

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

OFFICE OF THE ATTORNEY
GENERAL, DEPARTMENT OF LEGAL
AFFAIRS, STATE OF FLORIDA,

Plaintiff,

CASE NO.: 51-2010-CA-2912-WS/G

vs.

BOTFLY L.L.C., DAVID R. LEWALSKI,
and JON J. HAMMILL,

Defendants.

_____ /

PROCEEDINGS: EMERGENCY MOTION FOR ENTRY OF
BREAK ORDER WITHOUT NOTICE

BEFORE: Honorable Stanley R. Mills
Circuit Judge

DATE: April 7, 2010

TIME: 9:45 a.m. to 10:27 a.m.

PLACE: 7530 Little Road
Room 314
New Port Richey, Florida

REPORTED BY: Cheri L. Unice,
Registered Merit Reporter

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APPEARANCES:

JEFFREY W. WARREN, ESQUIRE
Bush, Ross, P.A.
1801 North Highland Avenue
Tampa, Florida 33602
Attorney for Receiver

GREGORY S. SLEMP, ESQUIRE
400 South Monroe Street
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Attorney for Office of the
Attorney General

CLEMENTINE CONDE, ESQUIRE
Lucas, Green & Magazine, P.A.
8606 Government Drive
New Port Richey, Florida 34654
Attorney for Defendant
Jon J. Hammill

ALSO PRESENT:

MR. MICHAEL LUETGERT
Representative for Receiver
MR. JON J. HAMMILL

1 PROCEEDINGS,

2 THE COURT: All right. Fire away.

3 MR. WARREN: Good morning, your Honor. I'm
4 Jeffrey Warren with the Bush, Ross law firm in Tampa,
5 Florida. I represent Michael Moecker who the Court
6 appointed as the receiver in this civil action brought
7 by the office of the Attorney General against Botfly
8 L.L.C., David Lewalski and Jon Hammill. We're here
9 today on a motion that we filed seeking to have a break
10 order entered by this Court.

11 Based upon the order appointing receiver there
12 were efforts to obtain possession of the business
13 records and assets of Botfly, Mr. Lewalski and
14 Mr. Hammill. In the process of attempting to comply
15 with the Court's order the representatives of the
16 receiver tried to serve the order appointing receiver.
17 It was served on Mr. Hammill; however, access was
18 refused to the premises where he was served. We've
19 also encountered problems at another business address
20 for this business. And it appears as though that's a
21 residence where we believe a mother of one of the
22 defendants may live at 2709 Clocktower Parkway, Bayonet
23 Point.

24 Being denied the ability to enforce your
25 Honor's order we've asked the Court to authorize the

1 receiver, with the assistance of the Pasco County
 2 Sheriff's Office and the Pinellas County Sheriff's
 3 Office to, if necessary, effectuate a break into the
 4 two premises that we've identified; one at 2684 70th
 5 Avenue South, St. Petersburg, and the other one being
 6 at 2709 Clocktower Parkway, Bayonet Point, Florida.

7 At the Court's direction we provided notice of
 8 this hearing and of the motion as best we could. I am
 9 not familiar with counsel who's present, but apparently
 10 that notice has been effectual in a certain extent.
 11 So perhaps counsel may identify herself for me and then
 12 we can determine whether we need to have the Court's
 13 intervention or not.

14 THE COURT: All right. Well, Ms. Conde is
 15 certainly well-known to the Court, but -- do I get to
 16 call you CC or do I say this is Clementine Conde?

17 MS. CONDE: Clementine Conde. Yes, your
 18 Honor. I just want to make it clear that Mr. Hammill
 19 did consult with me -- he's present before the Court
 20 for this proceeding as well -- yesterday. As you know,
 21 my practice is criminal primarily. My firm does
 22 personal injury and medical malpractice. We don't
 23 handle what it is that is taking place here. He did
 24 meet with me briefly yesterday, showed me the summons
 25 and the complaint and also the order of protection. He

1 is trying to secure other counsel; he believes that he
 2 has, so I just told him I would come here. He called
 3 me last night. This was received on his door at 3:56
 4 p.m. He didn't get home till 6:00 p.m.; that is the
 5 St. Petersburg address that's been referenced. His
 6 position is he hasn't had adequate time to secure his
 7 counsel in order to respond to this request to
 8 physically go into his house and remove him because
 9 that is the St. Petersburg address where he physically
 10 resides.

