

Highway 46 Holdings, LLC. vs. Michael and Jacqueline Myers  
APPEAL

1 IN THE CIRCUIT COURT, NINTH  
2 JUDICIAL CIRCUIT, IN AND FOR  
ORANGE COUNTY, FLORIDA

3 CASE NO.: 08-CA-1466

4 HIGHWAY 46 HOLDINGS, LLC,

5  
6 Plaintiff,

7 vs.

8 MICHAEL B. MYERS,  
9 JACQUELINE M. MYERS,  
10 SOUTHEAST COMMUNICATIONS,  
COMPANY OF CENTRAL FLORIDA  
DONALD J. HACHENBERGER,  
GLEND A. HACHENBERGER,

11 Defendants.

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Volume I

13 PROCEEDINGS: EXCERPT OF JURY TRIAL

14 BEFORE: HONORABLE DONALD A. MYERS

15 DATE: MARCH 13, 2017

16 PLACE: ORANGE COUNTY COURTHOUSE  
17 425 NORTH ORANGE AVENUE  
ORLANDO, FLORIDA 32801

18 STENOGRAPHICALLY  
19 REPORTED BY: SHOSHANA KRAMER, RPR, CRR

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22 ALSO PRESENT:

23 DONALD J. HACHENBERGER  
24 GLENDA JOY STONE  
25 MICHAEL MYERS  
JACQUELINE MYERS

1 P R O C E E D I N G S

2 \*\*\*\*\*

3 THE COURT: Okay. Good morning, everybody.

4 We're here this morning in 2008 CA-1466.

5 We'll take appearances, please, for the  
6 plaintiff.

7 MR. CHASE: Sir, Damon Chase with Chase  
8 Freeman, P.A.

9 With me is also Marc Jones from J. Marc Jones,  
10 P.A., on behalf of Donald Hachenberger and Highway  
11 46 Holdings, LLC.

12 Donald Hachenberger is also here.

13 THE COURT: Thank you.

14 And for the defendant.

15 MR. BENITEZ: Good morning, your Honor.

16 Gus Benitez. I'm here on behalf of the  
17 defendants and also the cross-plaintiffs.

18 And I've got Mrs. Myers and Mr. Myers with me.

19 THE COURT: Okay. Thank you very much.

20 And Mr. Shuker.

21 MR. SHUKER: Good morning, your Honor.

22 Scott Shuker and Marianne Dorris, to my right,  
23 both of the Latham Shuker firm. We represent the  
24 defendant Glenda Hachenberger.

25 She changed her name in 2013, so it's now

1 Glenda Stone, and we'll be referring to her as that,  
2 but the complaint says Glenda Hachenberger.

3 THE COURT: Okay. Very good. Thank you.

4 All right. Each of you should have on counsel  
5 table a copy of the Ninth Circuit rules of courtroom  
6 decorum. I'm going to require that you spend just a  
7 few minutes reviewing those personally and reviewing  
8 them with your clients. Understand that that is the  
9 Court's expectations of counsel and clients in a  
10 courtroom.

11 If there are violations of Ninth Circuit rules  
12 of decorum, I will first time warn you, the second  
13 time we will take an interruption to the proceedings  
14 and I will be holding contempt proceedings. I take  
15 the rules very seriously.

16 I don't expect to have any issues, and if there  
17 are issues, I will deal with them promptly, quickly,  
18 and if it becomes a real problem, then we're going  
19 to deal with it accordingly.

20 MR. CHASE: Yes, sir.

21 The rules say no drink or food without  
22 permission of the Court, and we do have water, and  
23 also we've brought into the courtroom like protein  
24 bars.

25 Are those permitted, sir?

1           THE COURT: You're welcome to have water  
2 bottles at your table, coffee cups, as long as they  
3 have a lid of some sort. I just don't want any  
4 spills, of course, during the course of the trial.  
5 Food items, if you'll take them out into the hallway  
6 to eat them, just nothing in the courtroom.

7           MR. CHASE: Yes, sir.

8           THE COURT: Now, as I indicated to counsel,  
9 I've spent some time reviewing the file, and I'm  
10 aware of a specific incident that occurred between  
11 the parties at a deposition and the fallout from  
12 that.

