

Case No. 78341

In the Supreme Court of Nevada

In the Matter of the Estate of
MILTON I. SCHWARTZ, deceased.

A. JONATHAN SCHWARTZ, Executor of
the Estate of MILTON I. SCHWARTZ,

Appellant,

vs.

THE DR. MIRIAM AND SHELDON G.
ADELSON EDUCATIONAL INSTITUTE,

Respondent.

Electronically Filed
Jan 29 2020 04:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable GLORIA J. STURMAN, District Judge
District Court Case No. 07-P061300-E

**APPELLANT'S
APPENDIX VOLUME 3
PAGES 501-750**

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
DALE KOTCHKA-ALANES (SBN 13,168)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

ALAN D. FREER (SBN 7706)
ALEXANDER G. LEVEQUE (SBN 11,183)
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 853-5483

Attorneys for Appellants

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
1	Petition for Probate of Will	10/15/07	1	1–26
2	Order Granting Petition for Probate of Will and Codicils and Issuance of Letters Testamentary	12/10/07	1	27–28
3	Petitioner’s Response to Objection to Petition to Probate Will and for Issuance of Letter Testamentary and Request for All Future Notices to be Properly Served	01/03/08	1	29–60
4	Notice of Entry of Order	01/04/08	1	61–66
5	Notice of Entry of Order	01/29/08	1	67–71
6	Ex Parte Order for Extension of Inventory	05/23/08	1	72–73
7	Petition to Compel Distribution, for Accounting and for Attorneys’ Fees	05/03/13	1	74–159
8	Notice of Entry of Order to Appear and Show Cause	05/14/13	1	160–163
9	Objection to Petition to Compel Distribution, for Accounting, and for Attorneys’ Fees and Ex Parte Petition for Order to Issue Citation to Appear and Show Cause	05/28/13	1	164–230
10	Petition for Declaratory Relief	05/28/13	1 2	231–250 251–298
11	Motion to Dismiss Executor’s Petition for Declaratory Relief	06/12/13	2	299–329
12	Adelson Campus’ Reply in Support of Petition to Compel Distribution, for Accounting and for Attorneys’ Fees & Preliminary Objection to Accounting	06/17/13	2	330–356
13	Recorder’s Transcript of All Pending Motions	06/25/13	2	357–385
14	Opposition to Motion to Dismiss	07/01/13	2	386–398

15	Reply in Support of Motion to Dismiss Executor's Petition for Declaratory Relief	10/02/13	2	399–432
16	Recorder's Transcript of Motions Hearing	10/08/13	2	433–475
17	Notice of Entry of Order Denying Adelson Campus' Motion to Dismiss Executor's Petition for Declaratory Relief Without Prejudice & Allowing Limited Discovery	11/13/13	2	476–479
18	Demand for Jury Trial	11/27/13	2	480–481
19	Motion for Reconsideration	12/02/13	2 3	482–500 501–582
20	Opposition to the Executor's Motion for Reconsideration of the Court's November 12, 2013, Order Denying Adelson Campus' Motion to Dismiss Executor's Petition for Declaratory Relief without Prejudice & Allowing Limited Discovery	12/09/13	3	583–638
21	Transcript of Proceeding: Motion for Reconsideration	12/10/13	3	639–669
22	Transcription of Discovery Commissioner Hearing Held on January 29, 2014	01/29/14	3	670–680
23	Notice of Entry of Order Denying Motion for Reconsideration and Re-Setting Discovery Deadline	02/27/14	3	681–684
24	Notice of Entry of Order Regarding Deposit of Funds in Blocked Account at Morgan Stanley	03/07/14	3	685–690
25	Notice of Entry of Order Granting Motion to Modify November 12, 2013 Order and/or Limit Discovery; and Order Denying the Dr. Miriam and Sheldon G. Adelson Educational Institute's Ex Parte Application (with notice) Countermotion to Continue the	03/07/14	3	691–696

	February 11, 2014 Hearing to Allow Discovery Commissioner to Resolve Discovery Dispute			
26	Adelson Campus' Motion for Partial Summary Judgment	04/22/14	3 4	697–750 751–772
27	Opposition to Motion for Partial Summary Judgment	05/27/17	4 5	773–1000 1001–1158
28	Supplement to Petition for Declaratory Relief to Include Remedies of Specific Performance and Mandatory Injunction	05/28/17	5	1159–1165
29	Errata to Opposition to Motion for Partial Summary Judgment	06/03/14	5	1166–1181
30	Adelson Campus' Reply in Support of Motion for Partial Summary Judgment	06/24/14	5 6	1182–1250 1251–1273
31	Supplement to Opposition to Motion for Partial Summary Judgment	07/02/14	6	1274–1280
32	Transcript for Motion for Summary Judgment	07/09/14	6	1281–1322
33	Notice of Entry of Order Denying the Dr. Miriam and Sheldon C. Adelson Educational Institute's Motion for Partial Summary Judgment	09/05/14	6	1323–1326
34	Opposition to the Adelson Campus' Motion for Reconsideration of Denial of Motion for Partial Summary Judgment	10/06/14	6	1327–1333
35	Reporter's Transcript of Proceedings	10/08/14	6	1334–1376
36	Notice of Entry of Stipulation and Order for Protective Order	03/05/15	6	1377–1389
37	Petition for Partial Distribution	05/19/16	6	1390–1394
38	Errata to Petition for Partial Distribution	06/02/16	6	1395–1410
39	Recorder's Transcript of Proceeding: All Pending Motions	08/03/16	6	1411–1441

40	Recorder's Transcript of Proceedings: Calendar Call	08/18/16	6	1442–1454
41	Recorder's Transcript of Proceeding: Status Check	09/28/16	6	1455–1464
42	Transcript of Proceedings: Motion for Protective Order on Order Shortening Time	04/19/17	6	1465–1482
43	Notice of Entry of Order Regarding the Adelson Campus' Motion for Protective Order	05/08/17	6	1483–1486
44	Notice of Filing Petition for a Writ of Mandamus of Prohibition	05/17/17	6	1487
45	Notice of Entry of Stipulation to Stay Matter Pending Petition for Writ of Mandamus or Prohibition	05/24/17	6	1488–1492
46	Motion for Partial Summary Judgment Regarding Fraud	06/04/18	6 7	1493–1500 1501–1523
47	Motion for Partial Summary Judgment Regarding Statute of Limitations	06/04/18	7	1524–1541
48	Motion for Summary Judgment Regarding Breach of Contract	06/04/18	7	1542–1673
49	Opposition to Motion for Partial Summary Judgment Regarding Fraud	07/06/18	7 8	1674–1750 1751–1827
50	Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations	07/06/18	8	1828–1986
51	Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	07/06/18	8 9	1987–2000 2001–2149
52	Errata to Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations	07/10/18	9	2150–2155
53	The Adelson Campus' Opposition to the Estate's Countermotion for Advisory Jury	07/23/18	9	2156–2161

54	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Fraud	08/02/18	9	2162–2177
55	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Statute of Limitations	08/02/18	9	2178–2209
56	Reply in Support of Motion for Summary Judgment Regarding Breach of Contract	08/02/18	9	2210–2245
57	The Estate's Pretrial Memorandum	08/06/18	9 10	2246–2250 2251–2263
58	The Estate's Pretrial Memorandum	08/06/18	10	2264–2274
59	The Adelson Campus' Pre-Trial Memorandum	08/07/18	10	2275–2352
60	Supplement to the Estate's Opposition to Motion for Partial Summary Judgment Regarding Fraud	08/08/18	10	2353–2386
61	Supplement to Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	08/08/18	10	2387–2416
62	Recorder's Transcript of Hearing on Motions in Limine and Motions for Summary Judgment	08/09/18	10 11	2417–2500 2501–2538
63	The Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract and Ex Parte Application for an Order Shortening Time	08/14/18	11	2539–2623
64	Supplement to the Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract	08/14/18	11	2624–2646

65	Recorder's Transcript of Proceedings, Pretrial Conference, All Pending Motions	08/15/18	11 12	2647–2750 2751–2764
66	The Adelson Campus' Opposition to the Estate's Motion for Reconsideration of the Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Contract and Countermotion to Strike the 8/14/18 Declaration of Jonathan Schwartz and All Attached Exhibits in Support	08/16/18	12	2765–2792
67	Recorder's Transcript of Proceedings, Pretrial Conference – Day 2, All Pending Motions	08/16/18	12	2793–2868
68	Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims	08/31/18	12	2869–2902
69	Trial Transcripts (Rough Drafts)	09/03/18	12 13 14 15 16 17 18	2903–3000 3001–3250 3251–3500 3501–3750 3751–4000 4001–4250 4251–4304
70	Opposition to Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims	09/03/18	18	4305–4333
71	The Estate's Motion for Judgment as a Matter of Law Regarding Construction of Will	09/03/18	18	4334–4341
72	Recorder's Partial Transcript: Jury Instructions	09/04/18	18	4342–4367
73	Recorder's Partial Transcript of Jury Trial: Closing Arguments	09/04/18	18	4368–4467
74	Amended Jury List	09/05/18	18	4468
75	Jury Instructions	09/05/18	18 19	4469–4500 4501–4512

76	Verdict Form	09/05/18	19	4513–4516
77	Proposed Jury Instructions Not Used at Trial	09/05/18	19	4517–4520
78	Proposed Verdict Form Not Used at Trial	09/05/18	19	4521–4525
79	Judgment on Jury Verdict	10/04/18	19	4526–4532
80	Recorder’s Transcript of Proceedings, Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims, The Estate’s Motion for Judgment as a Matter of Law Regarding Construction of Will	10/04/18	19	4533–4554
81	Notice of Entry of Order Denying the Adelson Campus’ Motion to Strike Jury Demand on Order Shortening Time	10/05/18	19	4555–4558
82	Notice of Entry of Order Denying the Adelson Campus’ Motion for Summary Judgment Regarding Breach of Contract	10/05/18	19	4559–4562
83	Notice of Entry of Order Denying the Estate’s Motion for Reconsideration of the Court’s Order Granting Summary Judgment on the Estate’s Claim for Breach of Oral Contract and the Adelson Campus’ Countermotion to Strike the August 14, 2018 Declaration of Jonathan Schwartz an All Attached Exhibits in Support	10/05/18	19	4563–4566
84	Notice of Entry of Judgment on Jury Verdict	10/05/18	19	4567–4575
85	The Dr. Miriam and Sheldon G. Adelson Educational Institute’s Verified Memorandum of Costs	10/11/18	19	4576–4579
86	Appendix of Exhibits to the Dr. Miriam and Sheldon G. Adelson Education Institute’s Verified Memorandum of Costs (Volume 1 of 2)	10/11/18	19 20	4580–4750 4751–4842

87	Appendix of Exhibits to the Dr. Miriam and Sheldon G. Adelson Education Institute's Verified Memorandum of Costs (Volume 2 of 2)	10/11/18	20 21	4843–5000 5001–5123
88	Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	10/16/18	21	5124–5167
89	The Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	10/22/18	21 22	5168–5250 5251–5455
90	Adelson Campus' Post-Trial Brief on Outstanding Claims	11/16/18	22 23	5456–5500 5501–5555
91	Post-Trial Brief Regarding the Parties' Equitable Claims and for Entry of Judgment	11/16/18	23	5556–5693
92	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	11/21/18	23 24	5694–5750 5751–5788
93	The Adelson Campus' Opposition to the Estate's Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	11/21/18	24	5789–5803
94	The Estate's Reply to Adelson Campus's Opposition to Motion for Post-Trial Relief from Judgment on Jury Verdict Entered on October 4, 2018	12/21/18	24	5804–5816
95	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Post-Trial Brief Regarding the Parties' Equitable Claims and for Entry of Judgment	12/21/18	24	5817–5857

96	The Estate's Response to the Adelson Campus' Post-Trial Brief on Outstanding Claims	12/21/18	24	5858–5923
97	Reply in Support of Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	01/04/19	24	5924–5941
98	Reporter's Transcription of Proceedings	01/10/19	24	5942–5993
99	Judgment on A. Jonathan Schwartz's Petition for Declaratory Relief	02/20/19	24	5994–5995
100	Judgment on the Dr. Miriam and Sheldon G. Adelson Educational Institute's Petition to Compel Distribution, for Accounting and for Attorneys' Fees	02/20/19	24	5996–5997
101	Notice of Entry of Order Denying the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered on October 4, 2018	02/20/19	24 25	5998–6000 6001
102	Notice of Entry of Judgment on A. Jonathan Schwartz's, Executor of the Estate of Milton I. Schwartz, Claims for Promissory Estoppel and Revocation of Gift and Construction Trust	02/21/19	25	6002–6010
103	Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25	6111–6015
104	Appendix of Exhibits to Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25 26	6016–6250 6251–6478
105	The Adelson Campus' Motion to Re-Tax and Settle Costs	03/06/19	26	6479–6489
106	Notice of Appeal	03/08/19	26 27	6490–6500 6501–6510
107	Case Appeal Statement	03/08/19	27	6511–6515

108	Notice of Appeal	03/22/19	27	6516–6517
109	Case Appeal Statement	03/22/19	27	6518–6521
110	The Estate’s Opposition to the Adelson Campus’ Motion to Re-Tax and Settle Costs	03/25/19	27	6522–6546
111	The Adelson Campus’ Reply in Support of Motion to Re-Tax and Settle Costs	04/04/19	27	6547–6553
112	Recorder’s Transcript of Pending Motions	04/11/19	27	6554–6584
113	Notice of Entry of Order	07/25/19	27	6585–6595
114	Stipulation and Order Regarding Trial Transcripts	08/05/19	27	6596–6597
115	Notice of Appeal	08/16/19	27	6598–6599
116	Case Appeal Statement	08/16/19	27	6600–6603
117	Notice of Posting Supersedeas Bond on Appeal	08/19/19	27	6604–6606
118	Trial Exhibit 3		27	6607–6609
119	Trial Exhibit 4		27	6610–6611
120	Trial Exhibit 5		27	6612–6620
121	Trial Exhibit 6		27	6621
122	Trial Exhibit 9		27	6622–6625
123	Trial Exhibit 14		27	6626–6628
124	Trial Exhibit 17		27	6629–6638
125	Trial Exhibit 22		27	6639–6645
126	Trial Exhibit 28		27	6646–6647
127	Trial Exhibit 38		27	6648–6649
128	Trial Exhibit 41		27	6650–6675
129	Trial Exhibit 43		27	6676–6679
130	Trial Exhibit 44		27	6680–6682
131	Trial Exhibit 51		27	6683–6684
132	Trial Exhibit 52		27	6685–6686
133	Trial Exhibit 55		27	6687–6713
134	Trial Exhibit 61		27 28	6714–6750 6751–6799
135	Trial Exhibit 62		28	6800–6867
136	Trial Exhibit 111		28	6868–6869

137	Trial Exhibit 112		28	6870
138	Trial Exhibit 113		28	6871
139	Trial Exhibit 114		28	6872
140	Trial Exhibit 115		28	6873
141	Trial Exhibit 118		28	6874–6876
142	Trial Exhibit 128		28	6877
143	Trial Exhibit 130		28	6878–6879
144	Trial Exhibit 134		28	6880–6882
145	Trial Exhibit 139		28	6683–6884
146	Trial Exhibit 149		28	6885–6998
147	Trial Exhibit 158		28	6999
148	Trial Exhibit 159		28	7000
149	Trial Exhibit 162		28	7001
150	Trial Exhibit 165		29	7002
151	Trial Exhibit 384		29	7003–7007
152	Trial Exhibit 1116A		29	7008

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
26	Adelson Campus’ Motion for Partial Summary Judgment	04/22/14	3 4	697–750 751–772
90	Adelson Campus’ Post-Trial Brief on Outstanding Claims	11/16/18	22 23	5456–5500 5501–5555
30	Adelson Campus’ Reply in Support of Motion for Partial Summary Judgment	06/24/14	5 6	1182–1250 1251–1273
12	Adelson Campus’ Reply in Support of Petition to Compel Distribution, for Accounting and for Attorneys’ Fees & Preliminary Objection to Accounting	06/17/13	2	330–356
74	Amended Jury List	09/05/18	18	4468
86	Appendix of Exhibits to the Dr. Miriam and Sheldon G. Adelson Education Institute’s Verified Memorandum of Costs (Volume 1 of 2)	10/11/18	19 20	4580–4750 4751–4842
87	Appendix of Exhibits to the Dr. Miriam and Sheldon G. Adelson Education Institute’s Verified Memorandum of Costs (Volume 2 of 2)	10/11/18	20 21	4843–5000 5001–5123
104	Appendix of Exhibits to Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25 26	6016–6250 6251–6478
107	Case Appeal Statement	03/08/19	27	6511–6515
109	Case Appeal Statement	03/22/19	27	6518–6521
116	Case Appeal Statement	08/16/19	27	6600–6603
18	Demand for Jury Trial	11/27/13	2	480–481
29	Errata to Opposition to Motion for Partial Summary Judgment	06/03/14	5	1166–1181
52	Errata to Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations	07/10/18	9	2150–2155

38	Errata to Petition for Partial Distribution	06/02/16	6	1395–1410
6	Ex Parte Order for Extension of Inventory	05/23/08	1	72–73
99	Judgment on A. Jonathan Schwartz’s Petition for Declaratory Relief	02/20/19	24	5994–5995
79	Judgment on Jury Verdict	10/04/18	19	4526–4532
100	Judgment on the Dr. Miriam and Sheldon G. Adelson Educational Institute’s Petition to Compel Distribution, for Accounting and for Attorneys’ Fees	02/20/19	24	5996–5997
75	Jury Instructions	09/05/18	18 19	4469–4500 4501–4512
68	Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims	08/31/18	12	2869–2902
46	Motion for Partial Summary Judgment Regarding Fraud	06/04/18	6 7	1493–1500 1501–1523
47	Motion for Partial Summary Judgment Regarding Statute of Limitations	06/04/18	7	1524–1541
19	Motion for Reconsideration	12/02/13	2 3	482–500 501–582
48	Motion for Summary Judgment Regarding Breach of Contract	06/04/18	7	1542–1673
11	Motion to Dismiss Executor’s Petition for Declaratory Relief	06/12/13	2	299–329
88	Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	10/16/18	21	5124–5167
106	Notice of Appeal	03/08/19	26 27	6490–6500 6501–6510
108	Notice of Appeal	03/22/19	27	6516–6517
115	Notice of Appeal	08/16/19	27	6598–6599

102	Notice of Entry of Judgment on A. Jonathan Schwartz's, Executor of the Estate of Milton I. Schwartz, Claims for Promissory Estoppel and Revocation of Gift and Construction Trust	02/21/19	25	6002–6010
84	Notice of Entry of Judgment on Jury Verdict	10/05/18	19	4567–4575
4	Notice of Entry of Order	01/04/08	1	61–66
5	Notice of Entry of Order	01/29/08	1	67–71
113	Notice of Entry of Order	07/25/19	27	6585–6595
17	Notice of Entry of Order Denying Adelson Campus' Motion to Dismiss Executor's Petition for Declaratory Relief Without Prejudice & Allowing Limited Discovery	11/13/13	2	476–479
23	Notice of Entry of Order Denying Motion for Reconsideration and Re-Setting Discovery Deadline	02/27/14	3	681–684
82	Notice of Entry of Order Denying the Adelson Campus' Motion for Summary Judgment Regarding Breach of Contract	10/05/18	19	4559–4562
81	Notice of Entry of Order Denying the Adelson Campus' Motion to Strike Jury Demand on Order Shortening Time	10/05/18	19	4555–4558
33	Notice of Entry of Order Denying the Dr. Miriam and Sheldon C. Adelson Educational Institute's Motion for Partial Summary Judgment	09/05/14	6	1323–1326
101	Notice of Entry of Order Denying the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered on October 4, 2018	02/20/19	24 25	5998–6000 6001
83	Notice of Entry of Order Denying the Estate's Motion for Reconsideration of the Court's Order Granting Summary	10/05/18	19	4563–4566

	Judgment on the Estate's Claim for Breach of Oral Contract and the Adelson Campus' Countermotion to Strike the August 14, 2018 Declaration of Jonathan Schwartz and All Attached Exhibits in Support			
25	Notice of Entry of Order Granting Motion to Modify November 12, 2013 Order and/or Limit Discovery; and Order Denying the Dr. Miriam and Sheldon G. Adelson Educational Institute's Ex Parte Application (with notice) Countermotion to Continue the February 11, 2014 Hearing to Allow Discovery Commissioner to Resolve Discovery Dispute	03/07/14	3	691–696
24	Notice of Entry of Order Regarding Deposit of Funds in Blocked Account at Morgan Stanley	03/07/14	3	685–690
43	Notice of Entry of Order Regarding the Adelson Campus' Motion for Protective Order	05/08/17	6	1483–1486
8	Notice of Entry of Order to Appear and Show Cause	05/14/13	1	160–163
36	Notice of Entry of Stipulation and Order for Protective Order	03/05/15	6	1377–1389
45	Notice of Entry of Stipulation to Stay Matter Pending Petition for Writ of Mandamus or Prohibition	05/24/17	6	1488–1492
44	Notice of Filing Petition for a Writ of Mandamus of Prohibition	05/17/17	6	1487
117	Notice of Posting Supersedeas Bond on Appeal	08/19/19	27	6604–6606
9	Objection to Petition to Compel Distribution, for Accounting, and for Attorneys' Fees and Ex Parte Petition for Order to Issue Citation to Appear and Show Cause	05/28/13	1	164–230

70	Opposition to Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims	09/03/18	18	4305–4333
27	Opposition to Motion for Partial Summary Judgment	05/27/17	4 5	773–1000 1001–1158
49	Opposition to Motion for Partial Summary Judgment Regarding Fraud	07/06/18	7 8	1674–1750 1751–1827
50	Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations	07/06/18	8	1828–1986
51	Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	07/06/18	8 9	1987–2000 2001–2149
14	Opposition to Motion to Dismiss	07/01/13	2	386–398
34	Opposition to the Adelson Campus’ Motion for Reconsideration of Denial of Motion for Partial Summary Judgment	10/06/14	6	1327–1333
20	Opposition to the Executor’s Motion for Reconsideration of the Court’s November 12, 2013, Order Denying Adelson Campus’ Motion to Dismiss Executor’s Petition for Declaratory Relief without Prejudice & Allowing Limited Discovery	12/09/13	3	583–638
2	Order Granting Petition for Probate of Will and Codicils and Issuance of Letters Testamentary	12/10/07	1	27–28
10	Petition for Declaratory Relief	05/28/13	1 2	231–250 251–298
37	Petition for Partial Distribution	05/19/16	6	1390–1394
1	Petition for Probate of Will	10/15/07	1	1–26
7	Petition to Compel Distribution, for Accounting and for Attorneys’ Fees	05/03/13	1	74–159
3	Petitioner’s Response to Objection to Petition to Probate Will and for Issuance of Letter Testamentary and	01/03/08	1	29–60

	Request for All Future Notices to be Properly Served			
91	Post-Trial Brief Regarding the Parties' Equitable Claims and for Entry of Judgment	11/16/18	23	5556–5693
77	Proposed Jury Instructions Not Used at Trial	09/05/18	19	4517–4520
78	Proposed Verdict Form Not Used at Trial	09/05/18	19	4521–4525
73	Recorder's Partial Transcript of Jury Trial: Closing Arguments	09/04/18	18	4368–4467
72	Recorder's Partial Transcript: Jury Instructions	09/04/18	18	4342–4367
13	Recorder's Transcript of All Pending Motions	06/25/13	2	357–385
62	Recorder's Transcript of Hearing on Motions in Limine and Motions for Summary Judgment	08/09/18	10 11	2417–2500 2501–2538
16	Recorder's Transcript of Motions Hearing	10/08/13	2	433–475
112	Recorder's Transcript of Pending Motions	04/11/19	27	6554–6584
39	Recorder's Transcript of Proceeding: All Pending Motions	08/03/16	6	1411–1441
41	Recorder's Transcript of Proceeding: Status Check	09/28/16	6	1455–1464
80	Recorder's Transcript of Proceedings, Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims, The Estate's Motion for Judgment as a Matter of Law Regarding Construction of Will	10/04/18	19	4533–4554
67	Recorder's Transcript of Proceedings, Pretrial Conference – Day 2, All Pending Motions	08/16/18	12	2793–2868
65	Recorder's Transcript of Proceedings, Pretrial Conference, All Pending Motions	08/15/18	11 12	2647–2750 2751–2764

40	Recorder's Transcript of Proceedings: Calendar Call	08/18/16	6	1442–1454
56	Reply in Support of Motion for Summary Judgment Regarding Breach of Contract	08/02/18	9	2210–2245
15	Reply in Support of Motion to Dismiss Executor's Petition for Declaratory Relief	10/02/13	2	399–432
97	Reply in Support of Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	01/04/19	24	5924–5941
35	Reporter's Transcript of Proceedings	10/08/14	6	1334–1376
98	Reporter's Transcription of Proceedings	01/10/19	24	5942–5993
114	Stipulation and Order Regarding Trial Transcripts	08/05/19	27	6596–6597
31	Supplement to Opposition to Motion for Partial Summary Judgment	07/02/14	6	1274–1280
61	Supplement to Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	08/08/18	10	2387–2416
28	Supplement to Petition for Declaratory Relief to Include Remedies of Specific Performance and Mandatory Injunction	05/28/17	5	1159–1165
64	Supplement to the Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract	08/14/18	11	2624–2646
60	Supplement to the Estate's Opposition to Motion for Partial Summary Judgment Regarding Fraud	08/08/18	10	2353–2386
105	The Adelson Campus' Motion to Re- Tax and Settle Costs	03/06/19	26	6479–6489

53	The Adelson Campus' Opposition to the Estate's Countermotion for Advisory Jury	07/23/18	9	2156–2161
66	The Adelson Campus' Opposition to the Estate's Motion for Reconsideration of the Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Contract and Countermotion to Strike the 8/14/18 Declaration of Jonathan Schwartz and All Attached Exhibits in Support	08/16/18	12	2765–2792
93	The Adelson Campus' Opposition to the Estate's Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	11/21/18	24	5789–5803
59	The Adelson Campus' Pre-Trial Memorandum	08/07/18	10	2275–2352
54	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Fraud	08/02/18	9	2162–2177
55	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Statute of Limitations	08/02/18	9	2178–2209
111	The Adelson Campus' Reply in Support of Motion to Re-Tax and Settle Costs	04/04/19	27	6547–6553
92	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	11/21/18	23 24	5694–5750 5751–5788
95	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Post-Trial	12/21/18	24	5817–5857

	Brief Regarding the Parties' Equitable Claims and for Entry of Judgment			
85	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Verified Memorandum of Costs	10/11/18	19	4576–4579
71	The Estate's Motion for Judgment as a Matter of Law Regarding Construction of Will	09/03/18	18	4334–4341
89	The Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	10/22/18	21 22	5168–5250 5251–5455
63	The Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract and Ex Parte Application for an Order Shortening Time	08/14/18	11	2539–2623
110	The Estate's Opposition to the Adelson Campus' Motion to Re-Tax and Settle Costs	03/25/19	27	6522–6546
57	The Estate's Pretrial Memorandum	08/06/18	9 10	2246–2250 2251–2263
58	The Estate's Pretrial Memorandum	08/06/18	10	2264–2274
94	The Estate's Reply to Adelson Campus's Opposition to Motion for Post-Trial Relief from Judgment on Jury Verdict Entered on October 4, 2018	12/21/18	24	5804–5816
96	The Estate's Response to the Adelson Campus' Post-Trial Brief on Outstanding Claims	12/21/18	24	5858–5923
32	Transcript for Motion for Summary Judgment	07/09/14	6	1281–1322
21	Transcript of Proceeding: Motion for Reconsideration	12/10/13	3	639–669
42	Transcript of Proceedings: Motion for Protective Order on Order Shortening Time	04/19/17	6	1465–1482

22	Transcription of Discovery Commissioner Hearing Held on January 29, 2014	01/29/14	3	670–680
136	Trial Exhibit 111		28	6868–6869
152	Trial Exhibit 1116A		29	7008
137	Trial Exhibit 112		28	6870
138	Trial Exhibit 113		28	6871
139	Trial Exhibit 114		28	6872
140	Trial Exhibit 115		28	6873
141	Trial Exhibit 118		28	6874–6876
142	Trial Exhibit 128		28	6877
143	Trial Exhibit 130		28	6878–6879
144	Trial Exhibit 134		28	6880–6882
145	Trial Exhibit 139		28	6683–6884
123	Trial Exhibit 14		27	6626–6628
146	Trial Exhibit 149		28	6885–6998
147	Trial Exhibit 158		28	6999
148	Trial Exhibit 159		28	7000
149	Trial Exhibit 162		28	7001
150	Trial Exhibit 165		29	7002
124	Trial Exhibit 17		27	6629–6638
125	Trial Exhibit 22		27	6639–6645
126	Trial Exhibit 28		27	6646–6647
118	Trial Exhibit 3		27	6607–6609
127	Trial Exhibit 38		27	6648–6649
151	Trial Exhibit 384		29	7003–7007
119	Trial Exhibit 4		27	6610–6611
128	Trial Exhibit 41		27	6650–6675
129	Trial Exhibit 43		27	6676–6679
130	Trial Exhibit 44		27	6680–6682
120	Trial Exhibit 5		27	6612–6620
131	Trial Exhibit 51		27	6683–6684
132	Trial Exhibit 52		27	6685–6686
133	Trial Exhibit 55		27	6687–6713
121	Trial Exhibit 6		27	6621
134	Trial Exhibit 61		27 28	6714–6750 6751–6799

135	Trial Exhibit 62		28	6800–6867
122	Trial Exhibit 9		27	6622–6625
69	Trial Transcripts (Rough Drafts)	09/03/18	12 13 14 15 16 17 18	2903–3000 3001–3250 3251–3500 3501–3750 3751–4000 4001–4250 4251–4304
76	Verdict Form	09/05/18	19	4513–4516
103	Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25	6111–6015

EXHIBIT “2”

SOLOMON DWIGGINS & FREER, LTD.
Attorneys at Law

Mark A. Solomon
Dana A. Dwiggins
Alan D. Freer
Brian K. Steadman

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: (702) 853-5483
Facsimile: (702) 853-5485

Brian P. Eagan
Robert D. Simpson
Jeffrey P. Luszeck
Ross E. Evans
Jordanna L. Evans
Alexander G. LeVeque
Joshua M. Hood
Bri F. Issurduff

Of Counsel
Steven E. Hollingworth

Direct Dial:
(702) 589-3555
afreer@sdfnvlaw.com

October 18, 2013

Via Hand-Delivery

The Honorable Gloria J. Sturman
Regional Justice Center
Dept. XXVI, Courtroom 3H
200 Lewis Avenue
Las Vegas, NV 89155

Re: *In the Matter of the Estate of Milton I. Schwartz, Deceased*
Eighth Judicial District Court Case No. 07-P-061300

Dear Judge Sturman:

This is in response to Mr. Couvillier's October 16, 2013, correspondence regarding his Proposed Order from the October 8, 2013, hearing.

First, contrary to Mr. Couvillier's contention, this Court did not confirm the Adelson Campus as a devisee under the Decedent's Will because that issue was not before the Court at the hearing. Indeed, at the hearing Mr. Couvillier did state that the Adelson Campus was a devisee, see October 8, 2013, transcript at 40:22, and the Court granted the Adelson Campus' request to conduct discovery on the accounting; however, the fact that Mr. Couvillier expressed his self-serving belief the Adelson Campus is a "devisee" does not make it so, and certainly does not constitute a finding by this Court. Whether the Adelson Campus is a devisee under the Decedent's Will is one of the ultimate issues in this case and requires a factual finding from the jury as requested by the Executor. As such, the Adelson Campus' requested finding is inappropriate and premature.

Second, the Adelson Campus' Proposed Order seeks to improperly limit discovery to the issue of "whether the purpose and condition of the bequest under

SOLOMON DWIGGINS & FREER, LTD.
Attorneys at Law

The Honorable Gloria J. Sturman
October 18, 2013
Page 2

Section 2.3 of the Will was for the school to be named "The Milton I. Scharz Hebrew Academy" in perpetuity." Lest the Adelson Campus forget: the Motion to Dismiss was denied, thereby allowing the Executor to conduct discovery on all of the claims asserted in his Petition for Declaratory Relief: (1) Construction of Will; (2) Fraud in the Inducement; (3) Bequest Void for Mistake; (4) Offset of Bequest Under Will; (5) Breach of Contract; and (6) Revocation of Gift and Constructive Trust. Denying the Executor the opportunity to conduct discovery on any of the other claims deprives him of due process and the ability to litigate such claims, especially since said claims will be heard by a jury. Further, the Court already conceded at the October 8, 2013, hearing that "the Court has to let you do your discovery." See *id.* at 33:13-14. For these reasons the Executor believes it is inappropriate to limit discovery as requested by the Adelson Campus in its Proposed Order.

In light of the foregoing, the Executor respectfully requests that the Court adopt and execute the competing order that he submitted on October 16, 2013, which for convenience of the Court is attached hereto.

Sincerely,



Alan D. Freer

ADF/sg

cc: Client
Maximiliano D. Couvillier II, Esq. (via email)

EXHIBIT “3”

Electronically Filed
11/13/2013 09:39:41 AM

1 **NEOJ**

2 Elizabeth Brickfield (SBN #6236)
3 ebrickfield@lionelsawyer.com
4 Maximiliano D. Couvillier, III (SBN #7661)
5 mcouvillier@lionelsawyer.com
6 Ketan D. Bhirud (SBN #10515)
7 kbhirud@lionelsawyer.com
8 LIONEL SAWYER & COLLINS
9 1700 Bank of America Plaza
10 300 South Fourth Street, Suite 1700
11 Las Vegas, Nevada 89101
12 (702) 383-8888 (Telephone)
13 (702) 383-8845 (Fax)

14 Attorneys for The Dr. Miriam and
15 Sheldon G. Adelson Educational Institute

CLERK OF THE COURT

DISTRICT COURT

Clark COUNTY, NEVADA

16 In the Matter of the Estate of
17
18 MILTON I. SCHWARTZ,
19
20 Deceased

Case No. P061300
Dept. No.: 26/Probate

**NOTICE OF ENTRY OF ORDER
DENYING ADELSON CAMPUS'
MOTION TO DISMISS EXECUTOR'S
PETITION FOR DECLARATORY
RELIEF WITHOUT PREJUDICE &
ALLOWING LIMITED DISCOVERY**

21 PLEASE TAKE NOTICE that an **ORDER DENYING ADELSON CAMPUS'**
22 **MOTION TO DISMISS EXECUTOR'S PETITION FOR DECLARATORY RELIEF**
23 **WITHOUT PREJUDICE & ALLOWING LIMITED DISCOVERY** was entered on this
24 Court's docket on November 12, 2013. A copy of the same is attached.

25 Dated: November 13, 2013.

26 LIONEL SAWYER & COLLINS

27 By:
28 Elizabeth Brickfield (SBN #6236)
Maximiliano D. Couvillier, III (SBN #7661)
Ketan D. Bhirud (SBN #10515)

Attorneys for The Dr. Miriam and Sheldon G.
Adelson Educational Institute

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 13, 2013, I deposited in the United States Mail at Las Vegas, Nevada, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING ADELSON CAMPUS' MOTION TO DISMISS EXECUTOR'S PETITION FOR DECLARATORY RELIEF WITHOUT PREJUDICE & ALLOWING LIMITED DISCOVERY** enclosed in a sealed envelope upon which first class postage was paid, addressed as follows:

Steven J. Oshins, Esq.
OSHINS & ASSOCIATES
645 Village Center Circle
Las Vegas, NV 89134

Robert P. Dickerson, Esq.
THE DICKERSON LAW GROUP
1745 Village Center Circle
Las Vegas, NV 89134

Attorneys for Executor

Attorneys for Abigail Richlin Schwartz

Eileen Joanna Zarin
9 Steven Lane
King Point, NY 11024

Robin Sue Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Samuel Schwartz
351 Woodlake Drive
Marlton, NJ 08053

Michael Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Zachary Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

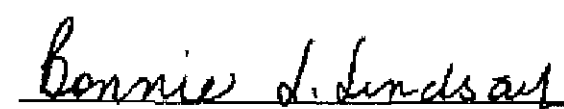
Benjamin Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Joshua Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

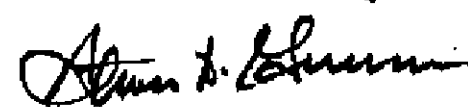
Frances A. Martel
235 Vista Del Parque
Redondo Beach, CA 90277

The Milton I. Schwartz Revocable Family
Trust, A. Jonathan Schwartz, Trustee
2293 Duneville Street
Las Vegas, NV 89146

Medicaid Estate Recovery
1050 E. William Street, Suite 435
Carson City, NV 89701-3199


An Employee of Lionel Sawyer & Collins

Electronically Filed
11/12/2013 03:45:47 PM



CLERK OF THE COURT

ORDR

Elizabeth Brickfield (SBN #6236)
ebrickfield@lionelsawyer.com
Maximiliano D. Couvillier, III (SBN #7661)
mcouvillier@lionelsawyer.com
Ketan D. Bhurad (SBN #10515)
kbhurad@lionelsawyer.com
LIONEL SAWYER & COLLINS
1700 Bank of America Plaza
300 South Fourth Street, Suite 1700
Las Vegas, Nevada 89101
(702) 383-8888 (Telephone)
(702) 383-8845 (Fax)

Attorneys for The Dr. Miriam and
Sheldon G. Adelson Educational Institute

DISTRICT COURT

Clark COUNTY, NEVADA

In the Matter of the Estate of

MILTON I. SCHWARTZ,

Deceased

Case No. P061300
Dept. No.: 26/Probate

**ORDER DENYING ADELSON CAMPUS'
MOTION TO DISMISS EXECUTOR'S
PETITION FOR DECLARATORY
RELIEF WITHOUT PREJUDICE &
ALLOWING LIMITED DISCOVERY**

On October 8, 2013, the Court heard the following matters: (1) The Motion to Dismiss the Executor's petition for declaratory relief ("Motion to Dismiss") by Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus"), devisee under the Will of the Decedent in the above-referenced Estate; and (2) the Adelson Campus' Preliminary Objection to Accounting. Maximiliano D. Couvillier III appeared on behalf of the Adelson Campus and Alan D. Freer appeared on behalf of the Executor A. Jonathan Schwartz ("Executor").

The Court has reviewed the record, all papers on file, considered the argument of counsel, and good cause appearing, it is **ORDERED** as follows:

1. The Adelson Campus' Motion to Dismiss is **DENIED WITHOUT PREJUDICE** and may be renewed as a motion for summary judgment after the conclusion of the limited discovery provided herein;

000508

EXHIBIT “4”

FEB 04 '91 15:25

P:2/10

TO: <i>Dr. Zal Goldstein</i>	FROM: <i>Milton Schwartz</i>	DATE: <i>1/19/91</i>	PAGES INCLUDING THIS PAGE: <i>9</i>
FAX #: <i>799-5505</i>	FAX #:	PHONE #: <i>583-6707</i>	

BYLAWS OF

Exhibit A

THE MILTON I. SCHWARTZ HEBREW ACADEMY

ARTICLE I

NAME AND OFFICE

1. Name: The name of this corporation is The Milton I. Schwartz Hebrew Academy (hereinafter referred to as The Academy) and shall remain so in perpetuity.

2. Office: The principal office of the corporation shall be at 9700 W. Hillpointe Road, Las Vegas, Nevada.

ARTICLE II

TRUSTEES

1. The governing board of the corporation shall be known as the Board of Trustees and the membership of the Board of Trustees shall constitute the corporation.

2. The Board of Trustees shall be composed of fourteen members elected by the Board of Trustees and the school head.

3. In the event the parents of the students of The Academy form a parent-teacher organization with dues paying members representing at least fifty percent of the student body, which holds regular meetings, such organization shall be entitled to one representative to the Board of Trustees at the discretion of the Board of Trustees and, dependent upon the activity level and services rendered to The Academy by the parent-teacher organization.

4. In the event of a vacancy during the term of a trustee, the Board of Trustees shall appoint, after due consultation with the nominating committee, a person to fill the unexpired term.

/ BYLAWS OF
THE MILTON I. SCHWARTZ HEBREW ACADEMY

ARTICLE I
NAME AND OFFICE

1. Name: The name of this corporation is The Milton I. Schwartz Hebrew Academy (hereinafter referred to as The Academy) and shall remain so in perpetuity.

2. Office: The principal office of the corporation shall be at 9700 W. Hillpointe Road, Las Vegas, Nevada.

ARTICLE II
TRUSTEES

1. The governing board of the corporation shall be known as the Board of Trustess and the membership of the Board of Trustees shall constitute the corporation.

2. The Board of Trustees shall be composed of fourteen members eleceted by the Board of Trustees and the school head.

3. In the event the parents of the students of The Academy form a parent-teacher organization with dues paying members representing at least fifty percent of the student body, which holds regular meetings, such organization shall be entitled to one representative to the Board of Trustees at the discretion of the Board of Trustees and, dependant upon the activity level and services rendered to The Academy by the parent-teacher organization.

4. In the event of a vacancy during the term of a trustee, the Board of Trustees shall appoint, after due consultation with the nominating committee, a person to fill the unexpired term.

FEB 24 '91 15:25

P13/18

5. Election of members of the Board of Trustees shall be conducted during the regular June meeting of the corporation or as soon thereafter as possible.

6. The election of the Chairman of the Board of Trustees, president, vice president, secretary and treasurer's offices in both the corporation and the Board of Trustees shall be held at the first meeting of the original Board of Trustees for a one-year term. Subsequent elections shall be held in conjunction with the annual June trustee elections.

7. If, for any reason, any trustee is not elected in the time and manner provided for by these Bylaws, such trustee shall continue to serve until such time as his successor has been elected.

8. A functional quorum of trustees shall consist of forty percent of the total number of trustees then serving, except during such periods of time when the total number of trustees actually serving is twelve or less, in which event a quorum shall consist of a majority of such trustees.

9. In the event a trustee fails to attend three consecutive meetings of the Board of Trustees, the Chairman shall direct a letter to be sent to the last known address of such trustee, requesting a written confirmation as to whether or not he/she desires to continue to serve. In the event that the confirmation letter is not received by the chairman prior to a fourth consecutive meeting, which such trustee has failed to attend, the office of the trustee shall be deemed thereafter vacant. In the

FEB 04/91 15:26

absence of the chairman, the secretary or treasurer may direct such a letter.

10. The Board of Trustees may, from time to time, elect a person to serve as an honorary trustee. An honorary trustee shall be entitled to attend and participate in all meetings of the Board of Trustees but shall have not vote. An honorary trustee shall serve until removed by the Board of Trustees.

ARTICLE III

1. The Chairman shall preside over all meetings of the Board of Trustees. In case of his/her absence, a chairman selected by Board members present shall preside.

ARTICLE IV

COMMITTEES

1. Chairmen: All chairmen of committees shall be chosen by the president annually for one year terms during which each chairman of each committee shall preside over committee affairs, be responsible for active disposal of committee business and be required to give adequate notice to committee members of all committee meetings.

2. Executive Committee: The Executive Committee shall manage the interim business and affairs of the corporation, excepting the Board's power to adopt, amend or repeal bylaws. The Board of Trustees shall have the power to prescribe the manner in which proceedings of the executive committee and other committees shall be conducted. The executive committee shall be composed of the president, the vice president, the treasurer and the secretary.

FEB 04 1991 13:26

The executive committee shall be the primary management mechanism between meetings of the Board of Trustees.

3. Nominating Committee: Members of this committee shall be appointed by the corporate president and the committee shall consist of three trustees. The committee shall submit a full report to the Board of Trustees no later than thirty days in advance of the June election. Any trustee in good standing may freely submit additional nominations, provided that such nominations are submitted in writing to the nominating committee and to the remaining members of the Board of Trustees no later than thirty days prior to the annual election. There shall be no nomination from the floor at the time of the elections.

4. Student Aid Committee: The student aid committee shall be appointed by the president and shall consist of a minimum of three members of the Board of Trustees. This committee shall review and consider all applications received by the Academy from any child enrolling in the Academy seeking a reduction in tuition fees.

5. Corporate Officers: The elected officers of the corporation shall be the same as the officers of the Board of Trustees.

6. Vacancies: The Board of Trustees of the Academy shall alone determine when a vacancy exists in any corporate or Board position appearing on the annual election slate, and shall report all such vacancies, from time to time, to the chairman of the nominating committee, who shall immediately convene his/her

FEB 04 9:15:27 PM '10 FEB 04 9:15:27 PM '10

committee for the purpose of receiving and submitting recommendations to the Board of Trustees in order to fill such vacancies.

7. Removal of Trustee: Any trustee may be removed from office through an affirmative vote by two-thirds of the total members of the Board, pursuant to a motion registered in person at any regular or special meeting called for that purpose; an adequate basis for removal shall consist of any conduct detrimental to the interest of the corporation. Any trustee, properly proposed to be removed because of conduct detrimental to the corporation, shall be entitled to at least five days notice in writing by mail of the meeting during which such removal is to be voted upon and shall be entitled to appear before and be heard at such meeting.

8. Compensation and Expenses: Trustees shall not receive any salary or compensation for their services as Trustee, nor any compensation for expenses incurred in connection with such services.

9. Standing Committees: The following committees shall be designated permanent committees:

- a. Fund-raising
- b. Nominating
- c. Student
- d. Building Fund

10. Other Committees: The president may establish and appoint members in good standing to additional committees, from

FEB 24 '91 15:27

P. 7/10

time to time, as he/she or the Board of Trustees may deem appropriate.

ARTICLE V

DESCRIPTION AND DUTIES OF OFFICERS OF THE BOARD

1. Chairman of the Board: The Chairman shall preside at all meetings of the Board of Trustees. One person may hold the position of Chairman and President.

2. President: The president shall preside at all meetings of the Board of Trustees. He/she is authorized to exercise general charge and supervision of the affairs of the corporation and shall be deemed invested with adequate authority to perform such other duties as may be assigned to him/her by the Board of Trustees. He/she shall serve two consecutive terms.

3. Vice President: At the request of the president or in the event of his absence or disability, the vice president shall perform the duties and possess and exercise the correlative powers of the president. To the extent authorized by law, the vice president may be invested with such other powers as the Board of Trustees may determine, and perform such other duties as may be assigned to him/her by the Board of Trustees.

4. Secretary: The secretary shall attend and keep the minutes of all meetings of the Board of Trustees. He/she shall keep an alphabetically arranged record containing names of all members of the corporation, showing their places of residence; such record shall be open for public and member inspection as prescribed by law. He/she shall perform all duties generally incidental to

FEB 04 1917 15:28

the office of secretary, although such duties are subject to the control of the Board of Trustees, additional duties being properly assignable by the Board to the secretary.

5. Treasurer: The treasurer shall maintain all financial records of the corporation and shall supervise and be responsible for those persons whose duty it will be to receive and disburse all corporate funds and maintain complete records of accounts. The treasurer is additionally charged with the preparation and submission of an annual financial statement and a budget to the Board of Trustees.

ARTICLE VI

MEETINGS OF THE BOARD OF TRUSTEES

The Board of Trustees shall meet monthly in accordance with a regular basis to be determined by Board resolution. Additional meetings may be held at the call of the president upon one week's notice. Such notice shall be given in writing if possible, or otherwise by telephone. Meetings may be held at the call of the Chairman without regard to the aforementioned notice requirements, although subject to good faith duty to attempt notification of all trustees.

ARTICLE VII

ELECTIONS

Except in the case of voting by acclamation, all voting shall be by secret ballot and no ballot shall be deemed valid unless it

FEB 24 '91 15:28

P.9/10

contains a vote for a number of candidates equal to the number of vacancies to be filled. A majority of valid ballots cast shall be required to elect a trustee to office.

ARTICLE VIII

AMENDMENTS

1. The Board of Trustees shall have the power to make, alter, amend and repeal the bylaws of the corporation by affirmative vote of a majority of the full board at a meeting duly noticed therefor.

ARTICLE IX

RULES

1. The Board of Trustees may adopt such Rules of Order and Procedure for the conduct of the business of its meetings as they deem appropriate, provided that such Rules are not inconsistent with these bylaws.

