

1
2 SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY : CIVIL TERM : PART 3

3 -----x
4 ALM UNLIMITED, INC.,

5 Plaintiff, INDEX NO.
603491/08

6 -against-

7 DONALD J. TRUMP,

8 Defendant. JURY TRIAL

9 -----x
10 April 19, 2013

11 60 Centre Street
12 New York, New York

13 B E F O R E :

14 HON. EILEEN BRANSTEN,
15 Supreme Court Justice.

16 A P P E A R A N C E S :

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KAREN MENNELLA
Senior Court Reporter

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2 THE COURT: All right. I have two statements I
3 want to make before bring the jury down.

4 One, I further want to clarify the reasons why, on
5 the record, the reasons why I've chosen to decide the
6 quantum meruit claim rather than send it to the jury. The
7 reasons are, one, ALM did not request a jury on the quantum
8 meruit claim.

9 Two, ALM's counsel indicated yesterday on the
10 record that he did not request a jury because it had always
11 been his expectation that the Court rules on equitable
12 claims.

13 Three, ALM did not submit a proposed jury
14 instruction on the quantum meruit claim.

15 And four, Trump's counsel objected to sending the
16 quantum meruit claim to the jury.

17 I reserved decision on the quantum meruit claim and
18 will allow counsel time to submit briefing for the Court to
19 consider the quantum meruit claim. All right. So I just
20 wanted to clarify.

21 MR. GOLDMAN: Your Honor, to that, can we do it in
22 two weeks, simultaneous submissions?

23 THE COURT: That's fine.

24 MR. GOLDMAN: Is that fine, Counsel, two weeks?

25 THE COURT: In two weeks; is that good for you?

26 MR. ITKOWITZ: Yes.

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THE COURT: Good. All right. Now, the next issue, I have received this morning, as I'm sure you have received this morning, a letter that was sent by e-mail; did you receive it, Mr. Goldman?

MR. GOLDMAN: I saw it this morning, yes, Your Honor.

THE COURT: I have made my ruling yesterday; however, the letter has a few other additional things, which I will address in my final writing, which I hope to have out some time today. So you'll have my writing, my signed writing, today along with the record and everything else and so that is the decision I have made.

MR. ITKOWITZ: I would ask for the opportunity to be heard on my --

THE COURT: No, you had your opportunity. I heard you extensively yesterday. You then did a writing this morning. You had case law in the writing this morning. I looked it up briefly, the cases that you cited, and I have made my ruling yesterday on the record.

Reading, basically, what is going to be my decision, the only thing that's going to be added to it is the latest argument in writing that you made that I'm going to address to make sure that that section is completed; and indeed, the writing itself has in it facts that otherwise you would have to cull through the record to define the

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facts. That's the only thing that's different in the writing that I'm going to be giving you is a little bit more elaboration than what I read into the record yesterday.

MR. ITKOWITZ: May I note for the record that your decision yesterday and your decision as you're stating it is going to be today is completely contrary to what Your Honor said on the record before we started this trial when we were talking about --

THE COURT: Mr. Itkowitz, before I started the trial I had no idea what you were going to be putting in. You know, the problem is that you had, let's see, we started the trial Tuesday afternoon of last week, so we did one entire week plus an extra Wednesday, Thursday and today is Friday, so we have a lot of time together; and it is only now that after you rested and Mr. Goldman rested also, but he did not put any witnesses, but anyway after you have rested that I'm making the decision, and that is it.

Bring down the jury.

MR. GOLDMAN: Just one last thing while the jury is coming down.

Several days ago, I believe it was Monday, it was brought to your attention Mr. Itkowitz communicated, in violation of the ethical rules, with my client. Your Honor said what you said to him initially and then you came back an hour later and said you were so outraged, it's not over,

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2 and you were going to give it further consideration; and
3 that's still an open issue, and I think it should be given
4 further consideration, because it's a clear violation of
5 disciplinary rules and the ethical canons.

6 THE COURT: All right. Look, you're making that
7 kind of request, it has to be done in writing because it's
8 an order that I will be giving. So if you want to make a
9 motion, I will consider it, but the truth is I think -- I
10 did not look at the tweets at all, so you'd have to tell me
11 what the tweets said, but I think that other members of my
12 staff have looked at the tweets and they're a little
13 confused, more than anything else.

14 Why don't we just let sleeping dogs lie, okay.

15 MR. GOLDMAN: I'm ready for the jury, Your Honor.

16 THE COURT: If you wish to make your motion, I'm
17 not denying it.

18 MR. ITKOWITZ: Your Honor, before you discharge
19 this jury, I'm asking you one last time to reconsider,
20 because this jury has listened to all this testimony and is
21 entitled to make a decision on whether there's admitted
22 conduct, which is a separate jury question that we submitted
23 to Your Honor, and in the Second Department and in the Third
24 Department that is recognized as taking a matter out of the
25 statute of frauds.

