

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Oct 18 2021 09:55 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Robert Kern, Esq.,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK COUNTY
and THE HONORABLE NANCY ALLF,
DISTRICT COURT JUDGE,

Respondent.

Supreme Court Case No:

APPENDIX TO PETITION
FOR EXTRAORDINARY
RELIEF

From the Eighth Judicial District Court, Clark County
The Honorable Nancy Allf, District Judge
District Court Case No. A-19-803488-B

APPENDIX TO PETITION FOR EXTRAORDINARY RELIEF

Robert Kern, Esq.
Nevada State Bar No.10104
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INDEX

Emails re: Scheduling of motion.....09

Plaintiff’s Motion for emergency hearing02

Opposition to Motion for Motion for emergency hearing06

Scheduling Order for Glass Oral Argument01

Order of June 12, 2020.....12

Transcript of June 12, 2020.....14

IN THE SUPREME COURT OF THE STATE OF NEVADA

KRISTAL GLASS, AN INDIVIDUAL,
Appellant,
vs.
SELECT PORTFOLIO SERVICING,
INC., AS SERVICING AGENT FOR U.S.
BANK NATIONAL ASSOCIATION, AS
TRUSTEE, ON BEHALF OF THE
HOLDERS OF THE HARBORVIEW
MORTGAGE LOAN TRUST 2006-1
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES, SERIES 2006-1, A
NATIONAL ASSOCIATION,
Respondent.

No. 78325

FILED

MAY 13 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

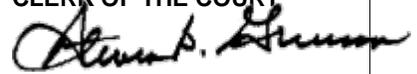
ORDER SCHEDULING ORAL ARGUMENT

This court has determined that oral argument may be of assistance in resolving this matter. Accordingly, this matter is scheduled for oral argument on June 11, 2020, at 1:30 p.m. in Las Vegas. Argument shall be limited to 30 minutes.

It is so ORDERED.


_____, A.C.J.
Gibbons

cc: Kern Law, Ltd.
Wright, Finlay & Zak, LLP/Las Vegas



1 **Marquis Aurbach Coffing**
Phillip S. Aurbach, Esq.
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paurbach@maclaw.com
6 acalaway@maclaw.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

9 DOMINIQUE ARNOULD,

Plaintiff,

11 vs.

12 CLEMENT MUNNEY; CHEF EXEC
SUPPLIERS, LLC; and DOES I through X,
13 inclusive; and ROE CORPORATIONS I through
X, inclusive,

Defendants,

16 And related counterclaims.

Case No.: A-19-803488-B
Dept. No.: 27

**PLAINTIFF'S EMERGENCY REQUEST
FOR TELEPHONIC HEARING FOR
APPOINTMENT OF RECEIVER TO
TAKE OVER THE WAREHOUSE OR
FOR ORDER ALLOWING ACCESS**

**Hearing requested on shortened time-by
telephonic conference**

17 Plaintiff, DOMINIQUE ARNOULD (hereinafter "Arnould" or "Plaintiff"), by and through
18 his attorneys, Marquis Aurbach Coffing, requests a telephonic conference today to appoint a
19 Receiver to take control of the warehouse storing Chef Exec inventory or in the interim, enter an
20 Order that Arnould can drop off inventory from the Los Angeles warehouse and pick up inventory
21 from the Las Vegas warehouse—Defendant Muney changed the locks and Arnould has no access.

22 This Opposition is made and based upon the pleadings on file herein, the following points
23 and authorities, and any argument allowed by the Court at the time of hearing.

24 Dated this 10th day of June, 2020.

MARQUIS AURBACH COFFING

26 By /s/ Phillip S. Aurbach
27 Phillip S. Aurbach, Esq., #1501
Alexander K. Calaway, Esq., #15188
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARNOULD NEEDS ACCESS TODAY TO THE LAS VEGAS WAREHOUSE TO PICK UP INVENTORY TO TAKE TO LOS ANGELES FOR CUSTOMERS IN LOS ANGELES AND MUNEY WILL NOT ALLOW ACCESS TO CHEF EXEC INVENTORY

1. Last Friday June 5, 2020, Plaintiff, Dominique Arnould, and Defendant, Clement Muneuy. had the following email exchange¹:

Clement

The warehouse we are currently using at Northstar lost their lease. They have asked us to move out. We have 29 pallets stored there which need to be moved before June 13. all other pallets have been stored at our location in Van Nuys. I could bring them back to our Las Vegas warehouse or rent another space I have already identified.

If we bring that inventory back to Las Vegas, i will need to Bring back some of the following products:

- Spheres
- Small Glass
- Round slanted cups.
- What would you like me to do?

Dominique

Muneuy's response was "tell me why you need those items."

