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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

MONSOUR'S INC.,)	
)	
)	Plaintiff,
)	Case No. 05-1204
vs.)	
)	
MENUMAKER FOODS,)	
)	
)	Defendant,
)	

TRANSCRIPT OF HEARING

On the 30th day of April, 2007, came on to be heard Hearing in the above-entitled and numbered cause before the HONORABLE MONTI L. BELOT, Judge of the United States District Court for the District of Kansas, Sitting in Wichita.

APPEARANCES

The Plaintiff appeared by and through Mr. Dustin DeVaughn and Mr. Richard James;

The Defendant appeared by and through Mr. Val Wachtel.

1 (Beginning at 3:30 p.m. April 30, 2007,
2 the following proceedings were had.)

3 THE COURT: All right. This is Monsour's vs.
4 MenuMaker Foods, Incorporated. Let's have the appearances and
5 who are present.

6 MR. DeVAUGHN: Your Honor, Dustin DeVaughn and
7 Richard James are here for Plaintiff Monsour's, Inc. And
8 Sheila Monsour is here as the corporate representative.

9 THE COURT: Where is Mark Monsour?

10 MR. DeVAUGHN: Mark Monsour is in Tulsa, Oklahoma,
11 Your Honor. He is in a voluntary drug rehabilitation program.

12 THE COURT: All right. Who's here for --

13 MR. WACHTEL: Your Honor, Val Wachtel on behalf of
14 Menu Maker Foods. With me is Mr. Dick Graves who is the
15 president of Menu Maker Foods, and seated behind me, Your
16 Honor, is Mr. Creighton Cox, who is the general manager of
17 Menu Maker Foods.

18 THE COURT: All right. Well, I've looked over the
19 things that you all have filed and with great reluctance I am
20 going to ask that this case be reassigned to another judge.

21 I had a conversation with Mr. DeVaughn about this
22 case. He called to say that the case had been settled. I
23 assumed at that time -- and I don't place any fault on
24 Mr. DeVaughn at all. I get calls like this. And I, I don't
25 remember whether I picked up the phone or whether somebody

1 told me that he was on the phone, but I frequently get calls
2 like this saying that a case has been settled. And both
3 lawyers don't have to be on the phone for something like that.
4 But I had a conversation with Mr. DeVaughn about some matters
5 that are involved in the case that don't directly have
6 anything to do with settlement. I later spoke to Alex
7 Mitchell, who is Mr. Wachtel's partner, and I had some
8 conversations with him. At the time I had both conversations
9 I had no idea that this case was going to fall apart. Had I
10 had any idea like that -- if there was any idea like that, I'm
11 sure Mr. DeVaughn would have told me, or Mr. Mitchell, one or
12 the other. But under the circumstances, I just think it would
13 be better if one of the other judges handled it. It will not
14 be Judge Brown. It will either be Judge Marten or one of the
15 other judges. And I'll talk to Judge Lungstrum about how to
16 reassign it.

17 Now, that's not to say that I don't think that you
18 ought to cease your efforts to resolve this case because I'm
19 going to tell whoever the judge is that takes this case over
20 that there's a pretrial order yet to be prepared and that
21 there's a dispositive motion, a third motion for summary
22 judgment, that presumably will have to be ruled on, and that
23 where the case will go from that point is either to trial or
24 settlement.

25 Apparently, even though there's a dispute over

1 whether or not a settlement was reached -- and I'm not going
2 to resolve that, you can present that to the next judge if you
3 want -- you were obviously having conversations about
4 settlement. It was not one of these situations where one
5 party was saying I won't settle this case under any
6 circumstances. You were having conversations and money was
7 talked about. And that suggests to me that at that time
8 anyway, people were using good judgment, good business
9 judgment, about the case. The most expensive litigation that
10 can ever be conducted is litigation over principle, over
11 feelings. And any judge will tell you that and any judge that
12 handles this case from now on out will not care whether the
13 case is settled. I don't care whether the case is settled.
14 But if it goes to trial, it will be expensive, more so than
15 now. And let me tell you, you can never be sure what a jury's
16 going to do. I know your lawyers have told you that, but you
17 may as well hear it from a judge. You can never be sure. So
18 I would encourage you to continue your efforts to get the
19 matter resolved. But as of now, I'll ask Judge Lungstrum
20 about reassigning it and you'll get an order to that effect.
21 Any questions?

22 MR. WACHTEL: No, sir.

23 MR. DeVAUGHN: No Your Honor.

24 THE COURT: All right.

25 (Adjourned at 3:35 p.m.)

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C E R T I F I C A T E

I, Cindy L. Schwemmer, United States Court Reporter in and for the District of Kansas, do hereby certify:

That the above and foregoing proceedings were taken by me at said time and place in stenotype;

That thereafter said proceedings were transcribed under my direction and supervision by means of computer-aided transcription, and that the above and foregoing constitutes a full, true and correct transcript of said proceedings;

That I am a disinterested person to the said action.

IN WITNESS WHEREOF, I hereto set my hand on this the 4th day of May, 2007.

s/ Cindy L. Schwemmer

Cindy L. Schwemmer

United States Court Reporter