

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA
CIVIL DIVISION

CASE NO: 2014-CA-159-P

BERNADETTE J. RESTIVO,
f/k/a BERNADETTE J. NOE,

Plaintiff

v.

THOMPSON, HINE, LLP.
an Ohio registered LLC, The Estate
of William Wilkinson, deceased,
O. Judson Scheaf and John Mitchell,
all residents of Ohio,

Defendants.

VERIFIED COMPLAINT TO QUIET TITLE

COMES NOW, Plaintiff, BERNADETTE J. RESTIVO, f/k/a BERNADETTE J. NOE, by and through counsel and files the instant Complaint to Quiet Title against the Defendants and states:

1. This is an action to quiet title to real property owned by the Plaintiff in fee simple, and located at 139 Stinger Road, Tavernier, Florida, and more described in Exhibit A attached hereto (hereinafter referred to as the Property) for an amount that exceeds the minimal jurisdictional amount of this Court.
2. Venue falls within the prevue of this Court pursuant to the Mortgage instrument which clearly states that the law to be applied is the law of the State where the Property is located, i.e., Monroe County, Florida.
3. Plaintiff's title to the Property is derived as follows: Property purchased by Plaintiff on or about July 3, 2003 and owned in fee simple.

4. Warranty Deed from Franz L. Kappel and Sheila H. Kappel to Bernadette R. Noe, recorded July 3, 2003 in O.R. Book 1905, page 688, Public Records of Monroe County, Florida.
5. A Quit Claim Deed from Thomas W. Noe and Bernadette Noe to Bernadette Noe, recorded January 7, 2010 in O.R. Book 2447, page 1888-1889, Public Records of Monroe County, Florida.
6. A Final Judgment of Divorce between Bernadette R. Noe and Thomas W. Noe was recorded in O.R. Book 2424, Page 1693 as amended in O.R. Book 2451, Page 1740 Public Records of Monroe County, Florida transferring all rights and interest in the subject property to Bernadette J. Noe n/k/a Bernadette J. Restivo.
7. Plaintiff has resided at the subject property since May 2005.
8. Defendant THOMPSON, HINE, LLP is a limited liability partnership doing business in Cleveland, Ohio.
9. Defendant, WILLIAM WILKINSON, on information and belief, is recently deceased in Columbus, Ohio and was an attorney practicing law in Columbus, Ohio.
10. Defendant, O. JUDSON SCHEAF is an attorney practicing law and residing in Columbus, Ohio.
11. Defendant, JOHN MITCHELL is an attorney practicing law and residing in Cleveland, Ohio.
12. All defendants are collectively referred to as the Defendants.
13. Defendants claim a lien against the Property adverse to Plaintiff.
14. Defendants' claim is without any right whatsoever, and Defendants have no estate, right, title, lien or interest whatever in or to the Property or any part of the Property.
15. Defendants' claim is based on a certain mortgage to the Property purportedly executed by Plaintiff to Defendant on or about March 13, 2006. (hereinafter referred to as the Mortgage and attached hereto as Exhibit B).

16. Said Mortgage was recorded in Monroe County, Florida on or about March 16, 2006, Document #1571269, O.R. Book #2194 at page 37.
17. Paragraph 3 of the Mortgage specifically states that the maturity date of the mortgage is **December 31, 2006**.
18. The Mortgage is invalid and unenforceable for the reasons set forth in this complaint.
19. The Mortgage remains unsatisfied of record and constitutes a cloud on Plaintiff's title to the property.
20. Plaintiff has been forced to retain counsel to represent her on this matter and has agreed to pay reasonable attorney's fees and costs resulting therefrom.
21. Plaintiff seeks an Order from the Court assessing all attorney's fees and costs expended on this matter against Defendants, individually and jointly.

FACTS SURROUNDING EXECUTION OF MORTGAGE
BY PLAINTIFF, BERNADETTE J. RESTIVO, f/k/a
BERNADETTE J. NOE

The facts of this case are extensive and complex. The following is a summary of the facts that pertinent to the instant complaint.

In February of 2005, Thomas Noe, (hereinafter NOE), the Plaintiff's former husband, hired Defendant THOMPSON HINE, LLP (TH) a law firm based in Ohio, to represent him in civil matters against the State of Ohio. NOE's legal team consisted of Defendants William Wilkinson, Esq., O. Judson Scheaf, Esq. and John Mitchell, Esq.

On May 24, 2005, the State of Ohio Bureau of Worker's Compensation sued NOE.¹ NOE paid Defendant TH over \$800,000.00 for this representation.²

¹ State of Ohio, Bureau of Workers' Compensation v. Thomas Noe, Inc, et al, Franklin County Ohio Court of Common Pleas, Case No. 05-CVH 05 5753.

Upon information and belief, no billing statements or accounting of services was ever provided by TH for this matter. Despite numerous requests by Plaintiff and NOE that they do so.

In October of 2005, NOE was indicted in U.S. Federal Court for Federal Campaign Finance Violations. Defendant TH did not represent NOE in this matter.

On or about November 21, 2005, the Franklin County, Ohio trial Judge David Cain entered an Order on Prejudgment Attachment (attached as Exhibit D) that included the following specific provisions:

Any assets titled or owned exclusively by Bernadette Noe are not subject to the condition that the proceeds of their sale are to be automatically deposited into the controlled account. **However**, *any asset sold by Bernadette that has a value over \$5,000.00 shall first be submitted to the Court for its approval. At that point, the Court will determine if the proceeds of the sale should be subject to the order.*

Counsel for both Tom and Bernadette shall come before this Court for an *in camera* review of their outstanding legal bills so that the Court can come up with a reasonable amount to be given to them from the controlled account for unpaid legal bills.

² As outlined in letter from Thomas Noe to Plaintiff dated March 2, 2011 and filed herewith under seal as Exhibit C.

Counsel for Defendants shall continue to come before this Court on a monthly basis for an *in camera* review of their legal expenses.

(emphasis added)

In February of 2006, NOE was indicted on 53 counts of Conspiracy, Grand Theft, Money Laundering, Tampering with Records and Forgery. The \$800,000.00 already paid to Defendant TH was allegedly depleted by this time (12 months) though no time sheets or break down of services was ever provided to Plaintiff.

After his criminal indictment in February of 2006, Defendant TH refused to make a notice of appearance on behalf of NOE while at the same time refusing to account for the \$800,000.00 which had already been paid to them.³ They demanded a Retainer Agreement and an assurance of payment.⁴ Defendant TH entered into aggressive, unethical and unconscionable negotiations with NOE, Plaintiff and Plaintiff's counsel. During the entire negotiation process, all parties were aware the Plaintiff was under the care of a physician and a mental health professional and that she was prescribed psychotropic medication for severe anxiety and depression. Defendant TH knew that Plaintiff was in no emotional or mental state to adequately understand and appreciate the consequences of

³ See email dated February 6, 2009 between Plaintiff and Defendant TH regarding request for accounting. (Exhibit E)

⁴ This despite and in contravention of the Court Order entered in November of 2005 and of which Defendant TH had full knowledge.

signing the Mortgage yet railroaded her, physically, emotionally and verbally, into executing same.⁵

FRAUD UPON THE COURT

In addition to the duress and coercion exerted by Defendants, Defendant TH refused to allow counsel for Plaintiff, Charles Ticknor III, to contact the bank (first mortgage holder on the Property) regarding this mortgage to ensure that the bank would not view the TH mortgage as a default and hence accelerate the mortgage. Defendant TH also refused to advise the Court of these negotiations in an effort to circumvent the Court Order entered in November of 2005. In fact, on February 28, 2006, Plaintiff granted her attorney, Ticknor, permission to inform Judge Cain, Franklin County Court of Common Pleas of the impending TH mortgage against the property per the Court's November 21, 2005 Order.⁶

Defendant TH demanded an "estimated" advance payment of \$1,867,000.00 from NOE. A fee proposal was submitted which among other unconscionable aspects, included 405 trial hours PER TEAM MEMBER.⁷ This amount is especially unconscionable where Defendant TH never presented a defense on behalf of NOE; never even presented one witness. The proposal for fees from Defendant TH was never submitted for Court approval pursuant to Judge Cain's November 2005 Order. In fact, when counsel for Plaintiff advised

⁵ See email dated February 17, 2014 between Defendant WILLIAM WILKINSON and Plaintiff regarding this issue. (Exhibit F)

⁶ The fact that this mortgage was not a "sale" of an asset is nothing more than semantics in that the effect of the mortgage was in direct contravention of the court Order.

⁷ See Memorandum dated January 31, 2006 and titled Tom Noe Fee Proposal (Exhibit G)

Plaintiff **not** to sign the mortgage until he had an opportunity to speak with her doctors and counselors⁸ he urged her to bring up the issue of the mortgage demanded by Defendant TH to Judge Cain. Defendant TH responded to this request through NOE⁹ absolutely refusing to take this matter before Judge Cain until AFTER the mortgage was signed by the Plaintiff. This is tantamount to a fraud upon the Court. As officers of the Court, these actions by Defendant are egregious.