2. In the absence of specific Rules adopted by the Board of Trustees and in all cases not covered by these bylaws, all deliberations and procedures shall be governed by Robert's Rules of Order, Revised.

KNOW ALL MEN BY THESE PRESENT:

That we, the undersigned, being a majority of all the persons appointed in the Amended Articles of Incorporation to act as the first Board of Trustees of The Hebrew Academy hereby assent to the foregoing bylaws and adopt the same as the bylaws of said corporation.

FEB 04 '91 15:29

P.10/10

IN WITNESS WHEREOF, we have hereunto set our hands this 19
 day of December, 1990.

Annan Harvey
 Ed Elly
 Steven V. Kelly
 Pheta S. Sledz
 Ken Runtler
 Neville Poling
 Elliott Clark
 [Signature]
 [Signature]
 [Signature]
 Tammie Lubin. Sapashnik

EXHIBIT “5”

Exhibit U

Milton I Schwartz Hebrew Academy MIS Contributions/donations						
	Per HA	ycs	VGC	loans	return of loans	
1988	\$ 50.00			\$ -	\$ -	
1989	\$ 500,900.00	\$ 1,200.00	\$ 600.00	\$ -	\$ -	
1990	\$ 9,000.00			\$ -	\$ -	
1991	\$ 150.00		\$ 1,300.00	\$ -	\$ -	
1992	\$ 69.66			\$ -	\$ -	
1993	\$ -			\$ -	\$ -	
1994	\$ -			\$ -	\$ -	
1995	\$ -			\$ -	\$ -	
1996	\$ -			\$ -	\$ -	
1997	\$ 2,100.00			\$ -	\$ -	
1998	\$ 22,500.00			\$ -	\$ -	
1999	\$ 26,600.00			\$ -	\$ -	
2000	\$ 7,400.00			\$ -	\$ -	
2001	\$ 88,535.00	\$ 88,535.00	\$ 1,200.00	\$ -	\$ -	
2002	\$ 57,130.00			\$ 150,000.00	\$ -	
2003	\$ 51,323.00			\$ 83,000.00	\$ (40,000.00)	
2004	\$ 135,277.00			\$ -		
2005	\$ 9,622.00					
2006	\$ 100,000.00					
2007						
Total	\$ 1,010,656.66	\$ 88,535.00	\$ 2,400.00	\$ 1,900.00	\$ 233,000.00	\$ (40,000.00)
CLT	\$ 45,247.09					
Grand Total	\$ 1,055,903.75					

Milton I Schwartz Hebrew Academy		
CLT #45 Contributions/donations (12/90 - 2005)		
1991	\$	-
1992	\$	8,052.09
1993	\$	-
1994	\$	-
1995	\$	-
1996	\$	-
1997	\$	-
1998	\$	-
1999	\$	-
2000	\$	7,000.00
2001	\$	-
2002	\$	30,000.00
2003	\$	-
2004	\$	-
2005	\$	195.00
Total	\$	45,247.09

EXHIBIT “6”

FILED

Mar 11 4 14 PM '93

Scott Michael Cantor
CLERK

1 SCOTT MICHAEL CANTOR, ESQ.
 Nevada Bar No. 001713
 2 GRAZIADEI & CANTOR, LTD.
 302 E. Carson Avenue, Suite 400
 3 Las Vegas, Nevada 89101
 (702) 477-7733
 4 Attorney for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

9 THE BOARD OF DIRECTORS of the
 10 MILTON I. SCHWARTZ HEBREW
 ACADEMY,

Plaintiff,

vs.

12 THE SECOND BOARD OF DIRECTORS
 13 of the MILTON I. SCHWARTZ
 HEBREW ACADEMY; IRA STERNBERG;
 14 GERI RENTCHLER; ROBERT DISMAN;
 ROBERTA SABBATH; RICHARD ELLIS
 15 SCOTT HIGGINSON; BOB RAKITA;
 and TAMAR LUBIN,

Defendants.

CASE NO. A314725
 DEPT. NO. III
 DOCKET NO. "E"

DATE OF HEARING: 3-15-93
 TIME OF HEARING: 9:00 am

18 AFFIDAVIT OF TAMAR LUBIN
 19 aka TAMAR LUBIN SAPOSHNIK

20 STATE OF NEVADA)
) ss:
 21 COUNTY OF CLARK)

22 TAMAR LUBIN, also known as TAMAR LUBIN SAPOSHNIK, being
 23 first duly sworn upon her oath, deposes and says:

24 1. That I am an individual of legal years residing in
 25 Clark County, Nevada; I am familiar with all facts related in
 26 this Affidavit and I am competent to testify thereto of my own
 27 personal knowledge.

28 2. That I make this Affidavit in Opposition to the

CE14



1 Plaintiff's Motion for Injunctive and Declaratory Relief and in
2 support of the Defendants' Countermotions.

3 3. That I am currently a member of the Board of Trustees
4 of the MILTON I. SCHWARTZ HEBREW ACADEMY and the School Head or
5 Administrator. As such, I am in charge of the administration of
6 all school programs and functions, finance, budgeting, fund
7 raising, purchasing, scheduling, testing, recruitment,
8 curricular development, programming, student progress and
9 activities, staff and personnel development and monitoring,
10 evaluation and improvement of all school programs. I have
11 served in the capacity as School Head since 1979.

12 4. I received my Bachelor of Arts Degree from the State
13 University of New York, at Rochester, New York. in Education and
14 Linguistics in 1974. I received a Masters of Education Degree
15 from the University of Rochester, at Rochester, New York, in
16 Educational Administration and Curriculum Development in 1975.
17 I received my Doctor of Education Degree from the University of
18 Rochester, at Rochester, New York, in Educational
19 Administration, Curriculum Development and Special Education in
20 1979.

21 5. I have been certified by the New York State Department
22 of Education and the Nevada State Department of Education in
23 Administration and Supervision of grades Kindergarten through
24 12, in Special Education of grades Kindergarten through 12, in
25 Elementary and Junior High School Education and, by the New York
26 State Department of Education, in Hebrew, grades 7 through 12.

27 6. I have been a teacher since 1952. Between 1952 and
28 1969, I taught school, first at the Redman School, London,

1 England, then, fourth and eighth grades and at Community High
2 School, Rochester, New York, then, 11th and 12th grades and
3 adult education. From 1974 to 1976, I was assistant principle of
4 Sinai and Hillel Day Schools, Rochester, New York. My
5 responsibilities included assisting in staff development,
6 assembly of resource materials, the demonstration of their use
7 in the classrooms, development of a resource center, the
8 devising and supervision of remedial and gifted programs and the
9 preparation of the annual budget and monthly financial
10 statements.

11 7. From 1976 to 1977, I was an instructor at Brockport
12 Elementary School, Brockport State University, Brockport, New
13 York, providing an educational program for racially diverse
14 students at the primary level in an open plan setting. From
15 1976 to 1979, I was an instructor in undergraduate courses of
16 the University of Rochester, New York in intermediate and
17 advanced literature.

18 8. In 1984, I was the recipient of an Educational
19 Excellence Award by the Clark County School District. In 1987,
20 I was a founding member of the Jewish Community Day School
21 Network of America. In 1987, I was a founder of the Association
22 of Private and Parochial Schools of Nevada and have served as
23 its President from 1988 to the present. In 1988, I secured 17
24 acres of land for the campus of the Hebrew Academy and, in 1989,
25 developed the new campus construction and fund raising programs.
26 The first phase campus was completed in December, 1990.

27 9. In 1990, I was named in "Who's Who in American
28 Education" and honored by the new elementary campus being named

1 the "The Tamar Lubin-Saposhnik Elementary School;" in 1987 and
2 1988, I was named in "Who's Who in World Jewry."

3 10. In 1991, I was honored as the recipient of the Women
4 of Achievement Award for Education from the Chamber of Commerce
5 in Southern Nevada.

6 11. Since my association with the Hebrew Academy, the
7 student population has more than quadrupled. I was virtually
8 single-handedly responsible for securing the Nevada State School
9 License and received the Nevada State Teachers Grant for
10 Excellence. The Academy has been awarded first, second and
11 third prizes at the City's annual science fairs and, on my own
12 initiative, the school has been accredited by the Northwest
13 Association of Schools and Colleges since 1986, the first
14 Southern Nevada elementary school to be so honored and only the
15 second in the State of Nevada. Under my administration, the
16 school has also received the Presidential Academic Fitness Award
17 for outstanding academic achievement, and, in 1988, became the
18 only member of the National Association of Independent Schools
19 from Nevada, and placed first in the Nevada State "National
20 Geographic" geography contest.

21 12. As stated above, I have served as President of the
22 Association of Private and Parochial Schools of Nevada since
23 1988. In 1985, I offered a seminar on "Women in School
24 Administration" at the annual conference of the National
25 Association of Elementary School Principals. From 1980 to 1983,
26 I offered courses in "Women in Administration" at the University
27 of Nevada Las Vegas. From 1979 to the present, I have served as
28

1 a member and, in 1983, the Treasurer of the Board of Trustees of
2 the Las Vegas Symphony.

3 13. I have prepared research papers on "Strategies for
4 Remedial Reading: a perceptual deficit theory-an organizational
5 approach;" "Intelligence Testing: Uses and Abuses and Their
6 Educational and Social Implications;" "The Administrators' Role
7 in School Improvement;" "The Art and Science of Teacher
8 Evaluation;" "Financing Educational Excellence;" and "Women in
9 School Administration."

10 14. I have published several articles in newspapers and
11 magazines and have made radio and television appearances
12 regarding schooling, early childhood education centers and
13 private versus public education. For certificates, articles and
14 studies regarding my credentials and personal and professional
15 accomplishments and those of the school, please see Exhibit
16 group CC.

17 15. In August of 1979, I arrived to Las Vegas from
18 Rochester, New York, to head a private Hebrew day school. What
19 I found was utter chaos. Hovering was the tragic aftermath of a
20 kidnaping, a bus fatality, a \$94,000.00 budget deficit, and
21 total administrative and educational mismanagement. (My
22 predecessor was not a credentialed school administrator). As if
23 these conditions were not enough, there were no programs, no
24 facilities, no funds, no faculty and worst of all, there was no
25 support, but rather an overwhelming community psyche completely
26 set against the establishment of a Hebrew day school in its
27 midst. Jewish leaders and Jewish institutions shunned the
28 school and one requested a written disclaimer.

1 16. It is needless to state that what was required at the
2 outset was nothing short of a miracle. I chose to stay and I
3 gave the school all I had: blood, sweat, tears, unrelenting
4 drive, tenacity and profound commitment.

5 17. Thirteen and a half years later, The Hebrew Academy is
6 a well-established, accredited and highly reputable institution
7 of learning. It secured its own campus in Summerlin, more than
8 quadrupled its student population, retained a core of master
9 teachers, formulated a comprehensive curriculum and created an
10 ethos. The Las Vegas community is the beneficiary. To date,
11 Jewish leaders and Jewish institutions are not only pleased to
12 associate with The Academy, they even seek credit for its
13 profound accomplishments.

14 18. Following is a brief history of the school:

15 a) Founded in 1979, the Hebrew Academy, a state
16 licensed school, was the first non-profit, non-parochial
17 elementary private school in Las Vegas. Housed at Temple
18 Beth Shalom, the school opened with 57 students in
19 kindergarten through 6th grade.

20 b) During the past decade, The Academy has expanded
21 its programs and facilities to accommodate its ever growing
22 student population. In 1983, the school relocated to the
23 Temple's Community Center on Bracken Avenue and added 7th,
24 8th and 9th grades. In 1986, The Hebrew Academy became the
25 only accredited elementary school in Las Vegas by the
26 Northwest Association of Schools and Colleges and joined
27 the National Association of Independent Schools as a full
28 member school.

1 c) In 1987, as the founding School Head, I began
2 negotiations with Summerlin, a division of Summa
3 Corporation, for the grant of a parcel of land for a campus
4 for The Academy and launched a major fund raising campaign.
5 Two years later, the school was gifted a 17-acre land grant
6 for the construction of its new campus. In the summer of
7 1990, The Academy's new facility was completed and renamed
8 The Milton I. Schwartz Hebrew Academy.

9 d) Through the years, The Academy has grown and
10 changed while retaining its character of tradition, ethics
11 and excellence that has made it one of the finest schools
12 in the State. A reflection of this success is its new
13 campus for Pre-K through 10th grade in 1993-94 school year.
14 In addition to a superior academic core curriculum, the new
15 facility houses the Early Childhood Development Institute,
16 a unique learning program for 3 and 4 year olds, the first
17 of its kind in Nevada, and provides four foreign languages:
18 Hebrew, Spanish, French and Japanese, and very elaborate
19 computer and science programs.

20 e) The new campus includes an auditorium, a large and
21 well-equipped library, a science lab and a computer center,
22 a spacious teacher's lounge, and a student book shop.
23 Future school improvements, according to its master plan,
24 will include a complete gymnasium, tennis courts, athletic
25 fields and an Olympic size swimming pool. The academic
26 program will expand to include grades 10-12 during the
27 years 1993-1995, respectively, thus providing a complete
28 institution of learning, Pre-K through high school. Second

1 phase of the school's master plan is now in progress; it
2 includes athletic courts, expansion of the auditorium to a
3 capacity of 700 and the addition of a swimming pool to
4 enhance the anticipated new summer program for next school
5 year.

6 19. Milton Schwartz became elected to the Board of
7 Trustees of the Hebrew Academy after making a large gift to the
8 school. Also in consideration of that grant, the school has
9 borne his name since 1989. In the first year of his
10 administration, the student body, which had been enrolled prior
11 to his election to the Board, numbered 250 students. In the
12 first two years of recruitment under his chairmanship, the
13 enrollment of the school dropped from 250 students to 215
14 students. Since Mr. Schwartz lost his re-election bid to the
15 chairmanship of the Board and a member of the Board of Trustees,
16 recruitment has succeeded in raising enrollment to 225 students.
17 Based upon the current recruitment figures, we anticipate having
18 280 students in the Academy for the next school term.

19 20. When Mr. Schwartz first became chairman, the school
20 accommodated children in grades Kindergarten through eighth
21 grade; since he has left the chairmanship, we have expanded
22 from pre-Kindergarten through grade nine and, next year, we will
23 educate students in pre-Kindergarten through grade ten.

24 21. I personally solicited Mr. Schwartz's donation to the
25 Academy, the very donation resulting in the school being named
26 for him. Prior to Mr. Schwartz's chairmanship, I initiated
27 contributions from Paul Sogg, from Robert Cohen, from George
28 Rudlak and others. Although these contributions were initiated

1 prior to Mr. Schwartz's chairmanship, they were paid during his
2 chairmanship in the amount of \$300,000.00, \$100,000.00 and
3 \$50,000.00, respectively. During the period of contribution
4 initiation prior to his chairmanship, I also initiated other
5 pledges, totaling approximately \$150,000.00, which were also
6 paid under his chairmanship. These funds were solicited
7 specifically for the school building fund, a fund which was
8 established prior to his association with the school.

9 22. I have attended each meeting of the Board of Trustees
10 since my association with the school in 1979.

11 23. I was present at the Board of Trustees meeting of May
12 21, 1992. At that meeting, the Board unanimously voted to hold
13 elections of the Trustees and the Officers of the Academy on
14 June 18, 1992. This vote was made pursuant to Article II,
15 Section 5 of the By-Laws, which establishes the "regular June
16 meeting" as the date for the election of Trustees.

17 24. June 18, 1992, was determined to be the date of the
18 "regular" June meeting pursuant to Board action of January,
19 1992, establishing the third Thursday of each month as the
20 "regular" meeting date.

21 25. I received a letter from Mr. Schwartz, under date of
22 May 19, 1992, a copy of which was sent to all Board members,
23 indicating that the Trustees' election would be held at the June
24 Board meeting, pursuant to the By-Laws.

25 26. The Board, at no time, authorized Mr. Schwartz to
26 cancel, postpone or delay the elections of June 18, 1992.

27 27. At the meeting of May 21, 1992, Mr. Schwartz appointed
28 a By-Laws committee consisting of Dr. Edward Goldman, Lenard

1 Schwartz, Don Schlesinger and Fred Berkley. He directed the
2 committee to meet, to consider proposed amendments to the By-
3 Laws and to report the proposed amendments to himself and to the
4 Board at the June 18, 1992 meeting. At no time did either he,
5 Dr. Goldman or any other member of the Board state, suggest or
6 inquire as to whether the elections set for June 18, 1992 should
7 be postponed in the event that recommendations were not made at
8 the June 18 meeting or in the event that recommendations offered
9 at the June 18 meeting were not acted upon.

10 28. At the preceding Board meeting, April 16, 1992, Mr.
11 Schwartz appointed a nominating committee and named Dr. Goldman
12 as its chair. Pursuant to the By-Laws, the nominating committee
13 was to report nominations to the Board and officerships at least
14 30 days prior to the election of the Trustees and Officers. Dr.
15 Goldman failed to do this and, instead, offered a slate of
16 candidates at the May 21, 1992 meeting.

17 29. Previously, pursuant to Article II, Section 10 of the
18 By-Laws, I made nominations to the Board. My nominations were
19 the only timely nominations. However, the Board voted
20 unanimously to waive the 30 day report requirement to allow the
21 nominating committee's nominees to stand election on June 18,
22 1992. Had the Board not done so, Mr. Schwartz, whom I did not
23 nominate and who was nominated only by the nominating committee,
24 would not have been eligible to stand election.

25 30. As the School Head, I have always conferred with the
26 President or Chairman, as she or he has been variously called,
27 to set a proposed agenda for the upcoming Board of Trustees
28 meetings. This habit continued under Mr. Schwartz's

1 chairmanship. In the event that I could not meet with Mr.
2 Schwartz personally, we discussed the proposed agenda by
3 telephone. On three occasions after May 21, 1992, and prior to
4 his issuance of the agenda of June 11, 1992, I telephoned him to
5 discuss the agenda. Twice, my secretary was told by his that he
6 had been contacted and would phone me back; he did not. The
7 third time, I was informed that the agenda had already been
8 mailed and that it was too late. This was the first time since
9 1979 that an agenda for a Board of Trustees meeting had been
10 prepared without my participation.

11 31. I attended the regular meeting of June 18, 1992, which
12 had also been scheduled for the election of Trustees and
13 Officers. Milton Schwartz made several proposals to postpone
14 the election. Each proposal was entertained by the Board,
15 discussed and rejected. Mr. Schwartz became frustrated. He
16 first tried to unilaterally adjourn the meeting, without putting
17 the motion for adjournment to a vote. Two attorney members of
18 the Board, Lenard Schwartz and Don Schlesinger, consulted
19 Roberts Rules of Order, newly revised (1990 Edition) and advised
20 him that they were of the opinion that he did not have authority
21 to adjourn the meeting without a vote of the Board. When his
22 efforts to adjourn the meeting failed, he threatened to hire
23 counsel to move to set aside the elections if they were to be
24 held that day. He claimed variously that the meeting was
25 illegal, that the elections were illegal and that he was
26 "confused".

27 32. Mr. Schwartz indicated that his agenda did not call
28 for elections and Mr. Schlesinger and Mr. Schwartz, again,

1 consulted Roberts Rules of Order and were of the opinion that an
2 agenda was only a suggestion for business to be conducted at the
3 meeting and was not binding unless approved by the vote of the
4 Board.

5 33. The resolution of Mr. Schwartz's efforts to adjourn
6 the meeting or to continue the election were not hurried. At
7 Mr. Schlesinger's request, the meeting was twice adjourned to
8 allow parties to caucus, to discuss and to air their views
9 amongst each other.

10 34. The election proceeded and ballots were distributed.
11 Mr. Schwartz stayed through the counting of the ballots and,
12 with others, oversaw the counting of the ballots by the
13 elections committee. Mr. Schwartz took a ballot, stated that he
14 would not vote for officers but he would vote for directors and
15 marked a ballot. That ballot was collected with the others.

16 35. Not only did Mr. Schwartz oversee the counting of the
17 ballots but, although he was a candidate for election to an
18 office, he was one of four people to actually count the ballots.
19 When the tally was made, he stormed out of the meeting without
20 adjourning it. The meeting was eventually adjourned by Daniel
21 Goldfarb, then the highest ranking officer remaining at the
22 meeting.

23 36. Mr. Schwartz lost his election by a margin of seven
24 votes to two votes in favor of Mr. Sternberg. All contested
25 officers' elections were decided by at least a three vote
26 margin.

27 37. After the election, there was an orderly transition of
28 business to the new Board. Mr. Schwartz did not come to the

1 school or, to my knowledge, make any overt effort to conduct
2 business in behalf of the Academy; he made no contact with the
3 administrative offices, with me as School Head or, to my
4 knowledge, any assistant in the Administrative offices.

5 38. At the conclusion of Mr. Schwartz's term on June 30,
6 1992, the Academy had total assets of somewhat more than
7 \$383,000.00. As of December 31, 1992, a period of six months
8 under the operation of the Defendant Board, the Academy's assets
9 totaled nearly \$483,000.00.

10 39. Under the administration of the Defendant Board, the
11 Academy secured a new loan, paying-off an existing loan with a
12 fluctuating rate of interest with no ceiling. The new loan is
13 fully amortized over 30 years, thus avoiding the need to
14 negotiation terms for payment of the balloon payment reduction 4
15 years hence. The loan also made additional cash available to
16 commence second-phase construction, construction required
17 pursuant to the Academy's agreement with Suma Corporation as a
18 condition for Summerlin's grant of the 17 acres for the school's
19 campus.

20 40. I have read the Affidavits of Milton Schwartz and
21 others filed by the Plaintiff and must express my genuine shock
22 and dismay that intentional misstatements have been made in such
23 a cavalier fashion. In response to the various allegations that
24 I am detrimental to the Academy or that the current Board is
25 about to cause immediate harm, I advise the Court, as follows.

26 41. At no time before the June 18, 1992 election did Mr.
27 Schwartz or Mr. Novick express to me, either directly or
28 indirectly, at any meeting of the Board or at any time outside

1 of the Board meeting, their desire to terminate me as
2 Administrator or to not renew my contract; and the only
3 reference made in any of the minutes of any Board member being
4 dissatisfied with me was made at a March, 1991, Board meeting
5 chaired by Mr. Schwartz. Mr. Schwartz disclosed that two
6 directors wanted me fired and stated clearly that he did not
7 count himself among their supporters. In fact, Mr. Schwartz had
8 provided me with a letter of recommendation, a copy of which has
9 been attached to Defendants' Supplemental Opposition as Exhibit
10 Q.

11 42. The allegation that the Defendant Board did nothing to
12 try to resolve the conflict which Mr. Schwartz has created is
13 false. Lenard Schwartz attempted to arrange mediation between
14 Mr. Schwartz and the Defendant Board. After consultation among
15 each other and our counsel, the Defendant Board agreed to
16 mediation by Mr. Schwartz and Mr. Novick, at Mr. Schwartz's
17 office. We agreed that the meeting would be without the benefit
18 of counsel, as the aim was to come to some mutually agreeable
19 resolution of the dispute, not a trial of the dispute by de
20 facto litigation. The date originally set for the meeting was
21 canceled because Mr. Schwartz was out of town at the Republican
22 National Convention. When he returned, we were then advised
23 that Mr. Schwartz wished to change the location of the meeting
24 to his office and to bring his counsel to show us that the
25 election was illegal and to mediate from that premise. (Please
26 see Mr. Schwartz's letter, Exhibit N). It was the Board's
27 consensus that Mr. Schwartz was not attempting to mediate in
28 good-faith and was doing exactly what we were told would not be

1 done in such a mediation, attempt a de facto litigation of the
2 legal issues.

3 43. In 1991, a list was left in the administrative offices
4 with the name of a Trustee, Dr. Neville Pokroy, at the top. The
5 list contained the names of parents of various students and
6 purported to be a list of parents who were dissatisfied with my
7 administration. This was found during the student recruitment
8 period and, at my instruction, my secretary, Julie James,
9 telephoned each parent on the list to inquire as to their
10 dissatisfaction. Julie James reported to me that, to a person,
11 the parents contacted indicated that they had not spoken with
12 Dr. Pokroy, had not given any consent to their names being used
13 regarding my administration and had no serious complaints about
14 my administration. Incidentally, Dr. Pokroy was one of the first
15 parents that term to re-enroll his children in the Academy and
16 provided me with a letter of reference which is attached hereto
17 as Exhibit DD; other laudatory parents' letters attached as
18 group Exhibit EE. See also Affidavit of Julie James, Exhibit
19 AA.

20 44. The allegation that I somehow abused a child by making
21 him sit in his own vomit is insidious. I was in the
22 administrative office with Julie James when a student from the
23 sixth grade class came into the office. He reported that the
24 teacher needed help because a student had vomited. The sub-
25 contracted janitor, Bud Scurlock, was not available. Julie and
26 I went to the classroom and found this young student sitting at
27 his desk with a lapful of vomit. The vomit covered not only him
28 but his desk and books. Rather than having the student stand up

1 and causing more of a mess, I asked him to sit still while
2 cleaning supplies were brought to the classroom. The other
3 students were running about the classroom and I tried to assist
4 the teacher in restoring order by having them sit in their
5 seats. When the cleaning materials were brought into the
6 classroom, I attended to cleaning the student first, so as to
7 get the vomit off of his person without spreading it onto the
8 floor, the furniture and other students and, then, had Julie
9 escort him immediately to the office and call his parents. I
10 then cleaned the rest of the mess.

11 45. This allegation has been made by Bud Scurlock, who is
12 the husband of the only teacher who was not offered a contract
13 renewal for the following school term. Mrs. Scurlock was not
14 asked to return because she was a divisive force among the
15 faculty and had caused rifts between various teachers, which
16 made their adherence to the curriculum and their
17 responsibilities strained and difficult.

18 46. Before discussing the non-renewal of her contract, I
19 made every effort to mediate between Mrs. Scurlock and the other
20 teacher with whom she had primary disagreements. Although the
21 other teacher was amenable to compromise, Mrs. Scurlock was not.

22 47. The allegation that I represented that all teachers
23 would be rehired for the next term is false. I gave a report to
24 the chairman at the April, 1992 meeting and was asked to
25 reiterate the report by the chairman at the May, 1992 meeting.
26 I indicated that, at that time, (May, 1992), and as the case
27 actually was, all the teachers were expressing eagerness for
28 contract renewals. (See Exhibit B). Contract renewals were not

1 offered until after the consideration of the budget in June,
2 1992. See Memo #16 to all teachers, Exhibit FF. Thereafter,
3 the decision was made not to afford Mrs. Scurlock a renewal
4 contract for the reasons stated, above. Three other teachers
5 who had been offered renewals chose not to renew, two because
6 they had made plans to move out-of-state and one who was offered
7 a better paying position at the Clark County School District.
8 The Academy employs a total of twenty teachers and our turn-over
9 has been on average with other local private schools and the
10 Clark County School District.

11 48. With regard to contract and other issues, the teachers
12 had expressed the desire to meet directly with members of the
13 Board, without my presence or Mr. Schwartz's presence. Bud
14 Scurlock reported this desire to Mr. Schwartz. Schwartz called
15 the teacher forward who had initiated this proposal and informed
16 her that she could not have such a meeting at "my school." A
17 letter which this teacher wrote regarding this incident is
18 attached hereto as Exhibit GG. Therefore, the meeting was held
19 at a teacher's private home and Schwartz faxed notes to the
20 Board members advising them not to attend that meeting.

21 49. Therefore, any misunderstanding or concern regarding
22 the contract procedure was a direct result of Mr. Schwartz's
23 refusal to allow the teachers to air their concerns openly and
24 directly to the members of the Board. In this regard, it is
25 interesting that Mr. Schwartz's former wife, Joanne Stevens,
26 appeared at the Teachers Appreciation dinner after dining with
27 Mr. Schwartz and attempted to distribute pamphlets implying that
28 somehow I was responsible for contract problems with the

1 teachers. To this day, I find her allegations somewhat
2 abstruse. Stevens appeared at the dinner in a state of
3 intoxication and was aggressive, bordering on the violent. I
4 was concerned that she was about to hit me and another member of
5 the Board, Geri Rentchler. Stevens was required to settle down
6 or leave by the owners of the house and some other members of
7 the Board in attendance. To this day, I am not sure of what her
8 complaints were or how I was alleged to have been responsible
9 for them.

10 50. The pamphlets which Stevens distributed contained
11 copies of teacher employment contracts which could only have
12 come from the administrative files or from someone with access
13 thereto. I overheard her state at that confrontation that she
14 had just come from a dinner meeting with her former husband,
15 Milton Schwartz. The day prior to this confrontation, she had
16 come to the administrative offices to register her daughter and
17 complimented my administration of the Academy. See Affidavit of
18 Terry Bothmann, Exhibit BB.

19 51. The Plaintiff attaches a Petition of Parents in behalf
20 of Jackie Edery. The signatures obtained on that petition were
21 solicited by a 6th grade student, who was asked to solicit
22 signatures on the Petition. A copy of that student's letter is
23 attached hereto and made a part hereof as Exhibit HH. After
24 Edery's termination for incompetence and misrepresenting his
25 credentials, he considered litigation against the Academy, then
26 decided not to litigate and, before he left town, met with me
27 personally to apologize for his misrepresentation and the
28 problems which his dismissal had caused. Mr. Schwartz, who now

1 opposes me on the Jackie Edery issue, previously supported me.
2 The minutes of the Board of Trustees' meeting of March 26, 1991,
3 a copy of which is attached as Exhibit S to the Defendants'
4 Supplemental Opposition states clearly at page 2: "Mr. Schwartz
5 brought up the Jackie Edery issue and stated that Dr. Lubin has
6 the right to hire and fire teachers." At the June 25, 1991
7 Board meeting, the Board considered actually paying Edery, who
8 had brought claims by his attorney, Dan Marks, but that Motion
9 was tabled upon my representation that Edery had met with me and
10 apologized over the incident. A copy of the June 25, 1991
11 minutes are attached hereto as Exhibit II.

12 52. Mr. Scurlock, the school's janitor, who has made a
13 variety of allegations against me, accused me of harassing
14 Edward Cusato and Cathy Ballog regarding their friendship.
15 Attached hereto and made a part hereof as group Exhibit JJ, are
16 letters and other data found in Mr. Cusato's computer file.
17 This relationship was so notorious that even students were
18 commenting about it but, at no time, did I harass either Mr.
19 Cusato or Ms. Ballog. Their relationship was their own business
20 so long as it did not interfere with their professional
21 responsibilities.

22 53. Scurlock has also accused me of ranting and raging at
23 a child's parent, George Shipman. At no time did such an event
24 occur and Mr. Shipman's letter under date of March 5, 1993, is
25 attached hereto as Exhibit KK.

26 54. Throughout the Plaintiff's documents, it alleges that
27 parents are clamoring for my dismissal. A careful review of the
28 lists relied on by the Plaintiff shows that they have simply

1 duplicated and reduplicated names and that the number of parents
2 are actually very few. However, once complaining parents were
3 advised as to the true facts, rather than the rumors and
4 suspicions which abounded, their complaints were assuaged. For
5 example, attached hereto as Exhibit LL is a letter from one of
6 the parents, Debra Rein, asking that her name be retracted.
7 Several other parents called in to retract their statements of
8 dissatisfaction.

9 55. Ira Martel's horrendous letter is attached as an
10 Exhibit to the Plaintiff's documents. My response is attached
11 hereto as Exhibit MM.

12 56. In April, 1992, the 6th Edition of "Trustee Handbook"
13 by Barbara Hadley Stanton, published by the National Association
14 of Independent Schools, of which the Academy is a full member,
15 was adopted by the Board unanimously to govern the Board's
16 operations, policies, actions and relationship of the Board
17 viz., the administrative staff, faculty and, etc. Since its
18 adoption, Mr. Schwartz has consistently voiced opposition to the
19 policies established by the National Association of Independent
20 Schools, despite the fact that he has absolutely no formal
21 training or education in that regard. I can only describe Mr.
22 Schwartz's efforts of that of "micromanaging" the affairs of the
23 Academy from a position of ignorance regarding school
24 curriculum, administration, policies and functions. For
25 example, the guidelines for organizing and running committees
26 provides that the School Head should be and ex officio member by
27 virtue of his or her office of all committees but Mr. Schwartz
28 has unilaterally prevented me from attending various committee

1 functions, particularly the nominating committee and By-Laws
2 committee.

3 57. The guidelines also recommend that, if there is a
4 conflict between the Chair and the Administrative head, the
5 chair should consider resigning. (Trustee Handbook, page 56).

6 58. I have found the Plaintiff's tactic of exaggeration an
7 overstatement very interesting. For example, in the minutes of
8 March 26, 1991, Exhibit S to the Defendants' Supplemental
9 Opposition, it is clear that only two Board members expressed a
10 desire to fire me. In Milton Schwartz's Supplemental Affidavit,
11 these two Directors become "some of the Directors". In the body
12 of the Plaintiff's Reply, Plaintiff's counsel argues that these
13 two Directors, who became "some Directors" in M. Schwartz's
14 Affidavit, are now "many" Directors.

15 59. Mr. Schwartz also alleges that the Academy is only
16 running at 40% capacity, implying that the school is 60% vacant.
17 However, a comparison of Jewish Community Day Schools for the
18 school term 1990-1991, the last period for which I have figures,
19 shows that in Jewish communities with a Jewish population
20 equivalent to that of Clark County, the Academy is the school
21 with the largest population of students. The only metropolitan
22 areas with larger student populations in day schools included
23 New York City, New York, San Francisco, California, Pittsburgh,
24 Pennsylvania, San Diego, California, West Palm Beach, Florida,
25 Denver, Colorado, and Cincinnati, Ohio, all of which have much
26 larger Jewish populations than Clark County. A copy of the
27 Jewish Community Day School Study for the 1990-1991 term is
28 attached hereto and made a part hereof as Exhibit NN.

1 60. The Plaintiff relies upon a letter from Carol Woolley
2 to attack my competency and credibility. However, the facts are
3 that Carol Woolley was a teacher who was not competent. Many
4 parents expressed negative concerns about this teacher and, one
5 of them, Sarah Rohde, observed Mrs. Woolley in the classroom and
6 prepared a report to me under date of December 3, 1990, a copy
7 of which is attached hereto as Exhibit OO. Mrs. Rohde found
8 Woolley to appear frustrated with students' behavior, nagged at
9 them, scolded them and lectured them about behavior or poor
10 classwork and concluded that almost all of the attention she
11 gave the students was negative. Conversely, the students who
12 sat quietly and did their work, following all classroom rules,
13 received no praise or attention for doing well. The students
14 who received negative attention did not change their behavior
15 because of Woolley's threats or warnings.

16 61. Dr. Neville Pokroy was the Trustee who was most vocal
17 in his concern about Ms. Woolley. Nevertheless, it was Dr.
18 Pokroy, himself, who solicited Woolley's letter which has been
19 attached to the Plaintiff's Reply. I attempted to work with
20 Woolley based upon the Rohde report and comments and feedback
21 from other parents and based upon my own evaluation. Mrs.
22 Woolley chose to resign for, in her own words, "medical reasons"
23 as of February 22, 1991. A copy of Mrs. Woolley's resignation
24 under date of February 21, 1991, is attached hereto as Exhibit
25 PP.

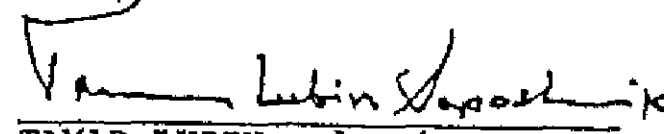
26 62. The Plaintiff has attempted to portray me as being a
27 cause of dissention with the teachers when, in fact, it was the
28 Board of Trustees, as a whole, under the express guidance of Mr.

1 Schwartz, that was the cause of most teacher complaints.
 2 Attached hereto and made a part hereof as Exhibit QQ, is a copy
 3 of a letter signed by 13 of the then 16 teachers at the Academy,
 4 who expressed unrest imposed upon the faculty staff and
 5 administration by Mr. Schwartz, acting through the Board, and
 6 who, at the same time, were "totally supportive of Dr. Lubin,
 7 her leadership, philosophies and policies of the Academy."

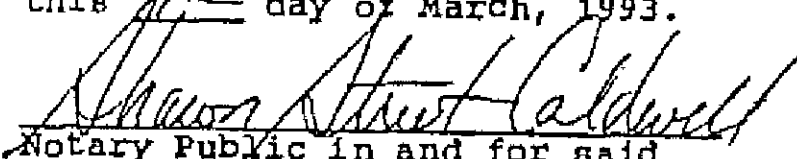
8 63. I have always endeavored to discharge my duties and
 9 responsibilities as the Head Administrator of the Hebrew
 10 Academy, and I do not believe I am exaggerating when I say that
 11 the success of the Academy and its rapid growth and development
 12 have been due primarily to my singularly devoted efforts. It is
 13 unfortunate that Mr. Schwartz has confused his own sense of
 14 self-importance with that of the Academy's students without
 15 regard for the best interests of the students or the future of
 16 the Academy.

17 64. Lastly, I wish to note that not one member of the
 18 fugitive Board has a child enrolled at the Hebrew Academy.

19 FURTHERMORE, your Affiant sayeth naught.

20 
 21 TAMAR LUBIN, also known as
 22 TAMAR LUBIN SAPOSHNIK

23 SUBSCRIBED and SWORN to before me
 24 this 11th day of March, 1993.

25 
 26 Notary Public in and for said
 27 County and State

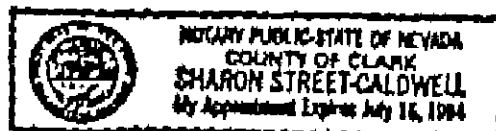


EXHIBIT “7”

000548

4 MICHAEL NOVICK, being first duly sworn, upon oath, deposes and
5 says:

10 2. That Affiant hereby affirms under penalty of perjury that
11 the assertions of this Affidavit are true.

4. That Affiant is a First Vice President of Investments with Dean Witter Reynolds, Inc. and donates Affiant's time to the Board of Directors of the Milton I. Schwartz Hebrew Academy as a public service.

23 5. That Affiant was elected to the Board of Directors in
24 January of 1991.

25 6. That Affiant was a member of the Board of Directors on
26 May 21, 1992 and was present at the Board of Directors meeting that
27 occurred on that date.

28 | 7. That the minutes of the May 21st meeting that are

1 attached as Exhibit "B" to the Defendant's Opposition To Plaintiff's
2 Motion for Declaratory Judgment and Injunctive Relief And Countermotion
3 For Sanctions; Countermotion To Dismiss Or In The Alternative, For A
4 More Definite Statement is not a true and accurate copy of the minutes
5 of the May 21st meeting. That at the May 21, 1992 meeting, the Board of
6 Directors agreed to hold the elections in June of 1992 only if problems
7 with the Bylaws could be resolved prior to the election occurring. In
8 addition, the Board of Directors also discussed problems with the Bylaws
9 relating to the thirty (30) day requirement and that the nominating
10 committee had recognized that this problem would also have to be
11 resolved prior to the elections being held.

12 8. That on or about June 11, 1992, Affiant received a letter
13 from Milton I. Schwartz, Chairman of the Board and President of the
14 Hebrew Academy and that this letter stated that the Board of Directors
15 would not be having elections at the meeting on June 18, 1992. That as
16 a result of receiving this letter, Affiant did not attend the June 18,
17 1992 meeting due to the fact that another business meeting had also been
18 scheduled for that time.

19 9. That had Affiant not received this letter, Affiant would
20 have rearranged Affiant's schedule to attend the meeting so that Affiant
21 could vote.

22 10. That Affiant has attempted to mediate the dispute between
23 the Plaintiff and the Defendant in the instant action. That the Affiant
24 and Frederic Berkley attempted to attend a board meeting in August of
25 1992. However, Mr. Berkley was barred from entering the meeting and was
26 informed that he was no longer a member of the Board of Directors.
27 Affiant was allowed to attend the meeting, but no progress was made
28 toward resolving the dispute. In addition, Affiant had numerous

1 | conversations with Tamar Lubin in an attempt to resolve this conflict.
2 | Affiant also attempted to arrange a meeting between Tamar Lubin, Ira
3 | Sternberg, Lenard Schwartz, Milton Schwartz and Affiant. However,
4 | they refused to meet with Affiant, Milton Schwartz, and Mr. Schwartz'
5 | attorneys.

6 | 11. That on September 3, 1992, Tamar Lubin instructed Affiant
7 | to offer to return \$500,000 to Milton I. Schwartz.

8 | 12. That Affiant understands that the \$500,000 was the amount
9 | of money Milton I. Schwartz donated to the Hebrew Academy prior to
10 | Milton I. Schwartz being elected Chairman of the Board of Directors of
11 | the MILTON I. SCHWARTZ HEBREW ACADEMY.

12 | 13. That in September of 1992, Affiant received a letter from
13 | the Defendant's stating that Affiant would be removed from the
14 | Defendant, the Second Board of Directors unless: (1) Affiant recognized
15 | that the Defendant, the Second Board of Directors is the true and
16 | correct Board of Directors; (2) Resigned; or (3) came and talked to the
17 | Defendants on September 27, 1992. Affiant responded in writing that
18 | Affiant would be in Phoenix for Rosh Hashana on the 27th and unable to
19 | meet with them. Affiant subsequently received a letter notifying
20 | Affiant that Affiant was removed from the Board of Directors of the
21 | Defendant.

22 | 14. That the Hebrew Academy will suffer irreparable harm if
23 | the actions of the Defendant are not stopped. That as a result of the
24 | actions of the Defendant and in particular Tamar Lubin, Affiant believes
25 | there has been a high turnover of teachers since the Defendants have
26 | wrongfully taken control of the Academy.

27 | 15. That it was the intention of the Board of Directors to
28 | consider not extending Tamar Lubin's contract as the Board of Directors

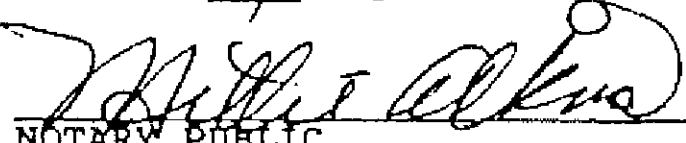
1 had received numerous complaints concerning the conduct of Tamar Lubin
2 in running the Hebrew Academy and that Affiant believes that the
3 Defendant is in the process of negotiating a long term contract with
4 Tamar Lubin to be the Administrator of the MILTON I. SCHWARTZ HEBREW
5 ACADEMY and that this action will cause irreparable harm to the Hebrew
6 Academy.

7 FURTHER AFFIANT SAYETH NAUGHT.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MICHAEL NOVICK

11 SUBSCRIBED AND SWORN to before
12 me this 19 day of February, 1993.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTARY PUBLIC

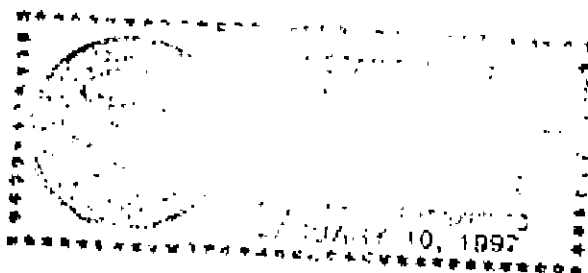


EXHIBIT “8”

Edward Everett Hale
Steve Lane
Stephen Peek
Loren D. Dennison
R. Craig Howard
Richard Bennett
Stephen V. Novacek
Richard L. Elmore
Marilyn L. Skender
Leonard E. Schwartz
Alex J. Flaugas
David L. Christensen
William C. Davis
Robert D. Martin
Rene Ellen Feinstein
Tracy L. Mathia
L. Scott Bogatz
James L. Kelly
Jeremy J. Nork
Joel M. Koroskin
Nik Skriminac
Daryl M. Sullivan
Dawn M. Cline
David A. Riggitt

Of Counsel: Gary B. Gelfand

* L.D. admitted in California and New York only

* L.D. admitted in West Virginia only

Hale, Peek, Dennison and Howard

*A Professional Corporation
Attorneys and Counsellors at Law*

REPLY TO LAS VEGAS
2300 West Sahara Avenue
Suite 800, Box 8
Las Vegas, Nevada 89102
Telephone (702) 362-5118
Fax (702) 365-6945

Reno Office
50 West Liberty Street, Suite 650
Reno, Nevada 89501
Post Office Box 3237
Reno, Nevada 89505
Telephone (702) 786-7900
Fax (702) 786-6179

Exhibit N

July 17, 1992

Milton I. Schwartz
2120 Silver Avenue
Las Vegas, Nevada 89102

Dear Milton:

I am writing this letter requesting that whatever you do you consider what is best for the Milton I. Schwartz Hebrew Academy. From my point of view, as a parent of children in the school and a former board member, it would be best for the Academy and you, if you throw your support behind the Board of Trustees and Ira Sternberg, as its president. That way everyone will be able to concentrate on building the school up -- raising funds, recruiting students, etc.

It's your school, it has your name on it forever, I know you will do the right thing.

Very truly yours,


Lenard E. Schwartz

LES:dah

EXHIBIT “9”

AFFIDAVIT OF IRA DAVID STERNBERG

1
2 STATE OF NEVADA)
3 COUNTY OF CLARK) ss:

4 IRA DAVID STERNBERG, being first duly sworn upon his oath,
5 deposes and says:

6 1. That I am an individual of legal years residing in
7 Clark County, Nevada; I am familiar with all facts related in
8 this Affidavit and I am competent to testify thereto of my own
9 personal knowledge, except as to matters stated herein upon
10 information and belief, and as to such matters, I believe them
11 to be true.

12 2. That I make this Affidavit in Opposition to the
13 Plaintiff's Motion for Declarative and Injunctive Relief and in
14 support of the Defendant's Countermotions.

15 3. That I have three children in the Academy; I have been
16 associated with the school for 10 years; I have been an officer
17 of the Parents' Organization for three years; that I have been a
18 member of the Board of Trustees of the MILTON I. SCHWARTZ HEBREW
19 ACADEMY since the fall of 1991, and elected as Chairman of the
20 Board of Trustees, at the elections of June 18, 1992.

21 4. That I have read and am I familiar with the Plaintiff's
22 Complaint, Motion for Declarative and Injunctive Relief and
23 Reply pleadings.

24 5. That I was present at the Board of Trustees meeting of
25 January 16, 1992 and the minutes of that meeting, which are
26 attached to the Defendant's Supplemental Opposition, is a true
27 and correct copy of the minutes at that meeting, distributed to
28 myself and other members of the Board at the Board meeting of

4

1 February 20, 1992.

2 6. At the January, 1992, meeting, I moved to set a
3 definite time for the holding of regular monthly Board meetings.
4 At that meeting, the Board agreed to hold the regular monthly
5 meetings of the Board on the third Thursday of each month and
6 such has been the practice of the Board since the meeting of
7 February 20, 1992.

8 7. I attended the Board of Trustees meeting on the third
9 Thursday of April, 1992, and was present when Mr. Schwartz, then
10 the Board's Chairman, appointed a nominating committee for "June
11 elections." I have reviewed a copy of the April 16, 1992
12 minutes, a copy of which was given to me and other members of
13 the Board at the meeting of May 21, 1992, and know it to be a
14 true and correct copy of the minutes of that meeting; a copy is
15 attached as Exhibit F.

16 8. That I received correspondence from Mr. Schwartz under
17 date of May 19, 1992 advising that elections "will be held at
18 our June Board meeting, in accordance with our By-Laws." A true
19 and correct copy of this letter is attached to the Defendant's
20 Opposition as Exhibit C.

21 9. That I attended the Board meeting of the third Thursday
22 of May, May 21, 1992. Upon Motion made thereat, June 18, 1992
23 was confirmed as the date of the Board of Trustees elections.

24 10. At the meeting of May 21, 1992, Dr. Edward Goldman
25 presented, untimely, his report of the nominating committee
26 which was required by our By-Laws to be distributed to the
27 members of the Board at least 30 days in advance of the
28 elections, which themselves, are scheduled for the regular June

1 meeting pursuant to Article II, Section 5 of our By-Laws.

