

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION,

Appellant,

vs.

SIMONE RUSSO,

Respondent.

Case No. 83115 Electronically Filed
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APPELLANT'S APPENDIX
VOLUME 10, PART 2

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12:03:01 1 going to be nothing in the release that's not agreed to
2 on the record today. There's not going to be any new
3 terms or new anything going on. And it's going to
4 comport with -- the release will comport with what
12:03:11 5 we've agreed to on the record today. Everyone agreed
6 that was the case. No problem. Not an issue.

7 The next thing I say is this idea that the
8 money will be paid within two weeks of release being
9 signed. I then said, well, I don't want the release to
12:03:27 10 take, you know, two weeks to get to me and then two
11 more weeks before you sign it. And so a month out and
12 we still don't have our money.

13 And the comments from the defense were, of
14 course, we'd never do that. Mr. Sampson, don't be
12:03:40 15 ridiculous. Why you got to always assume the worse,
16 that whole thing.

17 Yet here we sit three weeks later now. We're
18 three weeks and a day from Wednesday, and tomorrow is
19 two weeks from the Friday, and I don't have a release
12:03:53 20 that I can have my client sign to get the money. I did
21 get -- which we resolved it on Friday, I want to say
22 the 18th, on Monday, Mr. Fink sent an email over, and
23 he said here is the release that he had typed up. He
24 made no bones about it. Sunrise does not agree and has
12:04:11 25 not authorized this to be a release we can use in the

12:04:14 1 case.

2 And if we stand here today, we still don't
3 have anything from Sunrise that agrees we can use to
4 resolve the case.

12:04:21 5 I sent out some changes to what Mr. Fink
6 provided and asked for comment. I did get word from
7 Mr. Bushbaker's counsel, Mr. Meloro, to have some
8 rather insignificant changes we needed to make that
9 didn't affect any substance. I incorporated those
12:04:38 10 changes. And asked Cox, IES, Sunrise, anybody for
11 Mr. Scarcelli, anybody else have comments. I heard
12 nothing until the following Monday.

13 So on the following Monday I said, all right,
14 it's been a week that Mr. Fink provided this. And I
12:04:54 15 sent back my changes. I've heard nothing from anybody.
16 So I assume what I sent back was going to work and have
17 my client sign it. He expected his money in two weeks.

18 And then all of a sudden within like 15
19 minutes, I heard from Mr. Fink, oh, no, Sunrise hasn't
12:05:09 20 agreed yet. We told you we don't agree. We don't --
21 I'll pass it by to take a look at. Cox sent back word
22 very quickly from Mr. Turtzo, Oh, no, Cox hasn't
23 agreed. And I essentially wrote back and said, Well,
24 then get your clients to agree. I mean, what's he --
12:05:23 25 let me know what changes you have because it's -- I've

12:05:25 1 waited a week very patiently. I don't want this to
2 stall out. Because my client's losing patience. We
3 don't have anything for him to authorize.

4 We need to get this taken care of. I
12:05:36 5 ultimately did get comments from Cox, and we've
6 incorporated the changes they want. My understanding,
7 although Mr. Meloro would have to address this, my
8 understanding from the communications I received from
9 Mr. Meloro because he sent something a week ago Tuesday
12:05:52 10 saying, is this that Mr. Sampson sent out something we
11 can have my client sign and conclude. So I don't think
12 there is any additional issues.

13 I've not heard from Scarcelli's counsel other
14 than it was a side question about renters insurance,
12:06:05 15 and there isn't any. So I think, but I've not heard
16 conclusively, that Mr. Scarcelli is on board with what
17 I sent over.

18 But Sunrise now, between a week ago Tuesday
19 and Thursday, Mr. Fink and I were sending things back
12:06:23 20 and forth. What we're looking at is, again, we want to
21 preserve all rights against the defaulted defendants,
22 just like we said on the record. And the release that
23 was provided defines Sunrise as all employees,
24 independent contractors. It lays out other things that
12:06:40 25 could potentially include Duslak and Sesman.

12:06:44 1 So I included in there that we are not going
2 to include them specifically or anyone affiliated with
3 them. And I think, as I understand it, Sunrise no
4 longer agrees. So as of last Thursday, Halloween, was
12:06:57 5 my last conversation with Mr. Fink until yesterday.

6 And I've been calling every day since then trying to
7 work all this out. I got no response at all.

8 And so I did, when I didn't get it worked out
9 on Halloween, filed this motion. Let's get it in front
12:07:12 10 of the judge. It's been -- it's been silence since
11 then until yesterday. And even yesterday Mr. Fink on
12 the phone as we were talking sounded like maybe we
13 could work something out, but he sent over some
14 proposed language even this morning that, again, says
12:07:27 15 Seslak and Dusman [sic] are to be dismissed if it turns
16 out they're employees, for example, of Sunrise. Which
17 we -- so I sent something over yesterday. And I'll
18 just read it to the Court.

19 My email says: "It appears what I sent
12:07:44 20 earlier --" Well, I sent something over. I'm sorry.
21 I sent something over where I proposed since we haven't
22 got an agreement yet -- the problem was the first one I
23 sent over was red lined. So I said, it was so
24 ridiculously red lined that it looks like the actual
12:07:58 25 language I proposed didn't go through. But here is

12:08:01 1 what I propose our release should say.

2 Settlement release agreement. And it
3 identifies each party by name. Dr. Russo, Sunrise,
4 IES, Cox, PWJames, Kevin Bushbaker, Chris Scarcelli
12:08:16 5 hereby agree to settle the disputes between them and
6 release each other pursuant to the terms set forth on
7 the record on October 16 and October 18, 2019, in case
8 number, and I laid the case number out, pending in the
9 Eighth Judicial District, Clark County, Nevada, which
12:08:34 10 terms are incorporated herein by this reference.

