

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.

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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
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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
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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
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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
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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
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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

1 THE COURT: Yeah.

2 MR. JONES: I can't remember who but -- maybe Brennan but
3 anyway, the next answer is dislike due to fact that many small
4 businesses were negatively impacted to only have him settle later for a
5 fraction of what he owed. And then if you look at 81, he follows up or
6 she follows up -- I can't recall which it was.

7 THE COURT: She, yeah.

8 MR. JONES: And says she knows about the Adelsons. What
9 did you learn? The contractors lawsuit already mentioned above.

10 THE COURT: Affiliated with Sands.

11 MR. JONES: Affiliated with the Sands Corp. and owns
12 Review Journal. Not a fan of S. Adelson lack of payment to hard
13 working people --

14 THE COURT: And companies.

15 MR. JONES: -- and companies. Do you have anything that
16 might affect -- is there anything that might affect your ability to serve as
17 juror? Yes. Biased against S. Adelson disregard for the people who
18 built the Venetian. Again it leads up to the totality of the discussion here
19 that says --

20 THE COURT: Yes.

21 MR. JONES: -- I have a bias against the -- Mr. Adelson --

22 THE COURT: From something totally unrelated.

23 Okay, Mr. LeVeque, let's --

24 MR. JONES: Well, Your Honor, I would -- just for the record --

25 THE COURT: Yeah.

1 MR. JONES: -- I absolutely categorically disagree that it's
2 something totally unrelated. Mr. Adelson is a human being who she
3 holds responsible for things that she feels that were unfair or improper.
4 He is now the representative, the person, the face of my client.

5 THE COURT: Right.

6 MR. JONES: Not only is the -- the face of my client is the
7 chairman of the board. He --

8 THE COURT: And further she references both of them. She
9 says the Adelsons.

10 MR. JONES: She does refersent (phonetic) both --

11 THE COURT: And that's --

12 MR. JONES: -- reference both of them.

13 THE COURT: And Dr. Adelson had nothing to do with the
14 Venetian so she has an opinion about them as a -- as the Adelsons.

15 MR. JONES: And, Your Honor, again, how this Court could
16 possibly divorce Sheldon Adelson as a person from a school that bears
17 his name, I just don't get that.

18 THE COURT: Okay.

19 MR. JONES: I don't know how that is -- if she's biased
20 against Shelton Adelson and I'm here representing the Sheldon Adelson
21 Education Institute, to me that is a connection that is patently obvious.

22 THE COURT: Okay. So Mr. LeVeque.

23 MR. LEVEQUE: For purposes of the record, Your Honor, we
24 don't agree to stipulate.

25 THE COURT: Okay. Understood.

1 MR. LEVEQUE: I'll leave it at that.

2 THE COURT: Okay. Again, bias is the real concern here and
3 the goal is a jury that could be fair to both. In addition to her being very
4 specific about her bias against Sheldon Adelson, she somehow -- she
5 references the Adelsons where everything is in the context of the
6 nonpayment of the Venetian. That's very clearly a problem for her. So I
7 don't know why she would say the Adelsons as in both of them. Dr.
8 Adelson, I think it's pretty clear she's not involved in the business as far
9 as I know at all. She's her own person.

10 So this one, again, I -- it's the word bias. I just -- I would be
11 very concerned that this person -- even questioning her even outside the
12 presence of the other jurors, there's -- I don't see how you can redeem
13 her or rescue her from a stated bias so I'm going to go ahead and grant
14 that one. We'll excuse her over the objections of the estate.

15 Three twenty-two.

16 MR. JONES: Yes, Your Honor, 331 --

17 THE COURT: Or 22.

18 MR. CARLSON: Three twenty-two.

19 MR. LEVEQUE: Three twenty-two.

20 MR. JONES: Three twenty-two?

21 THE COURT: Twenty-two -- I've got 322 next. Is that --

22 MR. CARLSON: Yeah.

23 THE CLERK: Yeah.

24 MR. JONES: Three twenty-two. I'm sorry, I went past --

25 THE COURT: Cagin Lee?

1 MR. JONES: -- went past.

2 THE COURT: C-a-g-i-n Lee?

3 MR. JONES: Oh, yes, I -- that's right. I'm sorry, I got ahead
4 of myself. This really is just based upon the language issues if you look
5 at page -- question 87 on page 14. There's also the hardship about the
6 new job, but I think -- I just have a concern about anybody that
7 expresses a language issue and if you want to bring the prospective
8 juror into the courtroom and get further information on that, I understand
9 it, but I certainly think that that's --

10 THE COURT: Usually I like to know, you know, how long
11 have they lived here, what kind of job have they done for that period of
12 time, because some jobs you can do and you don't have to use any
13 English at all. I mean most people understand a little more English than
14 they're willing to admit. If they worked in a Chinese restaurant in the
15 kitchen and all they ever spoke was Chinese, that's different. This guy
16 is appears was a cab driver.

17 MR. LEVEQUE: Think a Lyft driver, yeah.

18 THE COURT: Yeah. So at this point I'm going to deny this
19 one. I do think we need to inquire into how much English he really does
20 understand, depending on how long he's been here and how -- what
21 kind of language he uses in his work. It may be a concern. And
22 fortunately we're not talking about like lots of big medical words or
23 something. Hopefully the vocabulary is adequate, we'll find out. So we
24 will inquire of him in greater detail about the -- on the language issue,
25 and of course whatever issues may be raised.

1 So we're now on to 331 which is --

2 MR. JONES: Yes, 331, Your Honor, number 45 on page 4 --
3 7 again, just --

4 THE COURT: Yeah, 331, this is one that we don't have and
5 we -- our master list skips from Cagin Lee to Halie Marie McGannon so
6 what do you guys have for --

7 MR. LEVEQUE: So the weird thing we have for this one, Your
8 Honor, is that the first page says 331 --

9 THE COURT: Right.

10 MR. LEVEQUE: -- and then the third page says 337.

11 MR. JONES: Yeah, that's true.

12 THE COURT: Oh --

13 MR. LEVEQUE: So I'm not sure which one it is.

14 THE COURT: Is it Renee Saliba-Cafero?

15 MR. JONES: Yes.

16 MR. LEVEQUE: Yes.

17 THE COURT: Okay. So that would -- the number should be
18 337 then.

19 MR. CARLSON: It should be?

20 MR. LEVEQUE: Okay.

21 MR. CARLSON: Okay.

22 THE COURT: We do have her, yeah.

23 MR. JONES: Oh maybe the top of the seven's cut off --

24 MR. LEVEQUE: Oh yeah.

25 MR. JONES: -- on the first page.

1 THE COURT: Just on the copy? It might be just --

2 MR. LEVEQUE: Yeah.

3 THE COURT: -- a copying problem.

4 MR. JONES: Yeah, I think that might be what it is, Judge.

5 THE COURT: Yeah. Okay.

6 MR. JONES: Anyway --

7 THE COURT: Thank you.

8 MR. JONES: -- it's page 7, the same issue is that they're --
9 they don't like Sheldon Adelson. I don't need to belabor the point. I
10 want to make a record that I know -- I've heard what the Court's had to
11 say so I don't need to make -- belabor it. Also it says -- lists hardship as
12 a tip earner, but I understand how the Court's --

13 THE COURT: Yeah. She looks like an MGM employee.
14 Again, no reason to think that would necessarily be a bias. It seems like
15 it's more of a personal issue with Mr. Adelson and we would just need to
16 inquire. So for that reason we'll -- again, this is somebody we'll call in
17 and if there are concerns that we need to talk to her outside the
18 presence of the others, we can certainly do that. But we'll have her
19 come in.

20 Okay, so 392, Connie Jeon, J-e-o-n?

21 MR. JONES: Yes. Your Honor, this is really a hardship issue
22 is -- if you look at page 14 --

23 THE COURT: Yeah.

24 MR. JONES: -- they begin their semester taking five courses I
25 don't know -- I mean I -- every case I've been in the courts let a college

1 student off from jury duty --

2 THE COURT: I mean it's a -- if it were a little more in like the
3 middle of the semester, we can give them excuses. If they're taking
4 night classes maybe it's not a problem, but this person says five classes.

5 MR. LEVEQUE: We'll withdraw our objection, Your Honor.

6 THE COURT: Okay. We're going to excuse her on the
7 grounds that she is a student. They can find her for another shorter jury
8 she can be on soon enough. We'll have -- give her a chance to do her
9 duty.

10 Three ninety-two.

11 MR. JONES: Um --

12 THE COURT: Oh that was her so that's --

13 MR. CARLSON: 401.

14 THE CLERK: 401.

15 THE COURT: -- granted.

16 MR. JONES: 401, yes, Your Honor.

17 THE COURT: 401. Thank you, Sharon. I appreciate that.
18 Tram Phi Phan.

19 MR. JONES: Yes, Your Honor, big issue here is this that this
20 prospective juror really didn't fill out much of the questionnaire so we
21 have an issue with who they are.

22 THE COURT: Right. You know, this is one where -- is this
23 sort of a philosophical thing? It's the question of do we want to take the
24 time -- do we have the time to bring this person in just as a matter of
25 principle that you need to participate in this in good faith and you may

1 not have enough English language skills but we can't tell -- I mean
2 they're able to work as a dealer.

3 MR. JONES: They checked a lot of boxes but there's --

4 THE COURT: So --

5 MR. JONES: -- been no -- there's essentially no -- other than
6 checking boxes, there's -- as you can see, there's no narrative
7 responses to --

8 THE COURT: Right.

9 MR. JONES: -- anything.

10 THE COURT: And so the question is what's your time worth?

11 I mean I -- to me it's -- this is the kind of thing where, you know, you
12 can't get away with that, you need to come in and you're going to have
13 to explain yourself. But is that a waste of our time? I mean because just
14 looking at it I would be like we're not going to play that game. Give us
15 good faith answers to these questions, that's why we asked them. But
16 on the other hand, do we want to waste our time --

17 MR. FREER: I say we refer him to the jury commissioner.

18 THE COURT: That's the other thing is just, you know, this guy
19 was not -- you know, as much as I would like to not waste any of our
20 time, I do --

21 MR. FREER: Well he's already wasted 10 minutes of our
22 time.

23 THE COURT: Yeah. I do think that -- it could be as simple as
24 just how good are your English skills. He's been here 15 years at least.
25 He's Vietnamese. He moved here from Vietnam 15 years ago so --

1 MR. FREER: And I -- I'm the one that reviewed that and that's
2 kind of why I didn't really stipulate to it is because to me he's not
3 responding and so -- you know, Randall and I were talking we're going
4 to be here probably four or five days empaneling a jury anyway. If you
5 want to send him to the jury commissioner, that's fine. I just kind of
6 thought it was --

7 MR. JONES: And really, Your Honor, honestly, this --
8 whatever information we got here, it doesn't -- there's no basis for bias
9 here.

10 THE COURT: Right.

11 MR. JONES: I just think these kind of jurors are a waste of
12 everybody's time so I tend to just say unless the other side feels strongly
13 about it, let's just get rid of him and get somebody who wants to
14 participate but that's -- that's why we did this one.

15 THE COURT: Okay.

16 MR. JONES: As you can see we had no other basis to do it.

17 THE COURT: All right.

18 MR. JONES: Wasn't something they said we thought was
19 bad.

20 THE COURT: Well I -- yeah, there's not a whole lot the jury
21 commissioner can do other than just put him right back in a rotation. We
22 can flag that one for her. So we'll excuse him, but we'll flag him as
23 somebody who needs to be called at the earliest opportunity because
24 this is just not a real good faith participation but we don't have the time
25 to deal with it.

1 Donna Barajas is number 410.

2 MR. JONES: Your Honor, we withdrew our challenge.

3 THE COURT: Okay. So they'll be on -- in the panel.

4 And then we've got 23, 423, Leonardo Gan-Lim.

5 MR. JONES: Right, Your Honor. This really is -- whether or
6 not this is a issue the Court wants to address or not, it's number 82 on
7 page 13. He knows -- or this juror knows Dr. Pokroy and it says is there
8 anything might affect your ability to serve as juror in this matter, yes and
9 no. So, you know, we can certainly just have further inquiry of that juror
10 at the time, but that's why we flagged it.

11 THE COURT: Okay. All right. It's a little difficult to tell if he's
12 going to have any bias --

13 MR. JONES: Right.

14 THE COURT: -- but on the other hand, he's --

15 MR. LEVEQUE: He's a physician, Your Honor, so it's a small
16 town.

17 THE COURT: Yeah.

18 MR. LEVEQUE: He might just know him --

19 THE COURT: And --

20 MR. LEVEQUE: -- because he refers people to Dr. Pokroy,
21 who knows?

22 THE COURT: So yes, so I -- my -- I guess the concern is --
23 what the heck is the American Academy of Anti-Aging Medicine? I don't
24 think that's a thing.

25 MR. FREER: I think they prescribe testosterone and --

1 THE COURT: Yeah.

2 MR. FREER: -- all that stuff.

3 THE COURT: Okay.

4 MR. FREER: For the water bottle drinkers.

5 THE COURT: They are active in --

6 MR. JONES: You heard?

7 THE COURT: -- a different church, they're active --

8 MR. FREER: He told me.

9 THE COURT: -- in the Catholic church so again, appears that
10 they are -- he's -- his wife's a nurse, he is a physician. I'm just -- at this
11 point we just need to know how much --

12 MR. JONES: That's fine, Your Honor.

13 THE COURT: Not sure how many patients he has. He's a
14 hospitalist. So I don't know how many patients would really be missing
15 his care. So I think we can check with him and see what's going on. So
16 we'll deny that one. We'll bring him in. He's flagged as somebody we
17 need to have a conversation with.

18 Cathy Hughes is 437.

19 MR. JONES: And 437, Your Honor, is really just more of a
20 hardship issue, a medically-related hardship. If you look at page 13 and
21 14, it talks about -- and it's not very clear so again may want to have this
22 juror come in and talk to us, but says that yes, has something that would
23 affect his ability to serve, his back, legs, knees and heart, he's on lots of
24 meds. I don't know if counsel thinks that's sufficient have him come in
25 here get further explanation. If they feel that ways, that's fine. I don't

1 care. It's just one that we flagged as a potential disability issue.

2 MR. FREER: Yeah, I did that one. The only reason I flagged
3 it is just seemed as if -- that's a different one that I was looking at. I
4 thought that she was working. That's why I was paused for a moment.
5 Seems like she's got --

6 THE COURT: Looks like she's a retired nurse.

7 MR. FREER: Yeah.

8 THE COURT: So I guess the question would just be if we
9 could accommodate her -- if this is an issue with sitting, is there
10 something we can do to accommodate her to be able to -- to permit her
11 to serve. So it's noted that this may -- is a potential medical issue --

12 MR. FREER: Yeah, the first voir dire question we'd ask is
13 what meds was she taking because obviously if she's --

14 THE COURT: Yeah, because I mean somebody else did put
15 in that I'm on these certain medications and they make me drowsy so,
16 you know, we were able to tell yes and exclude that guy. With her we
17 can't really tell so let's just plan to follow up with her. We can take some
18 of these people -- as I said, we can take them early instead of the usual
19 way we do it.

20 Okay. Five hundred?

21 MR. JONES: Yes, Your Honor. Again, just for the record,
22 question 45, political differences with Sheldon Adelson. I don't want to
23 belabor the point, I just want to make a record that I -- because I -- I
24 know you've already stated your points about that issue and so there's
25 no point in getting in a lengthy discussion about it.

1 THE COURT: Yeah. And this is another one where they
2 weren't really very forthcoming. All they say is, you know, I'm
3 self-employed and need to work in the real estate business. It's hard to
4 know how much of a hardship that would be. So again, that's somebody
5 that we need to call early and, you know, one option we could do is with
6 these people that we're holding off, we could seat them up here first and
7 just go through them; you claimed a hardship, we need to inquire further.
8 That might be the easiest way to deal with them.

9 MR. JONES: Understood, Your Honor.

10 THE COURT: All right. 709.

11 MR. JONES: 709 is again if you look at page 7, this is really
12 just as much as anything one of these where we didn't get very much
13 information. Question 45 they checked Yellow Cab, Adelson
14 Educational Campus and Albert Einstein Hebrew Day School, and then
15 down below at question 45, what do you -- what is your -- what do you
16 like or dislike any such company they say dislike. So we just weren't
17 sure what that meant and so --

18 THE COURT: Okay.

19 MR. JONES: -- if that applied to our client.

20 THE COURT: Again I think this is somebody we need to very
21 early on inquire and see if we need to waste any further time on him, but
22 I -- I don't like encouraging people who -- who knows, he may not have
23 intended that to be a way to get out, he just may not be somebody who's
24 very forthcoming. I mean some people aren't big sharers of personal
25 information so we can find out. We'll bring him in and we'll just note that

1 he's somebody we might want to consider calling up very very early.

2 I have, as I said, poor handwriting. Am I -- are we next on 711
3 or 717?

4 THE CLERK: Seventeen.

5 MR. LEVEQUE: Seven seventeen.

6 THE COURT: Thank you, Sharon.

7 MR. JONES: Yeah, 717 --

8 THE COURT: Seven seventeen and that's Ray Cazares.

9 MR. JONES: Yes, Your Honor, again, questions 44 and 45,
10 the fact that Sheldon Adelson, the Venetian Hotel, don't -- no union,
11 that's an issue with some union members here in Las Vegas. But that's
12 only part of the issue. The other issue is the hardship that they list on
13 page 13, number 82 and 83; son has type 2 -- excuse me, type 1
14 diabetes and he's concerned about coverage from his health insurance.
15 If he loses hours, he loses coverage for his son, and his son has a
16 preexisting condition, type 1 diabetes. He's concerned about that.

17 MR. LEVEQUE: And this one, Your Honor, be candid with
18 you, I didn't understand supplemental answer to 82.

19 THE COURT: Yeah, 81 and 82 --

20 MR. LEVEQUE: Yeah, I --

21 THE COURT: -- are a little confusing.

22 MR. LEVEQUE: So I just kind of wanted some clarification on
23 that from the potential juror.

24 THE COURT: It's not real clear who he knows about. I mean
25 I don't know who Dorit Schwartz is or why he --

1 MR. LEVEQUE: Former board member.

2 MR. FREER: Former board member, no relation to Milton.

3 THE COURT: Yeah, and why he marked that person as
4 having heard about him. He's heard about the Adelsons from the news.
5 TV and friends and coworkers suing for a gift that was given -- I -- is he
6 just referring back to the introduction to the questionnaire or does he
7 really have knowledge about this? It's an odd one, somebody I think we
8 should inquire of early on to see if we can make a decision on him
9 quickly one way or the other so we'll call him in and inquire about those
10 somewhat obscure answers.

11 Seven forty-nine, Emanuel Mitikas.

12 MR. JONES: If you look at the second page of the
13 questionnaire, Your Honor --

14 THE COURT: Okay.

15 MR. JONES: -- case synopsis, I think that says it all, the
16 handwritten note there. I think the estate shouldn't have to pay the
17 school if the school didn't put the name of Dr. or Mr. Milton Schwartz on
18 the school if in fact there was a legally enforceable agreement. This
19 person has already read the synopsis and made up their mind about
20 who wins.

21 MR. LEVEQUE: And, Your Honor, I just thought this was so
22 incredibly absurd that I thought that they were doing this on purpose.

23 MR. JONES: Well, if they were doing it on purpose, then they
24 certainly shouldn't be on the jury.

25 THE COURT: Yeah. This one I'll grant. I don't see that

1 anybody else has ever -- like I said, the last guy kind of seemed to be
2 doing the same thing, but you couldn't tell. This guy very clearly has
3 taken a look at this and he's got an opinion, so we'll deny this. We won't
4 -- grant this. We don't want to have people who prejudge the case and
5 may potentially taint the other jurors.

6 So 787.

7 MR. LEVEQUE: For the record I agree with him though, Your
8 Honor.

9 THE COURT: Seven eighty-seven. Yes, I'm sure you would.
10 Seven eighty-seven? We don't have it.

11 MR. JONES: Yes, Your Honor.

12 THE COURT: So what's the issue on him? Demi Joe -- her,
13 Demi Jo Mason.

14 MR. JONES: Yes. If you look at page 13, questions 82 and
15 83, and then the next page as well, but 82 checked the box believe that
16 there is something that would affect her ability to be fair, or serve as a
17 juror. I don't think that would be unbiased doesn't -- unfortunately doesn't
18 give us any real explanation as to why, but then down below talks about
19 a hardship, has three school-age children that I don't have means for
20 daycare in my absence from home; I am the only one to get them to and
21 from school and I live out of town. And then the next page she --

22 THE COURT: Do we -- does what we have here does it give
23 us -- tell us where they live?

24 MR. FREER: Should.

25 MR. JONES: Yes -- I think it does, yes, at the beginning?

1 THE COURT: That is a concern --

2 MR. LEVEQUE: Oh it's Moapa.

3 THE COURT: Yeah. For a -- on a longer trial.

4 MR. FREER: We're fine with that.

5 THE COURT: There are some --

6 MR. LEVEQUE: We'll withdraw.

7 THE COURT: There are some provisions we can make for
8 people who live that far out of town, but I think they're only in criminal
9 cases they have a fund for that. So for that reason we'll grant hers. It
10 would be an inconvenience to bring somebody in for two weeks from
11 Moapa. We'll grant that one.

12 902?

13 MR. JONES: Yes. 902 -- and again, you'll see that -- well,
14 actually, has a former family friend that worked at Black & LoBello who
15 was former counsel in the case, but that's not a major issue. The bigger
16 issue is on page 14, do you know of any reason has not been mentioned
17 why you cannot sit as a fair and impartial juror, yes, biased against
18 Adelson's politics. There's a direct --

19 MR. LEVEQUE: I'm sorry, which one are you on right now?

20 THE COURT: Oh. This is --

21 MR. JONES: Page -- the last --

22 THE COURT: -- juror number 902, page --

23 MR. JONES: -- 14, page 14.

24 MR. FREER: Oh, I thought we were on --

25 THE COURT: -- 14.

1 MR. LEVEQUE: Did we skip 843?
2 THE JUDICIAL EXECUTIVE ASSISTANT: I didn't have 843.
3 THE CLERK: I didn't have 843.
4 THE COURT: We didn't have it on our list?
5 MR. JONES: Page what page, Alan?
6 MR. CARLSON: Oh you know what?
7 MR. LEVEQUE: Juror number 843?
8 MR. CARLSON: Yeah. We did skip it.
9 MR. JONES: Oh.
10 THE COURT: Oh.
11 MR. JONES: We did. Sorry.
12 MR. CARLSON: Sorry. That's my fault.
13 MR. LEVEQUE: That's okay.
14 THE COURT: Okay. So we'll interlineate number 843 and for
15 the moment we'll talk about 902 --
16 MR. LEVEQUE: Okay.
17 THE COURT: -- since that's who we've got.
18 MR. JONES: Sorry. Page 14, Alex.
19 MR. LEVEQUE: Okay, thank you.
20 MR. JONES: So the basis there, Your Honor, is a direct
21 expression of bias against Mr. Adelson which again I don't know how
22 you disconnected Mr. Adelson from a school named Adelson Institute.
23 MR. LEVEQUE: And Your Honor, it's bias against his politics,
24 it doesn't say bias against Adelson and think the Court indicated that
25 political beliefs is really not enough to constitute bias for excusal for

1 cause.

2 MR. JONES: Well my response to that is the question itself,
3 do you know of any reason that has not been mentioned why you cannot
4 sit as a fair and impartial juror in this case which I added this -- in this
5 case, but it goes directly to the prospective juror's state of mind about
6 this case and bias. And they said yes, Sheldon Adelson's politics make
7 them bias in this case; they couldn't be a fair juror. A person can have a
8 bias that's so strong against somebody that may not have a direct
9 relationship to an issue in the case, but that's why you ask about
10 individuals, the people, the witnesses in the case, and if there's such a
11 strong bias against a witness that they would discount that witness's
12 testimony, ignore it or give it less weight than they would otherwise give
13 it because of a bias for whatever reason, whether because of political
14 differences or anything else, that's a basis to challenge them for cause.

15 THE COURT: Okay, great. This seems a little different from
16 some of the other people who've talked about bias, but I'm not sure what
17 it is about this one. I think it's just the way he writes bias against
18 Adelson politics.

19 MR. LEVEQUE: He might be a Democrat and say I -- you
20 know, I don't like conservatives. I don't know if that's enough to warrant
21 dismissal for cause.

22 THE COURT: Right. I guess that's the thing that I -- I don't
23 understand if that's -- means he can't be fair to anything because as Mr.
24 Jones points out, Mr. Adelson's going to be here, he's going to be the
25 representative of the Adelson School, he's president of the board, are

1 you going to be biased against the school because their president is
2 somebody --

3 MR. JONES: Right.

4 THE COURT: -- you just don't like their politics?

5 MR. JONES: Right.

6 THE COURT: And, you know, I think that's what he's trying to
7 say. He's not very clear -- he's not as clear as some of the others have
8 been. Some of the others have flat out said I'm biased against him and
9 clearly can't be fair to him. What is the -- this political dispute? Is it
10 going to -- can you put it -- I'm willing to inquire of him further to see if he
11 can do what Mr. Jones is asking because Mr. Jones is right, we have to
12 make sure that people don't allow their biases against something like
13 politics to cause him to be unfair to an entity that is just -- it's being
14 represented by Mr. Adelson. I just -- it's a legitimate concern. We'll
15 bring him in and we'll inquire about that. This is one of our early people
16 to put in the stand, find about him and probably talk to them outside the
17 presence of the jury and in fact some of these people we might want to
18 give some thought to just -- before the rest of the jury panel comes in
19 just calling some of these people up individually and just doing that.

20 MR. LEVEQUE: Okay. Yeah, I mean if he says --

21 THE COURT: That way might be another way we could do it.

22 MR. LEVEQUE: -- I'm a Republican and that's why I don't like
23 Sheldon Adelson so that's why I'm not going to believe a word he says
24 and that's why --

25 THE COURT: Right.

1 MR. LEVEQUE: -- I don't like the school, I --

2 THE COURT: Right.

3 MR. FREER: Sheldon's Republican.

4 THE COURT: Yeah.

5 MR. LEVEQUE: That's what I said, didn't I?

6 THE COURT: Eight forty-three.

7 MR. FREER: No, you said Democrat.

8 MR. LEVEQUE: Oh, I meant Republican.

9 THE COURT: So you guys we missed one, it was 843. Who
10 is that?

11 MR. JONES: Your Honor, we can't find that actually in our
12 group, but what we have listed here is a hardship for eye surgery on
13 August 29th.

14 THE COURT: Okay. Let me --

15 MR. JONES: So that appears to be the reason we were
16 moving to exclude this juror.

17 THE COURT: Okay. Oops, he's -- it's copied upside down.

18 MR. JONES: Yeah, Lawrence Slane?

19 THE COURT: Yeah. Eye cataract surgery on the 29th so
20 that's like basically our last day, but he -- he has surgery scheduled so --
21 and typically, if he had sent something in from his doctor, we would have
22 excused him automatically. So --

23 MR. LEVEQUE: It's kind of like the dentist situation where if
24 it's something that could be rescheduled relatively easily -- he doesn't
25 say that one way or the other, he just says it's scheduled the 29th.

1 THE COURT: Okay. I'm going to grant this one because we
2 know this is a surgical procedure. Going to the dentist is -- could be just
3 going to the dentist. This one, eye surgery, I'm going to grant that one.
4 As I said, if he had just sent me a -- something from the -- his physician's
5 office saying that's what was going on, we would have done him
6 automatically. We don't interfere with people's medical care.

7 904.

8 MR. JONES: Yes, Your Honor. Alice -- Alicia Simpson.

9 THE COURT: Okay.

10 MR. JONES: This is really just a hardship issue. If you look
11 at page 13, this looks like another college student although -- and says
12 that the only reason that they couldn't serve is because of school and
13 they're starting a semester second week of school so I leave that to the
14 Court's discretion as to whether or not that's appropriate to let this
15 person go. It's not trying to get rid of somebody that we think we
16 otherwise just don't like, it's just --

17 THE COURT: Yeah, she says very clearly that school is her
18 only issue. Will have -- will I have a note to my professor about the jury
19 duty so I can make up the class? I don't know how many classes she's
20 going to be missing. Certainly, if -- like the other person who's very
21 specific I've got five classes, I can't do this. It's hard to tell if she just has
22 one class and she would just be missing two sessions.

23 MR. JONES: Right.

24 THE COURT: I'd like to know a little bit more because she's
25 very -- very clear that she'd otherwise be on a jury, but if she's got a full

1 load, some people -- depending on the program you're in you can't make
2 it up. Like some of these nursing programs you can't make it up. So we
3 just need more information on what her school schedule is, but again
4 somebody we can get in and out pretty fast. Okay.

5 MR. JONES: The next one, Your Honor, is 920.

6 THE COURT: Yes.

7 MR. JONES: Steven Bobo, and this is really just a straight
8 hardship issue if look -- number 82 is -- on page 13, is a cab driver -- or
9 actually I'm sorry, construction contract, no pay for jury duty, would lose
10 \$4,500. Next page on number 88, economic hardship, no pay for jury
11 duty.

12 THE COURT: And that is as I said with respect to the other
13 folks who raised that is they didn't tell us if they knew they would or
14 wouldn't. Can I -- Mr. Jones is too tactful to bring this one up. Can I just
15 point you to page 8?

16 MR. JONES: Oh I -- and I saw that too. If they care about
17 that, obviously they could have brought that up.

18 MR. LEVEQUE: I mean --

19 THE COURT: It just made me laugh, I'm sorry.

20 MR. LEVEQUE: It made me laugh too. But Trump's not on
21 trial.

22 THE COURT: Yeah, exactly. A dangerous buffoon. Okay.

23 MR. FREER: Well that's the whole reason to ask him on
24 record, we can get --

25 THE COURT: Exactly. This particular person -- \$4,500 is a

1 lot of money in any family. That's a lot of money per week and he
2 apparently knows he will not get jury pay. And that's what I usually ask
3 people when they raise that is can you go call your boss and find out if
4 you get jury pay. This guy says I know I'm not going to get jury pay so
5 for that reason I would be entitled -- not entitled, inclined -- it's also a late
6 night -- inclined. So --

7 MR. LEVEQUE: Yeah, Your Honor, we -- I like to note for the
8 record too he's --

9 THE COURT: He also lives in Indian Springs.

10 MR. LEVEQUE: Exactly. So we'll withdraw.

11 THE COURT: Yeah. Okay, so for those various reasons,
12 we're going to excuse him. He's got multiple grounds. Thanks for
13 bringing that to my attention. Although I think he would be a heck of a
14 lot of fun.

15 Is this 939?

16 THE CLERK: Yes.

17 MR. LEVEQUE: Yes.

18 MR. JONES: Yes, Your Honor.

19 THE COURT: Thank you. I can't read my own handwriting
20 sometimes. Okay. So --

21 MR. JONES: Yeah, Your Honor, I'm going to withdraw that
22 one. There's a issue about school, but they didn't mention it on page 13.

23 THE COURT: Okay.

24 MR. JONES: They mention earlier on about school, but if they
25 didn't mention it as a hardship, then I think there's not an issue to be

1 brought before you.

2 THE COURT: Okay.

3 MR. JONES: So we'll withdraw it.

4 THE COURT: Okay. All right. Going to school now. Okay,
5 we can -- that's somebody if you want we can call early and find out if
6 that's an actual hardship.

7 Okay. Thanks very much. We've got all those done. We will
8 notify the commissioner as to who is excused so those folks do not have
9 to come in. Appreciate your time staying late to get that work done and
10 working essentially through lunch. We will see you tomorrow at --

11 MR. LEVEQUE: 1:45.

12 THE CLERK: 1:45.

13 THE COURT: -- 1:45. That was just to get you in before the
14 Rosenau people.

15 MR. JONES: Your Honor, I'm sorry, before we go, unless you
16 -- if you were done --

17 THE COURT: Yeah.

18 MR. JONES: -- I didn't mean to interrupt you.

19 THE COURT: Uh-huh.

20 MR. JONES: I know I've tried cases in front of you. I can't
21 remember trying jury trials and I've tried so many in different
22 departments, I -- and you probably have it on the website, but how do
23 you pick your jury? What's your process? You go through you put
24 everybody --

25 THE COURT: Normal -- I'll tell you normally and we might

1 need to adjust it because of some of these issues of these hardships
2 that you want to just inquire into and let those people go so I would say
3 and maybe the make -- it makes the most sense to bring in those few
4 people, just have the marshal bring up those people that we have --
5 want to inquire of on those issues and get them -- tell them if they have
6 to go back to the regular pool or if we're going to let them go.

7 Normally we start in the upper right-hand corner with number
8 1. We put 20 chairs.

9 MR. JONES: Okay.

10 THE COURT: So we don't need any more -- it's a two-week
11 trial, but I think two alternates is plenty?

12 MR. LEVEQUE: Yeah.

13 THE COURT: For two -- for a two-week --

14 MR. LEVEQUE: I was actually thinking one but --

15 THE COURT: A longer trial I might be concerned, but two
16 weeks I think two jurors is probably okay.

17 We'll fill the box, we'll have four chairs in the front and as you
18 -- after you -- everybody's questioned and we've gone through all the for
19 cause and then you're just doing your peremptories, we typically just
20 give you -- I don't know, there --

21 MR. JONES: The sheet, the --

22 THE COURT: They have a new form --

23 MR. JONES: Right.

24 THE COURT: -- that they use for the going back and forth
25 and if you waive a peremptory challenge, that doesn't mean you've

1 waived the rest of them unless you want it otherwise. I don't think
2 waiving a peremptory challenge doesn't mean you can't exercise -- you
3 exercise one, you don't exercise two, you can still exercise three and
4 four.

5 MR. JONES: Great. Thank you.

6 THE COURT: So however, when we get down to the
7 alternates, my only -- I believe it would be unfair to go back up into the
8 people who have already essentially been passed and strike one of
9 them. That's -- you're counting on that person being on the jury, both
10 sides have agreed on that, you're just down to those last four -- the last
11 alternates where you each have one strike, it usually should be the last
12 four people. You can't go back up to number 2 or number 3. So you
13 pick from those last four people. Unless of course you might have six or
14 seven, but you pick from those last people that have -- otherwise they're
15 on the jury.

16 MR. JONES: So just the luck of the draw, whoever the last
17 four are --

18 THE COURT: Yeah.

19 MR. JONES: -- they will end up being the alternates. So we'll
20 essentially --

21 THE COURT: Exactly.

22 MR. JONES: -- figured out who we're going to excuse for
23 peremptories, there'll be four left and we'll each get one strike of the
24 remaining four --

25 THE COURT: Right.

1 MR. JONES: -- and the only other question I -- and that's by
2 the way I -- not that it matters what I think, but I -- that process I think is
3 the best way to do it.

4 THE COURT: I know there are people who pick randomly
5 from -- they just pick the whole panel of 10 and pick randomly at the
6 close of trial who their alternates are. I never liked that. I always
7 wanted to know who my alternates were.