2 11. Dr. Tamar Lubin, a member of the Board, had presented
3 nominees pursuant to Article IV, Section 3 of the By-Laws and
4 had distributed her slate of nominees at least 30 days prior to
5 June 18, 1992. However, Dr. Goldman's report was untimely.
6 Nevertheless, so as to allow the nominating committee's nominees
7 to be placed upon the ballot, it was resolved at the meeting to
8 waive the requirement that the report be submitted 30 days in
9 advance of the elections. From the discussion at the time of
10 the resolution, it was clear that the Board was of the consensus
11 that this was only fair to the nominating committee and to
12 Milton Schwartz, who was nominated only by the nominating
13 committee.

14 12. I was not consulted by Mr. Schwartz prior to his
15 letter of June 11, 1992, wherein he advanced an agenda for the
16 meeting of June 18, 1992, which did not contain the elections
17 set by the Board's unanimous action.

18 13. I have read the Affidavits filed by the Plaintiff in
19 Reply in support of its Motion and, contrary to the allegations
20 advanced, the elections were set for June 18, 1992 by unanimous
21 vote, including Mr. Novick, Dr. Goldman and Mr. Berkley; Mr.
22 Schwartz chaired that meeting.

23 14. Dr. Goldman did not move the Board to table, cancel,
24 continue or defer the elections which had just been set by
25 unanimous vote for June 18, 1992, for any purpose, including as
26 now stated by the Plaintiff, in the event that proposed By-Laws
27 changes were not yet accepted. The By-Laws committee was
28 appointed by Mr. Schwartz for the first time at the May 21, 1992
meeting and was asked to meet and report back with

1 recommendation to him directly and to the Board on June 18,
2 1992. Dr. Lubin had recommended certain amendments but her
3 Motion was tabled and referred to Dr. Goldman's committee.

4 15. The issue of tabling, deferring, continuing or abating
5 the election of June 18, 1992 was never discussed at any time
6 during the meeting of May 21, 1992.

7 16. At the May 21, 1992 meeting, Mr. Schwartz read some
8 comments into the record and distributed a copy of those
9 comments, a copy of which has been attached to the Defendants'
10 Supplemental Opposition as Exhibit G. The only question
11 concerning any possible "conflict" with the By-Laws pertained to
12 Article IX of the By-Laws, having to do with the adoption of
13 rules for the conduct of business at meetings and, in the case
14 or instances where rules were not provided, regarding the
15 deliberations and procedures of meetings being governed by
16 Roberts Rules of Order, revised. No comments were made by Mr.
17 Schwartz regarding any possible conflict regarding Article II of
18 the By-Laws pertaining to Trustees or their election.

19 17. The minutes of the May 21, 1992 Board meeting were
20 distributed to me and other members of the Board by Cynthia
21 Michaels, the Board secretary. She tendered her resignation
22 from the Board and her resignation was discussed, voted on and
23 approved at that Board meeting. Fred Berkley made the Motion to
24 accept the resignation.

25 18. At the meeting of May 21, 1992, Mr. Schwartz
26 admonished the members of the Board not to tape record Board
27 proceedings because he perceived a "chilling effect" but he,
28 himself, brought a tape recorder to and recorded the proceedings

1 of June 18, 1992. Although the Defendant Board requested copies
2 of the tapes in order to prepare minutes of the June 18 meeting,
3 Mrs. Michaels failed to provide us with a copy of the tape and
4 claimed they were in the possession of Mr. Berkley.

5 19. I was not consulted by Mr. Schwartz nor, to my
6 knowledge, was any other member of the Board consulted by Mr.
7 Schwartz, regarding his efforts to postpone the election set for
8 June 18, 1992.

9 20. I know Mr. Michael Novick from my association with him
10 on the Board of the HEBREW ACADEMY, the Chamber of Commerce and
11 know him socially, as well. I am informed, believe and thereon
12 allege Novick is a stockbroker who does broker and in the past
13 has brokered, various securities transactions for Milton
14 Schwartz. I know that Mr. Novick did not provide a proxy for
15 the June 1992 meeting and that all contested races were decided
16 by at least a 3 vote margin.

17 21. That as Chairman of the Board, I received
18 communication from Lenard Schwartz where in he proposed a
19 mediation of the dispute between Mr. Schwartz, for truly this is
20 a dispute between Schwartz, himself, and the Board because he
21 was not re-elected to the Chairmanship of the Board of Trustees.
22 I discussed the mediation overtures with the other members of
23 the Board, with Dr. Lubin as school head and with our counsel
24 and agreed that it would be in the best interest of the Academy
25 to attempt to resolve the dispute by mediation. We all believed
26 that litigating this matter could only be detrimental to the
27 best interests of the ACADEMY and we, as a Board, were intent
28 not to commence litigation to avoid any prejudice to the school.

1 Mr. Schwartz wanted Mr. Novick and himself to mediate the
2 dispute. We, at first, disputed Mr. Novick as a mediator and
3 then agreed to him acting as such. The meetings were to be held
4 at Mr. Schwartz's office and it was specifically agreed that
5 no attorneys would be present, as this would be an effort to
6 resolve the matter within the "family". A date was set for the
7 mediation but canceled because Mr. Schwartz said he had to
8 attend the Republican Convention. When he returned, Mr.
9 Schwartz insisted on bringing an attorney to this meeting which
10 we had believed would be for purposes of mediation, in order to
11 demonstrate that the elections of June 18, 1992, were not valid
12 and also directed that the meeting to be held at his office.

13 22. We believe that Mr. Schwartz was not acting in good-
14 faith. It was clear that he wanted to bring his counsel after
15 we had agreed not to bring ours in order to try to intimidate us
16 into accepting his views and he wanted the meeting in his office
17 to further that intimidation. It became clear to us at that
18 time that Mr. Schwartz had no desire to mediate in good-faith.
19 In fact, in connection with a mediated settlement, it had been
20 discussed among members of the Board to appoint him pursuant to
21 the By-Laws to a vacancy to sit as a Trustee. However,
22 apparently this was not satisfactory to him, as it would not
23 have allowed him to be Chairman.

24 23. At no time since June 18, 1992, has Mr. Schwartz, Mr.
25 Novick, Mr. Berkley or any other person purporting to be elected
26 to the Board on July 16, 1992, made any requests for access to
27 any school records, accounts or financial records or accounts,
28 save by Mr. Novick, who was asked to but who failed to comply

1 with NRS 78.105, prior to being given the requested access; I
2 have received no request from the persons purportedly elected at
3 the July meeting at Mr. Schwartz's home to participate in or, in
4 any regard, conduct the affairs of the ACADEMY.

5 24. Milton Schwartz chaired the meeting of June 18, 1992.
6 At that meeting, he made several proposals to postpone the
7 meeting. Each proposal was discussed, at length, and denied by
8 the full Board. The ballots were distributed, the elections
9 were held and Mr. Schwartz and others witnessed the counting of
10 the ballots. After the ballots were counted, Mr. Schwartz left
11 without adjourning the meeting. The meeting was adjourned by
12 Daniel Goldfarb, the highest ranking officer remaining at that
13 meeting.

14 25. In Mr. Schwartz's first term as Chairman, the number
15 of students in the Academy had been determined by recruiting
16 which took place prior to his election, approximately 250.
17 Under the first recruitment after Mr. Schwartz's first year as
18 Chairman, enrollment dropped to 215 students. Presently, there
19 are approximately 225 students. Upon our recruiting to date, we
20 anticipate 280 students next term in grades pre-Kindergarten
21 through 10.

22 26. As of June 30, 1992, the Academy's assets totaled
23 \$383,231.05. As of December 31, 1992, the Academy's assets
24 totaled \$482,886.39.

25 27. Since the Defendant Board was installed, we have paid-
26 off an existing bank loan with a new loan at a lower interest
27 rate.

28 28. I am personally aware that Paul Sogg, Robert Cohen,

1 George Rudiak, and others, were solicited for contributions to
2 the Academy prior to Mr. Schwartz's election to the Board of
3 Trustees. The groundwork was laid largely by Tamar Lubin.
4 After Mr. Schwartz assumed the Chairmanship, he followed through
5 on these campaign efforts and the pledges of Mr. Sogg, Mr.
6 Cohen, Mr. Rudiak and others were collected.

7 29. I am also personally aware that Tamar Lubin personally
8 solicited executives in Summerlin to contribute land for the
9 Academy and was successful in obtaining a contribution of 17
10 acres of land for the Academy's campus.

11 30. I will be the first to admit that all members of the
12 Board have not always agreed with Dr. Lubin's views and
13 positions. However, the Board, as a whole, believed and
14 continues to believe that Dr. Lubin is a superb administrator.
15 I am aware of no consensus on the Board to seek Dr. Lubin's
16 termination, nor am I aware of any consensus on the Board to
17 recruit other individuals to take over her duties. Neither Mr.
18 Schwartz, nor Mr. Novick, have ever mentioned to me, or have
19 ever, in or outside of a Board meeting, evidence any desire to
20 oppose any contract renewal for Dr. Lubin.

21 31. There has been no large turnover of teachers at the
22 Academy. The final decision to offer contract renewals was not
23 made until June, 1992, after approval of the school's
24 preliminary budget. All teachers, except for one, Mrs.
25 Scurlock, whose husband, Bud, was a sub-contracted janitor for
26 the Academy, were offered contract renewals. Three of the
27 teachers offered contracts declined to renew, two because they
28 were moving out-of-state and one who had been offered a better

1 position with the Clark County School District.

2 32. I read with interest the allegations from Mr. Schwartz
3 that Dr. Goldman advised him that there is an inadequate degree
4 of critical skills teaching in the upper classes. I find this
5 amazing because Dr. Goldman has never attended any of our
6 classes and, to my knowledge, has never made any inquiries into
7 the curriculum offered to the upper classes. Further, the
8 Academy has graduated two students who graduated as
9 valedictorians and one as salutarian of their high school
10 classes. I also find it interesting that while Schwartz alleges
11 Goldman has made this statement, Goldman, himself, does not make
12 that allegation in his Affidavit.

13 33. Fred Berkley and other Trustees, including Lenard
14 Schwartz, were routinely rotated off of the Board last year,
15 pursuant to prior Board action setting rotating terms for
16 Trustees.

17 34. That the Defendants, as the Board of Trustees of the
18 Academy, have at all times since June 18, 1992, administered the
19 school. We have held fund raisers; we have overseen the
20 administration of the Academy; we have expended Academy's funds
21 as necessary for the ongoing operation of the educational
22 curriculum; we have successfully recruited students for next
23 term.

24 35. I have reviewed the list of parents which, it is
25 claimed, constitute parents who may withdraw their students in
26 the event that Dr. Lubin remains as school head. These parents
27 were contacted by telephone and, to my knowledge, not one had
28 indicated this to be their position.

1 36. I also find it interesting to note that some parents
2 have expressed a concern about the dismissal of Jackie Eddery as
3 a Hebrew teacher. He was dismissed two years ago because of
4 incompetence and behavior inappropriate for a teacher at the
5 Academy in misrepresenting his credentials to qualify him as a
6 teacher. Further, to my knowledge, none of these parents have
7 been involved in the setting of the curriculum of the school or
8 are in a position to know the reasons which led the Board to
9 conclude that his contract should not be renewed.

10 37. I also found the letter of Joanne M. Stevens, dated
11 August 4, 1992, to be very interesting, insofar as she does not
12 disclose that, at times relevant, she was married to Mr.
13 Schwartz and is presently his ex-wife. Further, I was present
14 on the evening of June 4, 1992, when Stevens says she attempted
15 to inform parents who were ignorant of the teachers' contract
16 situation of the necessity to intervene with Dr. Lubin. Mrs.
17 Stevens was loud, argumentative and clearly intoxicated at that
18 time.

19 38. In our files, we have literally dozens of letters from
20 parents who have supported Dr. Lubin and who continue to do so.

21 39. In my terms sitting on the Board, I have noticed that
22 Mr. Schwartz has often taken issue with Dr. Lubin in areas
23 which, to my mind, are within Dr. Lubin's field of expertise,
24 and the Board has often supported her positions rather than Mr.
25 Schwartz's, whom, to my understanding has no higher education or
26 training in the field of education. I have perceived Mr.
27 Schwartz as feeling threatened by his inability to convince the
28 Board of certain actions which have been opposed by Dr. Lubin


1 and within her field of expertise.

2 40. In several conversations I've had with Mr. Schwartz,
3 he has referred to the Academy as "my school". I've told him
4 that this implies his ownership of the school and have actually
5 debated this issue with him; I've told him that, while he was
6 Chairman, the Academy is an independent community day school
7 governed by a Board. However, at times, he has acted and spoken
8 as if he in fact owned it.

9 FURTHERMORE, your Affiant sayeth naught.

10
11 
12 IRA DAVID STERNBERG

13 SUBSCRIBED and SWORN to before me
14 this 22nd day of March, 1993.

15 
16 Notary Public in and for said
17 County and State

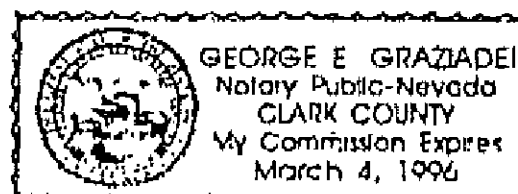


EXHIBIT “10”

THE HEBREW ACADEMY

8700 West Hillpointe Road
Las Vegas, Nevada 89134
Tel: (702) 265-4500 Fax: (702) 255-7232



Exhibit AK

Dr. Roberta Sabbath
School Head

May 23, 1996

Milton I. Schwartz
2120 Silver Ave.
Las Vegas, NV 89102

Dear Milton:

On behalf of myself, President, Geri Rentchler and the entire Board of Directors of the Milton I. Schwartz Hebrew Academy, I am pleased to inform you that we will immediately commence action to implement as soon as practicable the following:

- (1) Restore the Hebrew Academy's name to the "Milton I. Schwartz Hebrew Academy."
- (2) Amend the Hebrew Academy's Articles of Incorporation to restore its former name of the "Milton I. Schwartz Hebrew Academy."
- (3) Restore the marker in front of the Hebrew Academy identifying it as the "Milton I. Schwartz Hebrew Academy."
- (4) Change the Hebrew Academy's formal stationary to include its full name, the "Milton I. Schwartz Hebrew Academy", in a form consistent with this letterhead and include our full name on future brochures.
- (5) Where practicable, display the full name of the Hebrew Academy. In print advertising of sufficient size, the full name of the school will be displayed in a design consistent with the letterhead. Where impractical by reason of size, utilization of voice media, informal correspondence, informal memoranda, etc., and in answering the telephone, the school will utilize the shorthand version of its name as Hebrew Academy or simply, its logo. You can rest assured it is the intention of the School Head and the school's officers and Directors that the utilization of the school's full name will be consistent with an intent to recognize and honor your contribution and assistance.



Accreditation: Northwest Association of Schools and Colleges



Licensed: State of Nevada Department of Education



Member: National Association of Independent Schools

May 23, 1996 11:18

11:18 PM

Page 1

The restoration of the name of the "Milton I. Schwartz Hebrew Academy" has been taken as matter of "menschlackeit" in acknowledgement of your contribution and assistance to the Academy; your continued commitment to Jewish education reflected by the establishment of the "Jewish Community Day School" and last but not least, your recent action as a man of "shalom."

Your invitation to me as new School Head to meet and resolve differences and to work with me and the Board to bring "shalom" to our Jewish community will serve as a much needed example of Jewish leadership.

Please accept our assurance and commitment that we welcome with joy the establishment of the Jewish Community Day School which will provide Jewish parents a choice between the Jewish education offered by the "Milton I. Schwartz Hebrew Academy" during normal school hours and a school composed entirely of students with a Jewish parent and many more hours of Jewish education than can be offered in a normal school day.

You have our pledge that we are committed to make the "Milton I. Schwartz Hebrew Academy" a source of honor and a place of Jewish learning of which you and your family will always justly be able to take great pride.

Please accept our wishes for you and your family to have long, healthy, prosperous and joyous lives.

Very truly yours,



Dr. Roberta Sabbath
School Head

**The Milton I. Schwartz
HEBREW ACADEMY**

9700 West Hillpointe Road
Las Vegas, Nevada 89134
Tel: (702) 255-4500 Fax: (702) 255-7232



Dr. Roberia Sabbati
School Head



Accreditation, National Association of Schools and Colleges



Nevada State of Nevada Department of Education



Member, National Association of Independent Schools

IRI-23 1981 1140

1 100 000000

C. 67

EXHIBIT “11”

12 12 88 12 12 88 FAX 1 702 4667192

THE MELTON I. SCHWARTZ

RE: 12

Given to B1-
3-24-05

BY LAWS

OF

Exhibit F

THE MELTON I. SCHWARTZ

HEBREW ACADEMY

ARTICLE I

PURPOSE AND POWERS

Section 1.01. Name. The name of the Corporation is the Milton I. Schwartz Hebrew Academy and will remain so in perpetuity.

Section 1.02. Purpose. The Corporation shall have such purposes as are now or may hereafter be set forth in its Articles of Incorporation.

Section 1.03. Powers. The Corporation shall have such powers as are now or may hereafter be granted by the Nonprofit Corporation Act of the State of Nevada.

ARTICLE II

OFFICES

The principal office of the Corporation for the transaction of its business is shall be located at 5790 West Hillpointe Road, Las Vegas, Clark County, Nevada. The Corporation shall have and continuously maintain in the State of Nevada a registered office and a registered agent and may have other offices within or without the State of Nevada as the Board of Trustees may from time to time determine.

ARTICLE III

BOARD OF TRUSTEES

Section 3.01. General Powers. All of the business and affairs of the Corporation shall be managed and controlled by the Board of Trustees.

Section 3.02. Number Election And Tenure. The Board of Trustees shall consist of not less than 12 nor more than 20 members (each member may hereinafter be referred to as a "Trustee" and, collectively, as the "Trustees"). Each of the Trustees of the Corporation shall be elected and appointed to the office at a duly constituted meeting of the Board of Trustees, and shall serve for a

UNRECORDED COPY
MAY 1988

07-10-09 11:15 AM C:\Users\j\Documents\000573

000573

Section 3.08. Quorum. A simple majority of the Board of Trustees shall constitute a quorum of the transaction of business at any meeting of the Board of Trustees. If no quorum is present at any meeting of the Board of Trustees, no business of the Corporation may be conducted, except that a majority of the Trustees present may adjourn the meeting from time to time without further notice.

Section 3.09. Action By Written Consent. Any action which may be taken at any annual, regular or special meeting of the Board of Trustees may be taken without a meeting if a written consent is distributed to the Trustees, setting forth the proposed action, providing an opportunity for the Trustees to specify approval or disapproval of any proposal. The written consent shall be filed with the Secretary of the Corporation and maintained in the corporate records.

Section 3.10. Manner Of Acting.

(a) Formal Action by Trustees. The act of a majority of Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees.

(b) Informal Action by Trustees. No action of the Board of Trustees shall be valid unless taken at a meeting at which a quorum is present except that any action which may be taken at a meeting of the Board may be taken without a meeting if a consent in writing (setting forth the action so taken) shall be signed by each Trustee entitled to vote.

(c) Telephonic Meetings. Trustees may participate in a meeting of the Board of Trustees through the use of a conference telephone or similar communications equipment, so long as all Trustees participating in such meeting can hear one another. Participation in a meeting pursuant to this paragraph constitutes presence in person at such meeting.

Section 3.11. Resignations. Any Trustee may resign from the Board of Trustees at any time by giving written notice to the President or the Secretary of the Corporation and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.12. Removal. Any Trustee may be removed from office, with or without cause, by a two-thirds (2/3) vote of the Board of Trustees of the Corporation at any regular meeting of the Board of Trustees of the Corporation or at any special meeting of the Board of Trustees specifically called and noticed for that purpose. A Trustee may be removed for any reason whatsoever, including, without limitation, the following:

(a) The failure of a Trustee to attend three (3) consecutive meetings of the Board of Trustees of the Corporation;

(b) The Trustee commits any act or omission that brings disrepute or embarrassment upon the Corporation;

Section 4.04. Chairpersons. The President, subject to the approval of the Board, shall select the members and designate the Chairperson of any committees created hereunder and shall prescribe their duties which shall not be inconsistent with these Bylaws.

ARTICLE V

OFFICERS

Section 5.01. Officers. The officers of the Corporation shall consist of the President, the First Vice-President, the Second Vice-President, Secretary, and Treasurer, and any subordinate officer or officers to fill such subordinate office or offices as may be created by the Board of Trustees (each officer may hereinafter be referred to as an "Officer" and, collectively, as the "Officers"). Any person may hold more than one office.

Section 5.02. President. The President shall preside at all meetings of the Board of Trustees or the Executive Committee at which he or she may be present; shall perform such other duties as may be prescribed by these Bylaws or assigned to him or her by the Board of Trustees, and shall coordinate the work of the Officers and committees of the Corporation in order that the purposes of the Corporation may be promoted.

Section 5.03. First Vice-President. The First Vice-President shall act as an aid to the President and shall perform the duties of the President in the absence or disability of that Officer to act. He or she shall carry out such additional duties as may be assigned to him or her by the President or the Board of Trustees.

Section 5.04. Second Vice-President. The Second Vice-President shall act as an aid to the President and shall perform the duties of the President in the absence or disability of the President and the First Vice-President to act. He or she shall carry out such additional duties as may be assigned to him or her by the President or the Board of Trustees.

Section 5.05. Secretary. The Secretary shall record the minutes of all meetings of the Board of Trustees and the Executive Committee, and shall perform such other duties as may be delegated to him or her.

Section 5.06. Treasurer. The Treasurer shall have custody of all of the funds of the Corporation; shall keep a full and accurate account of receipts and expenditures, and shall make disbursements in accordance with the approved budget, as authorized by the Board of Trustees or the Executive Committee. The Treasurer shall present interim financial reports when requested by the Board of Trustees or the Executive Committee, and shall make a full report at the annual meeting. The Treasurer shall be responsible for the maintenance of such books of accounts and records as conform to the requirements of the Bylaws.

119

or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and that, with respect to any criminal action or proceeding, he or she had reasonable cause to believe that his conduct was unlawful.

Section 6.02. The Corporation shall indemnify, to the maximum extent permitted by the law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a Trustee, Officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Trustee, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, but no indemnification shall be made in respect of any claim, issue or matter as to which such person has been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation unless and only to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

Section 6.03. To the extent that a Trustee, Officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 6.01 and 6.02, or in defense of any claim, issue or matter therein, he or she shall be indemnified by the Corporation against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with such defense.

Section 6.04. Any indemnification under Sections 6.01 and 6.02, unless ordered by a court, shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Trustee, Officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 6.01 and 6.02. Such determination shall be made:

- (a) By the Board of Trustees by majority vote of a quorum consisting of Trustees who were not parties to such act, suit or proceeding;
- (b) If such a quorum of disinterested Trustees so orders, by independent legal counsel in a written opinion; or
- (c) If such a quorum of disinterested Trustees cannot be obtained, by independent legal counsel in a written opinion.

Section 6.05. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Trustees in the specific case upon receipt of an undertaking by or on behalf of the Trustee, Officer, employee or agent to repay such amount unless it is ultimately determined that he is entitled to be indemnified by the Corporation as authorized in this section.

Section 6.06. The indemnification provided by this section:

(a) Does not exclude any other rights to which a person seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested Trustees or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office; and

(b) Shall continue as to a person who has ceased to be a Trustee, Officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 6.07. The Corporation may purchase and maintain insurance on behalf of any person who is or was a Trustee, Officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Trustee, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this section.

ARTICLE VII

CONTRACTS, LOANS, CHECKS, DEPOSITS AND GIFTS

Section 7.01. Contracts. The Board of Trustees may authorize any Officer or agent of the Corporation, in addition to the Officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 7.02. Borrowing. No loan shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Trustees. Such authority may be general or confined to specific instances.

Section 7.03. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Trustees may select.

Section 7.04. Gifts. The Board of Trustees may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purposes or for any specific purpose of the Corporation. The Board of Trustees may vary the use to which a specific contribution, gift, bequest or devise can be put in the event the use for which the contribution, gift, bequest or devise is to be used becomes impossible, unnecessary, impractical or contrary to the best interests of the Corporation.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Books And Records. The Corporation shall keep correct and complete books and records of account, and the minutes of the proceedings of the Board of Trustees and Executive Committee. Copies of the minutes of the Board of Trustees and of the Executive Committee shall be regularly distributed to each member of the Board of Trustees and the Executive Committee. The books and records of accounts, and the records of the actions of proceedings of the Board of Trustees and the Executive Committee shall be open to inspection upon the written demand of any Trustee at any reasonable time and for any purpose reasonably related to its interest as a Trustee. Such inspection may be made by any agent or attorney of the Trustee and the right to make such inspection shall include the right to make extracts.

Section 8.02. Intentionally Deleted.

Section 8.03. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of July and end on the last day of June in each year unless otherwise determined by resolution of the Board of Trustees.

Section 8.04. Waiver Of Notice. Whenever any notice is required to be given under the provisions of the Nonprofit Corporation Act of the State of Nevada or under the provisions of the Articles of Incorporation or these Bylaws, a waiver thereof in writing signed by the persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 8.05. Self-Dealing. In the exercise of voting rights by members of the Board, no individual shall vote on any issue, motion, or resolution which directly or indirectly inures to his benefit financially except that such individual may be counted in order to qualify a quorum and, except as the Board may otherwise direct, may participate in the discussion of such an issue, motion, or resolution if he or she first discloses the nature of his or her interest.

Section 8.06. Loans To Officers And Trustees Prohibited. No loans shall be made by the Corporation to its Officers or Trustees. The Trustees of the Corporation who vote for or assent to the making of a loan to an Officer or Trustee of the Corporation, and any Officer or Officers

THE SECRETARY'S REPORT

THE TREASURER'S REPORT

2010

THE SECRETARY'S REPORT

THE TREASURER'S REPORT

2010

participating in the making of such loan, shall be jointly and severally liable to the Corporation for the amount of such loan until the repayment thereof.

Section 8.07. Additional Organizations. The Board of Trustees may authorize the formation of such auxiliary organizations as would in the opinion of the Board assist in the fulfillment of the purposes of the Corporation.

Section 8.08. Rules. The Board of Trustees may adopt, amend or repeal Rules (not inconsistent with these Bylaws) for the management of the internal affairs of the Corporation and the governance of its Officers, Agents, committees and employees.

Section 8.09. Parliamentary Procedure. Robert's Rules of Order, latest edition, or another similar manual or procedural guide concerning the conduct of meetings which is commonly used by corporations similar to the Corporation shall govern the conduct of meetings when not in conflict with the Articles of Incorporation of the Association, these Bylaws and any rules adopted pursuant to Section 8.08 of these Bylaws.

ARTICLE IX

AMENDMENTS TO BYLAWS

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by vote of two-thirds (2/3) of the Board of Trustees with the approval of two-thirds (2/3) of the Members.

By Carol G. Furr
President

Adopted this 13th day of April, 1999

The undersigned hereby certifies that the foregoing are the Bylaws of the Milton I. Saperstein Hebrew Academy as adopted on the date hereof.

At 13 4th day of April, 1999

By Geri R. Rottler
Secretary

EXHIBIT 12

107

Dear Friends:

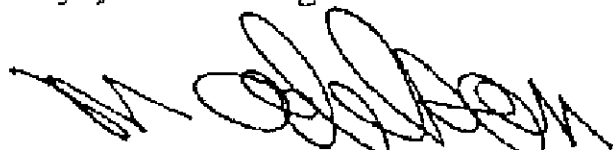
Welcome! It is our pleasure and privilege to chair The Milton I. Schwartz Hebrew Academy Gala. It is an inspiration to see so many in the community supporting not only The M.I.S. Hebrew Academy, but also The Adelson School. At last year's event, we presented plans to create a world class high school adjacent to The M.I.S. Hebrew Academy. We have now taken all key steps towards reaching this important goal. We are pleased to announce that the first graduating class of The Adelson School will begin their studies this fall!

Of course, a world class school needs more than superlative facilities, and it is here that head of school Paul Schiffman has met our extremely ambitious expectations: he searched the country and hired the best and the brightest educators. Paul is fond of saying that there is also a simple final criterion that each teacher must meet: "They must love children." Education, after all, is about guiding and nurturing children as well as educating and preparing them for the future. Many wonderful, extraordinary department heads for The Adelson School have already begun working full time along with our new Adelson School principal, Paul Mahoney (PhD UCLA). As our 9th and 10th grade classes begin their studies this August, we know that these children are beginning an exceptional journey at a school where a passion for learning, respect for Jewish mores, and a truly world class education coincide.


Many people have worked hard to create the success of our current Pre-K through 8th grade program and the beginning of our new high school. Tonight, we come together both to honor our "Pursuit of Excellence" Award winner and to say thank you to our wonderful teaching and administrative staff, our head of school, Paul Schiffman, our campus project director, Rhonda Glyman, our Board of Trustees, and to all the committed parents who have volunteered their time, intelligence and experience to make our school the very best it can be.

Tonight we honor the visionary behind The Hebrew Academy, Milton I. Schwartz. It is our privilege to honor Milton with the "Dr. Miriam and Sheldon G. Adelson In Pursuit of Excellence Award." With vision and foresight, Mr. Schwartz and a few others generously answered the need in Las Vegas for a strong secular and Judaic educational institution for elementary school-aged children by creating and continuously supporting The Milton I. Schwartz Hebrew Academy. The school, established in 1988, has since expanded to include preschool through 8th grade. Mr. Schwartz, an entrepreneur extraordinaire, sits on the Board of Trustees and has generously supported The M.I.S. Hebrew Academy's continued growth. We are truly pleased to bestow this award upon such a visionary leader of our community.

Enjoy the Evening!



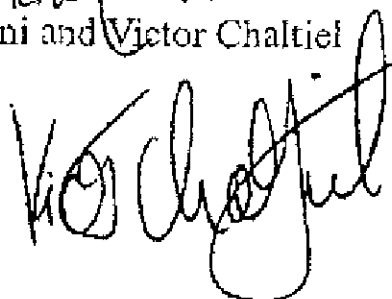
Dr. Miriam and Sheldon G. Adelson



Toni and Victor Chaltiel



Shelly F. Callan

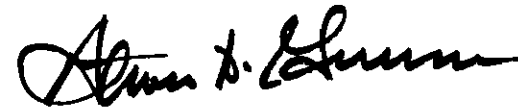


Victor Chaltiel



20

20



CLERK OF THE COURT

1 OPPN
Elizabeth Brickfield (SBN #6236)
2 ebrickfield@lionelsawyer.com
Maximiliano D. Couvillier, III (SBN #7661)
3 mcouvillier@lionelsawyer.com
Ketan D. Bhirud (SBN #10515)
4 kbhirud@lionelsawyer.com
LIONEL SAWYER & COLLINS
5 300 South Fourth Street, Suite 1700
Las Vegas, Nevada 89101
6 (702) 383-8888 (Tel.)
(702) 383-8845 (Fax)

7
8 Attorneys for The Dr. Miriam and
Sheldon G. Adelson Educational Institute

9
10 DISTRICT COURT

11 Clark COUNTY, NEVADA

12
13 In the Matter of the Estate of

14 MILTON I. SCHWARTZ,
15 Deceased

Case No. P061300
Dept. No.: 26/Probate

Date: December 10, 2013
Time: 9:00 a.m.

**OPPOSITION TO THE EXECUTOR'S
MOTION FOR RECONSIDERATION OF
THE COURT'S NOVEMBER 12, 2013,
ORDER DENYING ADELSON CAMPUS'
MOTION TO DISMISS EXECUTOR'S
PETITION FOR DECLARATORY
RELIEF WITHOUT PREJUDICE &
ALLOWING LIMITED DISCOVERY**

21 The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus"),
22 devisee of the Will of the Decedent in the above-referenced Estate, by and through its attorneys,
23 Elizabeth Brickfield, Maximiliano D. Couvillier, III, and Ketan D. Bhirud, of the law firm of
24 Lionel Sawyer & Collins, opposes the Executor's Motion for Reconsideration ("Motion") of this
25 Court's November 12, 2013, *Order Denying Adelson Campus' Motion to Dismiss Executor's*
26 *Petition For Declaratory Relief Without Prejudice & Allowing Limited Discovery* ("11/12/13
27 Order").
28

The Court should deny the Executor's Motion because the Executor did not establish any grounds for reconsideration, but simply restated arguments which the Court already considered and rejected. **This is the Executor's second bite at asking the Court to consider the 11/12/13 Order on identical grounds.** The Executor previously asked the Court to consider the 11/12/13 Order in his October 18, 2013, letter to the Court which asked Court to adopt his competing version of the Order. There, the Executor argued that: (1) limiting the scope of the Executor's discovery deprives him of due process; and (2) the Court purportedly did not intend to limit discovery. *See Exhibit A.* Those are **precisely the same grounds** the Executor raises in his Motion. *See Motion at 5:24-26 and 6:16-17.*

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE EXECUTOR DOES NOT ESTABLISH ANY GROUNDS FOR RECONSIDERATION BUT MERELY REPEATS ARGUMENTS PREVIOUSLY MADE AND REJECTED AND THUS RECONSIDERATION WOULD BE ABUSE OF DISCRETION

Nevada courts do not look favorably on motions for reconsideration. "Litigants are not entitled to a rehearing as a matter of right." *Bates v. Nevada Savings & Loan Ass'n*, 85 Nev. 441, 443, 456 P.2d 451, 452 (1969). "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *See Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Thus, a court may entertain a motion to reconsider a ruling only where the moving party can show: (1) a change in controlling law; (2) newly discovered evidence, unknown or unavailable when the parties were last before the court; or (3) clear error in law or fact or to correct manifest injustice. *See School Dist. No 1J Multnomah County v. AcandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Reconsideration is not to "be used to ask the Court to rethink what it has already thought," *Motorola, Inc. v. J.B. Rodgers Mechanical Contractors*, 215 F.R.D. 581, 582 (D. Ariz. 2003), or "to dress up arguments that previously failed." *Waddell & Reed Fin., Inc. v. Torchmark Corp.*, 338 F. Supp. 2d 1248, 1250 (D. Kan. 2004)(citations omitted). Thus, reconsideration motions cannot not be used merely to reargue the arguments the movant already made to the court. *See Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

1 In fact, in *Moore*, the Nevada Supreme Court held that the district court abused its discretion by
2 entertaining reconsideration where the motion was based on arguments previously made:

3 The only feature which distinguishes the second motion for
4 rehearing from the two previous motions is the citation of
5 additional authorities for a proposition of law already set forth and
6 adequately supported by reference to relevant authorities in the
7 earlier motions. We note particularly that the second motion for
8 rehearing raised no new issues of law and made reference to no
9 new or additional facts. Under such circumstances the motion was
10 superfluous and, in our view, it was an abuse of discretion for the
11 district court to entertain it.

12 *Moore*, 92 Nev. at 405, 551 P.2d at 246.

13 Here, the Executor does the same thing the Nevada Supreme Court rejected in *Moore*, to
14 wit: The Executor does not raise any new issues of law or fact¹ or error, but simply restates his
15 arguments and asks the Court to rethink what it has already thought, carefully and
16 considerately. In his Motion, the Executor asks the Court to reconsider its 11/12/13 Order on the
17 grounds that:

18 (1) the order "denied the Estate due process by limiting the scope of discovery"
19 (see *Motion at 6:16-21*); and

20 (2) "this Court never stated that it was going to limit discovery at the October 8,
21 2013, hearing" (see *Motion at 5:24-26*).

22 The Executor previously challenged the Court's 11/12/13 Order upon these identical
23 grounds when it requested the Court to adopt its competing version of the order, which the Court
24 rejected. In his letter to the Court dated October 18, 2013, the Executor also argued that the
25 11/12/13 Order:

26 (1) "improperly limits discovery" which deprives the Executor "of due process";

27 ¹ Aside from the October 2013 letters to the Court and the 11/12/13 Order attached as
28 Motion Exhibits 1-3, the Executor previously submitted all of the other documents attached to
his Motion, i.e., Motion Exhibits 4-12 were previously attached to his *May 28, 2013, Petition for*
Declaratory Relief as "Exhibits 4,5,7,8,9,10 and 11" and to his *June 24, 2013, Reply in Support*
of First Accounting and Report as "Exhibits 1 and 3." Tellingly, the most glaringly missing
exhibit omitted by the Executor is the October 8, 2013, hearing transcript - which utterly belies
the Executor's Motion and supports the Court's 11/12/13 Order.

1 and

2 (2) is erroneous because the Court did not intend to limit the scope of discovery
3 but rather somehow allowed unlimited discovery because it "conceded at the October 8, 2013,
4 hearing that the Court has to let you do your discovery." *See October 18, 2013, Letter, attached*
5 *here as Exhibit A.*

6 Because reconsideration motions cannot not be used merely to reargue the arguments the
7 movant already made, the Court should deny the Executor's Motion. *See Moore*, 92 Nev. at 405,
8 551 P.2d at 246 (entertaining a motion for reconsideration that is based on arguments previously
9 made is abuse of discretion).

10 The Court rejected the Executor's arguments and entered the 11/12/13 Order. Notably,
11 the Court entered the 11/12/13 Order after thoroughly considering - - for over three weeks - - the
12 Executor's arguments, his competing order and the transcript of the October 8, 2013, hearing
13 (which the Adelson Campus provided), among other things.

14 **A. The October 8, 2013, Hearing Transcript Clearly Manifest The Court's**
15 **Intention To Limit Discovery**

16 The Executor's statement its Motion that the Court "never stated that it was going to limit
17 discovery at the October 8, 2013, hearing" is unreasonable and directly belied by the October 8,
18 2013, hearing transcript. *See Motion at 5:24-26.* Indeed, glaringly missing from the Executor's
19 Motion is a copy of the October 8, 2013, hearing transcript. A copy of the October 8, 2013,
20 hearing transcript ("10/08/13 Transcript") is attached here as *Exhibit B*. As the 10/08/13
21 Transcript demonstrates, the Court recognized that Mr. Schwartz's Will clearly manifests his
22 intent that the Gift be used to educate Jewish children and not for the self-serving purpose that
23 his name be recognized in perpetuity. The record further shows that the Court expressly and
24 clearly isolated the material issue which the Executor has the burden of showing when the
25 Adelson Campus renews its motion to dismiss as a motion for summary judgment, to wit:
26 Whether the purpose and condition of the bequest under Section 2.3 of the Will was for the

27
28

1 school to be named "The Milton I. Schwarz Hebrew Academy" in perpetuity², and thus, limited
2 the scope of the Executor's discovery accordingly:

3 a) See 10/08/13 Transcript 32:1-8 & 16-25:

4 THE COURT: I will get it. Did he really intend that this
5 would only go to the school so long as it kept his name, the
6 Milton -- because it doesn't say that. It doesn't say, so long
7 as the school keeps the name Milton I. Schwartz Hebrew
8 Academy on it, then I'm going to give them my \$500,000.
I mean, because what happens if the \$500,000 was given
and they said, okay. Thanks, bye-bye. Changing our name
now.

9 *****

10 THE COURT: -- this is my problem here. I mean, it seems
11 pretty clear to me what Mr. Schwartz wanted to do. He had a
12 genuine interest demonstrated throughout his life in educating
13 the Jewish children of Nevada in a parochial school setting.
14 He wanted it to be a Hebrew school. That was what was
15 important to him. Because the will -- the way the will read it's
the Milton I. Schwartz Hebrew Academy parens (Hebrew
Academy). That was what was important to him; it was a
Jewish school. Not the Milton I. Schwartz -- he doesn't say the
Milton I. Schwartz school, he says the Hebrew Academy/.

16 ...

17
18 ² That is the principal issue in raised by the Executor's substantive counter-claims (i.e.,
19 construction of will, fraud in the inducement and breach of contract). Moreover, as the Court
20 already considered from the briefs and the October 8th hearing, limited discovery is appropriate
21 because the Executor's claims depend largely on discovery of parol evidence, which is barred by
22 *Frei v. Goodsell*, 129 Nev. Adv. Op. 42, 305 P.3d 70 (2013) and/or because the claims
themselves are barred by the applicable statutes of limitation under NRS 11.190(2)(c)(oral
contract), NRS 11.190(3)(d)(fraud in inducement) and NRS 137.120(construction of will). The
Executor's three remaining "counterclaims" (i.e., avoidance of bequest, offset of bequest and
revocation of bequest) are not causes of action, but simply the underlying remedies, *U.S. v.*
23 *Smelser*, 87 F.2d 799, 800-01 (5th Cir. 1937), which fail as a matter law because the substantive
24 claims fail, *Brinckerhoff v. Enbridge Energy Co., Inc.*, 2012 WL 1931242, *4 (Del. Ch.
2012)("Where there is no claim, there can be no remedy, equitable or otherwise.").

25 The Executor's claim that limited discovery somehow violates "due process" is
26 unsupported and indeed, contrary to the settled principle that the Court has "wide discretion" in
imposing limitations on discovery. NRCP 26(b)(2)(expressly authorizing the court to impose
limitations on discovery); *MGM Grand, Inc. v. Eighth Judicial Dist. Court*, 107 Nev. 65, 70, 807
27 P.2d 201, 204 (1991)(district court has "wide discretion" in controlling discovery).

28

1 b) See 10/08/13 Transcript at 33:4-18 (emphasis added):

2 THE COURT: Right. And so that's why I'm looking for
3 something that tells me, so long as they keep my name. He
4 may have been satisfied that during his lifetime they had
5 changed their name and that was satisfactory to him. I'm
6 just -- you know, I'm just at a loss as to, you know, what
7 this discovery would show.

8 Because the whole point of -- in Nevada on a motion to
9 dismiss, which is a very low pleading standard, if there's
10 anything possible that you can assert, go forth and see if
11 you can litigate this and figure it out. And the Court has to
12 let you do your discovery.

13 Where for me, the thing that I'm just struggling with here is
14 that Mr. Schwartz had so clearly stated that he wanted
15 Jewish children educated in a Jewish school and that was
16 what was important to him.

17 c) See 10/08/13 Transcript: 34:19 - 35:11:

18 THE COURT: But Mr. Schwartz, throughout all of it,
19 what he wanted was to educate the Jewish children of Las
20 Vegas in a Jewish school. And I don't -- for me, what I'm
21 struggling to say is, how are you going to, through any kind
22 of parol evidence, prove that he would only have wanted to
23 do that? His only goal in doing that was to have his name
24 on it. That seems entirely contrary to what Mr. Schwartz
25 had done. He was honored. I understand that, he was proud
26 of that, but he didn't educate Jewish children in order to
27 have his name recognized. He educated Jewish children
28 because he wanted Jewish children educated in Jewish
school. He didn't want his name. It was about educating the
children.

 Where is there anything that's going to be able to prove
through parol evidence that the only reason that mattered
was because he was able to have his name recognized in
perpetuity. I understand his children what a monument to
them. But to me, their dad, what he wanted was children
educated.

 d) See 10/08/13 Transcript at 35:22 - 36:1:

 THE COURT: I mean, if somebody can come in and say
the only reason they gave us money was because we were
going to recognize him. I mean, to me that just seems -- to

me, I don't see that as what Mr. Schwartz was doing, but okay. All right. If you -- so it's your positions --

e) See 10/08/13 Transcript at 38:22 - 39:21:

MR. COUVILLIER: I have not heard any discovery that needs to be had that hasn't already been introduced. Your Honor, I would submit we -- I would submit to convert the motions for a motion for summary judgment and ask the Court to enter judgment in our favor.

THE COURT: Okay.

MR. FREER: Well, then at that point I would get to do a 56F.

THE COURT: Right. So how much time do you think you need? Because --

MR. FREER: Probably three months.

THE COURT: I was going to say 90 days because that's -- it seems to me like it's this really narrow issue. I understand all that went on, all the drama in the 20 years. And they fired this board, and they hire -- they fired Ms. Lubin. I mean, that was an interesting litigation. I can't tell you how many people I knew that were involved in that litigation.

I mean, it's just -- if somebody can come in here and convince me that Milton Schwartz only wanted to educate Jewish children so long as he got the credit for it, okay. I mean, I don't think that's what Mr. Schwartz wanted to do. I think he wanted to educate Jewish children. I don't think he wanted his own permanent legacy or he would have put that in there.

f) See 10/08/13 Transcript at 41:4 - 42:7 (emphasis added):

THE COURT: So we'll do discovery on both the accounting and the issue of is this only going to go to the school if they put his name on it?

MR. COUVILLIER: We'll prepare the order, Your Honor.

THE COURT: Okay.

MR. FREER: Thank you, Your Honor. Can I get the order run by me please?

MR. COUVILLIER: Absolutely.....

Notably, as the foregoing demonstrates, Mr. Freer did not object to such limitation on Discovery but concurred with the Court's ruling.

B. The Court Should Not Extend The January 6, 2014, Discovery Deadline

The Court should not extend the January 6, 2014, discovery deadline imposed by the 11/12/13 Order for several reasons. First, the January 6, 2014, deadline is based upon the three months that the Executor requested for discovery at the October 8, 2013, hearing:

MR. COUVILLIER: I have not heard any discovery that needs to be had that hasn't already been introduced. Your Honor, I would submit we -- I would submit to convert the motions for a motion for summary judgment and ask the Court to enter judgment in our favor.

THE COURT: Okay.

MR. FREER: Well, then at that point I would get to do a 56F.

THE COURT: Right. So how much time do you think you need? Because --

MR. FREER: Probably three months.

THE COURT: I was going to say 90 days because that's -- it seems to me like it's this really narrow issue....

See 10/08/13 Transcript at 38:22 - 39:9, Exhibit B.

Second, the Executor's competing version of the 11/12/13 Order also imposes the January 6, 2014, discovery deadline. *See Executors' Motion at Exhibit 1.* Finally, the Court should not extend the January 6, 2014, discovery deadline because the Executor failed to show that reconsideration of the Court's 11/12/13 Order is appropriate.

II. CONCLUSION

The Court entered its 11/12/13 Order after a long and careful consideration of the issues and the parties' arguments, which were raised several months ago when the Adelson Campus' filed its motion to dismiss on June 12, 2013. The Court also previously considered the very same grounds raised by the Executor in his Motion together with his competing order for over three weeks prior to entering the 11/12/13 Order. Needless to say, the Court has been more than reasonable. For the reasons stated above, the Court should deny the Executor's Motion.

LIONEL SAWYER & COLLINS

By: 

Elizabeth Brickfield (SBN #6236)

Maximiliano D. Couvillier, III (SBN #7661)

Ketan D. Bhurud (SBN #10515)

Attorneys for The Dr. Miriam and Sheldon G. Adelson Educational Institute

RECEIPT OF COPY

Receipt of Copy of the foregoing **OPPOSITION TO THE EXECUTOR'S MOTION FOR RECONSIDERATION OF THE COURT'S NOVEMBER 12, 2013, ORDER DENYING ADELSON CAMPUS' MOTION TO DISMISS EXECUTOR'S PETITION FOR DECLARATORY RELIEF WITHOUT PREJUDICE & ALLOWING LIMITED DISCOVERY** is hereby acknowledged this December 9, 2013, by:

SOLOMON, DWIGGINS & FREER

By: 

Mark Solomon, Esq.

Alan D. Freer, Esq.

Steven E. Hollingworth, Esq.

9060 West Cheyenne Ave.

Las Vegas, NV 89129

Attorneys for Executor

The Adelson Campus

EXHIBIT A

SOLOMON DWIGGINS & FREER, LTD.
Attorneys at Law

Mark A. Solomon
Dana A. Dwiggins
Alan D. Freer
Brian K. Steadman

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: (702) 853-5483
Facsimile: (702) 853-5485

Brian P. Eagan
Robert D. Simpson
Jeffrey P. Luszeck
Ross E. Evans
Jordanna L. Evans
Alexander G. LeVeque
Joshua M. Hood
Bri F. Issurkulif

Of Counsel
Steven E. Hollingworth

Direct Dial:
(702) 589-3555
afreer@sdnvtlaw.com

October 18, 2013

Via Hand-Delivery

The Honorable Gloria J. Sturman
Regional Justice Center
Dept. XXVI, Courtroom 3H
200 Lewis Avenue
Las Vegas, NV 89155

Re: *In the Matter of the Estate of Milton I. Schwartz, Deceased*
Eighth Judicial District Court Case No. 07-P-061300

Dear Judge Sturman:

This is in response to Mr. Couvillier's October 16, 2013, correspondence regarding his Proposed Order from the October 8, 2013, hearing.

