

*In re: SVS Holdings, Inc./Tom H. Connolly vs.
Sequoia Voting Systems, et al.*

Deposition of Lars Fuller, Esq. - Volume II

April 27, 2016



700 17th Street, Suite 1750
Denver, CO 80202
303-988-8470 (Office) 303-988-8478 (Fax)
SKReporting.com

Stevens-Koenig
Reporting

In re: SVS Holdings, Inc./Tom H. Connolly vs. Sequoia Voting Systems, et al.

Deposition of Lars Fuller, Esq. - Volume II
April 27, 2016

Page 256

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE DISTRICT OF COLORADO
3 In re: Case Number: 10-24238 HRT
4 SVS HOLDINGS, INC., Chapter 7
5 Debtor.
6 TOM H. CONNOLLY, CHAPTER 7
7 TRUSTEE,
8 Plaintiff,
9 v.
10 SEQUOIA VOTING SYSTEMS, INC.,
11 DOMINION VOTING SYSTEMS
12 CORPORATION, and DOMINION
13 VOTING SYSTEMS, INC.,
14 Defendants.
15 -----
16 DEPOSITION OF LARS FULLER, ESQ.
17
18 Volume II
19
20 April 27, 2016
21
22 -----
23
24
25

1 PURSUANT TO NOTICE and the Federal Rules of
2 Civil Procedure, the deposition of LARS FULLER, ESQ.,
3 Volume II, called for examination by the Plaintiff, was
4 taken at the offices of Baker & Hostetler,
5 1801 California Street, Suite 4400, Denver, Colorado,
6 commencing at 9:10 a.m. on Wednesday, April 27, 2016,
7 before Rebecca J. Collings, RPR, CRCR, and Notary Public
8 in and for the State of Colorado.
9
10 I N D E X
11
12 EXAMINATION PAGE
13 By Ms. Bronson 260, 363
14
15 By Mr. Wilson 293, 369
16
17
18
19
20
21
22
23
24
25

Page 255

1 APPEARANCES:
2 ON BEHALF OF THE PLAINTIFF:
3 KRISTIN M. BRONSON, ESQ.
4 Lewis Roca Rothgerber Christie, LLP
5 1200 17th Street
6 Suite 3000
7 Denver, Colorado 80202
8 Phone: 303-623-9000
9 Fax: 303-623-9222
10 Email: kbronson@lrrc.com
11 ON BEHALF OF THE DEFENDANTS:
12 DAVID B. WILSON, ESQ.
13 Sherman & Howard, LLC
14 633 17th Street
15 Suite 3000
16 Denver, Colorado 80202
17 Phone: 303-299-8382
18 Fax: 303-298-0940
19 Email: dwilson@shermanhoward.com
20 ON BEHALF OF SMARTMATIC:
21 IRA S. GREENE, ESQ.
22 Locke Lord, LLP
23 Brookfield Place
24 200 Vesey Street, 20th Floor
25 New York, New York 10281
Phone: 212-912-2880
Fax: 888-325-9691
Email: ira.greene@lockelord.com
ON BEHALF OF THE DEPONENT:
ELIZABETH A. GREENE, ESQ.
Baker Hostetler
SunTrust Center, Suite 2300
200 South Orange Avenue
Orlando, Florida 32801
Phone: 407-649-4036
Fax: 407-841-0168
Email: egreen@bakerlaw.com