8 MR. JONES: With --

9 THE COURT: So unless you feel differently --

10 MR. JONES: With that said, well the -- and the only caveat or
11 tweak to that process is what we have been -- I've been doing in a lot of
12 cases lately is the lawyers and the judge knows upfront who the
13 alternate seats are but we pick the alternate seats ahead of time. It
14 makes it a little bit more difficult with the last four --

15 THE COURT: Right.

16 MR. JONES: -- but then you get the -- the two alternates are
17 paying attention for the whole trial --

18 THE COURT: And so that's -- and that's my -- that's -- a lot of
19 people --

20 MR. LEVEQUE: That was my only issue is we don't want
21 them to know that they're alternates.

22 THE COURT: Yeah.

23 MR. LEVEQUE: If that solves the issue --

24 THE COURT: That is the thing you -- you can do that if you
25 prefer that you know who the alternates are; it's not going to be seats 9

1 and 10, it can be any other seats that we -- that are picked. If you're
2 agreeable to that, I know there are people who do it that way. Most of
3 them do it like at the end of -- before the jury deliberations before the
4 arguments, they pick who their alternates are, but if you just want to
5 establish in advance by some random names we want seats 5 and 7 to
6 be the alternates --

7 MR. JONES: Well, Your Honor, we'll get with counsel and
8 come up with --

9 THE COURT: That's -- we'll do it how you want to do it.

10 MR. JONES: We just -- we --

11 THE COURT: It will as you said --

12 MR. JONES: The last trial we had we just kind of tossed a
13 coin and first -- I think plaintiff got to pick the first random seat, we got to
14 pick the second and --

15 THE COURT: Right.

16 MR. JONES: -- didn't really matter just we just have random
17 but then everybody knew but the jurors and --

18 THE COURT: Right.

19 MR. JONES: -- until of course we got to the verdict.

20 THE COURT: And you're right. Usually it turns that the
21 alternates are the only people who've been taking notes. Because
22 they're seated in 9 and 10 and for some reason those people seem to
23 be the people who take notes, and then they're the alternates. So if
24 you're agreeable, we'll do it however you guys want to do it --

25 MR. LEVEQUE: So you're saying flip a coin or whatever after

1 they're seated? Right?

2 MR. JONES: No. No, I think --

3 THE COURT: No.

4 MR. LEVEQUE: After we have 10?

5 THE COURT: No, before.

6 MR. JONES: No, before because then you and I -- well then
7 we get to figure out who the --

8 THE COURT: Yeah.

9 MR. JONES: We -- as the Judge said I agree, I want to know
10 who the alternates are, but we pick --

11 THE COURT: And that's why --

12 MR. JONES: -- before we start picking the jury, we decide
13 which will be the alternate seats and --

14 THE COURT: And that satisfies --

15 MR. LEVEQUE: Okay.

16 THE COURT: -- my concern. I don't like it where you pick the
17 alternates at the end and just randomly pull numbers. I don't know, I
18 don't like that. I always wanted to know who the alternates were. I just
19 -- it gave me a feel for the jury and I -- I don't know, I don't like picking
20 the alternates at the end.

21 MR. LEVEQUE: Oh I don't mean at the end of the case, I just
22 mean after a jury is seated after we have 10 --

23 THE COURT: No. No, before.

24 MR. JONES: No, before because then you know how to do
25 your peremptories.

1 MR. LEVEQUE: Okay, I see what you're saying.

2 MR. JONES: I don't know who you -- then you'd be -- you
3 might get one you wanted to have -- hope to get on the jury and it ends
4 up being an alternate.

5 MR. LEVEQUE: Yeah, I see.

6 MR. JONES: So you don't want to do that. Trust me, you
7 won't want to do that anymore than I don't want to do that because you'll
8 want to know who they are. And your strategy as to who you're going to
9 preempt.

10 But, Your Honor --

11 THE COURT: Yeah.

12 MR. JONES: -- if we can, maybe I'll get with counsel --

13 THE COURT: Yeah. The -- like the whoever -- whoever the
14 fifth person seated is, that person's going to be a juror.

15 MR. JONES: Right.

16 THE COURT: Whoever the third person seated is, that
17 person's -- you're definitely an alternate. I mean you'll know one way or
18 the other if they're seated in a chair that's definitely --

19 MR. LEVEQUE: Sure.

20 THE COURT: -- going to be an alternate or definitely going to
21 be --

22 MR. JONES: It really doesn't make it anymore complicated
23 other than the jurors don't end up knowing who the alternate --

24 THE COURT: Yeah.

25 MR. LEVEQUE: I just have to process it through my head.

1 MR. JONES: And I'll -- yeah.

2 THE COURT: Yeah.

3 MR. JONES: Why don't you kind of think about it if -- but I
4 think you'll think it's a lot better way to go than --

5 THE COURT: Well, thank you for all the time you've spent
6 today, gentlemen.

7 MR. LEVEQUE: Thank you, Your Honor. I do have one
8 other --

9 MR. JONES: Thank you.

10 THE COURT: Yeah.

11 MR. LEVEQUE: -- procedural question.

12 THE COURT: Yeah.

13 MR. LEVEQUE: What we'd like to do in terms of exhibits,
14 because --

15 THE COURT: Yeah.

16 MR. LEVEQUE: -- we're looking at a lot of documents and
17 they're a lot easier to look at in portrait mode as opposed to landscape
18 mode --

19 THE COURT: Yeah.

20 MR. LEVEQUE: -- putting up a projector so that we can
21 project in portrait mode. I just want to make sure that's okay with the
22 Court before we --

23 THE COURT: You just need to check with the IT department
24 so that somebody come in and test the mechanics of it. With the IT
25 department on like maybe Friday, just let Kerry know who you --

1 MR. LEVEQUE: Okay.

2 THE COURT: -- whoever your tech person's going to be.

3 MR. FREER: And his question assumes that we're not able to
4 rotate those --

5 MR. LEVEQUE: We already asked. I don't --

6 MR. FREER: Okay.

7 MR. LEVEQUE: My understanding is we can't rotate these
8 TVs so --

9 MR. JONES: And actually --

10 THE COURT: Oh, yeah, you mean turn this way, no.

11 MR. LEVEQUE: Yeah.

12 MR. JONES: -- Mr. LeVeque's question was the last question
13 I had was the same one so we're in agreement on that if the Court
14 doesn't have a problem with it. We would like to -- it's just so much
15 easier for them to see, you know, reading this print --

16 MR. FREER: The whole page, right.

17 MR. JONES: Even on the big screens the print is so much
18 smaller than --

19 THE COURT: Right.

20 MR. JONES: -- if you could put it on a projected screen.

21 THE COURT: Okay. If you're in agreement on that, yeah,
22 great. So just need to check so that you're all -- sure you know how
23 you're going to have it set up, have your tech people call -- call Kerry
24 and she'll put you in touch with the IT department. She's the contact
25 with them.

1 MR. LEVEQUE: Okay. Thank you.
2 THE COURT: Good luck.
3 MR. JONES: Thank you, Your Honor, and --
4 THE COURT: See you guys tomorrow.
5 MR. JONES: -- thank your staff for --
6 THE CLERK: Thank you, counsel.
7 MR. JONES: -- sitting through --
8 THE COURT: All right.
9 MR. JONES: -- lunchtime with us.
10 THE COURT: Thanks for putting up with the time.
11 MR. FREER: Appreciate it, Your Honor. We'll see you
12 tomorrow.
13 THE COURT: Yes.

14 [Proceedings concluded at 4:22 p.m.]

15 * * * * *

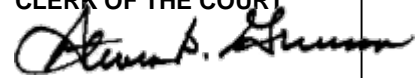
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20
21 ATTEST: I hereby certify that I have truly and correctly transcribed the
22 audio/visual proceedings in the above-entitled case to the best of my
23 ability.

24 

25 Tracy A. Gegenheimer, CER-282, CET-282
Court Recorder/Transcriber

66

66



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6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 In the Matter of the Estate of
10 MILTON I. SCHWARTZ,
11 Deceased.

Case No.: 07-P-061300
Dept. No.: 26/Probate

**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 ORAL CONTRACT**

AND

**COUNTERMOTION TO STRIKE THE
AUGUST 14, 2018 DECLARATION OF
JONATHAN SCHWARTZ AND ALL
ATTACHED EXHIBITS IN SUPPORT**

Hearing Date: August 16, 2018
Hearing Time: 1:30 p.m.

19
20
21 The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus" or the
22 "School") by and through its counsel, hereby submits its Opposition to the Estate's Motion for
23 Reconsideration of the Court's Order Granting Summary Judgment on the Estate's Claim for Breach
24 of Oral Contract and Countermotion to Strike the August 14, 2018 Declaration of Jonathan Schwartz
25 and All Attached Exhibits in Support.
26
27
28

///

1 This Opposition and Countermotion are made and based upon the following Points and
 2 Authorities, any exhibits attached thereto, the pleadings and papers on file herein, the oral argument of
 3 counsel, and such other or further information as this Honorable Court may request.

4 DATED this 16th day of August, 2018.

5 KEMP, JONES & COULTHARD, LLP

6 

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11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 I.

13 INTRODUCTION

14 In an attempt to distract the Adelson Campus from preparing for trial, the Estate filed a wholly
 15 premature and baseless motion for reconsideration, mere days after the oral argument, and before any
 16 draft written order could be circulated. The Estate contends that the Court committed clear error on its
 17 findings. However, the Estate's request is wholly premature as the Court's findings of fact and
 18 conclusions of law have not even been entered. It is axiomatic that the Estate cannot show that the
 19 Court committed clear error in its findings if no findings exist. At most, the Estate's Motion should be
 20 considered a request for clarification as to the date Jonathan Schwartz was put on inquiry notice of
 21 alleged breaches in any purported naming rights agreement. Even then, the Estate's Motion would be
 22 premature and improper because the Court's forthcoming written finding of fact and conclusions of
 23 law will address these issues.

24 The Estate's Motion is also improper because the Estate does not seek to introduce any new
 25 facts or evidence, but instead alleges that the Court simply got it wrong. The Estate's Motion is further
 26 improper as it raises new arguments that it never raised in the prior proceedings, evidence that was
 27 previously available, and yet another self-serving declaration of Jonathan Schwartz. The Estate could
 28 have included the statement by Jonathan Schwartz and the accompanying email correspondence in

support of its opposition to the motion for partial summary judgment, but chose not to, and cannot now get a do-over. Jonathan Schwartz's most recent declaration and the attached emails he relied on, are not *new* evidence appropriate for supporting a request for reconsideration, and should be disregarded entirely. Finally, the Court must disregard the Estate's new argument regarding separate breaches and statute of limitation accrual dates. The Estate is precluded from relying on this argument because it failed to raise this argument in the prior proceedings. Even if the Court considers the Estate's new argument, it lacks merit and is irrelevant to the Court's prior ruling.

Additionally, the Adelson Campus seeks an order striking Jonathan Schwartz's August 14, 2018 Declaration and all exhibits attached in support thereof. None of the attached exhibits contain bates stamps and, therefore, there is no indication these documents were timely produced, and also raise issues of discovery abuses by the Estate. Accordingly, the Adelson Campus respectfully requests that the Court deny the Estate's premature, improper, and baseless Motion, and grant the Adelson Campus' counter-motion to strike Jonathan Schwartz's August 14, 2018 Declaration and all attached exhibits.

II.

LEGAL ARGUMENT

A. The Estate's Motion for Reconsideration is Premature.

First, the Estate's Motion for Reconsideration is premature under EDCR 2.24(b). *See* EDCR 2.24(b); *see also Div. of Child & Family Servs., Dep't of Human Res., State of Nevada v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 120 Nev. 445, 451, 92 P.3d 1239, 1243 (2004) (Before the court reduces its decision to writing, signs it, and files it with the clerk, the nature of the judicial decision is impermanent. The court remains free to reconsider the decision and issue a different written judgment. Consequently, a "[c]ourt's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order **are ineffective for any purpose.**") (emphasis added) The Court has not yet entered written Findings of Fact and Conclusion of Law. Because the basis for granting the Adelson Campus' Motion for Partial Summary Judgment Regarding Statute of Limitation is ineffective and impermanent, it is impossible to determine if the denial was erroneous. Moreover, reconsideration at the district court level is only appropriate "in very rare instances" when a party raises *new* issues of law or fact that render the Court's prior holding erroneous. *Moore v. City of Las Vegas*, 92 Nev. 402, 551

P.2d 244, 246 (1976)(emphasis added). “Rehearings are not granted as a matter of right and are not allowed for the purpose of reargument, unless there is reasonable probability that the court may have arrived at an erroneous conclusion.” *Geller v. McCown*, 64 Nev. 102, 178 P.2d 380, 381 (1947) (internal citations omitted). Accordingly, the Estate’s Motion for Reconsideration must be summarily denied as premature.

B. The Declaration of Jonathan Schwartz Dated August 14, 2018 Cannot be Considered Under Nevada Law and is Not New Evidence that Could Support a Request for Reconsideration.

As discussed in greater detail below, the Estate has not raised any requisite *new* issues of fact or law that could support a rehearing on the Court’s decision on the Adelson Campus’ motion for partial summary judgment. Instead on the night of August 14, 2018, it filed a purported supplement to its motion for reconsideration that included yet another new Declaration of Jonathan Schwartz. *See Supp. to Mot.* The overwhelming weight of authority is that the failure to file documents in an original motion or opposition does not turn the late filed documents into “newly discovered evidence.” *See Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (citing *Waltman v. International Paper Co.*, 875 F.2d 468, 473–74 (5th Cir.1989) (materials available at time of filing opposition to summary judgment would not be considered with motion for reconsideration)); *Trentacosta v. Frontier Pac. Aircraft Indus., Inc.*, 813 F.2d 1553, 1557 & n. 4 (9th Cir.1987) (court did not abuse its discretion in refusing to consider affidavits opposing summary judgment filed late); *Frederick S. Wyle Professional Corp. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir.1985) (*evidence available to party before it filed its opposition was not “newly discovered evidence”* warranting reconsideration of summary judgment)(emphasis added).

The Declaration of Jonathan Schwartz dated August 14, 2018 and the attached emails he relied on, are not *new* evidence appropriate for supporting a request for reconsideration. Evidence available to a party before it filed its motion is not “newly discovered evidence.” *See Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *Frederick S. Wyle Professional Corp. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir.1985). The Estate could have included the statements by Jonathan Schwartz and the accompanying email correspondence in support of its opposition to the motion for partial summary judgment, but chose not to include these statements and

documents. The Schwartz Declaration cannot now be included to support the Estate's request for the Court to reconsider its decision on the Adelson Campus' Motion for Partial Summary Judgment Regarding Statute of Limitations. As the Estate failed to provide the Court any *new* factual evidence, the Estate's request for reconsideration is unsupported and must be denied.

C. The Estate's Motion for Reconsideration Should Be Denied as it has Not Demonstrated with New Facts or Intervening Law that the Court's Granting of the Adelson Campus' Motion for Partial Summary Judgment Regarding Statute of Limitations as to Oral Contracts was Erroneous or in Error.

A motion for reconsideration raising no new issues of law and no new facts is superfluous and, in the Supreme Court of Nevada's view, an abuse of discretion for the district court to entertain it. *See Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). The Estate has not raised any requisite new issues of fact or law that could support a rehearing on the granting of the Adelson Campus' Motion for Partial Summary Judgment Regarding Statute of Limitations. The Estate relies on recycled arguments and facts that there is a genuine issue of material fact as to when the Estate was on inquiry notice of alleged breaches of the purported naming rights agreement and the applicability of equitable tolling and estoppel on the statute of limitations. *Compare* Mot. at pp. 9-15 and Estate's Opp. to Mot for Partial Summary Judgment Regarding Statute of Limitations at 12:7-15:10. Because the Estate failed to provide the Court any new factual evidence or new law, the Estate's request for reconsideration is unsupported and should be denied.

Not only did the Estate fail to provide any "new facts" that would warrant this Court granting its Motion for Reconsideration, but the Estate also failed to provide any legal basis to support their contention that this Court's ruling on the Adelson Campus' Motion for Partial Summary Judgment Regarding Statute of Limitations was "clearly erroneous." The "clearly erroneous" standard is described as:

A finding is 'clearly erroneous' when although there is evidence to support it the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. [Citation omitted].

Unionamerica Mortg. and Equity Trust vs. McDonald, 97 Nev. 210, 211-212, 626 P.2d 1272, 1273 (Nev. 1981). Thus, in order for the Estate to meet its burden of proof to demonstrate that the Court's ruling should be reconsidered, the Court must come to a definite and firm conviction that its prior ruling

1 was a mistake. As the Estate cannot meet this burden, the Adelson Campus respectfully requests that
2 this Court deny the Estate's Motion for Reconsideration.

3 **D. The Estate is Precluded from Raising its New Argument Regarding "Separate Breaches"**
4 **in Support of its Request for Reconsideration.**

5 The Estate's request for reconsideration relies heavily on the newly proffered argument that
6 each alleged breach of the naming rights agreement constituted a separate breach for purpose of
7 determining the accrual date of the limitations period. *See* Mot. at pp.6-9. It is unequivocal, "points or
8 contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Achrem*
9 *v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996). The Estate failed to
10 assert this "separate breach" argument in opposing the Adelson Campus' subject motion for partial
11 summary judgement. *See generally* the Estate's Opp. to Mot. for Partial Summary Judgment Regarding
12 Statute of Limitations. Accordingly, it is foreclosed from now asserting this newly proffered argument
13 in support of its request for reconsideration.

14 Regardless, the Estate's new argument lacks merit. The law regarding separate breaches and
15 accruals of the statute of limitations would only apply to a divisible or installment contract. *See Wallace*
16 *v. Smith*, No. 60456, 2014 WL 4810304, at *2 (Nev. Sept. 26, 2014) (citing *Dredge Corp. v. Wells*
17 *Cargo, Inc.*, 82 Nev. 69, 73, 410 P.2d 751, 754 (1966); *Linebarger v. Devine*, 47 Nev. 67, 72, 214 P.
18 532, 534 (1923)). "A contract is divisible where ... performance of each party is divided into two or
19 more parts; the number of parts due from each party is the same; and the performance of each part is
20 the agreed exchange for a corresponding part by the other party." *Dredge Corp.*, 82 Nev. at 73, 410
21 P.2d at 754. In contrast, a contract is indivisible "if the consideration ... is single, and cannot be
22 apportioned to particular promises on each side." 15 Richard A. Lord, *Williston on Contracts* § 45:7
23 (4th ed.2014); *see also Linebarger*, 47 Nev. at 72, 214 P. at 534." *Id.* In addition, "where contract
24 obligations are payable by installments, the limitations statute begins to run only with respect to each
25 installment when due, unless the lender exercises his or her option to declare the entire note due."
26 *Clayton v. Gardner*, 107 Nev. 468, 470, 813 P.2d 997, 999 (1991).

27 There is no dispute that the alleged naming rights agreement is neither divisible nor an
28 installment contract. *See* Estate's Petition for Declaratory Relief at 2:13-15. Thus, any breach of the

1 alleged agreement would begin tolling the statute of limitations and any alleged subsequent breach is
2 irrelevant. Further, unlike with installment or divisible contracts, here, there can be no “partial” or
3 “multiple” breaches for statute of limitations purposes because the Estate’s alleged damages are the
4 same regardless of whether multiple breaches occurred. Disregarding the fact that there is no evidence
5 the parties agreed that a breach of the alleged naming rights agreement would entitle the Estate to the
6 relief it seeks, the Estate’s position that it would be entitled to these damages as a result of *any* breach
7 demonstrates the Estate is not entitled to a new statute of limitations for each alleged “partial breach.”

8 **III.**
9 **COUNTERMOTION TO STRIKE THE AUGUST 14, 2018 DECLARATION OF JONATHAN**
10 **SCHWARTZ AND ALL ATTACHED EXHIBITS IN SUPPORT**

11 The Adelson Campus seeks an order striking the Declaration of Jonathan Schwartz dated
12 August 14, 2018, and all attached exhibits thereto as a sanction for failing to disclose the exhibits emails
13 as required under NRCP 16.1. The exhibits attached in support of Jonathan Schwartz’s Declaration are
14 not bates stamped. Therefore, the Estate has not demonstrated that these documents were ever timely
15 produced in this matter.

16 Rule 37(c)(1) provides: “ A party that *without substantial justification* fails to disclose
17 information required by Rule 16.1 . . . is not. . . permitted to use as evidence . . . any witness or
18 information not so disclosed.” NEV. R. CIV. P. 37(c)(1) (emphasis added). Therefore, the Court must
19 strike Jonathan Schwartz’s August 14, 2018 Declaration and all previously undisclosed documents, and
20 order that the Estate is precluded from relying on these documents at trial.

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23 ///

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IV.

CONCLUSION

For all the reasons indicated above, the Adelson Campus respectfully requests that this Court to deny the Estate's Motion for Reconsideration and grant to the Adelson Campus' request to strike the August 14, 2018 Declaration of Jonathan Schwartz and all exhibits in support.

DATED this 16th day of August, 2018.

Respectfully Submitted,


KEMP, JONES & COULTHARD, LLP



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 Las Vegas, Nevada 89169
*Attorneys for The Dr. Miriam and
 Sheldon G. Adelson Educational Institute*

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of August, 2018, I served a true and correct copy of **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 ORAL CONTRACT AND COUNTERMOTION TO STRIKE THE AUGUST 14, 2018 DECLARATION OF JONATHAN SCHWARTZ AND ALL ATTACHED EXHIBITS IN SUPPORT** via the Eighth Judicial District Court's CM/ECF electronic filing system, addressed to all parties on the e-service list.

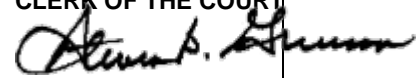


An employee of Kemp, Jones & Coulthard, LLP

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1 RTRAN



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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 In the Matter of the Estate of:
9 MILTON SCHWARTZ

10
11) CASE#: P-07-061300
12)
13) DEPT. XXVI
14)
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12 BEFORE THE HONORABLE GLORIA STURMAN,
13 DISTRICT COURT JUDGE

14 THURSDAY, AUGUST 16, 2018

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
16 **PRETRIAL CONFERENCE - DAY 2**
17 **ALL PENDING MOTIONS**
18

19 APPEARANCES:

20 For the Estate of Milton Schwartz: ALAN D. FREER, ESQ.
21 ALEX G. LEVEQUE, ESQ.

22 For the Dr. Miriam and Sheldon G. J. RANDALL JONES, ESQ.
23 Adelson Educational Institute: JOSHUA D. CARLSON, ESQ.

24
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Las Vegas, Nevada, Thursday, August 16, 2018

2
3 [Case called at 1:54 p.m.]

4 THE COURT: ... have some remaining motions in limine
5 which I thought we should just wrap those up, and then we can talk
6 about those other two issues, because we have the motion for
7 reconsideration and countermotion and then we also have the estate
8 having supplemented Rabbi Wyne.

9 Did you see both of those?

10 MR. CARLSON: Yes.

11 THE COURT: Okay. All right, so let's wrap up those motions
12 in limine we didn't already talk about and we'll figure out which ones
13 those are. I think I kept --

14 MR. FREER: Three five six.

15 THE COURT: Three, five and six.

16 Mr. Jones.

17 MR. JONES: Good afternoon, Your Honor. Randall Jones
18 and Josh Carlson on behalf of the Adelson Educational Campus.

19 THE COURT: And --

20 MR. JONES: I don't know --

21 MR. FREER: Oh I'm sorry. Alan Freer and Alex LeVeque on
22 behalf of the estate.

23 THE COURT: Okay. So hopefully we did not interfere with
24 your previous matter. We did have an opportunity to talk to the
25 colleagues from Mr. Freer's office who had the matter at two. They

1 agreed to wait and they're not going to come in till three. So --

2 MR. JONES: Okay. So --

3 THE COURT: -- cleared the way for --

4 MR. JONES: So we better go.

5 THE COURT: We better go. Yeah.

6 MR. JONES: Okay. I've just got a little outline, Your Honor --

7 THE COURT: Okay, thanks.

8 MR. JONES: -- of my argument that hopefully will --

9 THE COURT: Appreciate that.

10 MR. JONES: -- help everyone kind of follow along. The
11 reason you'll note there that -- and the way I look at this you tell me if
12 you disagree, Your Honor, but three, seven and 10 -- is that what it is?

13 MR. CARLSON: Three --

14 MR. LEVEQUE: Three, five and six.

15 MR. CARLSON: -- five and six.

16 MR. JONES: Three, five and 10 (sic).

17 THE COURT: Six.

18 MR. JONES: They're all having to do with out-of-court
19 statements made by -- allegedly made by Mr. Milton Schwartz to his
20 son, to other board members or other third parties.

21 THE COURT: And the family did agree on one. Is that
22 included in numbers 3, 5 and 6 because the family did concede on one.

23 MR. FREER: Four.

24 THE COURT: Oh four. So four they conceded on.

25 MR. JONES: Right.

1 THE COURT: So we only have to talk about the three that are
2 in issue which are three --

3 MR. JONES: Right.

4 THE COURT: -- five and six. Got it.

5 MR. JONES: And then of course Mr. Schwartz -- Milton
6 Schwartz' own statements in the form of affidavits and things to that
7 effect so --

8 THE COURT: Okay. Great.

9 MR. JONES: -- they -- I think -- I would put it this way, Your
10 Honor, to start the point here. This is -- and I've had conversation with
11 counsel and they're probate lawyers so they deal with this world more
12 than I ever do and they pointed out to me when I said well your whole
13 case seems to rest on getting in hearsay evidence and they said well,
14 hey, this is an estate case and we can do that in an estate case.

15 Actually I don't think they can. And the point here is, is that
16 this is simply trying to use the interpretation of a will issue as an end run
17 to the hearsay rule with respect to their breach of contract claim, which
18 by the way is really a dec relief claim, but the point's still the same.
19 They're trying to use the fact that there's a will involved in this process to
20 get around the hearsay rule, but the problem is the rules don't allow that.

21 And so I think it's important to start with what -- how is it
22 possible that they can get into the testator's intent here? And the only
23 way they can do that, as I understand it, is if there's a question of
24 ambiguity of the will. And I assume the Court agrees with that premise
25 because if not, then I have to go somewhere else.

1 THE COURT: Okay.

2 MR. JONES: So --

3 THE COURT: On same page.

4 MR. JONES: -- if that's our starting point, there has to be an
5 ambiguity in the will so let's look at the will. The provision at issue is 2.3,
6 Milton I. Schwartz Hebrew Academy, I hereby give, devise and bequest
7 the sum of \$500,000 to the Milton I. Schwartz Hebrew Academy, the
8 Hebrew Academy.

9 And then it goes on to talk about the mortgage and the other
10 things. And what happens if there's a mortgage it goes to pay the
11 mortgage down, but there's no question -- there's no ambiguity about the
12 500,000. That's 500,000. There's no ambiguity about he says he wants
13 to bequest it to Milton I. Schwartz Hebrew Academy, and then he puts in
14 paren Hebrew Academy. The entire 500,000 amount shall go to the
15 Hebrew Academy for the purpose of funding scholarships to Jewish --
16 educate Jewish children only.

17 So that's the plain language on the document and we know
18 from lots of Nevada cases but one we cite in particular says an
19 ambiguous provision means simply there are two constructions or
20 interpretations that may be given to a provision of a will that it may be
21 understood in more senses than one. Makes sense -- two
22 interpretations.

23 But we know in *In re Walters Estate* the court said: In
24 construction of a will, the court -- first of all not the jury, so that is clearly
25 not a jury question -- seeks to ascertain intention of testatrix, but such

1 intention must be found in the words used by the testatrix and if such
2 words are unambiguous, there is no occasion for construction.

3 So what types of ambiguities can there be? There are two
4 types of ambiguities, a patent ambiguity and a latent ambiguity. A
5 patent ambiguity is when there is uncertainty on the face of the
6 document. So there's no uncertainty in what is stated here, Milton I.
7 Schwartz Hebrew Academy; that he is giving it to the Hebrew Academy
8 \$500,000 either to pay off a mortgage -- if there is no mortgage, then to
9 go to scholarships. That's what it says.

10 So how do we define -- how does the Court define more
11 appropriately what a latent ambiguity is? A latent ambiguity exists
12 where the language of the will, though clear on its face, is susceptible to
13 more than one meaning when applied to the extrinsic facts. And we
14 cited a couple examples that would be -- been used by the courts
15 before. First example is -- of a latent ambiguity is Wilma made a request
16 -- bequest in a will to my cousin, John Reynolds. On its face there does
17 not appear to be an ambiguity. However, Wilma has two cousins named
18 John Reynolds. Two or more persons meet the description in the will.
19 Now we have, okay, did she mean this John Reynolds or did she mean
20 that John Reynolds? And the other one is essentially the same kind of
21 an issue.

22 They've alleged a latent ambiguity exists, Your Honor. That's
23 what they're saying. They're not saying it's a patent ambiguity, although
24 -- I don't think they're saying that all. In fact, Jonathan Schwartz himself
25 has said there is no ambiguity in this will.

1 And I heard what you said yesterday about well maybe he
2 meant that he wanted the money to go to kids for their education, and I
3 think you even mentioned cy pres is a possibility here. The only way
4 that I -- it seems to me that the Court could come to that conclusion --
5 because there's nothing on the face of the words used in paragraph 2.3
6 that suggest that. You'd have to go outside the will to come up with that
7 conclusion.

8 They -- they're essentially seeking this construction -- by the
9 way, their position is what that means is that the words of the estate
10 means so long as the Hebrew Academy is named after me. That does
11 not appear in 2.3. Just doesn't. And the words themselves don't
12 suggest that. It just says the Hebrew Academy; I'm going to give the
13 money to the Hebrew Academy. They don't say and I want -- only so
14 long as it's named the Hebrew Academy.

15 *In re Jones*: At the outset the limits of the court's power to
16 construe the language of the will should be noted. A court may not vary
17 the terms of a will to conform to the court's view as the true testamentary
18 intent. That is black letter law in the State of Nevada. The court -- and
19 by the way, doesn't say the jury. The court may not vary the terms of
20 the will to conform to the court's view as to the true testamentary intent.
21 The question before us is not what the testatrix actually intended or what
22 she meant to write. Evidence is admissible which, in its nature and
23 effect, simply explains the testator -- what the testator has written, but no
24 evidence can be admissible which, in its nature or effect, is appropriate
25 (sic) to the purpose of showing merely what he intended to have written.

1 The only way they can get this testimony in is if this Court
2 says I want to know from other people what he intended. The law in
3 Nevada -- I believe this is categorical error to allow an interpretation of
4 these words.

5 THE COURT: Is this a motion for summary judgment or is this
6 a motion in limine?

7 MR. JONES: It's a motion in limine --

8 THE COURT: Okay.

9 MR. JONES: -- but Your Honor, here's the point. It all goes
10 back to the -- these motions in limine. I want -- they being the estate.
11 The estate wants to put up all these witnesses to tell the jury what Mr.
12 Schwartz -- Milton Schwartz intended in his will. That's the only way
13 they can get it in related to the contract claim.

14 The black letter law says they can't do that. They can't do it.
15 So it is a motion in limine. The -- so how do they get past the hearsay
16 rule unless this Court determines that these witnesses can come in and
17 testify about his -- what he intended to say or what he meant by the
18 unambiguous words contained in his will?

19 I understand the Court feels compelled to let them do that, but
20 that is just on its face contrary to what the Nevada Supreme Court has
21 told us for decades. It just is. I mean there's no two ways around that.

22 To gives the words used any other than their recognized
23 meaning or to hold that extrinsic evidence may be admitted for that
24 purpose would be to sanction the changing of the will for the purpose not
25 of enforcing an unambiguous bequest but rather rendering an

1 unambiguous bequest -- an ambiguous bequest unambiguous. That
2 cannot be done.

3 THE COURT: Well, so --

4 MR. JONES: Yes, Your Honor.

5 THE COURT: -- isn't the question -- if you look at it on its face
6 unambiguous, I bequeath it to this institution, it doesn't exist and he
7 knows it doesn't exist prior to his death, yet he does nothing to change
8 this. So what did he mean? Did he just -- is that just his name for it or
9 did he really think they needed to change the name? I mean that's our
10 problem.

11 MR. JONES: Well here -- actually, Your Honor, I think you're
12 working under a misapprehension. Mr. Schwartz died in August I
13 believe 2000- --

14 MR. CARLSON: Seven.

15 MR. JONES: Seven. Yes, 2007. The corporation -- the
16 name of the corporation was changed I believe in March or May of 2008.

17 THE COURT: Right.

18 MR. JONES: So --

19 THE COURT: But the school name had been changed.

20 MR. JONES: No it was not, Your Honor, the first resolution
21 that occurred happened December -- I think was December 13 of 2007.
22 In fact that's a point they make that Jonathan Schwartz uses as a -- an
23 attempt to castigate the school by saying you just waited -- you know, he
24 just died and here you go and change the -- everything on him. So the
25 fact is Milton Schwartz when he made that bequest, the school was

1 called, the corporation was called the Milton I. Schwartz Hebrew
2 Academy.

3 THE COURT: Okay.

4 MR. JONES: So he -- and by the way, here's the other
5 interesting thing about it. That -- the name didn't come off of that school
6 until -- Mr. Schwartz refused up until 2013, 2013, six years after Milton
7 Schwartz died. The testimony has been consistent that the board
8 decided to take the name off when Jonathan Schwartz refused to honor
9 his father's bequest. So even up till six years after he died, Milton I.
10 Schwartz's name was on the elementary school. But as a matter of
11 indisputable fact --

12 THE COURT: And by that, just to be clear, we mean it was --
13 I don't know if the proper term is etched? It was physically --

14 MR. JONES: It was actually --

15 THE COURT: -- in the wall of the building over the front door.

16 MR. JONES: Actually, Your Honor, I think it -- it actually was
17 raised letters. They were attached --

18 THE COURT: Oh raised letter? Okay.

19 MR. JONES: -- to the building is my recollection is, and I don't
20 think it's -- whatever it was --

21 THE COURT: I only saw it once.

22 MR. JONES: -- they were -- I'm almost positive that they were
23 actual physical letters that were --

24 THE COURT: Okay.

25 MR. JONES: -- decent size letters that said Milton I. Schwartz

1 Hebrew Academy on the school, the front of the school.

2 We're going to be introducing that. We're not trying to shy
3 away from that point at all. But if the Court was of -- under the
4 impression that at the time that Milton made that bequest that the school
5 had changed the corporate name and the school had changed the name
6 on the building, that is incorrect. And so --

7 THE COURT: Yeah.

8 MR. JONES: And by the way, this is where it becomes
9 problematic and this is an issue we have to face in this case. At some
10 point the board took the name off the lower school, but it wasn't for
11 years later and it wasn't as a -- some kind of a bait and switch with
12 Milton I. Schwartz, it was because of the conduct of his son, the
13 executor of his estate, long after Milton died.

14 So that's why I have a problem with them saying well what
15 was his intent? At the time he made that bequest, the corporation was
16 in his name, the school was in his name, his name was on the
17 letterhead, all the things that they believe they have a contract right for
18 which I'm absolutely convinced and I -- I'm not trying to convince them, I
19 know I can't do that, but based on the evidence I've seen, he had no
20 enforceable contract right for.

21 But that's beside the point. What they're trying to do, Judge,
22 is they're trying to use a loophole in Chapter 51 of the hearsay rule to
23 bootstrap in hearsay to try to prove a contract claim that is totally
24 absolutely categorically inappropriate under the law of the state with
25 respect to the interpretation of wills.

1 THE COURT: Is this improper in all context? Because
2 always the question is for the truth of the matter. So what's the truth of
3 the matter you're trying to establish? If you're trying to establish did your
4 dad have a contract with whichever one of the iterations of the board
5 there was --

6 MR. JONES: Sure.

7 THE COURT: -- or with Dr. Lubin and Ms. Sabbath when they
8 -- Dr. Sabbath when they came over, that's one thing versus when
9 you're -- when you were taking your dad's dictation of this will, what did
10 you understand him to be saying when you wrote this? Why did he say
11 Milton I. Schwartz Hebrew Academy? Well, because he always told me
12 that's -- it was named after him in perpetuity so that's what I thought he
13 was saying.

14 MR. JONES: Well in any other case, that wouldn't even be a
15 hesitation for the Court say that's hearsay, you cannot get that in. The
16 only way that they can even talk about getting it in is try to hit this
17 loophole under Rule 51 and it doesn't apply the black letter law the State
18 of Nevada for at this point over 40 years. Actually about 60 years. I
19 think that the *Jones* case is as old as I am. Actually it's a year younger.
20 So it's only 62 years old. So that's the problem.

21 By the way, they have a right to bring in -- we have stipulated
22 to the -- they've alleged there's four documents that establish this
23 contractual right. This is in their papers so again they should be
24 estopped from trying to argue something else. We've asked them
25 forever tell us what the document is that creates this written contract.

