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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID GROCHOCINSKI,

Case No. 1:06-cv-05486

Plaintiff,

Chicago, Illinois

v.

May 20, 2010
Motion Hearing

MAYER BROWN ROWE & MAW LLP,
et al.,

Defendant.

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

APPEARANCES:

For the Plaintiff: Edward T. Joyce & Associates P.C.
By: Robert D. Carroll
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- and -

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APPEARANCES (Cont'd) :

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**Proceedings recorded by mechanical stenography; transcript
produced by notereading.**

10:09:41 1 (Commenced at 10:09 a.m.)

10:09:41 2 THE CLERK: 06C5486, Grochocinski versus Mayer,

10:09:49 3 Brown.

10:09:49 4 MR. MORGANS: Good morning, your Honor. David

10:09:50 5 Morgans representing David Grochocinski --

10:09:53 6 THE COURT: Good morning.

10:09:53 7 MR. MORGANS: -- as respondent to the motion for

10:09:55 8 sanctions by defendants.

10:09:55 9 THE COURT: Okay. Good morning.

10:09:57 10 MR. NOVACK: Good morning, your Honor. Steve Novack

10:09:58 11 on behalf of defendants.

10:09:59 12 THE COURT: Good morning, Mr. Novack.

10:10:02 13 MR. CARROLL: Good morning, your Honor. Rob Carroll

10:10:02 14 for Edward T. Joyce and Associates.

10:10:04 15 THE COURT: Okay. Good morning, folks.

10:10:05 16 Well, I did receive this memorandum of law in support

10:10:08 17 of the motion to dismiss the motion for sanctions, and I think

10:10:12 18 I need to have written responses to it. But I will take your

10:10:16 19 oral response, if you have one today, but I'm going to require

10:10:19 20 you to give me more. Okay?

10:10:20 21 MR. NOVACK: Okay. Then just briefly, your Honor, if

10:10:23 22 I may, first of all, I think that this motion or the grounds

10:10:28 23 in the motion should really just be a part of, maybe, Roman

10:10:32 24 numeral one of the response to the motion for sanctions.

10:10:34 25 THE COURT: Oh, I see.

10:10:35 1 MR. NOVACK: I don't know the reason why there should
10:10:37 2 be piecemeal briefing. But if the Court is going to hear it
10:10:41 3 separately -- and I think it should be denied out of hand.

10:10:45 4 The cases that are cited are cases that deal with
10:10:48 5 state law lawsuits against the bankruptcy trustee.

10:10:51 6 THE COURT: Right.

10:10:52 7 MR. NOVACK: They did not bring that lawsuit, was not
10:10:54 8 a party to that lawsuit before the incident in question. That
10:10:59 9 doesn't apply here, and I suggest respectfully to the motion
10:11:03 10 [sic] that it cannot apply here.

10:11:06 11 Our motion for sanctions was filed as simply the next
10:11:09 12 step as part of a proceeding that Mr. Grochocinski initiated
10:11:14 13 in this Court, the United States District Court --

10:11:15 14 THE COURT: Right.

10:11:16 15 MR. NOVACK: -- for the Northern District of
10:11:17 16 Illinois, which is the same Court in which the bankruptcy
10:11:20 17 Court sits.

10:11:23 18 Our motion is based on the Court's inherent authority
10:11:26 19 to control proceedings before it, and I would suggest that it
10:11:33 20 is illogical -- I'll use that word, kind of, at the very least
10:11:35 21 to suggest that a subordinate bankruptcy court could get a
10:11:39 22 trump card over this Court's inherent authority to control its
10:11:43 23 own proceedings.

10:11:45 24 And supporting my, sort of, common-sense argument, if
10:11:49 25 you will, and the lack of any case law cited against it, is

10:11:53 1 the Maxwell case. Maxwell was the Seventh Circuit case -- one
10:11:56 2 of the cases your Honor relied on --

10:11:57 3 THE COURT: Right.

10:11:58 4 MR. NOVACK: -- in entering summary judgment. It's a
10:12:00 5 case strikingly similar, you'll recall. It was a malpractice
10:12:03 6 case there against an accounting firm. Summary judgment was
10:12:05 7 entered by the District Court, which even though it was a
10:12:09 8 bankruptcy trustee case was in the District Court.