From: Clement Muneuy <clement@chefexecsuppliers.com>
To: DOMINIQUE ARNOUD <domiarnould@aol.com>
Cc: Clement Chef Exec <clement@chefexecsuppliers.com>
Sent: Fri, Jun 5, 2020 4:26 pm
Subject: Re: Inventory

Dominique,

I have no problem to store the products back in Las Vegas that you don't need in LA. I have no problem, as usual, to give what is necessary for LA's needs, as long as it is justified.

I just want the company to operate normally.

If there's anything in Vegas that you end up needing in LA at a later date, we can always ask Win distribution to bring you what you need. It just costs 105\$ per pallet and you would have that in 1 or 2 days.

Tell me what you need for the coming few months and how you want to proceed.

Clement Muneuy
(702) 340 8697 Sent from my iPhone

¹ If Defendant Muneuy denies this email exchange, we will provide a declaration regarding the same, but because of the time constraints, we copied the contents into this pleading.

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2. Plaintiff Dominique Arnould drove the 12 pallets to Las Vegas to access the warehouse, drop off the pallets and pick up the following inventory that he needs for Los Angeles clients:

- Spheres cups: 4 pallets 96 cases
- Small Glass TC: 72 cases
- Umbrella dish: 48 cases
- Round slanted cups: 1 pallet 72 cases
- Rhum Shot: 36 cases
- Espresso cups: 24 cases
- Cubic wave green: 72 cases or 1 pallet
- Cubic wave clear: 30 cases.

3. Muney had the locks changed and Arnould cannot access any inventory—drop off or pick up.

4. Arnould is in Las Vegas with the 12 pallets for Muney’s Las Vegas Customers and he needs to pick up inventory.

5. The receiver hearing is not set until July 9, 2020.

- a. A telephone conference is needed **today** to appoint a receiver to take control of the warehouse, log all inventory, control inventory taken out and added so either owner has authority to access the inventory,
- b. Alternatively, this Court should enter an Order that either party has access to the warehouse and both must document inventory in and inventory out.

6. In sum, Arnould is in Las Vegas with pallets for the LV warehouse and Muney will not allow access for Arnould to pick up inventory for California clients.

Dated this 10th day of June, 2020.

MARQUIS AURBACH COFFING

By /s/ Phillip S. Aurbach
Phillip S. Aurbach, Esq.
Nevada Bar No. 1501
Alexander K. Calaway, Esq.
Nevada Bar No. 15188
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

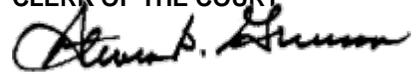
I hereby certify that the foregoing **PLAINTIFF'S EMERGENCY REQUEST FOR TELEPHONIC HEARING FOR APPOINTMENT OF RECEIVER TO TAKE OVER THE WAREHOUSE OR FOR ORDER ALLOWING ACCESS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 10th day of June, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²

Robert Kern
Melissa Milroy

Robert@Kernlawoffices.com
Admin@KernLawOffices.com

/s/ Javie-Anne Bauer
An employee of Marquis Aurbach Coffing

² Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



1
2 Robert Kern, Esq.
3 Nevada Bar Number 10104
4 **KERN LAW, Ltd.**
5 601 S. 6th Street
6 Las Vegas, NV 89101
7 (702) 518-4529 phone
8 (702) 825-5872 fax
9 Admin@KernLawOffices.com
10 Attorney for Defendants

11 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 DOMINIQUE ARNOULD,

14 Plaintiff/Counter-Defendant,

15 vs.

16 CLEMENT MUNEY; CHEF EXEC
17 SUPPLIERS, LLC; and DOES I through X,
18 inclusive, and ROE CORPORATIONS I
19 through X, inclusive,

20 Defendants/Counter-Claimants.)

21) Case Number: A-19-803488-B

22) Dept. Number: 27

23 **RESPONSE TO ARNOULD'S REQUEST**
24 **FOR EMERGENCY TELEPHONIC**
25 **HEARING**

26
27 COME NOW Defendants, CHEF EXEC SUPPLIERS, LLC (hereinafter, "CHEFEXEC"),
28 and CLEMENT MUNEY, (hereinafter "Muney"), by and through their undersigned counsel
Robert Kern, ESQ., of KERN LAW, Ltd. submit this Response to Arnould's request for
emergency telephonic hearing.

Counsel for Muney apologizes for the brevity of this response, however I have an
Oral Argument before the Nevada Supreme Court in 24 hours, and have been given less
than ¼ of the standard time to prepare. For this reason, I have no ability to attend a hearing
of any kind prior to tomorrow's oral argument.

