

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, STATE OF FLORIDA

CASE NO. 08 CA 11315

DIVISION: B

MARY LOU SMITH, an individual, and
SHARON DENSON, an individual,

Plaintiffs,

vs.

TRAILER ESTATES PARK AND RECREATION
DISTRICT, an independent special
taxing district, JANET JONES, an
individual, JOHN VANDER MOLEN, an
individual, JOSEPH SALERNO, an
individual, and MARY LOU MCNULTY, an
individual,

Defendants.

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DEPOSITION OF: MARTHA BRAUER,
TRAILER ESTATES PARK AND RECREATION
DISTRICT REPRESENTATIVE

(Volume II)

DATE: Friday, August 28, 2009

TIME: 9:49 a.m. - 5:03 p.m.

LOCATION: Kirk, Pinkerton, P.A.
1301 Sixth Avenue West
Suite 401
Bradenton, Florida 34205

REPORTED BY: NANCY E. PAULSEN, CRR, RPR, FPR
Notary Public
State of Florida at Large
US Legal Support
4350 West Cypress Street, Suite 701

U.S. Legal Support
(813) 876-4722

1 Q. Well, I'm --

2 A. Okay.

3 Q. I'm being broad.

4 A. Yeah, I understand.

5 Q. I'm being inclusive of both.

6 A. Yeah, I understand.

7 Q. So what I'm asking you is in the District's
8 possession, do they have a document that provides a list
9 of documents that should not be disclosed either to the
10 plaintiffs in this case or to the public in general?

11 A. No, we don't have a list.

12 Q. Okay. But do you believe that there are
13 documents that fit that criteria?

14 A. I know there is at least one document that fit
15 that criteria.

16 Q. And do you know what that document is?

17 A. It's an attorney/client work product.

18 Q. Okay. So it's a communication with Kirk
19 Pinkerton?

20 A. Well, it's an attorney/client work product.

21 Q. Is it a document that was created by Kirk
22 Pinkerton?

23 A. No.

24 Q. Is it a document that was created by you?

25 A. No.

1 **Q. Who is it -- who created the document?**

2 THE DEPONENT: Am I allowed to tell him that?

3 MR. SHULTS: No, that's work product. We
4 claim work product.

5 MR. HENNESSY: How would we be able to
6 determine if the work product applied? I'm not
7 asking for the content of the document, I'm asking
8 for its origin.

9 MR. SHULTS: All right, well, if you want, I
10 can take a break and talk to Martha about it,
11 because I'm not really sure --

12 MR. HENNESSY: Okay.

13 MR. SHULTS: -- of the definitions being used
14 here thus far. So perhaps that would be a good
15 idea.

16 MR. HENNESSY: All right. Why don't we take a
17 five-minute break.

18 (Recess taken from 10:50 a.m. to 11:03 a.m.)

19 MR. HENNESSY: Okay, back on the record.

20 BY MR. HENNESSY:

21 **Q. Before we took our break, Ms. Brauer, I had**
22 **asked you who was the author of the document that was**
23 **being withheld under a claim of attorney/client or**
24 **work-product privilege?**

25 MR. SHULTS: And we've had a -- I've had an

1 opportunity to define what document we're speaking
2 about, and they are trustee comments requested by
3 Mr. Barnebey to the allegations of the complaint.
4 That would be both attorney/client and work
5 product.

6 BY MR. HENNESSY:

7 **Q. Do you know the date on any of those**
8 **documents?**

9 A. No, I do not.

10 **Q. But so that I understand it correctly, your**
11 **attorney correctly, the documents are -- were created**
12 **after the District's receipt of the complaint in this**
13 **lawsuit?**

14 A. Yes.

15 **Q. Okay. And those are the only documents you**
16 **are aware of that are being withheld as work product by**
17 **the District?**

18 MR. SHULTS: There are -- there are also a --
19 there are some documents that have been withheld as
20 both work product and attorney/client
21 communications.

22 MR. HENNESSY: Have you prepared a privilege
23 log with regard to that?

24 MR. SHULTS: No.

25 MR. HENNESSY: Can we get such a privilege log

1 from you?

2 MR. SHULTS: I don't think a privilege log is
3 required in response to the type of discovery that
4 you had served. In other words, this document that
5 you have marked as an exhibit --

6 MR. HENNESSY: (Nods head affirmatively.)

7 MR. SHULTS: -- I don't believe requires the
8 preparation of a privilege log in order to exclude
9 documents from the realm. If it -- if it does, a
10 privilege log will be prepared.

11 BY MR. HENNESSY:

12 **Q. Okay. Are there any documents that are being**
13 **withheld based on claims that they are exempt under the**
14 **Public Records Law from disclosure?**

15 A. Could I ask him to answer that?

16 MR. SHULTS: Well.

17 BY MR. HENNESSY:

18 **Q. No, you can --**

19 MR. SHULTS: I can tell you the Shade
20 transcript is being declared exempt, and we all
21 know that.

22 MR. HENNESSY: There are several Shade
23 transcripts, I suppose, at this point.

24 MR. SHULTS: Correct. Although I'm only --
25 aware of only one transcript that's disputed.