11 And everybody signed it. And says it seems to
12 me to be the best way if, as we agreed, the release
13 isn't -- isn't any different than what was confirmed on
14 the record, all rights are going to be given in the
12:08:49 15 release nor taken away from the release than what was
16 confirmed on the record. This is really the only way
17 to do it.

18 And I have gotten a response I think from Cox
19 that they're not agreeable. I assume given I was given
12:09:02 20 the proposed changes from Mr. Fink perhaps they're not
21 agreeable either. But, you know, we really don't need
22 a release because, as your Honor pointed out a couple
23 times in voir dire, this case is pending a long time.
24 Happened back in October of 2016. And there is no
12:09:20 25 statute of limitations long run at this point in time.

12:09:22 1 So there really is no reason for a release. I
2 have no problem putting one -- or signing off on one as
3 long as it does two things:

4 One, doesn't delay my client getting his money
12:09:34 5 which now, it has;

6 And two, strictly comports with what was
7 placed on the record which the release I've now just
8 read into the record absolutely would do.

9 And if that are not agreeable, then I don't
12:09:46 10 know. I would ask the Court either enforce the
11 settlement and say, you know, since there was radio
12 silence regarding the release, I'm not going to require
13 one anymore. Or I will require one, but it's just
14 going to say what Mr. Sampson pointed out that you're
12:10:00 15 settling the case pursuant to the terms that were
16 placed on the record.

17 I've also given -- suggested a third option
18 that I'll now suggest to the Court that perhaps we just
19 print up the record, both days, and all the parties
12:10:13 20 sign it. And go, so agreed. And we're all released
21 pursuant to what this document says.

22 But what I don't want to do is keep spinning
23 my wheels with the parties with the defendants that's,
24 number one, going to delay my client getting his money.
12:10:27 25 And number two, potentially would add or takeaway from

12:10:31 1 the rights and claims that the parties agreed with not
2 be released or otherwise affected when we put this all
3 on the record.

4 So I'm just reaching out to the Court. I do
12:10:43 5 understand that the check from Sunrise is now in
6 Las Vegas. I understand the Cox one is either here or
7 should be here shortly. So I want to get my client his
8 money as we agreed to three weeks ago. I want to put
9 this thing to bed without waiving any rights other than
12:10:59 10 those that were specifically put on the record. So I
11 would ask for instruction or direction from the Court
12 on how we can best do that, please.

13 THE COURT: Okay. Thank you, sir.

14 MR. CLARK: If it please the Court, David
12:11:13 15 Clark for Chris Scarcelli. Mr. Sampson is right. We
16 did have a side issue on the additional insured
17 provision of the lease agreement.

18 Last week we got communications from
19 Mr. Sampson on that issue. And I can now say that my
12:11:29 20 client is going to go forward and just sign off on a
21 complete release and settlement.

22 THE COURT: Okay.

23 MR. CLARK: And if that's -- so I'm not really
24 involved in the other issues. I don't think my client
12:11:39 25 is going to pay me for this appearance now. But if it

12:11:42 1 please the Court, I have another appearance I need to
2 make. So if I'm not needed, and I don't know if
3 Mr. Sampson still needs me, but Mr. Scarcelli says
4 he'll just sign it when it's in final form.

12:11:56 5 THE COURT: I understand. And we don't need
6 you, sir, I don't think.

7 MR. CLARK: Okay. I'll take my leave now.
8 Thank you all.

9 MR. FINK: Your Honor, Leonard Fink for
12:12:03 10 Sunrise.

11 Mr. Sampson's recitation of what happened
12 since the Friday when we put the settlement on the
13 record is mostly correct. I want to throw in a few
14 things that I think are important here.

12:12:18 15 Number one is that I got everybody the
16 release, the proposed. And we said although we were
17 putting this on the record it was very clear that we
18 were going to be putting together an actual settlement
19 agreement.

12:12:32 20 I don't remember if that part was on the
21 record. I think it was. Mr. Lemkul might remember
22 that differently, but I do.

23 However, I did that Sunday night. And if
24 anybody knows me, the fact that I actually did it that
12:12:43 25 quickly shows that I was trying to be a person of my

12:12:46 1 word and get this done for Mr. Sampson. Especially
2 because I knew that his client -- that he was having
3 issues with that.

4 So I got that done. I sent it out either
12:12:55 5 Sunday night or early Monday morning. I did in the
6 email say my client had not yet agreed to the terms.
7 The reason is that I had a case with then Judge Bayliss
8 where a plaintiff went in to enforce the settlement
9 that was based upon terms that were negotiated between
12:13:09 10 counsel. And the reason the court enforced the
11 settlement, even though my client had not agreed to it,
12 was because counsel had agreed to it and he thought
13 that that was good enough.

14 So since that time, I made sure that unless my
12:13:21 15 client has absolutely signed off on it, every email
16 that goes out when we're talking about settlement
17 agreements, make sure it's clear. My client has not
18 yet agreed to these terms. I didn't think it would be
19 a problem, but I wanted to make sure everybody
12:13:33 20 understood that.

21 So I sent that out again either Sunday night
22 or early Monday morning waiting to hear back from
23 people as to what changes they were going to want, so
24 that we can get a final agreement, so then we can get
12:13:43 25 our respective clients to sign off on it.

12:13:46 1 And I don't recall, and I think Mr. Sampson is
2 probably correct. I think the next thing we probably
3 heard was maybe that next Friday. And then there was
4 some back and forth up until Thursday which was the
12:13:56 5 October 31, which is Halloween.

6 I got sick on Thursday, Friday. Then I had a
7 deposition on Monday which is why I never responded to
8 Mr. Sampson's phone calls. Again, I explained that to
9 him when I talked to him. So I wasn't shining him on
12:14:09 10 or anything like that. I just literally got sick and
11 wasn't do anything.