NOE, sometime thereafter, signed a Promissory Note to Defendant TH in the amount of \$1,867,000.00. Plaintiff *never* signed the Promissory Note and is not indebted to Defendant TH.

FRAUD AND FRAUD IN THE INDUCEMENT

Even more egregious on the part of Defendant TH was their conspiracy with their client to lie to Plaintiff in order to induce her to execute the mortgage. In an Affidavit prepared by NOE after the parties' divorce,¹⁰ where NOE states that his attorney's advised him to keep damaging and material information from Plaintiff which they knew would, in all likelihood, cause Plaintiff to refuse to sign a guaranty or mortgage on behalf of Defendant TH. After being made aware of the Affidavit, Defendant TH visited NOE in prison and asked him to rescind his Affidavit, which NOE refused to rescind.¹¹

⁸ see email from Chuck Ticknor, Esq. to Plaintiff dated February 28, 2006 (Exhibit H)

⁹ See email from NOE to Plaintiff forwarding Defendant Scheafs' response to Ticknor's February 28, 2006 email (Exhibit I)

¹⁰ See AFFIDAVIT from Thomas Noe dated July 23, 2009 (Exhibit J)

¹¹ See letter fro NOE to Plaintiff dated 3/21/2011 (Exhibit C filed under seal)

The actions of the Defendants was not only unethical, but clearly fraud in the inducement for which they should not be rewarded. There existed a fiduciary relationship, as husband and wife, between NOE and Plaintiff; therefore, a duty of full disclosure existed. Defendants, by advising and conspiring with NOE, participated in this fraud to mislead Plaintiff into signing this Mortgage.

The elements of Fraud in the Inducement of a contract are “(1) a misrepresentation of a material fact; (2) knowledge by the person making the statement that the representation is false; (3) intent by the person making the statement that the representation would induce another to rely and act on it; and (4) that the plaintiff suffered injury in justifiable reliance on the representation.” *Fixel v. Rosenthal & Rosenthal*, 842 So.2d 204, 209 (3d DCA 2003) citing *Kutner v. Kutner*, 173 So.2d 763 (Fla. 3d DCA 1965).

The fact that Plaintiff inquired of NOE on countless occasions regarding the material facts withheld, and the fact that NOE, acting upon advice of Defendants, lied and misled Plaintiff, blatantly outlines an action for Fraud in the Inducement. As officers of the Court, the actions by Defendants are especially unacceptable. This mortgage is invalid, null and void.

STATUTE OF REPOSE **UNENFORCEABILITY OF LIEN**

Florida Statute §95.281(1), entitled “Limitations; instruments encumbering real property”, provides that a mortgage lien shall terminate (a) if the final maturity of an obligation secured by a mortgage loan is ascertainable from the record of it, five years after the date of maturity and (b) if the final maturity of an

obligation secured by a mortgage is not ascertainable from the record of it, 20 years after that date of the mortgage. Florida Statute §95.281 is a statute of repose that prescribes the enforceable life of a mortgage lien. §95.281(1)(b) establishes an ultimate date when the lien of the mortgage terminates and is no longer enforceable.

§95.281 is a statute of repose as opposed to a statute of limitations. A “statute of limitations” is a procedural statute that prevents the enforcement of a cause of action that has accrued. A “statute of repose” in contrast to a statute of limitations, is a substantive statute which not only bars enforcement of an accrued cause of action but may also prevent the accrual of a cause of action where the final element necessary for its creation occurs beyond the time period established by the statute.

A statute of repose provides a substantive right to be free from liability after the established time period. It does not work to provide a time limitation for filing a suit after the accrual of the cause of action, but prevents the cause of action from arising after its time limitation. The purpose of a statute of repose is to set a definitive time limitation on a valid cause of action even if there are circumstances that would make it difficult to discover.¹²

On or about January 20, 2011, the Plaintiff (through counsel) again placed the Defendants on notice that the Mortgage was unenforceable and was being

¹² Florida Statute §§95.11(2)(c), and see also 95.281(1)(b)

repudiated by Plaintiff. Despite being received by Defendants via certified mail on January 24, 2011, no response was ever taken by Defendants.¹³

The maturity date on the Mortgage is clearly stated as December 31, 2006. Consequently the life of this mortgage expired on December 31, 2011. Therefore, the mortgage is invalid, null and void.

LACK OF CONSIDERATION

As a general principle of law, a mortgage is not valid and binding unless founded upon bona fide and sufficient consideration. *Chaykin v. Kant*, 327 So.2d 793 (Fla. 3d DCA 1976). See also, *Security and Inv. Corp of the Palm Beaches v. Droege*, 529 So.2d 799, (4th DCA 1988) (A mortgage which fails for lack of consideration is a nullity.)

If at the mortgagor's request, any detriment or loss is sustained by the mortgagee, or any advantage or benefit accrues to the mortgagor, there is sufficient consideration to support the mortgage. In the instant case, Defendants never suffered a detriment of any kind in that the amount of the mortgage was merely an "estimate" of legal work to be performed on behalf of a third party which was never proven to be done and the Plaintiff did not receive a benefit of any kind from the Defendants. In simpler terms, the transaction suffered from a lack of consideration for the reason that as between the Plaintiff and Defendants there was never a debt to be secured by the mortgage.

Where there was no debt between Plaintiff and Defendants, no funds were advanced to Plaintiff, Plaintiff never signed a note payable to Defendants, and

¹³ See letter from Trey Bruce, Esq. to Defendant TH dated January 20, 2011 and the verification that the letter was received (Exhibit K)

executed mortgage under fraudulent and coercive actions of former husband's attorneys, the transaction suffered from lack of consideration and, thus, there was not a valid mortgage which could be enforced by Defendants or assignees.

As set forth in the facts, the Mortgagor/Plaintiff never received any funds or services from Defendants. The "mortgage" was purportedly based upon the value of **estimated** legal services to be performed by Defendants on behalf of the Mortgagor's former husband, NOE. No actual bill for services rendered was ever provided to NOE or to the Plaintiff despite repeated requests.

The Defendants (a) failed to fully perform the services (b) never specifically set forth the costs for the services to be performed (c) never provided an accounting of any services actually rendered. The Defendants lied to the Plaintiff about the circumstances surrounding the execution of the mortgage to fraudulently induce the Plaintiff to execute the Mortgage. By virtue of certain facts surrounding the transaction, Defendants either knew or should have known of the lack of consideration and fraud.

FLORIDA HOMESTEAD PROTECTION

Plaintiff, Bernadette Restivo¹⁴ is a legal resident of Tavernier, Florida. She executed a Declaration of Domicile in May 2005, well prior to the execution of the purported "mortgage". Therefore, at the time of the signing of the "mortgage", 139 Stinger Road, Tavernier Florida was Bernadette Restivo's and her minor child's Homestead under Florida law.

¹⁴ Formerly Bernadette Noe

Florida's Homestead exemption provides, in pertinent part:

"There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase improvement or repair thereof, or obligations contracted for house, filed, or other labor performed on the realty, the following property owned by a natural person: (1) a homestead."

Art.X sec. 4(a)(1), Florida Constitution.

"This Court has long emphasized that the homestead exemption is to be liberally construed in the interest of protecting the family home." *Havoco v Hill*, 790 So.2d 1018, 1021 (Fla. 2001).¹⁵

"The homestead provision has been characterized as our 'legal chameleon.' Our constitution protects Florida homesteads in three distinct ways. First, a clause ... provides homesteads with an exemption from taxes. Second, the homestead provision protects the homestead from forced sale by creditors. Third, the homestead provision delineates the restrictions a homestead owner faces when attempting to alienate or devise the homestead property." *Chames v. Demayo*, 972 So.2d 850, 853 (Fla. 2007), citing *Snyder v. Davis*, 699 So.2d 999, 1001, 1002 (Fla. 1997)

"The policy of the Constitution cannot be misapprehended. Its design and purpose is to benefit the debtor by securing to him his homestead beyond all liability from forced sale under process of any court. The case law of this state

¹⁵ West's F.S.A. Const. Art 10 §4

dictates that homestead exemption laws should be liberally applied to the end that the family shall have shelter and shall not be reduced to absolute destitution.” *Bessemer Properties v. Gamble*, 158 Fla. 38, 27 So.2d 832; *Olesky v. Nicholas*, Fla., 82 So.2d 510 (Fla. 1955); *Slatcoff v. Dezen*, Fla., 76 So.2d 792. Clearly Article X is intended to confer valuable rights on the owner of the homestead and was not drawn for the benefit of creditors.

