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2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF ILLINOIS
4 EASTERN DIVISION

5 DAVID GROCHOCINSKI, Case No. 1:06-cv-5486
6 Plaintiff, Chicago, Illinois
7 v. October 30, 2007
Status Hearing
8 MAYER BROWN ROWE & MAW, LLP,
et al.,
9 Defendants.
10 -----

11 TRANSCRIPT OF STATUS HEARING
12 BEFORE THE HONORABLE VIRGINIA M. KENDALL
13 UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

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21
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25 Proceedings recorded by mechanical stenography;
transcript produced by notereading.

1 (Commenced at 9:13 a.m.)

2 THE CLERK: 06C5486, Grochocinski versus
00:00:03 3 Mayer, Brown, status hearing.

00:00:09 4 MR. NOVACK: Good morning, your Honor.
00:00:10 5 Steve Novack for defendants, N-o-v-a-c-k.

00:00:13 6 THE COURT: Good morning.

00:00:14 7 MR. NOVACK: Good morning.

00:00:14 8 MR. JOYCE: And Ed Joyce, J-o-y-c-e, for the
00:00:17 9 plaintiff.

00:00:18 10 THE COURT: Good morning.

00:00:18 11 MR. CARROLL: Rob Carroll, C-a-r-r-o-l-l.

00:00:22 12 THE COURT: Good morning.

00:00:22 13 All right, gentlemen. I have reviewed this
00:00:24 14 high and low and inside and out, and here's what I'm
00:00:28 15 going to do:

00:00:29 16 I am denying the motion to reconsider,
00:00:32 17 because I still believe that there are many fact
00:00:35 18 disputes that need to be resolved and that it is not a
00:00:39 19 situation where I can dismiss on a motion to dismiss.
00:00:43 20 But let me tell you where I'm coming from as far as how
00:00:47 21 we're going to move forward.

00:00:48 22 I find defendant's position extremely
00:00:50 23 persuasive, and I think the issue of unclean hands, for
00:00:55 24 lack of a better term -- he's used the term repeatedly
00:00:59 25 fraud on the court, I think there might be a few other

00:01:03 - 1 variations of what that issue is -- but there is a
00:01:06 2 question lurking about why this was handled in the way
00:01:10 3 it was and issues as to the trustee's position in coming
00:01:15 4 forward and being paid by this entity, issues regarding
00:01:20 5 why the trustee didn't go in and move to vacate the
00:01:23 6 dismissal, and I think what we need to do is we need to
00:01:27 7 do discovery solely on that, what I would call, unclean
00:01:32 8 hands issue first, so that I can have facts in front of
00:01:37 9 me and decide whether the case should be dismissed based
00:01:40 10 upon that issue.

00:01:41 11 It's a fact dispute that I'm having the
00:01:44 12 problem with. I think there are disputed issues of fact
00:01:47 13 that I can't get rid of this on a dismissal, but I find
00:01:54 14 your argument extremely persuasive. It is a very unique
00:01:54 15 situation. It's a very odd case.

00:02:03 16 MR. JOYCE: Judge, why is this something
00:02:03 17 that the District Court resolves as opposed to the
00:02:03 18 bankruptcy court? Because in the bankruptcy court it's
00:02:03 19 not the least bit unique. It's a regular -- it happens
00:02:06 20 all the time.

00:02:06 21 THE COURT: I don't think it happens all the
00:02:07 22 time that you have an entity that has a defaulted
00:02:11 23 judgment that has gone in -- you're coming in on a
00:02:15 24 malpractice count. How often have you seen a
00:02:18 25 malpractice claim with the only asset in the estate

00:02:20 1 being the value of the defaulted judgment?

00:02:24 2 MR. JOYCE: I'm focusing on -- the creditors
00:02:26 3 very often fund --

00:02:28 4 THE COURT: Oh, fair enough. That's one
00:02:29 5 issue; that's one issue.

00:02:30 6 MR. JOYCE: Correct.

00:02:31 7 THE COURT: In many. Fair enough. That's
00:02:32 8 one issue in many.

00:02:34 9 But as has been laid out at the motion to
00:02:37 10 reconsider hearing in the motion to dismiss, I think
00:02:40 11 that we need to get to the fact disputes that can aid me
00:02:44 12 in resolving whether it is common, whether it is
00:02:47 13 something that was a normal business strategy. It
00:02:52 14 doesn't sound like it, based upon the unique set of
00:02:56 15 facts here.

00:02:56 16 So I'd like to ask you what you think the
00:02:58 17 discovery would be that would get to the bottom of that
00:03:01 18 issue that we can resolve it first before we go into the
00:03:04 19 malpractice issue? What do you believe would be
00:03:07 20 necessary?

00:03:08 21 MR. NOVACK: I would imagine, your Honor,
00:03:09 22 that there would be discovery taken of the trustee,
00:03:13 23 probably in the form of a deposition of the trustee;
00:03:16 24 probably deposition of Mr. Spehar, who's the principal
00:03:21 25 of the entity that got the default judgment; and

00:03:25 1 probably some depositions of the key shareholder, slash,
00:03:31 2 officers of the debtor.