1 Well it's the resolution from 1990 -- actually 1989. It's the amendment to
2 the articles in 1990. It's a letter, an unsigned letter I believe is the other
3 thing that they say they've got. Oh no, I'm sorry, the bylaws, the bylaws
4 from 1990, from December of 1990. And then the checks that he wrote
5 for \$500,000, I think they're three checks.

6 So we're not trying to -- if there's a foundation for those --
7 most of those documents by the way I've stipulated to authenticity and
8 foundation. If they want to talk to Lenny Schwartzer for example who's
9 on the board and said well what was your understanding, that's a valid
10 question that I might have some issues with it one way or another but I
11 can't make a hearsay objection because that's his state of mind of what
12 he was thinking at a particular point in time.

13 The question that I object to is well what did Milton Schwartz
14 tell you about what his intent was. That is categorically inadmissible as
15 hearsay in a context of any other case. The only way to get around it is
16 the exception to 51 point what is one five oh.

17 THE COURT: Right. And so that -- again that's my question
18 about context. Isn't the issue here whether something that would
19 otherwise be hearsay and otherwise would be inadmissible in the
20 context it's being ask is admissible because there is this one little
21 loophole and it's relevant to that?

22 MR. JONES: By the way, I'm not arguing about its relevance.
23 I would argue -- I could see the reason the Court thinks --

24 THE COURT: Right.

25 MR. JONES: -- it's relevant, highly relevant, what his intent

1 was. The problem is Nevada law says even under that loophole you
2 cannot do it unless this Court finds that there is a specific ambiguity of
3 the will. Then issues of intent are allowed in -- to some extent.

4 But I mean the *In re Jones* case is I mean just absolutely right
5 on point. Evidence is inadmissible -- or is admissible which, in its nature
6 and effect, simply explains the testator -- what the testator had written,
7 but no evidence can be admissible which, in its nature or effect, is
8 applicable to the purpose of showing merely what was intended to have
9 been written.

10 And that's the problem they've got, Judge. They want to add
11 the language expressly or implicitly of well, the Hebrew Academy so
12 long as it remained the Hebrew Academy in perpetuity. That last part
13 does not exist in the will. It is not ambiguous. It doesn't say anywhere
14 in the will -- we read it, it says sum of \$500,000 to the Milton I. Schwartz
15 Hebrew Academy, the Hebrew Academy. And at the time he died, the
16 corporation was named the Hebrew Academy, his name was on that
17 school, it was on the website, was on the letterhead, it was on
18 everything.

19 So the only way they can meet that exception to the hearsay
20 rule is in a -- in a will contest is if the will is ambiguous with respect to his
21 intent or excuse me, is with respect to what the words themselves say.
22 If the words don't say anywhere in there and nobody could construe
23 them to say the Milton I. Schwartz Hebrew Academy so long as it
24 remains so in perpetuity, that's what this case is about. That's their
25 whole argument. You know, so I don't know -- and by the way, if that's

1 true, all three of those motions in limine we should prevail on --

2 THE COURT: Okay.

3 MR. JONES: -- because every single one of them goes to the
4 same issue; they're trying to get in Milton Schwartz's intent -- statements
5 that Milton that either himself in an affidavit, which I mean my gosh,
6 you're talking about affidavits that are 30 years old --

7 THE COURT: Right. So that's why we should look at the
8 different -- just real quickly --

9 MR. JONES: Sure. Of course.

10 THE COURT: -- what each of these out-of-court statements
11 by these respective people is. So Jonathan. Milton dictated the will to
12 him or at least discussed with him what he wanted in the will I mean so
13 worked on drafting with him.

14 MR. JONES: Sure.

15 THE COURT: So in that context, okay, but it seemed like
16 there was more that you were looking at other times that Milton had
17 talked to him about -- I don't know if it was in the context of the prior
18 litigation or just mentioned it --

19 MR. JONES: Well, we tried to -- because it's a motion in
20 limine --

21 THE COURT: -- you know, because a lot of talking about it.

22 MR. JONES: Because it's a motion in limine it's --

23 THE COURT: Right.

24 MR. JONES: -- it's always, you know, better if you can. Let
25 me see.

1 THE COURT: I mean my father told me. I specifically
2 remember my father -- my father was enjoying this -- I can see that, was
3 enjoying this process. Yeah.

4 MR. JONES: So yeah, if you look at -- it's on page 6 of our
5 motion we have a whole laundry list here of specific because I think it's
6 hard for the Court to make an --

7 THE COURT: Right.

8 MR. JONES: -- omnibus ruling --

9 THE COURT: Exactly.

10 MR. JONES: -- and so that's why we didn't want to do -- we
11 wanted to give you specific examples.

12 THE COURT: Right. And so that's why I said talking about in
13 context because there -- I think there are issues with respect to when it
14 is and is not relevant to so you couldn't ask it if you're trying to prove
15 something other than where it falls into this loophole. So --

16 MR. JONES: Well and I would say this, Your Honor.

17 THE COURT: -- that's the problem.

18 MR. JONES: I would have to say relevance to me is not the
19 issue because certainly you could make a legitimate argument --

20 THE COURT: I get --

21 MR. JONES: -- this is all relevant.

22 THE COURT: No, but I'm just saying if what they're talking
23 about is something other than it's -- because it's a pretty narrow
24 exception. With all due respect, why wouldn't anything that was said
25 during the process of drafting the will be relevant and admissible under

1 the exception because that's exactly what it is.

2 MR. JONES: Well I'll tell you exactly why --

3 THE COURT: Okay.

4 MR. JONES: -- because -- we're only talking about one
5 provision. We're not talking about other aspects of the will, we're talking
6 about one provision --

7 THE COURT: Right.

8 MR. JONES: -- 2.3 of the will. That provision is not
9 ambiguous and the testa- or the executor himself has said under oath
10 it's not ambiguous. If he's saying it's not ambiguous, then you cannot
11 have him testify -- the exception does not apply to him because he's
12 already said to you it's not ambiguous, therefore the testator's intent of
13 what he meant the words to mean are inadmissible.

14 And for any other purpose, by the way, if it's to relate to -- if
15 they want to use it for some other purpose like well did that inform your
16 opinion as to whether or not your dad thought he had an enforceable
17 naming rights contract, well that's just flat out inadmissible under --

18 THE COURT: Right.

19 MR. JONES: -- the hearsay rule. It doesn't come under the --

20 THE COURT: Okay. All right.

21 MR. JONES: -- exception at all. But the -- what -- related to
22 specifically to the exception, Jonathan says it's not ambiguous, only one
23 provision is at issue. If he wants to talk about his dad's intent of some
24 other provision of the will other than 2.3 that the Court might find to be
25 ambiguous, then I believe the exception would apply. But you have to

1 apply it in the context of this case and the only issue they want to use it
2 in connection with is 2.3, paragraph 2.3 of the will. And so you have to -
3 - as the Court as the gatekeeper here, you have to look at 2.3 --

4 THE COURT: Right.

5 MR. JONES: -- and you have to say does 2.3 say anything in
6 it there that would lead me to believe it's ambiguous to such an extent
7 on its face --

8 THE COURT: Haven't I already said that like five times?

9 MR. JONES: That --

10 THE COURT: I'm -- I mean --

11 MR. JONES: That you --

12 THE COURT: -- prior to you getting into the case, there were
13 motions in -- I understand Jonathan believes this makes perfect sense. I
14 don't.

15 MR. JONES: Oh, fair enough, Your Honor. I've heard you
16 say that and I guess I would ask this Court so I'm clear, and I'd like a
17 record of this, tell me exactly what it is you believe that is ambiguous
18 about that statement on its -- on that will provision on its face.

19 THE COURT: Well, here's my problem -- I probably shouldn't
20 read this excerpt, should probably look at the actual will.

21 MR. JONES: I may have a copy of it.

22 THE COURT: Is it attached to anything you guys --

23 MR. CARLSON: We have a full copy.

24 MR. FREER: And I would just point out, Your Honor, I think
25 you already did describe what your problem was in the 3/10/15 order --

1 THE COURT: Yeah.

2 MR. FREER: -- where it talks about the ultimate question of
3 fact.

4 MR. JONES: Your Honor, I have a copy of the full will if you
5 like.

6 THE COURT: Okay, thanks. Yeah. Okay, so --

7 MR. JONES: Yeah, I'd like to know exactly where the Court --

8 THE COURT: Okay.

9 MR. JONES: -- thinks there's an ambiguity on its face.

10 THE COURT: Okay. I'm fine with I hereby give, devise and
11 bequeath the sum of \$500,000 to the Milton I. Schwartz Hebrew
12 Academy, parens, the Hebrew Academy. Okay. Technically, at the --
13 he -- at the time of his death, technically, the corporation was named
14 after him. They already though, as I recall, had announced a name
15 change and were using a name change on like advertising materials, the
16 -- the big gala which Milton was honored specifically listed both, and so
17 the question there is when he says that, does he mean only the
18 elementary school? So they could only use it in the elementary school
19 that was problem one.

20 So whatever, whatever. And then he starts talking about this
21 -- all this stuff about the bank and the loan and the loan that I've
22 guaranteed. I don't know where that came from. So if at the time of my
23 death there is a bank or lender mortgage on the -- upon which I, my
24 heirs or assigns or successors in interest are obligated as a guarantor
25 on behalf of the Hebrew Academy, the \$500,000 is to be first used

1 towards the mortgage.

2 So that's just directing the executor as I -- I think that's what
3 this means, the executor is to determine if there is a mortgage and -- on
4 which Milton was a guarantor and if so he needs to direct the academy
5 to say you may need this for operating funds, but you can't use it for
6 that, you're going to have to apply this only to the mortgage that my
7 dad's a guarantor on.

8 And then what? Does that pay off the mortgage that he's a
9 guarantor on? Does he get -- does the estate get a release? I mean I --

10 MR. JONES: Well, all those questions --

11 THE COURT: What?

12 MR. JONES: -- Your Honor, though, that's the Court inferring
13 what the --

14 THE COURT: Right.

15 MR. JONES: -- intent is after that.

16 THE COURT: Right, and so that's -- because then we have to
17 get to this and the reason we need to know that is that in the event the
18 lender will not release my estate, then no gift is given to them. So I
19 mean this is more that Jonathan has to do to figure out if he's going to
20 give any money.

21 If it's not going to secure a release, then you don't get it. But
22 in the event that there isn't a mortgage at the time of my death, the
23 entire amount goes to the Hebrew Academy for the purpose of funding
24 scholarships to educate Jewish children only, so any gentiles attending
25 the school, sorry, you're out of luck but this is going to pay the fees only

1 for the Jewish children.

2 So the problem that I had here was when he then says the
3 Hebrew Academy, I don't know what that is. And I understand Milton I.
4 Schwartz Hebrew Academy that he's calling the Hebrew Academy, but
5 there's more to -- by the time -- I think even by the time he wrote this but
6 certainly by his death, they had the upper school. They only had, and I
7 don't know what year it opened, for a long time went to the eighth grade.
8 So -- and I don't know the timing on 2004 what there was -- if that was
9 still just the eighth grade. And if that's what he intended, these were
10 funding elementary school scholarships for the Jewish children, only in
11 the event there's no mortgage. But if there's a mortgage, then you don't
12 get any gift at all I guess is the way that it reads if you read the whole
13 thing as one.

14 I didn't find this that easy to interpret with all -- and I
15 understand Jonathan thinks --

16 MR. JONES: And by the way --

17 THE COURT: -- he made perfect sense.

18 MR. JONES: I very much appreciate you giving me kind of
19 the feedback as to what you found to be ambiguous so based on what
20 you just said, it would seem to me that that would fall directly within the
21 purview of the *Jones* case where it says evidence --

22 THE COURT: Right. But then when you talk to Jonathan,
23 when Jonathan was drafting this, somehow he -- he believes that what
24 his father meant was only if the school kept his name in perpetuity and,
25 you know, where's that? And that's when you get into this other part of

1 the case where they believe they had an agreement that it would remain
2 so in perpetuity so you have to interpret the will in light of his intention
3 that it would be in perpetuity. That's not in the will, but that's what
4 Jonathan tells us my dad intended I -- I wrote down what his intentions
5 were and that's what he intended.

6 MR. JONES: Well, that's why hearsay is not admissible at
7 trial. Self-serving hearsay especially.

8 THE COURT: Okay.

9 MR. JONES: And so let's just go back using what you've --
10 and I tried to follow along what you said is first thing was what Hebrew
11 Milton I -- what did he mean by that?

12 MR. FREER: Your Honor, we're not on a summary judgment
13 as to ambiguity.

14 THE COURT: Exactly. Yeah. No. And that's kind of why I
15 ask is this a motion for summary judgment, are we really getting the
16 motion for summary judgment or this just is about evidence. So Mr.
17 Jones's argument is you -- it's totally inadmissible for this reason that
18 there's no ambiguity. I believe there's a patent ambiguity and there's a
19 latent ambiguity.

20 MR. JONES: And the patent ambiguity is?

21 THE COURT: What does that mean?

22 MR. JONES: Well there's only one Hebrew -- Milton I.
23 Schwartz Hebrew Academy at the time. There were -- there was
24 nothing else.

25 THE COURT: Right.

1 MR. JONES: There was only one, so that's not a latent
2 ambiguity I would certainly say. I don't know how that could be a latent
3 ambiguity --

4 THE COURT: Okay.

5 MR. JONES: -- when there was only one. I mean that's what
6 the definition of ambiguity is, is if there could be two meanings. There
7 would have to be -- by definition there would have to be two Milton I.
8 Schwartz Hebrew Academies which we know there were not.

9 THE COURT: No.

10 MR. JONES: The latent -- well I don't -- maybe I'm missing
11 something about the analysis there.

12 THE COURT: Okay. All right. So yeah.

13 MR. JONES: Is could there be two Milton I. Schwartz --

14 THE COURT: That's not -- that was not my problem. That
15 was not that there -- is there another one out there. Because, you know,
16 he's been involved in the other school, he was involved in the shul, but --

17 MR. JONES: So what is the --

18 THE COURT: -- those were -- he didn't put his --

19 MR. JONES: -- patent ambiguity, Your Honor, that I'm
20 missing?

21 THE COURT: -- he didn't name those. So my problem here
22 is the Milton I. Schwartz Hebrew Academy, does he mean only up to the
23 eighth grade? Did he envision the whole ultimate Adelson Educational
24 Campus?

25 MR. JONES: And that's what -- I'm sorry.

1 THE COURT: So that's my problem because how do we
2 know what it goes to? Because he's clearly directing this to something,
3 how do we read this whole thing to say okay, there's no mortgage, the
4 Adelsons have paid everything off, he's no longer a guarantor on
5 anything, this goes then to scholarships for Jewish children for what?
6 Up to the eighth grade?

7 MR. JONES: For the record, Your Honor, I -- I just want to
8 make it clear for the record. I believe that that is precisely specifically
9 what the *In re Jones* case does not allow the Court to do.

10 THE COURT: Okay.

11 MR. JONES: It does not allow the Court --

12 THE COURT: Got it here.

13 MR. JONES: -- to admit evidence, by its nature or effect,
14 which is applicable to the purpose of showing merely what was -- what
15 he intended to have written, and everything you just said is what your --
16 your questioning is what he intended to have written. That is expressly
17 prohibited by the *In re Jones* case, and I understand if -- and that's fine if
18 I -- if the Court rules against me, but I want it to be absolutely utterly
19 clear on the record that I believe that is specifically prohibited under *In re*
20 *Jones*. It is contrary to 51.150, it is contrary to *In re Jones*, it's contrary
21 to the *Zovorik versus Kordit* (phonetic) case.

22 So I understand, Your Honor, with that -- listen, if that's the
23 Court's position then, my argument goes to every one of these --

24 THE COURT: Okay.

25 MR. JONES: -- out-of-court statements made, whether it be in

1 the form of --

2 THE COURT: Right.

3 MR. JONES: -- Milton Schwartz's sworn affidavits --

4 THE COURT: Okay.

5 MR. JONES: -- whether it goes to Jonathan Schwartz'
6 testimony, whether it goes to third parties who testified what they -- what
7 Milton Schwartz told them during his life, I believe they are categorically
8 inadmissible pursuant to --

9 THE COURT: Okay.

10 MR. JONES: -- *In re Jones* and Nevada Supreme Court
11 precedent.

12 THE COURT: Okay. Now, again, and in the context we have
13 Jonathan in the context of the scrivener --

14 MR. JONES: I think that's --

15 THE COURT: -- for lack of better term. Susan was his
16 assistant?

17 MR. JONES: Yeah -- well yes. As I understand Susan and --
18 and bookkeeper kind of?

19 MR. LEVEQUE: Controller secretary.

20 MR. JONES: Yeah.

21 MR. LEVEQUE: Assistant.

22 THE COURT: And so her -- information she would have
23 would be in the context of when he told her issue a check, write a letter,
24 so when she was again acting on his instructions -- okay. Dr. Pokroy.

25 MR. JONES: Yes, Your Honor.

1 THE COURT: Yeah, that's different.

2 MR. JONES: That's different why?

3 THE COURT: He was on the board --

4 MR. JONES: Okay.

5 THE COURT: -- and what I understand his out-of-court
6 statement is that as a member of the board --

7 MR. JONES: If are you --

8 THE COURT: -- so a member -- at the time, at the time, a
9 member of the board, so isn't that a party? Wasn't he acting for the
10 board?

11 MR. JONES: Actually, Your Honor, I think we addressed that
12 issue specifically is that it's if your -- it had to be an admission against
13 your interest at the time the statement was made and --

14 THE COURT: Okay.

15 MR. JONES: -- and they were all on the same side. That's
16 again case law that I think is unambiguous, it's very clear --

17 THE COURT: And so that would be the same for Roberta
18 Sabbath; again, she was --

19 MR. JONES: Correct.

20 THE COURT: -- at the time an -- I don't think she was the
21 director, or she might have been for one of these. Because she -- at a
22 point in time she was like the assistant, another point in time she was
23 the director.

24 MR. JONES: That's right.

25 THE COURT: Okay, got -- so same issue there. And then

1 Lenard Schwartzer, again same issue, he was on the board when they
2 allegedly --

3 MR. JONES: Right.

4 THE COURT: -- had this discussion.

5 MR. JONES: So --

6 THE COURT: Okay, so at the time and since these were --
7 there was no dispute at the time, then they're admissible. Okay, got it.
8 All right. Thanks.

9 MR. JONES: Yeah, so we -- I understand the admission
10 against interest and I think that's a -- that was a good point to raise. The
11 problem is the case law says it had to be an admission against your
12 interest at the time the statement was made. At that time they were all,
13 if you will, on the same side, so to speak.

14 THE COURT: Okay.

15 MR. JONES: Thank you, Your Honor.

16 THE COURT: All right.

17 MR. FREER: Well Your Honor, fundamental disagreement on
18 just about everything.

19 THE COURT: Uh-huh.

20 MR. FREER: With respect to the ambiguity, just to point out
21 to what Your Honor ruled previously is the ambiguity is patent ambiguity
22 because there's a lack of successor clause there. If you remember we
23 went back in --

24 THE COURT: Yeah.

25 MR. FREER: -- 2015 because there wasn't a successor

1 clause it's ambiguous, otherwise it would lapse.

2 THE COURT: Right. And it says there's no gift.

3 MR. FREER: Right. And that lack of successor clause is
4 even more interesting because when you go through the documents the
5 school's got on file, Milton Schwartz has a second codicil -- before he
6 draft this one without a successor, there's one that gives it to the Milton
7 I. Schwartz Hebrew Academy or its successors. And so he knew what a
8 successor clause was --

9 THE COURT: And he talks about his -- in his own context if I
10 guaranteed or my successors or my heirs --

11 MR. FREER: Right.

12 THE COURT: I mean he knew that language. It's --

13 MR. FREER: Right. So I just wanted to --

14 THE COURT: He was pretty sophisticated guy.

15 MR. FREER: -- clear that up. There's ambiguity there. And
16 we get focused and myopically so focused on the issue with respect to
17 the lapse, but we also have a mistaken bequest and when you have a
18 claim for mistaken bequest, it's the belief; does the belief constitute a
19 mistake? It doesn't matter whether or not there ultimately is a contract.
20 If he believed there was an enforceable contract and that's what he
21 made the bequest on the basis of, then that's admissible.

22 So but we only have to -- as Your Honor pointed out, we only
23 have to have one ground for admissibility at this point. So we're kind of
24 wading way into the weeds. That's why our position was now is not the
25 time, let's -- as we get into it and we're in context and --

1 THE COURT: That was my question, doesn't it depend on the
2 context?

3 MR. FREER: It does -- absolutely, and if you look at most of
4 the testimony that they're citing to, those -- a lot of those questions can
5 be asked in such a way that it doesn't even evoke hearsay --

6 THE COURT: Right.

7 MR. FREER: -- and you got to look at a lot of those questions
8 were questions that they were asking Jonathan, they were asking --

9 THE COURT: And particularly with Susan, who Milton -- what
10 did Milton direct you to do? Directed me to write this check.

11 MR. FREER: Right.

12 THE COURT: She was --

13 MR. FREER: What did she observe?

14 THE COURT: I don't know if you'd call her an agent but he
15 acted through her. She had to write the check --

16 MR. FREER: Right.

17 THE COURT: -- in order for him to sign it. I mean --

18 MR. FREER: And as we point out --

19 THE COURT: -- whatever that -- whatever you call that.

20 MR. FREER: As we point out in our brief, there's more than
21 one loophole. You got the present sense impression, you've got a
22 bunch of different ones, statements about a will, statements against
23 interest, present sense impression, assurance of accuracy, state of
24 mind, verbal acts.

25 So the only reason I'm bringing those up right now is because

1 it sounds like Your Honor's already found one. I just don't want to be
2 pigeonholed when we're going to trial that oh we only talked about one
3 loophole. We're asserting that there are a number of loopholes, but the
4 issue is we need to determine that at trial. Because doing this out of
5 context without anything is --

6 THE COURT: Right.

7 MR. FREER: -- virtually impossible. So if Your Honor has
8 any questions --

9 THE COURT: I do and that's then -- because I'm okay with
10 Jonathan and Susan because they had very specific roles they were
11 performing for Milton based on Milton's -- what Milton told them to do
12 this is why I'm doing this.

13 The board members and Dr. Sabbath, I mean assuming those
14 are the only ones who are coming in. They were acting for the school. I
15 get that part.

16 MR. FREER: Yeah.

17 THE COURT: So --

18 MR. FREER: Our position is it is a statement against interest.
19 They were acting -- they were on the board at the time those statements
20 were made. On top --

21 THE COURT: And the problem with that is that while Mr.
22 Jones says they were all on the same side, they weren't.

23 MR. FREER: They weren't, because there's litigation involved
24 and you get --

25 THE COURT: Yeah.

1 MR. FREER: -- Tamar Lubin that has an affidavit directly
2 against Milton I. Schwartz, except what's the one thing -- she goes on
3 and on for 20 pages about I disagree with Milton, I disagree with Milton.
4 What's the one thing she agrees with? The school was named after him
5 because he gave us money. And so --

6 THE COURT: Right.

7 MR. FREER: -- you've got, you know, issues with respect to
8 that, but on top of that, it's if he understood -- if they made a
9 representation to him and he understood that representation based on
10 what they --

11 THE COURT: Right.

12 MR. FREER: -- were saying, that's a present sense
13 impression.

14 THE COURT: So those are three and five. Milton's affidavit is
15 a whole nother --

16 MR. FREER: Okay.

17 THE COURT: -- can of worms.

18 MR. FREER: All right, let's talk about Milton's affidavit.

19 THE COURT: Because he is dead, how can we use -- I mean
20 I understand you can use something to impeach somebody -- you can
21 impeach with anything so there may be uses for the affidavit that aren't
22 just Milton testified to -- or Milton claimed X in an affidavit. There's no
23 chance to cross-examine an affidavit. So --

24 MR. FREER: Well --

25 THE COURT: -- how do we use an affidavit?

1 MR. FREER: The issue with the affidavit is it was his
2 understanding --

3 THE COURT: Milton's affidavit --

4 MR. FREER: Yeah, it's his --

5 THE COURT: -- to be clear because the others can all testify.

6 MR. FREER: It's his then -- as he's answering this, it's his
7 present sense impression as to what his understanding of the
8 agreement was.

9 THE COURT: Okay.

10 MR. FREER: All that -- and if you look at the case that we
11 cited with respect to the -- hang on one second. It's the Iowa case. It
12 doesn't talk about -- it doesn't -- that case stands for the proposition
13 when you're talking about understanding and intent with respect to what
14 you're doing with the will, present sense impression all the way along
15 the points -- data points of those plans are admissible.

16 Now we also asserted additional grounds with respect to the
17 affidavit, unavailability of witness with respect -- NRS 51.315, because
18 of accuracy -- he was under oath. This was him -- this wasn't in -- prior
19 to litigation, this was in litigation, and here's the issue is in that litigation
20 the naming rights of the school were not at issue. It was about
21 conflicting boards. In fact, I think everybody in the litigation testified as
22 the same thing; yeah, is the Milton I. Schwartz Hebrew Academy
23 because he gave us money.

24 So -- the other thing we listed was, you know, was an ancient
25 document. I guess I just raise for the record during the litigation there

1 was a chance to depose him about that declaration. The school could
2 have deposed him. They didn't.

3 THE COURT: In -- you mean in prior litigation?

4 MR. FREER: Yeah.

5 THE COURT: In prior litigation -- be really clear.

6 MR. FREER: Yeah.

7 THE COURT: He was dead by the time we got started talking
8 about --

9 MR. FREER: Right.

10 THE COURT: -- the will and what he meant. So like I said --

11 MR. FREER: I understand you've got --

12 THE COURT: -- there are all kinds of ways you could use
13 this. You -- because, I don't know, maybe Dr. Pokroy or Roberta
14 Sabbath or even Dr. Lubin were involved in something he says
15 happened, you could inquire of them doesn't -- impeach them with his
16 affidavit; doesn't that say instead it was this? You can impeach them
17 with anything.

18 MR. FREER: Right. So --

19 THE COURT: But that -- because I'm trying to figure out are
20 we proposing to just introduce into evidence this affidavit?

21 MR. FREER: No.

22 THE COURT: Okay.

23 MR. FREER: I'm not going to have an --

24 THE COURT: Okay.

25 MR. FREER: -- opening argument saying Milton I. Schwartz

1 said in his declaration --

2 THE COURT: Okay.

3 MR. FREER: -- blah, Exhibit 1 --

4 THE COURT: So again it's how --

5 MR. FREER: It's all contextual, Your Honor.

6 THE COURT: -- the affidavit is used --

7 MR. FREER: Exactly.

8 THE COURT: -- because to like read it in, you can't -- you
9 can't do that because it's not a deposition under oath so you can't read it
10 in. So if the context of how it's going to be used is something that you
11 can do, like Dr. Lubin testifies I never had that conversation with him,
12 well, you know, look at this affidavit of Milton Schwartz written in
13 whatever year --

14 MR. FREER: Right.

15 THE COURT: -- during the time of whatever litigation, does
16 that refresh your recollection, does that -- isn't it true that he said it was
17 this, does that change your testimony? Those kinds of things -- so again
18 it's a question of -- I just want to make sure that nobody was proposing
19 to show this to the jury, to give it to them in the evidence book or to just
20 sit and read it like it was a deposition.

21 MR. FREER: No, this is all context.

22 THE COURT: Okay.

23 MR. FREER: If there's some kind of admissibility issue, then
24 that -- you know, we'll deal with admissibility and if there's some kind of
25 limitation, Your Court can -- Your Honor can give a limiting instruction or

1 limiting guide, but talking about a blanket prohibition on hearsay
2 statements when we don't have any kind of context or even how they're
3 raised or asserted I think oversteps the bounds of a motion in limine.

4 THE COURT: Okay. Well because my understanding was
5 that -- the argument that it wasn't -- it's admissible because it's not
6 hearsay. I don't agree with that. I wouldn't go that far. Because in order
7 for it to be an out-of-court statement of Milton -- that's where I do agree
8 with Mr. Jones that it's not in the context of this litigation so it's not a
9 statement he made in this case. And even in any of the prior cases I
10 think they would have had to have cross-examined them on it, and this
11 is just an affidavit so appreciate the fact he's under oath, but --

12 MR. FREER: Understood, Your Honor.

13 THE COURT: I mean it conflicts with what Milton said in the
14 interview on the tape -- on the videotape. It's not entirely consistent. I
15 mean so that's my concern is that I think it can be used in the right
16 context.

17 MR. FREER: It's all context, Your Honor.

18 THE COURT: I just want to make very clear nobody thinks
19 we're showing it to the jury, we're putting it in their evidence book, just --
20 somebody will sit on the stand and read it, just so we're clear. Okay.

21 MR. FREER: We're clear.

22 THE COURT: I appreciate that, thank you. That's clarification
23 so I feel better about it now. So okay.

24 So Mr. Jones.

25 MR. JONES: Yes, Your Honor. I think that's -- maybe there's

1 been a misunderstanding. That's what our motion in limine is about, to
2 exclude it from being admissible into evidence. I understand the Court's
3 point that if Dr. Lubin got up and testified and said something, they could
4 use it as a document to try to refresh her recollection, see if she agreed
5 with it. They can't even -- as far as I understand the rules of evidence,
6 but I learn something new every day, they can't get up there and say
7 here's an affidavit from Milton Schwartz that contradicts you, I want you
8 to read this. They can show her a document and say I want to show you
9 this document --

10 THE COURT: Right.

11 MR. JONES: -- would you please take a look at it, see who
12 signed it, oh looks like Milton Schwartz signed it, whatever.

13 THE COURT: Refresh her recollection with it.

14 MR. JONES: Does that refresh your recollection? Yes or no.
15 But it doesn't come into evidence --

16 THE COURT: Right.

17 MR. JONES: -- and that's what our motion --

18 THE COURT: That's why I said I didn't want anybody thinking
19 they could just read or anything else.

20 MR. JONES: That's what our motion is about, Judge.

21 THE COURT: So I think we're on the -- I actually think we
22 may be on the same page. It's not admissible in and of itself as a
23 document in evidence.

24 MR. JONES: I've never seen an affidavit ever come into
25 evidence in that --

1 THE COURT: Ever. No. There's no way it can't be read in, it
2 can't be an exhibit that the jury sees. Can it be used for proper
3 purposes? It can be and --

4 MR. JONES: And our motion does not address anything other
5 than it's --

6 THE COURT: Right. Then I think we're on the same page.

7 MR. JONES: -- it's not admissible at trial.

8 THE COURT: So --

9 MR. JONES: They are not. There's not just one --

10 THE COURT: Okay, it would be --

11 MR. JONES: -- there's many many out-of-court statements by
12 Mr. --

13 THE COURT: It would -- so with respect to just Milton's
14 affidavit, let's take that one first.

15 MR. JONES: Okay.

16 THE COURT: With respect to Milton's affidavit, it's granted in
17 part and denied in part.

18 MR. JONES: Well actually, Your Honor, I think --

19 THE COURT: To the extent --

20 MR. JONES: -- there's more than one -- there's multiple
21 affidavits.

22 THE COURT: Yeah, oh I -- I think you're correct. Yeah. I'm
23 thinking --

24 MR. JONES: So I assume it would apply to all -- whatever
25 your ruling is it applies to all --

1 THE COURT: His affidavits.

2 MR. JONES: Yes, thank you.

3 THE COURT: Okay.

4 MR. JONES: Thank you.

5 THE COURT: His affidavits would be granted in part and
6 denied in part. Granted to the extent that the affidavit itself, any affidavit,
7 cannot come into evidence. It cannot be introduced as an exhibit for the
8 jury to view in other words. As a document that may be relevant, it may
9 be used for proper purposes. For example, and this is where it could be
10 used, impeachment or refresh somebody's recollection.

11 MR. JONES: And Your Honor, I understand you will make
12 those rulings as you see fit during the course of the trial --

13 THE COURT: And that will be waiting for proper objections at
14 the time of trial.

15 MR. JONES: And I -- and that will give me the opportunity to
16 make any think -- any objections I think are appropriate to the proffer --

17 THE COURT: Right.

18 MR. JONES: -- or whatever use it's intended for --

19 THE COURT: But we've been talking about context.

20 MR. JONES: -- but my motion --

21 THE COURT: Okay.

22 MR. JONES: -- is strictly limited to prohibiting the introduction
23 of those affidavits as exhibits at trial to referencing them to the jury by
24 reading from it there's an affidavit where -- for example, there's an
25 affidavit you'll hear about from Milton Schwartz where he says blah blah

1 blah --

2 THE COURT: Right, I --

3 MR. JONES: -- and then try to move the admission of that
4 affidavit.

5 THE COURT: Exactly. I think we all agree on that so proper
6 uses of it for impeachment or refreshing recollection are allowed. The
7 documents themselves are not introduced into evidence. They are not
8 exhibits, in other words, for the trial.

9 MR. JONES: Well and perhaps --

10 THE COURT: And they're not going to be read in as if they
11 were a transcript or a deposition.

12 MR. JONES: And perhaps this is where -- you keep referring
13 to context and it's hard because by saying that you -- it obviously entails
14 meaning that you have to look at the particular circumstances. I'm not
15 trying to handcuff the Court from --

16 THE COURT: Right.

17 MR. JONES: -- from making rulings as things happen --

18 THE COURT: I guess maybe the better way to put that would
19 be they -- just because they're an affidavit of a party, it doesn't mean
20 they could be publishes to the jury as a deposition could be.

21 MR. FREER: That was my concern, Your Honor. I'm fine with
22 that --

23 THE COURT: You can't read them in as if they were a
24 deposition, publish them to the jury.

25 MR. JONES: Or ask them to be admitted into evidence --

1 THE COURT: Right.

2 MR. JONES: -- as a separate -- as a document.

3 THE COURT: Okay. Yes. But in certain context there may
4 be proper uses for the document. Okay.

5 MR. JONES: And I --

6 THE COURT: So that one we agree on.

7 MR. JONES: I understand. That was not my -- and so be
8 clear my motion was not directed --

9 THE COURT: Right.

10 MR. JONES: -- towards anything other than --

11 THE COURT: And you're correct, you did -- it's a very
12 different title. That was testified -- that was not allowed -- document into
13 evidence. These others are testifying about statements. And the
14 reason I guess why I was a little confused was I was thinking the
15 concern was they were going to try to use this as if it were a deposition
16 to publish it to the jury and read it in. We're all clear. Everybody
17 understands that is improper. It will not happen.

18 So that was my -- why I wanted to clarify what you wanted to
19 use it for there so we're clear on that one. The issue on the testimony
20 because the -- when you talked about testimony, it was very specific the
21 testimony of four -- four people, five people?

22 MR. JONES: I think four --

23 THE COURT: Four people --

24 MR. JONES: -- if you count Jonathan.

25 THE COURT: -- who may have had out-of-court statements

1 made to them by Milton when they were acting in some capacity. Dr.
2 Pokroy, Roberta Sabbath and Lenard Schwartz were in the context of
3 being representatives of the school at the time a statement was made to
4 them, and depending on how it's asked and if a foundation is laid that at
5 that point in time the parties were not necessarily -- had the same
6 interest but this was done to -- because there was a conflict.

7 I mean my recollection was particularly with respect to Ms. --
8 Dr. Sabbath and Mr. Schwartz, that was during I think following Dr.
9 Lubin's litigation when they brought Milton back and they were needing
10 to resolve the dispute with him, it was -- he was -- it wasn't his litigation.
11 It was in order to bring him back because he had -- he was adverse to
12 them. He left because he didn't agree with how they were running the
13 school and they -- in order to resolve that and bring him back, they came
14 to an agreement, allegedly. That's what I understood them to be doing.

