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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL NO. 2:09-cv-1643-WJM

MY WAY PRODUCTIONS 2, LTD.,	:	
individually and as a member	:	
of Z&M MEDIA, LLC and HIP HOP	:	
GLOBAL MEDIA, LLC,	:	
	:	
Plaintiffs,	:	
	:	TRANSCRIPT OF PROCEEDINGS
v.	:	- Return date on a TRO -
	:	
Z&M MEDIA, LLC, HIP HOP GLOBAL	:	
GLOBAL MEDIA, LLC, RAYMOND	:	
SCOTT and DAVID MAYS,	:	
	:	
Defendants.	:	
- - - - -	:	x

Newark, New Jersey  
April 29, 2009

B E F O R E:

THE HONORABLE WILLIAM J. MARTINI,  
UNITED STATES DISTRICT JUDGE

Pursuant to Section 753 Title 28 United States Code, the following transcript is certified to be an accurate record as taken stenographically in the above entitled proceedings.

S/WALTER J. PERELLI

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WALTER J. PERELLI, CCR, CRR  
Official Court Reporter  
U.S. District Court  
Newark, New Jersey

WALTER J. PERELLI, C.S.R., OFFICIAL COURT REPORTER, U.S.D.C.

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Attorneys for Defendants Raymond Scott and David Mays

WALTER J. PERELLI, C.S.R., OFFICIAL COURT REPORTER, U.S.D.C.

1 THE COURT: Please be seated.

2 Would counsel please step forward in My Way versus Z&M  
3 Media.

4 Could I have the appearances of counsel please? For  
5 the plaintiff, My Way?

6 MR. SAXBY: Your Honor, Jeff Saxby here on behalf of  
7 the plaintiff.

8 THE COURT: How do you spell your last name?

9 MR. SAXBY: Saxby, S-a-x-b-y.

10 THE COURT: All right.

11 MS. TAYLOR: And Jana Taylor.

12 THE COURT: Ms. Taylor, good morning.

13 MR. SAXBY: Good morning, your Honor.

14 THE COURT: For the defendant?

15 MR. HUMPHREYS: Your Honor, Burrell Humphreys  
16 appearing for Raymond Scott and David Mays, two of the  
17 defendants.

18 THE COURT: All right.

19 MR. FINKLER: Good morning, your Honor. David  
20 Finkler. I have to make a representation to the Court. I'm  
21 here on the limited purpose of being counsel to the LLC, Z&M  
22 Media. Because of the way the Operating Agreement is drafted,  
23 I potentially have a conflict in actually representing the LLC  
24 without permission of the other side. So I'm here for that  
25 purpose. I don't know if I can represent the entity beyond --

1 THE COURT: What's the spelling of your last name,  
2 sir?

3 MR. FINKLER: F-i-n-k-l-e-r.

4 THE COURT: All right. I'll take that under  
5 advisement.

6 Mr. Saxby, the Court received your papers, I guess  
7 about a week ago, the Verified Complaint and your Order to Show  
8 Cause. An Order was entered by the Court dated April 20th,  
9 2009, setting today as the return date for the defendant to  
10 show cause why a preliminary injunction and/or some temporary  
11 restraint should not be entered pending the further disposition  
12 of this case.

13 At that time I did provide some limited temporary  
14 restraints. Some of the things that you requested I did not  
15 provide at that time.

16 Today is the return date. I have not received any  
17 response papers. I did get a call from Mr. Humphreys' office  
18 late yesterday, our clerk did, advising that he had just been  
19 retained and that he would, in fact, be representing Mr. Scott  
20 and Mr. Mays.

21 Is that correct, Mr. Humphreys?

22 MR. HUMPHREYS: Yes, your Honor.

23 THE COURT: Okay. Let me first hear from you, Mr.  
24 Saxby.

25 Mr. Humphreys is here. I trust, Mr. Humphreys, you'll

1 have some response to the allegations set forth in the  
2 Complaint?

3 MR. HUMPHREYS: I have not even met my client, your  
4 Honor. We have communicated by telephone and e-mails. I can  
5 make representations to the Court. But having only been  
6 retained yesterday afternoon --

7 THE COURT: Well, you are retained and you are  
8 representing him?

9 MR. HUMPHREYS: I am of counsel. I'm prepared to  
10 argue, although I would request a continuation of this hearing  
11 and I would like to put some matters on the record when your  
12 Honor wishes to hear me.

