

VOLUME 1 OF 1 VOLUME
PRETRIAL HEARING

FEBRUARY 26, 2002

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1 voluminous documents from us. And this isn't the first
2 request that they've made and they've made a request
3 before. Actually, before they ever made a request, they
4 came to my office and got all kinds of documents. I made
5 the mistake of letting them take them out of my office
6 because when we got them out, there were some missing.
7 And so that's been an issue ever since then and that was
8 back November of 2000.

9 So there's been a request for production last
10 spring. We've responded to that. And then another
11 request for production that was, I think, last September,
12 which is I guess the one that's pending here. I'm not
13 sure because it's not attached to the motion. That's one
14 of my objections.

15 THE COURT: Wait a minute. Let me ask you.
16 There's not a pending motion for an accounting? Do you
17 have a --

18 MR. CASTRO: There is a pending suit for
19 accounting, yes.

20 THE COURT: Does that ask for an accounting?

21 MR. CASTRO: Petition for an accounting filed
22 March the 9th of 2000. It has never progressed since that
23 point.

24 THE COURT: Let's see. What's the law on
25 that?

1 MR. WARE: It's just pending for two years,
2 Your Honor.

3 MR. CASTRO: Right. No one has asked for a
4 trial on that.

5 THE COURT: Is it necessary to have a trial
6 on it after 15 months?

7 MR. CASTRO: Yes, Your Honor. The way the
8 probate code works and I'm not --

9 THE COURT: Go ahead.

10 MR. CASTRO: -- implying that you don't know.

11 THE COURT: You're right.

12 MR. CASTRO: The way it works is that there
13 is a request that is required to be given under the
14 probate code and that request, in spite of what Ms. Shay
15 says, was never made. They just filed the lawsuit.
16 That's not the way --

17 THE COURT: That's what they did? You file a
18 motion for an accounting?

19 MS. SHAY: Well, sir, there was one filed
20 prior, during the will contest.

21 THE COURT: No. No. In this case, is there
22 a motion for an accounting?

23 MS. SHAY: Yes, Your Honor. And the probate
24 code says there's to be notice to the executive in
25 writing. It did not specify the manner, means or anything

1 else.

2 THE COURT: Okay. Let's have a hearing on
3 that motion then. How much time do you need? When can we
4 set a hearing on the motion for accounting?

5 MR. CASTRO: Let me tell you what. It's in
6 my chronology here, Your Honor.

7 THE COURT: Yeah.

8 MR. CASTRO: On June 28th, Mr. Zachary made a
9 proper request for an accounting under the probate code.

10 THE COURT: I don't see that. June 28th --

11 MR. CASTRO: I'm sorry. January 28th of
12 2002. My second page in the chronology.

13 THE COURT: Okay. January 28th. Proper
14 request for accounting from Mr. Zachary.

15 MR. CASTRO: We have 60 days before a lawsuit
16 is filed, yes.

17 THE COURT: It will be in March, right?

18 MR. CASTRO: Yes. We will do that, Your
19 Honor. We are going to comply.

20 THE COURT: All right. You want to wait and
21 see what that looks like then first?

22 MS. SHAY: Well, Your Honor, the problem that
23 we've been having throughout this whole ordeal is that,
24 you know, they are about to do this and they are about to
25 do that. They have supposedly been preparing this

1 accounting at least since the injunction hearing in May of
2 last year and we've yet to see it.

3 THE COURT: Well, let me ask -- Mr. Zachary,
4 is there an order that they're to comply with your request
5 for an accounting?

6 MR. ZACHARY: No, Your Honor. If they did
7 not comply with my request for an accounting within 60
8 days, yes, sir, then I would file a lawsuit.