15 MR. JONES: Well and, Your Honor, so --

16 THE COURT: So I think it's a foundational question.

17 MR. JONES: And with that in mind, to the extent they can
18 establish a particular statement was made while there was a -- because
19 I agree with you, there was a point of contention there. I thought the
20 statements we were referring to in our motion as I recall were after the
21 reconciliation when they're all on the same page, so to speak, so they're
22 not adverse to each other, but if not, then I believe that the rule is -- rule
23 is clear it has to be the parties had to be adverse at the time the
24 statement was made.

25 THE COURT: Just looking at Roberta Sabbath there's like

1 two different ones you pointed out.

2 MR. JONES: Right.

3 THE COURT: One I think was when they were talking about
4 will you come back, how do we resolve this, name it in perpetuity. The
5 other one was the letter. And maybe that -- you know, maybe the
6 objection there is wait a minute, that letter was after they resolved
7 things.

8 So I mean there are objections that can be made at the proper
9 time so with respect to this, I don't think I can make a blanket ruling in
10 advance of hearing individual questions which can establish both the
11 context that they're being asked the question and a proper foundation
12 for why there would be an exception in place. So that would be
13 reserved for appropriate objections to a specific question asked at the
14 time of trial.

15 MR. JONES: Yeah, and I guess one of my concerns is, is that
16 we now have litigation so for example, in Milton Schwartz's -- or excuse
17 me, Jonathan Schwartz's deposition now we're in litigation. There's a
18 fight between the parties.

19 THE COURT: Yeah.

20 MR. JONES: And Jonathan's testifying for example --

21 THE COURT: Okay, so now we're going to move on to
22 number 3 that's Jonathan so --

23 MR. JONES: I'm sorry.

24 THE COURT: -- and again --

25 MR. JONES: I was jumping around. You're right.

1 THE COURT: Yeah, so that's the ruling I -- because I'm
2 assuming you're -- you've got Mr. Carlson here because he's going to
3 write you some lovely orders. So moving then to three --

4 MR. JONES: Okay.

5 THE COURT: -- because each of these was different and you
6 made them separate for a reason. I understand --

7 MR. JONES: We did. We did.

8 THE COURT: -- it's an omnibus opposition but separate for a
9 reason. So number 3, this is statements made to Jonathan by his
10 father.

11 MR. JONES: So here's one example on page 6, Milton
12 discussed the fact that the school was supposed to be named the Milton
13 I. Schwartz Hebrew Academy in perpetuity with Jonathan's siblings,
14 Robin, Arlene (phonetic) and Samuel. So the problem I have about this,
15 Your Honor, is this is incredibly self-serving testimony after the
16 litigation's started. So is it true? I mean obviously I can challenge that
17 and challenge the credibility say well sir -- if the Court let it in, say well
18 yeah, ladies and gentlemen, that's -- that testimony is very suspect
19 because Milton's saying that -- excuse me, Jonathan's saying that after
20 this lawsuit started so he has a lot of motivation to lie.

21 But that's why hearsay is not allowed because those
22 statements are inherently untrustworthy. It goes directly to the heart of
23 the issue, so you read these statements that they -- that's why we were
24 very specific and we tried to give this Court specific examples. And at a
25 minimum, I guess I would ask the Court to go through and look at these

1 and -- because I don't think it is appropriate to do just some a la carte
2 carte blanche type of ruling that says nothing that Jonathan ever said
3 about conversations with his father is admissible.

4 As Mr. Freer even said, well, it depends on the context. Like
5 well what was your state of mind in -- after you had a conversation with
6 your dad? Well my state of mind was this is what I thought my dad
7 wanted to do. But it doesn't say my dad said to do this. That's where --
8 I think the other issue's probably improper, but that's your call, not mine.
9 I think these are very specific about things -- essentially quotes that
10 Jonathan is saying his father told him and I believe those -- those
11 specific ones in some other context about his -- Jonathan's state of mind
12 after having a conversation with his father might be different.

13 I did this so you would have a specific example of a particular
14 statement that that crosses a line, that's clearly hearsay, it doesn't go to
15 Jonathan's state of mind about after had a conversation with his dad, it
16 goes to what Milton Schwartz told him at a point in time. That's big
17 difference.

18 THE COURT: You have to also remember in addition to being
19 the scrivener, Jonathan's the executor, so there's a couple things on
20 here where Milton told Jonathan you might need this Roberta Sabbath
21 letter if the naming rights to the school ever become an issue. Milton
22 told Jonathan here's a copy of the bylaws. It says Milton I. Schwartz
23 Hebrew Academy in perpetuity. You may need this one day if it -- and
24 so, again, in the context of you -- Jonathan as the executor for Milton
25 being given instructions by his father before his death, I'm giving you this

1 document because you will need this in your role as my executor. So
2 why is Jonathan acting the way he is, why is he insisting on this? Well,
3 my father gave me this with the understanding I would need it to prove in
4 perpetuity. Probably okay.

5 MR. JONES: That -- but I believe that the only way that
6 comes in, in the context even of a probate case -- and I don't want to
7 belabor this, but it goes back to Rule 51.150 and it has to fit the
8 exception.

9 THE COURT: Right, and that's -- so that's again why I said
10 depending on context, there might -- because we have to remember not
11 just the context includes not just who's involved, but what they're doing
12 at that time. For example, Susan Pacheco, writing -- why did you write
13 that check? Well because he told me to.

14 Milton's -- you know, Jonathan played a couple of different
15 roles here.

16 MR. JONES: No, I certainly get that.

17 THE COURT: He wasn't just a kid. I understand the -- your
18 concerns about well he told the whole family, we were all sitting around
19 at dinner one night. Okay. But there are some things they're very
20 specifically tied to Milton giving direction to his executor. That's -- you
21 know, that's different for me because we're -- then we're getting in
22 context of what the decedent prior to his death told their executor to do
23 for him and the executor acts in accordance with the instructions.

24 MR. JONES: And is that --

25 THE COURT: Is that really appropriate?

1 MR. JONES: -- is that automatically admissible?

2 THE COURT: No, depends on the context. It's not -- and it
3 depends on how it's asked so this is my problem with, you know,
4 Jonathan why are you pursuing this, well my dad told me I would need
5 to have this in perpetuity stuff. Okay.

6 MR. JONES: Well let's assume that that is the question that
7 he ask. Is that admissible as far as you're concerned?

8 THE COURT: I think it could be.

9 MR. JONES: It could be?

10 THE COURT: Right. Because, you know, why in looking at --
11 why did you write the will the way you wrote it? I understood when I
12 wrote it that the agreement was it would be in perpetuity and that's what
13 I assumed.

14 MR. JONES: I understood.

15 THE COURT: I assumed I didn't need to put it in writing. I
16 don't know that he's going to say that, but if the question's asked like
17 that, you're an attorney, why did you write this will such odd language?
18 Well, my understanding was it was in perpetuity and I didn't need to say
19 anything because my dad had bylaws that proved it. Well?

20 MR. JONES: Well I guess my question is I guess -- and this is
21 to just help me understand the ruling and what I can do or not do at trial
22 and what --

23 THE COURT: Because we have this issue with scrivener's
24 errors -- we didn't really talk about that, but that's kind of another issue
25 here is did Jonathan somehow make an error in writing this?

1 MR. JONES: Well there's no evidence to that even from
2 Jonathan --

3 THE COURT: No.

4 MR. JONES: -- that he ever made an error so --

5 THE COURT: I know there's not.

6 MR. JONES: -- I would object at this point that they now try to
7 bring up another issue we never were allowed to investigate during the
8 discovery phase.

9 THE COURT: Okay. All right.

10 MR. JONES: So they can come up with all kinds of things, but
11 I guess I'm trying to say with what I understand that the --

12 THE COURT: But that -- but to me that's admissible is the
13 point it's different. It's a weird place to be where you're being asked to
14 interpret what a dead person meant when they did something and you
15 have to do it in probate. You have to do it.

16 MR. JONES: And but it would -- so let me -- I guess help me
17 out if you could, Judge --

18 THE COURT: I mean it's not different rules of evidence, it's
19 just the context of the --

20 MR. JONES: So is that a hearsay statement? I guess my first
21 question is it a hearsay statement?

22 THE COURT: What?

23 MR. JONES: Whatever Jonathan said his dad said. So I
24 guess --

25 THE COURT: Is it an out -- not hearsay, is it an out-of-court

1 statement?

2 MR. JONES: Offered for the truth of --

3 THE COURT: Truth of the matter asserted.

4 MR. JONES: Is that hearsay?

5 THE COURT: Yes, but -- but is it otherwise admissible
6 because of one, two, three, four?

7 MR. JONES: Yeah, and --

8 THE COURT: Whatever the exceptions are.

9 MR. JONES: So first of all I guess that's what I wanted to
10 finally get to is the fundamental question --

11 THE COURT: Oh I don't think there's a question --

12 MR. JONES: -- is a statement like we've ben talking about --

13 THE COURT: I don't think any of us -- I don't think anybody
14 would dispute that these are out-of-court statements. Everything you've
15 pointed out are out-of-court statements. Everything is an out-of-court
16 statement. But is it otherwise admissible?

17 MR. JONES: And so I guess my question would be to the
18 Court is can the Court tell me what the exception to the hearsay rule is
19 for these -- let's just stick to Jonathan for example and the ones we've
20 given here.

21 THE COURT: Well but the problem is I don't know that's how
22 a question's going to be asked and I -- the difficulty for me --

23 MR. JONES: Well, but we know what the statement is. I'm
24 not trying to get the question, I'm just saying he can't say this particular
25 thing. I'm not talking about a question, I'm talking about a statement we

1 know he's made before --

2 THE COURT: Right.

3 MR. JONES: -- that -- so if we all agree that statement that
4 he's made before is a hearsay statement, then regardless of the
5 question because I don't -- I'm not worried about a question -- if it's a
6 new question, then that's fine. I do know that this statement has been
7 made, this statement appears to me under everything I've ever learned
8 about evidence to be an out-of-court statement being offered for the
9 proof of the matter. If that's true, it falls under Rule -- Chapter 51. Then
10 the only way it comes in, as we lawyers typically think of, is it has to be
11 an exception.

12 So it doesn't -- I'm not asking the context of the opinions, I'm
13 talking about the actual statement itself which we have stated under
14 oath so we know that's a hearsay statement --

15 MR. FREER: Your Honor, this isn't appropriate for --

16 MR. JONES: Well, if counsel -- you've interrupted me twice
17 now. I've asked -- I did not interrupt you and I would appreciate it if you
18 allow me to finish.

19 THE COURT: Okay. All right. Thank you.

20 MR. JONES: Thank you, Your Honor. So this statement -- it's
21 not a question, it's a statement. So that statement I think everybody in
22 this courtroom that's taken evidence could agree is a hearsay
23 statement --

24 THE COURT: Okay.

25 MR. JONES: -- so then --

1 THE COURT: I will tell you my concern with doing that.

2 MR. JONES: Okay.

3 THE COURT: As I said, it depends on the context, it depends
4 on how the question is phrased. I don't know I -- if I rule you cannot say
5 the words that I had numerous conversations over the course of many
6 years concerning the Milton I. Schwartz Hebrew Academy gift, if
7 somehow in the context of a question that is asked in an appropriate
8 fashion, you know, what was your understanding as the scrivener of this
9 will when you wrote it that your father wanted -- what did he want you to
10 write, what did he tell you to write, what did he want you to write? Well
11 he wanted to do this for this reason; it was in perpetuity, whatever.

12 If I've ruled on one of these specific statements and there's a
13 word in there, I don't want to have a big fight in front of a jury over
14 whether the fact that I once said he couldn't use he -- it was
15 inappropriate to use the word in perpetuity because that was something
16 said to him out of court. I don't want to get into that problem.

17 We know that these are hearsay statements. I'm not going to
18 dispute you that these are hearsay statements. There may be a context
19 by which I mean was Jonathan acting as his executor, was he acting as
20 his scrivener, was he giving his dad legal advice, what was the context?

21 MR. JONES: And I understand, Your Honor. I won't belabor
22 this any more --

23 THE COURT: Yeah.

24 MR. JONES: -- other than just use one example. He used to
25 love to say whenever he would say --

1 THE COURT: Yeah.

2 MR. JONES: -- the Milton I. Schwartz Hebrew Academy --

3 THE COURT: I like that one.

4 MR. JONES: -- he would say the Milton I. Schwartz Hebrew
5 Academy in perpetuity with emphasis added.

6 THE COURT: Yeah.

7 MR. JONES: That is an incredibly gratuitous statement to --
8 goes to the heart of the case, incredibly self-serving. That is a -- alleged
9 to be a quote. It's in quotation marks. And so the whole point of a
10 motion in limine is to avoid the very thing you just talked about. I ask
11 you now so when they try to get that statement in and Jonathan
12 Schwartz who's up there on the witness stand who's a lawyer and he
13 blurts out oh my dad used to say that he wanted always -- whenever he
14 mentioned the name he said Milton I. Schwartz in perpetuity added
15 emphasis, I jump up objection. That's why I've got a motion in limine
16 here --

17 THE COURT: Okay.

18 MR. JONES: -- and I think that's inappropriate and I would
19 ask that if that kind of thing happens, I'm going to tell the Court I'm going
20 to ask for either instructions and depending on if it happens again I want
21 everybody to be forewarned I'm going to ask for sanctions and I'm going
22 to ask for a mistrial potentially if that is continued to be abused in this
23 trial. I think that is wholly inappropriate, I think it's contrary to Rule 51
24 and *In re Jones*, and so, Your Honor, I appreciate letting me make my
25 record.

1 THE COURT: Okay. Thank you very much.

2 So again for our rule, these specific issues I'm not ruling on.
3 I'm reserving objections to statements that may or may not be elicited
4 based on the context in which the question's ask and what the actual
5 question is as to whether that would be admissible. Objections can be
6 made at the time of trial. And yes, if you want to move to strike, we can
7 take into consideration as -- if improper statements are made, we can
8 consider moving to strike such statements.

9 MR. JONES: Thank you, Your Honor.

10 THE COURT: That's as far as I'm willing to go right now.

11 So those are all of our motions in limine.

12 MR. FREER: Yeah. Just one clarification on the order
13 though, Your Honor.

14 THE COURT: Yeah.

15 MR. FREER: *Deveroux versus State* says that the motions in
16 limine are without prejudice --

17 THE COURT: Correct.

18 MR. FREER: -- because obviously if we come in -- so I just
19 want that finding in there because if we obviously -- as to Milton's
20 declaration --

21 THE COURT: Right.

22 MR. FREER: -- if there's another ground of something that we
23 come up on, I'm just not -- I'm trying to not foreclose that so --

24 THE COURT: Right, and that's what I want to make really
25 clear it's -- it may be given the context or the wording of a question a

1 proper question to ask. If the answer is inappropriate, the remedy there
2 is to strike. If the question's inappropriate, the remedy is to object. So
3 nobody is prejudiced from raising proper objections or moving to strike,
4 just make that clear. Because yes, there are people who blurt things
5 out.

6 We need to talk about Rabbi Wyne. I think it's pronounced
7 Wyne.

8 THE CLERK: So you haven't done number 1, right?

9 THE COURT: We did number 1 previously.

10 THE CLERK: So was that --

11 MR. JONES: We did but it was in the context of him as an
12 expert. You talked about him as a fact witness.

13 THE COURT: Is that Dr. Wyne?

14 MR. FREER: Rabbi Wyne.

15 MR. CARLSON: Rabbi.

16 THE COURT: Rabbi Wyne.

17 MR. JONES: Right.

18 THE COURT: Yeah, so we're going back to Rabbi Wyne,
19 because the other issue --

20 MR. JONES: You asked them to come back and make --

21 UNIDENTIFIED SPEAKER: Alan.

22 THE COURT: The other issue --

23 UNIDENTIFIED SPEAKER: And I don't know if it's going to
24 be short either.

25 MR. FREER: Okay, then you guys can --

1 UNIDENTIFIED SPEAKER: I'll see --

2 MR. FREER: We were trying to accommodate --

3 THE COURT: Yeah.

4 MR. FREER: -- the other but they're saying it's probably going
5 to be long and I don't think he's here.

6 THE COURT: Okay. All right. So with respect to motion in
7 limine number 1, the issue that was reserved was that I view Rabbi
8 Wyne as having two roles. He was asked to provide expert testimony
9 which I think is inappropriate as it goes to issues of faith and how can he
10 know -- I mean he had conversations with Milton, but how can he make
11 a global statement as to the Jewish faith. That was my problem.

12 However, he is a percipient witness. He had these
13 conversations with Milton. Much like a doctor might have records
14 related to a medical visit, he might not be appropriate as an expert,
15 certainly a percipient witness.

16 MR. FREER: Right, and that's what we did supplement on, as
17 we talked about last time, and I'll be brief. We just feel we meet the
18 salami test; wasn't a surprise, the declaration was provided in May of
19 2014 in opposition to the original motion for summary judgment, he was
20 disclosed as an expert six months later. No prejudice occurred because
21 they already deposed him on those fact --

22 THE COURT: Right.

23 MR. FREER: -- witness bases. So the fact that we listed him
24 as 16.1(a) as an expert, the percipient stuff was there anyway so that's
25 our basis --

1 THE COURT: Okay.

2 MR. FREER: -- they had actual notice. Appreciate --

3 THE COURT: All right. Great.

4 I don't know who was responding. Is that yours, Mr. Jones?

5 MR. JONES: Your Honor, it's the same arguments we made
6 about the hearsay issue so that's all -- on the factual issue so I don't
7 need to belabor that.

8 THE COURT: Okay. So again, then I think Dr. Wyne can
9 testify as a percipient witness. This is -- as Mr. Freer pointed out, a
10 ruling on a motion in limine is always without prejudice for proper
11 objections or motions at the time of trial. And so I believe that there is
12 no surprise, he's been deposed, you had all this information and you
13 had a chance to cross-examine him, so I'm not concerned about there
14 being any surprise here. I think he can testify.

15 What he testifies to is subject to questions as ask and whether
16 the question's appropriate, again with the context and the way the
17 question's asked. And the response, if the response is appropriate, can
18 always be --

19 MR. JONES: Understood, Your Honor.

20 THE COURT: -- stricken if it's inappropriate.

21 MR. JONES: All right, thanks.

22 THE COURT: Okay, so --

23 MR. JONES: I think that's -- motions in limine are done I
24 believe.

25 MR. FREER: Motion in limines are done.

1 THE COURT: Okay. So now --

2 MR. FREER: Just the motion for reconsideration.

3 THE COURT: And the motion for reconsideration and a
4 countermotion.

5 MR. JONES: Yes, Your Honor.

6 THE COURT: Okay. All right.

7 MR. JONES: Think you're up, Alan.

8 THE COURT: Okay. There's Mr. Grover now. Okay. So
9 reconsideration.

10 MR. FREER: Thank you, Your Honor. The reason we're back
11 here is you had asked several questions and made some statements
12 with respect to wanting to know some issues in terms of why he waited
13 too long. We provided those answers to you by way of Jonathan's
14 declaration and also it highlights why we think is inappropriate for the
15 issue that notice be found as a matter of law. It may -- they point out an
16 order hasn't been entered. It may be better titled a motion for
17 clarification at this point. Obviously because trial's starting though we
18 wanted to clear up any reversible error before we got to it.

19 THE COURT: Sure.

20 MR. FREER: The first purpose of submitting it is you had
21 asked the question basically why did he wait until 2013 to do it. We
22 provided that in the declaration. Obviously I couldn't testify as to why he
23 didn't do it and so we did that. Paragraph 5 he couldn't make
24 distributions until 2013 because the IRS issues were not settled. We did
25 include the IRS letter that's signed basically saying February of 2013

1 that's when he accepted their final determination and so immediately
2 after that we see that this thing gains a lot of steam with respect to
3 increasing going back and forth and ultimately coming to bear with
4 respect to this whole naming rights and gift issue.

5 Just as a point of clarification, the chron order on that
6 declaration is wrong. Paragraph 5 is out of order. That was a 2013 it's
7 wedged in between a bunch of 2010 statements. That's scrivener's
8 error due to the time -- lack of time. If Your Honor wants, we can go
9 ahead and do an errata on that.

10 But the issue is the declaration also points in additional
11 information that the Court had with respect to what was going on with
12 these meetings and there was vagueness and if you remember, the
13 testimony that they cited from the deposition and the letter, there's really
14 not any type of specific issues or timelines in which notice is provided.
15 That's a big problem because during the initial motion and the motion
16 was drafted, we were focused on statute of limitations for fraud.
17 Obviously that's a three-year statute and that is an issue we abandoned.

18 But the issue that now arises and why we need clarification, if
19 not a reconsideration, is talking about an oral statute of limitations. That
20 falls right in between. And there isn't any definition with respect to if he
21 knew in 2010, that's within the statute of limitations.

22 So the information that we want to point out is -- highlights
23 three basic issues. Is the finding that he was put on notice prior to May
24 10th, 2010. That letter is unclear because there's no uncontroverted
25 evidence as to when Jonathan knew or should have known for notice

1 purposes. That's what's required for notice to be pled as a matter of law
2 and that's the finding is important -- hang on, I just lost my place on my
3 notes.

4 So just saying that prior to May 10th when that letter was
5 introduced -- that's the Randall Jones letter that we talked about being
6 highlighted -- that doesn't resolve anything. The court in *Siragusa*
7 *versus Brown* said if its susceptible to opposing inferences, it's a
8 question of fact and it goes to the jury with respect to the notice.

9 The second issue highlighted is, was at any time prior to the
10 May 10th letter tolled by assurances of the school --

11 THE COURT: May or March?

12 MR. FREER: May of --

13 MR. LEVEQUE: March.

14 MR. FREER: March, I'm sorry.

15 MR. LEVEQUE: March 10.

16 THE COURT: Yeah. Okay.

17 MR. FREER: March 10. It's been a long day.

18 [Colloquy between counsel]

19 MR. FREER: And just for the record, the issue that we're -- I
20 was talking about is the statute of limitations would be May 28th of 2009
21 because we filed in 2013. And so when we're looking at triggering
22 events, it's -- we have to have basically uncontroverted evidence that he
23 knew prior to May 2009.

24 Now, and I'll submit that it's just not there because we have in
25 addition to the vagueness of his statements, we also have statements

1 that he was meeting with Schiffman and at the same time the school
2 saying hey look, your dad's name is still up on the building. And so that
3 could -- you know, that creates an issue of fact with respect to whether
4 or not there's tolling or equitable estoppel.

5 The third issue to highlight and clarify is that there were other
6 breaches occurring even after -- Mr. Jones testified they took the name
7 off the school, took down the painting, took down the bust after the
8 litigation started. And so if we're going to have a notice of some period
9 of time, how does that apply to a subsequent breach? Because there
10 were different obligations. And we point that out in our brief that we're
11 saying just as a breach -- breach as to one is not a breach as to all.
12 There's many different obligations and some of these obligations came
13 in after the litigation started.

14 THE COURT: Okay. So on the IRS determination letter that
15 was when?

16 MR. FREER: That was 2013. I believe it was February of
17 2013.

18 THE COURT: So under either estate tax --

19 MR. FREER: So --

20 THE COURT: -- tax law --

21 MR. FREER: Correct, under --

22 THE COURT: -- or just general probate law, our there certain
23 obligations, duties, like the duty to distribute, that are tolled --

24 MR. FREER: Yes.

25 THE COURT: -- pending getting that determination? In other

1 words, some -- there are things that key off of the IRS determination.

2 MR. FREER: Correct. And you ask -- with respect to state
3 law and I don't have the cite, I'd have to look it up real quick and I'll look
4 it up while Mr. Jones is talking. But with respect to state law, a
5 beneficiary can petition any time after six months, but one of the
6 grounds for nondistribution is the fact that there is an outstanding IRS
7 obligation.

8 Now with respect to federal tax law, the reason nobody ever
9 distributes when the owe the federal government is it imposes personal
10 liability upon the executor for any distributions that are made to anyone
11 while there's federal tax due and owing. And so that's the whole reason
12 why we have the existence of the state law is to protect them under
13 state law so they don't get hosed under federal law.

14 THE COURT: So is that tolling? In other words, does that --
15 is that tolling? I guess because if -- so say you -- there's no question
16 you knew about it in 2010, it's uncontroverted you knew about it in 2010,
17 but you aren't able to take any action because state law -- and in fact
18 they did, they filed in 2013. That's the first petition they filed in 2013
19 when that was ripe because you have the IRS -- I don't know if you did
20 or not, but assuming you had the IRS determination prior to that, then
21 they had the right under state law they could pursue it at that point in
22 time. So it was an appropriate defense to raise at the time because it
23 wasn't brought until you can go forward on such petitions.

24 MR. FREER: Right. I think Your Honor brings up a good
25 point.

1 THE COURT: Is that the same as tolling?

2 MR. FREER: If you have no duty under statute to make a
3 distribution, then I think that would be a tolling because how can you go
4 ahead and assert defenses to that distribution if it can't even be raised
5 until 2013?

6 THE COURT: Because the -- it would -- the motion would
7 have been to stay -- if they filed in 2010 --

8 MR. FREER: It would have been a motion to stay everything
9 because you can't --

10 THE COURT: -- there would have been a motion to stay.

11 MR. FREER: -- even make the distribution, because it's
12 automatic under state law there's no obligation to distribute.

13 THE COURT: Okay.

14 MR. FREER: So and then the other issue is when was
15 Jonathan placed on inquiry notice? Because it's -- the law is it needs to
16 irrefutably demonstrate as a matter of law; that's the *Wynn* case. They
17 cannot irrefutably demonstrate that he was on notice at a particular point
18 in time. There are issues of fact with respect to when he was on notice,
19 what he was on notice about.

20 And I think it's even more appropriate to have the whole notice
21 issue tried at the same time because we've already said there are
22 issues of fact with respect to the contract and the contract terms. And
23 so just kind of sitting here kind of aw shucksing it is if there's a contract
24 and we don't know what the terms are, how can we know what the
25 breaches are and how can we know when he's put on notice of those

1 breaches? It's all a factual issue that needs to be determined at the
2 same time.

3 THE COURT: Mr. --

4 MR. FREER: The issue of the irrefutable -- irrefutably
5 demonstrates also especially important in context of the estoppel tolling
6 issues and I think it's even more important with respect to the
7 subsequent breaches in 2013.

8 THE COURT: Okay. If Mr. Jones were to stand up and say
9 why are we talking about this now, where was all of this last week, why
10 only now are we finding out about the IRS letter and how that may or
11 may not have affected legal -- the statute of limitations. How that might
12 actually have a legal impact on the statute of -- because that's the one
13 thing that to me may.

14 MR. FREER: All right.

15 THE COURT: That's a good point.

16 MR. FREER: You bring up a very good point for Mr. Jones.

17 THE COURT: Okay, so shall we let him make his argument?

18 MR. FREER: No, I will -- I'll go ahead and respond to it right
19 now, Your Honor. Issue's a couple fold. Is number one, Your Honor's
20 the first person that raised the issue with respect to -- I mean whether or
21 not he's got a legal obligation or not, that's an issue of law. And so the
22 fact that Your Honor astutely pointed out with respect to the duty to
23 distribute, that was something that quite frankly I didn't know because
24 we came on this litigation at a later point. We came on at the time this
25 was filed so we didn't --

1 THE COURT: Right, only when the litigation was filed.

2 MR. FREER: So --

3 THE COURT: You weren't advising him prior to that.

4 MR. FREER: Correct. And on top of that --

5 THE COURT: His tax attorney was advising him prior to that,
6 Mr. Oshins. Was Mr. Oshins handling it?

7 MR. FREER: Yes, but he wasn't advising him with respect to
8 any of the issues in the litigation.

9 So and here's the other issues, the school only focused on the
10 breach in 2007. We didn't really talk about any of the breaches with
11 respect to later in time. So, you know, really focusing -- you know, they
12 were focusing on those earlier breaches --

13 THE COURT: And so those are --

14 MR. FREER: Well the way they kind of get --

15 THE COURT: I guess my --

16 MR. FREER: -- back into 2007 is they back up the 2010 letter
17 where he says well, some of these breaches the school has been doing
18 in the last two, two and a half years, but it doesn't say when he knew
19 about it, it just says these breaches are happening for the last two and a
20 half years. And so they back up into a 2007 or 2008 timeframe using
21 that one sentence, ignoring all the other issues all fact that we point out
22 in our original brief and that we point out again in the motion for
23 reconsideration or clarification.

24 THE COURT: Okay. So if we talk about 2013, wasn't that just
25 after the litigation was filed then they took the name off the building --

1 MR. FREER: Correct.

2 THE COURT: -- and -- and so --

3 MR. FREER: And so it wouldn't be barred by statute of
4 limitation at all.

5 THE COURT: But it already had been raised. He -- the
6 complaint -- the first petition already filed and the counterpetition filed,
7 right?

8 MR. FREER: Correct.

9 THE COURT: So isn't that immaterial to why it was filed when
10 it was -- are you -- I mean is the argument there --

11 MR. FREER: I'm saying that's a separate breach.

12 THE COURT: -- that even if he hadn't filed it for these prior
13 things, he could have filed it in 2013 saying now you've really done it,
14 you filed your motion for this distribution, I raised this issue that -- about
15 in perpetuity and then you took my name -- my dad's name off the
16 building so --

17 MR. FREER: And that's another breach.

18 THE COURT: -- that's just punitive.

19 MR. FREER: And that -- and that's -- we actually talk about
20 that in the prior stuff we made -- we jumped up and down once they took
21 the name off in the pleadings in terms of that constituting a breach
22 because quite frankly I find it offensive. I mean he has no -- the man
23 that built the place, not a shadow of recognition or name anywhere on
24 the place. So -- and I may be missing something. Was there another
25 question you wanted me to answer?

1 THE COURT: I think there may be an error in Jonathan's
2 affidavit.

3 MR. FREER: That's what I said the scrivener error was, is the
4 notice with respect to the 2013 is sandwiched in with the 2010 stuff and
5 so there's a little clause that's right there that -- just to make the
6 paragraphs follow. That's scrivener error. That's my office that did that
7 wrong.

8 THE COURT: Okay.

9 MR. FREER: It was in the heat of trying to get this back --

10 THE COURT: Okay.

11 MR. FREER: -- in front of Your Court because we're right
12 before trial.

13 THE COURT: So just to be clear -- clear up the record that
14 when it says that in February 2013, we -- 2013 we resolved the last
15 issues with the IRS, I accepted the deficiency, we're good to go, and
16 then the next paragraph, after accepting and resolving the IRS
17 deficiency, and he has specific date, on February 23, 2010. No, that's
18 2013 because the IRS --

19 MR. FREER: Correct.

20 THE COURT: -- letter came on the 12th.

21 MR. FREER: That is absolutely correct, Your Honor.

22 THE COURT: Okay.

23 MR. FREER: And --

24 THE COURT: That makes it a little easier to understand.

25 MR. FREER: Yeah, I -- and just to clear up for the record the

1 paragraph with respect to the 2013, that should probably be inserted
2 after paragraph 7.

3 THE COURT: Yeah. So again --

4 MR. FREER: If we're going chronological.

5 THE COURT: Yeah, see we're getting -- February 2010 and
6 February 2013. Okay. All right. Yeah. Okay.

7 [Colloquy between counsel]

8 THE COURT: Okay. If you want to wait and let Mr. Jones
9 make his statement because you're going to have another opportunity --

10 MR. FREER: Yeah, and I just --

11 THE COURT: -- Mr. Freer.

12 MR. JONES: Go ahead.

13 MR. FREER: Do you want to do the --

14 MR. JONES: Go ahead.

15 MR. FREER: I'm just wondering about the countermotion --

16 THE COURT: The countermotion.

17 MR. FREER: Do you want me to just wait till you're done and
18 respond to that?

19 THE COURT: Yeah. You can just do it in response, yeah.
20 Okay.

21 MR. FREER: Okay.

22 MR. JONES: Your Honor, I -- this is troubling to me. I thought
23 we were supposed to play by the rules. This isn't a motion to clarify.
24 They're not trying to clarify anything, they're trying to reverse your
25 decision. So you can't call it a motion to clarify when clarification would

1 be I said Monday but I meant Tuesday. They're trying to get you to go
2 diametrically opposed to the decision you made, and for them to suggest
3 they didn't know what our motion was in the first place is hard for me to
4 listen to. This is their motion for reconsideration.

5 By the way, they don't call it a motion to clarify, they call it a
6 motion for reconsideration and they say of the court's order granting
7 summary judgment on the estate's claim for breach of oral contract. So
8 they identify specifically that it was a separate motion for summary
9 judgment on oral contract and they come in here now and tell you well
10 we were really focused on the fraud claim which we gave up because
11 they knew they'd blatantly blown the statute of limitations on that one so
12 they were trying to figure well let's fight about one that we might have a
13 shot at. And you listened to an hour of argument last Thursday --

14 THE COURT: Right.

15 MR. JONES: -- a week ago today and as is your penchant,
16 you went back and forth and listened to both sides and asked questions.
17 You are a, at least in my experience, a contemplative person. You do
18 not make rash decisions. In spite of lawyers' best attempts to get you to
19 go their way, if you think it's something else, you make a decision. And
20 everything I saw that you did last Thursday is that you considered all
21 aspects of this, and in talking to counsel even afterwards, I think both of
22 us agreed that -- we weren't sure which way you were going to go
23 because you were thinking real hard about what the issues were.

24 And you came to a conclusion and they didn't like it so now
25 they want a do-over. And I guess the question is going to be are we

1 going to have a do-over every time you make a ruling in this case
2 because I've seen those cases happen. I tried a case with Judge
3 McGroarty and every decision he made, opposing counsel got up and
4 asked for reconsideration because they thought he was a judge who
5 was susceptible to that, and it ended up meaning -- that case went on
6 for over three months. And I would ask this Court to nip this process in
7 the bud before we get started.

8 They have blatantly violated the rules on their face. 2.24(b),
9 you cannot bring a motion like this without an order. Can't do it. And
10 you can't call it a disguised motion for clarification after you file a motion
11 for reconsideration and then try to say oh we know -- we realize now
12 because you -- the other side pointed it out that is blatantly improper.

13 A court's oral pronouncement from the bench, the clerk's
14 minute order and even a unfiled written order are ineffective for any
15 purpose, period. Moreover, reconsideration at the district court level is
16 only appropriate in very rare instances when a party raises new issues
17 of law or fact that render the court's prior holding erroneous.

18 The declaration of Jonathan Schwartz cannot be considered
19 under Nevada law and is not new evidence that could support a request
20 for reconsideration. The overwhelming weight of authority is that the
21 failure to file documents in an original motion or opposition does not turn
22 the late filed documents into newly discovered evidence. A federal --
23 Ninth Circuit case; evidence available to a party before it filed its
24 opposition was not newly discovered evidence warranting
25 reconsideration of summary judgment.

1 They have not -- this oh well the IRS, well we didn't think
2 about this, we didn't know about this. They have violated -- by their own
3 admission now, they have violated Rule 16.1 and they want to now
4 come in and ask you to ignore their violation of Rule 16.1 and allow this
5 new evidence that they should have produced years ago. Evidence
6 available to a party before it filed its motion is not newly discovered
7 evidence.

8 This whole issue and I don't know if the Court wants me to
9 address it, this so-called separate breaches argument, on its face it is a
10 completely specious argument.

11 THE COURT: It keys off the first one.

12 MR. JONES: Pardon me?

13 THE COURT: It would key off the -- whatever it is the -- you
14 would key off the very first notice.

15 MR. JONES: That is correct, Your Honor. This is not an
16 installment contract. A contract where you have separate breaches is I
17 owe you monthly rent and I let five rents -- months rent go and then you
18 sue me and you can sue me for the five months, but you -- and if you got
19 an acceleration clause, you can sue me for the rest of the rent too.

