

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X

WADE ROBERTSON,

Plaintiff

v. Civil Action 09-1642

WILLIAM C. CARTINHOOR, JR.,

Defendant,

-----X

Washington, D.C.

Tuesday, December 15, 2009

9:30 A.M.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE ELLEN SEGAL HUVELLE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Edward N. Griffin, Esq.
GRIFFIN WHITAKER LLC
7474 Greenway Center Drive
Suite 550
Greenbelt, MD 20770
(301) 513-5080
Alain J. Ifrah, Esq.

Jeffrey R. Hamlin, Esq.
IFRAH, PLLC
1627 I Street, NW
Suite 1100
Washington, DC 20006
(202) 912-4819

Court Reporter: Lisa Walker Griffith, RPR
U.S. District Courthouse
Room 6507
Washington, D.C. 20001
(202) 354-3247

Proceedings recorded by mechanical stenography, transcript
produced by computer.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

For the Defendant: Patrick John Kearney, Esq.
Michael J. Bramnick, Esq.
SELZER GURVITCH RABIN & OBECNY
4416 East West Highway
Fourth Floor
Bethesda, MD 20814
(301) 986-9600

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE DEPUTY CLERK: This is Civil Action 09-1642, Wade Robertson versus William C. Cartinhour, Jr. 9:30.

MR. GRIFFIN: Eric Griffin on behalf of the Mr. Wade Robertson.

MR. KEARNEY: Patrick Kearney on behalf of William Cartinhour.

MR. BRAMNICK: Good morning, Your Honor. Michael Bramnick on behalf of William Cartinhour.

THE COURT: Your client is not here? Maybe he is, who--

MR. GRIFFIN: Jeffrey Hamlin and Alain Ifrah are here with me on behalf of Mr. Robertson. They're attorneys.

THE COURT: Are they members of this Bar? I'm sorry, I don't remember.

MR. HAMLIN: Yes, Ma'am

THE COURT: Do you know that the other side has made motions to dismiss for summary judgment based on this indemnification agreement?

MR. KEARNEY: Yes, Your Honor.

THE COURT: Can I ask the plaintiff's counsel, if you don't mind a question or two?

MR. GRIFFIN: Yes, Your Honor.

THE COURT: I have not done a lot of research but I have some real problems with some of these agreements. I don't

1 know what your client did in terms of legal work. I can't find
2 him listed on any of the cases, that case in New York that got
3 thrown out and there were almost sanctions. He wasn't one of
4 the lawyers. I don't get it.

5 I'm on the verge of reporting this whole matter to
6 the Bar Counsel. I'm a little worried about a 82 year old man
7 that put 3.5 million -- I almost wish your client were here.

8 I see what has been done here. And I read your
9 motion to dismiss, and your motion summary judgment. I'm
10 willing to hear what the other side has to say but I'm very
11 concerned that there has been a breach of fiduciary duty here.
12 He is a lawyer, this other man is not. And he is 82. \$3.2
13 million, and I can't find your client's name on a securities
14 action. Can you explain that to me?

15 MR. GRIFFIN: I think it was a fairly complicated
16 securities action. I really don't understand these type of
17 cases myself. I've never worked on one. I'm still trying to
18 get my head around --

19 THE COURT: I don't care how complicated it is. I'd
20 like to know what either the plaintiff or the defendant did.
21 Since when do you say you are doing legal work and you are not
22 listed on the pleadings in New York? How do you account for
23 that if you have this agreement?

24 MR. GRIFFIN: Your Honor, I don't know the answer to
25 that, although my understanding is that he was deeply involved

1 in litigation and coordinating with several of the other
2 attorneys who we've identified as potential witnesses in this
3 matter who would be able to validate that Mr. Robertson was
4 heavily involved in the case, both drafting motions, drafting
5 pleadings and my understanding representing clients.

6 THE COURT: Really? I've never heard of such a thing
7 when you don't enter your appearance.

8 Well, there is a lot to look at here. But I really,
9 I mean, I have not sat on the bench for all these years and not
10 got a sixth sense of a rat. I'm really worried here, I'll tell
11 you right now. I hope you look long and hard about what has
12 gone on here.

13 If you think I'm not going to try to find out whether
14 he did any work or whether there was any real work on the other
15 side for the money, he can't just under the Bar rules, put up
16 \$3.5 million for no services, at 82 years old. Come on.

