

1 IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
2 OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY
3 CIVIL DIVISION

4 NEIL J. GILLESPIE,

5 Plaintiff,

Case No.: 05-7205

6 -vs-

Division: F

7 BARKER, RODEMS & COOK, P.A.
8 A Florida Corporation,
9 WILLIAM J. COOK,

Defendants.

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13 TRANSCRIPT OF PROCEEDINGS

14
15 BEFORE: HONORABLE RICHARD A NIELSEN
Circuit Judge

16 TAKEN AT: Hearing Room No. 508
17 Hillsborough County Courthouse
Tampa, Florida

18 DATE & TIME: April 25, 2006
19 Commencing at 2:15 p.m.

20 REPORTED BY: Denise L. Bradley, RPR
21 Notary Public

22
23 **ORIGINAL**

24 STENOGRAPHICALLY RECORDED
25 COMPUTER-AIDED TRANSCRIPTION

1 APPEARANCES:

2
3 On behalf of the Plaintiff:

4 **NEIL J. GILLESPIE**
5 (Pro se litigant)

6
7 On behalf of the Defendant:

8 **RYAN CHRISTOPHER RODEMS, ESQUIRE**
9 Barker, Rodems & Cook, P.A.
400 North Ashley Drive, Suite 2100
10 Tampa, Florida 33602

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P R O C E E D I N G S

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2 THE COURT: All right. So you are Mr. Gillespie,
3 is that correct?

4 MR. GILLESPIE: Yes, Your Honor. Neil Gillespie.

5 THE COURT: And you are Mr. Rodems?

6 MR. RODEMS: That's correct, Your Honor.

7 THE COURT: What order do we want to take these
8 matters up today?

9 MR. RODEMS: Well, Judge, we noticed three
10 motions for hearing, two of them filed by
11 Mr. Gillespie. The first was to disqualify me as
12 counsel for the defendants. The second was to dismiss
13 the defendant's -- dismiss and strike defendant's
14 counterclaims. Our motion is a Section 57.105 motion.

15 The fourth motion that we filed had to do with a
16 request for a bailiff to be present. We didn't notice
17 that for hearing, but obviously we have a deputy here.
18 So that I don't know that that necessarily needs to
19 come up. It was not noticed for hearing today, but we
20 can take it up if you want to.

21 I would suggest that the order that makes sense
22 to follow is Mr. Gillespie's motion to disqualify and
23 the motion to strike our counterclaims.

24 THE COURT: I agree. And as for the request for
25 bailiff, my procedure is on any case in which there is

1 a pro se party, a bailiff is present. So just for
2 future reference you do not have to submit a request.
3 And since it's not in the form of a motion, I don't
4 think it needs a ruling. All right.

5 Motion to disqualify, Mr. Gillespie.

6 MR. GILLESPIE: Good afternoon, Your Honor.

7 THE COURT: Mr. Gillespie, you can go ahead and
8 argue your motion.

9 MR. GILLESPIE: Thank you, Judge. As the motion
10 states, this is to disqualify Mr. Rodems and the law
11 firm from representing themselves because in their
12 position as both attorney, Mr. Cook and the law firm,
13 they previously represented me. When the matter is the
14 same or substantially similar to the matter in the
15 present controversy, now the interest of Mr. Cook and
16 Barker, Rodems & Cook are materially adverse to my
17 interests, their former client. And this is creating a
18 conflict of interest, a conflict of interest that
19 applies to an attorney associated with a law firm.

20 THE COURT: Mr. Gillespie, I notice that you are
21 reading your motion to disqualify, is that correct?

22 MR. GILLESPIE: Yes, it is.

23 THE COURT: All right. Just so that we can
24 expedite this, I have read your motion.

25 MR. GILLESPIE: Okay.

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THE COURT: So if there's any additional argument that you wish to make, clarifying, expanding, presenting case law that would support that, that is what I would ask you to do at this time.

MR. GILLESPIE: I thank you, Judge. No, I think the motion is fairly thorough.

THE COURT: Well see then there was one clarification that I had, and you had actually just read that portion of it. You made reference to a same or substantially similar matter to the present controversy. Have you previously -- well, are you referring to the matter in which, as I understand, some of the underlying facts of your claim relate to the action that you had retained the firm for having to do with the --

MR. GILLESPIE: Amscot Corporation.

THE COURT: Yes, the Amscot.

MR. GILLESPIE: Yes.

THE COURT: And the action brought. Was it in federal court?