20 THE COURT: Right. And --

21 MR. JONES: But my statute doesn't run or your statute
22 wouldn't run in that example on the subsequent breaches over the years
23 because they're new breaches. Now you may not be able to get the old
24 damages, depending on how the contract's written, but this is by no
25 stretch of the imagination -- fact I'd like them to say in open court this is

1 an installment contract sometime. That's one of the problems we have.
2 They can't even tell you what the contract is --

3 THE COURT: So -

4 MR. JONES: -- but they certainly haven't said it's an
5 installment contract.

6 THE COURT: And this new issue and I found and I'll read it
7 into the record, 143.037, the duty to close the estate within 18 months
8 and one of the excuses why you may have to making a distribution,
9 paragraph 3, a court shall not enter an order distributing the assets of an
10 estate pursuant to this section if such a distribution will result in there
11 being insufficient assets to enable the personal representative to
12 discharge any tax liability. Doesn't say you can't do it, they just have to
13 reserve however much the IRS has told them you need to reserve.

14 MR. JONES: And to that very point, Your Honor, when you
15 brought this up -- again they didn't bring it up, but you brought up is this
16 -- are you saying this is some kind of tolling. And then of course Mr.
17 Freer latched on yeah, yeah, that's right, it's tolling, it's tolling, I agree
18 with the Court. Well you didn't say it was tolling, you asked him the
19 question and what did he do? He couldn't give you any legal authority
20 for the proposition that it was tolling.

21 Again, they have to show, and we've cited the case law, that
22 your decision was clearly erroneous. It's a higher burden in a situation
23 where you're asking for reconsideration assuming reconsideration is
24 proper.

25 And by the way, that's the whole point of reconsideration, you

1 have to get the order first so that they can see what you said to
2 determine whether or not they have a basis for reconsideration,
3 assuming there are some actual new facts, not old facts that they now
4 throw out to the Court for the first time.

5 And by the way, there's been no statement whatsoever that
6 these facts were not otherwise available to them, to Mr. Schwartz prior
7 to this motion. They just say well we started looking harder because of
8 something you said, Your Honor, during the motion. There's nothing in
9 our motion that did not alert them to the arguments we made last week
10 that you agreed with, and I don't -- I think it's totally inappropriate to get
11 into the substance of that motion because they have to have the motion
12 for reconsideration granted first before we ever get to the merits.

13 But I would just say this, that -- and this is what I think was
14 one critical fact for the Court. Mr. Schwartz cannot say in a letter in
15 2010 that I've known about these issues for two and a half years that are
16 eroding my father's rights. It's like I said to you at that time, that's like
17 saying well, I'm just a little bit pregnant. If there's a breach there's a
18 breach there's a breach.

19 And Mr. Schwartz has sued my client on the basis that every
20 issue that he claims that he has a contract right for, the letterhead, the
21 name of the school, the name of the corporation, the website, the
22 signage, all those -- virtually all those things and some of those things
23 started as you've pointed out yourself in 2000- -- early 2000- or late
24 2007.

25 So, you know, you made a well-thought-out decision after

1 lengthy argument by both counsel. They're trying to come in here in
2 direct violation of Rule 2.34, so that should be the end -- excuse me,
3 2.24(b). That should be the end of the discussion right there, but there
4 are multiple reasons that I've just pointed out as to why this motion is
5 improper and if we're going to have a motion for reconsideration and the
6 Court even entertain this, then I can assure you that I'm going to be
7 considering my options every time this Court makes a ruling against me
8 and I think that would lead to chaos and which is why the rule is in place
9 that it is. You can't do this unless there's some legitimate reason to do it
10 and then you can only do it after a written order has been entered.

11 Thank you, Your Honor.

12 THE COURT: Thanks. Okay. Mr. Freer.

13 MR. FREER: All right. With respect to the evidence that was
14 produced, I want to just raise two things and then I'm going to cut to the
15 heart of it, is first, Your Honor asked why something wasn't done until
16 2013. We provided the information with respect to that. That was -- that
17 wasn't an issue. It's not anything with respect to the statute of limitations
18 because anything happening in 2013 is well within the statute of
19 limitations. So that's why we provided it to Your Honor.

20 Now second they keep going on and on about how
21 outrageous it is with respect to these emails and everything that weren't
22 produced. Number one, they were used to refresh his recollection, but
23 number two, they never requested those in discovery. Number three,
24 with respect to all the emails with respect to Schiffman, those are --
25 that's his school account. They have those. They never produced them

1 to us. So what's the harm?

2 Now, we talk about motion for reconsideration versus motion
3 for clarification. Here's the pragmatic question I want -- because we've
4 got a jury trial starting on Monday. What is the order going to say, when
5 was Jonathan Schwartz put on notice that there was a breach of
6 contract? What date is that going to be? Because that is the date that
7 we're going to be stuck with going forward with respect to what the jury's
8 going to determine or not determine and so we need to know that before
9 we proceed to trial.

10 Also, with respect to what is the fact that put him on notice,
11 because I think that's also needs to be included in the order. Because
12 not only does he have -- we have to have a triggering event, we have to
13 have a date for him to put on notice. And those things need to be
14 addressed and they need to be addressed now with respect to --

15 THE COURT: Okay. Well, okay. All right. Thanks.

16 MR. FREER: Thank you.

17 THE COURT: As stated with all due respect, I don't think I
18 can or even that I should reconsider this decision. As we discussed at
19 great length a week ago, as of March 10th -- am I giving the right date --
20 2010 --

21 MR. JONES: Yes.

22 THE COURT: -- Jonathan, as I read it, admitted I'm on notice
23 and he -- I mean he didn't use those terms, but he talked about things
24 that essentially show the Court he had inquiry notice. He acknowledged
25 those things in that letter. That was my -- my problem was that -- and I

1 appreciate these subsequent events and as I said if this has ever been a
2 cause of action where Jonathan says I was misled, I was duped, I was
3 lulled into a sense of false comfort that I didn't need to pursue something
4 because they kept assuring me we were in settlement negotiations
5 which I'm not sure you can ever use that really, I don't know. Maybe
6 we'd be talking about something different, but since we're talking about
7 here a duty to administer and again, I understand that as a legal defense
8 if it had been -- if there'd been a motion to -- they filed their motion in
9 January of 2013 and he still didn't have his IRS determination letter
10 within the time the answer was due, okay, so let's call it December of
11 2012. He still doesn't have the letter for another eight weeks. Proper
12 response would have been stay this, I don't have a determination letter
13 yet.

14 So I don't think I can go back and read into this case that we
15 were relying on that since we don't have anything telling us that he
16 received that tax advice, you know, don't do anything, put them on
17 notice that I'm not going to be distributing anything to you if I owe you
18 anything for my dad because I still don't have a tax determination.

19 So absent that kind of evidence that there was some reason
20 to think that it was tolled by some sort of an agreement that let's wait for
21 the tax determination, I don't think I can use that also for reconsideration
22 although I do find it to be a interesting question as to whether that safe
23 harbor which I think you -- you're right, would entitle the estate to at least
24 ask for a stay tolls the statute of limitations. I think that's different.

25 So for this reason, I'm going to respectfully deny the request

1 for reconsideration. I don't -- although technically new issues were
2 raised, I don't think that they, if considered, would result in any different
3 outcome. So who's --

4 MR. JONES: Your Honor, we'll prepare the order and I hope
5 we don't see a new affidavit from Mr. Schwartz --

6 THE COURT: Okay.

7 MR. JONES: -- based on what you just said today.

8 THE COURT: All right, are we done and I see you've got your
9 technical expert present.

10 MR. JONES: We do and I was going to talk to counsel about
11 that with your --

12 THE COURT: Okay.

13 MR. JONES: -- staff to see -- make sure that what we're --

14 THE COURT: Okay.

15 MR. JONES: -- thinking about doing is acceptable to the
16 Court.

17 THE COURT: Okay. Do you need a moment to discuss that
18 and I can see how long these guys are going to take?

19 MR. JONES: Sure.

20 THE COURT: They've been out in the hallway for the whole
21 time so hopefully they're talking.

22 MR. JONES: Sure, we'll get out of your way, Your Honor, and
23 we'll --

24 THE COURT: So if you can go get the folks in the hallway,
25 that's Mr. Luszeck and Mr. Grover, and ask them to come in. We'll talk

1 to them about their matter and then we can make sure we've got
2 everything lined up technically.

3 MR. JONES: We'll stick around as long as we need to, Your
4 Honor --

5 THE COURT: Okay. All right.

6 MR. JONES: -- if we can today to help try to get that resolved.

7 THE COURT: Well we'll just find out --

8 [Proceedings concluded at 3:35 p.m.]

9 * * * * *

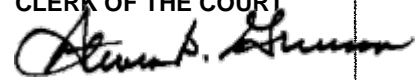
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21 ATTEST: I hereby certify that I have truly and correctly transcribed the
22 audio/visual proceedings in the above-entitled case to the best of my
23 ability.

24 

25 Tracy A. Gegenheimer, CER-282, CET-282
Court Recorder/Transcriber

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*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

**MOTION FOR JUDGMENT AS A MATTER
OF LAW REGARDING BREACH OF
CONTRACT AND MISTAKE CLAIMS**

Date of Hearing:

Time of Hearing:

The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus" or the "School") by and through their undersigned counsel of record, J. Randall Jones, Esq. and Joshua D. Carlson Esq., of the law firm of KEMP, JONES & COULTHARD, LLP, and pursuant to NEV. R. CIV. P. 50, hereby moves this Court for judgment as a matter of law in the School's favor and against the Estate on the Estate's claims for Breach of Contract, Specific Performance, and Mistake.

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This Motion is made pursuant to and is based on the following points and authorities, supporting documentation, the papers and pleadings on file in this action, and any oral argument the Court may allow.

DATED this 31st day of August, 2018.

KEMP, JONES & COULTHARD, LLP

/s/ J. Randall Jones

J. Randall Jones, Esq. (#1927)
Joshua D. Carlson, Esq. (#11781)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
*Attorneys for The Dr. Miriam and
Sheldon G. Adelson Educational Institute*

NOTICE OF MOTION

TO: All Interested Parties; and

TO: All Counsel of Record

PLEASE TAKE NOTICE that Dr. Miriam and Sheldon G. Adelson, will bring the foregoing

MOTION FOR JUDGMENT AS A MATTER OF LAW REGARDING BREACH OF

CONTRACT AND MISTAKE CLAIMS on for decision on the ____ day of October 4, 2018 at

9:30 a.m./p.m. in front of the above-entitled Court.

DATED this 31st day of August, 2018.

KEMP, JONES & COULTHARD, LLP

/s/ J. Randall Jones

J. Randall Jones, Esq. (#001927)
Joshua D. Carlson, Esq. (#11781)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
*Attorneys for The Dr. Miriam and
Sheldon G. Adelson Educational Institute*

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Time has run out on the Estate's opportunity to demonstrate the existence of an enforceable naming rights agreement. Pursuant to NRCF 50(a), the Court must enter judgment as a matter of law on the Estate's contract claims for two reasons. First, the Estate's contract claims are time barred under the applicable statute of limitations. The Estate's representative, Jonathan Schwartz, and the witnesses the Estate called in its case in chief, have unequivocally admitted that no written naming rights agreement exists and that the alleged agreement was an oral contract. This Court previously granted the School's Motion for Partial Summary Judgment regarding the statute of limitations for breach of an oral contract and reaffirmed this decision in denying the Estate's recent motion for reconsideration. Therefore, there is no dispute that the Estate's claims for breach of an alleged oral naming rights agreement are time barred.

Second, the Estate's contract claims fail as a matter of law under the statute of frauds. The terms of the agreement as alleged by the Estate require the School to perform *in perpetuity* and, therefore, is subject to the statute of frauds. *See* NRS 111.220(1). Because the Estate and its witnesses admit that no written agreement exists, and therefore, the statute of frauds applies, there can be no dispute that the Estate's contract claims are unenforceable and fail as a matter of law. For this additional reason the Court must enter a directed verdict in favor of the School on the Estate's contract claims.

In addition to the Estate's claims for breach of contract and specific performance, the Court must enter a directed verdict in favor of the School on the Estate's claim/affirmative defense of unilateral mistake. Claims based on mistake are subject to a three-year statute of limitations. *See* NRS 11.190(3)(d). As previously stated, the Court has determined that the Estate's claim for breach of an oral agreement under the applicable four-year statute of limitations is time barred. Therefore, based on the same facts supporting the finding that the Estate was on notice of its claims more than four years prior to the filing of the Petition, the Estate's claims subject to a three-year statute of limitations, and

which are premised on the same facts giving rise to the Estate's contract claims, are untimely as a matter of law.

Accordingly, the Court must enter judgment as a matter of law on the Estate's third, fifth, and seventh claims for relief pursuant to NRCP 50(a).

II.

STATEMENT OF RELEVANT FACTS

Trial in this matter commenced on August 20, 2018. During the Estate's opening statement, counsel for the Estate admitted that no naming rights agreement existed and that "if we had a naming rights agreement, we wouldn't be here today." *See* August 23, 2018 Trial Transcript, Vol. 1, at 14:14-19, attached hereto as **Exhibit A**.

During trial, the following testimony was elicited from the Estate representative and the witnesses the Estate called in its case in chief admitting that, at best, the Estate had an oral naming rights agreement:

Testimony	Witness	Cite
Q. There is no written agreement that says what Mr. Jonathan Schwartz says in that videotape deposition, is there? A. Correct. Q. So this is a verbal understanding that you had with Milton Schwartz. A. I think it's a verbal understanding that the board had with Milton Schwartz.	Lenard Schwartz	Vol. 2 174:10-17 ¹
Q. When you say the board had an understanding, again, this was a verbal understanding, right? A. Yes.	Lenard Schwartz	Vol. 2 175:5-8 ²
Q. But that's not in writing anywhere, right? A. There is no contract signed by both sides in this case, is my understanding, because otherwise we wouldn't be here.	Lenard Schwartz	Vol. 2 178:10-14 ³

¹ *See* August 24, 2018 Trial Transcript, Vol. 2, attached hereto as **Exhibit B**.

² *Id.*

³ *Id.*

Testimony	Witness	Cite
Q. And you told this jury you thought it was an oral contract, right? A. What is was, was an orally stated , mutual understanding between the members of the board and Milton Schwartz, that in exchange for his donation and raising additional funds and making sure the school got built, that the school would be named after him in perpetuity.	Lenard Schwartz	Vol. 2 222:23- 223:5 ⁴
Q. There is nothing in 1989 that says his name should go on the letterhead, right? A. Mr. Jones, it was an oral contract.	Jonathan Schwartz	Vol. 2 234:15- 17 ⁵
A. That was -- no. My understanding is that in exchange for the 500,000 that the school would be named after him. Q. Okay. A. There was also an understanding, my understanding, that everyone else's understanding was that he was going to be on the board and he would be involved in the school doing fundraising, being on the chairman of the board or being on the board, and he would be heavily involved in the school forever, for as long as he could. Q. Okay. A. That was the assumption. Now whether or not that's in writing somewhere, I don't know.	Susan Pacheco	Vol. 2 305:24- 306:12 ⁶
Q. So in your capacity as representing the board, did you agree to accept the money that Mr. Schwartz gave you in exchange for perpetual naming rights to the school? A. That was the gentleman's agreement. And we were representing the board and the intention of the board and the goodwill that generous gift engendered.	Dr. Roberta Sabbath	Vol. 2 346:4- 11 ⁷
Q. What did you mean by, quote, gentleman's agreement, close quote? A. Given the fact that I haven't seen or produced a contract -- I'm assuming this means the million dollars and the in perpetuity, that may be it was in conversation that this promise was made.	Dr. Roberta Sabbath	Vol. 3 90:17- 91:4 ⁸

⁴ *Id.*

⁵ *Id.* (emphasis added).

⁶ *Id.*

⁷ *Id.*

⁸ See August 27, 2018 Trial Transcript, Vol. 3, attached hereto as **Exhibit C**.

1 Prior to trial, this Court granted the Adelson School's Motion for Partial Summary Judgment
 2 regarding the statute of limitations for breach of an oral agreement and reaffirmed its decision by
 3 denying the Estate's motion for reconsideration.⁹

4 During trial, the Estate admitted it is still not even certain what the terms of the alleged agreement
 5 are:

6 Q. Would you agree with me, Mr. Schwartz, we are trying to give
 7 information to this injure I have [sic] so they can determine whether or not
 8 your dad had an agreement, an enforceable agreement with the school for
 9 naming rights? That's part of this case, right?

10 A. Correct.

11 Q. And we -- would you agree with me that it's important for this jury to get
 12 evidence about what the terms of the agreement were?

13 A. Correct.

14 Q. The jury can't figure out whether there was an agreement or not unless
 15 they can get the evidence about what the terms were, would you agree with
 16 that?

17 A. Correct.

18 Q. So I'm not asking you about anything other than what the terms of the
 19 agreement were. And so I need to know if a term of the -- let's try to make
 20 this easier. Break it down. We know your father gave \$500,000 in 1989 to
 21 the school, right?

22 A. Right.

23 Q. And nobody disputes that, and, by the way, that was an incredibly
 24 wonderful thing to do at a critical time for the school. So that's not a debate.
 25 Nobody is fighting over that. Everybody is glad that happened. It's a
 26 wonderful thing your dad did. We know about that. And I believe you
 27 testified that clearly was part of the agreement, right?

28 A. Right.

Q. So I just want to find out clear and unequivocal so this jury will know
 what your position is for the estate as to whether or not there was any other
 part of the agreement that had to do with money. So with that in mind, your
 dad's 500,000 he gave away that's fine we already got that on the agreement
 side. Let's talk about the other side of the agreement. Was your dad required
 as part of an agreement for naming rights to raise another \$500,000 from
 other people?

A. Sitting here today, I'm not 100 percent certain.

See Ex. C, August 27, 2018 Trial Transcript, Vol. 3 at 220:4-221:22.

⁹ The Estate submitted the corresponding draft Order to the Court on August 28, 2018.

III.

LEGAL ARGUMENT

A. Legal Standard for Judgment as a Matter of Law.

Rule 50(a) of the Nevada Rules of Civil Procedure allows any party to bring a motion for judgment as a matter of law after the presentation of evidence by an opposing party at trial or at the close of the case. Specifically, the Rule provides that:

If during a trial by jury, a party has been fully heard on an issue and on the facts and law a party has failed to prove a sufficient issue for the jury, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

NEV. R. CIV. P. 50(a)(1).

“Under NRCP 50(a)(1), the district court may grant a motion for judgment as a matter of law if the opposing party ‘has failed to prove a sufficient issue for the jury,’ so that his claim cannot be maintained under the controlling law. The standard for granting a motion for judgment as a matter of law is based on the standard for granting a motion for involuntary dismissal under former NRCP 41(b).” *Nelson v. Heer*, 163 P.3d 420, 424 (Nev. 2007). “In applying that standard and deciding whether to grant a motion for judgment as a matter of law, the district court must view the evidence and all inferences in favor of the nonmoving party.” *Id.* (citing *Chowdhry v. NLVH, Inc.*, 851 P.2d 459, 461-62 (Nev. 1993)). To survive a Rule 50(a) motion, a plaintiff must be able to establish a *prima facie* case establishing any entitlement for relief. *Chowdhry*, 851 P.2d at 461-62.

B. The Court Must Enter a Directed Verdict on the Estate’s Contract Claims Because They are Time Barred and the Alleged Agreement is Unenforceable under the Statute of Frauds.

1. The Estate’s representatives and the witnesses it called in its case in chief admit that the alleged naming rights agreement was an oral agreement and, therefore, the Estate’s contract claims are time barred.

The statute of limitations for breach of an oral agreement is four years. *See* NRS 11.190(2)(c). As discussed above, the Court previously found that the Estate was on inquiry and/or actual notice prior

to May 28, 2009, of alleged breaches of any purported oral naming rights agreement when it granted the School's Motion for Partial Summary Judgment regarding statute of limitations for breach of an oral agreement and further denied the Estate's recent motion for reconsideration. During its case in chief, the Estate representative and the witnesses it called admitted time and time again that no written agreement exists. *See* Section II Table, *supra*. In fact, the Estate's executor, Jonathan Schwartz expressly admitted: "**Mr. Jones, it was an oral contract.**" *See* Ex. C, August 27, 2018 Trial Transcript, Vol. 2, at 234:15-17 (emphasis added). Moreover, counsel for the Estate admitted during opening statements that one of the Estate's weaknesses was the fact that no written naming rights agreement exists between Milton Schwartz and the School. *See* Ex. A, August 23, 2018 Trial Transcript, Vol. 1, at 14:14-19. Thus, there is no dispute, and based on the evidence adduced during the Estate's case in chief there can be no dispute, that the alleged naming rights agreement was at best an oral agreement.

Accordingly, pursuant to the Court's granting of the School's Motion for Partial Summary Judgment regarding statute of limitations as to oral contract, and the uncontroverted testimony, the Estate's breach of contract claims are time barred. Therefore, the Court must enter judgment as a matter of law on these claims.

2. The Court must enter directed verdict on the Estate's breach of contract claim as a matter of law under the statute of frauds.

a. The alleged naming rights agreement must be in writing to be enforceable under the statute of frauds.

The Estate's breach of contract claim fails as a matter of law because the Estate has failed to provide evidence of a written contract to satisfy the statute of frauds. The statute of frauds requires that all agreements *that cannot be performed within a year must be in writing*. *See* NRS 111.220(1). According to the Estate, the school is required to comply with the alleged naming rights agreement in perpetuity. As such, the School's performance clearly cannot be completed within one year and the statute of frauds required that the alleged naming rights agreement be in writing to be enforceable.

b. The evidence unequivocally demonstrates that no written agreement exists.

As set forth above, the Estate's representative and the witnesses it called all admit that no written agreement exists evidencing the alleged naming rights agreement and, in fact, Jonathan Schwartz

1 testified that the alleged naming rights agreement “was an oral contract.” *See* Ex. C, August 27, 2018
 2 Trial Transcript, Vol. 2, at 234:15-17. Paul Schiffman also testified that he personally searched through
 3 every document in the School’s files but never saw a written naming rights agreement between Milton
 4 Schwartz and the School. *See* August 29, 2018 Trial Transcript, Vol. 5, at 104:1-105:9, attached hereto
 5 as **Exhibit D**. As such, the uncontroverted testimony and evidence admitted at trial unequivocally
 6 demonstrates that no written agreement exists. Therefore, the Court must enter directed verdict on the
 7 Estate’s breach of contract claim under the statute of frauds because the alleged naming rights agreement
 8 is unenforceable as matter of law.

9 *c. Performance does not remove the alleged naming rights agreement from the*
 10 *statute of frauds because the terms of the alleged agreement would require*
 11 *the School to perform in perpetuity.*

12 The Court must also reject the Estate’s anticipated argument that part performance somehow
 13 removes the alleged naming rights agreement calling for performance by the School in perpetuity from
 14 the statute of frauds. This contention fails as a matter of law. Part performance can operate as an
 15 exception to the statute of frauds where it is proved by “some extraordinary measure or quantum of
 16 evidence.” *Zunino v. Paramore*, 83 Nev. 506, 509, 435 P.2d 196, 197 (1967). However, part
 17 performance cannot remove an agreement that requires one party to perform in perpetuity from the
 18 statute of frauds. *See Almeciga v. Ctr. for Investigative Reporting, Inc.*, 185 F. Supp. 3d 401, 410
 19 (S.D.N.Y. 2016). In *Almeciga*, the plaintiff asserted a similar argument, contending that the statute of
 20 frauds did not apply because both parties fully performed on an agreement that was meant to apply “in
 21 perpetuity” because the plaintiff performed within one year.

22 ‘[T]he fact that the plaintiff has fully completed her performance under the
 23 contract as that contract is described by her **is of no moment**’ where **‘the**
 24 **defendant’s performance ... will continue in perpetuity...** Nor would it
 25 matter if defendants had performed for a year or more after entering into the
 26 alleged agreement and then breached. **The dispositive point is that defendants**
 27 **could not complete their performance within one year since their obligation**
 28 **was an ongoing one.’**

1 *Id.* (citations omitted). Similarly here, Milton Schwartz's alleged performance is irrelevant because the
 2 School is purportedly required to perform in perpetuity. The "dispositive point" is that the School cannot
 3 complete its performance within one year "since [its] obligation was an ongoing on." *Id.* Further, the
 4 School's decision to name various aspects of the school after Milton Schwartz from 1989 to 1993, and
 5 1999 to 2013 does not constitute full performance where the contract is alleged to last "in perpetuity."
 6 Therefore, the parties' alleged performance cannot and does not remove the alleged agreement from the
 7 statute of frauds.

8 Even assuming the Estate could show that part performance removes the alleged agreement from
 9 the statute of frauds, the terms of the parties' contract must be "clearly and definitely established" to
 10 render an oral agreement enforceable. *See Jones v. Barnhart*, 89 Nev. 74, 76, 506 P.2d 430, 431 (1973).
 11 The evidence adduced at trial demonstrated that the terms of the alleged agreement are far from clear or
 12 definite. None of the persons allegedly involved in making the agreement agree on what the material
 13 terms were, such as the consideration paid, whether it was all paid, or the scope — did it cover the
 14 corporation, the campus, the buildings, the letterhead, the monument, future land acquisitions, buildings
 15 on future land acquisitions, all of the above or some portion of the above — of the alleged agreement.
 16 For instance, Lenny Schwartz testified that the material terms of the agreement were that Milton
 17 Schwartz would contribute \$500,000 and use his best efforts to raise an additional half million dollars.
 18 *See Ex. B*, August 24, 2018 Trial Transcript, Vol. 2, at 167:8-168:4. Roberta Sabbath testified that
 19 Milton Schwartz committed one million dollars for the naming rights. *See Ex. C*, August 27, 2018 Trial
 20 Transcript, Vol. 3 at 11:16-12:11.

21 Critically, the Estate itself is not even certain what the terms of the alleged agreement are:

22 Q. Would you agree with me, Mr. Schwartz, we are trying to give
 23 information to this jury I have [sic] so they can determine whether or not
 24 your dad had an agreement, an enforceable agreement with the school for
 naming rights? That's part of this case, right?

25 A. Correct.

26 Q. And we -- would you agree with me that it's important for this jury to get
 evidence about what the terms of the agreement were?

27 A. Correct.
 28

1 Q. The jury can't figure out whether there was an agreement or not unless
2 they can get the evidence about what the terms were, would you agree with
3 that?

4 A. Correct.

5 Q. So I'm not asking you about anything other than what the terms of the
6 agreement were. And so I need to know if a term of the -- let's try to make
7 this easier. Break it down. We know your father gave \$500,000 in 1989 to
8 the school, right?

9 A. Right.

10 Q. And nobody disputes that, and, by the way, that was an incredibly
11 wonderful thing to do at a critical time for the school. So that's not a debate.
12 Nobody is fighting over that. Everybody is glad that happened. It's a
13 wonderful thing your dad did. We know about that. And I believe you
14 testified that clearly was part of the agreement, right?

15 A. Right.

16 Q. So I just want to find out clear and unequivocal so this jury will know
17 what your position is for the estate as to whether or not there was any other
18 part of the agreement that had to do with money. So with that in mind, your
19 dad's 500,000 he gave away that's fine we already got that on the agreement
20 side. Let's talk about the other side of the agreement. Was your dad required
21 as part of an agreement for naming rights to raise another \$500,000 from
22 other people?

23 A. **Sitting here today, I'm not 100 percent certain.**

24 See Ex. C, August 27, 2018 Trial Transcript, Vol. 3 at 220:4-221:22 (emphasis added). As such, the
25 terms of the alleged naming rights are still unknown, let alone "clearly and definitely established" to
26 permit enforcement as a matter of law. Therefore, the Court must enter judgment as a matter of law on
27 the Estate's contract claims.

28 **C. The Court Must Enter a Directed Verdict on the Estate's Claim/Affirmative Defense
of Unilateral Mistake because it is Time Barred under the Statute of Limitations.**

The Estate's unilateral mistake claim/affirmative defense (Third Claim for Relief) is likewise
time barred under the applicable statute of limitations. "An action for relief on the grounds of mistake
is subject to a three-year limitations period, which 'shall be deemed to accrue upon the discovery by the
aggrieved party of the facts constituting the...mistake.'" *State Dep't of Transportation v. Eighth Judicial
Dist. Court in & for Cty. of Clark*, 402 P.3d 677, 683 (Nev. 2017), reh'g denied (Nov. 29, 2017) (citing
NRS 11.190(3)(d)). The Court has already determined that the Estate was on notice of facts giving rise

1 to the Estate's claim for breach of an oral naming rights agreement, which is a four year statute of
2 limitations. The facts giving rise to the Estate's breach of contract claims are the same facts giving rise
3 to the Estate's claim for unilateral mistake. As such, there can be no question that the Estate's claim for
4 unilateral mistake is time barred.

5 "In a discovery based cause of action, a plaintiff must use due diligence in determining the
6 existence of a cause of action." *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440
7 (1998). "Dismissal on statute of limitations grounds is only appropriate when uncontroverted evidence
8 irrefutably demonstrates plaintiff discovered or should have discovered the facts giving rise to the cause
9 of action." *Id.* (internal quotation marks omitted).

10 Here, the uncontroverted evidence irrefutably demonstrates that the Estate discovered or should
11 have discovered facts giving rise to its claims/defense of unilateral mistake more than three years prior
12 to its Petition for Declaratory relief on May 28, 2013. The Estate's unilateral mistake claim/defense is
13 premised on its contention that the "bequest made by Milton Schwartz to the Academy was based on,
14 and motivated by, Milton's understanding and belief that the Academy had agreed to bear his name in
15 perpetuity and would fulfil its promises as memorialized in its May 23, 1996 letter." See Petition for
16 Declaratory Relief, at 8:3-5. Jonathan Schwartz's May 10, 2010 letter to the members of the board
17 irrefutably demonstrates that Jonathan Schwartz was on notice of facts constituting the basis for the
18 Estate's unilateral mistake claim. Accordingly, because the evidence irrefutably demonstrates that the
19 Estate discovered facts giving rise to its unilateral mistake claim/defense more than three years prior to
20 filing its Petition, this claim is time barred. Moreover, because the Court has previously ruled that the
21 Estate's claims subject to a four year statute of limitations are time barred, under the same reasoning,
22 the Estate's mistake claims subject to a three year statute of limitations would likewise be barred as
23 untimely. Accordingly, the Court must enter judgment as a matter of law on the Estate's mistake
24 claim/affirmative defense.

25 ///

26 ///

IV.

CONCLUSION

For the foregoing reasons, the Adelson Campus respectfully requests that this Court enter a directed verdict on the Estate's Third (Bequest Void for Mistake), Fifth (Breach of Contract), and Seventh (Specific Performance) Claims for Relief.

DATED this 31st day of August, 2018.

KEMP, JONES & COULTHARD, LLP

/s/ J. Randall Jones

J. Randall Jones, Esq. (#1927)
 Joshua D. Carlson, Esq. (#11781)
 3800 Howard Hughes Parkway, 17th Floor
 Las Vegas, Nevada 89169
 Attorneys for The Dr. Miriam and
 Sheldon G. Adelson Educational Institute

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of August, 2018, service of the foregoing **MOTION FOR JUDGMENT AS A MATTER OF LAW REGARDING BREACH OF CONTRACT AND MISTAKE CLAIMS** was electronically served on counsel for the Estate of Milton I. Schwartz via the Court's electronic filing system.

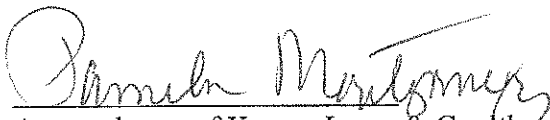

 An employee of Kemp, Jones & Coulthard, LLP

EXHIBIT A

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3
4 D R A F T
5 T R A N S C R I P T
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8

9 In The Matter of the Estate of Milton I. Schwartz,
10 Deceased
11
12

13
14
15 Thursday, August 23, 2018
16
17

18 By: Carre Lewis, NV CCR 497, CA CSR 13337
19 carre@discoverylegal.net
20
21
22
23
24
25

1 the Hebrew Academy to the Milton I. Schwartz Hebrew
2 Academy.

3 In addition you are likely to hear
4 testimony from several people involved in the
5 transaction that Milton himself understood these
6 documents reflected the agreement and belief that
7 the school would be named after him in perpetuity.
8 Now, let's talk a little bit about one of the
9 weaknesses in our case. I will be right up front we
10 have a weakness. If neither side had weaknesses in
11 their case we wouldn't be here at trial. And I
12 think Mr. Jones and I would both readily admit that
13 we are following ourselves if neither side had any
14 weaknesses. But, you may ask yourself, well why
15 aren't you just showing me a naming rights
16 agreement? Where why isn't it there it wasn't the
17 way these people operated they had terms that they
18 wrote on various documents if we had naming rights
19 agreement, we wouldn't be here today. You also may
20 hear conflicting testimony 20 years after this deal
21 happened about how much Milton actually had to pay
22 the school for the naming rights. You may hear some
23 testimony that differs as to whether he had to pay
24 500,000, a million or 500,000 plus agree to
25 fundraise 500,000 but you are also going to see

EXHIBIT B

In the Matter Of:

Jonathan A. Schwartz vs Adelson Educational Institute

VOL 2 TRANSCRIPT

August 24, 2018

1 then this morning you told this jury that he would
2 give a half a million and he would try to raise some
3 more money, but he didn't have to raise that money
4 in total. He just had to try. And now Mr. Jonathan
5 Schwartz says the agreement was that he had to give
6 a -- he being Milton Schwartz, had to give a half a
7 million dollars and raise a half a million dollars
8 for a total of a million dollars, and that's what he
9 did. So do you have -- well, let me put it another
10 way. There is no written agreement that says what
11 Mr. Jonathan Schwartz says in that videotape
12 deposition, is there?

13 A. Correct.

14 Q. So this is a verbal understanding that you
15 had with Milton Schwartz?

16 A. I think it's a verbal understanding that
17 the board had with Milton Schwartz.

18 Q. The board?

19 A. Because you have to remember, at the time
20 he was donating a half a million dollars. We knew
21 that he had gone to Paul Sogg and had gotten a large
22 commitment from Paul Sogg. We knew he was speaking
23 to a couple other people who he gave us the
24 understanding that there would be a couple of other
25 large donations made to the school. But the whole

1 fundraising was based upon the fact that his half a
2 million dollars was such a good big start that it
3 was easier to ask other people to then donate that
4 kind of money.

5 Q. When you say the board had an
6 understanding, again, this was a verbal
7 understanding, right?

8 A. Yes.

9 Q. So this would be what you would call --
10 would you consider this, as a board member of this
11 situation, a verbal contract with Mr. Schwartz?

12 MR. LEVEQUE: Objection. Calls for legal
13 conclusion.

14 THE COURT: Sustained.

15 MR. JONES: Your Honor, I'm asking as a
16 board member his capacity as a board member. That's
17 a key issue in this case is what his understanding
18 was about this alleged agreement. I -- they have
19 just asked Mr. Schwartz the same thing so as a
20 board member, not as a lawyer.

21 THE COURT: Okay.

22 MR. JONES: His understanding as a board
23 member that he believed the board had a -- an oral
24 contract with Mr. Schwartz.

25 THE COURT: Okay. I will allow that.

1 who Mr. Schwartz had been motivating force to get
2 them to donate six figure donations.

3 Q. So fair enough. So let me rephrase it,
4 then.

5 In your mind, what you believe the
6 agreement was, is that Mr. -- if Mr. Schwartz was
7 not able to get up to a half a million dollars, it
8 would not be a breach of the contract?

9 A. Yes, that's correct.

10 Q. All right. But that's not in writing
11 anywhere, right?

12 A. There is no contract signed by both sides
13 in this case, is my understanding, because otherwise
14 we wouldn't be here.

15 Q. I think you are probably right about that.

16 So let me ask a related question. So
17 that's what your mind was, that he had been
18 responsible already at the time he gave the half
19 million for getting other people to put up
20 substantial sums of money but even if it didn't
21 reach a half million, it was still -- that was still
22 a deal with him?

23 A. Yes.

24 Q. As you sit here today, do you know, can you
25 say with assurance under oath that the other

1 gotten so I never negotiated anything like that.