11 They have been -- the receiver I understand,
 12 and security, have been outside his house since I
 13 believe Friday when they first came to the residence.
 14 I can't speak for I guess the elderly lady at the
 15 Clocktower address. Mr. Hammill's provided me with
 16 some documentation from Mike Wells Pasco County
 17 Appraiser -- Property Appraiser's office that the
 18 address on Clocktower is Kathleen Lewalski who's not a
 19 party to this action. She's an 82-year-old mother of
 20 Mr. Lewalski who is a party to this action. And the
 21 physical address apparently of the business was changed
 22 some time ago to the Gainesville address, and there is
 23 no business from Botfly occurring at that address on
 24 Clocktower. This is what Mr. Hammill's informing me.
 25 I don't represent Mrs. Lewalski at this hearing

1 however.

2 So what we're asking, your Honor, is for the
3 Court to continue this hearing so that Mr. Hammill can
4 secure the proper counsel, adequate counsel to
5 represent him on these issues as I don't feel that I
6 can at this juncture, even though I'm physically here
7 representing him in this capacity.

8 THE COURT: Yeah, I'm not going to continue
9 it, counsel. We're going to either work something out
10 here or bad things are going to happen. I've got some
11 allegations that are extremely serious. I'm sure the
12 other side thinks that I was terrible in not letting
13 some Gestapo tactic take place where I just tell people
14 without any chance for them to be heard that some
15 people with uniforms are going to come busting into
16 their house, and I'm not going to do that and I doubt
17 that I'll ever do that. Maybe if there's some great
18 allegation about impending national disaster, but with
19 money involved I'm never going to do anything of that
20 nature.

21 But on the other hand, I do understand that
22 recordkeeping being of an electronic nature, that
23 giving people too much notice on this kind of thing
24 means that I risk that stuff goes down the drain. So
25 my compromise is I told them that -- or I had my

1 secretary tell them that we could do this on short
2 notice, but I wanted some notice so they'd have an
3 opportunity to at least get somebody to come in here
4 and try to help them. And they've certainly got a fine
5 lawyer, albeit one who probably isn't involved in this
6 sort of case very often. I dare say there's probably
7 not a lawyer in the state of Florida that's involved in
8 this sort of case very often.

9 But we've got allegations here that some 23
10 million dollars in a -- at least according to the
11 affidavits I've seen, a fairly obvious -- actually,
12 ridiculously obvious Ponzi scheme has been spirited
13 away and spent on a lot of things, not the usual stuff
14 with the Ponzi scheme, and that is paying off the other
15 people with the new people's money, but also on a
16 number of luxury items and everything else. All of
17 which may be completely untrue and there may be some
18 wonderful explanation for it, but they've got an
19 affidavit from somebody who is -- whose name I don't
20 recall right now, but probably fills the bill as a
21 forensic accountant or something of that nature who
22 says, whoopsie, I don't see any indication that
23 anything's been invested very well. I see indications
24 that things have been spirited away and spent on things
25 they shouldn't have been spent on and, you know, that

1 requires some action.

2 So we're either going to resolve this
3 peacefully or I'm going to have to find some way to
4 make sure that that evidence doesn't go south, because
5 it would look as though there is a great deal of reason
6 to be concerned about investors' money. And while I
7 certainly want to make sure that both sides get a fair
8 day, I'm not required to be blind to the idea that
9 evidence may go missing on us here, not the least of
10 which would be just flat out money, so --

11 MR. HAMMILL: If I may interject.

12 THE COURT: Well, I'd be careful about that
13 without talking to your lawyer first. These fellows
14 are very nice, but they are the enemy.

15 MS. CONDE: Your Honor, he indicated to me,
16 and he's just reiterating, that the monies in the
17 accounts have all been frozen. He doesn't have access
18 to any of the monies, I believe. What they -- I think
19 it's an online business, I think. I don't know what
20 they want in the house other than to secure whatever
21 furniture or property that he has in the house, so I'm
22 not sure what it is they want, or just to take
23 possession of his house, which is a mortgaged house.

24 THE COURT: I'm guessing they don't care a
25 whit about his furniture, the big screen television,

1 the coffeemaker or anything else. I'm guessing what
2 they're concerned about is records, electronic records,
3 written records, things written on the back of the
4 door, anything that might give them evidence as to
5 what's been going on here. And if it turns out that
6 everything is legitimate and it was all just a big
7 misunderstanding -- and you and I both have been in
8 situations where things looked awfully bad, didn't turn
9 out to be so bad once in a while. But right now we're
10 at the stage where it looks bad, smells bad, I'm
11 worried that it is bad. If it isn't, then fine, we'll
12 all go away peacefully.