10:12:11 9 The Seventh Circuit affirmed summary judgment, and
10:12:14 10 invited sanctions motions both to be made in the District
10:12:18 11 Court for the proceedings there and in the Seventh Circuit for
10:12:22 12 proceedings there.

10:12:23 13 The Court said, Judges must be vigilant in policing
10:12:28 14 the litigation judgment exercised by trustees in bankruptcy
10:12:32 15 and, in an appropriate case, must give consideration to
10:12:35 16 imposing sanctions for the filing of a frivolous suit. The
10:12:38 17 Court did not say, But only after getting permission from the
10:12:42 18 bankruptcy judge.

10:12:44 19 And then the Seventh Circuit issued, what I'll call,
10:12:47 20 Maxwell 2, a few months later, after substantively considering
10:12:52 21 the sanctions motion, and it described what had happened. And
10:12:57 22 it said that, In our opinion in this appeal we invited
10:13:01 23 appellee to file motions in the District Court and this Court
10:13:04 24 for an award of reasonable attorneys' fees.

10:13:07 25 Again, at no time did the Court say, But only if you

10:13:10 1 first get permission from the bankruptcy Court. Those
10:13:13 2 sanction proceedings proceeded. And, in fact, the Court said,
10:13:17 3 You need no more permission to go to the District Court
10:13:21 4 without more and come back to us without more.

10:13:23 5 And so this is a motion that seeks to interrupt a
10:13:27 6 briefing schedule already set, I think, on a prima facie
10:13:31 7 basis --

10:13:31 8 THE COURT: Where are we in the briefing schedule as
10:13:33 9 far as your response to the motion for --

10:13:35 10 MR. MORGANS: Our response is due in two weeks from
10:13:37 11 today, your Honor.

10:13:39 12 And my point is that the question of jurisdiction is
10:13:44 13 preliminary to the substance of the motion that's been brought
10:13:47 14 against my client.

10:13:48 15 Now, I would like to see the case law, obviously, and
10:13:51 16 have the opportunity to reply on the jurisdictional issue. I
10:13:54 17 could orally tell you that Maxwell, for instance, did not
10:13:57 18 address the Linton case or the Barton doctrine at all.
10:14:01 19 What -- it simply was not an issue raised.

10:14:03 20 But, in any event, I would like the opportunity to
10:14:06 21 reply to the case law that he cites -- that Counsel cites in
10:14:08 22 opposition to this motion. It's a very important
10:14:11 23 fundamental --

10:14:12 24 THE COURT: It is some -- but it is also somewhat a
10:14:16 25 subset of your response to the motion for sanctions, which is,

10:14:19 1 Judge, you can't give them, because you don't have
10:14:21 2 jurisdiction to give them. So I think it can be embodied in
10:14:25 3 the same briefing schedule.

10:14:27 4 MR. MORGANS: May I suggest, Judge? The motion for
10:14:30 5 sanctions is likely going to require an affidavit of my
10:14:34 6 client, Mr. Grochocinski. The response to that could involve
10:14:38 7 a question of fact and an ultimate evidentiary hearing before
10:14:42 8 your Honor. The motion to dismiss, based on subject matter
10:14:46 9 jurisdiction, is based purely on the law and the record that's
10:14:50 10 before the Court --

10:14:51 11 THE COURT: And the problem I have with this, which
10:14:54 12 is something you mentioned before, about the sanctions being a
10:15:01 13 disputed statement of fact and that -- and your client would
10:15:04 14 need to present an affidavit is that, of course, the Court had
10:15:07 15 the benefit of a thorough, very detailed deposition of your
10:15:12 16 client, and my findings regarding his activity were based upon
10:15:18 17 a Rule 56 summary judgment. So we had the facts. It would be
10:15:23 18 as if it played out in the courtroom. It just played out in
10:15:28 19 the chambers, where I read his entire deposition and went
10:15:31 20 through every single document in the matter.

10:15:34 21 So I'm not certain how a deposition subsequent to my
10:15:41 22 findings changes those findings. Why wouldn't that be, for
10:15:46 23 example, a motion to reconsider where -- is he going to
10:15:49 24 present new facts?

10:15:50 25 MR. MORGANS: Well, I believe so. Now, I have not --

10:15:54 1 I've got eleven boxes of documents on this case. I haven't
10:15:57 2 been in the case like --

10:15:58 3 THE COURT: Oh, believe me. They're in the back.
10:16:03 4 They've been living with me as well, and there's more than
10:16:04 5 eleven, so I know.

