lawsuit was a party, litigant, judge, attorney, court officer, public official or participant to, or was any way involved in, any prior lawsuit involving Kissi or Truvillion;
 - (c) a list of all lawsuits in the courts of any state, the United States District Court of the District of Maryland, and the Court of Appeals for

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the Fourth Circuit in which Kissi or Truvillion is or were a party. This list shall include the name, case number, and citation, if applicable, of each case; statement indicating the nature of Kissi or Truvillion's involvement in the lawsuit; and its current status or disposition. If judgment was rendered against Kissi or Truvillion, they must indicate the amount of the judgment, the amount of the judgment that remains outstanding, if any, and the reasons that amount remains outstanding. The Defendants must also identify the procedural or monetary sanctions, assessment of attorney fees, contempt orders, or jail sentences arising out of a civil prosecution imposed against Kissi or Truvillion by any court, including all appellate courts, if any. Kissi and Truvillion shall include a brief statement explaining the sanctions, contempt order, attorney fees or jail sentence imposed; the type or amount of sanctions; the outstanding amount of any sanctions or attorney fees; and the current status or disposition of the matter.

- (2) an affidavit in proper legal form containing the following recitals:
 - (a) that the claim or claims the Defendants wish to present have never before been raised by them and disposed of by any state or United States court and are not, to the best of his or her knowledge, barred by collateral estoppel or res judicata;
 - (b) that to the best of his or her knowledge the claim or claims are not frivolous or taken in bad faith; that they are well grounded in fact and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; that the lawsuit is not interposed for any improper purpose, such as to harass, cause unnecessary delay or needless increase in the cost of litigation, or to avoid the execution of a valid judgment;
 - (c) that the claim or claims are not meant to harass any judicial officer, attorney, individual, organization or entity; and
 - (d) that in prosecuting the action, the Defendants will comply with all state and local rules of procedure, including those requiring service to other parties of all pleadings and papers filed with the court and will provide the court with acceptable proof that such service was made; and
- (3) a copy of the complaint or claims sought to be filed in that district

3. Kissi, Truvillion, their agents and persons acting in concert with them are enjoined from transferring, assigning, selling, mortgaging, hypothecating or otherwise disposing of any real or personal property or any asset or property of whatever kind or nature and wherever situated without leave of this Court; and it is further

ORDERED, that this court shall retain jurisdiction to enforce the terms of this Order; and

it is further

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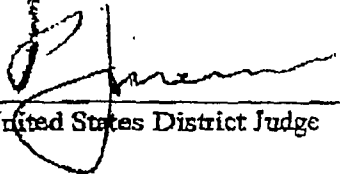
ORDERED, this Order shall expire on its own terms in ten (10) days unless this Court extends duration of this order for good cause shown; and it is further

ORDERED, any party affected by this Order may apply for the dissolution or modification of this Order on at least two (2) days' notice to Plaintiff; and it is further

ORDERED, a hearing on Plaintiff's request for a preliminary injunction shall be held on the 21st day of August, 2003 at 10 a.m./p.m.

ORDERED, Pramo shall to execute before the Clerk of the Court a bond in the sum of Fifty Thousand (Dollars) \$ 50,000⁰⁰ with surety approved by the Clerk and conditioned as provided by law within 4 days of the date of this Order. This Order shall not become effective until the date of issuance of said bond.

Entered: Aug 4 2003 at 3⁰⁰ p.m.


United States District Judge

Copies to:

Emil Hirsch
O'Connor & Hannan, LLP
1666 K Street, N.W.
Suite 500
Washington, D.C. 20006

David Kissi
Edith Truvillion Kissi
4305 Ammendale Road
Beltsville, MD 20705

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CIVIL PROCEDURE — DISTRICT COURT Rule 3-311

the plaintiff, unless the defendant appears and the court is satisfied that the defendant may have a defense to the claim. In that event, the court shall proceed with trial or, upon request of the plaintiff, may grant a continuance for a time sufficient to allow the plaintiff to prepare for trial on the merits. (Amended Nov. 20, 1984, effective Jan. 1, 1985.)

Source. — This Rule is derived from former M.D.R. 302.

Effect of amendments. — The 1984 amendment, effective Jan. 1, 1985, deleted "unresident" preceding "defendant" in section 302.
Quoted in Cooper v. Sacco, 357 Md. 622, 745

A.2d 1074 (2000); Goodman v. Commercial Credit Corp., 364 Md. 483, 778 A.2d 626 (2001).

Stated in Pickett v. Sears, Roebuck & Co., 365 Md. 67, 775 A.2d 1218 (2001).

Rule 3-308. Demand for proof.

When the defendant desires to raise an issue as to (1) the legal existence of a party, including a partnership or a corporation, (2) the capacity of a party to sue or be sued, (3) the authority of a party to sue or be sued in a representative capacity, (4) the averment of the execution of a written instrument, or (5) the averment of the ownership of a motor vehicle, the defendant shall do so by specific demand for proof. The demand may be made at any time before the trial is concluded. If not raised by specific demand for proof, these matters are admitted for the purpose of the pending action. Upon motion of a party upon whom a specific demand for proof is made, the court may continue the trial for a reasonable time to enable the party to obtain the demanded proof.

Source. — This Rule is derived from former M.D.R. 302 a.

Purpose. — The purpose of this Rule is to expedite litigation while giving a defendant the chance to challenge certain issues on the chance that there is a real dispute between the parties over any of those issues. Cooper v. Sacco, 357 Md. 622, 745 A.2d 1074 (2000).

Specificity required. — To demand that a plaintiff prove any of the five issues listed in this Rule, defendants must state specifically which issues they wish the plaintiff to prove at trial. Cooper v. Sacco, 357 Md. 622, 745 A.2d 1074 (2000).

The requirement that a defendant must spe-

cifically plead each negative defense: if the matter is not to be admitted is the same under both District and circuit court rules. Cooper v. Sacco, 357 Md. 622, 745 A.2d 1074 (2000).

There was no specific request made that the plaintiff prove ownership of a motor vehicle involved in an allegedly tortious accident where defendant's counsel appeared to have used this Rule strictly as an "ambush" tactic by attempting to place a wider burden of production on the plaintiff and to benefit from the chance error that plaintiff's counsel would not identify the owner at trial. Cooper v. Sacco, 357 Md. 622, 745 A.2d 1074 (2000).

Rule 3-311. Motions.

(a) Generally. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall set forth the relief or order sought.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-7077

September Term 2010

1:08-cv-01796-RBW

David Kissi,

Appellant

v.

EMC Mortgage Corporation, et al.,

Appellees

MANDATE		Filed On:
Pursuant to the provisions of Fed. R. App. Pro. 41(a)		
ISSUED:	<i>[Signature]</i>	NOV 19 2010
BY:	<i>[Signature]</i>	FILED
ATTACHED:	Accepting Order Clerk Order on Costs	

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

NOV 30 2010

CLERK

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BEFORE: Henderson, Garland, and Brown, Circuit Judges

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia, the briefs filed by the parties, and on appellant's supplements to his brief. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the case be remanded to the district court for reconsideration in light of the Maryland Court of Special Appeals' decision in Kissi v. EMC Mortgage Corp. of Texas (Md. Ct. Spec. App. No. 499, Aug. 13, 2009). That decision was issued after the district court dismissed appellant's claims on grounds of res judicata and collateral estoppel. In the district court's view, the judgment of the Circuit Court for Prince George's County, Maryland, precluded appellant from relitigating his claims in federal court. The Maryland Court of Special Appeals, however, has vacated the Maryland Circuit Court judgment and remanded the case to the Circuit Court. Accordingly, the district court is directed to consider anew whether the claims in appellant's complaint are precluded by res judicata and collateral estoppel, and if so, to what extent.

U.S. District Court
For The District of Columbia

David Kissi	Petitioner	:	
325 Pennsylvania Ave SE		:	
DC/USA 20003		:	
202-675-6365		:	
v.		:	Case #: _____
USA/DOJ	Respondent	:	
950 Pennsylvania Ave NW		:	
DC/USA 20530		:	

Points Of Authorities In Supporting Kissi' Petition
For A Writ of Habeas Corpus That Among Other Grounds Why Petitioner's Writ of Habeas Corpus
Should Be Granted Is That He was Poorly Represented By Several Lawyers In This Matter Chief Of
Whom Is F.W. Bennett

<u>CASES:</u>	<u>Pages</u>
Faretta v. California, 422 U.S. 806 (1975)	3
Godinez v. Moran, 509 U.S. 389 (1993)	3
Glover v. U.S., 531 U.S. 198 (2001)	8
Griffin V. Warden, Maryland Correction Adjustment Center, 970 F.2d 1355 (4 th Cir 1992)	8
Kimmel v. Morrison, 477 U.S. 365 (1986)	8
McMann v. Richardson, 397 U.S. 759 (1970)	7
McKaskle v. Wiggins, 465 U.S. 168 (1984)	3
Strickland v. Washington, 466 U.S. 668 (1984)	7, 8, 14
U.S. v. Lawrence, 605 F.2d 1321 (4 th Cir. 1979)	3
U.S. v. Lorick, 753 F.2d 1295 (4 th Cir. 1985)	3
U.S. v Oberhellman, 964 F.2d 50; 748 F.Supp 1334	2
U.S. v. Singleton, 107 F. 3d 1091 (4 th Cir. 1997)	3
U.S. v. Theodore, 354 F.3d 1 (1 st Cir. 2003)	7
U.S. v. Villegas, 388 F.3d 317 (7 th Cir. 2004)	7
Valley Forge Christian College v. Americans United for Separation of Church and State, Inc. 454 U.S. 464 (1982)	11
Zurcher v. Stanford Daily, 436 U.S. 547 (1978)	

Bill of Rights:

5th Amendment in Re: Property Rights
6th Amendment in Re: Due Process 2, 3, 7, 15

Federal Rules:

Federal Rules of Civil Procedure Rule 65(c) – Invalidation of an Injunction
with the removal of its surety bond 2
Federal Rules of Civil Procedure Rule 17 11

Statutes:

Habeas Corpus 28 USC 2255 (f) (2) 1
U.S. Const. Amendment V 2
U.S. Const. Amendment VI 3
18 USCA § 401 2
28 USC § 455 9

U.S. District Court

For The District of Columbia

David Kissi
325 Pennsylvania Ave SE
DC/USA 20003
202-675-6365
v.
USA/DOJ
950 Pennsylvania Ave NW
DC/USA 20530

Petitioner :
:
:
:
:
Respondent :
:
:

Case #: _____

Points of Authority

In Support Of Kissi' Assertion That He Has A Meritorious Claim In This Case: For Payees Pramco and AllFirst and Riggs Hill Condo Had No Clear Titles to Kissi' Trust Properties. And That This Case Should Be Heard In A Neutral D.C. Federal Forum: And That All This Justifies An Audit of Ammendale Trust U.S. Escrow Account And To Compel the Disgorgement Of Invalid Claims. Defendant/USA's Action Amounts To Taking Assets Without Compensation.

Federal Rules:

Federal Rules of Civil Procedure Rule 8 – Proper Complaint Filed By Plaintiff

Federal Rules of Civil Procedure Rule 38 – Demand for a Jury Trial

4th Amendment – Due Process and right to a hearing cited in support for at least a hearing.

5th, 6th and 7th Amendment Rights– Opposition to taking of assets without compensation

14th Amendment - Equal Protection Rights under the Law.

28 USC § 1391 (b)(3) – Establishing the legal basis of the jurisdiction of this court over this case in the D.C. Circuit. Also, See p. 38 for Kissi' current D.C. driver's license in support of his prayer for a neutral D.C. forum.

28 USC § 455 and § 144 – Why D.C. is a neutral forum for this case because all 4th Circuit forums are hostile to the Kissis – the most evident is Judge P. J. Messitte's continued involvement in all Kissi matters now pending in Federal Court in Maryland despite Federal anti-conflict of interest prohibition.

18 USC § 1951 and §1957 Crimes Trustee R.M. Kremen and Ammendale Trust Receiver R.E.
18 USC § 1982 Greenberg have committed in looting Ammendale Trust U.S. Escrow
21 USC § 853 Account.

Precedents that Undermine Pramco and AllFirst Claims Against DK&R Chapter 7 and Ammendale Trust Mortgage Notes :

US Bank National Association, Trustee v Antonio Ibanez, et al, Massachusetts Supreme Court Case #:SJC-10694. See pp. 7-18 hereby enclosed.

In re: Foreclosure Actions, U.S. District Court for Northern District of Ohio Eastern Division, Case #: 07CV1007 etc. – Judge Kathleen O'Malley threw out Pramco's bogus claims similar to Kissi' in Ohio on

the grounds that it had no clear title to commercial mortgages it had bought from another lender in the secondary market. See pp. 4-6 hereby enclosed.

U.S. v. Microsoft, 53 F.3d 568 – In support of Kissi’ Motion that this matter should be reassigned to an impartial judge other than Judge RB Walton, a U.S. Federal Judge in the District of Columbia who has shown consistent bias against Kissi and the Federal Appeals Court for D.C. did reverse RBW on an unrelated claim. See p. 39 for that court’s Mandate hereby attached.

I. Property Title

U.S. v. Dellinger, 982 F.2nd 233 (7th Circuit 1992); North v. Graham, 235 Ill 198, 85 N.E. 267 (1908) – (1) capacity of being effectually transferred.

(2) “Legal Title” to real property is defined as title evidencing apparent ownership, but does not necessarily signify full and complete title or beneficial interest – Woodland Grove Baptist Church v. Woodland Grove Community Cemetery Association, Inc, 947 So. 2nd 1031 (Ala 2006).

II. “Title and Ownership” are not synonymous.

“Ownership” is but one element of title

Montgomery County v. Wildwood Medical Center, LLC 176 MD App.731, 934 A.2d 484 (2007), cert. granted, 403 Md. 304, 941 A.2d 1104 (2008) and reversed on other grounds, 405 MD 489, 954 A.2d 457 (2008).

III. Title to Property does not necessarily involve ownership of property but refers only to a legal relationship to the land, while Ownership is comparable to control and denotes an interest in the real estate other than that of holding title thereto.

Azar v. Old Willow Falls Condominium Association 228 Ill. App. 3rd 753, 170 Ill. Dec. 694, 593 N.E. 2d 583 (1st Dist. 1992)

IV. “Color of Title” is that which gives a semblance or appearance of title, but is not the title in fact. Stevenson v Owen, 212 Mont. 287, 687 P.2d 1010 (1984)

A holder of “Color of Title” has a claim to the title that while having the appearance of validity is in reality defective.

Allen v. Hall, 2006 UT 70, 148 P.3d 939 (Utah 2006)

V. “Equitable Title” is the right in the party to who such title belongs to have the legal title transferred to him or her upon the performance of a specified condition.

Carolan v. Nelson, 226 SW 3d 923 (Mo.Ct. App W.D. 2007)

VI. A Party’s Possession of real property is merely prima facie evidence of title.

Hinojos v. Lohmann, 182 P.3d 692 (Colo. App. 2008)

VII. The Right to Dispose is one of the essential incidents of property.

(a) “Alienation” - one of the principal and most important rights incident to ownership is alienability, or the right to disposition.

Peterman v. Coleman, 764 F2d 1416 (11th Circuit 1985); Federal Deposit Insurance Corp. v British American Corp., 755 F. Supp. 1314 (E.D.N.C. 1991); Erickson v. Bank of California, N.A., 97

Wash. 2d 246, 643 P.2d 670 (1982) – ordinarily, a property owner has the power to dispose of his property as he wishes, as long as he does not violate public policy.

(b) Property must be capable of being transferred:

In re Marriage of McTiernan and Dubrow, 133 Cal. App. 4th 1090, 35 Cal. Reporter 3d 287 (2d Dist 2005).

(c) A fundamental principle of law is the right to transfer it.

(d) As a matter of general property law, one who does not hold title to property or is not acting within his or her scope as an agent for the owner cannot pass or transfer title to that property.

Estate of Herbert v Herbert, 152 S.W. 3d 340 (Mo. Ct. App. W.D. 2004)

VIII. A property can be encumbered or conveyed only by the owner.

In re: Estate of Reed, 201 P3rd 1264 (Colo. App. 2008)

The complete, voluntary transfer of title and is used generally to imply a sale from one person to another.

Carma Developers (Cal), Inc. v. Marathon Development California, Inc. 2 CAL 4th 342, 6 CAL. Rptr. 2d 467, 826 P.2d 710 (1992); In re Estate of Skuro, 487 So. 2d 1065 (FLA 1986).

(a) A right in property implies the legal power to convey that right, as long as the conveyance neither interferes with the existing right of others.

Willwer v Wilburn, 6 Ark. App. 280, 640 S.W. 2d 813 (1982); Wood v. Houtcher, 199 Kan. 238, 428 P.2d 799 (1967).

(b) An act cannot be denounced which the law authorized to be done.

Karsenty v. Schoukroun, 406 MD 469, 959 A.2d 1147 (2008)

Respectfully Submitted By: DLK 6/20/11
David Kissi, Petitioner
325 Pennsylvania Ave SE
Washington, DC 20003
202-675-6365 (business hrs 8am-5pm)

Certificate of Service

That on this day of 6/20/2011, the Plaintiff did send photocopies of the above to the Defendants USA, c/o: The U.S. Attorney General Eric Holder and U.S. Solicitor General Neal Katyal both at the US Dept of Justice, 950 Pennsylvania Ave NW, Washington, DC 20530 and the U.S. Attorney for D.C., Ronald C. Machen, Jr. at 555 4th St, NW, Washington, DC 20530.

DLK 6/20/11

David Kissi

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32 Cases
thrown
out!

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE FORECLOSURE ACTIONS	:	Case Nos. 1:07cv1007	1:07cv2660
	:	07cv1059	07cv2677
	:	07cv1060	07cv2776
	:	07cv1122	07cv2789
	:	07cv1252	07cv2797
	:	07cv1367	07cv2826
	:	07cv1515	07cv2951
	:	07cv1827	07cv2961
	:	07cv1872	07cv2963
	:	07cv1936	07cv2993
	:	07cv1981	07cv3022
	:	07cv1985	07cv3039
	:	07cv1992	07cv3143
	:	07cv2010	07cv3259
	:	07cv2257	07cv3306
	:	07cv2636	
	:	07cv2643	

Pranco!
CV6, LLC
IS A
DEFENDANT
HERE.

JUDGE KATHLEEN M. O'MALLEY

ORDER

Section I of the United States District Court for the Northern District of Ohio's *Fifth Amended General Order No. 2006-16* (October 10, 2007), captioned "The Complaint and Service," outlines specific filing requirements applicable to the numerous private foreclosure actions being filed in federal court. Specifically, Section 1.2.5 of that order provides:

1.2 The complaint must be accompanied by the following:

1.2.5 An affidavit documenting that the named plaintiff is the owner and holder of the note and mortgage, whether the original mortgagee or by later assignment, successor in interest or as a trustee for another entity.

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Fifth Amended General Order No. 2006-16 (October 10, 2007) (Emphasis added).¹ A foreclosure plaintiff, therefore, especially one who is not identified on the note and/or mortgage at issue, must attach to its complaint documentation demonstrating that it is the owner and holder of the note and mortgage upon which suit was filed. In other words, a foreclosure plaintiff must provide documentation that it is the owner and holder of the note and mortgage as of the date the foreclosure action is filed.

It is reasonably clear from Section 1.2.5 that an affidavit alone, in which the affiant simply attests that the plaintiff is the owner and holder of the note and mortgage, is insufficient to comply with Section 1.2.5's "documentation" requirement. To the extent a note and mortgage are no longer held or owned by the originating lender, a plaintiff must appropriately document the chain of ownership to demonstrate its legal status *vis-a-vis* the items at the time it files suit on those items. Appropriate "documentation" includes, but is not limited to, trust and/or assignment documents executed before the action was commenced, or both as circumstances may require.

In this case, the plaintiff is not identified on the note and mortgage as the original owner/holder, and has either: (1) not timely filed adequate documentation demonstrating that it was the owner and holder at the time it filed suit; or (2) filed documentation indicating that an assignment or execution of trust interest occurred, but occurred after the filing of the complaint.²

¹ None of the amendments to the order altered Section 1.2.5. That section has remained the same. Regardless, by its express terms, the *Fifth Amended General Order No. 2006-16* (October 10, 2007) applies to all then-pending and new foreclosure actions.

² The Court is only concerned with the date on which the documents were executed, not the dates on which they were recorded (if recorded) with the county recorder's office.

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Accordingly, the plaintiff's complaint does not comply with Section 1.2.5 of the Court's *Fifth Amended General Order No. 2006-16* (October 10, 2007).³ This case is **DISMISSED without prejudice. Pursuant to the Court's local rules, if re-filed, this case shall be marked as related and reassigned to the undersigned.**⁴

IT IS SO ORDERED.

s/Kathleen M. O'Malley
KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE

Dated: November 14, 2007

³ As of October 10, 2007 when it was issued, the Court's *Fifth Amended General Order No. 2006-16* automatically granted plaintiffs in then-pending foreclosure actions thirty (30) days to amend their pleadings to conform with, among other things, the order's owner/holder "documentation" requirement(s). As of November 9, 2007, the automatic thirty-day period in which to cure pleading defects in then-pending actions expired.

⁴ Because it was dismissed for failure to comply with the Court's *Fifth Amended General Order No. 2006-16*, if this case is re-filed and ultimately proceeds to judgment, the Court will not award in a subsequent action any fees or expenses incurred in connection with this case (*i.e.*, the dismissed case).

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U.S. BANK NATIONAL ASSOCIATION, trustee, vs. Antonio IBANEZ (and a consolidated case)

By adamg - 1/7/11 - 10:43 am

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U.S. BANK NATIONAL ASSOCIATION, trustee [FN1] vs. Antonio IBANEZ (and a consolidated case [FN2]). For ABFC 2005-OPT 1 Trust, ABFC Asset Backed Certificates, Series 2005-OPT 1. [FN3]).

No. SJC-10694.

October 7, 2010. - January 7, 2011.

Real Property, Mortgage, Ownership, Record title, Mortgage, Real estate, Foreclosure, Assignment, Notice, Foreclosure of mortgage.

CIVIL ACTIONS commenced in the Land Court Department on September 16 and October 30, 2008.

Motions for entry of default judgment and to vacate judgment were heard by Keith C. Long, J.

The Supreme Judicial Court granted an application for direct appellate review.

R. Bruce Allensworth (Phoebe S. Winder & Robert W. Sparkes, III, with him) for U.S. Bank National Association & another.

Paul R. Collier, III (Max W. Weinstein with him) for Antonio Ibanez.

Glenn F. Russell, Jr., for Mark A. LaRaca & another.

The following submitted briefs for amici curiae:

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Martha Coakley, Attorney General, & John M. Stephan, Assistant Attorney General, for the Commonwealth.

Kevin Costello, Gary Klein, Shennan Kavanagh & Stuart Rossman for National Consumer Law Center & others.

Ward P. Graham & Robert J. Moriarty, Jr., for Real Estate Bar Association for Massachusetts, Inc

Marie McDonnell, pro se.

Present: Marshall, C.J., Ireland, Spina, Cordy, Botsford, & Gants, JJ.

[FN4]

GANTS, J.

After foreclosing on two properties and purchasing the properties back at the foreclosure sales; U.S. Bank National Association (U.S. Bank), as trustee for the Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2006-Z; and Wells Fargo Bank, N.A. (Wells Fargo), as trustee for ABFC 2005 OPT 1 Trust, ABFC Asset Backed Certificates, Series 2005-OPT 1 (plaintiffs) filed separate complaints in the Land Court asking a judge to declare that they held clear title to the properties in fee simple. We agree with the judge that the plaintiffs, who were not the original mortgagees, failed to make the required showing that they were the holders of the mortgages at the time of foreclosure. As a result, they did not demonstrate that the foreclosure sales were valid to convey title to the subject properties, and their requests for a declaration of clear title were properly denied.

[FN5]

Procedural history. On July 5, 2007, U.S. Bank, as trustee, foreclosed on the mortgage of Antonio Ibanez, and purchased the Ibanez property at the foreclosure sale. On the same day, Wells Fargo, as trustee, foreclosed on the mortgage of Mark and Tammy LaRance, and purchased the LaRance property at that foreclosure sale.

In September and October of 2008, U.S. Bank and Wells Fargo brought separate actions in the Land Court under G.L. c. 240, § 6, which authorizes actions "to quiet or establish the title to land situated in the commonwealth or to remove a cloud from the title thereto." The two complaints sought identical

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relief: (1) a judgment that the right, title, and interest of the mortgagor (Ibanez or the LaRaces) in the property was extinguished by the foreclosure; (2) a declaration that there was no cloud on title arising from publication of the notice of sale in the Boston Globe; and (3) a declaration that title was vested in the plaintiff trustee in fee simple. U.S. Bank and Wells Fargo each asserted in its complaint that it had become the holder of the respective mortgage through an assignment made after the foreclosure sale.

In both cases, the mortgagors--Ibanez and the LaRaces--did not initially answer the complaints, and the plaintiffs moved for entry of default judgment. In their motions for entry of default judgment, the plaintiffs addressed two issues: (1) whether the Boston Globe, in which the required notices of the foreclosure sales were published, is a newspaper of "general circulation" in Springfield, the town where the foreclosed properties lay. See G.L. c. 244, § 14 (requiring publication every week for three weeks in newspaper published in town where foreclosed property lies, or of general circulation in that town); and (2) whether the plaintiffs were legally entitled to foreclose on the properties where the assignments of the mortgages to the plaintiffs were neither executed nor recorded in the registry of deeds until after the foreclosure sales. [FN6] The two cases were heard together by the Land Court, along with a third case that raised the same issues.

On March 26, 2009, judgment was entered against the plaintiffs. The judge ruled that the foreclosure sales were invalid because, in violation of G.L. c. 244, § 14, the notices of the foreclosure sales named U.S. Bank (in the Ibanez foreclosure) and Wells Fargo (in the LaRace foreclosure) as the mortgage holders where they had not yet been assigned the mortgages. [FN7] The judge found, based on each plaintiff's assertions in its complaint, that the plaintiffs acquired the mortgages by assignment only after the foreclosure sales and thus had no interest in the mortgages being foreclosed at the time of the publication of the notices of sale or at the time of the foreclosure sales. [FN8]

The plaintiffs then moved to vacate the judgments. At a hearing on the motions on April 17, 2009, the plaintiffs conceded that each complaint alleged a postnotice, postforeclosure sale assignment of the mortgage at issue, but they now represented to the judge that documents might exist that could show a prenotice, preforeclosure sale assignment of the mortgages. The judge granted the plaintiffs leave to produce such documents, provided they were produced in the form they existed in at the time the foreclosure sale was noticed and conducted. In response, the plaintiffs submitted hundreds of pages of documents to the judge, which they claimed established that the mortgages had been assigned to them

before the foreclosures. Many of these documents related to the creation of the securitized mortgage pools in which the Ibanez and LaRae mortgages were purportedly included. [FN9]

The judge denied the plaintiffs' motions to vacate judgment on October 14, 2009, concluding that the newly submitted documents did not alter the conclusion that the plaintiffs were not the holders of the respective mortgages at the time of foreclosure. We granted the parties' applications for direct appellate review

Factual background. We discuss each mortgage separately, describing when appropriate what the plaintiffs allege to have happened and what the documents in the record demonstrate. [FN10]

The Ibanez mortgage. On December 1, 2005, Antonio Ibanez took out a \$103,500 loan for the purchase of property at 20 Crosby Street in Springfield, secured by a mortgage to the lender, Rose Mortgage, Inc. (Rose Mortgage). The mortgage was recorded the following day. Several days later, Rose Mortgage executed an assignment of this mortgage in blank, that is, an assignment that did not specify the name of the assignee. [FN11] The blank space in the assignment was at some point stamped with the name of Option One Mortgage Corporation (Option One) as the assignee, and that assignment was recorded on June 7, 2006. Before the recording, on January 23, 2006, Option One executed an assignment of the Ibanez mortgage in blank.

According to U.S. Bank, Option One assigned the Ibanez mortgage to Lehman Brothers Bank, FSB, which assigned it to Lehman Brothers Holdings Inc., which then assigned it to the Structured Asset Securities Corporation, [FN12] which then assigned the mortgage, pooled with approximately 1,220 other mortgage loans, to U.S. Bank, as trustee for the Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2006-Z. With this last assignment, the Ibanez and other loans were pooled into a trust and converted into mortgage-backed securities that can be bought and sold by investors--a process known as securitization

For ease of reference, the chain of entities through which the Ibanez mortgage allegedly passed before the foreclosure sale is:

Rose Mortgage, Inc. (originator)

Option One Mortgage Corporation (record holder)

Lehman Brothers Bank, FSB

Lehman Brothers Holdings Inc. (seller)

Structured Asset Securities Corporation (depositor)

U.S. Bank National Association, as trustee for the Structured Asset Securities Corporation Mortgage Pass Through Certificates, Series 2006-Z

According to U.S. Bank, the assignment of the Ibanez mortgage to U.S. Bank occurred pursuant to a December 1, 2006, trust agreement, which is not in the record. What is in the record is the private placement memorandum (PPM), dated December 26, 2006, a 273-page, unsigned offer of mortgage-backed securities to potential investors. The PPM describes the mortgage pools and the entities involved, and summarizes the provisions of the trust agreement, including the representation that mortgages "will be" assigned into the trust. According to the PPM, "[e]ach transfer of a Mortgage Loan from the Seller [Lehman Brothers Holdings Inc.] to the Depositor [Structured Asset Securities Corporation] and from the Depositor to the Trustee [U.S. Bank] will be intended to be a sale of that Mortgage Loan and will be reflected as such in the Sale and Assignment Agreement and the Trust Agreement, respectively." The PPM also specifies that "[e]ach Mortgage Loan will be identified in a schedule appearing as an exhibit to the Trust Agreement." However, U.S. Bank did not provide the judge with any mortgage schedule identifying the Ibanez loan as among the mortgages that were assigned in the trust agreement.

On April 17, 2007, U.S. Bank filed a complaint to foreclose on the Ibanez mortgage in the Land Court under the Servicemembers Civil Relief Act (Servicemembers Act), which restricts foreclosures against active duty members of the uniformed services. See 50 U.S.C. Appendix §§ 501, 511, 533 (2006 & Supp. II 2008). [FN13] In the complaint, U.S. Bank represented that it was the "owner (or assignee) and holder" of the mortgage given by Ibanez for the property. A judgment issued on behalf of U.S. Bank on June 26, 2007, declaring that the mortgagor was not entitled to protection from foreclosure under the Servicemembers Act. In June, 2007, U.S. Bank also caused to be published in the Boston Globe the notice of the foreclosure sale required by G.L. c. 244, § 14. The notice identified U.S. Bank as the "present holder" of the mortgage.

At the foreclosure sale on July 5, 2007, the Ibanez property was purchased by U.S. Bank, as trustee for the securitization trust, for \$94,350, a value significantly less than the outstanding debt and the estimated market value of the property. The foreclosure deed (from U.S. Bank, trustee, as the purported

(B) 2/17

holder of the mortgage, to U.S. Bank, trustee, as the purchaser) and the statutory foreclosure affidavit were recorded on May 23, 2008. On September 2, 2008, more than one year after the sale, and more than five months after recording of the sale, American Home Mortgage Servicing, Inc., "as successor-in interest" to Option One, which was until then the record holder of the Ibanez mortgage, executed a written assignment of that mortgage to U.S. Bank, as trustee for the securitization trust. [FN14] This assignment was recorded on September 11, 2008.

The LaRace mortgage. On May 19, 2005, Mark and Tammy LaRace gave a mortgage for the property at 6 Brookburn Street in Springfield to Option One as security for a \$103,200 loan; the mortgage was recorded that same day. On May 26, 2005, Option One executed an assignment of this mortgage in blank.

According to Wells Fargo, Option One later assigned the LaRace mortgage to Bank of America in a July 28, 2005, flow sale and servicing agreement. Bank of America then assigned it to Asset Backed Funding Corporation (ABFC) in an October 1, 2005, mortgage loan purchase agreement. Finally, ABFC pooled the mortgage with others and assigned it to Wells Fargo, as trustee for the ABFC 2005-OPT 1 Trust, ABFC Asset Backed Certificates, Series 2005-OPT 1, pursuant to a pooling and servicing agreement (PSA)

For ease of reference, the chain of entitles through which the LaRace mortgage allegedly passed before the foreclosure sale is:

Option One Mortgage Corporation (originator and record holder)

Bank of America

Asset Backed Funding Corporation (depositor)

Wells Fargo, as trustee for the ABFC 2005-OPT 1, ABFC Asset-Backed Certificates, Series 2005-OPT 1

Wells Fargo did not provide the judge with a copy of the flow sale and servicing agreement, so there is no document in the record reflecting an assignment of the LaRace mortgage by Option One to Bank of America. The plaintiff did produce an unexecuted copy of the mortgage loan purchase agreement, which was an exhibit to the PSA. The mortgage loan purchase agreement provides that Bank of America, as seller, "does hereby agree to and does hereby sell, assign, set over, and otherwise convey to the Purchaser [ABFC], without recourse, on the Closing Date ... all of its right, title and interest in and to each Mortgage Loan." The agreement makes reference to a schedule listing the assigned mortgage

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loans, but this schedule is not in the record, so there was no document before the judge showing that the LaRace mortgage was among the mortgage loans assigned to the ABFC.

Wells Fargo did provide the judge with a copy of the PSA, which is an agreement between the ABFC (as depositor), Option One (as servicer), and Wells Fargo (as trustee), but this copy was downloaded from the Securities and Exchange Commission website and was not signed. The PSA provides that the depositor "does hereby transfer, assign, set over and otherwise convey to the Trustee, on behalf of the Trust ... all the right, title and interest of the Depositor ... in and to ... each Mortgage Loan identified on the Mortgage Loan Schedules," and "does hereby deliver" to the trustee the original mortgage note, an original mortgage assignment "in form and substance acceptable for recording," and other documents pertaining to each mortgage.

The copy of the PSA provided to the judge did not contain the loan schedules referenced in the agreement. Instead, Wells Fargo submitted a schedule that it represented identified the loans assigned in the PSA, which did not include property addresses, names of mortgagors, or any number that corresponds to the loan number or servicing number on the LaRace mortgage. Wells Fargo contends that a loan with the LaRace property's zip code and city is the LaRace mortgage loan because the payment history and loan amount matches the LaRace loan.

On April 27, 2007, Wells Fargo filed a complaint under the Servicemembers Act in the Land Court to foreclose on the LaRace mortgage. The complaint represented Wells Fargo as the "owner (or assigner) and holder" of the mortgage given by the LaRaces for the property. A judgment issued on behalf of Wells Fargo on July 3, 2007, indicating that the LaRaces were not beneficiaries of the Servicemembers Act and that foreclosure could proceed in accordance with the terms of the power of sale. In June, 2007, Wells Fargo caused to be published in the Boston Globe the statutory notice of sale, identifying itself as the "present holder" of the mortgage.

At the foreclosure sale on July 5, 2007, Wells Fargo, as trustee, purchased the LaRace property for \$120,397.03, a value significantly below its estimated market value. Wells Fargo did not execute a statutory foreclosure affidavit or foreclosure deed until May 7, 2008. That same day, Option One, which was still the record holder of the LaRace mortgage, executed an assignment of the mortgage to Wells Fargo as trustee; the assignment was recorded on May 12, 2008. Although executed ten months after

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foreclosure sale, the assignment declared an effective date of April 18, 2007, a date that preceded publication of the notice of sale and the foreclosure sale.

discussion. The plaintiffs brought actions under G.L. c. 240, § 6, seeking declarations that the defendant mortgagors' titles had been extinguished and that the plaintiffs were the fee simple owners of the foreclosed properties. As such, the plaintiffs bore the burden of establishing their entitlement to the relief sought. *Sheriff's Meadow Found., Inc. v. Bay-Courte Edgartown, Inc.*, 401 Mass. 267, 269 (1987). To meet this burden, they were required "not merely to demonstrate better title ... than the defendants possess, but ... to prove sufficient title to succeed in [the] action." *Id.* See *NationsBanc Mtge. Corp. v. Eisenhauer*, 49 Mass.App.Ct. 727, 730 (2000). There is no question that the relief the plaintiffs sought required them to establish the validity of the foreclosure sales on which their claim to clear title rested.

Massachusetts does not require a mortgage holder to obtain judicial authorization to foreclose on a mortgaged property. See G.L. c. 183, § 21; G.L. c. 244, § 14. With the exception of the limited judicial procedure aimed at certifying that the mortgagor is not a beneficiary of the Servicemembers Act, a mortgage holder can foreclose on a property, as the plaintiffs did here, by exercise of the statutory power of sale, if such a power is granted by the mortgage itself. See *Beaton v. Land Court*, 367 Mass. 385, 390-391, 393, appeal dismissed, 423 U.S. 806 (1975).

Where a mortgage grants a mortgage holder the power of sale, as did both the Ibanez and LaRice mortgages, it includes by reference the power of sale set out in G.L. c. 183, § 21, and further regulated by G.L. c. 244, §§ 11-17C. Under G.L. c. 183, § 21, after a mortgagor defaults in the performance of the underlying note, the mortgage holder may sell the property at a public auction and convey the property to the purchaser in fee simple, "and such sale shall forever bar the mortgagor and all persons claiming under him from all right and interest in the mortgaged premises, whether at law or in equity." Even where there is a dispute as to whether the mortgagor was in default or whether the party claiming to be the mortgage holder is the true mortgage holder, the foreclosure goes forward unless the mortgagor files an action and obtains a court order enjoining the foreclosure. [FN15] See *Beaton v. Land Court*, *supra* at 393.

Recognizing the substantial power that the statutory scheme affords to a mortgage holder to foreclose without immediate judicial oversight, we adhere to the familiar rule that "one who sells under a power

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of sale] must follow strictly its terms. If he fails to do so there is no valid execution of the power, and the sale is wholly void." *Moore v. Dick*, 187 Mass. 207, 211 (1905). See *Roche v. Farnsworth*, 106 Mass. 509, 513 (1871) (power of sale contained in mortgage "must be executed in strict compliance with its terms") See also *McGreevey v. Charlestown Five Cents Sav. Bank*, 294 Mass. 480, 484 (1936). [FN16]

One of the terms of the power of sale that must be strictly adhered to is the restriction on who is entitled to foreclose. The "statutory power of sale" can be exercised by "the mortgagee or his executors, administrators, successors or assigns." G.L. c. 183, § 21. Under G.L. c. 244, § 14, "[t]he mortgagee or person having his estate in the land mortgaged, or a person authorized by the power of sale, or the attorney duly authorized by a writing under seal, or the legal guardian or conservator of such mortgagee, or person acting in the name of such mortgagee or person" is empowered to exercise the statutory power of sale. Any effort to foreclose by a party lacking "jurisdiction and authority" to carry out a foreclosure under these statutes is void. *Chace v. Morse*, 189 Mass. 559, 561 (1905), citing *Moore v. Dick*, supra. See *Davenport v. HSBC Bank USA*, 275 Mich.App. 344, 347-348 (2007) (attempt to foreclose by party that had not yet been assigned mortgage results in "structural defect that goes to the very heart of defendant's ability to foreclose by advertisement," and renders foreclosure sale void).

A related statutory requirement that must be strictly adhered to in a foreclosure by power of sale is the notice requirement articulated in G.L. c. 244, § 14. That statute provides that "no sale under such power shall be effectual to foreclose a mortgage, unless, previous to such sale," advance notice of the foreclosure sale has been provided to the mortgagee, to other interested parties, and by publication in a newspaper published in the town where the mortgaged land lies or of general circulation in that town. *Id.* "The manner in which the notice of the proposed sale shall be given is one of the important terms of the power, and a strict compliance with it is essential to the valid exercise of the power." *Moore v. Dick*, supra at 212. See *Chace v. Morse*, supra ("where a certain notice is prescribed, a sale without any notice, or upon a notice lacking the essential requirements of the written power, would be void as a proceeding for foreclosure"). See also *McGreevey v. Charlestown Five Cents Sav. Bank*, supra. Because only a present holder of the mortgage is authorized to foreclose on the mortgaged property, and because the mortgagor is entitled to know who is foreclosing and selling the property, the failure to identify the holder of the mortgage in the notice of sale may render the notice defective and the foreclosure sale void. [FN17] See *Roche v. Farnsworth*, supra (mortgage sale void where notice of sale

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statutes that govern it. As the opinion of the court notes, such strict compliance is necessary because Massachusetts is both a title theory State and allows for extrajudicial foreclosure.

The type of sophisticated transactions leading up to the accumulation of the notes and mortgages in question in these cases and their securitization, and, ultimately the sale of mortgaged-backed securities, are not barred nor even burdened by the requirements of Massachusetts law. The plaintiff banks, who brought these cases to clear the titles that they acquired at their own foreclosure sales, have simply failed to prove that the underlying assignments of the mortgages that they allege (and would have) entitled them to foreclose ever existed in any legally cognizable form before they exercised the power of sale that accompanies those assignments. The court's opinion clearly states that such assignments do not need to be in recordable form or recorded before the foreclosure, but they do have to have been effectuated.

What is more complicated, and not addressed in this opinion, because the issue was not before us, is the effect of the conduct of banks such as the plaintiffs here, on a bona fide third-party purchaser who may have relied on the foreclosure title of the bank and the confirmative assignment and affidavit of foreclosure recorded by the bank subsequent to that foreclosure but prior to the purchase by the third party, especially where the party whose property was foreclosed was in fact in violation of the mortgage covenants, had notice of the foreclosure, and took no action to contest it.

FN1. For the Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2006-2.

FN2. Wells Fargo Bank, N.A., trustee, vs. Mark A. LaRice & another.

FN3. The Appeals Court granted the plaintiffs' motion to consolidate these cases.

FN4. Chief Justice Marshall participated in the deliberation on this case prior to her retirement.

FN5. We acknowledge the amicus briefs filed by the Attorney General; the Real Estate Bar Association for Massachusetts, Inc.; Marie McDonnell; and the National Consumer Law Center, together with Darlene Manson, Germano DePina, Robert Lane, Ann Coiley, Roberto Szumik, and Geraldo Dusanjos.

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FN6. The uncertainty surrounding the first issue was the reason the plaintiffs sought a declaration of clear title in order to obtain title insurance for these properties. The second issue was raised by the judge in the LaRace case at a January 5, 2009, case management conference.

FN7. The judge also concluded that the Boston Globe was a newspaper of general circulation in Springfield, so the foreclosures were not rendered invalid on that ground because notice was published in that newspaper.

FN8. In the third case, LaSalle Bank National Association, trustee for the certificate holders of Bear Stearns Asset Backed Securities I, LLC Asset-Backed Certificates, Series 2007-HE2 vs. Freddy Rosario, the judge concluded that the mortgage foreclosure "was not rendered invalid by its failure to record the assignment reflecting its status as holder of the mortgage prior to the foreclosure since it was, in fact, the holder by assignment at the time of the foreclosure, it truthfully claimed that status in the notice, and it could have produced proof of that status (the unrecorded assignment) if asked."

FN9. On June 1, 2009, attorneys for the defendant mortgagors filed their appearance in the cases for the first time.

FN10. The LaRace defendants allege that the documents submitted to the judge following the plaintiffs' motions to vacate judgment are not properly in the record before us. They also allege that several of these documents are not properly authenticated. Because we affirm the judgment on other grounds, we do not address these concerns, and assume that these documents are properly before us and were adequately authenticated.

FN11. This signed and notarized document states: "FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to _____ all beneficial interest under that certain Mortgage dated December 1, 2005 executed by Antonio Ibanez...."

FN12. The Structured Asset Securities Corporation is a wholly owned direct subsidiary of Lehman Commercial Paper Inc., which is in turn a wholly owned, direct subsidiary of Lehman Brothers Holdings Inc.