MR. GILLESPIE: Yes, it was, Judge.

THE COURT: Is that, when you refer to a matter or a substantially similar matter, is that the matter you were referring to?

MR. GILLESPIE: Yes, Judge. The defendants

1 represented me on that case, which really, as you say,
2 forms the underlying facts of this case. They also
3 represented me on another payday loan lawsuit against
4 Ace Cash Express, which was more or less
5 contemporaneously handled with the Amscot case. So
6 those two cases were similar. The Amscot case of
7 course is more similar because the same facts are
8 involved in contract and in how the case played out.

9 THE COURT: All right, sir. Thank you.

10 Mr. Rodems.

11 MR. RODEMS: Thank you, Judge. As you pointed
12 out, Your Honor, Rule 4-1.9 of the Rules Regulating the
13 Florida Bar discusses the same or substantially related
14 matter. The matter that the defendants represented
15 Mr. Gillespie on was a Truth in Lending Act claim filed
16 in the federal court involving issues of --

17 THE COURT: Do you have that rule?

18 MR. RODEMS: Yes, sir. It's 4-1.9.

19 THE COURT: Four --

20 MR. RODEMS: 4-1.9.

21 THE COURT: All right. Got it.

22 MR. RODEMS: Okay. So the case that
23 Mr. Gillespie alleges is substantially the same or
24 similar involved a claim by Mr. Gillespie against
25 Amscot, a corporation, involving alleged violations of

1 Mr. Gillespie's rights under the Truth in Lending Act.
2 This lawsuit involves different parties, different
3 facts and different legal issues.

4 In the case of *Frank, Weinberg & Black vs.*
5 *Effman*, 916 So.2d 971, there was also a motion to
6 disqualify on that case. The defendant in that case
7 was a law firm. And they were seeking to disqualify an
8 attorney by the name of Atlas who was representing
9 Effman. And Atlas had at one time represented the law
10 firm in an action the firm brought against a departing
11 shareholder to recover fees that that departing
12 shareholder received from clients.

13 And what the court said in that case is, quote,
14 the trial court did not depart from the essential
15 requirements of law in ruling that the 1991 lawsuit,
16 which involved the shareholder recovering fees from
17 clients, were not substantially related to the 2003
18 lawsuit within the meaning of the rule, 4-1.9. The
19 lawsuits involved entirely different facts, even though
20 the same underlying document governing the relationship
21 is the same.

22 So here we have a situation that is quite similar
23 to that case in which Mr. Gillespie is now suing
24 Barker, Rodems & Cook PA and Mr. Cook individually
25 regarding a contract he entered into with the law firm.

1 And it's completely separate, independent of the action
2 that the law firm represented Mr. Gillespie on.

3 In addition to that case, *Bochese vs. Town of*
4 *Ponce Inlet*, 267 F. Supp. 2nd 1240, the court ruled in
5 that case that the, and again it was a challenge under
6 4-1.9. That the two cases, the one that the client was
7 claiming that was substantially the same involved
8 different plaintiffs, different defendants, and for the
9 large part, different legal issues, which again is what
10 we have here. The court in that case denied a motion
11 to disqualify counsel under 4-1.9.

12 In *Jet One Center Inc., In Re: Jet One Center*
13 *Inc.*, 310 So.2d -- I'm sorry, 310-BR, Bankruptcy
14 Reporter, 649 -- this is Judge Paskay -- there was a
15 motion to disqualify the city of Naples airport
16 authority's attorney, who was Mr. Amado. The motion
17 was filed by the bank. Amado had, I think at the same
18 time or contemporaneously or in the past represented
19 the bank. But he represented the bank on collection
20 cases and this involved bankruptcy.

21 And the court said even a cursory reading of the
22 text in sub clause (a) -- again referring to 4-1.9 --
23 this rule leaves no doubt that it applies only to a
24 representation of a client against a former client in
25 matters that are, quote, the same or a substantially

1 related matter in which that person's interests are
2 materially adverse to the interest of the former
3 client.

4 And then Judge Paskay went on to say, one would
5 be hard pressed indeed to set forth a persuasive
6 argument that Amado's representation of the bank in
7 collection cases before the small claims court or in
8 other cases where he appeared for the bank are, quote,
9 the same or substantially related matters, closed
10 quote, to the interest of the former client.

11 It would involve a quantum leap indeed to tie the
12 issues involved in those cases to the complex and
13 highly technical issue involved in this litigation with
14 NAA, dealing with regulations of the FAA programs at
15 airports and such. And again, Your Honor, that case
16 also suggests that where you've got different parties,
17 different facts, different legal issues, that 4-1.9
18 doesn't come into play.

