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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE JUDGE ROBERT MCGUINESS

DEPARTMENT 22

JANE DOE,) No. HG115588324
)
Plaintiff,)
) ASSIGNED FOR ALL PURPOSES TO
v.) JUDGE ROBERT MCGUINESS,
) DEPARTMENT 22
WATCHTOWER BIBLE AND)
TRACT SOCIETY OF NEW)
YORK, INC., a)
corporation, et al.,)
)
Defendants.)
-----)

JURY TRIAL

JUNE 12, 2012

DAY 8

ATKINSON-BAKER, INC.
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REPORTED BY: KATHRYN LLOYD, CSR NO. 5955

JOB NO: A605B8B

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1 JUNE 12, 2012

8:36 A.M.

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PROCEEDINGS

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THE COURT: All right. Back on the record that the matter of Conti versus The Watchtower Bible and Tract Society New York, Inc. et al. The jury has -- first of all, Mr. Huey is your foreperson.

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He has requested the court as follows:

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"On May 29th, Elders Michael Clarke and Gary Abrahamson were directly examined by the Plaintiff's attorney. The congregation sent a letter, Plaintiff's Number 9 letter, from North -- and then Congregation Body of Elders -- The Watchtower Body of Elders for direction and guidance.

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What were the documented and/or undocumented responses and instructions from the Watchtower Body of Elders to the North Congregation?"

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21

I haven't had a chance to research this. I recall the letter in December of 1993. Was there not a response letter that's in evidence?

22

23

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MR. SIMONS: The response letter is not in evidence because after the redactions there is really nothing left of it.

25

MR. SCHNACK: I think the answer is "no, it

1 is not in evidence."

2 MR. SIMONS: So, no, it is not in evidence
3 then.

4 THE COURT: Okay. So -- I have got my
5 shoulders squared up. Nice work, Mr. Simons. So let's
6 go back.

7 And I will go to the Plaintiff first. What
8 would be your suggestion as to how to respond to that
9 request?

10 MR. SIMONS: Your Honor, there is testimony
11 from Mr. Abrahamson at page 90, of the transcript, line
12 25, to page 91, line 18.

13 THE COURT: You're a little quick, Mr.
14 Simons, this morning. So page 90.

15 MR. SIMONS: Ninety, line 25, to 91, line 18.
16 And there is testimony from Mr. Clarke on the subject at
17 page 183 of the transcript, line 24 through -- page 184
18 line 5; 183, line 24 to 184, line 5; and also from page
19 190 from lines 4 through 8.

20 THE COURT: Defense counsel, any thoughts?

21 MR. SCHNACK: There is no letter. There is
22 no exhibit. We haven't seen the testimony.

23 THE COURT: Well, you got me centered. I was
24 just going by memory, non-admissibility as to letter of
25 December of 1993 is my recollection.

1 The way I would answer it is to say that -- I
2 would refer them that there is testimony regarding the
3 same without necessarily directing onto whom. That may
4 be the subject of read back if they were to request it.

5 Now, is there any objection if I answer it
6 that way?

7 And I will give the defense a little time to
8 take a look at that testimony that they asked for
9 because -- you know, I have already given instruction
10 how to ask for a read back, if they have a witness in
11 mind or a specific topic or whatnot.

12 But, if you would like, we can -- certainly
13 Mr. Simons could help direct you to the quotes he gave
14 you.

15 MR. SCHNACK: If we could see it, that would
16 be great.

17 MR. SIMONS: Yes. Sure. I have got it right
18 here.

19 THE COURT: But the way I would answer it is
20 to say, there has been testimony about the body of
21 elders' reply which may be requested on read back.

22 MR. SCHNACK: I would like to see whether
23 there was testimony first, so...

24 THE COURT: Fair enough. So let's take a
25 moment.

1 (Off the record)

2 THE COURT: Back on the record. I would
3 reply as to documented responses, that there are no
4 documented responses in evidence. Do we agree on that?

5 MR. SIMONS: Yes.

6 MR. SCHNACK: Yes.

7 THE COURT: All right. Now, there's the
8 second prong as to whether there is undocumented
9 responses and instructions; i.e., testimony as to how I
10 will interpret that.

