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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

TIGERS LIMITED AND TIGERS)
(USA) GLOBAL LOGISTICS,)
INC.,)
)
Plaintiffs,) Case No. 1:15-cv-947
) Alexandria, Virginia
v.)
) May 17, 2016
TAMERLANE GLOBAL SERVICES,) 10:04 a.m.
ARTEMIS GLOBAL, INC., AND)
JAMES M. O'BRIEN,)
)
Defendants.)

_g0 _____

AND A JURY

APPEARANCES:

For the Plaintiffs: Katherine L. McKnight, Esq.
John C. McIlwee, Esq.

For the Defendants: Glenn H. Silver, Esq.
Erik B. Lawson, Esq.

Court Reporter: Tracy L. Westfall, RPR, CMRS, CCR

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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P R O C E E D I N G S

THE CLERK: Civil action 2015-947, g i i i
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MS. MCKNIGHT: Good morning, Your Honor. Kate McKnight
from BakerHostetler. With me is John McIlwee, my colleague in
our Chicago office. He's admitted .i

Also with me at counsel's table are our clients, the
president of Tigers, Sabastian Tschackert, and Mark Bongean.

THE COURT: Good morning.

MR. SILVER: Good morning, Your Honor. Glenn Silver of
Silver & Brown appearing for the defendants, Tamerlane Global
Services, Artemis Global, Inc., and James O'Brien. With me is
my associate, Erik Lawson.

And sitting at counsel table is Jim O'Brien and Candice
Kennedy, who are the representatives of the two corporate
defendants.

THE COURT: All right. Good morning.

We have two motions in limine. Who wants to go first?

MR. SILVER: Your Honor, Mr. Lawson is going to handle
the motions in limine for our side.

THE COURT: All right.

MR. LAWSON: Good morning, Your Honor.

If you'll recall, this complaint was a breach of
contract claim along with a bunch of tort counts. The counts

1 for fraud, unjust enrichment, conversion, breach of implied
2 covenant of good faith and

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1 breach of contract by attacking him personally. We're seeking
2 to prevent the use of five categories of evidence.

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1 enough to say if one is debarred, all are debarred.

2 So it really has nothing to do with ~~fraud~~ fraud. It has
3 nothing to do with alterego or a sham or a purpose, a specific
4 purpose related to this case in defrauding anyone or defrauding
5 anyone at all.

6 THE COURT: All right. I've got it. Is there anything
7 else?

8 MR. LAWSON: Their memorandum only addresses the
9 debarment ~~of~~ proceedings, Your Honor.

10 THE COURT: Let me hear from them then. Maybe they're
11 not going to use any of it.

12 MR. LAWSON: Thank you, Your Honor.

13 MS. MCKNIGHT: Thank you, Your Honor. I'll address a
14 few points that counsel just raised.

15 First of all, credibility of a witness in a case is
16 always an issue. Whatever the complaint says, if there is going
17 to be a witness on the ~~stand~~ stand, their credibility is an issue.
18 Not only that, there is a specific Federal Rule of Evidence on
19 this issue allowing for this type of evidence to be admitted.

20 That rule is 608(b). It says that specific instances
21 of conduct may be admitted in cross-examination and they may be
22 allowed -- theybe

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1 evidence.

2 If limiting instructions have any value, they have a
3 value in this instance of focusing the jury on why this piece of
4 evidence is being entered. Again, it has to do with the
5 credibility of ~~me~~ Mr. O'Brien to testify, not only for himself, but
6 for his company.

7 THE COURT: All right. I understand your position.

8 I'm going to grant the motion as to this bad check and
9 reckless driving, and would grant it as well to just simply the
10 admission of being AWOL. However, I'll deny it as to the
11 debarment. And if what's represented to me is some
12 untruthfulness was a cause of the disbarment, I'll see. I'm
13 going to rule on this, as far as the debarment is concerned, I'm
14 going to rule on that as I hear the evidence.

15 MR. SILVER: Your Honor, can I say just one thing?

16 The debarment letter that was attached to their
17 pleading is not an exhibit in their exhibit list, and they have
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1 MS. MCKNIGHT: Yes, Your Honor. Plaintiffs have
2 several motions in limine. I'd like to address them somewhat
3 out of order, if you don't mind.

