

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:

LINDA J. KINDLE and
MICHAEL BREWLEY,

14-CIV-6784

Plaintiffs,

US Courthouse
Central Islip, NY

-against-

:

PETER DEJANA, WILLIAM WYNPERLE,
KAREN BOKOWSKI, ATRIUM MANAGEMENT,
JOHN SIPALA,, et al,

Defendants.: September 5, 2017
4:15 pm

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE SANDRA J. FEUERSTEIN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: SIRI & GLIMSTAD, LLP
200 Park Avenue - 17th Floor
New York, New York 10166
BY: MASON BARNEY, ESQ.

FEINBERG JACKSON WORTHMAN &WASOW
384 4th Street - Suite 201
Oakland, California 94607
BY: DAN FEINBERG, ESQ.
TODD JACKSON, ESQ.

For the Defense: JOHN H. SNYDER, PLLC
Dejana, Wynperle 555 Fifth Avenue - Suite 1700
Bokowoski, Atrium New York, New York 10017
BY: JOHN H. SNYDER, ESQ.

Sipala, SILLS CUMMIS & GROSS
Saddle Creek One Riverfront Plaza
Newark, New Jersey 07102
BY: MICHAEL J. GERAGHTY, ESQ.

1 Court Reporter: Dominick M. Tursi, CM, CSR
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8 Proceedings recorded by mechanical stenography.
9 Transcript produced by computer.

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11 (After a recess, the following ensued.)

12 THE COURT: Am I correct that you have something
13 to spread on the record?

14 MR. FEINBERG: Yes, your Honor.

15 I thank you for your patience.

16 THE COURT: Not at all.

17 MR. FEINBERG: The parties would like to read
18 the terms of the settlement into the record.

19 THE COURT: Slowly.

20 MR. FEINBERG: Very slowly.

21 I'm going to recite these in numbered paragraphs
22 for the court reporter's convenience.

23 One. Plaintiff will supply the court and
24 defendants with three to five names of business valuation
25 professionals who are (1) ASA certified and (2) never
hired by plaintiffs or any of plaintiffs' counsel.

Plaintiff will disclose in writing any prior

1 relationships or conflicts with respect to any of the
2 proposed neutrals.

3 THE COURT: And contacts.

4 MR. FEINBERG: And contacts. Okay, your Honor.
5 Yes.

6 The only asterisk there is, it is possible I met
7 somebody years ago and forgot them.

8 THE COURT: But that will be determined when the
9 contact is revealed.

10 MR. FEINBERG: Yes.

11 MR. SNYDER: Obviously, any time we refer to
12 plaintiff, we are referring to plaintiff and counsel.

13 THE COURT: Of course.

14 MR. FEINBERG: The names will be supplied by
15 noon on Wednesday, September 6.

16 Defendants shall disclose in writing any prior
17 relationships, contacts, or conflicts with respect to any
18 of the proposed neutrals, and may object within 24 hours
19 (Thursday, September 7, at noon). No objections after 24
20 hours.

21 Two. The court will choose the candidates in
22 ranked order. And the court's decision is binding on the
23 parties.

24 Three. Neither party nor counsel shall
25 communicate with the proposed neutrals before appointment,

1 and there will be no ex parte communications with the
2 neutral after appointment.

3 Four. The parties shall agree on and send an
4 initial letter to inquire about retaining the first-ranked
5 neutral selected by the court, within seven calendar days
6 of the court's selection.

7 Five. If the top-ranked appraiser declines or
8 does did not respond within 14 calendar days, the parties
9 will ask the next-in-line neutral within seven calendar
10 days.

11 Six. If the independent appraiser agrees to the
12 assignment, the court will appoint that person as Special
13 Master pursuant to Federal Rule of Civil Procedure 53.

14 Seven. Plaintiffs and defendants shall split
15 the costs of the Special Master 50/50.

16 Eight. Within 15 calendar days of appointment
17 of the Special Master, the parties shall submit position
18 letters to the Special Master, copy the other side, with a
19 15-page limit (double spaced).

20 The parties may submit proposed trial exhibits,
21 depositions in this case, or any filing on the court's ECF
22 for this case.

23 Nine. The parties, within 15 calendar days,
24 shall supply the Special Master with any other documents
25 he or she may request.

1 Ten. Upon issuance of the Special Masters's
2 report, if the valuation of Atrium is more than
3 \$4,220,000, defendants shall deposit the difference plus 5
4 percent simple interest per annum prejudgment interest
5 running from December 30, 2011, until the funds are
6 deposited in escrow in the client trust account (client
7 escrow) of the law firm Feinberg Jackson Worthman & Wasow.

8 Defendants shall have 30 days from the date of
9 the Special Master's report to deposit the funds in
10 escrow.

11 Eleven. Within 14 calendar days from receipt of
12 the Special Master's report, plaintiff may apply for fees,
13 costs, disbursements, and any service award. Defendant
14 may oppose within seven calendar days, and plaintiff may
15 reply within seven calendar days.

16 The parties shall jointly request a hearing date
17 that is within 14 calendar days of the fee petition being
18 fully briefed. Upon receipt of the court's decision on
19 the fee petition, within seven calendar days the defendant
20 shall place the fees, costs, disbursements, and service
21 award amounts into escrow.

22 Twelve. Within seven calendar days of deposit
23 in escrow of all amounts, if any, required by paragraphs
24 10 and 11, Mr. Sipala and Saddle Creek will be dismissed
25 without prejudice.

1 Thirteen. Within 14 calendar days of deposit of
2 all amounts due under paragraphs 10 and 11, if any, into
3 escrow, plaintiff shall move on behalf of the class for
4 preliminary approval of the class settlement.

5 Fourteen. Upon class settlement becoming final,
6 Mr. Sipala will be dismissed with prejudice as part of the
7 final order approving the class settlement.

8 That is the total of our agreement, your Honor.

9 THE COURT: Does plaintiffs' counsel agree with
10 this stipulation?

11 MR. FEINBERG: Yes, plaintiff's counsel agrees
12 with this settlement, your Honor.

13 THE COURT: Mr. Snyder?

14 MR. SNYDER: Yes, the Dejana parties agree with
15 this settlement as well, your Honor.

16 THE COURT: And Mr. Sipala and Saddle Creek
17 agree as well?

18 MR. GERAGHTY: Saddle Creek LLP and Mr. John
19 Sipala are in agreement.

20 THE COURT: All right. The stipulation is
21 spread on the record and we will proceed according to its
22 terms.

23 MR. FEINBERG: Thank you, your Honor.

24 THE COURT: I will do so, as well.

25 MR. SNYDER: Thank you for your assistance.

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THE COURT: Thank you.

(Proceedings adjourned at 4:35 pm.)

CERTIFICATE OF COURT REPORTER

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

Dominick M. Tursi, CM, CSR