11 So I have not seen the referenced testimony
12 from Mr. Simons to defense counsel.

13 MR. SCHNACK: Your Honor, Mr. Simons
14 referenced testimony to Mr. Abrahamson on page 90, line
15 25, to page 91, line 18.

16 That is not responsive.

17 But the testimony he referenced from Mr.
18 Clarke at page 183, line 24 to page 184, line 5; and on
19 page 190 lines 4 to 8 is responsive.

20 THE COURT: Mr. Simons. Do you agree or
21 disagree as to --

22 MR. SIMONS: Well, agree with the part where
23 they agreed with me. I disagree on the Abrahamson
24 testimony, because he says -- the question is:

25 "Why were you reporting this to Watchtower

1 New York?"

2 And the answer was:

3 "To get direction."

4 And then:

5 "In all of your work as an elder that
6 involves anything in this type of matter, you
7 would get your direction and instruction from
8 New York. Correct?

9 And the answer was:

10 "In a lot of these cases that legal
11 matters are involved, we are always encouraged
12 to call the legal department because how could
13 we know all the laws?

14 And the testimony continues:

15 "You said you were encouraged to call
16 New York. Were you required?"

17 And he said:

18 "You might put it that way."

19 THE COURT: You were what?

20 MR. SIMONS: Required. He said "encouraged."

21 And I said:

22 "You actually were required to call
23 New York?"

24 And he said:

25 "You might put it that way."

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I said:

"I didn't put it that way. Do you agree?"

And he said:

"I agree that you put it that way."

And I said:

"Do you agree that you were required to call New York?"

And he said: "Yes."

MR. SCHNACK: So the difference, I think, is this conversation is about calling New York. And the question comes from the jury about a document.

THE COURT: Well, it's not. It says undocumented also.

MR. SCHNACK: But an undocumented response, it says, not that the call was made.

THE COURT: I think we are splitting hairs a little bit on that. Give me a second and I will tell you how I'm going to respond to this.

And, again, I'm not looking at the written terms, that was testimony from Messrs. Clarke and Abrahamson?

MR. SIMONS: Yes. Actually, Clarke is the one we agreed on. Abrahamson is the one --

THE COURT: There are no documented responses

1 in evidence as to undocumented responses.
2 Messrs. Clarke and Abrahamson testified about saying,
3 and you can request read back as related and the
4 instructions given which say person, content and
5 whatnot.

6 MR. SCHNACK: Your Honor, perhaps the way to
7 short-circuit, just so we don't have to come back in an
8 hour and have that read back. They're so short. Why
9 not read the responses -- have the court reporter read
10 the responses to the jury?

11 THE COURT: That's fine with this judge.
12 Now, that goes to process as to how we do read back.
13 And do you have any druthers?

14 What I generally do, in a request like this,
15 as long as we agreed as to what you read to the jury
16 directly, if you agree as to what she will read.

17 MR. SIMONS: I find it easier for the court
18 to take the court reporter to the jury rather than take
19 the jury to the court reporter.

20 THE COURT: I can't have that every which
21 way. And if it is really sophisticated stuff and
22 content is really at issue, I will do that. But on a
23 request like this where we have been provided very
24 specific read back, I have no objection.

25 Any objection to madame reporter reading the

1 responses referenced? I wanted to make the record right
2 now as to reference so it is clean, because I know that
3 there is translation in page and lines.

4 MR. SCHNACK: That was going to be my point
5 that. It really needs to be specific.

6 THE COURT: We're going to do that right now,
7 because of the translational stuff. So I would reply
8 otherwise now as follows:

9 "There are no documented responses in
10 evidence. Madame reporter will read back the
11 germane responses of Messrs. Clarke and
12 Abrahamson."

13 All right. Now, part of the burden is now on
14 you for a moment, madame court reporter, to be specific
15 as to the -- what you are going to read as to
16 Messrs. Abrahamson and Clarke.

17 (Brief break)

18 THE COURT: Back on the record for a minute.
19 I'm looking at the hard copy that was provided to each
20 and all of us.

21 As to the Clarke testimony it starts with:

22 "A. We felt the important thing was
23 that he was an admitted child abuser. He
24 touched his stepdaughter in a sexual way."

25 Q. And you communicated that?"

1 certain actions afterwards?