Page 257

EXHIBIT DESCRIPTION	INITIAL REFERENCE
199 2/8/10 Email Thread, BH0001056-1057	260
200 2/8/10 Email, BH001802	261
201 2/9/10 Email Thread, Note Purchase Agreement, DOM 0007766-7808	262
202 3/5/10 Email & 3/5/10 Letter RE: Asset Purchase Transaction, DOM 0008130-8136	264
203 3/15/10 Email Thread, BH001877-18778	274
204 3/31/10 Email Thread, Sequoia Income Statement, Chapter 11 - JB	275
3-30-10.xls Chart, BH009105-9112	
205 5/31/10 Email Thread, BH014098-014099	284
206 5/31/10 Email Thread, BH14104-14106	287
207 6/2/10 Email Thread, BH14187-14191	288
208 4/10/10 Email Thread, BH009372-9373	291
209 American Arbitration Association, Response to Demand for Arbitration, BH016037-16041	292
210 11/19/09 Email Thread, Agreement Regarding Outstanding Obligations, BH000182-185	312
211 1/18/10 Sequoia Letter to Anton Collins Miller, ACM015723-15739	323
212 9/20/11 Email, Sequoia Voting Systems, Inc., Settlement Agreement and Releases Summary as of 9/20/11, & SVS Holdings, Inc., and Subsidiary Summary of Trade Creditors as of 9/20/11, BH005592-5594	334

In re: SVS Holdings, Inc./Tom H. Connolly vs. Sequoia Voting Systems, et al.

Deposition of Lars Fuller, Esq. - Volume II
April 27, 2016

		Page 258
1	EXHIBITS CONTINUED	INITIAL REFERENCE
2		
3	213 7/7/09 Minutes of Meeting of Board of Directors of Sequoia Voting Systems, Inc., KN000769-770	340
4	214 Unanimous Consent of Board of Directors of Sequoia Voting Systems, Inc., KN000765-766	340
5	215 9/30/09 Email Thread & Unanimous Consent of Directors of Sequoia Voting Systems, Inc., BH000134-137	344
6	216 5/3/10 Email, BH010658	347
7	217 3/25/10 Unanimous Written Consent in Lieu of a Special Meeting of the Board of Directors of Sequoia Voting Systems, Inc., & 3/24 Letter RE: Asset Purchase Transaction, KN000805-815	351
8		
9	218 Unanimous Written Consent in Lieu of a Special Meeting of the Board of Directors of SVS Holdings & 3/24/10 Letter RE: Asset Purchase Transaction, SEYFARTH 00003595-3605	352
10		
11	219 4/15/10 Email Thread & 4/15/10 Bayard Engagement Letter, BH009528-9536	353
12	220 6/2/10 Email, BH014272-14273	355
13	221 6/3/10 Email, BH014612-14613	356
14		
15	PREVIOUSLY MARKED EXHIBITS	INITIAL REFERENCE
16		
17	38 4/28/10 Letter and Demand for Arbitration, BH002031-2088	294
18		
19		
20		
21		
22		
23		
24		
25		

		Page 259
1	PREVIOUSLY MARKED EXHIBITS CONTINUED	INITIAL REFERENCE
2		
3	83 1/13/10 Email Thread and Attachments: 5/27/08 Promissory Note; 5/27/08 Security Agreement; 6/24/08 Promissory Note; 6/24/08 Security Agreement, BH000268-295 and BH007757-7766	317
4	104 2/8/10 Email, BH000547	266
5	111 3/12/10 Email & Blaine Employment Letter, BH001582-1584	272
6		
7	112 3/14/10 Email Thread, BH001624-1626	268
8		
9	163 5/29/09 Email Thread, BH006746-6748	327
10		
11	165 7/7/09 Email Thread and Minutes of Meeting of Board of Directors of Sequoia Voting Systems, Inc., and Red-Lined Version, BH006818-6824	342
12	167 Summary of Creditors as of August 30, 2011	331
13		
14	179 1/7/10 Email Thread, Jack Blaine Loan Documents, 5/22/08 Unanimous Written Consent in Lieu of the Initial meeting of the Board of Directors of SVS Holdings, Inc., Sequoia Voting Systems, Inc., 8/26/09 Promissory Note, 11/24/09 Promissory Note Security Agreement, & 12/8/09 Email, BH007684-7705	301
15		
16	182 1/22/10 Sequoia Voting Systems, Inc., Promissory Note & Security Agreement, & 1/22/10 Email Thread, DOMSQ012086-12098	299
17		
18	185 2/25/10 Email Thread, BH001367-1369	321
19	23 3/5/10 Email Thread, BH008488-8495	297
20	194 2009/2010 Cash Statement, Stand Alone Chapter 11, BH001153	339
21		
22		
23		
24		
25		