12 So we resumed trying to get this done. The
13 hold up, and Mr. Sampson I think said it but I'll say
14 it again, I think the real hold up right now is whether
12:14:24 15 or not the release that we negotiated was intended to
16 cover Mr. Sesman and Duslak, D-U-S-L-A-K, I think.
17 Actually, I've got it in front of me. Okay. Duslak,
18 D-U-S-L-A-K, and Sesman, S-E-S-M-A-N, if they were
19 considered employees of Sunrise.

12:14:43 20 There's never been one bit of evidence in this
21 case that they were employees. It was always that they
22 were independent contractors. But as I'm sure the
23 Court has dealt with thousands of settlements, when you
24 settle with an entity, you are settling with the
12:14:57 25 employees too.

12:14:58 1 There's nothing in Mr. Sampson's amended
2 complaint that even suggests or asserts that either one
3 of these gentlemen is an employee. There is nothing in
4 any one of his disclosures that asserts they're
12:15:09 5 employees.

6 So the idea here is that not only is Sunrise
7 getting itself out of the case, but it's also getting
8 out its employees, which also includes board members.
9 Although, we didn't specifically say that on the record
12:15:22 10 either, but also Cox, IES, they're also getting their
11 employees out.

12 In fact, the gentleman Curtis, I think
13 was always the name that came up. But, again, that
14 wasn't specifically on the record. So I think it's an
12:15:34 15 understood term. When you're getting an entity out
16 that includes their employees. If somebody is saying
17 that somebody acted within the course and scope of
18 their employment, unless you're saying they weren't
19 acting within the course and scope of employment,
12:15:45 20 which, again, wasn't an issue in the case because it
21 was never made an issue in the case.

22 So to the extent this is what we were trying
23 to do with the settlement agreement, and Mr. Sampson is
24 right, I did throw in independent contractors in the --
12:15:55 25 in one of the versions of the draft. But as of this

12:15:59 1 morning, I sent out something that I intended to send
2 out before the hearing and realized when I was talking
3 to Mr. Clark when I got here that I didn't press send
4 on my computer. So I think I sent it out maybe 9:15,
12:16:10 5 maybe 9:30 this morning.

6 So I think that the only hang up is whether or
7 not this settlement includes Mr. Duslak and Mr. Sesman
8 if they are found to be employees of Sunrise. And I
9 think that's it.

12:16:23 10 If they're not and they're independent
11 contractors, then the settlement agreement absolutely
12 does not cover them. Would allow Mr. Sampson to do
13 what he needs to do. And even try to go after my
14 client's insurance carriers to see if there is coverage
12:16:38 15 for them as independent contractors. We all agree
16 that -- that was one of the things that was important
17 to him. We aren't seeking to release that.

18 But to the extent they're employees, this
19 should cover it. And I think, I think that's really
12:16:48 20 where we are, Judge. And, of course, I'd certainly
21 leave it up to Mr. Bushbaker's counsel -- I think I
22 always stumble on your name -- sorry, Joe -- and
23 Mr. Lemkul for anything else.

24 THE COURT: Okay. Anything you want to add?

12:17:01 25 MR. MELORO: Joseph Meloro on behalf of Kevin

12:17:04 1 Bushbaker. Your Honor, Mr. Fink did prepare a release
2 agreement that Sunday evening. During that week I made
3 some minor requests for some changes. I've been trying
4 to cooperate through this whole matter.

12:17:19 5 You know, the issues that's going on between
6 Mr. Sampson and Mr. Fink really have nothing to do with
7 my client. I just want to make sure that we're not
8 releasing anyone who wasn't a party to this action that
9 we might have some claims against in the future.

12:17:36 10 But I don't see that in the agreement that was
11 presented, if that's the case at this point. But we're
12 trying to get this along just as much as everyone else,
13 your Honor.

14 THE COURT: I understand.

12:17:48 15 Mr. Lemkul.

16 MR. LEMKUL: Yeah, your Honor, how are you?

17 THE COURT: Good.

18 MR. LEMKUL: Good, good. So the position of
19 Cox and IES, your Honor, is basically we sent back
12:17:59 20 changes to Mr. Sampson that were incorporated into the
21 release that he sent out.

22 I don't have any issue with Monday's changes.
23 I do agree that part and parcel to the Cox and IES
24 release would come, officers, agents, the typical
12:18:18 25 language that we all see in these releases. And that's

12:18:20 1 what we sent out.

2 So I really have nothing else to offer other
3 than to answer questions should the Court have them for
4 me or my clients.

12:18:29 5 THE COURT: Okay. I have no questions, sir,
6 at this point.

7 Okay. Mr. Sampson, have you had a chance to
8 see the revised proposed settlement agreement that's
9 been sent by Mr. Fink in this matter at approximately
12:18:43 10 9:30 this morning?

11 MR. SAMPSON: I didn't see a proposed
12 settlement agreement. I saw, like, a list of here's
13 some items. And the one that I take issue with is the
14 one that seeks to stop my client from being able to
12:18:56 15 proceed against Sesman and Duslak.

16 And yes, I do know and I understand if you
17 release a party, you typically would be releasing their
18 employees, and board of directors, and those types of
19 things unless you clearly indicate otherwise when you
12:19:10 20 put the settlement agreement together.