10:16:07 6 But I worry that you're looking at this issue as if
10:16:12 7 we are about to embark upon a brand new hearing and a new
10:16:16 8 factual analysis, when the Court's ruling it was based upon
10:16:21 9 the factual dispute before it and conclusions made by the
10:16:25 10 facts presented to the Court.

10:16:27 11 MR. MORGANS: The question of sanctions is whether my
10:16:30 12 client was willful and deliberate -- that's the standard of
10:16:33 13 sanctions against a trustee -- and what he did. I believe I
10:16:37 14 will have evidence to present, that's not in the record
10:16:40 15 already, concerning my client's long experience, his handling
10:16:43 16 of default judgments, his -- the appointment of the special
10:16:54 17 counsel by the bankruptcy Court, the fact that my client's not
10:16:57 18 experienced in legal malpractice matters, facts that as
10:17:01 19 alluded to by counsel were in the Maxwell case, and I might
10:17:03 20 add --

10:17:03 21 THE COURT: And were in my case --

10:17:03 22 MR. MORGANS: -- sanctions were denied --

10:17:06 23 THE COURT: And were in my case in the depositions.
10:17:09 24 His entire background was reviewed regarding his understanding
10:17:16 25 of legal malpractice claims, as to whether he was experienced

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1 in this area.

2 MR. MORGANS: Well, what I'm suggesting, Judge, is
3 because this is a -- this motion I've brought is -- can be
4 boxed together. It would delay the briefing schedule on the
5 merits, I agree, by some weeks, but it can be addressed. And
6 should the Court rule in our favor, then there would be no
7 need for the lawyers to brief the merits of the motion, nor
8 for the Court to have any sort of a hearing on the motion
9 unless and until the bankruptcy Court gave approval for the
10 bringing of the motion for sanctions. And, therefore, it's
11 economical for the Court and for the counsel and their
12 clients, who are paying the fees, to do it in the steps that I
13 suggest. The motion should be ruled on first --

14 THE COURT: Okay.

15 MR. MORGANS: -- the motion to dismiss.

16 THE COURT: Do you have anything you want to add?

17 MR. CARROLL: No.

18 THE COURT: Okay. Anything you want to add to that?

19 MR. NOVACK: (Shaking head.)

20 THE COURT: All right. Well, because the impact of
21 the motion is significant on your client, I will require a
22 briefing schedule on it, and I'll stay the briefing on the
23 others until this one is ruled upon. But I'm skeptical, but I
24 will be open-minded and do what you want me to do.

25 So how long do you need to --

10:18:27 1 MR. NOVACK: Could we have fourteen days, please?

10:18:28 2 THE COURT: Okay. Two weeks from today, and then

10:18:31 3 another week after that for your reply, and then I'll rule by

10:18:35 4 mail and give you a ruling on the motion to dismiss. If, of

10:18:39 5 course, you're correct, we won't go into the next one. And if

10:18:43 6 I disagree, I'm going to set -- restart the schedule on the

10:18:46 7 sanctions. Okay?

10:18:47 8 MR. CARROLL: Judge, I do have one question.

10:18:49 9 THE COURT: Sure.

10:18:49 10 MR. CARROLL: We're filing separate responses to the

10:18:51 11 motion for sanctions. Is the briefing schedule --

10:18:54 12 THE COURT: It's going to be stayed --

10:18:56 13 MR. CARROLL: That's fine.

10:18:56 14 THE COURT: -- so you'll be able to stay as well. If

10:18:59 15 you want, you can chime in on this as well on the

10:19:02 16 jurisdictional issue.

10:19:02 17 MR. CARROLL: Very good.

10:19:03 18 THE COURT: But your substantive response will be

10:19:05 19 stayed until I hear Mr. Grochocinski's concerns that I don't

10:19:09 20 have jurisdiction over it.

10:19:10 21 MR. CARROLL: Very well.

10:19:10 22 THE COURT: Okay. All right. Thank you.

10:19:11 23 MR. MORGANS: Thank you, Judge.

10:19:12 24 MR. NOVACK: Thank you, your Honor.

25 (Concluded at 10:19 a.m.)

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C E R T I F I C A T E

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

/s/April M. Metzler, RPR, CRR, FCRR May 20, 2010

April M. Metzler, RPR, CRR, FCRR **Date**

Official Federal Court Reporter

10:50:37