“We have repeatedly recognized that the homestead exemption protects not only the debtor, but also the debtor’s family and the State.” *Chames*, *id* at 860.¹⁶

“The Florida constitutional exemption of homestead protects the homestead against every type of claim and judgment except those specifically mentioned in the constitutional provision itself.” *Olesky*, *supra*, 82 So.2d at 513

The “mortgage” forced upon Plaintiff by Defendants does not fall into any of the exceptions cited by the Florida Constitution. The TH “mortgage” did not pertain to the payment of taxes and assessments, it did not pertain to obligations for the purchase, improvement or repair of the home, and it did not pertain to obligations contracted for house, field or other labor performed on realty. Therefore, Plaintiff’s residence located at 139 Stinger Road, Tavernier, Florida is protected from any “mortgage” asserted against it by Defendants.

Furthermore, since, as the facts clearly show, this “mortgage” was procured through fraud, duress and coercion, this “mortgage” was neither

¹⁶ See also *Havoco*, 790 So.2d at 1020.

knowing, intelligently nor voluntarily executed.¹⁷

This "mortgage" reeks of fraud, duress and coercion. It is invalid, null and void and it must be set aside as a matter of law.

WHEREFORE, Plaintiff Bernadette Restivo respectfully moves this Court for an Order to Quiet Title of her residence at 139 Stinger Road, Tavernier, Florida as to the mortgage placed upon it by Defendants¹⁸, and to find that the mortgage is invalid, null and void. Plaintiff further moves this Court for an award of all attorney's fees and costs expended on this matter.

Dated this 7th day of March, 2014.



Bernadette Restivo f/k/a
Bernadette Noe

Respectfully submitted,

/s/Elena Vigil-Fariñas, Esq.
Florida Bar No. 979661
Restivo, Reilly and Vigil-Fariñas, LLC
Suite 237, Pink Plaza
103400 Overseas Highway
Key Largo, Florida 33037
Tel: 305-453-4961
elena@rrvflaw.com

¹⁷ While it may be argued that Constitutional rights may be waived, "waivers of constitutional rights 'must be knowing, intelligent and voluntary.'" *Chames*, id. at 861.

¹⁸ Recorded under O.R. Book 2194, Page 37, Public Records of Monroe County, Florida

Exhibit “A”

EXHIBIT A

PARCEL A: LOTS 1 AND 2, BLOCK 2, TAVERNIER OCEAN SHORES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 4, AT PAGE 112, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA.

PARCEL B: ANY AND ALL INTEREST IN THAT CERTAIN PARCEL OF SUBMERGED LAND ABUTTING LOTS 1 AND 2, BLOCK 2, TAVERNIER OCEAN SHORES, AS RECORDED IN PLAT BOOK 4, AT PAGE 112, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: A PARCEL OF SUBMERGED LAND IN THE STRAITS OF FLORIDA IN SECTION 27, TOWNSHIP 62 SOUTH, RANGE 38 EAST, KEY LARGO, MONROE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A CONCRETE MONUMENT AT THE SOUTHWEST CORNER OF LOT 6, ACCORDING TO "PLAT SHOWING THE SUBDIVISION OF PROPERTY BELONGING TO ABSOLOM ALBURY, AT AL", RECORDED IN PLAT BOOK 1, AT PAGE 64, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, RUN EAST ON THE DIVIDING LINE BETWEEN LOTS 6 AND 7 ACCORDING TO SAID PLAT, A DISTANCE OF 1270.7 FEET TO A MONUMENT AT THE SOUTHEAST CORNER OF SAID LOTS 6 AND THE NORTHEAST CORNER OF SAID LOT 7; THENCE SOUTH 02 DEG. 11' EAST, A DISTANCE OF 90 FEET, MORE OR LESS, TO THE MEAN HIGH TIDE LINE ON THE SHORE OF THE STRAITS OF FLORIDA, AND THE POINT OF BEGINNING OF THE PARCEL HEREINAFTER DESCRIBED; THENCE CONTINUE SOUTH 02 DEG. 11' EAST, A DISTANCE OF 210 FEET; THENCE WEST, A DISTANCE OF 690 FEET; THENCE SOUTH 35 DEG. 00' WEST, A DISTANCE OF 640 FEET; THENCE SOUTH 02 DEG. 30' WEST, A DISTANCE OF 170 FEET; THENCE WEST, A DISTANCE OF 200 FEET TO THE SOUTHERLY LINE OF LOT 7, AT THE SHORE LINE AS SHOWN ON SAID PLAT BOOK 1, PAGE 64; THENCE NORTHEASTERLY AND THE EASTERLY MEANDERING SAID SHORE LINE AS SHOWN ON SAID PLAT BOOK 1, AT PAGE 64, A DISTANCE OF 1790 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

AND

ANY AND ALL INTEREST IN THAT CERTAIN EASEMENT SHOWN AS PART OF STINGER ROAD BEING 25' BY 75' ABUTTING LOTS 1 AND 2, BLOCK 2, NORTHWESTERLY OF LOT 1, OF SAID SUBDIVISION (TAVERNIER OCEAN SHORES).

Permanent Parcel Number: 1592340
BERNADETTE R. NOE

MONROE COUNTY
OFFICIAL RECORDS

Exhibit “B”

This instrument prepared by (and after recording should be returned to):

BOOK 1571269 PG 37
FILED & RECORDED IN OFFICIAL RECORDS OF
MONROE COUNTY, FLORIDA

Name: Ed Burt Bruton, Jr., Esq.
Address: Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, FL 33131

03/16/2006 12:04PM
INTANGIBLE TAX CL: SG \$3,734.00
MORTGAGE DOC STAMP CL: SG \$6,534.50

Doc# 1571269
Bk# 2194 Pg# 37

State of Florida Documentary Stamp
Tax required by law in the amount of
\$6,534.50 and Florida intangible tax in
the amount of \$3,734.00 are being paid
upon recordation of this Mortgage in
Monroe County, Florida.

_____ State of Florida _____ Space Above This Line For Recording Data _____

MORTGAGE AND SECURITY AGREEMENT

1. **DATE AND PARTIES.** The date of this Mortgage and Security Agreement (Mortgage) is March 13, 2006, and the parties and their addresses are as follows:

MORTGAGOR:

Bernadette R. Noe
139 Stinger Road
Tavernier, Florida 33070

Married, joined by her spouse, Thomas W. Noe

LENDER:

Thompson Hine LLP
10 West Broad Street, Suite 700
Columbus, Ohio 43215

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor's performance under this Mortgage, Mortgagor grants, bargains, conveys, mortgages and grants a security interest to Lender in and to the following described property:

SEE EXHIBIT "A"

Permanent Parcel Number: 1592340

The property is located in Monroe County at 139 Stinger Road, Tavernier, Florida 33070.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

Together with all rights of Mortgagor under any contract now existing or hereafter made for the sale of the Property, and ALL ACCOUNTS CONSISTING OF THE MORTGAGOR'S RIGHT TO PAYMENT OF ANY MONETARY OBLIGATION FOR THE SALE OF THE REAL PROPERTY DESCRIBED IN ATTACHED EXHIBIT A, WHICH REAL PROPERTY IS OR MAY BE THE HOMESTEAD OF MORTGAGOR.

Mortgagor authorizes Lender to file on behalf of Mortgagor one or more financing statements in respect of the collateral described in this Mortgage.

3. SECURED DEBT AND FUTURE ADVANCES. The term "Secured Debt" is defined as follows:

- A. The initial indebtedness secured by this Mortgage is the debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions:

Guaranty Agreement, executed and delivered by Bernadette R. Noe to Thompson Hine LLP dated March 13, 2006 (the "Guaranty"), with respect to a certain Promissory Note, executed and delivered by Thomas W. Noe to Thompson Hine LLP, dated March 13, 2006, in a principal amount of \$1,867,000.00 with a maturity date of December 31, 2006 (the "Note").

- B. All obligations Mortgagor owes to Lender, which may later arise, to the extent not prohibited by law.

- C. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage.

4. MORTGAGE COVENANTS. Mortgagor agrees that the covenants in this section are material obligations under the Secured Debt and this Mortgage.

Payments. Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Mortgage.

Prior Security Interests. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees to make all payments when due and to perform or comply with all covenants. Mortgagor also agrees not to allow any modification increasing the principal amount currently secured by such lien instrument, nor to request any future advances that would exceed the current stated principal amount of

the lien instrument under any note or agreement secured by the lien document without Lender's prior written approval.

Claims Against Title. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

Property Condition, Alterations and Inspection. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims and actions against Mortgagor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

Authority to Perform. If Mortgagor fails to perform any duty or any of the covenants contained in this Mortgage, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage.

Leaseholds; Condominiums; Planned Unit Developments. Mortgagor agrees to comply with the provisions of any lease if this Mortgage is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

Condemnation. Mortgagor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

Insurance. Mortgagor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause," and shall name Lender as a mortgagee and/or as an additional loss payee. Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

Financial Reports and Additional Documents. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property.

5. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record, which Mortgagor has disclosed in writing to Lender.
6. **DUE ON SALE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the transfer of the Property or of all or any part of the Property, or any interest in the Property is mortgaged or encumbered by a lien having priority over this Mortgage (other than the existing mortgages and liens, which Mortgagor has disclosed in writing to Lender) without Lender's prior written consent. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

7. DEFAULT. Mortgagor will be in default if any of the following occur:

Secured Debt. Mortgagor shall fail to pay the Secured Debt in accordance with the terms of the Secured Debt.

Event of Default Under Note. An "Event of Default" shall occur under the Note.

Property. Any action or inaction occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following: (a) Mortgagor fails to maintain required insurance on the Property; (b) Mortgagor transfers the Property or mortgages or encumbers the Property by a lien having priority over this Mortgage (other than the existing mortgages and liens, which Mortgagor has disclosed in writing to Lender); (c) Mortgagor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security; (d) Mortgagor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior or subordinate to the lien of this Mortgage; (e) the Property is taken through eminent domain; (f) a judgment is filed against Mortgagor in excess of \$100,000.00 and subjects Mortgagor and the Property to action that adversely affects Lender's interest; or (g) a prior lienholder commences an action to foreclose on the Property.

8. REMEDIES ON DEFAULT. In addition to any other remedy available under the terms of this Mortgage, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if Mortgagor is in default. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions.

At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.

9. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. If Mortgagor breaches any covenant in this Mortgage, Mortgagor agrees to pay all expenses Lender incurs in performing such covenants or protecting its security interest in the Property. Such expenses include, but are not limited to, fees incurred for inspecting, preserving, or otherwise protecting the Property and Lender's security interest. These expenses are payable on demand and will bear interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Mortgagor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Mortgage. This amount may include, but is not limited to, reasonable attorneys' fees, court costs, and other legal expenses. To the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction.

under the Bankruptcy Code. This Mortgage shall remain in effect until released. Mortgagor agrees to pay for any recordation costs of such release.

10. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that to the best of her knowledge, information and belief:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
- C. Mortgagor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor shall take all necessary remedial action in accordance with any Environmental Law.
- D. Mortgagor shall immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.

11. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

12. SEVERABILITY; INTERPRETATION. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Mortgage cannot be enforced according to its terms, that section will be severed and will not affect the

enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

13. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.
14. **WAIVERS.** Except to the extent prohibited by law, Mortgagor waives all appraisalment and homestead exemption rights relating to the Property, but only to the extent of the security provided herein.
15. **APPLICABLE LAW.** This Mortgage is governed by the laws of the jurisdiction where the Property is located, and applicable federal laws and regulations.

Mortgagor and Lender further covenant and agree as follows:

16. **ACCELERATION; REMEDIES.** Lender shall give notice to Mortgagor prior to acceleration following Mortgagor's breach of any covenant or agreement in this Mortgage (but not prior to acceleration under Section 8 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Mortgagor, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Mortgagor of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Mortgagor to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Mortgage without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 16, including but not limited to, reasonable attorneys' fees and costs of title evidence.
17. **RELEASE.** Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage. Mortgagor shall pay any recordation costs.
18. **ATTORNEYS' FEES.** As used in this Mortgage, the Note and the Guaranty, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.
19. **EXCULPATION.** The personal liability of Bernadette R. Noe for payment of the Secured Debt and for performance of the other obligations to be performed by her under this Mortgage is limited in the manner, and to the extent, provided in the Guaranty.
20. **JURY TRIAL WAIVER.** Mortgagor hereby waives any right to a trial by jury in any action, proceeding, claim or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Mortgage, the Note or the Guaranty.

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated on page 1.

Jamdi Webb
(Witness)

Kimela J. Alvar
(Witness)

Bernadette R. Noe
Bernadette R. Noe

Jamdi Webb
(Witness)

Kimela J. Alvar
(Witness)

Thomas W. Noe
Thomas W. Noe

ACKNOWLEDGMENTS:

STATE OF FLORIDA)
) ss.
COUNTY OF MONROE)

(individual)

This instrument was acknowledged before me this 13 day of March, 2006, by
Bernadette R. Noe, who is personally known to me or who has produced
as identification.

My commission expires:

(Seal)



Pamela J Steed
My Commission DD111329
Expires April 22, 2008

Pamela J. Steed
(Notary Public)

STATE OF FLORIDA)
) ss.
COUNTY OF MONROE)

(individual)

This instrument was acknowledged before me this 13 day of March, 2006 by
Thomas W. Noe, who is personally known to me or who has produced
as identification.

My commission expires:

(Seal)



Pamela J Steed
My Commission DD111329
Expires April 22, 2008

Pamela J. Steed
(Notary Public)

EXHIBIT A

PARCEL A: LOTS 1 AND 2, BLOCK 2, TAVERNIER OCEAN SHORES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 4, AT PAGE 112, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA.

PARCEL B: ANY AND ALL INTEREST IN THAT CERTAIN PARCEL OF SUBMERGED LAND ABUTTING LOTS 1 AND 2, BLOCK 2, TAVERNIER OCEAN SHORES, AS RECORDED IN PLAT BOOK 4, AT PAGE 112, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: A PARCEL OF SUBMERGED LAND IN THE STRAITS OF FLORIDA IN SECTION 27, TOWNSHIP 62 SOUTH, RANGE 38 EAST, KEY LARGO, MONROE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A CONCRETE MONUMENT AT THE SOUTHWEST CORNER OF LOT 6, ACCORDING TO "PLAT SHOWING THE SUBDIVISION OF PROPERTY BELONGING TO ABSOLOM ALBURY, AT AL", RECORDED IN PLAT BOOK 1, AT PAGE 64, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, RUN EAST ON THE DIVIDING LINE BETWEEN LOTS 6 AND 7 ACCORDING TO SAID PLAT, A DISTANCE OF 1270.7 FEET TO A MONUMENT AT THE SOUTHEAST CORNER OF SAID LOTS 6 AND THE NORTHEAST CORNER OF SAID LOT 7; THENCE SOUTH 02 DEG. 11' EAST, A DISTANCE OF 90 FEET, MORE OR LESS, TO THE MEAN HIGH TIDE LINE ON THE SHORE OF THE STRAITS OF FLORIDA, AND THE POINT OF BEGINNING OF THE PARCEL HEREINAFTER DESCRIBED; THENCE CONTINUE SOUTH 02 DEG. 11' EAST, A DISTANCE OF 210 FEET; THENCE WEST, A DISTANCE OF 690 FEET; THENCE SOUTH 35 DEG. 00' WEST, A DISTANCE OF 640 FEET; THENCE SOUTH 02 DEG. 30' WEST, A DISTANCE OF 170 FEET; THENCE WEST, A DISTANCE OF 200 FEET TO THE SOUTHERLY LINE OF LOT 7, AT THE SHORE LINE AS SHOWN ON SAID PLAT BOOK 1, PAGE 64; THENCE NORTHEASTERLY AND THE EASTERLY MEANDERING SAID SHORE LINE AS SHOWN ON SAID PLAT BOOK 1, AT PAGE 64, A DISTANCE OF 1790 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

AND

ANY AND ALL INTEREST IN THAT CERTAIN EASEMENT SHOWN AS PART OF STINGER ROAD BEING 25' BY 75' ABUTTING LOTS 1 AND 2, BLOCK 2, NORTHWESTERLY OF LOT 1, OF SAID SUBDIVISION (TAVERNIER OCEAN SHORES).

Permanent Parcel Number: 1592340
BERNADETTE R. NOE

MONROE COUNTY
OFFICIAL RECORDS

Exhibit
“C”
(SEAL)

Exhibit “D”

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

STATE OF OHIO, BUREAU OF
WORKERS' COMPENSATION, et al.,

Plaintiffs,

vs.

THOMAS NOE, INC., et al.,

Defendants.

:

:

:

:

:

Case No. 05CVH055753

Judge Cain

CLERK OF COURTS

2005 NOV 21 PM 3:37

FILED
CLERK OF COURTS
FRANKLIN COUNTY
OHIOENTRY GRANTING DEFENDANTS' MOTION TO STAY PROCEEDINGS, FILED
SEPTEMBER 29, 2005ENTRY CONCERNING THE PREJUDGMENT ATTACHMENT OF DEFENDANTSRendered this 21ST day of November 2005.

CAIN, J.

On September 29, 2005 Defendants, Thomas Noe and Thomas Noe, Inc., moved this Court for an order staying the current proceedings until the resolution of the current criminal investigation of Mr. Noe. Bernadette Noe later joined her husband in this motion. After reviewing the briefs of all the parties and hearing their arguments at the November 9, 2005 hearing, it is the order of this Court that Defendants' motion be GRANTED.

It is hereby ORDERED, ADJUDGED AND DECREED that the present case be stayed until the outcome of the current criminal investigation into the actions of Mr. Noe.