13 THE COURT: It's my understanding Z&M is operating.  
14 Their business is in Florida. Correct?

15 MR. SAXBY: Yes, your Honor.

16 THE COURT: That's their main office. Correct, Mr.  
17 Saxby?

18 MR. SAXBY: That's correct, your Honor.

19 THE COURT: My Way is a New Jersey company? I  
20 believe.

21 MR. SAXBY: Your Honor, it's actually --

22 THE COURT: Actually, Turks and Caicos, correct?

23 MR. SAXBY: Yes, your Honor..

24 THE COURT: What's the latest of any communication  
25 used had with Z&M in the last few weeks since they've been

1 served with these papers?

2 MR. SAXBY: Your Honor, as I understand it, Mr. Scott  
3 and Mr. Mays were served with the papers and the Court's Show  
4 Cause Order on the 22nd of April.

5 MR. HUMPHREYS: We dispute that, your Honor.

6 THE COURT: That they've been served?

7 MR. HUMPHREYS: On the 22nd; we dispute that.

8 THE COURT: Oh, okay.

9 MR. SAXBY: We have the return to service, your Honor,  
10 if you would like for us to tender those into the record.

11 THE COURT: But before we get to that, have you had  
12 any communication with them individually and/or anyone else on  
13 their behalf since then?

14 MR. SAXBY: Yes, your Honor. On the 23rd of April,  
15 Tony Mulrain of our firm spoke with Mr. Dave Mays representing  
16 the defendants. On the 23rd the parties attempted to see if  
17 they could possibly work things out. Those efforts were  
18 unsuccessful. I have an affidavit here from Mr. Mulrain who is  
19 not here today, he's actually in Florida, where he attests that  
20 thing didn't work out on the 23rd and that he form informed Mr.  
21 Mays on the 23rd that they would not consent to a continuance  
22 of the hearing deadline set forth in the Court's Show Cause  
23 Order.

24 On the 24th, Friday of last week, there were  
25 apparently additional conversations where the parties

1 tentatively agreed to meet on today, April the 29th in the  
2 Dominican Republic to see if they could possibly work things  
3 out.

4 THE COURT: They had to go to the Dominican Republic  
5 to work things out?

6 MR. SAXBY: Apparently that's where some of the owners  
7 of my clients are and the main officer -- or the controlling  
8 officer of our client, they're located in the Dominican  
9 Republic.

10 THE COURT: Okay.

11 MR. SAXBY: So, your Honor, Mr. Mays and myself, we  
12 exchanged voice messages over the past weekend to see how we  
13 would contact the Court to notify them of the potential  
14 meeting. I actually spoke with Mr. Mays on Monday, the 27th.  
15 At that time Mr. Mays asked to change the date of the meeting  
16 from the 29th to either the 30th or the 31st.

17 At that time we went back to Mr. Mays and told him  
18 that we would be willing to move the date to the 30th if Mr.  
19 Mays agreed to meet with us, in writing, and if Mr. Mays agreed  
20 to -- if he agreed to meet with us in writing. If he agreed to  
21 meet with us in writing, we were willing to change the hearing  
22 date to May the 14th and to actually change the date for his  
23 response papers -- which actually expired on the 24th -- we  
24 were agreeable to moving that date until May the 4th.

25 Mr. Mays did not respond to that letter, your Honor,

1 and accordingly, we are here today.

2 THE COURT: What about Mr. Scott? You say you had  
3 contact with Mr. Mays. Is that -- he's speaking on behalf of  
4 both of them, more or less?

5 MR. SAXBY: It is my understanding that he's speaking  
6 on behalf of them, more or less, your Honor.

7 THE COURT: All right. The temporary restraints, I  
8 did provide you back on the 20th. On the second page of the  
9 Order, it says: Mays and Scott are hereby required to provide  
10 My Way with access to all of their bank accounts, files, notes,  
11 and other business records related to the magazine.

12 Have they complied with that?

13 MR. SAXBY: To my knowledge no, your Honor.

14 THE COURT: Have you made a request that you want to  
15 go in and go through their books and records?

16 MR. SAXBY: Not to my knowledge, your Honor. The last  
17 communications we had were the communications on Monday, and at  
18 that point we started preparing for this hearing on Wednesday,  
19 on today.

20 THE COURT: In other words, it's not that you sent  
21 someone, an accountant down there or anything to go in and  
22 check the books and records and they said no, you're not  
23 permitted to come into the office?