First, contrary to Mr. Couvillier's contention, this Court did not confirm the Adelson Campus as a devisee under the Decedent's Will because that issue was not before the Court at the hearing. Indeed, at the hearing Mr. Couvillier did state that the Adelson Campus was a devisee, see October 8, 2013, transcript at 40:22, and the Court granted the Adelson Campus' request to conduct discovery on the accounting; however, the fact that Mr. Couvillier expressed his self-serving belief the Adelson Campus is a "devisee" does not make it so, and certainly does not constitute a finding by this Court. Whether the Adelson Campus is a devisee under the Decedent's Will is one of the ultimate issues in this case and requires a factual finding from the jury as requested by the Executor. As such, the Adelson Campus' requested finding is inappropriate and premature.

Second, the Adelson Campus' Proposed Order seeks to improperly limit discovery to the issue of "whether the purpose and condition of the bequest under

SOLOMON DWIGGINS & FREER, LTD.
Attorneys at Law

The Honorable Gloria J. Sturman
October 18, 2013
Page 2

Section 2.3 of the Will was for the school to be named "The Milton I. Scharz Hebrew Academy" in perpetuity." Lest the Adelson Campus forget: the Motion to Dismiss was denied, thereby allowing the Executor to conduct discovery on all of the claims asserted in his Petition for Declaratory Relief: (1) Construction of Will; (2) Fraud in the Inducement; (3) Bequest Void for Mistake; (4) Offset of Bequest Under Will; (5) Breach of Contract; and (6) Revocation of Gift and Constructive Trust. Denying the Executor the opportunity to conduct discovery on any of the other claims deprives him of due process and the ability to litigate such claims, especially since said claims will be heard by a jury. Further, the Court already conceded at the October 8, 2013, hearing that "the Court has to let you do your discovery." See *id.* at 33:13-14. For these reasons the Executor believes it is inappropriate to limit discovery as requested by the Adelson Campus in its Proposed Order.

In light of the foregoing, the Executor respectfully requests that the Court adopt and execute the competing order that he submitted on October 16, 2013, which for convenience of the Court is attached hereto.

Sincerely,



Alan D. Freer

ADF/sg

cc: Client
Maximiliano D. Couvillier II, Esq. (via email)

The Adelson Campus

EXHIBIT B

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER OF THE ESTATE
OF:

MILTON SCHWARTZ

CASE NO. 07-P-061300

DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 8, 2013

**RECORDER'S TRANSCRIPT
MOTIONS HEARING**

APPEARANCES:

For the Petitioner: MAXIMILIANO D. COUVILLIER, ESQ.
Lionel Sawyer & Collins

For the Estate: ALAN D. FREER, ESQ.
Solomon Dwiggin & Freer, Ltd.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

AVTranz

www.avtranz.com • (800) 257-0885

1 TUESDAY, OCTOBER 8, 2013 AT 9:48 A.M.

2

3 THE COURT: All right. Counsel state their appearances
4 for the record.

5 MR. COUVILLIER: Good morning, Your Honor. Max
6 Couvillier on behalf of the Petitioner, the Adelson's Campus.

7 THE COURT: Okay.

8 MR. FREER: Good morning, Your Honor. Alan Freer on
9 behalf of the Estate.

10 THE COURT: All right. So we're back and I think there's
11 -- we've been here previously on this. There's some time
12 taken to I guess, I don't know, have some discussions or
13 something and now it's back on. So what are you looking for
14 here today?

15 MR. COUVILLIER: Your Honor, we are here today for
16 basically two matters. One is, we have the Adelson's Campus
17 motion to dismiss --

18 THE COURT: Uh-huh.

19 MR. COUVILLIER: -- the Executor's petition. And I think
20 with the points that we've raised therein we've also resolved
21 some of the issues that were previously discussed with the
22 Court with respect to our preliminary objection to the
23 accounting.

24 THE COURT: Right. Because we've got a motion -- another
25 petition to compel a distribution.

1 MR. COUVILLIER: That is correct, Your Honor.

2 THE COURT: Okay.

3 MR. COUVILLIER: So I'd like to start with the Adelson
4 Campus motion to dismiss, Your Honor.

5 THE COURT: Okay, briefly. Because we've heard this all
6 once before so.

7 MR. COUVILLIER: Your Honor, the Executor's petition,
8 Your Honor, the sum and substance of it, is it contests the
9 will. There are six related claims basically to the will.
10 There's a will contest claim, a fraud and the inducement, and
11 three remedies in connection with that. Avoidance of the
12 bequest, offset of the bequest, revocation of the bequest.
13 And then the last six claims for a breach of contract.

14 And, Your Honor, the Court should grant our motion
15 to dismiss some or all of the claims stated. With respect to
16 the claims related to the contest of the will, Your Honor, the
17 executive claims are all dependent on the Executor's parol
18 evidence. And therefore are barred by the Nevada Supreme
19 Court's recent decision in Frei versus Goodsell at 129 NV
20 Advance Opinion 42 305 P.3d 70.

21 The Executor's claim for construction of a will are
22 also barred by the three month statute of limitations pursuant
23 to N.R.S. 137.1.20.

24 Third, the Executor's claim for fraud in the
25 inducement is also barred by the three year statute of

1 limitations under N.R.S. 11.190(3)(d). And the Executor's
2 claim for oral breach of contract fails because there is no
3 contract. And even if the Court were being generous under the
4 motion to dismiss standard that a contract did exist, this
5 claim is barred by the statute of limitations under N.R.S.
6 11.190(2)(c) and the statute of frauds at 11.221.

7 Your Honor, there is no fraud or breach of contracts
8 claim here. The school changed its name several times during
9 Mr. Schwartz's lifetime. Mr. Schwartz knew that the Adelsons'
10 were involved. They knew that the Adelsons' intended to gift
11 the school the \$80 million and that there was a contemplation
12 of the name change. Yet at no time during Mr. Schwartz'
13 lifetime, during the time in which the school changed its name
14 several times, there was a demand to the school to return the
15 gifts that he made. There was claims asserted against the
16 school for breaches of contract, or there was claims against
17 the school for fraud.

18 And most importantly, Your Honor, with respect to
19 the will. Notwithstanding the various name changes.
20 Notwithstanding the Mr. Schwartz is a sophisticated
21 businessman. The will makes no provision regarding the naming
22 of the school perpetuity.

23 So the fact that the school -- the corporate name
24 has changed that it's no longer the Milton I. Schwartz Hebrew
25 Academy; doesn't matter. The purpose of the will, Your Honor,

1 was to make a bequest for the scholarship to educate to Jewish
2 children and that is precisely what is going to happen with
3 that bequest.

4 With respect to our first, Your Honor, grounds to
5 dismiss the Executor's petition regarding the contest of the
6 will, Your Honor. The will is clear and unambiguous. This is
7 undisputed. There's no -- again, no provision in the will
8 regarding the naming of the Milton I. Schwartz Academy
9 remaining in perpetuity.

10 The Executor asked the Court to deny the scholarship
11 bequest because he claims that some 11 years before the will
12 the school somehow clairvoyantly induced Mr. Schwartz to make
13 the bequest. But this is all based on parol evidence. The
14 entirety of the executor petitions flows from that concoction
15 and is entirely dependent on parol evidence, Your Honor. We
16 go back and look at the statements that are made in the moving
17 -- in the papers by the school and in the previous statements
18 made by the Court here that they're seeking to do discovery
19 regarding the intent of Mr. Schwartz with regards to the
20 bequest to the school.

21 But all that evidence, Your Honor, all that intent
22 is barred by the Court's opinion, the Nevada Supreme Court's
23 opinion in Fraye versus Godsell, which bars the executive
24 claims and holds it extrinsic or parol evidence is not
25 admissible to contradict or vary the terms of unambiguous

1 will. It says all prior negotiations and agreements are
2 deemed to have merged there. Fraye, Your Honor, involved
3 similar circumstances in which the parties were contesting
4 estate documents.

5 And in that case, Your Honor, the person that made
6 the certain provisions in those estate documents himself was
7 alleging that his intent was not manifested in those
8 documents. The Nevada Supreme Court barred his testimony
9 regarding the intent saying that the documents itself
10 manifested what the intent were and that his own testimony
11 could not be admissible.

12 It's -- Your Honor, in this case it's even more
13 powerful because Mr. Schwartz is not here. He's not here.
14 And the unequivocal, unambiguous intent that we have is his
15 will. And the will speaks for itself, Your Honor.

16 THE COURT: All right, thanks.

17 MR. COUVILLIER: Your Honor, the second claim is the
18 executor cannot contest the will because the statute of
19 limitations expired over two years ago. The statute of
20 limitations to contest the will is provided under N.R.S.
21 137.120. Here the will was admitted into probate over four
22 and a half years ago on January 24th. The executor did not
23 contest the will until May 28, 2013.

24 Again, Your Honor, the will is admittedly clear and
25 unambiguous. Now we provided in our reply, Your Honor, this

1 dress-up that the Executor attempts to construing saying well,
2 we're not asking for the Court to -- we're not contesting the
3 will. We're asking the Court to construe a will. But there's
4 nothing to construe because the will is admittedly clear and
5 unambiguous. And as we pointed out, Your Honor, we've noted
6 several authorities, Your Honor, that had addressed
7 specifically this same type of ruse as we call it, to dress up
8 a contest claim as far as a construed claim in order to avoid
9 the statute of limitations. But we believe that the Court
10 here should not be fooled by that.

11 Your Honor, the Executor's claim for fraud and the
12 inducement is also barred independently of these other grounds
13 by the statute of limitations provided under N.R.S.
14 111.190(d)(3).

15 Again, Your Honor, the Executor claims at the
16 Adelson Campus somehow induced Mr. Schwartz to make several
17 gifts to the school including the bequest purportedly on
18 representations that this school would bear Mr. Schwartz's
19 name in perpetuity.

20 But, Your Honor, just to begin with, there are no
21 allegations that the purported representations were false at
22 the time they were made. But more importantly the school name
23 again changed several times over Mr. Schwartz's lifetime. And
24 not once did he come out of the woods and say there was fraud.

25 THE COURT: And during that period --

1 MR. COUVILLIER: I want my money back; this is a breach
2 of contract.

3 THE COURT: -- he wrote his original will, he wrote his
4 first codicil and the second codicil.

5 MR. COUVILLIER: That's right, Your Honor.

6 THE COURT: And never changed it.

7 MR. COUVILLIER: That's right, Your Honor. He -- his
8 will was written in 2004 --

9 THE COURT: 2004.

10 MR. COUVILLIER: -- and then the codicils were in 2006.
11 Your Honor, by that time the Adelsons were already involved.
12 Mr. Schwartz is serving on the board with the Adelsons. And
13 this was coming forward. Certainly if he believed that that
14 provision was important he would have included it in the
15 codicils --

16 THE COURT: Right. And --

17 MR. COUVILLIER: -- and he did not.

18 THE COURT: -- his original -- the original purpose was
19 first of all, the money goes to pay off a mortgage. If
20 there's no mortgage then you still get the money but you get
21 it for scholarships.

22 MR. COUVILLIER: That's correct, Your Honor.

23 THE COURT: So he provided for just the eventuality it
24 happened, which is an angel in the fundraising field; people
25 with a lot of money who clear up your debts are called angels.

1 So the school was fortunate in the Adelsons clearing up all
2 their debts. And that meant that Mr. Schwartz who had
3 foreseen something like that might happen still wanted the
4 money to go to the school, but in this instance it would go to
5 pay for Jewish children to be educated.

6 MR. COUVILLIER: That is correct, Your Honor. And that's
7 exactly what's happening.

8 THE COURT: That's was what he'd always wanted his whole
9 life.

10 MR. COUVILLIER: That's what --

11 THE COURT: Everything that he had done.

12 MR. COUVILLIER: -- he always wanted. And so this notion
13 of the name change, Your Honor, as we pointed out is
14 irrelevant, because the purpose of the gift as you hit it, is
15 to -- the gift is going to go to scholarships. It's going to
16 go to scholarships to fund the education of Jewish children --

17 THE COURT: Since it's not needed to pay off the
18 mortgage.

19 MR. COUVILLIER: That's correct. That's correct.

20 THE COURT: I mean --

21 MR. COUVILLIER: And the reason it wasn't needed to pay
22 for is because the Adelsons --

23 THE COURT: Right.

24 MR. COUVILLIER: -- extinguished the debt that Mister --

25 THE COURT: He clearly wanted the school to be

1 financially healthy. So first pay off the mortgage, help pay
2 off the mortgage. And if there's no mortgage then that's
3 great, but you still get the money, but this time let's use it
4 to educate the Jewish children of Las Vegas.

5 MR. COUVILLIER: That's correct, Your Honor. That's
6 correct.

7 THE COURT: Clearly stated never -- nothing indicates
8 that he ever changed that philanthropic purpose.

9 MR. COUVILLIER: Correct, Your Honor. And those were the
10 only conditions that he had on the will. And Mr. Adelson
11 helped him make the first condition because he eradicated all
12 the debt.

13 THE COURT: Uh-huh.

14 MR. COUVILLIER: And so we -- you know, we're still here
15 to help Mr. Schwartz fulfill his gift to help educate Jewish
16 children.

17 THE COURT: Right.

18 MR. COUVILLIER: That's the purpose of the will.

19 THE COURT: I mean, if he had just left the money to pay
20 off a debt and there was no debt, then that would be a
21 different thing.

22 MR. COUVILLIER: That's correct.

23 THE COURT: But he provided in the eventuality there's no
24 debt then we're going to just use it to educate children.

25 MR. COUVILLIER: That is correct, Your Honor.

1 THE COURT: Okay.

2 MR. COUVILLIER: And so we're here to ask the Court to
3 dismiss the petition. Some -- again, some or all the claims
4 based upon the reasons that I have set forth here.

5 And how we jump in, Your Honor, and with respect to
6 the accounting because I wanted to close that loop, is that
7 there was some discussion last time we were before the Court
8 about whether the school had, you know, some standing to
9 challenge the accounting based upon the notion that the
10 bequest would somehow be voided.

11 But again, Your Honor, that is the same premise that
12 we're here with respect to our motion to dismiss is that the
13 challenge on the accounting standing is that the bequest would
14 be void and it's doing two things. It's asking the Court to
15 allow the introduction of parol evidence --

16 THE COURT: Uh-huh.

17 MR. COUVILLIER: -- to attack the will and attack the
18 provision to make it void, which is clearly barred by Frei.
19 And it's also contesting the will, which is clearly barred by
20 the three year statute of limitations.

21 And therefore, Your Honor, we believe we do have the
22 standing. We believe that the Court should dismiss some or
23 all the claims, allow and instruct the executor to make a more
24 full accounting. I mean, you know, we were talking about
25 discovery going forward. And we can go with that, Your Honor,

1 but at this stage in the proceedings we believe that we'll
2 move forward with discovery, but notwithstanding that the
3 Court should order the executor to make a more fuller
4 disclosure of the accounting to provide some of the items that
5 we've previously requested including the tax returns, an
6 update on the accounting, Your Honor.

7 You'll see that the house that is listed on the
8 accounting, Your Honor, it has the same value as when the
9 house was first disclosed in 2008 of 200 and some thousand
10 dollars. Your Honor, it's been seven years. The housing
11 market, and the Court can take judicial notice, has turned.
12 And we believe that the increase, that that has increased.

13 So we're asking the Court, Your Honor, to dismiss
14 some or all of the claims. Certainly all of the claims
15 regarding the contest of the will. We also believe that the
16 last breach of contract claim should be dismissed. Again,
17 Your Honor, there is the statute of limitations has passed on
18 that. Mr. Schwartz was alive during the many changes of the
19 school name and never once claimed a breach of contract.
20 Never once claimed that a contract existed and never once
21 claimed for fraud. And that the Court would allow us to
22 proceed with our petition for distribution and allow discovery
23 with respect to that.

24 THE COURT: Thank you.

25 MR. COUVILLIER: Thank you, Your Honor.

1 MR. FREER: Well, Your Honor, unfortunately there's a lot
2 of conflated facts in law in the argument that was just
3 presented. So we're going to have to go through and untangle
4 a lot of those. But I want to start with the will itself.
5 Article 2.3 of the will states, "A bequest is made to the
6 Milton I. Schwartz Hebrew Academy." That entity doesn't exist
7 anymore.

8 That leads us to two possibilities. The bequest
9 lapses because it no longer exists, or there is a latent
10 ambiguity in the will which requires a determination of what
11 Milton I. Schwartz expected.

12 To outline, you know, their argument that there is
13 no ambiguity can be summarized by their conclusion. They say,
14 "Mr. Schwartz made a donation to the Jewish -- to benefit
15 Jewish children in Southern Nevada through funding of
16 scholarships to the Adelson campus." That's in their
17 conclusion of their reply brief. Nowhere in the will does it
18 say that. In fact, the only way they even try to assert that
19 they have standing is by admitting extrinsic evidence.

20 So they cannot on the one hand say there was no
21 ambiguity and yet at the same time produce evidence showing
22 that they have standing to assert that there was no ambiguity.
23 The issue is what did Milton Schwartz intend by making --

24 THE COURT: Well, I guess I'm trying to understand what
25 the problem is. Is the Executor's problem that he doesn't

1 want to pay the \$500,000, or is it the Executor's problem is
2 this should only be paid if you change the name back to my
3 father's name?

4 MR. FREER: That's it.

5 THE COURT: Okay.

6 MR. FREER: The second.

7 THE COURT: Okay.

8 MR. FREER: And we'll go -- you know, we've got to go
9 through some of the facts here, because the facts have been
10 conflated, okay.

11 During Milton I. Schwartz's lifetime he made a
12 bequest to Milton I. Schwartz Hebrew Academy. He made
13 lifetime gifts to a school that promised to bear his name in
14 perpetuity. That's in the documents. Within months after his
15 death after the will had been admitted, after the time to
16 contest the validity of the will, the school changes its name
17 to the Adelson Campus.

18 We've introduced in the petition allegations that
19 must be for purposes of their motion to dismiss accepted as
20 true. That Milton's bequest was not solely of a gratuitous
21 nature, but was part of a legacy for a specific purpose of a
22 school bearing his name. And the bequest concluded a lifetime
23 of gifts to the academy in consideration for bearing its name.

24 We have alleged and we have included in the petition
25 for declaratory relief. The testimony of Milton Schwartz

1 himself where he says, "On or about August 1989 he donated
2 500,000 to the Hebrew academy in return for which it would
3 guarantee his name in perpetuity".

4 The academy recognized this. And the one name
5 change that occurred during his lifetime occurred in 1993.
6 That was in context of litigation where a new board came
7 onboard, scuttled Milton Schwartz, changed his name. Milton
8 Schwartz sued the academy to gain control of the board.
9 During that period of time he ceased making all distributions
10 to the school.

11 In that lawsuit, even his detractors, members of the
12 second board that Milton considered broke, testified under
13 oath that Milton referred to this school as "my name" because
14 it bore his name.

15 There's sworn testimony from Tamara Lubin who was on
16 the board stating, "Milton Schwartz became elected to the
17 board of trustees of the Hebrew academy after making a large
18 gift to the school."

19 Also in consideration of this grant the school has
20 borne his name since 1989. There's sworn testimony from
21 Michael Novak, another member of the board that says, during
22 this whole flat between the board Tamara Lubin instructed him
23 to return the \$500,000 because the \$500,000 was in
24 consideration for bearing his name.

25 There's acknowledgment from another member of the

1 board, Lenny Schwartzer stating to -- in writing to Milt,
2 "It's your school. It has your name on it forever."

3 After this litigation was resolved in 1996 the
4 academy promised Milt in writing to restore Hebrew Academy's
5 name to Milton I. Schwartz Hebrew Academy. Amend the articles
6 to restore the name to Milton I. Schwartz Hebrew Academy.
7 Restore the marker in front of the academy to identify it as a
8 Milton I. Schwartz Hebrew academy. Change the stationary.
9 Display the full name of the Milton I. Schwartz Hebrew Academy
10 wherever practical.

11 But Hebrew Academy then in 1996 amended its articles
12 and its bylaws to change it to the Milton I. Schwartz Hebrew
13 academy.

14 We allege in our petition we provide evidence that
15 in reliance on those promises Milton resumed making payments.
16 We have a chart at Exhibit 9 of our petition that outlines the
17 payments made. After this promise was made in 1996, in 2004
18 he executes his will as we've already talked about, to the
19 Milton I. Schwartz Hebrew Academy.

20 And made codicils in 2006 where he didn't make that
21 change because the Hebrew academy was still named the Milton
22 I. Schwartz Hebrew Academy.

23 In fact, the school continued to honor his name and
24 be recognized as the Milton I. Schwartz Hebrew Academy until
25 his death despite the generous donations of the Adelsons.

1 In fact the last written document provided to Milt
2 prior to his death was in 2007. It was signed by the Adelsons
3 themselves where they signed, and acknowledged, and
4 represented that despite their generous donations there would
5 be two separate schools. The Milton I. Schwartz Hebrew
6 academy for the elementary students and the Adelson school for
7 the high school. In fact, this is what the signed letter that
8 Mariam and Sheldon Adelson stated.

9 "It is an inspiration to see so many in the
10 community supporting not only the Milton I. Schwartz Hebrew
11 Academy, but also the Adelsons' School. At last year's events
12 we presented plans to create a world class high school
13 adjacent to the Milton I. Schwartz Hebrew Academy.

14 We've now taken all the steps towards reaching this
15 important goal. We're pleased to announce the first
16 graduating class. The Adelson School will begin their studies
17 this fall. It is our privilege to honor Milton with a Dr.
18 Miriam and Sheldon G. Adelson in pursuit of excellence award.
19 With vision and Judaic educational institution for elementary
20 school aged children by creating and continually supporting
21 the Milton I. Schwartz Hebrew academy. The school established
22 in 1998 has since expanded to include preschool through eighth
23 grade."

24 That's Exhibit 11 to our position for declaratory
25 relief.

1 Those facts stated in our petition for declaratory
2 relief must be accepted as true for purposes of the motion to
3 dismiss.

4 Then we get to the issue of Milton passing away.
5 Six months after his death after the will's been admitted to
6 probate, after the three month period has expired to contest
7 any will. And by the way, our motion to construe the will
8 I'll talk about in a minute is not a contest of the will.
9 That is when the Milton I. Schwartz Hebrew Academy breached
10 its promise and changed its name and its bylaws to the Adelson
11 Education Campus.

12 In addition we allege in the petition the school
13 systematically taking steps to erase Milton's name and legacy
14 removing markers at the entrance. Removing the name from the
15 letterhead and business cards. Not operating or holding
16 itself out to the public as anything other than the Adelson
17 Educational Campus.

18 The website does not refer to any part of the school
19 as Milton I. Schwartz Hebrew Academy, not even grades
20 kindergarten through four. The website only lists Adelson
21 Education Campus as lower, middle and upper. The school's
22 even refused --

23 THE COURT: The name's still on the building, isn't it?

24 MR. FREER: The name is on the building, but that doesn't
25 comply with any of the promises made in '96 to which Milton

1 relied on in continuing to make his gifts. But the school's
2 even provided -- refused to provide assurance that that name
3 on the building itself will remain.

4 In short, my client and the connecting trust would
5 love to make the contribution of \$500,000, except they
6 breached his promise. The promise made to Milt. The legacy
7 that he worked for, for 20 years prior to his death, doesn't
8 bear his name. It's as if he didn't exist anymore on all but
9 the one sign on the building that they won't promise to keep
10 up.

11 We have no objection to keeping the high school
12 named Adelson Educational Institute. That's exactly how it
13 was communicated by the Adelsons to Milt prior to his death.
14 But the simple issue is the Adelson Education Campus can't
15 come in here and try to compel a distribution to the Milton I.
16 Schwartz Hebrew Academy when they violated all the promises
17 that they made to Milt during his lifetime.

18 Now we already talked about the ambiguity a little
19 bit. Their contention is there is no ambiguity. As I already
20 pointed out, the gift can only go if you read section 2.3 to
21 the Milton I. Schwartz Hebrew Academy. The discussion of
22 paying off the mortgage and making gifts or directing the gift
23 go to the purpose of funding scholarships. It's not
24 additional charitable intent. It is directing the Milton I.
25 Schwartz Hebrew Academy -- it's limiting how the Milton I.

1 Schwartz Hebrew Academy can use those funds.

2 So it's not a situation where you have a normal Side
3 Pray issues of direction by the testator that says, I want it
4 to go to the American Cancer Society and if for some reason
5 that doesn't work, to any cancer institution. That is not the
6 case. It says it goes to Milton I. Schwartz Hebrew Academy.
7 Here's what the Hebrew Academy can do with the money.

8 So despite arguing that it's clear and unambiguous
9 they're asking this Court to interpret the plain language of
10 the will which says Milton I. Schwartz Hebrew Academy as
11 meaning the Adelson Educational Institute. That's parol
12 evidence. That's question of fact. We are entitled to
13 introduce evidence that shows Milton I. Schwartz intended for
14 that to be his namesake.

15 THE COURT: So since we're here on a motion to dismiss
16 and the motion to dismiss standard being what it is in Nevada,
17 the issue is, do you have a cause of action that there is a
18 potential claim there that you should be allowed to pursue?
19 So you're saying typically that you should be allowed to do
20 the discovery to be able to prove that when Mr. Schwartz said,
21 I'm leaving this money to the Milton I. Schwartz Hebrew
22 Academy paren, (Hebrew Academy), that it must be an entity
23 under that name. And the direction that it be one of two
24 things. Pay off the mortgage. If there's no mortgage,
25 educate Jewish children of Las Vegas.

1 Then you should be allowed to do discovery in order
2 to establish that but for the name Milton I. Schwartz being on
3 the school whether it's on a physical building, or on the
4 school itself, that he would not have made that gift.

5 MR. FREER: That is absolutely correct.

6 THE COURT: So you want to be able to do that discovery
7 and that's your position is you should -- your client should
8 be allowed to proceed with this discovery, that the motion to
9 dismiss is premature because we have this issue of fact. As
10 the Court ultimately is going to have to interpret this
11 language you need to bring all the evidence forward.

12 MR. FREER: Correct.

13 THE COURT: So what have you guys been doing for the last
14 several months? That's why I'm kind of puzzled by why you're
15 back here.

16 MR. FREER: Well, we tried to engage in settlement and
17 actually I don't necessarily know if it's appropriate.

18 THE COURT: No. But I mean, I just -- well, that's my
19 point is why are we back here?

20 MR. FREER: The settlement has failed.

21 THE COURT: Okay.

22 MR. FREER: Settlement negotiations have failed.

23 THE COURT: All right. So we're back to just the issue
24 of should you be able to litigate over this \$500,000, yes or
25 no?

1 MR. FREER: Correct.

2 THE COURT: And the Academy is taking the position that
3 no need, this is simply an action to contest a will. You're
4 not really contesting the will. Nobody's saying that Mr.
5 Schwartz was in any way under any kind of influence here? The
6 issue is when he said Milton I. Schwartz Hebrew Academy did he
7 mean only an entity that was named after him, or did he mean
8 this school that he had worked on, as you had pointed out for
9 something like 20 years, to establish and to make sure it was
10 in good financial condition. And that grew over those years
11 to even include a high school. And he'd play the very
12 valuable and important role too.

13 MR. FREER: And during his lifetime Milton Schwartz
14 acknowledged the Adelsons. The concept that he understood and
15 that he continued to rely on. High school's separate; it'll
16 bear Adelsons' name. That was the understanding Milton
17 operated under.

18 THE COURT: Okay. So you're just saying that this --
19 Because I mean, this isn't something that can be decided
20 today. This is something where we need to do this discovery.
21 And then the school has its own separate petition which is, we
22 think your accounting's bad.

23 MR. FREER: Exactly. And as we -- as from the last
24 hearing I argued that's putting the cart before the horse
25 because if they don't have standing because they don't --

1 aren't able to step in place of the Milton I. Schwartz Hebrew
2 Academy. They have no standing to assert any deficiencies
3 with the accounting.

4 THE COURT: Okay. So until we determine if this gift has
5 lapsed because there is no such thing as Milton I. Schwartz
6 Hebrew Academy and his stated goal that if there's no mortgage
7 on this academy then we need to educate Jewish children will
8 just go away and the Estate keeps the \$500,000. And they've
9 got no right to --

10 MR. FREER: Right.

11 THE COURT: -- contest the Academy.

12 MR. FREER: And then the trust can use that 500,000 for
13 whatever charitable donation it wants to make.

14 THE COURT: Or to pay the beneficiaries, thank you.
15 Okay.

16 MR. FREER: If Your Honor has any additional questions
17 about additional factual issues that you want to raise I can
18 address those, but --

19 MR. COUVILLIER: Your Honor, we're not asking the Court
20 to dismiss their petition on the basis of facts. We're not
21 asking the Court to consider extrinsic evidence. We're asking
22 the Court to apply the law. The will says what the will says.
23 The Milton I. Schwartz Hebrew Academy has changed. The
24 corporate name is now the Dr. Miriam Sheldon Adelson
25 Educational Institute. But the naming is not a condition in

1 the will. There's no language in the will that says that the
2 school shall remain in perpetuity named the Milton I. Schwartz
3 Hebrew Academy.

4 THE COURT: Okay. Well, do you have any case law for me
5 that says well --

6 MR. COUVILLIER: Yes, I do, Your Honor.

7 THE COURT: -- if you've got -- you know, if I want to
8 leave this money to the Gloria Sturman school and it gets
9 bought by Stanford. And so all of a sudden in my will it says
10 well, gosh, Gloria wanted to leave all her money to the Gloria
11 Sturman school but there's no such thing, it's been brought by
12 Stanford, or let's be a little bit more realistic, the
13 University of Phoenix. You know, something that's just, you
14 know, totally off the wall then well, the money still goes
15 there because she really cared about that school. And it's
16 not so much that it had her name, it's that she cared about
17 the school.

18 MR. COUVILLIER: Your Honor --

19 THE COURT: So --

20 MR. COUVILLIER: -- and I'm glad --

21 THE COURT: -- that's their position is that's a question
22 of fact. It's not a question of law; it's a question of fact.
23 Because if you interpret this will when he says Milton I.
24 Schwartz Hebrew Academy does he mean a school named after him
25 or does he simply mean I worked really hard to get a Jewish

1 school up and off the ground and it's there, and it's
2 continuing to grow and during my lifetime it's now got a high
3 school, it's named after some other people, but this is
4 awesome. So the will doesn't say now you can only use this
5 for the portion of the school that's named after me. You
6 can't use it at the high school, you can only educate the
7 little children; not the big children.

8 MR. COUVILLIER: And, Your Honor, I'm glad you asked that
9 question. I'm glad you framed it the same way because several
10 courts have also addressed that issue as a matter of law and
11 we did provide that authority. Most recently we provided that
12 authority at page 11 of our reply brief, Your Honor. I'll
13 direct the Court to the -- one of the cases that we cited
14 there, which was Hardy versus Davis at 148 N.E.2d 805, Your
15 Honor.

16 And in that case a similar situation happened.
17 There was a provision in a will that the purpose of the will
18 was to establish a trust to build and endow the City of
19 Galesburg, Illinois a home for orphan children.

20 There's an additional provision that the home be
21 called the McKnight Industrial Home. However, Your Honor, for
22 various reasons there was an orphanage built. That the -- it
23 was not named the McKnight Industrial Home. And the Court
24 there found that the words that the home be called the
25 McKnight Industrial Home were words merely to designate the

1 mode or manner of carrying out the gift. The gift was to
2 establish an orphanage, a home for orphans.

3 Your Honor, the purpose of the gift here is to make
4 scholarships available for Jewish children.

5 THE COURT: Okay. But the question is in Nevada using --
6 applying Nevada law, which has a very low standard on motions
7 to dismiss. If they have a cause of action that they can
8 arguably assert it involves questions that they can, through
9 discovery, establish. They're allowed to do that kind of
10 discovery.

11 MR. COUVILLIER: Right.

12 THE COURT: And to establish that. Now, that's why I ask
13 what went on. Nobody's told me any new discovery's been going
14 on; simply that there are negotiations. So --

15 MR. COUVILLIER: Yes.

16 THE COURT: -- there's no new evidence, we aren't getting
17 new discovery. So the point is --

18 MR. COUVILLIER: The point is that --

19 THE COURT: -- under Nevada's very low pleading standard,
20 have they stated enough to go forward? Is this -- as a matter
21 of law the Court can rule at this preliminary stage well
22 before any discovery's been done.

23 MR. COUVILLIER: Correct, Your Honor. And we're almost
24 at a similar stage of Frei where they're at a point in
25 preparation where they want to proceed and go forward and

1 introduce evidence. Get all this evidence to introduce as to
2 what is the intent of Mr. Frei, including Mr. Frei who's
3 sitting in the background saying, I want to talk. I want to
4 say what my intent was. And the Court said no. You cannot
5 proceed. You cannot introduce parol evidence. We're at a
6 similar junction, Your Honor. They want to go and do
7 discovery. We're talking about the low standards of Nevada
8 law with respect to pleading, but we're also talking as
9 matters of law. And what they want to do is go forward and
10 say, we want to do discovery regarding his intent. We want to
11 go do discovery what he meant, what happened two decades ago.
12 And what we're saying, Your Honor, is that Frei says no. You
13 must stop.

14 The intent is evident from the will. We're not
15 saying the will is ambiguous. There's no question again the
16 naming of the school, but we've also cited authorities that
17 say it's a matter of law. Your Honor, this happens all the
18 time. Institutions change after the gifter has died. They
19 change, it happens, but they continue to do business, they
20 continue to operate; they continue to fulfill the mission. We
21 are in exactly that same position. And as a matter of law --

22 THE COURT: And so --

23 MR. COUVILLIER: -- the authorities have said it doesn't
24 matter --

25 THE COURT: If the rule said --

1 MR. COUVILLIER: -- that the name change.

2 THE COURT: -- so long as the Milton Schwartz Hebrew
3 Academy continues to bear my name then the scholarship fund
4 bearing my name will be there to educate Jewish children. If
5 it changes for any reason then I want my money to go to a
6 general scholarship fund for Jewish children through, I don't
7 know, pick something, APAC.

8 MR. COUVILLIER: It doesn't say that.

9 THE COURT: And --

10 MR. COUVILLIER: And that's why we're here, Your Honor.
11 It's a small universe. It's a small world. And as a matter
12 of law we believe the Nevada Supreme Court has already weighed
13 in that they can't proceed. We can't do discovery because
14 they can't introduce any of this evidence.

15 THE COURT: Okay. Thank you.

16 MR. FREER: I strongly disagree with a couple of the
17 points made. Number one, you know, the renaming allowing a
18 gift to go to a different charity other than the one that's
19 named in the will is called the Side Pray Doctrine.

20 Now the case he cites to that's what the Court ended
21 up applying the Side Pray Doctrine after it received evidence.
22 There are cases that we could cite innumerable that I didn't
23 have a chance to talk about because they talked about the Side
24 Pray Doctrine in the reply. I haven't had a chance to file
25 and substantive brief. But there are innumerable cases that

1 say the Side Pray Doctrine, those proceedings are factual
2 determinations. You have to introduce evidence and you have
3 to give both sides the opportunity to introduce extrinsic
4 evidence to show why the bequest would or would not be
5 appropriate to the new entity.

6 And that's the way it's been going on in this court
7 for years. When you have three or four charities, when a gift
8 would otherwise lapse and three or four charities come in and
9 say, I'm the successor, or interpret the will to have it go to
10 me, there are evidentiary hearings to determine that. Each
11 party is allowed to bring its evidence in.

12 Now on top of that we've got two issues of fact
13 here. Number -- in addition to the --

14 THE COURT: Okay. Well, let's talk about Frei then in
15 that context because --

16 MR. FREER: Okay, yeah. Let's talk about --

17 THE COURT: -- because looking -- I was looking for --
18 "The Court concluded that extrinsic evidence is admissible to
19 show whether an allegedly testamentary instrument was intended
20 to be effective as a will, however court modified its holding
21 explaining that such evidence is not admissible for the
22 purpose of proving the meaning that the testator attributed to
23 specific provisions of an admitted will." So --

24 MR. FREER: Correct. Here's the issue with Frei though,
25 is if you read in the factual summary the party seeking to

1 introduce intrinsic -- or seeking to introduce the extrinsic
2 evidence admitted that there was no ambiguity in the will.
3 The Supreme Court notes in footnote 3 on page 7 that because
4 of the way the parties pled the action it could have come up
5 with a different holding, but it was limited to what the
6 parties pled. In fact it --

7 THE COURT: So the conclusion ultimately is, "We conclude
8 the District Court did not abuse its discretion in prohibiting
9 Frei from presenting extrinsic evidence with regard to his
10 specific intent in executing the unambiguous documents."

11 MR. FREER: Correct. Because there was no ambiguity.

12 THE COURT: Okay. So your position there is an ambiguity
13 here and that ambiguity is, was this gift intended to be
14 specifically to an entity known as the Milton I. Schwartz
15 Hebrew Academy or can we name it something else --

16 MR. FREER: Correct. And --

17 THE COURT: -- like --

18 MR. FREER: -- what we have here is what's called --

19 THE COURT: -- Red Rock school.

20 MR. FREER: What we have here is called --

21 THE COURT: Some random name.

22 MR. FREER: Correct. What we have here is called a
23 latent ambiguity.

24 THE COURT: Uh-huh, okay.

25 MR. FREER: The words itself in the will don't create any

1 ambiguity. It's there is no entity named the Milton I.
2 Schwartz Hebrew Academy for the gift to go to.

3 THE COURT: Okay, right. So then -- but it seems to me
4 that nevertheless what Frei does seem to imply is that there
5 is some limit on what this kind of evidence can go to.

6 MR. FREER: Right. But if you look at the prior Supreme
7 Court cases that deal with ambiguity.

8 THE COURT: Uh-huh.

9 MR. FREER: You get into Atkins versus Opion. There the
10 Nevada Supreme Court says, we're four corners jurisdiction
11 unless and until there's an ambiguity. Then we allow
12 extrinsic evidence to come in. And then it becomes a factual
13 determination as to what is made and what was the grantor's
14 intent?

15 Here in Frei everybody's saying there's no ambiguity
16 in the will, but --

17 THE COURT: So --

18 MR. FREER: -- we still want to introduce extrinsic
19 evidence.

20 THE COURT: Okay. So your position is that keeping in
21 mind Nevada has very low pleading standards. We're at a
22 motion to dismiss phase, but there is the need to do discovery
23 to determine whether when Mr. Schwartz wrote his will did he
24 really intend -- well --

25 MR. COUVILLIER: We're getting back to Frei, Your Honor.

1 THE COURT: I will get it. Did he really intend that
2 this would only go to the school so long as it kept his name,
3 the Milton -- because it doesn't say that. It doesn't say, so
4 long as the school keeps the name Milton I. Schwartz Hebrew
5 Academy on it, then I'm going to give them my \$500,000.

6 I mean, because what happens if the \$500,000 was
7 given and they said, okay. Thanks, bye-bye. Changing our
8 name now.

9 MR. FREER: Actually there are cases that address that.

10 THE COURT: I mean, here's my --

11 MR. FREER: And we can cite to those. That actually
12 allows you to assert a constructive trust back over those
13 cases.

14 THE COURT: Okay. Well I guess this --

15 MR. FREER: Or back over those gifts.

16 THE COURT: -- this is my problem here. I mean, it seems
17 pretty clear to me what Mr. Schwartz wanted to do. He had a
18 genuine interest demonstrated throughout his life in educating
19 the Jewish children of Nevada in a parochial school setting.
20 He wanted it to be a Hebrew school. That was what was
21 important to him. Because the will -- the way the will read
22 it's the Milton I. Schwartz Hebrew Academy parens (Hebrew
23 Academy). That was what was important to him; it was a Jewish
24 school. Not the Milton I. Schwartz -- he doesn't say the
25 Milton I. Schwartz school, he says the Hebrew Academy.

1 MR. FREER: He says the Milton I. Schwartz Hebrew Academy
2 and then defines that term as Hebrew Academy. And if you look
3 further in the will --

4 THE COURT: Right. And so that's why I'm looking for
5 something that tells me, so long as they keep my name. He may
6 have been satisfied that during his lifetime they had changed
7 their name and that was satisfactory to him. I'm just -- you
8 know, I'm just at a loss as to, you know, what this discovery
9 would show.

10 Because the whole point of -- in Nevada on a motion
11 to dismiss, which is a very low pleading standard, if there's
12 anything possible that you can assert, go forth and see if you
13 can litigate this and figure it out. And the Court has to let
14 you do your discovery.

15 Where for me, the thing that I'm just struggling
16 with here is that Mr. Schwartz had so clearly stated that he
17 wanted Jewish children educated in a Jewish school and that
18 was what was important to him.

19 MR. FREER: Well, and that's what --

20 THE COURT: And that school bore his name and he was
21 really proud of that. And I think it's great. And I
22 appreciate that the trustee and the executor wants to honor
23 his father's memory. And it's important to the family that
24 the role Mr. Schwartz played in establishing that school,
25 which had a fabulous reputation even before the Adelsons got

1 involved. That was really important to that family and it
2 should be honored.

3 And I appreciate the sincere belief that the family
4 has that this is what their dad wanted. He wanted that school
5 to continue, but he wanted it to continue in a way that
6 honored the role he played in its founding and in its health,
7 and security, and stability for the first 20 years of its
8 existence.

9 There's -- I wonder if it would even had been there
10 for the Adelsons to rescue if it hadn't been for Milton
11 Schwartz. I think that's the whole point. And that's what
12 happened in the '90s when they had all their turmoil is he was
13 their angel then. And he was the one who saved them. And
14 they were there for the Adelsons to come along years later and
15 say hey, we're going to step in and we're going turn this into
16 -- take this to the next level.

17 And that's wonderful that they've been there and
18 that they have turned this into the institution that it is
19 today. But Mr. Schwartz, throughout all of it, what he wanted
20 was to educate the Jewish children of Las Vegas in a Jewish
21 school. And I don't -- for me, what I'm struggling to say is,
22 how are you going to, through any kind of parol evidence,
23 prove that he would only have wanted to do that? His only
24 goal in doing that was to have his name on it. That seems
25 entirely contrary to what Mr. Schwartz had done. He was

1 honored. I understand that, he was proud of that, but he
2 didn't educate Jewish children in order to have his name
3 recognized. He educated Jewish children because he wanted
4 Jewish children educated in Jewish school. He didn't want his
5 name. It was about educating the children.

6 Where is there anything that's going to be able to
7 prove through parol evidence that the only reason that
8 mattered was because he was able to have his name recognized
9 in perpetuity. I understand his children what a monument to
10 them. But to me, their dad, what he wanted was children
11 educated.

12 MR. FREER: Okay. We've had limited -- we've had no
13 chance to do discovery and here's three examples of parol
14 evidence. Number one, as soon as they changed his name off he
15 discontinued making any gifts during his lifetime until they
16 put his name back on.

17 THE COURT: But did they only do it because they put his
18 name on, or did they do it because he was unhappy with the
19 administration. There was a lot of turmoil at that school.

20 MR. FREER: There was a lot of turmoil. The lawsuit was
21 resolved I believe in 1993.

22 THE COURT: I mean, if somebody can come in and say the
23 only reason they gave us money was because we were going to
24 recognize him. I mean, to me that just seems -- to me, I
25 don't see that as what Mr. Schwartz was doing, but okay. All

1 right. If you -- so it's your positions --

2 MR. FREER: Number two --

3 THE COURT: -- is that's what discovery could show.

4 MR. FREER: Number two, Tamara Lubin --

5 THE COURT: Uh-huh.

6 MR. FREER: Informed one of the affiants that she was

7 going to return the money because the idea was Milton I.

8 Schwartz would not have given that money if it hadn't been his

9 name recognized.

10 THE COURT: Uh-huh.

11 MR. FREER: Number three, the gift was only made in his

12 will after his name was put back on the building.

13 THE COURT: Right. Ten years after.

14 MR. FREER: And it remained that way until his death.

15 THE COURT: Okay. I just -- you know, I'm trying to

16 understand what kind of discovery you can possibly do that

17 will explain that Mr. Schwartz was primarily concerned about

18 his name. And not primarily motivated by educating Jewish

19 children?

20 But the pleading standard in Nevada is so low that

21 when we get to the issue of is this a question of fact or law

22 that I can -- because essentially what it would be would be a

23 motion for summary judgment at this point in time. I can't

24 say they can't prove a cause of action. For me, my problem

25 here is I'm struggling to understanding what you can -- I

1 mean, it's fact. I understand the facts, but I'm trying to
2 understand how any of that helps us understand what he was
3 doing in his will when he specifically said, I want this to go
4 to support the school. But if the school's -- if the debt's
5 been paid off then that's awesome. I'm still supporting the
6 school, but I'm going to do it in a way that educates Jewish
7 children, because his goal throughout was to educate the
8 Jewish children.

9 THE COURT: I understand --

10 MR. FREER: And I understand the family's wish to have
11 their father's legacy and the role he played in that school
12 maintained in a permanent fashion.

13 But I'm just trying to understand how through
14 discovery you can hope to show that he -- when it doesn't say
15 as the school has released it, it doesn't say so long as you
16 leave my name on there you can have this money. It doesn't
17 say that. And that's the thing I'm struggling with.

18 I understand that because the school's technically
19 not named that there's a question of fact as to whether that's
20 what he would have intended. So you know, I'll deny the
21 motion without prejudice to renew it at a later date, because
22 for me a lot of what you're talking about here to me, it just
23 -- it doesn't show that he only intended to do this if they
24 honored him. The fact that he says if there's no mortgage,
25 then scholarships, to me demonstrates an intent to educate

1 Jewish children.

2 And here's the school, the Jewish school that will
3 educate Jewish children. And I want this -- that's what I
4 want. I want to educate Jewish children.

5 And I think that people are getting hung up on this
6 idea that Mr. Schwartz somehow only wanted to do that if in
7 the course of educating these children his name was somehow
8 prominent.

9 MR. FREER: And I know Your Honor set a mountain for me
10 to climb, but I get to climb the mountain with the evidence.
11 I also get -- we will also have an opportunity to show the
12 Court the differences in this type of naming versus other
13 situations where courts have applied the Side Pray --

14 THE COURT: Right.

15 MR. FREER: -- Doctrine.

16 THE COURT: Okay.

17 MR. COUVILLIER: Your Honor, just one point of
18 consideration for the Court. Is my -- the school's a non-
19 profit. We're expending attorney's fees here is to obtain
20 money for a scholarship for Jewish children.

21 THE COURT: Exactly.

22 MR. COUVILLIER: I have not heard any discovery that
23 needs to be had that hasn't already been introduced. Your
24 Honor, I would submit we -- I would submit to convert the
25 motions for a motion for summary judgment and ask the Court to

1 enter judgment in our favor.

2 THE COURT: Okay.

3 MR. FREER: Well, then at that point I would get to do a
4 56F.

5 THE COURT: Right. So how much time do you think you
6 need? Because --

7 MR. FREER: Probably three months.

8 THE COURT: I was going to say 90 days because that's --
9 it seems to me like it's this really narrow issue. I
10 understand all that went on, all the drama in the 20 years.
11 And they fired this board, and they hire -- they fired Ms.
12 Lubin. I mean, that was an interesting litigation. I can't
13 tell you how many people I knew that were involved in that
14 litigation.

15 I mean, it's just -- if somebody can come in here
16 and convince me that Milton Schwartz only wanted to educate
17 Jewish children so long as he got the credit for it, okay. I
18 mean, I don't think that's what Mr. Schwartz wanted to do. I
19 think he wanted to educate Jewish children. I don't think he
20 wanted his own permanent legacy or he would have put that in
21 there. So but you know, you can do your discovery and we'll
22 -- so it's without prejudice to be renewed but it would
23 probably be renewed I think in a summary judgment.