Second, nowhere in the request was there any indication (nor any affidavit or other
evidence in support) to show why this matter was an emergency, nor why it must be heard

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1 today, rather than, for example, Friday. Counsel for Muney would ask the court, that if the
2 Court believes a hearing is necessary, that it be held on Friday when Muney's counsel can
3 participate, as there has been no showing why holding it Friday would prejudice any party.
4

5 Third, there is no reason a hearing is necessary; counsel for Arnould have made zero
6 attempt to resolve this outside of the courtroom; the sole communication I have received
7 from them on the subject was a single email forwarding the email exchange between our
8 clients, without comment. My client asked Mr. Arnould to explain why he needs inventory
9 that is not normally sold by the LA branch; Arnould has failed to answer. Now Arnould
10 asks this court to intervene because he's forced to answer a question before taking Las
11 Vegas inventory, whereas 3 weeks ago, he took control of 100% of the entire company's
12 funds, and used that control to dictate how Muney could run his half of the company. Before
13 this Court is asked to intervene, there is no reason we should not at least follow the most
14 basic attempts to resolve outside of court, such as Arnould answering the email to tell
15 Muney why he needs inventory that the records suggest he does not need, and failing that,
16 Arnould's counsel should communicate their issue with myself, Muney's counsel, to see if
17 we can resolve the matter.
18

19 For these reasons, Muney asks the Court to deny the request entirely, at least until
20 more regular methods of resolving the issue are attempted, or failing that, to hold the
21 hearing on Friday where counsel for Muney can attend without prejudice.

22 DATED this 10th day of June, 2020.

23 **KERN LAW**

24 By: /s/ Robert Kern /s/
25 Robert Kern, Esq.
26 601 S. 6th Street
27 Las Vegas, NV 89101
28 (702) 518-4529
Attorney for Defendants

RE: [External] RE: [External] Arnould v. Muney - Case No. A-19-803488-B [IWOV-iManage.FID1085969]

Robert Kern <robert@kernlawoffices.com>

Wed 6/10/2020 11:21 AM

To: Phil Aurbach <paurbach@gmail.com>; Lawrence, Karen <lawrencek@clarkcountycourts.us>; Javie-Anne Bauer <jbauer@maclaw.com>; Dagher, Joseph LC <Dept27LC@clarkcountycourts.us>; dc27inbox@clarkcountycourts.us <DC27Inbox@clarkcountycourts.us>

Cc: Phil Aurbach-work <PSA@maclaw.com>; Alex. K. Calaway <acalaway@maclaw.com>; Jennifer Case <jcase@maclaw.com>; Dominique Arnould <domiarnould@aol.com>

The Los Angeles warehouses have NEVER been open to my client – he has NEVER had a key to either, and he was refused access when he requested it.

Likewise your client has refused to share equally the money that belongs to the company that my client is 50% owner of.

I strongly protest any hearing being held without my presence – There has been no showing or even allegation why there would be damages suffered from waiting until Friday, when all parties can be represented.

If this court will not intervene to ensure the company's money is shared out equally- it should not intervene to force Las Vegas inventory to be given out to the Los Angeles branch, especially without opportunity to be heard.

Please ensure this message reaches the judge – I will not be reachable most of the rest of the day.

Robert Kern, Esq.
Attorney
Kern Law, Ltd.

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Las Vegas, NV 89101
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From: [Phil Aurbach](#)

Sent: Wednesday, June 10, 2020 11:15 AM

To: [Robert Kern](#); [Lawrence, Karen](#); [Javie-Anne Bauer](#); [Dagher, Joseph LC](#); [dc27inbox@clarkcountycourts.us](#)

Cc: [Phil Aurbach-work](#); [Alex. K. Calaway](#); [Jennifer Case](#); [Dominique Arnould](#)

Subject: Re: [External] RE: [External] Arnould v. Muney - Case No. A-19-803488-B [IWOV-iManage.FID1085969]

Robert

Sorry you are not available. I am asking for an order to change the locks and have access to the warehouse where chef exec inventory is located. I am putting a caption and my signature on this declaration and asking for the order without your client's interrogation as to why my client needs Chef Exec Inventory. The warehouse should be open to both parties as long as there is documentation of what is take out or put in.

phil

Phil Aurbach

On 6/10/2020 10:46:07 AM, Robert Kern <robert@kernlawoffices.com> wrote:

I have an Oral Argument in front of the Supreme Court in 24 hours. I am not available for a hearing prior to Friday.
Please see our response to the request for hearing – attached.

Robert Kern, Esq.
Attorney
Kern Law, Ltd.

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Las Vegas, NV 89101
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From: [Lawrence, Karen](#)
Sent: Wednesday, June 10, 2020 10:24 AM
To: '[Javie-Anne Bauer](#)'; [Dagher, Joseph LC](#); [DC27Inbox](#)
Cc: [Phillip Aurbach](#); [Alexander K. Calaway](#); [Jennifer P. Case](#); [Robert Kern](#)
Subject: RE: [External] Arnould v. Muney - Case No. A-19-803488-B [IWOV-iManage.FID1085969]

I need a hat everyone is available. The call will be set up through Bluejeans and everyone will receive an email with the instructions.