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FN13. As implemented in Massachusetts, a mortgage holder is required to go to court to obtain a judgment declaring that the mortgagor is not a beneficiary of the Servicemembers Act before proceeding to foreclosure. St.1943, c. 57, as amended through St.1998, c. 142.

FN14. The Land Court judge questioned whether American Home Mortgage Servicing, Inc., was in fact a successor in interest to Option One. Given our affirmance of the judgment on other grounds, we need not address this question.

FN15. An alternative to foreclosure through the right of statutory sale is foreclosure by entry, by which a mortgage holder who peaceably enters a property and remains for three years after recording a certificate or memorandum of entry forecloses the mortgagor's right of redemption. See G.L. c. 244, §§ 1, 2; Joyner v. Lenox Sav. Bank, 322 Mass. 46, 52-53 (1947). A foreclosure by entry may provide a separate ground for a claim of clear title apart from the foreclosure by execution of the power of sale. See, e.g., Grabel v. Michelson, 297 Mass. 227, 228-229 (1937). Because the plaintiffs do not claim clear title based on foreclosure by entry, we do not discuss it further.

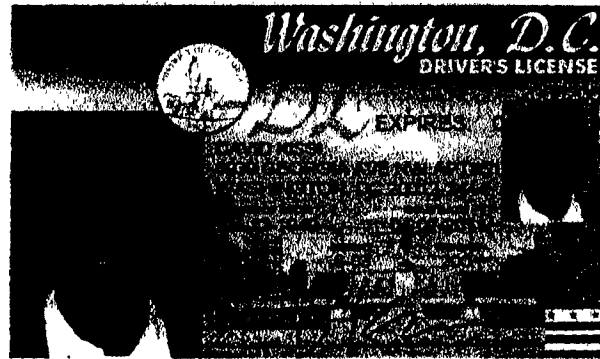
FN16. We recognize that a mortgage holder must not only act in strict compliance with its power of sale but must also "act in good faith and ... use reasonable diligence to protect the interests of the mortgagor," and this responsibility is "more exacting" where the mortgage holder becomes the buyer at the foreclosure sale, as occurred here. See Williams v. Resolution GGF Oy, 417 Mass. 377, 382-383 (1994), quoting Seppala & Aho Constr. Co. v. Petersen, 373 Mass. 316, 320 (1977). Because the issue was not raised by the defendant mortgagors or the judge, we do not consider whether the plaintiffs breached this obligation.

FN17. The form of foreclosure notice provided in G.L. c. 244, § 14, calls for the present holder of the mortgage to identify itself and sign the notice. While the statute permits other forms to be used and allows the statutory form to be "altered as circumstances require," G.L. c. 244, § 14, we do not interpret this flexibility to suggest that the present holder of the mortgage need not identify itself in the notice.

FN18. The plaintiffs were not authorized to foreclose by virtue of any of the other provisions of G.L. c. 244, § 14: they were not the guardian or conservator, or acting in the name of, a person so authorized; nor were they the attorney duly authorized by a writing under seal.

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NB: Official identity of Ammendale Trust
U.S. Escrow A/C to Trustor and Beneficiary
D. Kison, an African American whose
assets were stolen by Emil Hersh, Prince's
debt collector



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Fy 2004-2005.

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-7077

September Term 2010

1:08-cv-01796-RBW

David Kissi,

Appellant

v.

EMC Mortgage Corporation, et al.,

Appellees

MANDATE		Filed On:
<small>Pursuant to the provisions of Fed. R. App. Pro. 41(a)</small>		
ISSUED:	<i>[Signature]</i>	UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA CIRCUIT NOV 30 2010 CLERK
BY:	<i>[Signature]</i>	
ATTACHED:	Appealing Order Opinion Order on Costs	

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BEFORE: Henderson, Garland, and Brown, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia, the briefs filed by the parties, and on appellant's supplements to his brief. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the case be remanded to the district court for reconsideration in light of the Maryland Court of Special Appeals' decision in Kissi v. EMC Mortgage Corp. of Texas (Md. Ct. Spec. App. No. 499, Aug. 13, 2009). That decision was issued after the district court dismissed appellant's claims on grounds of res judicata and collateral estoppel. In the district court's view, the judgment of the Circuit Court for Prince George's County, Maryland, precluded appellant from relitigating his claims in federal court. The Maryland Court of Special Appeals, however, has vacated the Maryland Circuit Court judgment and remanded the case to the Circuit Court. Accordingly, the district court is directed to consider anew whether the claims in appellant's complaint are precluded by res judicata and collateral estoppel, and if so, to what extent.



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

August 24, 2005

Mr. David Kissi
DK&R
325 Pennsylvania Avenue, S.E.
Washington, DC 20003

Dear Mr. Kissi:

This responds to your letter of July 14, 2005, regarding your request for information pertaining to "each individual monthly payment for our company DK&R's two Money Store loan #70743130 and #55366330 and the same information applicable for our Key Bank loan #92182730," under the Freedom of Information Act.

The following is responsive to your request. Upon receipt of your request we contacted the SBA Denver Finance Center (DFC) and requested a transcript of account for each loan listed. The DFC responded that the Money Store loans were lender serviced accounts and that the SBA could not provide transcripts of payment activities as the lender would have been the servicer of record. Any transcript would need to be obtained by contacting the servicing company. The Key Bank loan was an SBA serviced loan and the transcript is provided showing activity up to the point the loan was sold on August 7, 2001 to Pramco II.

Should you deem this reply unsatisfactory, you have the right to appeal this decision to the Chief, Freedom of Information/Privacy Acts Office, Small Business Administration, 409 Third Street, SW, Suite 5900, Washington, DC 20416. You must submit an appeal within 45 calendar days of the date of the notice of denial. The appeal should contain a description of the information requested, the name and title of the SBA official or employee who denied the request, the reason for the denial, and other pertinent facts you deem appropriate.

Sincerely,

Richard C. Blewett
Director, National Guaranty Purchase Center

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18

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
301-344-0632

June 19, 2008

The Honorable Sara Lioi
United States District Court for the Northern District of Ohio
526 United States Courthouse
Akron, Ohio 44308-1813

Re: Pramco II, LLC v. David Kissi, et al.
Civil Case No. PJM 03-2241

Dear Judge Lioi:

It appears that David Kissi and/or his wife, Edith Truvillion Kissi, may have filed one or more suits in your court against Pramco-II, LLC. As I advised you on the telephone, the filing of any such suit may well be in violation of this Court's preliminary injunction entered on October 10, 2003 in *Pramco II LLC v. David Kissi, et al.*, Civil Case No. PJM 03-2241.

I became aware of the activity in the United States District Court for the Northern District of Ohio as a result of a pleading filed by DLA Piper and Richard Kremer, Esq. on my docket on April 28, 2008. A copy of that paper is enclosed, and a copy of the Preliminary Injunction may be found at Exhibit 1.

You may want to transfer the cases filed by Mr. Kissi back to me to determine if they are appropriate in light of the preliminary injunction in my case. I would appreciate it if you would alert other Judges in your court that they may wish to do the same with other cases filed by or on behalf of Mr. Kissi.

Sincerely yours,



Peter J. Messitte

Enclosures

cc: David Kissi
#38348-037
FCI Elkton

78

16

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

MESSITTE
DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
301-344-0632

June 19, 2008

Honorable John R. Adams
United States District Court for the Northern District of Ohio
United States Courthouse
Columbus, Ohio 44308-1813

Re: Pramco II, LLC v. David Kissi, et al.
Civil Case No. PJM 03-2241

Dear Judge Adams:

It appears that David Kissi and/or his wife, Edith Truvillion Kissi, may have filed one or more suits in your court against Pramco II, LLC. As I advised you on the telephone, the filing of any such suit may well be in violation of this Court's preliminary injunction entered on October 1, 2003 in *Pramco II LLC v. David Kissi, et al.*, Civil Case No. PJM 03-2241.

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You may want to transfer the cases filed by Mr. Kissi back to me to determine if they are appropriate in light of the preliminary injunction in my case. I would appreciate it if you would alert other Judges in your court that they may wish to do the same with other cases filed by or on behalf of Mr. Kissi.

Sincerely yours,



Peter J. Messitte

Enclosures

cc: David Kissi
#38348-037
FCI Elkton

192

presented to the Court with the federal
argument and marked
case to DC

APPENDIX A.

FILED _____ ENTERED _____
LODGED _____ RECEIVED _____

AUG 22 2006

AT GAITHERSBURG
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND

BY

DFP

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 8:05-cr-00254

DAVID M. KISSI,

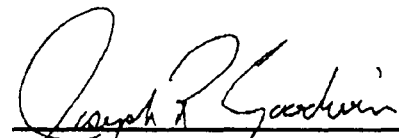
Defendant.

ORDER

Pending before the court is the defendant's motion for an extension of time to file post-trial motions [Docket 126]. The court **GRANTS** the motion and allows the defendant to file post-trial motions for an additional ten days after this order.

The court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: August 22, 2006



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

50

FILED ENTERED
LOGGED RECEIVED

UNITED STATES DISTRICT COURT

SEP 10 2007

SOUTHERN DISTRICT OF WEST VIRGINIA

AT GREENBELT
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND
DEPUTY

UNITED STATES OF AMERICA

Case Number: 8:05-cr-00254

V.

USM Number: 38348-037

Defendant's Attorney: Aaron Durden and
Walter Weir

David M. Kissi

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT:

- pleaded guilty to count(s) _____.
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on counts one, two, three, four, five, seven and eight after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 157 and 2	Bankruptcy Fraud	May 2005	One and Two
18 U.S.C. §§ 1503 and 2	Obstruction of Justice	May 2005	Three, Four and Five
18 U.S.C. § 401(3)	Contempt	April 26, 2005	Seven and eight

The defendant is sentenced as provided in pages 2 through 6 of this judgment.

- The defendant has been found not guilty on count six.
- Count nine is dismissed on the motion of the United States.

It is ORDERED that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and the United States Attorney of material changes in economic circumstances.

Date of Imposition of Judgment: August 10, 2007
Date Signed: August 17, 2007

2007 SEP 10 P 3:41
RECEIVED
U S MARSHALS
GREENBELT, MARYLAND

Joseph R. Goodwin
Joseph R. Goodwin, Chief Judge

Page 6

81

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **30 months and 1 day**.

X The court **RECOMMENDS** the following to the Bureau of Prisons:

The court recommends that the defendant be placed in a camp facility.

- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district by 1:00 p.m. on _____.
- X The defendant shall surrender to the United States Marshal for this district as notified by the United States Marshal.
- X The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons by 2:00 p.m. on September 10, 2007.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered _____ to _____

a _____, with a certified copy of this judgment.

United States Marshal

By _____
Deputy United States Marshal

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SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant must participate in mental health counseling.

Check if applicable:

- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer.
- The defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments page of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptance reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement or act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

While on supervised release, the defendant must not commit another federal, state, or local crime, must not possess a firearm or other dangerous device, and must not unlawfully possess a controlled substance. The defendant must also comply with the standard terms and conditions of supervised release as recommended by the United States Sentencing Commission and as adopted by the United States District Court for the Southern District of West Virginia, including the special condition that the defendant shall participate in a program of testing, counseling, and treatment for drug and alcohol abuse as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties as set out on the Schedule of Payments page.

	Assessment	Fine	Restitution
TOTALS:	\$700	\$10,000	

- The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS:	\$	\$	

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Page 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that the interest requirement is waived for the fine.
- The court determined that the defendant does not have the ability to pay interest and it is ordered that the interest requirement is waived for the restitution.
- The court determined that the defendant does not have the ability to pay interest and it is ordered that the interest requirement for the fine is modified as follows:
- The court determined that the defendant does not have the ability to pay interest and it is ordered that the interest requirement for the restitution is modified as follows:

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 2994, but before April 23, 1996.

(55)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- Lump sum payment of \$700 due immediately.
- Lump sum payment of \$ _____ due immediately, balance due as set forth below:
- Special instructions regarding the payment of criminal monetary penalties: **The defendant shall pay the special assessment while incarcerated through participation in the Bureau of Prisons Inmate Financial Responsibility Program. The defendant shall pay the fine immediately.**
- The court in accordance with 18 U.S.C. § 3006A(f), having found that funds are available for payment, orders David Kissi to pay \$28,692.50 for the services of Michael Schatzow. Payment is to be made by check or money order drawn to the order of the clerk of court, who will deposit all monies received to the credit of the Treasury and credit such sums to the CJA appropriation.

Unless the court expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

86

STATE OF MARYLAND

* IN THE

V.

* CIRCUIT COURT

DAVID KISSI

* FOR

CASE NO.: 802261004

* BALTIMORE CITY

* * * * *

ORDER

Upon Consideration of Defendant's Motion to Withdraw Petition for Expungement of Record Contingent Upon Maryland's Correction of Kissi's Record By 6/20/2011 to Reflect Nolle Prosequi Disposition of the Above Case, it is this 15th day of June, 2011, by the Circuit Court for Baltimore City, hereby:

ORDERED that Defendant's Request is **GRANTED**.

**TIMOTHY J. DOORY - PART 16
JUDGE**

**THE JUDGES SIGNATURE APPEARS
ON THE ORIGINAL DOCUMENT ONLY**

The Honorable Timothy J. Doory, Part 16
Circuit Court for Baltimore City

RECEIVED

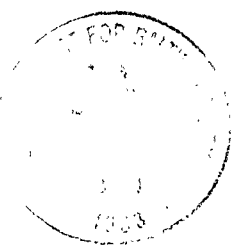
JUN 15 2011

Criminal Div.
Circuit Court For
Baltimore City, /

TRUE COPY

[Handwritten Signature]

FRANK W. COLEMAN, CLERK



87

U.S. District Court
For The District of Columbia

David Kissi
325 Pennsylvania Ave SE
DC/USA 20003
202-675-6365
v.
USA/DOJ
950 Pennsylvania Ave NW
DC/USA 20530

Petitioner :
:
:
:
:
Respondent :
:
:

Case #: _____

Exhibit A

Poor Legal Representation

In re: Documentation or a Summary that most of the lawyers who represented the Kissis, their DK&R Chapter 7 Estate, Trust Entities and Kissi' criminal trial did under serve him after collecting close to \$700,000 in legal fees.

And now that Petitioner stands a good chance to have his conviction overturned and has done all what he can to get good counsel without avail, Petitioner's 6th Amendment Right should motivate this Court to appoint Petitioner a competent and honest Counsel in the case now.

DK
Respectfully Submitted By
David Kissi, Petitioner
325 Pennsylvania Ave SE
Washington, DC 20003
202-675-6365 (business hrs 8am-5pm)

6/24/2011

AFFIDAVIT

I, Edith Truvillion, am past over 18 years of age and I do have a personal knowledge of these legal expenses because I am an interested party in all the criminal and civil cases where we had to defend ourselves and our assets against the malicious and brutal assaults of Judge Peter J. Messitte, Judge E. Stephen Derby, Trustee Richard Kremen, Kremen's Assistant Maria Chavez Ruark, U.S. Trustee Mark Neal, and U.S. Trustee Katherine Levin who collectively launched malicious attacks against us under the guise of liquidating all our assets to satisfy Pramco's bogus \$855,000 judgment. That I am of sound mind to make the following tabulations under oath. And all this represents money we paid several lawyers from 9/2000 to Fall 2005.

Attorney	Retainer Amount Paid
C. William Michaels, Towson	\$8,000
Charles Broida, Columbia	500
Donald Wilson, Washington	500
Jeffrey Hines/Katherine Levin, Baltimore	1,000
Joel Spler, Washington	500
John D. Bums, Greenbelt	2,000
John McBumey, Oxon Hill	300
Joseph Bruce, Annapolis	2,500
James Quirk, Loan Broker, DC	1,400
Leonard Bulman, Annapolis	300
Mark A. Epstein, Baltimore	12,000
Paul Kramer, Baltimore	21,000
R. W. Moore, Baltimore	10,000
Richard McGill, Upper Marlboro	1,300
Richard Rosenblatt, Rockville	1,500
Robert Rogers/Steven Welnecke, GE Capital Loan Broker	9,000
Ron Deitch, Loan Broker	5,000
Ron Shechtman, Therapist, DC	525
Ronald Schwartz, College Park	15,520
Sheldon Schuman, Bethesda	1,000
Stanley Alpert, Baltimore	8,000
Steven Parrott, Annapolis	700
Thomas Glunta, Annapolis	1,000
Appraisal and credit application fees to refinance	3,500
Miscellaneous costs, i.e. court cost, postage, long distance phone calls, secretarial services, printing, research, and our unsuccessful refinance of Pramco's loans because Hirsch illegally put liens totaling \$1.5 million on all our assets.	13,000
Cost to have dismissed Emil Hirsch's Restraining Order he sought before Judge Barry Hamilton in the District Court of Maryland in Rockville on 1/24/05.	2,225
Loss of business profit as a result of Hirsch illegal liens	22,000
Amount earmarked as a deposit to retain a law firm to get our money back from Pramco	20,000
Printer for the 4th Circuit Appeal Brief	1,850
U.S. Receiver R. Greenberg's fees paid from our Trust	14,000
Transcripts for appeals on 4/5/04, 5/04, 10/25/04, 11/22/04 and 1/27/05	5,100
Preparation of 5/05 4th Circuit Brief to disqualify Judge Messitted 50hr x \$250/hr pro se	12,500
Preparation of Certiorari to the High Court to overturn Judge Messittes summary judgment to Pramco of \$855,000 prepared pro se \$250/hr x 100 hours	25,000
Preparation of the 4th Circuit Writ of Mandamus pro se filed in 8/2005, 100 hrs x \$250/hr	25,000
Long term Capital Gains Payable to IRS for Sale of West Pratt Properties That Messitte Ruled Don't Belong To The Trust But To DK/ET Personally	51,000
Total Gross Actual Legal Bills To Date Is About	\$298,720

Edith Truvillion 10/3/05

 Edith Truvillion

NOTARY:
 Subscribed and sworn to before me a Notary Public for the State of Maryland and the County of Montgomery.
 My Commission Expires: 11-17-2007
 Signed by: Karen Lepson

②

for Judge DeLozji Courthouse #0061-175D

Affidavit in Re: U.S. Case # PJM 03-0473

March 22, 2005

2005 MAR 22 P 3:20
CLERK OF COURT
BALTIMORE MARYLAND

To: Melvin Hirshman, Bar Counsel
Attorney Grievance Commission of Maryland
100 Community Place, Suite 3301
Crownsville, MD 21032-2027

Re: **Affidavit: Motion To Reconsider To Have Baltimore Attorney Paul R. Kramer Censored And He Should Return Our \$9,067 plus 10% Interest That U.S. Judge Peter J. Messitte of the Greenbelt Courthouse Has Sent Him In Error In 12/04**

I, David Kissi, the Affiant, am making the following assertion to counter Paul R. Kramer, my former attorney's response as to the reason why he won't release to me about \$9,067 in funds that U.S. Judge Peter J. Messitte had sent to Kramer in error in 12/04. That I am competent and I have a full firsthand knowledge about this matter because I am the one who hired Kramer in 8/03 to represent myself and my spouse before Judge Messitte in a criminal proceeding. I am at least over 18 years of age and of sound mind and I have lived in Maryland for the past 25 years. Based on all the above, I am confident to assert under oath the following:

That the Commission should reverse its decision that Attorney Paul R. Kramer is not doing anything wrong by sitting on our \$9,067 because he himself admits that he is no longer our lawyer as of 10/25/04. And if Judge Messitte in error did send him our money to be given to us, then Kramer is wrong and you are also wrong to take a passive role in this matter. See p. 3 of Kramer's memo acknowledging he doesn't represent us any more.

I am also adding a separate charge of misrepresentation which the Commission should use to censor Paul R. Kramer in addition to our previous charge of illegally withholding our \$9,067. Originally, when we retained Kramer to represent my spouse, Edith Truvillion, and myself in Judge Messitte's courtroom to fight a criminal contempt charge, he asserted that he was representing both of us for the same amount of money when we first retained him in 8/03. In 5/04, when he negotiated a plea agreement with Judge Messitte that nearly sent me to jail over a purely civil debt collection claim filed by Emil Hirsch, attorney for Pramco, Kramer brought in his assistant, one Granger Maher. Maher's role here in this plea agreement was to represent my wife, Edith, and Kramer was to represent me. Later on, a research of public records shows that Maher isn't authorized to practice in Federal court and he never entered his appearance in this specific criminal proceeding. See U.S. Courthouse case #: PJM 03-0473. This is a serious misrepresentation by Paul Kramer because he used to be a Federal prosecutor and has been a lawyer for over 50 years as he claims. And his action here where he inserted his youthful assistant into a plea agreement that could have sent me to jail and ruined my life forever shouldn't be taken lightly because it shows Maher didn't have the experience to negotiate a plea on behalf of my wife because he wasn't admitted to practice in that Federal court, nor did Maher enter his appearance on her behalf. So Kramer's sole intention here was to earn as much legal fees as possible by misrepresenting his starving inexperienced friend to all parties.

PAUL R. KRAMER, LLC

ATTORNEY AT LAW

ADMITTED MARYLAND AND D. C.

ONE NORTH CHARLES STREET

SUITE 1104

BALTIMORE, MARYLAND 21201

(410) 727-5531

FAX: (410) 727-2186

Associate

Granger G. Maher, III

MEMORANDUM

VIA FACSIMILE: (301) 937-2143/(301) 937-2144

To: David Kissi

From: Paul R. Kramer, LLC

Date: March 16, 2005

Reference is made to your fax of 3/14/05. Please be advised you have fired me. At your insistence, I withdrew from your case. Therefore, I no longer have any authority to represent you in any of these matters.

Further, I was not originally retained to represent you in any of the civil matters but only in the criminal contempt matter. At your insistence, I assisted other attorneys in trying to resolve the many disputes that have arisen, and in many of the issues, I was successful in having certain matters resolved in your favor. I was not responsible for arguing any of your civil issues at this time. You should discuss this with the attorneys you hired to represent you in the civil matter, not with me. Since you have been very critical of my representation, which is completely unfounded, as well as my efforts to help you, I will not volunteer to do anything further on your behalf.

I may have felt otherwise if you had not attacked me, if you had paid the bill for work already completed and been more appreciative of what I was trying to do to help you and your wife.

4

PAUL R. KRAMER, P.A.
ATTORNEY AT LAW
ADMITTED MARYLAND AND D. C.

*Defence for the 2nd
set of
contempt charges*

JEFFERSON BUILDING
101 NORTH CHARLES STREET, SUITE 700
BALTIMORE, MARYLAND 21201
(410) 727-5531
FAX (410) 727-2166

June 11, 2004

Christopher B. Mead, Esquire
London & Mead
1225 19 St., N.W.
Washington, DC 20036

RE: United States v. Davis Kissi and Edith Truvillion Kissi
Criminal No.: 03-CR-473 (PJM)

Dear Mr. Mead:

I am enclosing, for your information, correspondence between Joseph Bruce (one of the attorneys representing the Kissis in the civil aspects of this case) and Emil Hirsch. What is shocking to me is what the Kissis have been telling me has turned out to be true. That is, there was a lien placed on their property which was dismissed by the Court over a year ago, but has yet to be removed by Pramco and their attorneys. I believe this may be what prompted Mr. Kissi to file an objection to that lien in Prince George's County (subject of the so-called second set of contempt charges). This further explains Mr. Kissi's and Mrs. Truvillion's frustration and supports their argument that Pramco had repeatedly acted in bad faith and taken advantage of this situation.

I bring this to your attention to explain why Mr. Kissi has tried so hard, apparently (at times) against Court Order, to protect what he believed was being taken from him unlawfully.

5

Christopher B. Mead, Esquire

June 11, 2004

Page 2

I would like to discuss postponing the June 22, 2004, sentencing. That date was set in expectation that the entire loan would be paid off by that time. The settlement date has now been moved to July, 2004. In addition, Mr. Kissel's psychiatrist would like to testify on his behalf and he will not be available on that date. I believe the psychiatrist's testimony will help to explain Mr. Kissel's behavior to the Court. Accordingly, I ask you to agree to a short postponement for the above reasons.

Please contact me upon review of these letters.

Very truly yours,



Paul R. Kramer

PRK/erc
Enclosures:

Bruce's letter of June 9, 2004, to Hirsch
Bruce's letter of June 9, 2004, to Judge Messitte
Hirsch's letter of June 10, 2004, to Bruce
Hirsch's letter of June 10, 2004, to Judge Messitte
Bruce's letter of June 10, 2004, to Judge Messitte

(6)

In the U.S. District Court
For Maryland

U.S. Plaintiff :
v. : Case #: AW05-cr-0254
David Kissi, Defendant :

Request To Grant An Extension Beyond 8/14/06 To Permit
New Counsel To Enter His Appearance And Then File A
Post Verdict Motion For A New Trial Pursuant To
My 6th Amendment Right For A Fair Trial And For Effective Counsel

2006 AUG 14 3:49
U.S. DISTRICT COURT
FEDERAL BUILDING
BALTIMORE, MD

This Honorable Court should note the following:

- I. That I was wrongfully convicted in a jury trial on 8/4/06. Essentially, my former attorney Fred W. Bennett wasn't prepared for trial on 7/31/06 because he had failed to visit the FBI's warehouse to examine 27 cartons of documents and records the FBI had hauled away from our principal residence on 2/17/05 under a false Affidavit. And from these documents, the government did build its case against me: Also, Attorney Bennett failed to visit the Bankruptcy Court to examine the case file for mitigating evidence that could have strengthened my criminal defense: Moreover, Bennett failed to call key witnesses like Subrina Manley, the bankruptcy caseworker who could have testified that Pramco's claim in the bankruptcy court still remains unproven and SBA loan officer Richard Blewett, who could have also testified that Pramco could not have submitted a valid claim against DK&R's Estate because the loans were not sold to Pramco with proper documentation: And that my numerous Objections to Pramco's claims were proper and did not, as the U.S. is now charging, amount to obstruction of justice. That separately, on 7/31/06 Bennett could have simply asked the Court for a trial extension because 28 U.S.C. Section 3161 at least permitted me an extension of up to 180 days on the grounds that the government had added two more superceding charges to it Indictment and I had been rearraigned on 7/10/06. However, Bennett's failure to ask for an extension beyond 7/31/06 did prejudice my chances for effective counsel and a fair trial. So a re-trial is warranted and it also justifies my filing this motion pro se, until I can make arrangements for Attorney Walter Weir of Philadelphia to enter the case by promptly filing Pro Hac Vice, as we have agreed on 8/11/06.
- II. That an extension is also warranted because Attorney Weir needs time to obtain and get acquainted with the records of this case which have been sealed. He also needs time to review the transcripts for such pretrial

prejudicial statements made by presiding Judge Goodwin that I am “almost delusional”, which indicates that I wasn’t going to get a fair hearing from him as his instructions to the jury later on showed and that in part led to my wrongful conviction.

- III. That given all the above, I plead this court should grant an extension beyond 8/14/06 to allow Attorney Weir to make the proper arrangements to enter the case and file the necessary post conviction motion. And that beginning with the initial advanced notice I gave to this court on 6/27/06, this is the 4th time I am notifying this court in writing that I have discharged Attorney Fred W. Bennett as my attorney and he isn’t authorized to act on my behalf beyond 6/27/06.

Respectfully Submitted by: *David Kissi*
David Kissi, Defendant
325 Pennsylvania Ave, SE
Washington, DC 20003
Tel: 202-668-4154

Certificate of Service

That on this day of 8/13/06, I have sent a copy of Motion by U.S. Postmaster to the U.S. Attorney for Maryland Rod Rosenstein at 36 S. Charles St, Baltimore, MD 21201; my former attorney Fred W. Bennett at 6301 Ivy Lane, Suite 418, Greenbelt, MD 20770 and my new attorney Walter Weir, 1339 Chestnut St, Suite 500, Philadelphia, PA 19107.

David Kissi
David Kissi

February 7, 2008

To: Ohio State Bar Association
Attorney Complaint Section
P.O. Box 16562
Columbus, Ohio 43216-6562
Tel: (800) 282-6556 or (614) 487-2050

Re: Complaint Against Aaron G. Durden of Ohio
In the Case of U.S. v Kissi, # AW05-cr-0254
For Abandoning the Kissi Case

I and my spouse did pay Aaron G. Durden to represent me at the sentencing stage of my wrongful criminal conviction in 6/2007. We paid him \$20,000. But we feel Durden took us for a ride for it appears he never read one single transcript and after submitting to the Federal District Court some briefs that were riddled with grammatical errors that clearly undermined my reason to stay the imposition of my sentence, Durden unilaterally abandoned my case at the 4th Circuit Appellate Court.

Prior to his exit, Durden had sent us several notes that if he withdraws from the case, he will refund some of our \$20,000 we paid him. See attached Exhibit A. So this was one reason when he formally informed the 4th Circuit clerk that he was withdrawing, we agreed that he does that provided he refunds the retainer so that I can obtain another counsel since the 4th Circuit says I am not eligible for a court appointed attorney. Now, Durden, even though he has been released by the court, still refuses to refund us the money. He even lied to the Prince George's County, Maryland Circuit Court that since he has refunded us some of the money, the court should dismiss my complaint to recover.

As mentioned, I have already begun litigation against Durden in Maryland, so the Ohio Bar does not need to act on this complaint, but rather it is for informational purposes and in support of others who may have complained about Durden.



David Kissi
38348-037
Moshannon Valley CI
555 I Cornell Dr.
Philipsburg, PA 16866

November 23, 2005

To: Attorney Michael Schatzow
Venable, LLP
1800 Mercantile Bank and Trust Building
2 Hopkins Plaza
Baltimore, MD 21201
Tel: 410-244-7592 Fax: 410-244-7742

Re: Kissi' 6th Amendment Right for Effective Counsel

I restate that I did discharge you as my attorney in the case of U.S. v Kissi effective, 11/1/05 because of your arbitrary refusal to provide me full service for not only the white collar criminal case, but also for bankruptcy, Trust matters, SBA loan guarantees and possibly our counter-claims amounting to about \$10 million against the U.S., O'Connor and Hannan and Piper Rudnick. The stakes are too high for me to accept substandard service from Venable. So based on all the above I did discharge you on 11/1/05.

In tandem with the above, I am asking the Appeals Court not only to vacate or modify Judge Goodwin's Order of 10/20/05, but also to replace you with a law firm that will give me full service and transfer all our cases including Edith's to impartial Virginia or West Virginia in the next 60 days for relief.

Separately, I suggest you shouldn't communicate with me through Yakima Supplies email which is a separate incorporated entity. So to transmit messages per Yakima's email is a violation of my 5th Amendment Rights. You may, however, correspond with me per the U.S. Postmaster.

David Kissi, Crime Victim
In an American Gulag
PO Box 77878
One Massachusetts Ave, NE
Washington, DC 20003



cc: Judge Joseph Goodwin, U. S. District Court for West Virginia,
Fax: 304-347-3193, PO Box 2546, Charleston, WV 25329

Timothy Smith, Probation Officer, Fax: 301-344-0381, c/o: Lisa Spinnicchio, Mgr. Pretrial Services, U.S. , Probation and Pretrial Services, 101 W. Lombard St., Suite 1625, Baltimore 21201

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U.S. District Court
Baltimore, MD

U.S. Plaintiff :
v. : Case #: AW 05-cr-0254
David Kissi Defendant :

Line Item
Re: Kissi Discharging of Michael Schatzow as His Attorney

This honorable court should promptly note that effective 3/2/06, I did fire the inept Michael Schatzow of Baltimore as my attorney. And the reason for this is his persistent substandard service he has given me and “knowingly and recklessly” relegating my case to Michael Hecht, a rookie attorney, who has never even handled a landlord/tenant case nor a criminal matter on the scale I am facing.

That the decision to fire Michael Schatzow again was not done impulsively, but I slowly arrived at this decision after several persistent attempts to get him to add at least two strong middle-aged good bankruptcy experts to assist in my criminal defense because that is what this case is all about. But my effort was to no avail. So, effective 3/2/06, Schatzow isn’t authorized to act on my behalf or else he will risk a \$100 million malpractice suit on his head.

That I suggest the Honorable Judge Joseph Goodwin should formally assign my case to Venable Sr. Partner Benjamin Civiletti to whose attention, within the last 30 days, I have sent over 10 Briefs and I have made several pleadings to him that he should take over my case. See pp. 2-10. This assignment should be made under the proviso that he handles my case with two good middle-aged bankruptcy experts all to be paid for at the public expense. This is because the stakes here are too high to rely on Schatzow who has no bankruptcy experience and refuses to add bankruptcy lawyers to help me.

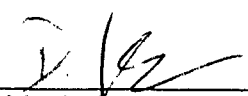
On the other hand, if the Honorable Judge Goodwin cannot assign this case to Benjamin Civiletti, then I plead that he should postpone all further proceedings in this case until 9/2006 so that I can retain a competent full service law firm at my own expense who can file for a “Suppression Hearing” and have the government’s bogus charges thrown out. However, to realize this plan, I need to get out of the “House Arrest” and work since I have been detained in one form or other from 5/25/05 until now and this has substantially cut into my income. This loss comes on top of about \$300,000 in legal fees we had incurred plus \$3 million worth of our personal, business and Trust assets that in 2003 Judge Peter J. Messitte sold off at a few cents on the dollar to pay his pals Emil Hirsch, James Ryan and

other wise guys for creditor Pramco's hearsay \$855,000 claims. Also see pp. 9; 31-32 – for a partial list of assets Judge Messitte stole from the bench. And if I can't be released under my own reconnaissance, then I suggest this court should accept my principal residence as a bond to guarantee my release. I believe this arrangement will permit me to resume my regular occupation as a door-to-door salesman and to fulfill our FY 2006 charitable \$100,000 pledges to minority scholarship programs and grants to Catholic and Jewish organizations. See pp. 18-20 for a partial list of our foundation. Also, see pp. ¹⁸⁻²⁸ for a summary that supports the Honorable Judge Joseph Goodwin's acknowledgment on 12/14/05 in open court that I have fully complied with the terms of my House Arrest and therefore I deserve a small break. This court should also note that the kind Goodwin did release me on 10/20/05, but I wasn't released from the Baltimore Detention Center until 10/24/05. In other words, I have been punished twice for my illegal detention and in addition to the 4 days extra spent in jail after my release. I also demand relief now on the grounds of prosecution misconduct, i.e., FBI Agent Thomas Simmons did suborn perjury to build a case for my Arrest and Indictment; Emil Hirsch did file false liens on our Trust properties in 11/2003 when the Trust properties weren't even covered by creditor Pramco's bogus judgments; and this court should note that James Ryan made court appearances and executed liens on properties when even he isn't certified to practice in Federal court. See pp. 5-8.

Request for a Hearing

I request a hearing pursuant to Federal Rule 56 and Maryland Rule 2-311(f) to elaborate on the above if the court warrants it.

Respectfully Submitted by:


David Kissi, Defendant
325 Pennsylvania Ave, SE
Washington, DC 20003
Tel: 202-668-4154

3/3/06

Certificate of Service

That on this day of 3/3/06 I did send by U.S. Postmaster a copy of this Line Item to U.S. Attorney Rod Rosenstein, 36 S. Charles St., Baltimore, MD 21201, The Honorable Judge Joseph Goodwin, US District Court of WV, PO 2546, Charleston, WV 25329 and Benjamin Civiletti of Venable, 575 7th St, NW, Washington, DC 20004.


Edith Truvillion

3/3/06

FILE COPY

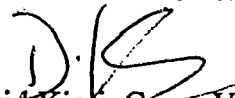
To: The Honorable Benjamin R. Civiletti, Venable Sr. Partner
575 7th St., NW, Washington, DC 20004
Tel: 202-344-4000 Fax: 202-344-8300

Re: Why O'Connor and Hannan, Piper Rudnick and the U.S. Should Voluntarily Pay Kissi \$10M
U.S. v Kissi, Case #AW05-cr-0254 - A Line Up of Witnesses I Intend to Subpoena

I am sending you an amended partial list of judicial officers I have dealt with within the last 10-20 years who can attest in court as witnesses I never menaced them after they ruled on my cases and I accepted their decisions regardless of the outcomes. They are namely:

<u>Judicial Officer</u>	<u>Court</u>
1. U.S. District Judge Joyce H. Green	D.C. Circuit
2. U.S. District Judge McFeeley	U.S. Court New Mexico
3. Judge Alonzo Martin	P.G. Circuit Court
4. Judge Thomas Smith	P.G. Circuit Court
5. Judge Schiff	P.G. Circuit Court
6. Judge Casula	P.G. Circuit Court
7. Judge Shaw	P.G. District Court
8. Judge Felicia Omega Canon	Baltimore City Circuit Court
9. Judge Oshrine	Baltimore City District Court
10. Judge Ballou Watts	Baltimore County Circuit Court, Towson
11. U.S. Magistrate Judge William Connelly	U.S. Courthouse Greenbelt
12. U.S. Magistrate Judge Charles Day	U.S. Courthouse Greenbelt
13. U.S. Judge Alexander Williams	U.S. Courthouse Greenbelt
14. Judge Leasure	District Court of MD Howard County
15. Judge Kane (Retired)	Circuit Court of MD Howard County
16. Chief Judge Paul Weinstein	Circuit Court of Montgomery County 1989-1994
17. Judge Barry Hamilton	District Court of MD Montgomery County
18. Judge Smalkin	U.S. Court Baltimore
19. Judge Joseph Goodwin	U.S. Court West Virginia

In brief, at the heart of this criminal case is DK&R's bankruptcy which Judge E. Stephen Derby did intentionally botch so that Judge Messitte and his pals could move in under the guise of the bench to steal our personal and Trust business assets outside the "stay" of the Bankruptcy Code. Be mindful all the U.S. witnesses against me have already suborned perjury, i.e., Judge Messitte, Judge Derby, Emil Hirsch, James Ryan, Mark Neal, Katherine Levin and it will be better for all parties to compensate me for \$10 million for our stolen property, court cost and emotional distress. See pp. 1-6. Also, be mindful that out of the 200 cases I have tried pro se in the past 30 years; I obtained about 160 favorable outcomes. But the stakes here are too high to go pro se now.


David Kissi, Crime Victim
Tel: 202-668-4154
Fax: 301-937-2143

cc: U.S. Judge Joseph R. Goodwin, PO Box 2546, Charleston, WV 25329, Tel: 304-347-3192, Fax: 304-347-3193

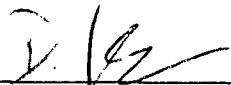
13

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David Kissi, Defendant
325 Pennsylvania Ave, SE
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Edith Truvillion

FILE COPY

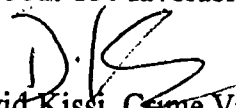
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6. Judge Casula	P.G. Circuit Court
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15. Judge Kane (Retired)	Circuit Court of MD Howard County
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18. Judge Smalkin	U.S. Court Baltimore
19. Judge Joseph Goodwin	U.S. Court West Virginia

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David Kissi, Crime Victim
Tel: 202-668-4154
Fax: 301-937-2143

cc: U.S. Judge Joseph R. Goodwin, PO Box 2546, Charleston, WV 25329, Tel: 304-347-3192, Fax: 304-347-3193

16

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
DISTRICT OF MARYLAND

Felicia C. Cannon, Clerk

Assistant Clerk, Chief Deputy
Assistant Clerk, Chief Deputy

Reply to Southern Division Address

October 11, 2005

James P. Ryan
Connor & Hannan, LLP
166 K Street NW Ste 500
Washington, DC 20006

Re: Kissi, et al vs. Hirsch, et al
PJM-05-2781

Dear Counsel:

The above-captioned case has been removed from the Circuit Court for Prince George's County, Maryland and assigned the case number above. The case: [X] is [] is not subject to this Court's electronic filing requirements and procedures. Our records show that:

- X] You are not a member in good standing of our bar. Your appearance has not been entered in this case and the Court will not send you copies of orders and other documents. Within ten (10) days from the date of this letter you must notify the chambers of the presiding judge whether you will be seeking admission or if another attorney will be entering an appearance. For information on how to become a member of our bar or to appear *pro hac vice*, please visit our web site at: www.mdd.uscourts.gov. If you were previously a member and have a question about your status you may contact one of our attorney admission specialists: Catherine Scaffidi at (301) 344-3220 or Tina Stavrou at (410) 962-3552. Once you have been admitted, you should register to use CM/ECF.
-] You are not a registered CM/ECF user. To register, go to the Court's web site: www.mdd.uscourts.gov and fill in the on-line registration form. Information about electronic filing procedures and requirements is available on the web site. Please note that if this case is subject to electronic filing, any documents submitted for filing in paper format may be returned to you. The Court does not mail paper copies of orders and other documents which are filed electronically.

Sincerely yours,

/s/

Felicia C. Cannon, Clerk

cc: ✓ All counsel/parties

Northern Division • 4415 U.S. Courthouse • 101 W. Lombard Street • Baltimore, Maryland 21201 • 410-962-2600
Southern Division • 240 U.S. Courthouse • 6500 Cherrywood Lane • Greenbelt, Maryland 20770 • 301-344-0660

Visit the U.S. District Court's Web Site at www.mdd.uscourts.gov

17

ORDERED



E. STEPHEN DERBY
U. S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Baltimore

In Re:

DK & R COMPANY,

Debtor.

*
*
*
*
*
*

Case No. 00-6-1147-SD
Chapter 7

ORDER ON RECONSIDERATION VACATING ORDER
GRANTING MOTION FOR JAMES P. RYAN TO
APPEAR PRO HAC VICE WITHOUT PREJUDICE

David Kissi, an interested party, has moved for reconsideration of the Order Granting Motion for James P. Ryan, Esquire of Virginia to appear pro hac vice in this case as co-counsel for Pramco II, LLC. The motion will be granted, without prejudice to a new request, because the motion to appear pro hac vice did not comply with the requirements of Local Bankruptcy Rules 9010-3(b)(2) and (b)(3) as a matter of law. The moving attorney, Maria Elena Chavez-Ruark, Esquire, a member of the bar of the United States District Court for the District of Maryland, has not entered her appearance as co-counsel for Pramco II, LLC, and indeed she could not without creating a conflict of interest because she and her firm represent

P. 355, 348

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SO ORDERED



[Handwritten signature]

E. STEPHEN DERBY
U. S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Baltimore

In Re:
DK & R COMPANY,

*
* Case No. 00-6-1147-SD
* Chapter 7
*
*
*

Debtor.

ORDER OF RECUSAL

It is, by the Court, sua sponte.

ORDERED, that E. Stephen Derby recuses himself henceforth from presiding over any matters
in this case.

cc: Debtor
U.S. Trustee
Trustee - Richard M. Kremen, Esquire

Recuse-36.1 -- 9/24/04

End of Order

19

UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF MARYLAND

PAUL MANNES
JUDGE

U. S. Courthouse
6500 Cherrywood Lane
Greenbelt, Maryland 20770
(301) 344-8018

January 25, 2005

Honorable James F. Schneider
Chief Judge, U.S. Bankruptcy Court
101 W. Lombard Street
Baltimore, Maryland 21201

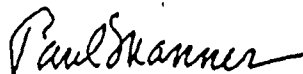
RE: **EMIL HIRSCH**

Dear Chief Judge Schneider:

The enclosed correspondence from David Kissi, Trustee, was mailed to me. Apparently Mr. Kissi believed that I was still the Chief Judge, "US Court."

In view of the very serious nature of the allegations of misconduct as to Mr. Hirsch, such as, extortion and subornation of perjury, I am forwarding the material to you for such action as you may deem appropriate.

Very truly yours,



PAUL MANNES

cc:

David Kissi, Trustee ✓

Emil Hirsch, Esq.