13 I'd rather not have a bunch of broken doors
14 and a terrified 82-year-old woman out of the whole
15 thing. I'm confident the Attorney General doesn't want
16 to have a terrified 82-year-old woman on the front page
17 of the newspaper either, so -- but, you know, the
18 political considerations are not mine here. I have
19 little regard for politics since I'm in my last term
20 and would ever be running for anything again, including
21 dog catcher, so I'm pretty much immune to the political
22 concerns here. The due process concerns I'm never
23 immune from, so, you know --

24 MR. WARREN: May I be heard, your Honor?

25 THE COURT: Yes, of course. I'm open to

1 suggestions --

2 MR. WARREN: Thank you, your Honor. And I
3 appreciate --

4 THE COURT: -- since we have about three
5 minutes to resolve this.

6 MR. WARREN: I understand what the Court is
7 saying. We are very concerned about electronic
8 records. We're concerned about valuable assets that
9 may be in these locations. Our compromise with the
10 Attorney General's office was to qualify a removal of
11 any of the parties only to the extent necessary and
12 appropriate. So once we have been able to inspect
13 what's in these two locations, to the extent that there
14 are computers, to the extent there are laptops, to the
15 extent there are records, you know, files, things of
16 that nature that relate to the business, or valuable
17 assets or things of that nature that should be
18 preserved, not necessarily left on the premises so that
19 we don't have to post a guard outside the door 24 hours
20 a day to make sure things aren't removed, you know,
21 that solves those issues.

22 We also have a second issue, your Honor, that
23 existed because there was a clerical error in the order
24 appointing the receiver. It wasn't clear about the
25 financial statements that should be provided, which

1 your Honor should clear this up, because the
2 receivership order directs the defendants to provide
3 certain financial information on a very short time
4 period and there was supposed to be forms attached to
5 the receivership order that weren't there. So we
6 prepared a motion to amend that order so that the
7 defendants can have the opportunity to respond on the
8 standardized form used for enforcement of judgment so
9 that the Court and the plaintiff can determine with
10 some certainty what assets are out there for Botfly as
11 the corporate entity and the two individuals.

12 And so we -- you know, between the combination
13 of only accessing for the purposes necessary to protect
14 the assets and having the defendants to complete the
15 standard form that is approved as part of the Florida
16 Rules of Civil Procedure, I think we solve everybody's
17 concerns. And then Mr. Hammill should have an
18 opportunity to get counsel; we'll be happy to work with
19 him.

20 THE COURT: What I take it they're suggesting
21 is some type of peaceful coordinated entry into the
22 premises, a look to see if there's any kind of business
23 records there. Obviously they have no intention, I'm
24 sure, of walking off with an 82-year-old woman's Social
25 Security records or her personal bank records or

1 anything of that nature. It would appear that if her
2 son has a computer there then they're probably going to
3 want access to that computer to be able to go through
4 it in a nondestructive fashion to find out if there are
5 business records related to this Botfly limited
6 liability corporation on it or if there are any other
7 business records in there. My guess is they wouldn't
8 have any problem with her sitting on the front porch or
9 sitting in the living room watching Let's Make a Deal
10 reruns or anything else that she might want to watch
11 while they go through and do not tear up her house or
12 anything else.

13 My desire is to make sure that we do this as
14 peacefully as possible rather than having some poor
15 deputy who doesn't want to terrify an 82-year-old woman
16 either come in there and force the front door open or
17 get a locksmith at someone's expense to get into the
18 place and really upset her.

19 MS. CONDE: Yes, your Honor, and I understand
20 what the Court is -- the Court's position. I was just
21 concerned about the wording of their order is that they
22 wanted to be in possession and control of all property,
23 change the locks and that the defendants would no
24 longer have access, that was the way that it read.

25 THE COURT: They probably didn't realize this

1 was an 82-year-old woman's home at the time. It was
2 listed as a business address.

3 MR. HAMMILL: And mine as well.

4 MS. CONDE: Mr. Hammill's residence, that's
5 the St. Petersburg address that I was referencing as
6 well.

7 THE COURT: Well, I don't think -- you guys
8 don't have any intention of walking away with his
9 household belongings and things of that nature, I take
10 it? Now, if they find 23 million dollars in cash
11 stuffed in a closet somewhere, I would guess they would
12 want to take custody of that, and they'll give him a
13 nice receipt for it.