21 So when we put this on the record, that's why
22 I made it a point to say, none of this settlement
23 involves Sesman or Duslak at all in any of their
24 capacities. And if there was an idea of, well, hold
12:19:25 25 on, Sunrise wants all its employees, and there might be

12:19:29 1 a claim that they're employees, so that should have
2 been brought up when we put the terms on the record.
3 It shouldn't have been dropped on me just like they
4 couldn't come up later and say, we want it
12:19:39 5 confidential. Or, and there is language about
6 indemnification and what not, which we'll agree to even
7 though it wasn't specifically put on the record. But
8 if you wanted those -- when I say -- make it a point to
9 mention, and I'm sure had I said, for example, you
12:19:50 10 know, here's so and so, it's the CEO of Cox, we're not
11 releasing any claims against that person, I'm sure
12 Mr. Lemkul would have piped up and said, oh, no, hold
13 on. We don't agree to that. We were stippling on the
14 record putting the terms together.

12:20:05 15 So I think it's improper for Sunrise to stand
16 there while we're putting the settlement on the record,
17 and I say Sesman and Duslak are not released in any
18 way, shape, or form. They remain parties. We still
19 have all rights to proceed against them, and that's all
12:20:19 20 fine and dandy while we're on the record, and then to
21 come back later in the release and say, except they're
22 not. Because if they're employees they're out.

23 I don't think they're employees either as I
24 sit here right now. But I've not had a chance to find
12:20:32 25 any of that stuff out. I have not -- I have no

12:20:34 1 confirmation as to any of that. So but the bottom line
2 is, you know, what I proposed now is, again, the
3 settlement that says here's all the people. We agree
4 to release each other pursuant to the terms reached on
12:20:48 5 the record on those two days we were there. And then
6 we all sign it.

7 I don't see why anyone would have a problem
8 having that serve as the release given that it does
9 exactly what we agreed to do. The only thing I can
12:21:00 10 envision as to why that would be a problem for someone
11 is: One, they want to continue to delay things, which
12 is an inappropriate reason and shouldn't be permitted;
13 or two, they're looking to change the deal that was
14 reached on the record.

12:21:14 15 Because what I proposed says specifically
16 releasing each other as agreed on the record. No more,
17 no less. I don't think anybody should require that my
18 client do any more or any less for any of that.

19 So given, again, EDCR allows a settlement to
12:21:31 20 be enforceable if it's placed on the record, so we've
21 done that. Mr. Fink kept talking about we're looking
22 at getting people out. Well, they are out. Anybody
23 pursuant to the terms that were set forth on the
24 record, they're out. The agreement is enforceable on
12:21:49 25 the record. Beside the fact that the statute of

12:21:50 1 limitations ran over a year ago at this point.

2 So it's not a question about that. I don't
3 know what else is going on. And my clients should not
4 be -- my client should not be required to waive any
12:22:02 5 right at all that he -- that he specifically --
6 especially when he specifically preserved them on the
7 record when we -- when we resolved this thing and put
8 the settlement on the record.

9 So, again, I appreciate your Honor asking if
12:22:14 10 I've had a chance to review what they sent me. Again,
11 I didn't get an actual release. I just got an email
12 from Mr. Fink that had some terms. And the term that I
13 had an issue with is this idea that if they're
14 employees, then Sesman and Duslak are out. That was
12:22:27 15 not agreed to.

16 But I think what you should perhaps ask is, to
17 the defendants, you know, what about what Mr. Sampson
18 sent you guys Wednesday and Tuesday? Say, we hereby
19 release each other as agreed on the record, and it's
12:22:40 20 incorporated by this reference. And we're done. Why
21 wouldn't that work?

22 And if they're going to balk and somehow say
23 that won't work, then, clearly, they must be either
24 looking to just drag this thing out or trying to get
12:22:52 25 something in the release that wasn't on the record,

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12:22:54 1 which I don't think the Court should permit.

2 THE COURT: Do we have a copy of that portion
3 of the record? Have we ordered one or no?

4 MR. SAMPSON: I've not ordered one. I mean,
12:23:06 5 again, that's another proposal is I will order a copy
6 of Wednesday and Friday's transcripts and just have
7 everyone just sign the transcripts so agreed, so
8 released.

9 THE COURT: All right. Anything else?

12:23:22 10 MR. SAMPSON: But whatever is on -- yeah.
11 Whatever is on the transcript from Wednesday and Friday
12 would be incorporated by reference with exactly what I
13 proposed. And it just says release each other as per
14 what was put on the record. And then we all sign off
12:23:36 15 and get my client his money. And then we're done.

16 THE COURT: Well, I don't know if it's -- I
17 wish it was just that simple.

18 The reason why I asked that question regarding
19 a copy of the transcript, I wish I could say with
12:23:51 20 computer-like recollection I can remember every
21 utterance in court regarding the general terms of the
22 settlement and the like, but I can't.

23 And so all I'm saying is this: As to whether
24 anyone is correct as to specifically what was placed on
12:24:06 25 the record, I'd need a copy of the transcript to make

12:24:08 1 that determination. That's what I'm saying.

2 MR. SAMPSON: I don't know that anyone is
3 disputing what I'm talking about. In fact, I think
4 Mr. Fink indicated that my discussion with what was
12:24:19 5 placed on the record was accurate.

6 I mean, my position is -- I'm telling you, we
7 put on the record -- we're not waiving, releasing, or
8 otherwise affecting anything against Sesman or Duslak.
9 I don't think anyone would dispute that.

12:24:34 10 And if they don't dispute it, I mean, we can
11 keep a transcript -- we can get a transcript if we need
12 to, but I don't think it's disputed what I'm telling
13 you as to what we agreed to.

14 THE COURT: Is it --

12:24:44 15 MR. SAMPSON: It was a pretty significant
16 point that day.

17 THE COURT: Is it disputed? Anyone?

18 MR. SAMPSON: Not -- I'm not disputing. I'm
19 not disputing my version of what happened. I tell you
12:24:58 20 that. This is Dave Sampson.