24 MR. SAXBY: Not as yet, your Honor. That will  
25 probably occur after this hearing today.



1 MR. FINKLER: Your Honor, might I interject only  
2 because I have --

3 THE COURT: Sure.

4 If you don't mind, would you speak into the  
5 microphone? You can pull it closer.

6 MR. FINKLER: I was cheering for a hockey game last  
7 night and I seem to have lost my voice.

8 THE COURT: Disappointing outcome I guess, if you're a  
9 Rangers or Devils fan.

10 MR. FINKLER: Both.

11 Yes, your Honor, as counsel to the LLC, Z&M, I've been  
12 privy to the conversations that have been going on  
13 back-and-forth between the parties.

14 THE COURT: All right.

15 MR. FINKLER: With all due respect to Mr. Saxby, I  
16 think that he may not have all of the information.

17 As I understand it, a significant amount of data  
18 regarding the financial paperwork on this company has been  
19 transmitted between Z&M Media and a woman named Brenda Hunter,  
20 who was some time ago designated by Mr. and Mrs. Missek as the  
21 accountant or bookkeeper -- I don't know what she actually  
22 is -- who was actually supposed to look over the books and  
23 records.

24 THE COURT: Of Z&M?

25 MR. FINKLER: Of Z&M.

1 THE COURT: On behalf of My Way?

2 MR. FINKLER: On behalf of My Way.

3 Just so the record is clear, there is another company  
4 involved in this called Hip Hop Weekly -- Hip Hop Global Media.

5 Hip Hop Global Media is really just a holding company  
6 for intellectual property. I don't represent that entity. I  
7 actually own a 10 percent interest in that company, but it does  
8 no business and earns no money. And I know it's in this case,  
9 but I just wanted to put that on the record, that --

10 THE COURT: Z&M is the operating company?

11 MR. FINKLER: Z&M is the operating company that  
12 operates the magazine that publishes...

13 Getting back to the heart of this position. The  
14 question that the Court asked is a significant one because, as  
15 I understand it, Z&M has never been approached by My Way in all  
16 these years that they've been an investor to actually look at  
17 the books and records in person at the offices in New Jersey.  
18 They've received documentation, and now they've objected to the  
19 documentation. But as I understand it, I have not heard  
20 anything since just before the threat to this lawsuit that  
21 there was a problem with the finances of Z&M and the way it was  
22 being run.

23 What I can tell your Honor is that Z&M Media is  
24 essentially run by the two gentlemen who are named here: David  
25 Mays and Ray Scott. They're pioneers in the hip hop world.

1 They started this magazine called The Source, which is the  
2 "bible," they called it, of the hip hop magazine generation.

3 Ultimately they left that entity and started this  
4 entity. Contrary --

5 THE COURT: "This entity," being?

6 MR. FINKLER: Being Z&M Media.

7 THE COURT: Okay.

8 MR. FINKLER: Contrary to the trend in this industry,  
9 which is that magazines that are published and sold by  
10 newsstands and/or subscriptions -- which have been declining  
11 and we've been seeing in the news many companies are actually  
12 shutting their doors, including The Source from which they've  
13 worked, they've gone through bankruptcy -- Z&M Media has  
14 actually been building a significant base year after year after  
15 year. I did share with Mr. Saxby something that Mr. Humphreys  
16 gave to me today which would be vital to David Mays, which was  
17 a letter from the distributor evidencing the fact that this  
18 company is actually building and building and building.

19 When the original agreement was entered into -- and  
20 this is one of the problems that I had, your Honor, is that I  
21 was party to the negotiations so I believe I'd be a witness at  
22 some point in this case -- but when this whole entity was  
23 created, the understanding was that My Way, which really hadn't  
24 been established at that point, it was an assignee under our  
25 Operating Agreement, they were permitted to assign their

1 shares -- meaning Mr. and Mrs. Missek -- to an entity. But Mr.  
2 and Mrs. Missek were putting money in as investors. It wasn't  
3 a loan. They were investors in a company. And there was a  
4 carve-out for a preferred return of profit.

