

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF ONONDAGA: CIVIL PART

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RJI No. 33-11-1413
Index No. 2011-2128

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6 KELLY VARANO, As Parent and Natural Guardian
Of Infant JEREMY BOHN; et al.,

7

Plaintiffs,

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vs.

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10 FORBA HOLDINGS, LLC, FORBA, LLC n/k/a
LICSAC, LLC; DD MARKETING, INC.;
SMALL SMILES DENTISTRY, PLLC.

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...
Including: MAZIAR IZADI, DDS;
LAURA KRONER, DDS; LISSETTE BERNAL, DDS;
NAVEED AMAN, DDS; KOURY BONDS, DDS;
YAQOOB KHAN, DDS; JANINE RANDAZZO, DDS;
LOC VIN VUU, DDS, et al.,

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Defendants.

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Hearing

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October 10, 2013

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Onondaga County Courthouse
401 Montgomery Street
Syracuse, New York 13202

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Before:

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HONORABLE DEBORAH KARALUNAS
Supreme Court Justice

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(October 10th, 2013, Judge Karalunas, Small Smiles)

THE COURT: All right. How's everybody today?

Mr. FIRST: Good.

Mr. HULSLANDER: How are you, Judge?

THE COURT: I'm fine, thank you.

I sent everybody an e-mail last evening requesting that a representative of each party be present as well as the gentleman who I had admonished during the course of this trial for using his computer.

I see that you are here. I'm going to ask you to please come on up.

I'm going to have you sworn in.

SCOTT GREENSPAN, having been called to the witness stand, being duly sworn, testified as follows:

THE COURT: Will you state your name please?

THE WITNESS: Scott Greenspan,
G-r-e-e-n-s-p-a-n.

THE COURT: Okay. Mr. Greenspan, where do you live?

THE WITNESS: 401 East 16th Street, Apartment 28B, in Manhattan.

THE COURT: What is your date of birth?

1 THE WITNESS: February 18th, 1971.

2 THE COURT: And are you employed?

3 THE WITNESS: I am.

4 THE COURT: Who are you employed by?

5 THE WITNESS: I'm a partner at the law firm of
6 Sedgwick L.L.P.

7 THE COURT: Okay. And where did you go to law
8 school?

9 THE WITNESS: N.Y.U.

10 THE COURT: And when did you graduate?

11 THE WITNESS: 1995.

12 THE COURT: And what is the nature of your
13 practice?

14 THE WITNESS: Insurance coverage, advice and
15 litigation.

16 THE COURT: All right. You have sat through the
17 trial that I've just been in, the Small Smiles trial?

18 THE WITNESS: I have, yes.

19 THE COURT: And what was your role in connection
20 with that trial?

21 THE WITNESS: I was asked by the dental
22 professional liability malpractice carrier for New FORBA
23 and clinics and dentist defendants -- that's National
24 Union Fire Insurance Company, Pittsburgh, P.A.-- to
25 monitor the trial.

1 THE COURT: Okay, so specifically who asked you
2 to monitor the trial?

3 THE WITNESS: I just want to be clear. I'll
4 tell you that -- if it starts getting into the substance
5 and privilege communications, I may have to assert the
6 privilege, but the person who asked me was Denise
7 D'Assaro, D-apostrophe-a-s-s-a-r-o, who works for A.I.G.
8 Claims, Inc., who is the authorized claims handling
9 representative of National Union.

10 THE COURT: Okay. So who does that carrier
11 insure in connection with the case that just proceeded to
12 trial?

13 THE WITNESS: Sure. As I just said, that
14 carrier insures New FORBA, insures the dentist defendants,
15 and the Syracuse clinic. I should let you know, I'm also
16 counsel for National Union in coverage litigation, the
17 Middle District of Tennessee and Nashville, as to
18 insurance coverage rights under the policies against Small
19 Smiles.

20 THE COURT: Were you given specific instructions
21 with respect to monitoring this litigation?

22 THE WITNESS: I want to be careful not to break
23 the privilege. I can tell you what my understanding was
24 of my purpose. It was just to monitor the trial and
25 report back to the client on my mental impressions as to

1 what was going on. I have been a litigator for 18 years,
2 and that was my purpose in reporting back to the client
3 what was going on and whether there were any implications
4 for the insurance coverage issues.