19 And I would also cite the court to the case of
20 *Transmark USA vs. State Department of Insurance*, which
21 is at 631 So.2d 1112-1116. And that case talks about
22 these types of motions, Your Honor. And what it says
23 is that, you know, when you wait a considerable length
24 of time and then try to move to disqualify counsel, it
25 takes on the appearance of being suspicious or having a

1 calculated or strategic reason for doing that.

2 In this case this motion was filed six or eight
3 months after this litigation began. And it appears to
4 be nothing more than an effort by Mr. Gillespie to
5 either delay proceedings or disrupt Barker, Rodems &
6 Cook PA and Mr. Cook from having the counsel of their
7 choosing, which the case law also says that's a drastic
8 remedy that should only be allowed under unusual
9 circumstances.

10 Now he also raises some other issues about why I
11 should be disqualified. And he says in his motion that
12 I'm going to be a witness in this case. Well, the case
13 law on that is clear. That allegation alone is not
14 enough. You got to prove it. He has not established
15 in any way before this court with any testimony how I'm
16 a witness.

17 But more importantly, in the case of *Cerillo vs.*
18 *Highley*, 797 So.2d 1288, the court says, a lawyer may
19 act as an advocate at pretrial, open parens, before the
20 start of the trial, closed parens, and post-trial, open
21 parens, after the judgment is rendered, closed parens.

22 So even if, even if I was to be a witness in this
23 case, which there's been no proof of that, that
24 wouldn't prevent me from handling the pretrial matters
25 or the post-trial matters, just the actual trial of the

1 case.

2 But I would also point you out to *Singer Island*
3 *Limited vs. Budget Construction Company* because that
4 one is almost directly on point. 714 So.2d 651.

5 And what the court said is, you know, where
6 somebody is moving to disqualify counsel on the basis
7 that they're going a witness, quote, we view motions to
8 disqualify on this ground with some skepticism because
9 they are sometimes filed for tactical or harassing
10 reasons rather than the proper reasons.

11 And in that case on a writ of certiorari, the
12 court upheld the trial court's denial of the motion to
13 disqualify because the petitioner alleged at most only
14 a possibility that disqualification might be necessary.
15 In that case he said the attorney was going to be a
16 witness, but he hadn't taken the attorney's deposition,
17 as Mr. Gillespie has not taken my deposition.

18 And it said, quote, if petitioner had waited
19 until after he had deposed opposing counsel, he might
20 have been able to develop more of a record to support
21 his motion to disqualify. On the other hand, counsel's
22 testimony might well have convinced petitioner that a
23 motion to disqualify would not have been well-founded.

24 So here he comes in with a bold, unfounded
25 allegation that somehow or other I'm going to be a

1 witness in the case and therefore I should be
2 disqualified. His final reason for trying to
3 disqualify me is he said that I lack candor, which he
4 cites no case law to that. And I would assert before
5 the Court, as an officer of the court, that everything
6 that I've represented to the court has been accurate.

7 So his, again, unsupported, unfounded allegation
8 under the law cannot support a disqualification. So we
9 would ask you to deny that motion, Your Honor.

10 THE COURT: Any further response, Mr. Gillespie?

11 MR. GILLESPIE: Yes. I would respond as to what
12 Mr. Rodems would testify to. That would be his
13 performance during the settlement of this matter where
14 he was having me sign documents in his law office that
15 the -- that there have been -- November 1st, 2001. And
16 then two days earlier at the settlement where we signed
17 Amscot documents. He would be testifying about what he
18 did at that time. And that's a pretty substantial part
19 of this case.

20 The contract really is a central issue in this
21 case. In fact I've just filed today a motion for
22 summary judgment, and this is Mr. Rodems copy.

23 Mr. Rodems, that's your copy.

24 There's also an affidavit in support. And this
25 is a contract case with elements of fraud. The

1 contract is the same contract in the Amscot case, and
2 it's the same contract in this case. And now it's up
3 for summary judgment. Now if that's granted, this may
4 be a moot point.

5 However, if it goes further I'll have to take
6 his, as you know, a deposition and get to exactly what
7 his role was in the settlement in creating these false
8 documents. The documents that say on the one hand that
9 we had a court award for attorney's fees, and on the
10 other hand, it wasn't really a court award. It was a
11 claim to a court award. And it was a claim that had
12 no, nothing to back it up. And all of that is argued
13 in the summary, in the motion for summary judgment.