24 So 90 days for discovery and at the conclusion of
25 that then the school can re-notice their motion.

1 [Court and Clerk confer]

2 THE COURT: So then how much time after that? Like 30
3 days after that? Because if we've got 30 days of discovery
4 and then -- so we'd be looking at the probate calendars in
5 February are the 10th and the 24th.

6 So you know, the 30 days for discovery is January
7 and then to renew -- for the school to renew the motion.

8 What about the accounting? Do you have anything to
9 say about the -- your position is until such time as it's
10 determined in fact they're entitled to this money, this is
11 premature?

12 MR. FREER: And in fact --

13 THE COURT: Okay, thanks.

14 MR. FREER: -- at the last -- yeah. And at the last
15 hearing we had produced the accounting and they've got issues
16 with the accounting, but it's premature.

17 MR. COUVILLIER: Your Honor, at this point I would say
18 we're doing the 90 days. The accounting one is I think at our
19 level of standard to get the accounting. We've proved that we
20 do have standing.

21 THE COURT: Correct.

22 MR. COUVILLIER: We're devisee, it's clearly stated under
23 the statute that we have the standing for it.

24 THE COURT: So you want the same period of time to do
25 discovery --

1 MR. COUVILLIER: Yes, Your Honor.

2 THE COURT: -- on the accounting? Okay, fine.

3 MR. COUVILLIER: Thank you, Your Honor.

4 THE COURT: So we'll do discovery on both the accounting
5 and the issue of is this only going to go to the school if
6 they put his name on it?

7 [Court and Clerk confer]

8 MR. COUVILLIER: We'll prepare the order, Your Honor.

9 THE COURT: Okay.

10 MR. COUVILLIER: Thank you.

11 [Court and Clerk confer]

12 MR. FREER: So do we have a status check. Is that what
13 you were --

14 THE COURT: I think it was just a status check on that
15 because -- yeah. We're -- they'd move to dismiss the
16 Executor's petition. And I'm not dismissing it. I'm saying
17 I'm denying it without prejudice to be renewed after 90 days
18 of discovery.

19 THE CLERK: Okay. So I think like three things on --

20 THE COURT: Right, yeah. The Executor's petition there's
21 actually -- there wasn't anything actually on. I mean, it's
22 -- the motion was to dismiss the Executor's petition.

23 MR. FREER: Right. We had the petition --

24 MR. COUVILLIER: That's correct.

25 MR. FREER: -- on at the last calendar and then we

1 continued that pending the motion to dismiss.

2 THE CLERK: So the status check is February 25th, 9:00.

3 MR. COUVILLIER: Thank you.

4 THE COURT: Okay.

5 MR. FREER: Thank you, Your Honor. Can I get the order
6 run by me please?

7 MR. COUVILLIER: Absolutely. February 25th is the status
8 check?

9 MR. FREER: 24.

10 MR. COUVILLIER: 24, thank you.

11 THE CLERK: No, 25.

12 THE COURT: 25, yeah.

13 MR. FREER: 25th, I had it wrong. I apologize.

14 THE COURT: Tuesday.

15 MR. COUVILLIER: Tuesday February 25th.

16 MR. FREER: Not the first time I've been wrong.

17 MR. COUVILLIER: Thank you.

18 MR. FREER: Thank you, Your Honor.

19 THE COURT: Are you going to do -- is somebody going to
20 do an order?

21 MR. COUVILLIER: Yeah. We'll send it --

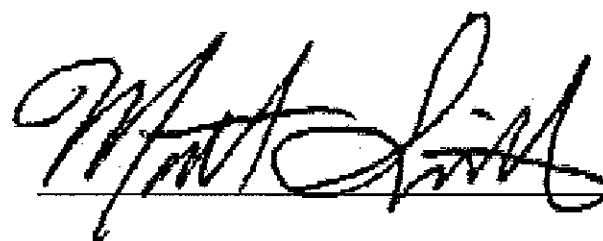
22 MR. FREER: Yeah.

23 MR. COUVILLIER: -- and I'll run it by Mr. Freer.

24 THE COURT: Okay, thanks. Thanks.

25 [Proceedings Concluded at 10:42 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.

A handwritten signature in black ink, appearing to read 'Matthew Smith', is written over a horizontal line.

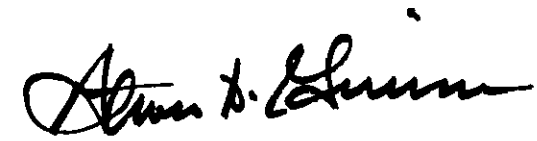
Matthew Smith

Certified Transcriber

21

21

TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

IN THE MATTER OF THE ESTATE OF)
MILTON SCHWARTZ.)
)
)

CASE NO. 07P061300
DEPT NO. XXVI

**TRANSCRIPT OF
PROCEEDING**

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

MOTION TO RECONSIDER: MOTION FOR RECONSIDERATION

TUESDAY, DECEMBER 10, 2013

APPEARANCES:

For the Executor: ALAN FREER, ESQ.

For Adelson Campus: MAXIMILIANO D. COUVILLIER, ESQ.

RECORDED BY KERRY ESPARZA, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

1 **LAS VEGAS, NEVADA, TUESDAY, DECEMBER 10, 2013, 10:11 A.M.**

2 * * * * *

3 MR. FREER: You threw me a curve ball, Your Honor. I
4 thought we were going to do Mosler first, so I've got to pull
5 out the right binder.

6 THE COURT: Oh, okay. I actually thought this one
7 was a little easier, it could go a little faster.

8 MR. FREER: I agree.

9 THE COURT: All right. So it's P061300.

10 MR. FREER: Good morning, Your Honor. Alan Freer on
11 behalf of the executor.

12 MR. COUVILLIER: Good morning, Your Honor. Max
13 Couvillier, on behalf of the Adelson Campus.

14 THE COURT: Okay.

15 MR. FREER: Your Honor, this is just a
16 straightforward request that we've submitted with --
17 requesting the Court to expand its order of November 13th to
18 allow the executor to conduct discovery on all of his claims
19 asserted in his Petition to Declaratory Relief as opposed to
20 just the one issue of the will construction.

21 Paragraph 3(b) of the order limits the discovery to
22 "The executor may conduct discovery as to whether the purpose
23 and condition of the bequest under Section 2.3 of the will was
24 for the school to be named the Milton I. Schwartz Hebrew --
25 the Milton I. Schwartz Academy in perpetuity."

1 We're asking that that be changed, strike that
2 paragraph and insert in its place, "The executor may conduct
3 discovery concerning any and all of his claims asserted in
4 this Petition for Declaratory Relief."

5 The Adelson Campus has given us a bunch of technical
6 arguments, but the bottom line is under the current order
7 executor cannot conduct discovery on all of his claims.
8 Simply put, it's not fair. In fact, it deprives him of due
9 process and his right to a fundamental fair due process rights
10 -- fundamental fairness and for a meaningful opportunity to
11 present his case, because he will be denied the ability to
12 seek discovery and gather evidence as to those other claims.

13 If you want to go through the context of the last
14 hearing, when we were here last we focused primarily -- almost
15 all of the argument at the hearing was with respect to the --
16 the will construction claim. That's the first claim we have
17 in the Petition for Declaratory Relief and it's what really
18 was focused on in the briefing.

19 However, in our Petition for Declaratory Relief, we
20 have also claims for fraud in the inducement, breach of
21 contract, promissory estoppel, mistaken bequest, and
22 revocation of inter vivos gifts during Milton's lifetime.

23 The Court denied the motion to dismiss in its
24 entirety, and they were seeking to dismiss all of our claims.
25 The oral argument focused on the construction of the bequest.

1 If Your Honor will recall, we focused on arguments concerning
2 parol evidence and whether the construction of the will
3 constitutes a will contest for statute of limitations
4 purposes.

5 However, you know, at the end of that, all we talked
6 about was some -- the Court was talking about issues, it was
7 having some concerns with what type of discovery would be
8 done. That was in the context of the will -- of the -- of the
9 construction claim.

10 After the hearing, between October 16th and 18th,
11 competing orders were submitted to the Court. Theirs is the
12 one the Court adopted. We submitted a competing order that
13 allowed for the broader language to allow the executor to
14 conduct all of the discovery related to his petition.

15 We've got -- discovery's presently set to close on
16 January 6th and I'll address that in -- in a minute. What I
17 want to talk about right now is the major difference with
18 respect to the current order and why we can't conduct our
19 discovery, is right now all of the discovery's limited to what
20 Milton intended. And with respect to other claims, that
21 focuses on conduct of the Hebrew Academy, its board members
22 and officers and directors.

23 With respect to the fraudulent representation, breach
24 of contract, and mistake, it was going to focus on promises,
25 representations, discussions, and statements made by the board

1 members to Milton. Also focus on documents such as minutes,
2 correspondence, memoranda, and certain video footage. There
3 was a bunch of video footage that was done in 2007 after Mr.
4 Adelson had made his \$25 million donation, but during which
5 time Mr. Adelson and others admit that there will be two
6 schools, Milton I. Schwartz Hebrew Academy for the lower
7 grades and the Adelson High School.

8 And what, basically, what we need to be able to focus
9 on for those other claims is what we're -- what
10 representations were being made to Milton and what did he
11 understand based on those representations.

12 Without removing the limitation, it just -- we just
13 won't have a meaningful opportunity to conduct discovery with
14 respect --

15 THE COURT: I think there's -- there's one other
16 issue, which was an accounting that the -- that the --

17 MR. FREER: Correct. There --

18 THE COURT: -- school wanted an accounting.

19 MR. FREER: Right.

20 THE COURT: And then the other issue was, because we
21 had to get past this first issue was, did this gift lapse
22 because there's no more -- no such thing as the -- the Milton
23 I. Schwartz Hebrew Academy anymore, was it -- was the gift
24 intended only to go to an institution with that name or was it
25 -- was the purpose the education of Jewish children in a -- in

1 a Jewish school, Jewish academy.

2 MR. FREER: Correct. And that was -- one of the
3 issues, one of the defenses that we had to their petition to
4 compel the distribution was the lapse. But we'd also asserted
5 other claims in the Petition for Declaratory Relief. In
6 essence, offset the \$500,000 on other theories --

7 THE COURT: Uh-huh.

8 MR. FREER: -- such as that are primarily focused on
9 the conduct, representations made by board members, etcetera.
10 For example, a mistaken bequest. There's a whole body of law
11 that basically says where a test dater operates under a
12 mistaken belief for -- in this case, for example, Milton
13 understanding that the Milton I. Schwartz Hebrew Academy be in
14 perpetuity. That was a mistaken belief, whether or not there
15 was a misrepresentation, whether or not there was a contract.
16 There's a whole body of law that says if that is a mistaken
17 belief, you're entitled to revoke the bequest. However, we
18 have -- enable to focus on that mistake, we have to be able to
19 broaden discovery to what representations were made.

20 We've already shown the Court some letters from,
21 like, Lenny Schwartz, saying, Milt, you're right. This is
22 going to be the Milton I. Schwartz Hebrew Academy in
23 perpetuity. So the context of what was being said to Milton
24 and how was it being operated under.

25 THE COURT: Okay.

1 MR. FREER: I do have, you know, they bring up a
2 couple of issues with respect to technical arguments
3 concerning whether or not it's appropriate for this Court to
4 hear this matter substantively. Do you want me to address
5 those or -- I can address those now.

6 The real issue is -- they're talking about were
7 limited in terms of the scope of what this Court can hear.
8 They cite non Nevada authority for that. This Court's pretty
9 -- the Nevada Supreme Court's pretty clear that this Court
10 needs to modify its order, it has the ability to do so.

11 THE COURT: Okay. Thanks.

12 MR. FREER: Thank you.

13 MR. COUVILLIER: Your Honor, I've heard nothing new.
14 Mr. Freer has said nothing new that hasn't been argued to this
15 Court time and again. We were here in June, we were here in
16 October, and we're here now, and we're hearing the same
17 things.

18 The grounds for reconsideration, Your Honor, and I
19 won't belabor those, because you had those two cases ahead of
20 us that were pretty clear. There is new law cited, there is
21 no new facts cited, there is no change in circumstances cited.
22 The executor simply repeats the very same arguments that the
23 Court has already considered. In fact, the precise same
24 arguments the Court considered when it looked at the competing
25 orders on October 18th. There, they submitted the order, they

1 laid out their arguments. The same two points we're hearing
2 today: Limited discovery somehow deprives them of due process
3 and that the Court never intended to limit discovery.

4 Your Honor, we do cite case. It's Nevada law. And
5 it's Moore vs. The City of Las Vegas. And in Moore, the
6 Supreme Court said that the District Court abuses the
7 discretion when it entertains reconsideration, which is what
8 they're asking for now, based on arguments that are previously
9 made. In fact, I -- we -- we quote that on our -- on our
10 brief and it's at 92 Nev. 402, precisely at 405. And I quote,
11 the Nevada Supreme Court says, "We note particularly that the
12 second Motion for Rehearing raised no new issues of law and
13 made reference to no new or additional facts. Under such
14 circumstances, the motion was superfluous and, in our view, it
15 was an abuse of discussion for the Court to entertain it."

16 Your Honor, they claim that the -- that the limiting
17 discovery somehow violates their due process. But they cite
18 absolutely no authority for that, Your Honor. And it's well
19 settled in the MGM case that we cited. And in Nevada Rules of
20 Civil Procedure 26 that the Court has wide discretion to limit
21 discovery and, in fact, courts limit discovery all the time,
22 particularly in these procedural circumstances, where we have
23 a Motion to Dismiss, that the Court invited to --

24 THE COURT: Right. And I --

25 MR. COUVILLIER: -- restate it's Motion for Summary

1 Judgment --

2 THE COURT: -- I think it should be --

3 MR. COUVILLIER: -- after some limited discovery.

4 THE COURT: Yeah. But it needed to be clarified that
5 this -- this wasn't the only discovery that's ever going to be
6 allowed in this case. It's just that we have this one issue
7 before us now, we need to make a determination on this,
8 because it kind of effects how -- how anything else goes
9 forward in the case --

10 MR. COUVILLIER: Precisely.

11 THE COURT: -- in the future. But I -- I'm kind of
12 wondering if -- if maybe the parties are -- have some
13 disagreement that's really more of a discovery dispute more
14 appropriate for the discovery commissioner, which is what's
15 the scope of saying this is relevant to just making this one
16 determination? Because one thing that Mr. Freer talked about,
17 it seemed to me, well, wouldn't that be included in the
18 context of what did Mr. Schwartz intend? And that's his
19 question of was there a mistaken bequest.

20 The whole issue of the name and what was the
21 significance of the name. And what did he -- did Mr. Schwartz
22 intend when he wrote that section of his will, what did he
23 understand he was leaving that money to, what was the
24 institution that he understood he was leaving that money to.

25 So, it seems to me if there's some question as that

1 the parties are limiting or saying we -- we think that this is
2 beyond the scope of what goes to intent, you know, I'm not
3 entirely sure that it -- that it does, although it may not
4 have been couched as such. So, that's why, I guess, to me it
5 seemed more like a discovery dispute. That there's a question
6 as to what are we allowed to do discovery on in this -- in
7 this phase of this litigation and that maybe it's being more
8 narrowly construed on one side than -- than it is on the
9 other.

10 MR. COUVILLIER: Well, Your Honor, the -- the --
11 again, the scope is whether that bequest -- and everything
12 flows from that -- that premise. And that's why Your Honor
13 was correct in -- in limiting it to this phase, because we
14 raised it in this motion, and we're going to renew our -- our
15 motion is a Motion for Summary Judgment. And that is the
16 issue of whether the bequest, the gift to the school, was
17 philanthropic. Did he intend to -- to have that gift go to
18 educate children or was the bequest a -- a perpetual naming
19 rights bequest? And the will is clear --

20 THE COURT: Right. But the -- the --

21 MR. COUVILLIER: -- this will is clear --

22 THE COURT: -- the technical -- the technical cause
23 of action or the legal theory that Mr. Freer just -- just
24 cited to me just a moment ago, he said, Well, there's also a
25 theory of mistaken bequest. I'm like, well, yeah, why

1 wouldn't -- why wouldn't that fall under that same concept?
2 It's the same -- this concept of, just looking at that
3 language, what did -- what was Mr. Schwartz intending to leave
4 money to? What entity, what organization was he intending to
5 leave money to and for what purpose?

6 So, to me that actually seems like it's a pretty
7 broad issue. And I think that it may have been interpreted by
8 the parties, one or the other or maybe both, somewhat more
9 narrowly than -- than I thought it was. Because I -- I viewed
10 this as this is -- this is a preliminary issue, we have to
11 make a determination as to what was intended here before we
12 can even get to -- because we may not need to -- get to these
13 other issues of was there fraud, did he somehow revoke it. I
14 mean, those are subsequent issues. Because first we have to
15 make a determination of what did he intend? What's that
16 language intended to -- to be?

17 MR. COUVILLIER: Yes, Your Honor.

18 THE COURT: Because your -- it was essentially a
19 Motion for Summary Judgment that you're entitled to do some
20 discovery on.

21 MR. COUVILLIER: And -- and we covered this during
22 the last hearing. And, in fact, we raised the issue, the very
23 same issue and had this discussion with the Court. And that
24 was, Your Honor, under the Fray case, Your Honor, that we
25 introduced in Fray vs. Goodsell at 129 Nev, Advance Opinion

1 42, which we cited in the briefs, which the Court considered,
2 which says parol evidence cannot be introduced as evidence of
3 the intent of the will. Because the intent of the will is
4 manifested in the language of the will.

5 THE COURT: Right. Well, and that -- that's the --
6 what I'm saying is I'm just not entirely clear if what we've
7 had here is a problem with discovery and this is really more
8 of a discovery problem. Because several theories under which
9 the estate was seeking to say, you know, we don't have to pay
10 this money, there are -- they're -- they all go to the same
11 key fact, which is what did Milton Schwartz intend to do when
12 he wrote the will that said I leave this \$500,000 to pay off
13 the debt on the Milton I. Schwartz Hebrew Academy, or the
14 alternative, to the education of Jewish children, at -- then
15 the scholarship's there. There's no -- if there's no more
16 issue, it'll go to the scholarships. But there are several
17 legal theories under which that's relevant.

18 The -- the mistaken bequest, whether it has lapsed,
19 there's several theories. And so I'm just wondering if what
20 we have here is a problem where, with respect to discovery
21 questions, one party is saying that's got nothing to do with
22 what the Court said we could -- could do our discovery on, and
23 the other party is saying, Well, then, you know, you're tying
24 our hands. And it seems to me that it's really more of a
25 question -- it's a discovery dispute. The discovery

1 commissioner has to say what's relevant to that issue with
2 respect to discovery, because I think it's pretty clear what
3 the Court was trying to do here, which is to say let's first
4 address this issue.

5 Is the motion being sought here, you know, it's a
6 Motion to Dismiss, can we get beyond Motion to Dismiss stage,
7 do some discovery and let's see if that is, in fact -- because
8 it may be that is has lapsed or that it was mistaken or that
9 it's no longer valid. Before we get into all this other about
10 did they, you know, was there fraud, did they mislead him, did
11 he do something to revoke it with, we first have to decide
12 what did he try -- what was he trying to do with his bequest.

13 And to me, it -- I was just curious as to if the
14 problem had been, you know, discovery objections to things
15 that might fall within the scope of that, in which this is
16 more appropriately directed to the discovery commissioner to
17 determine is that within the scope of what the Court's looking
18 for, which I -- you know, maybe that's really what this is,
19 it's a discovery dispute. Needs to go to the discovery
20 commissioner.

21 MR. COUVILLIER: And -- and, Your Honor, that could
22 very well be the case. But as I heard from Your Honor, the --
23 the only two conditions of the will that are clear and they're
24 undisputed is that the gift go to pay the mortgage. Well, Mr.
25 Schwartz --

1 THE COURT: Well, I'm not going to --

2 MR. COUVILLIER: -- on the night of the executor came
3 up to pay it --

4 THE COURT: You know, we're not going to rule on that
5 today, Mr. Couvillier.

6 MR. COUVILLIER: Right. Right.

7 THE COURT: I'm just saying what's the scope of what
8 discovery was intended to be. The scope of discovery was
9 intended to go to what did Mr. Schwartz mean. There are a lot
10 of legal theories that effect that claim that is being made by
11 the estate. And the -- the claim by the Academy saying pay us
12 our money, that might fall to that end. And that's all I
13 wanted to do at this point and I thought it was pretty clear
14 was let's look first at this issue. Because there are other
15 issues. And we may or may not get past this first issue.
16 This first issue may be determinant. It may not be. But we
17 have to -- we have to address this issue before we can move
18 on. So let's do that and then make a determination, is the
19 case over or are we going to go forward?

20 And so to me this seems like this is a discovery
21 issue. This is a discovery dispute. Is something that the
22 Academy's refusing to allow discovery or says it's outside the
23 scope of discovery really included within this overall concept
24 of what did Mr. Schwartz mean when he wrote his will. What
25 did he understand, what was his intent. And so, I mean, I

1 just -- to me, this seems like this is just a dispute, it's a
2 discovery dispute.

3 MR. COUVILLIER: Okay.

4 THE COURT: About the scope of what the Court
5 intended. Because there -- I think the order's pretty clear.
6 I think it was very clear what we were -- throughout the
7 transcript of the hearing, we were talking very specifically
8 what was his intent, what could he mean, what was in the
9 existence. So, you know, it's -- it's actually -- I know that
10 we're focused on one issue, but it's a pretty big issue. And
11 it's a pretty broad issue. And it's not just -- I don't know
12 what the discovery is that's been objected to, but, you know,
13 so I can't rule on all that. It seems to me that my intent
14 was clear, it's -- if there's a dispute as to what one side
15 thinks the other side's entitled to. And that's -- goes to
16 the discovery commissioner.

17 MR. COUVILLIER: Okay. And in -- then -- then, Your
18 Honor, I appreciate that understanding. Because when I
19 received a Motion for Reconsideration, the points that were
20 laid out on there about to what discovery was needed or what
21 the interpretation was, we're going well beyond this issue,
22 Your Honor, we're talking about fraud.

23 THE COURT: And -- it --

24 MR. COUVILLIER: And so it --

25 THE COURT: -- it may well be. And that's why I said

1 it seems to me at that point in time it goes to the discovery
2 commissioner to say, Yeah, that's outside the scope, or no,
3 that's relevant to this underlying issue, which is what did
4 Mr. Schwartz mean.

5 MR. COUVILLIER: Okay. All right.

6 THE COURT: Thank you.

7 MR. COUVILLIER: Then -- then it seems -- then --
8 does the Court have any other questions for me, then?

9 THE COURT: I don't have any questions for you, no.

10 MR. COUVILLIER: Or is the Court just intending to --
11 to dismiss this and have it be set with the discovery
12 commissioner should a discovery dispute arise?

13 THE COURT: Well, I -- I'm not inclined to reconsider
14 my order. I think the order is pretty clear. I -- I see here
15 that we probably have a dispute between the respective sides
16 as to what's encompassed within this order as appropriate
17 discovery. And I think that that, at that point in time, it's
18 more appropriate to go to the -- to the discovery commissioner
19 and say -- because, you know, the whole purpose was if we were
20 going to -- because this is a limited amount of money, and
21 because this is a charitable institution and a trust, we
22 didn't want to waste the assets of these -- of these entities
23 by litigating this, if the whole thing hinges on this
24 interpretation and it's all going to be over once we do that.
25 And we don't need to get to all these other issues that maybe

1 going to be a lot more complicated.

2 That was my hope and my intention was that we could
3 focus on this one issue, which I will tell you, I don't -- I
4 don't view it as a real narrow issue. I mean, it -- it's --
5 it's pretty broad. What did -- what did he intend? Well, you
6 have to go over what he knew, what the circumstances were at
7 the time. You know, but we're just not going to litigate
8 fraud. We're not going to litigate, you know, did he revoke
9 it at a later time.

10 We -- we have to first determine what it was he
11 intended. So that's what I thought we were focusing on, and
12 maybe I was less clear than I should have been or maybe the
13 parties -- maybe this is just -- because it didn't -- it
14 looked to me like it was -- it said -- and I'm not -- I
15 shouldn't -- by saying it's just a discovery dispute, I do not
16 mean to belittle it or in any way diminish the importance to
17 the respective parties. But it does seem to me that what this
18 is, is a dispute between the parties as to what is intended or
19 encompassed within the scope of that -- of that order.

20 Because I think the order's pretty clear, I think the
21 transcript's pretty clear. We're going to stage our
22 discovery, because we get past this first question, there are
23 other issues. But until we get past this first question, you
24 know, why would we expend all this time and money and
25 resources if it's ultimately determined no, Mr. Schwartz, this

1 was contingent on naming it after him, and you didn't name it
2 after him, so you're out of luck. Before we waste a lot of
3 money of a charitable institution, let's just decide that
4 first.

5 MR. COUVILLIER: Thank you, Your Honor.

6 THE COURT: Because we don't know.

7 MR. FREER: All right. And I appreciate Your Honor
8 discussing this as predicate issue. I understood that we were
9 going towards a discovery cutoff with respect to all of the
10 issues that were in our petition for declaratory relief. So I
11 appreciate Your Honor --

12 THE COURT: No.

13 MR. FREER: -- addressing that. The one issue I
14 wanted to address -- actually, there are two. First, the --
15 this issue as to what he intended is not a predicate issue as
16 to all of our claims in the petition for declaratory relief.
17 We've also requested that there be a recoupment of the
18 lifetime gifts that he made since 1996. That's something that
19 we put in there. We're also going to be amending our petition
20 on the breach of contract claim for specific performance as to
21 getting the naming rights back to the elementary school.

22 And so those claims, whether or not what he intended
23 by the will, those claims actually would operate independent
24 of what was in the will. And so what I need to know at this
25 point is are we going to go on those other claims that are

1 separate and apart, or are we solely focused on the one issue
2 here with the will and the construction.

3 THE COURT: And maybe this is just something that we
4 see more often in civil cases and it's kind of unique to
5 probate, which is somebody comes in very early on in the
6 Motion to Dismiss and it's this key legal defense. Like,
7 well, let's do discovery on that, find out if I can grant a
8 Motion to Dismiss, because it's a pretty high standard to
9 grant a Motion to Dismiss in Nevada. And then we can move on
10 with the rest of the case. Let's not waste our time if, you
11 know, you've got the wrong person on your side. If you've got
12 the wrong company, you know, those kinds of things.

13 That's what I thought we were doing here, is we were
14 going to focus on this first question of is there even
15 anything to fight over? Does the -- does the -- does the
16 school even have a claim here or do we just need to move on.
17 Because I don't know, wouldn't the rest of that be an A claim?
18 It would be kind of like an A case, wouldn't it? I don't
19 know.

20 MR. FREER: Well, what we --

21 THE COURT: I mean, that would really probably be a
22 probate matter.

23 MR. FREER: Well, this was actually the neat thing
24 about the 2011 amendments to the particular declaratory relief
25 statutes, is it allowed in all sorts of supplemental relief

1 permitted in the declaratory relief sections. So when we get
2 into NRS 30.60, etcetera, we've got the ability now in context
3 of the declaratory relief to have everything adjudicated. And
4 it just makes sense, because --

5 THE COURT: Right.

6 MR. FREER: -- you've got, you know, their --

7 THE COURT: Well, in the long term, I may end up
8 saving myself in time and the parties in money. But I just
9 viewed this as why would we expend the funds of a charitable
10 institution if, in the end, it's going to be determined they
11 don't have a claim. They're chasing money that they've got no
12 claim to. Mr. Schwartz intended this to be a gift in exchange
13 for -- for naming rights in perpetuity. Sorry, you're out of
14 luck. Let's just end this now. That's what I thought we were
15 looking at is, you know, is it, in fact, appropriate to
16 dismiss this claim because you're just not going to go
17 anywhere with it. You're -- you're not going to be
18 successful, let's just stop this now, don't waste funds and
19 the charitable institution chasing money that you've got no
20 claim to. That was my concern.

21 If, on the other hand, it's like, just pay them the
22 money, you know, let's make that determination early on before
23 we waste a lot of other funds of the estate fighting to keep
24 money that they've got no claim to. It -- do you see what I'm
25 -- what I'm saying? It just -- to me, we just needed to make

1 this first determination. Because then you have all these
2 other -- these other issues to fight. Was this, in fact,
3 revoked? Did -- you know, should he get back the -- the other
4 funds that were paid? Those were all other issues that need
5 to be determined. But I don't know.

6 To me, it just seemed that we needed to first focus
7 on this, get this determined so we could move -- or if there's
8 a question of fact, it may or may not be -- it may not be a
9 summary judgment. It may or may not -- see what I'm saying?
10 It's --

11 MR. FREER: No. I understand.

12 THE COURT: I --

13 MR. FREER: I just wanted --

14 THE COURT: I did one thing, I never said that I'm
15 dismissing all those other claims, you have to focus on this,
16 this is the only thing that matters. That was not my intent.
17 My intent was we need to look at this, really, really focus on
18 this, and let's get this determined first. Because otherwise,
19 we're just going to keep fighting this battle as we go through
20 the rest of this. We just first need to make sure that
21 there's anything there to fight over.

22 MR. FREER: Okay. So just to be sure, we've got this
23 staged, we're focusing on his intent and belief at this point.
24 If we get down to the other issues and the other claims after
25 you want this predicate issue --

1 THE COURT: Right. And that's just because the way
2 it was -- it was originally framed was a Motion to Dismiss
3 this claim. You know, you -- they've got no claim. Well, you
4 know, or -- or I guess maybe it was the counterweight, you --
5 you -- we've got a claim that you've got pay us this money.
6 And the defense was, no, we don't, because there's no such
7 institution. We have to make that determination first before
8 we go forward, because otherwise, you know, this is -- it
9 seems to, you know, I realize in the scope of the money that's
10 involved here, that this \$500,000 is not huge. I mean, the
11 Adelson Campus is the beneficiary of a \$20-some million gift,
12 \$500,000 may not seem like a whole lot. But it is. You know.
13 And if we're -- if we're fighting, doing -- if we're going
14 all-out on this, fighting over this -- this amount of money,
15 what's the -- what's the net benefit to -- to-- either to the
16 trust or -- or to this charitable institution that just wants
17 to educate these kids?

18 MR. FREER: Right. And on the same token, you know,
19 the issues raised on the petition are very important to the
20 estate in terms of --

21 THE COURT: Absolutely.

22 MR. FREER: -- what they believe were appropriate.

23 THE COURT: Sure.

24 MR. FREER: We do have another issue and you asked
25 about whether or not discovery had been objected to yet.

1 Discovery on our end was sent out very limited. The 90 days
2 that you had initially provided was based on 90 days running
3 from the October 8th hearing. I hadn't done discovery yet,
4 because I didn't want to be in violation of an order that I
5 felt limited my discovery. And so what we've got now is
6 discovery's ending on January 6th to the extent that, you
7 know, you want us to submit discovery and have them object and
8 go be in front of the discovery commissioner on the expanded
9 scope, even if it's more towards, you know, what was his
10 understanding or intent. I need discovery continued on that
11 and I need to have the order amended.

12 THE COURT: Mr. Couvillier, any -- because I do think
13 that if there's disputes about what kind of information is to
14 be provided or discovery that has to be done, it's going to
15 take some time to go to the discovery commissioner, maybe 90
16 days from today's date. Because I just want to give a date,
17 like when we can -- if you're going to re-file, however you're
18 going to re-file it. We have, like a -- we have a plan for
19 how we're going to go forward. Because, apparently, there's
20 going to be all these other issues. Okay. Fine. We'll get
21 to those. But we still have to deal first with this issue,
22 how do we interpret this will.

23 MR. COUVILLIER: Sure, Your Honor. And -- and I
24 recognize the conundrum. I -- I would -- I would submit to
25 the Court that maybe a shorter period and perhaps a status

1 check so that we can ensure that this is moving along. I
2 mean, we filed our petition back in June. No real discovery
3 was done challenging those issues. And now we're, you know,
4 towards the end of the year and we're extending discovery
5 again. So, you know, I would submit to the Court to maybe a
6 shorter window, maybe 45 days.

7 THE COURT: Okay. All right. Well, yeah, I'm going
8 to -- because of the holidays, I'm going to do 90 --

9 MR. COUVILLIER: Okay.

10 THE COURT: -- 90 days from today's date. And just
11 to make it clear that -- that this is a -- this first stage,
12 which is addressing this basic issue can't, you know, because
13 we could -- it was in the context of a Motion to Dismiss.
14 That's the standard, that's a very high standard under Nevada
15 law. And, you know, if -- if it's successful, we would be not
16 making the best use of the funds, it's protracted litigation.

17 But I think the dispute's about what's the scope of
18 that, probably are more appropriate for the discovery
19 commissioner to make a determination. So let's...

20 MR. FREER: At this point, would Your Honor like me
21 to do a motion clarifying -- or an order clarifying --

22 THE COURT: An order clarifying that the -- I'm
23 denying the Motion to Reconsider, but clarifying that it was
24 intended to be a phase of discovery focused on the issues
25 raised in that original Motion to Dismiss. And then they'll

1 -- then we'll address at a later date what other discovery is
2 necessary, if any. But until we get past this first motion,
3 we really can't address that. So we need to do discovery,
4 really, to the issues raised.

5 MR. COUVILLIER: And --

6 THE COURT: And --

7 MR. COUVILLIER: Sorry.

8 THE COURT: -- if there are disputes between the
9 parties as to what the scope of that is, it's more appropriate
10 to the discovery commissioner. But given the confusion about
11 it, I'll extend my 90 days, it'll start from today's date.

12 MR. COUVILLIER: And just to clarify, we're not
13 changing the substance of the order.

14 THE COURT: No.

15 MR. COUVILLIER: Or the identification of that issue,
16 we're just saying --

17 THE COURT: No.

18 MR. COUVILLIER: -- the things that -- that would be
19 related to that issue could be discovered.

20 THE COURT: Reasonably related to -- to what was
21 encompassed in that -- the issue raised in the Motion to
22 Dismiss. That, you know, that's the kind of an issue that --
23 that really requires some -- some factual discovery. And it's
24 because if it's -- if it's found that there's no claim to this
25 money, then we would have just wasted a lot of time on a lot

1 of other issues.

2 MR. COUVILLIER: Right. But, Your Honor, what I --
3 what I want to forestall is there's issues that were raised,
4 several underlying issues that were raised through the Motions
5 to Dismiss.

6 THE COURT: Right. I'm just looking at --

7 MR. COUVILLIER: The issue about the -- the naming --

8 THE COURT: Right. The naming.

9 MR. COUVILLIER: -- the naming issue that's
10 identified in the order.

11 THE COURT: The naming. That -- that's in that key
12 provision in the will. But the concept of how that's written,
13 leaving the money to the Milton I. Schwartz Hebrew Academy for
14 a Hebrew academy, for the mortgage and/or --

15 MR. COUVILLIER: To educate Jewish children.

16 THE COURT: -- if there's no mortgage, then to --
17 then to scholarships. That whole issue of what's that mean?

18 MR. COUVILLIER: Okay. Thank you, Your Honor.

19 MR. FREER: I just have the -- we are going to be
20 withdrawing our defense about lack of funds in the estate,
21 which engendered their accounting --

22 THE COURT: Right.

23 MR. FREER: -- request. We're hoping that
24 streamlines a lot of this process. Talked to Mr. Couvillier
25 about that. But basically the trust is willing to -- to

1 basically post him a separate account the \$500,000. So I
2 think that's going to dispense with the accounting --

3 THE COURT: Segregate the funds. Okay.

4 MR. FREER: -- phase of the discovery. I'll get back
5 with him.

6 THE COURT: Sure.

7 MR. FREER: But if not, if we have a disagreement,
8 unfortunately, I'll have to file a --

9 THE COURT: Because that was the other -- that was
10 the other issue that discovery was allowed on, if you resolve
11 it in that fashion, by just saying, We're going to protect
12 your funds.

13 MR. FREER: It seems to me it foregoes, you know,
14 they got the ultimate relief they're looking for by way of
15 accounting is making sure that that money is there.

16 THE COURT: Yeah.

17 MR. COUVILLIER: Well, Your Honor, the executor does
18 have some fiduciary duties.

19 THE COURT: Sure.

20 MR. COUVILLIER: So we do like to reserve our --

21 THE COURT: Sure.

22 MR. COUVILLIER: -- our efforts and our rights to --
23 to the accounting.

24 THE COURT: That -- okay, that --

25 MR. COUVILLIER: And I will speak with Mr. Freer

1 about it after I -- I speak with my client.

2 THE COURT: Sure.

3 MR. COUVILLIER: But I want to state on the record
4 that there are some fiduciary issues and that we don't
5 necessarily agree that whatever Mr. Freer and I discuss
6 afterwards I think would moot it, unless we come to an
7 agreement.

8 THE COURT: Okay. All right. Well, I'm not making
9 any rulings with respect to discovery at this point. Other
10 just that those were the issues that were addressed. There
11 were two. And if you can resolve the accounting issue
12 differently, then -- and you don't need to do any discovery on
13 accounting, then that's great.

14 MR. COUVILLIER: Thank you, Your Honor.

15 THE CLERK: So you have until March 11th is the
16 [indiscernible].

17 THE COURT: It'd be March 11th, then, Mr. Freer.
18 That's our new cutoff.

19 MR. FREER: Okay.

20 THE COURT: So if you put that in your order.
21 Instruct Mr. Couvillier before you send it over, please.

22 MR. COUVILLIER: He does. He always does.

23 MR. FREER: Your Honor, if I may ask your indulgence
24 on just one other issue. My client wasn't at the last
25 hearing, but he read the transcript. And I think he just

1 wanted a peace of mind for Your Honor. You'd made some
2 statements that basically kind of indicated you had a little
3 bit of extra judicial knowledge about what Mr. Schwartz
4 intended or what he wanted with respect --

5 THE COURT: Yeah. I was going to say --

6 MR. FREER: -- to the schools.

7 THE COURT: -- I think everybody knew about that
8 litigation.

9 MR. FREER: Okay. So I just wanted to make sure you
10 were either talking about that or hypothesizing. But we
11 wanted to make sure that there wasn't any --

12 THE COURT: I was not involved in any of it.

13 MR. FREER: Okay.

14 THE COURT: I just said pretty much everybody I knew
15 was.

16 MR. FREER: Okay.

17 THE COURT: I -- I knew people on the board, I knew
18 people who were representing people on the board. I mean, it
19 was --

20 MR. FREER: It was widespread.

21 THE COURT: -- pretty well known in the --

22 MR. FREER: I think Mark was involved in that.

23 THE COURT: -- back in the day.

24 MR. FREER: He was involved in the defamation of
25 Tamar.

1 THE COURT: Yeah. I would -- I had no -- I had no
2 clients in that litigation, I have no personal knowledge about
3 it. It just seemed like everybody I knew was involved.

4 MR. FREER: Okay. I appreciate that, Your Honor.

5 THE COURT: Okay.

6 MR. COUVILLIER: Thank you, Your Honor.

7 MR. FREER: Thank you. I guess I will stick around
8 for the next hearing.

9 THE COURT: Okay.

10 (Proceeding concluded at 10:44 a.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**KARR REPORTING, INC.
Aurora, Colorado**


KIMBERLY LAWSON

22

22

Discovery Commissioner Hearing Re: Estate of Milton I. Schwartz January 29, 2014

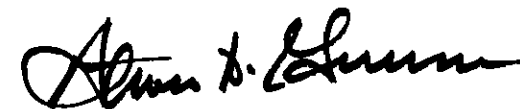
Audio Transcription

Page 1

Electronically Filed
02/06/2014 03:47:40 PM

DISTRICT COURT

CLARK COUNTY, NEVADA



CLERK OF THE COURT

In the matter of the)
Estate of MILTON I. SCHWARTZ,) Case No. 07P061300
Deceased.) Dept. No. XXVI/
Probate

**CERTIFIED
COPY**

** AUDIO TRANSCRIPTION **

DISCOVERY COMMISSIONER HEARING

Held on January 29, 2014

At 9:00 a.m.

Transcribed by Kathy Hoffman

1 APPEARANCES

2

3

4

5 For Addison Campus

6 MAXIMILLIANO COUVILLIER, ESQ.

Lionel Sawyer & Collins

7 300 South Fourth Street, Suite 1700

Las Vegas, Nevada 89101

8 (702) 383-8888

9

For the Estate and Respondent, A Jonathan Schwartz

10

ALAN D. FREER, ESQ.

11 Solomon Dwiggin & Freer

9060 West Cheyenne Avenue

12 Las Vegas, Nevada 89129

(702) 853-5483

13

14

15

16

17

18

19

20

21

22

23

24

25

Discovery Commissioner Hearing Re: Estate of Milton I. Schwartz January 29, 2014
Audio Transcription

Page 3

1 PROCEEDINGS

2

3 THE COURT: Good morning. Please be
4 seated.

5 Estate of Milton Schwartz.

6 MR. COUVILLIER: Good morning,
7 Your Honor. Max Couvillier on behalf of the
8 Addison Campus.

9 MR. FREER: Good morning, Your Honor.
10 Allen Freer on behalf of the estate. And the
11 executor Jonathan Schwartz is with me.

12 THE COURT: Good morning. Okay. This is
13 the Beneficiary's Motion to Compel discovery from
14 the executor and third parties regarding accounting
15 of the estate.

16 I have read through everything including
17 the opposition. Does anyone have anything to add?

18 MR. COUVILLIER: Yes, Your Honor. There
19 was -- I wanted to address whether the Court had
20 some issues regarding -- there's also a pending
21 motion by the executor to modify the Court's order.
22 And so I just wanted to run through that if I may.

23 THE COURT: Certainly.

24 MR. COUVILLIER: Your Honor, on
25 November 12th we received an order from the

Discovery Commissioner Hearing Re: Estate of Milton I. Schwartz January 29, 2014
Audio Transcription

Page 4

1 District Court allowing us to conduct discovery on
2 the accounting filed by the estate and for the
3 estate to conduct certain discovery.

4 Disputes arose regarding that order,
5 which the Court determined to be discovery
6 disputes. And after the Court resolved them, we
7 have good-faith belief the District Court intended
8 for all future disputes regarding that discovery
9 scope under that order to be held before the
10 Discovery Commissioner.

11 And we believe that the transcript of
12 that December 10th hearing supports our belief,
13 Your Honor. That's Exhibit 14 in our motion.

14 THE COURT: So let's assume I have
15 jurisdiction to hear this and we're not going to be
16 troubled by that.

17 MR. COUVILLIER: Okay.

18 THE COURT: Do you have anything else to
19 add?

20 MR. COUVILLIER: Your Honor, unless the
21 Court has any questions, we submit on our motion.

22 THE COURT: Thank you.

23 I do have questions for the estate and, I
24 guess, the trustee or the representative.

25 MR. FREER: Yes, Your Honor.

1 THE COURT: Has the 500,000 that's at
2 issue been put into a blocked account yet?

3 MR. FREER: No, Your Honor. Based on the
4 motion, it was a tender basically requesting that
5 the Court upon tender of that -- basically we went
6 to the Court and said we'll put this in a blocked
7 account --

8 THE COURT: Okay.

9 MR. FREER: -- if the Court will moot all
10 this. Otherwise, there's really no need for us to
11 tie up the money at this point.

12 THE COURT: But let me ask this question.

13 MR. FREER: Sure.

14 THE COURT: Independent of it being in a
15 block account, do you have the money to pay the
16 beneficiary, I put that in quotes, if, in fact,
17 it's determined that that is the proper course of
18 action?

19 MR. FREER: The answer to that is yes.
20 The trust has the ability to satisfy that
21 obligation. It's not obligated to pay the debts of
22 the estate, but he has the authority to pay the
23 debts of the estate. And that's what we offered to
24 try to just get to the bottom of this and -- oh, go
25 ahead.

1 THE COURT: I'm sorry. Is part of the
2 blocked account issue going to be before the judge
3 in February?

4 MR. FREER: Correct.

5 THE COURT: Okay. I've read through
6 everything. I've looked at the discovery that has
7 been requested, and I'm denying the motion without
8 prejudice.

9 There is absolutely no purpose in
10 allowing this type of invasive discovery if the
11 estate can satisfy the obligation, which the
12 representation in court and will be in my minutes,
13 is that it can.

14 So with that being said, there is no more
15 that the Academy is entitled to other than the
16 bequest of 500,000 should that have been the intent
17 of the gentleman leaving the money to the Academy.

18 MR. COUVILLIER: Your Honor, if I may
19 address that.

20 The sum that has been offered is not a
21 sum that's entirely going to make us whole. At
22 this point the estate should have paid out that
23 benefit over seven years ago, Your Honor. And
24 given the way the estate has been handled, we
25 believe that the \$500,000 will make us whole.

1 I mean, we're entitled to interest on the
2 loss of the use of that money. Kids have not
3 received a scholarship for the past seven years.
4 And, you know, at this point we have had to file a
5 motion --

6 THE COURT: It's a bequest. It's a gift.
7 Sorry. Don't buy it. Save it for the District
8 Court judge.

9 MR. COUVILLIER: Thank you, Your Honor.

10 THE COURT: Motion is denied. I'll deny
11 it without prejudice in case something changes in
12 the future where maybe the accounting at some point
13 becomes relevant.

14 I appreciate the briefs, and everybody
15 did an excellent job. I just -- you know, usually
16 I try not to say too much, but let's not lose sight
17 of what this is all about.

18 MR. COUVILLIER: Thank you, Your Honor.

19 THE COURT: This is a bigger issue than
20 the three of you sitting up here in this room. And
21 maybe we need to be concerned about what the intent
22 of Mr. Schwartz was. Maybe that's where we need to
23 focus our discovery.

24 MR. COUVILLIER: Thank you, Your Honor.

25 MR. FREER: Thank you, Your Honor.

1 THE COURT: All right. Thank you.

2 MR. FREER: I'll prepare the report and
3 recommendation and run it by counsel.

4 THE COURT: Yes. Perfect. I need it in
5 ten days.

6 THE CLERK: (Inaudible) check is
7 February 28th at 11:00.

8 THE COURT: And that's only for
9 Mr. Freer.

10 MR. FREER: If I don't have a report and
11 recommendation.

12 THE COURT: Yes. But you're going to.

13 MR. FREER: I will always.

14 THE COURT: And I am confident that
15 counsel will assist you in making that happen.

16 MR. FREER: Mr. Couvillier and I have a
17 great working relationship.

18 MR. COUVILLIER: He's very diligent.

19 THE COURT: I anticipate that you do.

20 Thank you very much.

21 MR. COUVILLIER: Thank you, Your Honor.

22 MR. FREER: Thank you, Your Honor.

23 THE COURT: Nice job.

24 (Whereupon, the recording ended.)

25

1 TRANSCRIBER'S CERTIFICATE

2

3 STATE OF NEVADA)
4) ss.
COUNTY OF CLARK)

5

6 I, Kathy Hoffman, do hereby certify:
7 That I listened to the recording of a
Discovery Commissioner Hearing in the above
entitled case held January 29, 2014, at 9:00 a.m.;

8

9 That I thereafter transcribed said
recording into a typewritten transcript and that
the typewritten transcript of said proceedings are
a complete, true, and accurate transcription of
said recording to the best of my ability to hear
and understand the recording.

11

12 I further certify that I am not a
relative or employee of counsel involved in said
action, nor a person financially interested in said
action.