14 MR. WARREN: Yes, your Honor. We will be --
15 we are responsible. We will be filing a bond with the
16 Court. We'll file the oath of receiver today. Your
17 Honor, we are accountable to this Court and to the
18 people of the state of Florida for our conduct. What
19 we have to do is make sure that, you know, the assets
20 of the two individuals and the assets of the business
21 entity are protected.

22 THE COURT: And there's going to have to be
23 some search. I mean, no offense to your client, but
24 part of their job description is not to trust him as
25 far as this sort of thing. They've got some stuff from

1 the Attorney General's office that would indicate that
2 trust is not necessarily a good idea at this point, so
3 let's have everybody not worry about trusting anybody.
4 They'll give receipts for anything. But I'm thinking
5 that the only thing that they're going to depart with
6 is potentially computer equipment, which they may have
7 to remove in a nondestructive fashion, it's easily
8 unplugged, and move it to some other location to make
9 sure they go over it. They're to obviously stay away
10 from anything other than business records, and if there
11 are written business records they'll want to go through
12 all those.

13 MS. CONDE: Yes, your Honor, but he indicated
14 to me they mentioned taking his vehicle, which is his
15 means of transportation.

16 MR. WARREN: No, your Honor. We're not
17 talking about a normal vehicle. We're talking about a
18 Porsch, is that --

19 MR. LUETGERT: One of the defendants drives a
20 Porsch convertible. I noticed a nice truck and a Lexus
21 sitting outside the house in St. Petersburg, which is
22 the location I went to. I know there's a Ferrari, I
23 guess, in one of the other locations.

24 THE COURT: Well, I'm green with envy, but
25 let's come to the conclusion right now that those

1 things aren't going to be easily removed. And if we
2 have to I'm sure something can be done through the
3 Department of Motor Vehicles to put some sort of a hold
4 to make sure they're not sold or traded or anything of
5 that nature. But right now there are lots of people
6 who make me green with envy who have Porsches and
7 Lexuses -- my God, yes, our court reporter last time I
8 saw was driving a Lexus. And I shudder at thinking
9 what her husband drives; my God, it's probably
10 gold-plated. But in any event, I drive an older Buick
11 right now. So there are lots of people, some of them
12 probably work for the Attorney General's office, that
13 have a Lexus, maybe a Porsch or two sprinkled in there
14 someplace.

15 MR. WARREN: But, your Honor, those were
16 properly acquired through proper resources and funds.
17 Here the allegations are that these assets have not
18 been acquired --

19 THE COURT: We don't have any judgment yet. I
20 don't want people grabbing things that we can preserve
21 in other fashion. Right now there's not a presumption
22 of guilt the last time I checked. I grant you things
23 don't look so good from what I see from the affidavit.

24 MR. WARREN: The more practical problem, your
25 Honor, is that the Court has placed the receiver in the

1 position of responsibility for these assets, so
2 consequently to the extent that these assets are used
3 by the defendant, he has an accident or something of
4 that nature, the claim would be made against the
5 receiver associated with that asset. So we cannot --

6 THE COURT: These assets are in the name of
7 the business?

8 MR. WARREN: The only assets that we can take
9 would be assets that are owned by Botfly L.L.C., by
10 Mr. Lewalski or by Mr. Hammill. We can't take somebody
11 else's assets without coming to this Court and getting
12 an order to do so. So, you know, consequently those
13 are the only assets that we have court authority to
14 take. And so if the title to this vehicle is not in
15 Mr. Hammill's name then we don't have the authority to
16 take it. If it's in Mr. Hammill's name then not only
17 do we have the authority to take it, we have the
18 responsibility to take it and we have the liability for
19 not taking it. So, you know, it doesn't matter whether
20 it's a \$10, you know, 1929 Volkswagen. You know, it's
21 not the make or model, it's the asset itself. And, you
22 know, so -- you know, we need to be judicious. And
23 obviously we have no intention, your Honor, of taking
24 normal regular personal household furnishings and
25 things of that nature because there would be no

1 practical way or reason for us to do things like that,
2 but valuable items, and to the extent that there are
3 things such as vehicles or boats, you know, that's what
4 we're responsible for.