9 MR. CASTRO: Yes. That's correct.

10 THE COURT: All right. So won't that take
11 care of it? We'll wait until March the 28th and see?

12 MS. SHAY: That's fine, Your Honor.

13 THE COURT: Okay. All right. Let's do that
14 then.

15 MR. ZACHARY: Perhaps, Your Honor, we could
16 even consider going ahead and setting something after
17 March 28th, and in the event that a proper accounting was
18 not --

19 THE COURT: Well, I think Mr. Castro is going
20 to make a proper accounting. I hate to anticipate that
21 he's not.

22 MR. ZACHARY: Okay. Well, I just -- okay.

23 THE COURT: I don't want to anticipate that
24 he's not going to do it. We need to get an accounting and
25 go ahead and get that divided and this thing taken care

1 of.

2 MR. CASTRO: It's being prepared by a CPA, so
3 we anticipate it is going to be a proper one.

4 THE COURT: Yes, sir. Ms. Shay.

5 MS. SHAY: With regard to the partition, Your
6 Honor --

7 THE COURT: Yes, ma'am.

8 MS. SHAY -- the thing is that prior to the
9 appearance stat, there was a -- that was in existence that
10 secured two sections of land and it was approximately
11 \$260,000, I think, in the aggregate. There was more than
12 one note, but the principal note, I believe, was \$230,000
13 or somewhere around in there.

14 Mr. Denison renewed and extended that note
15 and transferred it to the Hamlin National Bank, the same
16 bank that Mr. Castro represents, which is another reason
17 why we've been having problems with production, because as
18 Mr. Castro indicated, we do have a release. The problem
19 is any time we request information from the Hamlin bank,
20 they send it to Isaac first for review. So it's
21 questionable as to whether or not we're receiving
22 everything we've requested.

23 With regard to the partition suit though,
24 Your Honor, that new loan is for a period of ten years, I
25 believe, or it was a period of ten years from the date of

1 execution. I believe it comes up on 2009. And it
2 encumbers ten sections instead of two.

3 So with regard to partitioning the estate,
4 almost the entire estate is encumbered now. And we don't
5 believe that the entire loan amount is attributable
6 rightfully to half -- to his half of the estate.

7 And there's also the issue of damages. We
8 believe there's substantial damages that the Defendant is
9 going to have to reimburse the estate for and it's
10 probably going to have to be through property because --

11 THE COURT: Well, I think, though, the
12 starting point is the accounting, right?

13 MS. SHAY: Yes, Your Honor.

14 THE COURT: And then you are going to have
15 some objections to that.

16 MS. SHAY: Yes, Your Honor.

17 THE COURT: So if on the 28th, you're not
18 satisfied with this accounting, then I would expect some
19 motions to be filed. And you, specifically, point out
20 what it is you are going to need and your deficiencies in
21 the accounting. Yes, sir.

22 MR. WARE: Your Honor, would it be too much
23 to ask who the CPA is that is preparing this?

24 THE COURT: Would you mind revealing this?

25 MR. CASTRO: It wouldn't be too much to ask.

1 He's testified here before. Ed Phillips.

2 THE COURT: All right. So if you're not
3 satisfied with that accounting, file your motions and
4 let's move it on.

5 Now, let's go through the motion for
6 contempt. Who do you want to hold in contempt?

7 MR. CASTRO: Well, Your Honor, that relates
8 to the failing to appear at the deposition. You denied
9 sanctions on my motion for sanctions --

10 THE COURT: Yes, sir. All right.

11 MR. CASTRO: -- on that as well.

12 THE COURT: Now, the accounting is due then
13 March the 28th, is that right, or what is it?

14 MR. ZACHARY: Yes, that's correct, Your
15 Honor.

16 THE COURT: March the 28th. We have the
17 depositions set up and you're furnishing the discovery.

18 MR. CASTRO: Okay. Your Honor, that --

19 THE COURT: What else?

20 MR. CASTRO: Furnishing the discovery, I
21 guess we got off the track on that.

22 THE COURT: Okay.

23 MR. CASTRO: Even though they have not had an
24 accounting, they have had much better than an accounting.
25 They don't have to take our word for what these entries