

REPORTER'S RECORD
TRIAL COURT CAUSE NO. 2010-CI-10977

JOHN K. MEYER | IN THE DISTRICT COURT
VS. | BEXAR COUNTY, TEXAS

JP MORGAN CHASE BANK, N.A.
INDIVIDUALLY/CORPORATELY AND
AS TRUSTEE OF THE SOUTH TEXAS
SYNDICATE TRUST AND GARY P.
AYMES | 225TH JUDICIAL DISTRICT

COURT'S RULING

On the 18th day of August, 2011, the following proceedings
came on to be heard in the above-entitled and numbered cause
before the Honorable David A. Berchelmann, Jr., Judge presiding,
held in San Antonio, Bexar County, Texas:

Proceedings reported by computerized stenotype machine.

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A P P E A R A N C E S :

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10:36:23 1 (The following is the requested Court's ruling.)

10:36:23 2 THE COURT: Well, here's what I think you ought to

10:36:25 3 do. I think that you should -- you should notify all these

10:36:28 4 beneficiaries in writing and give them copies of the petitions

10:36:36 5 and give them the option of opting in or out and let's see where

10:36:44 6 we stand before I decide whether to abate this entire case or

10:36:48 7 not. But I want some reaction from the other beneficiaries.

10:36:51 8 Because as Mr. Drought pointed out, I mean, it looks like, at

10:36:54 9 least in his request for production, that they are pretty

10:36:59 10 innocuous stuff and I think the trustee probably should turn

10:37:02 11 over -- well, at least a couple that he pointed to, request for

10:37:05 12 production 17 and 18, that the trustee would have to turn this

10:37:09 13 over to one of the beneficiaries and say, Okay, you know, this is

10:37:12 14 what we've been doing while we've been head of this trust. You

10:37:17 15 know? I know this is pretty difficult because, you know, the

10:37:24 16 number of people and the cost, those kinds of things. But I

10:37:28 17 don't think that the trustee can continue to stand behind what

10:37:31 18 the statute says they have to have -- they're necessary parties.

10:37:38 19 So let's try it the cheap way first and see where

10:37:42 20 it goes. All right? And then I will let you know. And you can

10:37:47 21 just come back to me. Okay? So I'm not going to require them to

10:37:50 22 give you any discovery right now, let's see where it stands after

10:37:54 23 you notify them.

10:37:58 24 MR. FLEGLE: Your Honor, from our standpoint, can

10:38:01 25 we have a time frame?

10:38:04 1 THE COURT: Well, how -- you have to compose the
10:38:07 2 letter, get it to them certified mail or whatever, decide what
10:38:11 3 you're going to put in it. I don't know, how long -- give them
10:38:16 4 30 days after they get the letter, you think? I don't know, I'm
10:38:22 5 trying to be reasonable to both sides and give you an
10:38:24 6 opportunity.

10:38:24 7 MR. FLEGLE: Certainly.

10:38:25 8 THE COURT: I already know Mr. Sheehan's position
10:38:29 9 which is you can't do it, and he'll make that argument again, but
10:38:32 10 let's see where we stand with the other beneficiaries and see if
10:38:35 11 they want to be involved in this case.

10:38:37 12 MR. FLEGLE: I understand. So we should get the
10:38:40 13 notices prepared, get them out and then give the beneficiaries
10:38:44 14 30 days --

10:38:44 15 THE COURT: Yeah.

10:38:44 16 MR. FLEGLE: And I take it, Your Honor, once we get
10:38:47 17 that in the process and we know where the 30-day time period is,
10:38:50 18 we can set another hearing.

10:38:52 19 THE COURT: All right. And you come back here.

10:38:52 20 MR. FLEGLE: Okay.

