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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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DAVID GROCHOCINSKI,

Case No. 1:06-cv-5486

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Plaintiff,

Chicago, Illinois

October 30, 2007

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v.

Status Hearing

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MAYER BROWN ROWE & MAW, LLP,
et al.,

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Defendants.

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

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APPEARANCES:

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Proceedings recorded by mechanical stenography;
transcript produced by notereading.

09:13:34 1 (Commenced at 9:13 a.m.)

09:13:34 2 THE CLERK: 06C5486, Grochocinski versus
09:13:38 3 Mayer, Brown, status hearing.

09:13:43 4 MR. NOVACK: Good morning, your Honor.
09:13:44 5 Steve Novack for defendants, N-o-v-a-c-k.

09:13:48 6 THE COURT: Good morning.

09:13:48 7 MR. NOVACK: Good morning.

09:13:48 8 MR. JOYCE: And Ed Joyce, J-o-y-c-e, for the
09:13:52 9 plaintiff.

09:13:52 10 THE COURT: Good morning.

09:13:52 11 MR. CARROLL: Rob Carroll, C-a-r-r-o-l-l.

09:13:56 12 THE COURT: Good morning.

09:13:57 13 All right, gentlemen. I have reviewed this
09:13:59 14 high and low and inside and out, and here's what I'm
09:14:02 15 going to do:

09:14:03 16 I am denying the motion to reconsider,
09:14:06 17 because I still believe that there are many fact
09:14:09 18 disputes that need to be resolved and that it is not a
09:14:14 19 situation where I can dismiss on a motion to dismiss.
09:14:17 20 But let me tell you where I'm coming from as far as how
09:14:21 21 we're going to move forward.

09:14:22 22 I find defendant's position extremely
09:14:24 23 persuasive, and I think the issue of unclean hands, for
09:14:30 24 lack of a better term -- he's used the term repeatedly
09:14:33 25 fraud on the court, I think there might be a few other

09:14:37 1 variations of what that issue is -- but there is a
09:14:41 2 question lurking about why this was handled in the way
09:14:45 3 it was and issues as to the trustee's position in coming
09:14:50 4 forward and being paid by this entity, issues regarding
09:14:54 5 why the trustee didn't go in and move to vacate the
09:14:58 6 dismissal, and I think what we need to do is we need to
09:15:02 7 do discovery solely on that, what I would call, unclean
09:15:06 8 hands issue first, so that I can have facts in front of
09:15:11 9 me and decide whether the case should be dismissed based
09:15:15 10 upon that issue.

09:15:15 11 It's a fact dispute that I'm having the
09:15:19 12 problem with. I think there are disputed issues of fact
09:15:21 13 that I can't get rid of this on a dismissal, but I find
09:15:29 14 your argument extremely persuasive. It is a very unique
09:15:29 15 situation. It's a very odd case.

09:15:38 16 MR. JOYCE: Judge, why is this something
09:15:38 17 that the District Court resolves as opposed to the
09:15:38 18 bankruptcy court? Because in the bankruptcy court it's
09:15:38 19 not the least bit unique. It's a regular -- it happens
09:15:40 20 all the time.

09:15:41 21 THE COURT: I don't think it happens all the
09:15:42 22 time that you have an entity that has a defaulted
09:15:45 23 judgment that has gone in -- you're coming in on a
09:15:49 24 malpractice count. How often have you seen a
09:15:52 25 malpractice claim with the only asset in the estate

09:15:55 1 being the value of the defaulted judgment?

09:15:58 2 MR. JOYCE: I'm focusing on -- the creditors
09:16:01 3 very often fund --

09:16:02 4 THE COURT: Oh, fair enough. That's one
09:16:04 5 issue; that's one issue.

09:16:05 6 MR. JOYCE: Correct.

09:16:05 7 THE COURT: In many. Fair enough. That's
09:16:07 8 one issue in many.

09:16:08 9 But as has been laid out at the motion to
09:16:11 10 reconsider hearing in the motion to dismiss, I think
09:16:14 11 that we need to get to the fact disputes that can aid me
09:16:19 12 in resolving whether it is common, whether it is
09:16:22 13 something that was a normal business strategy. It
09:16:26 14 doesn't sound like it, based upon the unique set of
09:16:30 15 facts here.

09:16:31 16 So I'd like to ask you what you think the
09:16:33 17 discovery would be that would get to the bottom of that
09:16:35 18 issue that we can resolve it first before we go into the
09:16:38 19 malpractice issue? What do you believe would be
09:16:41 20 necessary?

09:16:42 21 MR. NOVACK: I would imagine, your Honor,
09:16:44 22 that there would be discovery taken of the trustee,
09:16:48 23 probably in the form of a deposition of the trustee;
09:16:51 24 probably deposition of Mr. Spehar, who's the principal
09:16:55 25 of the entity that got the default judgment; and

09:16:59 1 probably some depositions of the key shareholder, slash,
09:17:05 2 officers of the debtor.

