

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BLUE FLAME MEDICAL LLC, . Civil Action No. 1:20cv658

Plaintiff, .

vs. .

Alexandria, Virginia

April 15, 2021

CHAIN BRIDGE BANK, N.A., .

10:00 a.m.

JOHN J. BROUGH, and .

DAVID M. EVINGER, .

Defendants, .

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CHAIN BRIDGE BANK, N.A., .

Counterclaim Plaintiff, .

vs. .

BLUE FLAME MEDICAL LLC, .

Counterclaim Defendant. .

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CHAIN BRIDGE BANK, N.A., .

Third-Party Plaintiff, .

vs. .

JPMORGAN CHASE BANK, N.A., .

Third-Party Defendant. .

. X

TRANSCRIPT OF FINAL PRETRIAL CONFERENCE
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE
(Via Teleconference)

(Pages 1 - 9)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

APPEARANCES:

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FOR CHAIN BRIDGE BANK, N.A.; GARY A. ORSECK, ESQ.
JOHN J. BROUGH; AND Robbins Russell Englert Orseck
DAVID M. EVINGER: Untereiner & Sauber LLP
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FOR JPMORGAN CHASE ALAN SCHOENFELD, ESQ.
BANK, N.A.: Wilmer Cutler Pickering Hale &
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1 P R O C E E D I N G S

2 THE COURT: All right, this is the matter of Blue
3 Flame Medical LLC versus Chain Bridge Bank, and then Chain
4 Bridge Bank, N.A., Counterclaim-Plaintiff, versus Blue Flame
5 Medical LLC, Civil Action 20cv658.

6 Who will be -- who will be speaking for Blue Flame,
7 please?

8 MR. WHITE: This is Pete White of Schulte Roth &
9 Zabel, for Blue Flame, Your Honor.

10 THE COURT: All right, Mr. White.

11 And who's speaking for Chain Bridge?

12 MR. ORSECK: Good morning, Your Honor. This is Gary
13 Orseck from Robbins Russell for the Chain Bridge defendants.

14 THE COURT: All right. And for JPMorgan Chase?

15 MR. SCHOENFELD: Good morning, Your Honor. This is
16 Alan Schoenfeld from Wilmer Cutler Pickering Hale & Dorr.

17 THE COURT: All right. Well, this is on for our
18 final pretrial. Have you-all had a chance to exchange your
19 exhibits and witness lists?

20 MR. WHITE: This is Pete White, Your Honor. Yes, we
21 have.

22 THE COURT: All right. Are there going to be any
23 dispositive motions, Mr. White?

24 MR. WHITE: Yes, Your Honor. I believe there will be
25 for plaintiff.

1 THE COURT: What are you anticipating, a motion for
2 summary judgment or what?

3 MR. WHITE: Yes, ma'am, a motion for summary judgment
4 on several of the counts.

5 THE COURT: I'm sorry, you-all cannot rustle your
6 papers. We can't hear you. What was that, Mr. White?

7 MR. WHITE: We expect to file a motion for summary
8 judgment on at least some of the, at least some of the counts.

9 THE COURT: All right. And how about on behalf of
10 Chain Bridge? Does Chain Bridge plan to file any motions?

11 MR. ORSECK: This is Gary Orseck. We do plan to file
12 a dispositive motion as to all the remaining counts in Blue
13 Flame's complaint. We also intend to file a summary judgment
14 motion as to our third-party claim against JPMorgan Chase.

15 THE COURT: All right. And how about JPMorgan Chase?
16 Are you also planning to file something?

17 MR. SCHOENFELD: We may well, Your Honor. We're
18 still deciding --

19 THE COURT: All right.

20 MR. SCHOENFELD: -- on the indemnification claim and
21 the unjust enrichment claim in *Chambers* as complained.

22 THE COURT: All right. Well, discovery is over at
23 this point, so I'm assuming that you can get your motions filed
24 within the next 14 days. Does that sound about right?

25 MR. ORSECK: This is Gary Orseck, Your Honor. We

1 will, of course, comply with whatever schedule you impose. We
2 would request a bit of additional time because of the number of
3 issues and the fact that we're filing two complaints.
4 Twenty-one days would be substantially better for us if the
5 Court will allow that.

6 THE COURT: All right. I'll make that ruling then.
7 For all parties, any affirmative motions need to be filed
8 within 21 days. Response times will be the standard 14 days.
9 Reply briefs, seven days thereafter.

10 And in terms of oral argument, I will tell you we're
11 going to be back on a June -- I'm sorry, on a Friday motions
12 docket by the time these are ready for oral argument, so you
13 can go ahead and you can notice argument for any Friday at ten
14 o'clock, and if it bumps into something we've got, we'll let
15 you know, but we're going to go back to the old system.