From: Javie-Anne Bauer [mailto:jbauer@maclaw.com]
Sent: Wednesday, June 10, 2020 10:17 AM
To: Lawrence, Karen; Dagher, Joseph LC; DC27Inbox
Cc: Phillip Aurbach; Alexander K. Calaway; Jennifer P. Case; 'Robert Kern'
Subject: RE: [External] Arnould v. Muney - Case No. A-19-803488-B [IWOV-iManage.FID1085969]

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Thank you!

From: Lawrence, Karen <lawrencek@clarkcountycourts.us>
Sent: Wednesday, June 10, 2020 10:08 AM

To: Javie-Anne Bauer <jbauer@maclaw.com>; Dagher, Joseph LC <Dept27LC@clarkcountycourts.us>; DC27Inbox <DC27Inbox@clarkcountycourts.us>
Cc: Phillip Aurbach <PSA@maclaw.com>; Alexander K. Calaway <acalaway@maclaw.com>; Jennifer P. Case <jcase@maclaw.com>; 'Robert Kern' <robert@kernlawoffices.com>
Subject: RE: [External] Arnould v. Muney - Case No. A-19-803488-B [IWOV-iManage.FID1085969]

I have sent a message to the Judge and am awaiting her response.

From: Javie-Anne Bauer [<mailto:jbauer@maclaw.com>]
Sent: Wednesday, June 10, 2020 10:07 AM
To: Dagher, Joseph LC; Lawrence, Karen; DC27Inbox
Cc: Phillip Aurbach; Alexander K. Calaway; Jennifer P. Case; 'Robert Kern'
Subject: Arnould v. Muney - Case No. A-19-803488-B [IWOV-iManage.FID1085969]

Dear Dept 27,

Attached please find Plaintiff's Emergency Request for Telephonic Hearing for an Appointment of Receiver to Take Over the Warehouse or for Order Allowing Access that was recently filed in the above referenced case. Please let us know as soon as possible when Judge Alf is available for a telephone or zoom conference call this morning with all counsel. I have copied all counsel to this email.

Thank you,
Javie-Anne



Javie-Anne Bauer | Legal Assistant to

Phillip S. Aurbach, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
t | 702.942.2124
f | 702.382.5816
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * *

DOMINIQUE ARNOULD,

CASE NO.: A-19-803488-B

Plaintiff

vs.

DEPARTMENT 27

CLEMENT MUNNEY; CHEF EXEC
SUPPLIERS, LLC.,

Defendants

ORDER ISSUING SANCTION

COURT FINDS after review that on June 10, 2020, a hearing was held following Plaintiff's Emergency Request for Hearing. Phillip Aurbach, Esq. and Alexander Calaway, Esq. appeared for Plaintiff Dominique Arnould. Robert Kern, Esq. failed to appear for Defendants. Rather, Mr. Kern had the time to file a responsive pleading stating that he's unable to attend the hearing as he was preparing for oral argument before the Nevada Supreme Court. Moreover, Mr. Kern emailed the Court and counsel "protesting" any hearing being held without his presence. The Court's staff attempted to contact Mr. Kern prior to the hearing, but was informed that Mr. Kern was unavailable. Nevertheless, the hearing went forward on June 10, 2020 and out of professional courtesy, the Court, *sua sponte*, continued the matter to June 12, 2020.

COURT FURTHER FINDS after review that at the June 12, 2020 hearing, Mr. Kern was provided an opportunity to explain his June 10, 2020 actions on the record.

COURT FURTHER FINDS after review that Mr. Kern's failure to appear at the June 10, 2020 hearing or respond to the Court's staff was unexcused, inappropriate, and demeaned the Court.

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HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

DEPT XXVII

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LAS VEGAS, NEVADA, FRIDAY, JUNE 12, 2020

[Proceeding commenced at 12:30 p.m.]

THE COURT: Okay. All right. I'm calling the case of Arnould versus Muney, A803488.

Appearances, please, starting with the plaintiff.

MR. KERN: Robert Kern for Clement Muney.

THE COURT: Thank you.

MR. CALAWAY: Alex Calaway here for the plaintiff.

THE COURT: Thank you, both.

Let me just go over a few just housekeeping matters. I'm in the courtroom. And there's no camera on my screen. So I try to -- it's voice-activated. So I try to look at the lectern. You guys appear on my screen to my right, so when I'm looking at that screen, I'm looking at your argument and looking -- trying to get eye contact with you so I can listen and also hear and see you. So it doesn't mean I'm being inattentive.

All right. So there was a request for an emergency hearing by the plaintiff on Wednesday. I set it for a hearing.

Mr. Kern, you didn't appear. I'd like to -- I've seen -- I've read all the paperwork, and I've seen the e-mails between the parties.