		Page 260
1	PROCEEDINGS	
2	MS. BRONSON: We're back on the record on	
3	the second day. Mr. Fuller, thank you for reappearing,	
4	and you're still under oath. I think your counsel wanted	
5	to make a quick objection based on yesterday's testimony.	
6	And she's chewing. Sorry about that, Liz.	
7	THE DEPONENT: I can make it for you, but I	
8	shouldn't.	
9	MS. GREEN: Sorry. To the extent that	
10	David objected as to form and to foundation and the other	
11	objections, we also preserve those objections, and I	
12	wanted to put that on the record.	
13	MS. BRONSON: Okay.	
14	MS. GREEN: Okay.	
15	MS. BRONSON: Let's get started.	
16	EXAMINATION	
17	BY MS. BRONSON:	
18	Q. I want to kind of orient you back in time	
19	since we had an overnight break here. Take a look at	
20	Exhibit 199.	
21	(Exhibit 199 marked.)	
22	A. I see it.	
23	Q. Okay. Why was -- why were you exchanging	
24	contact information with Ian MacVicar in early 2010?	
25	A. I'm not recalling the specifics of why, but	

		Page 261
1	my just reading through this exhibit seems to be like an	
2	initial give-me-your-contact-guy-type email. So my guess	
3	is this is a time when Sequoia was in discussion with	
4	Dominion.	
5	Q. Okay. Discussions that ultimately led to	
6	the 2010 asset sale?	
7	A. Correct.	
8	Q. Okay.	
9	(Exhibit 200 marked.)	
10	Q. I'll hand you Exhibit 200. Did you have a	
11	conference call with Mr. MacManemy, Mr. MacVicar, and	
12	Mr. Hurst in this early February 2010 time period?	
13	A. I must have. I don't remember it, but that	
14	seems to be what the email suggests.	
15	Q. What was your involvement in the early	
16	discussions with Dominion that ultimately led to the 2010	
17	asset sale?	
18	A. I would describe it as limited to offering	
19	legal opinions about various components of the	
20	transaction, which is to say that the business people	
21	were really discussing the business terms, and I wasn't	
22	really negotiating business terms as much as offering my	
23	perspective on some of the components.	
24	Q. And then as time progressed, did you then	
25	become involved in papering the deal?	

Page 330

1 that I've been given.

2 **Q. Based on whether Holdings has its own**

3 **policy, right?**

4 A. That's right.

5 **Q. Okay. And so in the top email, it says --**

6 **Mr. MacManemy tells you -- it says, We have a board --**

7 **pardon me -- it says, We have a board meeting on Monday,**

8 **and this would be useful. He's talking about a template**

9 **or some bankruptcy options. Okay?**

10 A. Yes.

11 **Q. Were -- did you have a general**

12 **understanding that there were board meetings for Sequoia**

13 **Voting Systems?**

14 A. Were there board meetings for the operating

15 company as opposed to the holding company is your

16 question?

17 **Q. Well, did you understand -- first of all,**

18 **did you understand that there were both an operating**

19 **company and a holding company?**

20 A. I did.

21 **Q. You never were confused about that?**

22 A. I was never confused about that.

23 **Q. Those are separate entities in your mind,**

24 **right?**

25 A. Absolutely.

Page 331

1 **Q. And that continued through your**

2 **representation of SVS and Sequoia together?**

3 A. Correct.

4 **Q. And your representation of Sequoia**

5 **separately, right?**

6 A. Correct.

7 **Q. And in fact, after SVS filed for**

8 **bankruptcy, you continued to represent Sequoia for a**

9 **number of years, right?**

10 A. Correct.

11 **Q. In fact, during that period from the**

12 **bankruptcy filing in 2010 until Sequoia itself provided**

13 **[sic] for bankruptcy, you worked with or helped to work**

14 **with creditors of Sequoia to try to reach settlements of**

15 **their claims against Sequoia, didn't you?**

16 A. Yes, I did.

17 **Q. So if we look at, for example, Deposition**

18 **Exhibit 167 --**

19 MS. BRONSON: Sorry. What was the number

20 again?