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

April 18, 2005

David Kissi
324 Pennsylvania Avenue
Washington, D.C., 20003

Dear Mr. Kissi:

I am writing in response to your March 19, 2005, letter addressed to the Federal Bureau of Investigation (FBI), concerning allegations of wrongdoing in connection to your involvement with a Chapter 7 Bankruptcy matter.

In order for the FBI to initiate an investigation of any complaint we receive, specific facts must be present to indicate that a violation of federal law within our investigative jurisdiction has occurred. The information you provided may relate to a matter within our jurisdiction.

It is the procedure of the units at FBI Headquarters to refer matters within our investigative jurisdiction to the closest Field Office in the area where the allegations of wrongdoing occurred. It is noted that in your March 19, 2005, letter that you sent a copy to the Calverton, Maryland FBI Office, which is part of the Baltimore Field Division.

The FBI's Baltimore Field Division is the office who would review your complaint for appropriate action. If you have additional information, please contact that office directly at 7142 Ambassador Road, Baltimore, Maryland 21244.

Sincerely yours,

Patricia M. Ferrick

Unit Chief

Public Corruption/Governmental Fraud

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AFFIDAVIT

I, Edith Truvillion, am east over 18 years of age and I do have a personal knowledge of these legal expenses because I am an interested party in all the criminal and civil cases where we had to defend ourselves and our assets against the malicious and brutal assaults of Judge Peter J. Messitte, Judge E. Stephen Derby, Trustee Richard Kremen, Kremen's Assistant Maria Chavez Ruark, U.S. Trustee Mark Neal, and U.S. Trustee Katherine Levin who collectively launched malicious attacks against us under the guise of liquidating all our assets to satisfy Pramco's bogus \$855,000 judgment. That I am of sound mind to make the following tabulations under oath. And all this represents money we paid several lawyers from 9/2000 to Fall 2005.

Attorney	Retainer Amount Paid
C. William Michaels, Towson	\$8,000
Charles Broida, Columbia	500
Donald Wilson, Washington	500
Jeffrey Hines/Katherine Levin, Baltimore	1,000
Joel Spler, Washington	500
John D. Bums, Greenbelt	2,000
John McBurney, Oxon Hill	300
Joseph Bruce, Annapolis	2,500
James Quirk, Loan Broker, DC	1,400
Leonard Bulman, Annapolis	300
Mark A. Epstein, Baltimore	12,000
Paul Kramer, Baltimore	21,000
R. W. Moore, Baltimore	10,000
Richard McGill, Upper Marlboro	1,300
Richard Rosenblatt, Rockville	1,500
Robert Rogers/Steven Welnecke, GE Capital Loan Broker	9,000
Ron Deltch, Loan Broker	5,000
Ron Shechtman, Therapist, DC	525
Ronald Schwartz, College Park	15,520
Sheldon Schuman, Bethesda	1,000
Stanley Alpert, Baltimore	8,000
Steven Parrott, Annapolis	700
Thomas Glunta, Annapolis	1,000
Appraisal and credit application fees to refinance	3,500
Miscellaneous costs, i.e. court cost, postage, long distance phone calls, secretarial services, printing, research, and our unsuccessful refinance of Pramco's loans because Hirsch illegally put liens totaling \$1.5 million on all our assets.	13,000
Cost to have dismissed Emil Hirsch's Restraining Order he sought before Judge Barry Hamilton in the District Court of Maryland in Rockville on 1/24/05.	2,225
Loss of business profit as a result of Hirsch illegal liens	22,000
Amount earmarked as a deposit to retain a law firm to get our money back from Pramco	20,000
Printer for the 4th Circuit Appeal Brief	1,850
U.S. Receiver R. Greenberg's fees paid from our Trust	14,000
Transcripts for appeals on 4/5/04, 5/04, 10/25/04, 11/22/04 and 1/27/05	5,100
Preparation of 5/05 4th Circuit Brief to disqualify Judge Messitted 50hr x \$250/hr pro se	12,500
Preparation of Certiorari to the High Court to overturn Judge Messittes summary judgment to Pramco of \$855,000 prepared pro se \$250/hr x 100 hours	25,000
Preparation of the 4th Circuit Writ of Mandamus pro se filed in 8/2005, 100 hrs x \$250/hr	25,000
Long term Capital Gains Payable to IRS for Sale of West Pratt Properties That Messitte Ruled Don't Belong To The Trust But To DK/ET Personally	51,000
Total Gross Actual Legal Bills To Date Is About	\$298,720

Edith Truvillion 10/3/05

Edith Truvillion

NOTARY:

Subscribed and sworn to before me a Notary Public for the State of Maryland and the County of

Montgomery My Commission Expires: 11-17-2007

Signed by: Karen Lepson

22

February 12, 2006

To: Benjamin R. Civiletti, Venable Sr. Partner
575 7th St., NW, Washington, DC 20004
Tel: 202-344-4000 Fax: 202-344-8300


Re: Pleading to Civiletti for Relief U.S. v Kissi, AW05-cr-0254

Please, the Honorable Civiletti, note that at the heart of this case is simply a theft scheme engineered by creditor Pramco's debt collectors Emil Hirsch and James Ryan, Judge Peter J. Messitte, Judge E. Stephen Derby and Richard M. Kremen. Fortunately, all what is needed is a remand by the 4th Circuit to compel creditor Pramco to return to prove its bogus claims in the Bankruptcy Court. However, since Pramco lacks proof and that is why its debt collector Emil Hirsch had bypassed and skirted the Bankruptcy Court and had gone to his pal Judge Messitte to obtain a bogus summary judgment, we expect to eventually get back our stolen assets worth about \$3 million plus interest and compensation from the U.S. for mental distress tied to my wrongful imprisonment. See p.39 for a pack of 10 separate appeals on this same case now pending at the 4th Circuit.

In tandem with the above, I expect the U.S. Indictment for allegedly menacing some judicial officers will be eventually dismissed because all the government witnesses are so badly tainted the U.S. will be adding to their woes of perjury they have already suborned, i.e. U.S. Trustee Mark Neal's conflict of interest crimes; James Ryan practicing law without a license in a federal courtroom; Emil Hirsch's persistent suborning of perjury; Judge Messitte's illegal defiance of Federal Rules of Criminal Procedure 11(e) and Judge Derby's excusing himself, all collectively undermines the government's case such that no jury will convict me in a case where my spouse, Edith Truvillion, and I, with unblemished public records, are clearly the crime victims here. See pp.23-35.

Now, in a compromise, instead of firing Michael Schatzow, I suggest you appoint two middle-aged Venable bankruptcy experts to my case to assist Michael Schatzow to promptly petition a U.S. Magistrate Judge to grant me a work release and then file for a 'Suppression Hearing' and have the 7 Count Indictment thrown out by 2/28/06 on the grounds that FBI Agent Thomas Simmons "knowingly" and "recklessly" made false statements in his Affidavit to have our personal and business records seized and have me arrested and indicted. This is a superior plan to Michael Schatzow's current strategy of sitting on my case whereby I am now kept in a home detention, after losing virtually all our assets on top of giving away about \$300,000 to stupid lawyers. See p. 3. At least, my plan will allow me to return to work to fulfill a \$1.5 million contract D.C. recently awarded us. At least, I can earn a profit to retain another counsel to help recover our stolen assets.

Also, by returning to work, it will help us fulfill about \$100,000 in philanthropic pledges for FY 2006 we have made to churches, school scholarship programs, Jewish organizations and other beneficiaries. See pp.3 - 22 for a partial listing of our Foundation beneficiaries. Please, promptly help us get some breathing room.


David Kissi, Crime Victim
Tel: 202-668-4154
Fax: 301-937-2143

cc:
U.S. Judge Joseph R. Goodwin, PO Box 2546, Charleston, WV 25329, Tel: 304-347-3192, Fax: 304-347-3193

23



Print

Subject FW: Proposed Resolution Over US v Kissi and Kissi v US Civil Claim for \$100 Million
From: John Hundley <jhundley@troutcacheris.com>
Sent: Jun 9, 2011 10:03:32 AM
To: kissid@verizon.net
CC: pcacheris@troutcacheris.com

SENT ON BEHALF OF PLATO CACHERIS

Dear Mr. Kissi:

Thank you for your correspondence. I have reviewed the materials you forwarded to me. Unfortunately, I am not available to handle your legal matter. I wish you good luck.

Sincerely,

Plato Cacheris
Trout Cacheris PLLC
Suite 300
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036
Tel: (202) 464-3300
Fax: (202) 464-3319
www.troutcacheris.com

The preceding e-mail message (including any attachments) contains information that may be confidential, be protected by the attorney-client or other applicable privileges, or constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete it from your system. Use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: kissid@verizon.net [mailto:kissid@verizon.net]
Sent: Wednesday, June 08, 2011 8:32 PM
To: tclaw
Subject: Proposed Resolution Over US v Kissi and Kissi v US Civil Claim for \$100 Million

June 8, 2011

(24)

June 5, 2011

To: Mr. Plato Cacheris, Esq.
Trout Cacheris PLLC
1350 Connecticut Ave, NW, #300
Washington, DC .20036
Tel: 202-464-3300 Fax: 202-464-3319
Email: tclaw@troutcacheris.com

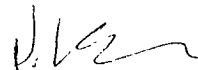
Re: A Review Of U.S. v. D. Kissi, Federal Case # 05-cr-00254
U.S. District Court, Baltimore, MD
In Light of Newly Discovered Evidence
That Has Never Been Heard In Any Court

A while back I had briefly corresponded with you over a civil matter where mortgage lender Pramco's debt collector, Emil Hirsch, did criminalize a simple debt collection and had me thrown into jail so that he would get me out of the way to seize \$3 million worth of real estate for a debt that wasn't more than \$155,000 to start with. But you couldn't help me at that time is because was Maryland case and you did not practice there.

Well, the D.C. Federal Court Circuit now has accepted my argument that I am a D.C. resident and that Maryland has been malicious and hostile to me, my Business and Trust entities: And that we don't stand a chance to get a fair hearing in Maryland. And in fact the Federal Appeals Court for D.C. did recently rule for me in an unrelated mortgage case against EMC/JP Morgan Chase after buying all of the above argument. See p.4 of Exhibit A – Court Mandate of the U.S. Appeals Court for the D.C. Circuit. So now since I need to file a 2255 review of my wrongful criminal conviction in U.S. v D. Kissi case # 05-cr-00254 based on a series of newly discovered evidence that has never been tested or heard in any court, is it possible you can represent me in this matter in the U.S. District Court in D.C.? Please, see Exhibit A, a preliminary draft of my Motion for Resentencing or a plea to the D.C. Circuit to set aside my Judgment of Conviction despite the verdict. For starters could you move the U.S. District Court for D.C. to quash the remaining twelve months left on my 36 months Probation?

Now, in tandem with the above, I on 6/3/2011 did file on my own at the U.S. Court of Claims a \$100 Million claim against the U.S. Justice Department in its position as the 'Custodian' who has mismanaged and looted our Ammendale Trust U.S. Escrow Account. This was the custodial account where after the liquidation of \$ 3 million of our assets, the proceeds were parked here and the U.S. doled out the funds to several claimants; among them was Pramco. But the U.S. didn't exercise proper care and prudence and carelessly went ahead and paid all the claims which new evidence shows were false. Thus, there is no doubt of mismanagement and malfeasance on the part of the U.S. in this matter. And I strongly believe the U.S. Court of Claims will end up giving back to us our stolen assets plus a decent amount for damages. So in connection with reviewing the above criminal matter you can also review the accompanying civil claim both of which are associated. See Exhibit B – D.K. v U.S. Justice Department, case # 05-cr-00254. And perhaps by reviewing them jointly, it will give you a broader picture of how you can help us to clean my record and sustain my claim against the U.S.

Now, if you were to do an excellent job, your fees can be handled within the scope and expected reimbursements of the above legal work. Thanks and promptly respond soon.



David Kissi, Crime Victim
325 Pennsylvania Ave SE
Washington, DC 20003
Tel: 202-675-6365
Business hrs 8AM-5PM
Email: kissid@verizon.net

25

In the Circuit Court for Prince Georges County
14735 Main Street, Upper Marlboro, MD 20772
(301) 952-3655

David Kissi,	Plaintiff	:	
325 Pennsylvania Ave, SE		:	
Washington, DC 20003		:	
v.		:	Case # CAL07-30836
Aaron G. Durden,	Defendant	:	
10 W. Monument Ave.		:	
Dayton, OH 45402		:	

Affidavit

In Support of Plaintiff's Motion To Deny Defendant's Motion To Dismiss

That I, Edith R. Truvillion, am of sound mind and I am over 18 years of age and that I do have a full firsthand knowledge of this case because I am the spouse of the Plaintiff and assert the following under oath:

That we did jointly pay Aaron G. Durden, the Defendant, \$20,000 in legal fees to represent my spouse in criminal case AW05-cr-0254, U.S. v. Kissi in 2007. But Aaron Durden, in bad faith, did a poor job in drafting motions where he deliberately made factual and grammatical errors such that the courts dismissed them as substandard. And when we complained, Durden threatened to withdraw with the understanding that he will partially refund a portion of the money we had paid him. See attached Durden's communication to Plaintiff pledging a refund. Then when he got released from the case in 12/2007, Durden reneged.

Plaintiff Kissi then sued him, but Durden countered that Kissi's claim should be dismissed because he has refunded the money. This is false and his motion should be denied. I will be glad to testify at trial how Durden's promises and misrepresentations contributed to my spouse being sent to Moshannon Valley Correctional Institution in Philipsburg, PA a penitentiary for deportee illegal aliens But my husband is a naturalized U.S. citizen and he doesn't belong there and the sentencing judge had suggested Kissi should be confined to a minimum security camp. But Durden's bad faith and substandard legal practice landed my spouse at Moshannon Valley and this has had an adverse impact on his appeal to overturn his wrongful conviction.

26

Thus, the emotional toll and Durden's failure to return the retainer money justifies this suit should proceed to trial.

Respectfully Submitted by: Edith Truvillion 1/26/08
Edith Truvillion
325 Pennsylvania Ave, SE
Washington, DC 20003

Notary:

Subscribed and sworn to before me a Notary Public for the State of MARYLAND and the
County of BALTIMORE My Commission Expires: MARCH 24, 2010

Signed by [Signature]
JANUARY 26, 2008

A. G. Durden

AARON G. DURDEN & Co., L.P.A.
ATTORNEY AT LAW

10 WEST MONUMENT AVENUE
DAYTON, OHIO 45402
(937) 461-9400
(937) 222-1841 FAX

1629 K. STREET, N.W., STE. #300
WASHINGTON, D.C. 20006
(202) 349-3958

October 17, 2007

Mr. David Kissi, 39349-037
Moshannon Valley Correctional Institution
555 Cornell Drive
Phillipsburg, Pa. 16866

Re: ***United States vs. Kissi***
Court of Appeals No.: 07-4916

Dear Mr. Kissi:

I received the handwritten version of the same e-mail previously sent by your wife, which claims I failed to properly represent you in this case.

You appear upset that the lower court denied your request to remain out of prison prior to the court of appeals process in this case. Your mandatory reporting to the Moshannon Valley Correctional Institution had been anticipated as I reminded you to put business affairs in order. The retainer of Attorney Francis demonstrates your understanding of the mandatory reporting to prison. I am concerned that you have again claimed I failed to properly represent your interest based upon the inability to convince the judge, who sentenced you to prison, to allow you to remain out on bond during the appeal period. As I clearly indicated, the trial court did not have jurisdiction to decide this issue.

Mr. Kissi I have been reviewing the documents received in support of your appeal, and we have discussed the issues to pinpoint our focus seeking a reversal of the conviction in this case. Whereas, I cannot guarantee a reversal of the lower court's decision, I remain concerned that you seek to threaten me with a lawsuit, and call me incompetent based upon the fact you cannot remain out of prison.

If you no longer wish for me to work on your case, please let me know

25

Handwritten marks at the top right of the page.

Letter to Kissi

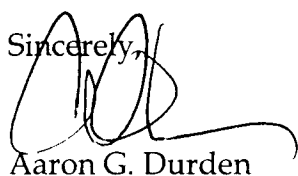
Re: *United States vs. Kissi*

Page Two

immediately so I can timely withdraw from the appeal and allow you to seek another lawyer, and further seek to return the balance of your retainer. I look forward to work on your behalf, but cannot reasonably continue to do so if you believe I am not capable to handling this case.

The 4th Circuit Court of Appeals has acknowledged my entry of appearance and shall be sending me the brief scheduling calendar. Yet, if you continue to claim I am not satisfying your needs, it shall be best to withdraw prior to the filing of the brief and refund your balance.

I hope to hear from you soon as to whether I am to remain on the case unconditionally, without further threats, disparaging remarks, or reduction in the retainer agreed upon in this matter.

Sincerely,

Aaron G. Durden

Handwritten circled number 29 and other marks at the bottom right of the page.

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MARYLAND

PRAMCO,

Plaintiff,

-v-

D. KISSI, et al.,

Defendants.

§

§

§

§

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§

Case no. PJM 03-2241

AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE AS TO WHY M. RAY
PEARSON AND BENNETT AND BLAIR LAW FIRM SHOULDN'T REFUND A
\$30,000 RETAINER THEY ACCEPTED FROM KISSI AMMENDALE LIVING
TRUST.

That I David Kissi, am at least 18 years of age and I do have a personal knowledge of this matter because I and my spouse did retain on 4/06 the late attorney F.W. Bennett, M. Ray Pearson and their Law Firm of Bennett and Blair to represent me in criminal trial in the case of U.S. v. KISSI, case no: Cr-00254, and that I make the following assertions under oath:

1. That F.W. Bennett pledged to me and my spouse, on 4/06, that he would refund at least \$10,000 of the \$30,000 we paid him if I would accept the plea.

In any case I did not accept the plea, because I felt I was a victim of theft by creditor Pramco's debt collector Emile Hirsh.

So, I sought to fire Bennett since I thought he did not represent my best interest. But he refused to withdraw from the case. See trial transcripts volume # 1, pages 8-19, dated 7/31/06.

2. However, in a compromise Bennett pledged to refund to me some of the \$30,000 if the trial, which began on 7/31/06, did not go beyond ~~August~~ 4, 2006. Well, the trial ended on 8/4/06, but Bennett never gave me the refund as agreed. Now, before I could take him to arbitration with the DC Bar, Bennett was killed in a car accident on 7/07. I have legal grounds to enforce our oral contract. And I pray that this Court orders Bennetts associates, Pearson & their Law Firm to show cause why the entire \$30,000 retainer should not be released to Ammendale Trust of which we are the trustors. And since the trust brokerage account was the source of the \$30,000 retainer Bennett Blair accepted in 4/06, to represent me, I need this money right away to retain counsel to draft and reverse my unlawful conviction.

Respectfully submitted by,

D. Kissi 2/5/08

David Kissi Pro-Se
Reg. no. 38348-037
CI Moshannon Valley
555 I-Cornell Drive
Philipsburg, PA 16866

Dated this 5th day of February, 2008.
Commonwealth of Pennsylvania
County of Clearfield

On this day 5th of February, 2008, Mr. Davis Kissi, appeared before me and swore, under oath, this affidavit.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Ann M. Butler, Notary Public
Decatur Twp., Clearfield County
My Commission Expires April 28, 2009
Member, Pennsylvania Association of Notaries

Ann M. Butler
Signature of Notary Public

Seal of Notary Public

Ann M. Butler
Printed Name of Notary Public

4/26/2009
Commission Expires On

31

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,)
Plaintiff/Appellee,)
v.) Case No. 07-4916
DAVID KISSI,)
Defendant/Appellant.)

AFFIDAVIT IN SUPPORT OF PROOF THAT FORMER DEFENSE COUNSEL FAILED
TO PURSUE DISCOVERY OF SEIZED PAPERS AND EFFECTS.

COMES NOW, Appellant, David Kissi, and states that:

1. The affiant is at least 18 years of age and does have a first-hand knowledge of this case because he is the defendant in the case and can make the following assertions under oath.
2. That my former attorney and I agreed that for discovery purposes the two of us would visit the FBI warehouse in April, 2006 to inspect the 27 cartons of records and documents the FBI seized.
3. That defense counsel, Mr. Bennett, for some unexplained reason reneged and never went to the FBI warehouse. This negligence proved to be a fatal error to my criminal defense because if Bennett had inspected the seized documents, he would have found that the FBI, among its illegal haul, seized my wife's employment records, pay-stubs, her three personal computers and diskettes.
4. But since my spouse was not a target of the search, the FBI did err in seizing those items.
5. My spouse did not consent to the FBI hauling along the three personal computers because they were her personal property with her own passwords on there.

6. In sum, since her personal property and my personal and business records were seized with a warrant supported by a false affidavit, Bennett's prettrial inspection could have convinced the Court to have suppressed the seized records, out of which a nine-count indictment was built against me.

Respectfully submitted,

DK
David Kissi 383 48 037

Notary Seal and Signature:

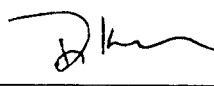
That on this day 21/10/08, Affiant did appear and
swore to me above Affidavit under oath.

Signed by Affiant

Notary Signature

33


Thus, for all the above, this Court should reconsider its ruling in quashing my appeal of the Default Judgment.

Respectfully Submitted by: 

David Kissi, Appellant
PO Box 77878
One Massachusetts Ave, NE
Washington, DC 20013

Certificate of Service

That on 9/15/09, I, David Kissi, did transmit copies of this Response per U.S. Certified Mail to Plaintiff Walter Weir, Jr. at Weir & Partners, LLP, 1339 Chestnut St, Suite 500, Philadelphia, PA, 19107.



David Kissi

35

May 22, 2003

To: Mr. Samuel W. Phillips, Executive
U.S. Court of Appeals for The 4th Circuit
1100 East Main St., Suite 617
Richmond, VA 23219-3517

Re: **Violation Of Our Civil Rights By U.S. Judge Peter J. Messitte of Greenbelt, MD**
Case # PJM 02CV43, Case # PJM 02-42 and Case # WMN 2002-44
Statement of Facts

In 12/02, Judge Messitte decreed that since we were then represented by an attorney, one Mark A. Epstein of Baltimore, he won't allow us to file cases pro se in the above proceedings.

Then on 2/24/03, despite clear evidence that a genuine dispute exists in Pramco's confessed judgment claims because the Plaintiff's claims were supported by a false Affidavit and that we, the Defendants, were entitled to at least a hearing on its merits, Judge Messitte summarily ruled against my spouse Edith R. Truvillion. Then on 3/10/03, we fired our attorney M. A. Epstein and duly notified Judge Messitte. See p. 4. And before Judge Messitte could enter the judgments between the order date of 2/24/03 and 3/27/03, we repeatedly notified him not to enter the judgments, but rather to transfer them to Judge Derby in the U.S. Bankruptcy Court in Baltimore where they originated and where there is a Repayment Plan to resolve Pramco's claims. Our request was permitted by Bankruptcy Code 9027. But Judge Messitte denied these requests to transfer on the grounds that we couldn't act pro se even though we had earlier notified him that we had fired Epstein. See p. 2 and 3.


In sum, Judge Messitte, by his action here, has abused his discretion, over exceeded his authority and has violated our due process because there is no federal law that says that after we have fired our attorney we can't act pro se. His boss, Judge Legg, has suggested we write you to have this matter promptly resolved. We therefore suggest that Judge Messitte step aside and assign our cases to another Judge who is impartial because Judge Messitte is doing this because we are Black and he wants to financially ruin us with those bogus confessed judgments of about \$1 million, which he knows are flawed because Pramco's clerk, one Julie Tumia, filed false Affidavits on 5/10/01 in support of Pramco's claims and Judge Messitte is trying to help Pramco by covering up the perjury by not holding a full hearing and instead granting summary judgments. See pp. 8 - 9 for the said defective Affidavits.

Separately, during a 10/02 hearing, on more than three occasions he implied that we, the Defendants, were deadbeats. Messitte further stated that we had bounced checks drafted for our Riggs Hill mortgage payments to the Money Store. But his assertion isn't just a prejudicial error, but amounts to hearsay because Judge Messitte couldn't identify a specific check we had sent to the Money Store agent, C.L. Wiser between 1998 - 2000 that bounced. This false assertion is not only unbecoming of a federal judge but it showed his prejudiced state of mind. See transcript of hearing in 10/02 and 2/24/03.

No doubt since Messitte has shown bias because we are Black, our cases should be assigned to another judge who will reconsider our Motions to nullify the confessed judgments because our Notices of Removal on 3/21/03 and 4/21 (and in other proceedings) required that the Court ought not to have had judgments entered on 3/27/03. See U.S. v. Microsoft, U.S. Court of Appeals, D.C. Circuit #95-5039 and U.S. v. Eddie Antar, U.S. Court of Appeals for the Third Circuit # 94-5230.

Finally, if applicable, we suggest this Council hold a 'hearing' pursuant to Maryland Rule 2-311(f) to provide additional evidence and witnesses to support our complaint that Messitte has violated our civil rights. For example, during the 2/24/03 hearing, Messitte for no reason other than my race, assigned Court bailiffs to guard me, whereas, none of the whites was placed under guard. However, whatever the outcome, this complaint should be made part of Judge Messitte's permanent U.S. job record.

Respectfully Submitted by: _____


David Kissi, Petitioner, 202-675-6365
1108 W. Pratt St., Baltimore, MD 21223

cc: Chief Judge Benson Everett Legg, US District Court 101 W. Lombard St., Baltimore, MD 21223

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

UNITED STATES OF AMERICA : Criminal Action No.
v. : PJM 03-CR-473
DAVID KISSI, et al., : Greenbelt, Maryland
Defendant. : Monday, May 24, 2004
/ 11:34 A.M.

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

SPECIAL PROSECUTOR: CHRISTOPHER B. MEAD, ESQUIRE
LONDON & MEAD
1225 19th Street, NW, Suite 320
Washington, D.C. 20036
(202) 331-3334

FOR THE DEFENDANT DAVID KISSI: PAUL R. KRAMER, ESQUIRE
PAUL R. KRAMER, PA
Jefferson Building
101 N. Charles Street, Suite 700
(410) 727-5531

FOR THE DEFENDANT EDITH TRUVILLION: GRANGER GEORGE MAHER, III, ESQUIRE
LAW OFFICE OF GRANGER G. MAHER
101 N. Charles Street, Suite 70
Baltimore, Maryland 21209
(410) 727-5531

OFFICIAL COURT REPORTER: LINDA C. MARSHALL, (301) 344-3229

COMPUTER-AIDED TRANSCRIPTION OF STENOTYPE NOTES

P-R-O-C-E-E-D-I-N-G-S

1
2 THE DEPUTY CLERK: Matter now coming before the Court,
3 RJM 2003-00473, United States of America versus David Kissi and
4 Edith Truvillion Kissi. The matter now before this Court for a
5 bench trial.

6 THE COURT: All right. Counsel, identify yourselves.
7 First is the special prosecutor.

8 MR. MEAD: Thank you, Your Honor. Chris Mead on
9 behalf of the Court as the specially appointed prosecutor.

10 MR. KRAMER: Paul Kramer on behalf of Mr. Kissi.

11 MR. MAHER: Granger Maher on behalf of Edith
12 Truvillion.

13 THE COURT: All right.

14 All right. Have a seat if you would, counsel.

15 I don't -- you have, perhaps, a preliminary motion or
16 motions you want to make, Mr. Kramer.

17 MR. KRAMER: I thought before doing so if we could
18 approach the bench on the record.

19 THE COURT: All right. On the record. That's fine.

20 (Bench conference.)

21 MR. KRAMER: Good morning.

22 THE COURT: Good morning.

23 MR. KRAMER: You already ruled on my motion to recuse
24 Your Honor. I don't know whether it needs to be elaborated on
25 and may not be, but, briefly, my view was that because of so

1 many things that went on before Your Honor, in the presence of
2 Your Honor, I wasn't present but got secondhand information from
3 the other attorneys, that it would be, in my view, extremely
4 difficult to, to look at the issues in a, in a form that would
5 not have --

6 Well, it's just difficult for a Court, any Court who
7 have heard so much about the Kissis and all the things they
8 allegedly have done to be able to look at it without having all
9 the background information that you should not normally have as
10 a judge. And that's why I raised the motion. I was a little
11 concerned about that.

12 MR. MAHER: Your Honor, I think that the real issue
13 is, is that the -- their defense, if there is to be a defense,
14 is based entirely upon credibility. And I think having reviewed
15 all the documents, again we weren't here, I think the Kissis
16 have done more than enough to shoot their credibility with any
17 person not having anything else. And that is our concern,
18 especially in --

19 You know, my biggest concern as far as Ms. Truvillion
20 goes is this matter involving whether or not she was served and
21 the expiration -- I don't think we received an answer. I think
22 Mr. Hirsch was to follow up on that and even the cause of all
23 that.

24 And again, I think it's just a matter of credibility.
25 I think that they've done a lot to shoot their credibility with

1 anybody.

2 MR. KRAMER: And I might add, Your Honor, the letter
3 that I sent to the special prosecutor, copied to Your Honor on,
4 the information I had from the attorneys directly handling the
5 so-called settlement negotiations was reviewed by them in
6 advance prior to my sending them and is based on what they told
7 me and my understanding. And I was in the loop --

8 THE COURT: You're responding to Mr. Hirsch's latest
9 letter?

10 MR. KRAMER: No, I was in Chicago for a meeting.

11 THE COURT: Have you seen the letter of May 20th
12 though?

13 MR. KRAMER: Is that the one you read to me?

14 MR. MAHER: I read it.

15 MR. KRAMER: I'm not going to get into a letter
16 contest with him. The answer is, the letters were reviewed by
17 the other attorneys and that's it. And I knew for myself that
18 they were trying.

19 I mean, there's no settlement involved. It's paying
20 off the balance. That's all that's left. If they ever get a
21 payoff, they pay off the balance and the additional monies that
22 Mr. Hirsch wants to me is a separate matter. Let that be put
23 aside. That's the basis for --

24 THE COURT: Well, I had hoped to have some specific
25 indication of just what the number was and how far apart you

1 were and what other assets were out there to close out the civil
2 case.

3 MR. MAHER: I can answer that question, Your Honor.
4 If the receiver's fees are to remain at \$20,000, I don't know if
5 the Court --

6 THE COURT: Well, that's up in the air. That's
7 negotiable.

8 MR. MAHER: Okay. Well, assuming there's \$20,000 off
9 the receiver's fees, they're within a couple thousand dollars
10 and that would be solely upon interest of settling it.

11 Mr. Hirsch apparently maintains -- I apologize.
12 Pramco maintains liens on two pieces of properties owned by the
13 Kissis free and clear that would more than satisfy any amount of
14 money. So the money is there to settle the case.

15 The hold-up has been to pay off the first -- well, to
16 satisfy the judgments, Your Honor. The hold-up has been
17 negotiations resolving a sum of money over the payoff amount. I
18 think that has been resolved. It's just a question of,
19 mechanically, how is it going to be done, because of course the
20 money from the KEOGH account doesn't really belong to Mr. Kissi
21 right now. It's in Mr. Kremen's possession from the United
22 States Bankruptcy Court.

23 And there are concerns about a date certain of when it
24 has to be paid. Otherwise, the deal would be off and Mr.
25 Kremen would have to agree to all this. And this is just some

1 of that on Thursday and Friday --

2 THE COURT: Right. I was a little distressed by Mr.
3 Hirsch's letter, quite frankly, because I'd hoped to try and do
4 something more comprehensive this morning. The idea that you're
5 not supposed to be talking about it, Mr. Kramer, and he doesn't
6 want me to somehow put my hand in this thing is not at all where
7 I want to be.

8 I don't want to settle the case in the sense of
9 negotiating the numbers, but I want to bang heads and make
10 people come to specific numbers and stop parlaying this thing
11 into something it shouldn't be. That's the way I am about this
12 case.

13 MR. KRAMER: That's how I approach it too.

14 THE COURT: Well, I agree. And I think that's the
15 proper approach and Mr. Mead does too.

16 I think what I will do as soon as we get through here
17 is I will, we will call Mr. Hirsch and say to him, essentially,
18 look, I've got to know that you folks are in serious
19 negotiations right now and I need to know exactly where you are
20 and where Mr. Bruce is, and what other assets are there out
21 there to decide if he and -- to decide what the final number is.

22 If you think, for example, that there's more money
23 you're entitled to and requires a ruling by me, you tell me
24 immediately and I'll make a determination. And if that has to
25 do with the extent of the receiver's fee or it has to do with

1 these claims for additional attorneys fees, I want to know that
2 right now.

3 And I'll make the rulings immediately on these issues
4 so we can make sure we know where everybody is. And we'll get
5 on the phone with him right away and tell him that.

6 MR. KRAMER: That's fine. That's all we ask.

7 THE COURT: That seems to me, we'll move this thing
8 along considerably.

9 MR. KRAMER: It's really in the settlement, just the
10 payoff --

11 THE COURT: Right.

12 MR. KRAMER: Now, as to the criminal contempt, which
13 we're here this morning for.

14 THE COURT: Right. There may be some preliminary
15 things we can talk about there.

16 MR. KRAMER: But one of the things before we even get
17 into --

18 THE COURT: You've got a motion that you've made?

19 MR. KRAMER: I may not have to.

20 THE COURT: That's all right.

21 MR. KRAMER: I may be willing to withdraw it, because
22 I -- it is one of these motions that I was kind of forced to
23 make for whatever reason.

24 THE COURT: You don't have to apologize. I'm not in
25 any way taking issue with that.

1 MR. KRAMER: No, we're trying to work this matter out.
2 Mr. Kissi isn't, for obvious reasons, 100 percent
3 mentally and physically -- I think that's imminent from his
4 behavior. We have some medical evidence to that effect. Mrs.
5 Kissi, I sense, kind of goes along with him and that's part of
6 it.

7 I think everyone would like to resolve the contempt if
8 we could. Of course, his main concern is whether he's going to
9 go to jail or what proper sanction should be for his behavior.

10 I advised him that although some of the counts can be
11 defended and we think we can win on, we're aware of the legal
12 terms for putting your head in the sand, at least as to one
13 count.

14 Mr. Mead has indicated what he would recommend to the
15 Court. I guess I don't know how much involved you get in, is
16 this a civil matter -- I mean, a criminal contempt matter rather
17 than a criminal case, how much we can take back to the Kissis,
18 but I think they would like to get rid of it today.

19 THE COURT: Well --

20 MR. KRAMER: I mean, that's the bottom line. We can
21 withdraw --

22 (Discussion held off the record.)

23 MR. KRAMER: For example, whether home detention might
24 be an alternative; whether community service could be an
25 alternative. Although he's fighting for every cent because his

1 so-called life savings have now been taken, he does have assets
2 that could not only pay off the debt, but could pay some kind of
3 fine in lieu of jail.

4 He had just gotten a contract from the government.
5 They were successful business people and that could be lost if
6 he goes to jail too. And he hasn't walked away, because I'm not
7 free. I'm not paid as much as I should be. I might have to ask
8 Mr. Hirsch to collect the balance of my fee, I joke with him,
9 but he does have some assets to pay a fine.

10 THE COURT: Look, I would like to see the civil
11 litigation resolved. I mean, that to me is the main, main thing
12 here that gives rise to all this in the first place. Obviously,
13 there are some issues involving respect for the Court's order
14 that may survive that issue. But apart from that, the main
15 event is the civil litigation which is why I've tried to put the
16 squeeze on Mr. Hirsch to tell us a number here and let's stick
17 with it, and let's see what there is to apply to it and see if
18 we can't get all this resolved.

19 Obviously, the threat of these proceedings has had a
20 chastening effect on Mr. and Mrs. Kissi. I think they moved
21 considerably from where they once were in this litigation, which
22 is one of fairly significant resistance to, at least, trying to
23 come up with some of the assets or at least not being able to
24 oppose that.

25 As I say, I will get on the phone with Hirsch right

1 away after these proceedings and tell him how important it is to
2 get this thing concluded right away. And I don't know. He
3 says, he'll only talk to Mr. -- it's true, there are other
4 lawyers out there besides you, aren't there?

5 MR. KRAMER: Well, I haven't really handled the civil
6 negotiation. I've been working the background with the other
7 lawyers. And as much as Mr. Kissi felt that I could do better
8 in negotiating than the others, I did not choose to do so for a
9 lot of different reasons.

10 THE COURT: Let me put it to you this way: I think
11 you ought to be involved in that negotiation to the extent that
12 I would certainly look favorably upon the successful conclusion
13 of the civil litigation in terms of what might happen here.

14 And I'll tell you, there's another matter we need to
15 sort of open up and talk about. You've cited a rather
16 compelling case from the Supreme Court, which I did talk to Mr.
17 Mead about.

18 And you'll notice that Stewart Berman is back sitting
19 here, because we talked to the U.S. Attorney, Mr. Mead and I,
20 after we got your letter and we said that we've got this case,
21 and I think that these folks have raised a valid point.

22 And I said, and I think, perhaps, you ought to come in
23 and hear at least the preliminaries in this case this morning,
24 because my sense is that I should give you an option as the U.S.
25 Attorney first maybe for 30 days to study whether you want to

1 prosecute this case independently. And if you do, that's fine,
2 we'll go with it. If you don't, I've got a special prosecutor
3 ready to go forward with the case.

4 But I don't want to get involved in a proceeding this
5 far procedurally. So that's what I have said. So that may be
6 the most we're going to do anyway, which is to say to Mr. Berman
7 who I think probably now has seen what the charging document
8 looks like in this case, please study this case.

9 I haven't done any nods or winks or anything. I mean,
10 do it legitimately. If you think you want to prosecute it, do
11 it. If you don't, I've got somebody ready to go with it. So,
12 we can pursue that that way and that will take a little --

13 Look, it takes the heat off and it keeps the heat on.
14 And one of the things that's made this case move is that there
15 is some potential heat on it.

16 MR. MAHER: Your Honor, the only thing I want to tell
17 you is that based upon the letter delivered by Mr. Hirsch, I'm
18 assuming that there was no \$2,000 worth of interest. Worse case
19 scenario, if the receiver wants, demands another \$20,000, here
20 it's about 12 grand.

21 And my concern is, for obvious reasons, we don't want
22 the United States Attorneys involved in this. I don't know if
23 Your Honor would still be binding itself to keep it out of the
24 jury trial situation.

25 THE COURT: I'm binding myself to that. We're not

1 going to have a jury trial on this case and that's why I did
2 that.

3 MR. KRAMER: I have a suggestion that I think could
4 move everything. It's going to be paid off 100 percent. It's
5 just a matter of getting Hirsch to sit down on a settlement
6 date, figure out what the interest is to that date. Somebody
7 writing a check from whatever assets there are being held by the
8 trustee and Hirsch dismissing all these claims.

9 And if he wants to bring a separate action for his
10 so-called inconvenience, malicious prosecution, that's a
11 separate case. Hirsch can defend it or not, but I would like --

12 What I suggest to Your Honor is this: I understand
13 the special prosecutor is prepared to allow the Kissis to plead
14 if Your Honor will accept a plea to one of the counts.

15 THE COURT: You're jumping ahead. There's two things
16 out there. One is my participation in the case. The second is
17 the U.S. Attorney's participation, because we need to get
18 waivers as to that before we get to this point.

19 MR. KRAMER: Well, I agree with Your Honor. I don't
20 want to -- they would have to waive. I was even suggesting in
21 writing, besides orally on the record Your Honor's
22 participation. And as -- unless Your Honor were planning to
23 recuse himself for whatever reason, but I assume Your Honor has
24 already ruled. I'm not going to argue that issue.

25 THE COURT: Right.

1 MR. MAHER: Your Honor, we would be willing to waive
2 prosecution by the United States Attorneys' office, if the
3 Court -- my impression is the Court's obviously more concerned
4 about the civil payoff. Would the Court be willing to postpone
5 this matter today and be inclined to --

6 MR. KRAMER: Or the sentencing.

7 THE COURT: I would be willing to postpone it. It's
8 your sense that there'd be a plea to one of the allegations put
9 forth by Mr. Mead?

10 MR. MEAD: We might as well discuss what the terms are
11 that I'm offering, because it requires the Court --

12 THE COURT: Should we be doing all this at the bench?

13 MR. KRAMER: I would prefer -- I would prefer, and
14 then we can summarize it afterwards.

15 MR. MEAD: Your Honor --

16 THE COURT: Tell me what the plea would be to.

17 MR. MEAD: It would be, I think, to the service on
18 Gary Wilson, which is the buyer of one of these properties which
19 I find to be the most egregious of the conduct. I'd be willing
20 to recommend, if the Court would accept it, a "C" plea for Ms.
21 Truvillion, which would be probation unsupervised but with the
22 condition that she comply with all lawful court orders
23 submitting -- in other words, just to trigger civil enforcement
24 and a general recommendation of jail non-specific as to term
25 with respect to Mr. Kissi.

1 I want the Court to understand, I will not be offended
2 if the Court does not find that as appropriate sanction. It's
3 just my personal recommendation based on the entire course of
4 conduct that some sanction is appropriate. Unfortunately, the
5 conduct he's engaged in here is not the only frivolous
6 litigation that he was brought in his history and I find that
7 compelling. So that's my general recommendation and I think --

8 THE COURT: Would you then be prepared though to
9 postpone this for a period of time to -- if we go through the
10 plea today, we postpone sentencing. Hopefully wind up the civil
11 litigation in the interim.

12 I mean, the problem is that I don't want to put it off
13 too long. If I put this thing for sentencing, either this case
14 resolves or it doesn't civilly, and we make this determination
15 --

16 MR. MEAD: Certainly.

17 MR. KRAMER: The other thing, Your Honor, I understand
18 is another set of, second set of alleged contempts which I
19 understand will not be pursued.

20 THE COURT: Well, we've deferred that for now in the
21 hope that, you know -- it's one of those things like the
22 prosecutor has got a lot of things to bargain with. I don't
23 need to put everything on the table if I've got enough in front
24 of me already.

25 So I don't need all that stuff, but it's there if we

1 can't get this thing moved along. But there is, obviously, some
2 message in all this to Mr. Kissi. He just can't play havoc on
3 the system. And if you do, there's going to be some
4 consequence.

5 MR. KRAMER: But I think there's some medical reasons
6 for a lot of it.

7 THE COURT: One hopes that in the future one doesn't
8 see the same behavior again with the same gentleman. That's why
9 walking away from this entirely is not an easy proposition.

10 MR. KRAMER: I understand that. And I explained that
11 to him.

12 MR. MAHER: If he was to walk out the door, I can
13 assure the Court he's a husk of what he was when I first met
14 him. He's suffered dramatically.

15 THE COURT: Well, having said all this then, your idea
16 is that he will plead to this one charge. You would make a
17 recommendation now or would you wait on that, to say what the
18 terms are?

19 MR. MEAD: I'd have to say what the terms of the plea
20 bargain would be.

21 THE COURT: All right. The Court would defer any
22 specific ruling for -- is 30 days a reasonable period.

23 MR. KRAMER: It's just a matter of getting resolved.

24 MR. MAHER: My only concern would be is would the
25 Court be willing to extend it again if the case wasn't paid off

1 for some reason?

2 THE COURT: All right. Then I don't want any
3 incentive on his side --

4 MR. MAHER: We won't tell anybody that. And I think
5 your calling Mr. Hirsch will go a long way towards moving this
6 along.

7 THE COURT: Well, I will call him today and tell him.
8 And I think that he needs to understand that his moving this
9 along and Bruce's moving this along will have a substantial
10 impact on the criminal case.

11 MR. KRAMER: And I, I think I put this in my letter
12 because I don't like to speak out of school, but it's my view
13 that a lot of this has been prompted by Hirsch as a wedge
14 against the Kissis, including this extra --

15 THE COURT: I haven't even gotten to that issue,
16 frankly, and I --

17 MR. KRAMER: That's why he's been holding it up.

18 THE COURT: I can rule on that quickly. That's why
19 I'm saying, if he's got some sort of further claim and he's
20 holding it up, all I know is we rendered a judgment in this
21 case. I don't know anything about attorneys fees and I don't
22 know anything about inconvenience and all this other stuff.