Before we get into the substance, Mr. Kern, can you please explain why you refused to attend a hearing? I have never seen that in my 10 years on the bench or my 27 years before that, practicing

1 law.

2 MR. KERN: Your Honor, I had a duty to my client. It was
3 an eight-year litigation, and we had 24 hours until a Supreme Court
4 argument. My client had paid -- well, was going to be owed -- owing
5 in excess of around \$10,000 worth of attorney time for the panel of
6 other attorneys that we had hired to moot at 1 p.m. on that day. As
7 the Court hearing -- as my oral argument was the following day,
8 there was no possibility of rescheduling.

9 THE COURT: If you -- but you had --

10 MR. KERN: So I do deeply apologize, Your Honor. But --

11 THE COURT: But you took the time -- you took the time to
12 file an opposition that morning. It was 15 minutes. And your oral
13 argument on the next day was only a 30-minute oral argument.

14 MR. KERN: I understand, Your Honor. I was scheduled at
15 1 o'clock p.m. for the -- for that moot. It was at an office outside my
16 own, so it involved travel. And you know, I was able to put an
17 opposition together because I wrote that in, you know, 10 minutes.
18 And it wasn't at the time that I was scheduled with eight other
19 attorneys to do a moot in prep for the next day's Supreme Court
20 argument.

21 THE COURT: Okay. All right. Let me hear from the
22 plaintiff on the motion, please.

23 MR. CALAWAY: Yes, Your Honor. Our simple request
24 here is that the receiver be appointed. We've -- you've already
25 appointed a receiver here. The parties were unable to come to an

1 agreement on a receiver to appoint.

2 Mr. Kern proposed a -- I believe his name is Andrew
3 Martin. We did some research. Mr. Martin proposed a -- gave us a
4 proposal and an explanation on his background. We considered
5 him, and we tried to see if it would be a good fit. We don't think that
6 it would be. He's a -- he has a lot of forensic accounting experience,
7 but he doesn't have the experience that we need in this case as a
8 receiver.

9 Our first choice is Larry Bertsch, who we've had
10 experience with, who we understand is -- has been a court-appointed
11 receiver, both in state and federal court, and has experience with
12 that. So we would -- and in our motion, we explain some of his
13 background in handling those types of cases, especially for business
14 disputes like this.

15 Also, in our motion earlier this week, which has been
16 consolidated with this hearing I believe -- that motion is to get access
17 to this warehouse. I mean, I think the court -- the judge, I think
18 your -- the best thing to do here, Your Honor, is to just appoint that
19 receiver and allow that receiver to be able to have both parties get
20 access to it.

21 But the issue here is, you know, Robert Kern, we tried to
22 find some way -- you know, my client drove his truck all the way
23 down here with 10 pallets. They knew this was coming. And when
24 we showed up, my client --

25 THE COURT: Your -- your papers -- hang on.

1 MR. CALAWAY: Go ahead.

2 THE COURT: Your papers said 12 pallets.

3 MR. CALAWAY: Oh, excuse me. I'm sorry, Your Honor.
4 12 pallets. And he came to pick up a list of things which we had
5 already discussed with -- my client had already discussed with
6 Mr. Muney -- and then he locked us out. We weren't able to get into
7 that. My client had to stay the night.

8 We filed this emergency motion so that we could get
9 access, and we still weren't able to do that.

10 So I think this is a perfect time to hopefully get a receiver
11 in place so that the parties can continue to run and operate their
12 business as usual.

13 THE COURT: Thank you.

14 And, Mr. Kern, if you'll respond to both parts of that -- the
15 receiver, as well as the motion.

16 MR. KERN: Yes, Your Honor.

17 First, I'll point out that we do not oppose immediate
18 appointment of a receiver. We believe that that would be a far more
19 reasonable response to this dispute than an injunction.

20 With regards to who to appoint as a receiver, I don't
21 dispute that Mr. Bertsch seems to be well qualified and have a lot of
22 experience as a receiver. But the fact is that this case involves
23 significant allegations of conversion fraud, breach of fiduciary duty,
24 self-dealing, and unjust enrichment -- both parties alleging against
25 each other.

1 These issues will unquestionably have to be resolved at
2 some point. So there's no reason to have separate receivers. This --
3 Mr. Martin was chosen because he has significant experience as a
4 certified fraud examiner and a CPA. He does have receiver
5 experience, which we concede is less than Mr. Bertsch.

6 But we don't believe Mr. Bertsch would be qualified to
7 resolve all the disputes between the parties down the road. And we
8 think it would be a waste of time and resources to hire a receiver
9 now, get them fully familiar with everything between the parties and
10 the books, and then have to resort to a different receiver that has the
11 appropriate experience for evaluating these actual claims against
12 each other with regard to the records.