21 THE COURT: Okay. Mr. Fink, are we disputing
22 that?

23 MR. FINK: Well, first I did send this out at
24 9:35 this morning which included, like, I think, six
12:25:10 25 bullet points, five bullet points of things that were

12:25:13 1 kind of core to the agreement.

2 My best recollection is that when Mr. Sampson
3 said he was specifically retaining his rights to go
4 against Mr. Sesman and Mr. Duslak, we all agreed to
12:25:27 5 that. There was no specific discussion as to whether
6 or not they were independent contractors or employees.
7 So I didn't -- I didn't jump and say, well, to the
8 extent they're employees. This wouldn't cover them.
9 So that part is right.

12:25:41 10 But then I didn't know that I had to do that
11 because when you're releasing Sunrise, you're releasing
12 their employees, their board members, all of that. So
13 I don't know that I was thinking that that's something
14 I needed to specifically do.

12:25:53 15 I completely understood that to the extent
16 that Sesman and Duslak were his independent
17 contractors, which we all think they are, that the HOA
18 hired to do the lawn maintenance that it --
19 shouldn't -- it didn't and shouldn't affect
12:26:07 20 Mr. Sampson's rights to go after them. That was the
21 point.

22 But certainly not if it turns out that they
23 were my client's employees, which, again -- and I
24 appreciate Mr. Sampson recognizing that in most cases
12:26:20 25 that's what's included, but that's exactly what I was

12:26:22 1 thinking was excluded here. If they're employees,
2 they're covered.

3 THE COURT: So the impact of the -- what would
4 be considered the material terms of the settlement is
12:26:34 5 an issue.

6 MR. FINK: If -- if the -- I think the only
7 issue, if I'm not mistaken, is whether or not the
8 settlement covers those two gentlemen if it turns out
9 they're employees. That's it.

12:26:46 10 If they're not employees, there's no question
11 the settlement doesn't cover them. And allows
12 Mr. Sampson whatever avenue or avenues he needs to try
13 to recover money from them, including going after
14 Sunrise's insurance carrier if for some reason that
12:27:01 15 that carrier should have defended or indemnified those
16 two gentlemen as independent contractors. And that's
17 language that my carrier agreed to that's in that
18 agreement. Which is fine. And that absolutely was not
19 part of a negotiation to get them out.

12:27:16 20 But the issue really is, is whether or not if
21 it turns out that these two were employees and getting
22 W-2s, which there's been no evidence and no allegation
23 that there they were, that it's our belief that the
24 settlement covers them under that one circumstance.

12:27:34 25 THE COURT: Okay. Mr. Sampson.

12:27:35 1 MR. SAMPSON: Your Honor.

2 THE COURT: Go ahead.

3 MR. SAMPSON: Sure. All I would ask, again,
4 is the Court to consider, well, you know, that should
12:27:42 5 have been brought up on the record. Because I made
6 clear -- and there is no dispute it sounds like. I
7 made it clear we want to preserve all rights against
8 Sesman and Duslak. They've been defaulted. We want to
9 move forward against them. And this release and this
12:27:56 10 money doesn't go to affecting any of my client's rights
11 against them, period.

12 And the response while we were on the record
13 from Mr. Fink and everybody else was that is correct.
14 And we are in agreement.

12:28:08 15 And if they were going to raise some kind of,
16 well, hold on. Is this, then okay. But if not, then
17 that was the time to do it, and they did not do it.
18 And they did it -- they had a chance on Wednesday and
19 again on Friday. So we can't even blame it on, like,
12:28:23 20 spur of the moment. I didn't have time to consider it.
21 It just got tossed out there. It was brought up
22 specifically, and they agreed. And they can't now turn
23 around and unagree, or try to undo it when we said --
24 again, all I want to do is enforce the terms that were
12:28:39 25 placed on the record. And I don't think my client

12:28:41 1 should be forced to agree to terms that weren't placed
2 on the record, which Mr. Fink is now asking to do. I
3 think -- I hope Mr. Fink is correct when he says
4 they're not employees.

12:28:51 5 I'm a little concerned if he is so convinced
6 they're not employees why this is a sticking point.
7 Because it shouldn't be. If he's convinced they're not
8 employees, I don't know how it would turn out, as he
9 used the phrase, if they somehow would magically become
12:29:06 10 employees other than perhaps if the carrier goes to
11 Sunrise, and says, you know, I don't know. Something
12 goes on and all of a sudden that all -- that they come
13 up W-2s that were not provided before and Mr. Fink's
14 not aware of, and then we've somehow been mislead.

12:29:20 15 But the terms of the agreement were reached on
16 the record, and we're just asking no more, no less than
17 what was placed on the record be enforced. And since
18 it's been three weeks now and they can't seem to come
19 up with an agreement, that Sunrise would be on board
12:29:37 20 with that comports with what was on the record, then I
21 think the Court either just find that that's waived at
22 this point, or that they sign what I proposed. Which
23 is we just release each other pursuant to what was
24 placed on the record.

12:29:51 25 THE COURT: Anything else? There is no way

12:29:52 1 this can be worked out.

2 MR. FINK: Never say no way. But your Honor,
3 again --

4 THE COURT: And the reason why I do that, I
12:30:01 5 think everybody understands this, it's always easier.

6 MR. FINK: Right. I mean, it's -- it's
7 problematic. I mean, look, there's nothing in the
8 complaint. So when Mr. Sampson says, Well, then we
9 should have said something. The problem here is that
12:30:12 10 if we are looking at the record, we're looking at the
11 entire record.

12 And the entire record is the amended complaint
13 which makes no allegation, even an allegation, that
14 either one of those two gentlemen were employees of
12:30:23 15 Sunrise, or were working within the course and scope of
16 being employees of Sunrise.

17 So if that's what he has alleged, then that's
18 why I have no problem releasing them as to how he's
19 alleged it. Had he alleged in his amended complaint
12:30:36 20 that they were employees of Sunrise, that would have
21 been a different discussion on the record.