5 THE COURT: Would you tell the next people I'm
6 running late and I'll do the best I can.

7 MR. WARREN: We thank your Honor for
8 accommodating us on short notice.

9 THE COURT: Well, there's a lot of property at
10 stake for citizens here. And I don't want to give
11 everybody the bum's rush, but this isn't the only case
12 I've got so --

13 MR. WARREN: Well, two things, your Honor.
14 Number one, we're not going to dispose of anything; we
15 will simply hold it and protect it. Number two, if the
16 Court agrees with our effort to amend the order
17 appointing receiver then the defendants will have the
18 opportunity to quickly, you know, come forward with
19 information regarding the financial status and assets
20 and that will enable everybody to not deal with things
21 in a vacuum, but deal with things that are under oath,
22 filed with the Court, and we can very quickly sort
23 something out if there's been a -- if there's an issue
24 regarding title or ownership or possession.

25 THE COURT: All right. Well, moreover of

1 course, the defense has always got the opportunity to
2 move to dissolve the orders that have already been set
3 in motion, and I've got to give that some priority even
4 if I have to cancel other things and replace them with
5 this.

6 All right. Got anything to say that answers
7 that problem? They say their receiver that they
8 represent has got things that have, according to the
9 affidavit, been acquired with money which is, at least
10 based on the affidavits, based on a rather -- well,
11 actually poorly put together Ponzi scheme. You know,
12 one of the things according to the affidavits that the
13 best hope is that it doesn't get noticed; if it gets
14 noticed it becomes unraveled almost immediately. That
15 may not be the case here at all, but that's certainly
16 what the affidavit sets forth in some detail.

17 So they're worried that if the receiver is
18 acting on behalf of the defendants as well as the -- as
19 Botfly L.L.C. that all the assets that are in their
20 names, that might potentially cause some liability to
21 the receiver or be destroyed in an accident or
22 something else, but in worst case scenario a car of
23 course could create some liability, not personally for
24 the receiver, but for the receivership, and they want
25 to get all those things nailed down so that they don't

1 reduce in value, become destroyed, get stolen or
2 anything else. They want to take them, lock them up
3 until we can have a fuller hearing on the matter. I
4 think they probably got a point there.

5 MS. CONDE: Well, your Honor, I know that
6 Mr. Hammill doesn't have title to all of those vehicles
7 that they've just referenced, so I'm not quite sure
8 what vehicles we're talking about other than what's
9 been mentioned.

10 THE COURT: Well, it's only going to the ones
11 that are titled in his name, Mr. Lewalski's name or in
12 Botfly L.L.C.

13 MR. WARREN: That's correct, your Honor.

14 THE COURT: So, I mean, if he's got vehicles
15 there that are in somebody else's name then -- you
16 know, even if it's Mrs. Hammill, if there is a
17 Mrs. Hammill, then I would assume they're going to need
18 to come back. We can't take someone's property who
19 isn't even a party to the suit. And we're not taking
20 anything, by the way. I'm using a bad term there. We
21 are simply nailing it down to the floor so that it
22 doesn't drive away from us before everything gets taken
23 care of.

24 MS. CONDE: Well, he's indicating to me that
25 there's one vehicle that's titled in a business that he

1 was associated with; it's not Botfly, but --

2 THE COURT: If it's not Botfly and it's -- I
3 repeat, if it's not Botfly and it's not one of these
4 guys then I don't think that the receiver has any
5 business dabbling in it, at least at this point.
6 Possibly at some point, but certainly not without
7 further hearings. So we're only talking about stuff
8 that's titled in the name of the corporation or in the
9 name of Mr. Lewalski or Mr. Hammill.

10 MS. CONDE: Yes, your Honor. I understand
11 about the computer equipment and that they have the
12 right to go in and search for any monies or anything,
13 but -- would be of substantial value, but, I mean, the
14 term assets in there -- I'm sorry.

15 THE COURT: Go ahead.

16 MS. CONDE: The term assets that they listed
17 here shall include files, records, documents, which
18 we've already talked about, monies, leases, mortgages,
19 securities, investments, contracts, effects, lands,
20 agreements, judgments, bank accounts, book of accounts,
21 rents, choses in action, goods, automobiles,
22 motorcycles. It's pretty much, you know, I think
23 anything that anybody could own.

24 THE COURT: Well, and that's what most of us
25 would do if we were representing the receiver too,

1 because we don't know what we've got there. And if you
2 narrow it down too much then you miss stuff that you
3 should have taken and that sort of thing. The house up
4 here I would assume is in the name of this lady?

5 MS. CONDE: It is. It's in the name of
6 Margaret -- excuse me, Kathleen Lewalski.

7 THE COURT: Well, they're not going to take
8 possession of Kathleen Lewalski's house right now. Six
9 months from now they can demonstrate the ill-gotten
10 gains were given to her in order to buy the house for
11 her, well, they may have a different attitude about it.
12 But where we are right now is I want to establish that
13 there's going to be some peaceful way to get this
14 accomplished. And I got to be frank with you, if there
15 isn't a peaceful way we'll do it a nastier way.