5 THE COURT: All right.

6 MR. FINKLER: And essentially the company hasn't  
7 reached that yet.

8 THE COURT: Well, no. But before we get into all  
9 this, Mr. Finkler, right now I have to take this in a  
10 piecemeal --

11 MR. FINKLER: I understand.

12 THE COURT: Okay? I have allegations by the investor,  
13 My Way, who put up eight hundred some thousand dollars and has  
14 a 25 percent interest in Z&M. Correct? That the company is  
15 being misrun.

16 MR. FINKLER: I understand.

17 THE COURT: That, in fact, Mr. Scott and Mr. Mays have  
18 now -- are still operating the company even though they have no  
19 employment agreement, or there was an agreement by -- which was  
20 this agreement between F&M?

21 MR. FINKLER: Z&M.

22 THE COURT: -- My Way and Z&M in terms of the  
23 employment of Scott and Mays?

24 MR. FINKLER: No, it's between Z&M and Scott and Mays.

25 And I don't believe that's expired. I believe it's

1 still continuing. It might be continuing on a month-to-month  
2 basis, but it continues.

3 THE COURT: Well, there's an allegation it's expired,  
4 and I haven't heard anything that it's being continued by some  
5 authorities.

6 MR. FINKLER: Right.

7 THE COURT: Again, I don't know who approves the  
8 agreement. Was it -- did My Way Productions have any input in  
9 approving the employment agreement?

10 MR. SAXBY: I am not sure, your Honor. I believe they  
11 may have had input on the initial employment agreement. But  
12 that agreement expired in December 2008.

13 THE COURT: That's part of the question; they may  
14 have. I don't know. Did My Way have any vote or did they have  
15 to sign off on the employment agreement of Scott and Mays?

16 MR. FINKLER: They helped write it.

17 THE COURT: They did?

18 MR. FINKLER: Yeah.

19 THE COURT: So there's some indication.

20 And now there's some allegation by the plaintiff that  
21 that expired and that Scott and Mays are remaining in operation  
22 of Z&M without authority, I guess, or they're alleging, and  
23 that they're misusing funds. That they're making draws that  
24 they shouldn't be making and that they're also using funds for  
25 their personal use and they're breaching fiduciary duties.

1 Those are all the allegations I have before me.

2 MR. FINKLER: I understand that they're allegations.

3 THE COURT: And so -- no. I obviously did not grant  
4 all of the temporary restraints they sought because, again, I  
5 don't know really who is supposed to be in control of this  
6 company at this point. I have some allegations, but I don't  
7 have anything else.

8 Mr. Saxby, do you have a proposal that you would like  
9 to make to me at this point or --

10 MR. SAXBY: Your Honor, at this point, to the extent  
11 that they have not shown cause to deny the injunctive relief  
12 that we've requested, we request that the full injunction as  
13 set forth in the Court's Order be entered. This company needs  
14 to be protected while this whole issue is resolved. This is an  
15 interlocutory injunction and it serves the purpose deemed by  
16 its name; it preserves the status quo until the parties have an  
17 opportunity to go in and litigate it.

18 THE COURT: Who would then run the company if Scott  
19 and Mays are --

20 MR. SAXBY: Removed from the company, your Honor?

21 THE COURT: -- removed from the company, let's say,  
22 today, what happens to the company?

23 MR. SAXBY: We have Star Jones lined up to step in to  
24 be editor-in-chief of the magazine.

25 THE COURT: And the magazine is published monthly?

1 MR. SAXBY: I believe it's biweekly.

2 MR. FINKLER: It's biweekly, your Honor.

3 May I interject?

4 THE COURT: Yes.

5 MR. FINKLER: And I know Mr. Humphreys --

6 THE COURT: By all means. Mr. Finkler first.

7 MR. FINKLER: The entire magazine is based upon Mays  
8 and Scott. They run the entire thing. They pretty much do  
9 everything. If they're removed, they'll be and the company  
10 will be irreparably harmed, your Honor. This company will not  
11 survive, in my opinion. Notwithstanding the name Star Jones, I  
12 don't believe she's ever run a magazine before, I don't think  
13 she's ever stayed up 24 hours to write articles or to edit  
14 articles or has she run out and made sure that a circulation  
15 provider is in the loop, or has she met deadlines for  
16 production of a magazine at all. I don't know how she would be  
17 paid.

18 I don't know -- this is not in their papers so it's  
19 again a scenario where we're -- I'm responding based upon what  
20 I believe and I don't know for fact. But what I can tell your  
21 Honor is that this company will, in all likelihood, go down in  
22 flames if Mays and Scott are removed from the company.

