1/28/09 Hearing

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

DOCTOR'S ASSOCIATES, INC.,	)	
Plaintiff,	)	
vs.	)	No. 3:06-cv-01710 (VLB)
QIP HOLDER LLC and	)	
IFILM CORP.,	)	
Defendants.	)	

Record of proceedings held before SPECIAL MASTER GEORGE ROYSTER (via telephone), taken before GREG S. WEILAND, CSR, at Suite 4200, 35 West Wacker Drive, in the City of Chicago, Cook County, Illinois, commencing at 10:04 o'clock a.m. Central Standard Time, on the 28th day of January, 2009.

1 PRESENT:

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3 SPECIAL MASTER GEORGE ROYSTER (via telephone)

4

5 ON BEHALF OF THE PLAINTIFF:

6 LEVY & DRONEY, P.C.

7 Pondview Corporate Center

8 74 Batterson Park Road

9 Farmington, Connecticut 06032

10 (860) 676-3000

11 BY: MR. JEFFREY J. MIRMAN (via telephone) and

12 MS. LISA A. ZACCARDELLI (via telephone)

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15

16 ON BEHALF OF THE DEFENDANTS:

17 WINSTON & STRAWN LLP

18 35 West Wacker Drive

19 Chicago, Illinois 60601-9703

20 (312) 558-5700

21 BY: MR. RONALD Y. ROTHSTEIN and

22 MR. MARLON E. LUTFIYYA

23 E-mail: rrothstein@winston.com

24 mlutfiyya@winston.com

1 SPECIAL MASTER ROYSTER: All right. This
2 is George Royster.
3 First all, I assume this is being
4 recorded.
5 MR. ROTHSTEIN: It is.
6 SPECIAL MASTER ROYSTER: All right. Why
7 don't the parties identify themselves.
8 MR. MIRMAN: Jeff Mirman and
9 Lisa Zaccardelli for the Plaintiff.
10 MR. ROTHSTEIN: Ron Rothstein and
11 Marlon Lutfiyya for the Defendants.
12 SPECIAL MASTER ROYSTER: And this is
13 George Royster. I'm the Special Master in this
14 case.
15 The purpose of this conference is a
16 follow-up to the in camera hearing that I held some
17 time ago, and the first thing that I'd like to cover
18 is that Mr. Rothstein sent me an e-mail on January 8
19 saying that there was an agreement with respect to
20 who the parties were and who some of the
21 subsidiaries of some of these corporations were,
22 including Cervantes, and I want to know if there is
23 an agreement and what that agreement is.
24 MR. MIRMAN: This is Jeff Mirman. With

1 respect to Cervantes, there is no agreement. The
2 only thing that we can agree to is that it appears
3 that IFILM and MTV are subsidiaries of Viacom, but
4 that's the limits of our agreement.
5 MR. ROTHSTEIN: Right. And I am trying to
6 get consent from my client, but I've had to run this
7 up several chains of command over with my client to
8 get Mr. Mirman a corporate flowchart to establish
9 that Cervantes owns Quiznos, and I am just waiting
10 to hear back from my client on the document that I
11 can turn over to Mr. Mirman, and that shouldn't be
12 more than a day or two longer, and my sense is that
13 should extinguish that issue at that point.
14 MR. MIRMAN: I don't know whether it will
15 or it won't.
16 MR. ROTHSTEIN: Okay. We can litigate it
17 then.
18 SPECIAL MASTER ROYSTER: What about VH1,
19 are they a subsidiary of Viacom?
20 MR. ROTHSTEIN: Yes.
21 MR. MIRMAN: Yes, I believe they are.
22 SPECIAL MASTER ROYSTER: Okay. Here's
23 what I think that I should do and should rule is
24 that Mr. Rothstein can get to Mr. Mirman whatever he

1 wants no later than let's say February 3rd, and
2 then if there's an agreement, you can send it to me
3 by February 5th. If there is no agreement, if I
4 receive nothing, then I'm just going to proceed as
5 if there's no agreement because I can't compel an
6 agreement.
7 Is that understood?
8 MR. MIRMAN: Yes.
9 MR. ROTHSTEIN: That's fine. Do you want
10 a copy of whatever I send to Mr. Mirman?
11 SPECIAL MASTER ROYSTER: Well, no. What I
12 want is whether there's an agreement or not.
13 MR. ROTHSTEIN: Right. Well, if there's
14 no agreement, what are you going to do?
15 SPECIAL MASTER ROYSTER: I'm just going to
16 proceed, decide the issue as best I can based on --
17 MR. ROTHSTEIN: I understand. If you've
18 got the document, you can see what I see and you can
19 see what Mr. Mirman sees.
20 How are you going to decide the issue if
21 you don't have the document?
22 SPECIAL MASTER ROYSTER: I'm just going to
23 decide it based on what's on the file unless
24 Mr. Mirman agrees that I should see the document.

