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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE DAVID O. CARTER, JUDGE PRESIDING

- - - - -

BILLIE RENE FRANCES LILLIAN)
POWERS,)
)
Plaintiff,)
)
vs.)
)
THE BANK OF NEW YORK MELLON, et)
al,)
)
Defendants.)
_____)

CERTIFIED

No. 8:17-CV-1397-DOC
Item No. 3

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Hearing on Application for TRO
Santa Ana, California
Thursday, November 2, 2017

Debbie Gale, CSR 9472, RPR, CCRR
Federal Official Court Reporter
United States District Court
411 West 4th Street, Room 1-053
Santa Ana, California 92701
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**Transcript certified for Billie Rene Frances Lillian Powers
Debbie Gale, CSR, RPR, CCRR
Federal Official Court Reporter**

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21 ALSO PRESENT:

22 Billie Rene Frances Lillian Powers, plaintiff
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I N D E X

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1 **SANTA ANA, CALIFORNIA, THURSDAY, NOVEMBER 2, 2017**

2 **Item No. 3**

3 (9:01 a.m.)

4 THE COURT: Billie Powers v. The Bank of New York
5 Mellon.

09:01 6 **APPEARANCES**

09:01 7 MR. SNYDER: Good morning, Your Honor. Richard
8 Snyder on behalf of the plaintiff.

09:01 9 PLAINTIFF POWERS: Good morning, Your Honor.
10 Billie Rene Frances Lillian Powers. Thank you for your
11 time.

09:01 12 THE COURT: You're the plaintiff.

09:01 13 PLAINTIFF POWERS: Yes, Your Honor.

09:01 14 THE COURT: Okay. Thank you.

09:01 15 And the Bank?

09:01 16 MR. DAILEY: Good morning, Your Honor. Steve
17 Dailey of Kutak Rock, here on behalf of Defendant Select
18 Portfolio --

09:02 19 THE COURT: All right. Thank you.

09:02 20 How would you like to proceed today, Counsel?
21 Would you like to call a witness? Present any additional
22 evidence? I've read the documentation. I'm at your
23 disposal.

09:02 24 MR. SNYDER: Well, Your Honor, um, the -- I think
25 everything's pretty well detailed in the -- in the moving

1 papers.

09:02 2 THE COURT: All right.

09:02 3 MR. SNYDER: You know, the --

09:02 4 THE COURT: Well, I'm asking you now: How would
5 you like to proceed? I've read the documents, but I'm
6 not -- there's no chilling effect if you'd like to present
7 evidence today on either party's part.

09:02 8 If you would like to -- you'd like to submit on
9 the papers, I just need to know that.

09:02 10 MR. SNYDER: Um, I think we'd like to submit on
11 the papers, Your Honor.

09:02 12 THE COURT: Okay.

09:02 13 Counsel, how would you like to proceed today?

09:02 14 MR. DAILEY: I'd like to be heard, Your Honor.

09:02 15 THE COURT: Okay. Please.

09:02 16 Now, Counsel, we're gonna move quickly now. I
17 wanna hear your argument.

09:02 18 **ARGUMENT BY MR. DAILEY**

09:02 19 MR. DAILEY: So, Your Honor, the first thing I
20 wanna say is there's no basis for exigent relief. There's
21 no emergency. We only received a day's notice or couple
22 day's notice of this, and we really didn't have time to put
23 together a comprehensive opposition.

09:03 24 THE COURT: Well, the most concerning thing are
25 the allegations of fraud, of course. That strikes to the

1 heart of the process, and I don't know if those are true or
2 not.

09:03 3 But what ramifications do we have? They're here
4 on a TRO to stop, I believe, a sale?

09:03 5 MR. DAILEY: Well, that's the thing. I couldn't
6 tell. I looked at their paperwork and they asked for --

09:03 7 THE COURT: Well, why don't you ask them.

09:03 8 MR. DAILEY: The sale's already occurred.

09:03 9 THE COURT: Okay.

09:03 10 MR. DAILEY: So their TRO asked for, um -- a TRO
11 to prevent eviction, prevent sale of the property, but they
12 don't --

09:03 13 THE COURT: Just a moment.

09:03 14 **INQUIRY BY THE COURT**

09:03 15 THE COURT: Is your client still in the house,
16 Counsel?

09:03 17 MR. SNYDER: No, she's not in the house,
18 Your Honor.

09:03 19 THE COURT: So counsel raises a good point. You
20 may have merit concerning the damages that you may have
21 accruing -- I don't know yet -- especially if there's fraud
22 here. But if she's not in the house and the sale's
23 occurred, I have a hard time understanding why you're here
24 on a temporary restraining order.

09:04 25 I can understand the merits of this eventually, if

1 we get to the merits. I have a hard time understanding a
2 TRO.

09:04 3 MR. SNYDER: Well, the reason why she's not in the
4 house, Your Honor -- there was a, um -- there was a -- what
5 we considered an unlawful foreclosure sale.

09:04 6 THE COURT: No. I understand that.

09:04 7 Has the house been sold, though?