17 MR. GRIFFIN: I understand, Your Honor. I believe
18 that defense counsel have already filed a complaint with the
19 Bar.

20 THE COURT: They have?

21 You have.

22 MR. GRIFFIN: They have, Your Honor.

23 MR. KEARNEY: Yes, Your Honor.

24 MR. GRIFFIN: We're coordinating with separate
25 counsel for Mr. Robertson who is responding to the Bar

1 complaint.

2 THE COURT: Do you think that there is merit to your
3 motions for summary judgment and to dismiss? It is same
4 argument that the counter claims, you've got an -- What was he
5 doing to indemnify your client against, malpractice?

6 MR. GRIFFIN: Your Honor, I think it was, well it
7 certainly wasn't malpractice because I don't believe
8 Mr. Robertson was representing Mr. Cartinhour as his attorney.
9 They were business partners.

10 THE COURT: What could he indemnify him against?

11 MR. GRIFFIN: I think there was a concern of, he
12 would indemnify him just this type of lawsuit, this -- a breach
13 of the partnership agreement. Really what we have here is the
14 defense has sort of jumped the gum. They have said, well
15 you've breached these agreements. But there is no indication
16 that he has breached any of the partnership agreements.

17 THE COURT: How did he use the \$3.5 million that was
18 given to him? Where is there some level of confidence that the
19 money got used? What did he do, set up a law practice here on
20 Elm Street? I think it is interesting exactly how this 3.5
21 million was spent.

22 When did you report this to the Bar?

23 MR. BRAMNICK: In the last month, Your Honor.

24 THE COURT: I hate to see this gentleman spending any
25 more money in this case. You filed for a declaratory judgment

1 based on an agreement -- I have rarely seen a more one side
2 indemnification agreement in my life.

3 I don't see what Mr. Cartinhour was doing putting
4 \$3.5 million in a securities lawsuit that got thrown out in the
5 district court and the Court of Appeals. But he is not a
6 lawyer. If that does not establish a fiduciary duty when a
7 lawyer and his partner who is not a lawyer, I am sure I
8 researched this just recently. There has to be a fiduciary
9 duty between these two. And you can't waive everything. It is
10 a completely unconscionable.

11 What do you want to do, counsel? This is another
12 one. Somebody has a misperception going here about what is
13 valid. They can waste their time opposing your motion but
14 there is no way there is not going to be discovery. It is
15 going to put your client in all kind of curious situations
16 because I, for one, want to know how he spent \$3.5 million,
17 every penny of it.

18 I bet he doesn't have a record. You wait until Bar
19 Counsel gets looking at this one. Wow! I want him to come in
20 here. I would like to see Mr. Robertson. He obviously knows
21 laws. He came up with that indemnification agreement as if he
22 read the Bar Counsel's opinions almost verbatim. And then
23 comes up with an agreement that, think about it, 82 year old
24 man. Is that how old your client is?

25 MR. KEARNEY: Yes, Your Honor.

1 THE COURT: What was his business, where did he get
2 \$3.5 million to waste.

3 MR. KEARNEY: Most of is, my understanding is most of
4 it is inherited money. He is a doctor. But I don't think he
5 has practiced much. He spends most of his time in his house.
6 He has certain social phobias.

7 THE COURT: How did he meet this guy? Do you know?

8 MR. KEARNEY: Mr. Bramnick can probably--

9 MR. BRAMNICK: He was introduced through a mutual
10 acquaintance for the purpose of funding the litigation. I
11 think plaintiff was looking for an investor and somehow found
12 him.

13 THE COURT: It is new vehicle to get investors. Has
14 not really been litigated particularly much. There was a Legal
15 Times article about it. It said the District of Columbia is
16 the least favorably disposed towards these things. But I have
17 not yet been able to find any specific case. It has the worst
18 champerty laws around.

19 How do you want to proceed here? You can oppose all
20 these motions, I can tell you. You would have to move heaven
21 and earth for me to grant these motions.

22 MR. KEARNEY: I expected, Your Honor, that I was
23 going to file early next week a Rule 56-F motion on summary
24 judgment in order to conduct discovery first.