16 It will be in person by the time these motions are
17 filed. We're going back to as much in-person work as possible.
18 So I recommend, counsel, that you do everything you can to get
19 vaccinated before then.

20 I'll let you, as I said, work among yourselves to
21 decide what kind of motions date, you know, when you want the
22 motions to be argued, but obviously, you've got to give us in a
23 case like this at least a week after the reply brief comes in
24 before we want to have oral argument.

25 In terms of a trial date, I think at this point it

1 may make sense, because I suspect a lot of the issues in this
2 case will be resolved on motions, just from my background in
3 this case, I think I'm going to wait on setting a trial date
4 until we see how the motions are resolved.

5 Does anyone have a problem with that?

6 MR. WHITE: This is Pete White for plaintiffs, Your
7 Honor. No, that is perfectly acceptable.

8 THE COURT: All right. And the other thing is right
9 now this is set as a jury trial; is that correct?

10 MR. WHITE: Yes, Your Honor. Pete White again.

11 THE COURT: All right. Well, as you know, civil jury
12 trials are taking second priority after criminal cases, and
13 we're backed up on criminal cases. Until the epidemic gets
14 really under control, we're not able to run more than two jury
15 trials at a time in the courthouse, and we have multiple
16 criminal cases that are mounting up. So I would expect that
17 you cannot -- you probably will not get a trial date until
18 quite late in the fall of 2021 and possibly into next year, but
19 we'll wait and see. Again, I don't know how much of the case
20 will be left after the motions are heard.

21 Have you-all tried to settle this case? I thought
22 when I was last with you-all, I recommended that you give
23 settlement a try. Have you made any effort to do that?

24 MR. ORSECK: Judge, this is Gary Orseck from Robbins
25 Russell. I did reach out to Mr. White in early December in

1 response to your comments at the motion to dismiss hearing and
2 said that we would be willing and open to such a discussion.
3 I've not heard back from Blue Flame since that date.

4 THE COURT: Well, now that the discovery is done, I
5 mean, all of the attorneys now have a pretty good picture as
6 to, you know, what the evidence looks like, and at this point,
7 you ought to be able to make reasonable assessments as to the
8 strengths and weaknesses of your positions.

9 Mr. White, are you -- do you think a settlement
10 conference at this point would be of any use?

11 MR. WHITE: Your Honor, I don't think so. I almost
12 take partial issue with what Mr. Orseck said. He did reach out
13 in December. It was clear to me from where he was signalling
14 that they were in terms of settlement that it wouldn't be
15 productive to have a conversation at that point given where my
16 clients were. I think it's always worth reassessing that and
17 speaking with my clients and Mr. Orseck. I think having those
18 conversations, we can make an assessment of whether the Court's
19 assistance would be helpful or not.

20 THE COURT: Well, I think it would not be unwise for
21 you to do that, Mr. White. As I recall, I thought there were
22 quite a few significant hurdles that the plaintiff faced in
23 this case. Now, the discovery may have shown something new,
24 but it would not be foolish on your part to seriously talk with
25 your clients.

1 Again, this is the time when good lawyers start to
2 really assess the strengths and weaknesses of their cases, and
3 even though you may have a client who's, you know, come into
4 the case thinking they're going to hit a home run, at best they
5 might get to first base, and, you know, at this point, it's
6 going to get very expensive. These are going to be complex
7 motions, I suspect, and it's going to cost a fair amount of
8 time, and that means money, and, you know, it could result in
9 the case going away entirely or big chunks of it going away or
10 possibly none of it going away, but this is a really opportune
11 time. If you're serious about settling, this would be the time
12 to do it.

13 So that's what I'll give you. You know, that's the
14 bully pulpit here. But if you don't settle, then we'll see you
15 back here sometime in the summer for the argument of the
16 motions.

17 All right, anything else we need to address today?

18 MR. WHITE: Not for plaintiffs, Your Honor. Thank
19 you for your time.

20 THE COURT: All right. And just as soon as you get a
21 date for the argument of motions, you should get that noticed
22 so that we can be sure it's on the calendar.

23 All right, thank you. We'll sign off at this time.

24 MR. ORSECK: Thank you, Your Honor.

25 MR. SCHOENFELD: Thank you, Your Honor.

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(Which were all the proceedings
had at this time.)

CERTIFICATE OF THE REPORTER

I certify that the foregoing is a correct transcript of
the record of proceedings in the above-entitled matter.

/s/
Anneliese J. Thomson