14 As far as lack of candor towards the court, he's
15 made several references to the fact that I committed
16 criminal extortion. He cited Florida Statute 836.05
17 and the holdings of the four cases in here. And
18 there's really no basis for that. And on that basis
19 alone, I think he should be disqualified.

20 THE COURT: All right. Well, with respect to
21 those matters covered under the conflict of interest,
22 your motion is denied.

23 As to the issue of a witness, it is also denied.
24 It is without prejudice to raise it at a later time if
25 appropriate. I will say that my understanding of the

1 rules relating to attorney as witness is that those
2 rules have over the years substantially changed from a
3 position where 15 years ago any even possibility of an
4 attorney being a witness would have resulted in
5 disqualification.

6 Rightly or wrongly, the Florida Bar, as well as
7 the American Bar Association has moved to a position
8 where the issue of an attorney being a witness is not
9 an automatic basis for disqualification.

10 And in fact I think there's some case law.
11 There's cases out there that suggest that an attorney
12 can handle the case, Mr. Rodems, you were saying pre
13 and post-trial and not at trial. But my recollection
14 is, and there's some cases out there that say you can
15 even handle it at trial handing over the matter to
16 co-counsel at the point that you might have to testify.
17 At that point you would actually be testifying, a
18 hypothetical I'm suggesting. But having said all of
19 that, it's denied without prejudice for you to raise
20 that at some later time.

21 As for the grounds based upon lack of candor, I
22 don't find a proper basis for that at this time. The
23 allegations that you have made with respect to
24 allegations Mr. Rodems may have made seems to me to
25 fall within the litigation privilege. And so that is

1 denied as well.

2 MR. GILLESPIE: Thank you, Judge. I don't think
3 we discussed whether we were going to hear my motion
4 for an order of protection. I trust you're in receipt
5 of that.

6 THE COURT: I don't know about that one. I've
7 read several motions. Yes, I did see that.

8 MR. GILLESPIE: That goes into the candor issue a
9 little more thoroughly.

10 MR. RODEMS: Just a second, Your Honor. If I
11 could have a moment to find that particular motion.

12 MR. GILLESPIE: It's plaintiff's verified
13 response to defendant's verified request for bailiff
14 and for sanctions, and plaintiff's motion for an order
15 of protection. They're both contained in the same
16 document.

17 MR. RODEMS: Your Honor, if I might suggest. The
18 motion related to the motion to dismiss our
19 counterclaim was -- we noticed these hearings first,
20 and since we only have 45 minutes, I would suggest that
21 it would be appropriate if we could go to the
22 substantive motion.

23 THE COURT: Well, I agree. Mr. Gillespie, since
24 your motion was quite late in the process, an add-on,
25 if you will, to the response to the motion or the

1 request for the bailiff, I'll defer on that and go back
2 to the order we were discussing.

3 So the disqualification is denied.

4 And then --

5 MR. RODEMS: Your Honor, may I prepare the
6 proposed order on that since I'm --

7 THE COURT: Yes, sir.

8 MR. RODEMS: Okay.

9 THE COURT: Now so we're back to what, your
10 motion for sanctions?

11 MR. RODEMS: No, sir. The next motion would be
12 Mr. Gillespie's motion to dismiss and strike the
13 defendant's counterclaim.

14 THE COURT: Very well.

15 MR. GILLESPIE: Here's case law on that. Under
16 the rule of civil procedure, defendant's counterclaim
17 is a compulsory counterclaim and was not timely filed,
18 was waived and must be dismissed. That is the first,
19 the first objection to the counterclaim.

20 As defined by Rule 11 -- 1.170(a) compulsory
21 counterclaim is one that arises out of a transaction or
22 occurrence that is the subject matter of opposing
23 party's claim. It does not require for its
24 adjudication the presence of third parties over which
25 the court cannot acquire jurisdiction.

1 And that's what we have here. There are no third
2 parties required in this lawsuit to adjudicate this
3 claim. And the court has developed a test to determine
4 whether a claim is compulsory, and that's the logical
5 relationships test.

6 THE COURT: Mr. Gillespie, could you focus on the
7 timing issue. I may come back to the issue of whether
8 it's compulsory or permissive.

9 MR. GILLESPIE: Well basically I'm arguing that
10 the -- a compulsory counterclaim must be raised at the
11 first appearance, defendant's first appearance. And
12 that would have been when he filed the defendant's
13 motion to dismiss and strike on August 29th, 2005.