13 So that's why we think Mr. Martin would be a superior
14 choice because he's capable of doing both sides, even if the first part
15 of it isn't being ordered yet, it will -- unless there's settlement, it will
16 almost certainly be called for at some point in this case.

17 Regarding the request for an injunction, again, we think --
18 we do agree to the extent that I don't think an injunction is
19 necessary. It's a much more reasonable resolution to simply appoint
20 the receiver and let the receiver handle this dispute.

21 I'll also point out that injunctive relief requires a balancing
22 of equities and a clear showing of irreparable harm. We have
23 neither of these here. I don't even know what they would allege as
24 irreparable harm here. He just said that he wanted to get the
25 inventory. He drove up. He said -- he e-mailed my client saying he

1 wanted certain inventory. My client pointed out that these are not
2 items that he would normally take because they don't sell in LA, and
3 LA has sufficient inventory of those.

4 And rather than simply answering that e-mail, he
5 apparently surprise -- drove a truck up and was surprised that the
6 warehouse was unlocked. We did not know he was coming -- at
7 least that is my understanding of it.

8 MR. CALAWAY: The warehouse was locked, not unlocked.

9 MR. KERN: The warehouse -- it's always locked so that
10 random people can't come in and take items in and out of it. It
11 wasn't locked against your client; it simply is kept locked.

12 THE COURT: But wait, Mr. Kern --

13 MR. KERN: Now, his --

14 THE COURT: Mr. Kern, let me interrupt you.

15 MR. KERN: Yes.

16 THE COURT: This is an important issue to me. Did you
17 know that your client had changed the locks when Mr. Arnould was
18 coming?

19 MR. KERN: My client changed the locks as soon as
20 Arnould filed a Motion for Summary Judgment declaring that they
21 considered the settlement agreement gone. At settlement, it was
22 discussed about keys. It was discussed that Mr. Arnould had not
23 given keys to the LA warehouse to Mr. Muney, but demanded keys
24 to the Las Vegas warehouse. We gave him a key to the Las Vegas
25 warehouse as part of that settlement, despite his refusing to share

1 keys to LA with us.

2 When he said the settlement was over, we considered the
3 agreement to share a key over. So we changed the locks after that
4 point, because we don't have access to LA. There's no reason LA
5 should have access to our inventory without simply discussion and
6 partners being able to agree on it, as they have for the entire course
7 of this -- of the seven years of operation of this company.

8 Whether we disagree about whether -- if he should or if
9 Muney should be allowed to question why he wants unusual
10 inventory out of Las Vegas's inventory, when Muney is not allowed
11 to have it, it's -- there's no dispute that there's been no
12 demonstration of irreparable harm. I understand this Court has
13 taken a more hands-off approach, as demonstrated when we asked
14 for relief when all company funds were seized by Mr. Arnould. But if
15 we're going to do that, we have to apply it evenly across the board.

16 And there's no reason that in balancing the equities,
17 Mr. Muney should be deprived of the right to manage the Las Vegas
18 inventory, when Mr. Arnould has the absolute right to manage LA
19 inventory and the entire funds of the company.

20 But ultimately, I would say --

21 THE COURT: But Mr. Kern, they both --

22 MR. KERN: -- beyond that -- yes.

23 THE COURT: Mr. Kern, they both have a 50 percent
24 interest in this business.

25 MR. KERN: Yes, Your Honor.

1 THE COURT: It was improper for Mr. Muney to deny
2 access to Mr. Arnould.

3 MR. KERN: Is it -- well, isn't it equally improper for
4 Mr. Arnould to deny Muney access to the company funds or to the
5 LA inventory?

6 THE COURT: Well, we have already had a hearing on that.

7 MR. CALAWAY: But Your Honor, he has not.

8 MR. KERN: Because that's [indiscernible].

9 THE COURT: Hang on. We already had a hearing on that.
10 And I believe the plaintiff was trying to conserve assets and was
11 concerned about corporate waste. I've already ruled on that.

12 MR. KERN: Well, we are as well, Your Honor. We are as
13 well, Your Honor.

14 If you look at the e-mail, that was exactly what we were
15 discussing is it's more expensive to store inventory in Los Angeles
16 than it is in Las Vegas. And that is why he didn't want to send
17 unneeded inventory down to Los Angeles, because it's -- he is
18 worried about that, and we are in dispute about whether that is a
19 waste of company resources.

20 Beyond that is the fact that this motion was filed without
21 any attempt to resolve it outside of court. The motion was the first I
22 had even heard that there was a significant dispute. I was aware that
23 the -- there was one exchange of e-mails between the clients, and
24 the next thing I saw was the motion.

25 So I think it is premature. I think there's no showing of

1 irreparable harm. And I think the balancing of equity says that if one
2 is allowed to manage his inventory and the entire funds of the
3 company, the other should also be allowed to at least ask for the
4 explanation for why the -- why he's wanting to take an unusual
5 amount of inventory from what Las Vegas is using.