00:03:33 3 THE COURT: And --

00:03:34 4 MR. NOVACK: And those things would be
00:03:36 5 needed to show --

00:03:37 6 THE COURT: What would the shareholders show
00:03:40 7 you?

00:03:41 8 MR. NOVACK: Well, I think, among other
00:03:42 9 things, the shareholders are going to show that they
00:03:45 10 were not contacted by the trustee to even ask them about
00:03:49 11 the allegations that we think are completely
00:03:53 12 unsupported. They're on information and belief. But
00:03:56 13 the people that had the information about this
00:03:59 14 complaint, I think, will testify that they were never
00:04:02 15 contacted by the trustee, that they don't believe in
00:04:05 16 this complaint, and had they been asked by the trustee
00:04:08 17 they would have so told him.

00:04:09 18 THE COURT: Okay. And what do you think
00:04:10 19 would resolve any fact dispute which would justify the
00:04:13 20 proper procedure of moving forward in the case?

00:04:15 21 MR. JOYCE: Well, I haven't seen your
00:04:17 22 opinion, and I'm concerned that --

00:04:18 23 THE COURT: Well, my opinion -- I don't have
00:04:20 24 a new opinion on the motion to reconsider. You just
00:04:22 25 heard my opinion.

00:04:23 1 MR. JOYCE: Okay; okay.

00:04:24 2 THE COURT: My opinion and order was the one
00:04:25 3 that was issued over a month ago.

00:04:27 4 MR. JOYCE: Okay. Here's my concern: My
00:04:29 5 concern is that when you give Mr. Novack a limited bite,
00:04:36 6 he's going to get the whole apple. So I'm going to
00:04:41 7 submit for deposition twice --

00:04:41 8 THE COURT: Well, you may be going on merits
00:04:43 9 of discovery. Who said it's going to be a limited bite?

00:04:46 10 What's important here is that if it is an
00:04:49 11 unclean hands situation -- and I'm using that term, I'm
00:04:52 12 not so sure that is the -- I think that's a more
00:04:55 13 appropriate term rather than the fraud on the court that
00:04:58 14 you've used, but that's just my analysis of it.

00:05:01 15 If that's the case, then we're not going to
00:05:03 16 go for full discovery. So it's my coordination of the
00:05:09 17 case, because I find the motion to reconsider very
00:05:13 18 persuasive. But, as I've said, I think there's fact
00:05:17 19 disputes in this case that I can't get to the bottom of.
00:05:19 20 And maybe your fact disputes will show that it needs to
00:05:23 21 go forward for full discovery. And it may be that you
00:05:25 22 will need to have your clients be deposed on other
00:05:28 23 issues other than that later on. But it's my
00:05:31 24 coordination of this issue and this discovery first that
00:05:34 25 I think is the appropriate way to go.

00:05:35 -1 MR. JOYCE: So he's then going to be limited
00:05:37 2 to asking questions that would go to the area of unclean
00:05:40 3 hands?

00:05:40 4 THE COURT: That's correct; that's
00:05:41 5 absolutely correct.

00:05:42 6 MR. JOYCE: That's fine.

00:05:43 7 THE COURT: That's right.

00:05:43 8 And I -- how long do you think that would
00:05:45 9 be? 60 days?

00:05:46 10 MR. NOVACK: Judge, I was going to suggest
00:05:48 11 90 only because 60 gets us bumped up against the end of
00:05:51 12 the year and the holidays.

00:05:52 13 THE COURT: Fair enough. 90 days.

00:05:54 14 I am sure you're going to have a dispute as
00:05:56 15 to what is covered, I bet, and you're going to come back
00:05:58 16 to me.

00:05:59 17 MR. JOYCE: It's a bad bet for me.

00:06:00 18 THE COURT: Just -- I can see you and I can
00:06:02 19 see that that's where we're headed. But that's okay. I
00:06:05 20 will be here and I will resolve whether it is limited or
00:06:07 21 not. Rather than sending this off to a magistrate
00:06:10 22 judge, let me resolve it.

00:06:11 23 So 90 days for the limited discovery on
00:06:13 24 unclean hands. And then from the basis of that
00:06:17 25 discovery, you, if you fully believe it's appropriate,

00:06:21 1 can move for summary judgment on that issue alone. And
00:06:24 2 if it is denied, we go forward for the rest of the case.

00:06:27 3 MR. NOVACK: Thank you very much.

00:06:27 4 THE COURT: And that's the way we're going
00:06:28 5 to handle this.

00:06:29 6 MR. JOYCE: Thank you, Judge.

00:06:30 7 THE COURT: Thank you.

8 (Concluded at 9:20 a.m.)

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C E R T I F I C A T E

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

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22 _____
April M. Metzler, RPR, CRR

Date

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