1 Do you agree to that, Mr. Mirman?

2 MR. MIRMAN: I don't know. I can't agree

3 to that because I don't know what the document will

4 be or will look like, and I can't -- you know, I

5 would have to be able then to have an opportunity to

6 comment on the document.

7 SPECIAL MASTER ROYSTER: Yes. The problem

8 is that I don't want -- this matter needs to be

9 brought to a conclusion, and the file contains

10 certain information. Actually the file is pretty

11 thick. But if I keep receiving documents, then I am

12 inclined to think that people have a chance to

13 respond to those documents, and that's what I don't

14 want to have going on and on and on.

15 But if there is an agreement, that's a

16 different story. I'm happy to receive agreements up

17 until the point where I render my decision, which I

18 intend to do relatively quickly, by sometime the

19 first part of February.

20 MR. ROTHSTEIN: No, I understand. I guess

21 my point is this: If you were to somehow find that

22 Cervantes was not covered by the privilege, that's

23 just going to end up in front of the judge, and

24 we're going to have side litigation over that issue.

1 SPECIAL MASTER ROYSTER: Well, I may not
2 make that exact finding. I mean, it's possible that
3 I just decide on which documents are privileged and
4 which documents aren't privileged. I wasn't going
5 to necessarily make a lot of tremendously detailed
6 findings on that point because that's just going to
7 take a lot more time and a lot more expense.
8 So I wasn't planning on finding every
9 small fact point.
10 MR. ROTHSTEIN: No, I understand. But I
11 guess my point is this: I guess we can deal with
12 this if and when we have to deal with it, but as to
13 Cervantes, the issue that we're confronting is one
14 where if you're just making privilege calls and
15 you're not just categorically saying there's no
16 privilege issue that I need to deal with here
17 because Cervantes and Quiznos are part of the same
18 corporate organization, it's conceivable that you
19 could find in our favor and it's a non-issue on
20 other grounds, but it's conceivable that you may not
21 on the privilege issue, where I guess let's see if
22 we can resolve this between us.
23 MR. MIRMAN: Our position, of course, is
24 that even assuming arguendo that Cervantes has some

1 ownership interest in Quiznos, that that doesn't
2 mean that the documents in which Cervantes has
3 identified there's a privilege which attaches.
4 SPECIAL MASTER ROYSTER: That's absolutely
5 correct in my opinion because there has to be a
6 privilege. Look, the common interest doctrine only
7 comes into play if there's a claimed waiver, so
8 there has to be a privilege to begin with, and then
9 the privilege has to be waived, so I think that's a
10 correct statement.
11 MR. ROTHSTEIN: I'm not arguing with that
12 statement. What I'm arguing with is that I don't
13 know what you're going to say as to the document as
14 it relates to -- I mean, you could say because
15 Cervantes is a third party I'm going to find there's
16 no privilege. That's where my concern is.
17 Okay. Let's just deal with this when we
18 get to it.
19 SPECIAL MASTER ROYSTER: I understand
20 where the issue is, and, look, all I can say is try
21 to work together on this, and if you want to have a
22 further hearing by agreement, then I'm willing to do
23 that. And I need to finish my job because the judge
24 has given me a deadline.

1 MR. ROTHSTEIN: We understand.

2 SPECIAL MASTER ROYSTER: So, look, you

3 guys can always agree even after I render a decision

4 here that you want to have me consider further

5 things. I'm sure the judge will go along with it if

6 you can agree that you want me to make a more

7 detailed finding. But the problem is that you're

8 paying for all of this, and I'm trying to be

9 efficient because it takes a long time to make this

10 in camera examination in and of itself.

11 MR. MIRMAN: Understood.

12 MR. ROTHSTEIN: Okay.

13 SPECIAL MASTER ROYSTER: But believe me, I

14 am happy to go on if the judge asks me to or you ask

15 me to, so I want to make that clear, but I'm going

16 to try to be as efficient as I can to begin with.