4 First of all, we have a motion to exclude evidence that
5 was not produced in discovery. This is evidence and these are
6 documents that defendants have put forward and proposed as
7 defendants' exhibits in this matter. They're documents that
8 were responsive to discovery requests in this matter. They were
9 not produced during discovery in this matter.

10 As you may know from the docket, there was -- we had to
11 fight for a number of discovery responses from defendants,
12 including a motion to compel that was granted by Judge
13 Nachmanoff.

14 So these documents, these materials, were not produced
15 in discovery. We did not have an opportunity to ask witnesses
16 about them in deposition.

17 THE COURT: What documents are they?

18 MS. MCKNIGHT: So these would include, first,
19 Plaintiffs' Exhibit 2.

20 Pardon me. Let me find that for you, Your Honor.

21 THE COURT: All right.

22 MS. MCKNIGHT: Pardon me, Your Honor. One moment.

23 THE COURT: Well, I'll tell you. Why don't we just
24 reserve -- well, you can object. If they try to offer those
25 some time during the trial, you can object that they weren't

1 timely produced and I'll resolve it then.

2 What else do you have?

3 MS. MCKNIGHT: Okay, Your Honor.

4 Another point is a motion to exclude any testimony or
5 other evidence that LBG, and this is a third company, this is
6 the company that Tigers and Tamerlane contracted to move
7 equipment for, motion to exclude any evidence that LBG, quote,
8 unquote, illegally moved cargo into Afghanistan. We think this
9 is irrelevant. We don't think it's supported. It's come up in
10 some of their filings.

11 The focus on this case is Tamerlane's and Tigers'
12 performance of the contract to move equipment. It doesn't
13 matter how -- what does not matter is Mr. O'Brien's opinion
14 about how LBG brought the cargo into the country.

15 If he would like to testify about how it was brought
16 in, that's one thing. If he would like to testify referring to
17 it as being illegal, that's another thing, and that's what we
18 would like to exclude.

19 THE COURT: Is there going to be such testimony?

20 MR. SILVER: Excuse me, Your Honor?

21 THE COURT: Is there going to be such testimony?

22 MR. SILVER: The testimony is going to be that they're
23 complaining that the -- that the uncompleted move was not
24 completed, and the reason for that, one of the reasons that
25 we're going to have as an explanation, besides there not being a

1 contract for it, is that they didn't have the proper
2 documentation to bring it across the borders.

3 So that's what we're going to say. It couldn't be
4 moved anyway because there wasn't proper documentation. Whether
5 or not that's illeg doc b

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1 that are alteregos of O'Brien which he controls and operates and
2 uses for the purpose of defrauding Tigers and other logistics
3 companies in avoiding judgments.

4 Then they cite the exact case that they don't want us
5 now to talk about. I assume they're going to talk about it
6 since they have it in their pleadings. And what happened in
7 Fairfax County is the Fairfax County Court said Artemis and
8 Tamerlane are two separate and distinct companies.

9 So if they're going to talk about defrauding, which I
10 don't think they can because I think you already ruled on that,
11 but if they get into that this is the alterego for the sole
12 reason in paragraph 1 of their complaint, then we ought to be
13 free to say this has already been ruled on and we are two
14 separate and distinct corporations, which is also consistent
15 with their other allegation in the complaint that Artemis is a
16 Virginia corporation and Tamerlane is a Virginia corporation.

17 THE COURT: All right. I'll have to rule on this after
18 I listen to the evidence.

19 MS. MCKNIGHT: Your Honor, bear with me for one
20 additional point on that.

21 Counsel just said that it's the exact same case. It is
22 not. If you look at our complaint, the case at issue there is a
23 case where -- there are two cases cited where Mr. O'Brien was in
24 litigation in this court, in the EDVA.

25 THE COURT: All right. I'll sort it out as I listen to

1 the evidence. What else do you have?

2 MS. MCKNIGHT: So the last motion we have for you, Your
3 Honor, is a motion to exclude evidence that Tigers knew of the
4 1.9 million judgment against Tamerlane entered in October 2013.

5 The reason this is irrelevant is because the timing of
6 when Tigers knew of this judgment. They're trying to put this
7 into evidence to show that somehow Tigers knew that Tamerlane
8 was approaching liquidation or had this large debt before or
9 while they were entering into the contract. We don't think it's
10 appropriate evidence and we think it's prejudicial.