2 Q. I appreciate that. Let's pull up Exhibit 5
3 again. If we go to -- I think it's the last page --
4 second to the last page, yes. If you look under
5 amendments, Paragraph 1, amendments. Blow that up
6 for the jury.

7 Now, Mr. LeVeque asked you about this and
8 so did I. These are the bylaws that you signed, as
9 well as all those other board members and they
10 specifically say the board of trustees shall have
11 the power to make, alter amend and appeal the bylaws
12 of the corporation by affirmative vote of a majority
13 of the full board at a meeting duly noticed there
14 for, right?

15 A. That's correct.

16 Q. And it doesn't limit that in any way,
17 shape, or form, does it?

18 A. Correct.

19 Q. You again answered Mr. LeVeque's question
20 you said you believed there was a legally
21 enforceable contract, right?

22 A. Yes.

23 Q. And you told this jury you thought it was
24 an oral contract, right?

25 A. What it was, was an orally stated, mutual

1 understanding between the members of the board and
2 Milton Schwartz, that in exchange for his donation
3 and raising additional funds and making sure the
4 school got built, that the school would be named
5 after him in perpetuity.

6 Q. To be a legally enforceable oral contract
7 as a board member, you would agree with me that all
8 of the board members had to have the same
9 understanding that you did as to what the terms of
10 that oral contract were to be enforceable, right?

11 A. Majority.

12 Q. A majority. And if a majority of the board
13 members had different understanding of what that
14 oral contract was, then there would be no
15 enforceable oral contract with Mr. Schwartz, isn't
16 that true?

17 A. I think you are asking me a legal question.
18 And I -- as a lawyer I could come up with scenarios
19 going both ways. For example, if somebody says
20 something orally and they say this is what I am
21 agreeing to, but somehow in their mind they are
22 thinking of something else, the person on the other
23 side would still have the right to enforce the
24 agreement that was orally stated.

25 Q. I appreciate your point. So let me ask you

1 you can't tell if the board intended any of these to
2 be in perpetuity by just reading the document,
3 right?

4 A. I would assume by just reading the
5 document.

6 Q. Why? What in the document tells you that
7 anything is going to be named in perpetuity?

8 A. It doesn't say that. I said I assume that.

9 Q. Oh, okay. It doesn't say that?

10 A. No, it doesn't say that. I would assume
11 that because if I give money and something is named
12 after me, I would assume it is in perpetuity.

13 Q. I think you also testified to Mr. LeVeque
14 when he was asking you questions that Milton
15 Schwartz's agreement to have the school named after
16 him was in exchange for \$500,000, right?

17 A. Correct.

18 Q. And that was the total amount. And once he
19 paid that, he was done, the deal was done, right?

20 A. Correct.

21 Q. And he didn't have to do anything else
22 other than get that 500,000 and he had a solid deal
23 and it was over?

24 A. That was -- no. My understanding is that
25 in exchange for the 500,000 that the school would be

1 named after him.

2 Q. Okay.

3 A. There was also an understanding, my
4 understanding, that everyone else's understanding
5 was that he was going to be on the board and he
6 would be involved in the school doing fundraising,
7 being on the chairman of the board or being on the
8 board, and he would be heavily involved in the
9 school forever, for as long as he could.

10 Q. Okay.

11 A. That was the assumption. Now whether or
12 not that's in writing somewhere, I don't know.

13 Q. Okay.

14 A. Or I don't recall. It could be.

15 Q. But generally speaking, what you said
16 before is that once he paid his 500,000, it was,
17 again, he clearly was going to be continue to be on
18 the board, be involved with the school. But the
19 critical part of the deal for the naming rights was
20 that he put up the 500,000, right?

21 A. Correct.

22 Q. You said there were several documents that
23 you believe supported the idea that his name would
24 be in perpetuity. One you said was the quitclaim
25 deed do you remember that?

1 A. Yes. Well, I didn't personally agree to
2 it. Dr. Lubin was representing the school. And I
3 was representing the board so . . .

4 Q. So in your capacity as representing the
5 board, did you agree to accept the money that
6 Mr. Schwartz gave you in exchange for perpetual
7 naming rights to the school?

8 A. That was the gentleman's agreement. And we
9 were representing the board and the intention of the
10 board and the goodwill that generous gift
11 engendered.

12 Q. But did you agree to be bound by that
13 promise that the school would be named for him in
14 perpetuity?

15 A. I did not personally agree to be bound. As
16 a board member, that was the intention that I
17 understood.

18 Q. Of the whole board?

19 A. Yes.

20 Q. So the board agreed to be bound by this
21 promise?

22 MR. JONES: I object to the form of the
23 question as to what the agreement was that we are
24 talking about.

25 THE COURT: So to specify, I guess, the

EXHIBIT C

In the Matter Of:
Schwartz vs Adelson Educational Institute

TRANSCRIPT TRIAL

August 27, 2018

002896

002896

1 when Jewish kids went to school, there might be one
2 or two Jews in a class. We came from the Washington
3 D.C. area where schools were closed for I don't mean
4 Kipper. Everybody was Jewish so it was either do
5 something or maybe our kids wouldn't have the
6 ability to become educated and to love their
7 religion. So does that seem -- that answers the
8 question.

9 THE COURT: Apparently so.

10 This question being from Juror No. 9, Sarah
11 Langlois: In the letter from 1996, was it a
12 conscious effort to keep the term, quote, in
13 perpetuity, close quote, out of it?

14 THE WITNESS: I don't remember. That I do
15 not remember.

16 THE COURT: Thank you. The next question
17 then being from juror No. 2 Sarah Sam Alaska. In
18 reference to the agreement that Mr. Schwartz and the
19 school had, you mentioned in your testimony on
20 Friday that it was a gentleman's agreement. What
21 did you mean by, quote, gentleman's agreement, close
22 quote?

23 THE WITNESS: Given the fact that I haven't
24 seen or produced a contract -- I'm assuming this
25 means the million dollars and the in perpetuity,

1 that may be it was in conversation that this promise
2 was made. I can only conjecture that and so I used
3 that phrase a gentleman's agreement between
4 Dr. Lubin and Mr. Schwartz.

5 THE COURT: Thank you very much. Those are
6 the questions from the jurors brief follow up from
7 counsel.

8 MR. JONES: No, Your Honor.

9 MR. LEVEQUE: I do, Your Honor.

10 THE COURT: Okay. Okay.

11 EXAMINATION

12 BY MR. LEVEQUE:

13 Q. Dr. Sabbath with respect to the 1996 letter
14 that you signed, do you recall if the spirit of the
15 letter was to omit in perpetuity language?

16 A. I do not. As I had explained to the jury,
17 I do not remember dealing with that specific piece
18 in writing that letter.

19 Q. Thank you. And with respect to the third
20 question, the gentleman's agreement, gentlemen's
21 agreement I guess is a term of art. Do you believe
22 that there was an enforceable agreement between the
23 school and Mr. Schwartz concerning the naming
24 rights?

25 MR. JONES: Your Honor I'm going to object

EXHIBIT D

In the Matter Of:
Schwartz vs Adelson Educational Institute

TRIAL TRANSCRIPT

August 29, 2018

002900

002900

1 What efforts did you do, if you could
2 explain to the jury what efforts made to try to find
3 out if there was a contract between Milton Schwartz
4 and the school for naming rights?

5 A. I was asked by our attorney at the time to
6 actually go and have people look through the files.
7 Quite honestly, if I was going to be the person to
8 attest to that, I went through the files personally
9 myself from the records going back, and I can't
10 remember the year, to actually go through page by
11 page, which took me -- I did it over a two-week
12 period of time. Not full-time, I was still going to
13 school at the time.

14 Q. How comfortable are you that you looked
15 everywhere you could think of with any school
16 records that existed to try to determine whether or
17 not any such agreement existed?

18 A. I'm extremely comfortable that I went
19 through every page of the documents. They were at
20 the present time of kept in locked files.

21 Q. Who had access to them?

22 A. The business manager and his assistant.
23 There were two keys.

24 Q. And how did you get access to them?

25 A. I asked the assistant to open up the files

1 for me and they did at the time.

2 Q. Was there a question of about -- a few
3 months of files, I think 11 months of files for 2005
4 that you couldn't find we have already testified
5 that was before you got there. But was there any
6 evidence you ever saw that anybody was intentionally
7 trying to hide anything or not produce what was
8 available?

9 A. Not to my understanding, no.

10 Q. Now let me go back a minute here to kind of
11 backtrack a bit. You told the jury you live in
12 White Plains, New York now?

13 A. I do.

14 Q. How is it you got out here? You have
15 already testified that the Adelsons paid for your
16 plane ticket.

17 A. Yes.

18 Q. Are you here voluntarily or otherwise?

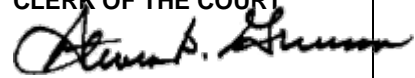
19 A. I am here voluntarily.

20 Q. I asked you some questions on what we call
21 voir dire about your feelings about Milton Schwartz
22 and the Adelsons. Could you please explain. Do you
23 have any ill will towards the Milton I. Schwartz
24 estate or Jonathan Schwartz?

25 A. I do not.

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Executor of the Estate of Milton I. Schwartz*

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of:

MILTON I. SCHWARTZ,

Deceased

Case No.: 07P061300

Dept.: 26/Probate

Hearing Date:

Hearing Time:

APPENDIX OF TRIAL TRANSCRIPTS
(Rough Drafts)

A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz ("Executor"), by and through his counsel, Alan D. Freer, Esq. and Alexander G. LeVeque, Esq., of the law firm of Solomon Dwiggins & Freer, Ltd., hereby submits his Appendix of Trial Transcripts in support of the Opposition to Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims ("Opposition") and the Executor's Motion for Judgment as a Matter of Law ("Motion").

DATED this 3rd day of September, 2018.

SOLOMON DWIGGINS & FREER, LTD.

/s/ -- Alan D. Freer

By: _____

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*Attorneys for A. Jonathan Schwartz,
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Case No. 07P061300

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08/31/2018	7

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TRUST AND ESTATE ATTORNEYS



CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of September, 2018, service of the foregoing APPENDIX OF TRIAL TRANSCRIPTS (Rough Drafts) was electronically served on counsel for the Dr. Miriam and Sheldon G. Adelson Educational Institute via the Court's electronic filing system.

/s/ -- Sherry Curtin-Keast

An employee of Solomon Dwiggin & Freer, Ltd.

7

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EXHIBIT 1

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D R A F T
T R A N S C R I P T

In The Matter of the Estate of Milton I. Schwartz,
Deceased

Thursday, August 23, 2018

By: Carre Lewis, NV CCR 497, CA CSR 13337
carre@discoverylegal.net

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ROUGH DRAFT TRANSCRIPT

REALTIME AND INTERACTIVE REALTIME TRANSCRIPT

ROUGH DRAFT DISCLAIMER

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if any, and replace it with the final transcript
upon its completion.

1 REPORTER'S NOTE:

2 Since this deposition has been provided in
3 realtime and is in rough draft form, please be aware
4 that there may be a discrepancy regarding page and
5 line number when comparing the realtime screen, the
6 rough draft, rough draft disk, and the final
7 transcript.

8

9 Also please be aware that the realtime
10 screen and the uncertified rough draft transcript
11 may contain untranslated steno, reporter's notes,
12 asterisks, misspelled proper names, incorrect or
13 missing Q/A symbols or punctuation, and/or
14 nonsensical English word combinations. All such
15 entries will be corrected on the final, certified
16 transcript.

17

18 Court Reporter's Name:

19 Carre Lewis, CCR 497

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1 THE MARSHAL: Please be seated.

2 THE COURT: Okay. Ladies and gentlemen,
3 thank you so much for returning. We are pleased to
4 see that our entire jury panel was feeling well and
5 able to come today, so welcome back. We are going
6 to go on the record in P061300. The record, for the
7 record, should reflect that counsel are present with
8 their respective clients. And counsel, you will see
9 the presence of our constituted jury is here today.

10 MR. FREER: Yes, Your Honor.

11 MR. JONES: Yes, Your Honor.

12 THE COURT: We are ready, at this point in
13 time, ladies and gentlemen, as we told you, to start
14 with the real meat of the case. Before you hear
15 witnesses, you need your road map and that's what
16 counsel are going to provide you now we are going to
17 start Mr. Freer will go first the estate will go
18 first, then we will hear from Mr. Jones. So we may
19 take a break in the middle between the two of them
20 as I said try to do it about ever hour and a half so
21 thank you very much sorry which are a little late we
22 have our technology set up so counsel.

23 MR. FREER: I'm going to pull this podium
24 here so I can address you a little bit better.
25 While I'm setting up that I know you for your

1 service I just want to introduce Carre Lewis over
2 here and she is going to be recording what we are
3 saying in the she is not an official court reporter.
4 She is a court reporter that bodies sides have hired
5 so we can have access to full-time -- realtime
6 communication that pops up on the screens it allows
7 you us to do our job a little bit better and more
8 efficiently. We were just joking about technology
9 being good or bad this is an idea of good technology
10 so long as it continues to work.

11 Judge Sturman talked about the opening --
12 the purpose of the opening that we are going to be
13 giving you is to give you guys a little overview of
14 the party's positions chance to give you our story,
15 highlight a few of the facts place the evidence you
16 see through the next two weeks into context. You
17 are not going to see the sum total of either side's
18 evidence because our openings would be probably two
19 weeks long. But it's enough to give you an
20 understanding of each side's position. As you heard
21 during the jury selection process there are two
22 issues in this case. You will see as I use this
23 PowerPoint presentation it's going to appear the
24 same on all of the screens I will be using a laser
25 pointer and I will try not to shine it in your eyes.

1 As you see there are two issues in this case and for
2 why we are here the first issue is we believe that
3 there's an agreement between Milton Schwartz and a
4 school that now calls itself the Adelson School we
5 will call that the contract portion of the case. We
6 also are here because we believe that Milton did not
7 intend to leave a gift in his will to a school that
8 did not bear his name and that's kind of the estate
9 portion of the -- that Judge Sturman was talking
10 about. Now, as to the first, we believe the
11 evidence in this case will show that the Adelson
12 School broke its promise to forever name the school
13 Milton eye Schwartz Hebrew academy and as to the
14 second the will contest we believe that the evidence
15 will show that Milton wanted to leave a \$500,000
16 gift only to the Milton I. Schwartz Hebrew Academy
17 and not to the Adelson School.

18 Now with respect to both issues, we believe
19 that the evidence will show that for the last 20
20 years of his life Milton Schwartz did he mated a lot
21 of money, a lot of time, a lot of effort, a lot of
22 love to build a school that was named after him. A
23 school that was named Milton I. Schwartz Hebrew
24 Academy a school that promised, we believe, and the
25 evidence will show, that promised to be called the

1 Milton I. Schwartz Hebrew Academy forever. We
2 believe the evidence will also show that only four
3 months after Milton's death, the people left in
4 charge of the school which included none other than
5 Sheldon Adelson began breaking that promise by
6 removing Milton's name and replacing it with the
7 Adelson name. After removing Milton's name and
8 erasing Milton's memory, the Adelson School has sued
9 the Milton's estate demanding that it receive a
10 \$500,000 gift that was left in Milton's will. We
11 assert that that gift was to the Morris Hebrew
12 Academy. The evidence will also show that Jonathan
13 tried several times to resolve this prior to the
14 litigation but unfortunately we are here in the
15 litigation, the Adelson School filed suit, we had to
16 file a counterclaim. And that Jonathan's purpose in
17 this case as shown by the evidence is to protect
18 Milton's memory and follow his father's
19 instructions. You got to see Mr. LeVeque a little
20 bit. I'm Mr. Freer. You haven't heard from me
21 much. By the end of these two weeks, you might wish
22 you heard less from me, but we are here representing
23 the estate you have seen Jonathan. Jonathan is the
24 court appointed person just means he is going to
25 represent Milton's estate audibly Milton is not here

1 can't speak to himself as long as we would like to
2 have ghosts on the stand or have a seance, we can't
3 do that. But you will hear from Milton in various
4 forms throughout the trial. As Mr. Jones informed
5 you on Tuesday, you may see some of Milton's own
6 words on paper, may see some of Milton's words in
7 his own voice on a video. You may see documents
8 showing what minimum ton wanted to do or testimony
9 from witnesses who may testify as to what Milton
10 believed, understood about certain things that are
11 relevant in this case. So even though Milton is
12 gone, he still somewhat has a voice that you will
13 get to hear.

14 Now before we get too far along let me
15 introduce you to Milton Schwartz this is middle
16 torn. Milton was a distinguished war veteran he was
17 also a philanthropist, a businessman and someone who
18 cared very much about Jewish education. A little
19 bit about him. He was born in New York City, raised
20 in Brooklyn. When World War II broke out, he
21 enlisted, was in the Army; saw combat in the
22 Far East. After moving to Las Vegas in 1946, Milton
23 owned several companies, including, early on, Valley
24 Hospital and then several cab companies, Yellow,
25 Checker, Star -- Yellow Cab and Star. As I said,

1 Milton liked to contribute to charity, and he was
2 especially interested in Jewish charities and
3 causes, and education.

4 This is a picture of the Adelson high
5 school. It's a nice building. It was built in
6 2007, 2008. And it's on this 17 acres of property
7 in Summerlin. It's right in the heart of Summerlin.
8 If you know who Howard Hughes Corporation is , the
9 developers of Summerlin, this was their property.
10 The red roof building right there is the building
11 that was originally on the property. That's the
12 building that Milton helped to build. And the
13 evidence will show that without that building being
14 there, all of that would look drastically different.
15 It wouldn't be the high school or the middle school
16 or the elementary school you see today. But let me
17 take you back in time a little bit. Let me take you
18 back 29 years ago. It's 1989. It's August, it's
19 hot, it's muggy, probably a lot liked to. The
20 Hebrew Academy as it was called then was facing a
21 cross roads. Howard Hughes Corporation was just in
22 the process of developing Summerlin. They had this
23 17 acres set aside. They had an opportunity, the
24 school, to get that property on a grant, but they
25 needed to come up with money for a building. And

1 that hot August sun, two members of the Hebrew
2 Academy as board, Tamar lube and Dr. Roberta Sabbath
3 knocked on Milton's door. Milton would give money
4 to the Hebrew Academy to allow to get property for
5 the school; in exchange, Milton would have the right
6 to name the school after him.

7 Here is a picture of Milton in 19 89 and a
8 picture of Tamar lieu bib in 1989, you will see this
9 a little bit later. This is a newspaper article.
10 You will see you will see three checks in Milton's
11 hand and we will show you evidence of those checks.
12 It was \$500,000. From that humble beginning, a
13 knock on a door, three checks, and a promise, the
14 Milton I. Schwartz Hebrew Academy was born. The
15 evidence will show that the three people at that
16 meeting, Tamar Lubin, Dr. Roberta Sabbath, and
17 Milton Schwartz all understood that want agreement
18 was to name the school, the Milton I. Schwartz
19 Hebrew Academy, forever, or in their words, in
20 perpetuity.

21 Now you are going to see over the next week
22 and a half the words "in perpetuity" a lot, probably
23 more than you will ever want to see them in your
24 lifetime. You are going to hear testimony from
25 everybody in the board in 1989, '90 that they heard

1 the word in perpetuity, and you are going to hear
2 several witnesses talk about in perpetuity and the
3 understanding that not only they but Milton had
4 that it means forever. In fact, the evidence will
5 show, and we expect Dr. Sabbath to testify and
6 remember she was there at the original meeting, that
7 to Milton, during their conversation, the words in
8 perpetuity were very important, that Milton wanted
9 the school to be called the Milton I. Schwartz
10 Hebrew Academy in perpetuity. Also, Ms. Lubin will
11 also testify that she had specifically recalled
12 Milton using the term in perpetuity in discussing
13 their arrangement to name the school after him.
14 Now, in addition to Ms. Lubin and Ms. Sabbath, the
15 evidence will show that on August 14, 1989, the rest
16 of the board of trustees, and here is the list of
17 some of those that were present in these minutes. I
18 know they aren't great copies; you guys will get
19 better copies of it. This is one of the better
20 things about having historic documents is the
21 mimeographs don't scan well. So as we go throughout
22 this I am going to be calling out some information
23 that we typed just to make it easier for you guys to
24 read. I lost my place.

25 You are likely going to hear testimony from

1 everybody that was on the board at that time. That
2 they recall using the term in perpetuity and that in
3 these minutes, they passed a resolution. These are
4 corporate minutes. And all they mean is a fancy
5 term for rules -- I'm sorry, these are the corporate
6 minutes. These show the board of trustees who were
7 just the people to make decisions for the school,
8 they agreed on behalf of the board to accept with
9 thanks the donations Milton Schwartz made and voted
10 that a letter should be written to Milton Schwartz
11 stating that the academy would be named after him.

12 Now, following that decision, the evidence
13 will show that the board changed its by laws and the
14 by laws are nothing more than kind of internal rules
15 that govern a company. And the bylaws were changed
16 to be named the school the Milton I. Schwartz Hebrew
17 Academy you guessed it, here is that word, "in
18 perpetuity." It's anticipated that you are going to
19 hear testimony from several of the board members
20 that these bylaws and especially this first clause
21 acknowledge or memorialize the school's promise and
22 agreement with Milton. You will likely hear
23 testimony from board members such as Lenny
24 Schwartz. He was on the board. He was a
25 secretary of the board at the time. He donated time

1 to serve on the board because he had a child at the
2 school. He was also an attorney. He will likely
3 state that he drafted these bylaws that contain what
4 we assert is the promise to name the school Milton
5 I. Schwartz Hebrew Academy in perpetuity. We
6 anticipate that Mr. Schwartz will testify that the
7 reason for that and the reason for the school's
8 decision was because Milton's donation was by far
9 the largest amount of money that the school had
10 received at that time. And without Milton's
11 donation, the school wouldn't have been built. You
12 will also see other evidence, other documents from
13 the school showing that the school did take action
14 to live up to its promise made to Milton. For
15 example, the school filed formal papers with the
16 state of Nevada. These are articles of
17 incorporation. It's just fancy documents showing
18 the state what the corporation is going to be
19 called. And here it says in article 1 the
20 corporation shall be called the Milton I. Schwartz
21 Hebrew Academy. The school also changed the
22 ownership of the land from the Hebrew Academy to the
23 Milton I. Schwartz Hebrew Academy we will show you
24 documents to that fact such as this quitclaim deed
25 and the information called out shows it's going from

1 the Hebrew Academy to the Milton I. Schwartz Hebrew
2 Academy.

3 In addition you are likely to hear
4 testimony from several people involved in the
5 transaction that Milton himself understood these
6 documents reflected the agreement and belief that
7 the school would be named after him in perpetuity.
8 Now, let's talk a little bit about one of the
9 weaknesses in our case. I will be right up front we
10 have a weakness. If neither side had weaknesses in
11 their case we wouldn't be here at trial. And I
12 think Mr. Jones and I would both readily admit that
13 we are following ourselves if neither side had any
14 weaknesses. But, you may ask yourself, well why
15 aren't you just showing me a naming rights
16 agreement? Where why isn't it there it wasn't the
17 way these people operated they had terms that they
18 wrote on various documents if we had naming rights
19 agreement, we wouldn't be here today. You also may
20 hear conflicting testimony 20 years after this deal
21 happened about how much Milton actually had to pay
22 the school for the naming rights. You may hear some
23 testimony that differs as to whether he had to pay
24 500,000, a million or 500,000 plus agree to
25 fundraise 500,000 but you are also going to see

1 evidence that Milton donated 500,000, undisputed, he
2 gave 3 checks. You will hear testimony from board
3 members that Milton lived up to his end of the deal.
4 You are going to see evidence of an internal report
5 prepared by the school that shows three columns of
6 donor's, an amount pledged, you are going to see
7 500,000, an amount paid, you are going to see
8 500,000, an amount owing, you are going to see zero:
9 And that's in the school's minutes and we will show
10 you that document to show that Milton lived up to
11 his pledge. Perhaps most compelling of all and you
12 have already seen some of this today is that the
13 school accepted Milton's performance because
14 otherwise they wouldn't have named the school after
15 Milton. So in short, while there may be some
16 questions looking back 30 years ago, we believe the
17 evidence is going to show that everybody involved in
18 this deal at the time understood what the agreement
19 was, that Milton made a promise -- I mean that
20 Milton made a payment to the school; the school made
21 a promise to name the school after him; the school
22 accepted the money; and the school agreed to name
23 the school the Milton I. Schwartz Hebrew Academy in
24 perpetuity. And we believe that's what the evidence
25 will show you.

1 Now, Milton loved the Milton I. Schwartz
2 Hebrew Academy. He took great pride in that it was
3 named after him. You are going to hear testimony
4 from people that show he called it his school. He
5 referred to the kids as his kids. It was a labor of
6 love from Milton. But despite that labor of love,
7 in 1992, a very dark time in both Milton and the
8 school's relationship occurred. A dispute arose
9 between Milton and Ms. Lubin over the constitution
10 of the board, the people that would control the
11 school did that resulted in a lawsuit that was filed
12 in 1992 and here is a picture of lawsuit. You are
13 going to see the lawsuit it's going to be admitted
14 into evidence.

15 You are going to see though the evidence
16 that even during this lawsuit Ms. Lubin still
17 admitted it was called Milton I. Schwartz Hebrew
18 Academy still acknowledged it was because of his
19 pains. You will see evidence from 1994, to be
20 precise, that the board controlled by Ms. Lubin
21 removed Milton's name from the school reverting it
22 back to the Hebrew Academy. You are going to see
23 evidence from our side that Milton considered that a
24 breach. But you are also going to see evidence that
25 during this period Milton turned his attention to

1 other endeavors. During that time you are going to
2 see evidence that Milton was not involved and during
3 that time the school began experiencing serious
4 issues. Indeed by 1996, the school was involved in
5 a serious lawsuit. It was being investigated by the
6 Nevada board of education, and there were other
7 issues with Ms. Lubin that required the board
8 terminate her employment there.

9 In fact -- see if I have got the right --
10 yes. In fact, as of 1996, the board held an
11 emergency meeting where it was concerned that the
12 very existence of the school was put into jeopardy.
13 The evidence will also show that just 12 days after
14 this meeting though there was another emergency
15 board meeting held and that on May 19, 1996, the new
16 school had Dr. Roberta Sabbath was there in 1989 and
17 met with Milton had reached out to Milton again and
18 to request his assistance to return to the school
19 once again. In fact, the board in this meeting
20 passed a resolution that it would return the name of
21 the school to the Milton I. Schwartz Hebrew Academy.
22 That the name would be returned to the stone outside
23 the school as well as the letterhead and other
24 appropriate places. Also, Dennis Sabbath who was
25 the counsel for the board also Roberta's husband

1 discussed and the board approved a letter from
2 Dr. Sabbath that would be sent to Milton Schwartz
3 that outlined some specifics of what the school was
4 going to do. We expect Dr. Sabbath to testify that
5 the intent behind this letter, and we will show you
6 this letter during trial -- the intent behind this
7 May 23rd letter was to reassure Milton I. Schwartz
8 of the name reversion back to his name. And we
9 expect Dr. Sabbath to also testify that her intent
10 in sending that letter was in the hopes to rebuild
11 the bridges that had been broken.

12 After this, the school followed through,
13 evidence will show that the school took steps to fix
14 the broken promise from 1992. The school again
15 filed papers with the state returning its name to
16 the Milton I. Schwartz Hebrew Academy. The school
17 again amended its internal bylaws back to the Milton
18 I. Schwartz Hebrew Academy, and there are those
19 words, "in perpetuity." The evidence will show that
20 in reliance upon the board's promises and actions,
21 Milton resumed as a board member. For the rest of
22 his life he devoted substantial time, money, effort,
23 and love to building the school and keep it
24 operating. The evidence will show as I said that
25 Milton loved the school, it was almost like a child

1 to him. In fact, there are a lot of documents that
2 you are going to see over the next two weeks that
3 just show Milton's involvement. You are going to
4 see a lot of minutes, corporate minutes. You are
5 going to see a lot of meetings occurring. You are
6 going to see Milton loving this school and being
7 intimately involved.

8 As an example, here is 2030 minutes. You
9 are going to see a lot of minutes. Minutes were
10 taken at every meeting. And I think we have got
11 just about all of those minutes. Now, let's switch
12 topics a little bit.

13 In 2004, Milton signed a will. This is one
14 of the key issues in the case. In Milton's will he
15 instructed Jonathan to carry out his instructions as
16 the personal representative. And he had this
17 paragraph 2.3 and you are going to be seeing 2.3 a
18 lot. In 2.3 says and I apologize for the bad text,
19 I will get over here so I can read it myself a
20 little bit says I here by give devise and bequeath
21 the sum of \$500,000 to the Milton I. Schwartz Hebrew
22 Academy. Period.

23 You will notice that after the words Milton
24 I. Schwartz Hebrew Academy, it ends. There is no
25 other word or alternate. We are going to show you

1 evidence that that was intentional by Milton. It's
2 what he intended it's what he wanted. He wanted a
3 donation to go only to a school that bore his name.
4 We will show you evidence that the absence of the
5 language is not only intentional but we will show
6 you evidence that in 1999, he had executed a
7 previous will. And that is in the school's very
8 files. And in that previous will it's called the
9 second codicil, the evidence will show within we
10 bill get that to the little later, that previous
11 codicil that 1999 will highlights the differences
12 between the language choices in this will and the
13 1999 will, and this gift, in the gift made in 1999.
14 The evidence will show that that old 1999 will shows
15 that Milton used language that allowed it to go to
16 somebody other than the Milton I. Schwartz Hebrew
17 academy if it wasn't in existence. But by the 2004
18 version, that language no longer is present. He had
19 changed his mind. We will show you both of those
20 side by side so you can see the language is clearly
21 missing.

22 Now, our contention is the evidence not
23 only shows the difference in the language, but it's
24 willing also going to be important because one of
25 issues in this case is Milton's intent. And the

1 evidence will show that Milton had a right to change
2 his will as many times as he wanted so when he
3 changed his will in 2004, the testimony of Jonathan
4 Schwartz, Milton's son who typed the will as Milton
5 was dictating it to him will corroborate or will
6 second the information about those changes. He will
7 testify that Milton's use of the language was very
8 intentional. It wasn't a form that was just used,
9 it was intentional for the choices that he made.

10 You are also going to hear testimony from
11 other witnesses, like Rabbi Wyne, that when Milton
12 was asked to donate money, he always wanted his name
13 attached to it and their experiences. So we will
14 show you evidence that shows this is more than just
15 a happenstance, it was an intentional act from our
16 point of view.

17 Now, one more thing. You may remember
18 during jury selection we had some heated
19 conversations. There was an issue about whether or
20 not the estate was going to try to take money away
21 from scholarships and whether or not that was
22 influencing any of the jurors. I just want to clear
23 up one thing right away and real quickly. The
24 evidence is going to show that the estate never
25 intended to keep money from charity. You are going

1 to see that the estate reported years ago to the IRS
2 that it was going to give money to charity. You are
3 going to hear Jonathan testify that that money is
4 going to charity and that it's the family's
5 intention that it go to scholarships for children.
6 The issue in this case is where shows scholarships
7 go, not if those scholarships go. I want to clear
8 that up right now. So that is not the issue. In
9 fact, you are also going to see evidence, even some
10 tad that Jonathan went to great measures, even with
11 the Adelson School, to try to resolve these issues
12 prior to getting into this lawsuit. You will see
13 that Jonathan asked the campus for a win-win
14 situation.

15 Now, in 2006, 2007, Mr. Adelson starts
16 getting involved with the school. The final couple
17 years of Milton's life the evidence is going to show
18 that the Adelsons had come up and were going to
19 build a high school on the Milton I. Schwartz Hebrew
20 Academy. Building a high school was one of the long
21 time goals of the Milton I. Schwartz Hebrew Academy.
22 You will find it in the early minutes of the
23 corporation. So this was a dream that these
24 individuals in the Milton I. Schwartz Hebrew Academy
25 had had for some time. The evidence will also show

1 that Milton, the school and Mr. Adelson arranged for
2 the high school to be named after the Adelsons but
3 that during Milton's lifetime, as far as Milton
4 knew, everything he had built would continue to bear
5 his name. Indeed we believe that the evidence will
6 show that while Milton was alive, he believed at
7 minimum and the school's intent as a fact to coexist
8 together, side by side, that Mr. Adelson would get
9 credit for the school he was building but Milton
10 would keep the credit for the school that he had
11 built. For example, the evidence is going to show
12 you that in 2006, a press release was issued that
13 announces the creation of the high school building.
14 You will see the Adelson logo there. You will
15 see -- I hit my -- there we go. You will see
16 evidence that while the high school is going to be
17 named after the Adelsons, it was still going to be
18 located adjacent to the Milton I. Schwartz Hebrew
19 Academy. There would be separate schools, one that
20 acknowledged the Adelson, one that acknowledged
21 Schwartz. In fact you are going to see evidence of
22 meetings by the school board to discuss just how
23 these two schools would operate. Here is one
24 example. It's a discussion at a time when Sheldon
25 Adelson is on the board, he is not present at that

1 one, but the board members are discussing the need
2 to clarify whether there will be one board or two
3 boards, one for Milton I. Schwartz Hebrew Academy,
4 one for the Adelson School. And the evidence will
5 show that they decided not to have two boards, that
6 they decided to keep the Milton I. Schwartz Hebrew
7 Academy.

8 You are going to see other evidence of this
9 coexist answer in a number of ways. You are going
10 to see documents that display both logos during
11 2006, 2007. You are going to see documents showing
12 that the schools were supposed to exist side by side
13 but more importantly you are going to hear testimony
14 that Milton believed that these schools were going
15 to coexist. Milton make no mistake, you are going
16 to see evidence that Milton wanted the Adelsons to
17 receive credit for their school. But you are also
18 going to see evidence that the credit given to the
19 Adelsons and that Milton was very firm about this,
20 that the credit given to the Adelsons was not to
21 take away from the recognition that he had done will
22 Milton I. Schwartz Hebrew Academy.

23 Now, in 2007, the Milton I. Schwartz Hebrew
24 Academy decided to honor Milton at its annual formal
25 event. It's called a gala and I have struggled

1 whether it's gala or gala, I Googled it, both are
2 fine. So even if you hear me say gala once and gala
3 another time, still okay. Bother's the English
4 major in me, but I tell myself it's potato/potato.

5 Anyway, at this gala, this was one of the
6 last interactions that Milton had with the Milton I.
7 Schwartz Hebrew Academy before he passed away. As
8 part of this gala the Adelsons as you can see here
9 honored Milton with an award. Here they are handing
10 that award to Mr. Schwartz. The gala also produced
11 a book of congratulatory statements and a statement
12 on behalf of the school that it gave to the
13 attendees and to Milton. In that book is a signed
14 letter by Sheldon Adelson and his wife Miriam. Here
15 is a copy of it and we will introduce that and the
16 evidence will show it and you will get to see it.

17 Now, this letter, signed by the Adelsons,
18 you will see there are the signatures right there,
19 they acknowledge that the two schools would coexist.
20 It's interesting to see so many of the community
21 supporting not only the Milton I. Schwartz Hebrew
22 Academy, but also the Adelson School. They were
23 going to -- last year they announced that it was
24 going to be built adjacent to the Milton I. Schwartz
25 Hebrew Academy. They have then go on to praise as

1 the visionary behind the Hebrew Academy. And that
2 they are honoring him. They acknowledge that Milton
3 created and continuously supported the Milton I.
4 Schwartz Hebrew Academy and they acknowledged that
5 because of Milton's efforts while he was on the
6 board, the school expanded from an elementary school
7 to preschool and the 8th grade.