22 Should that have been made more clear from
23 both sides? Probably, which we wouldn't be here. But
24 the fact is it's -- again, it's in the operative
12:30:51 25 complaint. There is no allegations that they are

12:30:53 1 employees, which is why I didn't feel the need that I
2 had to clarify that.

3 And again, nothing in any 16.1 disclosure, up
4 until and including trial, that alleged that either one
12:31:02 5 of them were employees. And I also think and I didn't
6 check this before the hearing, but even when we did the
7 motion for summary judgment, and even the renewed
8 motion for summary judgment -- or I think it was a
9 motion for reconsideration, I don't believe, and I'll
12:31:15 10 apologize if I'm wrong here, I don't believe that even
11 then Mr. Sampson -- Mr. Sampson said they were
12 employees.

13 And then there was a motion in limine related
14 to keeping the gardener's statements out of evidence.
12:31:29 15 And, again, he didn't say they were employees. He said
16 that we argued about whether or not agent in principal
17 whether or not that would --

18 So there has never been an allegation by
19 Mr. Sampson in this case that they're employees. And I
12:31:39 20 think that's true which is what I said all along. I
21 don't think they were. I thought they were independent
22 contractors, two guys on a mower.

23 However, I'm sure the Court can appreciate
24 that even though I'm really, really comfortable with
12:31:53 25 that, I'm also not that comfortable with just leaving

12:31:57 1 it to wind.

2 So, I mean, maybe the best thing to do is to
3 get a copy of the transcripts from those two hearings
4 and try to hash it out. I mean, the good thing is we
12:32:06 5 do have the money, so we're not waiting on that. So if
6 there is no delay here, no one is trying to delay
7 anything. We're just trying to get it right and trying
8 to save our own --

9 THE COURT: Well, here's the issue. I mean,
12:32:18 10 I've been listening patiently. And it appears to be no
11 dispute that hypothetically they're independent
12 contractors and potentially additional insureds under
13 the insurance policy, there would be coverage.

14 MR. FINK: Well, well, no, no. Not a coverage
12:32:33 15 issue, but would allow them to go after my insurance
16 carrier.

17 THE COURT: Right.

18 MR. FINK: Absolutely.

19 THE COURT: I understand. It's not a
12:32:38 20 stipulation.

21 MR. FINK: Right.

22 THE COURT: It's not a stipulation of
23 coverage.

24 MR. FINK: Right.

12:32:41 25 THE COURT: But there's not a -- I get the

12:32:43 1 significance.

2 MR. FINK: Right.

3 MR. MELORO: And your Honor.

4 THE COURT: Yes.

12:32:48 5 MR. MELORO: Joseph Meloro on behalf of
6 Mr. Bushbaker.

7 Mr. Fink did send an email earlier today. And
8 there were some bullet points. One of the bullet
9 points that I want to make clear was that Mr. Bushbaker
12:32:59 10 is not waiving any claims against any insurance
11 carriers.

12 Also I'd like the record to reflect that
13 Mr. Sampson in his motion did state that Mr. Bushbaker
14 is not doing anything to delay this settlement and that
12:33:14 15 we've been cooperative.

16 And so I just want to make that clear that
17 we're not doing anything. This is a dispute. I think
18 it's pretty narrow on whether these are independent
19 contractors or employees. Doesn't really regard my
12:33:29 20 client. But we're trying to help facilitate a
21 settlement here.

22 MR. FINK: We'd like nothing more than to give
23 Mr. Sampson the money.

24 MR. SAMPSON: Your Honor.

12:33:38 25 THE COURT: Yes. Yes, Mr. Sampson.

12:33:39 1 MR. SAMPSON: Well, so given that's the case,
2 I think then why don't we do this. Why doesn't the
3 Court order the money be paid to Dr. Russo, you know,
4 forthwith, or however you want to do it. Within, I
12:33:51 5 don't know, by middle of the next week or something.
6 If it's here in town, it could even be by the end of
7 this week. But order that the funds be paid. And that
8 we set maybe a status check or something. Or where we
9 can look at --

12:34:03 10 I don't know what Mr. Fink -- I've never known
11 him to say something that's not accurate, but I don't
12 know that my complaint doesn't make those allegations.
13 I know I typically have a paragraph in every complaint
14 I've done that involves respondeat superior potentially
12:34:18 15 that says the parties -- that the defendants were all
16 agents, principals, employees, employers, managers and
17 service with one another. Perhaps it's not in there.
18 I don't know. I don't know what was said. Sounds like
19 neither does Mr. Fink with much surety about what was
12:34:33 20 said in relation to motions that were filed.

21 But I think you say, Look, the Court is going
22 to enforce the terms that were reached on the record.
23 So go ahead and pay the money. We'll figure out a way
24 to draft it and get it written up. But we're going to
12:34:45 25 enforce it pursuant to what was placed on the record.

12:34:47 1 And the other issue I've got is if, you know,
2 Mr. Fink is saying, Well, we never had any allegation
3 that he thought they were employees. We never -- it
4 was never anything that would have ever even entered my
12:34:57 5 mind, well then why now? Because I didn't bring it up.

6 Why now when all of a sudden it's the sticking
7 point. Something has gone on, and it sure -- I mean,
8 again, I only see two reasons why we would do anything
9 other than sign something that says the terms reached
12:35:12 10 on the record are incorporated herein and we agree to
11 them. Unless they're trying to delay things or put
12 something in there that wasn't reached on the record.

13 And the Court shouldn't permit either one of
14 those to take place. So, you know, I haven't heard any
12:35:24 15 objection to what I proposed a day or two ago saying
16 let's just sign something saying that we agree to the
17 terms as proposed on the record, or as placed on the
18 record and incorporated by this reference and then pay
19 the money, then we're done.