13           And the presence of Mr. Myers here today is  
14 permitted, under the court rules, to allow him to  
15 appear in court proceedings. But I want to be clear  
16 to all parties. All parties, you had -- you do not  
17 have the right to be present during these court  
18 proceedings, and if there is a disruption, I will  
19 remove you from the courtroom and you can learn  
20 about the rest of the trial proceedings from outside  
21 of the courtroom.

22           I'm not going to tolerate it. The first bit of  
23 nonsense, the first cross words that are said  
24 between parties directly will be your ticket to a  
25 seat outside. Just not going to tolerate it. Don't

1 test me.

2 And if it's bad enough, you'll be leaving this  
3 courtroom through that side door -- this side door,  
4 excuse me -- courtesy of the sheriff's department.  
5 Just not going to tolerate it.

6 We're here in a civil trial to resolve a  
7 dispute concerning money and partnership issues.  
8 That's what we're going to do. Period.

9 Plaintiffs' counsel, have you had the  
10 opportunity to review the Ninth Circuit courtroom  
11 rules?

12 MR. CHASE: Yes, sir.

13 THE COURT: Defense counsel.

14 MR. BENITEZ: Yes, your Honor, I have.

15 THE COURT: And, Mr. Shuker, as well.

16 MR. SHUKER: Yes, your Honor.

17 THE COURT: You understand that you are bound  
18 by those rules, all of you?

19 MR. BENITEZ: Yes, your Honor.

20 MR. CHASE: Yes, sir.

21 THE COURT: Okay, thank you.

22 All right, consistent with our discussion at  
23 pretrial, we're going to qualify the jurors to be  
24 here through March the 28th, which is 12 business  
25 days. And, as I shared with you during the course

1 of our pretrial meetings, we have until that date to  
2 conclude the trial.

3 If we have not finished it by that time, I need  
4 to mistry it. I have another trial on the back end  
5 of this. So that is our deadline, to have this case  
6 to the jury no later than March the 28th.

7 Just a reminder, I will read final jury  
8 instructions before closing arguments so you'll have  
9 the benefit of those jury instructions in your  
10 hands. The jury will have them in their hands  
11 during closing arguments. So you'll have to outline  
12 a framework for them to be able to discuss in that  
13 context.

14 All right. During the course of voir dire,  
15 what we're going to have you all do is to turn your  
16 chairs around to this side of the table. We'll have  
17 our potential venires seated out in the seats there  
18 in the gallery. We'll bring in ten at a time.  
19 We'll sit five on the left, five on the right in the  
20 front row.

21 We'll give them a microphone to be able to  
22 respond to questions. That is probably more for my  
23 benefit than it is yours. You should be able to  
24 hear them, but I may not be able to back here.

25 During the initial voir dire, what I'm going to

1 do is just ask hardship questions just about timing  
2 to confirm who can and can't be with us.

3 We're taking groups of ten. We should have 40  
4 folks available to us.

5 Are they on their way up?

6 Let's call them to get them on their way up.

7 MR. BENITEZ: Excuse me, your Honor. Do you  
8 mean we're going to examine just ten at a time?

9 THE COURT: I'm going to examine ten at a time  
10 for hardship issues.

11 MR. BENITEZ: Oh, okay.

12 THE COURT: Once we've determined who's  
13 available to us through the 28th, then we'll bring  
14 them all in as one group and then you'll have the  
15 opportunity to conduct examination.

16 MR. BENITEZ: Thank you, your Honor.

17 THE COURT: The Court does have examination  
18 first, but I'll do it to resolve any additional  
19 hardship issues or clear cause issues. I'll also do  
20 the preliminary type instructions that are  
21 contemplated in the standard form instructions that  
22 relate to introducing them to the participants of  
23 the case, and those types of things. But beyond  
24 that, I'll let you all inquire after I've concluded.

25 I would anticipate that after we get our group,



1 that I would take no more than 30 minutes with them.

2 MR. CHASE: Is there other copies of the jury  
3 questionnaires -- juror questionnaires, I should  
4 say, that we could take a look at?

5 THE COURT: You're going to receive -- when the  
6 jury comes up, they'll deliver to us a seating  
7 chart, but you could ignore the seating chart  
8 because we're just going to take them ten at a time  
9 and redo the seating chart.

10 They're also going to give you information that  
11 is responsive to the juror questionnaire. It comes  
12 in 8-and-a-half-by-11 format, with multiple jurors  
13 per page. But that you'll be receiving at the time  
14 that they bring the jurors up themselves.

