

IN THE CIRCUIT COURT OF THE
18TH JUDICIAL CIRCUIT, IN AND FOR
BREVARD COUNTY, FLORIDA

CASE NO. 05-2013-CP-028863

ANNEEN NINA GLORIA BAUM,
PLAINTIFF,

VS.

DAVID A. BAUM, individually and as
Personal Representative of the Estate of
Seymour Baum; PINE RIDGE PLAZA,
LLC; VILLAGE GREEN PLAZA, LLC;
SILVER SPRING MANOR, INC.;
SILVER SPRING MANOR, LLC;
BORUCH-DAVID, INC.; BORUCH-
DAVID, LLC; AND DOWNTOWN MINI
STORAGE OF MELBOURNE, LLC,

DEFENDANTS.

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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN M. HARRIS
CIRCUIT COURT JUDGE

DATE: NOVEMBER 12, 2013
TIME: COMMENCED AT: 9:23 A.M.
CONCLUDED AT: 9:39 A.M.
PLACE: THE MOORE JUSTICE CENTER
2825 JUDGE FRAN JAMIESON WAY
VIERA, FLORIDA
STENOGRAPHICALLY
REPORTED BY: LISA M. FITZGERALD,
FLORIDA PROFESSIONAL REPORTER
and NOTARY PUBLIC

Ex 9

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P R O C E E D I N G S

1
2 THE COURT: The Estate of Seymour Baum. What
3 are we doing on this case today, folks?

4 MR. HENNESSEY: Good morning, Your Honor.
5 Bill Hennessey here from Gunster Yoakley. Your
6 Honor, I represent David Baum. David Baum is the
7 personal representative of the Estate of Seymour
8 Baum.

9 We have a couple of different actions pending
10 before you in two separate case numbers, and so
11 there's a status conference actually in both case
12 numbers this morning.

13 The Estate of Seymour Baum is pending before
14 Your Honor, and in that case, Nina Baum, David's
15 sister, has contested the validity of Seymour's
16 last will and testament. In a separate civil
17 matter pending before you, Nina Baum has filed a
18 claim against her father's estate alleging that he
19 promised to support her for the rest of her
20 lifetime, and she's seeking some \$8 million in
21 damages under that claim for promissory estoppel.

22 We're here before you first on a status
23 conference to -- because we're having a Dickens of
24 a time getting anything scheduled in this case.
25 And through no fault of Mr. Manney or Mr. Roche,

1 their client has been uncommunicative with them in
2 terms of scheduling things before the Court.

3 And so we had a hearing before you to strike
4 her predator claim as untimely on the 3rd, and you
5 granted them a continuance on that. That's now set
6 for the 17th of December before you, to have heard
7 on the afternoon of December 17th.

8 I've attempted for the last three months to
9 get Ms. Baum's deposition set. And finally on
10 October 30th I sent a letter to my counsel
11 unilaterally setting it, saying if we want -- if
12 you want to move it to a different date, just give
13 me dates, and we'll get it set.

14 And unfortunately, when we tried to press to
15 get the dates set, Mr. Manney and Mr. Roche have
16 now -- are seeking to withdraw as counsel. And we
17 have Mr. -- I think his name is Guralnick who's
18 going to be appearing.

19 As I said, Your Honor, this -- I don't think
20 this is through any fault of our opponents. Ms.
21 Baum on the other side -- and I sent over to Your
22 Honor -- I'm not sure if you have it; I don't see
23 it before you -- but a notebook. But Ms. Baum
24 herself is a sort of a serial litigant.. And the
25 U.S. District Court -- and I cited it in my

1 response on their motion for protective order, you
2 know, basically in quoting, he said, you know, she
3 lies, manipulates, distorts, she defies court
4 rulings, misses countless professional
5 appointments, decides when or when not to be
6 present for court appearances, filed multiple
7 criminal and civil complaints of dubious merit, and
8 fired or alienated close to ten experienced
9 attorneys. She's clear, concise and rational when
10 it's in her interest to do so. Otherwise, she's
11 vague, circumstantial, evasive and circuitous.
12 This is not mental illness; it's her style of
13 combat.

14 And so that's -- unfortunately the rulings of
15 the New York District Court and the Federal -- the
16 Federal Court are playing out again in this case.
17 And I'm seeking your assistance this morning in
18 just trying to help get a couple of things
19 accomplished.