12:35:38 20 So, again, I would just ask we either do that
21 or the Courts say, look, as Mr. Fink said and I'm sure
22 Mr. Lemkul probably agrees, they'd love nothing more
23 than to give Dr. Russo his money. So go ahead and give
24 it to him. And then we can sit down at some point if
12:35:52 25 we need to have an evidentiary hearing or some other

12:35:54 1 kind of status check where we go over complaints or the
2 transcript from when we put it on the record. Because
3 at some point we'll have a release in place that
4 Dr. Russo will sign that comports to what was placed on
12:36:05 5 the record. No more, no, less.

6 THE COURT: I don't think I can do that, as
7 far as ordering payments of monies without an execution
8 of some sort of closing documents, or release, or
9 something like that.

12:36:22 10 MR. SAMPSON: So then what about the one I
11 proposed that now no one has as of this point had an
12 objection to?

13 THE COURT: Well, here's --

14 MR. SAMPSON: That I've heard.

12:36:31 15 THE COURT: This is the -- I think it's always
16 better for parties to come to some sort of resolution.
17 Because I can anticipate -- and I don't mind saying
18 this, and then I want to go to lunch. I think we all
19 do. But and I don't know this, but I can anticipate
12:36:57 20 potentially without having it all tied up, there could
21 be litigation as to the impact of the release under one
22 remote scenario. Right?

23 And that's the concern I have. And, I mean,
24 it doesn't matter, I mean, from a personal level. But
12:37:16 25 from a judicial perspective, that's why I always want

12:37:20 1 you to try to come to some sort of accord before I make
2 decisions because realistically it could be litigation.
3 I mean, the chances are remote. I get that.

4 Because when you look at it from this
12:37:36 5 perspective if there was truly evidence -- I mean, this
6 makes perfect sense. If there was evidence that they
7 were employees, there would not have been a default
8 judgment entered against them. There would have been
9 motions to set aside, answers, and the like. And
12:37:50 10 that's pretty much the status of the case because I
11 can't -- I can't foresee either Mr. Lemkul or Mr. Fink
12 permitting an employee to be defaulted; right?

13 MR. SAMPSON: Could we perhaps enter a
14 stipulation on the record here and now that for
12:38:06 15 purposes of this litigation they're not employees?

16 THE COURT: Well, I think -- here's the thing,
17 and I don't -- I mean, as far as -- and, I mean, you
18 know, when you look at it, this is so layered. I'd
19 hate to go down this rabbit hole. But there could be
12:38:22 20 arguments made based upon the law of the case; or facts
21 of the case; or how the case has developed; as it has
22 an impact, what does the release cover? And so those
23 are issues. I think -- I don't mind saying this. I
24 think it's almost -- it rises to a level of a
12:38:47 25 significant presumption they're not employees because

12:38:50 1 there would have been an answer filed, you know. But I
2 just want everyone to come to some sort of accord on
3 this.

4 MR. SAMPSON: Well, the problem is it's been
12:38:59 5 three weeks, and we haven't. And I've spent two weeks,
6 Monday the 21st until the following week before I heard
7 anything and Thursday until yesterday where I go with
8 no communication from the -- from Sunrise. Or -- and
9 one of those weeks was including Cox, and then three
12:39:19 10 weeks with Scarcelli. I'm glad to hear he's on board.
11 But I don't want any further -- I mean, I don't want to
12 tell my client, well you don't get your money and you
13 don't get your verdict either. So...

14 THE COURT: I understand.

12:39:30 15 MR. SAMPSON: I mean, I need at this point for
16 the Court to please take action to tell these
17 defendants, do what -- enter into a release that
18 comports no more no less than what was placed on the
19 record and give the doctor his money.

12:39:44 20 MR. MELORO: Your Honor, I take exception to
21 being grouped as defendants by Mr. Sampson. There are
22 separate entities here. I communicated with
23 Mr. Sampson and the other parties in this action, not
24 only that first week after we made this agreement but
12:40:01 25 the following week I did a follow up saying have we

12:40:05 1 come to any agreements. So I just want it clear when
2 Mr. Sampson says "defendants", which defendants he's
3 speaking of, please. Thank you.

4 MR. FINK: Your Honor --

12:40:15 5 MR. SAMPSON: And I thought -- I don't know
6 what comes through on the phone, but I thought I said
7 some of the defendants, specifically Sunrise. I
8 went -- I got the release either Sunday night, Monday
9 morning. Didn't hear anything for a week. And then we
12:40:29 10 talked from Monday to Thursday. I didn't hear anything
11 for another week until yesterday. Cox I didn't hear
12 for the first week, but we did deal with them the
13 following week. We got it all worked out.

14 Scarcelli I hadn't heard from hardly at all,
10:27:58 15 but it sounds today like they're on board.

16 (Reporter clarification)

17 So that's where we are at. And again, I
18 just -- I don't want -- please don't make me go back
19 and tell Dr. Russo you don't get your money; you don't
12:40:49 20 get your trial either. There is some kind of limbo.

21 I'd like to think there is some way the Court
22 can take action under the settlement to say here's what
23 you need to do, and it includes -- and it should
24 include signing the release that comports and provides
12:41:05 25 no more no less than what was placed on the record, and

12:41:08 1 tender the funds pretty quickly. We've already been
2 three weeks into this.

3 THE COURT: Mr. Fink.

4 MR. FINK: Good, your Honor. Mr. Sampson made
12:41:16 5 an interesting suggestion that I'd like to think about
6 and that may work. That if we say for the purposes of
7 this litigation they weren't employees. That may take
8 care of all of this. I would just need to run that by
9 my people. But that may take care of all of our
12:41:31 10 concerns at that point, and then we can -- we can be
11 done.

