

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 MIAMI DIVISION
4 CASE NO. 16-cv-21199-CMA

4 ANDREA ROSSI, et al., Miami, Florida
5 Plaintiffs, June 29, 2017
6 vs. 9:54 a.m. to 10:08 a.m.
7 THOMAS DARDEN, et al., Courtroom 12-2
8 Defendants. (Pages 1 to 11)

9
10 JURY TRIAL - DAY 2
11 BEFORE THE HONORABLE CECILIA M. ALTONAGA,
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

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I N D E X

WITNESSES

WITNESSES FOR THE PLAINTIFF:

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WITNESSES FOR THE DEFENDANTS:

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EXHIBITS IN EVIDENCE

PRE

MARKED

ADMITTED

Plaintiffs' Exhibit No.

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Defendants' Exhibit No.

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MISCELLANEOUS

Proceedings.....

Page

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Court Reporter's Certificate.....

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1 (The following proceedings were held at 9:54 a.m.)

2 THE COURT: Are all the jurors here?

3 COURT SECURITY OFFICER: Let me check, Your Honor.

4 (Pause in proceedings.)

5 THE COURT: Good morning, gentlemen. I trust you have
6 all, now, had the benefit of reading the notes from the two
7 jurors of yesterday. And we just received this typewritten
8 note from Juror Apezteguia, the gentleman who needed to have
9 his fingerprints taken.

10 I will hear your position on the three jurors.
11 Plaintiffs?

12 MR. LUKACS: If I may, Your Honor.

13 I just want to see where -- where the jurors are
14 seated currently.

15 THE COURT: Defendants' position?

16 MR. PACE: Um, well, as to our last Juror Chanon [sic]
17 having a scheduled vacation, which, as I understood it,
18 arose --

19 THE COURT: Just tell us your position. What do you
20 want to do with the three jurors? Who do you want to excuse,
21 if any?

22 MR. PACE: I think the only one that we would propose
23 to excuse would be Mr. Chanon because he has got the set
24 vacation.

25 THE COURT: All right.

1 Third-party Defendants?

2 MR. LUKACS: Your Honor.

3 THE COURT: Oh, I'm sorry. Are you ready now?

4 MR. LUKACS: I am.

5 THE COURT: Yes, all right.

6 MR. LUKACS: Given the hardships that have been
7 expressed, particularly by Mr. Etienne, who is Juror No. 2 and
8 I think seated in the first position here, I believe he should
9 be excused for cause.

10 With respect to Mr. Chacon, which was Juror No. 31, I
11 conquer with Defense. I believe he should be excused as well.

12 With respect to, I can't pronounce his last name.

13 THE COURT: Apezteguia.

14 MR. LUKACS: Apezteguia, I too would -- I understand
15 what it's like to have to earn your living, and it appears that
16 there would be a significant hardship incurred by this juror.

17 THE COURT: So you are in agreement to excuse all
18 three?

19 MR. LUKACS: Yes, Your Honor.

20 THE COURT: Thank you.

21 Third-party Defendants.

22 MR. NUNEZ: Yes, Your Honor, I mean, they all seem
23 legitimate. I mean, the gentleman with the vacation, I don't
24 know, but I certainly would have a hard time being here for
25 five weeks, and she is a sole breadwinner. I mean, I would

1 agree also.

2 THE COURT: All right.

3 Defense?

4 MR. PACE: Your Honor, our concern is that, well, one,
5 we'll be down to seven jurors.

6 THE COURT: Correct.

7 MR. PACE: And two --

8 THE COURT: So what do you want to do, Mr. Pace?

9 MR. PACE: Can I have just one moment, Your Honor?

10 THE COURT: All right.

11 MR. PACE: I'm sorry.

12 THE COURT: All right.

13 (Pause in proceedings.)

14 MR. PACE: Your Honor, our -- our request would be, as
15 to the two jurors who have not identified that they have travel
16 plans but because of their work schedule, would it be possible
17 to bring them in and for the Court to inquire as to their
18 schedule? I'm -- I'm just concerned going to seven on Day 1
19 and then tomorrow -- in all honesty, tomorrow two more are
20 going to come in and say, you know, I have this terrible
21 situation.

22 So I'm inclined, in fact, I should be honest and just
23 say we should probably do this to all three because the third
24 one is maybe the vacation scheduled, how fixed the vacation
25 schedule is. But I don't know what else to do. I am just very

1 concerned that the message that's going to be sent is these
2 jurors are going to go back again, today and say three of us
3 are gone, and how can I come up with the next reason. So that
4 would be my request.