14

15


KATHY HOFFMAN, TRANSCRIBER

16

17

18

19

20

21

22

23

24

25

Discovery Commissioner Hearing Re: Estate of Milton I. Schwartz January 29, 2014
 Audio Transcription

Page 1

A	block 5:15 blocked 5:2,6 6:2 bottom 5:24 briefs 7:14 buy 7:7	D	focus 7:23 Fourth 2:7 Freer 2:10,11 3:9 3:10 4:25 5:3,9 5:13,19 6:4 7:25 8:2,9,10,13,16,22 further 9:11 future 4:8 7:12	involved 9:12 issue 5:2 6:2 7:19 issues 3:20
\$500,000 6:25 a.m 1:16 9:7 ability 5:20 9:10 absolutely 6:9 Academy 6:15,17 account 5:2,7,15 6:2 accounting 3:14 4:2 7:12 accurate 9:9 action 5:18 9:12,13 add 3:17 4:19 Addison 2:5 3:8 address 3:19 6:19 ago 6:23 ahead 5:25 ALAN 2:10 Allen 3:10 allowing 4:1 6:10 answer 5:19 anticipate 8:19 APPEARANCES 2:1 appreciate 7:14 arose 4:4 assist 8:15 assume 4:14 AUDIO 1:13 authority 5:22 Avenue 2:11	C Campus 2:5 3:8 case 1:7 7:11 9:7 certain 4:3 Certainly 3:23 CERTIFICATE 9:1 certify 9:5,11 changes 7:11 check 8:6 Cheyenne 2:11 CLARK 1:2 9:4 CLERK 8:6 Collins 2:6 Commissioner 1:14 4:10 9:6 Compel 3:13 complete 9:9 concerned 7:21 conduct 4:1,3 confident 8:14 Correct 6:4 counsel 8:3,15 9:12 COUNTY 1:2 9:4 course 5:17 court 1:1 3:3,12,19 3:23 4:1,5,6,7,14 4:18,21,22 5:1,5 5:6,8,9,12,14 6:1 6:5,12 7:6,8,10 7:19 8:1,4,8,12 8:14,19,23 Court's 3:21 Couvillier 2:6 3:6 3:7,18,24 4:17,20 6:18 7:9,18,24 8:16,18,21	denied 7:10 deny 7:10 denying 6:7 Dept 1:8 determined 4:5 5:17 diligent 8:18 discovery 1:14 3:13 4:1,3,5,8,10 6:6,10 7:23 9:6 disputes 4:4,6,8 District 1:1 4:1,7 7:7 Dwiggins 2:11	G gentleman 6:17 gift 7:6 given 6:24 go 5:24 going 4:15 6:2,21 8:12 Good 3:3,6,9,12 good-faith 4:7 great 8:17 guess 4:24	J January 1:15 9:7 job 7:15 8:23 Jonathan 2:9 3:11 judge 6:2 7:8 jurisdiction 4:15
B		E	H	K
Based 5:3 basically 5:4,5 behalf 3:7,10 belief 4:7,12 believe 4:11 6:25 beneficiary 5:16 Beneficiary's 3:13 benefit 6:23 bequest 6:16 7:6 best 9:10 bigger 7:19		employee 9:12 ended 8:24 entirely 6:21 entitled 6:15 7:1 9:7 ESQ 2:6,10 estate 1:8 2:9 3:5 3:10,15 4:2,3,23 5:22,23 6:11,22 6:24 everybody 7:14 excellent 7:15 executor 3:11,14 3:21 Exhibit 4:13	handled 6:24 happen 8:15 hear 4:15 9:10 hearing 1:14 4:12 9:6 held 1:15 4:9 9:7 Hoffman 1:25 9:5 9:15 Honor 3:7,9,18,24 4:13,20,25 5:3 6:18,23 7:9,18,24 7:25 8:21,22	Kathy 1:25 9:5,15 Kids 7:2 know 7:4,15
		F	I	L
		fact 5:16 February 6:3 8:7 file 7:4 filed 4:2 financially 9:12	Inaudible 8:6 including 3:16 Independent 5:14 intended 4:7 intent 6:16 7:21 interest 7:1 interested 9:12 invasive 6:10	Las 2:7,12 leaving 6:17 let's 4:14 7:16 Lionel 2:6 listened 9:6 looked 6:6 lose 7:16 loss 7:2
			M	M
				making 8:15 matter 1:7 Max 3:7 MAXIMILLIA... 2:6 mean 7:1 Milton 1:8 3:5 minutes 6:12 modify 3:21 money 5:11,15 6:17 7:2 moot 5:9 morning 3:3,6,9,12 motion 3:13,21 4:13,21 5:4 6:7 7:5,10
				N

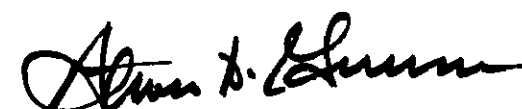
Discovery Commissioner Hearing Re: Estate of Milton I. Schwartz January 29, 2014
 Audio Transcription

Page 2

need 5:10 7:21,22 8:4 Nevada 1:2 2:7,12 9:3 Nice 8:23 November 3:25	read 3:16 6:5 really 5:10 received 3:25 7:3 recommendation 8:3,11 recording 8:24 9:6 9:8,10,10 regarding 3:14,20 4:4,8 relationship 8:17 relative 9:12 relevant 7:13 report 8:2,10 representation 6:12 representative 4:24 requested 6:7 requesting 5:4 resolved 4:6 Respondent 2:9 right 8:1 room 7:20 run 3:22 8:3	Suite 2:7 sum 6:20,21 supports 4:12 Sure 5:13	we're 4:15 7:1 went 5:5 West 2:11 working 8:17	9 9:00 1:16 9:7 9060 2:11
O		T	X	
obligated 5:21 obligation 5:21 6:11 offered 5:23 6:20 oh 5:24 Okay 3:12 4:17 5:8 6:5 opposition 3:17 order 3:21,25 4:4,9		ten 8:5 tender 5:4,5 Thank 4:22 7:9,18 7:24,25 8:1,20,21 8:22 third 3:14 three 7:20 tie 5:11 transcribed 1:25 9:8 TRANSCRIBER 9:15 TRANSCRIBE... 9:1 transcript 4:11 9:8 9:9 transcription 1:13 9:9 troubled 4:16 true 9:9 trust 5:20 trustee 4:24 try 5:24 7:16 type 6:10 typewritten 9:8,9	XXVI 1:8 Y years 6:23 7:3 Z 0 07P061300 1:7 1 10th 4:12 11:00 8:7 12th 3:25 14 4:13 1700 2:7 2 2014 1:15 9:7 28th 8:7 29 1:15 9:7 3 300 2:7 383-8888 2:8 4 5 500,000 5:1 6:16 6 7 702 2:8,12 8 853-5483 2:12 89101 2:7 89129 2:12	
P	S	U		
paid 6:22 part 6:1 parties 3:14 pay 5:15,21,22 pending 3:20 Perfect 8:4 person 9:12 Please 3:3 point 5:11 6:22 7:4 7:12 prejudice 6:8 7:11 prepare 8:2 Probate 1:9 proceedings 3:1 9:9 proper 5:17 purpose 6:9 put 5:2,6,16	satisfy 5:20 6:11 Save 7:7 Sawyer 2:6 scholarship 7:3 Schwartz 1:8 2:9 3:5,11 7:22 scope 4:9 seated 3:4 seven 6:23 7:3 sight 7:16 sitting 7:20 Solomon 2:11 sorry 6:1 7:7 South 2:7 ss 9:3 STATE 9:3 Street 2:7 submit 4:21	V		
Q		W		
question 5:12 questions 4:21,23 quotes 5:16		wanted 3:19,22 way 6:24 we'll 5:6		
R				

23

23



CLERK OF THE COURT

1 **NEOJ**
Elizabeth Brickfield (SBN #6236)
2 ebrickfield@lionelsawyer.com
Maximiliano D. Couvillier, III (SBN #7661)
3 mcouvillier@lionelsawyer.com
Ketan D. Bhirud (SBN #10515)
4 kbhirud@lionelsawyer.com
LIONEL SAWYER & COLLINS
5 1700 Bank of America Plaza
300 South Fourth Street, Suite 1700
6 Las Vegas, Nevada 89101
(702) 383-8888 (Telephone)
7 (702) 383-8845 (Fax)

8 Attorneys for The Dr. Miriam and
Sheldon G. Adelson Educational Institute

9
10 **DISTRICT COURT**

11 Clark COUNTY, NEVADA

12 In the Matter of the Estate of
13
14 **MILTON I. SCHWARTZ,**
15
16 Deceased


Case No. P061300
Dept. No.: 26/Probate

**NOTICE OF ENTRY OF ORDER
DENYING MOTION FOR
RECONSIDERATION AND RE-SETTING
DISCOVERY DEADLINE**

17 PLEASE TAKE NOTICE that an **ORDER DENYING MOTION FOR**
18 **RECONSIDERATION AND RE-SETTING DISCOVERY DEADLINE** was entered on this
19 Court's docket on February 25, 2014. A copy of the same is attached.

20 Dated: February 27, 2014.

21 LIONEL SAWYER & COLLINS

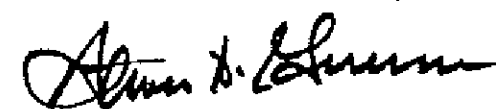
22
23 By: 
24 Elizabeth Brickfield (SBN #6236)
Maximiliano D. Couvillier, III (SBN #7661)
25 Ketan D. Bhirud (SBN #10515)

26 *Attorneys for The Dr. Miriam and Sheldon G.*
27 *Adelson Educational Institute*
28

- 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
- 26
- 27
- 28

000682

Electronically Filed
02/25/2014 02:57:51 PM



CLERK OF THE COURT

1 **ORDR**

2 Elizabeth Brickfield (SBN #6236)
ebrickfield@lionelsawyer.com
3 Maximiliano D. Couvillier, III (SBN #7661)
mcouvillier@lionelsawyer.com
4 Ketan D. Bhirud (SBN #10515)
kbhirud@lionelsawyer.com
LIONEL SAWYER & COLLINS
5 1700 Bank of America Plaza
300 South Fourth Street, Suite 1700
6 Las Vegas, Nevada 89101
(702) 383-8888 (Telephone)
7 (702) 383-8845 (Fax)

8 Attorneys for The Dr. Miriam and
Sheldon G. Adelson Educational Institute

9 **DISTRICT COURT**

10 **Clark COUNTY, NEVADA**

11
12 In the Matter of the Estate of
13 **MILTON I. SCHWARTZ,**
14 **Deceased**

Case No. P061300
Dept. No.: 26/Probate

15 **ORDER DENYING MOTION FOR**
RECONSIDERATION AND RE-SETTING
DISCOVERY DEADLINE

16
17 On December 10, 2013, the Court heard the following matters: Motion for
18 Reconsideration of this Court's Order Denying Adelson Campus' Motion to Dismiss
19 Executor's Petition for Declaratory Relief Without Prejudice & Allowing Limited Discovery
20 entered November 12, 2013 ("11/12/13 Order"). Maximiliano D. Couvillier III appeared on
21 behalf of the Adelson Campus and Alan D. Freer appeared on behalf of the Executor A.
22 Jonathan Schwartz ("Executor").
23

24 The Court has reviewed the record, all papers on file, considered the argument of
25 counsel, and good cause appearing, it is **ORDERED** as follows:

26 I. The Estate's Motion for Reconsideration is **GRANTED IN PART** with respect to
27 Estate's request to re-set discovery. The discovery deadline under the 11/12/13 Order is
28

1 extended to March 11, 2014;

2 2. The Estate's Motion for Reconsideration is DENIED in all other regards;

3 3. The Court states that its 11/12/13 Order was intended to bifurcate discovery into
4 phases and clarifies that the Estate may conduct discovery relevant to the preliminary issue of
5 whether the purpose and condition of the bequest under Section 2.3 of the Will was for the
6 school to be named "The Milton I. Schwarz Hebrew Academy" in perpetuity and raised its
7 First Claim for relief;
8

9 4. At this time, the Estate may not conduct discovery regarding its Second, Third,
10 Fourth, Fifth and Sixth Claims for Relief until further Court order; and

11 5. Any questions regarding the scope of discovery under the 11/12/13 Order shall be
12 addressed by the Discovery Commissioner.
13

14 DATED this 13 day of February, 2014.

15 
16 DISTRICT COURT JUDGE

17
18 Respectfully submitted by

19 LIONEL SAWYER & COLLINS

20
21 By: 

22 Elizabeth Bielefeld, Esq.

23 Maximiliano D. Couvillier, III, Esq.

24 1700 Bank of America Plaza

25 300 South Fourth Street, Suite 1700

26 Las Vegas, NV 89101

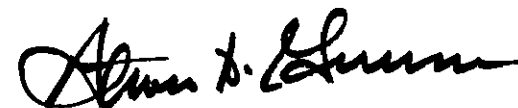
27 Attorneys for The Dr. Miriam and Sheldon G.

28 Adelson Educational Institute

24

24

1 **NEOJ**
2 MARK A. SOLOMON, ESQ.
3 Nevada State Bar No. 00418
4 msolomon@sdfnvlaw.com
5 ALAN D. FREER, ESQ.
6 Nevada State Bar No. 7706
7 afreer@sdfnvlaw.com
8 STEVEN E. HOLLINGWORTH, ESQ.
9 Nevada State Bar No. 7753
10 shollingworth@sdfnvlaw.com
11 SOLOMON DWIGGINS & FREER
12 9060 West Cheyenne Avenue
13 Las Vegas, Nevada 89129
14 Telephone: (702) 853-5483
15 Facsimile: (702) 853-5485



CLERK OF THE COURT

16 Attorneys for A. Jonathan Schwartz

10 **DISTRICT COURT**

11 **COUNTY OF CLARK, NEVADA**

12 In the Matter of the Estate of
13 MILTON I. SCHWARTZ,
14 Deceased.

Case No. P061300

Dept. No.: 26/Probate

Date of Hearing: February 11, 2014

Time of Hearing: 9:00 a.m.

17 **NOTICE OF ENTRY OF ORDER**
18 **REGARDING DEPOSIT OF FUNDS IN BLOCKED**
19 **ACCOUNT AT MORGAN STANLEY**

20 PLEASE TAKE NOTICE that an ORDER REGARDING DEPOSIT OF FUNDS IN BLOCKED
21 ACCOUNT AT MORGAN STANLEY was entered in the above-entitled matter on the 6th day of

22 ///

23 ///

24 ///

25 ///

26 ///

1 March, 2014, a true and correct coy of which is attached hereto.

2 DATED THIS 7th day of March, 2014.

3
4
5 **SOLOMON DWIGGINS & FREER, LTD**

6
7 By 

8 MARK A. SOLOMON, ESQ.,
9 ALAN D. FREER, ESQ.,
10 STEVEN E. HOLLINGWORTH, ESQ.
11 9060 West Cheyenne Avenue
12 Las Vegas, NV 89129
13 *Attorneys for Jonathan Schwartz*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
989000
SOLOMON DWIGGINS & FREER, LTD.
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TEL: (702) 853-5483 | FAX: (702) 853-5485

///

///

///

///

///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

8

9

0

0

1

1

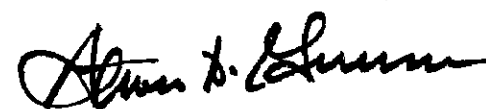
2

9060 WEST CHEYENNE AVENUE

9060 WEST CHEYENNE AVENUE

LAS VEGAS, NEVADA 89129

TEL: (702) 853-5483 | FAX: (702) 853-5485

1 ORDER**2 MARK A. SOLOMON, ESQ.****3 Nevada State Bar No. 00418****4 msolomon@sdfnvlaw.com****5 ALAN D. FREER, ESQ.****6 Nevada State Bar No. 7706****7 afreer@sdfnvlaw.com****8 STEVEN E. HOLLINGWORTH, ESQ.****9 Nevada State Bar No. 7753****10 shollingworth@sdfnvlaw.com****11 SOLOMON DWIGGINS & FREER****12 9060 West Cheyenne Avenue****13 Las Vegas, Nevada 89129****14 Telephone: (702) 853-5483****15 Facsimile: (702) 853-5485****16 Attorneys for A. Jonathan Schwartz**Electronically Filed
03/06/2014 02:21:33 PM

CLERK OF THE COURT

DISTRICT COURT**COUNTY OF CLARK, NEVADA**

In the Matter of the Estate of

Case No. P061300

MILTON I. SCHWARTZ,

Dept. No.: 26/Probate

Deceased.

Date of Hearing: February 11, 2014

Time of Hearing: 9:00 a.m.

ORDER REGARDING DEPOSIT OF FUNDS IN BLOCKED ACCOUNT AT MORGAN STANLEY

On February 11, 2014, the Court heard the Estate's Motion to Modify November 12, 2013, Order and/or Limit Discovery, and The Dr. Miriam and Sheldon G. Adelson Educational Institute's Ex Parte Countermotion to Continue the February 11, 2014, Hearing to Allow the Discovery Commissioner to Resolve the Discovery Dispute. Maximiliano D. Couvillier III appeared on behalf of The Dr. Miriam and Sheldon G. Adelson Educational Institute ("Adelson Campus"), and Alan D. Freer appeared on behalf of the Executor A. Jonathan Schwartz ("Executor").

The Court has reviewed the record, all papers on file, considered the argument of counsel, and good cause appearing, it is ORDERED as follows:

IT IS HEREBY ORDERED that the Court authorizes the Executor to accept the benefit of Five Hundred Thousand Dollars (\$500,000.00) in securities, which has been represented to be in the form

1 of investment grade bonds from the Milton I. Schwartz Revocable Family Trust u/a/d January 29,
 2 1986, as amended, and shall take all reasonable steps within his power as Executor of the Estate to
 3 facilitate deposit of said bonds by no later than February 27, 2014, in a blocked account at Morgan
 4 Stanley in the name of the Milton I. Schwartz Revocable Family Trust u/a/d January 29, 1986, as
 5 amended fbo The Estate of Milton I. Schwartz, A. Jonathan Schwartz, Executor, pending further order
 6 of this Court;

7
 8 **IT IS FURTHER ORDERED** that the Court authorizes and directs Morgan Stanley to open
 9 said blocked account in the above referenced name and to block and/or freeze such account until
 10 further Order of this Court, except that the Court authorizes Morgan Stanley and/or the investment
 11 manager, Kenneth Malamed, to sell any investment grade bonds only if they expire, term out or
 12 become due during the pendency of the litigation, in which case, Morgan Stanley and/or the
 13 investment manager, Kenneth Malamed, shall reinvest such proceeds to purchase bonds of equal or
 14 better credit rating so that the funds will continue to earn income; and

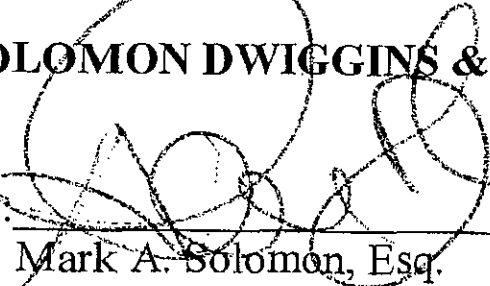
15 **IT IS FURTHER ORDERED** that Morgan Stanley shall send the Executor and the Adelson
 16 Campus quarterly statements of said blocked account during the pendency of this litigation or pending
 17 further order of Court. The statements may be sent to the Adelson Campus c/o Maximiliano D.
 18 Couvillier III, Esq., 300 So. Fourth St., Suite 1700, Las Vegas, Nevada 89101.

19 DATED this 14th day of March, 2014.

20
 21
 22 
 DISTRICT COURT JUDGE


23 Respectfully submitted,

24 **SOLOMON DWIGGINS & FREER**

25
 26 By: 
 27 Mark A. Solomon, Esq.
 Alan D. Freer, Esq.

28 Approved As To Form And Content:

LIONEL SAWYER & COLLINS

By: 
 Elizabeth Brickfield, Esq.
 Maximiliano D. Couvillier, III, Esq.

1 Steven E. Hollingworth, Esq.
2 9060 West Cheyenne Avenue
3 Las Vegas, Nevada 89129
4 Attorneys for Respondent, A. Jonathan Schwartz

1700 Bank of America Plaza
300 South Fourth Street, Suite 1700
Las Vegas, NV 89101
Attorneys for The Dr. Miriam and Sheldon
G. Adelson Educational Institute

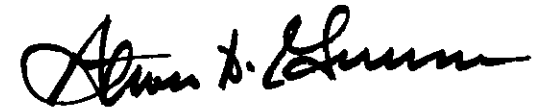
069000

SOLOMON DWIGGINS & FREER, LTD.
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TEL: (702) 853-5483 | FAX: (702) 853-5485

000690

25

25



CLERK OF THE COURT

1 **NEOJ**
2 MARK A. SOLOMON, ESQ.
3 Nevada State Bar No. 00418
4 msolomon@sdfnlaw.com
5 ALAN D. FREER, ESQ.
6 Nevada State Bar No. 7706
7 afreer@sdfnlaw.com
8 STEVEN E. HOLLINGWORTH, ESQ.
9 Nevada State Bar No. 7753
10 shollingworth@sdfnlaw.com
11 SOLOMON DWIGGINS & FREER
12 9060 West Cheyenne Avenue
13 Las Vegas, Nevada 89129
14 Telephone: (702) 853-5483
15 Facsimile: (702) 853-5485

16 Attorneys for A. Jonathan Schwartz

17 **DISTRICT COURT**

18 **COUNTY OF CLARK, NEVADA**

19 In the Matter of the Estate of
20 MILTON I. SCHWARTZ,
21 Deceased.

22 Case No. P061300

23 Dept. No.: 26/Probate

24 Date of Hearing: February 11, 2014
25 Time of Hearing: 9:00 a.m.

26 **NOTICE OF ENTRY OF ORDER**

27 **ORDER GRANTING MOTION TO MODIFY NOVEMBER 12, 2013, ORDER AND/OR LIMIT**
28 **DISCOVERY; AND ORDER DENYING THE DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL**
29 **INSTITUTE'S EX PARTE APPLICATION (WITH NOTICE) COUNTERMOTION TO CONTINUE THE**
30 **FEBRUARY 11, 2014, HEARING TO ALLOW DISCOVERY COMMISSIONER TO RESOLVE DISCOVERY**
31 **DISPUTE**

32 PLEASE TAKE NOTICE that an ORDER GRANTING MOTION TO MODIFY NOVEMBER
33 12, 2013, ORDER AND/OR LIMIT DISCOVERY; AND ORDER DENYING THE DR. MIRIAM
34 AND SHELDON G. ADELSON EDUCATIONAL INSTITUTE'S EX PARTE APPLICATION
35 (WITH NOTICE) COUNTERMOTION TO CONTINUE THE FEBRUARY 11, 2014, HEARING TO
36 ALLOW DISCOVERY COMMISSIONER TO RESOLVE DISCOVERY DISPUTE was entered in

37 ///

1 the above-entitled matter on the 6th day of March, 2014, a true and correct copy of which is attached
 2 hereto.

3 DATED THIS 7th day of March, 2014.

4
 5
 6 **SOLOMON DWIGGINS & FREER, LTD**

7
 8 By 

9 MARK A. SOLOMON, ESQ.,
 10 ALAN D. FREER, ESQ.,
 11 STEVEN E. HOLLINGWORTH, ESQ.
 12 9060 West Cheyenne Avenue
 13 Las Vegas, NV 89129
 14 *Attorneys for Jonathan Schwartz*

15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

SOLOMON DWIGGINS & FREER, LTD.
 9060 WEST CHEYENNE AVENUE
 LAS VEGAS, NEVADA 89129
 TEL: (702) 853-5483 | FAX: (702) 853-5485

///

///

///

///

///

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of March, I mailed a true and correct copy of the above and foregoing NOTICE OF ENTRY OF ORDER GRANTING MOTION TO MODIFY NOVEMBER 12, 2013, ORDER AND/OR LIMIT DISCOVERY; AND ORDER DENYING THE DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL INSTITUTE'S EX PARTE APPLICATION (WITH NOTICE) COUNTERMOTION TO CONTINUE THE FEBRUARY 11, 2014, HEARING TO ALLOW DISCOVERY COMMISSIONER TO RESOLVE DISCOVERY DISPUTE by placing the same in a sealed envelope upon which first class postage was fully prepaid thereon, addressed as follows:

LIONEL SAWYER & COLLINS

Elizabeth Brickfield, Esq.

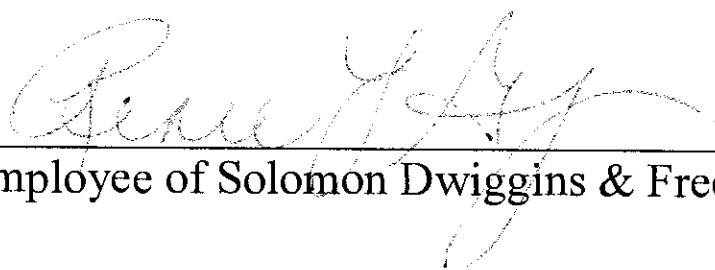
Maximiliano D. Couvillier, III, Esq.

1700 Bank of America Plaza

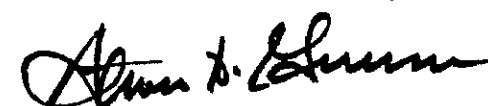
300 South Fourth Street, Suite 1700

Las Vegas, NV 89101

Attorneys for The Dr. Miriam and Sheldon G. Adelson Educational Institute


An Employee of Solomon Dwiggin & Freer, LTD.

Electronically Filed
03/06/2014 02:19:33 PM



CLERK OF THE COURT

ORDR

MARK A. SOLOMON, ESQ.

Nevada State Bar No. 00418

msolomon@sdfnvlaw.com

ALAN D. FREER, ESQ.

Nevada State Bar No. 7706

afreer@sdfnvlaw.com

STEVEN E. HOLLINGWORTH, ESQ.

Nevada State Bar No. 7753

shollingworth@sdfnvlaw.com

SOLOMON DWIGGINS & FREER

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

Telephone: (702) 853-5483

Facsimile: (702) 853-5485

Attorneys for A. Jonathan Schwartz

DISTRICT COURT

COUNTY OF CLARK, NEVADA

In the Matter of the Estate of

Case No. P061300

MILTON I. SCHWARTZ,

Dept. No.: 26/Probate

Deceased.

Date of Hearing: February 11, 2014

Time of Hearing: 9:00 a.m.

**ORDER GRANTING MOTION TO MODIFY NOVEMBER 12, 2013, ORDER AND/OR LIMIT
DISCOVERY; AND ORDER DENYING THE DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL
INSTITUTE'S EX PARTE APPLICATION (WITH NOTICE) COUNTERMOTION TO CONTINUE THE
FEBRUARY 11, 2014, HEARING TO ALLOW DISCOVERY COMMISSIONER TO RESOLVE DISCOVERY
DISPUTE**

On February 11, 2014, the Court heard the Estate's Motion to Modify November 12, 2013, Order and/or Limit Discovery, and The Dr. Miriam and Sheldon G. Adelson Educational Institute's Ex Parte Countermotion to Continue the February 11, 2014, Hearing to Allow the Discovery Commissioner to Resolve the Discovery Dispute. Maximiliano D. Couvillier III appeared on behalf of The Dr. Miriam and Sheldon G. Adelson Educational Institute ("Adelson Campus"), and Alan D. Freer appeared on behalf of the Executor A. Jonathan Schwartz ("Executor").

After review of the briefs, consideration of the argument from Counsel, and for good cause shown:

1 The Court makes the following findings:

2 1. The Adelson Campus' discovery regarding the Accounting was invasive because the
3 Estate offered to deposit Five Hundred Thousand Dollars (\$500,000.00) in securities, which has been
4 represented to be in the form of investment grade bonds from the Milton I. Schwartz Revocable
5 Family Trust u/a/d January 29, 1986, as amended, into a blocked account to guarantee and satisfy the
6 distribution of the disputed bequest under Section 2.3 of the Last Will & Testament of Milton I.
7 Schwartz (dated February 5, 2004) if ordered by the Court.

8 2. That upon the Estate's receipt of Five Hundred Thousand Dollars (\$500,000.00) in
9 investment grade bonds and establishment of a blocked account renders the Adelson Campus'
10 discovery on the Accounting and the Estate's ability to fund the disputed bequest moot.

11 Good cause being found,

12 **IT IS HEREBY ORDERED** that the Estate's Motion to Modify November 12, 2013, Order
13 and/or Limit Discovery is hereby GRANTED;

14 **IT IS FURTHER ORDERED** that the Adelson Campus' Ex Parte Countermotion to Continue
15 the February 11, 2014, Hearing to Allow the Discovery Commissioner to Resolve the Discovery
16 Dispute is hereby DENIED;

17 **IT IS FURTHER ORDERED** that, at this time, the Adelson Campus is not entitled to conduct
18 any additional discovery regarding the Accounting upon the Milton I. Schwartz Revocable Family
19 Trust u/a/d January 29, 1986, as amended, depositing Five Hundred Thousand Dollars (\$500,000.00)
20 in investment grade bonds into a blocked account for the benefit of The Estate of Milton I. Schwartz,
21 A. Jonathan Schwartz, Executor, pending further order of this Court;

22 **IT IS FURTHER ORDERED** that the Executor A. Jonathan Schwartz shall take all reasonable
23 steps within his power as Executor of the Estate to facilitate deposit of Five Hundred Thousand
24 Dollars (\$500,000.00) in investment grade bonds into a blocked account for the benefit of The Estate
25 of Milton I. Schwartz by no later than February 27, 2014; and
26
27
28

1 **IT IS FURTHER ORDERED** that this Court is denying the Parties attorneys' fees and costs at
 2 this time, but will re-examine the same after a determination has been made regarding the disputed
 3 bequest.

4 DATED this 10th day of March, 2014.

5
 6 
 7 DISTRICT COURT JUDGE
 8 

9 Respectfully submitted,

10 **SOLOMON DWIGGINS & FREER**

11 By: 
 12

13 Mark A. Solomon, Esq.
 14 Alan D. Freer, Esq.
 15 Steven E. Hollingworth, Esq.
 16 9060 West Cheyenne Avenue
 17 Las Vegas, Nevada 89129
 18 Attorneys for Respondent, A. Jonathan Schwartz

Approved As To Form And Content:

LIONEL SAWYER & COLLINS

19 By: 
 20

21 Elizabeth Brickfield, Esq.
 22 Maximiliano D. Couvillier, III, Esq.
 23 1700 Bank of America Plaza
 24 300 South Fourth Street, Suite 1700
 25 Las Vegas, NV 89101
 26 Attorneys for The Dr. Miriam and Sheldon
 27 G. Adelson Educational Institute
 28

969000
 SOLOMON DWIGGINS & FREER, LTD.
 9060 WEST CHEYENNE AVENUE
 LAS VEGAS, NEVADA 89129
 TEL: (702) 853-5483 | FAX: (702) 853-5485

26

26



CLERK OF THE COURT

0054
Elizabeth Brickfield (SBN #6236)
ebrickfield@lionelsawyer.com
Maximiliano D. Couvillier, III (SBN #7661)
mcouvillier@lionelsawyer.com
Ketan D. Bhirud (SBN #10515)
kbhirud@lionelsawyer.com
LIONEL SAWYER & COLLINS
300 South Fourth Street, Suite 1700
Las Vegas, Nevada 89101
(702) 383-8888 (Telephone) / (702) 383-8845 (Fax)

*Attorneys for The Dr. Miriam and
Sheldon G. Adelson Educational Institute*

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of

MILTON I. SCHWARTZ,

Deceased

Case No. P061300
Dept. No.: 26/Probate

Date: July 8, 2014
Time: 9:00 am

**ADELSON CAMPUS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

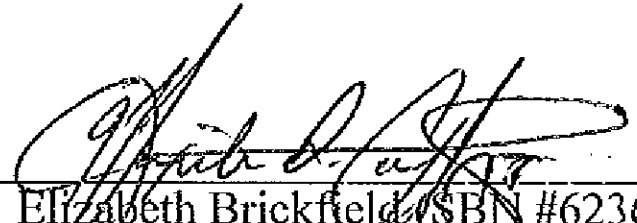
The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus"), devisee of the Will of the Decedent in the above-referenced Estate, by and through its attorneys, Elizabeth Brickfield, Maximiliano D. Couvillier III, and Ketan D. Bhirud, of the law firm of Lionel Sawyer & Collins, moves for partial summary judgment:

1. That the purpose and condition of the \$500,000 bequest of Section 2.3 of Milton I. Schwartz's Last Will and Testament ("Will") dated February 5, 2004, is for "the purpose of funding scholarships to educate Jewish children only";
2. That Section 2.3 of the Will and the \$500,000 bequest thereunder do not contain or state any naming rights provision and condition for the school or the corporation which runs the school to be named "The Milton I. Schwartz Hebrew Academy" in perpetuity; and
3. Ordering Morgan Stanley Smith Barney to release to the Adelson Campus the

1 \$500,000 which the Executor, Jonathan Schwartz ("Executor"), deposited in a
 2 blocked account to guarantee the distribution of the bequest upon the
 3 determination requested here.

4 This Motion is made and based on all of the pleadings on file, the Court record, the
 5 Memorandum of Points and Authorities that follow and the arguments of counsel at any hearing
 6 convened to consider this motion.

8 LIONEL SAWYER & COLLINS

9
 10 By: 
 Elizabeth Brickfield (SBN #6236)
 Maximiliano D. Couvillier, III (SBN #7661)
 Ketan D. Bhirud (SBN #10515)

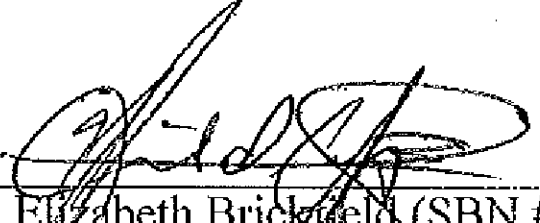
11
 12
 13 *Attorneys for The Dr. Miriam and Sheldon G.
 Adelson Educational Institute*

14
 15
 16 **NOTICE OF MOTION**

17 **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

18 PLEASE TAKE NOTICE that the foregoing motion for partial summary judgment will
 19 be heard before the above-captioned Court on the 8th day of JULY, 2014, at 9:00 a.m., or as
 20 soon thereafter as counsel may be heard.

21 LIONEL SAWYER & COLLINS

22
 23 By: 
 Elizabeth Brickfield (SBN #6236)
 Maximiliano D. Couvillier, III (SBN #7661)
 Ketan D. Bhirud (SBN #10515)

24
 25
 26 *Attorneys for The Dr. Miriam and Sheldon G.
 Adelson Educational Institute*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In his Will, Milton I. Schwartz bequeathed a \$500,000.00 scholarship gift ("Bequest") to provide Jewish children with an education. The Will clearly and unequivocally states that the purpose and condition of the Bequest is for "the purpose of funding scholarships to educate Jewish children only." Section 2.3 of Mr. Schwartz's Will provides:

2.3 The Milton I. Schwartz Hebrew Academy. I hereby give, devise and bequeath the sum of five hundred thousand dollars (\$500,000.00) to the Milton I. Schwartz Hebrew Academy (the, "Hebrew Academy"). This gift is to be in the form of securities (stocks, bonds, or cash) with the largest profit so that my estate can take advantage of the low cost basis and increased price as directed by my Executor in his sole discretion. If, at the time of my death, there is a bank or lender mortgage (the "mortgage") upon which I, my heirs, assigns or successors in interest are obligated as a guarantor on behalf of the Hebrew Academy, the \$500,000.00 gift shall go first to reduce and or expunge the mortgage.¹ In the event that the lender will not release my estate or my heirs, successors or assigns, no gift shall be given to the Hebrew Academy. In the event that no mortgage exists at the time of my death, the entire \$500,000.00 amount shall go to the Hebrew Academy for the purpose of funding scholarships to educate Jewish children only.

A true and correct copy of the Will is attached as Exhibit 1 (emphasis added).

The Executor refuses to make the Bequest. To justify his denial, the Executor would like to have the Court insert a new "naming rights" purpose and condition into Section 2.3 of the Will. The Executor claims that the purpose and condition of the Bequest under Section 2.3 of the Will is somehow a naming rights covenant for the school to be named "The Milton I.

¹ When Mr. Schwartz died in 2007, the corporation running the school had an outstanding mortgage of over \$1.8 million, which was personally guaranteed by Mr. Schwartz up to \$1 million. At that time, the corporate name was "The Milton I. Schwartz Hebrew Academy" yet the Executor inexplicably failed to make the Bequest towards payment of the \$1.8 million debt as he was clearly obligated to do under the Will. Instead, the \$1.8 million mortgage was paid off and the guaranty by Mr. Schwartz was extinguished from proceeds of a generous \$25 million donation made by Dr. Miriam and Sheldon Adelson. See 05/02/13, Declaration of Paul Schiffman at ¶16, filed on May 3, 2013, in Support of the Adelson Campus' Petition to Compel Distribution. Because of the Adelsons generously paying off the debt guaranteed by Milton I. Schwartz, the Bequest can now be used to create the Milton I. Schwartz scholarship which will continue to honor him and his desire to educate children, and not to pay off Milton's guaranty.

1 Schwarz Hebrew Academy" in perpetuity. And so the Executor requests the Court deny the
 2 funding of scholarships to educate Jewish children because the corporation which operates the
 3 school changed its name from "The Milton I. Schwarz Hebrew Academy" to the "Dr. Miriam
 4 and Sheldon G. Adelson Educational Institute" in 2008 after the school expanded from a single-
 5 building primary school to multi-building, state-of-the art campus consisting of a lower school,
 6 middle school and high school. The Executor's naming rights condition does not exist.

7 The Court should enter partial summary judgment in favor of the Adelson Campus that
 8 Section 2.3 is for "the purpose of funding scholarships to educate Jewish children only" as
 9 expressly stated in the Will (*see Exhibit 1, emphasis added*) and not a "naming rights" purpose
 10 for "the school"² to be named "The Milton I. Schwarz Hebrew Academy" in perpetuity. The
 11 Executor's proffered purpose is not found in Section 2.3 but manufactured by the Executor
 12 through only his self-serving parol testimony and the Nevada Supreme Court recently confirmed
 13 that parol evidence is prohibited to vary or interpret the terms of a will. *See Frei v. Goodsell*,
 14 129 Nev. Adv. Op. 42, 305 P.3d 70 (2013). Moreover and notwithstanding Frei, the parties
 15 recently completed discovery which confirms that Milton Schwartz's sole intention with Section
 16 2.3 was for the benign purpose of funding scholarships for Jewish children.

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25

26 ² Among the numerous problems with the Executor's concocted position that the "purpose
 27 and condition" of Section 2.3 of the Will was a "naming right" for "the school to be named The
 28 Milton I. Schwarz Hebrew Academy in perpetuity" is that "the school" is vague and ambiguous.
 At the time that Mr. Schwartz prepared his Will in 2004, the high school and current multi-
 building, state-of-the art campus, did not exist.

Procedural Summary

On June 12, 2013, the Adelson Campus filed a Motion to Dismiss the Executor's counter-petition. During the October 8, 2013, hearing on the Adelson Campus' Motion to Dismiss, the Court recognized the purpose of the Bequest of Section 2.3:

THE COURT: -- his original -- the original purpose was first of all, the money goes to pay off a mortgage. If there's no mortgage then you still get the money but you get it for scholarships.

MR. COUVILLIER: That's correct, Your Honor.

THE COURT: So he provided for just the eventuality it happened, which is an angel in the fundraising field; people with a lot of money who clear up your debts are called angels. So the school was fortunate in the Adelsons clearing up all their debts. And that meant that Mr. Schwartz who had foreseen something like that might happen still wanted the money to go to the school, but in this instance it would go to pay for Jewish children to be educated.

October 8, 2013, Hearing Transcript at 8:18-9:5, Exhibit 2. The Court, however, felt that the issue regarding the purpose of the Bequest under Section 2.3 should be determined in the context of a motion for summary judgment. To that end, the Court entered an order on November 12, 2013, providing for limited discovery "as to whether the purpose and condition of the bequest under Section 2.3 of the Will was for the school to be named 'The Milton I. Schwartz Hebrew Academy' in perpetuity." *See 11/12/13 Order at p. 2, Exhibit 3.* The Court also allowed limited discovery concerning the May 29, 2013, Accounting filed by the Executor. *Id.*

The Executor refused to provide any discovery regarding the May 29, 2013, Accounting and offered to deposit \$500,000 into a blocked account to guarantee distribution of the Bequest to the Adelson Campus upon the Court's resolution as to the purpose and condition of the Bequest, as requested by this Motion for Summary Judgment. On March 6, 2014, the Court entered an Order mooting discovery concerning the May 29, 2013, Accounting upon the Executor depositing \$500,000 in securities in the form of investment grade bonds into a blocked account. *See 03/06/14 Order at p. 3.* The Executor effectuated said deposit with Morgan Stanley Smith Barney on or about March 21, 2014.

The Adelson Campus asks the Court to enter summary judgment that the purpose and condition of the Bequest of Section 2.3 is for the purpose of funding scholarships to educate

1 Jewish children only and order Morgan Stanley Smith Barney to release the \$500,000 to the
2 Adelson Campus.

3 **II.**
4 **STATEMENT OF UNDISPUTED FACTS**

5 1. There is no language in Section 2.3 or anywhere else in the Will that provides
6 that the purpose or condition of the Bequest under Section 2.3 was a naming right for the
7 school to be named "The Milton I. Schwartz Hebrew Academy" in perpetuity. *See Will* at
8 §2.3, Exhibit 1.

9 2. The Will is clear, unambiguous and speaks for itself. *See Deposition*
10 *Transcript of A. Jonathan Schwartz dated March 5, 2014 ("Executor Depo.")* at 28:10-22,
11 Exhibit 5.

12 3. Milton Schwartz dictated the Will himself and the Will reflects his own
13 words. *See Executor Depo.* at 6:14 - 8:12, Exhibit 5.

14 4. Milton Schwartz was a genius, experienced businessman and considered
15 himself smarter than most lawyers:

16 My father often drafted documents. My father was a very, very
17 experienced business person and, frankly, considered himself
18 brighter than most of the attorneys that he employed. My father
19 was a member of MENSA. He was a member of Intertel. He was
20 literally a genius....

21 *See Executor Depo.* at 8:23 - 9:4.

22 5. Milton had prepared other wills and had considerable experience and
23 knowledge doing his own estate planning. Milton Schwartz's long time estate planning and
24 business attorney testified about Milton's experience and acumen:

25 Q. Did Mr. Schwartz ask you for your thoughts or suggestions
26 regarding this will?

27 A. No, I don't recall having specific conversations about the
28 terms. During the phone conversation we had that set the
appointment for the ceremony, he just indicated that, you know, *he*
had a lot of experience and I knew that he had a lot of experience
preparing his own wills over the years, a tremendous effort had
gone into his estate planning with other lawyers and that he really
just wanted to make sure an attorney oversaw the execution

1 ceremony and review the document for legality and make sure
2 everything was appropriate, and that's what I did.

3 *Deposition Transcript of Attorney Marc Gordon dated March 11, 2014 ("Gordon Depo.") at*
4 *10:22 - 11:9, Exhibit 6 (emphasis added).*

5 **6. Milton was fastidious about details and reviewing documents, and he**
6 **carefully reviewed the language of the Will:**

7 Q. Anybody proofread your dictation [of the Will] --

8 A. Well, he did.

9 Q. -- after you completed.

10 A. My father did.

11 Q. Your father did?

12 A. He was extremely fastidious about reviewing any and every
13 document that went out of the office. Anyone who worked for him
14 can attest to the fact that he was very, very challenging to work for.

15 *Executor Depo. at 15:21 - 16:9, Exhibit 5. Attorney Marc Gordon also observed Milton*
16 *Schwartz's obsession with details:*

17 Q. Did he tell you whether he had reviewed the will before he
18 sent it to your office?

19 A. I can't recall specifically, but I know he -- I have to assume
20 he did because that's the way Milton was; he was very particular
21 about his work and very detailed. So I always assumed that he had
22 reviewed his will and knew what it said.

23 *Gordon Depo. at 7:5-11, Exhibit 6.*

24 **7. Milton had a separate estate attorney review the Will, who confirmed the**
25 **Will complied with law in form and substance:**

26 A. ...He [Milton] asked me if I would just review the will to
27 make sure that it was in compliance with law in form and
28 substance and that we conduct an execution ceremony properly to
make sure it was all signed off legally.

Q. And, in your opinion, was the document appropriate per
legality?

A. Yes.

Gordon Depo. at 6:25 - 7:4 and 11:10-12, Exhibit 6.

//

//

1 8. At the time that he prepared his Will, Milton knew the school was
2 considering expanding and intended to offer school naming opportunities to raise capital.

3 Specifically, Milton Schwartz and then fellow school Board members, Sheldon Adelson
4 and Victor Chaltiel, discussed school name changes in 2004 (the year Milton prepared his Will),
5 including using the name "The Dr. Miriam and Sheldon G. Adelson Educational Campus."

6 Q. ...With respect to 2004 forward, do you know of anybody
7 that might have information concerning the naming of the school?

8 A. It's my understanding there was a conversation with the
9 Adelson -- well, with Sheldon Adelson and Victor Chaltier [sic].

10 Q. You say that conversation with Sheldon and Victor, was that
11 between the two of them or did it involve third parties?

12 A. Between the three of them.

13 Q. The third being Milt?

14 A. Yes.

15

16 Q. Do you know the general nature of that conversation?

17 A. It was that the campus would be named the Dr. Miriam and
18 Sheldon G. Adelson Educational Campus.

19 ****

20 Q. So it's your understanding that prior to 2006, there was
21 already a decision to amend the bylaws to change the name of the
22 school?

23 A. Yes.

24 *Deposition Transcript of Paul Schiffman dated March 11, 2014 ("Schiffman Depo.") at 28:18 -*
25 *29:18 & 34:24 - 35:1, Exhibit 7. The minutes of the school Board of Director meetings*
26 *corroborate Mr. Schiffman's testimony and further confirm that Milton and his fellow Board*
27 *members formally discussed name changes and naming opportunities during Board meetings.*
28 *Specifically, during a March 16, 2004, Board meeting in which Milton Schwartz was present, the*
 Chairman of the Board (Victor Chaltiel) proposed to the Board that "a capital campaign with
naming opportunities needs to ensue." Attached as Exhibit 8 are true and correct copies of the
Minutes of the March 16, 2004, Board Meeting and the *Chairman's Report* provided at the

meeting.³ Mr. Schwartz and his fellow Board members were also provided with the Chairman's report which identified school funding issues and proposed naming opportunities for the "Pre-School, Elementary, Middle School, High School Eventually." *Id.*

9. Milton did not intend that the purpose of Section 2.3 was to provide him with naming rights for the school to be named "The Milton I. Schwarz Hebrew Academy" in perpetuity. *See Will* at §2.3, Exhibit 1: There is no language in the Will which manifest such intention. Moreover, the Executor's self-serving testimony (notwithstanding that *Frei* prohibits parol evidence to interpret the Will) confirms that Milton did not intend that the purpose of Section 2.3 to be a perpetual naming right. The Executor testified that he took the dictation of the Will from Milton Schwartz and that the *only* thing that Milton discussed with the Executor about Section 2.3 was whether a successor clause should be added (*see Schwartz Depo.* at 10:8-22). A successor clause is not at issue here.⁴ The issue is whether the purpose and condition and

³ The school minutes and agendas for 2004 (the year Milton prepared his Will) and 2006 (the year Milton prepared his codicils) were produced to the Executor during discovery and were authenticated by Mr. Paul Schiffman, the Head of School, during his deposition. *See Schiffman Depo.* at 18:19-19:22, Exhibit 7.

⁴ The purpose of the Bequest is to fund scholarships for Jewish children and it is well settled that a corporate name change does mean the Hebrew Academy ceased to exist or somehow became a new entity. *See In re VHA Diagnostic Services, Inc.*, 65 Ohio St. 3d 210, 215, 602 N.E. 2d 647, 651-652 (Ohio 1992) ("A change of name in no way affects the legal existence of the corporation or the nature of the corporation. Appellants cite no authority or rationale for their bare assertion that a corporation ceases to exist by a change of name.") (emphasis added); *Pro Source Roofing, Inc. v. Boucher*, 822 So. 2d 881, 884 (La. App. 2 Cir. 2002) (change in a corporation's name does not create a new entity); *Bankers Life & Cas. Co. v. Kirtley*, 338 F.2d 1006, 1013 (8th Cir. 1964) (change in name of corporation does not affect its rights); *Goodwyne v. Moore*, 170 Ga. App. 305, 308, 316 S.E. 2d 601, 603 (Ga. App. 1984) ("A corporate name change is routinely accomplished by merely amending the articles of incorporation.... Such a procedure does not cause a new corporation to come into 'existence.'"); 6 Fletcher Cyc. Corp. § 2456 ("A change of name by a corporation has no more effect upon the identity of the corporation than a change of name by a natural person has upon the identity of such person. It is the same corporation with a different name.") (emphasis added).