11 THE COURT: Boy, I don't know. I'm going to have to
12 sort that out after I listen to the case as well. I'll rule on
13 that. You'll have to object again now as you go along with the
14 evidence.

15 MS. MCKNIGHT: Thank you, Your Honor.

16 THE COURT: Are we ready for the jury?

17 MR. SILVER: Yes, Your Honor.

18 MS. MCKNIGHT: Your Honor, we have not yet -- and
19 pardon me. I'm sorry to interrupt. But will we decide on jury
20 instructions after?

21 THE COURT: After.

22 MS. MCKNIGHT: After. Great. Thank you, Your Honor.

23 (The jury panel enters at 10:23 a.m.)

24 THE CLERK: Ladies and gentlemen of the jury, as I call
25 your name, please stand, answer present, and be seated until the

1 next name is called.

2 Claudia Alfaro.

3 THE PROSPECTIVE JUROR: Present.

4 THE CLERK: Sujatha Ammanbrolu.

5 THE PROSPECTIVE JUROR: Present.

6 THE CLERK: You can have a seat. Darryl Austin, Jr.

7 THE PROSPECTIVE JUROR: Present.

8 THE CLERK: Jacob Baines.

9 THE PROSPECTIVE JUROR: Present.

10 THE CLERK: Liza Cicirelli.

11 THE PROSPECTIVE JUROR: Present.

12 THE CLERK: Thank you. Jan Clausen.

13 THE PROSPECTIVE JUROR: Present.

14 THE CLERK: Melinda Conway.

15 THE PROSPECTIVE JUROR: Present.

16 THE CLERK: Mark Cummings.

17 THE PROSPECTIVE JUROR: Present.

18 THE CLERK: Buddy Dees, Jr.

19 THE PROSPECTIVE JUROR: Present.

20 THE CLERK: Edmond -- oh, sorry. Eddie Driver.

21 THE PROSPECTIVE JUROR: Present.

22 THE CLERK: Graham Draha G

23 JUROR

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1 THE CLERK: Tesfahun Ersumu.
2 THE PROSPECTIVE JUROR: Present.
3 THE CLERK: Thomas Grycewicz.
4 THE PROSPECTIVE JUROR: Present.
5 THE CLERK: Heather Gustin.
6 THE PROSPECTIVE JUROR: Present.
7 THE CLERK: Jessica Hopson.
8 THE PROSPECTIVE JUROR: Present.
9 THE CLERK: Patricia Howe.
10 THE PROSPECTIVE JUROR: Present.
11 THE CLERK: Jonathan Hoyes. Jonathan Hoyes?
12 William Jackson, Jr.
13 THE PROSPECTIVE JUROR: Present.
14 THE CLERK: Michael Jefferson.
15 THE PROSPECTIVE JUROR: Present.
16 THE CLERK: David Krohmal.
17 THE PROSPECTIVE JUROR: Present.
18 THE CLERK: Samer Louh.
19 THE PROSPECTIVE JUROR: Present.
20 THE CLERK: Katherine Mills.
21 THE PROSPECTIVE JUROR: Present.
22 THE CLERK: Donald Myers.
23 THE PROSPECTIVE JUROR: Present.
24 THE CLERK: Tu Xuan Nguyen.
25 THE PROSPECTIVE JUROR: Present.

1 THE CLERK: Corey Nichols. Corey Nichols?
2 Deborah Ramsey.
3 THE PROSPECTIVE JUROR: Present.
4 THE CLERK: Kyle Rodgers.
5 THE PROSPECTIVE JUROR: Present.
6 THE CLERK: Thomas Uiselt.
7 THE PROSPECTIVE JUROR: Present.
8 THE CLERK: Zo Wang.
9 THE PROSPECTIVE JUROR: Present.
10 THE CLERK: Sin Hyang Yi.
11 THE PROSPECTIVE JUROR: Present.
12 THE CLERK: And Monaa Zafar.
13 THE PROSPECTIVE JUROR: (No audible response.)
14 Ladies and gentlemen of the jury, please stand, raise
15 your right hands, and respond after the oath.
16 (The jury panel is sworn.)
17 THE CLERK: Please be
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1 THE COURT: He's still in the suit. All right. So we
2 have three defendants.

3 MR. SILVER: Your Honor, I'm not sure he is in the
4 suit.

5 THE COURT: Well, we'll have to hassle it out after
6 awhile. I'll tell the jury that he's in it for the moment and
7 we'll go on.