14 Now we're here today many months later. The case
15 is far moved along. In fact there's a motion for
16 summary judgment. And now defendants want to raise
17 this claim, counterclaim that they should have done
18 back on August 29th.

19 Your Honor, that's the timing issue.

20 THE COURT: All right. Well, Mr. Gillespie,
21 you're not trained in the law. You're not trained in
22 the Rules of Civil Procedure so I'll give you a quick
23 explanation of how we can get to where we are today.
24 When you filed your complaint, under the Rules of Civil
25 Procedure a defendant has the right, doesn't have to,

1 but has the right to file a motion to dismiss, that is
2 question the legal sufficiency of certain pleadings.
3 That is not technically under the rules a responsive
4 pleadings. It is testing the sufficiency of the
5 complaint. Once the court rules on those preliminary
6 motions and enters an order then directing a responsive
7 pleading -- and that was done by order of January 13,
8 '06. Let's see where I said it.

9 Paragraph 2 is where I said that the motion to
10 dismiss was denied. And stated further, defendant
11 shall have 15 days from the date of this order within
12 which to file responsive pleadings. And the key word
13 is "responsive pleadings."

14 MR. GILLESPIE: Thank you, Judge, for making that
15 clear. I understand that.

16 THE COURT: All right. So once that order is
17 forthcoming, the parties have the opportunity to then
18 file an answer, defenses, counterclaims, whether they
19 are permissive or compulsory. And so under that
20 understanding of the rules, sir, this was timely filed.

21 MR. GILLESPIE: Thank you, Judge. As for the
22 jurisdiction allegation, I was relying on Mr. Rodems'
23 answer. And his answer, on the one hand he claims in
24 his counterclaim that I'm a resident of Marion County,
25 but in his answer he denies that. In the complaint,

1 paragraph 1, Plaintiff Neil J. Gillespie resides in
2 Ocala, Marion County, Florida. And defendant's
3 response to it was, as to paragraph 1 of the complaint,
4 defendants are without knowledge and therefore deny the
5 allegations.

6 Now we go to their counterclaim, and they take
7 the opposite position. And that will be 62, paragraph
8 62, page 6, counterclaims. On information and belief
9 plaintiff counter defendant is a resident of Ocala,
10 Marion County, Florida. And it was really a procedural
11 objection. I don't know they can take both ends of
12 that argument.

13 THE COURT: They can do that because they're
14 lawyers.

15 MR. GILLESPIE: Okay.

16 THE COURT: And because the rules allow it.

17 MR. GILLESPIE: Okay.

18 THE COURT: And let me very briefly explain the
19 difference. What they have said, and they're permitted
20 to do this under the rules, is they don't know whether
21 you are or not. So when you don't know, it's denied,
22 again under the rules. When they come to their
23 counterclaim and say on information and belief, again
24 they're saying we don't know, but we think this guy
25 lives in Marion County. And so everything they've done

1 does not establish or raise to the level of a lack of
2 jurisdiction.

3 In fact, you know, you started this party here in
4 Hillsborough County. And so as a result of you
5 starting the party, they can bring you here, because
6 you came here, for anything they want, and under the
7 law prove that they have some sort of cause of action.
8 I'm not saying they do. I'm just saying that, again
9 under our rules by you starting it here, they then
10 don't have to go to your county to engage you in
11 litigation.

12 MR. GILLESPIE: Thank you, Judge.

13 THE COURT: So I'll deny paragraph 2. All right.
14 Now in 3 you say they failed to state a cause of action
15 for libel.

16 MR. GILLESPIE: Yes, Judge. In their complaint,
17 in their counter complaint they attach a copy of the
18 purported libel. In other words, it's not a complete,
19 it's not a complete document. And in the letter to
20 Amscot, and I have that as Exhibit 2. If you look at
21 the letter to Amscot, the third paragraph it would be,
22 and then the fourth sentence down in parentheses it
23 says, see copy of my letter enclosed.

24 Well, the defendants haven't enclosed or attached
25 that letter as part of this document. And in doing so

1 they are not presenting the entire item that they say
2 is libelous. And the law is pretty clear on that, that
3 you can't parse, pick words out and say this is libel
4 and that's libel. You have to take the document in its
5 full context. They haven't done that because they
6 haven't attached the letter. But in contrast, they've
7 attached a different letter, the one that they
8 prepared, which really doesn't have bearing on my libel
9 because I didn't write it.