23 Based upon what your Honor did leave in the Order, if  
24 that remained in effect; simply that my clients were required  
25 to abide by the Operating Agreement, which if you read the

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1 Operating Agreement doesn't even allow them to make any  
2 decisions above spending \$15,000, that should be protection  
3 enough for both sides. And also I would think that this  
4 plaintiff would be concerned about his -- about their  
5 investment to the extent that they wouldn't want to jeopardize  
6 it.

7 And to take David and Ray out of the picture  
8 completely -- in fact, just so we can go back a couple of  
9 steps. During the conversations that occurred between Mays and  
10 Mr. Mulrain, the understanding was that Mays would continue to  
11 run the business. So as of just a couple days ago they had no  
12 problem with him continuing to run the business and meeting a  
13 week or two from now. The big concern was simply --

14 THE COURT: All right.

15 MR. FINKLER: -- your Honor, the return date when they  
16 had to file papers --

17 THE COURT: Mr. Finkler, I understand your position  
18 and it probably is premature to order Scott and Mays on a  
19 temporary restraining basis or temporary injunction to be  
20 removed from the business, okay? I mean, based on -- there are  
21 counsel here now, there appears there might be some factual  
22 allegations that will be disputed by Mays and Scott.

23 However, I am concerned about in the interim since you  
24 entered an appearance so late and your papers in response were  
25 to be filed on April 24th, okay, and I am concerned that this



1 company is being operated still while you get a chance -- and  
2 I'll give you a chance to get some opposition papers in if you  
3 have any -- but in the meantime, if you can't work out between  
4 you today some way of going forward within the next week that  
5 will give them some assurance to protect their interests in  
6 this next week, then I'll impose certain other oversight  
7 provisions in this interim period. In all likelihood, I'll  
8 order something like no checks will be written without --  
9 unless they're -- without the consent of F&M and/or something  
10 along the line that they're ordered only to pay -- issue checks  
11 and disbursements that are for the immediate and necessary  
12 business expenses, something along that line.

13 I'm giving you some ideas. I think you should sit  
14 down and try to work out something voluntarily. If you can't,  
15 I'll be here, and I will do some provisional oversight for the  
16 next week. But, obviously, one of the things I'll probably do  
17 will be that they are hereby required to cooperate with My Way  
18 and its designees who will be running the magazine pending the  
19 outcome of this disposition and, obviously, if there's no  
20 cooperation and they come back to me and say they're not  
21 cooperating, they could be in contempt of court. You know, we  
22 don't want to go there.

23 The other thing would be some provisions that you can  
24 agree on, and if you can't, I'll order them. I'm telling  
25 you -- so you have every incentive to work it out, the language

1 together. But some other provision such as, you know, they're  
2 not to issue any checks either without the approval and consent  
3 of My Way, or something that they're only to issue checks for  
4 the most immediate and pressing necessary business expenses  
5 during this pendency of this return date for the Order to Show  
6 Cause.

7 MR. FINKLER: Does that include salary?

8 THE COURT: That would include --

9 MR. FINKLER: Because they won't work for free.

10 THE COURT: Well, it will give you the incentive to  
11 get back into court within a week. You know, they probably  
12 could work -- I'll let you think that out.

13 Look, it sounds as if they are, you know, important  
14 people to the business and you want the business to succeed,  
15 okay? It sounds that way. On the other hand, you don't want  
16 them taking moneys for personal funds if they say, well, it's  
17 my salary; or it's my draw and I'm entitled to a draw right now  
18 and they write out checks. Or we have a provision that no  
19 check in excess of X amount of dollars to them shall be issued  
20 in this interim period. I mean, I think the attorneys can work  
21 this out in an amicable way for now. If not, I'm going to  
22 order some oversight. Okay?

23 MR. FINKLER: Your Honor, there's just one more point,  
24 and maybe you'll take this into consideration when deciding a  
25 time line.

1 My concern is that in this business they're running  
2 close to the bone, and if they have to incur significant  
3 expenses in this litigation alone, it may destroy the company.

4 THE COURT: Which will give you all the more  
5 incentive, all of you -- it sounds to me from what I'm hearing  
6 there are some key people here, it sounds to me that there is  
7 some concern by an investor that they may be drawing more funds  
8 than necessary for their own personal use. It sounds to me  
9 that they're not cooperating in providing the books and  
10 records. One of the more important things is, it sounds to me  
11 they haven't filed their tax returns. I mean, that's pretty  
12 troubling. I don't think anybody who is an investor or  
13 themselves want to go down that road.