16 MS. CONDE: No, I understand, your Honor.
17 Obviously he doesn't want that. Mr. Hammill's house is
18 a rented house, by the way. He doesn't own it, so --

19 THE COURT: Well, then they're not going to be
20 taking a house anywhere, the house is there. I don't
21 imagine even the Attorney General's Office has the
22 ability to pick it up and cart it away, so the house is
23 going to remain where it is. As far as I can see
24 Mr. Hammill is going to continue to live in it. I
25 simply want somebody to go in there without breaking

1 the door down or doing something else that is
2 relatively Draconian to gain access. You know, if they
3 simply allowed access in the first place we wouldn't
4 even be here arguing about this. Might be arguing
5 about something else, but we wouldn't be arguing about
6 this.

7 All right. Here's what I'm going to do. This
8 is something that needs to be done with dispatch, so
9 I'm going to give like two hours to work out some
10 peaceful way to get this done, otherwise I'm going to
11 give them what they want and tell them that the
12 Sheriff's Office gets to accompany them. And if
13 they're not allowed access, then the Sheriff's Office
14 is to obtain access in the least destructive way they
15 possibly can, but obtain it they will, I can guarantee
16 you.

17 Anything they remove of course they will
18 receipt for just as if it was a search warrant, which
19 is kind of where we are here, I'm afraid.

20 MS. CONDE: Yes, your Honor.

21 THE COURT: As a matter of fact, it's good
22 that they've picked somebody who's quite familiar with
23 the criminal side of things because I think we both
24 know there's probably not a judge in the county that
25 wouldn't have signed a search warrant for this sort of

1 thing on the criminal side and they'd be in there by
2 now, there wouldn't be any talk about it. We're just
3 on the civil side so I feel compelled to behave more
4 civilly.

5 MS. CONDE: Your Honor, the company was
6 investigated by the FBI and they were cleared by the
7 FBI, not that long ago, for the same sort of
8 allegations. So he did cooperate with the FBI. It was
9 an ongoing investigation for a while. So he will
10 cooperate, obviously, peacefully in this respect. He
11 doesn't want the sheriffs to go in and break the door
12 and change the locks and so forth, so there will be
13 cooperation at this point in allowing them to come in
14 and search and take whatever, that they'll inventory,
15 that they need to take for their end of the
16 investigation.

17 MR. WARREN: Your Honor has been very
18 gracious. The proposed order that we have is --
19 enables, you know, Mr. Hammill, and to the extent it's
20 Ms. Lewalski at the other location, to consensually
21 allow the entry and only if that is denied would the
22 break order become effective. And, you know, we would
23 not be doing anything that's not necessary or
24 appropriate. So I think we have this resolved because
25 it sounds to me like with the advice of good counsel,

1 you know, this will be done amicably. If it turns out
2 that there's a problem then, you know, we'd like to
3 have the order already entered so that we don't have to
4 come back and have further delay.

5 THE COURT: I agree with you. I agree with
6 you. Have you seen the proposed order, CC?

7 MS. CONDE: I'm looking at it right now.

8 THE COURT: I do want to add something that
9 says that everything that's removed is to be receipted
10 for.

11 MR. WARREN: May I, your Honor? I think you
12 have the order we sent before we made the change to add
13 as necessary and appropriate in both instances, because
14 that was something that the Attorney General wanted to
15 make sure that there was no disruption of -- I guess
16 it's Mrs. Lewalski.

17 THE COURT: I was confident that would be the
18 case. Anybody have a problem with me adding language
19 that all items removed or taken into possession shall
20 be receipted for? I'm sure I can find a less clumsy
21 way to say that. All right.

22 MS. CONDE: Your Honor, just that the language
23 -- C it says, "Place receiver in possession and control
24 of all property of the defendants at the premises." I
25 mean, that's --

1 THE COURT: Okay. I'm open to suggestions.

2 MS. CONDE: Because that sort of is all
3 encompassing, as you know. I think we talked about as
4 part of Botfly, I think the language says part of
5 Botfly Enterprises, titled in -- I don't know. I'm
6 trying to think --

7 MR. WARREN: It's just Botfly L.L.C.

8 MS. CONDE: Just Botfly L.L.C.

9 MR. WARREN: And it's limited of all property
10 of the defendants at the premises, so it's limited to
11 the three defendants.