10 And I think that this should be, at least if not
11 dismissed completely, at least dismissed with allowing
12 them a chance to amend it so that we can see what the
13 letter that "see copy of my letter enclosed" states.
14 Because right now we don't know. And it's important.

15 THE COURT: All right. Mr. Rodems, response on
16 that.

17 MR. RODEMS: Thank you, Your Honor. First of
18 all, under the Rules of Civil Procedure and the case
19 law concerning motions to dismiss, all the allegations
20 of the complaint are to be accepted as true. And this
21 letter from Mr. Gillespie accuses the defendants and
22 Barker, Rodems & Cook of, among other things, being
23 incompetent and not truthful.

24 And Mr. Gillespie claims he was pressured into
25 the lawsuit and that Amscot paid 42,000 too much to

1 settle the case. And that Mr. Cook said Mr. Gillespie
2 was selfish for not suing Amcot. And that Amcot's
3 and plaintiff counter defendant's attorneys engaged in
4 collusion. Those are all things that are stated in
5 this letter.

6 This is the letter that we received. The fact
7 that the letter says, see copy of the letter enclosed,
8 does not objectively prove that there was any letter
9 enclosed. This is what we received.

10 The statements contained in this letter,
11 regardless of whatever letter may have been attached,
12 are defamatory. Some of them are defamatory in and of
13 themselves, calling somebody untruthful, that type of
14 thing. Saying that people engaged in collusion to
15 force a higher settlement than plaintiff and counter
16 defendant wanted.

17 So as far as the claim that Mr. Gillespie makes
18 in his argument to dismiss, he's violating the
19 provision of the case law that says you accept the
20 claims in the light most favorable to the nonmoving
21 party, which would be us, and accepting them as true.

22 THE COURT: Well, Mr. Rodems, are you saying with
23 respect to Exhibit 2 that that's all that you, that
24 that's all that the defendant received?

25 MR. RODEMS: That is all that the defendant

1 received. Yes, Your Honor.

2 THE COURT: Is that set out in the -- let's see,
3 65 I guess talks about Exhibit 2.

4 MR. RODEMS: Yes, sir.

5 THE COURT: It really doesn't clarify what you
6 got as I read it.

7 MR. RODEMS: No, sir. And I don't believe that
8 the pleading rules require us to do that. We are
9 alleging that he composed and published this letter.
10 And Mr. Gillespie can deny that allegation if he
11 doesn't believe it's true. But at this point he
12 composed and published that letter. It is a fact that
13 we must assume on a motion to dismiss is true.

14 He's claiming that this isn't a complete letter,
15 but again, he's making an assertion outside the four
16 corners of the complaint to support his motion to
17 dismiss, which is not appropriate on a motion to
18 dismiss.

19 MR. GILLESPIE: Actually we're staying within the
20 four corners of the letter. And it says, see copy of
21 my letter enclosed. We have independent knowledge that
22 Mr. Macatchney of Amscot did in fact receive the
23 enclosed letter because I received the response from
24 him by and through his attorney. And his attorney
25 makes reference to the information in that letter.

1 Mr. Rodems I know has received a copy of that letter
2 from another avenue.

3 THE COURT: All right. Well, here is how I'll
4 rule. I will deny this paragraph 3 of your motion.
5 But there will be included in this a statement in the
6 order itself that the defendants represented at the
7 hearing that the Exhibit 2 that they received consisted
8 of only one page.

9 MR. GILLESPIE: All right. Judge, I'm not
10 finished stating why and that I'll sustain a cause of
11 action for libel. That's just the opener.

12 THE COURT: Go ahead.

13 MR. GILLESPIE: There's an absolute privilege
14 here concerning litigation. If you look at the letter,
15 the letter begins with a caption of the court case.
16 And that's *Clement et al., vs. Amscot Corporation* with
17 the case number, district court, et cetera. And it's
18 addressed to Amscot Corporation, which was the
19 defendant in that case. I'm not even sure that the
20 letter rises to the level of publication because it was
21 sent to the corporation that was a defendant in the
22 lawsuit.

23 And that's what the letter talks about, the
24 lawsuit. And as such, it talks about the lawsuit that
25 was passed, the Amscot lawsuit. And let's just go

1 through it for a minute. It says, I was a plaintiff in
2 the above-captioned lawsuit. While the action is
3 settled, I regret becoming involved and was pressured
4 into it by my lawyer.

5 I don't know that that being pressured by a
6 lawyer amounts to libel. I think that's what lawyers
7 generally do is they pressure people. There may be a
8 fancier term for it, but that's what they do.