6 And again, I will say that if we appoint a receiver -- and I
7 assume we're appointing a receiver extremely soon -- that that's
8 something a receiver would be able to handle and -- you know, and
9 take care of in the way they see -- deem appropriate.

10 THE COURT: Mr. Kern, did that exhaust your argument?

11 MR. KERN: That is my argument, Your Honor.

12 I would point out one other thing, that Chef Exec does not
13 own a lease. They have no -- they do not technically have a legal
14 interest in that warehouse. Because Chef -- Mr. Arnould refused to
15 sign and refused to allow Mr. Muney to sign on his behalf, Chef Exec
16 was not able to extend that lease. That lease is owned by a separate
17 legal entity, CMJJ, who chooses to allow them to store that in
18 exchange for funds being paid. But that -- those funds haven't been
19 paid in a very long time.

20 But my point being that CMJJ is the one who has the
21 authority to control locks on that warehouse, and they are not a
22 party to this suit.

23 THE COURT: Thank you, Mr. Kern.

24 And Mr. Calaway, the reply, please.

25 MR. CALAWAY: Thank you, Your Honor.

1 I would like to introduce and have called for the record.
2 Phil Aurbach in my firm has also appeared. His video wasn't
3 working as well. And he'll be handling the reply, if that's okay with
4 you.

5 THE COURT: That's fine. Mr. Aurbach.

6 MR. AURBACH: Can you see and hear me, Your Honor?

7 THE COURT: I can hear you; but I can't see you. I --
8 sometimes it's voice-activated. Let me -- the court recorder may be
9 able to assist. She says it should work, so -- so please proceed.

10 MR. AURBACH: Well, my reply is brief --

11 THE COURT: I can see you.

12 MR. AURBACH: -- anyway, Your Honor.

13 Number one, it's our understanding that CMJJ is
14 100 percent owned by Mr. Muney, and he controls it. It's not like it's
15 a third party.

16 No. 2, it has inventory of Chef Exec. We should have a key
17 today. The Court -- we would request the Court order that we have a
18 key.

19 Three, when a receiver is appointed -- we asked for a
20 receiver with limited powers. But I think he should go in and take
21 control of that warehouse so that both parties have equal access --
22 and the same with any warehouse in LA.

23 My understanding, Judge, is that Mr. Muney went to LA;
24 never asked for the -- to look inside the LA warehouse. But be that
25 as it may, we need a receiver. We would like to extend his limited

1 powers that we -- that your previous order granted that take control
2 of the warehouse and be able to take the inventory of the warehouse
3 and keep track of what's in and what's out. He's going to have to do
4 that anyway. But he should be the one with control of the
5 warehouse.

6 THE COURT: All right. Is there any response with regard
7 to who you wish to serve as a receiver?

8 MR. AURBACH: Are you asking me, Your Honor?

9 THE COURT: I am, yes.

10 MR. AURBACH: Or Mr. Kern?

11 THE COURT: Yeah.

12 No. I heard from Mr. Kern. And I heard from Mr. Calaway
13 on the reply. I just need a reply on who the best receiver will be.

14 MR. AURBACH: Well, we believe that -- that Mr. Bertsch is
15 the -- has the most receiver experience, the most experience as a
16 CPA and receiver. Whereas the opponent of the receiver by Mr. Kern
17 has a ton of forensic experience that we can't deny, but he just
18 doesn't have the amount of receiver experience that may be
19 necessary because these parties have had a hard time decide --
20 agreeing on the sun rises in the east.

21 So if the receiver has to be rolled over into full powers,
22 this proponent by Mr. Kern just doesn't have that experience.

23 THE COURT: All right. So -- and Mr. Kern, do you have
24 any final thoughts before I rule?

25 MR. KERN: I would just go -- clarify, I did notice

1 Mr. Aurbach said that they should put the receiver in -- fully in
2 control of the warehouse. He said that singular. I would assume if
3 he's going to be in control of the warehouse, he would be in control
4 of all warehouses and all inventory --

5 THE COURT: Right --

6 MR. KERN: -- would be more appropriate.

7 But nonetheless, I do argue that a -- if we are remaining a
8 limited receiver, that he remain as limited, as was said in the order.
9 And you know, I don't think there's any dispute that if he orders us to
10 transfer inventory, that's given in the order, and we would certainly
11 follow that.

12 THE COURT: Okay.

13 MR. AURBACH: In brief response, we would like our client
14 to be able to come up, drop off the inventory, pick up the inventory
15 that he wants, and have freedom to do that without this restriction.

16 THE COURT: Good enough.

17 And have you touched base with Mr. Bertsch to see if he's,
18 in fact, available to be the receiver?

19 MR. AURBACH: Mr. Calaway would be able to respond to
20 that.

21 MR. CALAWAY: Yes, Your Honor. He provided us a
22 resume and his experience when we inquired about it. And he said
23 he would be able to take on something like this.