14 MR. FINKLER: I believe they have filed their taxes.  
15 I understand, your Honor.

16 THE COURT: Well, right now I have nothing in front of  
17 me except their papers. And I'm going to give you --

18 MR. FINKLER: I understand.

19 THE COURT: -- the adjournment that you're asking for,  
20 provided you reach some understanding between you today that  
21 gives them some assurance that in this interim period since you  
22 need additional time your clients aren't going to be writing  
23 checks inappropriately. So how you work that out -- if you  
24 don't work it out, I'll be here and I'll figure out a way to do  
25 it. It might be more Draconian than you want right now. So I

1 think you should work it out in a way that gives them the  
2 satisfaction for a week or so. I'll probably direct that you  
3 have any opposition papers in to me no later than Friday or  
4 Monday -- probably Monday, if there's going to be opposition  
5 papers.

6 On the other hand, there's supposed to be meeting in  
7 the Dominican Republic. Maybe they can work this all out  
8 voluntarily with another agreement and further understanding.  
9 Maybe you would want to incorporate by way of an order of the  
10 Court so that they have some assurance that you're -- you know,  
11 if your clients are doing what they allege -- and I don't know  
12 if they are or not -- that gives them some assurance going  
13 forward that there is some oversight by the Court for a period  
14 of time perhaps.

15 MR. FINKLER: Would the Court accept an agreed-upon  
16 date for our opposition papers?

17 THE COURT: Yes. I mean, you know, obviously if you  
18 can agree on dates that are reasonable and there's a meeting  
19 going on and that meeting may be productive, it may be if the  
20 meeting goes forward on a certain date they'll give you the  
21 chance. If the meeting doesn't go forward, maybe they'll agree  
22 on a different date then.

23 MR. FINKLER: I thought for court purposes you needed  
24 it within a few days.

25 THE COURT: I'm fine.

1 MR. SAXBY: If your Honor is fine with May 4th as a  
2 response date for their papers, we're fine with May 4th, your  
3 Honor.

4 THE COURT: I think you should sit down -- you can use  
5 my jury room, why don't you sit down and see -- you might be  
6 able to -- you know, there's a meeting. It may be if that  
7 meeting is productive you may put that date further off; you  
8 may not. You know, you don't need to file papers unnecessarily  
9 and incur that expense if the parties are genuinely looking to  
10 resolve it and give them the comfort that things are not  
11 proceeding the way they imagined they are right now; or they  
12 allege they are, I should say.

13 MR. FINKLER: All right.

14 MR. SAXBY: One point of clarification for the Court,  
15 your Honor.

16 The lead attorney on this, Mr. Mulrain, actually will  
17 be on an airplane for the next two hours. He has the primary  
18 client contact and would be the best suited person to  
19 communicate with opposing counsel -- not necessarily opposing  
20 counsel -- communicate with counsel. So it may be one or 2  
21 o'clock this afternoon before these conversations can commence.

22 THE COURT: Well, I mean, do you have a suggestion? I  
23 mean, if you want, I'll adjourn it with the status quo and  
24 obviously you can call me tomorrow. And if you haven't reached  
25 some understanding going forward as to the dates for a response

1 or as to some oversight that you can agree on, then I'll order  
2 something over the phone and provide you with that. I don't  
3 want to keep you here on the clock billing your clients  
4 unnecessarily just to wait around until 3 o'clock or something  
5 today. I don't think it would be fair to your clients.

6 MR. SAXBY: That's perfectly acceptable, your Honor,  
7 to adjourn it today.

8 THE COURT: Is that okay with you, Mr. Finkler?

9 MR. FINKLER: It's fine with me.

10 THE COURT: Mr. Humphreys, does that work for you?

11 MR. HUMPHREYS: Yes, your Honor.

12 MR. SAXBY: And we'll contact the Court tomorrow  
13 morning, your Honor.

14 THE COURT: Would tomorrow morning be better then?

15 MR. FINKLER: I haven't checked my schedule. Maybe if  
16 we could do it --

17 THE COURT: I'll tell you what --

18 MR. SAXBY: That's fine. End of day tomorrow will be  
19 fine.

20 THE COURT: I'm going to order today that the return  
21 date be May 4th unless I hear otherwise that the parties agree  
22 on a different set of dates.