12 MS. CONDE: This was the motion you already
13 filed back in April?

14 MR. WARREN: No. This was the motion I
15 referenced earlier about fixing the order because the
16 order references an attachment that's not there.

17 THE COURT: All right. Now, normally, for
18 instance, in a search warrant, I'm sort of likening
19 this to a search warrant, the receipt would be provided
20 to the defendant, of course, and the original would
21 normally be filed with the return on the warrant with
22 the court. Now, I don't know whether that's going to
23 interfere with any investigation, so I'm wondering if
24 that shouldn't be sealed in the court records.

25 MR. WARREN: Your Honor, on April 21st we were

1 ordered to provide a report to the Court and if there
2 was a need to seal something we can request it be
3 sealed, otherwise we would provide the report.

4 THE COURT: All right. I'll let it go at
5 that. If it would appear there's going to be
6 something that -- well, actually both sides, there may
7 be things that the defense would like to have sealed,
8 too. I'm just wondering if we shouldn't just have the
9 original sealed in the court file right to begin with
10 so that nothing of a personal nature for the defense is
11 out there for the public and --

12 MS. CONDE: Yes.

13 THE COURT: -- nothing that might interfere
14 with the investigation is out there for the public to
15 see.

16 MR. WARREN: We're not uncomfortable with
17 protecting the rights of the defendants, your Honor.
18 We don't know of any reason why we would need something
19 under seal, but we don't want to interfere with the
20 rights of the defendants.

21 MS. CONDE: There's already been press on this
22 case. It was already in the St. Pete Times, so -- but
23 further sealing probably would be a good idea not to
24 have any further press on it, access to that
25 information, because I'm sure that they'll be looking

1 to access that information for further articles.

2 THE COURT: And they may be entitled to it. I
3 just want to make sure that there isn't a good argument
4 that it's going to unnecessarily invade your client's
5 privacy and that it isn't going to unnecessarily hinder
6 the investigation that's going to be ongoing here and
7 which will hopefully come to a very peaceful solution.
8 I'm sure if the press wants it they'll come storming in
9 with their own sea of lawyers. At that point everyone
10 will be given notice and an opportunity to be heard on
11 it.

12 MS. CONDE: Exactly.

13 THE COURT: Okay. So what I've added is
14 language that says, "All items removed or taken into
15 possession of the receiver shall be shown on a receipt;
16 a copy of which shall be provided to the defendants.
17 The original receipt shall be sealed in the court
18 file." Not pretty, but it's the best I can do on short
19 notice.

20 MR. WARREN: We appreciate that, your Honor.

21 THE COURT: Okay.

22 MS. CONDE: And your Honor, he's --

23 THE COURT: The reason I'm talking about
24 allowing a couple hours here is so somebody can contact
25 this lady and let her know that --

1 MR. HAMMILL: She's got another son that -- I
2 mean, he's about two and a half hours away that I can
3 call to see if he can come down and at least --

4 THE COURT: She may want to go sit at Denny's
5 or something and have a cup of coffee. On the other
6 hand, I suspect if people were going through my house
7 I'd rather be on premises to make sure there wasn't a
8 lot of loud crashing and banging.

9 MR. HAMMILL: I think they would like to have
10 someone from the family there, of course, to sit with
11 her and make sure that --

12 THE COURT: Well, and that's fine.

13 MR. WARREN: We don't object to that, your
14 Honor, at all.

15 MS. CONDE: Right, because of her age.

16 MR. HAMMILL: If I leave now it will take me
17 an hour and a half to even get back home from here,
18 so --

19 THE COURT: I don't think this is going to be
20 a situation where anything terrible is going to happen.
21 As we both know, sometimes with the standard search
22 warrant things are considerably less friendly and that
23 things get broken in the process, and we don't want
24 that to happen here. Okay.

25 MS. CONDE: So, your Honor, the time frame --

1 because he's got to get back to his house obviously.

2 THE COURT: I'd use the telephone if I were
3 him because these guys are going to get more nervous by
4 the second. And frankly, I'm going to get more nervous
5 by the second because I may have a whole bunch of
6 citizens out there who have got a whole bunch of money
7 who have an interest in this too, and guess who they're
8 going to think has messed up big time here if some of
9 that stuff goes south on them? They're going to think
10 it's me. And that's not what I'm primarily concerned
11 about, about what people think about me, but I do say
12 that to emphasize that I've got some responsibility to
13 both sides here and I'm trying my best to cover it.
14 But further delays other than just giving her a couple
15 hours to make some arrangements to either go sit with a
16 neighbor or --

17 MS. CONDE: No. No. I understand. I'm just
18 speaking of Mr. Hammill, because the house is all the
19 way down in St. Petersburg, so he's got to get back
20 there and --

21 THE COURT: They won't beat him there.

22 MS. CONDE: I think there were people still
23 outside the house is my understanding. They've been
24 sitting outside the house, obviously, you know --

25 THE COURT: Well, you need to give him a fair

1 opportunity to get down there. Where is it in St.
2 Petersburg?