Counsel for both sides of this case have submitted entries to this Court in regards to the prejudgment attachment order against Defendants. Both sides seek to fashion this order in a manner most beneficial to themselves. Due to the

complexity of this issue, along with the parties' inability to agree in the past, the Court feels that it is necessary for it to issue a comprehensive prejudgment attachment order. The Court hereby orders the following:

- All past prejudgment attachment orders issued by the Court in this case are hereby vacated in their entirety.
- Defendants shall establish one interest bearing account¹ in which the proceeds of all of Defendants' asset sales shall be placed. This account will not only contain the proceeds of future asset sales, but shall also include the proceeds, if not already expended, of any assets sold since the commencement of the current litigation.
- No other accounts shall be used.
- This order specifically applies to property titled exclusively to Thomas Noe or Thomas Noe, Inc. This order shall also apply to any property held jointly between any of the Defendants.
- Any assets titled or owned exclusively by Bernadette Noe are not subject to the condition that the proceeds of their sale are to be automatically deposited into the controlled account. However, any asset sold by Bernadette that has a value over \$5,000.00 shall first be submitted to the Court for its approval. At that point the Court will determine if the proceeds of the sale should be subject to this order.

¹ In this order this account will sometimes be referred to as the "controlled account".

- This account shall be under the exclusive supervision of this Court and no monies shall be withdrawn from it without the express permission of this Court.²
- Tom and Bernadette Noe are hereby jointly given the permission of this Court to withdraw up to \$6,000.00 a month from this account to cover their reasonable living expenses.
- If Defendants require more money, they shall come before this Court for an *in camera* review of their reasonable living expenses and the Court shall determine whether more money is warranted. Defendants may also petition the Court for one-time withdrawals that the Court find to be reasonable.
- Thomas Noe and Thomas Noe, Inc. are hereby given permission to sell any asset in their possession, regardless of its amount, as long as the proceeds are deposited in the controlled account.
- If the asset is worth less than \$5,000.00, this Court will not review the transaction. If the asset is worth \$5,000.00 or more, Defendants shall come before the Court and establish that they are receiving reasonable value for the asset. Defendants shall file a pleading establishing the value of the asset with the Court. Plaintiffs will then have the normal fourteen (14) days to respond if they feel the value is not reasonable. Defendants will then have the customary seven (7) days to reply. If the parties agree

² This mandate obviously excludes any kind of account fees levied by the establishment where the account is set up.

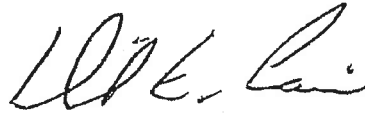
that the valuation is reasonable, they can submit an agreed entry for the Court's approval.

- Regardless of whether the asset is worth more than or less than \$5,000.00, the proceeds of its sale shall be placed in the account.
- Any *de minimus* sale of an asset, \$500 or less, is not subject to the terms of this order.
- Counsel for both Tom and Bernadette shall come before this Court for an *in camera* review of their outstanding legal bills so that the Court can come up with a reasonable amount to be given to them from the controlled account for unpaid legal bills. This payment will, however, not relieve Defendants of their obligation to pay the balance of their unpaid legal bills at some future date.
- Counsel for Defendants shall continue to come before this Court on a monthly basis for an *in camera* review of their legal expenses. At this time the Court will also make an *in camera* review of the status of the controlled account.
- This order shall not be construed to apply to any earnings of Defendants derived from the performance of personal services.
- As a condition of this order, Plaintiffs shall hold all financial information concerning Defendants in their possession as "confidential" and shall not disclose it to third parties without the permission of this Court.

- Counsel for both sides of this case shall come before this Court in four (4) months so that the status of the criminal investigation can be reviewed and future actions can be discussed.

The Court hopes that the parties comply with this order in good faith and with the spirit of cooperation.

IT IS SO ORDERED.



David E. Cain, Judge

Copies to:

Jim Petro
William Becker
Randall W. Knutti
Richard Coglianese
William Bodoh
Michael Yarbrough
Jeffery Rupert
Counsel for Plaintiffs

H. Buswell Robert, Jr.
William Wilkinson
Counsel for Defendant

Michael A Snyder
Michael J. O'Callaghan
Counsel for Defendant, Bernadette Noe

Exhibit “E”

From: Feher, Thomas <Tom.Feher@thompsonhine.com>
To: Legalnoe <Legalnoe@aol.com>
Cc: ~~theinfo@thompsonhine.com~~; cticknor <cticknor@dinslaw.com>
Subject: FW: TH/Noe
Date: Fri, Feb 6, 2009 3:40 pm

Ms. Noe:

I am designated counsel for Thompson Hine and will be the person with whom you or your counsel should correspond going forward regarding the inquiries you have made. I apologize for any delay in responding to your messages, but I wanted to ensure that I gathered facts and had your counsel's consent to respond directly to you before doing so.

It is first important to note that your husband Tom is our client. We do not have an attorney client relationship with you and you are, in fact, represented by other counsel. Nor do we have an authorization from Tom to discuss with you the specifics of our communications or representation. Because you, as Guarantor of Tom's fees, are responsible for the outstanding balance, I am happy to address issues regarding your debt, to the extent I have the information and that it is appropriate to discuss. Regarding payments and billing, the amount of your debt is fixed by the Agreement you signed in March 2006. There have not been any payments since that date.

Your requests for other information are more problematic. I do not have information about the amounts paid. Even if I did, we do not have Tom's permission to disclose such information, but am given to understand that the source of the payments and the payments themselves were disclosed to and approved by Judge Cain in Franklin County. Your request for personal information about our partners seeks information I also do not have and is information to which even Tom would not be entitled.

As to your offer of settlement, we are not inclined to make such an agreement at this time.

If you have any questions, please feel free to contact me at your convenience.

From: Legalnoe@aol.com [<mailto:Legalnoe@aol.com>]
Sent: Monday, February 02, 2009 9:09 AM
To: Coyne, Thomas
Cc: ~~theinfo@thompsonhine.com~~ cticknor@dinslaw.com
Subject: TH/Noe

A few weeks ago, I sent you an email requesting several documents for me and Tom. I asked you for a current accounting of Tom's bill with your firm. I would like to see everything from day one. I have no indication how much Tom has already paid your firm, or the origin of the funds he used to pay the firm. I also asked you for a complete list of all senior partners, their political affiliation and political contributions to Ohio and Federal Campaigns from 2004 to the present. My request was not even acknowledged in your reply to my email. This is my second request for the information.

I appreciate your agreement to delay settling our bill in a full and final manner until the appeal at the 6th District Court of Appeals is completed in order to avoid any ethical dilemma. As I stated previously, I have counsel in Ohio and Florida advising me on this issue.

However, as we are all anxious to put this matter to rest, I am proposing a one-time offer to settle the outstanding balance for \$750,000.00 cash; the payment schedule would be \$25,000.00 on or before March 1, 2009, with monthly payments until the bill is paid in full no later than July 1, 2009. As I am dealing with an offer to refinance my debts, I need a reply from your firm by Tuesday, February 3, 2009 at 4:00 pm.

I have been working diligently to secure the finances to be able to offer this payment and I hope you respect the fact that I am doing so. I look forward to your response.

Bernadette Noe

[Great Deals on Dell Laptops. Starting at \\$499.](#)

Exhibit “F”

From: Chuck Ticknor <cticknor@BDBLAW.com>

To: Legalnoe <Legalnoe@aol.com>

Subject: FW: Status

Date: Fri, Feb 17, 2006 8:00 pm

Attachments: f42b01_.DOC (155K)

Bernie: I have read the email but have not yet had a chance to look through the attachment. I will later tonight.

Bill's tone is rude and offensive, and it has an air of superiority that tends to make one nauseous. In addition, there are a few places where it is just plain wrong. Please do not let that bother you too much. It is clear that his one and only interest is your role in providing money. He states very clearly that he could care less what our views are, and as with other events of the last few weeks, it is a lesson you should not quickly forget. On the other hand, Rocky recommended Bill, and Tom hired Bill, for a reason. The fact that he does not give a damn about our view, and the fact that the tone and content is inappropriate (and in some cases just arrogantly incorrect) does not change my long held view that Bill is a great person for the job over the next several months. There are any number of people as qualified in the bigger context, but Bill has unique and special qualities that can be a huge help over the next few months. I think it is clear that he is leveraging you in an unfair manner. But as I say, he could not be more clear about this. He is not concerned with you.

I think we should review all of this and talk further. Unlike the omniscient one, who apparently need not care about your views or mine, I am completely interested in your views. And importantly, I remain fully interested in Bill's views.

Furthermore, because I know that **you** care how Tom feels and what is best for him, and **you** both care what is best for your five kids and the extended family, I care what Tom thinks too. Finally, before you proceed to give away the only protected money that your family has, I think it can and should be reviewed very carefully so that you do not lose it just to expedite TH's comfort level. With respect to that asset, they have given you no wiggle room. They do not care about anything other than being paid before year end.

All is fine. Just breath. We can talk whenever you want.