23 MR. HUMPHREYS: Your Honor, is that the return day of  
24 the hearing or the --

25 THE COURT: No, the return date for the filing of your

1 papers, any opposition papers. Okay?

2 MR. HUMPHREYS: Thank you.

3 THE COURT: Then the hearing will be shortly  
4 thereafter, if necessary. Okay?

5 MR. SAXBY: Would the Court be inclined to also order,  
6 just simply as a point of clarification based on the current  
7 state of the records, that the employment agreements have  
8 expired and they are not authorized to draw salary, charge  
9 expenses to the company, or have the other benefits they were  
10 entitled to under their expired employment agreement?

11 THE COURT: I would be making a finding that the  
12 employment agreement expired, and I don't know, maybe it was  
13 continued on a month-to-month basis on some oral understanding.

14 MR. SAXBY: Thank you, your Honor.

15 THE COURT: I don't know. So I can't do that today.

16 MR. SAXBY: Thank you, your Honor.

17 THE COURT: What I am telling you -- and, Mr. Finkler,  
18 I think you heard me very well -- in this limited time period I  
19 would expect you can come up with some provisions that will  
20 give them assurance that your clients -- and it will be  
21 incorporated by way of an order that I'll sign tomorrow -- that  
22 will give their clients some assurance that your clients, Mr.  
23 Mays and Mr. Scott, are not drawing funds for their personal  
24 use and/or excessive salaries during this limited period of  
25 time, that's all.

1 MR. FINKLER: That's fair, your Honor.

2 THE COURT: You know, something either by way of "no  
3 checks are to be written except for necessary business  
4 expenses; non-salaries or non-draws by them in this period,  
5 without their approval."

6 So if Scott and Mays say we need some salary, we need  
7 to draw a check for \$3,000, you know, maybe they'll agree to  
8 that. But if they say we're drawing a \$20,000 check --

9 MR. HUMPHREYS: May I point out under the Operating  
10 Agreement --

11 THE COURT: It's 15,000 maximum.

12 MR. HUMPHREYS: -- anything over \$15,000 can't be  
13 done.

14 THE COURT: Well, I know it can't be done, but is it  
15 being done?

16 In other words, "can't be done." There's an agreement  
17 that says it can't be done. But the sense I'm getting is  
18 that -- look, the sense I'm getting is, they're alleging Mays  
19 and Scott are taking -- not taking -- are drawing funds that  
20 are not necessary for their own personal use right now. Okay?  
21 How much that is, I don't know.

22 MR. HUMPHREYS: The allegation will be disputed. They  
23 will be disputed.

24 THE COURT: I'm certain they will be.

25 On the other hand, it sounds to me like it's a company



1 that might be operating very close to the bone. And good  
2 counsel, as you are, I think -- and you have a vested interest  
3 in making this succeed, you might need to just put in some  
4 oversight provisions that gives them assurance and let them go  
5 forward operating it for awhile and hopefully there won't be  
6 any further litigation. Because if you want to litigate this,  
7 I can tell you, a hearing like this will take you a long time  
8 and will be very costly to your clients. Because there's a lot  
9 of specific allegations that would have to be refuted, we could  
10 be here for a long time, very costly. It doesn't seem like it  
11 would be necessary if people cooperate, that's all.

12 Now if they're stealing, you know, that's a whole  
13 different story. But if there's some explanation for some of  
14 these expenses -- I think you probably can work out some  
15 stronger oversight for the investor that might be enough for  
16 them right now to be satisfied. All right?

17 MR. SAXBY: Thank you, your Honor.

18 THE COURT: Give it a shot.

19 MR. FINKLER: All right.

20 MR. SAXBY: Thank you, your Honor.

21 THE COURT: I'll leave it on you, Mr. Saxby, to get  
22 back in touch with my office. If you don't get to me because  
23 I'm in court, you can ask for Melissa, then I can always get  
24 back to you if necessary. Okay?

25 MR. SAXBY: Thank you, your Honor.

1 MS. TAYLOR: Thank you.

2 THE COURT: Good luck.

3 Good to see you, Mr. Humphreys.

4 MR. HUMPHREYS: Thank you, your Honor.

5 THE COURT: Thank you, Mr. Saxby. Thank you, Mr.  
6 Finkler.

7 MR. SAXBY: Thank you.

8 (Conclusion of proceedings.)

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