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APPEARANCES CONTINUED:

NOT PRESENT:

McMahon, Martine & Gallagher
Attorneys for Defendants
90 Broad Street
New York, New York 10004

Maurice Schwartzberg
Official Court Reporter.

1 Proceedings

2 (Via speakerphone.)

3 THE COURT: Mr. DeClemente, this is
4 Judge Heitler again. Good morning. We're on
5 the record and I'm going to have everybody
6 around my table -- I'm in my robing room --
7 indicate who's present.

8 MR. LEINWAND: Harris Leinwand
9 representing the Veneskis.

10 THE COURT: Did you hear that, sir?

11 MR. DeCLEMENTE: Yes.

12 MR. SACHS: Mel Sachs, representing
13 Norman Cousins.

14 MR. COUSINS: Norman Cousins.

15 THE COURT: If you can't hear at any
16 point, Mr. DeClemente, would you please so
17 indicate to us?

18 MR. DeCLEMENTE: Yes. I heard "Mel
19 Sachs representing Norman Cousins."

20 THE COURT: And he's also in the
21 room.

22 Sir, because this is being taken down
23 and because you're on the telephone, I'm going
24 to ask you to speak more slowly so that the
25 reporter can hear what you have to say.

26 MR. DeCLEMENTE: I will.

1 Proceedings

2 THE COURT: So, please give us your
3 name and your representation again.

4 MR. DeCLEMENTE: Thomas DeClemente,
5 representing Legal Asset Funding, LLC.

6 THE COURT: Now, I have just been
7 handed some papers, Mr. DeClemente, which I
8 have not yet read and I'm briefly looking
9 through them. It appears to be an indictment.
10 It's dated 5/26/00.

11 Mr. Sachs, since you brought these
12 papers, do you want to tell me what they're all
13 about, please?

14 MR. DeCLEMENTE: I have not seen them
15 as well, so I'm hard-pressed to talk about
16 anything that I've never seen.

17 THE COURT: Well, I've never seen it,
18 either, and I'm going to be handing them back
19 to Mr. Sachs.

20 Since Mr. DeClemente says he doesn't
21 know what they are, make the application you
22 started to make before we went on the record.

23 MR. SACHS: For background purposes,
24 we have here an indictment against Mr.
25 DeClemente.

26 THE COURT: What does that have to do

Proceedings

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with this case?

MR. SACHS: The reason it's being shown is because it's parallel and it's analogous to what's happened here in this case.

.
So, by way of background, we're presenting this, frankly, for modus operandi regarding the way Mr. DeClemente has done things in the past. The contention here is that he's done the same type of conduct here.

MR. DeCLEMENTE: May I respond?

THE COURT: Absolutely, sir.

MR. DeCLEMENTE: Your Honor, that was dismissed as a matter of law.

Secondly, Judge Olivieri of the Hudson County Superior Court heard Mr. Cousins on these very same issues, including the allegations of forgery and allegations that he made of usury, et cetera. Judge Olivieri decided against Mr. Cousins on the facts and on the law and said that there were no forgeries, there was no usury, and this is now the law of the case in Hudson County. Mr. Cousins presented the identical arguments several times and he has continued to do so.

Proceedings

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So your Honor is aware, last week I

took the deposition of Kevin and Juanita

Veneski, with Mr. Leinwand representing them.

He told us, and I will have a transcript

shortly, that they were instructed by Mr.

Cousins to perjure themselves, in depositions,

under oath. Mr. Cousins himself perjured

himself in depositions under oath.

I will have the transcript very

shortly about what took place when Mr. Cousins

told the Veneskis that they should lie and

misstate and misrepresent, and this is

something Mr. Leinwand who is in the room, can

confirm.

And, so, Mr. Cousins, in his apparent

attempt to evade what's going on before you,

which is an application for a fee increase when

he's already taken two and a half times that

which he's permitted under the statute, and

apparently seeking even more, is again just

trying to obscure the issues before the court.