5 THE COURT: I don't see a need to inquire. I don't
6 need more particulars. If you want to inquire, we can have you
7 ask questions.

8 MR. PACE: Well, in all honesty, Your Honor, I don't
9 feel comfortable. If I --

10 THE COURT: I have enough information from Apezteguia
11 in the note here and from Juror No. 2 to know what their issues
12 are. I don't have a question to ask.

13 MR. PACE: Understood, Your Honor. We would -- we
14 would request --

15 THE COURT: And there are two more letters coming.
16 Another one doesn't speak English very well. My courtroom
17 deputy just advised. So why don't we wait for the two other
18 letters.

19 (Pause in proceedings.)

20 THE COURT: All right. The first letter is on behalf
21 of Amaury Jimenez. The employer is asking that we excuse him.
22 The employer is Bryant Electric.

23 (Pause in proceedings.)

24 THE COURT: I think we are fast approaching the point
25 where we declare a mistrial and pick a new jury tomorrow. Let

1 me know what your thoughts are on that.

2 MR. LUKACS: Your Honor, that was precisely my thought
3 as I read through the letter from Bryant Electric.

4 THE COURT: All right.

5 Third-party Defendants?

6 MR. LEON DE LA BARRA: We have no objection to that,
7 Your Honor.

8 MR. NUNEZ: Your Honor, my only concern is, I don't
9 know how long this trial is going to be, but I postponed my
10 vacation. I'm out on --

11 THE COURT: You're postponing it again.

12 MR. NUNEZ: -- on August 2nd. I mean, if we can be
13 done by there --

14 THE COURT: We pick another jury.

15 MR. NUNEZ: -- I'm good to go.

16 THE COURT: We'll pick another jury tomorrow.

17 Mr. Pace?

18 MR. PACE: Is there one more? I am just --

19 THE COURT: Yes, there is one more. And this one is
20 from Santofimio who, now, says she doesn't speak "affluent
21 [sic] English."

22 (Pause in proceedings.)

23 THE COURT: That brings us down to five jurors.

24 MR. LUKACS: Your Honor, in light of the various
25 hardships and the difficulties of understanding and,

1 particularly given the nature of the testimony that will be
2 provided in this case, being down to five jurors is not
3 something that the Plaintiffs wish to stipulate to.
4 Accordingly, we would under these circumstances respectfully
5 move for a mistrial and request the Court permission to
6 commence with jury selection tomorrow.

7 THE COURT: All right.

8 Mr. Pace?

9 (Pause in proceedings.)

10 MR. PACE: Your Honor, Defense agrees.

11 THE COURT: Third-party Defendants?

12 MR. NUNEZ: We agree, Your Honor.

13 MR. LEON DE LA BARRA: We agree, Your Honor.

14 THE COURT: All right. Let's bring the jury in and
15 say good-bye to them.

16 COURT SECURITY OFFICER: All rise for the jury.

17 (The jury entered the courtroom at 10:05 a.m.)

18 JUROR JIMENEZ: I am sorry, everybody. Good morning.

19 THE COURT: Good morning, please be seated.

20 Well, welcome back, ladies and gentlemen. Since we
21 last saw you yesterday and are now seeing you again, there are
22 five of you who have written notes and have passed notes on to
23 my courtroom deputy who has passed them on to us explaining
24 your hardships and your conflicts with serving as jurors in the
25 five-week trial.

1 Given that there are five of you who cannot serve, we
2 don't have enough jurors to proceed with the trial, and I must
3 declare a mistrial. So you are excused from your service in
4 this case.

5 You continue to be subject to that jury summons. You
6 may be summoned from jury pool to return for jury selection in
7 another case, but you are excused from this one, and I thank
8 you for your time. You all have a good day.

9 COURT SECURITY OFFICER: All rise for the jury.

10 (The jury exited the courtroom at 10:07 a.m.)

11 THE COURT: I will see you all back here tomorrow,
12 please, at 9 o'clock. At that time, we should have
13 questionnaire forms for you to review. And we will start in
14 the courtroom with the new panel at 10:00 a.m.

15 MR. LUKACS: Thank you, Your Honor.

16 MR. NUNEZ: Thank you, Your Honor.

17 (The proceedings adjourned at 10:08 a.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is an
accurate transcription of the proceedings in the
above-entitled matter.

06/29/17
DATE



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