

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT OF APPEALS OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

SALAM RAZUKI,)	CERTIFIED TRANSCRIPT
Plaintiff & Respondent,)	District Court of Appeal
)	No. D075028
vs.)	
NINUS MALAN, ET AL,)	
Defendant & Appellants.)	Superior Court Case
)	No. 37-2018-00034229
)	CU-BC-CTL

FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY
Honorable KENNETH MEDEL, Judge
Department 66

Reporter's Appeal Transcript

Volume 1 of 7
JULY 17, 2018
(Pages 1 - 12/200)

Appearances:

For the Plaintiff Respondent: STEVEN ELIA, ESQ.
2221 CAMINO DEL RIO S. #207
SAN DIEGO, CALIFORNIA 92108

For the Defendant Appellants: GINA AUSTIN, ESQ.
3990 OLD TOWN AVENUE, A-112
SAN DIEGO, CALIFORNIA 92110

Darla Kmety, RPR, CSR No. 12956
Court-Approved Official Pro-Tem Court Reporter, San Diego
Superior Court

1 JULY 17, 2018; San Diego, California; 1:30 P.M.

2 -- 00o --

3 THE COURT: Item 4. Razuki versus Malan.

4 MR. ELIA: Good morning. Steven Elia on behalf
5 of Mr. Razuki.

6 MS. GRIFFIN: Maura Griffin on behalf of
7 plaintiff.

8 THE COURT: Mr. Elia.

9 MS. AUSTIN: Your Honor? Gina Austin specially
10 appearing on behalf of all defendants.

11 THE COURT: When you say "specially," what does
12 that mean?

13 MS. AUSTIN: It means we're here only to oppose
14 this and protect their interests. They have been served.
15 We are not retained as counsel yet for this matter.

16 THE COURT: All right. Counsel, tell me --
17 flush this out for me. I need a little more history. I
18 only had a peripheral chance to read your papers.

19 MR. ELIA: Yes, your Honor. It's a lengthy set
20 of facts. I'll do my best to summarize.

21 This case is about three properties that operate
22 three legal dispensaries: There's a retail location at
23 Balboa. There's a manufacturing, cultivation at the
24 Murriesta. And there is a third location which hasn't
25 engage in operations at this moment. We're really dealing
26 with the two operations.

27 My client invested millions of dollars. Her
28 client invested nothing. If he did, it's a nominal

1 amount.

2 THE COURT: What was the role of her client?

3 MR. ELIA: To be the operator. But the deal was
4 that my client would be 75 percent owner; her client would
5 be 25 percent owner after my client recouped his
6 investment, which hasn't happened.

7 THE COURT: Okay.

8 MR. ELIA: This oral agreement was memorialized
9 into a settlement agreement where both sides were
10 represented by an attorney. They met several times as
11 Exhibit D. It's very clear as to what the ownership of
12 the assets are. There's no ambiguity.

13 At this point, Mr. Malan, who is the defendant,
14 and Mr. Hakim want to cut my client out of the deal
15 completely. Essentially, they want to steal these
16 operations. So in October of 2017, they brought in a
17 management company, a professional management company,
18 that would operate these operations. Counsel is here on
19 behalf of SoCal. And they entered into three agreements
20 for the three locations.

21 SoCal has paid about \$2.6 million so far. That
22 money -- some of that money was supposed -- probably about
23 a million dollars of it -- was supposed to go to an entity
24 called Flip. My client was a 50 percent -- I'm sorry --
25 75 percent owner, and her client would be a 25 percent
26 owner, as I previously stated.

27 What Mr. Malan did, what Mr. Hakim did is they
28 set up another entity called Monarch. Didn't tell my

1 client about it and funneled over a million dollars of
2 that amount.

3 Now, under these three management agreements,
4 SoCal was supposed to pay a hundred thousand dollars a
5 month. So 50,000 per location. It's a substantial amount
6 of money we're talking about. This was since October of
7 2017.

8 Now, when SoCal eventually found out about a
9 month ago that Mr. Razuki, my client, had a substantial
10 interest in these operations, they sent a letter over to
11 her client saying, what is this all about? Tell us why
12 you didn't tell us Mr. Razuki had this ownership interest.
13 Then they withhold payments.

14 So what her client does is he locks them out.
15 Resorts to self-help, locks them out. Although they've
16 got a million dollars worth of machinery at the
17 cultivation location. Locks him out. Locks him out of
18 the retail establishment. Brings in a new operator.