8 The plaintiffs are being represented by Ms. Kate
9 McKnight and Mr. John McIlwee, seated at the table to my left.

10 The defendants are being represented by Mr. Glenn
11 Silver and Mr. Erik Lawson, seated at the table to my right.

12 The plaintiff alleges a breach of contract that was
13 entered into on or about September 6th of 2013 for the movement
14 of equipment, one within Afghanistan and a second move of
15 equipment from Afghanistan to Pakistan.

16 I would ask if any of you know anything about the facts
17 and circumstances of this case?

18 Are any of you either close personal friends, relatives
19 of, have any kind of business relationship with either the
20 plaintiff, the defendants, or any of the lawyers involved in
21 this case?

22 Have any of you been involved in a civil case before
23 either as a plaintiff or a defendant?

24 Yes. Would you stand and tell me your name and the
25 circumstances briefly.

1 THE PROSPECTIVE JUROR: My name is Deborah Ramsey. And
2 in '97, I was involved in a civil case as a plaintiff, medical
3 malpractice.

4 THE COURT: All right. Thank you. Anyone else as a
5 plaintiff or a defendant?

6 Are any of you or any members of your -- I'm sorry.

7 Yes, sir.

8 THE PROSPECTIVE JUROR: I was involved in a case with a
9 roofing contractor. My name is David Krohmal.

10 THE COURT: Thank you.

11 Are any of you or any members of your immediate family
12 involved in the moving or the transportation and moving of
13 equipment of any kind?

14 Do any of you have any specialized knowledge or
15 workings in government contracts?

16 Yes.

17 THE PROSPECTIVE JUROR: My name is Patricia Howe. I work for
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1 THE COURT: Thank you.

2 THE PROSPECTIVE JUROR: My name is Michael Jefferson.
3 I work on a team that reviews government contracts.

4 THE COURT: Thank you.

5 THE PROSPECTIVE JUROR: Buddy Dees. I also work with a
6 government team that reviews contracts.

7 THE PROSPECTIVE JUROR: Thomas Grycewicz. I'm a
8 retired Air Force officer, and I oversaw a number of contracts
9 during that period.

10 THE COURT: Thank you.

11 THE PROSPECTIVE JUROR: Dave Krohmal. I'm a retired
12 federal employee and managed a number of contracts for the
13 government.

14 THE COURT: All right.

15 THE PROSPECTIVE JUROR: Tesfahun Ersumu. I work for a
16 government contractor called URS Corporation.

17 THE COURT: How long do you think this case is going to
18 take?

19 MS. MCKNIGHT: Your Honor, we don't expect this case to
20 take longer than today.

21 THE COURT: How many witnesses do you have?

22 MS. MCKNIGHT: We will be calling two witnesses.

23 THE COURT: Okay. How many do you have?

24 MR. SILVER: Your Honor, I believe one of the
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1 THE COURT: All right. Okay. Apparently, we may
2 finish this case today or it might go over till tomorrow once
3 you've heard the evidence and have to deliberate.

4 Do any of you have any particular difficulty or
5 disability that would prevent you from sitting on this jury
6 today and tomorrow?

7 All right. Considering all of the questions I've asked
8 you, is there any reason why any one of you could not sit on
9 this jury, render a fair and impartial verdict based on the
10 evidence presented here in the courtroom and the instructions on
11 the law as will

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1 Will the following jurors please come forward and have
2 a seat in the jury box:

3 Juror No. 21, William Jackson, Jr.

4 Juror No. 32, Thomas Uiselt.

5 Juror No. 6, Jan Clausen.

6 (Pause.)

7 THE COURT: Okay.

8 THE CLERK: Ladies and gentlemen of the jury, please
9 stand, raise your right hands, and respond au reÆ No

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1 Certain things are not evidence and must not be
2 considered by you. Statements or arguments and questions by
3 lawyers are not evidence. Now, objections to questions, of
4 course, are not evidence. The lawyers have an obligation to
5 object when they feel that evidence is being offered which is
6 improper under the Rules of Evidence.

7 You should not be influenced by the objection or by the
8 Court's ruling on it. If the objection is sustained, ignore the
9 question. If it is overruled, treat the answer like any other.

10 If you're instructed that some item of evidence is
11 received for a limited purpose only, you must follow that
12 instruction.