23 I do know that I've got a petition from the receiver
24 and I can review that, and I can give him a portion of his
25 request. Particularly, if cutting it in some way may give us a

1 conclusion in this litigation, I can do that.

2 I'm prepared to do all those things and that's why I
3 need to -- and I'll tell him on the phone today, I don't have
4 anything before me, other than the judgments in this injunction.
5 I don't have any request for fees. He's not going to hold up
6 this case because of that.

7 MR. KRAMER: Next thing you know, he'll file
8 something.

9 THE COURT: Well, I haven't had a chance to hear his
10 argument, but I can tell you without sort of tipping my hand, I
11 suppose on it, the judgments in this case include attorneys
12 fees.

13 Now, there's a serious legal question about once
14 somebody gets attorneys fees under a promissory note that you
15 continually get from under the promissory note after it's been
16 incorporated in a judgment.

17 They may be a separate lawsuit. It may have no merit
18 at all. I don't know, but it's not part of this lawsuit right
19 now. So, I think that's what I need to tell him. He needs to
20 hear this.

21 Okay. Let's go back. You want a moment or two to
22 talk with them?

23 MR. KRAMER: Yeah, I think I do. I think we're
24 concerned about the second set of charges going away.

25 THE COURT: We're not doing anything with them.

1 They're there and I'm inclined to tell you without prejudice
2 really that if other things resolve, we can perhaps let those go
3 away. But I'm not prepared to say that. I don't know that Mr.
4 Mead is either.

5 MR. MEAD: Well, I guess what I'd say, Your Honor, is
6 that my recommendation with respect to jail in a sense
7 encompasses the second.

8 THE COURT: All right. Well, other conduct we're
9 talking about.

10 MR. MEAD: I mean, if I get pleas from each of them
11 to one count on the first charge, I'm willing to dismiss, if the
12 Court would accept that.

13 THE COURT: I'm prepared to listen to that. I'm not
14 losing sight of this fact that this all grows out of civil
15 litigation and I don't want -- I suppose Mr. Hirsch has got
16 reason to be unhappy with the way he's been pulled around, but
17 that's not going to interfere with -- that's not why we're here
18 today. We're here because whether this man and this woman are
19 or not in compliance with the Court's order. Not anything to do
20 with Mr. Hirsch's's personal feelings.

21 MR. KRAMER: And I told them that if we worked
22 something out, they would have to waive the legal issues you
23 raise and there's no appeal from the waiver.

24 MR. MAHER: We'll do that on the record.

25 THE COURT: You want a few minutes.

1 MR. KRAMER: Yes, please, Your Honor.

2 THE COURT: You want to take a short recess?

3 MR. KRAMER: I think a recess would be good to make
4 sure he understands.

5 THE COURT: All right.

6 (Open court.)

7 THE COURT: Would you have any objection to me, Mr.
8 Kramer, Mr. Maher, I want to just speak to Mr. Berman for a
9 moment?

10 Come up to the bench real quickly.

11 (Bench conference.)

12 THE COURT: This is on the record, madam reporter.

13 Mr. Berman, I know you're here from the U.S.
14 Attorneys' office. And we've pointed out to counsel, as I think
15 your office knows, that having had our attention drawn to the
16 Supreme Court case that it probably is the better part of wisdom
17 to invite the U.S. Attorneys' office to consider this case first
18 before we go forward with the special prosecutor.

19 Having said that, I had said that -- I told Ms. Raman
20 of your office the same thing that, perhaps, I would suggest
21 that for 30 days the U.S. Attorneys' office study this case and
22 come back to us about whether or not they want to prosecute.

23 Looks now like the plaintiff is probably going to be
24 willing to waive that issue about having the matter presented to
25 the U.S. Attorneys office and letting us go forward with Mr.

1 Mead in the case.

2 So, having said that, you don't need to stay around
3 any longer because I think we've resolved that procedural issue.
4 Blessing for all of us quite frankly on how one could use a
5 special prosecutor.

6 MR. BERMAN: Right. We looked at this case last week,
7 but if the parties have no objection, we're happy to let Mr.
8 Mead handle it.

9 THE COURT: I think right now it's fairly clear that
10 they're going to waive any objection to going forward with the
11 special prosecutor, but I do -- obviously, all this weighs on
12 people making decisions. They, I think, were afraid they might
13 get what they asked for in this case without limitations on
14 sentences, and I think that had a very chastening effect on
15 where they were.

16 Appreciate you coming.

17 MR. BERMAN: Thank you, Judge.

18 (Open court.)

19 MR. KRAMER: Your Honor, after discussion with
20 defendants and both counsel, we'd like to enter into a plea as
21 to one of the charges.

22 We're prepared to withdraw and both the Kissi's waive
23 their objection to Your Honor presiding over the case. And also
24 waive the issue that we raised, I think, in a letter to Your
25 Honor on last Thursday of the case that suggested that such

1 matter should have originally been referred to the U.S.
2 Attorney, rather than a special prosecutor.

3 We've explained to both the Kissis last week in my
4 office and again today that it would be giving up -- by giving
5 such rights, they would also on the record, they give up any
6 right to appeal Your Honor continuing on the case or appeal the
7 fact that we're waiving the right to have it referred to U.S.
8 Attorney for initial review.

9 Is that correct, Mr. Kissi?

10 THE DEFENDANT: Yes.

11 MR. KRAMER: Is that correct, Mrs. Kissi?

12 THE DEFENDANT: Yes.

13 MR. KRAMER: I'm sure Your Honor may want to go into
14 more detail. You may.

15 THE COURT: All right. Is there anything preliminarily
16 you want to say, Mr. Mead, about this?

17 MR. MEAD: Your Honor, this is a pursuant to a plea
18 bargain which the parties have not reduced to writing and I
19 would like to state my understanding of it, because it does
20 require Court approval.

21 THE COURT: All right. Why don't we at least get the
22 general terms of what this agreement would be and then we'll go
23 through the voir dire on the waivers.

24 MR. MAHER: I just have one question, Your Honor, if I
25 may.

1 THE COURT: Go ahead, Mr. Maher.

2 MR. MAHER: Would Your Honor be willing to allow Ms.
3 Kissi to submit to a "C" plea?

4 THE COURT: I think that's going to be Mr. Mead's
5 recommendation in any event. So, let's see.

6 Nothing in binding right now. I want the parties to
7 hear what Mr. Mead is going to recommend and then I'll give you
8 some indication of where I am.

9 MR. MAHER: Certainly, Your Honor.

10 MR. MEAD: Your Honor, as the Court appointed special
11 prosecutor, I would be willing to recommend the following plea
12 bargain to the Court. I would recommend that the Kissis plead
13 guilty to count two of the first notice of charges, which
14 charges them with, in violation of Your Honor's TRO, filing,
15 quote, Our second Motion to Dismiss Pramco complaint of
16 harassment, restraining order and appointment of a receiver,
17 close quote.

18 I would be willing to recommend that the Court accept
19 Mrs. Kissi's plea as conditional plea under Rule 11(e)1(c)
20 binding the Court to a sentence of unsupervised probation for a
21 period -- I guess we did not discuss the period. I'd be willing
22 to recommend a one year period with the term that she comply
23 with all lawful orders of this Court and all related litigation.

24 I see no reason to burden probation beyond that and
25 the enforcement mechanism obviously would be available to any

1 parties harmed by her violation of any litigation order.

2 With respect to Mr. Kissi, I would make a general
3 recommendation of jail non-specific as to term. I think the
4 offense he has committed fundamentally is against the Court's
5 authority and the Court is in the best position to evaluate the
6 injury to it.

7 However, I do feel based on my review of the case that
8 Mr. Kissi's conduct has been repeated and serious enough both in
9 this context and in other context to warrant some imposition of
10 jail time as a sanction. And I've been clear with that in my
11 plea negotiations.

12 Obviously, the Court would be free to accept or reject
13 that recommendation. My understanding is that Your Honor has
14 already agreed that these charges are a six month maximum
15 misdemeanor and that would be a specific condition of the plea.

16 And on those terms, Your Honor, I would be prepared to
17 recommend to the Court that the second Notice of Charges that I
18 filed be dismissed again understanding that that is a
19 non-binding recommendation and I would be available to serve if
20 the Court so desired to prosecute those charges, if you did not
21 accept that deal.

22 THE COURT: Now, further, the parties would anticipate
23 that the Court would defer for some 30 days any sentencing in
24 this case. Would you have in mind that there be some sort of a,
25 a probation report made, some sort of PSR made as to Mr. Kissi?

1 You've made reference to other activities beyond the
2 activities in this case. Is there something you had in mind?

3 MR. MEAD: Well, Your Honor, I'm not sure that's
4 necessary, again, depending on what the Court chooses. My sense
5 is that Mr. Kissi's finances have been subject of extensive
6 discovery. And so, I guess my sense is that there's not the
7 usual need to do an investigation into his financial resources.

8 I am personally aware of other litigation filed by
9 Mr. Kissi, which I consider frivolous, which was put on the
10 record before Your Honor in the preliminary junction hearing
11 amongst other things, so I don't feel the need to further
12 investigate that. I would make reference to it in a sentencing
13 allocution and I think the defense is aware of it. That's all.

14 THE COURT: Mr. Kramer, you heard Mr. Mead on that.
15 And does that represent -- Mr. Maher as well -- your
16 understanding of the outlines of the plea agreement that --

17 MR. KRAMER: That is correct, Your Honor, that after
18 the plea today, if accepted, it would be postponed 30 days or so
19 in hopes that the civil matter that's underpin these proceedings
20 may be satisfied fully and that would be a plus for everyone.

21 And if necessary and good faith by Mr. and Mrs. Kissi,
22 if need be to postpone longer, but I see no reason why it can't
23 be done in 30 days. The Kissi's are prepared to make the
24 waivers I suggested.

25 THE COURT: Mr. Maher.

1 MR. MAHER: That fully contemplates my understanding.
2 Our only question would be about whether or not Your Honor would
3 accept the "C" plea.

4 THE COURT: All right. Well, let me voir dire
5 Mr. Kissi and Ms. Truvillion, and we'll see where we are first.
6 And I think we can probably do it simultaneously. If you'll
7 both raise your right hand.

8 Madam Clerk, swear them both please.

9 DAVID KISSI, THE DEFENDANT, SWORN

10 EDITH TRUVILLION, THE DEFENDANT, SWORN

11 THE COURT: All right. Have a seat. You can answer
12 from your place.

13 Mr. Kissi, would you state your name please?

14 MR. KISSI: My name is David Kissi.

15 THE COURT: And Ms. Truvillion.

16 MS. TRUVILLION: Edith Truvillion and.

17 THE COURT: And your age, Mr. Kissi?

18 MR. KISSI: I'm 55.

19 THE COURT: Ms. Truvillion.

20 MS. TRUVILLION: I'm 48, Your Honor.

21 THE COURT: And your home address, Mr. Kissi?

22 MR. KISSI: 4305 Annendale Road in Beltsville,
23 Maryland.

24 THE COURT: Likewise, Mrs. Kissi?

25 MS. TRUVILLION: Yes, the same

1 THE COURT: You have children, sir?

2 MR. KISSI: No, sir.

3 THE COURT: All right. Now, you have a business at
4 this time, Mr. Kissi?

5 MR. KISSI: Yes, I'm trying to organize chemo
6 supplies.

7 THE COURT: And you are working at this time, Ms.
8 Truvillion?

9 MS. TRUVILLION: Yes.

10 THE COURT: Where are you working?

11 MS. TRUVILLION: Working for Montgomery County
12 Government.

13 THE COURT: All right. Now, and I'm doing all this
14 because I need to make a record. I obviously know the answers
15 to some of these things, but we have to do in the context of
16 this particular proceeding.

17 You are aware that there was a document -- and I put
18 this question to both of you and I'm going to ask you to answer
19 yes or no -- that Mr. Mead has put in and it's entitled Notice
20 of Criminal Contempt Charges by court appointed attorney.

21 Have you seen that document, Mr. Kissi.

22 MR. KISSI: The charging document, yes.

23 THE COURT: Charging document.

24 Ms. Truvillion, have you seen it?

25 MS. TRUVILLION: Yes.

1 THE COURT: All right. Now, you both are represented
2 by counsel on this matter, have been; is that correct?

3 MR. KISSI: Yes.

4 MS. TRUVILLION: Yes.

5 THE COURT: All right. Have you gone over this matter
6 with Mr. Kramer, Mr. Kissi, this charging document?

7 MR. KISSI: Yes, we have.

8 THE COURT: All right. Ms. Truvillion, likewise with
9 Mr. Maher?

10 MS. TRUVILLION: Yes, we have.

11 THE COURT: Now, you understand that you are before
12 the Court this morning and it was originally set as a matter for
13 the Court to take evidence with regard to these charges.

14 Do you understand that, Mr. Kissi?

15 MR. KISSI: Yes.

16 THE COURT: Ms. Truvillion?

17 MS. TRUVILLION: Yes.

18 THE COURT: All right. Now, your counsel and Mr. Mead
19 have presented to me at the bench, and we simply just repeated
20 it now openly to the Court that both of you are prepared on
21 different terms to agree to; that is, to accept responsibility
22 for at least one of these charges.

23 Is that correct, Mr. Kissi?

24 MR. KISSI: Yes, sir.

25 THE COURT: Ms. Truvillion.

1 MS. TRUVILLION: Yes.

2 THE COURT: All right. Now, there were some
3 preliminary matters that were raised in this regard that I need
4 to go over with you.

5 The first is that there has been a prior request that
6 I recuse myself from these proceedings based on my history with
7 this case, and I denied that earlier. I don't know whether the
8 motion is still pending or not. I think, perhaps, Mr. Kramer is
9 saying that if I otherwise accept this plea agreement that you
10 would forego my withdrawal in the case.

11 But I want to say this: I'm allowing for present
12 purposes that I am sitting on this case. As I say, I've denied
13 your motion earlier and I feel that I can properly sit on this
14 case because I am simply reviewing the question of whether or
15 not you have complied with my Court orders.

16 So I would -- even if this matter, this motion were
17 still alive, I would deny it again. I want you to know that.
18 However, as I understand, one the proposals that is made by
19 Mr. Kramer and Mr. Maher is that if I otherwise go along with
20 your agreement, you would waive any, you would waive any claim
21 about my recusal.

22 Is that correct, Mr. Kissi?

23 MR. KISSI: Yes.

24 THE COURT: Ms. Truvillion?

25 MS. TRUVILLION: Yes, it is.

1 THE COURT: All right. Now, the second issue that was
2 raised by Mr. Kramer and Mr. Maher earlier last week was, was
3 that instead of going directly to the appointment of the special
4 prosecutor, the Court should have gone to the U.S. Attorneys'
5 office first to see whether the U.S. Attorney would prosecute
6 this matter as a criminal prosecution.

7 And the Court's attention was invited a Supreme Court
8 case which the Court reviewed. And the Court happens to agree
9 with the position Mr. Kramer and Mr. Maher raised. And that is
10 that this matter should properly have been referred to the U.S.
11 Attorneys' office before I appointed Mr. Maher (sic).

12 Having said that, the suggestion was made this
13 morning -- and let me say further, I spoke with the U.S.
14 Attorneys' office on Friday as did Mr. Mead and told them that
15 they should have an opportunity to look at this case and decide
16 whether or not they would prosecute it criminally.

17 And indeed this morning Stewart Berman, who is one of
18 senior deputies in the U.S. Attorneys' office, was in court this
19 morning listening to the proceedings. Of course, they were at
20 the bench, so he didn't hear them at first. And I was prepared
21 to say to Mr. Berman and the U.S. Attorneys' office, the Court
22 will defer any action in this case for 30 days. If the U.S.
23 Attorney chooses to prosecute the case, that's fine, the U.S.
24 Attorney can prosecute it. If the U.S. Attorney declines to
25 prosecute, then we'll go forward with Mr. Mead as the special

1 this matter?

2 MR. KISSI: Yes.

3 THE COURT: All right. Ms. Truvillion, likewise?

4 MS. TRUVILLION: Yes.

5 THE COURT: All right. Well, let me make a finding
6 that the, that the defendants have knowingly and voluntarily
7 waived their right to further claim that the Court recuse itself
8 in these proceeding and further waive their right to have this
9 matter referred in the first instance in this U.S. Attorneys'
10 office and are agreeable, therefore, to having the special
11 prosecutor go forward.

12 Now, having said that, you heard Mr. --

13 Do you need to talk to your lawyer, Mr. Kissi?

14 MR. KISSI: Pardon?

15 THE COURT: Do you need to talk to your lawyer?

16 MR. KISSI: Yeah, I want to ask him a question.

17 THE COURT: Okay. Go ahead.

18 (Discussion held off the record.)

19 THE COURT: Are you satisfied? Have you had enough
20 time to talk?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now, you've heard Mr. Mead's indication of
23 the proposed plea agreement. And that is that you would both
24 plead guilty to the second count in the first Notice of Criminal
25 Contempt Charges.

1 Is that correct, Mr. Kissi, the second count?

2 MR. KISSI: Yes, Your Honor.

3 THE COURT: Count two provides that on August, on or
4 about August 11, 2003, David Kissi and Edith Truvillion Kissi
5 did knowingly and willfully disobey and resist the TRO, a lawful
6 order issued by the United States District Court for the
7 District of Maryland with contempt of the Court's authority by
8 jointly filing, quote, Our Second Motion to Dismiss Pramco's
9 Complaint of Harassment, Restraining Order and Appointment of
10 Receiver, end-quote, in the Pramco litigation without seeking
11 legal court as required by the TRO. This in violation of 18
12 United States Code, Section 402 and 18 United States Code
13 Section 2. That's the count that as I understand that you're
14 prepared to plead guilty to.

15 Is that correct, Mr. Kissi?

16 MR. KISSI: Yes, Your Honor.

17 THE COURT: Ms. Truvillion.

18 MS. TRUVILLION: Yes, it is.

19 THE COURT: All right. Now, the further
20 recommendation or agreement, rather, that Mr. Mead has proposed
21 and Mr. Maher has confirmed as to Ms. Truvillion is that the
22 Court would accept a binding plea as to Ms. Truvillion and would
23 accept a binding disposition, which would be unsupervised
24 probation for at least a year, as I understand, or some
25 unspecified term.

1 MR. MAHER: That's correct. That's also our
2 understanding, Your Honor.

3 THE COURT: All right. As to Mr. Kissi, the agreement
4 would be that the Court would accept the plea and the Court
5 would, at least, entertain the recommendation of the special
6 prosecutor for some unspecified jail term, not to exceed six
7 months.

8 MR. MEAD: That's correct, Your Honor.

9 THE COURT: And the Court is not taking position one
10 way or another. It's strictly what Mr. Mead would recommend.
11 I'm not making a -- I'm not imposing a sentence at this time.
12 I'm just understanding what the special prosecutor is free to
13 propose.

14 Is that your understanding, Mr. Kissi, as well?

15 (A discussion was held off the record.)

16 THE COURT: And let the record reflect that Mr. Kissi
17 is consulting with his lawyer at this time.

18 MR. KISSI: Yes, Your Honor.

19 THE COURT: All right. Now, the further proposed term
20 of the agreement would be that the second Notice of Criminal
21 Contempt Charges by the court appointed attorney would be
22 recommended dismissal by Mr. Mead.

23 Do you understand that, Mr. Kissi?

24 MR. KISSI: Yes, Your Honor.

25 THE COURT: Have you seen that second Notice of

1 Criminal Contempt Charges?

2 MR. KISSI: I haven't seen it.

3 MR. KRAMER: Yes, you have.

4 THE COURT: The second notice. You haven't seen that?

5 MR. KRAMER: Not here in court.

6 MR. MEAD: Your Honor, I can provide a copy.

7 THE COURT: You have a copy.

8 Ms. Truvillion, I'm asking you the same thing, whether
9 you've seen the second Notice of Criminal Contempt Charges.

10 MS. TRUVILLION: Yes, I believe so.

11 I think he's just confused about it.

12 THE COURT: Those are charges that Mr. Mead would
13 recommend the dismissal of.

14 Do you understand that, Mr. Kissi?

15 MR. KISSI: Yes, Your Honor.

16 THE COURT: Ms. Truvillion?

17 MS. TRUVILLION: Yes, Your Honor.

18 THE COURT: Anything further with regard to the terms,
19 Mr. Mead, that we need to recite?

20 MR. MEAD: I think the Court has accurately stated the
21 terms.

22 THE COURT: All right. Only that, the further term, I
23 think, is that Mr. Mead would be free to allocute to the Court
24 with regard to other litigation that's been mentioned in the
25 course of this litigation about Mr. Kissi's involvement.

1 MR. KRAMER: I don't think that's necessary, Your
2 Honor. That I would object to because I think what's important
3 is what these charges are. There might be extensions to the
4 other ones. There might be -- some may actually be legitimate,
5 may not come technically under the Court order and I hate to get
6 into an argument what can and what can't. These are very
7 specific, they're to the point and he's admitted to these. And
8 I ask Your Honor that we restrict it to these and not to take
9 all the other matters into consideration.

10 MR. MAHER: Your Honor, in all fairness, we would
11 stipulate to the authenticity of the documents. What their
12 meanings are, I think, is what Mr. Kramer is concerned about.
13 So, we previously agreed with Mr. Mead that we would admit that
14 Mr. Kissi did, in fact, file other actions.

15 THE COURT: I think and I'll need to hear from Mr.
16 Mead on this, but I recollect that there are some facts related
17 to the earlier filings, just people who were sued who were
18 witnesses, people who were sued who were trustees. I'm not sure
19 that Mr. Mead intends to go beyond that.

20 I think that maybe you ought to give us some idea
21 where you are on that, Mr. Mead.

22 MR. MEAD: Well, Your Honor, it has come to my
23 attention in the course of my investigation that the Kissis, for
24 example, when they received notice of housing code violations
25 for some the properties that were seized in the litigation

1 brought a suit against the city attorney who had signed the code
2 violations.

3 They have sued the bankruptcy trustee for doing his
4 job. They have -- as you know, one of the charges here is suing
5 a buyer of the properties who is just putting in a bid pursuant
6 to bankruptcy court process.

7 If the Kissis conduct, I guess the way I put it to
8 them and explaining the rationale for my recommendation of jail,
9 I'll be blunt with the Court. If their conduct was restricted
10 solely to the charges here, I could understand how the Court
11 might be more merciful in the sense that this, it's a civil
12 context, happened once, doesn't reveal a pattern of conduct.

13 What I find compelling is that Mr. Kissi has engaged
14 in this pattern of frivolous and vexatious litigation, not just
15 in these civil proceedings but repeatedly over the past several
16 years in other context. And I think there's a need -- he has
17 always escaped any consequences for the harm he's done to the
18 system and for the cost he's imposed on other human being. He's
19 always escaped that until now. And I think it's time he pay
20 some sanction for this behavior beyond the merits of the
21 underlying litigation, which is always going to be there.

22 MR. KRAMER: My concern with that, Your Honor, is that
23 you have a lay person who everything is being taken away from
24 them, who don't have all the resources available -- although
25 they have a lot of lawyers, but they're not able to pay them, so

1 they drop out -- to do all the things, quote, legally, unquote,
2 necessary. So he's floundering around in a way to try to
3 reserve this assets and to be able to pay off what's owed and
4 stop the taking of it by being able to get liens off.

5 So what he's done might be unorthodoxed, but it's not,
6 quote, a bad motive. And I hate to get into defending each one
7 of these.

8 THE COURT: Well, of course, you know, it was, in all
9 candor, as we look at the history of this case, it was that
10 litigation that gave rise to the Court's injunction. I mean, I
11 took note of all, what, 20 cases I recollect. And there were
12 representations made as to each as to who the defendants were in
13 these cases. And it was on the basis of that that I said, no
14 more.

15 Now, how do I erase all that? I mean, the issue --
16 there is an argument to be made. I'm not necessarily responding
17 to it now, but there's an argument to be made that there has
18 been a pattern of conduct here that is seriously disrespectful
19 of the court process. And I think what you're saying is that
20 Mr. Mead should not be able to argue that at the time of
21 sentencing.

22 MR. KRAMER: Part of it is defending it with
23 psychiatric testimony, mental state.

24 THE COURT: Well, I don't think there's anything that
25 precludes you from presenting anything you want to. I don't

1 think, Mr. Mead, in all candor, I don't want to go into the
2 specifics of cases. Obviously, if there's something to be said
3 just from the nature of the suit that the city person who put in
4 the violations was sued, that the trustee was sued.

5 I mean, I remember that being the case from my
6 injunction, quite candidly, that people who were witnesses in
7 the litigation suddenly were sued for something or another. And
8 that would certainly underlay the Court's decision to issue the
9 injunction.

10 Now, as I understand your opposition to what he's
11 saying, you don't even want me to consider that at the time of
12 sentencing. You want him to be precluded.

13 MR. KRAMER: Well, I don't want to get into a lot of
14 ones that may be justified, or ones that may have caused by
15 mental distress and ones sued by mistake, not realizing you
16 don't sue this person. If you're going to sue, you know, it may
17 not be right. This is the right way of doing it if there is a
18 right way. I just don't want to have to get into all that.

19 THE COURT: Well, maybe the way to limit this is just
20 to say that the Court is limited to the record in this case,
21 because some of this is in the case. If we limit it to the
22 record in this case, I know what the case involves.

23 MR. MAHER: Your Honor, I think what Mr. Kramer's
24 biggest concern is specifically dealing with this matter
25 involving the Assistant State's Attorney who was sued because of

1 the criminal housing violations. What happened in that case is
2 that there was --

3 THE COURT: Well, I don't need to get into it.

4 MR. MAHER: That's what the problem is, is that
5 Mr. Kramer is concerned about with each thing we open up a can
6 of worms about whether or not it could be possibly justified as
7 to this particular defendant as opposed to something a rational
8 person, you know, using all their functioning capacities would
9 have acted in the same way.

10 Certainly, I think it's well documented and we agreed
11 to submit the transcript to the hearing involving Mr. Kremen on
12 August 5th. And I think Mr. Kramer's biggest concern is this
13 thing involving the Assistant State's Attorney in a matter that
14 is wholly unrelated to these proceedings beyond the point that
15 it just happened to be the same block of properties that Pramco
16 was trying to get at that Mr. Kissi still owned when the housing
17 violations were ordered.

18 And that's really what precipitated all of this,
19 because Mr. Kissi didn't want to go and fix all these properties
20 at great personal expense to himself knowing that they were just
21 going to be taken away by Pramco. And that's where that matter
22 where he was unrepresented got into kind of a, a kerfuffle, I
23 guess is the word.

24 MR. MEAD: I think what we're arguing over is a speech
25 that I would make no longer than the one I just made. In other

1 words, I don't contemplate calling in witnesses or putting in
2 documents. All I'm talking about is briefly summarizing what I
3 read in the August 21st preliminary injunction hearing. I mean,
4 I've never heard of the Government restricting its rights of
5 allocution at sentencing. That's an unheard of request from a
6 defendant in a plea bargain.

7 MR. MAHER: No objection.

8 MR. KRAMER: Doesn't cost to ask.

9 THE COURT: I didn't contemplate more than that
10 either, only to take notice of a fact which obviously is before
11 the Court that there have been some issues involving people who
12 were sued earlier, had no apparent liability of any sort.

13 Now, again, Mr. Kramer, if the mere fact that Mr. Mead
14 will argue this in his allocution at the sentencing of Mr. Kissi
15 is going to squash this deal, that's okay, but you need to tell
16 me that now.

17 MR. KRAMER: I don't think it will, Your Honor. I'm
18 just trying to limit --

19 THE COURT: It is going to be limited. I don't intend
20 to hear testimony about any of these cases, quite frankly. I
21 just assumed he was going to refer to the record in this case,
22 which itself is fairly extensive. I was here when Mr. Kremen
23 testified. I heard the testimony.

24 MR. MAHER: Would the Court be willing to -- would Mr.
25 Mead, I suppose, be willing to limit it to Mr. Kremen then? I

1 mean, that was something where it was before the Court. It was
2 before Judge Derby, I'm sorry, but there's a full transcript
3 available. My only concern about this other matter --

4 THE COURT: Well, I took testimony in court from these
5 witnesses.

6 MR. MAHER: I don't believe anything was taken from
7 Mr. Studdard, which is the name of the Assistant State's
8 Attorney involved in that matter.

9 THE COURT: Well, maybe not him, but I think there
10 were two or three or four witnesses is my recollection at the
11 hearing. I don't have the transcript in front of me, but there
12 was a hearing about people that underlay the preliminary
13 injunction. Now, that's the record evidence in the case.

14 MR. MAHER: That's the record, Your Honor, you're
15 correct.

16 MR. MEAD: That's the August 21 hearing. I mean, I'm
17 certainly willing to restrict my comments to what was in that
18 transcript. That's fine.

19 MR. MAHER: That's fine. That's perfectly acceptable.

20 THE COURT: I think that's the answer.

21 Is that agreeable, Mr. Kramer?

22 MR. KRAMER: That's part of the record.

23 THE COURT: Well, that's right. I think that's all
24 we're saying here.

25 MR. MAHER: It's agreeable.

1 THE COURT: Mr. Kissi, do you understand that? Mr.
2 Mead will refer to the evidence that was taken on August 21st.

3 MR. KISSI: I understand, but I want to say something
4 to my attorney with your permission.

5 THE COURT: Go ahead, talk to your attorney. No, talk
6 to your attorney.

7 (Discussion held off the record.)

8 MR. KRAMER: He simply wanted me to mention someone he
9 had sued was in private practice before they became a trustee.
10 So, the suit took place before rather than after. And I told
11 him, I don't think it's relevant to these proceedings.

12 THE COURT: I think the way Mr. Mead has said it and
13 the way it's presented to me is whatever was developed in the
14 August 21 hearing is a matter of record in the case, it can be
15 argued by him. If he argues pattern or practice, whatever, he
16 can do that based on the evidence developed there.

17 Mr. Kissi was present for that. He was represented by
18 counsel, I recollect. He had an -- maybe he wasn't.

19 MR. KISSI: No, I didn't have a lawyer then.

20 THE COURT: Anyway, he had opportunity to
21 cross-examine and I think he did cross-examine. He did have
22 cross examination at that point. So, that's the only point is
23 that can be referred to at the time of this sentencing. That's
24 all I added.

25 Do you understand that, Mr. Kissi?

1 MR. KISSI: Yes, Your Honor.

2 THE COURT: All right. Now, having said all of that,
3 I guess, do you need to make any further statement about the
4 facts at this point?

5 MR. MEAD: Your Honor, I would rely on the stipulation
6 between the parties that was filed. I think that is sufficient
7 to establish guilt on count two.

8 THE COURT: All right. Well, let me ask you both
9 about this. I have a document, Mr. Kissi, entitled stipulations
10 between defendants and court appointed attorney.

11 Do you have a copy of that, Mr. Kissi?

12 That's been filed, Mr. Mead?

13 MR. MEAD: It has, Your Honor.

14 THE COURT: All right. And it's been signed by all
15 counsel; by Mr. Mead, Mr. Kramer and Mr. Maher.

16 MR. MAHER: That's correct, Your Honor.

17 THE COURT: But I want to make sure that Mr. Kissi has
18 individually read it, Ms. Truvillion has individually read it.

19 You have a copy of it there, Mr. Kramer? If you
20 don't, I have an extra copy here.

21 MR. KRAMER: We're getting it out of the file, Your
22 Honor.

23 Here it is.

24 THE COURT: Ken, run a couple copies off of this now,
25 if you would.

1 Did you do the CM/ECF filing on this?

2 MR. MEAD: Yes.

3 (Discussion held off the record.)

4 MR. KRAMER: Mr. Mead, which paragraph in particular?

5 MR. MEAD: We're looking at count two, which is the
6 August 11th conduct.

7 THE COURT: All right. Have you had a chance to
8 review that stipulation, Mr. Kissi?

9 MR. KISSI: Yeah. Mr. Kramer had it.

10 THE COURT: And do you stipulate to those facts? Do
11 you agree to those facts?

12 MR. KISSI: Yeah, I agree with that.

13 THE COURT: All right. Ms. Truvillion, have you had a
14 chance to review the stipulation?

15 MS. TRUVILLION: Yes.

16 THE COURT: Do you agree with those facts?

17 MS. TRUVILLION: Yes, I do.

18 THE COURT: I've handed off my copy on that actually.

19 Do you have a specific portion that refers to count
20 two, Mr. Mead?

21 MR. MEAD: I do, Your Honor. In terms of
22 preliminaries, paragraph one states that the Kissis were married
23 and living together. Paragraph four, I'm sorry, paragraph
24 eleven of the stipulation refers to the August 4th issuance of
25 the TRO and describes the terms of both numbered paragraphs of

1 the TRO.

2 Specifically providing that the Kissis and their
3 agents and persons acting in concert with them are enjoined and
4 restrained from continuing or instituting any actions or
5 proceedings in any state court or in any United States Court
6 which constitutes a collateral attack on any order or judgment
7 of this Court.

8 Paragraph 13 refers to the fact that on, at the
9 August 5th hearing in bankruptcy court on the DK&R Trustee's
10 Motion for Temporary Injunction, Preliminary Injunction, Mr.
11 Kissi was informed that Pramco had not yet filed the \$50,000
12 bond required by the TRO and that Pramco anticipated filing that
13 bond within days.

14 Paragraph 14 states that Pramco filed the \$50,000 bond
15 on August 7th, 2003. The Court later issued an order indicating
16 that the TRO became effective on August 8.

17 Paragraph 16 of the stipulation states that on
18 August 11th, 2003, the Kissis jointly filed, quote, our second
19 Motion to Dismiss Pramco's complaint of harassment, restraining
20 order and appointment of a receiver, close quote, in the Pramco
21 litigation which constituted a challenge to the Court's prior
22 rulings in violation of paragraph one of the TRO.

23 And, Your Honor, it is our, it is my contention as
24 special prosecutor that the Fourth Circuit's case law on willful
25 blindness obligated the defendants to make themselves aware of

1 the court docket, which clearly posted that bond on August 8.

2 The Kissis were on notice that the bond would be filed
3 within days and they willfully ignored the Court's docket and
4 filed pleadings in violation of the Court's order on
5 August 11th.

6 THE COURT: All right. You've heard that proffer of
7 the facts and that is a summary, I believe, of the stipulations
8 that are agreed to.

9 Do you agree that those stipulations are correct, Mr.
10 Kissi?

11 MR. KISSI: Yeah, Your Honor, but if I may clarify.

12 THE COURT: All right. Well, talk to your lawyer.

13 (Discussion was held off the record.)

14 MR. KRAMER: Basically, what he's saying, Your Honor,
15 is that, I think, the willful blindness, which we explained to
16 him is what occurred, the official notice, I think, that he
17 physically, actually received in the mail came afterwards. And
18 he was told by Derby would be in a few days. But I think the
19 record will show he didn't check the record to see if the bond
20 was filed. And not receiving official notice of it, which is
21 usually -- both of them are usually going from Hirsch to have
22 things hand-delivered or faxed to them. Not receiving it, he
23 just went ahead and he filed. So, I think that's what he was --
24 one of the counts.

25 The postmarks don't show receiving extensions until

1 the 20th is when he actually got the letter the 21st. And
2 therefore, he didn't have actual notice, but he was told he
3 would -- it would be done in a couple days and he never checked.

4 THE COURT: Is that Ms. Truvillion's position too,
5 Mr. Maher?

6 MS. TRUVILLION: Yes, it is.

7 THE COURT: Mr. Mead?

8 MR. MEAD: It is correct that they did not receive
9 formal notice from the Court or from Pramco prior to
10 August 18th, which is the last act charged in the first notice.

11 I still contend that under Willful Blindness Doctrine,
12 the Fourth Circuit, that it's sufficient to establish guilt.

13 THE COURT: If it isn't, then we don't have a contempt
14 finding. So, I mean, let's not mince words here.

15 I don't want a plea to something where he says, you
16 know, later on, that wasn't a plea to any contempt because there
17 wasn't a basis for it.

18 Now, he's proceeding on a theory of willful blindness.
19 If your clients don't want to accept that and we're not going to
20 mince words on it now.

21 MR. MAHER: Your Honor, I think the stipulations are
22 clear and we would concede that the stipulations form a
23 sufficient factual basis for taking of the pleas.

24 Again, it does say in stipulations that the Kissis
25 never -- neither Mr. Kissi or Ms. Truvillion ever bothered to

1 check with the Court file. I think the stipulations are also
2 clear that they didn't receive actual notice, but that they took
3 no affirmative action during the period before the August 24th
4 hearing, 21st hearing to determine whether or not the bond
5 itself had been posted.

6 They were, in fact, on notice that the TRO was granted
7 with the stipulation that the \$50,000 would bond be paid. It
8 was just a question of whether or not the bond was paid and it
9 became effective. They never bothered to check that, but they
10 were on notice that actually the TRO was in effect.

11 And they were, in fact, advised by Judge Derby, and I
12 believe it was by Mr. Kremen who said it to Judge Derby that the
13 bond would be paid within the next couple of days. That was on
14 August 5th.

15 And Mr. Kissi nor Ms. Truvillion never bothered to
16 check after that. They just took what actions they took.

17 THE COURT: Well, I think that supports the finding of
18 willful blindness.

19 MR. MAHER: That's correct.

20 THE COURT: Do you accept that, Ms. Truvillion?

21 MS. TRUVILLION: Yes, it is, it's correct.

22 THE COURT: Mr. Kissi, do you accept that?

23 MR. KISSI: Yes.

24 THE COURT: And Ms. Truvillion likewise?

25 MS. TRUVILLION: Yes.

1 MR. MAHER: Thank you, Your Honor.

2 THE COURT: Now, with regard to the agreement that has
3 been discussed in court this morning, are there any other
4 promises that have been made to you, Mr. Kissi, that haven't
5 been revealed to me about how this case is going to resolve?
6 Anybody make any promises to you?

7 MR. KISSI: Your Honor, nobody promise me anything.

8 THE COURT: Ms. Truvillion, any promises made to you?

9 MS. TRUVILLION: No, Your Honor.

10 THE COURT: All right. And with regard to this
11 agreement, are you entering into it voluntarily, Mr. Kissi?

12 MS. TRUVILLION: Yes, Your Honor.

13 THE COURT: All right. Ms. Truvillion, are you
14 entering into it voluntarily?

15 MS. TRUVILLION: Yes, I am.

16 THE COURT: Did anyone make you agree to his, Mr.
17 Kissi?

18 MR. KISSI: No.

19 THE COURT: You're still entitled to a day in court
20 with regard to evidence being put on, if you care to do that.
21 You understand that, don't you?

22 MR. KISSI: Yes, Your Honor, I understand.

23 THE COURT: Likewise, Ms. Truvillion?

24 MS. TRUVILLION: Yes, I do, Your Honor.

25 THE COURT: You can call witnesses on your own. You

1 can confront and cross-examine the Government's, the special
2 prosecutor's witnesses. You have a right to do all those
3 things. Do you understand that?

4 MR. KISSI: Yes, Your Honor.

5 THE COURT: All right. Now, are you pleading guilty
6 to this charge voluntarily, Mr. Kissi?

7 MR. KISSI: Yes, Your Honor.

8 THE COURT: Ms. Truvillion?

9 MS. TRUVILLION: Yes, Your Honor.

10 THE COURT: Anyone threaten or coerce you to plead
11 guilty to this charge?

12 MR. KISSI: Not I'm aware of.

13 THE COURT: Not that you're aware of? What does that
14 means?

15 MR. KISSI: There's no threat.

16 THE COURT: Ms. Truvillion?

17 MS. TRUVILLION: No, Your Honor.

18 THE COURT: Anything you don't understand about these
19 proceedings, Mr. Kissi?

20 MR. MAHER: Mr. Kissi, only thing he's asking you
21 right now if you have any questions about this.

22 THE COURT: Anything you don't understand about these
23 proceedings?

24 (A discussion was held off the record.)

25 THE COURT: Again, let the record reflect Mr. Kissi is

1 consulting with his lawyer.

2 (Pause.)

3 MR. MEAD: Do you have any questions, Mr. Kissi?

4 THE DEFENDANT: No sir.

5 THE COURT: Do you have any further questions about
6 these proceedings, Mrs. Kissi?

7 MS. TRUVILLION: No, Your Honor.

8 THE COURT: All right. As I understand, in both cases
9 you are waiving your right to appeal this agreement. Is that
10 correct, Mr. Kissi?

11 MR. KISSI: Yes, Your Honor.

12 THE COURT: Mrs. Kissi?

13 MS. TRUVILLION: Yes, Your Honor.

14 THE COURT: This doesn't have effect on the underlying
15 appeal of the civil judgments, but we're only talking about this
16 particular proceeding. Is that clear?

17 MR. KISSI: Yes, Your Honor.

18 MS. TRUVILLION: Yes, Your Honor.

19 THE COURT: Just so that we're clear, at a trial of
20 this matter you would have a right to have the assistance of an
21 attorney throughout. If you couldn't afford an attorney, and we
22 would have to do an inquiry as to your financial ability to pay,
23 you would have one appointed for you. That issue has not been
24 resolved at this point about your ability to pay, but you have
25 retained counsel here and you would have a right to have counsel

1 proceed for you at a trial in this matter.

2 As I said, you can confront and cross-examine the
3 Government's witnesses and you can call your own witnesses in
4 this matter.

5 Now, are you satisfied with your attorney's services,
6 Mr. Kissi?

7 MR. KISSI: With Mr. Kramer? Yes.

8 THE COURT: Ms. Truvillion, are you satisfied with
9 your attorney's services?

10 MS. TRUVILLION: Yes, Your Honor.

11 THE COURT: Taking into account everything said, do
12 you choose to plead guilty to this charge, Mr. Kissi?

13 MR. KISSI: Yes.

14 THE COURT: Ms. Truvillion?

15 MS. TRUVILLION: Yes, Your Honor.

16 THE COURT: The Court finds that the defendants pleas
17 have been made knowingly and voluntarily. The Court finds that
18 there are sufficient facts to find the defendants guilty as
19 charged beyond a reasonable doubt.

20 And the Court is prepared to accept the agreement in
21 this case as to both defendants and enter a finding of guilty.
22 The Court will embody the plea agreement in its judgment at
23 sentencing. And we will set then sentencing for 30 days from
24 today, if that's acceptable. That would be June 24th. That is
25 a Thursday.

1 MR. MEAD: That's fine, Your Honor.

2 THE COURT: Nine-thirty a.m.

3 MR. KRAMER: Nine-thirty?

4 THE COURT: Nine-thirty a.m., both defendants. The
5 Court will release the defendants on their personal
6 recognizance.

7 They were arraigned earlier, were they not?

8 THE DEPUTY CLERK: Yes.

9 THE COURT: Continue them on personal recognizance.

10 Now, as I indicated, so that the record is clear, I
11 will speak to Mr. Hirsch this morning. And Mr. Kramer and
12 Mr. Maher, it may make sense to try to hook you into a phone
13 conference with him this afternoon, if we can.

14 I will call him this morning and try to set something
15 up. Will you be back in your office this afternoon?

16 MR. KRAMER: Yes, Your Honor, if you want to set a
17 time.

18 THE COURT: We'll try to make that around 2:30. We'll
19 try to get in touch with Mr. Bruce.

20 Mr. Mead, you don't really need to be a part of this.

21 MR. MEAD: Thank you, Your Honor.

22 THE COURT: This is really about the negotiation of
23 the settlement. I will not actually be part of the actual
24 numbers, but I want to push them to make them come up with
25 specific numbers.