So, just to repeat, the indictment

was dismissed as a matter of law. Mr. Cousins

continually uses these things to try and

obfuscate that which comes before any tribunal,

1 Proceedings

2 all of which, by the way, is raised over and
3 over again and is continually being rejected.

4 THE COURT: As a member of this noble
5 profession, I am always very concerned when we
6 have a case in which we are dealing with
7 lawyers accusing other lawyers of behavior that
8 is not appropriate.

9 Now, when Mr. Cousins was here last
10 time, I strongly suggested that he seek
11 counsel, and, in fact, he now does have
12 counsel.

13 What I'm going to suggest today is
14 that perhaps counsel can all get into the same
15 room and see if this cannot be resolved. If
16 not, if not, then I know that Mr. Sachs
17 indicated that he had to be in another
18 courthouse this morning, and that's why we took
19 this earlier this morning rather than later,
20 and I'm glad we were able to reach you, Mr.
21 DeClemente, and then I'll have to resolve this
22 through a decision.

23 There are some uncomfortable
24 scenarios that are being presented to me, and,
25 again, if they cannot be worked out, then I
26 will deal with them.

Proceedings

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2 Neither I nor anybody else who is not
3 in this room was present when Mr. Cousins was
4 counseling his clients.

5 Right now I have clients who say that
6 an attorney told them to perjure themselves,
7 and I have an attorney shaking his head
8 indicating, I assume, that that's not what
9 happened -- is that correct, Mr. Cousins?

10 MR. COUSINS: You can count on it.

11 THE COURT: So, gentlemen, when are
12 you getting into that room?

13 MR. SACHS: Your Honor, I just wanted
14 to say this in regard to the papers which I had
15 submitted, your Honor, which I commented on.

16 The way this matter was resolved, it
17 was with a pretrial intervention, and there
18 certainly is a difference between legal guilt
19 and factual guilt. The reason they've been
20 presented and the reason Mr. Cousins has
21 addressed them is simply because of the fact
22 that what happened here had happened earlier.

23 So, I'm not playing ducks and drakes
24 with the court when I submitted this. It's
25 clear and obvious that there is a procedural
26 way of disposing of the matter in the New

Proceedings

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2 Jersey court system, and that's a pretrial
3 intervention, and it may not be a legal
4 conviction.

5 However, factually, there were
6 assertions that were made, and because of the
7 similarity and the conduct and the modus
8 operandi, it was important to bring it to the
9 attention of the court.

10 What we're here for today is, on
11 behalf of Mr. Cousins, to respectfully ask for
12 a 90-day adjournment.

13 THE COURT: For what reason?

14 MR. SACHS: Based upon the United
15 States Attorney's Office who had asked for this
16 period of time for the purpose of their
17 determination as to whether or not there should
18 be an indictment in this case.

19 THE COURT: An indictment of Mr.
20 DeClemente.

21 MR. SACHS: Yes.

22 THE COURT: Mr. DeClemente, do you
23 know anything about this?

24 MR. DeCLEMENTE: Absolutely not.
25 It's absolute nonsense. Mr. Cousins knows it.
26 He knows there are no charges.

1 Proceedings

2 As a matter of fact, Judge Olivieri
3 again reviewed these very same allegations of
4 forgery, and Mr. Cousins should show you the
5 document he refers to, but, again, your Honor,
6 it is a smokescreen all they're doing,
7 especially in light of the fact that the
8 Veneskis themselves and Mr. Leinwand who was in
9 the room representing the Veneskis, will tell
10 you that the Veneskis said Mr. Cousins
11 specifically advised them to perjure themselves
12 --

13 THE COURT: All right, I've heard
14 this now twice. I'm not granting any
15 adjournment. If the United States Attorney
16 feels it's important to speak to me about
17 something, I'm sure the United States Attorney
18 will reach out to me in an appropriate way.