17 Is that reasonably clear?

18 MR. MIRMAN: It is.

19 MR. ROTHSTEIN: Yes.

20 SPECIAL MASTER ROYSTER: All right. So I

21 don't know how to leave it, but I'm always happy to

22 receive agreements, and if you say, well, look,

23 after I've rendered my decision we need to have that

24 decision expanded upon, we need to have further

1 findings of fact and you ask the judge to continue
2 my assignment, I'm happy to do it, very happy.
3 So let's move on to another, which is
4 Mr. Rothstein sent me a couple of cases via e-mail,
5 namely the Kingsway Financial case and also the
6 Gucci case, which I've read, and Mr. Mirman said,
7 well, it's fine that these cases be sent to me, but
8 he wants a chance to respond if he feels it's
9 appropriate.
10 So, Mr. Mirman, do you feel it's
11 appropriate that you respond?
12 MR. MIRMAN: I don't feel it's necessary.
13 I don't think these cases add anything to the
14 analysis that has been set forth in other various
15 briefs and it doesn't add anything new or different
16 and it doesn't affect in any way the arguments which
17 we have made, which we believe remain sound law.
18 SPECIAL MASTER ROYSTER: Okay. That's
19 fine.
20 Now, I also received a number of
21 redactions. Some of the redactions, by the way,
22 were just duplicates of what was already redacted in
23 the file.
24 But let me ask you this, Mr. Mirman: Do

1 you have any comment on these redactions? I mean,
2 it's hard for you to comment too thoroughly because
3 you don't know what's in the redactions.
4 MR. MIRMAN: Yes, exactly. The only
5 comment I can make is this: I looked at the
6 documents, and as a result of my review, I had a
7 number of questions about them which I raised with
8 Mr. Rothstein by letter of January 20th, and I
9 have not had a response to those inquiries, so I
10 can't agree that the documents as redacted are
11 appropriate. I continue to press for the full
12 version of all of the documents which he has
13 provided to you.
14 MR. ROTHSTEIN: Jeff, the issue with most
15 of these documents is that with the redactions and
16 whatnot the thing that we've got to do, because I'm
17 looking at nine entries here and I know not all nine
18 apply to this situation but most do, we've got to
19 amend our privilege log. And we're going to send
20 you an amended privilege log to satisfy you that the
21 privilege is properly asserted at least according to
22 our view of the law, and we can get that out to you
23 today.
24 I would have sent it to you prior to

1 today, but I was waiting to have this call because I
2 think it was the intention to get a lot of this
3 stuff on the record and then we'd proceed from
4 there.
5 So the issue I think now is just one of
6 amending the privilege log to reflect the change in
7 circumstances because of the fact that we've
8 redacted documents that we've now sent over to you,
9 and so the nature of the claim of privilege and the
10 people involved are going to have to be amended and
11 I think satisfy your curiosities about that.
12 And then we've had to go to
13 Davis & Gilbert to track down some attachments which
14 were attached to privileged documents, but we're
15 going to get you the attachments that we've now
16 obtained from Davis & Gilbert.
17 MR. MIRMAN: Mr. Royster, I guess the only
18 thing I can say is that when I see what was provided
19 that may or may not form the basis of something we
20 might be able to agree to by February 3rd.
21 MR. ROTHSTEIN: Yes, right.
22 So, Jeff, what I will do then is I'll get
23 you a revised privilege log. If you've got further
24 questions on it, send it to me as quickly as you

1 can. We will see if we can resolve it by the 3rd.
2 And where you've asked for attachments, we're
3 endeavoring to locate those. Sometimes they're just
4 with third parties and we're contacting them to
5 obtain them for you.
6 MR. MIRMAN: Of course, that they are with
7 third parties suggests to me that the documents
8 should never have been privileged in the first
9 place.
10 MR. ROTHSTEIN: No, when I say third
11 parties, I mean Davis & Gilbert where we are
12 claiming a privilege.
13 SPECIAL MASTER ROYSTER: Well, go ahead
14 and do that if you want to, and in some of the
15 opinions in some of the cases the judge or the
16 master has taken up these documents one at a time.
17 There are so many -- and said why they are or are
18 not privileged. That is not my intention at this
19 particular time because the amount of work involved
20 in doing that with the number of documents that are
21 being contested here would be very, very
22 substantial, and I don't think I would ever be able
23 to finish it by the deadline given to me by the
24 Court.