1 MR. MAHER: Mr. Hirsch may not be happy if we're
2 involved in that.

3 THE COURT: I think we're beyond that.

4 MR. MAHER: Okay. I just want to make sure --

5 THE COURT: The Court is going to push him on that.

6 Thank you very much for your presentations, counsel.

7 (Recessed at 11:50 a.m.)

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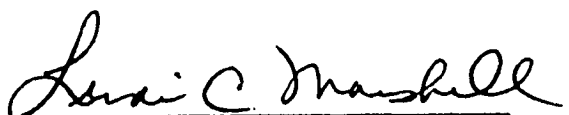
23

24

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CERTIFICATE OF COURT REPORTER

I, Linda C. Marshall, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



Linda C. Marshall, RPR
Official Court Reporter

EXHIBIT C

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT U.S. Court of Appeals
for the District of Columbia
333 Constitution Ave, NW
Washington, DC 20001

MAY 23 2011

RECEIVED

David Kissi Appellant : No. 09-7067
: September Term 2010
v. : Lower Court Case
: 08-cv-02031-RBW
Christopher Mead et al Appellees :

Affidavit In Support of Appellant Kissi' Claim That Lender Pramco of NY
Never Had A Clear Title Over Riggs Hill Commercial Mortgages And That D.C.
Is A Proper Neutral Forum To Adjudicate This Newly Discovered Evidence
See Federal Rule 60(b)(3) Over Fraud

That I, Edith R. Truvillion, am at least 21 years of age and I do have a first hand knowledge of this case for I and my spouse David Kissi are truly the victims of Lender Pramco of New York's fraud. And that I am asserting under oath the following:

- I. That I am also an interested party in this case for my assets, real estate, personal property in our Chapter 11 Estate of DK&R and our Ammendale Trust entity were sold off fraudulently by Peter J. Messitte, a Federal Judge in Maryland to satisfy Pramco's claims of about \$855,000 for a debt that wasn't more than \$155,000 to start with: And that as a result of Pramco debt collectors Emil Hirsch and James Ryan's fraud, my claim of \$1.2 million against our DK&R Chapter 11 Estate for my 20+ years of my cash contributions towards my spouse's Business, Trust and joint asset's holdings was denied by Bankruptcy Judge E. Stephen Derby and Judge Peter J. Messitte. See pp.19-22, hereby attached. And in fact, this fraudulent claim isn't time barred pursuant to Federal Rule 60(b)(3).
- II. That as a result of a Title Search of the Land Records in Howard County Circuit Court shows that when the SBA (U.S. Small Business Administration) our Riggs Hill mortgage notes co-guarantor sold our Riggs Hill notes to Pramco, Pramco never recorded the loans "Assignments" as Maryland requires all mortgages notes investors and resellers to do. Therefore, ipso facto, Pramco had no clear title to have filed any claim against us, our DK&R Chapter 11 and Ammendale Trust Entity. See pp. 5-18 in re: Title Search dated 5/19/2011 and Pramco's fraudulent Assignments that cloud its titles over Riggs Hill. In a similar case this Winter the Supreme Court of Massachusetts did rule for Defendants/Respondents Ibanez et al against U.S. National Bank of Minnesota on same. See pp.57-68.

- III. That given all the above new developments that no court has ever heard or tested the newly discovered evidence of Pramco's fraud and that my \$1.2 million claim has never been heard by any court, this Court shouldn't summarily turn away or send this case to Maryland or any 4th Circuit forum for they have been very hostile to us. See pp.23-28 hereby attached, P. Kramer's note to Judge Messitte about E. Hirsch, Pramco's debt collector and , Rod J. Rosenstein, USA of Maryland's hostility and Judge Messitte's bias and hidden conflict of interest. In fact, this same court bought all Kissi' argument in favor of D.C. jurisdiction in unrelated case # 07-7077. See p. 4 for this Court's own Mandate in that case.
- IV. That this Honorable Court should note that it has jurisdiction over this case pursuant to 28 USC § 1391(b)(3). This is because we are D.C.residents and the headquarters of the Justice Department, a party in this case and virtually all the Appellees either live or work in D.C. And even though a substantial part of this matter occurred in Maryland, however, since D.C. offers an impartial forum, this case should be heard here for the entire 4th Circuit has been very hostile to Kissi et al, his business and Trust entities. In fact, in a criminal case instigated by Pramco et al where my spouse was tried in Maryland in 8/2006, the then Chief Judge of MD, U.S. District Court Judge Benson Legg, fearing the local conflict of interest, has to import Federal Judge J.R. Goodwin of West Virginia to preside over the Plaintiff's trial held in Baltimore. But it was to no avail. See p.32 and the Record on U.S. v Kissi, #05-cr-00254. Also, see 28 US § 455 and 144. Federal statutes Federal Judge Peter J. Messitte who at one time tried Kissi, they sold off all our assets and then on 8/2/2006 at Kissi' criminal trial, Messitte did get off the bench to testify against Kissi as a U.S. witness where Kissi was convicted with Messitte's perjured testimony. In fact, Messitte still sits on Kissi cases in Maryland and nothing stops him from flouting the above anti-conflict of interest statutes. Ps, See pp. 28: 30-33.

Conclusion:

- V. In conclusion, I, as an Interested Party, am entitled to a hearing and a jury trial pursuant to Rule 38 to seek Relief and Remedy for the unlawful seizure of our assets, Business profits lost and for incurring a huge legal bill accompanied by emotional distress. See pp. 20-23. And that in the interim to stop the U.S. from further taking our assets on top of Pramco's theft without compensation, this Court should promptly enjoin the U.S. from impounding our Ammendale Trust U.S. Escrow account for the imposition of a freeze on this account amounts to taking our assets by the United States without compensation, especially when the said funds in the Ammendale Trust Account are not subject to forfeiture or statutes pursuant to 18 USC § 1982 and 21 USC § 853. Rather the said funds are the net residue due to us as the Beneficiaries and Trustors of Ammendale Trust.

VI. That I further assert that I am prepared to step forward and defend this Affidavit under oath in an open forum and whosoever is opposed to this Affidavit should promptly do so by contesting it word by word and point by point or else the opposing party will forfeit all his rights in this matter and will thus concede forever that all my assertions are true. And I further reaffirm that our claims are genuine for none of us has ever filed a frivolous suit especially given Kissi' record of obtaining at least 3 favorable outcomes in every 5 cases he pursues in Court. See pp.39-56.

Respectfully Submitted by: Edith Truvillion 5/21/2011
Edith Truvillion, Affiant
325 Pennsylvania Ave SE
Washington, DC 20003
202-675-6365 (Business hrs 8AM-5PM)

Certificate of Service

That on this day of 5/21/2011 I did deliver a copy of this Affidavit per the U.S. Postmaster to all the Appellees.

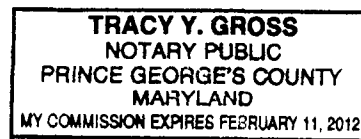
Edith Truvillion 5/21/2011
Edith Truvillion, Interested Party

Notary:

Subscribed and sworn to before me a Notary Public for the State of Maryland.

My Commission Expires: February 11, 2012.

Signed by: Tracy Y. Gross



United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-7077

September Term 2010

1:08-cv-01796-RBW

David Kissi,

Appellant

v.

EMC Mortgage Corporation, et al.

Appellees

MANDATE		Filed On:	
Pursuant to the provisions of Fed. R. App. P. 41(a)			
ISSUED:	11/19/2010	UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA CIRCUIT	
BY:	[Signature]		FILED
ATTACHED:	Amending Order Opinion Order on Costs		NOV 30 2010 CLERK

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BEFORE: Henderson, Garland, and Brown, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia, the briefs filed by the parties, and on appellant's supplements to his brief. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the case be remanded to the district court for reconsideration in light of the Maryland Court of Special Appeals' decision in Kissi v. EMC Mortgage Corp. of Texas (Md. Ct. Spec. App. No. 499, Aug. 13, 2009). That decision was issued after the district court dismissed appellant's claims on grounds of res judicata and collateral estoppel. In the district court's view, the judgment of the Circuit Court for Prince George's County, Maryland, precluded appellant from relitigating his claims in federal court. The Maryland Court of Special Appeals, however, has vacated the Maryland Circuit Court judgment and remanded the case to the Circuit Court. Accordingly, the district court is directed to consider anew whether the claims in appellant's complaint are precluded by res judicata and collateral estoppel, and if so, to what extent.

4

Maryland Department of Assessments and Taxation
 Real Property Data Search (v4.2A)
 HOWARD COUNTY

[Go Back](#)
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[GroundRent](#)
[Redemption](#)
[GroundRent](#)
[Registration](#)

Account Identifier: District - 06 Account Number - 512909

Owner Information

Owner Name: AFSG PROPERTIES LLC **Use:** COMMERCIAL CONDOMINIUM
Mailing Address: 10630 RIGGS HILL RD STE U **Principal Residence:** NO
 JESSUP MD 20794-9439 **Deed Reference:** 1) /12046/ 00143
 2)

Location & Structure Information

Premises Address 10630 S RIGGS HILL RD
 JESSUP 20794-0000
 CONDO UNIT U
Legal Description P/O PAR C9 4 167 A
 10630 RIGGS HILL RD
 CORR NORTH RSB PAR C 6

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:	7429
0048	0007	0018		0000			UN U	2	Plat Ref:	

Special Tax Areas
Town NONE
Ad Valorem 104
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
		1 0000 AC	

Stories	Basement	Type	Exterior
		WAREHOUSE CONDOMINIUM	

Value Information

	Base Value	Value		
		As Of	Phase-in Assessments	As Of
Land	85,000	85,000	07/01/2010	07/01/2011
Improvements:	127,500	127,500		
Total:	212,500	212,500	212,500	212,500
Preferential Land:	0			0

Transfer Information

Seller: MOISTURE PROTECTION TECHNOLOGIES	Date: 09/18/2009	Price: \$225,000
Type: ARMS LENGTH IMPROVED	Deed1: /12046/ 00143	Deed2:
Seller: DK AND R COMPANY	Date: 09/29/2003	Price: \$106,500
Type: NON-ARMS LENGTH OTHER	Deed1: /07659/ 00058	Deed2:
Seller: MOTRENEC C DENNIS	Date: 07/06/1994	Price: \$140,000
Type: ARMS LENGTH IMPROVED	Deed1: /03294/ 00490	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2011	07/01/2012
County			0 00
State			0 00
Municipal			0 00

Tax Exempt: **Special Tax Recapture:**
Exempt Class: * NONE *

Maryland Department of Assessments and Taxation
 Real Property Data Search (v4.2A)
 HOWARD COUNTY

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[GroundRent](#)
[Redemption](#)
[GroundRent](#)
[Registration](#)

Account Identifier: District - 06 Account Number - 512917

Owner Information

Owner Name: MORGAN INVESTMENTS LLC **Use:** COMMERCIAL CONDOMINIUM
Mailing Address: 1696 SUN BERRY CT **Principal Residence:** NO
 FINKSBURG MD 21048-2624 **Deed Reference:** 1) /07691/ 00271
 2)

Location & Structure Information

Premises Address: 10630 S RIGGS HILL RD
 JESSUP 20794-0000
 CONDO UNIT V
Legal Description: P/O PAR C9 4 167 A
 10630 RIGGS HILL RD
 CORR NORTH RSB PAR C 6

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:	7429
0048	0007	0018		0000			UN V	2	<u>Plat Ref:</u>	

Special Tax Areas:
Town NONE
Ad Valorem Tax Class 104

Primary Structure Built: **Enclosed Area:** **Property Land Area:** 1 0000 AC **County Use:**

Stories: **Basement:** **Type:** **Exterior:**
 WAREHOUSE CONDOMINIUM

Value Information

	Base Value	Value	Phase-in Assessments	
			As Of	As Of
Land	85,000	85,000	01/01/2011	07/01/2010
Improvements:	127,500	127,500		07/01/2011
Total:	212,500	212,500	212,500	212,500
Preferential Land:	0			0

Transfer Information

Seller: D K & R COMPANY	Date: 10/07/2003	Price: \$213,000
Type: NON-ARMS LENGTH OTHER	Deed1: /07691/ 00271	Deed2:
Seller: AMERIBANC SERVICES CORPORATION	Date: 03/16/1990	Price: \$306,000
Type: NON-ARMS LENGTH OTHER	Deed1: /02142/ 00282	Deed2:
Seller: U A D C COLUMBIA INC	Date: 02/26/1990	Price: \$2,596,705
Type: NON-ARMS LENGTH OTHER	Deed1: /02134/ 00203	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2011	07/01/2012
County			0 00
State			0 00
Municipal			0 00

Tax Exempt: **Special Tax Recapture:**
Exempt Class: * NONE *



Maryland Department of Assessments and Taxation Real Property Data Search (aws12a) HOWARD COUNTY	Go Back View Map New Search GroundRent Redemption GroundRent Registration
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Account Identifier: District - 06 Account Number - 512925

Owner Information

Owner Name: MORGAN INVESTMENTS LLC	Use: COMMERCIAL CONDOMINIUM
Mailing Address: 1686 SUN BERRY CT FINKSBURG MD 21048-2624	Principal Residence: NO
	Deed Reference: 1) /07691/ 00271 2)

Location & Structure Information

Premises Address 10630 S RIGGS HILL RD JESSUP 20794-0000 CONDO UNIT W	Legal Description P/O PAR C9 4 167 A 10630 RIGGS HILL RD CORR NORTH RSB PAR C6
---	--

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:	7429
0048	0007	0018		0000			UN W	2	Plat Ref:	

Special Tax Areas	Town NONE
	Ad Valorem Tax Class 104

Primary Structure Built	Enclosed Area	Property Land Area 1.0000 AC	County Use
--------------------------------	----------------------	-------------------------------------	-------------------

Stories	Basement	Type WAREHOUSE CONDOMINIUM	Exterior
----------------	-----------------	-----------------------------------	-----------------

Value Information

	Base Value	Value	Phase-in Assessments	
			As Of	As Of
Land	85,000	85,000	01/01/2011	07/01/2010
Improvements:	127,500	127,500		07/01/2011
Total:	212,500	212,500	212,500	212,500
Preferential Land:	0			0

Transfer Information

Seller: D K & R COMPANY	Date: 10/07/2003	Price: \$213,000
Type: NON-ARMS LENGTH OTHER	Deed1: /07691/ 00271	Deed2:
Seller: AMERIBANC SERVICES CORPORATION	Date: 03/16/1990	Price: \$306,000
Type: NON-ARMS LENGTH OTHER	Deed1: /02142/ 00282	Deed2:
Seller: U A D C COLUMBIA INC	Date: 02/26/1990	Price: \$2,596,705
Type: NON-ARMS LENGTH OTHER	Deed1: /02134/ 00203	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2011	07/01/2012
County			0.00
State			0.00
Municipal			0.00

Tax Exempt:	Special Tax Recapture:
Exempt Class:	* NONE *





U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

August 24, 2005

Mr. David Kissi
DK&R
325 Pennsylvania Avenue, S.E.
Washington, DC 20003

Dear Mr. Kissi:

This responds to your letter of July 14, 2005, regarding your request for information pertaining to "each individual monthly payment for our company DK&R's two Money Store loan #70743130 and #55366330 and the same information applicable for our Key Bank loan #92182730," under the Freedom of Information Act.

The following is responsive to your request. Upon receipt of your request we contacted the SBA Denver Finance Center (DFC) and requested a transcript of account for each loan listed. The DFC responded that the Money Store loans were lender serviced accounts and that the SBA could not provide transcripts of payment activities as the lender would have been the servicer of record. Any transcript would need to be obtained by contacting the servicing company. The Key Bank loan was an SBA serviced loan and the transcript is provided showing activity up to the point the loan was sold on August 7, 2001 to Pramco II.

Should you deem this reply unsatisfactory, you have the right to appeal this decision to the Chief, Freedom of Information/Privacy Acts Office, Small Business Administration, 409 Third Street, SW, Suite 5900, Washington, DC 20416. You must submit an appeal within 45 calendar days of the date of the notice of denial. The appeal should contain a description of the information requested, the name and title of the SBA official or employee who denied the request, the reason for the denial, and other pertinent facts you deem appropriate.

Sincerely,

Richard C. Blewett
Director, National Guaranty Purchase Center

- Spring 2011 -

Appendix H

Howard County in Pramco's failure to file this Assignment after buying the Kissis' Buzz Hill Commercial property Mortgage Note
s its lack of ASSIGNMENT AND ASSUMPTION AGREEMENT
or title received (SBA Loan Sale #3)
Court claims
must the Kissis et al.

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made and entered into as of the 18th day of January, 2001, by and between the U.S. SMALL BUSINESS ADMINISTRATION ("Assignor") and PRAMCO II, LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Assignee").

WHEREAS Assignor and Latte Stone, LLC, a Delaware limited liability company ("Latte Stone"), have entered into that certain Loan Sale Agreement, dated as of December 7, 2000 (the "Sale Agreement"), pursuant to which Assignor has agreed to sell, transfer and assign to Latte Stone certain loans;

WHEREAS Latte Stone has assigned certain rights under the Sale Agreement with respect to the loans identified in Attachment 1, attached to this Agreement (the "Loans"), and Assignor has agreed to provide a direct conveyance of the Loans to Assignee;

WHEREAS Assignor is a party to certain agreements pursuant to which certain of the Loans are serviced by third parties (the "Servicing Agreements");

WHEREAS Assignor is a party to other agreements relating to the Loans, including the Collateral Documents relating to each Loan and agreements with attorneys and others relating to collection of the Loans (the "Miscellaneous Agreements"); and

WHEREAS as a condition to the sale of the Loans, Assignor has agreed to assign and convey to Assignee all of Assignor's right, title and interest in, to and under the Servicing Agreements and the Miscellaneous Agreements and Assignee has agreed to accept and assume from Assignor all of Assignor's duties and obligations arising from and after the date hereof under the Servicing Agreements and the Miscellaneous Agreements.

NOW, THEREFORE, in consideration of the foregoing and the sum of ten dollars (\$10.00), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby transfers, grants, conveys and assigns to Assignee all of Assignor's right, title and interest in, to and arising under the Loans, including, but not limited to, the Servicing Agreements and the Miscellaneous Agreements,

(9)

29 (47) |

(c) Neither Assignee nor anyone acting on its behalf has offered, transferred, pledged, sold or otherwise disposed of any of the Loans (or any interest therein or evidence thereof) to, or solicited any offer to buy or accept a transfer, pledge or other disposition of any of the Loans (or any interest therein or evidence thereof) from, or otherwise approached or negotiated with respect to any of the Loans (or any other interest therein or evidence thereof) with, any person or entity in any manner, or taken any other action that would constitute a distribution under, or render the disposition to Assignee or the disposition by Assignee to any other party of any of the Loans (or any interest therein or evidence thereof) a violation of, the Securities Act or any other securities law or require registration or qualification pursuant thereto, nor will it act, nor has it authorized or will it authorize any person or entity to so act, in

(d) Assignee has been furnished with, and has had an opportunity to review and understands, all information relating to the Loans as has been requested and as is considered necessary by Assignee, and has had all questions arising from or relating to such review answered to the satisfaction of Assignee;

(c) Assignee is acquiring the Loans for its own account and not for or on account of any other person or entity;

(b) Assignee is a substantial, sophisticated investor having such knowledge and experience in financial and business matters, and in particular in matters relating to the purchase, sale, origination or ownership of loans such as the Loans, that it is capable of evaluating the merits and risks of investment in the Loans and understands and is able to bear the economic risks of such an investment (including a total loss of its investment and the risk that Assignee might be required to hold the Loans for an indefinite period of time);

(a) Assignee understands that neither the Loans, nor any interest therein or evidence thereof, has been registered or qualified under the Securities Act of 1933, as amended (the "Securities Act"), or the securities laws of any state or any other jurisdiction;

2. Assignee hereby represents and warrants to, and covenants with, Assignor the following:

under or pursuant to the Servicing Agreements and the Miscellaneous Agreements. The obligations assumed pursuant to this Agreement include any and all obligations (a) to pay outstanding invoices and bills relating to Loans serviced by Assignor that, if paid-by Assignor, would constitute Advances, (b) to make Advances with respect to Loans serviced by Assignor and (c) to reimburse another servicer with respect to Loans serviced by others for Advances.

16

any such manner with respect to the Loans (or any interest therein or evidence thereof);

(f) Assignee understands and acknowledges that it is accepting an assignment of and assuming the obligations as servicer with respect to the Loans.

3. Assignee will indemnify and hold harmless Assignor from and against any and all damages, liabilities, losses, costs, charges, liens, deficiencies and expenses of any nature (including, without limitation, reasonable attorneys' fees and all other actual litigation costs) suffered or incurred by or assessed against Assignor from and after the date hereof as a result of any claim, demand or legal proceeding arising out of or resulting from either Assignee's failure to perform the assumed obligations or pay the assumed liabilities identified in Section 1 above or Assignee's breach of any representation, warranty or covenant contained in this Agreement.

4. This Agreement will be binding upon and will inure to the benefit of Assignor and Assignee and their respective successors and assigns.

5. This Agreement is made, executed and delivered pursuant to the Sale Agreement, and is subject to all of the terms, provisions and conditions thereof. Without limiting the generality of the foregoing, initially capitalized terms used but not defined in this Agreement will have the meanings given them in the Sale Agreement.

6. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and all of which together will be deemed to be one and the same instrument.

**{THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT
BLANK. SIGNATURES APPEAR ON THE FOLLOWING PAGE.}**

(41)
(11/2/14)

IN WITNESS WHEREOF, each of the parties has caused this Assignment and Assumption Agreement to be executed and delivered by its duly authorized officer or authorized agent as of the day and year first written above.

ASSIGNOR:
U.S. SMALL BUSINESS ADMINISTRATION,
as Assignor

Uplanda V. Swyz
WITNESS

By: Arnold S. Rosenthal
Name: Arnold S. Rosenthal
Title: Authorized Agent

ASSIGNEE:

PRAMCO II, LLC, as Assignee

Timothy P. Stal
WITNESS

By: Midwest, Inc., its Managing Member

By: Terri A. Nunan
Terri A. Nunan, President

(43)
45
(12)

Attachment 1

Loan Schedule

[Attached]

**{THE ATTACHED LOAN SCHEDULE MAY INCLUDE LOANS WITHDRAWN FROM
SBA LOAN SALE #3 PRIOR TO THE CLOSING DATE. A SCHEDULE OF
RETAINED LOANS IS APPENDED TO THE ATTACHED LOAN SCHEDULE}**

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(13)
~~16~~

ASSIGNEE: Pramco II, LLC

Sum Outstanding

Count



14
~~48~~

ASSIGNEE: Pramco II, LLC

Sum Outstanding Count

15



64
91

Count

Sum Outstanding

ATTACHMENT 1
Page 3 of 7

ASSIGNEE: Pramco II, LLC

ASSIGNEE: Pramco II, LLC

Sum Outstanding

Count

17 ~~18~~ ~~18~~

ASSIGNEE: Pramco II, LLC

Sum Outstanding

Count

(18)

~~50~~

Edith K. Truvillion

STOCK OF DELAWARE COMPANY MARKED WITH CASE # CD 61147 SD

EXHIBIT I

Affidavit

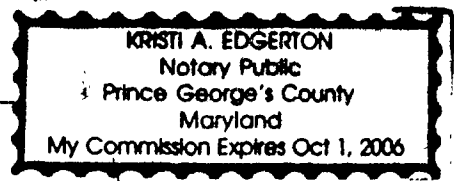
Establishing Priority Or Seniority Claim Over Pramco's \$150,000 Combined Investments In DK&R's Notes. Our Priority Claim Allows Us To Take Adverse Possession Of DK&R's Personal Property Which Is Now Ours Anyway Based On A Combined Amount Of \$1,290,000 We Have Lent To DK&R Estate From 1982- 7/2001 Guaranteed By The Estate's And Our Personal Property & Personal Guarantee. This Debt Has Been Converted Into An Investment Contingent Upon Reaching A Mutual And Prompt Settlement With Pramco.

In 1991, we paid off Capital Bank loan	\$75,000
In 1998 owners paid off First Union loan	39,000
Partial listing of cash expenses owners paid for DK&R's gas, postage, repairs	8,000
Co-owner E. Truvillion's contribution from her regular job calculated at \$20,000 per year x 10 years from 1991 - 2001	200,000
Owners' Bank of America Trust rental income that went to DK&R to buy supplies for resale the Trust wasn't reimbursed	34,000
Forbearance Agreement from 11/98 - 6/00 payments by Ammendale Trust for DK&R's mortgage to the Money Store local agent C.L. Wiser	100,000
D. Kissi's unreimbursed wages at \$10/hr x 50 hrs/week x 50 weeks x 20 years (1982-current)	500,000
Co-owner E. Truvillion's unreimbursed wages at \$10/hr x 30 hrs/wk x 50 wks x 20 years (1982-current)	300,000
Howard County property taxes, condo fees and insurance from 1996 - 2001	10,000
Legal bills to preserve the Estate from 9/00-2001	24,000

Combined Gross Due Owners \$1,290,000

That I, Edith Truvillion, am over 18 years of age and I have a personal knowledge of this matter because my spouse, David Kissi, and I own 100% of DK&R, a paper distributorship we had founded as a Delaware Corporation and invested our money in about 20 years ago. We have lent a total of \$1,290,000 as of 7/2001 when we filed for Receivership. In 3/2001 DK&R became a sole proprietorship when it lost its Delaware charter for non-payment of its franchise tax. Therefore all DK&R's personal property, i.e. Riggs Hill and elsewhere are now regarded as the owners, myself and my spouse's personal property pursuant to the Bankruptcy Code.

Signed by: *Edith Truvillion*

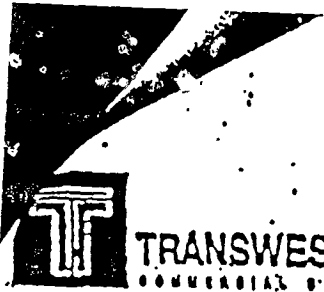


Notary: Subscribed and sworn to before me a Notary Public for the State of Maryland

and the County of Prince Georges. My Commission Expires _____

Kristi A. Edgerton March 21, 2003

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33



TRANSWESTERN
COMMERCIAL SERVICES

Commercial Real Estate Services
September 26, 2001

Ms. Susan Datasman
Piper, Marbury, Rudnick & Wolfe, LLP
6225 Smith Avenue
Baltimore, Maryland 21209-3400

RE: Brokerage Agreement

Dear Susan:

This letter shall serve as our outline of the brokerage services we are prepared to provide for the disposition of 10630 Riggs Hill Road, Savage, Maryland, and 12212 Distribution Place, Beltsville, Maryland.

We will offer the properties for sale as follows:

Riggs Hill Road

Unit U—One Hundred Ninety-One Thousand Dollars and 00/100 (\$191,000.00)
Units V & W—Three Hundred Eighty-Four Thousand Dollars and 00/100 (\$384,000.00)

Distribution Place

One Hundred Six Thousand Two Hundred Fifty Dollars and 00/100 (\$106,250.00)

Our commission structure for these properties will be as follows:

For a transaction completed by Transwestern Commercial Services, the commission shall be five percent (5%) of the gross sales price paid upon settlement. For a transaction completed with the cooperation of an outside broker, the commission shall be six percent (6%) with said fee split equally between Transwestern Commercial Services and the outside broker.

We propose a five (5) month listing agreement to conclude this assignment.

We look forward to working with you. If you have any questions, please feel free call.

Sincerely,

TRANSWESTERN COMMERCIAL SERVICES

Michael A. Boyce
Senior Vice President

James M. Darby
Senior Vice President

MAR/gk

TYTCN 6700 Alexander Bell Drive, Suite 360 • Columbia, MD 21046-2164 • Phone 443.233.0770 / 801.421.8800 • Fax 443.233.0560 / 301.421.4401

Austin, TX • Bethesda, MD • Charlotte, NC • Chicago, IL • Columbia, MD • Corpus Christi, TX • Dallas, TX • Denver, CO • Detroit, MI • Houston, TX • Las Vegas, NV • Los Angeles, CA
New Orleans, LA • Orange County, CA • Phoenix, AZ • Portland, OR • Salt Lake City, UT • San Antonio, TX • San Diego, CA • San Francisco, CA • Tulsa, OK • Virginia, VA • Washington, DC

72



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#7
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Summer 2006

AFFIDAVIT


I, Edith Truvillion, am at least over 18 years of age and I do have a personal knowledge of these legal expenses because I am an interested party in all the criminal and civil cases where we had to defend ourselves and our assets against the malicious assaults of Judge Peter J. Messitte, Judge E. Stephen Derby, Trustee Richard Kremen, Maria Chavez Ruark, US Trustee Mark Neal and US Trustee Katherine Levin who collectively launched malicious attacks to steal \$3 million of our assets to satisfy Pramco's bogus \$855,000 judgment. That I vouch under oath that these are lawyers we retained to fight the above wise guys from 9/2000 to 2006 plus some of our other costs.

	Retainer Amount Paid
Attorney	
C. William Michaels, Towson	\$8,000
Charles Broida, Columbia	500
Donald Wilson, Washington	500
Jeffrey Hines/Katherine Levin, Baltimore	1,000
Joel Spier, Washington	500
John D. Bums, Greenbelt	2,000
John McBumey, Oxon Hill	300
Joseph Bruce, Annapolis	2,500
James Quirk, Loan Broker, DC	1,400
Leonard Bulman, Annapolis	300
Mark A. Epstein, Baltimore	12,000
Paul Kramer, Baltimore	21,000
R. W. Moore, Baltimore	10,000
Richard McGill, Upper Marlboro	1,300
Richard Rosenblatt, Rockville	1,500
Robert Rogers/Steven Weinecke, GE Capital Loan Broker	9,000
Ron Deitch, Loan Broker	5,000
Ron Shechtman, Therapist, DC	525
Ronald Schwartz, College Park	15,520
Sheldon Schuman, Bethesda	1,000
Stanley Alpert, Baltimore	8,000
Steven Parrott, Annapolis	700
Thomas Giunta, Annapolis	1,000
Appraisal and credit application fees to refinance	3,500
Miscellaneous costs, i.e. court cost, postage, long distance phone calls, secretarial services, printing, research, and our unsuccessful refinance of Pramco's loans because Hirsch illegally put liens totaling \$1.5 million on all our assets.	13,000
Cost to have dismissed Emil Hirsch's Restraining Order he sought before Judge Barry Hamilton in the District Court of Maryland in Rockville on 1/24/05.	2,225
Loss of business profit as a result of Hirsch illegal liens	300,000
Amount earmarked as a deposit to retain a law firm to get our money back from Pramco	20,000
Printer for the 4th Circuit Appeal Brief	1,850
U.S. Receiver R. Greenberg's fees paid from our Trust	14,000
Transcripts for appeals on 4/5/04, 5/04, 10/25/04, 11/22/04 and 1/27/05	5,100
Preparation of 5/05 4th Circuit Brief to disqualify Judge Messitted 50hr x \$250/hr pro se	12,500
Preparation of Certiorari to the High Court to overturn Judge Messittes summary judgment to Pramco of \$855,000 prepared pro se \$250/hr x 100 hours	25,000
Preparation of the 4th Circuit Writ of Mandamus pro se filed in 8/2005, 100 hrs x \$250/hr	25,000
Long term Capital Gains Payable to IRS for Sale of West Pratt Properties That Messitte Ruled Don't Belong To The Trust But To DK/ET Personally	51,000
Cost of drafting a Writ of Certiorari to the High Court and 7 Appeal Briefs to the 4th Circuit to overturn Messitte and J. Goodwin is figured at 100 hrs @\$250/hr plus mileage phone secretarial help and xeroxing to yield a combined cost of \$30,000 - See attached said Briefs	30,000
Retainer for Fred W. Bennett representation in case # AW05-cr-0254	30,000
Gross Legal and Miscellaneous Costs	\$636,720


Edith Truvillion

NOTARY.

Subscribed and sworn to before me a Notary Public for the State of Maryland and the County of Mixed
My Commission Expires: 11-17-2007 Signed by: Karen S. [Signature]

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Amundale Trust
 Deductions for FY 2002
 Valuation of Real Estate Portfolio
 Of Rental Properties

Property	Year Of Purchase	Purchase Cost	Property Expenses	Est. Market Value Per Replacement Cost	Yearly Rental Income FY 2002	Income Per Mth
Pratt	5/00	\$20,000	\$9,071	\$87,000	\$5,712	476
Pratt	5/00	45,000	4,502	91,021	5,400	450
Pratt	12/99	12,000	n/a	52,500	n/a	n/a
Pratt	12/00	12,000	20,769	90,000	3,600	600
Pratt	12/00	14,000	n/a	55,100	n/a	n/a
Pratt	12/00	12,000	n/a	52,500	n/a	n/a
Pratt	5/00	10,000	18,000	90,000	7,200	650
Pratt	5/02	18,000	27,200	90,000	n/a	n/a
Wilmington	4/02	12,200	29,200	263,000	n/a	n/a
Estate *	1985	86,000	32,000	264,000	4,800	400

 Total Gross value of Portfolio = \$1,135,121 \$26,712 \$2,576

*Property Expenses (140,742)
 - Depreciation - (10,000)

 Subtotal of Gross Investment Expenses = (150,742)
 + Rental Income = 26,712

 Gross Loss = (\$124,030)

 Passed on to Trustees' personal returns to shelter income 30,000

 Net Adjusted Loss = (\$94,030)
 That can be carried over

Estate Improvements Include:
 water heater, room, airconditioning, furnace, detached shed,
 room addition, electrical upgrade, new basement
 remodeled basement, new carpet, paint (int.+ext.),
 deck back porch, roof replacement

purchase price = \$80,000 - note bought back from Allfirst 1/03.

*Trust
 income
 went to
 support
 DK's
 operation
 on the
 form
 of
 debt*

*DK
 27
 37*

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UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF MARYLAND

INES

January 25, 2005

U. S. Courthouse
4500 Cherrywood Lane
Greenbelt, Maryland 20770
(301) 344-8018

Honorable James F. Schneider
Chief Judge, U.S. Bankruptcy Court
101 W. Lombard Street
Baltimore, Maryland 21201

RE: EMIL HIRSCH

Dear Chief Judge Schneider:

The enclosed correspondence from David Kissi, Trustee, was mailed to me. Apparently Mr. Kissi believed that I was still the Chief Judge, "US Court."

In view of the very serious nature of the allegations of misconduct as to Mr. Hirsch, such as, extortion and subornation of perjury, I am forwarding the material to you for such action as you may deem appropriate.

Very truly yours,

Paul Mannes

PAUL MANNES

cc:

David Kissi, Trustee ✓
Emil Hirsch, Esq.

[Handwritten initials]

[Handwritten initials] 23

(14)

R. KRAMER, P.A.
ATTORNEY AT LAW
BETHESDA, MARYLAND AND D.C.

*Defense for this set
of contempt charges*

33

JEFFERSON BUILDING
101 NORTH CHARLES STREET, SUITE 100
BALTIMORE, MARYLAND 21201
(410) 731-4331
FAX (410) 727-1116

June 11, 2004

Stephen B. Mead, Esquire
Mead & Mead
19 St., N.W.
Washington, DC 20036

RE: United States v. Davis Kissl and Edith Truvillion Kissl
Criminal No.: 03-CR-473 (PJM)

Mr. Mead:

I am enclosing for your information correspondence between Joseph Bruce (one of the attorneys representing the Kissls in the civil aspects of this case) and Emil Hirsch. What is shocking about what the Kissls have been telling me has turned out to be true. That is, there was a lien on their property which was dismissed by the Court over a year ago, but has yet to be paid by Prambo and their attorneys. I believe this may be what prompted Mr. Kissl to file an application to that Hon. in Prince George's County (subject of the so-called second set of contempt charges). This further explains Mr. Kissl's and Mrs. Truvillion's frustration and supports their contention that Prambo had repeatedly acted in bad faith and taken advantage of this situation.

I am bringing this to your attention to explain why Mr. Kissl has tried so hard, apparently (at times) to get a Court Order, to protect what he believed was being taken from him unlawfully.

[Handwritten initials and marks]

34

Stephen B. Mead, Esq. also
11, 2004
12

I would like to discuss postponing the June 22, 2004, sentencing. That date was set in
citation that the entire loan would be paid off by that time. The settlement date has now been
set to July, 2004. In addition, Mr. Kissel's psychiatrist would like to testify on his behalf and he
will not be available on that date. I believe the psychiatrist's testimony will help to explain Mr.
Kissel's behavior to the Court. Accordingly, I ask you to agree to a short postponement for the
above reasons.

Please contact me upon review of these letters.

Very truly yours,



Paul R. Kramer

Enclosures:

- Mr. Mead's letter of June 9, 2004, to Hirsch
- Mr. Mead's letter of June 9, 2004, to Judge Messitte
- Mr. Hirsch's letter of June 10, 2004, to Bruce
- Mr. Hirsch's letter of June 10, 2004, to Judge Messitte
- Mr. Mead's letter of June 10, 2004, to Judge Messitte

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EVIDENCE OF JUDGE MESSITTE'S BIAS *against* ^{US3} *27* ^{of} *10*

THAT SHOULD HAVE DISQUALIFIED HIM FROM THE CASE IN 5/02.

1 MESSITTE THE COURT: It doesn't matter. It's really more a
2 matter of giving each side their opportunity to meet the
3 arguments that are being made and I don't have that right now. I
4 simply do not. I see a case where, and I've got to be very
5 candid with you, it looks to be like debtors have tried to pull
6 out every possible stop to avoid liability here. That's the
7 impression I have. Now, there may be some defenses. But that's
8 the picture that this case gives. And there are cases that your
9 clients have been involved in that I'm just hearing about for the
10 first time. I mean, they're in every front trying to frustrate a
11 legitimate commercial expectation, so it appears.

12 Having said that -- having said that, I am prepared to
13 leave the confessed judgment in place, but I need to get
14 specifically the following. I need to get from you, Mr. Epstein,
15 a specific pleading that tells me what you're arguing, and I
16 don't need live witnesses like Mr. Moore. If you've got an
17 affidavit that you're going to put in, put it there so that he
18 knows what's coming and then he can respond to that very
19 specifically. And you can respond by way of either an opposition
20 to the motion for summary judgment -- to lift the confessed
21 judgment or alternatively for summary judgment, because I want to
22 get this issue focused very quickly on where we are. And we will
23 see if there is a genuine issue of material fact that is not
24 foreclosed by language in the agreement, by law, by a lot of
25 things. We may well get to your case on the merits. But I am

STATEMENT

26

~~20~~ ~~22~~

the K... 51

EVIDENCE OF JUDGE MESSITTE'S BIAS ^{as found} 25

~~THAT SHOULD HAVE DISQUALIFIED HIM FROM THE CASE IN 5/02~~

1 what estoppel is about -- would really mandate that the Court, I
2 think, would want to see that. They wouldn't want -- I don't
3 think the Court would want to ignore that.

4 THE COURT: I'm not disallowing the possibility that I
5 may remove the confessed judgment. I'm making a different
6 statement. I'm not going to remove it today based on an argument
7 that plaintiff hasn't even had a chance to respond to.

8 MR. EPSTEIN: Well, if I may, Your Honor, A, first of
9 all, I have no objection to continuing the hearing based on the
10 fact that I've been able to collect this and we have a
11 forbearance. I mean, it speaks for itself. It's as
12 straightforward as it can be.

13 THE COURT: Well, let me --

14 MR. EPSTEIN: I know Mr. Hirsch has got to be aware of
15 this.

16 THE COURT: All right, Mr. Hirsch.

17 MR. HIRSCH: Your Honor, what he's doing is absolutely
18 appealing to the sympathy of the Court.

19 MESSITTE → THE COURT: No, there's no sympathy here, believe me.
20 If there's any sympathy, I've got it for the plaintiff, who
21 hasn't been paid in a long time. So, have a seat, Mr. Epstein.
22 Have a seat.

23 MR. HIRSCH: I have not been put on notice. I've been
24 prejudiced. Your Honor, there's another basis that I have that
25 I'd like to outline for the Court. Mr. Epstein may think that

STATEMENT

Letter from Kissi's conviction 18

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
301-344-0632

June 19, 2008

The Honorable Sara Lioi
United States District Court for the Northern District of Ohio
526 United States Courthouse
Akron, Ohio 44308-1813

Re: Pramco II, LLC v. David Kissi, et al.
Civil Case No. PJM 03-2241

Dear Judge Lioi:

It appears that David Kissi and/or his wife, Edith Truvillion Kissi, may have filed one or more suits in your court against Pramco-II, LLC. As I advised you on the telephone, the filing of any such suit may well be in violation of this Court's preliminary injunction entered on October 10, 2003 in *Pramco II LLC v. David Kissi, et al.*, Civil Case No. PJM 03-2241.

I became aware of the activity in the United States District Court for the Northern District of Ohio as a result of a pleading filed by DLA Piper and Richard Kremer, Esq. on my docket on April 28, 2008. A copy of that paper is enclosed, and a copy of the Preliminary Injunction may be found at Exhibit 1.

You may want to transfer the cases filed by Mr. Kissi back to me to determine if they are appropriate in light of the preliminary injunction in my case. I would appreciate it if you would alert other Judges in your court that they may wish to do the same with other cases filed by or on behalf of Mr. Kissi.

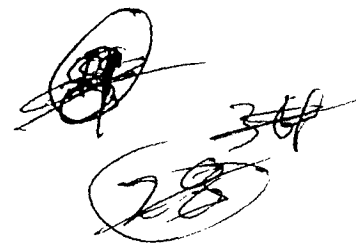
Sincerely yours,



Peter J. Messitte

Enclosures

cc: David Kissi
#38348-037
FCI Elkton



IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

Key Bank and Trust f/k/a
Key Financial Savings Bank
7P Gwynn Falls Court
Owings Mills, MD 21117
Plaintiff :

v. :

Civil Case #: 03-C-97-007682 CJ

David Kissi, et al
4305 Annendale Rd
Beltsville, MD 20705
Defendant :

ORDER

It is this 22 day of November 1997, ORDERED, that the
Defendant(s) ^{UNOPPOSED} Motion to vacate the defective confessed judgment is
granted.



Judge

True Copy Test

SUZANNE MENSCH, Clerk

Per *Catherine P. Hall*

Assistant Clerk

FILED DEC 22 1997

(29)

April 24, 2011

To: Sandra A. Bungo, Unit Chief
Initial Processing Unit
U.S. Dept. of Justice – FBI
935 Pennsylvania Ave, NW
Washington, DC 20535-0001

Re: Response to Your Letter Dated 4/19/2011 re: Complaint Against
Agent Thomas Simmons, Baltimore Division. See p. 4.

How can you even close a case when you haven't even personally interviewed me or even seen the various transcripts of hearings stretching back to 2002 over the following allegations against a group of White Federal Judicial Officers who maliciously abused their office and retaliated against us an African American couple after they stole our small fortune of about \$3 million? Now, here are also new charges that you have not bothered to investigate in your attempt to help the other side. They are namely i.e..