10:38:55 21 MR. SHEEHAN: And, Judge, we would request -- it's
10:38:56 22 still their burden to put this notice together and we request
10:39:01 23 that they show it to us before --

10:39:02 24 THE COURT: You can show it to them, but I don't
10:39:04 25 know whether your objection is going to -- you're going to have

10:39:07 1 an objection --

10:39:07 2 MR. SHEEHAN: Sure, they'll be --

10:39:09 3 THE COURT: -- that the Court will find favorable,
10:39:12 4 but, I mean, let them know what you're sending out.

10:39:15 5 MR. SHEEHAN: They'll be duly noted.

10:39:22 6 MR. FLEGLE: Your Honor, I have -- do we have
10:39:24 7 anything else?

10:39:25 8 MR. DROUGHT: Well, Your Honor, the -- on the nine
10:39:28 9 leases they have entered into receiving basic information, this
10:39:35 10 was a summary of our -- there were nine leases and we asked five
10:39:43 11 items of information about each lease. Very basic information.
10:39:48 12 That covers our request for production 17 through 16 or whatever
10:39:53 13 I gave you, and we would ask that you order them to go ahead and
10:39:56 14 at least begin answering those items of discovery so we could at
10:40:02 15 least find out who they leased it to, what the terms were, what
10:40:06 16 the bonuses were. And so -- and by the way, we have offered and
10:40:14 17 prepared a confidentiality order where we're bound to keep all
10:40:18 18 the confidential information that they mark confidential. We've
10:40:21 19 offered that and -- I think y'all have even reviewed the order
10:40:25 20 and I'm not even sure, is there any objection?

10:40:28 21 MR. SHEEHAN: Let me deal with this. Here's the
10:40:31 22 thing. The -- the way this normally works is you have a
10:40:35 23 confidentiality order, you confer, whatever. The problem here
10:40:40 24 has been this, we weren't going to get in a situation where we
10:40:44 25 physically worked through a confidentiality order or gave certain

10:40:48 1 issues, documents or whatever, conferred, worked anything out,
10:40:52 2 then somebody comes in -- I've had this happen, you've waived
10:40:56 3 your plea in abatement because you stepped into it. I've enjoyed
10:41:00 4 that experience before, didn't want to enjoy it again. So my
10:41:04 5 sense of it is this, that you've said that you're not going to
10:41:08 6 order any discovery at this point, I've asked that you stay with
10:41:14 7 that. If they have these requests and these topics that they
10:41:17 8 want to talk to us about that, we'll talk to our client. And if
10:41:22 9 we can -- if we can work that out and agree to a confidentiality
10:41:27 10 order -- I think their's is too burdensome. It's got the Western
10:41:32 11 District attorneys eyes only, a lot of stuff in there we don't
10:41:34 12 need. But we'll try to work that out with them as long as they
10:41:38 13 agree that if we do do that, if we do work that out, that we're
10:41:42 14 not waiving anything and their whole argument that we have waived
10:41:46 15 anything concerning the plea in abatement.

10:41:49 16 MR. DROUGHT: Judge, there's nothing confidential
10:41:52 17 about the information.

10:41:53 18 THE COURT: I understand that, but I did say that
10:41:55 19 until I -- until I see the results, that they don't have to
10:41:59 20 produce anything. All right? So we're going to stand by that at
10:42:03 21 this time.

10:42:03 22 MR. DROUGHT: All right.

10:42:04 23 THE COURT: But I'm also telling you, Mr. Sheehan,
10:42:06 24 that I don't think the bank can object to this kind of
10:42:09 25 information. Okay? I mean, assuming that there's nothing in

10:42:12 1 there that's -- that's definitely confidential and privileged
10:42:17 2 to certain beneficiaries. But this kind of request, you know,
10:42:19 3 what are you doing with the property? And if you are doing
10:42:22 4 something, tell us who it's with and what the deal is. We're
10:42:27 5 entitled to know that.