19 MR. SACHS: The United States
20 Attorney was spoken to. Carl Metzner, he's an
21 assistant United States attorney --

22 MR. DeCLEMENTE: I cannot hear what
23 he just said.

24 MR. SACHS: There's an assistant
25 United States attorney from the Southern
26 District of New York called Carl Metzner, who I

Proceedings

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have reason to believe --

MR. COUSINS: He was told you weren't here, so he spoke to the part clerk and left the message.

THE COURT: Gentlemen, when are you getting into a room together to try to resolve this, if you want to?

MR. DeCLEMENTE: If I might be heard, you told Mr. Cousins three weeks ago that he has three weeks to get an attorney.

THE COURT: And he got an attorney and the attorney is here, and like other attorneys, he happens to have something that he needs to handle at 11 o'clock.

So, the question is, today is Wednesday. When are we getting into a room, if we want to? If we don't, I'll adjourn this and I'll just hear oral argument at that time and I'll make a decision.

MR. DeCLEMENTE: Mr. Cousins is in bankruptcy and has been for the last two years.

He has attested that he has absolutely no monies, he has nothing by which he could possibly settle this case.

And understand this, your Honor, my

Proceedings

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2 position in this case has nothing to do with
3 the application before you. I have a claim
4 against him which Judge Olivieri granted me
5 summary judgment on 10 days ago, and now it's
6 just a matter of how much Mr. Cousins owes to
7 Legal Asset Funding.

8 THE COURT: Then, why are we on the
9 phone with you?

10 MR. DeCLEMENTE: Because I was there.

11 This was before the court, before Judge
12 Olivieri ruled. The only reason I was there
13 was because Mr. Leinwand and I discussed the
14 fact that what Mr. Cousins would do is exactly
15 what he's doing, and I was just there to tell
16 the court that I had deposed the Veneskis and
17 that the application that Mr. Cousins --

18 THE COURT: Slow down, slow down.

19 MR. DeCLEMENTE: -- which is against
20 my own interests, because the more money Mr.
21 Cousins gets, the more money is in the pot. I
22 was supporting Mr. Leinwand who first brought
23 it to the attention of the court.

24 So, as a result, your Honor, the only
25 thing Mr. Cousins has by way of trying to
26 settle this case is an empty pocket. So, I

Proceedings

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don't know how it could be settled. Mr. Cousins has to repay Mr. Veneski that which he took from him.

So, at the end of the day, the only thing before the court is whether or not you need to grant a fee application increase pursuant to the statute, 474-A, and, secondly, whether Mr. Cousins has committed egregious acts in taking a \$455,000 gift. Although he claims that it was a gift, the Veneskis claim it was a fee, and they labeled it as such, with Mr. Cousins crossing out that labeling and inserting the word "Gift" so he wouldn't have to pay taxes.

THE COURT: If that's the case, I understand what you have to say.

I think at this particular time we can terminate this conference relative to your participation in it, and I will continue on with Mr. Sachs and Mr. Leinwand.

All right, thank you very much, sir.

MR. DeCLEMENTE: Bye-bye.

THE COURT: Have a good day.

We're off the record now.

(Off the record.)

Proceedings

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THE COURT: What are we doing,
gentlemen?

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MR. COUSINS: Mr. Leinwand would like
me to withdraw my application --

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MR. LEINWAND: I didn't say that.

10

THE COURT: Wait. You have a lawyer
now. I know it's tough for a lawyer --

11

12

MR. COUSINS: I can keep my mouth
shut.

13

14

THE COURT: Talk to me.

15

MR. SACHS: Your Honor, Mr. Cousins
cannot withdraw his motion.

16

17

THE COURT: Why not?

18

MR. SACHS: Your Honor, because,
number one, he's entitled to what he's asking
for, and that would serve the interests of Mr.
DeClemente in this case.