15 All right. You're welcome during -- for the  
16 voir dire process, you can stand at counsel table,  
17 so you'll be -- as I said, you'll be on the side of  
18 them, so you're welcome to stand at counsel table,  
19 walk up in between counsel table.

20 You can even move this podium up there, if you  
21 prefer, right between the two counsel table. All I  
22 ask is you stay between you and those two chairs  
23 that are between you and the bar there as you  
24 conduct your voir dire.

25 If there's a potential juror that you know

1 needs to go, please be very careful. Let's not  
2 taint our entire panel over one juror. If you're  
3 concerned and want the opportunity to question them  
4 further privately, I'll be happy to allow you to do  
5 that, but let's not lose an entire panel over one  
6 juror who's clearly poisonous.

7 Be cautious, obviously, with any mentions of  
8 insurance and arguments regarding insurance. I  
9 don't think those are issues that we have in this  
10 case, but let's be careful with that.

11 Make sure that you identify the juror that is  
12 speaking or that you are speaking to for the benefit  
13 of our court reporter. It's very difficult,  
14 especially when we have a large panel, to have her  
15 looking back and forth between her sheet trying to  
16 figure out who it is that's speaking. So just  
17 address them by name. You'll have the names there  
18 in front of you. It will make it easier for our  
19 court reporter that way.

20 If you have a cell phone or other electronic  
21 device in the courtroom, please make sure that it is  
22 off or in a vibrate position so that it does not  
23 become a distraction to us during the course of the  
24 jury selection process.

25 Examination of witnesses. In light of the

1 number of parties, this is the way we're going to  
2 handle this: Plaintiff, on direct, you will have  
3 the opportunity to initiate with direct questions.

4 Mr. Benitez, you will have the opportunity to  
5 cross.

6 Mr. Shuker, then you will then have the  
7 opportunity to cross.

8 And then you'll have the opportunity for  
9 redirect.

10 MR. CHASE: Yes.

11 THE COURT: That is all. For each witness.

12 Don't anticipate that by allowing somebody to  
13 ask questions outside of the scope of what's been  
14 asked, that you're going to have the chance to get  
15 up on recross. That's not going to happen. So,  
16 direct, cross, cross, redirect. And that's it.

17 So then, when -- Mr. Benitez, when you have the  
18 case-in-chief, you will have the opportunity for  
19 direct.

20 Mr. Chase, you will then have the opportunity  
21 for cross. Mr. Shuker for cross. And then redirect  
22 to Mr. Benitez. Okay.

23 Do you anticipate putting this case -- you have  
24 no case-in-chief; is that right? Or --

25 MR. SHUKER: We have no case-in-chief. We, in

1 defense, may call Ms. Stone.

2 THE COURT: Okay. All right. And you're  
3 certainly welcome to do that at that time.  
4 Obviously, they would have the right of direct,  
5 cross, cross and redirect.

6 MR. BENITEZ: And, your Honor, with respect to  
7 the initial claim of the plaintiff, I don't believe  
8 that Glenda Hachenberger's a party to that. So I'm  
9 a little concerned about the order that you  
10 explained in case there's something that's brought  
11 up for the first time on cross by Glenda  
12 Hachenberger, even though she's not a party to those  
13 claims.

14 THE COURT: Her questioning is going to be  
15 limited to the scope of what has been asked on  
16 direct, so there shouldn't be anything new coming up  
17 for the first time unless it relates to her defense.

18 MR. BENITEZ: I was just hoping that maybe the  
19 Judge would consider putting me last with respect to  
20 plaintiff, Mrs. Glenda Hachenberger's attorney, and  
21 then me at the end, so I can cover both.

22 MR. SHUKER: That would have us putting on our  
23 defense before he puts on his claims against us.

24 MR. BENITEZ: Oh, no.

25 MR. CHASE: I think I understand what he's

1 saying.

2 THE COURT: No, he's just saying, in the  
3 plaintiffs' initial direct of its witnesses, he  
4 would like to come after your questioning, on cross  
5 examination.

6 MR. BENITEZ: If they have any questions.

7 THE COURT: If you have any questions. You may  
8 not have any questions.

9 MR. SHUKER: Yeah, I'm fine with that.

10 MR. CHASE: I'm fine with that, as well, your  
11 Honor.

12 MR. BENITEZ: Thank you, your Honor.

13 THE COURT: That's fine. All right. Very  
14 good. All right. Our first agreement for the day.  
15 Let's remember this.