614-~~REDACTED~~

From: Wilkinson, William [<mailto:William.Wilkinson@thompsonhine.com>]

Sent: Friday, February 17, 2006 5:29 PM

To: Chuck Ticknor

Cc: Paul Giorgianni; Scheaf, Judson; sbwesq@ameritech.net; Grover, Douglas; Vintagenoe@aol.com

Subject: RE: Status

CHUCK, DUE TO THE NEED FOR SPEED, I WILL RESPOND BELOW TO EACH PARAGRAPH OF YOUR MESSAGE FROM THIS MORNING. SAM WEINER WILL SPEAK FOR HIMSELF AND SAY WHETHER HE AGREES OR DISAGREES WITH MY STATEMENTS BELOW.

I am working through issues with Bernie. As we proceed with those discussions, there are a few things that should be placed on the table for consideration.

1. We agree that Option 1 is a potentially viable option, and all of the parties would have some incentive to do so (with the potential exception of Julia). Although it is too difficult to predict the future (such as who wins the Republican primary), it is our sense is that if Option 1 works, it must work in approximately the next 30-45 days. Option 1 could solve a great many problems.

WE AGREE THAT A GLOBAL SETTLEMENT MAY NOT HAPPEN. WE AGREE THAT IF IT IS GOING TO HAPPEN, IT WILL PROBABLY BE A PRE-PRIMARY EVENT.

It would seem that if such a deal was worked out, at least a week or two before the announcement, AG might want **you** crying in public just a little bit about the fact that Tom has millions of dollars being held by the State of Ohio which have nothing to do with the pending matters and that he is having trouble even defending himself. The AG could publicly take issue with the amount, but concede that there are certainly some significant (seven figure? High six figure?) assets that fall into the pure Tom category. The AG could say that the problem is that the record keeping was sloppy enough that the process of figuring that out could take a long, long time. Since there will be no way to avoid the fact that the public will learn that Tom is getting money (even from a private entity in settlement) the fact that there were assets that were clearly Tom's could provide political cover for AG. Having the public understand that fact in advance helps AG. I raise this because this backside issue (tom getting any money, regardless of source) is seemingly the only reason AG would be afraid to cut the Option 1 deal. Later, it also could be made clear to the public, by someone, that the money really is not going to Tom, but rather directly to his lawyers. That is, from a public perspective, Tom is really going to be broke by this process, simply by needing to defend himself. Again, the AG may not like these ideas and want to do it differently, but he will undoubtedly be very concerned with the public perception if Tom gets any money, regardless of source. He will know that The Blade, and the other big D's will attack.

THIS IS FOR ANOTHER DAY.

2. The only readily apparent rub in the Option 1 approach is that it takes away some of the money leverage you were going to use in the later negotiation process with Julia. Certainly Option 1 would help out from a financial perspective right now, and that is good. But, it is not a chit to be given away lightly. That is, for the most part, a judgment call for you and Tom to make. What I am saying is that as long as we get Option 2 in place in the next few weeks or so, how (and how far) to play Option 1 is something we are willing to consider. That situation is fluid.

AGREE, EXCEPT AS TO TIMING. WE DO NOT HAVE A FEW WEEKS OR SO. NEED A SOLUTION IN PLACE BY NEXT WEEK, AS DISCUSSED BELOW.

3. We agree with the concept of the security issues outlined in Option 2. I want the message to you to be clear. We are in favor of taking the necessary steps to keep you and Sam on the team. That is the most important, fundamental point I want to make. Nevertheless, there are a wide variety of issues which really should not be decided too quickly, without thorough consideration on the part of Tom and Bernie. The concept of us getting them all resolved in the next week is conceivable, but we believe unnecessary and to some degree, imprudent.

A. The proposed flat fee amounts are too high. Perhaps not outer space too high, but nonetheless too high. In other words, those flat fee amounts will either need to be lowered, or kept the same, but the guarantee amount from Bernie should be lower. I think we can reach an understanding on this issue with more discussion on B., below.

THE FEE WILL NOT BE NEGOTIATED DOWN. IT WILL BE INCREASED BY: a) ANY AMOUNT OUTSTANDING AS OF THE TIME A LUMP SUM FEE AGREEMENT IS ENTERED, AND b.) AN AMOUNT TO COMPENSATE FOR THE FACT THAT THE DEAL IS NO LONGER CASH, AND INVOLVES NEW COMPLICATIONS AND RISKS. I USED A THOUGHTFUL FORECAST METHODOLOGY FOR THE FEE ESTIMATE. ALMOST EVERY TIME I MAKE SUCH A LONG TERM ESTIMATE, I COME IN LOW; I.E., FEES TURN OUT TO BE MORE THAN MY ESTIMATE. AND IN THIS CASE, THE LAW FIRM WOULD BE AT RISK TO PROVIDE THE WORK EVEN IF MY ESTIMATE IS TOO LOW. I HAVE ATTACHED A MEMO THAT SUMMARIZES SOME OF THE QUANTITATIVE FACTORS ON WHICH THE ESTIMATE IS BUILT. ONCE THOSE FACTORS ARE IN PLACE, THE REST IS MULTIPLICATION. WE ARE NOT INTERESTED IN ANYONE ELSE'S VIEWPOINT WHETHER OUR FACTORS ARE PROPERLY SET. THEY WILL NOT CHANGE, BECAUSE I WILL NOT CUT BACK THE EFFORT LEVEL TO ONE THAT IS LESS THAN I DEMAND FROM MYSELF AND MY TRIAL TEAMS.

B. There is no clear litigation plan in place, and that is problematic when you are seeking a seven figure guarantee. Clearly litigation is fluid, in this case more than most, so it probably does not make much sense to be too specific. Nevertheless, my client has no sense (virtually zero) of the type of action that is going to happen between now and say, June? July? Thereafter? I have assured her that there is going to need to be a flurry of activity in the next 3-4 months in particular, and I have made it 150% clear that **you two** are the best people I know to handle this next phase. But it is still a blank slate as far as she can see, and that is uncomfortable. I am empathetic on this point. Her discomfort is legitimate.

WHICHEVER LAWYERS HANDLE THE CASE WILL DEVELOP A LITIGATION PLAN. IF WE ARE HIRED, WE WILL DO SO THEN, IF OUR CLIENT REQUESTS ONE. SOME OF THE ASSUMPTIONS ON WHICH THE FEE ESTIMATE ARE BASED

WILL BE SEEN IN THE ATTACHMENT.

C. There is also an allocation issue between Sam and TH. That raises a host of issues consistent with B., above.

AS FAR AS FEE ALLOCATION, SAM'S FEES ARE SEPARATE FROM OURS. HE HAS HIS OWN FEE REQUIREMENTS WHICH ALSO NEED TO BE SATISFIED WITHIN THE WEEK, BECAUSE EACH OF THE OPTIONS INCLUDED IN OUR LUMP SUM FEE PROPOSAL ASSUMES THAT TOM WILL ALSO HIRE A CRIMINAL DEFENSE SPECIALIST ONTO THE COURTROOM TEAM.

AS FAR AS DUTY ALLOCATION, UNLESS WE INCLUDE DOUG GROVER ON THE COURTROOM TEAM, WE NEED SAM OR EQUAL, BECAUSE JUD AND I WILL NOT TRY THE CASE WITHOUT A CRIMINAL DEFENSE SPECIALIST AT OUR SIDE. WHETHER DOUG OR SAM OR ANOTHER, THAT LAWYER WOULD HAVE PRIMARY RESPONSIBILITY FOR ALL CRIMINAL PROCEDURE ISSUES AND SHARED RESPONSIBILITY FOR ALL OTHERS. HOW THE RESPONSIBILITIES ARE ALLOCATED WILL DEPEND ON WHICH TH TRIAL PERSONNEL TOM DESIGNATES FOR THE COURTROOM. WE PRESENTED THREE OPTIONS.

D. There are also timing issues re 100% payment by 12/31/06. The concept of a payment obligation by year end is understood and appreciated. However, payment of 100% (whatever amount that is) probably does not make sense from a litigation strategy, personal, and real property/market/maximize asset perspectives. I also know that TH has the capability of accepting less than 100% cash in the door by year end. I recognize that Sam's issue is different to some degree. Having said that, some significant obligation for actual cash payment by year end, with full payment later in 2007, is more reasonable. Obviously there are a number of bells and whistles that need to be considered, and the legal implications of same.

Bottom line. Bernie wants you on Tom's team. We are in agreement that TH and Sam need financial assurances that are strong, viable, and enforceable. We understand that some year-end cash in the door is required. While I realize that you cannot say with finality your views on any particular point, I would like your feedback (and Sam's) on these points. It will be helpful for me as we proceed through the next few days.

NOT NEGOTIABLE. I WILL NOT EVEN TAKE A LUMP SUM FEE PROPOSAL TO OUR MGT WHICH DOES NOT CONTEMPLATE PAYMENT ASAP, AND IN ALL EVENTS, THIS YEAR.