25 THE COURT: All you have to do is give me an

1 affidavit from your client saying he relied on representations
2 and invested based on those. That's the end of these motions.
3 I mean, he can't waive fraud, an 82 year old man with a lawyer
4 in a partnership. It is preposterous. So, I don't need a lot
5 of fancy stuff.

6 I'm not going to uphold these agreements without full
7 discovery about it. I don't know what you want. If they
8 prevail here, I'm going to think about costs and fees. I don't
9 like it. This is another one I think you lawyers had better
10 start talking quick.

11 MR. GRIFFIN: Your Honor, the agreements, when you
12 take a look at the agreements themselves, Mr. Cartinhour had
13 met with an attorney before entering into these agreements, he
14 had reviewed them. His attorney advised him.

15 THE COURT: That's the partnership. How about the
16 agreement where he waived all rights? I'm not aware that he
17 met with a lawyer on that one. He indemnifies the guy who
18 waives all rights. He says, I can't sue you for anything, and
19 I'm not entitled to an accounting of my 3.5 million. Besides
20 that, you may as well take my house, my car and family.

21 MR. GRIFFIN: That's not what we're saying, Your
22 Honor. I think he is entitled to examine the books and records
23 of the partnership. And he can do that any time upon
24 reasonable request.

25 THE COURT: Is he? Not according to your pleadings.

1 You say he gave that up. Fine. I want those things produced
2 to me forthwith. I am going to give them to him. I want to
3 know how \$3.5 got spent.

4 MR. GRIFFIN: Your Honor, we have no money no
5 evidence that the money has been spent.

6 THE COURT: Good. Then we may be able to get his
7 money back to him. If he didn't do any work on the lawsuit and
8 we don't have any evidence that he spent the money, fine.
9 We're going back to Go; get it back to him. We're going to
10 hold this over.

11 You are welcome to file your oppositions, make them
12 short and sweet. Give me an affidavit. That's all I need. It
13 is your client. How did he get in this deal and what did he
14 know when he entered this, let's see, hold harmless. April 7,
15 06. Is this the one that we're worried about? Yeah.

16 Basically, it says anything I say I can't be held
17 liable, I can't be liable for fraud, I can't be held for
18 misusing your money and I'm not going to tell you how I used
19 your money. I think that's kind of one-sided under the law.

20 Okay. We'll set this down. You file your response.
21 When are you going to file?

22 MR. KEARNEY: We'll have the response in by Christmas
23 Eve, Your Honor. That's why I say probably a little earlier.

24 THE COURT: I'm issuing an order forthwith to
25 Mr. Robertson that he is, if he has any of this 3.5 million, he

1 may not spend it, give it or in any way, indirectly or directly
2 give it to any other person or hide it, conceal it, it's
3 frozen. Tell your client that.

4 And I will issue an order. It will go on, I'm giving
5 notice. He is not here. If he violates that, that is contempt
6 of Court. The order will go out today. He in no way is to use
7 any penny of that. Or anything that he has used to buy things,
8 he must freeze any assets that were obtained directly or
9 indirectly from this 3.5 million that was given. I want him to
10 come back here with an accounting. And I want to know what
11 legal work he did.

12 So in response to theirs I would like to know what is
13 going on here. If he wants to pursue this lawsuit as a
14 plaintiff, he had better realize I am not going to allow
15 anything to be filed in this case under seal. That motion is
16 denied.

17 There is a public interest. There is no basis in the
18 world. There is no proprietary information, there are no trade
19 secrets. There is nothing in these pleadings other than these
20 agreements. And in the agreement, your client thinks he can
21 tell the Court what should be under seal. I'm governed by law,
22 I'm governed by Supreme Court precedent. There is no basis
23 other than your private agreement. So nothing here is under
24 seal, unless there is something you can specify that is
25 proprietary.

1 I want your client to be here next time. He is to
2 produce to the Court an accounting of how 3.5 million was used.
3 Second of all, I want to know what legal work in a lawsuit that
4 he never entered his appearance in. We will have argument. I
5 will insist the plaintiff be here for this argument after the
6 holidays.

7 What day are you filing your opposition again?

8 MR. KEARNEY: I'll have it in by Christmas Eve, Your
9 Honor, the 24th.

10 THE COURT: Do you want to file a reply?

11 MR. GRIFFIN: Yes, Your Honor.

12 THE COURT: I urge you to make it short.

13 MR. KEARNEY: You don't have to tell me twice, Judge.

14 THE COURT: You are not swimming up stream here. I'm
15 so suspicious. I'm worried that this man -- What do you mean
16 he has phobias? Does he have mental problems?