- I. That my 30 months+ sentence was enhanced by Sentencing Judge JR Goodwin of W. Va partly based on false information RJ Rosenstein, US Attorney for Maryland inserted in my PSI Report claiming that I had a previous misdemeanor conviction in a Baltimore trash case.
- II. That RJ Rosenstein did maliciously ask a Federal Grand Jury to return an indictment against me in the Summer of 2005, albeit the Federal Rule Book does prohibit him for at that time I had some unresolved criminal contempt charge un-American Judge PJM had hit me with. See USCA Const Amendment 5; 18 USCA § 401 in re: Oberhellman, 748 F. Supp. 1344, reversed U.S. v Oberhellmann, 964 F2d 50.
- III. That it has emerged that Lender Pramco of Upstate New York and its local debt collectors the unsavory Emil Hirsch and James Ryan did perpetrate fraud on the courts when they sought to criminalize a simple debt collection on our commercial mortgages they didn't have clear titles to. And that in a similar case which the Supreme Court of the Commonwealth of Massachusetts recently ruled upon, (see First Bancorp et al v. Albanez et al), the Court did rule against the moving party similarly situated like Pramco. Also, be mindful Judge Kathleen O'Malley of the Federal Court in the Sixth Circuit in Ohio did rule against Pramco when it did fraudulently seize others properties in Ohio. And when I was Guest of Uncle Sam in the Federal Penitentiary in Ohio and I had sought Relief and Remedy over same in the Ohio Federal Court, Federal Judge Peter J. Messitte of Maryland, certainly influenced by U.S. Assistant Attorneys B. Sale, J. Biran, S. Wilkerson, Mark Neal and Katherine Levin, all did team up and have PJM write letters to Federal Judges John Adams and Sara Loi to reroute my claims back to PJM in Maryland where he summarily tossed them out of the window. See pp. 5-9 letters and final transcripts hereby attached even though the Federal Rule Book did forbid him since the same PJM had testified against me on 8/2/2006 at my trial and had committed perjury when at the witness stand he swore that he wouldn't have anything to do with our cases when that trial in 05-cr-00254 was over. Now, if this is not retaliation because I am a Negro by an all White criminal enterprise headed by PJM and the



so-called U.S. Attorney in Baltimore and rogue FBI Agent Thomas Simmons, acting more as their debt collection agent and enforcer, what is it? And you should interview Federal Bankruptcy Judge E. Stephen Derby of Baltimore for he also testified against me at my trial, but thereafter, unlike Judge PJ Messitte, has excused himself from all Kissi matters. See p.4.

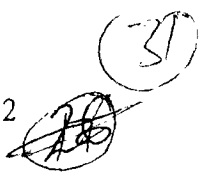
ow, Ms. Bungo, if you are an honest, competent, impartial and a fair Law Enforcement Officer who is asked to investigate my charges that these officers cited above have retaliated against me, then you would show me evidence before you dismiss my charges that you have talked to them and interviewed witnesses and reviewed the public record and you should also interview me, too. And where are your me logs and transcripts of your interviews with the bad white guys? Please, provide them to me by this Memorial Day or else you concede that all that I have said is true.

in sum, you are suborning perjury and obstructing justice. And if your boss Eric Holder the West Indian G, weren't inept, he already should have the above wise guys indicted for a Jewish AG will never accept such a poor treatment of his fellow Jew by US Justice minions.

Sincerely,
David Kissi, A Negro Crime Victim
of PJM and RJR and all his
Six US Attorneys



cc:
the Honorable Justice Ruth B. Ginsburg, U.S. Supreme Court
our inept Attorney General Eric Holder of Queens, NY
William Daly, Chief of Staff to our African Prez. Obama
Isaac Fulwood, Chief of the U.S. Parole Commission
Washington Post Metro Columnist Petula Dvorak
Baltimore Sun Staff Writer Jamie Smith Hopkins
Harvard Law Professors L. Bebchuk and Al Dershowitz, Cambridge, MA
Stephen N. Zack, Esq., President ABA, Miami, FL
Kevin Ohlson, Assistant Attorney General, US Dept. of Justice, 950 Penn. Ave, SE DC 20530
Theodore Olson, Esq. 1050 Connecticut Ave, NW, DC/USA



In the U.S. District Court for Southern Maryland
6500 Cherrywood Lane
Greenbelt, MD 20770

U.S.

Plaintiff

v.

Case #: AW05-cr-0254

David Kissi

Defendant

Affidavit

In Support Of Defendant Kissi' Request That The Honorable Joseph R. Goodwin Should Voluntarily Excuse Himself In Presiding Over This Case Because I Intend To Call Him As My Judicial Witness That I Have Never Menaced Despite His Adverse Rulings Against Me

That I, David Kissi, the Defendant and Affiant in this case make the following statements under oath:

1. That I am at least 18 years of age and that I do have a personal full firsthand knowledge of this matter because I am a Defendant in this case.
2. That I assert that Judge Joseph R. Goodwin of West Virginia has consistently abused his discretion and has deliberately trespassed on my Civil Rights by summarily in 7/05 dismissing 19 motions I had filed pro se in this court. Included was complaint where I had asked this Court to have FBI Agent Thomas Simmons' indicted for perjury and to have the entire U.S. 7 Count Indictment thrown out because the government's case is built on Simmons' falsehood.
3. That despite Judge Goodwin's adverse rulings, I assert that I have never threatened or menaced him. And that since I intend to call him as a witness to counter U.S. Counts 4, 5 and 6 of my Indictment, I request that The Honorable Judge Goodwin should voluntarily excuse himself from presiding over this case further.

Respectfully Submitted by:



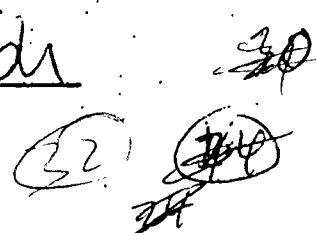
David Kissi, Defendant
325 Pennsylvania Ave, SE
Washington, DC 20003
Tel: 202-668-4154 Fax: 301-937-2143

Certificate of Service

On this day of 4/6/06, I did send per U.S. Postmaster copies of this Affidavit to the Honorable Chief Judge William Wilkins, 4th Circuit, 1100 E. Main St, Richmond, VA 23219, U.S. Attorney Rod Rosenstein, U.S. Attorney's Office at 36 S. Charles St., Baltimore, MD 21201, The Honorable Judge Joseph Goodwin of the Federal Courthouse of West Virginia, PO Box 2546, Charleston, WV 25329 and The Honorable Chief Judge Betson Legg, U.S. District Court, 101 W. Lombard St., Baltimore, MD 21201.

Notary: Subscribed and sworn to before me a Notary Public for the State of MD and the County of PGC. My Commission Expires: 7/30/08.

JANELL M. ADOLPH
Notary Public, State of Maryland
Anne Arundel County
My Commission Expires July 30, 2008

Signed by: Janelle Adolph


**Statement of Objective As To Why David Kissi Is Inclined
To Be Admitted Into A Fine American Law School As A Part-time Day Student In The Fall 2011**

Objective: I am interested to acquire a JD with emphasis in Labor, Criminal and Human Rights Law. Eventually I intend to run a multilingual non-profit Temp Agency that will assist white collar criminal ex-offenders to regain professional jobs. This Agency will also serve as my methodology for my PhD in Law Thesis. In fact, at the moment, there is nothing like such an Agency helping ex-offenders who have professional backgrounds and may have licenses for Accounting, Pharmacy, Medical Physicians and Scientific skilled consultants, whose security clearances have been revoked, to get back on their feet. Now, these are the individuals that I am inclined to help with other competent lawyers, retired judges and top flight head hunters to regain their licenses after serving time and even have their security clearances restored.

Education:

- Postgraduate studies in Business at University of Maryland, College Park, MD from 1980-1982
- Certificate in Computer Science, George Washington University, DC, 1984
- Masters in Economics, Northeastern University, Boston, MA, 1978
- Masters in Business, Clark University, Worcester, MA 1976
- Bachelors in Economics, Worcester State College, Worcester, MA, 1975

Work History:

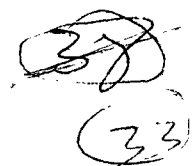
That I have worked as a self-employed copy paper salesman for about 30 years in the D.C. area. My work involves Marketing and building competitive business models to increase sales to a million plus by 2012. Also, I did once manage a \$300,000 3 year contract leasing appliances to the U.S. Navy in Norfolk, VA in FY 1996-FY 2000 and was able to reduce downtime of its washers and dryers and save the Navy hundreds of hours - additional hours the Navy sailors and soldiers were able to devote to military services instead of performing household washing chores.

That between 2000 – 2010 as a Trustor of Edith Foundation along with my spouse, we did donate about \$100,000 worth of books, personal computers, clothing, cash and service to such beneficiaries as: an elementary school in Kwabeya, Accra, Ghana; a Girls' School in Afghanistan; redeemed a slave girl from bondage in Ethiopia; we gave books to U.S. prisons; made cash donations to prisoners' commissary accounts; and cash donations to U.S. churches, a Jewish Meals on Wheels Organization in NY, NY and etc. See p. 3-Edith Foundation is funded solely by funds from the Kissis, it refuses to take money from the government.

That a law school Admissions Office should also take into consideration my self initiated improvements to culturally enrich my life and community and to be a good and decent person who, after immigrating to the U.S. at 20, in addition to pursuing high education and success in a paper dealership and a real estate portfolio of ±\$3 million, I have self studied German, Italian, French, Spanish, Portuguese, Russian, Arabic. Fluent in English and Twi. I also intend to learn deep water swimming as needed to sail a boat to Europe in FY 2012. I like to garden and for 30 years + have informally pursued the study of Law and have produced winnable Briefs from the Traffic Court to the High Court. See p. 2.

In conclusion, in terms of practical business experience of 30 years and my international background and informal study of the law rounds up my broad background that is not too far behind other candidates shooting for good law schools at same time frame of 12/2011 as I am now pursuing at age 61. And if successful or not in law school, I still intend to give back to society as reiterated in my intent of running a temp agency to help white collar ex-offenders.

Respectfully Submitted by,
David Kissi
325 Pennsylvania Ave SE, DC 20003
Tel: 202-675-6365 (office 8am-5pm)



UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 499

September Term, 2007

DAVID KISSI, et al.

v.

EMC MORTGAGE CORPORATION OF
TEXAS, et al.

Meredith,
Woodward,
Moylan, Charles E., Jr.
(Retired, specially assigned),

JJ.

Opinion by Meredith, J.

Filed: August 13, 2009

CAE0515718

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(34)

The substitute trustees under a deed of trust, appellees,¹ foreclosed upon real property owned by David Kissi and Edith Truvillion, appellants, who were indebted to EMC Mortgage Corporation of Texas (“EMC” or “the lender”), also an appellee. After the foreclosure sale, appellants objected to the sale and filed a countercomplaint against EMC and one of the Trustees, Joseph V. Buonassissi. Appellants later filed an amended countercomplaint. The Circuit Court for Prince George’s County overruled appellants’ exceptions to the foreclosure sale; ratified the sale; granted appellees’ oral motion to strike the amended countercomplaint for failure to comply with Maryland Rule 2-341(e); overruled appellants’ exceptions to the attorney’s fees allowed in the auditor’s report; ratified the auditor’s report; and entered personal judgments against appellants for a deficiency in the proceeds of sale.

On appeal, appellants argue that the circuit court: 1) should not have struck their amended countercomplaint; 2) failed to hold a hearing on appellants’ exceptions to the auditor’s report, and erred in overruling their exceptions; 3) should not have entered deficiency judgments against appellants personally; and 4) should not have awarded attorney’s fees at all or, alternatively, should have awarded a lesser amount. Appellees counter that we must dismiss this appeal because appellants filed the notice of appeal too late.²

¹The substitute trustees are Joseph V. Buonassissi II, Richard E. Henning, Jr., Richard A. Lash, Mary Snyder Barry, and Keith M. Yacko.

²Appellants presented the following questions:

(continued...)

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We hold that appellants' notice of appeal was timely. On the merits, we agree that the circuit court erred in ratifying the auditor's report without holding a hearing on appellants' exceptions, as required by Maryland Rule 2-543(h). Accordingly, we vacate the judgments entered by the circuit court and remand the case for further proceedings.

²(...continued)

I. Whether the circuit court erred in awarding trustees under a deed of trust and the lender over \$120,000 in attorney's fees in a foreclosure case involving pro se defendants without either any contractual basis permitting the recovery of such fees for the services performed or any findings or evidence as to the reasonableness of those fees.

II. Whether the circuit court erred in striking the amended counterclaim of a defendant in a foreclosure action pursuant to an oral motion at a hearing without any notice to the defendant and without analyzing the factors that govern the consequences of non-compliance with the rules merely because the abandoned counterclaim was not attached to the amended counterclaim.

III. Whether the circuit court erred in sua sponte entering judgment in a foreclosure action in favor of the trustees and lender and against the defendants personally for over \$120,000 when the trustees and lender had filed no motion for a deficiency judgment.

IV. Whether the circuit court erred in ratifying the report of an auditor in a foreclosure action based upon the court's incorrect determination that no exceptions had been filed and without conducting a hearing that was requested in those exceptions.

finding was made by the circuit court, but, on remand, the circuit court should reconsider the reasonableness of hiring separate counsel, and the extent of any unnecessary duplication of legal services.

Although appellants contend it was not reasonable for appellees' attorneys to spend so many hours defending claims appellees considered groundless, appellants must bear part of the blame for asserting the claims that necessitated a defense. This is another factor for the court to consider on remand in connection with its analysis under Rule 1.5(a).

Appellants further contend that EMC failed to prove that the hourly rates charged by its attorneys in the D.C. law firm of Greenberg Traurig, which went as high as \$525 an hour, were commensurate with "the fee customarily charged in the locality for similar legal services." Appellants argue that the relevant "locality" must be Prince George's County, where this case was tried. Under Rule 1.5(a)(3), this, too, is a factor the court must consider upon remand.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY VACATED. CASE
REMANDED FOR PROCEEDINGS
NOT INCONSISTENT WITH THIS
OPINION.
COSTS TO BE PAID BY APPELLEES.**

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UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1140

September Term, 2007

DAVID KISSI, ET AL.

v.

JUAN M. PORTILLO, ET AL.

Woodward,
Zarnoch,
Karwacki, Robert L.,
(Ret., specially assigned),

JJ.

Opinion by Karwacki, J.

Filed: September 23, 2008

CAE0512152

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Appellants, David Kissi and Edith Truvillion, appeal from the entry of a default judgment for \$47,957.02 against them and in favor of Juan Portillo and German F. Guevera, appellees, by the Circuit Court for Prince George's County. Appellants were also assessed \$9,330.50 for appellees' attorney's fees. They present the following questions for our review:

I. Did the circuit court improperly enter a default order against appellants on a withdrawn complaint without service of the amended complaint, a proper servicemembers' affidavit, or a hearing before striking appellant's defensive pleading?

II. Did the circuit court abuse its discretion in refusing to vacate the default order absent explanation for its decision?

III. Did the circuit court improperly determine damages by ignoring the rules governing the measure of damages for breach of a contract to sell real property and by awarding damages that did not result from the breach?

IV. Did the circuit court erroneously award attorney's fees to purchasers without any showing as to the reasonableness of the fees that they sought?

We conclude that appellant's were not properly served with the Second Amended Complaint and that the circuit court never acquired personal jurisdiction over them. We thus vacate the judgment of default.

Factual Background and Legal Proceedings

In February 2005, Kissi and Truvillion (hereinafter, collectively, "Sellers") owned a single family residence located at 4305 Ammendale Road in Beltsville, Maryland

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(hereinafter "the First House"). On or about February 22, 2005, Sellers entered into a residential contract of sale (hereinafter "the Contract") with Portillo and Guevera (hereinafter, collectively, "Buyers") for the sale of the First House.¹ The purchase price was \$350,000.00 and the settlement date was set for March 17, 2005. Later, by mutual agreement, settlement was extended to March 31, 2005. On that date, Buyers appeared for settlement, but Sellers did not.²

The parties again agreed to postpone settlement and a new settlement date was set for April 20, 2005. It was also agreed that Buyers would allow Sellers to "rent back" the First House without payment until April 24, 2005. The parties further agreed that if Sellers did not vacate the First House on April 24, 2005, they would pay Buyers \$1,000.00 a day for each additional day they remained in the residence.

On April 20, 2005, Buyers again arrived at settlement ready to purchase the First House, but Sellers did not appear. At the hearing on damages, Liliana Chedrauy, the Buyers' real estate agent, testified that, while at settlement, a call was received indicating that Sellers were not going to show up and that they were no longer interested in selling

¹The primary actors in this dispute were Seller Kissi and Buyer Portillo, but both Sellers and both Buyers were party to the Contract and nearly all of the filings in circuit court. Accordingly, throughout this opinion, we refer mostly to "Sellers" and "Buyers" and only identify the individual Seller or Buyer when relevant.

²In their Amended Complaint, Buyers assert that Sellers later indicated that they had been in court at a hearing that did not end in a timely manner.

Handwritten initials "YD" and a circled number "10" in the bottom right corner of the page.

I., *supra*, the circuit court did not have jurisdiction over Sellers. In addition, service of process of the Second Amended Complaint did not comply with the Maryland Rules and thus Sellers were under no obligation to file an answer. Because we have concluded that the circuit court was without authority to enter the default order, we need not determine whether the circuit court abused its discretion in failing to vacate an order it lacked authority to enter in the first place.

For this same reason, we need not reach Sellers' remaining questions. The circuit court was without authority to enter the Order of Default. As a result, it was without authority to award damages and attorney's fees. We thus vacate the judgments of the circuit court.

**JUDGMENTS VACATED.
COSTS TO BE PAID BY APPELLEES.**

40 (11)

EXHIBIT B

OUTPUT SAMPLE OF KISSI'S INFORMAL STUDY
OF THE LAW

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1594

September Term, 1994

DAVID KISSI

v.

MUIRKIRK INDUSTRIAL CENTER
CONDOMINIUM, INC.
et al.

Bishop,
Fischer,
Harrell,

JJ.

Per Curiam

Filed: May 18, 1995

Appellant, David Kissi ("Kissi"), a condominium owner, filed a motion to request audit of condominium books, in the Circuit Court for Prince George's County, against appellee, Muirkirk Industrial Center Condominium, Inc. ("Muirkirk"). Although Muirkirk filed an answer, Kissi filed a motion for default judgment and requested that a trustee be appointed to manage the condominium complex. Originally, the motion for default judgment was denied, but the circuit court later entered an order of default against Muirkirk. The circuit court ultimately vacated the default judgment and the case was set in for trial.

Kissi filed a motion to reset the trial date and a request for a jury trial, which the circuit court denied. At a hearing on a motion for reconsideration of postponement, the circuit court dismissed the case for insufficiency of service of process. Kissi appeals the dismissal.

Issues

Kissi raises three issues, which we rephrase:

I. Whether the circuit court erred in dismissing the case for insufficiency of service of process.

II. Whether there was an improper *ex parte* communication between appellee's attorney and the trial court.

III. Whether the motion's hearing was a valid hearing although no parties testified under oath?

Because we shall reverse the circuit court's dismissal of the case for insufficiency of service of process, we shall not address the third issue raised.

Facts

Kissi owns a condominium unit located at 12212 Distribution Place in Beltsville, Maryland in the 33 unit Muirkirk Industrial Center Condominium. Steve Wege, at the time Kissi initiated this case, was the condominium association president. In June of 1993, Kissi petitioned Mr. Wege to have the condominium books audited for fiscal years 1988 through 1993 by an independent accountant. Because Mr. Wege failed to respond to the petition by June 30th, Kissi filed a motion to request audit of condo books under § 11-116 of the Real Property Article of the Annotated Code of Maryland. Kissi maintained that he had the authority to file the motion as he was requesting the audit with other unit owners comprising at least 5% of the units. Muirkirk, however, contends that it was only Kissi himself, and no other unit owners, that requested the audit.

Section 11-116(b) of the Real Property Article provides:

On the request of the unit owners of at least 5 percent of the units, the council of unit owners shall cause an audit of the books and records to be made by an independent certified public accountant, provided an audit shall be made not more than once in any consecutive 12-month period. The cost of the audit shall be a common expense.

Md. Real Prop. Code Ann. § 11-116(b) (1988).

Kissi alleged, in his motion requesting the audit, that Mr. Wege was financially mismanaging the condominium association. In the certificate of service attached to the motion, Kissi affirmed that

I, David Kissi, acting on behalf of unit 12212 Distribution Place, Beltsville, MD et al, has [sic] caused a copy of this motion to be

(44)

ex-parte communication has occurred. Because we are remanding this case, we ask that the trial court disclose to Kissi the nature of the phone call and its purpose.

JUDGMENT OF THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY REVERSED AND
CASE REMANDED FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION; COSTS
TO BE PAID BY APPELLEE.

4/13

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1140

September Term, 2007

DAVID KISSI, ET AL.

v.

JUAN M. PORTILLO, ET AL.

Woodward,
Zarnoch,
Karwacki, Robert L.,
(Ret., specially assigned),

JJ.

Opinion by Karwacki, J.

Filed: September 23, 2008

Appellants, David Kissi and Edith Truvillion, appeal from the entry of a default judgment for \$47,957.02 against them and in favor of Juan Portillo and German F. Guevera, appellees, by the Circuit Court for Prince George's County. Appellants were also assessed \$9,330.50 for appellees' attorney's fees. They present the following questions for our review:

I. Did the circuit court improperly enter a default order against appellants on a withdrawn complaint without service of the amended complaint, a proper servicemembers' affidavit, or a hearing before striking appellant's defensive pleading?

II. Did the circuit court abuse its discretion in refusing to vacate the default order absent explanation for its decision?

III. Did the circuit court improperly determine damages by ignoring the rules governing the measure of damages for breach of a contract to sell real property and by awarding damages that did not result from the breach?

IV. Did the circuit court erroneously award attorney's fees to purchasers without any showing as to the reasonableness of the fees that they sought?

We conclude that appellant's were not properly served with the Second Amended Complaint and that the circuit court never acquired personal jurisdiction over them. We thus vacate the judgment of default.

Factual Background and Legal Proceedings

In February 2005, Kissi and Truvillion (hereinafter, collectively, "Sellers") owned a single family residence located at 4305 Ammendale Road in Beltsville, Maryland

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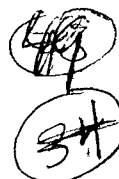
(hereinafter "the First House"). On or about February 22, 2005, Sellers entered into a residential contract of sale (hereinafter "the Contract") with Portillo and Guevera (hereinafter, collectively, "Buyers") for the sale of the First House.¹ The purchase price was \$350,000.00 and the settlement date was set for March 17, 2005. Later, by mutual agreement, settlement was extended to March 31, 2005. On that date, Buyers appeared for settlement, but Sellers did not.²

The parties again agreed to postpone settlement and a new settlement date was set for April 20, 2005. It was also agreed that Buyers would allow Sellers to "rent back" the First House without payment until April 24, 2005. The parties further agreed that if Sellers did not vacate the First House on April 24, 2005, they would pay Buyers \$1,000.00 a day for each additional day they remained in the residence.

On April 20, 2005, Buyers again arrived at settlement ready to purchase the First House, but Sellers did not appear. At the hearing on damages, Liliana Chedrauy, the Buyers' real estate agent, testified that, while at settlement, a call was received indicating that Sellers were not going to show up and that they were no longer interested in selling

¹The primary actors in this dispute were Seller Kissi and Buyer Portillo, but both Sellers and both Buyers were party to the Contract and nearly all of the filings in circuit court. Accordingly, throughout this opinion, we refer mostly to "Sellers" and "Buyers" and only identify the individual Seller or Buyer when relevant.

²In their Amended Complaint, Buyers assert that Sellers later indicated that they had been in court at a hearing that did not end in a timely manner.

Handwritten initials "LKG" in a circle above a circled number "31".

I., *supra*, the circuit court did not have jurisdiction over Sellers. In addition, service of process of the Second Amended Complaint did not comply with the Maryland Rules and thus Sellers were under no obligation to file an answer. Because we have concluded that the circuit court was without authority to enter the default order, we need not determine whether the circuit court abused its discretion in failing to vacate an order it lacked authority to enter in the first place.

For this same reason, we need not reach Sellers' remaining questions. The circuit court was without authority to enter the Order of Default. As a result, it was without authority to award damages and attorney's fees. We thus vacate the judgments of the circuit court.

**JUDGMENTS VACATED.
COSTS TO BE PAID BY APPELLEES.**

served upon Mr. Steve Wege, president of the Muirkirk unit owners condo association. The service was executed by U.S. certified mail per Mr. Richard L. Hoffman, the condo association's resident agent

Two weeks after Kissi sent the summons to Richard Hoffman, the clerk of the Circuit Court for Prince George's County received a letter, sent on behalf of Mr. Hoffman, indicating that

Mr. Hoffman has had no connection with [Muirkirk] for more than ten years and did not know that he was the Resident Agent, we have requested papers from Assessments and Taxation to have him removed. I have also notified Mr. Kissi and he has requested that I send the papers back to him.

Subsequently, Kissi served the summons requesting the audit of the condominium books on Mr. Wege. In his affidavit of service of summons, Kissi stated:

I, David Kissi, am over twenty-one years of age and a resident in the State of Maryland. I am declaring under this affidavit that I did serve the summons upon the defendant; Mr. Steve Wege, the president of the Council of Owners of the Muirkirk Condominium Association. The summons was delivered per U.S. certified mail to the defendant on September 20, 1993, as evidence [sic] by the enclosed return receipt.

This court should take note that the Muirkirk Association affairs are so neglected such that it hasn't got a resident agent as required by Maryland law. One Mr. Richard Hoffman, who is listed as the resident agent in the records of the State of Maryland Assessments and Taxation Office in Baltimore, MD, claims he has nothing to do with the Association and he has informed the Assessments Office and this court to have his name removed (see attached copy of his letter, dated September 15, 1993).

All this taken together, a direct service upon the defendant by certified U.S. mail with return receipt constitutes a proper service.

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(Emphasis added).

On October 13, 1993, Mr. Wege answered Kissi's summons via a letter to the clerk of the circuit court in which he stated that, in response to Kissi's writ of summons for motion to request audit of condo books, which he received on September 20th, he was enclosing a letter from Handwerger and Funkhouser, P.A., CPA, "acknowledging that they are preparing an audit for our condominium association with an expected date of completion of November 20, 1993." Despite Mr. Wege's answer, Kissi filed a motion for default judgment alleging that Mr. Wege had chosen to ignore the summons, and that, "[i]n other words, the defendant doesn't dispute our original complaint. This being the case, this court should hold [Mr. Wege] in default" On March 3, 1994, Mr. Wege submitted the required audits.

Muirkirk moved to vacate the default judgment arguing, *inter alia*, that although "[Kissi] asserts that proper service was made on September 20, 1993, . . . service of the Complaint and Summons was not proper." After vacating the default judgment entered against Muirkirk, a trial date was set for January 13, 1995. On August 15, 1994, however, during a hearing on Kissi's motion for reconsideration, the circuit court dismissed the case because of lack of service of process. The circuit court, in so ruling, stated that

the Court looked more carefully at the file, and found out defendant knowingly or unknowingly is one hundred percent correct, the reason being the party served the defendant. Rule 2-12J specifically states a party may not serve process in a case. Rule

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2-123 practically lets the world serve process with one specific exception, a party may not serve. The case law says the party's secretary can serve, the party's employee can serve, but the party may not serve process; and that is what has been done in this case.

Discussion

I. Service of Process

Under Rule 2-123(a), "[s]ervice of process may be made by a sheriff or, except as otherwise provided in this Rule, by a competent private person, 18 years of age or older, including an attorney of record, but not by a party to the action." In his affidavit of service of summons, Kissi declared that "I did serve the summons upon the defendant, Mr. Steve Wege, the president of the Council of Owners of the Muirkirk Condominium Association. The summons was delivered per U.S. certified mail to the defendant on September 20, 1993, as evidence [sic] by the enclosed return receipt." (Emphasis added).

Muirkirk alleged, and the trial court agreed that, because Rule 2-123(a) states that service of process cannot be made by a party to the action, the service of process in the case *sub judice* was improper because, Kissi, himself served the summons on Mr. Wege, albeit via U.S. certified mail. Kissi concedes that the rules governing service of process would not permit him, as plaintiff, to hand deliver the summons to Mr. Wege. Kissi argues, however, that the rules governing service of process do not forbid a party to mail a summons to the person(s) to be served, which is what Kissi did in the case *sub judice*. We agree and explain.

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The Rules permit service of process to "be made within this State . . . by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting: 'Restricted Delivery — show to whom, date, address of delivery.'" Rule 2-121(a). The Rules also state that a party to the action cannot personally deliver process upon a defendant. Rule 2-123(a). The Rules, however, do not state that a party to the action cannot deliver process upon a defendant via the mail; when any person serves process upon a defendant via the mail, the United States Postal Service is the serving vehicle.

When a plaintiff seeks to have a sheriff serve process, the plaintiff furnishes to the clerk the complaint, along with all other necessary papers and information. Rule 2-111. The clerk, in turn, "shall issue forthwith a summons for each defendant and shall deliver it, together with a copy of each paper filed, to the sheriff or other person designated by the plaintiff." Rule 2-112(a). When a plaintiff files the necessary papers with a clerk and when a plaintiff mails the necessary papers to the defendant, there are other persons involved in the serving process. In the first instance, the sheriff is the agent making service, and in the second case, the United States Postal Service and a postal carrier are the agents making service. In neither case does the plaintiff personally deliver a summons to the defendant. Accordingly, we hold that the circuit court erred in dismissing the case when it found that Kissi had served process in violation of the Rules when it mailed the summons, via certified mail, to Mr. Wege.

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When a party serves process via the mail, the Rules specify that it shall be certified mail, restricted delivery requested. Rule 2-121(a). In the case *sub judice*, Kissi delivered the summons to Mr. Wege via certified mail. Mr. Wege signed the original return receipt, which Kissi filed with the circuit court. Although Kissi did not request "Restricted Delivery," we hold that this does not affect the validity of the service of process in the case *sub judice*.

"Restricted Delivery" ensures that the proper party is served. In the case *sub judice*, we know that the proper party was served. Mr. Wege, the condominium association president at the time Kissi initiated this suit, was served with the summons. See Rule 2-124(c). "The Court of Appeals has said that the obvious purpose of the provisions of [the Rules] is to provide methods which will reasonably insure the ultimate reception by the corporation of actual notice that an action has been filed against it." *J. Whitson Rogers, Inc. v. Hanley*, 21 Md. App. 383, 392 (1974). Moreover, when "a corporation has actual notice, in fact, of the pendency of the action, due process of law is obviously afforded and unless the defect in service is *jurisdictional*, the corporation cannot effectively complain that it has not been afforded due process." *Id.* (citation omitted) (emphasis in original).

As indicated *supra*, in the case *sub judice*, the president of Muirkirk was served with process. Muirkirk, during oral argument, conceded that it was served with process. When actual service, upon a corporation, is established via certified mail, although not

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"Restricted Delivery," the technical defect is not a jurisdictional defect. If the corporation has received actual notice, and there was actual service, the corporation has been afforded due process. Because we hold that the service of process in the case *sub judice* was proper, we remand so that the circuit court may reach the merits of Kissi's claim against Muirkirk.

II.

Kissi alleges that "the attorney for the Appellee, on 7/5/94 did consult [the trial judge] in his chambers unbeknownst to us Since [the trial judge] didn't disclose to us the nature of said meeting and its purpose at the court hearing on 8/15/94, we believe that we have been denied our due process in this case" Kissi bases this allegation solely on a billing statement of professional services, from Muirkirk's attorney's law firm, which indicates a "conversation with [the trial judge's] chambers" occurring on July 5, 1994. Muirkirk, however, maintains that this notation on the billing sheet referred to a phone call from the trial judge's administrative assistant, to Muirkirk's counsel, "during which [the assistant] simply asked if the defendant intended to respond to the plaintiff's motion for continuance of the trial date. Counsel for the defendant had no ex-parte communication with [the trial judge] on this matter."

Kissi, aside from his allegation, provides us with no evidence to support that there was an ex-parte communication. A law firm billing statement indicating a conversation with a judge's chambers, standing alone, is not sufficient to establish that an

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U.S. BANK NATIONAL ASSOCIATION, trustee, vs. Antonio IBANEZ (and a consolidated case)

By adamg - 1/7/11 - 10:43 am

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U.S. BANK NATIONAL ASSOCIATION, trustee [FN1] vs. Antonio IBANEZ (and a consolidated case [FN2]). For ABFC 2005-OPT 1 Trust, ABFC Asset Backed Certificates, Series 2005-OPT 1. [FN3]].

No. SJC-10694.

October 7, 2010. - January 7, 2011.

Real Property, Mortgage, Ownership, Record title, Mortgage, Real estate, Foreclosure, Assignment, Notice, Foreclosure of mortgage.

CIVIL ACTIONS commenced in the Land Court Department on September 16 and October 30, 2008.

Motions for entry of default judgment and to vacate judgment were heard by Keith C. Long, J.

The Supreme Judicial Court granted an application for direct appellate review.

R. Bruce Allensworth (Phoebe S. Winder & Robert W. Sparkes, III, with him) for U.S. Bank National Association & another.

Paul R. Collier, III (Max W. Weinstein with him) for Antonio Ibanez.

Glenn F. Russell, Jr., for Mark A. LaRice & another.

The following submitted briefs for amici curiae:

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Martha Coakley, Attorney General, & John M. Stephan, Assistant Attorney General, for the Commonwealth.

Kevin Costello, Gary Klein, Shennan Kavanagh & Stuart Rossman for National Consumer Law Center & others.

Ward P. Graham & Robert J. Moriarty, Jr., for Real Estate Bar Association for Massachusetts, Inc

Mahe McDonnell, pro se.

Present: Marshall, C.J., Ireland, Spina, Cordy, Botsford, & Gants, JJ.

[FN4]

GANTS, J.

After foreclosing on two properties and purchasing the properties back at the foreclosure sales; U.S. Bank National Association (U.S. Bank), as trustee for the Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2006-Z; and Wells Fargo Bank, N.A. (Wells Fargo), as trustee for ABFC 2005 OPT 1 Trust, ABFC Asset Backed Certificates, Series 2005-OP1 1 (plaintiffs) filed separate complaints in the Land Court asking a judge to declare that they held clear title to the properties in fee simple. We agree with the judge that the plaintiffs, who were not the original mortgagees, failed to make the required showing that they were the holders of the mortgages at the time of foreclosure. As a result, they did not demonstrate that the foreclosure sales were valid to convey title to the subject properties, and their requests for a declaration of clear title were properly denied.

[FN5]

Procedural history. On July 5, 2007, U.S. Bank, as trustee, foreclosed on the mortgage of Antonio Ibanez, and purchased the Ibanez property at the foreclosure sale. On the same day, Wells Fargo, as trustee, foreclosed on the mortgage of Mark and Tammy LaRance, and purchased the LaRance property at that foreclosure sale.

In September and October of 2008, U.S. Bank and Wells Fargo brought separate actions in the Land Court under G.L. c. 240, § 6, which authorizes actions "to quiet or establish the title to land situated in the commonwealth or to remove a cloud from the title thereto." The two complaints sought identical

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relief. (1) a judgment that the right, title, and interest of the mortgagor (Ibanez or the LaRaces) in the property was extinguished by the foreclosure; (2) a declaration that there was no cloud on title arising from publication of the notice of sale in the Boston Globe; and (3) a declaration that title was vested in the plaintiff trustee in fee simple. U.S. Bank and Wells Fargo each asserted in its complaint that it had become the holder of the respective mortgage through an assignment made after the foreclosure sale.

In both cases, the mortgagors--Ibanez and the LaRaces--did not initially answer the complaints, and the plaintiffs moved for entry of default judgment. In their motions for entry of default judgment, the plaintiffs addressed two issues: (1) whether the Boston Globe, in which the required notices of the foreclosure sales were published, is a newspaper of "general circulation" in Springfield, the town where the foreclosed properties lay. See G.L. c. 244, § 14 (requiring publication every week for three weeks in newspaper published in town where foreclosed property lies, or of general circulation in that town); and (2) whether the plaintiffs were legally entitled to foreclose on the properties where the assignments of the mortgages to the plaintiffs were neither executed nor recorded in the registry of deeds until after the foreclosure sales. [FN6] The two cases were heard together by the Land Court, along with a third case that raised the same issues.

On March 26, 2009, judgment was entered against the plaintiffs. The judge ruled that the foreclosure sales were invalid because, in violation of G.L. c. 244, § 14, the notices of the foreclosure sales named U.S. Bank (in the Ibanez foreclosure) and Wells Fargo (in the LaRace foreclosure) as the mortgage holders where they had not yet been assigned the mortgages. [FN7] The judge found, based on each plaintiff's assertions in its complaint, that the plaintiffs acquired the mortgages by assignment only after the foreclosure sales and thus had no interest in the mortgages being foreclosed at the time of the publication of the notices of sale or at the time of the foreclosure sales. [FN8]

The plaintiffs then moved to vacate the judgments. At a hearing on the motions on April 17, 2009, the plaintiffs conceded that each complaint alleged a postnotice, postforeclosure sale assignment of the mortgage at issue, but they now represented to the judge that documents might exist that could show a prenotice, preforeclosure sale assignment of the mortgages. The judge granted the plaintiffs leave to produce such documents, provided they were produced in the form they existed in at the time the foreclosure sale was noticed and conducted. In response, the plaintiffs submitted hundreds of pages of documents to the judge, which they claimed established that the mortgages had been assigned to them

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before the foreclosures. Many of these documents related to the creation of the securitized mortgage pools in which the Ibanez and LaRae mortgages were purportedly included. [FN9]

The judge denied the plaintiffs' motions to vacate judgment on October 14, 2009, concluding that the newly submitted documents did not alter the conclusion that the plaintiffs were not the holders of the respective mortgages at the time of foreclosure. We granted the parties' applications for direct appellate review.

Factual background. We discuss each mortgage separately, describing when appropriate what the plaintiffs allege to have happened and what the documents in the record demonstrate. [FN10]

The Ibanez mortgage. On December 1, 2005, Antonio Ibanez took out a \$103,500 loan for the purchase of property at 20 Crosby Street in Springfield, secured by a mortgage to the lender, Rose Mortgage, Inc. (Rose Mortgage). The mortgage was recorded the following day. Several days later, Rose Mortgage executed an assignment of this mortgage in blank, that is, an assignment that did not specify the name of the assignee. [FN11] The blank space in the assignment was at some point stamped with the name of Option One Mortgage Corporation (Option One) as the assignee, and that assignment was recorded on June 7, 2006. Before the recording, on January 23, 2006, Option One executed an assignment of the Ibanez mortgage in blank.

According to U.S. Bank, Option One assigned the Ibanez mortgage to Lehman Brothers Bank, FSB, which assigned it to Lehman Brothers Holdings Inc., which then assigned it to the Structured Asset Securities Corporation, [FN12] which then assigned the mortgage, pooled with approximately 1,220 other mortgage loans, to U.S. Bank, as trustee for the Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2006-Z. With this last assignment, the Ibanez and other loans were pooled into a trust and converted into mortgage-backed securities that can be bought and sold by investors--a process known as securitization.

For ease of reference, the chain of entities through which the Ibanez mortgage allegedly passed before the foreclosure sale is:

Rose Mortgage, Inc. (originator)

Option One Mortgage Corporation (record holder)

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Lehman Brothers Bank, FSB

Lehman Brothers Holdings Inc. (seller)

Structured Asset Securities Corporation (depositor)

U.S. Bank National Association, as trustee for the Structured Asset Securities Corporation Mortgage Pass Through Certificates, Series 2006-Z

According to U.S. Bank, the assignment of the Ibanez mortgage to U.S. Bank occurred pursuant to a December 1, 2006, trust agreement, which is not in the record. What is in the record is the private placement memorandum (PPM), dated December 26, 2006, a 273-page, unsigned offer of mortgage-backed securities to potential investors. The PPM describes the mortgage pools and the entities involved, and summarizes the provisions of the trust agreement, including the representation that mortgages "will be" assigned into the trust. According to the PPM, "[e]ach transfer of a Mortgage Loan from the Seller [Lehman Brothers Holdings Inc.] to the Depositor [Structured Asset Securities Corporation] and from the Depositor to the Trustee [U.S. Bank] will be intended to be a sale of that Mortgage Loan and will be reflected as such in the Sale and Assignment Agreement and the Trust Agreement, respectively." The PPM also specifies that "[e]ach Mortgage Loan will be identified in a schedule appearing as an exhibit to the Trust Agreement." However, U.S. Bank did not provide the judge with any mortgage schedule identifying the Ibanez loan as among the mortgages that were assigned in the trust agreement.

On April 17, 2007, U.S. Bank filed a complaint to foreclose on the Ibanez mortgage in the Land Court under the Servicemembers Civil Relief Act (Servicemembers Act), which restricts foreclosures against active duty members of the uniformed services. See 50 U.S.C. Appendix §§ 501, 511, 533 (2006 & Supp. II 2008). [FN13] In the complaint, U.S. Bank represented that it was the "owner (or assignee) and holder" of the mortgage given by Ibanez for the property. A judgment issued on behalf of U.S. Bank on June 26, 2007, declaring that the mortgagor was not entitled to protection from foreclosure under the Servicemembers Act. In June, 2007, U.S. Bank also caused to be published in the Boston Globe the notice of the foreclosure sale required by G.L. c. 244, § 14. The notice identified U.S. Bank as the "present holder" of the mortgage.

At the foreclosure sale on July 5, 2007, the Ibanez property was purchased by U.S. Bank, as trustee for the securitization trust, for \$94,350, a value significantly less than the outstanding debt and the estimated market value of the property. The foreclosure deed (from U.S. Bank, trustee, as the purported

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holder of the mortgage, to U.S. Bank, trustee, as the purchaser) and the statutory foreclosure affidavit were recorded on May 23, 2008. On September 2, 2008, more than one year after the sale, and more than five months after recording of the sale, American Home Mortgage Servicing, Inc., "as successor-in interest" to Option One, which was until then the record holder of the Ibanez mortgage, executed a written assignment of that mortgage to U.S. Bank, as trustee for the securitization trust. [FN14] This assignment was recorded on September 11, 2008.

The LaRace mortgage. On May 19, 2005, Mark and Tammy LaRace gave a mortgage for the property at 6 Brockburn Street in Springfield to Option One as security for a \$103,200 loan; the mortgage was recorded that same day. On May 26, 2005, Option One executed an assignment of this mortgage in blank.

According to Wells Fargo, Option One later assigned the LaRace mortgage to Bank of America in a July 28, 2005, flow sale and servicing agreement. Bank of America then assigned it to Asset Backed Funding Corporation (ABFC) in an October 1, 2005, mortgage loan purchase agreement. Finally, ABFC pooled the mortgage with others and assigned it to Wells Fargo, as trustee for the ABFC 2005-OPT 1 Trust, ABFC Asset Backed Certificates, Series 2005-OPT 1, pursuant to a pooling and servicing agreement (PSA)

For ease of reference, the chain of entities through which the LaRace mortgage allegedly passed before the foreclosure sale is:

- Option One Mortgage Corporation (originator and record holder)
- Bank of America
- Asset Backed Funding Corporation (depositor)
- Wells Fargo, as trustee for the ABFC 2005-OPT 1, ABFC Asset-Backed Certificates, Series 2005-OPT 1

Wells Fargo did not provide the judge with a copy of the flow sale and servicing agreement, so there is no document in the record reflecting an assignment of the LaRace mortgage by Option One to Bank of America. The plaintiff did produce an unexecuted copy of the mortgage loan purchase agreement, which was an exhibit to the PSA. The mortgage loan purchase agreement provides that Bank of America, as seller, "does hereby agree to and does hereby sell, assign, set over, and otherwise convey to the Purchaser [ABFC], without recourse, on the Closing Date ... all of its right, title and interest in and to each Mortgage Loan." The agreement makes reference to a schedule listing the assigned mortgage:

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loans, but this schedule is not in the record, so there was no document before the judge showing that the LaRacé mortgage was among the mortgage loans assigned to the ABFC.

Wells Fargo did provide the judge with a copy of the PSA, which is an agreement between the ABFC (as depositor), Option One (as servicer), and Wells Fargo (as trustee), but this copy was downloaded from the Securities and Exchange Commission website and was not signed. The PSA provides that the depositor "does hereby transfer, assign, set over and otherwise convey to the Trustee, on behalf of the Trust ... all the right, title and interest of the Depositor ... in and to ... each Mortgage Loan identified on the Mortgage Loan Schedules," and "does hereby deliver" to the trustee the original mortgage note, an original mortgage assignment "in form and substance acceptable for recording," and other documents pertaining to each mortgage.