19 SoCal has already paid million of dollars, and
20 her client has granted options under this agreement.
21 They've paid \$225,000 for these options to purchase half
22 of these operations, and they just locked him out and
23 brought in a new operator.

24 They did this to conceal the fact and to cut my
25 client out of the transaction. The new operator has no
26 idea that my client owns 75 percent of these operations.

27 Now, we're asking for a receiver because these
28 are extraordinary circumstances and conduct by the

1 defendants. All we're asking for is to preserve the
2 status quo that we've had the last ten months with the
3 defendants. We're just asking for the appointment of a
4 receiver that would take over the marijuana operations,
5 temporary restraining order so they don't commit waste.
6 The problem, your Honor --

7 THE COURT: What underlying suit do you have?

8 MR. ELIA: The complaint?

9 THE COURT: Yeah.

10 MR. ELIA: It's basically to enforce the
11 settlement agreement that's attached as Exhibit D.

12 THE COURT: There was a settlement in this case?

13 MR. ELIA: There was a settlement.

14 THE COURT: It's not agree -- they agreed to.

15 MR. ELIA: Yes. Exhibit D to our moving papers.
16 That and for damages of the millions of dollars their
17 clients have taken not told us about. They told us, Look.
18 They're not really paying. In fact, they did pay.
19 They're paying a hundred thousand dollars a month. They
20 paid 225,000 for options we never knew about. All this
21 money needs to be accounted for.

22 We're not asking for any harm to anybody. We
23 just want a receiver to take over so that we can stop the
24 wasting. We need some internal controls so that her
25 clients don't continue to steal and put in a new operator
26 that is eventually going to end up joining this complaint,
27 and then we have a multiplicity of lawsuits.

28 THE COURT: You want an injunction.

1 MR. ELIA: Yes, your Honor.

2 THE COURT: The injunction it to maintain the
3 status quo.

4 MR. ELIA: Maintain the status quo, to not
5 waste. And one of things, your Honor, her client is the
6 record owner on the LLCs; however, the settlement
7 agreement says no matter who owns it, the deal is 75/25.
8 He's free to sell the properties.

9 In fact, when we look at the management
10 agreements, he's sold furniture, fixtures, and equipment
11 that belonged to my client. He can't sell something that
12 he doesn't own. There's irreparable harm. He's free to
13 sell -- transfer the properties tomorrow. My client is
14 guarantor on millions of dollar of real estate loans on
15 this.

16 THE COURT: Another party wanted to intervene
17 today.

18 MR. ELIA: Yes, your Honor. Rob Fuller. We
19 filed our motion today ex parte.

20 THE COURT: You did that today without a --

21 MR. ELIA: We filed ex parte before
22 10:00 yesterday. Gave notice. Should have been with the
23 court.

24 THE COURT: I don't have it, but isn't that
25 supposed to be a full-blown motion? Can I do that on an
26 ex parte basis?

27 MR. ELIA: I believe it's appropriate for ex
28 parte under the rules. We cite that in our brief.

1 THE COURT: Counsel?

2 MS. AUSTIN: Good morning, your Honor. As I
3 mentioned, I am specially appearing on behalf of all the
4 defendants. None of the defendants have been served with
5 either the motion or the complaint intervention, nor the
6 underlying complaints for this ex parte. We're here to
7 protect their rights.

8 THE COURT: You have not served them?

9 MR. ELIA: Your Honor, we haven't located them,
10 but I did speak to their counsel on Friday. He told me at
11 10:00 a.m. on Friday he downloaded the complaint. He
12 represented he represents both sides and that I asked
13 him -- I had a 15-minute conversation with him, fully
14 explained everything. I told him -- asked him to please
15 let your clients know, and he assured me that he would.

16 MS. AUSTIN: Your Honor, the person he spoke to
17 is not a litigation counsel. He does, as I understand it,
18 he does represent some of the defendants in some business
19 transactional work but does not represent them in this. I
20 don't know the nature of that nor do I --

21 THE COURT: Did you not know them beforehand?

22 MS. AUSTIN: Did I not know who?

23 THE COURT: Did you have no relationship with
24 the moving parties beforehand?

25 MS. AUSTIN: No. I only have relationship with
26 -- no. I have relationship with Ninus Malan in other
27 matters, so we may end up representing them, but we
28 haven't done conflicts checks.