5 THE COURT: Were you given any specific
6 instructions with respect to the jurors?

7 THE WITNESS: No.

8 THE COURT: I'm going to take a brief recess.

9 THE WITNESS: Sure.

10 (Whereupon, a brief recess was then taken)

11

12 THE DEPUTY: Court is back in session.

13 THE COURT: What was your name again, I'm sorry?

14 THE WITNESS: I'm sorry if I didn't pronounce it
15 clearly. Scott, the last name is Greenspan,
16 G-r-e-e-n-s-p-a-n, like the guy who used to run the
17 Federal Reserve.

18 THE COURT: All right. Mr. Greenspan, did you
19 have any conversation at any time during the course of the
20 trial with any of the jurors?

21 THE WITNESS: Yes. When I was in the
22 elevator -- actually, the day when you told me to type
23 quieter on the laptop, when I was coming back up from
24 lunch, I was in the elevator. There were, I think, three
25 or four of the jurors there. One was -- I think one was

1 the hairdresser. I think she was like Juror Number 5. I
2 think the skater guy was there. He was Juror Number 6,
3 and the middle-aged woman -- I don't remember her name --
4 sitting in the middle. I think she was Number 3. It was
5 not Juror French; I remember that name. It was the one in
6 the middle. We were riding up on the elevator and Juror
7 Number 3 asked me, "Are you a reporter?" which I
8 responded, "I'm sorry, but I can't answer your question.
9 No one can talk to the jury." That was the end of the
10 conversation; the elevator door opened and they walked
11 away.

12 THE COURT: How many times were you in the
13 elevator with the jurors?

14 THE WITNESS: Other than that occasion, just
15 going up and down from lunch, during the course of the
16 month, maybe one or two other times. You know, going up
17 to the court or going down to lunch or back from lunch.

18 THE COURT: Did you ever eat in the places that
19 the jurors ate?

20 THE WITNESS: One or two times I ate -- when I
21 saw them at a different part of the restaurant. I don't
22 know the name of the restaurant. It was the one when you
23 sort of leave the court and you go directly down that
24 street on the right. It's like a Panera but it isn't. I
25 used to go there to plug in my laptop that you didn't

1 like. So yeah, I did eat in that restaurant one or two
2 times during lunch when they were there, but I didn't sit
3 anywhere near in proximity.

4 THE COURT: Did you have any other conversation
5 with the jurors?

6 THE WITNESS: No, your Honor.

7 THE COURT: And have you testified fully as to
8 the conversation that you had with the jurors in the
9 elevator?

10 THE WITNESS: Yes, I did, ma'am.

11 THE COURT: At any point in time did you record
12 anything that the jurors were saying?

13 THE WITNESS: Record?

14 THE COURT: Record.

15 THE WITNESS: No, your Honor.

16 THE COURT: At any time did you videotape the
17 jurors?

18 THE WITNESS: No, your Honor.

19 THE COURT: Following the verdict, I went into
20 the juror room, as I always do, to personally thank the
21 jurors. I asked the jurors, as I always do, whether they
22 had any questions at all.

23 The first question the jurors asked me was
24 whether they did a good job. The second question the
25 jurors asked me was who was the individual who was

1 stalking them throughout this trial. When I inquired of
2 the jurors what did the person look like who was
3 "stalking" them, to use the juror's word, they advised me
4 that it was the individual who I had admonished -- I don't
5 know that the jury used that word -- during the course of
6 the trial, the individual with the computer.

7 The jurors described for me their interactions
8 with you, Mr. Greenspan. They used the word that you were
9 creepy, that you were very seedy, that you were in the
10 elevator with them frequently, that you followed them to
11 various places where they had lunch, identifying four
12 restaurants; that you were waiting in the lobby of the
13 courtroom and got into the elevator with them after lunch
14 to ride up in the elevator with them.

15 The conversation -- they also stated that the
16 conversation you described having with the jurors in the
17 elevator was that you were asked who were you and whether
18 you were a reporter, and your response was that, "I'm not
19 supposed to talk with you. I wish I could talk with you.
20 I really wish I could talk with you." And you repeated
21 that multiple times.