4. We think that Tom (or Tom's lawyers on his behalf) should file the DQ affidavit. We see no rationale basis for delay. The recent DQ issue (today's Blade) in Toledo makes it even more obvious that this should be done. While there are no assured results, it has a very good chance of success, there is not much likelihood of a hearing on the matter, and it is possibly the most likely way to free up a little more time. We completely disagree with the logic that suggests that the team absolutely needs to be in place before Tom files it. We disagree that the current defense team, after being paid as much as they have, should shy away from filing it just because the current financial picture is not yet completely clear. We assume that Tom agrees that none of the defense lawyers are going to be bound to continue if that financial picture does not clear up in the next several weeks. Further, if no member of the current proposed defense team is willing to file the DQ affidavit, then we think that Tom should file it on his own. He faces no jeopardy by doing so. In the highly unlikely event that there was a hearing called, he could say the truth: He is still trying to ascertain who his counsel is going to be.

WE ARE NOT INTERESTED IN ANYONE ELSE'S VIEW ON THE TIMING ISSUE, THE RISK WE SHOULD TAKE, OR WHETHER PAYMENT FOR PAST SERVICES ENTITLES A CLIENT TO FUTURE SERVICE. THE ISSUE IS NOT UP FOR DEBATE. WE HAVE MADE A DECISION. WE WILL NOT MAKE AN APPEARANCE IN ANY COURT IN RE THE NEW CRIMINAL CASE WITHOUT A FEE AGREEMENT THROUGH TRIAL IN PLACE. I BELIEVE THE OTHER THREE FIRMS INVOLVED IN TOM'S REPRESENTATION HAVE MADE THE SAME DECISION. WHETHER TOM AGREES WE CAN LATER WITHDRAW OR NOT, A JUDGE MAY NOT LATER LET A FIRM WITHDRAW AFTER IT APPEARS IN TOM'S DEFENSE. WE WILL NOT TAKE THAT RISK. WE CALCULATE THAT THE DQ AFFIDAVIT IS DUE BY THE END OF THIS MONTH. THAT IS WHY THE FEE ISSUE NEEDS TO BE RESOLVED WITHIN A WEEK. WE CANNOT CONTINUE AS TOM'S COUNSEL AND NOT FILE THE DQ AFFIDAVIT, BECAUSE IT IS SO IMPORTANT. NOR CAN WE FILE IT WITHOUT A FEE AGREEMENT THRU TRIAL. SO WE WILL DISCONTINUE AS TOM'S COUNSEL NEXT WEEK IF WE DO NOT HAVE AN AGREEMENT IN PLACE. IF WE DO THAT, WE WILL ASSURE THAT TOM HAS THE MATERIAL HE NEEDS TO FILE THE DQ AFFIDAVIT BY MEANS OTHER THAN OUR FIRM.

The filing of the DQ affidavit is not really Bernie's call or our call. It is Tom's. However, it is Bernie's (and our) concern to the extent that the DQ deadline is having an impact on Bernie. And, more to the point, that impact is pressuring her to act more quickly on her issues than common sense dictates she should. We think the DQ affidavit has no direct tie to the Option 2 issue, other than we understand that Option 2 needs to be worked out fairly soon.

NOT FAIRLY SOON. SIGNED NEXT WEEK. I TRAVEL TO FLORIDA ON OTHER BUSINESS ON WEDNESDAY MORNING NEXT WEEK. I PLANNED TO MEET WITH TOM THURSDAY AFTERNOON/EVENING. THAT TIME AND MONDAY/TUESDAY NEXT WEEK ARE THE ONLY TIMES I AM AVAILABLE NEXT WEEK. I AM ABSOLUTELY UNAVAILABLE WEDNESDAY, THURSDAY TILL MID-AFTERNOON, AND FRIDAY.

Holding this together is clearly very important to Bernie. But I do not want her unfairly pressured.

THE TIME PRESSURE DERIVES FROM FACTORS BEYOND OUR CONTROL.

We will continue to work on this with Bernie throughout the weekend and into next week. I know that your preference is that we come to TH with a proposal, and we will. But it would be helpful to receive some general feedback on many of these issues. I can also meet with you both any time, any where this weekend except during the noon-5:00p.m. time periods on Saturday and Sunday. It might be wise to do so if you have the time.

WE HAVE NOT ASKED FOR A PROPOSAL FROM YOU. IF YOU HAVE ONE TO MAKE, FINE. BUT THE ONLY PROPOSALS BEING CONSIDERED BY TH MGT ARE THE TWO IN MY EMAIL YESTERDAY, AND MANAGEMENT'S PRIOR APPROVAL IS REQUIRED FOR ANY PROPOSAL MADE. ONE NOT PRESENTED TO THEM TODAY HAS ALMOST NO CHANCE OF BEING CONSIDERED IN TIME TO SOLVE THE PROBLEM.

JUD AND CHUCK AND CRAIG AND DOUG AND OTHERS HERE WANT VERY BADLY TO HAVE THE CHANCE TO DEFEND TOM AGAINST THE LUCAS COUNTY CHARGES, ALONGSIDE SAM WEINER. BUT WE WILL NOT BE PERMITTED TO TAKE ON THE CASE WITHOUT SECURITY OF PAYMENT. UNLESS SOMETHING CHANGES, THE TIME TO FINALIZE THOSE ARRANGEMENTS EXPIRES NEXT WEEK.

William C. Wilkinson
Thompson Hine LLP
10 West Broad Street
Columbus, Ohio 43215
614.469.3266
614.469.3361 (fax)
William.Wilkinson@ThompsonHine.com

From: Chuck Ticknor [<mailto:cticknor@BDBLAW.com>]
Sent: Friday, February 17, 2006 12:34 PM
To: Scheaf, Judson; Wilkinson, William
Cc: Paul Giorgianni
Subject: Status

Exhibit “G”

MEMORANDUM

January 31, 2006

To: David J. Hooker

FROM: William C. Wilkinson
O. Judson Scheaf, III
Douglas E. Grover

RE: Tom Noe Fee Proposal

We have been asked by Tom Noe to represent him on a flat-fee basis at his criminal trial in relation to the State Coin Fund issues. Because of Tom's legal jeopardy, we are recommending that the firm agree to do so.

Following is a flat-fee proposal for Thompson Hine to represent Tom on a going-forward basis through trial in the Ohio Coin Funds matter, which is based upon the following assumptions:

SCOPE OF WORK

1. The firm will not represent Tom in a trial of the federal campaign finance matter, other than continue with plea negotiation efforts and strategy-development.
2. This proposal does not include the costs of any appeal.

TIMING ASSUMPTIONS

3. Tom will be indicted in the Coin Fund matter in February, 2006.
4. The Coin Fund trial will occur in October, 2006.
5. Trial will last four weeks and the trial team will work seven days per week at fifteen hours per day during that period (28 days¹ x 15 = 405 trial hours per team member).

TERMS AND CONDITIONS

6. ~~William. Wilkinson@thompsonhine.com Phone 614.469.3200 Fax 614.469.3361~~ Noe will pay all fees current thru January 2006, from proceeds of a mid-January real estate closing. 95691.1

7. The flat-fee amount paid to the firm will be deemed earned by the firm upon receipt.

¹ This assumes forty witnesses, most of whose testimony, including cross-examination, will be less than half-a-day.

January 31, 2006

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8. Timekeepers will keep track of their time and, if there is no trial (due to a plea or any other reason), the firm will charge Tom for the work performed based upon those records at our standard hourly rates, deduct expenses, and pay Tom any difference.

FEE AMOUNT

9. The firm will continue to provide an estimated \$50,000 per month in legal services and expenses for "maintenance" of Tom's interests, including the issues pending in the Franklin County Common Pleas Court, asset liquidations, plea negotiations, and cooperation with DSI (February September = 8 months x \$50,000 = \$400,000).
10. The firm will provide an estimated \$250,000 in legal services in the month preceding trial (September), in addition to the maintenance services.
11. Tom will incur \$100,000 in expert witness fee expenses (one accountant-one lawyer @ \$50,000 a piece).
12. The Thompson Hine trial team options² proposed to Tom are as follows:
- | | | | | |
|----------------------------|---|------------------------------------|---|-----------|
| Scheaf/Paralegal | = | \$560 per hour x 405 trial hours | = | \$227,000 |
| Wilkinson/Paralegal | = | \$820 per hour x 405 trial hours | = | \$332,000 |
| Wilkinson/Scheaf/Paralegal | = | \$1,205 per hour x 405 trial hours | = | \$488,000 |
13. Trial team office support during October trial will be \$150,000 for motions, research, jury instructions, et al.