1 we have another attorney we're talking to,
2 George Fleming, who is looking at but hasn't done
3 conflicts checks. We're not even sure the nature of the
4 complaint. The notice we received for their ex parte
5 which was in email on Friday, didn't even tell us the
6 nature of the ex parte.

7 THE COURT: All right.

8 MS. AUSTIN: That's the Number 1 thing is we
9 haven't been served. The second thing is there's no
10 urgency here. I briefly read the papers as we were
11 sitting out there -- or sitting here waiting, listening
12 and there's no urgency. What is going on today has been
13 going on for -- Ninus Malan having control of the
14 entities, which he's entitled to, has been going on a very
15 long time. There's no evidence of any urgency in this
16 particular matter.

17 And I think most importantly here is that as
18 I skimmed through the declaration, which is Mr. Razuki,
19 which is all hearsay, none of it shows just why there is a
20 need to change anything today.

21 If we were able to get into the factual matter
22 of this, we -- you would get evidence presented to you
23 that would show that, in fact, SoCal Builders was -- the
24 reason that they had to be terminated was because of
25 mismanagement, was because the HOA was looking at revoking
26 the permit, because they weren't doing proper permits
27 under the state licensing.

28 I don't want to get into all the merits. We

1 don't represent them yet. We don't know that we will.

2 THE COURT: Okay. Thank you. Anything further,
3 counsel?

4 MR. FULLER: Yes, your Honor. I found the
5 citation. Code of Civil Procedure 387(c) that says it can
6 be brought ex parte.

7 THE COURT: I'm going to grant your motion to
8 intervene.

9 MR. FULLER: Thank you, your Honor.

10 THE COURT: On yours, the only thing is the
11 receivership?

12 MR. FULLER: May I address that briefly?

13 THE COURT: Yes.

14 MR. FULLER: We believe that we have a very
15 long, detailed authored dispute resolution clause in our
16 contracts.

17 THE COURT: Detailed --

18 MR. FULLER: This seller undercut. We're in the
19 position we've got until next Tuesday, July 24, to make
20 \$170,000 of payments. Right now, we have the unavailable
21 task to decide whether to give to Mr. Malan and
22 Mr. Hakim, or whether Mr. Razuki should get a hundred
23 percent or 75 percent of that. We don't know where to put
24 that money. We feel more comfortable giving it to the
25 receiver.

26 MR. ELIA: Your Honor, I brought the receiver in
27 court, Mr. Essary. I've had Judge Sturgeon appoint sua
28 sponte without anyone asking for it. He's trusted by

1 other judges here. I know some judges have reservations
2 with receiver, but Mr. Essary would be appropriate for
3 this case.

4 MS. AUSTIN: Your Honor, we haven't seen
5 briefing on this. We don't know anything about what is
6 going on. If they don't know where to put the money, we
7 suggest they interplead with the court.

8 THE COURT: All right. I'm going to grant the
9 relief requested. The injunction is granted.
10 Receivership is appointed. Hope you all can sort this
11 out. I would have some really good communication with
12 people. See if you can work out --

13 MS. AUSTIN: Your Honor, you're granting the
14 receivership? We're not even served. How are we going --
15 we don't even know if this is the case.

16 THE COURT: Well, the order is granted at this
17 point.

18 MR. ELIA: Thank you, your Honor. Appreciate
19 it.

20
21 [whereupon the proceeding concluded.]

22
23
24
25
26
27
28

1 STATE OF CALIFORNIA

2 COUNTY OF SAN DIEGO

3

4 I, Darla Kmety, Court-Approved Official Pro Tem
5 Reporter for the Superior Court of the State of
6 California, in and for the County of San Diego, do hereby
7 certify:

8

9 That as such reporter, I reported in machine
10 shorthand the proceedings held in the foregoing case;

11

12 That my notes were transcribed into typewriting
13 under my direction and the proceedings held on
14 July 17, 2018, contained within pages 1 through 12, are a
15 true and correct transcription.

16

17 Pages 13 through 200 are utilized for block
18 numbering purposes. The next page number is 201 in volume
19 2. Nothing has been omitted.

20

21

22 This Day 4th of February 2019

23

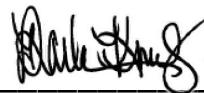
24

25

26

27

28



Darla Kmety, CSR 12956