20 Number one, the parties in the estate
21 proceeding, in the will contest, are parties that
22 still have not been served despite the fact that
23 it's been pending since June. There are still
24 parties in the civil case that have not been served
25 despite the fact that the case is pending again

1 since June.

2 We have Ms. Baum's deposition set, which I'd
3 like your assistance, if it's going to be moved,
4 just in terms of getting dates so we can get that
5 set and move forward.

6 And then ultimately Ms. Baum had a request for
7 production which was served on her that she's never
8 filed a response to. And I'd just like assistance
9 on that in terms of getting the request out for
10 Ms. Baum's -- Ms. Baum and her counsel.

11 I know Mr. Manney and Mr. Roche have a motion
12 to withdraw, which I'm sure they're going to want
13 to address next so that they're -- but that's what
14 I -- in terms of scheduling, that's what I was
15 hoping to accomplish this morning, Your Honor, is
16 just making sure things get served, depositions get
17 set and the like so that we can move this estate
18 proceeding along. It's been pending for over five
19 months now, and still folks haven't been served
20 despite repeated requests. We can't get
21 depositions set and the like. So thank you, Your
22 Honor.

23 THE COURT: All right. Thank you,
24 Mr. Hennessey.

25 Let's go ahead and deal with the motion to

1 withdraw. That's filed by Mr. Manney and
2 Mr. Roche. Who wants to argue that?

3 MR. ROCHE: I'll argue it, Your Honor. This
4 is Patrick Roche.

5 THE COURT: Okay.

6 MR. ROCHE: We filed that motion to withdraw
7 on -- (indiscernible) --

8 THE COURT REPORTER: I can't understand him.

9 THE COURT: Hold on.

10 MR. ROCHE: -- Ms. Baum -- (indiscernible) --
11 advising us that she had found new counsel and she
12 did not want us taking any further action on her
13 case. And it was confirmed yesterday.

14 (Indiscernible.)

15 THE COURT REPORTER: I can't hear him.

16 MR. ROCHE: (Indiscernible.)

17 THE COURT: All right. Is Ms. Baum -- is she
18 on the line today?

19 MR. GURALNICK: No, she's not. This is Mark
20 Guralnick appearing on her behalf. We just moments
21 ago filed an entry of appearance. I'm prepared to
22 jump right in there and assume responsibility for
23 her representation immediately, though I would
24 certainly join in the applications laid by
25 Mr. Manney and Mr. Roche to postpone the

1 deposition. I'd like to get on the phone with
2 Mr. Hennessey right away and work out all of these
3 outstanding discovery issues.

4 THE COURT: That all sounds great. Let me, on
5 the motion to withdraw, then, without any
6 objection, go ahead and grant that motion, allow
7 Mr. Manney and Mr. Roche to withdraw as counsel of
8 record for Ms. Baum. And I will need an order, so
9 somebody just prepare one and send one that allows
10 you guys to withdraw as her counsel. Note in there
11 that Mr. Guralnick has filed an appearance on her
12 behalf, so he'll be assuming representation. So
13 we've dealt with the motion to withdraw.

14 Mr. Manney or Mr. Roche, is there anything
15 further that you guys need to address today?

16 MR. ROCHE: I guess not.

17 THE COURT: Is there any reason we can't let
18 these gentlemen go, Mr. Hennessey?

19 MR. HENNESSEY: No, sir. Thank you.

20 THE COURT: All right. Thank you guys very
21 much. Somebody send me an order, please.

22 All right. So we've got the issue of
23 Ms. Baum's deposition. Is that already scheduled?

24 MR. HENNESSEY: Your Honor, it's on the
25 calendar right now. I sent out a deposition notice

1 on October 30th, and so right -- I'm sorry -- on
2 October 30th for November 15th, so it's on the
3 calendar right now for November 15th. There have
4 been dates circulated previously by Mr. Roche that
5 were acceptable to him, and they're acceptable to
6 me. Those were December 11th, 12th and 13th.