09:04 8 MR. SNYDER: It was sold -- it was taken back by
9 the foreclosing party.

09:04 10 THE COURT: Okay.

09:04 11 MR. SNYDER: So it has been sold --

09:04 12 *(Court reporter requests clarification for the*
13 *record.)*

09:04 14 MR. SNYDER: Has not been sold to a third party.

09:04 15 We're concerned that the plaintiff -- excuse me --
16 the defendant is going to run out and sell it to a third
17 party to try and interject a bona fide purchaser.

09:04 18 My client has been in this property for -- since
19 2007. That was her home. Her belongings are there. She
20 was forced out of the property and has been -- is required
21 to live, um, on the generosity of friends, um, putting her
22 up, and her -- and her minor child, a 13-year-old girl.

09:05 23 It -- the exigent circumstances is that -- that
24 she doesn't have a house. And this house is sitting empty
25 and, um, so the -- um, the harm -- the relative harm weighs

1 dramatically in my client's favor.

09:05 2 The bank has the house --

09:05 3 THE COURT: I don't know what you're asking for.

4 So let me just ask you a couple questions. Okay?

09:05 5 On October 10th, defendants filed a Motion to
6 Dismiss and a Motion to Strike, which are Dockets 14 and 15.

09:05 7 And on October 30th, plaintiff, you filed
8 opposition in which you concede that many of the claims in
9 the First Amended Complaint failed to meet the pleading
10 standard for stating a claim. And I think we both agree
11 about that.

09:05 12 Thus, my first question would be, on what
13 remaining theory of relief are you seeking this TRO? And
14 we're going around that issue, apparently.

09:06 15 Second, you're claiming that because the
16 fraudulent conveyances occurred, neither plaintiff nor the
17 lender has any interest in the property.

09:06 18 Well, if that's the case, how do you have standing
19 to bring claims that require your client to be the owner of
20 the property? And have you produced a true Grant Deed --
21 which I've never received -- or delivered in any of your
22 papers?

09:06 23 For the defendants, I have a very practical
24 concern; and that is, since plaintiff filed the First
25 Amended Complaint, *pro se*, before she retained counsel, it

1 put her in a difficult position. And even if plaintiff's
2 counsel has conceded that the First Amended Complaint is
3 very poorly pled, it is missing required facts. It is, by
4 and large, not pled with the particularity that's required.
5 So it's difficult to determine exactly the merits or
6 demerits of the causes of action. And at times remedies are
7 pled as causes of action.

09:07 8 So one thing that you might consider, just to save
9 your client a lot of time, is potentially stipulating to
10 allow plaintiff's counsel to file a Second Amended
11 Complaint, mooting the instant Motion to Dismiss, in order
12 to save your resources -- on both parties -- and the Court's
13 resources.

09:07 14 Otherwise, what I would have to do is I'd have to
15 wade through the First Amended Complaint and attempt to
16 parse plaintiff's claims in order to rule on defendant's
17 motion. Yet, at the end of this rather time-consuming
18 process, and a costly process for both of you, if I decided
19 that dismissal was warranted, I would almost certainly give
20 plaintiff's counsel and plaintiff leave to amend anyway. In
21 other words, you're coming right back here.

09:07 22 So, thus stipulating to a Second Amended Complaint
23 would save everyone time. I mean, it would save a lot of
24 resources. So I'm kind of somewhat encouraging that to
25 speed this along. Right now this TRO does not seem

1 appropriate. This seems to be compensable, quite frankly.
2 This seems to be something that could be recovered,
3 especially in terms of fraud. And this would give you a
4 time to look into this affidavit signed by this person.

09:08 5 So why don't you two talk for just a moment.
6 Sometimes wisdom prevails and sometimes it doesn't. And if
7 it doesn't, I'll resolve this matter quickly. That means,
8 Counsel, get up out of your seat.

09:08 9 Counsel, talk to your other counsel. That's an
10 order. That's not a request now.

09:08 11 MR. SNYDER: Yes, Your Honor.

09:08 12 MR. DAILEY: Would you like us to go in the hall
13 now, Your Honor?

09:08 14 THE COURT: Yeah. Go talk quickly now.

09:08 15 Trying to save your client some money, frankly --
16 both of you.

09:08 17 PLAINTIFF POWERS: Thank you so much.

09:08 18 *(Pause in the proceedings at 9:08 a.m.)*

09:10 19 *(Proceedings resumed at 9:10 a.m.)*

09:10 20 THE COURT: Counsel, your thoughts and wisdom?

09:10 21 MR. DAILEY: Your Honor, we're amenable to
22 stipulating to a Second Amended Complaint.

09:10 23 THE COURT: I think that would be wise. It'll
24 save a lot of time and effort and expense on both of your
25 parts. Let's -- I'm going to note that a stipulation is

1 entered as to a Second Amended Complaint. And we're going
2 to get rid of this Motion to Dismiss at the time.

09:10 3 It's very poorly written, frankly. I'm glad
4 you've got a lawyer. This would've been kicked out --

09:10 5 PLAINTIFF POWERS: Yes, I'm --

09:10 6 THE COURT: I'm not speaking to you now. I'm
7 speaking to counsel, and you're listening.