09:17:08 3 THE COURT: And --

09:17:09 4 MR. NOVACK: And those things would be
09:17:10 5 needed to show --

09:17:12 6 THE COURT: What would the shareholders show
09:17:14 7 you?

09:17:15 8 MR. NOVACK: Well, I think, among other
09:17:17 9 things, the shareholders are going to show that they
09:17:19 10 were not contacted by the trustee to even ask them about
09:17:24 11 the allegations that we think are completely
09:17:27 12 unsupported. They're on information and belief. But
09:17:31 13 the people that had the information about this
09:17:34 14 complaint, I think, will testify that they were never
09:17:36 15 contacted by the trustee, that they don't believe in
09:17:39 16 this complaint, and had they been asked by the trustee
09:17:42 17 they would have so told him.

09:17:43 18 THE COURT: Okay. And what do you think
09:17:44 19 would resolve any fact dispute which would justify the
09:17:47 20 proper procedure of moving forward in the case?

09:17:50 21 MR. JOYCE: Well, I haven't seen your
09:17:51 22 opinion, and I'm concerned that --

09:17:53 23 THE COURT: Well, my opinion -- I don't have
09:17:54 24 a new opinion on the motion to reconsider. You just
09:17:57 25 heard my opinion.

09:17:57 1 MR. JOYCE: Okay; okay.

09:17:58 2 THE COURT: My opinion and order was the one
09:18:00 3 that was issued over a month ago.

09:18:01 4 MR. JOYCE: Okay. Here's my concern: My
09:18:03 5 concern is that when you give Mr. Novack a limited bite,
09:18:11 6 he's going to get the whole apple. So I'm going to
09:18:15 7 submit for deposition twice --

09:18:16 8 THE COURT: Well, you may be going on merits
09:18:18 9 of discovery. Who said it's going to be a limited bite?

09:18:21 10 What's important here is that if it is an
09:18:23 11 unclean hands situation -- and I'm using that term, I'm
09:18:27 12 not so sure that is the -- I think that's a more
09:18:29 13 appropriate term rather than the fraud on the court that
09:18:32 14 you've used, but that's just my analysis of it.

09:18:35 15 If that's the case, then we're not going to
09:18:38 16 go for full discovery. So it's my coordination of the
09:18:44 17 case, because I find the motion to reconsider very
09:18:48 18 persuasive. But, as I've said, I think there's fact
09:18:51 19 disputes in this case that I can't get to the bottom of.
09:18:54 20 And maybe your fact disputes will show that it needs to
09:18:57 21 go forward for full discovery. And it may be that you
09:19:00 22 will need to have your clients be deposed on other
09:19:03 23 issues other than that later on. But it's my
09:19:05 24 coordination of this issue and this discovery first that
09:19:08 25 I think is the appropriate way to go.

09:19:10 1 MR. JOYCE: So he's then going to be limited
09:19:12 2 to asking questions that would go to the area of unclean
09:19:15 3 hands?

09:19:15 4 THE COURT: That's correct; that's
09:19:16 5 absolutely correct.

09:19:16 6 MR. JOYCE: That's fine.

09:19:17 7 THE COURT: That's right.

09:19:18 8 And I -- how long do you think that would
09:19:20 9 be? 60 days?

09:19:21 10 MR. NOVACK: Judge, I was going to suggest
09:19:22 11 90 only because 60 gets us bumped up against the end of
09:19:26 12 the year and the holidays.

09:19:27 13 THE COURT: Fair enough. 90 days.

09:19:28 14 I am sure you're going to have a dispute as
09:19:30 15 to what is covered, I bet, and you're going to come back
09:19:33 16 to me.

09:19:33 17 MR. JOYCE: It's a bad bet for me.

09:19:35 18 THE COURT: Just -- I can see you and I can
09:19:36 19 see that that's where we're headed. But that's okay. I
09:19:39 20 will be here and I will resolve whether it is limited or
09:19:42 21 not. Rather than sending this off to a magistrate
09:19:44 22 judge, let me resolve it.

09:19:46 23 So 90 days for the limited discovery on
09:19:48 24 unclean hands. And then from the basis of that
09:19:52 25 discovery, you, if you fully believe it's appropriate,

09:19:56 1 can move for summary judgment on that issue alone. And
09:19:58 2 if it is denied, we go forward for the rest of the case.

09:20:01 3 MR. NOVACK: Thank you very much.

09:20:02 4 THE COURT: And that's the way we're going
09:20:03 5 to handle this.

09:20:04 6 MR. JOYCE: Thank you, Judge.

09:20:05 7 THE COURT: Thank you.

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

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15 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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