The copy of the PSA provided to the judge did not contain the loan schedules referenced in the agreement. Instead, Wells Fargo submitted a schedule that it represented identified the loans assigned in the PSA, which did not include property addresses, names of mortgagors, or any number that corresponds to the loan number or servicing number on the LaRacé mortgage. Wells Fargo contends that a loan with the LaRacé property's zip code and city is the LaRacé mortgage loan because the payment history and loan amount matches the LaRacé loan.

On April 27, 2007, Wells Fargo filed a complaint under the Servicemembers Act in the Land Court to foreclose on the LaRacé mortgage. The complaint represented Wells Fargo as the "owner (or assignor) and holder" of the mortgage given by the LaRacés for the property. A judgment issued on behalf of Wells Fargo on July 3, 2007, indicating that the LaRacés were not beneficiaries of the Servicemembers Act and that foreclosure could proceed in accordance with the terms of the power of sale. In June, 2007, Wells Fargo caused to be published in the Boston Globe the statutory notice of sale, identifying itself as the "present holder" of the mortgage.

At the foreclosure sale on July 5, 2007, Wells Fargo, as trustee, purchased the LaRacé property for \$120,397.03, a value significantly below its estimated market value. Wells Fargo did not execute a statutory foreclosure affidavit or foreclosure deed until May 7, 2008. That same day, Option One, which was still the record holder of the LaRacé mortgage, executed an assignment of the mortgage to Wells Fargo as trustee; the assignment was recorded on May 12, 2008. Although executed ten months after

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the foreclosure sale, the assignment declared an effective date of April 18, 2007, a date that preceded the publication of the notice of sale and the foreclosure sale.

Discussion. The plaintiffs brought actions under G.L. c. 240, § 6, seeking declarations that the defendant mortgagors' titles had been extinguished and that the plaintiffs were the fee simple owners of the foreclosed properties. As such, the plaintiffs bore the burden of establishing their entitlement to the relief sought. *Sheriff's Meadow Found., Inc. v. Bay-Courte Edgartown, Inc.*, 401 Mass. 267, 269 (1987). To meet this burden, they were required "not merely to demonstrate better title ... than the defendants possess, but ... to prove sufficient title to succeed in [the] action." *Id.* See *NationsBanc Mtge. Corp. v. Eisenhauer*, 49 Mass.App.Ct. 727, 730 (2000). There is no question that the relief the plaintiffs sought required them to establish the validity of the foreclosure sales on which their claim to clear title rested.

Massachusetts does not require a mortgage holder to obtain judicial authorization to foreclose on a mortgaged property. See G.L. c. 183, § 21; G.L. c. 244, § 14. With the exception of the limited judicial procedure aimed at certifying that the mortgagor is not a beneficiary of the Servicemembers Act, a mortgage holder can foreclose on a property, as the plaintiffs did here, by exercise of the statutory power of sale, if such a power is granted by the mortgage itself. See *Beaton v. Land Court*, 367 Mass. 385, 390-391, 393, appeal dismissed, 423 U.S. 806 (1975).

Where a mortgage grants a mortgage holder the power of sale, as did both the Ibanez and LaRice mortgages, it includes by reference the power of sale set out in G.L. c. 183, § 21, and further regulated by G.L. c. 244, §§ 11-17C. Under G.L. c. 183, § 21, after a mortgagor defaults in the performance of the underlying note, the mortgage holder may sell the property at a public auction and convey the property to the purchaser in fee simple, "and such sale shall forever bar the mortgagor and all persons claiming under him from all right and interest in the mortgaged premises, whether at law or in equity." Even where there is a dispute as to whether the mortgagor was in default or whether the party claiming to be the mortgage holder is the true mortgage holder, the foreclosure goes forward unless the mortgagor files an action and obtains a court order enjoining the foreclosure. [FN15] See *Beaton v. Land Court*, *supra* at 393.

Recognizing the substantial power that the statutory scheme affords to a mortgage holder to foreclose without immediate judicial oversight, we adhere to the familiar rule that "one who sells under a power

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[of sale] must follow strictly its terms. If he fails to do so there is no valid execution of the power, and the sale is wholly void." *Moore v. Dick*, 187 Mass. 207, 211 (1905). See *Roche v. Farnsworth*, 106 Mass. 509, 513 (1871) (power of sale contained in mortgage "must be executed in strict compliance with its terms") See also *McGreevey v. Charlestown Five Cents Sav. Bank*, 294 Mass. 480, 484 (1936). [FN16]

One of the terms of the power of sale that must be strictly adhered to is the restriction on who is entitled to foreclose. The "statutory power of sale" can be exercised by "the mortgagee or his executors, administrators, successors or assigns." G.L. c. 183, § 21. Under G.L. c. 244, § 14, "[t]he mortgagee or person having his estate in the land mortgaged, or a person authorized by the power of sale, or the attorney duly authorized by a writing under seal, or the legal guardian or conservator of such mortgagee or person acting in the name of such mortgagee or person" is empowered to exercise the statutory power of sale. Any effort to foreclose by a party lacking "jurisdiction and authority" to carry out a foreclosure under these statutes is void. *Chace v. Morse*, 189 Mass. 559, 561 (1905), citing *Moore v. Dick*, supra. See *Davenport v. HSBC Bank USA*, 275 Mich.App. 344, 347-348 (2007) (attempt to foreclose by party that had not yet been assigned mortgage results in "structural defect that goes to the very heart of defendant's ability to foreclose by advertisement," and renders foreclosure sale void)

A related statutory requirement that must be strictly adhered to in a foreclosure by power of sale is the notice requirement articulated in G.L. c. 244, § 14. That statute provides that "no sale under such power shall be effectual to foreclose a mortgage, unless, previous to such sale," advance notice of the foreclosure sale has been provided to the mortgagee, to other interested parties, and by publication in a newspaper published in the town where the mortgaged land lies or of general circulation in that town. Id. "The manner in which the notice of the proposed sale shall be given is one of the important terms of the power, and a strict compliance with it is essential to the valid exercise of the power." *Moore v. Dick*, supra at 212. See *Chace v. Morse*, supra ("where a certain notice is prescribed, a sale without any notice, or upon a notice lacking the essential requirements of the written power, would be void as a proceeding for foreclosure"). See also *McGreevey v. Charlestown Five Cents Sav. Bank*, supra. Because only a present holder of the mortgage is authorized to foreclose on the mortgaged property, and because the mortgagor is entitled to know who is foreclosing and selling the property, the failure to identify the holder of the mortgage in the notice of sale may render the notice defective and the foreclosure sale void. [FN17] See *Roche v. Farnsworth*, supra (mortgage sale void where notice of sale

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statutes that govern it. As the opinion of the court notes, such strict compliance is necessary because Massachusetts is both a title theory State and allows for extrajudicial foreclosure.

The type of sophisticated transactions leading up to the accumulation of the notes and mortgages in question in these cases and their securitization, and, ultimately the sale of mortgaged-backed securities, are not barred nor even burdened by the requirements of Massachusetts law. The plaintiff banks, who brought these cases to clear the titles that they acquired at their own foreclosure sales, have simply failed to prove that the underlying assignments of the mortgages that they allege (and would have) entitled them to foreclose ever existed in any legally cognizable form before they exercised the power of sale that accompanies those assignments. The court's opinion clearly states that such assignments do not need to be in recordable form or recorded before the foreclosure, but they do have to have been effectuated.

What is more complicated, and not addressed in this opinion, because the issue was not before us, is the effect of the conduct of banks such as the plaintiffs here, on a bona fide third-party purchaser who may have relied on the foreclosure title of the bank and the confirmative assignment and affidavit of foreclosure recorded by the bank subsequent to that foreclosure but prior to the purchase by the third party, especially where the party whose property was foreclosed was in fact in violation of the mortgage covenants, had notice of the foreclosure, and took no action to contest it.

FN1. For the Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2006-Z.

FN2. Wells Fargo Bank, N.A., trustee, vs. Mark A. LaRice & another.

FN3. The Appeals Court granted the plaintiffs' motion to consolidate these cases.

FN4. Chief Justice Marshall participated in the deliberation on this case prior to her retirement.

FN5. We acknowledge the amicus briefs filed by the Attorney General; the Real Estate Bar Association for Massachusetts, Inc.; Marie McDonnell; and the National Consumer Law Center, together with Darlene Manson, Germano DePina, Robert Lane, Ann Coiley, Roberto Szumik, and Geraldo Dosanjós.

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FN6. The uncertainty surrounding the first issue was the reason the plaintiffs sought a declaration of clear title in order to obtain title insurance for these properties. The second issue was raised by the judge in the LaRace case at a January 5, 2009, case management conference.

FN7. The judge also concluded that the Boston Globe was a newspaper of general circulation in Springfield, so the foreclosures were not rendered invalid on that ground because notice was published in that newspaper.

FN8. In the third case, LaSalle Bank National Association, trustee for the certificate holders of Bear Stearns Asset Backed Securities I, LLC Asset Backed Certificates, Series 2007-HE2 vs. Freddy Rosario, the judge concluded that the mortgage foreclosure "was not rendered invalid by its failure to record the assignment reflecting its status as holder of the mortgage prior to the foreclosure since it was, in fact, the holder by assignment at the time of the foreclosure, it truthfully claimed that status in the notice, and it could have produced proof of that status (the unrecorded assignment) if asked."

FN9. On June 1, 2009, attorneys for the defendant mortgagors filed their appearance in the cases for the first time.

FN10. The LaRace defendants allege that the documents submitted to the judge following the plaintiffs' motions to vacate judgment are not properly in the record before us. They also allege that several of these documents are not properly authenticated. Because we affirm the judgment on other grounds, we do not address these concerns, and assume that these documents are properly before us and were adequately authenticated.

FN11. This signed and notarized document states: "FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to all beneficial interest under that certain Mortgage dated December 1, 2005 executed by Antonio Ibanez...."

FN12. The Structured Asset Securities Corporation is a wholly owned direct subsidiary of Lehman Commercial Paper Inc., which is in turn a wholly owned, direct subsidiary of Lehman Brothers Holdings Inc.

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FN13. As implemented in Massachusetts, a mortgage holder is required to go to court to obtain a judgment declaring that the mortgagor is not a beneficiary of the Servicemembers Act before proceeding to foreclosure. St.1943, c. 57, as amended through St.1998, c. 142.

FN14. The Land Court judge questioned whether American Home Mortgage Servicing, Inc., was in fact a successor in interest to Option One. Given our affirmance of the judgment on other grounds, we need not address this question.

FN15. An alternative to foreclosure through the right of statutory sale is foreclosure by entry, by which a mortgage holder who peaceably enters a property and remains for three years after recording a certificate or memorandum of entry forecloses the mortgagor's right of redemption. See G.L. c. 244, §§ 1, 2; Joyner v. Lenox Sav. Bank, 322 Mass. 46, 52-53 (1947). A foreclosure by entry may provide a separate ground for a claim of clear title apart from the foreclosure by execution of the power of sale. See, e.g., Gabriel v. Michelson, 297 Mass. 227, 228-229 (1937). Because the plaintiffs do not claim clear title based on foreclosure by entry, we do not discuss it further.

FN16. We recognize that a mortgage holder must not only act in strict compliance with its power of sale but must also "act in good faith and ... use reasonable diligence to protect the interests of the mortgagor," and this responsibility is "more exacting" where the mortgage holder becomes the buyer at the foreclosure sale, as occurred here. See Williams v. Resolution GGF Oy, 417 Mass. 377, 382-383 (1994), quoting Seppala & Aho Constr. Co. v. Petersen, 373 Mass. 316, 320 (1977). Because the issue was not raised by the defendant mortgagors or the judge, we do not consider whether the plaintiffs breached this obligation.

FN17. The form of foreclosure notice provided in G.L. c. 244, § 14, calls for the present holder of the mortgage to identify itself and sign the notice. While the statute permits other forms to be used and allows the statutory form to be "altered as circumstances require," G.L. c. 244, § 14, we do not interpret this flexibility to suggest that the present holder of the mortgage need not identify itself in the notice

FN18. The plaintiffs were not authorized to foreclose by virtue of any of the other provisions of G.L. c. 244, § 14: they were not the guardian or conservator, or acting in the name of, a person so authorized; nor were they the attorney duly authorized by a writing under seal.

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FN19. Ibanez challenges the validity of this assignment to Option One. Because of the failure of U.S. Bank to document any preforeclosure sale assignment or chain of assignments by which it obtained the Ibanez mortgage from Option One, it is unnecessary to address the validity of the assignment from Rose Mortgage to Option One.

FN20. The plaintiffs have not pressed the procedural question whether the judge exceeded his authority in rendering judgment against them on their motions for default judgment, and we do not address it here.

FN21. Title Standard No. 58(3) issued by the Real Estate Bar Association for Massachusetts continues: "However, if the Assignment is not dated prior, or stated to be effective prior, to the commencement of a foreclosure, then a foreclosure sale after April 19, 2007 may be subject to challenge in the Bankruptcy Court," citing *In re Schwartz*, 366 B.R. 265 (Bankr.D.Mass.2007).

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At the District Court
Upper Meriden, Conn., Ct.

3/11/05.

To The Honorable Judge Thomas Smith

Re: Request to dissolve liens # CAL 03-16744
and CAL 03-16745 See pages 2-6.

Please, note in the public records that the
above cited liens should be promptly
dissolved because we have fully
paid off the underlying Judgment in a
combined sum of about \$55,000 as
of 10/04.

Apparently, Emil through the Judgment creditor
Pranco attorney, has refused to remove these
two liens but his deliberate action
amounts to suborning of perjury
and you should sanction him and
grant us the proper remedy because
we are the victims of several felonious
acts of his which the U.S. District Court
in Greenbelt has turned a blind eye on.

Thank you and promptly respond by sending us a
copy of the dissolution of the said liens by
3/15/05.

Respectfully Submitted by D. Kissel
202 675-6365
Defendant/Debtor.

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for DK

US District Court
Greenbelt, Maryland

Pramco II, LLC,

Plaintiff

Criminal Contempt
Case #: PJM 03-0473

David Kissi, et al

Defendants

Affidavit Seeking Judge Messitte's Permission To
Release Funds Due Us From the Court Escrow Or
Appoint Us Counsel To Fight Emil Hirsch's Criminal Charges

I, David Kissi, am over 18 years of age and I have a personal knowledge of this matter because I am a Defendant in a purely civil debt collection case that has been turned into a criminal matter. And I am making the following assertions under oath:

- I. That as a result of Judge Peter J. Messitte's summary judgment he decreed on 5/03, my spouse, Edith, and I have lost about 13 out of 15 properties we owned just a year ago. These said 13 properties worth about \$1.5 million were liquidated in a 'fire sale' by the Honorable Judge Peter J. Messitte to satisfy Pramco's disputed judgment of \$755,000 which the Honorable Judge decreed without holding a "hearing" on its merits that my properties should be sold off to pay a debt which actually did not exceed \$375,000. And even though Federal and Maryland rules say that if there is a genuine dispute between a lender and borrower, in an equity case, the court should hold a "hearing" on its merit, but Judge Messitte did ignore this safeguard, too.
- II. In addition to all the above, Pramco's brutal attorney, one Emil Hirsch, of O'Connor and Hannan has consistently defied and has shown open contempt to this court's proceedings without impunity. To cite one specific example, he garnished my wife's paycheck from 10/03 through 10/31/04. But Hirsch's attachment did constitute a contempt of Messitte's order of 12/17/04 that ordered Hirsch to ungarnish Edith's paycheck. But Hirsch ignored him without impunity. This garnishment, in the form of a forfeiture of \$1,200 per month deepened our financial woes so that we couldn't pay our bills like BGE, Verizon phone, doctor's bills and our lawyers. Prior to that we had spent about \$150,000 in legal fees that brought us no results. Not to mention another \$100,000 we have forfeited in rent when we lost our 13 properties to Pramco. See Appendix A & B on Affidavits on legal fees

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we actually paid.

III. That our two Beltsville homes are our only real properties remaining. These two properties are in such decrepit condition because we have not been able to do repairs on them since we don't have the money.

So having established the basis of our hardship and having made it clear we don't personally have the funds to hire a competent law firm to represent us in the Re-Sentencing phase, we are asking Judge Messitte to promptly release the \$25,000 - \$30,000 net residue now being held in his court's escrow i.e., the remaining funds from the forced sale of Ammendale Trust's assets in order to hire a good and prominent law firm like Steptoe and Johnson or Wilmer Cutler and Pickering who have the good lawyers that specialize in multiple skills such as Money and Banking and Bankruptcy, Trust and criminal procedures and Civil Rights. These are matters which a 'one-man shop' isn't equipped to handle effectively on our behalf.

But if Messitte can't comply with the above, then he should rely on our assertions in this Affidavit to hire same on our behalf at the court's expense. At least our dismal present financial condition and the threat of imprisonment makes us eligible for such assistance. See the applicable Federal penal code.

D.K. 11/14/04.
D.K. 11/18/04.

Respectfully Submitted by: _____

Trustee, David Kissi, Defendant
4305 Ammendale Rd.
Beltsville, MD 20705
Tel: 301-937-2144

Certificate of Service

That on this 11th day of November 2004, I did mail copies of this Affidavit to Judge Peter J. Messitte and other interested parties.

Subscribed and sworn to before me a Notary Public for the State of Maryland

and the County of Frederick. My Commission Expires: _____

Stephanie B. Montgomery
Notary Public State of Maryland
My Commission Expires April 3, 2007

Signed by: *[Signature]*

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U.S. District Court
Greenbelt, MD

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

2005 APR 18 AM 10:39

Pramco, II LLC
Plaintiff

v.

David Kissi, et al
Defendant

Case #: PJM 03-0473 BY _____ DEPUTY

AFFIDAVIT

**Our Fifth Motion To Judge Peter J. Messitte To Disqualify Himself
From All Our Cases Pending Before Him For Abusing His Discretion
Combined With A Request To Postpone the 4/22/05 Hearing And
Freeze All Proceedings Until Grand Jury Proceedings Are Over**

- i. That Judge Peter J. Messitte improperly appointed Special Prosecutor Christopher Mead in 8/03 to prosecute us over our alleged contempt of his Temporary Restraining Order he arbitrarily imposed upon us in 8/03 which Emil Hirsch, Pramco's attorney or the Plaintiff in this case, instigated with Messitte to criminalize a purely civil debt collection matter for a claim that didn't amount to more than \$300,000 according to claims Pramco or its predecessor, The Money Store, had filed in Judge E. Stephen Derby's Bankruptcy Courtroom against our Estate DK&R Company. But Hirsch, relying on his friendship with Messitte, somehow was able to skirt bankruptcy laws and improperly seize \$755,000 of our assets through Messitte's courtroom, instead of collecting the \$300,000 Pramco was actually due from DK&R's Chapter 7 Estate.
- ii. That pursuant to the above in 8/03, Messitte, without consulting, U.S. Attorney Thomas DiBiagio, at the U.S. Attorney's Office in Maryland, did arbitrarily select one Christopher Mead, an attorney in private practice in D.C. as a Special Prosecutor. But this was an abuse of Messitte's discretion because the U.S. Attorney's Office ought to have been offered a chance first to review whether the merits of the contempt charges against us warrant prosecution first. And if the U.S. Attorney's Office declined to take the case, then Messitte could have appointed Christopher Mead. See Federal Practice and Procedure Rule 42 § 711. See p. 7.
- iii. That Messitte's bias to use his bench and black robe to ruin us was clearly shown when in 5/04, in a mini-trial at the bench, he initiated a plea bargain between Christopher Mead, Paul Kramer and Granger Maher. That it did emerge from our research that Messitte, as the presiding judge,

ought not to have participated and personally crafted the said terms of the plea bargain because this is forbidden by Federal statute. See Federal Rules of Criminal Procedure, Rule 11(e) and 161 ALR Fed 537 pp. 8 - 9. Also, not only were Mead and Messitte not suppose to have participated in the draft of the plea, but Messitte ignored the fact that Paul Kramer's associate, Granger Maher, who was pleading on Edith's behalf wasn't even permitted to practice in Federal Court. See p. 10. So, it is not only that Messitte has shown bias and prejudice that requires he should recuse himself from all our cases, but also Maryland requires that after he had illegally, openly, and actively participated in crafting our plea agreement which we rejected on 11/22/04, Messitte ought to have excused himself from any further trials of ours, i.e. matters involving the Second Temporary Restraining Order he imposed upon us in 1/28/05, Emil Hirsch's motion for partial summary judgment and also his motion to impose a permanent injunction upon us. These remaining matters Messitte should promptly excuse himself from and the court should assign an impartial judge to them. See Maryland Rule 4-243(5) – re: Withdrawal of Plea. See p. 11. In sum, after we rejected the plea on 11/22/04 all actions Messitte has taken thereafter are illegal and not enforceable because he has also abused his discretion and willfully violated Maryland and Federal statutes. In sum, we repeat for at least the fifth time that Messitte should promptly excuse himself from all further trials and proceeds involving us.

- iv. That Messitte failed to acknowledge the corruption and the misdeeds of Pramco's Attorney Emil Hirsch that caused us to allegedly violate the said Restraining Order and therefore any contempt charge isn't enforceable. See p 12-13 - 76 ALR 4th 982 which references the Code of Judicial Conduct, Am Jur 2d, Desk Book, Item 90. For example, when Hirsch allegedly posted a \$50,000 bond to secure and ratify the Restraining Order in 8/10/03, he never sent us a copy of the bond notice. This is a violation of the Federal Rule governing Certificates of Service. So we assert that any of our alleged violations that occurred after 8/10/03 amount to harmless errors because of Emil Hirsch's neglect and contributory corruption. See Federal Sentencing Guidelines Manual dated November 1, 2004, §5K2.7 extract p. 14.
- v. That Messitte, by his own general preconceived statements, has indicated that he has abused his discretion by prejudging our guilt and he should therefore recuse himself from all our cases before him. See transcripts going back to 2002 where Messitte indicated we were deadbeats even before the trial started. See p. 15. Also, see Maryland Rule, 3-505, p.16. Also, see

Perkins v Spivey, 113 L.Ed.2d 243; U.S. v Microsoft, 53 F.3d 568 and U.S. v. Eddie Antar, 56 F.3d 1448.

- vi. That we also ask Messitte to step aside because Federal Criminal Procedure Rule 42(b) says that in a proceeding such as ours where we have criticized Messitte from the courtroom to the big newspapers and all over the world, he should disqualify himself from all our proceedings involving him. See p. 17 - Federal Criminal Procedure Rule 42(b). That my personal criticism of Messitte prompted him in retaliation to criminalize what is a purely civil debt collection matter into a criminal shake down. See 42 USCA § 713. Also, see pp. 18-23 for our criticisms of Messitte going back to 2003. So Messitte ought to have disqualified himself and given the case back to another judge.
- vii. That Messitte also abused his discretion by failing to sanction or discipline Emil Hirsch for filing false liens on our properties for \$1.2 million instead of the \$755,000 Messitte granted him in disputed claims that ought not to have been more than \$300,000. See p. 28-37. Emil Hirsch actually warrants punishment for the several crimes and misdemeanors he has maliciously and deliberately brought against us with the help of Messitte. In fact, Hirsch has nearly driven us to a financial edge and mental anguish and such that we have incurred about \$165,000 in legal bills in defending ourselves in a purely civil debt matter he and Messitte have succeeded to criminalize. See pp. 24-27.
- viii. That all this reinforces our charge that Messitte has abused his discretion. And this being the case, Messitte should disqualify himself from any further proceedings because any reasonable adult can safely surmise that we are not going to get a fair hearing from Messitte on its merits. See p.16 - Maryland Rule 3-505.
- ix. That we suggest this court should ask Kramer to release the \$9,067 Messitte sent Kramer in 12/04 so that we can go and hire a law firm to protect our interest before this court and protect us before the Grand Jury if needed. See pp.38-39. As shown by Paul Kramer's own note to us, he is no longer our attorney. See p. 42. But to maliciously and deliberately punish us, Messitte did remit our money to Paul Kramer despite Kramer's own statement that he doesn't represent us and our request to Messitte not to give the money to Kramer. See p. 40-42. All this demonstrates Messitte's bias and reinforces our motion that he should promptly recuse himself so that this court can assign our case to an impartial jurist to recompute the exact amount of money we owe Pramco which is not more than \$300,000. And that all the Restraining Orders should be rescinded so that we can have fresh start to rebuild our lives

Certificate of Service

That on this day of 4/16/05, I did send copies of this Request per the U.S. Postmaster to the following:

1. Noel Hillman, Chief, US Justice Department, Criminal Division, Public Integrity Section, DC
2. Albert Moskowitz, Chief US Justice Department, Criminal Division, Civil Rights Section, DC
3. US Attorney General, Alberto Gonzales, US Justice Department, Washington, DC
4. Judge E. Stephen Derby, US Bankruptcy Court, Baltimore, MD
5. Chief Judge Schneider, US Bankruptcy Court, Baltimore, MD
6. Judge Paul Mannes, US Bankruptcy Court, Greenbelt, MD
7. David Wells, President, Key Bank, Owings Mills, MD
8. US Trustee Mark Neal, US Trustee's Office, Washington, DC
9. Richard Kremen, Piper Rudnick, Baltimore, MD
10. Asst. US Trustee Katherine Levin, DK&R's former attorney in private practice
11. US Supreme Court Chief Judge William Rehnquist
12. Robert S. Mueller, III, FBI Director
13. Allan F. Loucks, U.S. Attorney for Maryland, Baltimore
14. Ms. M. Rahman, Assistant U.S. Attorney for Southern Maryland c/o: the US Courthouse
Greenbelt
15. Retired Judge Edward Angeletti, Baltimore
16. U.S. Grand Jury c/o: Judge Charles Day, Greenbelt, MD
17. U.S. Probation Officer Jay Wheitzel, Greenbelt, MD
18. Gordon Lee, Senior Partner, Boss of E. Hirsch at O'Connor and Hannan

January 1, 2005

To: Counsel Ronald Schwartz
Tel: 301-474-2300 Fax: 301-474-6607

Re: Proposal To Settle Your Disputed Legal Billing
And Retainer Agreement. See p. 2ff.

The retainer agreement I had with you in 9/03 said, among other things, that out of the \$11,000 initial cash I paid you, you were going to put about \$5,800 into a special escrow account which sole purpose was to pay for my bankruptcy petition whether Messitte's Temporary Restraining Order of 8/03 allowed it or not. And that you were going to earmark the \$5,200 net balance for non-bankruptcy litigation.

However, as it did turn out, you didn't file for bankruptcy after you had spoken with your fellow Jewish attorney's Emil Hirsch, Paul Kramer, Stanley Alpert and Chuck Michaels because they all teamed up to discourage you from blocking Hirsch to collect the \$755,000 judgment, albeit, a bogus one.

But eventually it appears from the accounting you provided me recently that you started tapping the \$5,800 earmarked for the bankruptcy petition to pay for time incurred for non-bankruptcy litigation. Now, the question is, if I didn't give you any written permission to tap the non-bankruptcy escrow, then you should have sought my written permission then you and I ought to have jointly amended the written agreement before taking funds earmarked for bankruptcy. This is certainly an actionable misconduct that I can refer to the Maryland Attorney General's Office and the Maryland Attorney Grievance Commission in Annapolis, MD. But I imagine, as a Jewish attorney who loves debate over every subject, you have already prepared a perfect excuse for this one. And since you didn't submit any bill to me for non-bankruptcy matters that I refused to pay, you can't make an issue that you had to tap the funds because I didn't have the money.

So, having walked out of the case after you have happily collected from me a combined sum of \$15,000 over a one year period, I am now faced with a dilemma to come up with about \$10,000 for a law firm to perfect my million dollar claim against DK&R's Estate. As matters now stand, Judge E. Stephen Derby did acknowledge on the record that since R.M. Kremen didn't object to my million dollar claim when I initially filed it in 2001 and 2003, I now have the right to have it perfected to be considered by the court for payment because my claim as a creditor looks more valid since other creditors who filed their claims against DK&R's Estate after me all have been paid. But since there is no doubt Trustee R.M. Kremen of Piper Rudnick is trying to steal the net residue of about \$200,000 left in DK&R's Estate by gouging it at \$500 per hour, I need money right now to retain a competent law firm to either negotiate with him whereby I collect 2/3 of the \$200,000 and he can retain 1/3. But if no agreement can be reached, then I will vigorously contest him for his bogus claim.

So I suggest that you voluntarily refund me 50% or \$7,500 out of the \$15,000 grand total I paid you to represent me in cases you chose not to pursue, i.e., the bankruptcy. But, if your answer to this is nay, then I will refer this matter to mediation at the Maryland Attorney Grievance Commission in Annapolis, MD. And I will also file a complaint of fraud against you at the Maryland Attorney General's Office. Thanks and promptly respond by 1/5/05.

Edith Truvillion, An Unhappy Client

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for U.S. Judge Derby's Commission # 0661-175D

Affidavit in Re: U.S. Case # PJM 03-0473

March 22, 2005

FILED
2005 MAR 22 P 3:20
CLERK OF COURT
BALTIMORE MARYLAND

To: Melvin Hirshman, Bar Counsel
Attorney Grievance Commission of Maryland
100 Community Place, Suite 3301
Crownsville, MD 21032-2027

Re: **Affidavit: Motion To Reconsider To Have Baltimore Attorney Paul R. Kramer Censored And He Should Return Our \$9,067 plus 10% Interest That U.S. Judge Peter J. Messitte of the Greenbelt Courthouse Has Sent Him In Error In 12/04**

I, David Kissi, the Affiant, am making the following assertion to counter Paul R. Kramer, my former attorney's response as to the reason why he won't release to me about \$9,067 in funds that U.S. Judge Peter J. Messitte had sent to Kramer in error in 12/04. That I am competent and I have a full firsthand knowledge about this matter because I am the one who hired Kramer in 8/03 to represent myself and my spouse before Judge Messitte in a criminal proceeding. I am at least over 18 years of age and of sound mind and I have lived in Maryland for the past 25 years. Based on all the above, I am confident to assert under oath the following:

That the Commission should reverse its decision that Attorney Paul R. Kramer is not doing anything wrong by sitting on our \$9,067 because he himself admits that he is no longer our lawyer as of 10/25/04. And if Judge Messitte in error did send him our money to be given to us, then Kramer is wrong and you are also wrong to take a passive role in this matter. See p. 3 of Kramer's memo acknowledging he doesn't represent us any more.

I am also adding a separate charge of misrepresentation which the Commission should use to censor Paul R. Kramer in addition to our previous charge of illegally withholding our \$9,067. Originally, when we retained Kramer to represent my spouse, Edith Truvillion, and myself in Judge Messitte's courtroom to fight a criminal contempt charge, he asserted that he was representing both of us for the same amount of money when we first retained him in 8/03. In 5/04, when he negotiated a plea agreement with Judge Messitte that nearly sent me to jail over a purely civil debt collection claim filed by Emil Hirsch, attorney for Pramco, Kramer brought in his assistant, one Granger Maher. Maher's role here in this plea agreement was to represent my wife, Edith, and Kramer was to represent me. Later on, a research of public records shows that Maher isn't authorized to practice in Federal court and he never entered his appearance in this specific criminal proceeding. See U.S. Courthouse case #: PJM 03-0473. This is a serious misrepresentation by Paul Kramer because he used to be a Federal prosecutor and has been a lawyer for over 50 years as he claims. And his action here where he inserted his youthful assistant into a plea agreement that could have sent me to jail and ruined my life forever shouldn't be taken lightly because it shows Maher didn't have the experience to negotiate a plea on behalf of my wife because he wasn't admitted to practice in that Federal court, nor did Maher enter his appearance on her behalf. So Kramer's sole intention here was to earn as much legal fees as possible by misrepresenting his starving inexperienced friend to all parties.

In brief, I am asking the Maryland Attorney's Grievance Commission to reconsider to have Baltimore Attorney Paul R. Kramer censored for improperly unethically inserting his friend Granger Maher into federal proceedings without going through the proper channels. See U.S. Case # PJM 03-0473 docket entries forever FY2003 - 12/2004.

Respectfully Submitted by: _____

D/K 3/22/05

David Kissi, Affiant and Defendant
325 Pennsylvania Ave., SE
Washington, DC 20003
202-675-6365

Certificate of Service

That on this day of 3/22/05, I did send copies of this Affidavit to:

1. Attorney Paul R. Kramer of Baltimore
2. Chief Judge Bell, Appeals Court of Maryland, Annapolis
3. Chief U.S. Bankruptcy Judge James F. Schneider of Baltimore
4. Judge Peter J. Messitte, U.S. District Court, Greenbelt
5. Chief U.S. Judge Legg, Baltimore
6. Alberto Gonzales, U.S. Attorney General, Dept. of Justice
7. Albert Moskowitz, Chief Civil Rights Division, Dept. of Justice
8. Noel Hillman, Chief Public Integrity Section, Dept. of Justice
9. Judge Peter J. Messitte, US District Court, Greenbelt
10. Judge E. Stephen Derby, US Bankruptcy Court Baltimore
11. Chief Judge William Rehnquist, US Supreme Court
12. Melvin Hirshman, Bar Counsel, Maryland Attorney Grievance Commission

Notary:

Subscribed and sworn to before me a Notary Public for the State of District of Columbia and
the County of _____.

My Commission Expires: 03/31/08 Signed by: Mary F. Vincent March 22, 2005

Mary F. Vincent
Notary Public
325 Pennsylvania Ave SE
Washington, DC 20003
202-544-1111

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March , 2005

To: Melvin Hirshman, Bar Counsel
Attorney Grievance Commission of Maryland
100 Community Place, Suite 3301
Crownsville, MD 21032-2027

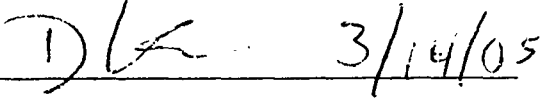
Re: Complaint of Suborning of Perjury by Emil Hirsch of O'Connor and Hannan
1666 K St., NW, # 500, Washington, DC 20036

I once wrote you about Maryland Attorney Emil Hirsch suborning perjury in regards to his submission of a defective affidavit drafted by one Julie Tumia, a clerk at Pramco, a sub-prime lender that had retained Hirsch to collect our debt on its behalf. However, it was clear that Julie Tumia was making an assertion to which she had no full and personal first hand knowledge of because the events she was swearing to occurred between 1998 – 1999 at a time when our mortgage notes were held by The Money Store. And Pramco and Julie Tumia came into the picture after they bought this loan at 30 cents on the dollar in 5/01 for a combined sum of \$50,000. Yet Hirsch somehow went before U.S. Judge Peter J. Messitte in Greenbelt with made up numbers, because he didn't have full documentation, and had Messitte liquidate our combined assets of \$1.5 million at 50 cents on the dollar to pay for this disputed judgment of \$755,000. Amidst all this, we did write you about Hirsch not exercising due diligence for submitting Julie Tumia's affidavit, which were clearly defective. But you, without doing any investigation at all, brushed the whole matter aside and let him get away with it. Surely, you are not serving the public by favoring lawyers over laymen because your agency is out to protect the status quo. And this being the case, Maryland remains one of the most corrupt states in the Union. And it has a court system you shouldn't be proud of. This atmosphere discourages big business to move in from places like New York, Texas and California.

Now, despite the above perception about your agency, I will give you the benefit of the doubt. Once again my complaint concerns the same Emil Hirsch of O'Connor and Hannan of D.C. As stated above, even though we had opposed a judgment of \$755,000 that US Judge Peter J. Messitte had granted Hirsch and his client even though we were not given a "hearing" on its merits as required by Federal Rule 56 and Maryland Rule 2-311(f), we went ahead with the liquidation of assets and had the judgment paid. And despite the satisfaction of this disputed judgment, Hirsch has gone back to P.G. court and put a combined sum of \$1 million in liens on our two properties located at 4303 and 4305 Ammendale Rd., Beltsville, MD. Hirsch is not only suborning perjury, but this is clearly a defiance of Judge Messitte's court Order in 10/04. Please, you should conduct a proper investigation this time by taking a statement from Hirsch under oath and by reviewing his time and phone records and court papers that direct him and show that the judgments have been paid and also show that he has no right to have done what he is doing. And by putting liens on our properties, he has suborned perjury. And it is the duty of the Maryland Attorney Grievance Commission to either debar him or suspend him indefinitely for lack of due diligence. This will help rebuild the public confidence in Maryland's judicial system. See pp. 5 -14.

In conclusion, you should ask Hirsch why he has now placed liens on our properties despite the satisfaction of judgment and Messitte's Order that goes back to 10/25/04. And you should censor him because by not censoring lawyers like Hirsch, you make life difficult for the average taxpayer. Already Hirsch is under scrutiny by U.S. Bankruptcy Judges Paul Mannes and Schneider of Baltimore. See p. 3.

Respectfully Submitted by: _____

 3/14/05
David Kissi
4305 Ammendale Rd, Beltsville, MD 20705
202-675-6365

cc: Paul Moore, Public Editor, The Baltimore Sun

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U.S. District Court
Greenbelt, MD

Pramco, II LLC
Plaintiff

v.

David Kissi, et al
Defendant

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:

Case #: PJM 03-0473

**Our Fifth Motion To Judge Peter J. Messitte To Disqualify Himself
From All Our Cases Pending Before Him For Abusing His Discretion
Combined With A Request To Postpone the 4/22/05 Hearing And
Freeze All Proceedings Until Grand Jury Proceedings Are Over
ORDER**

That given all the above alleged judicial bias and abuse of discretion by Judge Peter J. Messitte and crimes and misdemeanors of Emil Hirsch and other parties in this case, Judge Messitte hereby removes himself from presiding any further over any of the Kissis' cases and all pending motions are frozen pending the Grand Jury's investigation of the Kissis. Further, the Temporary Restraining Order imposed by Judge Messitte on the Kissis on 1/28/05 has been extended by consent until this Labor Day.

Judge

2005 APR 19 A 10:39

Pramco, II LLC
Plaintiff

v.

David Kissi, et al
Defendant

Case #: PJM 03-0473 BY _____ DEPUTY

AFFIDAVIT

**Our Fifth Motion To Judge Peter J. Messitte To Disqualify Himself
From All Our Cases Pending Before Him For Abusing His Discretion
Combined With A Request To Postpone the 4/22/05 Hearing And
Freeze All Proceedings Until Grand Jury Proceedings Are Over**

- i. That Judge Peter J. Messitte improperly appointed Special Prosecutor Christopher Mead in 8/03 to prosecute us over our alleged contempt of his Temporary Restraining Order he arbitrarily imposed upon us in 8/03 which Emil Hirsch, Pramco's attorney or the Plaintiff in this case, instigated with Messitte to criminalize a purely civil debt collection matter for a claim that didn't amount to more than \$300,000 according to claims Pramco or its predecessor, The Money Store, had filed in Judge E. Stephen Derby's Bankruptcy Courtroom against our Estate DK&R Company. But Hirsch, relying on his friendship with Messitte, somehow was able to skirt bankruptcy laws and improperly seize \$755,000 of our assets through Messitte's courtroom, instead of collecting the \$300,000 Pramco was actually due from DK&R's Chapter 7 Estate.
- ii. That pursuant to the above in 8/03, Messitte, without consulting, U.S. Attorney Thomas DiBiagio, at the U.S. Attorney's Office in Maryland, did arbitrarily select one Christopher Mead, an attorney in private practice in D.C. as a Special Prosecutor. But this was an abuse of Messitte's discretion because the U.S. Attorney's Office ought to have been offered a chance first to review whether the merits of the contempt charges against us warrant prosecution first. And if the U.S. Attorney's Office declined to take the case, then Messitte could have appointed Christopher Mead. See Federal Practice and Procedure Rule 42 § 711. See p. 7.
- iii. That Messitte's bias to use his bench and black robe to ruin us was clearly shown when in 5/04, in a mini-trial at the bench, he initiated a plea bargain between Christopher Mead, Paul Kramer and Granger Maher. That it did emerge from our research that Messitte, as the presiding judge,

But I, Affiant D. Kissi, am at least 21 years of age and I do have sufficient knowledge in this case to swear under oath

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ought not to have participated and personally crafted the said terms of the plea bargain because this is forbidden by Federal statute. See Federal Rules of Criminal Procedure, Rule 11(e) and 161 ALR Fed 537 pp. 8 - 9. Also, not only were Mead and Messitte not suppose to have participated in the draft of the plea, but Messitte ignored the fact that Paul Kramer's associate, Granger Maher, who was pleading on Edith's behalf wasn't even permitted to practice in Federal Court. See p. 10. So, it is not only that Messitte has shown bias and prejudice that requires he should recuse himself from all our cases, but also Maryland requires that after he had illegally, openly, and actively participated in crafting our plea agreement which we rejected on 11/22/04, Messitte ought to have excused himself from any further trials of ours, i.e. matters involving the Second Temporary Restraining Order he imposed upon us in 1/28/05, Emil Hirsch's motion for partial summary judgment and also his motion to impose a permanent injunction upon us. These remaining matters Messitte should promptly excuse himself from and the court should assign an impartial judge to them. See Maryland Rule 4-243(5) – re: Withdrawal of Plea. See p. 11. In sum, after we rejected the plea on 11/22/04 all actions Messitte has taken thereafter are illegal and not enforceable because he has also abused his discretion and willfully violated Maryland and Federal statutes. In sum, we repeat for at least the fifth time that Messitte should promptly excuse himself from all further trials and proceeds involving us.

- iv. That Messitte failed to acknowledge the corruption and the misdeeds of Pramco's Attorney Emil Hirsch that caused us to allegedly violate the said Restraining Order and therefore any contempt charge isn't enforceable. See p 12-13 - 76 ALR 4th 982 which references the Code of Judicial Conduct, Am Jur 2d, Desk Book, Item 90. For example, when Hirsch allegedly posted a \$50,000 bond to secure and ratify the Restraining Order in 8/10/03, he never sent us a copy of the bond notice. This is a violation of the Federal Rule governing Certificates of Service. So we assert that any of our alleged violations that occurred after 8/10/03 amount to harmless errors because of Emil Hirsch's neglect and contributory corruption. See Federal Sentencing Guidelines Manual dated November 1, 2004, §5K2.7 extract p. 14.
- v. That Messitte, by his own general preconceived statements, has indicated that he has abused his discretion by prejudging our guilt and he should therefore recuse himself from all our cases before him. See transcripts going back to 2002 where Messitte indicated we were deadbeats even before the trial started. See p. 15. Also, see Maryland Rule, 3-505, p.16. Also, see

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Perkins v Spivey, 113 L.Ed.2d 243; U.S. v Microsoft, 53 F.3d 568 and U.S. v. Eddie Antar, 56 F.3d 1448.