In *Ratcliffe v. Seaboard Nat. Bank of New York*, 46 S.W. 2d 750 (Tex. Civ. App. 1932), the corporation designated as executor in a will changed its name several times without affecting its rights and obligations under the will. There, the will named "Mercantile Trust Company" as executor. The Mercantile Trust Company changed its name twice. First, to "Mercantile National Bank of New York" and then to "Seaboard National Bank of New York." The Court held that "such changes of name did not destroy the identity of the corporation named as executor in the will nor affect its property, rights, or obligations." *Ratcliffe*, 46 S.W. 2d at 752. *See also* 96 C.J.S. *Wills* § 1091 ("The mere fact that a corporate charity has changed its name does not render a gift to it under its former name void for uncertainty.").

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3

4

6

7
8

9
10
11
12
13
14
15
16
17
18

19

21
22
23
24
25
26
27
28

1 444, 445 (1998)(summary judgment proper where the evidence offered by defendants in
 2 opposing summary judgment was not admissible); *Orr v. Bank of America, NT & SA*, 285 F.3d
 3 764, 773 (9th Cir. 2002)("A trial court can only consider admissible evidence in ruling on a
 4 motion for summary judgment."); *see Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026,
 5 1031 (2005)(the nonmoving party has the burden of demonstrating the existence of a genuine
 6 issue with admissible evidence).

7 **i. The Executor Cannot Rely On Parol Evidence To Concoct A New, Different**
 8 **Purpose Of Section 2.3 Of The Will**

9 The Nevada Supreme Court recently confirmed that extrinsic or parol evidence is not
 10 admissible to contradict, vary, show intent or give meaning to the terms of unambiguous estate
 11 documents. *Frei*, 129 Nev. Adv. Op. 42 at *8, 305 P.3d at 73 (citing *Kaldi v. Farmers Ins.*
 12 *Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001)). *See also Geo. B. Smith Chemical v. Simon*, 92
 13 Nev. 580, 582, 555 P.2d 216, 216 (1976) ("Where, as here, written contract is clear and
 14 unambiguous on its face, extraneous evidence cannot be introduced to explain its meaning.").
 15 Here, the Executor claims that the purpose of Section 2.3 of the Will is somehow a perpetual
 16 naming rights provision for "The Milton I. Schwartz Hebrew Academy." But that purpose and
 17 condition is not stated in Section 2.3 or anywhere else in the unambiguous Will. Indeed, the
 18 Executor essentially wants the Court to re-write the Will to include the Executor's manufactured
 19 purpose, which the Nevada Supreme Court expressly prohibits. *See Griffin v. Old Republic Ins.*
 20 *Co.*, 122 Nev. 479, 483, 133 P.3d 251, 254 (2006)(A court "will not rewrite contract provisions
 21 that are otherwise unambiguous."); *United National Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev.
 22 678, 684, 99 P.3d 1153, 1157 (2004)(courts cannot "rewrite contract provisions that are
 23 otherwise unambiguous"); *Farmers Ins. Exchange v. Neal*, 119 Nev. 62, 65, 64 P.3d 472, 473
 24 (2003) ("Unambiguous provisions will not be rewritten").

25 In *Frei*, the Nevada Supreme Court rejected a similar effort to introduce parol
 26 evidence to establish a testator's intent of unambiguous estate documents. Strikingly, the
 27 parol evidence rejected by the Nevada Supreme Court in *Frei* was the testimony of the testator
 28 himself. *Frei* arose after an attorney prepared various estate planning documents for the

signature of Emil Frei III, which transferred over \$1,000,000 of Frei's assets into his wife's trust. After his wife's death, Frei sought to void the documents on the grounds that the documents did not accurately reflect his intent and his understanding of the documents. Frei admitted that the estate documents were clear and unambiguous but argued that parol evidence of his intent was essential to prove the documents did not meet his objectives. *Frei*, 129 Nev. Adv. Op. 42 at *8, 305 P.3d at 73. The Executor is doing precisely the same thing. The Executor argues that parol evidence is essential to "correctly understand Milton's intent"⁵ that Section 2.3 somehow be construed a naming rights provision when such language and intent is clearly absent from the Will.

The Nevada Supreme Court held that evidence of Frei's intent was manifested by the estate documents themselves and that Frei was prohibited from offering parol evidence (e.g., Frei's own testimony). *Frei*, 129 Nev. Adv. Op. 42 at *9-10, 305 P.3d at 74. The circumstances here are even more feeble than in *Frei*. Unlike *Frei*: (a) Milton prepared and executed the Will 10 years ago; (b) Milton died 7 years ago; and (c) it is the Executor, and not Milton himself, offering self-serving parol testimony⁶ and other parol evidence, most of which precedes the Will by at least decade.

Therefore, the Executor is prohibited from introducing parol evidence to vary, interpret or manufacture some other understanding or intent that Milton purportedly had regarding Section 2.3 of the Will. *See Frei*, 129 Nev. Adv. Op. 42 at *8, 305 P.3d at 73. Milton's intent that the Bequest is "for the purpose of funding scholarships to educate Jewish children only" is manifested in the clear and unambiguous Will. *See Will* at §2.3, Exhibit 1.

C. The Executor's Effort To Construe The Will Is Also Barred As A Matter Of Law

NRS 137.080 requires that anyone seeking to contest a will must do so within 3 months after the order admitting the will to probate is entered.⁷ According to the Court's docket, the

⁵ *See Executor's Opposition to Motion to Dismiss* at 10:10-11, filed on July 1, 2013.

⁶ The Executor's self-serving testimony is also hearsay and barred by NRS 51.035 & 51.065.

⁷ NRS 137.120 further provides that "[i] no person contests the validity of a will or of the probate thereof, *within the time specified in NRS 137.080*, the probate of the will is conclusive.").

1 Order admitting the Will to probate was entered on January 23, 2008. Pursuant to NRS 137.080,
2 the final day to contest the Will was on April 23, 2008. The Court's docket further shows that
3 the Executor did not file his petition to void the Bequest until May 28, 2013.

4 In order to circumvent the NRS 137.080 statute of limitations, the Executor attempts to
5 disguise his barred will contest claim as a claim for "will construction."⁸ The Executor's play-
6 on-words is a distinction without a difference. The Executor is clearly contesting the Will
7 because he seeks to "declare the bequest void,"⁹ which is prima facie a will contest. See *In Re*
8 *Estate of Moore*, 889 S.W.2d 136, 137 (Mo. App. E.D. 1994) (an action couched as one "to
9 construe a will" which seeks to void any provision of a will is really a will contest)(further held
10 the will contest was barred by the six month statute of limitations); see also *Williams v. Bryan,*
11 *Cave, et al.*, 774 S.W.2d 847, 848 (Mo. App. E.D. 1989)(an action to void will or any part
12 thereof is a will contest no matter how couched). To be sure, courts routinely reject similar
13 machinations where litigants disguise a will contest through deceptive naming. See *In Re Estate*
14 *of Hutchins*, 875 S.W.2d 564, 568 (Mo. App. S.D. 1994) ("Although plaintiffs characterize this
15 action [to void a will provision] as one for construction of a will, that position is untenable.");
16 *Johnson v. Wheeler*, 360 Mo. 334, 337, 228 S.W.2d 714, 716 (Mo. 1950)(one "cannot under the
17 guise of construing it bring a suit to have [a will] (or the part involved) declared void").

18 **D. Even If The Prohibitions Imposed By *Frei* Are Ignored, The Parol Evidence**
19 **Confirms That The Only Purpose For The Bequest Is For Scholarships For Jewish**
20 **Children**

21 Foremost, Milton Schwartz prepared the Will himself and dictated his words to the
22 Executor. See *Executor Depo.* at 6:14 - 8:12, Exhibit 5. And, Milton's own words were that the
23 Bequest under Section 2.3 is "for the purpose of funding scholarships to educate Jewish children
24 only." See *Will* at §2.3, Exhibit 1.

25 Second, at the time that Milton prepared and dictated his Will, Milton did not raise or

26 ⁸ See *Executor's Petition for Declaratory Relief* at p. 10, filed on May 28, 2013.

27 ⁹ See *Id.* at 10:21-22 (the Executor's petition requests "[t]hat this Court declare that the
28 bequest to the Milton I. Schwartz Hebrew Academy is void.").

1 discuss any intention that the purpose of the Bequest was for naming rights requiring the school
2 to be named "The Milton I. Schwartz Hebrew Academy" in perpetuity. *See Executor Depo.* at
3 10:8-22 (discussion of what the Executor and Milton discussed about Section 2.3, which was not
4 a perpetual naming right and condition).

5 Third, after the Will was written out, Milton thoroughly reviewed and considered: (i) the
6 language of the Will; and (ii) that the Will clearly and unequivocally manifested his intentions,
7 which did not include an intention for Section 2.3 to provide a perpetual naming right. *See*
8 *Executor Depo.* at 15:21 - 16:9, Exhibit 5; *Gordon Depo.* at 7:5-11, Exhibit 6. Milton was a
9 brilliant businessman with acumen that rivaled most lawyers. *See Executor Depo.* at 8:21 - 9:4,
10 Exhibit 5. He was a thorough draftsman and fastidious about details and preciseness. *Id.* at
11 15:21-16:9. *If Milton intended for perpetual naming rights as the purpose and condition of*
12 *Section 2.3, he certainly would have expressly stated it.*

13 Fourth, at the time that Milton prepared his Will in 2004, he was aware that the school
14 was considering changing names or offering naming rights opportunities as a way to raise
15 money. *See Schiffman Depo.* at 28:18 - 29:18 & 34:24 - 35:1, Exhibit 7 and 2004 Board
16 Minutes, Exhibit 8. Indeed, such naming issues were expressly discussed at 2004 Board
17 meetings in which Milton Schwartz was present and participated. *See Exhibit 8. Thus, if Milton*
18 *intended for Section 2.3 to secure perpetual naming rights, the circumstances would have*
19 *compelled him to have stated such purpose in clear, express and detailed language in the Will.*
20 But Milton did not intend such naming rights purpose for Section 2.3. As the Executor admitted,
21 Milton "almost never let time lapse between creating an intent and memorializing it in some
22 fashion...." *See Executor Depo.* at 27:2-4, Exhibit 5. Here, in the midst of school name
23 discussions, Milton clearly manifested his sole intent of the purpose of the Bequest under Section
24 2.3 is "for the purpose of funding scholarships to educate Jewish children only." *See Will* at
25 §2.3.

26 Fifth, in 2006, Milton affirmed that he did not intend a naming right purpose for Section
27 2.3. In 2006, Milton revisited and affirmed his Will when he executed two codicils, the first on
28 January 27, 2006, and the second on June 21, 2006. The Codicils concerned other distributions

1 and Mr. Schwartz elected not to revisit and revise the Bequest to the Adelson Campus. *See*
 2 *Executor Depo.* at 24:14-17 and 26:14 - 28:9 (First Codicil did not concern Section 2.3); and
 3 32:22 - 33:1 (Second Codicil has nothing to do with the school; there's no changes that affect
 4 either Section 2.3 or even mention the school).

5
 6 **IV.**
CONCLUSION

7 For the foregoing reasons, this Court should grant the Adelson Campus' Motion and
 8 enter partial summary judgment:

- 9 1. That the purpose and condition of the \$500,000 bequest of Section 2.3 of Milton
 10 I. Schwartz's Last Will and Testament ("Will") dated February 5, 2004, is for "the
 11 purpose of funding scholarships to educate Jewish children only";
- 12 2. That Section 2.3 of the Will and the \$500,000 bequest thereunder do not contain
 13 or state any naming rights provision and condition for the school or the
 14 corporation which runs the school to be named "The Milton I. Schwartz Hebrew
 15 Academy" in perpetuity; and
- 16 3. Ordering Morgan Stanley Smith Barney to release to the Adelson Campus the
 17 \$500,000 which the Executor, Jonathan Schwartz ("Executor"), deposited in a
 18 blocked account to guarantee the distribution of the bequest upon the
 19 determination requested here.

20
 21 LIONEL SAWYER & COLLINS

22
 23 By: 

24 Elizabeth Brickfield (SBN #6236)
 25 Maximiliano D. Couvillier, III (SBN #7661)
 26 Ketan D. Bhirud (SBN #10515)

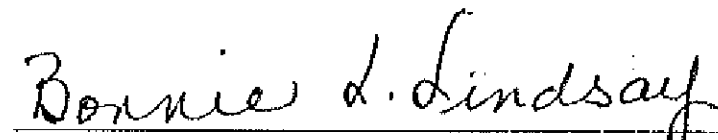
27 *Attorneys for The Dr. Miriam and Sheldon G.*
 28 *Adelson Educational Institute*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 22, 2014, I deposited in the United States Mail at Las Vegas, Nevada, a true and correct copy of the foregoing **ADELSON CAMPUS' MOTION FOR PARTIAL SUMMARY JUDGMENT** enclosed in a sealed envelope upon which first class postage was paid, addressed as follows:

Mark Solomon, Esq.
Alan D. Freer, Esq.
Steven E. Hollingworth, Esq.
SOLOMON, DWIGGINS & FREER
9060 West Cheyenne Ave.
Las Vegas, NV 89129

Attorneys for Executor


An Employee of Lionel Sawyer & Collins

ADELSON CAMPUS

Exhibit 1

Will of Milton I. Schwarz

Conformed Copy of Last Will and Testament

LAST WILL AND TESTAMENT

OF

MILTON I. SCHWARTZ

FILED

OCT 11 4 23 PM '07

CLERK OF DISTRICT COURT

I, MILTON I. SCHWARTZ, domiciled in Clark County, Nevada, and a citizen of the United States, being of sound and disposing mind memory, do hereby make, publish and declare this to be my LAST WILL AND TESTAMENT, and hereby revoke any and all Wills and Codicils at any time heretofore made by me.

FIRST: MARITAL AND FAMILY STATUS

I am married to ABIGAIL SCHWARTZ and any references to my "spouse" or my "wife" herein is to her. I have four (4) children now living, whose names and dates of birth are:

EILEEN JOANNA ZARIN	July 21, 1948
ROBIN SUE LANDSBURG	January 15, 1951
SAMUEL SCHWARTZ	June 8, 1953
A. JONATHAN SCHWARTZ	August 5, 1970

The terms "my child" and "my children" as used in this Will shall refer to the aforementioned children. The term "descendants" as used in this Will shall mean the blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted who was a minor at the date of adoption, that child or his descendants shall be considered as descendants of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

SECOND: BEQUESTS

2.1 Written Directions. I may leave one or more written directions disposing of items of personal and household articles. Each shall be effective only if (i) executed by me with all the formalities of a deed (i.e., witnessed and notarized), and (ii) delivered to the Trustees of the trust referred to in ARTICLE THIRD hereof prior to my death. Each may be dated before or after the date of this Will, but none shall be effective insofar as I have expressly revoked it by a similarly executed and delivered written instrument. If such a direction exists, (i) it shall be given effect as though its provisions were written here (in this Section) in this Will, and (ii) it shall take precedence over any contrary disposition of the same item or items of property in this Will (or in any Codicil hereto, unless such Codicil expressly overrides such direction). If there be more than one such unrevoked direction, to the extent they are in conflict, the one bearing the most recent date shall control.

2.2 Personal and Household Articles Not Subject to Written Directions. Subject to the foregoing provisions of Section 2.1, I give my jewelry, clothing, household furniture and furnishings, personal automobiles, and any other tangible articles of a personal nature; or my interest in any such property, not otherwise specifically disposed of by this will, or in any other manner, together with any insurance on the property, to my descendants who survive me, per stirpes, such descendants to make their shares as they shall agree. My Executor shall represent any beneficiary under age 18 in matters relating to any distribution under this Section 2.2, including selection of the assets that shall constitute that beneficiary's share, and my Executor in my Executor's discretion sell for the beneficiary's account any part of the beneficiary's share. Any property or its proceeds distributable to a beneficiary under age 18 pursuant to this Section 2.2 may be delivered without bond to any suitable person with whom the beneficiary resides or who has care of the beneficiary.

I direct that the expense of packing, shipping and delivering such property to said legatee, at said legatee's

Testator's Initials

MIS

residence or place of business, shall be paid by my Executor as an administration expense of my estate.

2.3 The Milton I. Schwartz Hebrew Academy. I hereby give, devise and bequeath the sum of five hundred thousand dollars (\$500,000.00) to the Milton I. Schwartz Hebrew Academy (the, "Hebrew Academy"). This gift is to be in the form of securities (stocks, bonds or cash) with the largest profit so that my estate can take advantage of the low cost basis and increased price as directed by my Executor in his sole discretion. If, at the time of my death, there is a bank or lender mortgage (the "mortgage") upon which I, my heirs, assigns, or successors in interest are obligated as a guarantor on behalf of the Hebrew Academy, the \$500,000.00 gift shall go first to reduce and or expunge the mortgage. In the event that the lender will not release my estate or my heirs, successors or assigns, no gift shall be given to the Hebrew Academy. In the event that no mortgage exists at the time of my death, the entire \$500,000.00 amount shall go to the Hebrew Academy for the purpose of funding scholarships to educate Jewish children only.

2.4 Landsburg Grandson's Gift. I hereby give, devise and bequeath the total sum of one hundred eighty thousand dollars (\$180,000.00); forty five thousand dollars (\$45,000.00) each to the following of my grandchildren upon my death in recognition of my appreciation and pride that I experienced upon hearing each of the following grandchildren chant a portion of the Torah at Benjamin Landsburg's Bar Mitzvah: Michael Landsburg; Zachary Landsburg; Benjamin Landsburg; Joshua Landsburg.

2.5 Distribution of Trust Assets of THE MILTON I. SCHWARTZ 1991 IRREVOCABLE TRUST. I created THE MILTON I. SCHWARTZ 1991 IRREVOCABLE TRUST on August 21, 1991 (herein, "MIS 1991 Trust"), which presently owns the home in which I reside commonly known as 2120 Silver Avenue, Las Vegas, Nevada (herein, the "home"). Under the terms of the MIS 1991 Trust, if I should die prior to the 13 years and 7 month term, I give, devise and bequeath the home to my wife, ABIGAIL SCHWARTZ, if she survives me, provided that she is married to and living with me at the time of my death.

2.6 Frances A. Martel. I hereby direct my Executor or the Successor-Trustee of the Milton I. Schwartz Revocable Family Trust, dated January 29, 1986 (herein, my "Executor") as the case may be, to give, devise and bequeath the sum of one thousand dollars (\$1,000.00) per month, each month, to Frances A. Martel (herein, "Martel") for so long as she shall live.

2.7 Termination of Gifts. I hereby terminate and revoke any gift to the following: Las Vegas Jewish Federation or any successor thereto; Las Vegas Jewish Federation Day School in Formation or any successor thereto. In the event that the revocation of these gifts in section 2.8 hereof shall be challenged in any way, I hereby give, devise and bequeath the sum of one dollar only (\$1.00) to each organization.

THIRD: RESIDUARY BEQUESTS

3.1 Residue to Trust. I give, devise and bequeath the residue of my estate to A. JONATHAN SCHWARTZ as Successor-Trustee, or any successor Trustees, of the trust designated as "THE MILTON I. SCHWARTZ REVOCABLE FAMILY TRUST" established January 29, 1986 and amended earlier today, of which I am the Grantor and the original Trustee. I direct that the residue of my estate shall be added to, administered and distributed as part of that trust, according to the terms of that trust and any amendments made to it before my death. To the extent permitted by law, it is not my intention to create a separate trust by this Will or to subject the trust or the property added to it by this Will to the jurisdiction of the Probate Court.

3.2 Incorporation by Reference. If the disposition in Section 3.1 is not operative or is invalid for any reason, or if the trust referred to in that Section fails or has been revoked, then I hereby incorporate by reference the terms of that trust, including any amendments thereto, and I give, devise and bequeath the residue of my estate to the Trustee named therein as Trustee, to be held, administered and distributed as provided in that instrument.

Testator's Initials

MS

FOURTH: EXECUTOR

4.1 Appointment of Executor. I nominate, constitute and appoint A. JONATHAN SCHWARTZ, or in the event of his death, Robin Sue Landsburg, as Executor of this Will. If both shall for any reason fail to qualify or cease to act as such Executor, then I nominate Eileen Joanna Zarin as Executor in their place and stead. The term "my Executor" as used in this Will shall include any personal representative of my estate.

4.2 Waiver of Bond. No bond shall be required of any Executor nominated in this Will.

4.3 Appointment of Ancillary Fiduciaries. Should ancillary administration be necessary or advantageous in any jurisdiction and should my Executor be unable and or unwilling to act as my ancillary fiduciary, I nominate, constitute and appoint as ancillary fiduciary such qualified person or trust institution as my Executor shall from time to time designate (with retained right of removal) in a writing filed in the court having ancillary jurisdiction. Furthermore, all my ancillary fiduciaries shall at all times be subject to the directions of my Executor and the residuary estate of each ancillary administration shall be transmitted to my Executor as promptly as possible.

4.4 Election of Simplified Unsupervised Administration. If independent administration without certain court proceeding and supervision is to any extent permitted under the laws of any jurisdiction in which any part of my estate is being administered, I hereby elect such simplified mode(s) of administration and direct; to the greatest extent possible, settlement of my estate without the intervention of or accountings to any courts.

4.5 General Powers. In addition to, and not in limitation of the Executor's common law and statutory powers, and without order or approval of any court, I give and grant to my Executor the rights and powers to take any action desirable for the complete administration of my estate, including the power to determine what property is covered by general descriptions contained in this Will, the power to sell on behalf of my estate, with or without notice, at either public or private sale, and to lease any property belonging to my estate, subject only to such confirmation of court as may be required by law.

4.6 Power Regarding Tax Returns. My Executor is authorized to file an income tax return for me and to pay all or any portion of the taxes due thereon. If any additional assessment shall be made on account of any income tax return which I have filed, my Executor is authorized to pay the additional assessment. The exercise of authority hereunder by my Executor shall be conclusive and binding on all persons.

4.7 Power to Make Tax Elections. My Executor has the authority to make the following choices

- (a) Elect any valuation date for purposes of federal estate tax permitted by law which my Executor deems to be to the best advantage of the family considered as a whole rather than the advantage of those interested only in my estate, even to the extent of making the election in such a way that the federal estate tax is greater rather than less a result of such election, provided that in my Executor's discretion such is likely to be for the best advantage, present and future, of the family taken as a whole.
- (b) Choose the methods of payment of federal estate taxes or state estate or inheritance taxes.
- (c) Determine whether any or all of the expenses of administration of my estate shall be used as federal estate tax deductions or as federal income tax deductions. No beneficiary under this Will shall have any right to recoupment or restoration of any loss the beneficiary suffers as a result of the use of such deduction for one or the other of these purposes.
- (d) Join with my spouse or the estate of my spouse in filing a joint income or gift tax return or returns for any arrears for which I have not filed returns prior to my death.
- (e) Consent that any gifts made by me or my spouse have been made one-half by me and one-half by my spouse for gift tax purposes even though these actions may subject my estate to additional tax liabilities.

Testator's Initials 12 JS

- (f) Allocate in my Executor's sole discretion, any portion of my exemption under Sec. 2631(a) of the Internal Revenue Code, as amended, to any property as to which I am the transferor, including any property transferred by me during life as to which I did not make an allocation prior to my death.
- (g) Exercise any other options or elections afforded by the tax law of the United States or of any other jurisdiction. My Executor may exercise this authority in my Executor's sole discretion; regardless of any other provisions in this Will or the effect on any other provisions of this Will or the effect on any person interested in my estate. No beneficiary under this Will shall be entitled to a compensating adjustment even though the exercise of these tax powers affects the size or composition of my estate or of any disposition under this Will. The determination of my Executor with respect to the exercise of the election shall be conclusive upon all affected persons.

4.8 Power to Select Property to be Distributed. I authorize my Executor, on any preliminary or final distribution of property in my estate, to partition, allot, and distribute my estate in kind, including undivided interests in my estate or any part of it, or partly in cash and partly in kind, or entirely in cash, in my Executor's absolute discretion. Any distribution or division in kind may be made on a proportionate or a non-proportionate basis so long as the respective assets allocated or distributed have equivalent or proportionate fair market values.

4.9 Power to Employ. My Executor may employ and compensate from my estate accountants, brokers, attorneys, investment advisors, custodians and others whose services are, in my Executor's discretion, necessary or convenient to the administration of the estate created herein. My Executor is expressly authorized to employ and compensate any firm with which my Executor may be associated to perform any services that are in my Executor's opinion necessary or convenient to the administration of my estate.

4.10 Continuance of Business. (a) I further authorize my Executor either to continue the operation of any business belonging to my estate for such time and in such manner as my Executor may deem advisable and for the best interests of my estate, or to sell or liquidate the business at such time and on such terms as my Executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my Executor in good faith, shall be at the risk of my estate and without liability on the part of my Executor for any resulting losses.

4.10 (b) In connection with the business interests known as Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation, Nevada Star Cab Corporation, Besdew Limited Partnership, National Automotive, Ltd., Star Limousine, L.L.C. and all affiliates and related entities, and any successor companies thereto, and all real estate related thereto (herein "YCS"); as well as the real property commonly known as Jennifer Park, Jonathan Park, Michael Park, as well as any other real estate held by the Grantor's estate or real estate or investments invested in as proceeds from the sale of these properties; any investments whether equities, stocks, bonds, limited partnerships, cash or investments invested in as proceeds from the sale of these investments (herein, "investments"); the management of Americab, Roland Garage, all affiliates and related entities (herein "Americab"), and all related real estate and any successor companies thereto or companies or investments, invested in as proceeds from the sale of Americab; as well as any other real estate or businesses of which the Grantor or his estate held or holds an interest in, the Grantor specifically nominates, constitutes and appoints his son, Executor, and Trustee, A. JONATHAN SCHWARTZ (herein, "JONATHAN"), to serve and represent his, his family's, estate's and Revocable Trust's interests, with respect thereto. A. JONATHAN SCHWARTZ is fully familiar with the details of these business interests and most capable of continuing the management of their affairs. Insofar as the Grantor has personally performed management duties and functions in the past, represented his or his family's interest at Board Meetings, TSA or TA Meetings, JONATHAN is hereby designated to continue in those capacities subject to the following conditions:

4.10 (c) In connection with management duties performed by A. JONATHAN SCHWARTZ for the Grantor, the Grantor's estate and Revocable Trust's interest in YCS and any successor companies thereto, and all real estate related thereto; A. JONATHAN SCHWARTZ shall receive a ninety three thousand eight hundred forty six (\$93,846.00) annual salary, increased by 2% each year (herein, "YCS Salary"). The YCS Salary shall be paid from a combination of both the Payroll and Director's Fees customarily received by the Grantor during his life. Furthermore, A. JONATHAN SCHWARTZ shall receive any medical insurance or other benefits as a Director of YCS as the Grantor received during his lifetime.

Testator's Initials LS

4.10 (d) JONATHAN'S management, control and decision making authority of YCS shall be limited only by the following: In the event that the primary assets of YCS (the taxicab and transportation operations) are to be sold, in order to provide consent to such a sale, JONATHAN must receive two additional votes of the Grantor's three remaining children or their representatives.

4.10 (e) Notwithstanding any provision herein contained to the contrary, all stock held or managed by Milton I. Schwartz at the time of his death or held in the Milton I. Schwartz Revocable Family Trust (January 29, 1986) in YCS, shall continue to be held, after Milton I. Schwartz's death, in the name of the Milton I. Schwartz Revocable Family Trust (January 29, 1986), A. Jonathan Schwartz, Trustee. JONATHAN'S duties as described within this section 4.02 shall continue for his lifetime or permanent disability.

4.10 (f) Notwithstanding any provision herein contained to the contrary, to the extent that the primary assets of YCS are sold, comprised of the entity names and transportation operations so that there are no further operations of YCS or its successors, and if the sales proceeds are distributed out to the respective owners of YCS, the Trustee shall distribute out said sales proceeds to each of the four family units as to twenty-five percent (25%) to each family unit.

4.10 (g) JONATHAN'S management, control and decision making authority on behalf of my estate's interest in YCS shall be limited only by the following: In the event that the primary assets of YCS (the taxicab and transportation operations) are to be sold, in order to provide consent to such a sale, JONATHAN must receive two additional votes of my three remaining children or their representatives.

4.10 (h) With regard to the management of Jennifer Park, Jonathan Park and all other income producing properties in which I or my estate holds an interest, JONATHAN shall receive a management fee in the amount of three percent (3%) of the annual base rent generated by the respective property, as he has received during my life, for property management services.

4.10 (i) In connection with JONATHAN'S property management services of the property commonly known as Michael Park, JONATHAN shall receive monthly compensation of one thousand six hundred sixty seven dollars (\$1,667.00) as he has received during my life.

4.10 (j) JONATHAN shall serve as President of Americab, Roland Garage, all affiliates and related entities (herein, "Americab"), and all related real estate and any successor companies thereto or companies or investments, invested in as proceeds from the sale of Americab.

4.11 Distribution to Minors. In the event any person entitled to receive distributions hereunder shall be a minor, or an incompetent, the distributions to that person shall be to the natural guardian of the legally appointed guardian, conservator or other fiduciary of the person or estate of that person (including, but not limited to, a custodian for the beneficiary under the Uniform Transfers to Minors Act in the state in which the beneficiary or custodian resides or any other state of competent jurisdiction), to be held and used exclusively for the benefit of that person. My Executor shall not be required to see to the application of any funds so paid or applied and the receipt of that guardian, conservator or other fiduciary of the person or estate of that person shall be complete acquittance of my Executor.

4.12 Power to Disclaim. My Executor is authorized to disclaim all or any portion of any bequest, devise or trust interest provided for me under any will or trust instrument. In particular, I authorize my Executor to exercise this authority in order to obtain advantageous results considering, in the aggregate, the taxes to be imposed on my spouse's estate and mine, even though this may cause some beneficiaries of my estate to receive less than they would otherwise have received.

4.13 Power to Transact with Trusts. My Executor is hereby authorized to purchase any property, and to make loans and advances, or to otherwise deal with, the Trustee of any trust, including, but not limited to, trusts wherein the Executor and Trustee shall be the same parties.

FIFTH: TESTAMENTARY DECLARATIONS

5.1. Revocation of Spouse's Right to Receive Annuity Payments. Pursuant to the provisions of Section 4.01 of each of THE ROBIN SUE LANDSBURG 1993 RETAINED ANNUITY TRUST, THE EILEEN JOANNA ZARIN 1993 RETAINED ANNUITY TRUST, THE SAMUEL SCHWARTZ 1993 RETAINED ANNUITY TRUST and THE

Testator's Initials LS

A. JONATHAN SCHWARTZ 1993 RETAINED ANNUITY TRUST, my wife has the right to receive certain annuity payments, subject to my power of revocation. I hereby revoke my wife's right to receive any such annuity payments.

5.2 Non-exercise of Powers of Appointment. I refrain from exercising any testamentary power of appointment that I may have at the time of my death.

5.3 Presumption of Survivorship. For purposes of this Will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within 90 days' after my death.

5.4 Confirmation of Gifts. I hereby ratify and confirm all gifts made by me prior to my death, and I direct that none of those gifts should be deemed or construed to be an advancement to any beneficiary nor shall any gift be taken into account in the settlement of my estate.

5.5 Premarital Agreement. On January 26, 1993 I entered into a Premarital Agreement with my wife. I have made provisions in the trust referred to in ARTICLE THIRD hereof to carry out the provisions of said Agreement. I hereby direct my Executor to take any further actions necessary or appropriate to carry out the terms of said Agreement. I hereby instruct my representatives to fulfill the terms and provisions of the Premarital Agreement in lieu of any other bequests or legacies to Abigail Schwartz, only to the extent agreed to in writing by Abigail Schwartz and myself, or as ordered in a judgment of a court of competent jurisdiction. Abigail Schwartz shall have no further interest in my estate, Will or trusts.

5.5 (b) Abigail Schwartz Outstanding Loan. As of January 7, 2004, an outstanding Promissory Note (herein, the "Note") existed between my wife and myself whereby my wife owes me or my estate two hundred thirty thousand dollars (\$230,000.00). To the extent that any balance is left remaining on the Note at the time of my death, any amounts to be paid to my wife from my estate, in accordance with our Premarital Agreement, shall be reduced by the amount of the balance on the Note.

SIXTH: MISCELLANEOUS

6.1 Incontestability. In the event any person authorized to receive any property hereunder commences, prosecutes, promotes, intervenes in, contributes to or voluntarily participates in, directly or indirectly, or counsels or aids any other person to commence, prosecute, promote, intervene in, contribute to or voluntarily participate in, directly or indirectly, any proceeding or action in any court, agency, tribunal or other forum wherein the person authorized to receive property or the counseled person (1) seeks to void, nullify or set aside all or any part of my Will; (2) seeks to void, nullify or set aside any trust of which I am a grantor or trustee, or both; or (3) makes a claim which is based upon any alleged act or omission by me, individually, or in my capacity as trustee, executor, partner, officer or director, or in any other capacity; or (4) directly or indirectly contests or calls into question the discretionary decisions of the Executor or Trustee hereunder, then I revoke any share or interest in my estate given under this Will or in the trust referred to in ARTICLE THIRD hereof to the person making the claim, to the counseling person, and to the descendants of each of them, and such share or interest shall be immediately disposed of by termination of the appropriate trust or trust or otherwise, as if such claimant or counseling person had predeceased me without descendants. This provision shall remain in effect from my death until no trust under the trust referred to in ARTICLE THIRD hereof is in existence, whether or not the administration of my estate has been completed. If any provision of this Article is held to be unenforceable or void for any reason, the remaining provisions shall be fully effective.

6.2 Tax Contribution. I direct that every specific and general gift, devise or bequest given under this Will or any Codicil hereto shall be delivered free of all estate and inheritance taxes and that such taxes be paid out of the residue of my estate. I further direct that no legatee, devisee or beneficiary hereunder, or beneficiary under any of my life insurance policies, or any surviving joint tenant, or any trustee of any private trust of mine which shall be in existence at the time of my death, shall be called upon to make any contributions toward the payment of any estate or inheritance taxes.

6.3 No Interest on Specific Bequests. I direct that no interest be paid on any specific bequest herein.

Testator's Initials

JS

6.4 Severability If any part or parts of this Will shall be invalid, illegal or inoperative, it is my intention that the remaining parts shall stand and be effective and operative.

6.5 Gender and Number As used in this Will, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

6.6 Headings The headings, titles and subtitles in this Will have been inserted for convenient reference, and shall be ignored in its construction.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of February

2004.

Milton I. Schwartz
MILTON I. SCHWARTZ

On the date last above written, MILTON I. SCHWARTZ declared to us that the foregoing instrument, consisting of seven (7) pages, including the affidavit signed by us as witnesses, was his Will dated January __, 2004, and requested us to act as witnesses to it. He thereupon signed this Will in our presence all of us being present at the same time. We now at his request, in his presence, and in the presence of each other, subscribe our names as witnesses.

[Signature]
Residing At:
1465 Verde Triandos Dr.
Henderson, NV 89012

Beverley J. Jones
Residing At:
1911 Surf Drive
Henderson, NV 89015

STATE OF NEVADA)
) ss.:
COUNTY OF CLARK)

Then and there personally appeared the within named Richard B. Newman and Beverley J. Jones who, being duly sworn, depose and say:

That they witnessed the execution of the within Will of the within named Testator, MILTON I. SCHWARTZ; that the Testator subscribed the Will and declared the same to be his Will in their presence; that they thereafter subscribed the same as witnesses in the presence of the Testator and in the presence of each other and at the request of the Testator; that the Testator at the time of the execution appeared to be of full age and of sound mind and memory and under no constraint; and that they make this Affidavit at the request of the Testator.

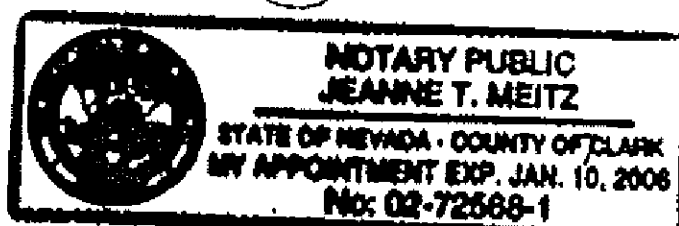
[Signature]

Beverley J. Jones

SUBSCRIBED and SWORN to before me

This 5th day of February, 2004.

[Signature]
Notary Public



ADELSON CAMPUS

Exhibit 2

October 8, 2013, Hearing Transcript

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER OF THE ESTATE
OF:

MILTON SCHWARTZ

CASE NO. 07-P-061300

DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 8, 2013

**RECORDER'S TRANSCRIPT
MOTIONS HEARING**

APPEARANCES:

For the Petitioner: MAXIMILIANO D. COUVILLIER, ESQ.
Lionel Sawyer & Collins

For the Estate: ALAN D. FREER, ESQ.
Solomon Dwiggin & Freer, Ltd.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

AVTranz

www.avtranz.com • (800) 257-0885

1 TUESDAY, OCTOBER 8, 2013 AT 9:48 A.M.

2

3 THE COURT: All right. Counsel state their appearances
4 for the record.

5 MR. COUVILLIER: Good morning, Your Honor. Max
6 Couvillier on behalf of the Petitioner, the Adelson's Campus.

7 THE COURT: Okay.

8 MR. FREER: Good morning, Your Honor. Alan Freer on
9 behalf of the Estate.

10 THE COURT: All right. So we're back and I think there's
11 -- we've been here previously on this. There's some time
12 taken to I guess, I don't know, have some discussions or
13 something and now it's back on. So what are you looking for
14 here today?

15 MR. COUVILLIER: Your Honor, we are here today for
16 basically two matters. One is, we have the Adelson's Campus
17 motion to dismiss --

18 THE COURT: Uh-huh.

19 MR. COUVILLIER: -- the Executor's petition. And I think
20 with the points that we've raised therein we've also resolved
21 some of the issues that were previously discussed with the
22 Court with respect to our preliminary objection to the
23 accounting.

24 THE COURT: Right. Because we've got a motion -- another
25 petition to compel a distribution.

1 MR. COUVILLIER: I want my money back; this is a breach
2 of contract.

3 THE COURT: -- he wrote his original will, he wrote his
4 first codicil and the second codicil.

5 MR. COUVILLIER: That's right, Your Honor.

6 THE COURT: And never changed it.

7 MR. COUVILLIER: That's right, Your Honor. He -- his
8 will was written in 2004 --

9 THE COURT: 2004.

10 MR. COUVILLIER: -- and then the codicils were in 2006.
11 Your Honor, by that time the Adelsons were already involved.
12 Mr. Schwartz is serving on the board with the Adelsons. And
13 this was coming forward. Certainly if he believed that that
14 provision was important he would have included it in the
15 codicils --

16 THE COURT: Right. And --

17 MR. COUVILLIER: -- and he did not.

18 THE COURT: -- his original -- the original purpose was
19 first of all, the money goes to pay off a mortgage. If
20 there's no mortgage then you still get the money but you get
21 it for scholarships.

22 MR. COUVILLIER: That's correct, Your Honor.

23 THE COURT: So he provided for just the eventuality it
24 happened, which is an angel in the fundraising field; people
25 with a lot of money who clear up your debts are called angels.

1 So the school was fortunate in the Adelsons clearing up all
2 their debts. And that meant that Mr. Schwartz who had
3 foreseen something like that might happen still wanted the
4 money to go to the school, but in this instance it would go to
5 pay for Jewish children to be educated.

6 MR. COUVILLIER: That is correct, Your Honor. And that's
7 exactly what's happening.

8 THE COURT: That's was what he'd always wanted his whole
9 life.

10 MR. COUVILLIER: That's what --

11 THE COURT: Everything that he had done.

12 MR. COUVILLIER: -- he always wanted. And so this notion
13 of the name change, Your Honor, as we pointed out is
14 irrelevant, because the purpose of the gift as you hit it, is
15 to -- the gift is going to go to scholarships. It's going to
16 go to scholarships to fund the education of Jewish children --

17 THE COURT: Since it's not needed to pay off the
18 mortgage.

19 MR. COUVILLIER: That's correct. That's correct.

20 THE COURT: I mean --

21 MR. COUVILLIER: And the reason it wasn't needed to pay
22 for is because the Adelsons --

23 THE COURT: Right.

24 MR. COUVILLIER: -- extinguished the debt that Mister --

25 THE COURT: He clearly wanted the school to be

1 financially healthy. So first pay off the mortgage, help pay
2 off the mortgage. And if there's no mortgage then that's
3 great, but you still get the money, but this time let's use it
4 to educate the Jewish children of Las Vegas.

5 MR. COUVILLIER: That's correct, Your Honor. That's
6 correct.

7 THE COURT: Clearly stated never -- nothing indicates
8 that he ever changed that philanthropic purpose.

9 MR. COUVILLIER: Correct, Your Honor. And those were the
10 only conditions that he had on the will. And Mr. Adelson
11 helped him make the first condition because he eradicated all
12 the debt.

13 THE COURT: Uh-huh.

14 MR. COUVILLIER: And so we -- you know, we're still here
15 to help Mr. Schwartz fulfill his gift to help educate Jewish
16 children.

17 THE COURT: Right.

18 MR. COUVILLIER: That's the purpose of the will.

19 THE COURT: I mean, if he had just left the money to pay
20 off a debt and there was no debt, then that would be a
21 different thing.

22 MR. COUVILLIER: That's correct.

23 THE COURT: But he provided in the eventuality there's no
24 debt then we're going to just use it to educate children.

25 MR. COUVILLIER: That is correct, Your Honor.

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.

A handwritten signature in black ink, appearing to read "Matthew Smith", is written over a horizontal line.

Matthew Smith

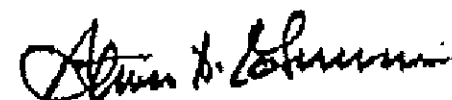
Certified Transcriber

ADELSON CAMPUS

Exhibit 3

11/12/13 Order

Electronically Filed
11/12/2013 03:45:47 PM



CLERK OF THE COURT

1 ORDER
Elizabeth Brickfield (SBN #6236)
2 ebrickfield@lionelsawyer.com
Maximiliano D. Couvillier, III (SBN #7661)
3 mcouvillier@lionelsawyer.com
Ketan D. Bhurud (SBN #10515)
4 kbhurud@lionelsawyer.com
LIONEL SAWYER & COLLINS
5 1700 Bank of America Plaza
300 South Fourth Street, Suite 1700
6 Las Vegas, Nevada 89101
(702) 383-8888 (Telephone)
7 (702) 383-8845 (Fax)

8 Attorneys for The Dr. Miriam and
Sheldon G. Adelson Educational Institute

DISTRICT COURT

Clark COUNTY, NEVADA

12 In the Matter of the Estate of
13 MILTON I. SCHWARTZ,
14 Deceased

Case No. P061300
Dept. No.: 26/Probate

ORDER DENYING ADELSON CAMPUS'
MOTION TO DISMISS EXECUTOR'S
PETITION FOR DECLARATORY
RELIEF WITHOUT PREJUDICE &
ALLOWING LIMITED DISCOVERY

17 On October 8, 2013, the Court heard the following matters: (1) The Motion to Dismiss
18 the Executor's petition for declaratory relief ("Motion to Dismiss") by Dr. Miriam and Sheldon
19 G. Adelson Educational Institute (the "Adelson Campus"), devisee under the Will of the
20 Decedent in the above-referenced Estate; and (2) the Adelson Campus' Preliminary Objection to
21 Accounting. Maximiliano D. Couvillier III appeared on behalf of the Adelson Campus and Alan
22 D. Freer appeared on behalf of the Executor A. Jonathan Schwartz ("Executor").

23 The Court has reviewed the record, all papers on file, considered the argument of
24 counsel, and good cause appearing, it is ORDERED as follows:

25 1. The Adelson Campus' Motion to Dismiss is DENIED WITHOUT
26 PREJUDICE and may be renewed as a motion for summary judgment after the conclusion of
27 the limited discovery provided herein;
28

LIONEL SAWYER & COLLINS
ATTORNEYS AT LAW
300 SOUTH FOURTH ST.
SUITE 1700
LAS VEGAS, NEVADA 89101
(702) 383-8888

000731

ADELSON CAMPUS

Exhibit 4

03/06/14 Order

ORDR

MARK A. SOLOMON, ESQ.

Nevada State Bar No. 00418

msolomon@sdfnvlaw.com

ALAN D. FREER, ESQ.

Nevada State Bar No. 7706

afreer@sdfnvlaw.com

STEVEN E. HOLLINGWORTH, ESQ.

Nevada State Bar No. 7753

shollingworth@sdfnvlaw.com

SOLOMON DWIGGINS & FREER

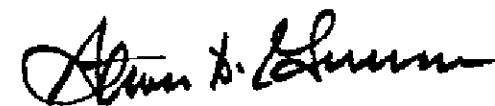
9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

Telephone: (702) 853-5483

Facsimile: (702) 853-5485

Attorneys for A. Jonathan Schwartz

Electronically Filed
03/06/2014 02:21:33 PM

CLERK OF THE COURT

DISTRICT COURT**COUNTY OF CLARK, NEVADA**

In the Matter of the Estate of

Case No. P061300

MILTON I. SCHWARTZ,

Dept. No.: 26/Probate

Deceased,

Date of Hearing: February 11, 2014
Time of Hearing: 9:00 a.m.**ORDER REGARDING DEPOSIT OF FUNDS IN BLOCKED ACCOUNT AT MORGAN STANLEY**

On February 11, 2014, the Court heard the Estate's Motion to Modify November 12, 2013, Order and/or Limit Discovery, and The Dr. Miriam and Sheldon G. Adelson Educational Institute's Ex Parte Countermotion to Continue the February 11, 2014, Hearing to Allow the Discovery Commissioner to Resolve the Discovery Dispute. Maximiliano D. Couvillier III appeared on behalf of The Dr. Miriam and Sheldon G. Adelson Educational Institute ("Adelson Campus"), and Alan D. Freer appeared on behalf of the Executor A. Jonathan Schwartz ("Executor").

The Court has reviewed the record, all papers on file, considered the argument of counsel, and good cause appearing, it is ORDERED as follows:


IT IS HEREBY ORDERED that the Court authorizes the Executor to accept the benefit of Five Hundred Thousand Dollars (\$500,000.00) in securities, which has been represented to be in the form

1 of investment grade bonds from the Milton I. Schwartz Revocable Family Trust u/a/d January 29,
 2 1986, as amended, and shall take all reasonable steps within his power as Executor of the Estate to
 3 facilitate deposit of said bonds by no later than February 27, 2014, in a blocked account at Morgan
 4 Stanley in the name of the Milton I. Schwartz Revocable Family Trust u/a/d January 29, 1986, as
 5 amended fbo The Estate of Milton I. Schwartz, A. Jonathan Schwartz, Executor, pending further order
 6 of this Court;

7
 8 **IT IS FURTHER ORDERED** that the Court authorizes and directs Morgan Stanley to open
 9 said blocked account in the above referenced name and to block and/or freeze such account until
 10 further Order of this Court, except that the Court authorizes Morgan Stanley and/or the investment
 11 manager, Kenneth Malamed, to sell any investment grade bonds only if they expire, term out or
 12 become due during the pendency of the litigation, in which case, Morgan Stanley and/or the
 13 investment manager, Kenneth Malamed, shall reinvest such proceeds to purchase bonds of equal or
 14 better credit rating so that the funds will continue to earn income; and

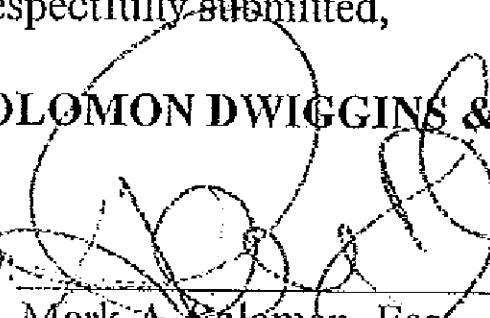
15 **IT IS FURTHER ORDERED** that Morgan Stanley shall send the Executor and the Adelson
 16 Campus quarterly statements of said blocked account during the pendency of this litigation or pending
 17 further order of Court. The statements may be sent to the Adelson Campus c/o Maximiliano D.
 18 Couvillier III, Esq., 300 So. Fourth St., Suite 1700, Las Vegas, Nevada 89101.