2 A. Yes. We advised our branch
3 office and told them our position was to
4 remove him as a ministerial servant and
5 immediately responded. They confirmed our
6 assessment and it was announced that he was no
7 longer a ministerial servant."

8 That's the first aspect of the Clarke
9 testimony.

10 Second prong of the Clarke testimony:

11 "Q. The fact that he minimized it or
12 lied about the nature and extent of it, was
13 that important for you to communicate to
14 Watchtower?

15 A. We felt the important thing was
16 that he was an admitted child abuser. He
17 touched his stepdaughter in a sexual way.

18 Q. And you communicated that?

19 A. In a letter? Yes.

20 Q. And The Watchtower did respond
21 to the letter and he was removed as
22 ministerial servant?

23 A. Correct. And we announced
24 that."

25 That is my understanding that that's the

1 agreed upon Clarke testimony; is that correct?

2 MR. SIMONS: That's correct.

3 THE COURT: And, Madame Reporter -- and,
4 actually, counsel have organized, in order, the pages
5 and the testimony. It is yellow highlighted testimony
6 starting "As presented to you."

7 Going on to the Abrahamson testimony.

8 "Q. Why were you reporting this to
9 Watchtower New York?

10 A. To get direction.

11 Q. And in all of your work as an
12 elder that involves anything in this type of
13 matter, you would get your direction and
14 instruction from New York?

15 A. Correct. In a lot of these
16 cases that legal matters are involved, we are
17 always encouraged to call the Legal Department
18 because how could we know all the laws. And
19 the laws change from state to state. But our
20 Legal Department could help us through this.

21 Q. And you used the word
22 "encouraged," but, actually, you are required
23 to call New York.

24 A. You might put it that way.

25 Q. I did put it that way. Do you

1 agree?

2 A. I agree you put it that way.

3 Q. Do you agree that you were
4 required to call New York?

5 A. Yes."

6 THE COURT: And that is the Abrahamson
7 testimony. Correct?

8 MR. McCABE: Yes. You could put it that way.

9 THE COURT: All right. We have worked
10 through that.

11 So what I'm going to ask you to do, Madame
12 Reporter, is, I'm going to hand you these so you can see
13 them, but you can probably just read it from your
14 machine, whatever you want to do. But we have them
15 lined up person-to-person highlighted testimony.
16 Certainly, anything that has an "X through it is
17 redacted material.

18 MR. SCHNACK: I have no objection to her
19 reading it from the page, your Honor, just to be safe.

20 MR. SIMONS: And I agree.

21 THE COURT: I have no objection either. We
22 can agree that we agree on that.

23 MR. SCHNACK: You could put it that way.

24 THE COURT: All right. We are off the
25 record.

1 (Off the record from 9:17 to 2:56)

2 MR. McCABE: Back on the record. All counsel
3 are here. The jury requested Reference Table A of 3904
4 Casey, (B), and we agree that it should be included, I
5 believe. Correct?

6 MR. SIMONS: We do.

7 MR. McCABE: Yes. It is hard to read, your
8 Honor. I wonder if we should copy it off the book.

9 MR. SIMONS: At the risk of being technically
10 dinosauric, I agree.

11 THE COURT: Okay. Hill, here it is.

12 MR. SCHNACK: Your Honor, the reporter did
13 not read the entire record.

14 THE COURT: Apparently Madame Reporter did
15 send me an email, but I was writing decisions so I
16 wasn't looking for it.

17 MR. SCHNACK: My understanding is she sent us
18 the entire testimony, but the jury asked her to stop at
19 a certain point. And I understand you did stop at that
20 point; is that correct?

21 THE COURT: Define what point we started and
22 what point we stopped.

23 MR. SCHNACK: Are we on the record? This is
24 one of the problems with not having it read back in the
25 courtroom is that the court reporter makes decisions

1 based on what the jury wants, not what your Honor wanted
2 to decide.

3 THE COURT: We reacted to "We want to hear
4 Dr. Ponton's testimony." It wasn't limited in terms of
5 substance or terms. So were I to get that request
6 again, I might bring the foreperson out just to see if
7 there was any more specific, but we marked what we read
8 to the jury for record purposes.

9 (Proceedings adjourned at 3:30 p.m.)

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REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by the court clerk;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded

stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this ____ day of _____, 2012.

KATHRYN LLOYD, CSR 5955