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Also, the United States Attorney's
Office, your Honor, was very definite about
needing this time --

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THE COURT: I hear that, but you
can't make that application for them, and you

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Proceedings

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understand that.

So, we're just going to adjourn this case and you'll all come back and I'll tell you what's probably going to happen. So, if you want to get it done sooner than later, just agree on a date right now.

MR. LEINWAND: Mr. Cousins has said he has not read my papers yet.

THE COURT: I'm not worried about Mr. Cousins now. I'm worried about Mr. Sachs.

MR. LEINWAND: I don't know, but I haven't gotten a response. I'd like to have a date certain when I'm going to have a response, and then he says I asked him to withdraw. I did not ask him to withdraw.

THE COURT: What did you ask him?

MR. LEINWAND: I said I'd like to sit down and settle, but he's not willing to pay back the Veneskis what he wrongfully took. He does say, which he's told me before, that he won't take any more money from them whatever you do. He's already gotten the money. That's all he says, but that's not sufficient to the Veneskis.

THE COURT: So, let's just assume

Proceedings

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right now that nobody is in the posture of settling this case.

MR. LEINWAND: We want to, but there's no way to.

THE COURT: Well, there's always a way, counsel, there's always a way.

But, be that as it may, you're in this case now, Mr. Sachs. We need responsive papers. Ten days?

MR. SACHS: Yes.

THE COURT: You'll have responsive papers in 10 days.

I've got to tell you something. I'm a speed-reader, but I do not need 130 pages, okay?

MR. SACHS: Could we just have a little more time? Two weeks?

THE COURT: Fine. Two weeks. So, today is the 5th of July. You'll have papers by 5 o'clock on the 19th of July. Then I need to see everybody again and you could make whatever arguments you'd like.

You can come in on the 20th, the 21st, the 1st of August. You tell me what's good for all of you.

Proceedings

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MR. SACHS: The 1st of August.

THE COURT: Does that work for you,
counsel?

MR. LEINWAND: I'm hoping to go off
with my son.

THE COURT: Tell me when is good for
you. Could you come in the 21st of July?

MR. LEINWAND: I'm not going to have
the papers very long.

THE COURT: Well, tell me when it's
good for you.

MR. LEINWAND: We can make it on the
21st in the afternoon.

THE COURT: That won't work.

MR. LEINWAND: In the morning Mr.
Cousins and I have to be in New Jersey before
Judge --

THE COURT: That's not a good day.
When are you coming back, sir?

MR. LEINWAND: I never know with my
son, but I'd like to make it in late August.

THE COURT: The 28th?

MR. LEINWAND: That's fine.

Your Honor, this is a response to a
response.

Proceedings

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MR. SACHS: I can do it in August,
but the last week I'm going to be away with my
family.

THE COURT: How about the 21st of
August?

MR. SACHS: That's fine.

THE COURT: Does that work for you?

MR. LEINWAND: All right.

THE COURT: Yes?

MR. LEINWAND: Yes.

THE COURT: The 21st at 10 o'clock.

MR. COUSINS: That's for a hearing or
conference?

THE COURT: That's to make your oral
argument, but I'll tell everybody right now
where this is heading. You think, on papers,
just because the Veneskis or you say you didn't
tell them to perjure themselves? Give me a
break, guys.

MR. LEINWAND: I'll get you the
transcript.

THE COURT: I'm telling you now.

MR. LEINWAND: It's pretty clear.
It's very clear that there can't be a
reasonable argument. He was invited to that

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Proceedings

deposition. He was given notice of that deposition. Then he says he wasn't notified.

THE COURT: Could you now step outside for one moment, please? Thank you.

MR. COUSINS: Could we have more time?

THE COURT: The 26th.

(At this point Mr. Cousins exited the robing room and there was an off the record discussion.)

(Proceedings concluded.)

I hereby certify that this is a true and accurate transcription of the original notes of the stenographic proceedings.

MAURICE J. SCHWARTZBERG
Official Court Reporter