3 MR. HAMMILL: Pinellas Point, the last exit.

4 THE COURT: That's about as far south before
5 the Skyway. Well, I don't know that it's going to take
6 you two hours, but it's certainly going to take you
7 over an hour to get down there.

8 MR. HAMMILL: If I have to notify his
9 mother --

10 THE COURT: Well, you can notify his mother by
11 telephone, and I'm sure that Mr. Lewalski can notify
12 his mother by telephone too, assuming he's somewhere to
13 do that sort of thing. And I'm not asking, it's not my
14 business. So I've signed it. Do you have copies?

15 MR. WARREN: I do, your Honor.

16 THE COURT: If you would all like to troop up
17 to my --

18 MR. WARREN: That's what I was thinking, we
19 should just work from your Honor's handwritten order --

20 THE COURT: Yeah.

21 MR. WARREN: -- and make copies.

22 THE COURT: That would be a good idea.

23 MR. WARREN: Procedurally, your Honor, with
24 respect to the motion that I have to file to amend the
25 order appointing receiver, how does the Court wish us

1 to proceed with something ministerial like that? Would
2 the Court consider that without a hearing or --

3 THE COURT: I don't think I better consider
4 much without a hearing in here other than what I've
5 already done. So we'll squeeze it in wherever we can,
6 that's the best I can tell you. My office is located
7 one floor up. You all can take the elevator and all of
8 you can troop up there together and --

9 MS. CONDE: Yes, your Honor.

10 THE COURT: You know how to do it and get
11 ahold of Helen. She will show you. Push the button
12 and Helen, once she sees that you're not wearing
13 assault rifles or something around your neck, she'll
14 push the button and let you back in. Now, what I'm
15 going to do here is what the Clerk's Office never ever
16 wants me to do and that is to just give you the
17 original file and the original order because I'm not in
18 a position since I got to get on with the half hour
19 hearing I'm now going to have to squeeze in about three
20 minutes --

21 MS. CONDE: I'll walk it all together --

22 MR. WARREN: We'll follow her since she knows
23 where she's going.

24 THE COURT: That's a good idea. And Helen can
25 take care of where we can squeeze something else, too.

1 MS. CONDE: We can leave the file with Helen?

2 THE COURT: Yes, leave the file and the
3 original order with her. Tell her that although the
4 legislature's apparently unhappy with every single
5 penny we spend that we'll nevertheless make copies of
6 that order so she doesn't have to go through doing all
7 that stuff and to give -- make sure that both sides get
8 copies.

9 MS. CONDE: Yes, your Honor, I'll certainly do
10 that.

11 MR. WARREN: Thank you. We'll take a copy.

12 THE COURT: I appreciate you and your client,
13 Ms. Conde, coming in here on what was admittedly short
14 notice.

15 MR. WARREN: Just for the record, I understand
16 that the Sheriff's Office will request that we have
17 certified copies.

18 THE COURT: The Clerk's Office will have to
19 take care of that for you. And they'll probably send
20 somebody up to get the file from Helen. If she's got a
21 minute she'll probably walk it down for you, but one
22 way or the other we'll get it down there for you.

23 MR. WARREN: Thank you, your Honor.

24 HEARING CONCLUDED AT 10:27 A.M.

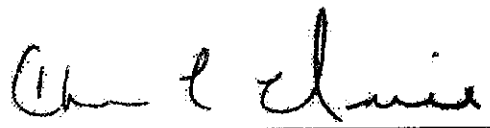
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STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, Cheri L. Unice, Registered Merit Reporter, do hereby certify that proceedings were held in the above-entitled case at the time and place set forth in the caption hereof; that I was authorized to, and did, report in shorthand the testimony and proceedings had in said proceedings, and that the foregoing pages, numbered 1 to 33, inclusive, constitute a true and correct transcription of my said shorthand report.

WITNESS MY HAND THIS 15th day of April, 2010, at Tampa, Hillsborough County, Florida.



CHERI L. UNICE, RMR, CRR
Registered Merit Reporter