SUMMARY OF THREE OPTIONS

<u>Description</u>	<u>Scheaf/ Paralegal</u>	<u>Wilkinson/ Paralegal</u>	<u>Wilkinson/ Scheaf/ Paralegal</u>
Monthly Maintenance	\$ 400,000	\$ 400,000	\$ 400,000
September Trial Preparation	350,000	350,000	350,000
October Trial Team	227,000	332,000	488,000
Trial Team Home Office Support	150,000	150,000	150,000
Experts	100,000	100,000	100,000
Extraordinary Travel, Reproduction, Equipment Charges for Trial	<u>50,000</u>	<u>50,000</u>	<u>50,000</u>

² In addition to the Thompson Hine trial team, we expect that Tom will also separately engage a criminal defense lawyer, such as Sam Weiner, to be a part of the trial team.

January 31, 2006

Page 3

Total Through Trial	\$1,277,000	\$1,382,000	\$1,538,000
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Based upon the foregoing assumptions, we would like authority to enter into a flat-fee arrangement with Tom for the following amounts in respect to the referenced trial teams:

- a. Scheaf/Paralegal - \$1,300,000
- b. Wilkinson/Paralegal - \$1,400,000
- c. Wilkinson/Scheaf/Paralegal - \$1,550,000

Exhibit “H”

From: Chuck Ticknor <cticknor@BDBLAW.com>

To: legalnoe <legalnoe@aol.com>

Cc: Paul Giorgianni <pgiorgianni@BDBLAW.com>

Subject: RE:

Date: Tue, Feb 28, 2006 4:28 pm

Bernie. My advice from the other day stands. You should **not** sign, and you should allow me to speak with your doctors and counselors. I also would urge you to permit me to bring up the issue with Judge Cain, even if only in chambers. He probably has the power or at least the influence to make them do what you feel you cannot. For the reasons we have discussed before, you seem to think you are powerless on this. It is just not true.

I do not think the issue is competency. They act as if I am suggesting that you are some raving lunatic. They are suggesting that I am saying you cannot do your legal job. That is ridiculous. The issue is undue pressure and duress from a variety of sources, primarily over the last two weeks and on a sporadic, yet intense basis from TH and your own husband.

We can discuss this later at your convenience, but I strongly urge you not to sign at this juncture, to allow me to tell TH that you want out of the existing document, but that you still very much want them to represent Tom, just on fairer terms. Essentially that you want a deal that is not so blatantly one-sided in favor of TH. Again, I also urge you to allow me to speak with your doctors. You had promised me you would let me speak with them.

At this point the only response I will provide to TH will be consistent with your email attached hereto.

Chuck

From: legalnoe@aol.com [<mailto:legalnoe@aol.com>]

Sent: Tuesday, February 28, 2006 2:57 PM

To: Chuck Ticknor

Cc: Paul Giorgianni

Subject:

Please inform TH that I will gladly sign a new fee agreement on Friday and that I would like to have the proposed mortgage delivered tomorrow by 3 pm so that my attorneys have ample time to review it.

Thanks.

Exhibit “1”

From: Vintagenoe <Vintagenoe@aol.com>

To: Legalhoe <Legalhoe@aol.com>

Subject: Juds reply from Chucks antics

Date: Fri, Mar 3, 2006 7:49 am

I do NOT agree that the mortgage should not be delivered. Cain does NOT need to approve that. He does need to approve the sale of the house and disposition of the funds. That said, I do agree we should get to Cain early next week. He will want to inform Petro. But delivery of the mortgage does not require his approval.

Exhibit “J”

AFFIDAVIT

I, THOMAS W. NOE, currently housed at Hocking Correctional Center, Nelsonville, Ohio, Inmate #589407, do hereby aver and swear to the truthfulness of my following statement.

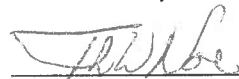
"During the course of legal representation of me by Thompson Hine, L.L.P., I disclosed to my attorneys William Wilkinson, Jud Schaef, and John Mitchell, that during my marriage to Bernadette Noe, I committed adultery with a woman named [REDACTED]. I revealed all of the details of this adulterous affair to my lawyers including the length of time, gifts for the woman and trips with the woman. At the time I disclosed this information to my lawyers, I had not been truthful to my wife, Bernadette Noe, regarding this affair. There was a real and significant threat that [REDACTED] would be called by the State of Ohio to testify in my criminal trial, and had this occurred, it would have caused great harm to my marriage, to Bernadette and to my family.

Although I wanted to disclose the details of this affair to my wife, my attorneys advised and insisted that I not tell Bernadette. Instead, I continued to lie to Bernadette on advice of counsel. This lie continued throughout the course of my criminal trial.

Most importantly, this lie continued during the negotiations with Thompson Hine to secure the payment of legal fees using Bernadette's sole remaining assets, 139 Stinger Road, Tavernier, Florida, as a guarantee. The negotiations between Thompson Hine, me, Bernadette, and Bernadette's attorney, Charles Ticknor, were contentious. Bernadette was very resistant to signing over a \$1,865,000.00 mortgage on her homesteaded property. Bernadette and I sought marriage counseling during this time to assist us in making the decision as to whether or not to have this attorney lien/mortgage placed on Bernadette's home. Still, even after all of this counseling and negotiations, Thompson Hine continued to advise me to withhold the details of the affair from Bernadette, in an effort, I believe, to insure that Bernadette would sign the attorney lien/mortgage for the purpose of paying their legal fees.

I have no doubt that if I had told Bernadette the entire truth about my affair with [REDACTED] prior to her signing the attorney lien on her home, she would have never signed the attorney lien. Even so, she signed the lien against advice of Counsel. Had she and her attorney been given the truth of the circumstances, and had I not purposely withheld pertinent and relevant information from her, Bernadette would never have given Thompson Hine an attorney lien/mortgage on her homestead.

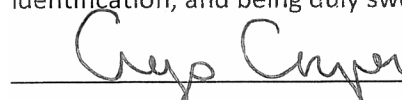
I believe that Thompson Hine advised me in such a manner that Bernadette was fraudulently induced to sign an attorney lien/mortgage lien on her home to Thompson Hine.


Thomas W. Noe

7/23/09
Date

State of Ohio
County of Hocking

On this 23 day of July, 2009, appeared before me, Thomas W. Noe, whom produced personal identification, and being duly sworn, signed the above statement.



Notary Public, State of Ohio
My Commission Expires 1-26-10
Commission Recorded In 1-28-09

Exhibit “K”

TREY BRUCE
ATTORNEY AT LAW

January 20, 2011

BY CERTIFIED MAIL

Mr. David Hooker
Thompson Hine LLP
3900 Key Center 127 Public Square
Cleveland, Ohio 44114-1291

Re: Rescission And Cancellation of Mortgage And Security Agreement between
 Thompson Hine, L.L.P. and Bernadette R. Noe, joined by Thomas W. Noe

Dear Sir:

Enclosed are copies of the following: 1) Mortgage And Security Agreement, dated March 13, 2006, between Thompson Hine LLP. and Bernadette R. Noe, joined by Thomas W. Noe; 2) Formal Notification of Rescission, addressed to you, dated February 5, 2010; 3) Release of Mortgage Lien; and 4) Instructions For Signing Release Of Mortgage Lien. In early 2009, Ms. Restivo learned of the acts of which she complains. As indicated by the above correspondence, Ms. Restivo, upon discovery of such conduct, promptly repudiated the agreement. This letter will provide Thompson Hine, LLP with the final notice of rescission. It is our hope that you will execute the enclosed Release of Mortgage Lien in the manner prescribed by applicable Florida Law. In this regard, please see the Instructions For Signing Release Of Mortgage Lien. Please mail the Release to 99530 Overseas Highway, #2, Key Largo, Florida 33037.

If I do not receive the executed Release by Wednesday, February 9, 2011, I am prepared to file an action in equity for the rescission and cancellation of the Mortgage and Security Agreement, as well as for a declaratory judgment that the agreement is unenforceable. To this end, I intend to employ traditional avoidance theories, including active concealment misrepresentation, unilateral mistake, and unconscionability, as provided by Florida Law.

305-453-5277

305-453-4985 fax

99530 Overseas Hwy, #2

Key Largo, FL 33037

treyb8751@gmail.com

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Search Results

Label/Receipt Number: **2305 1590 0001 1923 0672**Expected Delivery Date: **January 24, 2011**Class: **Priority Mail®**Service(s): **Signature Confirmation™**Status: **Delivered**

Your item was delivered at 7:38 am on January 24, 2011 in CLEVELAND, OH 44114. The item was signed for by M CONEY.

Detailed Results:

- Delivered, January 24, 2011, 7:38 am, CLEVELAND, OH 44114
- Arrival at Post Office, January 24, 2011, 4:50 am, CLEVELAND, OH 44113
- Processed through Sort Facility, January 23, 2011, 8:38 am, CLEVELAND, OH 44101
- Processed through Sort Facility, January 21, 2011, 11:20 pm, OPA LOCKA, FL 33054
- Acceptance, January 21, 2011, 12:29 pm, KEY LARGO, FL 33037

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