21 MR. WILSON: It's 167. It was marked

22 yesterday.

23 MS. BRONSON: Thank you.

24 A. I see that.

25 **Q. (By Mr. Wilson) And is this -- and I**

Page 332

1 **apologize because I'm not recalling your testimony**

2 **yesterday. Is this a document that you saw in the**

3 **August 2011 timeframe?**

4 A. It looks familiar and similar to documents

5 I would have been reviewing in that timeframe. I can't

6 be certain that I actually saw this document.

7 **Q. And so do you recall the source of the**

8 **information that is presented on the second page of**

9 **Deposition Exhibit 167?**

10 A. I don't recall as I sit here the source of

11 this information. I can deduce based on the top of it,

12 August 30, 2011, that would have been Kevin Hurst and

13 only Kevin Hurst.

14 **Q. It came from Sequoia, correct?**

15 A. Certainly.

16 **Q. So Sequoia had information that**

17 **distinguished between accounts payable for Sequoia and**

18 **accounts payable for SVS Holdings, right?**

19 A. Yes.

20 **Q. And so accounts payable at the Sequoia**

21 **level were \$968,439 as of August 30, 2011, right?**

22 A. Correct.

23 **Q. And then accounts payable for SVS Holdings**

24 **as of the same date were \$318,655, right?**

25 A. Correct.

Page 333

1 **Q. And then there is a listing of other**

2 **obligations. Do you see that?**

3 A. I do.

4 **Q. Once again, there's a distinction between**

5 **the obligations of Sequoia and the obligations of**

6 **SVS Holdings, right?**

7 A. Yes, there is.

8 **Q. And then we have equipment lease and**

9 **termination fees showing obligations only to Sequoia,**

10 **right?**

11 A. Yes.

12 **Q. And then a total obligations for each**

13 **entity and then a grand total, right?**

14 A. Yes.

15 **Q. And then if you look at -- under "other**

16 **obligations," there are references to numbers in the left**

17 **hand of that column that's 20620, for example.**

18 A. I see that.

19 **Q. Do you have an understanding of what those**

20 **numbers reference?**

21 A. My understanding is that they were

22 basically on Kevin Hurst's spreadsheet or on the internal

23 accounting of Sequoia. They were fields or internal

24 notifications to separately account for these

25 obligations.

Page 334

1 **Q. These are account classification codes,**
2 **right?**
3 A. I wouldn't disagree with that, yeah.
4 **Q. And sorry. You would not disagree?**
5 A. I would not, yeah. I'd never use those
6 words, but --
7 **Q. Based on your work with Kevin Hurst, did**
8 **you understand that Sequoia had an accounting system?**
9 A. Yes.
10 **Q. And that continued after the bankruptcy --**
11 **pardon me. After the -- bad question.**
12 **That continued after the SVS bankruptcy?**
13 A. Sequoia continued outside -- continued
14 to -- I hesitate to use the word "operate." They
15 remained operated by Kevin Hurst and they had an
16 accounting system that occurred continually up until the
17 point at least Tom Connolly took possession.
18 **Q. All right. Let's go to another exhibit**
19 **that has not been marked before. I'll hand you this.**
20 (Exhibit 212 marked.)
21 MS. GREEN: Is there a way I can get a
22 complete set, because some -- I'm not getting some
23 exhibits and I want to make sure that when we get the
24 transcript that I can have a complete set.
25 (Brief discussion off the record.)