8 Now, after working with the Milton I.
9 Schwartz Hebrew Academy for the better part of 20
10 years, almost to the very day when Roberta Sabbath
11 and Tamar Lubin knocked on his door in August on
12 another hot August day, Milton Schwartz passed away.
13 He died from pneumonia. Although Milton had
14 understood that the school be named after him in
15 perpetuity, the evidence will show that although he
16 believed there was a promise, and that he believed
17 that the Adelson School and the Milton I. Schwartz
18 Hebrew Academy would exist, just 126 days after
19 Milton died on December 13, 2007, the evidence will
20 show that the school began to break its promise to
21 Milton taking the first step in a series of steps to
22 remove Milton's name and his legacy. For example,
23 you are going to see evidence of a resolution passed
24 on December 13, 2007. The school resolved to change
25 its name, that the articles of incorporation be

1 amended and restated as the Dr. Miriam and Sheldon
2 G. Adelson Educational Institute. You are going to
3 see evidence that they even used the word in
4 "perpetuity" to describe that name change, taking
5 out of Milton's own book, own plan that he fought
6 for so hard in 1989.

7 You are also going to see evidence that
8 they provided him a small consolation, that the
9 corporation's elementary school would be named in
10 honor of Milton I. Schwartz in perpetuity. But the
11 evidence will show that even that small consolation
12 was ultimately taken away.

13 Now, you are going to see evidence that the
14 Adelson School formally put this resolution into
15 action on March 21, 2008, by filing documents with
16 the secretary of state. You are also going to see
17 evidence that the school never notified Jonathan,
18 who was then acting as the executor, or personal
19 representative of Milton's estate, that it changed
20 the name of the school corporation.

21 Jonathan will testify that it was just the
22 opposite. The Adelson School continued to send
23 papers and accept donations in the name of the
24 Milton I. Schwartz Hebrew Academy. For example, the
25 evidence will show a letter from Paul Schiffman who

1 was the head of the school in April 2008 that uses
2 letterhead that has the Milton I. Schwartz Hebrew
3 Academy on it. Jonathan will testify that for all
4 he knew, the schools were continuing to coexist and
5 operating the same way they had in 2007 before
6 Milton's death.

7 For example, we will show you that in
8 August of 2008 Jonathan wrote a letter to Paul
9 Schiffman, again that's the school head, asking the
10 Milton I. Schwartz Hebrew Academy board to take
11 action. During this time, Jonathan was working as
12 the representative and was trying to line up the
13 distributions that were going to take place. This
14 gets back a little sidetracked, but as Judge Sturman
15 talked about probate. Been going on forever. But
16 during this period of time of administration of the
17 estate, Jonathan was trying to get things lined up.
18 So as soon as he could make the donations, he could.
19 So he sent this letter. The evidence will show that
20 he asked the board he first referenced the gift,
21 then he asked the board to send a letter
22 acknowledging that the anticipated Milton I.
23 Schwartz scholarship fund be utilized to fund the
24 annual scholarships for the purpose of educating
25 Jewish children so he is asking them to pass a

1 resolution to sign a letter, merely acknowledging
2 that. Jonathan didn't know at the time that there
3 was no Milton I. Schwartz Hebrew Academy board. No
4 board that would have been capable of meeting his
5 request. Now, over the next few years Jonathan met
6 with Paul Schiffman and the school board president
7 Victor Chaltiel. The evidence will show that they
8 had some conversations, had some lunches several
9 times, in an effort to provide a means to distribute
10 the gift consistent with the instructions.

11 Jonathan will testify that each time he met
12 with them, assured that his father's legacy -- we
13 had problems with the PowerPoint. Jonathan will
14 testify that each time he met with them they assured
15 him that his legacy was preserved and protected,
16 even going to the point of showing him during one
17 meeting that Milton's name was still on the building
18 the evidence will also show in or around May
19 of 2010, Jonathan had a conversation with
20 Mr. Adelson. As a result of that meeting, Jonathan
21 became concerned that the school might not honor his
22 father's legacy. The evidence will show that on
23 May 10, 2010, Jonathan wrote a letter to address his
24 concerns regarding the Milton I. Schwartz Hebrew
25 Academy. You will see from that letter that

1 Jonathan wanted to resolve the concerns and that he
2 had to honor his father's intentions. Said I'm
3 writing this letter in an attempt to finalize the
4 bequest made by my father in his will in the amount
5 of \$500,000. I have made several attempts to
6 finalize the bequest of the Milton I. Schwartz
7 Hebrew Academy since my father passed away in 2007.
8 I take my duty to fulfill my dad's wishes extremely
9 seriously. Again, I'm writing this letter as a
10 final attempt to conclude the bequest. The evidence
11 will show that Jonathan was not asking that the
12 Adelson's not receive credit for their
13 contributions. To the opposite, the evidence will
14 show that he recognized that they made a tremendous
15 gift and deserve recognition. Here he is
16 acknowledging it in that letter. In essence,
17 Jonathan was saying credit should be given where
18 credit is due.

19 Additionally, you will hear testimony that
20 in the discussion between Jonathan and Mr. Adelson,
21 Mr. Adelson wanted demanded that Milton's estate
22 make a larger donation. The evidence will show that
23 Jonathan couldn't make that donation. He
24 represented the school that he was unable to. In
25 fact he does so right here, as I commented, my dad

1 left \$500,000 to the Milton I. Schwartz Hebrew
2 Academy the amount of the bequest says 500,000 in
3 the will. As my dad's executor I don't have the
4 authority to give anymore money to MIS from my dad's
5 estate. However the evidence is going to show that
6 this issue was never resolved.

7 Now in early 2013, evidence will show that
8 the estate was able to make -- in a position where
9 it could make distributions. The evidence will show
10 that Jonathan had lunch with one of the board
11 members not a board member with Sam Ventura at that
12 time who at least am some point used to be a board
13 member who told John that that Mr. Adelson was
14 taking steps to remove Milton's name from the
15 school. In response Jonathan went to the school and
16 met with Paul Schiffman. Jonathan will testify that
17 he asked about some of the changes that
18 Mr. Schiffman told him only applied to the high
19 school. They were unable to work out a resolution
20 with respect to this gift and Jonathan's concerns.

21 Now, on May 3, 2013, the evidence will show
22 that this is going to be one of the first exhibits
23 you see that the school brought a claim requesting
24 that the estate be forced to pay the \$500,000 gift
25 left to the Milton I. Schwartz Hebrew Academy and

1 have it paid to the Adelson School. The evidence
2 will show that Milton's intention that that gift was
3 to go to the school that continued to honor its
4 promise to be named the Milton I. Schwartz Hebrew
5 Academy and it's the estate's position as raised in
6 our pleadings that it didn't. In response, on
7 May 28, 2013, the school was forced to file a
8 responding lawsuit. As you have heard, the estate
9 claims that the Adelson School breached its
10 agreement. Milton's instructions were to leave the
11 gift in the school's name. Mr. Jones is going to
12 get up and tell you what the Adelson School's claims
13 are.

14 But it doesn't stop there. The evidence is
15 going to show that after these lawsuits were
16 started, the Adelson School further broke its
17 promises to Milton even those acknowledged to the
18 school in its 2008 resolution where it was going to
19 name the Milton I. Schwartz Hebrew Academy
20 elementary school in perpetuity. This is a picture
21 of the Milton I. Schwartz Hebrew Academy as it
22 existed in 2013. You will notice that there is a
23 name and a logo for Milton I. Schwartz on the
24 building. This is a picture of the Milton I.
25 Schwartz Hebrew Academy now known as the Adelson

1 School lower school in 2018. You are going to hear
2 testimony from Paul Schiffman, the former head
3 master of the school and somebody that was
4 designated as a person most knowledgeable earlier in
5 this litigation on behalf of the school testify that
6 he caused the name to be removed at the direction of
7 the Adelson School board. You will hear
8 Mr. Schiffman also testify that the school board
9 that included Mr. Adelson instructed Mr. Schiffman
10 to remove those letters off the building you will
11 also hear Mr. Schiffman testify that he directed
12 that a picture that was hanging in the entryway of
13 Milton be taken down off the wall inside the
14 building. So the evidence will show that as of now,
15 the physical notations, the physical legacy of
16 Milton I. Schwartz Hebrew Academy is nowhere to be
17 seen on the campus.

18 Now, although the Adelsons honored the
19 visionary behind the Hebrew Academy, Milton I.
20 Schwartz during his lifetime the evidence will show
21 as Milton's death the Adelson School caused Milton's
22 very legacy to be erased from the school, no name,
23 no memory, no credit. Members of the jury as I have
24 said a few times the estate isn't asking you to
25 erase the Adelson's name from their contributions.

1 The Adelsons have done a good thing with the high
2 school and helping out. No one is asking you to
3 take that away as I said at the beginning we are
4 asking for two things. We are asking that the
5 promise that we believe was made to Milton be
6 honored and the evidence presented to you will show
7 that Jonathan has requested a form of relief to
8 allow that to be honored to have the Hebrew Academy
9 placed as it were before he died. That's a claim of
10 specific performance. That's a claim that they
11 coexist side by side. But if Milton's name cannot
12 be restored the estate will request that you enter a
13 judgment that award Milton's estate money in an
14 amount to refund the monies that Milton contributed
15 in the form of a gift. As to Milton's last will,
16 the evidence will show first that the estate is not
17 asking you to take money, scholarship money away
18 from kids, but that Milton wanted to leave \$500,000
19 only to the Milton I. Schwartz Hebrew Academy, not
20 to a school that erased his name, not to a school
21 named the Adelson School. In other words, if the
22 Adelson School chose to abandon Milton I. Schwartz's
23 name, it is our position that it is responsible for
24 the harm caused to Milton's estate and it is not
25 entitled to receive a gift from Milton's estate.

1 Thank you for your time.

2 THE COURT: Thank you. So Mr. Jones,
3 rather than start and interrupt in the middle should
4 we take our break now.

5 MR. JONES: If you want mind Your Honor.

6 THE COURT: I think that makes more sense,
7 otherwise we are going to be here way longer than an
8 hour and a half. So let's take an early break so
9 that Mr. Jones can get set up for his presentation,
10 and he will go straight through his presentation.
11 So during the recess of 15 minutes, like five till
12 3.

13 During this recess, you are admonished not
14 to talk or converse among yourselves or with anyone
15 else on any subject connected with this trial; or
16 read, watch or listen to any report of or commentary
17 on the trial or any person connected with this trial
18 by any medium of information, including, without
19 limitation, to newspapers, television, the internet
20 and radio; or form or express any opinion on any
21 subject connected with the trial until the case is
22 finally submitted to you. So we will be in recess
23 until five minutes to 3. Thank you.

24 (Off the record.)

25 THE COURT: Counsel, if we are ready to go

1 back on the record.

2 MR. FREER: I had mistakenly called
3 Dr. Lubin Ms. Lubin. She is here today as well on
4 the stand, but I didn't mean any disrespect.

5 THE COURT: Thank you for correcting that.

6 Mr. Jones, if you are ready to begin with
7 your opening.

8 MR. JONES: Thank you, Your Honor. I think
9 I am.

10 Well, good afternoon, everybody. I
11 wanted -- it's been a couple days and I just want to
12 introduce myself again. I'm Randall Jones. I
13 represent the school, the Adelson School. And
14 again, I'm here for the school. And again, I'm here
15 for the Adelson School. Here for the school is
16 Allie Abrahamson, and my colleague Josh Carlson,
17 he's the guy that helps me out -- does his best to
18 help me out. And Shane Godfrey is our tech support.
19 He's trying not to make me look stupid with the
20 technology.

21 Obviously, you heard an opening statement.
22 This is a lawsuit, and that means there is a
23 dispute. And the thing I would ask you all and hope
24 that you would do this is to give me a chance to
25 talk about the school. And hear the school's side

1 of the story because we clearly, we clearly have a
2 very different version of reality here. I want to
3 start out at the very beginning by clearing up
4 something that was said. The evidence in this case
5 is clear. This is not a case about trying to
6 disrespect the memory of Milton I. Schwartz or
7 denigrate his contributions to the school and I tell
8 you I say that because if you go to the school's
9 website right now --

10 THE COURT: Which they will not do.

11 MR. JONES: You are not going to do that.
12 The judge keeps giving you that admonition, every
13 time you have to leave the courtroom. So I'm not
14 suggesting that and I would ask you to make sure
15 don't do that. The judge is going to reinforce that
16 every time but my point is this: That suggest that
17 the school is trying to denigrate or disrespect
18 Milton I. Schwartz's memory is just not true. On
19 that website, to this day is a reference under the
20 school history, a reference to Milton I. Schwartz
21 and his contribution starting in 1988 in helping
22 create the Milton I. Schwartz Hebrew Academy. At
23 the end of that history, it specifically thanks
24 Milton I. Schwartz along with a man name Victor
25 Chaltiel which I will tell you about and the

1 Adelsons. Specifically calls out those four people
2 Milton Schwartz, Victor Chaltiel and Dr. and
3 Mr. Adelson. So that's the evidence that we believe
4 you will see in this case. I want to point out
5 something else. Another point about taking credit
6 and who did what for the school. We believe the
7 evidence will show that Milton Schwartz and I'm not
8 holding this against him, I believe he did love that
9 school, I absolutely believe that, but he tried to
10 take credit for other people's contribution to that
11 school. And you will hear evidence from that. And
12 in fact, I was surprised to see, but here in this
13 courtroom is Dr. Lubin Saposhnik. She is here with
14 her son Dan. So you will hear testimony of how
15 Milton I. Schwartz tried to take credit for many
16 things that she was responsible for. She was a
17 critical component of this school. And you will see
18 in the evidence I'm going to show you some of it and
19 you will see at trial of how the school honored her
20 and put her name on the elementary school. And then
21 they took it off when they decided they didn't want
22 to have her be a part of the school anymore. And
23 she believed that she had an agreement, I believe
24 she will tell you she believes she had an agreement
25 in perpetuity forever and ever and eternity. The

1 reason I'm starting with this slide is Mr. Freer
2 talked about the high school and the nice thing that
3 the Adelsons did they created the high school.
4 Well, that's the complex that exists now at the
5 Adelson campus and that complex is made up of many,
6 many buildings. You will hear testimony of how the
7 doctor and Mr. Adelson have contributed to date over
8 \$100 million to build a facility like that. This is
9 a state of the art pre-K through high school
10 preparatory academy that the Adelsons I can tell you
11 are extremely proud of. So let me tell you this
12 part here the lower school that's what they call it
13 now the lower school that's the school that building
14 and that building alone was the only building that
15 was built back in the day with Dr. Lubin's help and
16 Milton Schwartz help and many others, by the way.
17 All the rest of it, the middle school is over here.
18 This was a middle school because that's all they
19 could afford. They put the 6, 7 and 8 grades in
20 this building but when they built this incredible
21 complex, the middle school went over here. So there
22 is no Milton I. Schwartz middle school in this
23 building anymore, and there never was once the
24 Adelsons got involved. Now, I want to mention this
25 other point here. This is the monument that's out

1 in front of the school. I wish I had a picture, I
2 don't, I thought -- I do have a picture, I just
3 didn't put it in my slides I took it out at some
4 point along the line don't remember doing it any way
5 it's a screw up on my part because I wanted to show
6 you the front of the school and the reason I wanted
7 to show you that is because it has the main entrance
8 if I go back here, at the admin building you will
9 see there is kind of a round building there if you
10 can see that it has great bill letters on it, the
11 Dr. Miriam and Sheldon G. Adelson educational campus
12 or institute. I can't remember which one it says.
13 It's the main entrance you got to go through there
14 if you go to the main entrance to the school. The
15 reason I bring that up is Mr. Freer showed you a
16 letter from August 28 of 2008 and he told you about
17 this is the letter when he sent saying, hey, I want
18 to honor my dad's bequest. And he didn't know that
19 they were dishonoring his dad's bequest at that time
20 he didn't know that there was another board. Well,
21 he walked into the building, not -- he knew the
22 middle school wasn't there anymore, he walked into a
23 building that had the name of the Adelsons on the
24 front of it. And by the way, and we will get to
25 this later. That lower school still said the Milton

1 I. Schwartz Hebrew Academy. Nobody took it down.

2 We will talk about that a little bit later too.

3 So what is this case about? On -- let me
4 get here first. On May 28 of 2013, the school filed
5 a petition -- I'm sorry, on May 3, 2013, the school
6 filed its petition. So let me explain what that
7 means. That petition is like a complaint in a
8 lawsuit. But it's probate court what that means is
9 the estate said you know what we have been waiting
10 over five years for this money and we will get to in
11 a minute what we show why the estate didn't pay.
12 And finally they said we are done and we petition --
13 we are going to petition the court and asked court
14 to say please honor the will. And within a few
15 days, the estate on May 28th, the estate filed its
16 claim and said we are not paying and you breached a
17 naming rights agreement. And the evidence is going
18 to show it was only after that date, over five and a
19 half years later that the school board, not the
20 Adelsons, the Adelsons are not the only people on
21 that board, and certainly they are important people
22 on the board, but the board members said wait a
23 minute, they wouldn't pay, we disagree with your
24 position on the naming rights in perpetuity because
25 there is a lot more about this letter that

1 Mr. Jonathan Schwartz sent in May of 2010 making --
2 the school believes completely inappropriate and
3 unreasonable demands in return for the payment. And
4 so once Mr. Schwartz sued, that's when the board
5 finally said okay, enough is enough, and they took
6 down the name off that building. So we believe the
7 evidence will show not only did Milton I. Schwartz
8 fail to live up to his promise in 1989 to give the
9 school \$1 million to the academy, he also never had
10 a contract for naming rights in perpetuity. In
11 other words, he never had a contract for naming
12 rights forever and ever. But in addition to that,
13 the agreement that he claims he made, he failed to
14 live up to his promises to the school. And we will
15 get into that in a minute too. Secondly, we believe
16 the evidence will show his son used this false
17 breach the contract claim as an excuse to refuse to
18 honor the promises his father made in his will to
19 give \$500,000 in student scholarships. Now, they
20 want to say -- well, I won't -- that's argument and
21 I'm not supposed to argue in this part so I won't
22 say that until later.

23 But here is what I'm going to do. I'm
24 going to start with our case because we actually
25 filed first in May 3 of 2013. So I'm going to start

1 with the case that we have. And by the way, I
2 should explain and here -- let me see -- here are
3 the various petitions for declaratory relief.
4 That's when these were filed. The one on the left
5 is the school's, the one on the right is the
6 estate's. And so we have the burden of proof in our
7 claim under the will. We have to prove that there
8 is a legitimate basis to pay under the terms of the
9 will. So school's claim under the will. So there
10 is the death certificate. There is no dispute.
11 Obviously Mr. Schwartz unfortunately died August 9,
12 2007. And here is the provision of the will that's
13 at issue. So it goes on and talks about what he is
14 going to do. I here by give, devise and bequest the
15 sum of \$500,000 to the Milton I. Schwartz Hebrew
16 Academy, the Hebrew Academy. And there is a part in
17 the middle here says basically there is a mortgage
18 on the property. The money will be used to pay down
19 the mortgage. But if there is no mortgage, by the
20 way, there was no mortgage, you know why? Because
21 the Adelsons paid it off. So by the time it came
22 around where Jonathan Schwartz says I will pay but
23 only if you sign this contract that gives my father
24 perpetual naming rights, I will pay, by that time
25 the Adelsons had already paid off the debt of the

1 school. So if there is no debt, then in the event
2 that no mortgage exists at the time, the entire
3 \$500,00 amount shall go to the Hebrew Academy for
4 the purpose of funding scholarships to educate
5 Jewish children only that's why we went we talked
6 about this I talked about funding scholarships to
7 educate Jewish kids. Here it is. This is the big
8 bug boo if you will Milton I Schwartz. Milton I.
9 Schwartz Hebrew Academy. That's what they say. The
10 evidence will show that it didn't exist at the time
11 of the time they were supposed to make the bequest.
12 Let me go back here. This is the deposition of
13 Jonathan Schwartz. I don't know if any of you are
14 familiar with a deposition, but what that it is when
15 there is any kind of a lawsuit, both sides to get to
16 ask questions of witnesses under oath and we have a
17 court reporter like carry over there who comes to
18 the office and they have the right to put a witness
19 under oath just like they were here in court. They
20 swear the same oath to tell the truth the whole
21 truth and they are subject to perjury if they don't.
22 So we got to ask questions of Mr. Schwartz, Jonathan
23 Schwartz when he filed his lawsuit just like they
24 got to ask questions of Mr. Adelson and some of
25 these board members so this testimony that they give

1 out of court is just like it was in court, under
2 oath. So what did Mr. Schwartz say in March of 2014
3 under oath? It's fair -- this is the question it's
4 fair to say that with respect to the wills IRS
5 documents you are not disputing that the documents
6 are ambiguous or otherwise don't speak for
7 themselves. And here is Jonathan's answer. I don't
8 believe they are ambiguous. Does that answer your
9 question?

10 Now may have remembered some of the
11 questions in voir dire some of you, do you know what
12 ambiguous is and I think it was Mr. Glen who was
13 actually sitting up there in the first seat for a
14 while said yeah we kept our contract kind of vague
15 because we wanted to be some wiggle room. But
16 Mr. Schwartz is testifying under oath that he
17 doesn't believe that agreement is ambiguous. So it
18 says you have to pay it to the Milton I. Schwartz
19 Hebrew Academy. That's their position. So here is
20 the petition for probate will, you will see that was
21 filed by the estate. And basically in 19 -- or
22 2007, that petition for probate of will and codicil
23 for issuance of letters testamentary. That's saying
24 we got this will, we've got to present it, and we've
25 got to do what Mr. Jonathan Schwartz was sworn to do

1 as the executor and do what the will says. So in
2 November 2007, he publishes this and says here is
3 the will and that tells the school that there has
4 been a bequest made on the school's behalf. Let me
5 show you this picture.

6 So this picture was taken on January 12,
7 2010. That's, what, a little more than three years
8 after he probated the will, filed the will with the
9 court said I got to pay P. What do we see there?
10 What does that say. That seems to say the Milton I.
11 Schwartz Hebrew Academy on the building. And then
12 this is a document that came from Mr. Schwartz
13 affidavit that he filed with the court in connection
14 with this case. It says that this is a document
15 that is a front of the next picture I'm going to
16 show you says sheaves photos behind this next slide
17 I'm going to show you from March 13 of 2013 folder
18 past user Jonathan -- these are pictures
19 Mr. Schwartz took on March 13, 2013, more than five
20 years after they probated the will. What does it
21 say, Milton I. Schwartz Hebrew Academy. Goes to my
22 point, ladies and gentlemen, the evidence is going
23 to show in this case that the school had no
24 obligation under the law to keep Milton I. Schwartz
25 name on that building. But because of his

1 contribution, they were honoring his memory and kept
2 it up there. And now you just heard Mr. Freer say
3 that, look, they can live in compatibly, I guess,
4 that this should stay the way that was and we
5 wouldn't have had a fight and that you would have
6 to, I guess, you can still have the high school
7 named the Adelson School. Well, the evidence is
8 going to show that had Milton I. Schwartz not filed
9 his lawsuit, make these accusations, that in all
10 likelihood, that would still be there. But the
11 point is is that will said pay to the Milton I.
12 Schwartz Hebrew Academy and over five years after
13 the will was probated and his father died, that name
14 was still on the building and didn't come down until
15 he decided to sue the school so by the way that's
16 our claim simply that. There is a will it says the
17 money should be paid to the Milton I. Schwartz
18 Hebrew Academy, that certainly -- that building was
19 still named the Milton I. Schwartz Hebrew Academy at
20 the time. There was nothing to indicate that the
21 school was going to take the name down until
22 Jonathan Schwartz sued. The evidence will show that
23 Jonathan Schwartz has been in violation of the terms
24 of the will he is required to enforce.

25 So now what are the estate's claims? Well,

1 first of all, as I told you, we have the burden to
2 prove that we are entitled to the money -- the
3 school is entitled to the money under the will.
4 That's our burden. Now the estate has made its own
5 claims. They have the burden, they have the
6 obligation to prove their claims. That's the way it
7 works in every case.

8 So here is the deposition of Jonathan
9 Schwartz. Now, this is the same time. I wanted to
10 show you this, same time as the other deposition
11 actually. Again under oath statements he said under
12 oath, sworn penalty of perjury. What did he say?
13 He said did your dad ask you to take dictation on
14 his while, answer, my father often drafted
15 documents. My father was a very, very experienced
16 business person and frankly, considered himself
17 brighter than most of the attorneys that he
18 employed. My father was a member of MENSA. That's
19 a thing where you have to be a certified genius to
20 be a part of it. I guess you take a test if you get
21 a high enough IQ you get in. Never took the test.
22 I didn't want to figure I wanted anybody to prove
23 that I was not a genius. I guess I didn't want to
24 kid myself that I might be.

25 Anyway, he was a member of enter tell. He

1 was literally a genius and he often did things like
2 this, so that's why. Meaning often dictated his
3 will, things like that. That's an important legal
4 document, ladies and gentlemen. So now, question,
5 at the time you took dictation you had already
6 received why you law degree, correct. Answer,
7 correct. So Jonathan Schwartz his father is a
8 genius and smarter than most of the lawyers he
9 employed and his son who was involved in this
10 process is a lawyer. Did you have any experience in
11 the estate planning? I had worked alongside my
12 father my entire life with Dick Oshins and Marc
13 Gordon. I sat on the and was a part of witnessing
14 my father create his estate plan for my entire life
15 in addition to all of the classes I took in law
16 school.

17 So why is that important ladies and
18 gentlemen because the evidence is clear. And you
19 will hear more of it. Milton Schwartz was a very
20 sophisticated businessman. He was a genius by his
21 son's own statement. He had been involved in
22 probably hundreds of contract negotiations in his
23 life. He ran Valley Hospital. He owned cab
24 companies. He understood what a contract was. He
25 understood how you made a contract, and he

1 understood the importance of having a contract. And
2 I want to just talk a little about -- we are talking
3 about naming rights of a nonprofit. I'm sure you
4 have all heard of Smith Center, you have all heard
5 of Thomas & Mack. This case, the estate's case is
6 about perpetual naming rights. Their position is
7 that Milton Schwartz had the right to have his name
8 on everything, not just that lower school, by the
9 way, on everything you will see evidence of that on
10 May 28, 2010, letter that he wrote to the school
11 demanding that. He wanted his dad's name on every
12 single thing. And he wanted it in perpetuity. That
13 means he wanted it forever and ever and ever. And
14 ladies and gentlemen the evidence is going to be
15 clear that nonprofits don't just give away those
16 kind of rights lightly, willy-nilly because they
17 can't get them back. If you do that in perpetuity,
18 you are done. So if somebody like the Adelsons come
19 along years later and offer ten or a hundred times
20 more money to say, well, we want to give money to
21 the school too but we would like our name to be on
22 the school, then too bad. So that's why we believe
23 the evidence will show in this case that these kind
24 of agreements need to be in clear and in writing and
25 signed by the parties and that Milton Schwartz

1 understood the importance of contract rights and
2 what that meant.

3 Moving along here. So what were the terms?
4 So this is the estate claim that they had a written
5 contract. Was there a written contract? First
6 question need to look at. What evidence is there
7 for that? What was the consideration? Ladies and
8 gentlemen I think some you may not have heard of
9 that term blue consideration in concept is I want to
10 buy a car for \$10,000 and I offer you \$10,000 and
11 you give me title to the car. The consideration is
12 the \$10,000. It's the money paid in exchange for
13 the thing, whatever that is. So what was the
14 consideration? With what does the evidence show
15 that Milton I. Schwartz gave in return for forever
16 and ever naming rights? One of the other questions
17 evidence you are going to look at in this case what
18 did the naming rights cover? Did they cover a
19 particular building? Did they cover all of the
20 grounds? Did they cover -- what do they cover?
21 Fourth thing, what did the board say about in
22 perpetuity this forever thing what did the board say
23 about that? So let's look at first question. Was
24 there a written contract? On July 19, 2018, the
25 estate told this court the terms of the written

1 contract were contained within four documents what
2 were those four documents three checks drawn on
3 Milton I. Schwartz account dated August 14, 1989.
4 Those are by the way, we believe the evidence here
5 shows that what the estate tried to do because they
6 don't have a written contract. They tried to cobble
7 together a bunch of different things.

8 MR. FREER: I hate to object. I think we
9 are getting into legal argument here.

10 MR. JONES: Your Honor, I will try to --

11 We believe the evidence will show that they
12 tried to take multiple documents to use those as the
13 basis of a written contract and that there is no
14 evidence of a written contract.

15 The second thing that they told the court
16 in just this in July this year, the school's board
17 meeting minutes, which Mr. Freer showed you, thank
18 Mr. Schwartz for his donation and evidence that the
19 school was resolved to send a letter to had
20 Mr. Schwartz stating that the academy will be named
21 after him, C, the third document the bylaws were
22 amended in 199020 reflect that the school resolved
23 to change the legal name of the school to Milton I.
24 Schwartz Hebrew Academy in perpetuity. D, the
25 school's articles of incorporation were amended in

1 1990 to change the legal name of the school to
2 Milton I. Schwartz. Let's look at these items that
3 they refer to.

4 First one, three checks. We do not dispute
5 that he paid \$500,000 in three checks. That is not
6 a dispute in this case. Let's look at the second
7 thing, the August 14, 1989, board meeting minutes.
8 These are the same minutes I believe Mr. Freer
9 showed you, August 14, 1989, and so what do we have
10 Milton Schwartz is there, Milton Schwartz is running
11 the meeting and we will see down there they moved
12 the board accepts with thanks the donations of
13 Milton I. Schwartz and a letter should be written to
14 Milton I. Schwartz stating that the academy will be
15 named after him. So those are board meetings --
16 board minute meetings, the school bylaws were
17 amended in 1990 to reflect the school resolved to
18 change the name in perpetuity. So here are the
19 bylaws. These are November 29, 1990, bylaws and
20 they do say the board accepted a draft of the
21 revised bylaws by eliminating paragraph 6 and naming
22 the corporation after Milton I. Schwartz in
23 perpetuity. Remember that word "corporation" there.
24 We will talk about that in a bit. So that's a
25 document. But they are bylaws. They are not a

1 signed contract by Milton Schwartz with the school,
2 it's bylaws, just like the meeting minutes.

3 It school articles of incorporation were
4 amended in 1990 to change the legal name of the
5 school to the Milton I. Schwartz Hebrew Academy.
6 Let's look at that. This is the certificate of
7 amendment hopefully you will remember this base we
8 will be looking at the those compared to some of
9 those happened later in the school. Says filed with
10 the secretary of state they formally changed the
11 name to the Milton I. Schwartz Hebrew Academy. The
12 documents the estate rely on to show a written
13 contract are materially different. I point that out
14 because you will hear evidence about you have to
15 have an agreement as to what the deal is to have a
16 contract. And in these documents, they are
17 internally inconsistent with each other. The
18 August 14 board meeting minutes and the articles of
19 incorporation in 1990 say nothing about in
20 perpetuity, including the one that was filed with
21 the secretary of state. Doesn't use those words, of
22 forever words. Only the 1990 bylaws change mentions
23 in perpetuity. So those three documents, two of the
24 three don't talk about anything in perpetuity. So
25 let's talk about the consideration. What was the

1 money that was paid? Well, let's start with the
2 first thing the estate said was it was \$500,000.
3 And by the way, Mr. Freer mentioned this document or
4 this dispute. In 1992 or thereabouts or 1994, they
5 got into a fight. The board got into a fight and
6 they split up. Milton Schwartz -- we will talk
7 about this in a minute. In the meantime as parts of
8 that dispute Mr. Schwartz filed an affidavit in
9 support of his position about the dispute with the
10 school. What did he say? This is his affidavit.
11 An affidavit is under oath just like when you are
12 sworn in court. He said under oath this of a --
13 affidavit was made of my own personal knowledge
14 except affirms under penalty of perjury that the
15 assertions of this affidavit are true. Affidavit
16 under oath. What did he tell the court then. That
17 affiant donated \$500,000 to the Hebrew Academy with
18 the understanding -- doesn't say based on a
19 contract, says with the understanding -- that the
20 school will be renamed the Milton I. Schwartz Hebrew
21 Academy in perpetuity. Talks about the document
22 that he says supports that is the bylaws that that
23 we looked at a minute ago. So that's the statement
24 under oath that to the court in 1993 saying I paid
25 \$500,000 in exchange for perpetual naming rights so

1 this is the petition for declaratory relief. This
2 is the document we talked about a minute ago that
3 the estate filed in May of 2013 saying hey wait a
4 minute, the school breached the contract and we
5 don't have to pay the money because you breached the
6 naming rights contract. So this was a statement by
7 them that gave rise to this lawsuit object their
8 part. What did Mr. Jonathan Schwartz say in that
9 document? Jonathan Schwartz, by and through his
10 attorneys, make this petition. So what did
11 Mr. Schwartz say about this claim? In August 1989,
12 Milton Schwartz donated \$500,000 to the academy in
13 return for which the academy would guarantee that
14 its name would change in perpetuity to the Milton I.
15 Schwartz Hebrew academy what did he do? He verified
16 it. He verified it he made this statement
17 consistent with his dad's affidavit \$500,000 for the
18 perpetual naming rights the first duly sworn under
19 penalty of perjury does depot and states.
20 Everything in there is true and correct. He is
21 testifying under oath or stating under oath that's
22 true and correct.

23 So again what was the consideration? Well
24 wait a minute. Then the estate changed its story
25 and said Milton Schwartz agreed to raise a million

1 by paying 500,000 and getting others to give 500,000
2 so because it's not in evidence yet I can't show you
3 this but there is a video. And by the way this
4 video was in honor of Milton I. Schwartz and it was
5 a video interview by Dr. Adelson of Jonathan for
6 this gala that Mr. Freer talked about. They were
7 again honoring him for his contribution. And he
8 said of own volition and had video in June -- he
9 said I gave 500,000 and raised 500,000 from others
10 in exchange for naming the school Milton I. Schwartz
11 Hebrew Academy. So now it's gave 500 and raise 500.
12 Now the interesting thing about that and you I think
13 will hear testimony and I'm going to refer to her as
14 Dr. Lubin because Saposhnik, she was known as
15 Dr. Lubin many times. So I believe Dr. Lubin will
16 testify that, first of all, that's not the deal. We
17 will get to that in a minute but that Mr. Schwartz
18 when he said this, he was trying to take credit for
19 money that she raised for the school to build that
20 building. What did Mr. Jonathan Schwartz say, the
21 son who is in court with us, remember his petition
22 that he filed in May of 2013 said under oath my dad
23 gave \$500,000 only for perpetual naming rights. Now
24 we have got his deposition here. This was taken by
25 the way in July 28 of 2016, a separate time. And

1 this is again under oath, the same oath that the
2 witnesses will have when they talk to you in front
3 of the judge here in open court. Same oath to tell
4 the truth. What did he say this time under oath as
5 compared to what he said under oath last time?

6 (Tape played.)

7 MR. JONES: So what happened there?
8 Evidence will show ladies and gentlemen there is a
9 third version of what the estate claims the deal
10 was, the -- not what the estate claims, there is a
11 third version from other witnesses. The witnesses
12 who were there in 1989 and 1990 including one that's
13 here in the courtroom contradict both versions of
14 Milton I. Schwartz's testimony. You will hear
15 Dr. Sabbath is supposed to testify tomorrow that
16 Milton I. Schwartz under oath she testified before
17 that Milton I. Schwartz donated a million dollars to
18 the school. Dr. Lubin: Milton Schwartz pledged a
19 million, but only gave 500,000. Neville Pokroy:
20 Understood that Mr. Schwartz gave a million and
21 solicited an additional amount of approximately
22 500,000 from other donors for a total of a million
23 five. Elliot Klain: Believed Mr. Schwartz's
24 conation was millions and millions of dollars at the
25 time of the donation. So version one 500,000,

1 version two 500,000, raise 500,000. Both of those
2 versions were stated under oath by both Mr. Jonathan
3 Schwartz and the second statement of his dad was in
4 a video that hopefully you will be able to see.
5 Then the third version Milton I. Schwartz was to pay
6 a million or more for naming rights.