09:11 8 What disturbs me the most is, if these allegations
9 of fraud are not appropriate, be careful with this Court.
10 But if they are, you've just met a sledgehammer.

09:11 11 MR. DAILEY: Your Honor --

09:11 12 THE COURT: No, no. I'm speaking. You're
13 listening now. You're listening to me. You've met a
14 sledgehammer. I will come down on these parties like you
15 haven't seen, including recommending a criminal indictment.

09:11 16 That will give you two time to talk this through.
17 It'll give you time to look at this see if this has any
18 substance. If it's meritless, maybe you can work out a
19 resolution quickly and avoid me. If it does have merit,
20 then I'm encouraging you to proceed forward. Okay?

09:11 21 So I look forward to your Second Amended
22 Complaint. When would that be filed, counsel?

09:11 23 MR. SNYDER: May I?

09:11 24 THE COURT: Give time -- give yourself enough time
25 also to just discuss the matter of whether this alleged

1 fraud is meritorious. In other words, it doesn't have to be
2 filed within two weeks. I want to give you time to sort
3 this out before I do. Okay?

09:12 4 So give me a time on your schedule. That means
5 talk to your opposing counsel. He's right over there.

09:12 6 MR. DAILEY: Yeah. Whenever you can file it, it's
7 fine with me.

09:12 8 MR. SNYDER: Four weeks?

09:12 9 MR. DAILEY: Four weeks is fine.

09:12 10 THE COURT: Well, you need time also, don't you,
11 to look at these documents? In other words, before he files
12 this, this may get easily resolved between the two of you
13 very quickly.

09:12 14 But let me repeat: If these are fraudulent
15 documents, watch out. Because this will go far beyond a
16 civil matter. I'll refer it over to the U.S. Attorney's
17 Office. Okay?

09:12 18 Just give me a date. Quit looking at me and give
19 me a date now, something convenient for you. Normally,
20 courts tell you a date. I'm being courteous and asking you
21 two to agree on a date. That requires you to talk to him.
22 Thank you.

09:12 23 MR. SNYDER: Four weeks, Your Honor.

09:12 24 THE COURT: Four weeks. Okay.

09:12 25 Then let's take the date of --

09:12 1 (To the clerk:) Deb, four weeks?

09:12 2 THE CLERK: November 30th.

09:12 3 THE COURT: November 30th, Counsel.

09:12 4 Well, that catches you right after the holiday.

5 Give 'em another week.

09:13 6 THE CLERK: December 7th.

09:13 7 THE COURT: December 7th. That way you've got

8 more time. It gives you more time to talk to each other and

9 see if there's any merit concerning these fraud allegations

10 or not, independently. If there's not, then you should

11 proceed, of course. If there is, maybe you can resolve it

12 quickly between the two of you and avoid me.

09:13 13 MR. DAILEY: Your Honor, actually, could we do it

14 December 14th?

09:13 15 THE COURT: Absolutely. December 14th.

09:13 16 MR. DAILEY: We have -- we're gone.

09:13 17 THE COURT: That's okay. If you've got a vacation

18 or another matter, there's no rush.

09:13 19 I just want some settlement discussions quietly

20 between the two of you to see if you can reach a resolution.

21 If you can't, that's fine.

09:13 22 But when these kinds of allegations are made, this

23 isn't something that's just going to pass through the civil

24 side. Trust me.

09:13 25 Okay. Thank you very much.

09:13 1 MR. DAILEY: Appreciate your time, Your Honor.

09:13 2 THE COURT: My pleasure.

09:13 3 Sorry I'm so abrupt today, but I'm not gonna waste
4 time with it. We've got other matters now.

09:13 5 MR. DAILEY: And just to be clear, the TRO is
6 denied?

09:13 7 THE COURT: Well, the TRO is withdrawn at this
8 point, Counsel. He's going to file.

09:14 9 Is that correct?

09:14 10 MR. SNYDER: I'm going to file a Second Amended
11 Complaint.

09:14 12 THE COURT: Yeah. You're going to withdraw the
13 TRO on today's date; is that correct?

09:14 14 MR. SNYDER: I would like to have my client
15 restored the possession of the property.

09:14 16 **RULING OF THE COURT**

09:14 17 THE COURT: I'm gonna deny that at the present
18 time. This is compensable.

09:14 19 MR. SNYDER: Yes, Your Honor.

09:14 20 THE COURT: The property isn't in her possession
21 right now. There's no further harm. I'm going to deny your
22 TRO. Now, you can bring that back to me. Okay? The door's
23 not closed. But at this time, I don't see anything here
24 that isn't compensable by money.

09:14 25 Thank you very much, Counsel.

09:14 1 MR. DAILEY: Thank you for your time, Your Honor.

09:14 2 THE COURT: Thank you.

09:14 3 *(Proceedings adjourned at 9:14 a.m.)*

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: November 18, 2017

/s/ Debbie Gale

DEBBIE GALE, U.S. COURT REPORTER
CSR NO. 9472, RPR, CCRR