9 Also it's a letter of apology to Mr. Macatchney.
10 I am sorry for the consequences you're suffering. And
11 then I go on to tell him the facts about this case,
12 that I found discrepancies in the case file. This is
13 part of my attempt to uncover the truth.

14 As I see it, you paid \$43,000 too much to settle
15 this case, and here's why. Now Mr. Rodems objects to
16 that, but this doesn't libel either Mr. Cook or
17 Mr. Rodems' law firm because this doesn't talk about
18 that. This talks about Mr. Macatchney. This is a
19 question did he pay too much, and is more of a
20 reflection on his attorney, not the defendants. It's
21 just not about them.

22 For something to be libelous it has to concern
23 the plaintiff, the counter claimant here. And none of
24 these statements concern them, and if they do, they're
25 privileged. And then it goes on to talk about

1 involvement in the Ace case, and that I initially
2 declined Mr. Cook's solicitation to join the lawsuit.
3 And again, that's saying what I did. I initially
4 declined. He solicited it. That's his job. I
5 declined that.

6 And again, Mr. Cook said that I was selfish for
7 not suing Amscot. Again that's Mr. Cook making a
8 statement about me. I'm not claiming that they defamed
9 me for saying that I'm selfish, and they have no basis
10 under the law to claim they have been defamed by that.

11 During the course of litigation it became
12 apparent to me that Mr. Cook and his associates were
13 incompetent and not truthful. And I think that that's
14 been spelled out in the complaint from the lawsuit
15 that's against them. And this is where the letter
16 that's missing, and I have a copy of it here. During
17 the settlement negotiations, I tried to settle this
18 case for \$10,000 in legal fees and \$1,000 for each of
19 the three plaintiffs. See copy of my letter enclosed.

20 Since they haven't provided it, let me provide it
21 at this time.

22 THE COURT: Well, sir, that's not necessary.

23 MR. GILLESPIE: Not necessary? Thank you, Judge.

24 Again, you ultimately paid 56,000 to settle and
25 this was a result of our lawyers' collusion. Then I go

1 on to say, this is my opinion. This isn't put out as
2 fact. This is my opinion. I was involved in a lawsuit
3 and I'm -- I was preparing to sue them on the same set
4 of facts, and this is my opinion of what happened.

5 And I also say, and I welcome any supporting
6 evidence. I'm reaching out to this defendant who I've
7 apologized to.

8 And I just want to go back to the second
9 paragraph. I don't say that there was no cause of
10 action against Amscot. I just say that it was a pretty
11 thin case. And a thin case nevertheless is still a
12 case that can be prosecuted.

13 And I go on to say, in the alternative, if that
14 set of facts isn't correct, in the alternative, perhaps
15 your lawyer was just a very poor negotiator and you
16 paid \$43,000 too much to settle the lawsuit. I'm
17 speculating. This is opinion and speculation. I'm
18 trying to get at the truth here.

19 Finally I talk about a bar complaint against
20 Mr. Cook, that I filed a bar complaint, and then I put
21 the complaint number here. And I also write that this
22 was to no avail. That means that the bar reviewed all
23 of these issues here and more, and they decided that
24 whatever happened, that this didn't amount to anything
25 wrong under the Florida rules governing lawyers.

1 And then I go on to say, I'm available to discuss
2 this further if you wish.

3 THE COURT: All right. Thank you.
4 Mr. Gillespie, let me again explain that whether it's
5 in a counterclaim or complaint, I'm limited to looking
6 at the four corners, just for sufficiency now, not the
7 merits, the sufficiency under the law of what's
8 alleged.

9 They allege that you have made false statements,
10 that you've damaged their good name and reputation. I
11 read the letter. That's within the four corners. The
12 letter says the lawyers were incompetent and not
13 truthful. That alone, not -- there may be other things
14 that if you've covered all of the points of your
15 letter, it may or may not have been an issue to the
16 defendants in this case. I don't know. But that alone
17 in my mind rises to the level of a sufficient claim of
18 libel.

19 Your second point, which was -- or my second
20 point, it may have been your first point, is that you
21 claim these are privileged communications relating to
22 ongoing litigation. That may or may not be the case.
23 Under libel, whether you are privileged in your
24 communication or not is what is called an affirmative
25 defense. So you must respond to the allegation of

1 whether it was libelous or not in your opinion. And if
2 you believe that they're privileged, then you raise
3 that as a defense.