26 The First Department has not ruled on that and,

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2 therefore, in order to have a complete record you should let
3 this go to the jury.

4 THE COURT: Mr. Itkowitz, you're one hundred
5 percent right, the Second and Third Department have written
6 on this matter, but the key element is that all of the
7 essential terms to the contract were admitted in those cases
8 and that is not what happened in this case. And we went
9 into it at length. I'm not going to reiterate it. I have
10 ruled on it.

11 MR. ITKOWITZ: Admission and waiver is a question
12 of fact, Your Honor.

13 THE COURT: Sir, I am not taking it to the jury.

14 MR. ITKOWITZ: With respect to what you said about
15 the --

16 THE COURT: One second.

17 MR. ITKOWITZ: With respect to what you said about
18 the quantum meruit, when we checked off a jury trial we did
19 not specify whether it would be equitable.

20 THE COURT: As you stated, okay, on the record
21 yesterday that you did not request a jury on the quantum
22 meruit because it was your expectation that the Court rules
23 on equitable claim. Furthermore, without a doubt, your
24 proposed jury instructions did not have one iota of anything
25 on quantum meruit; and furthermore, you didn't even question
26 the witnesses on it, but that's neither here nor there.

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2 Trump's counsel object and after considering it at
3 first I thought I'd go with it, but I am going to decide on
4 an equitable basis after I hear from both of you and get
5 briefs. All right.

6 MR. GOLDMAN: Thank you.

7 THE COURT: Bring in the jury, please.

8 (Whereupon, the jury enters the courtroom and the
9 following transpired:)

10 THE COURT: All right, please be seated, jurors.
11 First place, good morning. After a great deal of work
12 yesterday, the Court has concluded that this matter was
13 decided on a legal basis, and I'm going to have to dismiss
14 you without getting to anything further.

15 Now, I know you spent -- what was it? It was
16 actually close to ten days, 11 days. Anyway, I know you've
17 been here and listened attentively, but this was a complex
18 case and it had a lot of legal issues that had to be decided
19 before I could get to the factual issues to be sent to you;
20 and that's what we were doing yesterday. It was a very
21 intense day and, frankly, I know one that's very
22 disappointing to at least one side, and understandably so.

23 But nevertheless, that's what my job is, and I told
24 you that in the beginning. My job is a legal job, and I
25 have to enforce the law, and that's what I have done. And
26 as a result, I'm going to dismiss you with great deal of

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2 thanks. I have to commend you for being excellent jurors.
3 Not only were you here on time, which of course is a big
4 thing; very rarely do I get a whole jury one place at one
5 time when I ask them to be. So you have been absolutely
6 fantastic that way. I know you paid exceptional attention
7 to the case, because I saw you folks making a lot of notes
8 and listening and observing and caring about the case; so
9 obviously, you were just terrific jurors with that.

10 However, my job had to be done and until I did my
11 job. I wasn't sure, but I have done it; and so I have to
12 dismiss you with a great deal of thanks, and I know counsel
13 joins with me to thank you, too. And again, I want to wish
14 you God speed and very happy day. By the way, you get paid
15 today, which is probably not a tremendous amount, but
16 whatever it is, and you are my jurors today so you can take
17 an extra day off because no one can expect you at work as
18 you're here today in front of me and that's what counts.

19 All right. Thank you very, very much and leave
20 your notebooks behind. We will shred all your notes, okay.

21 MR. GOLDMAN: Your Honor, one issue before they
22 leave. Can you please advise the jury that if they so
23 desire and if counsel desires to speak with them about the
24 case or about how we did, they can give us their thoughts
25 voluntarily.

26 THE COURT: Yes. It is true, you're under no

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2 obligation to indeed speak to any of the attorneys. You're
3 absolutely free not to discuss and you're free, by the way,
4 to talk to my Aunt Tilly, talk to your dog, talk to the
5 parakeet; whatever you want to do, you're free to do.
6 Sometimes attorneys like to talk to jurors because it helps
7 them hone their skills and makes them better attorneys the
8 next time they have a trial, because they have your feedback
9 as to what was said and how it was said and whether you
10 found that a good presentation or not a good presentation.
11 You're under no obligation. And when I say that, I mean
12 that very, very sincerely. If you say nope, I don't want to
13 talk and leave, voila, you're done. All right. If you want
14 to talk, you want to talk, I can't say no to that.

15 With that, I wish you the best and we'll hopefully
16 see you back in six years, okay. And, who knows, I might
17 still be around. Who knows. Okay. Thank you very much.

18 (Whereupon, the jury exits the courtroom and the
19 following transpired:)

20 (Whereupon, the matter concluded.)
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C E R T I F I C A T E

I, Donna Evans/Karen M. Mennella, a Senior Court Reporter for
the State of New York do hereby certify that the foregoing is a
true and accurate transcription of my original stenographic
notes.

Donna Evans

Karen M. Mennella

Senior Court Reporters

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