16 MR. CHASE: We're on a roll.

17 THE COURT: All right. I have the brief  
18 statement of the case that we have agreed upon and I  
19 want to just read it one more time to you, make sure  
20 that we're all on the same page:

21 This case is a partnership dispute over the  
22 management and ownership of certain property, and  
23 the enforceability of a letter agreement and  
24 operating agreement between the parties relating to  
25 the Route 46 restaurant complex on State Road 46 in

1 Sanford, east of I-4.

2 Everybody in agreement with that?

3 MR. CHASE: Yes.

4 MR. BENITEZ: Yes, your Honor.

5 MR. SHUKER: Yes.

6 THE COURT: Have you all marked any exhibits  
7 yet?

8 MR. CHASE: Yes, your Honor.

9 THE COURT: Those are ready to be marked, you  
10 can give them to the clerk and she can be working on  
11 those during the voir dire.

12 MR. CHASE: May I approach.

13 THE COURT: You may. Thank you.

14 MR. CHASE: And going back to this Friday,  
15 we're free to walk around the courtroom.

16 THE COURT: Yes.

17 MR. CHASE: Madam Clerk, these -- they're all  
18 marked for identification only. The -- they're all  
19 but two -- all of but one are coming in without  
20 objection, so I don't know if you want to mark them  
21 as exhibits in evidence.

22 THE COURT: I'm happy to do that now if you've  
23 all reached agreement. If you haven't, then we can  
24 do that later.

25 MR. BENITEZ: Judge, there's always the need

1 for foundations for exhibits before they're admitted  
2 into evidence.

3 MR. CHASE: There's -- you didn't object to  
4 that.

5 THE COURT: Hang on.

6 MR. CHASE: Yes.

7 THE COURT: There's two issues. Number one,  
8 were they stipulated in or was there an indication  
9 there's no objection to them.

10 MR. CHASE: There's no objection -- there's an  
11 objection to one of them. There is, I think an  
12 agreement, probably -- I probably won't be  
13 introducing one, but he didn't object to it. It's  
14 just it could end up opening up a can of worms that  
15 we don't want to open up. I agree with him on that.

16 But the rest of them, there was -- there were  
17 no objections cited in the pretrial statement and  
18 none today. I would rather just stipulate them in  
19 so we can --

20 THE COURT: Well, if you all can reach a  
21 stipulation of that, that's one thing, but the  
22 absence of an objection is not a stipulation.

23 MR. CHASE: I agree, sir.

24 Can we stipulate them?

25 MR. BENITEZ: No. And what I've done -- I've

1 represented to the Court and I indicated to the  
2 Court, that what I've done is I've got a lot of  
3 exhibits and I've been narrowing it down. I've got  
4 it down to what I call one to 28 exhibits. But I'm  
5 putting it all together. Hopefully, that's going to  
6 significantly shorten the trial, provided there's an  
7 agreement by the parties with respect to the  
8 exhibits.

9 So that's a -- that's still getting worked on  
10 finally, it should be done by today, so I should be  
11 able to go through it with opposing counsel in  
12 detail. I just want to let the Court know, I  
13 figured we're going to be doing jury selection and  
14 opening statement, in the best scenario, today.

15 THE COURT: Best scenario, I think you're  
16 probably right.

17 MR. BENITEZ: So, I just want to let the Court  
18 know that I'm trying to take every step possible  
19 because that's where the time is going to come in on  
20 this trial, is on those exhibits, and I think I can  
21 do a significant job of shortening that.

22 THE COURT: Just please take advantage of our  
23 clerk's time during voir dire and other parts of the  
24 case, where she's not actively managing exhibits, to  
25 get her to mark those.



1 MR. BENITEZ: Okay.

2 THE COURT: So once you have them marked for  
3 identification, if you can at least give them to  
4 her, she can be at least creating a chart so that  
5 when they're offered into evidence, we can indicate  
6 they're received into evidence quickly.

7 MR. BENITEZ: Okay.

8 THE COURT: Just a reminder. This is noted on  
9 the rules of professionalism, but this is one rule  
10 that I have more difficulty with than any other. No  
11 speaking objections.

12 If you object, just object and the legal basis,  
13 objection, hearsay, objection, predicate, objection,  
14 foundation, objection, whatever it might be, best  
15 evidence. But you can typically say that in two or  
16 three words. It does not require an explanation. I  
17 will rule.