22 One juror expressed a concern that you were
23 videotaping them. You were the subject of conversation
24 amongst the jury throughout the course of the trial. The
25 jurors -- one of the jurors observed that you were

1 speaking with Dan DeRose, Mike Roumph, and Mr. First out
2 in the Columbus Circle area. That juror then told the
3 rest of the jurors that she figured out who you were
4 because you were speaking to those individuals.

5 They described that you would follow them where
6 they went to lunch, and at one point they ducked into a
7 restaurant and observed out the window that you were
8 panicking because you couldn't see them.

9 I'd like you to comment on those statements that
10 were provided to me by the jurors.

11 THE WITNESS: Sure. I have no client/attorney
12 relationship with the Old FORBA people. I've never met
13 Mr. First before the trial, or any of the Old FORBA
14 people. A few times, because we parked in the same
15 garage, we walked down the street together and talked,
16 just, you know, but never -- I have no relationship with
17 them. They're not clients.

18 This is a small town. There aren't, in my
19 estimation, I don't know, a lot of places to eat. I went
20 to a place that a lot of people in the trial, including
21 some lawyers in this courtroom, went to a lot where I
22 could plug in my laptop, and that was that place that
23 looks like Panera's but isn't Panera's, and a lot of the
24 people from the trial were there.

25 One other time, I went to the Taqueria by the

1 Farmer's Square. I saw they were walking maybe 100 feet
2 ahead of me going into some other restaurant, but I don't
3 know what they were talking about. I do know when I was
4 in Taqueria, I had a fight with my fiance over the phone
5 because she was annoyed because I was up here so long.
6 They might have seen some agitation. You could call her
7 to the stand and she would tell you about that. There was
8 yelling between us, but it had nothing to do with them.

9 And as far as the elevator, I didn't wait for
10 them or anything like that. I went in -- you know, this
11 is one courtroom; there's one elevator close to the
12 courtroom, and I just went up. I didn't wait for them or
13 follow them or anything like that.

14 As far as the conversation in the elevator, I
15 might have said I felt bad; "I wish I could answer your
16 question," but that was it. I didn't answer their
17 question and I wouldn't answer their question because no
18 one is supposed to talk to the jury.

19 As far as my clients go, I had no instructions
20 whatsoever to talk with the jury or have any interaction
21 with the jury at all. I have been doing this for eighteen
22 years. I'm even rated with Martindale-Hubbell and no
23 client would be worth interfering with a jury, so, you
24 know... that's my testimony.

25 They did -- Juror Number 3 asked me once "Are

1 you a reporter?" And I told her, I said, "I'm sorry, I
2 can't talk to you. No one is supposed to talk to the
3 jury." I wished I could talk to her, "Wish I could tell
4 you the answer, but I can't. You can't talk to the jury."

5 As far as the restaurants go, there aren't that
6 many restaurants in the area of the courtroom. There's
7 the Mission, which I went to a few times and saw attorneys
8 there. There's that Panera place which I went to almost
9 every day and you can ask the staff if I was there every
10 day, and they would say yes because I wanted to plug in my
11 computer. Once I went further down the street to
12 Taqueria, which is maybe two blocks away, because those
13 were the restaurants.

14 And that's what my comments would be.

15 THE COURT: Okay. I'm going to take another
16 recess.

17 (Recess taken)

18 THE COURT: Mr. Greenspan, I don't need to hear
19 more from you. At this point, however, I would like
20 submissions from the attorneys within a week about the
21 issues that were raised as a result of my conversation
22 with the jurors and the testimony of Mr. Greenspan. So by
23 next Friday.

24 Thank you.

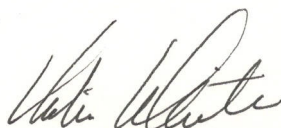
25 (Conclusion of proceedings)

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CERTIFICATE

I, VALERIE WAITE, an Official Court Reporter
in and for the State of New York, Fifth Judicial District,
do hereby certify that I recorded stenographically the
foregoing proceedings, at the time and place noted in the
heading hereof, and that it is a true and correct
transcript of the proceedings therein to the best of my
ability.



Valerie Waite,
Senior Court Reporter

Dated: October 10, 2013