- vi. That we also ask Messitte to step aside because Federal Criminal Procedure Rule 42(b) says that in a proceeding such as ours where we have criticized Messitte from the courtroom to the big newspapers and all over the world, he should disqualify himself from all our proceedings involving him. See p. 17 - Federal Criminal Procedure Rule 42(b). That my personal criticism of Messitte prompted him in retaliation to criminalize what is a purely civil debt collection matter into a criminal shake down. See 42 USCA § 713. Also, see pp. 18-23 for our criticisms of Messitte going back to 2003. So Messitte ought to have disqualified himself and given the case back to another judge.
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- ix. That we suggest this court should ask Kramer to release the \$9,067 Messitte sent Kramer in 12/04 so that we can go and hire a law firm to protect our interest before this court and protect us before the Grand Jury if needed. See pp. 38-39. As shown by Paul Kramer's own note to us, he is no longer our attorney. See p. 42. But to maliciously and deliberately punish us, Messitte did remit our money to Paul Kramer despite Kramer's own statement that he doesn't represent us and our request to Messitte not to give the money to Kramer. See p. 40-42. All this demonstrates Messitte's bias and reinforces our motion that he should promptly recuse himself so that this court can assign our case to an impartial jurist to recompute the exact amount of money we owe Pramco which is not more than \$300,000. And that all the Restraining Orders should be rescinded so that we can have fresh start to rebuild our lives

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~~55~~

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2. Albert Moskowitz, Chief US Justice Department, Criminal Division, Civil Rights Section, DC
3. US Attorney General, Alberto Gonzales, US Justice Department, Washington, DC
4. Judge E. Stephen Derby, US Bankruptcy Court, Baltimore, MD
5. Chief Judge Schneider, US Bankruptcy Court, Baltimore, MD
6. Judge Paul Mannes, US Bankruptcy Court, Greenbelt, MD
7. David Wells, President, Key Bank, Owings Mills, MD
8. US Trustee Mark Neal, US Trustee's Office, Washington, DC
9. Richard Kremen, Piper Rudnick, Baltimore, MD
10. Asst. US Trustee Katherine Levin, DK&R's former attorney in private practice
11. US Supreme Court Chief Judge William Rehnquist
12. Robert S. Mueller, III, FBI Director
13. Allan F. Loucks, U.S. Attorney for Maryland, Baltimore
14. Ms. M. Rahman, Assistant U.S. Attorney for Southern Maryland c/o: the US Courthouse
Greenbelt
15. Retired Judge Edward Angeletti, Baltimore
16. U.S. Grand Jury c/o: Judge Charles Day, Greenbelt, MD
17. U.S. Probation Officer Jay Wheitzel, Greenbelt, MD
18. Gordon Lee, Senior Partner, Boss of E. Hirsch at O'Connor and Hannan

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U.S. District Court
For The District of Columbia

David Kissi
325 Pennsylvania Ave SE
DC/USA 20003
202-675-6365
v.
USA/DOJ
950 Pennsylvania Ave NW
DC/USA 20530

Petitioner :
:
:
:
:
Respondent : Case #: _____
:
:

Exhibit E

In Re: Partial Extracts of Petitioner's Winnable Briefs Showing He Has Never Filed A Frivolous Court Suit And That For Every Five Claims He Files In Court Kissi Has Been Able To Obtain On The Average Three Favorable Outcomes. Thus, To Restate, Petitioner Isn't Filing This Writ Of Habeas Corpus To Create Confusion, Delay Or Waste Money.

 6/20/11
Respectfully Submitted By
David Kissi, Petitioner
325 Pennsylvania Ave SE
Washington, DC 20003
202-675-6365 (business hrs 8am-5pm)

? y l l l c f \$ -

Informal Advanced Training in Law Acquired and Justifies Why the LSAT Requirement and Entrance Admission Fee Should Be Waived: And a PhD Program Should Be Customized for Law School Candidate David Kissi for Winter 2012 Consideration

Objective: I am interested to acquire a JD with emphasis in Labor, Criminal and Human Rights Law. Eventually I intend to run a multilingual non-profit Temp Agency that will assist white collar criminal ex-offenders to regain professional jobs. This Agency will also serve as my methodology for my PhD in Law Thesis. In fact, at the moment, there is nothing like such an Agency helping ex-offenders who have professional backgrounds and may have licenses for Accounting, Pharmacy, Medical Physicians and Scientific skilled consultants, whose security clearances have been revoked, to get back on their feet. Now, these are the individuals that I am inclined to help with other competent lawyers, retired judges and top flight head hunters to regain their licenses after serving time and even have their security clearances restored.

Education:

- Postgraduate studies in Business at University of Maryland, College Park, MD from 1980-1982
- Certificate in Computer Science, George Washington University, DC, 1984
- Masters in Economics, Northeastern University, Boston, MA, 1978
- Masters in Business, Clark University, Worcester, MA 1976
- Bachelors in Economics, Worcester State College, Worcester, MA, 1975


Work History:

That I have worked as a self-employed copy paper salesman for about 30 years in the D.C. area. My work involves Marketing and building competitive business models to increase sales to a million plus by 2012. Also, I did once manage a \$300,000 3 year contract leasing appliances to the U.S. Navy in Norfolk, VA in FY 1996-FY 2000 and was able to reduce downtime of its washers and dryers and save the Navy hundreds of hours - additional hours the Navy sailors and soldiers were able to devote to military services instead of performing household washing chores.

That between 2000 – 2010 as a Trustor of Edith Foundation along with my spouse, we did donate about \$100,000 worth of books, personal computers, clothing, cash and service to such beneficiaries as: an elementary school in Kwabecya, Accra, Ghana; a Girls' School in Afghanistan; redeemed a slave girl from bondage in Ethiopia; we gave books to U.S. prisons; made cash donations to prisoners' commissary accounts; and cash donations to U.S. churches, a Jewish Meals on Wheels Organization in NY, NY and etc. See p. 3-Edith Foundation is funded solely by funds from the Kissis, it refuses to take money from the government.

That a law school Admissions Office should also take into consideration my self initiated improvements to culturally enrich my life and community and to be a good and decent person who, after immigrating to the U.S. at 20, in addition to pursuing high education and success in a paper dealership and a real estate portfolio of +\$3 million, I have self studied German, Italian, French, Spanish, Portuguese, Russian, Arabic. Fluent in English and Twi. I also intend to learn deep water swimming as needed to sail a boat to Europe in FY 2012. I like to garden and for 30 years + have informally pursued the study of Law and have produced winnable Briefs from the Traffic Court to the High Court. See p. 2. †

In conclusion, in terms of practical business experience of 30 years and my international background and informal study of the law rounds up my broad background that is not too far behind other candidates shooting for good law schools at same time frame of 12/2011 as I am now pursuing at age 61. And if successful or not in law school, I still intend to give back to society as reiterated in my intent of running a temp agency to help white collar ex-offenders. Thus, having shown good cause, the LSAT and Law School Admission Fee should be waived.


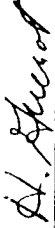
Respectfully Submitted by, 
David Kissi
325 Pennsylvania Ave SE, DC 20003
Tel: 202-675-6365 (office 8am-5pm)

CERTIFICATE OF COMPLETION

THIS CERTIFICATE IS AWARDED TO

DAVID KISSI

FOR EXCELLENCE IN AND COMPLETION OF
ADVANCED SPANISH

INSTRUCTOR SIGNATURE		DATE	12/21/07
PROGRAM DIRECTOR SIGNATURE		DATE	12/21/07



**CERTIFICATE OF COMPLETION
MOSHANNON VALLEY
CORRECTIONAL CENTER**

THIS CERTIFICATE IS AWARDED TO

DAVID KISSI

FOR EXCELLENCE IN AND COMPLETION OF
INTRODUCTION TO MARKETING

Alleen
INSTRUCTOR SIGNATURE

2/14/08
DATE

[Signature]
PROGRAM DIRECTOR SIGNATURE

2/14/08
DATE



CERTIFICATE OF COMPLETION
MOSHANNON VALLEY
CORRECTIONAL CENTER

THIS CERTIFICATE IS AWARDED TO

DAVID KISSI

FOR EXCELLENCE IN AND COMPLETION OF
SOLUTIONS TO POVERTY (18 HRS)

McLennan
INSTRUCTOR SIGNATURE

Feb 18/08
DATE

Stanley W. Spaulding
PROGRAM DIRECTOR SIGNATURE

2-18-8
DATE



CP

CERTIFICATE OF COMPLETION
MOSHANNON VALLEY
CORRECTIONAL CENTER

THIS CERTIFICATE IS AWARDED TO

DAVID KISSI

FOR EXCELLENCE IN AND COMPLETION OF
IMMIGRATION LAW

[Signature] 2-22-2008
INSTRUCTOR SIGNATURE DATE
[Signature]
PROGRAM DIRECTOR SIGNATURE DATE





CORNELL

Certificate of Completion
Italian Language Class

This certificate is awarded to

David Kissi

Mr. Belar

2-22-08

Signature

Date

Mr. Belar

8

CERTIFICATE OF COMPLETION

THIS CERTIFICATE IS AWARDED TO

DAVID KISSI

FOR EXCELLENCE IN AND COMPLETION OF
ADVANCED SPANISH

INSTRUCTOR SIGNATURE *[Signature]* DATE *12/21/07*
PROGRAM DIRECTOR SIGNATURE *[Signature]* DATE *12/21/07*



(6)

CERTIFICATE OF COMPLETION
MOSHANNON VALLEY
CORRECTIONAL CENTER

THIS CERTIFICATE IS AWARDED TO

DAVID KISSI

FOR EXCELLENCE IN AND COMPLETION OF
INTRODUCTION TO MARKETING

INSTRUCTOR SIGNATURE

W. Deane

DATE

2/14/08

PROGRAM DIRECTOR SIGNATURE

[Signature]

DATE

2/14/08



101

CERTIFICATE OF COMPLETION
MOSHANNON VALLEY
CORRECTIONAL CENTER

THIS CERTIFICATE IS AWARDED TO

DAVID KISSI

FOR EXCELLENCE IN AND COMPLETION OF
SOLUTIONS TO POVERTY (18 HRS)

McLennan
INSTRUCTOR SIGNATURE

Feb 18/08
DATE

Stanley W. Smith, Jr.
PROGRAM DIRECTOR SIGNATURE

2-18-8
DATE



CERTIFICATE OF COMPLETION
MOSHANNON VALLEY
CORRECTIONAL CENTER

THIS CERTIFICATE IS AWARDED TO

DAVID KISSI

FOR EXCELLENCE IN AND COMPLETION OF
IMMIGRATION LAW

INSTRUCTOR SIGNATURE *[Signature]* DATE 2-22-2009
PROGRAM DIRECTOR SIGNATURE *[Signature]* DATE



12

OUTPUT SAMPLE OF KISSY'S INFORMAL
STUDY OF THE LAW.

EXHIBIT C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2512

SEPTEMBER TERM, 1999

DAVID KISSY

v.

JOHN MCBURNEY

Murphy, C.J.
Hollander,
Salmon,
JJ.

Opinion by Hollander, J.

Filed: October 26, 2000

This appeal arises from an order issued by the Circuit Court for Baltimore County, granting a motion to dismiss the suit filed by David Kissy, pro se, appellant, against his former attorney, John McBurney, appellee. In the suit, appellant alleged false pretenses, misrepresentation, and fraud, stemming from appellant's payment of \$300 to appellee for legal services that appellee allegedly agreed to perform, for which appellant sought a refund of his \$300, plus \$100,000 for "mental anguish." In response, appellee filed a motion to dismiss claiming, *inter alia*, improper venue and lack of jurisdiction. Appellant filed an opposition to the motion. Thereafter, the circuit court granted the motion to dismiss without a hearing. After the circuit court denied appellant's motion to reconsider, appellant timely noted this appeal. He presents a single issue for our review, which we have rephrased:

Did the circuit court err in granting appellee's motion to dismiss without a hearing?

For the reasons set forth below, we conclude that the court erred. Therefore, we shall vacate the judgment and remand the matter to the trial court for further proceedings consistent with this opinion.

FACTUAL SUMMARY¹

¹ By way of background, our summary of facts includes allegations contained in appellee's brief and in his affidavit in support of his motion to dismiss. Nevertheless, as we discuss, *infra*, the court was required to assume the truth of all well-pleaded averments in the complaint in deciding whether to grant the

(continued...)

James Kissy and John McBurney met in July 1999. At the relevant time, they both resided in Prince George's County. On or about July 22, 1999, Kissy retained McBurney to advise him on the proposed refinancing of Kissy's home, in return for a \$300 legal fee. Appellee investigated the proposed refinancing and met with appellant on or about July 25, 1999, to review his findings. At the meeting, Kissy allegedly attempted to discuss other legal matters, but McBurney told Kissy that the fee agreement did not extend to other work.

In August 1999, the parties had several conversations and meetings, at which Kissy unsuccessfully attempted to discuss legal matters allegedly beyond the scope of the parties' initial agreement. On August 16, 1999, a meeting between the parties ended in a dispute. As a result, McBurney gave Kissy his file and asked him to leave his office. According to appellee, he spent approximately five hours on the refinancing issue on appellant's behalf.

Thereafter, appellant filed suit in the Circuit Court for Baltimore County. The suit consisted of a two-count, two page complaint for "Fraud and Misrepresentation." It is not clear why the complaint was filed in Baltimore County, but appellant asserted that venue was "proper" in any circuit court in Maryland. The

¹(...continued)
motion to dismiss.

first count contained some three lines. There, appellant alleged that he was "induced by false pretense" to pay appellee for "legal service," but appellee "failed to do so as agreed." The second count, seven lines in length, alleged misrepresentation. Relying upon "39 CJS Section 59," appellant claimed that McBurney "engaged in misrepresentation as defined by Maryland and Federal Statutes." The complaint concluded with the following:

"Request For A Hearing (MD Rule 2-311f)"

The Plaintiff requests a hearing before a jury as permitted by Maryland Rule 2-325(a).

Conclusion

That with all the above considered, the Plaintiff seeks a remedy of a personal judgment against the Defendant for a combined sum of about \$100,300 plus court costs that breaks down as follows:

\$300 for Plaintiff's retainer squandered by Defendant

\$100,000 compensation for the mental anguish the Defendant's negligent misrepresentation has caused the Plaintiff.

In response, appellee moved to dismiss. He argued, *inter alia*, that the Circuit Court for Baltimore County was an improper venue because "all meetings, conversations . . . and all legal activity took place within Prince George's County . . . and [b]oth parties are residents [thereof]." Additionally, appellee asserted that the circuit court lacked jurisdiction, because the amount in controversy was only \$300.

In his opposition to the motion to dismiss,² appellant alleged that the court had jurisdiction because the claim exceeded \$100,000. Moreover, appellant argued that venue was proper because "the cash the Defendant squandered was earned in Baltimore County and thereabouts." Significantly, appellant also stated:

And since we have invoked Maryland Rule 2-311(f) that essentially says that a case cannot be disposed of without a hearing, it appears this Court wouldn't compound our loss by arbitrarily tossing out our claim.

On October 13, 1999, the circuit court granted appellee's motion to dismiss, without a hearing. The order contained the following handwritten notation by the court: "No Hearing Requested by Plaintiff or Defendant."

Subsequently, on October 25, 1999, appellant filed a "Post Judgment Motion For Reconsideration Pursuant to Maryland Rule 2-535(a) [and] (b)." Appellant argued that, in granting appellee's motion, the court erred in concluding that he had not asked for a hearing. He said:

On 10/13/99, this Court erroneously ruled that since I have not asked for a hearing in my initial complaint, the Defendant's Motion For Dismissal is granted (Appendix C). It's hard to believe this because in my original complaint (see Appendix A), I have specifically requested a hearing by invoking Maryland Rule 2-311(f) and I repeated the same in my subsequent Motion Opposing Dismissal (see Appendix B).

That motion was also denied. This appeal followed.

² The opposition to the motion to dismiss is not included in the Record Extract. Appellee claims in his brief that he was not served with a copy of the opposition to the motion to dismiss.

DISCUSSION³

I.

In reviewing the trial court's grant of a motion to dismiss, we assume the truth of all well-pleaded facts in the complaint and reasonable inferences drawn therefrom. See *Morris v. Osmose Wood Preserving*, 340 Md. 519, 531 (1995); *Stone v. Chicago Title Ins. Co.*, 330 Md. 329, 333-34 (1993); *Fick v. Perpetual Title Co.*, 115 Md. App. 524, 547 n.4, cert. denied, 347 Md. 153 (1997). Moreover, we must consider those facts and inferences in the light most favorable to appellant. See *Berman v. Karvounis*, 308 Md. 259, 264-65 (1987); *Parker v. Kowalsky & Hirschhorn, P.A.*, 124 Md. App. 447, 458 (1999). If the complaint fails facially to disclose a legally sufficient cause of action, then we must affirm the dismissal order of the motion court. See *Lubore v. RPM Assocs.*, 109 Md. App. 312, 322, cert. denied, 343 Md. 565 (1996); *Hrehorovich v. Harbor Hosp. Ctr., Inc.*, 93 Md. App. 772, 785 (1992), cert. denied, 330 Md. 319 (1993).

II.

Maryland Rule 2-311(f) is relevant here. It states:

³ Surprisingly, although McBurney is an attorney, he has not cited a single rule, statute, or case in the text of his brief. Moreover, in his Table of Citations he cites only two authorities, which are of little use. He refers us to "Courts & Judicial Proceedings, Maryland Rules, Jurisdiction" and "Courts & Judicial Proceedings, Maryland Rule 6-201." Appellee has obviously confused the Maryland Rules of Procedure with the Maryland Code, Maryland Rule 6-201 concerns decedents' estates and is completely inapposite. Appellee has also improperly submitted his brief with a yellow cover, in violation of Rule 8-503(c)(1)(B), which requires a green cover.

A party desiring a hearing on a motion . . . shall so request in the motion or response under the heading "Request for Hearing." Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but it may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

(Emphasis added).

Clearly, the granting of a motion to dismiss is "dispositive of a claim" under Rule 2-311(f). See *Fowler v. Printers II*, 89 Md. App. 448, 485 (1991), cert. denied, 325 Md. 619 (1992). Therefore, if a party requests a hearing on a motion to dismiss, the court must "provide an oral hearing and 'adequate notice of the time, place, and nature of that hearing' before entering an order that is, in fact, dispositive of the claim or defense." *Karl v. Blue Cross and Blue Shield of Maryland, Inc.*, 100 Md. App. 743, 746 (1994) (quoting *Phillips v. Venker*, 316 Md. 212, 222 (1989)). Absent a request for a hearing, however, the court may grant a motion to dismiss without holding a hearing. See *Adams v. Offender Aid & Restoration of Baltimore, Inc.*, 114 Md. App. 512, 515 (1997).

It follows that if appellant requested a hearing, the court was obligated to provide one before dismissing appellant's case. See *Parker v. Housing Auth. of Baltimore City*, 129 Md. App. 482, 488 (1999); *Karl*, 100 Md. App. at 747. Accordingly, we must determine whether appellant properly or adequately requested a hearing.

Rule 2-311(f) provides guidelines with which a party must comply in order to request a hearing. The rule states that a party "shall . . . request [a hearing] in the motion or response under the heading 'Request for Hearing.'" (Emphasis added). As we noted, appellant generally requested a hearing in his complaint, expressly relying on both Rule 2-311(f) and Rule 2-325(a). Subsequently, appellant filed an opposition to appellee's motion to dismiss. To be sure, the opposition did not specifically include a request for hearing under the heading "Request for Hearing." But, appellant had generally requested a hearing under a separate heading in his complaint, citing Md. Rule 2-311(f), and then, in his opposition to the motion to dismiss, he renewed that request when he said: "[S]ince we have invoked Maryland Rule 2-311(f) that says that a case cannot be disposed of without a hearing, it appears this Court wouldn't compound our loss by arbitrarily tossing out our claim."

Under the circumstances, we believe appellant, who is *pro se*, adequately made known his desire for a hearing under Rule 2-311(f) in his opposition to the motion to dismiss. To conclude otherwise would elevate form over substance, even though it has long been recognized in Maryland that "substance rather than the form of the pleading is the controlling consideration." *Lapp v. Stanton*, 116 Md. 197, 199 (1911); see *Payne v. Payne*, 132 Md. App. 432, 439 (2000).

Accordingly, we conclude that the circuit court erred in granting appellee's motion to dismiss without a hearing. In reaching our conclusion, however, we address only the narrow issue before us, and express no opinion as to the merits of the motion to dismiss.

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY VACATED; CASE
REMANDED FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION. COSTS
TO BE PAID BY APPELLEE.**

COURT OF SPECIAL APPEALS
Robert W. Murphy Courts of Appeal Building
361 Rowe Boulevard



Annapolis, MD
21401 - 1698



DAVID KISSY
4305 AMMENDALE RD.
BELTSVILLE, MD 20705

02512

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

Key Bank Trust f/k/a :
Key Federal Savings Bank :
7F Gwynns Mills Court :
Owings Mills, MD 21117 :
Plaintiff :

v. :
David Kissi, et al :
4305 Annendale Rd :
Beltsville, MD 20705 :
Defendant :

Civil Case #: 03-C-97-007682 CJ

ORDER

It is this 22 day of November 1997, ORDERED, that the
Defendant(s) ^{UNOPPOSED} Motion to vacate the defective confessed judgment is
granted.



Judge

True Copy Test

SUZANNE MENSCH, Clerk

Per *Gloria B. Hall*

Assistant Clerk

FILED DEC 22 1997

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 499

September Term, 2007

DAVID KISSI, et al.

v.

EMC MORTGAGE CORPORATION OF
TEXAS, et al.

Meredith,
Woodward,
Moylan, Charles E., Jr.
(Retired, specially assigned),

JJ.

Opinion by Meredith, J.

Filed: August 13, 2009

CAE0515718

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The substitute trustees under a deed of trust, appellees,¹ foreclosed upon real property owned by David Kissi and Edith Truvillion, appellants, who were indebted to EMC Mortgage Corporation of Texas (“EMC” or “the lender”), also an appellee. After the foreclosure sale, appellants objected to the sale and filed a countercomplaint against EMC and one of the Trustees, Joseph V. Buonassissi. Appellants later filed an amended countercomplaint. The Circuit Court for Prince George’s County overruled appellants’ exceptions to the foreclosure sale; ratified the sale; granted appellees’ oral motion to strike the amended countercomplaint for failure to comply with Maryland Rule 2-341(e); overruled appellants’ exceptions to the attorney’s fees allowed in the auditor’s report; ratified the auditor’s report; and entered personal judgments against appellants for a deficiency in the proceeds of sale.

On appeal, appellants argue that the circuit court: 1) should not have struck their amended countercomplaint; 2) failed to hold a hearing on appellants’ exceptions to the auditor’s report, and erred in overruling their exceptions; 3) should not have entered deficiency judgments against appellants personally; and 4) should not have awarded attorney’s fees at all or, alternatively, should have awarded a lesser amount. Appellees counter that we must dismiss this appeal because appellants filed the notice of appeal too late.²

¹The substitute trustees are Joseph V. Buonassissi II, Richard E. Henning, Jr., Richard A. Lash, Mary Snyder Barry, and Keith M. Yacko.

²Appellants presented the following questions:

(continued...)

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C

We hold that appellants' notice of appeal was timely. On the merits, we agree that the circuit court erred in ratifying the auditor's report without holding a hearing on appellants' exceptions, as required by Maryland Rule 2-543(h). Accordingly, we vacate the judgments entered by the circuit court and remand the case for further proceedings.

²(...continued)

I. Whether the circuit court erred in awarding trustees under a deed of trust and the lender over \$120,000 in attorney's fees in a foreclosure case involving pro se defendants without either any contractual basis permitting the recovery of such fees for the services performed or any findings or evidence as to the reasonableness of those fees.

II. Whether the circuit court erred in striking the amended counterclaim of a defendant in a foreclosure action pursuant to an oral motion at a hearing without any notice to the defendant and without analyzing the factors that govern the consequences of non-compliance with the rules merely because the abandoned counterclaim was not attached to the amended counterclaim.

III. Whether the circuit court erred in sua sponte entering judgment in a foreclosure action in favor of the trustees and lender and against the defendants personally for over \$120,000 when the trustees and lender had filed no motion for a deficiency judgment.

IV. Whether the circuit court erred in ratifying the report of an auditor in a foreclosure action based upon the court's incorrect determination that no exceptions had been filed and without conducting a hearing that was requested in those exceptions.

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111

finding was made by the circuit court, but, on remand, the circuit court should reconsider the reasonableness of hiring separate counsel, and the extent of any unnecessary duplication of legal services.

Although appellants contend it was not reasonable for appellees' attorneys to spend so many hours defending claims appellees considered groundless, appellants must bear part of the blame for asserting the claims that necessitated a defense. This is another factor for the court to consider on remand in connection with its analysis under Rule 1.5(a).

Appellants further contend that EMC failed to prove that the hourly rates charged by its attorneys in the D.C. law firm of Greenberg Traurig, which went as high as \$525 an hour, were commensurate with "the fee customarily charged in the locality for similar legal services." Appellants argue that the relevant "locality" must be Prince George's County, where this case was tried. Under Rule 1.5(a)(3), this, too, is a factor the court must consider upon remand.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY VACATED. CASE
REMANDED FOR PROCEEDINGS
NOT INCONSISTENT WITH THIS
OPINION.
COSTS TO BE PAID BY APPELLEES.**

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1140

September Term, 2007

DAVID KISSI, ET AL.

v.

JUAN M. PORTILLO, ET AL.

Woodward,
Zarnoch,
Karwacki, Robert L.,
(Ret., specially assigned),

JJ.

Opinion by Karwacki, J.

Filed: September 23, 2008

CAE0512152

⑤ 38

Appellants, David Kissi and Edith Truvillion, appeal from the entry of a default judgment for \$47,957.02 against them and in favor of Juan Portillo and German F. Guevera, appellees, by the Circuit Court for Prince George's County. Appellants were also assessed \$9,330.50 for appellees' attorney's fees. They present the following questions for our review:

I. Did the circuit court improperly enter a default order against appellants on a withdrawn complaint without service of the amended complaint, a proper servicemembers' affidavit, or a hearing before striking appellant's defensive pleading?

II. Did the circuit court abuse its discretion in refusing to vacate the default order absent explanation for its decision?

III. Did the circuit court improperly determine damages by ignoring the rules governing the measure of damages for breach of a contract to sell real property and by awarding damages that did not result from the breach?

IV. Did the circuit court erroneously award attorney's fees to purchasers without any showing as to the reasonableness of the fees that they sought?

We conclude that appellant's were not properly served with the Second Amended Complaint and that the circuit court never acquired personal jurisdiction over them. We thus vacate the judgment of default.

Factual Background and Legal Proceedings

In February 2005, Kissi and Truvillion (hereinafter, collectively, "Sellers") owned a single family residence located at 4305 Ammendale Road in Beltsville, Maryland

(hereinafter “the First House”). On or about February 22, 2005, Sellers entered into a residential contract of sale (hereinafter “the Contract”) with Portillo and Guevera (hereinafter, collectively, “Buyers”) for the sale of the First House.¹ The purchase price was \$350,000.00 and the settlement date was set for March 17, 2005. Later, by mutual agreement, settlement was extended to March 31, 2005. On that date, Buyers appeared for settlement, but Sellers did not.²

The parties again agreed to postpone settlement and a new settlement date was set for April 20, 2005. It was also agreed that Buyers would allow Sellers to “rent back” the First House without payment until April 24, 2005. The parties further agreed that if Sellers did not vacate the First House on April 24, 2005, they would pay Buyers \$1,000.00 a day for each additional day they remained in the residence.

On April 20, 2005, Buyers again arrived at settlement ready to purchase the First House, but Sellers did not appear. At the hearing on damages, Liliana Chedrauy, the Buyers’ real estate agent, testified that, while at settlement, a call was received indicating that Sellers were not going to show up and that they were no longer interested in selling

¹The primary actors in this dispute were Seller Kissi and Buyer Portillo, but both Sellers and both Buyers were party to the Contract and nearly all of the filings in circuit court. Accordingly, throughout this opinion, we refer mostly to “Sellers” and “Buyers” and only identify the individual Seller or Buyer when relevant.

²In their Amended Complaint, Buyers assert that Sellers later indicated that they had been in court at a hearing that did not end in a timely manner.

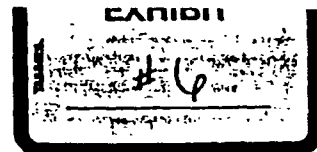
I., *supra*, the circuit court did not have jurisdiction over Sellers. In addition, service of process of the Second Amended Complaint did not comply with the Maryland Rules and thus Sellers were under no obligation to file an answer. Because we have concluded that the circuit court was without authority to enter the default order, we need not determine whether the circuit court abused its discretion in failing to vacate an order it lacked authority to enter in the first place.

For this same reason, we need not reach Sellers' remaining questions. The circuit court was without authority to enter the Order of Default. As a result, it was without authority to award damages and attorney's fees. We thus vacate the judgments of the circuit court.

**JUDGMENTS VACATED.
COSTS TO BE PAID BY APPELLEES.**

10 (11)

EXHIBIT B



OUTPUT SAMPLE OF KISSI'S INFORMAL STUDY
OF THE LAW.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1594

September Term, 1994

DAVID KISSI

v.

MUIRKIRK INDUSTRIAL CENTER
CONDOMINIUM, INC.
et al.

Bishop,
Fischer,
Harrell,

JJ.

Per Curiam

Filed: May 18, 1995

#CAE93-16755

11

Appellant, David Kissi ("Kissi"), a condominium owner, filed a motion to request audit of condominium books, in the Circuit Court for Prince George's County, against appellee, Muirkirk Industrial Center Condominium, Inc. ("Muirkirk"). Although Muirkirk filed an answer, Kissi filed a motion for default judgment and requested that a trustee be appointed to manage the condominium complex. Originally, the motion for default judgment was denied, but the circuit court later entered an order of default against Muirkirk. The circuit court ultimately vacated the default judgment and the case was set in for trial.

Kissi filed a motion to reset the trial date and a request for a jury trial, which the circuit court denied. At a hearing on a motion for reconsideration of postponement, the circuit court dismissed the case for insufficiency of service of process. Kissi appeals the dismissal.

Issues

Kissi raises three issues, which we rephrase:

I. Whether the circuit court erred in dismissing the case for insufficiency of service of process.

II. Whether there was an improper *ex parte* communication between appellee's attorney and the trial court.

III. Whether the motion's hearing was a valid hearing although no parties testified under oath?

Because we shall reverse the circuit court's dismissal of the case for insufficiency of service of process, we shall not address the third issue raised.

Facts

Kissi owns a condominium unit located at 12212 Distribution Place in Beltsville, Maryland in the 33 unit Muirkirk Industrial Center Condominium. Steve Wege, at the time Kissi initiated this case, was the condominium association president. In June of 1993, Kissi petitioned Mr. Wege to have the condominium books audited for fiscal years 1988 through 1993 by an independent accountant. Because Mr. Wege failed to respond to the petition by June 30th, Kissi filed a motion to request audit of condo books under § 11-116 of the Real Property Article of the Annotated Code of Maryland. Kissi maintained that he had the authority to file the motion as he was requesting the audit with other unit owners comprising at least 5% of the units. Muirkirk, however, contends that it was only Kissi himself, and no other unit owners, that requested the audit. Section 11-116(b) of the Real Property Article provides:

On the request of the unit owners of at least 5 percent of the units, the council of unit owners shall cause an audit of the books and records to be made by an independent certified public accountant, provided an audit shall be made not more than once in any consecutive 12-month period. The cost of the audit shall be a common expense.

Md. Real Prop. Code Ann. § 11-116(b) (1988).

Kissi alleged, in his motion requesting the audit, that Mr. Wege was financially mismanaging the condominium association. In the certificate of service attached to the motion, Kissi affirmed that

I, David Kissi, acting on behalf of unit 12212 Distribution Place, Beltsville, MD et al, has [sic] caused a copy of this motion to be

ex-parte communication has occurred. Because we are remanding this case, we ask that the trial court disclose to Kissi the nature of the phone call and its purpose.

JUDGMENT OF THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY REVERSED AND
CASE REMANDED FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION; COSTS
TO BE PAID BY APPELLEE.

(14)

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UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1140

September Term, 2007

DAVID KISSI, ET AL.

v.

JUAN M. PORTILLO, ET AL.

Woodward,
Zarnoch,
Karwacki, Robert L.,
(Ret., specially assigned),

JJ.

Opinion by Karwacki, J.

Filed: September 23, 2008

CAE0512152

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Appellants, David Kissi and Edith Truvillion, appeal from the entry of a default judgment for \$47,957.02 against them and in favor of Juan Portillo and German F. Guevera, appellees, by the Circuit Court for Prince George's County. Appellants were also assessed \$9,330.50 for appellees' attorney's fees. They present the following questions for our review:

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II. Did the circuit court abuse its discretion in refusing to vacate the default order absent explanation for its decision?

III. Did the circuit court improperly determine damages by ignoring the rules governing the measure of damages for breach of a contract to sell real property and by awarding damages that did not result from the breach?

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(16) 22 33

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¹The primary actors in this dispute were Seller Kissi and Buyer Portillo, but both Sellers and both Buyers were party to the Contract and nearly all of the filings in circuit court. Accordingly, throughout this opinion, we refer mostly to “Sellers” and “Buyers” and only identify the individual Seller or Buyer when relevant.

²In their Amended Complaint, Buyers assert that Sellers later indicated that they had been in court at a hearing that did not end in a timely manner.

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I., *supra*, the circuit court did not have jurisdiction over Sellers. In addition, service of process of the Second Amended Complaint did not comply with the Maryland Rules and thus Sellers were under no obligation to file an answer. Because we have concluded that the circuit court was without authority to enter the default order, we need not determine whether the circuit court abused its discretion in failing to vacate an order it lacked authority to enter in the first place.

For this same reason, we need not reach Sellers' remaining questions. The circuit court was without authority to enter the Order of Default. As a result, it was without authority to award damages and attorney's fees. We thus vacate the judgments of the circuit court.

**JUDGMENTS VACATED.
COSTS TO BE PAID BY APPELLEES.**

(18)
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served upon Mr. Steve Wege, president of the Muirkirk unit owners condo association. The service was executed by U.S. certified mail per Mr. Richard L. Hoffman, the condo association's resident agent

Two weeks after Kissi sent the summons to Richard Hoffman, the clerk of the Circuit Court for Prince George's County received a letter, sent on behalf of Mr. Hoffman, indicating that

Mr. Hoffman has had no connection with [Muirkirk] for more than ten years and did not know that he was the Resident Agent, we have requested papers from Assessments and Taxation to have him removed. I have also notified Mr. Kissi and he has requested that I send the papers back to him.

Subsequently, Kissi served the summons requesting the audit of the condominium books on Mr. Wege. In his affidavit of service of summons, Kissi stated:

I, David Kissi, am over twenty-one years of age and a resident in the State of Maryland. I am declaring under this affidavit that I did serve the summons upon the defendant; Mr. Steve Wege, the president of the Council of Owners of the Muirkirk Condominium Association. The summons was delivered per U.S. certified mail to the defendant on September 20, 1993, as evidence [sic] by the enclosed return receipt.

This court should take note that the Muirkirk Association affairs are so neglected such that it hasn't got a resident agent as required by Maryland law. One Mr. Richard Hoffman, who is listed as the resident agent in the records of the State of Maryland Assessments and Taxation Office in Baltimore, MD, claims he has nothing to do with the Association and he has informed the Assessments Office and this court to have his name removed (see attached copy of his letter, dated September 15, 1993).

All this taken together, a direct service upon the defendant by certified U.S. mail with return receipt constitutes a proper service.

(Emphasis added).

On October 13, 1993, Mr. Wege answered Kissi's summons via a letter to the clerk of the circuit court in which he stated that, in response to Kissi's writ of summons for motion to request audit of condo books, which he received on September 20th, he was enclosing a letter from Handwerger and Funkhouser, P.A., CPA, "acknowledging that they are preparing an audit for our condominium association with an expected date of completion of November 20, 1993." Despite Mr. Wege's answer, Kissi filed a motion for default judgment alleging that Mr. Wege had chosen to ignore the summons, and that, "[i]n other words, the defendant doesn't dispute our original complaint. This being the case, this court should hold [Mr. Wege] in default" On March 3, 1994, Mr. Wege submitted the required audits.

Muirkirk moved to vacate the default judgment arguing, *inter alia*, that although "[Kissi] asserts that proper service was made on September 20, 1993, . . . service of the Complaint and Summons was not proper." After vacating the default judgment entered against Muirkirk, a trial date was set for January 13, 1995. On August 15, 1994, however, during a hearing on Kissi's motion for reconsideration, the circuit court dismissed the case because of lack of service of process. The circuit court, in so ruling, stated that

the Court looked more carefully at the file, and found out defendant knowingly or unknowingly is one hundred percent correct, the reason being the party served the defendant. Rule 2-123 specifically states a party may not serve process in a case. Rule

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2-123 practically lets the world serve process with one specific exception, a party may not serve. The case law says the party's secretary can serve, the party's employee can serve, but the party may not serve process; and that is what has been done in this case.

Discussion

I. Service of Process

Under Rule 2-123(a), "[s]ervice of process may be made by a sheriff or, except as otherwise provided in this Rule, by a competent private person, 18 years of age or older, including an attorney of record, but not by a party to the action." In his affidavit of service of summons, Kissi declared that "I did serve the summons upon the defendant, Mr. Steve Wege, the president of the Council of Owners of the Muirkirk Condominium Association. The summons was delivered per U.S. certified mail to the defendant on September 20, 1993, as evidence [sic] by the enclosed return receipt." (Emphasis added).

Muirkirk alleged, and the trial court agreed that, because Rule 2-123(a) states that service of process cannot be made by a party to the action, the service of process in the case *sub judice* was improper because, Kissi, himself served the summons on Mr. Wege, albeit via U.S. certified mail. Kissi concedes that the rules governing service of process would not permit him, as plaintiff, to hand deliver the summons to Mr. Wege. Kissi argues, however, that the rules governing service of process do not forbid a party to mail a summons to the person(s) to be served, which is what Kissi did in the case *sub judice*. We agree and explain.

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The Rules permit service of process to "be made within this State . . . by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting: 'Restricted Delivery — show to whom, date, address of delivery.'" Rule 2-121(a). The Rules also state that a party to the action cannot personally deliver process upon a defendant. Rule 2-123(a). The Rules, however, do not state that a party to the action cannot deliver process upon a defendant via the mail; when any person serves process upon a defendant via the mail, the United States Postal Service is the serving vehicle.

When a plaintiff seeks to have a sheriff serve process, the plaintiff furnishes to the clerk the complaint, along with all other necessary papers and information. Rule 2-111. The clerk, in turn, "shall issue forthwith a summons for each defendant and shall deliver it, together with a copy of each paper filed, to the sheriff or other person designated by the plaintiff." Rule 2-112(a). When a plaintiff files the necessary papers with a clerk and when a plaintiff mails the necessary papers to the defendant, there are other persons involved in the serving process. In the first instance, the sheriff is the agent making service, and in the second case, the United States Postal Service and a postal carrier are the agents making service. In neither case does the plaintiff personally deliver a summons to the defendant. Accordingly, we hold that the circuit court erred in dismissing the case when it found that Kissi had served process in violation of the Rules when it mailed the summons, via certified mail, to Mr. Wege.



When a party serves process via the mail, the Rules specify that it shall be certified mail, restricted delivery requested. Rule 2-121(a). In the case *sub judice*, Kissi delivered the summons to Mr. Wege via certified mail. Mr. Wege signed the original return receipt, which Kissi filed with the circuit court. Although Kissi did not request "Restricted Delivery," we hold that this does not affect the validity of the service of process in the case *sub judice*.

"Restricted Delivery" ensures that the proper party is served. In the case *sub judice*, we know that the proper party was served. Mr. Wege, the condominium association president at the time Kissi initiated this suit, was served with the summons. See Rule 2-124(c). "The Court of Appeals has said that the obvious purpose of the provisions of [the Rules] is to provide methods which will reasonably insure the ultimate reception by the corporation of actual notice that an action has been filed against it." *J. Whitson Rogers, Inc. v. Hanley*, 21 Md. App. 383, 392 (1974). Moreover, when "a corporation has actual notice, in fact, of the pendency of the action, due process of law is obviously afforded and unless the defect in service is jurisdictional, the corporation cannot effectively complain that it has not been afforded due process." *Id.* (citation omitted) (emphasis in original).

As indicated *supra*, in the case *sub judice*, the president of Muirkirk was served with process. Muirkirk, during oral argument, conceded that it was served with process. When actual service, upon a corporation, is established via certified mail, although not

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"Restricted Delivery," the technical defect is not a jurisdictional defect. If the corporation has received actual notice, and there was actual service, the corporation has been afforded due process. Because we hold that the service of process in the case *sub judice* was proper, we remand so that the circuit court may reach the merits of Kissi's claim against Muirkirk.

II.

Kissi alleges that "the attorney for the Appellee, on 7/5/94 did consult [the trial judge] in his chambers unbeknownst to us Since [the trial judge] didn't disclose to us the nature of said meeting and its purpose at the court hearing on 8/15/94, we believe that we have been denied our due process in this case" Kissi bases this allegation solely on a billing statement of professional services, from Muirkirk's attorney's law firm, which indicates a "conversation with [the trial judge's] chambers" occurring on July 5, 1994. Muirkirk, however, maintains that this notation on the billing sheet referred to a phone call from the trial judge's administrative assistant, to Muirkirk's counsel, "during which [the assistant] simply asked if the defendant intended to respond to the plaintiff's motion for continuance of the trial date. Counsel for the defendant had no ex-parte communication with [the trial judge] on this matter."

Kissi, aside from his allegation, provides us with no evidence to support that there was an ex-parte communication. A law firm billing statement indicating a conversation with a judge's chambers, standing alone, is not sufficient to establish that an

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April 9, 2011

To: Stephen N. Zack, Esq., President ABA, Miami, FL

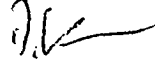
Re: A Comment on "Boies, Olson Tackle Funding for the Courts", See David Ingram at The National Law Journal and Legal Times, Dated 3/29/2011, front page and also, See p. 10

Sir Zack, it's good you now admit that you have in the past spent an inordinate amount of time lobbying the government to increase judges' salaries. And now your focus, like Attorneys D. Boies and T. Olson is your new campaign to get government to increase the budget to run the court system, albeit you never mention the need to simultaneously improve law school standards to improve the mediocre quality of lawyers running on the streets, two-thirds of whom cannot even draft a High Court Brief. See Washington Post comment by Warren Burger, the late Supreme Court Chief Justice in 1973. And while at it, why shouldn't there be a parallel debate in finding a better system in selection of judges since good competent and honest judges are in short supply in contemporary American courtroom?

Ironically, D.C. Bar Counsel and MD Attorneys Grievance Committee are very protective of their dishonorable members. And since local area judges are ultimately selected from this pool, our court rooms end up corrupted and we, especially the minorities, and also taxpayers pay a stiff price to fund biased courts that intentionally incarcerate Black males at a disproportionate high rate such that the Black American family economic stability is undermined as a result: And with many Black fathers almost absent, there is virtually no one at home to enforce discipline to make Black kids do their school homework and in the end imperils the standards of our inner city schools. Now, this is a dark side of American Society no politician will discuss in public.

In sum, the call or debate for increase in funding our courts should by extension also be same for improving our law school standards and ethics governing the conduct of judges and lawyers for their court rulings have overall effect in every aspect of our lives including decent public education and the quality of our standard of living, enforcement of contracts and giving a fresh start to struggling businesses pursuant to the Federal Bankruptcy Code. And in this regard, our judicial systems shouldn't purposely be used to create divisions for a house divided against itself will not stand.

Sincerely,
David Kissi, A Negro Crime Victim of
The U.S. Judiciary
325 Pennsylvania Ave SE DC/USA 20003
202-675-6365 (business hrs 8AM-5PM)



cc:

David Boies, Esq. Founder, Boies, Schiller & Flexner LLP
Theodore Olson, Esq. Gibbons, Dunn & Crutcher
Mary McQueen, President, National Center for State Courts
Ex-U.S. Presidents Bill Clinton, Jimmy Carter
Obama's Mother-in-Law, Marian Robinson
Jamie S. Hopkins, The Sun Staff Reporter & Petula Dvorak, W.Post Metro Columnist & Al Brisbane of the NYT
Alice Rivlin, A Senior Fellow At the Brookings Institute
Al Dershowitz, Harvard Law Professor
Justice Ruth B. Ginsberg
Dr. Henry Gates of Harvard, Dr. Angela Davis of CA, Dr.E.F. Williams, CEO Congress of Black Women, DC