18 If I can't rule, I'll call you up because I  
19 need an explanation, and we'll have a bench  
20 conference on the issue. If you think that I need  
21 to hear something: Judge, may we have a bench  
22 conference. That's all you need to ask: Judge, may  
23 we approach. Okay. And we'll address it in that  
24 fashion.

25 All right. Any cleanup issues or other issues

1 to address from the plaintiff before we begin jury  
2 selection?

3 MR. CHASE: So, one of the exhibits, so madam  
4 clerk doesn't get thrown off a little bit, is the CD  
5 attached to the second amended complaint were  
6 exhibits that it included in a picture of the CD.  
7 The CD was filed with the clerk when the -- the CD,  
8 when everything was filed back in 2008, it all went  
9 into the court.

10 So, but what you see when you pull up on the  
11 screen is a picture of a CD. And so, we have the  
12 CD. There's part of those, but that's not like a  
13 separate exhibit, it's just -- it's in there as part  
14 of the letter agreement.

15 So that's -- madam clerk, when you see that CD  
16 sitting there, that's part of the letter agreement,  
17 which is, I believe, our marked A for identification  
18 purposes.

19 THE COURT: And to be introduced, ultimately,  
20 you propose as a composite.

21 MR. CHASE: Yes, sir, it's all -- the letter  
22 agreement, it's part of that which was attached to  
23 Exhibit -- that is, our letter A for identification  
24 purposes.

25 THE COURT: Okay. Thank you.

1 MR. CHASE: There's also a thumb drive, which  
2 is -- it's taped to an evidence card, which is our H  
3 for identification purposes.

4 THE COURT: If you are going to mark exhibits  
5 that are received in evidence in electronic form,  
6 which you are welcome to do, recognize that the only  
7 way that the jury could see them is if they return  
8 to the courtroom.

9 Because unless, of course, you plan ahead and  
10 have a clean laptop that they could take back there  
11 with them, they have no other way to view those  
12 exhibits. So, up to you.

13 MR. CHASE: The inventory that -- the one --  
14 the CD that is referenced is a -- just a -- not  
15 just -- handful of pictures. The inventory,  
16 however, is an inventory of 6,824 individual items;  
17 that is, a picture and then a bar code with numbers  
18 to identify to that. That's the memorabilia.

19 So that would be a lot to lay on them. And I  
20 think that if they see that, I don't know if they  
21 ultimately ask, can we view those pictures again,  
22 and I think I'd rather deal with it that way rather  
23 than sending them back with it.

24 THE COURT: It's fine. I'm happy to bring them  
25 back into the courtroom and then we could show them

1 those photographs, but it will have to be, you know,  
2 through the system here, otherwise, they go back and  
3 have no mechanism to view them.

4 MR. CHASE: Understood, sir.

5 THE COURT: All right.

6 Anything else from the plaintiff?

7 MR. CHASE: No, sir.

8 THE COURT: Anything from the defense?

9 MR. BENITEZ: No, your Honor.

10 THE COURT: Mr. Shuker, anything for the --

11 MR. SHUKER: No, thank you.

12 THE COURT: Go ahead -- and, counsel, if you  
13 will go ahead and move your chairs around the table.

14 Mr. Shuker, you're fine over there. You don't  
15 have to move yours.

16 Deputy, there's one tall back chair right  
17 there, in that corner.

18 (TIME NOTED: 9:32 A.M.)

19 (VOIR DIRE BEGINS, NOT TRANSCRIBED.)

20 (END OF EXCERPT.)

21 (CONTINUED IN VOLUME II.)

22

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25

1 CERTIFICATE OF REPORTER

2

3

4 STATE OF FLORIDA )

)

5 COUNTY OF ORANGE )

6

7 I, SHOSHANA KRAMER, RPR, CRR, Notary Public,  
8 State of Florida, I was authorized to and did  
9 stenographically report the foregoing proceedings; and  
10 that the transcript, pages 3 through 19, is a true and  
11 accurate record of my stenographic notes.

12

13 I FURTHER CERTIFY that I am not a relative, or  
14 employee, or attorney, or counsel of any of the parties,  
15 nor am I a relative or employee of any of the parties'  
16 attorney or counsel connected with the action, nor am I  
17 financially interested in the action.

18 Dated this 20th day of SEPTEMBER, 2018.

19

20

21

*Shoshana Kramer*

22

SHOSHANA KRAMER, RPR, CRR

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