24 We didn't ask him if he would be able to take it on
25 immediately, as in today. But I -- I'm more than happy -- we actually

1 have a hearing later today with Mr. Bertsch, we could ask him after
2 the hearing.

3 THE COURT: Okay. Does anyone have anything further
4 before I rule?

5 MR. AURBACH: Nothing further on behalf of the plaintiff,
6 Your Honor.

7 THE COURT: Mr. Kern.

8 MR. KERN: Just in response to the last statements from
9 Mr. Aurbach, I would just say that, you know, we've had allegations
10 before about Mr. Arnould taking inventory he wasn't supposed to
11 take out of the warehouse.

12 We would much prefer that any desire to exchange
13 inventory between warehouses simply go through the receiver,
14 rather than saying just take what you want. I think that's appropriate
15 for both sides.

16 THE COURT: Okay. Thank you both.

17 I'm going to appoint a receiver today. But I'm going to
18 rule that the defendant will have access to the Las Vegas storage
19 unit, or storage warehouse, in the interim and that the defendant will
20 be required to pay for security to be present when the plaintiff goes
21 to the warehouse.

22 I considered the receiver carefully because I have 37 years
23 of experience, including working with Mr. Bertsch. And I'm
24 acquainted with Mr. Martin, and I'm very impressed by him, but I've
25 never worked with him before. And I appoint Mr. Bertsch regularly.

1 And the quality of his services to the Court are just very high. So I
2 am going to go with Mr. Bertsch.

3 The defendant will be allowed to access the warehouse
4 today, if they're available or when they're available, logistics to be
5 worked out with regard to the convenience to both sides, but the
6 defendant will pay for security to be present at the time that he goes
7 to the warehouse.

8 The receiver will be ordered to change the locks on both
9 warehouses.

10 And Mr. Kern, for your failure to appear yesterday, I'm
11 going to sanction you in the amount of \$100, payable to Nevada
12 Legal Services, Clark County Library, or the Legal Aid Center of
13 Southern Nevada. And you will need to file proof of such payment
14 within 10 days.

15 Now, plaintiff to prepare the order from today granting the
16 motion for receiver.

17 The hearing on June 24th will be vacated with regard to
18 the receivership.

19 If you can't come to terms on the scope of the order
20 appointing the receiver, I won't accept competing orders, but I would
21 convene a telephonic for you at your convenience next week.

22 Are there any questions?

23 MR. AURBACH: Yes, Your Honor. I think you said the
24 defendant should have immediate access and the defendant would
25 pay for security when he goes to the warehouse.

1 THE COURT: No.

2 MR. AURBACH: I think you meant the plaintiff.

3 THE COURT: Plaintiff -- plaintiff will have immediate
4 access. I apologize to both of you. It's Friday and we've worked all
5 week.

6 Plaintiff to have immediate access to that warehouse at a
7 time that's convenient to both parties. They still have to work
8 together on that. The defendant will pay for security to be present
9 for that exchange.

10 MR. AURBACH: And I think we already agreed upon an
11 order of a receiver with limited powers. So that order, I believe --

12 Mr. Calaway, isn't that correct, that order has already been
13 entered?

14 So we don't have to sit down and agree on what powers
15 the receiver has right now. I was asking the Court to extend the
16 receiver's authority to control the warehouses.

17 THE COURT: Well, the parties should work on the
18 language of the receivership order immediately. I'm not going to
19 leave Mr. Kern out of that discussion.

20 If you can't agree as to the language -- I am ordering
21 specifically that he will change the locks on both warehouses,
22 though.

23 If you can't agree on that --

24 MR. KERN: Thank you, Your Honor.

25 THE COURT: -- let me know. Let me -- outline your

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differences, and we'll convene a telephonic next week.

I want him appointed as soon as practicable, as soon as possible.

Mr. Kern, did you have any questions?

MR. KERN: Just to clarify, Your Honor. My client is the one who is paying for security?

THE COURT: That's correct. Yes.

MR. KERN: Okay. Thank you, Your Honor.

THE COURT: All right.

And so Mr. Aurbach will prepare the order from today's hearing.

With regard to the \$100 sanction, I will prepare that order.

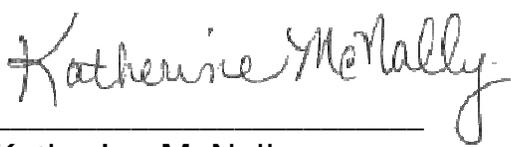
MR. AURBACH: Thank you, Your Honor.

THE COURT: Thank you, all.

[Proceeding concluded at 12:52 p.m.]

* * * * *

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



Katherine McNally
Independent Transcriber CERT**D-323
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