4 MR. GILLESPIE: And would that go the same for a
5 qualified privilege?

6 THE COURT: Yes, sir.

7 MR. GILLESPIE: And what about the issue of not
8 being published?

9 THE COURT: Well, sir, my understanding of the
10 law is if you say something or if you write something
11 and it goes to somebody else, that's publication. And
12 they say that you're the author of this, and it went to
13 somebody besides them. There have to be three parties
14 involved. It has to be from one party to a third party
15 about a second party. That's sufficient to have
16 publication as I view this letter.

17 MR. GILLESPIE: All right. And whether it's
18 opinion, Judge?

19 THE COURT: Again, that's going to be a matter of
20 defense.

21 MR. GILLESPIE: And with regard to their
22 incompetency, and the record shows that they did not
23 prevail in any court.

24 THE COURT: Well, sir, truth will be your
25 absolute defense to libel.

1 MR. GILLESPIE: Will I need to assert that at
2 this time?

3 THE COURT: No, sir.

4 MR. GILLESPIE: Okay.

5 THE COURT: If you can prove to a trier of fact,
6 whether that's me or a jury, that in fact they were
7 incompetent, then the libel claim fails.

8 MR. GILLESPIE: All right.

9 THE COURT: All right. And we have run out of
10 time. I have a 3:00. You have a 3:00 ending to your
11 45 minutes. So we can pick this up at some other time.

12 MR. RODEMS: There are -- before we close the
13 record, Your Honor, just so that we're clear. There
14 are several more paragraphs of this motion to dismiss
15 and strike counterclaim that have not been heard. When
16 we readjourn are we going to pick it up from that
17 point?

18 THE COURT: Well, it's up to you where you want
19 to pick it up. I've drawn my line after paragraph 3.

20 MR. RODEMS: Yes, sir.

21 THE COURT: Of the plaintiff's motion.

22 MR. GILLESPIE: Judge, I'm not clear about what's
23 happening. Could you help me understand.

24 THE COURT: We have stopped the hearing because
25 you have run out of time.

1 MR. GILLESPIE: Is that stop for the day or just
2 for a break?

3 THE COURT: It's stopped for the day.

4 MR. GILLESPIE: Thank you.

5 THE COURT: I have other cases that have
6 scheduled from 3:00 through 4:30. So to pick up again
7 you have to see my judicial assistant about additional
8 time at some future date.

9 MR. GILLESPIE: Thank you. Do I need to take any
10 action other than that?

11 THE COURT: Mr. Rodems will be preparing an order
12 on what we've covered thus far, and he will send it to
13 you for your review. Your review is only for the form,
14 not whether you like the ruling or not, but the form of
15 the order. But if the form meets with what you believe
16 happened today, then you can approve that. And
17 Mr. Rodems will send that on to me with that
18 understanding.

19 If you disagree, then you're to provide your own
20 version of what you believe the order, the rulings that
21 may be covered.

22 MR. GILLESPIE: One of the things Mr. Rodems
23 wanted to do was to challenge my qualifications to
24 proceed pro se. Do you want to address any of that at
25 this time?

1 THE COURT: We have no time left today.

2 MR. GILLESPIE: Okay.

3 MR. RODEMS: Thank you for your time, Your Honor.

4 THE COURT: Thank you both.

5 (Thereupon, the hearing concluded.)

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1 STATE OF FLORIDA

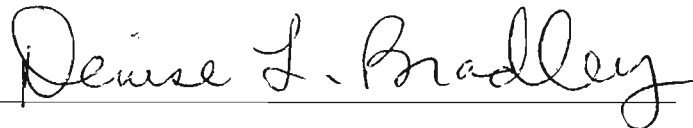
2 COUNTY OF HILLSBOROUGH

3
4 I, DENISE L. BRADLEY, court reporter for the
5 circuit court of the Thirteenth Judicial Circuit of the State
6 of Florida, in and for Hillsborough County,

7 DO HEREBY CERTIFY that I was authorized to and did,
8 through use of computer-aided transcription, report in
9 shorthand the proceedings and evidence in the afore-styled
10 cause, as stated in the caption thereto, and that the
11 foregoing pages numbered 1 to 32, inclusive, constitute a
12 true and correct transcription of my shorthand report of said
13 proceedings and evidence.

14 IN WITNESS WHEREOF, I have hereunto set my hand in
15 the City of Tampa, County of Hillsborough, State of Florida,
16 this 6th day of July, 2006.

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18
19 Denise L. Bradley, Court Reporter

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