17 MR. KEARNEY: I'm not completely certain about that.
18 I have spoken to him. He is cogent and aware and knows what is
19 going on. I need to do a little more digging about that.

20 THE COURT: Does he have family?

21 MR. KEARNEY: I don't think so.

22 THE COURT: Does he have anybody help take care of
23 him? Who manages his affairs?

24 MR. KEARNEY: That's one of the issues. He relies
25 fairly heavily on some Serbian women. I'm not completely sure

1 where they fit into his life, but he relies heavily on them.

2 THE COURT: Does he live independently?

3 MR. KEARNEY: Yes, he does.

4 THE COURT: Wow! Okay. Do you want to come on the
5 sixth or the eighth of January?

6 MR. KEARNEY: I have a deposition on the sixth but
7 I'm available on the eighth.

8 MR. GRIFFIN: I'm in trial in Baltimore city on the
9 eighth.

10 THE COURT: Can we do it on the seventh?

11 MR. KEARNEY: I can, Your Honor.

12 THE COURT: Yes? In the afternoon?

13 MR. GRIFFIN: I believe we have a conflict.

14 THE COURT: Who does? You don't all have to be here.
15 Three lawyers are unnecessary. 2:30, argument on the motions.
16 Any reply has to be filed by the fourth. I will issue an order
17 enjoining him from spending in any way the money or anything
18 that he has purchased with this 3.5 million. It is frozen.
19 Don't let him move it. If he has off shore accounts he had
20 better leave them there.

21 Set it down for argument on the motions. By the
22 fourth, I want the plaintiff to filed an affidavit telling me
23 how he spent the 3.5 million with records to support it. I
24 want to know what legal work he actually did with records to
25 support it on a lawsuit that he didn't enter his appearance in.

1 I'm very interested to know about your client's mental state.

2 MR. KEARNEY: I'll find out more, Your Honor.

3 THE COURT: So 24th, the opposition, the fourth,
4 the replies and we will issue--

5 What is his address. It's Elm Street. I'll have to
6 send him a copy of my injunction. Nothing is going to happen
7 here until I get a better handle on it. We'll continue the I.
8 S. C.

9 MR. KEARNEY: The Elm Street address is just an
10 office. As far as I know, Mr. Robertson lives in either
11 Tennessee or California.

12 THE COURT: What do you mean it is just an office?

13 MR. KEARNEY: It is just an office. I don't know if
14 it is an active office.

15 THE COURT: He filed a complaint here. He is a
16 member of this Bar? We're going to look into that because he
17 is the one that filed this complaint.

18 Are the lawyers for the plaintiff, any of you
19 involved in these security cases that are supposedly the
20 subject matter of any of this?

21 MR. GRIFFIN: No, Your Honor.

22 THE COURT: Is that true of all of you?

23 MR. IFRAH: That's correct, Your Honor.

24 THE WITNESS: Yes, Your Honor.

25 MR. HAMLIN: We were just recently retain.

1 THE COURT: There is not a question in my mind that
2 this man read all of the Bar opinions on this subject, and came
3 up with a bunch of agreements for a non lawyer that mirror the
4 Bar opinions. He is obviously astute. He had better be here
5 next time. Thank you very much. We'll be back.

6 MR. KEARNEY: Thank you, Your Honor.

7 MR. GRIFFIN: Thank you, Your Honor.

8 THE COURT: I hope your client knows that they have
9 reported him to the Bar.

10 MR. GRIFFIN: He does, Your Honor. He has separate
11 counsel for that.

12 THE COURT: Who is doing that, do you know?

13 MR. GRIFFIN: Phil Fox.

14 THE COURT: You tell Phil Fox, who is a good old
15 friend, that I'm ordering Mr. Robertson to file these
16 affidavits to me along with records to me relating his time and
17 his expenditures of 3.5 million and see what Mr. Fox says about
18 that. Okay.

19 MR. GRIFFIN: Thank you, Your Honor.

20 THE COURT: Send him my regards.

21 (Whereupon, at 10:00 A.M., the hearing concluded.)

22

23

24

25