19 DATED this 14th day of March, 2014.

20
 21
 22 
 DISTRICT COURT JUDGE


23 Respectfully submitted,

24 **SOLOMON DWIGGINS & FREER**

25
 26 By: 
 27 Mark A. Solomon, Esq.
 Alan D. Freer, Esq.

28 Approved As To Form And Content:

LIONEL SAWYER & COLLINS

By: 
 Elizabeth Brickfield, Esq.
 Maximiliano D. Couvillier, III, Esq.

1 Steven E. Hollingworth, Esq.
2 9060 West Cheyenne Avenue
3 Las Vegas, Nevada 89129
4 Attorneys for Respondent, A. Jonathan Schwartz

1700 Bank of America Plaza
300 South Fourth Street, Suite 1700
Las Vegas, NV 89101
Attorneys for The Dr. Miriam and Sheldon
G. Adelson Educational Institute

98/000
000735
SOLOMON DWIGGINS & FREER, LTD.
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TEL: (702) 853-5483 | FAX: (702) 853-5485

000735

ADELSON CAMPUS

Exhibit 5

Deposition Transcript of Executor Jonathan Schwartz

1

DISTRICT COURT

2

COUNTY OF CLARK, NEVADA

3

4

In the Matter of the Estate of) Case No. P061300

5

MILTON I. SCHWARTZ,

) Dept. No.: 26/Probate

6

Deceased.

7

8

9

10

11

12

13

14

15

DEPOSITION OF A. JONATHAN SCHWARTZ

16

Taken on Wednesday, March 5, 2014

17

At 12:33 p.m.

18

At 9060 West Cheyenne Avenue

19

Las Vegas, Nevada

20

21

22

23

24

Reported by: Carla N. Bywaters, CCR 866

25

Job No. 9107

A. Jonathan Schwartz

In the Matter of the Estate of Milton I. Schwartz

Page 1

DISTRICT COURT
COUNTY OF CLARK, NEVADA

In the Matter of the Estate of) Case No. P061300
MILTON I. SCHWARTZ,) Dept. No.: 26/Probate
Deceased.)

DEPOSITION OF A. JONATHAN SCHWARTZ
Taken on Wednesday, March 5, 2014
At 12:33 p.m.
At 9060 West Cheyenne Avenue
Las Vegas, Nevada

Reported by: Carla N. Bywaters, CCR 866
Job No. 9107

Page 2

APPEARANCES:

For A. Jonathan Schwartz:

ALAN D. FREER, ESQ.
Solomon Duggins & Freer, Ltd.
West Cheyenne Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

For The Dr. Miriam and Sheldon G. Adelson Educational
Institute:

MAXIMILIANO D. COUVILLIER III, ESQ.
Lionel Sawyer & Collins
300 South Fourth Street
Suite 1700
Las Vegas, Nevada 89101

* * * * *

Page 3

I N D E X

WITNESS	PAGE
A. JONATHAN SCHWARTZ	
Examination by Mr. Couvillier	4
Examination by Mr. Freer	33

E X H I B I T S

NUMBER	DESCRIPTION	MARKED
9	February 5, 2004 Conformed Copy of Last Will and Testament	6
10	January 27, 2006 Conformed Copy of First Codicil to Last Will and Testament	22
11	July 21, 2006 True and Correct of Second Codicil to Last Will and Testament	29

Page 4

P R O C E E D I N G S

(Witness sworn.)

A. JONATHAN SCHWARTZ,
having been first duly sworn, was
examined and testified as follows:

E X A M I N A T I O N

BY MR. COUVILLIER:

Q. And, Jonathan, you've sat through these depositions, so I'm going to just cut short a lot of the introductory remarks or questions, if that's okay with you?

A. Please.

Q. Jonathan, have you ever been convicted of a felony?

A. No.

Q. What do you do for a living?

A. I'm an executive. I own several businesses.

Q. What sorts of businesses do you own?

A. Real estate, investment, real estate developmental, transportation, banking, advertising.

Q. And how long have you been engaged in this line of work as an executive?

A. For several years.

Q. Talk a little bit about your education.

A. I have a double major Bachelor Arts from UCLA

Page 5

1 in History and Political Science. I have a law degree
 2 from Northwestern University School of Law, and I have
 3 a Master's in Business Administration from Loyola
 4 Marymount University in Los Angeles.
 5 Q. When did you receive your law degree?
 6 A. 1996.
 7 Q. Are you licensed to practice law anywhere in
 8 the United States?
 9 A. I am.
 10 Q. Where?
 11 A. Arkansas.
 12 Q. Why Arkansas?
 13 A. It's a long story. You don't need to know it.
 14 Q. What's the synopsis?
 15 A. The synopsis is that I was contemplating doing
 16 some work there. I got licensed there, and my father
 17 became ill, and I got more involved in the family
 18 business and went in that direction.
 19 Q. And when did you become licensed in Arkansas?
 20 A. I want to say 2000.
 21 Q. Did you review any documents to prepare for
 22 your deposition today?
 23 A. Just my father's will, and I've seen all of
 24 these exhibits flying around during the depositions.
 25 Q. Did you review any of the codicils.

Page 6

1 A. I've seen them during the depositions.
 2 Q. Other than discussions with Mr. Freer and
 3 Mr. Luszeck, have you had any discussions with anybody
 4 else about your deposition?
 5 A. No.
 6 MR. COUVILLIER: And, Alan, we're just going
 7 to go in the number sequence here, if that's all right.
 8 MR. FREER: Oh, that's fine.
 9 MR. COUVILLIER: We'll mark this as Exhibit
 10 No. 9.
 11 (Exhibit No. 9 was marked for
 12 identification.)
 13 BY MR. COUVILLIER:
 14 Q. Jonathan, I've just handed you what's been
 15 marked as Exhibit No. 9. What is that document?
 16 A. My father's Last Will and Testament dated
 17 February 5th, 2004.
 18 Q. And did Mr. Marc Gordon prepare the will?
 19 A. The will was dictated in our offices. It went
 20 to Marc Gordon's office to review and approve, and he
 21 had some discussions or meetings with my father.
 22 Q. When you said your offices, could you please
 23 give me an address for that.
 24 A. 2293 Duneville Street, Las Vegas, Nevada
 25 89146.

Page 7

1 Q. And when did the dictation take place?
 2 A. Preceding it being executed.
 3 Q. At or around February 5th, 2004?
 4 A. Correct.
 5 Q. And who took the dictation?
 6 A. I did.
 7 Q. And how did you take the dictation?
 8 A. I sat in my father's office with a laptop
 9 computer. He took his former copy of his will and told
 10 me what he wanted.
 11 Q. Did you start anew from the former copy of his
 12 will or did you have a form already up there --
 13 A. We used --
 14 Q. -- for the will?
 15 A. He used the same form.
 16 Q. And did he have that in an electronic format
 17 or in a paper format?
 18 A. Paper format.
 19 Q. And was that previous will a draft or a formal
 20 will that was substituted by this will?
 21 A. It was a formal will.
 22 Q. And what was the date of that will?
 23 A. I don't recall off the top of my head.
 24 Q. Do you have a copy of it?
 25 A. We might.

Page 8

1 Q. If you did, where would it be?
 2 A. In my office.
 3 Q. Okay. And your office is at the Duneville --
 4 A. Correct.
 5 Q. -- address? And who else was present there
 6 when the dictation took place?
 7 A. Nobody was in the office. Nobody was in my
 8 father's immediate office at the time, just the two of
 9 us.
 10 Q. So the dictation took place actually in his
 11 office.
 12 A. Correct.
 13 Q. And how long did the process take?
 14 A. I don't recall.
 15 Q. Do you recall an approximate number? Was it
 16 less than five hours, more than two?
 17 A. I don't remember.
 18 Q. Do you recall whether it was an extensive
 19 amount of time --
 20 A. I don't remember.
 21 Q. -- as you sit here? Why did your dad ask you
 22 to take dictation on his will?
 23 A. My father often drafted documents. My father
 24 was a very, very experienced business person and,
 25 frankly, considered himself brighter than most of the

Page 9

1 attorneys that he employed. My father was a member of
 2 MENSA. He was a member of Intertel. He was literally
 3 a genius, and he often did things like this, so that's
 4 why.
 5 Q. Now, at the time that you took dictation, you
 6 had already received your law degree, correct?
 7 A. Correct.
 8 Q. Did you have any experience in estate
 9 planning?
 10 A. I had worked alongside my father my entire
 11 life with Dick Oshins, with Marc Gordon. I sat in on
 12 and was a part of witnessing my father create his
 13 estate plan for my entire life in addition to all the
 14 classes I took in law school.
 15 Q. So suffice it to say you were pretty
 16 knowledgeable about your father's estate --
 17 A. Yes.
 18 Q. -- and that process?
 19 A. Yes.
 20 Q. Did you give your father any advice regarding
 21 the preparation of the will?
 22 A. We discussed it. I don't know if I would say
 23 I ever gave my father advice.
 24 Q. What did you discuss?
 25 A. We discussed numerous things.

Page 10

1 Q. Like what?
 2 A. Well, when it has to do with what's relevant,
 3 which is the Milton I. Schwartz Hebrew Academy, we
 4 certainly discussed the language as to that gift.
 5 Q. Did you discuss anything else with regards to
 6 any of the other provisions?
 7 A. I don't recall specifically.
 8 Q. Okay. And what do you recall discussing about
 9 this provision, 2.3, of the will?
 10 A. I specifically recall him saying that he did
 11 not want a successor clause added to the language where
 12 it says -- may I read?
 13 Q. Yes, please.
 14 A. Let me find it. I hereby give, devise, and
 15 bequeath the sum of \$500,000 to the Milton I. Schwartz
 16 Hebrew Academy. We discussed whether or not the
 17 language should say to the Milton I. Schwartz Hebrew
 18 Academy and its successors in interest or its
 19 successors in interest, and he specifically said it
 20 shouldn't because there would be no successor in
 21 interest, that the gift was only to go to the Milton I.
 22 Schwartz Hebrew Academy.
 23 Q. Okay. And what was your response to that?
 24 A. Yes, sir.
 25 Q. Okay. Did you conduct any research in regards

Page 11

1 to preparing this specific section?
 2 A. I didn't conduct research, but over the course
 3 of many, many years, I had numerous conversations with
 4 my father where he would walk into my office -- we
 5 shared an office in the same building. He had an
 6 office; I had a separate office.
 7 And he would walk into my office, and he would
 8 bring out the Roberta Sabbath letter that was the
 9 subject of a prior deposition today and say, "You may
 10 need this one day, if the naming rights to the school
 11 ever become an issue."
 12 A couple months later he would come in, and he
 13 would say, "Here is a copy of the Bylaws to the school
 14 that say it's the Milton I. Schwartz Hebrew Academy in
 15 perpetuity. You may need this one day, if it ever
 16 becomes an issue." We had more conversations like that
 17 than I can count.
 18 Q. Okay. Why did he ever think that the naming
 19 rights would become an issue?
 20 A. Because it was a subject of the litigation, I
 21 believe -- and I may be slightly wrong on the year -- I
 22 think '92 was the year.
 23 Q. Okay. And did you have these sorts of
 24 discussions in 2004?
 25 A. I don't recall.

Page 12

1 Q. Would there be anything to help refresh your
 2 recollection, maybe notes or --
 3 A. I didn't take any --
 4 Q. -- conversations?
 5 A. I didn't take any notes. I just recall
 6 numerous times where we had that discussion. I do
 7 recall in 2004 we had a family meeting. My father was
 8 very, very open about his will and his estate plan with
 9 our entire family. We had periodic meetings, and we
 10 discussed these issues; what was in his will, what he
 11 intended, why he wanted it.
 12 And the fact that the school was supposed to
 13 be named the Milton I. Schwartz Hebrew Academy in
 14 perpetuity was a discussion he had with me and my
 15 siblings and members of my family. He used to love to
 16 say -- whenever he would say the Milton I. Schwartz
 17 Hebrew Academy, he would say the Milton I. Schwartz
 18 Hebrew Academy in perpetuity with emphasis added.
 19 Q. Did you have any of these conversations at the
 20 time that he dictated the will to you?
 21 A. Yes.
 22 Q. Okay. And how did that come up?
 23 A. It was just -- it was understood. It was
 24 known. Like I said, he would always say that. It was
 25 an oft-made statement, often-made statement.

A. Jonathan Schwartz

In the Matter of the Estate of Milton I. Schwartz

Page 13	Page 15
<p>1 Q. Okay. Did he discuss this provision, Section</p> <p>2 2.3, of the will with anybody else from your immediate</p> <p>3 family, your mom or your siblings?</p>	<p>1 Q. Did he have any discussions with anybody else</p> <p>2 outside of that family meeting that we were talking</p> <p>3 about?</p>
<p>4 A. I know he had discussions about the fact that</p> <p>5 it was supposed to be named the Milton I. Schwartz</p> <p>6 Hebrew Academy in perpetuity with my siblings.</p>	<p>4 A. He may have discussed it with Marc Gordon. He</p> <p>5 may have discussed it with my mother. I don't know</p> <p>6 otherwise.</p>
<p>7 Q. And for the record, Jonathan, who are your</p> <p>8 siblings?</p>	<p>7 Q. Okay. Anybody else that you could think of?</p> <p>8 A. I can't think of it off the top of my head</p>
<p>9 A. Robin Sue Landsburg, Eileen Joanna Zarin, and</p> <p>10 Samuel Schwartz are my father's other children.</p>	<p>9 now.</p> <p>10 Q. Anything that would help refresh your</p>
<p>11 MR. FREER: Would you mind spelling that for</p> <p>12 the court reporter, please?</p>	<p>11 recollection; any notes, conversations?</p> <p>12 A. Not that I can recall.</p>
<p>13 THE WITNESS: Which names do you want me to</p> <p>14 spell? Do you want me to spell all of them from</p> <p>15 beginning to end?</p>	<p>13 Q. Okay. I just wanted to close the loop on one</p> <p>14 set of questioning maybe that will save us some time.</p> <p>15 When he dictated the will to you, did this just take</p>
<p>16 BY MR. COUVILLIER:</p>	<p>16 place over one day?</p>
<p>17 Q. And if you could add their addresses while</p> <p>18 we're at it, too, please.</p>	<p>17 A. I don't recall.</p> <p>18 Q. Okay. So it could have been more than one</p>
<p>19 A. Well, I'm going to have to give you those</p> <p>20 later.</p>	<p>19 day?</p> <p>20 A. I don't recall.</p>
<p>21 Q. How about whether they live in Las Vegas or</p> <p>22 what city?</p>	<p>21 Q. Okay. Did anybody else assist you in the</p> <p>22 dictation process?</p>
<p>23 A. Some live in -- I'll go one by one --</p>	<p>23 A. Well, Marc Gordon. It all went to Marc Gordon</p>
<p>24 Q. Thank you, Jonathan.</p>	<p>24 to review and approve, and I know they had a</p>
<p>25 A. -- to make it simple for you. It's Samuel</p>	<p>25 conversation about it and a meeting.</p>
Page 14	Page 16
<p>1 Schwartz, S-a-m-u-e-l, S-c-h-w-a-r-t-z. He lives in</p> <p>2 New Jersey. Robin Sue Landsburg, R-o-b-i-n, S-u-e,</p> <p>3 Landsburg, L-a-n-d-s-b-u-r-g, lives in New Jersey. And</p> <p>4 my sister Eileen Joanna Zarin, E-i-l-e-e-n,</p> <p>5 J-o-a-n-n-a, Zarin, Z-a-r-i-n, lives in New York.</p>	<p>1 Q. Anybody proofread your dictation --</p>
<p>6 Q. Now I'm taking you back to 2004. Did your</p> <p>7 father discuss this provision, Section 2.3, with</p> <p>8 anybody else?</p>	<p>2 A. Well, he did.</p> <p>3 Q. -- after you completed.</p>
<p>9 A. I know that it was discussed at the family</p> <p>10 meeting we had in and around the time the will was</p> <p>11 executed because we had a family meeting at the Las</p> <p>12 Vegas Country Club.</p>	<p>4 A. My father did.</p> <p>5 Q. Your father did?</p>
<p>13 Q. And you don't -- I mean, I don't expect you to</p> <p>14 name everybody who was at the family meeting, but was</p> <p>15 there anybody else there outside of the family?</p>	<p>6 A. He was extremely fastidious about reviewing</p> <p>7 any and every document that went out of the office.</p>
<p>16 A. My father's assistant, Susan Pacheco was</p> <p>17 there, but at the time, her name was McGarraugh. She</p> <p>18 got married subsequently, and my vague recollection is</p> <p>19 that that my wife was there also.</p>	<p>8 Anyone who worked for him can attest to the fact that</p> <p>9 he was very, very challenging to work for.</p>
<p>20 Q. And at that time who would you have considered</p> <p>21 family?</p>	<p>10 Q. But he brought everybody's standards up, I</p> <p>11 take it?</p>
<p>22 A. Any of my dad's kids, their spouses, some of</p> <p>23 their children may have been there.</p>	<p>12 A. He did.</p> <p>13 Q. Did your father maintain -- was he pretty good</p>
<p>24 Q. Anybody else?</p>	<p>14 at maintaining records?</p>
<p>25 A. I don't think so.</p>	<p>15 A. Yes.</p> <p>16 Q. And where did he maintain his records?</p>
	<p>17 A. In our office.</p> <p>18 Q. Okay. And this is the Duneville?</p>
	<p>19 A. Correct.</p> <p>20 Q. Okay. And from here forward, so we don't have</p>
	<p>21 to clarify, it's fair to assume that when you're</p> <p>22 talking your office, you mean that Duneville address?</p>
	<p>23 A. Correct.</p> <p>24 Q. Would that be fair?</p>
	<p>25 A. Correct.</p>

Page 17

1 Q. Now, what did you do after you finished the
2 dictation, and your father reviewed it; what happened
3 after that?
4 A. It was sent to Marc Gordon.
5 Q. How was it sent to Marc?
6 A. I don't recall.
7 Q. Did you have an e-mail account at that time?
8 A. Probably.
9 Q. Could you have sent it to him via e-mail?
10 A. I don't specifically recall. You're talking
11 ten years ago.
12 Q. I understand. I'm just asking for your best
13 testimony here today, Jonathan. And after you sent it
14 to Marc, what happened after that?
15 A. I know they had a conversation on the phone,
16 and I know that Marc conducted a signing ceremony at
17 his office.
18 Q. And how do you know that they had a
19 conversation on the phone?
20 A. Because my father told me about it.
21 Q. And when you say they had a conversation, you
22 mean your father and Marc Gordon?
23 A. Correct.
24 Q. Okay. Was anybody else a part of that
25 conversation?

Page 18

1 A. I don't remember.
2 Q. What did your father say to you about that
3 conversation?
4 A. That he sent it to Marc to review and to --
5 that was it. That's all I can remember.
6 Q. Okay. Did you have any conversations with
7 Marc Gordon about the will?
8 A. When?
9 Q. After you sent him the copy that you had taken
10 the dictation?
11 A. Well, again, that's a ten-year period.
12 Q. Asking for your best testimony.
13 A. I've told Marc that he's going to be called
14 for a deposition, so yes.
15 Q. More immediate to the 2004, let's say within a
16 month of you sending that over to Marc, did you have
17 any conversations with him?
18 A. I don't remember.
19 Q. Okay. What was your most recent conversation
20 that you've had with Marc?
21 MR. FREER: And I'll object to the extent that
22 I was present and -- on the attorney-client
23 privilege -- you can answer absent any meetings in
24 which I was present with Marc. And I guess, also,
25 let's post an objection from the standpoint that --

Page 19

1 hang on one second.
2 (Discussion held off the record between
3 the deponent and his counsel.)
4 MR. COUVILLIER: I want to just let the record
5 reflect that there was consultation between --
6 MR. FREER: We're just trying to assert the
7 scope of -- to the extent that any conversations
8 dealing specifically with the will or Milton's intent,
9 we will waive that, but we will assert a privilege over
10 any other conversations that he had with Marc.
11 MR. COUVILLIER: Okay. And at this time,
12 we'll -- Alan, I'll just note your objection, and I'll
13 just ask him some of the questions, and you could guide
14 me back if you think I'm outside the scope --
15 MR. FREER: I appreciate it.
16 MR. COUVILLIER: -- when you make your
17 objections.
18 BY MR. COUVILLIER:
19 Q. When was the last conversation that you had
20 with Marc -- and I'm just asking for the date -- that
21 you had with Marc regarding the will, Section 2.3?
22 A. I don't recall if I ever had a conversation
23 with Marc about it.
24 Q. Okay. About Section 2.3?
25 A. Correct.

Page 20

1 Q. Okay. Were your discussions with Marc just in
2 general about the will?
3 A. I don't recall that I ever had a conversation
4 with Marc about it.
5 Q. Okay. Did you have any conversations with
6 anybody at Marc's office?
7 A. Not that I remember.
8 Q. Okay. So would it be fair to say that after
9 you sent him the dictation, you didn't have any
10 conversations with Marc thereafter regarding
11 Section 2.3?
12 A. I didn't say I sent him the dictation.
13 Q. Okay. Let me rephrase that question. After
14 the dictation that you had taken from your father was
15 sent to Marc, you didn't have any conversations with
16 Marc regarding Section 2.3 of the will?
17 A. I don't recall.
18 Q. Did you give your father any advice regarding
19 Section 2.3 of the will?
20 A. I think I testified previously I don't -- I
21 didn't give him advice. I recall specifically us
22 discussing whether or not there should be a successor
23 clause and him saying he didn't want one because there
24 wouldn't be a successor.
25 Q. Okay. Anything else beyond that?

Page 21	Page 23
<p>1 A. Not that I can recall.</p> <p>2 Q. Okay. Would there be anything, any notes,</p> <p>3 conversations, anything that you could think of that</p> <p>4 could help refresh your recollection?</p> <p>5 A. Sitting here right now, not that I can recall.</p> <p>6 Q. I understand. It's been a long time. Were</p> <p>7 you there -- well, strike that.</p> <p>8 Where did your father execute the will?</p> <p>9 A. My understanding is that he executed it at the</p> <p>10 offices of Berkley and Gordon.</p> <p>11 Q. And how do you arrive at that understanding?</p> <p>12 A. I don't remember. That's -- that's my</p> <p>13 understanding.</p> <p>14 Q. Okay. Why do you believe that?</p> <p>15 A. He could have -- well, I know for -- I know</p> <p>16 that when we went through the will that the people</p> <p>17 listed as the witnesses were employees of Berkeley and</p> <p>18 Gordon, so that's where it had to be.</p> <p>19 Q. Where are the offices of Berkeley and Gordon?</p> <p>20 A. At this time, they were on Sahara.</p> <p>21 Q. And at this time, you mean in 2004 when the</p> <p>22 will was executed?</p> <p>23 A. In 2004, I believe their office was in the</p> <p>24 Bank West building on Sahara.</p> <p>25 Q. Were you present when your dad executed the</p>	<p>1 document here, I wanted to just close a couple</p> <p>2 questions with respect to the will. Do you know if</p> <p>3 anybody assisted Marc Gordon in finalizing or preparing</p> <p>4 the will?</p> <p>5 A. I have no idea.</p> <p>6 Q. All right. I've just handed you what's been</p> <p>7 marked as Exhibit No. 10. Do you recognize this</p> <p>8 document?</p> <p>9 A. I do.</p> <p>10 Q. What is it?</p> <p>11 A. It's the First Codicil to my father's Last</p> <p>12 Will and Testament -- wait a minute -- dated January</p> <p>13 27, 2006.</p> <p>14 Q. Thank you. Sometime in 2005, did you have any</p> <p>15 conversations with your father about amending his will?</p> <p>16 MR. FREER: I'll object on the grounds that</p> <p>17 this is beyond the scope of discovery as set forth in</p> <p>18 the prior order, but you can answer it.</p> <p>19 THE WITNESS: I don't remember.</p> <p>20 BY MR. COUVILLIER:</p> <p>21 Q. Do you know who prepared this document,</p> <p>22 Exhibit No. 10?</p> <p>23 A. This was prepared in our office. He dictated</p> <p>24 it.</p> <p>25 Q. Okay. And to whom did he dictate it?</p>
Page 22	Page 24
<p>1 will?</p> <p>2 A. I'm not sure. I don't recall.</p> <p>3 Q. Anything to help refresh your recollection,</p> <p>4 anything I could show you or conversations that you</p> <p>5 could think about that could trigger?</p> <p>6 A. Not that I can remember.</p> <p>7 Q. Okay. What happened after your father</p> <p>8 executed the will?</p> <p>9 MR. FREER: Objection. Vague. You can</p> <p>10 answer.</p> <p>11 THE WITNESS: I remember him sending out a</p> <p>12 copy of the will to my siblings.</p> <p>13 BY MR. COUVILLIER:</p> <p>14 Q. Do you recall if he sent a copy of the will to</p> <p>15 anybody else?</p> <p>16 A. Well, Marc would have had a copy of it. He</p> <p>17 often would have sent a copy to my mother, and that's</p> <p>18 it.</p> <p>19 Q. Do you know whether he discussed the will with</p> <p>20 anybody from the Hebrew Academy from the school?</p> <p>21 A. I don't know.</p> <p>22 Q. Okay.</p> <p>23 (Exhibit No. 10 was marked for</p> <p>24 identification.)</p> <p>25 Q. Jonathan, actually before we go on to this</p>	<p>1 A. To me. Can I ask a question?</p> <p>2 MR. COUVILLIER: Let's go off the record.</p> <p>3 (Discussion held off the record.)</p> <p>4 MR. COUVILLIER: Okay.</p> <p>5 BY MR. COUVILLIER:</p> <p>6 Q. And where did the dictation take place,</p> <p>7 Jonathan?</p> <p>8 A. In my father's office.</p> <p>9 Q. Was there anybody else there present?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Okay. And what did your dad and you discuss</p> <p>12 about this First Codicil?</p> <p>13 A. I don't recall. It speaks for itself.</p> <p>14 Q. Did you discuss Section 2.3 of his will in</p> <p>15 connection with this First Codicil? Do you recall</p> <p>16 having any conversations?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Okay. Do you recall whether your father</p> <p>19 was -- what his role was with the school in 2006?</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you recall whether he was on the board of</p> <p>22 directors?</p> <p>23 A. He may have been.</p> <p>24 Q. And after you took dictation of the First</p> <p>25 Codicil, what did you do next?</p>

Page 25	Page 27
<p>1 A. I don't remember.</p> <p>2 Q. Is this the same scenario where, after you</p> <p>3 took the dictation, it was Marc Gordon who ultimately</p> <p>4 prepared it?</p> <p>5 A. I think, and I only know this from looking at</p> <p>6 who witnessed it, that it went over to the cab</p> <p>7 company's Legal Department, and it was witnessed and</p> <p>8 executed over there.</p> <p>9 Q. Okay. So you don't have an idea -- well, let</p> <p>10 me step back. In looking at this document, Jonathan,</p> <p>11 is this the document that was dictated to you?</p> <p>12 A. Yes.</p> <p>13 Q. Does it look like it's been changed in any</p> <p>14 way?</p> <p>15 A. No. My father's signature is on it on page 4.</p> <p>16 His initials are at the bottom of every page. It's the</p> <p>17 document.</p> <p>18 Q. Were you present at the time that your father</p> <p>19 executed this?</p> <p>20 A. I don't remember.</p> <p>21 Q. Anything to help refresh your recollection?</p> <p>22 A. No.</p> <p>23 Q. Did you give your father any advice in</p> <p>24 connection with this First Codicil?</p> <p>25 A. I don't remember.</p>	<p>1 that existed at the time. He never let time lapse</p> <p>2 between -- I won't say never. He almost never let time</p> <p>3 lapse between creating an intent and memorializing it</p> <p>4 in some fashion, so that's why he would have done it.</p> <p>5 From reading this, I can surmise from Section</p> <p>6 1 that he must have come to an agreement sometime with</p> <p>7 her, with Abigail, regarding dealing with the ownership</p> <p>8 or reversion of the house, so that was Section 1.</p> <p>9 Section 2, let me read it. There, he's just</p> <p>10 clarifying my compensation as a director for</p> <p>11 Yellow-Checker-Star if he were to pass away, so again</p> <p>12 it speaks for itself.</p> <p>13 Let me see No. 3. Article 3, again, he's</p> <p>14 republishing his intent that his premarital agreement</p> <p>15 and various amendments to it were to remain effective</p> <p>16 and that it met his intent. He had had a series of</p> <p>17 disputes with his former wife Abigail.</p> <p>18 They had had a separation and in some</p> <p>19 litigation, she did everything she possibly could to</p> <p>20 try and upset their premarital agreement, and he wanted</p> <p>21 to, you know, state on the record, yet again that any</p> <p>22 agreements they had come to in writing were effective,</p> <p>23 and there was no differing oral agreement, so that was</p> <p>24 the reason for Article 3 as I recollect.</p> <p>25 And then Article 4, again from reading it, I</p>
Page 26	Page 28
<p>1 Q. Did you share any ideas or suggestions with</p> <p>2 him?</p> <p>3 A. I don't remember.</p> <p>4 Q. Did he express any concerns to you in</p> <p>5 connection with this First Codicil?</p> <p>6 A. The only way I could answer that question is</p> <p>7 by reading the language of the codicil which would tell</p> <p>8 me what was going on during the circumstances --</p> <p>9 Q. Okay.</p> <p>10 A. -- surrounding the codicil, but I don't have</p> <p>11 any specific recollection. I mean, I can certainly</p> <p>12 tell from reading it what he was thinking and what the</p> <p>13 circumstances were.</p> <p>14 Q. And what do you glean from reading it what the</p> <p>15 circumstances were?</p> <p>16 A. Well, the first section, Section 1, has to do</p> <p>17 with his residence. He had an agreement in his</p> <p>18 premarital agreement that his wife at the time was</p> <p>19 supposed to receive the house after a certain number of</p> <p>20 years, if I remember correctly, and they entered into</p> <p>21 some sort of settlement regarding a payment to her and</p> <p>22 reversion of the interest in the house back to him, and</p> <p>23 he wanted to memorialize it in a codicil.</p> <p>24 That was -- he was very, very timely in</p> <p>25 creating a codicil or what have you to circumstances</p>	<p>1 recollect that he had loaned Abigail some money to</p> <p>2 purchase a piece of land and she had repaid him, and he</p> <p>3 wanted to memorialize the fact that she had repaid him,</p> <p>4 so that there would be no misunderstanding with the</p> <p>5 estate at a later date if he passed away.</p> <p>6 He wanted to memorialize the fact that she</p> <p>7 didn't owe him anything, so that all just sort of goes</p> <p>8 to my prior testimony that he was pretty careful about</p> <p>9 memorializing things.</p> <p>10 Q. And so with respect -- you know, because I'm</p> <p>11 going to get into the second codicil briefly. It's</p> <p>12 fair to say that with respect to the will, the first</p> <p>13 and second codicil, the documents you're not disputing</p> <p>14 that the documents are ambiguous or otherwise don't</p> <p>15 speak for themselves?</p> <p>16 MR. FREER: Objection. Calls for a legal</p> <p>17 conclusion.</p> <p>18 THE WITNESS: Repeat the question, please.</p> <p>19 (Record read.)</p> <p>20 THE WITNESS: I don't believe they're</p> <p>21 ambiguous. Does that answer your question?</p> <p>22 MR. COUVILLIER: Yes, thank you.</p> <p>23 Can we go off the record for just a second?</p> <p>24 (Recess taken.)</p> <p>25 MR. COUVILLIER: Back on. If you'll mark this</p>

Page 29	Page 31
<p>1 as Exhibit 11, please.</p> <p>2 (Exhibit No. 11 was marked for</p> <p>3 identification.)</p> <p>4 BY MR. COUVILLIER:</p> <p>5 Q. All right. Jonathan, I've handed you what's</p> <p>6 been marked as Exhibit No. 11. What is this document?</p> <p>7 A. It's the Second Codicil to my father's Last</p> <p>8 Will and Testament dated the 21st of July, 2006.</p> <p>9 Q. Okay. When did you find out that the school</p> <p>10 had changed its name to the Dr. Miriam and Sheldon</p> <p>11 Adelson School?</p> <p>12 A. I don't remember.</p> <p>13 Q. Anything that I could help refresh your</p> <p>14 recollection?</p> <p>15 A. Not that I can remember. I mean you can try</p> <p>16 and show me something and that might, but --</p> <p>17 Q. Does the date of this will, could it have been</p> <p>18 around that time that this codicil was --</p> <p>19 A. Well --</p> <p>20 Q. -- executed?</p> <p>21 A. -- it certainly wasn't before my dad died.</p> <p>22 They would have never done that.</p> <p>23 Q. Okay.</p> <p>24 A. They were trying to get more money out of him.</p> <p>25 They would have never done that while he was living,</p>	<p>1 date for you.</p> <p>2 Q. Okay.</p> <p>3 A. I mean as late as 2013, at some point I had a</p> <p>4 meeting with Paul Schiffman where Paul made a point to</p> <p>5 tell me that they were doing some stucco work on the</p> <p>6 pediment over the building that my father built and</p> <p>7 that they would have to temporarily take down the name</p> <p>8 Milton I. Schwartz Hebrew Academy, and he told me as</p> <p>9 soon as the stucco work was completed, they would</p> <p>10 replace the name. I don't know if that answers your</p> <p>11 question.</p> <p>12 Q. Okay. So let me go back then and close the</p> <p>13 loop here on the Second Codicil, is this a document</p> <p>14 that your father dictated to you, Exhibit No. 11?</p> <p>15 A. It is.</p> <p>16 Q. Does it look like the exact document that you</p> <p>17 took dictation of?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And I see that you're reviewing the</p> <p>20 document, let me know when you've completed reviewing</p> <p>21 the document.</p> <p>22 A. I'm finished.</p> <p>23 Q. This document, does it concern Section 2.3 of</p> <p>24 your father's will?</p> <p>25 A. It does not.</p>
Page 30	Page 32
<p>1 and they knew that if they tried do it while he was</p> <p>2 alive, he would have sued them.</p> <p>3 Q. And do you recall -- what was the date that</p> <p>4 your father passed away?</p> <p>5 A. August of 2007.</p> <p>6 Q. Okay. And forgive me for using that date as a</p> <p>7 reference, but with that date in mind, does it help</p> <p>8 refresh your recollection as to when you learned that</p> <p>9 the school had changed its name?</p> <p>10 A. I continued to give -- I continued to -- I</p> <p>11 don't know if this answers your question or not. I</p> <p>12 continued to make annual gifts to the school in the</p> <p>13 name of the Milton I. Schwartz Hebrew Academy for years</p> <p>14 after, and I had meetings with members of the board,</p> <p>15 members of the administration where they told me that</p> <p>16 it was still the Milton I. Schwartz Hebrew Academy,</p> <p>17 that it would always be the Milton I. Schwartz Hebrew</p> <p>18 Academy.</p> <p>19 I had meetings as late as last year where</p> <p>20 members of staff told me that, but in the ensuing</p> <p>21 period between 2007 after my father passed away and to</p> <p>22 the present date, and I can't pinpoint dates, but</p> <p>23 little by little, I would hear things from the</p> <p>24 community about them minimizing my father's naming</p> <p>25 rights in one way or another, but I can't pinpoint a</p>	<p>1 Q. Do you recall whether in July of 2006, the</p> <p>2 date that this Second Codicil was executed, whether</p> <p>3 there was -- you had any discussions with your father</p> <p>4 regarding Section 2.3 of his will?</p> <p>5 A. I don't recall.</p> <p>6 Q. Okay. And, Jonathan, I just wanted to close</p> <p>7 another loop here. When we're talking about your</p> <p>8 father's will, I'm talking about the will that I</p> <p>9 introduced as Exhibit No. 9, which is his February 5th,</p> <p>10 2004 will. Has that been also your understanding when</p> <p>11 we're talking about his will?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Were you present when your father</p> <p>14 executed this Second Codicil, Exhibit 11?</p> <p>15 A. I don't remember.</p> <p>16 Q. Did you give your father any advice regarding</p> <p>17 the Second Codicil?</p> <p>18 A. I don't remember.</p> <p>19 Q. Did you give your father any ideas or</p> <p>20 suggestions regarding the Second Codicil?</p> <p>21 A. I don't remember.</p> <p>22 Q. And to close the loop for good, this Second</p> <p>23 Codicil has nothing to do with the school; there's no</p> <p>24 changes that affect either Section 2.3 or even mention</p> <p>25 the school, correct?</p>

Page 33

1 A. Correct.

2 MR. COUVILLIER: Can we go off the record for

3 just a moment.

4 (Recess taken.)

5 MR. COUVILLIER: Back on the record.

6 Jonathan, thank you for your time. At this time, I

7 don't have any further questions as to this first

8 phrase of discovery, and as we've discussed in

9 memorializing other depositions, the Court has

10 bifurcated discovery into two phases.

11 And so for this first phase of discovery,

12 we're conducting it regarding the scope of the Court's

13 November 11th order, and I've agreed with Mr. Freer

14 that we reserve our right to call witnesses should the

15 court allow the second phase of discovery to proceed.

16 At this time, Jonathan, I don't have any further

17 questions.

18 EXAMINATION

19 BY MR. FREER:

20 Q. Jonathan, earlier you testified in response to

21 a question from Mr. Couvillier that you did not believe

22 there were any ambiguities with respect to your

23 father's estate plan. With respect to Section 2.3 of

24 the will, why do you believe there are no ambiguities?

25 A. Because it says the bequest was to go to the

Page 34

1 Milton I. Schwartz Hebrew Academy. It doesn't say it

2 was supposed to go anywhere else, and there's no

3 successor-in-interest language, and the

4 successor-in-interest language was specifically

5 excluded, because he didn't intend for it to go to

6 anywhere else but a school named the Milton I.

7 Schwartz Hebrew Academy because the school had been

8 performing for 10 years on the Roberta Sabbath letter,

9 and there was no question that that was his intent, the

10 school's intent. It wasn't even an issue.

11 MR. FREER: Okay. I don't have any further

12 questions.

13 MR. COUVILLIER: Okay. I don't. Thank you.

14 (Deposition was recessed at 1:27 p.m.)

15

16

17

18

19

20

21

22

23

24

25

Page 35

1 CERTIFICATE OF WITNESS

2

3 PAGE LINE CHANGE REASON

4

5

6

7

8

9

10

11

12

13

14 *****

15 I, A. JONATHAN SCHWARTZ, witness herein, do hereby

16 certify and declare under penalty of perjury the within

17 and foregoing transcription to be my deposition in said

18 action; that I have read, corrected, and do hereby

19 affix my signature to said deposition.

20 A. JONATHAN SCHWARTZ _____

21 Witness Date

22

23

24

25

Page 36

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

3) ss

3 COUNTY OF CLARK)

4 I, Carla N. Bywaters, a duly certified court

5 reporter licensed in and for the State of Nevada, do

6 hereby certify:

7 That I reported the taking of the deposition of

8 the witness, A. JONATHAN SCHWARTZ, at the time and

9 place aforesaid;

10 That prior to being examined, the witness was by

11 me duly sworn to testify to the truth, the whole truth,

12 and nothing but the truth;

13 That I thereafter transcribed my shorthand notes

14 into typewriting and that the typewritten transcript of

15 said deposition is a complete, true and accurate record

16 of testimony provided by the witness at said time to

17 the best of my ability.

18 I further certify (1) that I am not a relative,

19 employee or independent contractor of counsel of any of

20 the parties involved in said action; nor a person

21 financially interested in the action; nor do I have any

22 other relationship with any of the parties or with

23 counsel of any of the parties involved in the action

24 that may reasonably cause my impartiality to be

25 questioned; and (2) that transcript review pursuant to

NRCP 30(e) was not requested.

IN WITNESS WHEREOF, I have hereunto set my hand in

the County of Clark, State of Nevada, this 17th day of

March 2014.

Carla N. Bywaters, CCR 866

ADELSON CAMPUS

Exhibit 6

Deposition Transcript of Attorney Marc Gordon

MARC GORDON - 3/11/2014

Page 1

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of)
) CASE NO. P061300
)
MILTON I. SCHWARTZ,)
)
)
Deceased.)
)
)
_____)

DEPOSITION OF MARC GORDON
LAS VEGAS, NEVADA
TUESDAY, MARCH 11, 2014

REPORTED BY: KAREN L. JONES, CCR NO. 694
JOB NO.: 203834-B

LITIGATION SERVICES & TECHNOLOGIES - 800-330-1112

Page 2		Page 4	
1	DEPOSITION OF MARC GORDON, taken at Solomon	1	LAS VEGAS, NEVADA; TUESDAY, MARCH 11, 2014
2	Dwiggins & Freer, located at 9060 West Cheyenne	2	2:48 P.M.
3	Avenue, Las Vegas, Nevada, on Tuesday,	3	-oOo-
4	March 11, 2014, at 2:48 p.m., before Karen L. Jones,	4	Whereupon --
5	Certified Court Reporter, in and for the State of	5	MARC GORDON,
6	Nevada.	6	having been first duly sworn to testify to the
7		7	truth, the whole truth, and nothing but the truth,
8	APPEARANCES:	8	was examined and testified as follows:
9	For A. Jonathan Schwartz:	9	
10	SOLOMON DWIGGINS & FREER	10	EXAMINATION
11	BY: ALAN D. FREER, ESQ.	11	BY MR. COUVILLIER:
12	9060 West Cheyenne Avenue	12	Q. Marc, I know that you're an attorney.
13	Las Vegas, Nevada 89129	13	Have you ever had your deposition taken before?
14	(702) 853-5483	14	A. Yes.
15	afreer@sdfnlaw.com	15	Q. When was the last time that you had your
16		16	deposition taken?
17	For The Dr. Miriam and Sheldon G. Educational	17	A. I can't recall specifically, probably at
18	Institute:	18	least six or seven years ago.
19		19	Q. But it's safe to say you're familiar
20	LIONEL SAWYER & COLLINS	20	with the deposition process?
21	BY: MAXIMILIANO D. COUVILLIER, III, ESQ.	21	A. I am.
22	300 So. Fourth Street, Suite 1700	22	Q. If I ask you a question, I assume you
23	Las Vegas, Nevada 89101	23	understand it unless you ask me to repeat it.
24	(702) 383-8888	24	A. Correct.
25	mcouvillier@lionelsawyer.com	25	Q. Are you taking any medications or are
Page 3		Page 5	
1	INDEX	1	you under any medical condition that would preclude
2	WITNESS: MARC GORDON	2	you from testifying truthfully today?
3	EXAMINATION	3	A. No.
4	BY: Mr. Couvillier	4	Q. What is your area of practice in law?
5		5	A. Primarily business and corporate, and
6		6	for several years, I did quite a bit of real estate
7	EXHIBITS	7	related work and some estate planning.
8	NUMBER DESCRIPTION PAGE	8	Q. How long have you been licensed to
9		9	practice law in Nevada?
10	Exhibit F Subpoena Duces Tecum 23	10	A. Since 1978.
11		11	Q. Are you licensed to practice anywhere
12		12	else?
13		13	A. No.
14		14	Q. And what did you do to prepare for your
15		15	deposition today?
16		16	A. Very little. The only thing I looked at
17		17	was the 2004 will, and other than that, I'm here.
18		18	Q. Did you have any discussions with
19		19	anybody?
20		20	A. I had some -- one conference with
21		21	Mr. Freer and Mr. Schwartz here at the office and
22		22	that was it.
23		23	Q. And when did that take place?
24		24	A. It seems like several weeks, six weeks
25		25	ago, maybe.

Page 6

1 Q. Did you have any conversations with
2 anybody else?

3 A. No.

4 Q. Do you recall the last discussion that
5 you had with Milton Schwartz?

6 A. I do. It was -- well, the last
7 discussion before he passed?

8 Q. Yes, sir.

9 A. I can't recall the specific discussion
10 before he passed because he passed 2007 or '8, I
11 believe it was.

12 Q. I believe it was 2007.

13 A. And I probably on occasion talked to him
14 between the 2004 will and his death. The only thing
15 I can recall specifically about the will is the
16 conversation we had some days before he signed it.

17 Q. And what was that conversation about?

18 A. Milton, Mr. Schwartz, called, asked if
19 he could make an appointment to come by and have me
20 look at his will he had prepared and perform an
21 execution ceremony at my office. I had done many,
22 many will execution ceremonies so he knew I was
23 familiar with the process. We would have the
24 witnesses and the notary available.

25 He asked me if I would just review the

Page 7

1 will to make sure that it was in compliance with law
2 in form and substance and that we conduct an
3 execution ceremony properly to make sure it was all
4 signed off legally.

5 Q. Did he tell you whether he had reviewed
6 the will before he sent it to your office?

7 A. I can't recall specifically, but I know
8 he -- I have to assume he did because that's the way
9 Milton was; he was very particular about his work
10 and very detailed. So I always assumed that he had
11 reviewed his will and knew what it said.

12 Q. We'll get into the will in just a
13 minute. I'm going to cover some preliminary stuff.
14 If we can mark this as Exhibit F, I believe.

15 (Exhibit F marked.)

16 BY MR. COUVILLIER:

17 Q. Marc, I've handed you what's marked as
18 Exhibit Number F, which I represent to you is a
19 Subpoena Duces Tecum directed to your attention.

20 Have you seen this document before?

21 A. I have not seen the document. It has
22 been discussed with me by Mr. Freer.

23 Q. And if I may have you turn to page 4 of
24 Exhibit F, please. Do you have any file or records
25 regarding Mr. Schwartz's Last Will and Testament

Page 8

1 dated February 5th, 2004?

2 A. I do not.

3 Q. Did you ever at any point have any files
4 in connection with that?

5 A. I assume that I did because I kept a
6 specific folder on virtually every subject for
7 Milton or his entities and/or Jonathan. And I
8 assume I always had a will file for the 2004 will.
9 In anticipation of my deposition, I went back and
10 looked at my archives, could not find a will.

11 It was most likely because I disposed of
12 it in 2011 when I retired from private practice and
13 went in-house at Yellow-Checker-Star cab companies.
14 Most of my files -- a lot of my files -- under my
15 document retention policy at that time, some files
16 were retained and some were discarded.

17 Q. Where are you currently employed now?

18 A. I'm employed at Yellow-Checker-Star
19 Transportation Company, 5225 West Post Road. Been
20 there since 2011, early 2011.

21 Q. And, Marc, what is your role?

22 A. General Counsel.

23 Q. And previous to going in-house with
24 Yellow Checker, where did you work?

25 A. I was a private practitioner in civil

Page 9

1 practice for since 1978, and the name of the firm
2 just prior to my retiring was Berkley, Gordon &
3 Goldstein.

4 Q. Thank you. And let me jump back into
5 Exhibit Number F. And let me have you turn to page
6 number 5 of Exhibit F now and we'll go down to
7 Request Number 2. Do you have any files relating to
8 the First Codicil to Mr. Milton Schwartz' will?

9 A. No, I could not find any.

10 Q. Let me close the loop here with Request
11 No. 3. Do you have any files or documents regarding
12 the Second Codicil to Mr. Schwartz' will?

13 A. No, I could not find any in my search.

14 MR. COUVILLIER: If we can show him
15 Exhibit B.

16 BY MR. COUVILLIER:

17 Q. I've handed you what's been previously
18 marked as Exhibit B. Do you recognize this
19 document?

20 A. Yes, I do.

21 Q. What is it?

22 A. It is the Last Will and Testament of
23 Milton I. Schwartz dated October 11th -- excuse me,
24 that's the file stamp. It's actually dated
25 February 5th, 2004.