10:42:27 6 MR. SHEEHAN: I understand what you're saying,
10:42:29 7 Judge, and here's the thing just so you sort of understand the
10:42:33 8 view here. Those things are done in a certain way when you
10:42:37 9 represent the trustee because you have fiduciary duties to other
10:42:41 10 people and there really is this confidentiality and whatever
10:42:47 11 obligation that can be a little tough to deal with. So what you
10:42:51 12 end up doing is you make objections and things, you then get a
10:42:54 13 confidentiality order in place. In the meantime, a lot of this
10:43:00 14 stuff gets worked out. The reality of it is in the due order of
10:43:03 15 things you probably wouldn't hear that fight, but it's just
10:43:06 16 because of where we are right now that you're --

10:43:08 17 THE COURT: I understand that.

10:43:09 18 MR. SHEEHAN: Well, okay. All right.

10:43:10 19 THE COURT: I'm just telling you for the future,
10:43:12 20 you can't stand on that.

10:43:13 21 MR. SHEEHAN: I'm just telling you that isn't like
10:43:17 22 that either --

10:43:17 23 THE COURT: You're not supposed to be telling me
10:43:18 24 anything. I'm the judge and I'm telling you.

10:43:21 25 MR. SHEEHAN: I understand.

10:43:22 1 THE COURT: You've got to remember, if you want to
10:43:23 2 come up here and do this job --

10:43:25 3 MR. SHEEHAN: No.

10:43:25 4 THE COURT: We'll change places.

10:43:29 5 MR. SHEEHAN: You see how beaten up I am, Judge.
10:43:29 6 I've been beaten up many, many times.

10:43:32 7 THE COURT: Well, what happens at your house
10:43:33 8 between you and your wife --

10:43:35 9 MR. SHEEHAN: You already know that happens. But I
10:43:37 10 don't want -- I'm sorry, Judge, if I said something that offended
10:43:39 11 you.

10:43:39 12 THE COURT: I am not the least bit offended. After
10:43:41 13 doing this 31 years, don't worry, I've heard it all. Don't worry
10:43:43 14 about it.

10:43:44 15 MR. SHEEHAN: Well, thank you, Judge. Thank you
10:43:46 16 for letting me off the hook.

10:43:48 17 MR. FLEGLE: Judge, point of privilege, my
10:43:52 18 Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2 copies have my
10:43:54 19 handwritten notes on it. Do I have the Court's permission to
10:43:57 20 submit --

10:43:57 21 THE COURT: Absolutely.

10:43:57 22 MR. FLEGLE: -- copies?

10:43:57 23 THE COURT: Withdraw them, sure.

10:44:00 24 MR. FLEGLE: Okay.

10:44:00 25 THE COURT: All right.

10:44:02 1 MR. SHEEHAN: All right, so may we be excused?

10:44:02 2 THE COURT: Yeah, but here, I'm going to keep some
10:44:05 3 of the stuff like -- I think this is George's copy of the order
10:44:12 4 that Judge Tanner signed. I want you to have that. And Tom --
10:44:16 5 Tom, here's your request for production, you hang on to that.
10:44:22 6 I'm going to hang on to the rest of it. Okay?

10:44:23 7 So y'all call Virginia whenever -- whenever you're
10:44:27 8 ready and we'll schedule a hearing.

10:44:31 9 MR. SHEEHAN: Judge, when we get to that point, we
10:44:33 10 just go to your --

10:44:35 11 THE COURT: For right now. For this kind of stuff
10:44:36 12 until we get through this.

13 (End of proceedings.)

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1 THE STATE OF TEXAS)

2 COUNTY OF BEXAR)

3 I, Bob L. Hogan, Official Court Reporter in and for the
 4 District Courts of Bexar County, State of Texas, do hereby
 5 certify that the above and foregoing contains a true and correct
 6 transcription of the Court's ruling as requested in writing by
 7 counsel for the parties to be included in this volume of the
 8 Reporter's Record, in the above-styled and numbered cause, all of
 9 which occurred in open court or in chambers and were reported by
 10 me.

11 I further certify that the total cost for the preparation
 12 of this Reporter's Record is \$ _____ and was paid by

13 _____

14 WITNESS MY OFFICIAL HAND this the _____ day of
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