12 THE COURT: How's that, Mr. Sampson?

13 MR. SAMPSON: It was my suggestion, so I still
14 totally agree with it.

12:41:40 15 THE COURT: Well, you know what --

16 MR. SAMPSON: I would ask -- I would ask
17 just -- Mr. Fink has made a couple of comments today,
18 and I think the Court also echoed them, along the lines
19 of Sesman and Duslak, all rights against them, anybody
12:41:53 20 who insures them, you know, all of those are preserved.
21 They're not affected. I would like to make sure that
22 is crystal clear in whatever iteration we end up with.
23 I put some language in there that Mr. Fink has asked to
24 modify. And I think he and I hopefully can work that
12:42:08 25 out, and say, you know, that sentiment that, I believe,

12:42:11 1 was expressed much more clearly today than in the
2 agreement be set out very, very clearly.

3 THE COURT: And I think he has no problem with
4 that because that was his idea, you know, so regarding
12:42:24 5 the fact that if they're independent contractors,
6 there's no waiver of the right to seek coverage for
7 this case. I mean, I get that based upon the insurance
8 policy. And no big deal there.

9 But, okay. How about this? Because I know
12:42:41 10 your client wants their money. And I've been in that
11 situation before.

12 How long do you think it would take you,
13 Mr. Fink, to run that passed your clients?

14 MR. FINK: Well, I can try to do that now.
12:42:55 15 They're on the east coast, Philly. So I can try to do
16 that now. But I would say for sure -- and they're,
17 obviously, they're hot on this issue. I would say if I
18 can't get that by them today for whatever reason,
19 tomorrow morning. You know, I get up early. I'm
12:43:09 20 usually up east coast time anyway. So I think I can
21 get an answer from them, again, either this afternoon
22 or before everybody generally wakes up in the morning.
23 But I think it's -- I think it's a workable solution
24 from where I'm sitting.

12:43:25 25 And yeah, Mr. Sampson and I, other than this

12:43:28 1 one thing, we're in complete agreement. I don't think
2 we have any issues on that.

3 THE COURT: So how about this then.

4 (Off-the-record scheduling discussion
01:24:06 5 between the court clerk and the Court.)

6 THE COURT: How about a status check,
7 telephonic status check at 9:30?

8 MR. FINK: That would be fine for Sunrise,
9 Judge.

12:43:52 10 THE COURT: Is that fine, Mr. Sampson?

11 MR. SAMPSON: That's fine.

12 THE COURT: Okay.

13 MR. SAMPSON: In the meantime, Mr. Fink can
14 just re-forward to me whatever the final version is
12:44:04 15 he's claiming. Or perhaps what we're talking the
16 stipulation he'd be okay with, the last one I provided.
17 And then I get a chance to look that over, and we can
18 talk it out tomorrow and find out where we're at, but
19 what if anything else we would do from there.

12:44:16 20 THE COURT: Well, I think this -- I think it's
21 actually much simpler than that in this regard.

22 Hypothetically, Mr. Fink hears back from the
23 east coast sometime today. He gives you a phone call
24 or email, says, Look, my client has no problems with
12:44:32 25 the stipulation. You guys move from -- with that, with

12:44:36 1 the stipulation and whatever release language you feel
2 would be appropriate. And everything is covered. I
3 make my phone call tomorrow at 9:30. Say, Look, Judge,
4 we've resolved this issue.

12:44:50 5 MR. SAMPSON: That would be nice too.

6 THE COURT: I mean, I can foresee that
7 happening. And the reason -- and what that does is
8 this, and remember this is important too, that gives
9 finality.

12:45:02 10 MR. SAMPSON: Yeah.

11 THE COURT: That's a big -- and I'm -- and,
12 Mr. Sampson, I understand your plight, and I respect
13 it. And I'm not just kicking the can down the road.
14 I'd rather give you finality now than maybe appeals,
12:45:17 15 those types of things. And we don't need that. We
16 need to just put this case to bed. Because 24 hours
17 could save you a year and a half, right?

18 MR. FINK: Mr. Sampson, did you get a copy of
19 the email I just sent over to you?

12:45:31 20 MR. SAMPSON: I don't know.

21 MR. FINK: Okay.

22 MR. SAMPSON: I'm not in a position to check
23 my emails right now.

24 MR. FINK: All right. Let me know if you
12:45:37 25 didn't get it. I just sent it over again, so I can

12:45:40 1 do --

2 MR. SAMPSON: All right. I'll take a look.

3 THE COURT: So what we'll do, we'll set a

4 9:00 o'clock conference call, and we'll use Court Call.

12:45:46 5 9:30, I'm sorry.

6 MR. FINK: 9:30.

7 THE COURT: 9:30. We'll use Court Call. And

8 we'll -- how do we do that?

9 THE COURT CLERK: Do you all have

12:45:56 10 instructions?

11 MR. LEMKUL: No.

12 MR. FINK: I'm sure my office does somewhere.

13 THE COURT CLERK: No worries.

14 MR. FINK: Those are all beyond my

12:46:03 15 capabilities.

16 THE COURT: And it's just a continuation of

17 today's hearing, Mr. Sampson and Mr. Lemkul. That's

18 all it is.

19 MR. LEMKUL: Sounds good, your Honor.

12:46:14 20 MR. SAMPSON: Sounds good.

21 THE COURT: All right. Everyone enjoy your

22 day.

23 MR. FINK: Thank you.

24 THE COURT: All right.

12:46:16 25 MR. SAMPSON: All right.

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12:46:21 1

MR. MELORO: Have a good lunch, your Honor.

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(Proceedings were concluded.)

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REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
AND UNDER MY DIRECTION AND SUPERVISION AND THE
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

PEGGY ISOM, RMR, CCR 541

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