Page 335

1 **Q. (By Mr. Wilson) Mr. Fuller, I've handed you**
2 **Exhibit 212, and you recognize this document?**
3 A. I'm not remembering this exchange. It
4 clearly appears to be an email from me to Brent Cohen.
5 **Q. And just for the record, it's BH005592 to**
6 **94. Do you see that?**
7 A. I do see that.
8 **Q. And so this says -- Mr. Cohen is**
9 **Ms. Bronson's partner at the Rothgerber firm?**
10 A. I know him well.
11 **Q. Yeah. And it says, Please find a summary**
12 **of Sequoia Voting Systems' settlements and outstanding**
13 **trade debts, and then there's a two-page attachment.**
14 A. Yes, I see that.
15 **Q. And would you just describe generally what**
16 **it is that you were attaching for Mr. Cohen's**
17 **edification?**
18 A. These are summary spreadsheets showing at
19 5593 a summary of Sequoia Voting Systems, Inc., the
20 operating company's creditors and settlements on claim
21 amounts that we had negotiated and a characterization of
22 the level of discount we were able to accomplish and sort
23 of a summary status of attempts to resolve the
24 outstanding debts of the operating company. And that's
25 at 5593. And then on 5594 is a summary spreadsheet that

Page 336

1 has both creditor information of the holding company and
2 the operating company.
3 **Q. Okay. So it -- on the second page of the**
4 **spreadsheet, it's SVS Holdings and subsidiary summary of**
5 **trade creditors as of September 20, 2011. Do you see**
6 **that?**
7 A. I do.
8 **Q. That's an update to the similar information**
9 **that's provided in Deposition Exhibit Number 167, right?**
10 A. It is.
11 **Q. So you'll notice as between August and**
12 **September of 2011 that the balances that are shown on**
13 **the -- the balances have changed and they've been**
14 **updated, right?**
15 A. I'm going to say yes, but can you remind me
16 of the exhibit I'm supposed to be comparing these to?
17 **Q. Yes. Compare Deposition Exhibit Number 212**
18 **with 167.**
19 MS. BRONSON: We're looking at the last
20 pages of each of those, David; is that correct? I want
21 to make sure I'm on the right pages.
22 MR. WILSON: Yes, that's correct.
23 **Q. (By Mr. Wilson) Just focus on --**
24 A. Yes, the numbers have changed.
25 **Q. The numbers have changed. Okay. So**

Page 337

1 **somebody is -- would that be Mr. Hurst who's making those**
2 **updates to the -- to that information, or is that**
3 **something you would have done or somebody else, I**
4 **suppose?**
5 A. It would only have been Mr. Hurst
6 potentially from advice of counsel. But -- well, I can't
7 remember if there was an individual that Mr. Hurst was
8 using. Maybe it was Laura Clyncke. Anyway, it would
9 have been Mr. Hurst independently or Mr. Hurst with the
10 advice of counsel coming from me.
11 **Q. Okay. So on the second page of Deposition**
12 **Exhibit 212, this is a summary of the settlements that**
13 **Sequoia has reached with its creditors, right?**
14 A. The second page? 5594?
15 **Q. 5593, the second page of Exhibit 212.**
16 A. Yes. So 5593 is a summary of settlements
17 made with --
18 **Q. What was your role in negotiating these**
19 **settlements?**
20 A. To negotiate them.
21 **Q. And did you --**
22 (Whereupon, Ms. Green left the
23 proceedings.)
24 **Q. (By Mr. Wilson) And so it was your**
25 **responsibility to deal with the creditors or their**