1 So that's why I said earlier if you want
2 me to expand my opinion, I will do that, or, of
3 course, if the Court wants me to expand my opinion
4 and go over this document by document, line by line,
5 I can do that, but that's not where I'm planning to
6 start.
7 MR. MIRMAN: Understood. And I guess we
8 reserve the right to request that you do so if
9 needed.
10 SPECIAL MASTER ROYSTER: Well, you can
11 always reserve that right, and, look, I'm probably
12 going to render my decision in all likelihood during
13 the week of February 16th because I have the
14 deadline that the judge has given me anyway.
15 So you can request that the judge extend
16 it or do further things, and as I said, I'm happy to
17 do that, but I'm not planning to go into great
18 detail on each document at this particular time, so
19 I wanted you to know that.
20 MR. MIRMAN: Understood.
21 SPECIAL MASTER ROYSTER: Now, the next
22 thing that's on our agenda is any comment that
23 Mr. Mirman may have on the prior in camera hearing,
24 which you now have the transcript of I assume,

1 Mr. Mirman.

2 MR. MIRMAN: Yes, I do. I have no

3 additional comment on that, no.

4 SPECIAL MASTER ROYSTER: All right. Then

5 the only other thing that I have left here to

6 discuss is whether or not there's anything else that

7 the parties wish to discuss with me before I

8 basically try to finish this opinion.

9 MR. ROTHSTEIN: No. We will just be with

10 you by February the 5th to apprise you of anything

11 that you need to be apprised of regarding

12 agreements.

13 SPECIAL MASTER ROYSTER: Right. And you

14 can send me by February 5th whatever you want.

15 That's going to be in writing, and then if you say

16 to me, for example, well, we've agreed that we would

17 like to have a further hearing the 16th of February

18 or let's say the 17th, let's say the 16th of

19 February, and you've agreed on a common time, you

20 can check it with my secretary, I'm going to hold

21 that hearing, but I'm not planning to hold a

22 hearing.

23 MR. MIRMAN: Okay.

24 SPECIAL MASTER ROYSTER: Is that

1 understood?

2 MR. MIRMAN: It is.

3 MR. ROTHSTEIN: Yes.

4 SPECIAL MASTER ROYSTER: This will be the

5 last hearing unless you agree to a further hearing

6 before I render my initial decision, and, of course,

7 if you agree that you want me to have a more

8 detailed finding and the judge allows it, that's

9 fine.

10 MR. ROTHSTEIN: Okay. Well, thank you.

11 MR. MIRMAN: That's all I have.

12 MR. ROTHSTEIN: Thank you very much,

13 Mr. Royster. Appreciate your time.

14 SPECIAL MASTER ROYSTER: Good talking to

15 you.

16 MR. MIRMAN: Thank you.

17 Ron, will you send me a copy of the

18 transcript?

19 MR. ROTHSTEIN: I certainly will.

20 MR. MIRMAN: Thank you.

21 MR. ROTHSTEIN: See you, Jeff.

22 MR. MIRMAN: All right. Bye-bye.

23 SPECIAL MASTER ROYSTER: Send me a copy

24 too.

1 (Whereupon, the proceeding was
2 adjourned at 10:22 a.m. Central
3 Standard Time.)
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1 C E R T I F I C A T E

2 STATE OF ILLINOIS)

3) SS:

4 COUNTY OF C O O K)

5 The within and foregoing hearing was

6 reported in shorthand by GREG S. WEILAND, CSR,

7 within and for the County of Cook and State of

8 Illinois, on the 28th day of January, 2009, at the

9 hour of 10:04 a.m. Central Standard Time, at 35 West

10 Wacker Drive, Suite 4200, in the City of Chicago,

11 Cook County, Illinois.

12 There were present during this hearing the

13 following counsel: MR. JEFFREY J. MIRMAN

14 (via telephone) and MS. LISA A. ZACCARDELLI

15 (via telephone), representing the Plaintiff;

16 MR. RONALD Y. ROTHSTEIN and MR. MARLON E. LUTFIYYA,

17 representing the Defendants.

18 The proceedings were taken down in

19 shorthand by the undersigned, acting as

20 stenographer; and the within and foregoing is a

21 true, correct and complete record of all of the

22 proceedings had at the time and place hereinabove

23 referred to.

24 The undersigned is not interested in the

1 within case, nor of kin or counsel to any of the
2 parties.
3 Witness my official signature and seal as
4 Notary Public in and for Cook County, Illinois, on
5 this 28th day of January, 2009.
6
7 _____
GREG S. WEILAND, CSR
8 License No. 084-003472
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