7 And --

8 THE COURT: All of those or any of those?

9 MR. HENNESSEY: Any of those.

10 THE COURT: It's not a three-day deposition?

11 MR. HENNESSEY: Well, I'm not sure how the
12 deposition's going to play out, but any one -- I'm
13 only seeking to take her deposition, you know, for
14 one particular day. And so all of those dates were
15 represented by Mr. Roche's -- available for him,
16 and I've cleared those dates on the calendar for
17 some of the other lawyers involved in this case.

18 So if you're inclined to grant a motion for
19 protective order this morning as it relates to her
20 deposition scheduled for this Friday, I would ask
21 that the plaintiff be required to select a date
22 certain of December 11th, 12th or 13th for her
23 deposition and that she be ordered to appear on
24 that date.

25 If she doesn't select a date, then the

1 deposition will take place on the 12th. And if she
2 doesn't show, then we would, you know, have to come
3 back before you and deal with sanctions as
4 appropriate.

5 But the issue -- and with respect to
6 Mr. Guralnick, I haven't spoken with him before,
7 but as I indicated to you, Your Honor, in the
8 response that I filed I gave you copies of the case
9 law where the courts have made these rulings
10 against Ms. Baum in the past. We're in for a long
11 haul on this. And I just want to start the process
12 of trying to make sure that she's ordered to appear
13 on dates.

14 I tried with Mr. Manney to schedule a
15 deposition starting back in August, and I'm here in
16 November, and it's still not scheduled.

17 THE COURT: Mr. Guralnick, how's your schedule
18 looking December 11th, 12th and/or 13th?

19 MR. GURALNICK: Well, I'm good on both the
20 12th and the 13th. Mind you I've only had one bit
21 of experience with this case, so I don't yet know
22 if Ms. Baum, who's in New York, has any issues
23 concerning those dates. But I can commit to either
24 of those dates, December 12th or the 13th. I just
25 need a little bit of time to consult with her on

1 that.

2 I would also respectfully caution the Court in
3 considering any of these issues by this federal
4 judge. It's over a decade ago. And she was
5 embroiled in a child custody -- (indiscernible).
6 It really is quite -- (indiscernible) -- and
7 unrelated to any of this.

8 THE COURT: I'm not holding any of that
9 against Ms. Baum. I'll make my own judgments about
10 her in my case.

11 But let's go ahead and use December the 12th.
12 Go ahead and set it for that date. And then if,
13 for whatever reason, she absolutely cannot be
14 available on that date, then if you can't get with
15 Mr. Hennessey to work out another date, then file
16 then a motion for protective order. But let's go
17 ahead and shoot for December 12th. That's a month
18 away. That should give her plenty of time.

19 So that takes care of the deposition issue.
20 Mr. Hennessey, you'll do an order for me on that?

21 MR. HENNESSEY: I will, Your Honor.

22 THE COURT: Okay. You've got some scheduling
23 matters you wanted to address as well, service
24 matters?

25 MR. HENNESSEY: We have issues relating to

1 service of process. In the will contest case, the
2 charities which have appeared on the phone, Bill
3 Boyes represented Hadassah, The Chabad represented
4 by Mr. Jacoby, have been served. The personal
5 representative hasn't been served with the
6 petition, nor -- either in his individual capacity
7 or as personal representative.

8 In the civil case there are all of the -- my
9 client, as personal representative, appeared
10 voluntarily to have a lis pendens discharge, but
11 all of the entities that are listed there have
12 never been served as parties. And so I'd just like
13 to see if we can get some dates set to have parties
14 served by, so that in the event that she's dropping
15 parties, they're dropped, and we don't have to
16 speculate as to whether folks are in, out, or what
17 have you.

18 And so if you could provide us with --
19 Ms. Baum with two weeks or whatever you think is
20 appropriate to serve, subject to coming back in if
21 she's having difficulties, I think that would be
22 appropriate under the circumstances, Your Honor.

23 THE COURT: Do you need to have all these
24 folks served before the deposition?

25 MR. HENNESSEY: I don't.

1 THE COURT: Mr. Guralnick, can you get
2 everybody served within 45 days?

3 MR. GURALNICK: Yeah. We can do it before the
4 end of the year. Makes sense.

5 THE COURT: If they're not served, they'll be
6 dismissed? What happens if they're not served?

7 MR. GURALNICK: (Indiscernible) -- served
8 within that time period, I'm going to have other
9 motions on the rules. I'll have to file a motion
10 and explain it to you.