Page 362

1 for a second. Do you have an understanding as to where
 2 Mr. Blaine got the money for those loans?
 3 A. Yes. My understanding was that was
 4 essentially his retirement, that they were -- that was
 5 personal funds that he had acquired from a long
 6 professional career. And he had some personal wealth,
 7 but that's where his money was coming from.
 8 Q. And you -- can you characterize the
 9 negotiations between Dominion and Sequoia with regard to
 10 the -- let's start with the 2010 asset transaction.
 11 First of all, I mean, were -- do you have a view as to
 12 whether Sequoia was trying to get a -- the best deal that
 13 it could, or did it want to leave some things on the
 14 table?
 15 A. No question Sequoia was attempting and
 16 fighting as hard as it could to get the best deal it
 17 could from Dominion.
 18 Q. What about with regard to the 2009 asset
 19 purchase agreement, or do you have a view on that?
 20 A. I don't have a specific recollection of
 21 that specific transaction, and I don't recall that I was
 22 closely involved with it.
 23 Q. Now, there are allegations in this case
 24 regarding the separateness of Sequoia and SVS. Do you
 25 have a view on those?

Page 363

1 MS. BRONSON: Object to form.
 2 Q. (By Mr. Wilson) You can answer.
 3 A. Yeah. My perspective was that they were
 4 always distinct entities and they were intended to be
 5 distinct entities and they attempted to observe the
 6 necessary formalities to preserve their separate
 7 distinction; and that within the company itself and
 8 certainly during my tenure as attorney, we did everything
 9 we could to try and preserve the distinction between the
 10 two entities.
 11 Q. And that would be continuous through the
 12 time that you represented both entities as well as
 13 Sequoia, correct?
 14 A. Yes.
 15 MR. WILSON: All right. Mr. Fuller, I want
 16 to thank you for your patience, first of all. That went
 17 a lot longer than I thought it would, but I appreciate
 18 your patience and your thoughtfulness. Thank you.
 19 THE DEPONENT: Thank you.
 20 MS. BRONSON: I just have two short
 21 follow-ups on two issues.
 22 FURTHER EXAMINATION
 23 BY MS. BRONSON:
 24 Q. You were asked by Mr. Wilson to review a
 25 document that you and I had also spoken about that

Page 364

1 involved the red line of board meeting minutes, a draft.
 2 Do you recall that testimony?
 3 A. I do.
 4 Q. Okay. Were you ever retained by Sequoia to
 5 perform a review of the company's compliance with its
 6 corporate governance obligations?
 7 A. No.
 8 Q. Were you ever retained by SVS Holdings to
 9 perform a review of the company's compliance with its
 10 corporate governance obligations?
 11 A. No.
 12 Q. Did you ever actually perform such a review
 13 for either company?
 14 A. Not a review, no.
 15 Q. So you would not be able to testify as to
 16 whether either company's board complied with its
 17 corporate governance obligations?
 18 A. During my tenure, I was at least aware of
 19 the obligations and corporate governance obligations and
 20 necessary approvals and -- with respect to transactions
 21 that I was advising them on. That was an aspect of my
 22 advice.
 23 Q. Let me be more specific. Other than
 24 specific actions of the board that you were involved in,
 25 you would not be able to testify as to whether either

Page 365

1 company's board complied with its corporate governance
 2 obligations?
 3 MR. WILSON: Object to form.
 4 A. With respect to transactions that I was not
 5 involved with, I can't imagine -- I don't know. I don't
 6 know if I could advise -- or testify as to whether I
 7 thought they were in compliance with a transaction that I
 8 wasn't involved with.
 9 Q. (By Ms. Bronson) Or for periods prior to
 10 your engagement as counsel, for example, right?
 11 A. I'll agree with that.
 12 Q. And certainly during your tenure as counsel
 13 with the companies, they were engaging in transactions
 14 that you were not involved in, right?
 15 A. That's correct.
 16 Q. And you weren't serving as counsel to the
 17 board of directors for corporate governance purposes,
 18 were you?
 19 A. I was advising both SVS and Sequoia, which
 20 is to say I was advising their officers and directors on
 21 legal issues related to a number of transactions. And in
 22 that capacity, compliance with corporate formalities and
 23 obligations would be within the scope of what I was
 24 advising them.
 25 Q. So you may have been asked to review some