13 Now, testimony that the Court has excluded or told you
14 to disregard is not evidence and must not be considered by you.
15 Anything you've seen or heard outside the courtroom is not
16 evidence in this case. You're to decide this case solely on the
17 evidence presented here in the courtroom.

18 Now, just a few words as to your conduct as jurors. I
19 would first instruct you that during the trial you should not
20 discuss this case with anyone nor permit anyone to discuss it
21 with you.

22 Until you retire to the jury room at the end of the
23 case to deliberate on your verdict, you simply should not talk
24 about the case. Don't read or listen to anything touching the
25 case in any way. If anyone should try to talk to you about it,

1 bring it to the Court's attention promptly.

2 Finally, don't make any -- don't form any opinion until
3 all of the evidence is in. Keep an open mind until you begin
4 your deliK

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1 end of her case. If there's no evidence against O'Brien, the
2 case will be dismissed.

3 MR. SILVER: But I don't think she gets to put in the
4 evidence against O'Brien if he's not a party to the action.

5 THE COURT: How could he not be a party? She's named
6 him in the suit.

7 MR. SILVER: Because if you look at the complaint,
8 there were --

9 THE COURT: I've already done that.

10 MR. SILVER: But this is against Artemis and Tamerlane
11 only on a breach of contract.

12 THE COURT: I don't believe that they're limited to
13 that. ~~could~~ the

14 MR. SILVER: There are no allegations --

15 THE COURT: I have ruled. A

16 MR. SILVER: Okay.

17 ~~There~~ upon, the following proceedings

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1 English, which, again, is a poor time to bring that up.

2 MR. SILVER: I think we need to dismiss her.

3 THE COURT: Then we've got a mistrial, don't we?

4 MR. SILVER: I would be willing to have the Court hear
5 this case.

6 THE CLERK: Judge, we can call downstairs, Judge, too
7 and see if they hold them.

8 MS. MCKNIGHT: Your Honor, could we check if there
9 are --

10 THE COURT: We can see if there are some additional,
11 yeah.

12 MR. MCILWEE: Makes sense.

13 MR. SILVER: I would ask that two be brought up for the
14 reason we talked about it.

15 MS. MCKNIGHT: Your Honor, I would -- you've already
16 ruled on that. And not only that, they said they would be able
17 to make an unbiased decision in this case.

18 THE COURT: Well, I'll bring up a bunch. See if
19 there's any down there.

20 We're going to have to take just a brief recess.

21 (The jury exits at 10:48 a.m.; recess taken at 10:47 a.m.
22 until 10:55 a.m.)

23 THE COURT: All right. We haven't gotten any more
24 jurors. This lady obviously doesn't understand English.
25 Apparently, she had her son here with her to help understand

1 what was going on, and he just sat there and said nothing. So
2 that's our situation.

3 MR. SILVER: Your Honor, we would be willing to waive
4 jury and have the Court hear this case.

5 MS. MCKNIGHT: Your Honor, first, we would like to ask
6 if there's a possibility to continue the trial to some point in
7 the next week to two weeks.

8 THE COURT: I don't know if I can do it -- I don't know
9 if I can do that quick. I don't have my book with me. We can
10 try it during the summer sometime. We don't -- it's not likely
11 going six months away, but I don't know if we can do it within
12 two weeks.

13 MS. MCKNIGHT: We'd be willing to look beyond two
14 weeks, Your Honor.

15 THE COURT: You don't want to waive the jury. You-all
16 want to agree to five jurors?

17 MR. SILVER: No, Your Honor.

18 THE COURT: All right. Well, I guess the only thing to
19 do is declare a mistrial. If you'll call the jury, I'll explain
20 that to them.

21 MS. MCKNIGHT: Your Honor, if you declare a mistrial,
22 will you be able to reschedule the trial? Is that the
23 procedure, that you would then --

24 THE COURT: I'll set a date. I'll get my book and
25 we'll set a date today.

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1 MS. MCKNIGHT: Your Honor, that date works for
2 plaintiffs.

3 THE COURT: Okay. The case will be continued to July
4 the 11th.

5 And we don't need to do anything further, I guess.
6 We'll stand in recess till tomorrow morning at 9:30.

7 * * *

8 (Proceedings concluded at 11:01 a.m.)

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CERTIFICATION

I certify, this 31st day of May 2016, that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter to the best of mya