7 What did the naming rights cover? Point
8 number three about this contract that the estate
9 claims existed. What is the evidence that you will
10 see about what the naming rights were? Was it the
11 corporation? Was it the campus? Was it the school
12 building? Well, here is the corporate resolution
13 from, again, August 14, 1989, the following
14 resolution was adopted by the board of trustees of
15 said corporation, this corporation shall be known at
16 the Milton I. Schwartz Hebrew Academy. Corporation.
17 What dot bylaws say? These are the bylaws that
18 Mr. Freer also showed you from November 29, 1990.
19 Mr. Schwartz, Dr. Sabbath I think both of those
20 people will be testifying I think both these people
21 will as well. The board corrected the draft of the
22 revised by laws by eliminated Paragraph 6 and naming
23 the corporation after Milton I. Schwartz in
24 perpetuity. Again this is where it does say
25 perpetuity. The corporation, though. Corporation.

1 So what do the naming rights cover? Was it the
2 campus? Let's look at other documents. This is the
3 minutes from that very first meeting that they even
4 talk about this H. Milton is there and it says the
5 letter should be written to Milton I. Schwartz
6 stating the academy will be named after him. By the
7 way, at least as far as I know there has never been
8 a signed letter in connection with this -- these
9 minutes that I'm aware of. I will be sure shocked
10 if one shows up at trial what were the terms? Did
11 the naming rights cover the school building? Again,
12 these are the meeting minutes from November 29,
13 1990, Mr. Schwartz is there at this meeting.
14 Remember does this cover the building that's the
15 question I'm showing what's going to happen here.
16 At this meeting a motion was made by Roberta Sabbath
17 and seconded by George Rudiak that Dr. Lubin the
18 lady sitting in the back of the courtroom should be
19 honored by naming the Tamar Lubin Saposhnik
20 elementary school the motion was passed unanimously.
21 Was it the school. Unanimously means Milton I.
22 Schwartz voted for that resolution. And what
23 happened? That's the school ladies and gentlemen.
24 That's the school in 2010 and that's the same school
25 on the left there. That's the Milton I. Schwartz

1 Hebrew Academy 1996 to 2013, a mar Lubin Saposhnik
2 elementary school 1990, 1996. By the way, that
3 picture on the right came from Dr. Lubin's book she
4 wrote a book called chaos to order.

5 So what were the terms. What did the board
6 say about perpetuity. The last of my 4 points what
7 the evidence is going to show you. Here are those
8 same meeting minutes going back to 1989 that gave
9 rise to this whole argument about rights to a name.
10 Milton Schwartz, Schwartz. So the point here is
11 ladies and gentlemen the evidence is clear, the
12 board meeting minutes are the original corporate
13 minutes upon which the estate basis its entire claim
14 and where the board first refers to naming anything
15 in connection with Milton I. Schwartz donation. It
16 says nothing about naming the academy or anything
17 else in perpetuity. There it is. So what about the
18 corporate resolution that came as a result of those
19 meeting minutes? On 14th day of August 89 at a
20 special meeting that's a document we were just
21 looking at says the following resolution was adopted
22 by the board, the corporation shall be known as the
23 Milton I. Schwartz Hebrew Academy.

24 Says nothing about in perpetuity. Both of
25 those documents say nothing about naming anything in

1 perpetuity. So the evidence will show that there
2 was no written contract, there was no agreement on
3 the amount of money to be paid, there was no
4 agreement about what the naming rights would cover,
5 and there was no agreement about what -- whether it
6 was in perpetuity or not. That's what the evidence
7 will show in this case.

8 Now, the board gets into a dispute because
9 you have heard a bill bit about that in 1992 there
10 was a dispute over things. And that's litigation,
11 unfortunately. So we have these meeting minutes
12 from December 16 of 1992. And Dr. Lubin again who
13 is sitting back there and Dr. Sabbath were at this
14 meeting and they say about the removing all board
15 member pictures from the wall and the Milton I.
16 Schwartz name from the school. And said Milton I.
17 Schwartz is [inaudible] just having printed without
18 Milton I. Schwartz on it. So that's the meeting
19 they had. What did they do, they passed a
20 resolution and filed this document with the
21 secretary of state. And they changed the name of
22 the corporation back to the Hebrew Academy in 1994,
23 took his name off the corporation. So the evidence
24 shows that the board believed it had the power to do
25 that in 1994. The evidence shows Milton Schwartz

1 knew the board could pass a new resolution taking
2 his name off the corporation or anything to do with
3 the school. Now, clearly didn't agree with that but
4 he certainly knew that was something that could
5 happen. Milton I. Schwartz then reconciles with the
6 Hebrew Academy. So now there is these minutes from
7 1996. They talk about this letter from Milton I.
8 Schwartz and the board passes a resolution returning
9 the name of the school to the Milton I. Schwartz
10 Hebrew Academy. By the way, you will note nothing
11 in the resolution about in permanent perpetuity.
12 This is the letter that Mr. Freer also showed you
13 from Roberta Sabbath who I think was working
14 basically as the principal at this time because they
15 fired Dr. Lubin. As part of this resolving this
16 dispute, she had to go if Milton was going to come
17 back. And what did they do? They took her name off
18 the school. That's why you saw those pictures, her
19 name was on the school from 1990 to 1996. And then
20 part of the deal with Mr. Schwartz, he we want your
21 name off the school. Took it off. One of the
22 things I wanted to talk about that Mr. Freer didn't
23 that the evidence will show in this letter they
24 say -- Ms. Sabbath -- Dr. Sabbath the restoration of
25 the name the Milton I. Schwartz Hebrew Academy has

1 been taken as a matter of admonish LA kite * in
2 acknowledgment of your continued commitment to
3 Jewish education reflected by the establishment of
4 the Jewish community day school and last but not
5 least your recent action as a man of shalom. So
6 ladies and gentlemen there is no money paid.
7 Admonish LA kite means you are an honorable guy, we
8 want to honor you. It does not talk about
9 consideration in a contract. And by the way, the
10 evidence I believe is clear that the Milton I.
11 Schwartz nor the estate ever claimed that the
12 Roberta Sabbath's letter constitutes a binding
13 contract for the naming rights of the school.

14 That's just again shows you back again what
15 we were talking about that her name came off the
16 school.

17 Then that we have already seen. So my
18 slide show has duplication. It gets us back on the
19 name but there is nothing about in perpetuity in
20 those documents.

21 There is new articles adopted in March 21
22 of 1990. I want to show you those. This puts
23 Mr. Schwartz's name back on the corporate documents
24 with the secretary of state. The Hebrew academy is
25 the name of the corporation when they filed this it

1 says we are changing this to go back to the Milton
2 I. Schwartz Hebrew Academy in 1996. And these are
3 1990 by laws that were passed while Milton I.
4 Schwartz was on the board. Now he is back on the
5 board. It says -- and I want to show you these
6 because this is what the evidence will show what the
7 bylaws mean and what they are. Because remember --
8 the evidence will show that the only document that
9 ever says Milton I. Schwartz in perpetuity are
10 bylaws not corporate resolutions, not meeting
11 minutes, bylaws. So the power of the corporation
12 shall have such powers as are now or may hereafter
13 be granted. So what does it say? This one section
14 we believe the evidence will show Milton I. Schwartz
15 was involved with the board, understood what these
16 bylaws changes meant and specifically agreed to
17 these new bylaws. Bylaws, by the way, that they
18 point to as supporting their proposition because
19 they do say perpetuity. Says the board of trustees
20 may accept on behalf of the corporation any
21 contribution, give, bequest or devise for the
22 general purposes of any specific purpose of the
23 corporation. In other words, what we believe that
24 the evidence will show what that means is
25 essentially the board can accept a gift for naming

1 rights, for example. They can accept that kinds of
2 gift. Specific gift on behalf of each specific
3 purpose like naming rights. The board of trustees
4 may vary the use of such a specific contribution,
5 gift, bequest or devise can be put to in the event
6 the use for which the contribution, gift or devise
7 is to be used becomes impossible, unnecessary,
8 impractical or contrary to best interests of the
9 corporation.

10 Now what does all that mean? It confused
11 me. So I believe the evidence will show that this
12 means that if they get a gift, it's not in the form
13 of a contract, it can't be changed, and that gift,
14 like, for instance, if there is no contract for
15 naming rights, they give them an name but there is
16 no contracting naming rights the school finds it's
17 in the best interest of the corporation, the
18 corporation can vary the use of that gift. It's
19 right there in the bylaws that Mr. Schwartz was
20 involved with. And the reason I put this up there
21 is these bylaws also say clearly and I believe the
22 1990 bylaws say this the bylaws may be altered
23 amended or repealed and the new bylaws may be
24 adopted by the vote of two thirds of the board. The
25 evidence shows that the bylaws that were in affect

1 in 1990 in 1999 both times Milton I. Schwartz was on
2 the board specifically spell out the bylaws can be
3 changed and in fact were changed to take out the
4 reference to in perpetuity. The Adelsons get
5 involved with the school. This is 1990 -- 1999. I
6 wanted to talk about the Adelsons. Mr. Freer talked
7 about Milton I. Schwartz and I certainly appreciate
8 all those things. He certainly did a lot of good
9 things for the community. I wanted to talk about
10 the Adelsons contribution to the community.
11 Mr. Adelson and Dr. Adelson have been incredibly
12 successful. Mr. Adelson is one of the most
13 successful businessmen in the country. It's a big
14 part of what he and his wife do to give back. And
15 they wanted to give back. They got involved in 1999
16 and actually were solicitor approached by the board
17 to get involved and they said yeah, we want to be a
18 part of this. We want to contribute. And
19 Mr. Adelson and Dr. Adelson I think both got on the
20 board for a period of time in the late '90s and they
21 started talking about giving money. And they had a
22 couple young boys at the time that were pre-K and
23 they started thinking where do we want our kids to
24 go? We want to be part of the school. So they got
25 involved and started contributing. Just some of the

1 evidence you will hear is even before -- by 2003
2 they had already given over \$600,000 to the school.
3 In 2005, they pledged \$25 million, which essentially
4 gave rise to this whole naming rights issue. Then
5 they gave another 3 million, another million, and
6 another \$50 million. And since then they continue
7 even though their boys are grown and off to college,
8 both their boys are now in college and have been for
9 several years. The Adelson family continues to
10 support that school to the tune of several million
11 dollars a year in deficits. It's so expensive to
12 run that school they continue to support that school
13 even though their kids are no longer there.

14 Milton I. Schwartz was present during board
15 discussions regarding naming opportunities for the
16 school including the elementary school, as late as
17 February 10, 2014 [sic]. Why are we talking about
18 that, ladies and gentlemen? The evidence is going
19 to show Milton Schwartz understood that there were
20 naming rights issues involved with that school while
21 he claims -- he claimed he had perpetual naming
22 rights. So this is a February board meeting,
23 present, Milton I. Schwartz, February 2004. This is
24 a chairman's report, Mr. Chaltiel was chairman at
25 the time, and they are talking about funding issues.

1 The Adelsons haven't pledged their 25 million yet.
2 They are talking about funding it. They have
3 already given about six hundred thousand by this
4 time. The chairman brings it up and says, hey,
5 let's talk about this. What are the naming
6 opportunities? In a meeting that Milton I. Schwartz
7 was at. Now we believe the evidence is clear that
8 if Milton I. Schwartz believed he had the right to
9 naming rights to the elementary school, the middle
10 school or anything else, this wouldn't be on the
11 agenda but any way that's our position what the
12 evidence shows. The board votes on certain
13 resolutions -- sorry got ahead of myself.

14 So Mr. Freer talked about these minutes,
15 and these resolutions, December 13, 2007.
16 Mr. Milton I. Schwartz passed away by now, he passed
17 away in August of that year. And the board votes on
18 certain resolutions including granting perpetuity,
19 actual naming rights to the Adelsons and Milton I.
20 Schwartz. You will hear testimony of several of the
21 board members who are still alive who say that
22 resolution was not complete. There was a dispute
23 and a debate over some of the terms of that
24 resolution even though it got signed. And so by the
25 way, the resolution does contain this. The

1 corporation shall be known in perpetuity as
2 Dr. Miriam and Sheldon G. Adelson Educational
3 Institute and talking about other things. Including
4 the bylaws be amended to change the Corp. name in
5 perpetuity to the Adelsons. And then finally, this
6 is December of 2007, again, these are not, we
7 believe the evidence shows these are not final
8 resolutions but it does say specifically that Victor
9 Chaltiel is authorized on bee hatch of the
10 corporation to execute and deliver that grant
11 agreement letter dated December 13, 2007, by and
12 between the corporation that Victor Chaltiel that
13 each officer of the corporation are authorized to
14 deliver all documents et cetera et cetera to carry
15 out the terms of the grant agreement and the
16 purposes there of including but not limited to
17 actions regarding the naming campus and the schools
18 and they have saying they have do everything to
19 obtain that goal. That was the board resolution and
20 it talks about authorizing the chairman of the board
21 to sign a contract which we believe the evidence
22 here is that is what makes for a perpetual naming
23 rights agreement that will withstand scrutiny. The
24 board votes -- I just want to mention this because
25 this is something. The board votes in February

1 of 2008 to bring Mr. Jonathan Schwartz because his
2 dad has passed away now, on to the board. And by
3 the way also talks about they will -- the Adson's
4 will match \$40 million on the deal. Dr. Adelson is
5 there at that meeting, Phil Kantor is there, I
6 believe he will testify about that. So they weren't
7 trying to hide anything -- the evidence shows they
8 weren't trying to hide anything from Jonathan
9 Schwartz they even invited him to join the board.
10 The board votes on the final version of the
11 resolutions about the naming rights and deletes the
12 reference to the Milton I. Schwartz and authorizes
13 chairman of the board to sign a binding contract for
14 naming right to the Adelsons in perpetuity. This is
15 the final version that does not have a reference to
16 Milton I. Schwartz on it. It essentially says the
17 same thing the one in December except now it
18 references a copy of the agreement is attached as
19 Exhibit A and authorizes Mr. Chaltiel to sign it and
20 by his or her execution below the trustees each
21 consent to the board resolutions and ratifies it
22 this is attachment Exhibit A this is the naming
23 rights contract. This we believe the evidence will
24 show is what Milton I. Schwartz was required to have
25 an actual forceable naming rights agreement. A F C

1 A, that's Adelson family charitable foundation
2 agrees to make grant of \$3 million, it actually
3 ended up being way more than that. The family, the
4 family foundation grant is made in reliance on the
5 following representations by the corporation. So
6 what were those representations? The corporation
7 agrees that all funds received to be used,
8 et cetera. Paragraph 3, the paragraph agrees that
9 the corporation agrees that the corporation, the
10 campus, the high school, the middle school, and the
11 classroom buildings themselves will be named in
12 perpetuity in honor of Dr. Miriam Adelson and
13 Sheldon G. Adelson with the exact names to be
14 specified by the A F C F. Including the classrooms
15 and buildings themselves. Now even though they had
16 a right to it you will see the evidence is that the
17 Adelsons did not insist that the name be taken off
18 the lower school at that time. Even though we
19 believe the evidence is clear they could have
20 demanded that. It wasn't until as I told you the
21 evidence will show it wasn't until Jonathan Schwartz
22 sued the school and demanded that his dad get naming
23 rights in perpetuity for all kinds of other things
24 that the school did not believe he had a right to
25 let that happen. If the letter correctly sets forth

1 the corporation's understanding please counter sign
2 and return the attached could of this letter.
3 That's why you see in this case the school signed
4 it, the chairman signed it, Mr. Chaltiel as
5 authorized by that resolution in March 2, 0089.
6 Now, contrary to the Schwartz' corporate amendments
7 the Adelson corporate amendments specifically say
8 they this be named in perpetuity. So this is the
9 filing with the secretary of state that was done in
10 March of 2008 it says this corporation shall be
11 known in perpetuity as the Miriam and -- Dr. Miriam
12 and Sheldon G. Adelson Educational Institute. Here
13 this is just the evidence to show comparing the
14 different documents. The first document on the left
15 is the first amendment of the articles that were
16 done in 1990 with Mr. Schwartz. We will see those
17 articles say nothing about in perpetuity. The
18 second one is from 1997 when they filed with the
19 secretary of state, put his name back on the
20 corporation. Nothing about in perpetuity. The
21 final one is done in connection with the contract
22 the school signed for this purpose. It says the
23 Milton I. Schwartz will have its articles amended
24 and shall be known in perpetuity as the Dr. Miriam
25 and Sheldon G. Adelson Educational Institute.

1 So ladies and gentlemen, the evidence we
2 believe in this case will show that Milton I.
3 Schwartz did not have any kind of written contract
4 for perpetual naming rights of any kind. We believe
5 that to the extent that he had any naming rights, if
6 he did have naming rights, which we don't believe
7 the evidence shows he did, he failed to live up to
8 his promise as to what he was going to pay in
9 exchange for those names that there was never any
10 meeting of the minds of the school and Mr. Schwartz
11 about what the naming rights would be and how long
12 they would last, that the resolutions by the board
13 are not contracts and can be changed by subsequent
14 boards, by lies are not contracts and can be changed
15 by subsequent boards, corporate resolutions are not
16 contracts and can be changed by subsequent boards,
17 and that the will is unambiguous and this goes back
18 to our claim, the school's claim, the will is
19 unambiguous and requires the school to pay
20 \$5,000,000 that up until 2013, five plus years after
21 Milton passed away, the lower school was the Milton
22 I. Schwartz Hebrew Academy which is completely
23 consistent with the unambiguous language of that
24 will. And that the evidence will show that it is
25 likely -- that it is like lye likely that the name

1 never would have come off of that school, had
2 Jonathan Schwartz not filed that suit on May 28,
3 2013. With that ladies and gentlemen, I thank you
4 for your attention. It was a long slog and you all
5 were actually very attentive so I appreciate that.
6 Thank you.

7 THE COURT: Thank you, Mr. Jones.
8 Appreciate that.

9 Mr. Freer, Mr. LeVeque, your first witness.

10 MR. LEVEQUE: Mr. Schwartz is supposed to
11 be here at 4.

12 THE COURT: If people can work through
13 another hour, let us know if you need a break.

14 MR. LEVEQUE: I may need five minutes to
15 change out technology.

16 THE COURT: While you do that we will get
17 Mr. Schwartz on the stand.
18 Whereupon --

19 SCHWARTZER,
20 having been first duly sworn to testify to the
21 truth, was examined and testified as follows:

22 MR. JONES: Your Honor, since we finished
23 with opening statements, I believe Dr. Lubin was
24 going to be a witness. They have invoked
25 exclusionary rule, so they can't sit for the

1 witness's testimony.

2 THE COURT: The parties invoked the
3 exclusionary rule, other than experts. If a party
4 is -- a witness is going to be testifying, they need
5 to wait outside until it's their turn to testify
6 they can't listen to other witnesses testify so at
7 this point we would ask that anybody who is a
8 witness remain outside the courtroom until called.

9 EXAMINATION

10 THE COURT: State your name for the record.

11 THE WITNESS: My name is Lenard Schwartzer,
12 Lenard is spelled L-E-N-A-R-D, middle initial E.,
13 Schwartzer is S-C-H-W-A-R-T-Z-E-R.

14 EXAMINATION

15 BY MR. LEVEQUE:

16 Q. Good afternoon, Mr. Schwartzer. Do you
17 have any relation to my client Jonathan Schwartz?

18 A. No.

19 Q. How long have you resided in Las Vegas?

20 A. I have been a legal residents of Nevada
21 since 1973.

22 Q. What's your current occupation?

23 A. I'm an attorney.

24 Q. How long have you been an attorney?

25 A. Since 1974.

1 Q. What's your air of practice?

2 A. Bankruptcy and commercial transactions.

3 Q. And has that always been the case?

4 A. Well, since 1980.

5 Q. Do you currently have your own firm?

6 A. Yes.

7 Q. How long have you had your own firm?

8 A. Well, I have been a partner in law firm
9 since 1979. The current law firm of Schwartz
10 McPherson is about 16 years old.

11 Q. Mr. Schwartz do you have any children?

12 A. Yes.

13 Q. How many?

14 A. Three.

15 Q. Did they grow up here in Las Vegas?

16 A. They did.

17 Q. What are their current ages?

18 A. Oh, that's a bad thing to ask. How about I
19 say that Michael was born in 1981, Fey born in 1983
20 and Sharon was born in 1988.

21 Q. Did any of your children go to the school
22 at least back then known as the Milton I. Schwartz
23 Hebrew Academy?

24 A. Yes, two of them.

25 Q. Which two of those?

1 A. Michael went from kindergarten through 8th
2 grade and -- actually all three of them did. Fay
3 went from kindergarten through third grade or fourth
4 grade. And Sherri went through kindergarten.

5 Q. Do you know my client John than the
6 Schwartz?

7 A. Who?

8 Q. My client, Jonathan Schwartz?

9 A. No.

10 Q. Did you know his father?

11 A. Yes.

12 Q. Who is his father?

13 A. Milton.

14 Q. Yes.

15 A. I mean, I met Jonathan once or twice, I
16 think in connection with meetings concerning this
17 litigation.

18 Q. Okay. But you knew Milton Schwartz?

19 A. I knew Milton Schwartz because he was on
20 the board of the Hebrew Academy and he was on the
21 board of the Jewish Federation at the same time I
22 was.

23 THE COURT: Take a break please. We are
24 not getting into video of Mr. Schwartz, something is
25 interfering with the video of Mr. Schwartz. The

1 camera goes black every time. So.

2 (Discussion held off the record.)

3 THE COURT: During this recess, you are
4 admonished not to talk or converse among yourselves
5 or with anyone else on any subject connected with
6 this trial; or read, watch or listen to any report
7 of or commentary on the trial or any person
8 connected with this trial by any medium of
9 information, including, without limitation, to
10 newspapers, television, the internet and radio; or
11 form or express any opinion on any subject connected
12 with the trial until the case is finally submitted
13 to you.

14 Thank you. Appreciate everybody's
15 accommodation to that. We will fix this tomorrow
16 morning when you come in. It won't be a problem
17 because we have all day to fix it. We are going to
18 make it work for Mr. Schwartz. He is going to put
19 on his glasses and we will be ready to go. So we
20 are back on the record.

21 BY MR. LEVEQUE:

22 Q. Mr. Schwartz, you mentioned that you knew
23 Mr. Schwartz through the board of the school; is
24 that right?

25 A. Correct.

1 Q. Do you recall how it came to be that you
2 became a member of the board of trustees for the
3 school?

4 A. Very vaguely. I'm sure that either
5 Dr. Lubin or one of the other members of the board
6 asked me if I was interested in joining, and I said
7 yes because I had a trial -- at that time Michael
8 was starting at the school and it was a very small
9 school at that time.

10 Q. When you say fairly small, how would you
11 say it was small?

12 A. Well, it was -- at the time Michael
13 started, the school was still on the old Temple Beth
14 Sholom building on 17th street so it was a very
15 small school. It was not anywhere near the size
16 facility that it now has.

17 Q. Could you estimate for me at that time when
18 you started on the board how many students were
19 enrolled?

20 A. I couldn't. I can't even tell you how many
21 grades they had. I know they had 15 or 16 kids in
22 the kindergarten. So -- and I don't remember how
23 many grades they had above that. I know they had
24 grades above that but I don't remember if it went up
25 to 5th grade or 6th grade.

1 Q. Do you remember when you first became a
2 member of the board?

3 A. Well, it probably wasn't the year Michael
4 started, which would have been 1986 or '87, or the
5 following year.

6 Q. And at that time period, 1986 or 1987 I
7 think you said the school was located at the temp
8 Beth Sholom?

9 A. That's my best recollection.

10 Q. Where was that located?

11 A. 17th Street off Maryland Parkway.

12 Q. Did the school have its own building at
13 Temple Beth Sholom?

14 A. No.

15 Q. How was it operating then?

16 A. It had a lease -- my recollection is that
17 it had a lease from the synagogue for -- and it paid
18 the synagogue a certain amount per month for rent
19 for use of the classrooms in the temple building.

20 Q. At the time what was the name of the school
21 when it was Temple Beth Sholom?

22 A. Hebrew Academy.

23 Q. At some point did the school relocate?

24 A. Yes.

25 Q. Can you tell me how that came about?

1 A. Howard Hughes Corporation donated land in
2 Summerlin on Hillpointe on the condition that the
3 school build a building, a school building on that
4 property within a certain period of time.

5 Q. So was the donation of land from Howard
6 Hughes Corporation a free donation?

7 A. That was my -- that's my recollection.

8 Q. And in order to keep the land --

9 A. The school building had to be built.

10 Q. Okay.

11 THE COURT: Exhibit 111.

12 BY MR. LEVEQUE:

13 Q. Mr. Schwartzer, please let me know when you
14 are at proposed Exhibit 111.

15 A. I am. Is that the minutes of August 4th.

16 Q. It is. If you look at the document on the
17 second page, do you see your signature?

18 A. Yes, that certainly looks like my
19 signature.

20 Q. What does the document appear to be?

21 A. Minutes of the Hebrew Academy for August 4,
22 1989.

23 Q. Does it show that you were present at that
24 meeting?

25 A. It does.

1 MR. LEVEQUE: Propose exhibit 111.

2 THE COURT: Any objections.

3 MR. JONES: I don't believe so, Your Honor
4 but we didn't pull all of our exhibit binders in
5 here.

6 MR. FREER: It's right here.

7 MR. JONES: No objection, Your Honor.

8 THE COURT: It's admitted, 111.

9 BY MR. LEVEQUE:

10 Q. Mr. Schwartz, I would like you to look at
11 the first paragraph -- actually, I'm sorry, it
12 actually the third paragraph where it starts with
13 your name?

14 A. Yes.

15 Q. It states Lenard Schwartz reported that he
16 still has not received the final documentation of
17 the donation of property from the Howard Hughes
18 properties.

19 Do you see where I read that?

20 A. Yes.

21 Q. Is that what you were talking about this
22 donation from Howard Hughes?

23 A. Yes.

24 Q. Mr. Schwartz, at some point during this
25 time period, August 1989, did the school change its

1 name?

2 A. Yes.

3 Q. Can you tell me about that?

4 A. We were -- in order to build a school, we
5 found the most -- the only possible way of raising
6 the money was through donations. And Milton I.
7 Schwartz donated a -- a half a million dollars and
8 arranged for several other substantial donations
9 from friends of his that provided the funds for
10 building the school.

11 Q. So in addition to a half million dollars
12 that he donated, he also had friends he also
13 solicited friends for donations as well?

14 A. He was the main -- the main fundraiser. I
15 mean, if there was a million dollars raised, he
16 raised nine hundred thousand of it or 800,000 of it
17 everybody else donated a couple thousand dollars and
18 maybe got another friend to donate a thousand but he
19 got people to donate \$200,000.

20 Q. What did the school give in return?

21 A. Well, the board agreed to name the school
22 the Milton I. Schwartz Hebrew Academy.

23 Q. How long?

24 A. My recollection is in perpetuity, meaning
25 forever.

1 Q. Why did the school agree to name itself the
2 Milton I. Schwartz Hebrew Academy in perpetuity?

3 MR. JONES: Object that calls for
4 speculation. He can say what he believed.

5 THE COURT: Rephrase.

6 MR. LEVEQUE: I will lay some foundation.

7 BY MR. LEVEQUE:

8 Q. Mr. Schwartz, you were a board member at
9 the time; is that right?

10 A. That is correct.

11 Q. As a board member, would you have been in a
12 position to vote for that type of resolution?

13 A. Yes, I would have.

14 Q. Did you vote for that type of resolution?

15 A. I'm sure I did.

16 Q. What was your understanding then of what --
17 of why the school agreed to name the Milton I.
18 Schwartz Hebrew Academy in perpetuity?

19 A. Well, the fact that Milton I. Schwartz had
20 donated a half a million dollars and arranged for
21 most of the other donations for the school. And was
22 by far largest supporter financially the largest
23 supporter of the school was the reason why we
24 decided to name the school in his honor. I mean, I
25 think it was sort of a quid pro quo that in exchange

1 for all he had done for the school, we were naming
2 the school in his honor.

3 Q. Was the donation that Mr. Schwartz gave, a
4 half million dollars, was that necessary in order to
5 build the building?

6 A. Absolutely.

7 Q. Do you think the building could have been
8 built within the time frame imposed by the Howard
9 Hughes Corporation had he not donated the money?

10 A. I'm not going to object on speculation but
11 I didn't know any other source of that substantial
12 amount of the funds that were necessary for
13 building. We didn't know -- the board members
14 certainly knew of no other source of funds that
15 would have been required to build the school.

16 Q. Mr. Schwartz, if you could please turn to
17 Tab 112.

18 A. Yes.

19 MR. LEVEQUE: Move to admit 112.

20 THE COURT: Do you have 112 for Mr. Jones
21 to see?

22 MR. FREER: I do, Your Honor.

23 MR. JONES: Your Honor, I thought that was
24 a joint exhibit, actually. Maybe -- I thought that
25 was a joint exhibit. I have no objection.

1 THE COURT: Then it will be admitted.

2 BY MR. LEVEQUE:

3 Q. Mr. Schwartz, what does this document
4 appear to be?

5 A. Appears to be minutes of the board of
6 trustees of Hebrew Academy on August 14, 1989.

7 Q. Does it show that you were present at this
8 meeting?

9 A. No, it doesn't.

10 Q. I would like you to look at the portion
11 that's highlighted in the bottom third of the page
12 where it states that a letter should be written to
13 Milton I. Schwartz stating that the academy will be
14 named after him do you see that?

15 A. Yes.

16 Q. Is that consistent with your understanding
17 that the academy would be named after him?

18 A. Yes.

19 Q. Again the date of that letter is?

20 A. Well, the date of the board meeting.

21 Q. I'm sorry the board meeting.

22 A. August 14, 1989.

23 Q. Thank you.

24 If you could look at proposed Exhibit 14?

25 A. 114?

1 Q. Yes, is 14. Getting late in the day.

2 A. Yes.

3 Q. If you could just read this document to
4 yourself?

5 THE COURT: Mr. Jones, Exhibit 114 --

6 MR. LEVEQUE: I haven't asked for it to be
7 admitted yet.

8 THE COURT: I'm getting ahead of you.

9 BY MR. LEVEQUE:

10 Q. Mr. Schwartzer, if you could just read this
11 document to yourself for a moment.

12 A. Yes, I have read it.

13 Q. Mr. Schwartzer, what does this document
14 appear to be?

15 MR. JONES: What was the question?

16 MR. LEVEQUE: What does it appear to be.

17 MR. JONES: Your Honor, I guess I would
18 object and voir dire the witness to try to get some
19 foundation before he starts testifying as to what it
20 appears to be.

21 THE COURT: Okay.

22 EXAMINATION

23 BY MR. JONES:

24 Q. Good afternoon, Mr. Schwartzer.

25 A. Good afternoon, Mr. Jones.

1 Q. Nice to see you, sir.

2 A. Thank you.

3 Q. Have you ever seen this letter before?

4 A. Yes.

5 Q. When is the first time you saw this letter?

6 A. A few weeks ago.

7 Q. You don't know when it was written, do you,
8 or do you?

9 A. I do not.

10 Q. You don't know who wrote it, do you other
11 than what somebody told you?

12 A. Nobody told me who wrote it. I was asked
13 if I wrote it. And I said I don't recall writing
14 it.

15 Q. Thank you. So as you sit here today, you
16 don't have any recollection of writing this letter
17 yourself, do you?

18 A. No. No, I do not recall writing this
19 letter.

20 Q. The first time you say you saw it was that
21 shown to you by one of the lawyers for the estate?

22 A. Yes. The first time I recall seeing the
23 letter is a couple weeks ago. If I had seen it 25
24 years ago, I don't remember seeing it 25 years ago
25 as I sit here today.

1 Q. It's not on any kind of letterhead is it?

2 A. No.

3 Q. So you don't know where it came from?

4 A. I do not.

5 Q. And it's not signed, is that true?

6 A. That is correct.

7 Q. So there is no signature you can recognize
8 because there is to signature on it if you have to
9 recognize a particular signature is that true?

10 A. Since there is no signature there is no
11 signature for me to recognize.

12 Q. One of those terrible questions that the
13 answer is so obvious. I appreciate you indulging
14 me?

15 A. Don't ask me when I stopped beating my
16 wife.

17 Q. I promise you I will not do that since I
18 know your wife as well I certainly know you have not
19 done that or she would not let you do that.

20 A. That's right.

21 MR. JONES: In any event, Your Honor, I
22 would certainly object to any testimony related to
23 this letter from Mr. Schwartzer. There may be other
24 people, but not Mr. Schwartzer.

25 MR. LEVEQUE: I wasn't seeking to admit it.

1 Somewhat unnecessary. I was only asking him to
2 review it to refresh his memory.

3 THE COURT: That he can do without
4 admitting it.

5 BY MR. LEVEQUE:

6 Q. You have had a chance to read this,
7 Mr. Schwartzer?

8 A. The letter?

9 Q. Yes.

10 A. Yes.

11 Q. Is the letter consistent with your
12 recollection with respect to what the agreement was
13 between the school and Mr. Schwartz?

14 A. Yes, Your Honor.

15 MR. JONES: I would object to the relevance
16 of that question. There is no foundation of what
17 the letter is or what it says.

18 THE COURT: I'm going to overrule that. I
19 think he can refresh his recollection as to what the
20 agreement was. He didn't say he didn't have a
21 recollection.

22 BY MR. LEVEQUE:

23 Q. Is that document consistent with your
24 recollection with respect to how much money
25 Mr. Schwartz donated?

1 A. Yes.

2 Q. Is that document consistent with your
3 recollection of what the school gave in return?

4 A. Yes.

5 Q. Does that refresh your recollection with
6 respect to whether the school defined what in
7 perpetuity meant?

8 MR. JONES: By the way, Your Honor, I have
9 the same objections to all of these questions about
10 the letter.

11 THE COURT: I think Mr. Schwartzer
12 previously specifically said what he understood "in
13 perpetuity" means.

14 MR. LEVEQUE: Let me redirect him, Your
15 Honor.

16 BY MR. LEVEQUE:

17 Q. The last sentence of the second paragraph,
18 Mr. Schwartzer, if you could review that. Does that
19 refresh your memory at all as to whether there were
20 any definitions or restrictions on the phrase in
21 perpetuity, to your understanding?

22 A. No. I think it means what I know what in
23 perpetuity means which is for as long as the school
24 exists.

25 Q. For as long as the school exists?

1 A. Yes.

2 Q. Thank you.

3 A. That would be my -- that was my
4 understanding then, and that's my understanding now.

5 Q. Thank you. Mr. Schwartz, if you could
6 please turn to Tab 118.

7 A. 115?

8 Q. 118.

9 A. 118. Yes, I'm there.

10 Q. Let me ask you this. Do you recognize this
11 document?

12 A. I can tell you what this document is from
13 reading it, but if you ask me if I have a
14 recollection of writing it and preparing it, no.

15 MR. JONES: What exhibit number?

16 MR. LEVEQUE: 118.

17 BY MR. LEVEQUE:

18 Q. Is it signed by you?

19 A. That's my signature on the second page.

20 Q. Does it appear to be a record from the
21 school?

22 A. It is the minutes of the board of trustees
23 of Hebrew Academy for January 18, 1990.

24 Q. And at the bottom of the first page, do you
25 see where it says the status of the building fund

1 pledges were discussed and list of pledges is
2 attached?

3 A. Yes.

4 Q. And the last page of this document, do you
5 see the list of pledges?

6 A. Yes.

7 Q. And do you see your pledge?

8 A. I do.

9 Q. And is that amount stated correct with your
10 recollection as to what you pledged?

11 A. I didn't double-check what I donated back
12 in 1990.

13 Q. Any reason to dispute?

14 A. No. It's -- appears to be an amount that
15 would be consistent with my donations at that period
16 of time.

17 MR. LEVEQUE: Propose to admit 118.

18 MR. JONES: No objection.

19 THE COURT: So 118 is admitted.

20 BY MR. LEVEQUE:

21 Q. Mr. Schwartzer, what's the date of this
22 meeting?

23 A. The minutes are dated as of January 18,
24 1990.

25 Q. And who -- strike that. Were you at this