11 THE COURT: Right.

12 MR. HENNESSEY: Yeah, the 120-day rule on all
13 of these defendants has long since run at this
14 point. And so we are in a situation, Your Honor,
15 where there is some discretion that you have in
16 whether or not to dismiss.

17 We have a hearing pending before you on the
18 17th of December, and in that hearing -- the
19 afternoon of December 17th has been set aside to
20 address an evidentiary motion on a petition to
21 strike claims as untimely as well as motions to
22 dismiss that have been filed by many of the charity
23 clients as well as my client.

24 And one of the issues in the motion to dismiss
25 is failure to serve, which I guess we'll address.

1 It might be tackled now. But again, just trying to
2 move it along, I went ahead and filed a motion to
3 dismiss saying that he was never served under --
4 under -- as required by the 120-day rule, as well
5 as other defenses in there too.

6 THE COURT: Let me do this: Let me give,
7 instead of 45 days -- that hearing is
8 December 17th?

9 MR. HENNESSEY: It is, Your Honor.

10 THE COURT: What day of the week would that be
11 happening on? Do you have a calendar on you?

12 MR. HENNESSEY: I don't.

13 MR. GURALNICK: It's a Tuesday.

14 THE COURT: It's a Tuesday, the 17th, so the
15 13th would be a Friday, Friday the 13th. There you
16 go. That's your service date, Mr. Guralnick.
17 Let's shoot for Friday the 13th. That gives you
18 just over a month.

19 MR. GURALNICK: Okay.

20 THE COURT: And then if not, we can address it
21 on the 17th. Fair enough?

22 MR. GURALNICK: Fair enough.

23 MR. HENNESSEY: And the last issue we have
24 this morning before Your Honor is a motion to
25 compel production. We had filed a request for

1 production in Case Number 028863 that Ms. Baum
2 never responded today. It's now three weeks late.
3 And we need both a response and responsive
4 documents. If we're taking her deposition on the
5 12th, I'd like to get the documents before the
6 deposition.

7 THE COURT: Mr. Guralnick, what do you say to
8 that one?

9 MR. GURALNICK: I do not have -- have not seen
10 a request for production. I read about it for the
11 first time when I saw papers from Mr. Manney last
12 night. So I'm happy to act promptly to respond to
13 the discovery, but I fear I'm going to need another
14 copy. I have not been able to access the Court's
15 calendar -- (indiscernible) -- so I don't have any
16 discovery. I haven't had opportunity to --
17 (indiscernible) -- from anybody yet.

18 THE COURT: All right. Well, let's do this:
19 Put in an order, Mr. Hennessey, that the documents
20 are to be produced ten days prior to the
21 deposition. If not, then another motion needs to
22 be filed for an extension or something on behalf of
23 Ms. Baum.

24 So that will give you time, Mr. Guralnick, to
25 either review it and provide those to Mr. Hennessey

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or to request further relief from the Court.

MR. GURALNICK: (Indiscernible) -- with Mr. Hennessey. He can e-mail me and talk with me so I can get on top of it quickly.

MR. HENNESSEY: No problem, sir. Thank you.

THE COURT: Do you have his e-mail address?

MR. HENNESSEY: I don't.

Mr. Guralnick, would you shoot me an e-mail and just provide me with your contact information?

MR. GURALNICK: Sure. I'll e-mail you the notice of appearance. I just filed it this morning, but I'll e-mail it to you right away.

MR. HENNESSEY: Great. Thank you.

THE COURT: Do you have Mr. Hennessey's e-mail?

MR. GURALNICK: I do.

THE COURT: Outstanding. All right. Anything else we can do on this case today from anybody?

MR. HENNESSEY: Thank you, Your Honor.

THE COURT: All right. Thank you all very much. Have a great day.

(The proceedings were concluded at 9:39 a.m.)

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REPORTER'S COURT CERTIFICATE

STATE OF FLORIDA)
COUNTY OF BREVARD)

I, LISA M. FITZGERALD, certify that I was authorized to and did stenographically report the foregoing proceedings to the best of my ability and that the transcript is a true record of my stenographic notes.

Dated this 13th day of November, 2013.



Lisa M. Fitzgerald

LISA M. FITZGERALD
Court Reporter