

ORIGINAL

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8 Las Vegas, Nevada 89129

9 Attorneys for Plaintiff
10 CRISPIN LEYSER

11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA

13
14 BRUCE CRISPIN LEYSER, an Individual,)
15)
16 Plaintiff,)

Case Number: 2:06-CV-01072(RLH)

17 v.)

18 JAMIE MILES GOLD, an Individual,)
19 DOE INDIVIDUALS ONE THROUGH 10)
20 INCLUSIVE; ROE CORPORATIONS ONE)
THROUGH 10 INCLUSIVE.)

21 Defendants.)
22)

23
24 **OPPOSITION TO DEFENDANT GOLD'S EMERGENCY EX-PARTE MOTION TO**
CONTINUE PRELIMINARY INJUNCTION HEARING

25 COMES NOW, Plaintiff, Bruce Crispin Leyser, by and through his counsel, DAVID Z.
26 CHESNOFF, ESQ., and RICHARD A. SCHONFELD, ESQ., of the Law Offices of CHESNOFF
27 & SCHONFELD, and Oppose the Defendant's Ex-Parte Motion to Continue Preliminary
28


1 Injunction Hearing.

2 This Opposition is made and based upon the papers and pleadings on file herein, the
3 attached Memorandum of Points and Authorities, and any oral argument which may be heard.

4 DATED this 1st day of September, 2006.

5 Respectfully submitted,

6 CHESNOFF & SCHONFELD

7
8
9 By: 

10 DAVID Z. CHESNOFF, ESQ.
11 Nevada Bar #2292
12 RICHARD A. SCHONFELD, ESQ.
13 Nevada Bar #6815
14 520 S. Fourth Street
15 Las Vegas, Nevada 89101
16 (702) 384-5563

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MEMORANDUM OF POINTS AND AUTHORITIES

1
2 On August 21, 2006, Plaintiff filed his Motion for a Temporary Restraining Order and
3 Preliminary Injunction. As a result of that Motion the Court entered a Temporary Restraining
4 Order and scheduled a hearing on the Motion for Preliminary Injunction. Contrary to the
5 Defendant's assertion that he did not receive notice of the pending action, that same day all
6 pleadings were faxed to Defendant's counsel Samuel Israel. See Exhibit A. The hearing on the
7 Motion for Preliminary Injunction was scheduled in the Eight Judicial District Court for September
8 1, 2006, at 9:00am, and the Temporary Restraining Order expires on September 5, 2006, fifteen
9 days after it was issued. The Temporary Restraining Order specifically provided that the
10 Defendant had until August 31, 2006, to file his Response to the request. No Response was filed.
11

12
13 On August 25, 2006, Plaintiff's previous counsel **formally accepted** service of all
14 pleadings in Nevada. Exhibit B. Defendant falsely asserts that Gold's Nevada counsel was not
15 served.
16

17 On August 30, 2006, at 4:57p.m., Defendant, through new counsel, filed his Notice of
18 Removal. It was Plaintiff's belief that Defendant utilized the removal process as a strategic
19 method to vacate the State Court hearing.
20

21 On August 31, 2006, Plaintiff filed his Emergency Motion for a hearing on the Preliminary
22 Injunction. In the alternative, the Plaintiff requested an extension of the Temporary Restraining
23 Order until such time as the Court's schedule could accommodate the hearing on the Preliminary
24 Injunction. That pleading made it abundantly clear that Plaintiff wanted a hearing on the
25 Injunction as soon as the Court could accommodate that request and merely requested that the
26 Temporary Restraining Order be extended until such time.
27
28

1 This Honorable Court Ordered the hearing to be scheduled for September 5, 2006.

2 At the time of the September 5, 2006, hearing Mr. Gold will have had over two weeks to
3 prepare for the hearing. A continuance should not be granted.

4
5 I

6 **STATEMENT OF THE LAW**

7 The Ninth Circuit Court of Appeals has made it abundantly clear that when a case is
8 removed to Federal Court it is as if all pleadings had been filed in the Federal Court, and the
9 Federal Court “takes the case up where the State Court left it off”. *Jenkins v. Commonwealth Land*
10 *Title Ins. Co.*, 95 F.3d 791 (9th Cir. 1996) citing: *Granny Goose Foods, Inc. v. Brotherhood of*
11 *Teamsters Local 70*, 415 U.S. 423, 436, 94 S.Ct. 1113, 1122, 39 L.Ed.2d 435 (1974) (quoting
12 *Duncan v. Gegan*, 101 U.S. 810, 812, 25 L.Ed. 875 (1880)). *See also Butner v. Neustadter*, 324
13 F.2d 783, 785 (9th Cir.1963); *Savell v. Southern Ry. Co.*, 93 F.2d 377, 379 (5th Cir.1937) (“When
14 a case is removed the federal court takes it as though everything done in the state court had in fact
15 been done in the federal court”).

16
17 Accordingly, this State Court action was left off with a hearing on the Preliminary
18 Injunction scheduled for September 1, 2006, and that same hearing is now scheduled for
19 September 5, 2006. The Defendant cannot be rewarded for the procedural action of removing this
20 case to Federal Court, and has no excuse for failing to prepare his defense herein.

21
22 The Defendant failed to comply with the State Court Order that he respond to the pleadings
23 by August 31, 2006, and the Defendant is now attempting to buy time and delay the proceedings
24 once again.
25
26
27
28

1 A continuance in this case would be contrary to the clear case law that the Federal Court
2 picks up where the State Court left off.

3 Plaintiff will have his witnesses on September 5, 2006, and will be prepared to proceed.
4

5 DATED this 1st day of September, 2006.

6 CHESNOFF & SCHONFELD

7 By 

8 DAVID Z. CHESNOFF, ESQ.
9 Nevada Bar #2292
10 RICHARD A. SCHONFELD, ESQ.
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15 Attorneys for Plaintiff
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FAX TRANSMISSION

GOODMAN & CHESNOFF
520 South Fourth Street
Las Vegas, Nevada 89101
702-384-5563
Fax: 702-598-1425

To: Samuel Israel, Esq. **Date:** August 21, 2006
crispin
Subject: Bruce Leyser **Pages:** including cover sheet
From: Rosemary Reyes Assistant to **Fax:** (310) 553-2280
Richard A. Schonfeld, Esq.

Comments:

Mr. Israel, upon receipt, please call Mr. Chesnoff, also if you could provide me with your office address and telephone numbers. Thank you.

CONFIDENTIALITY NOTICE: The document[s] accompanying this telecopy transmission contains confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking

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FAX TRANSMISSION

GOODMAN & CHESNOFF

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Las Vegas, Nevada 89101

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LAW OFFICES

Goodman & Chesnoff

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

520 SOUTH FOURTH STREET

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OSCAR B. GOODMAN, CHARTERED
DAVID Z. CHESNOFF, CHARTERED

RICHARD A. SCHONFELD
CHAKA T. HENRY

TELEPHONE
(702) 384-5563

FAX
(702) 598-1425

August 24, 2006

Via Facsimile
(310) 207-2680

Mr. Les Abell, Esq.
Myman, Abell, et al.
11601 Wilshire Blvd. #2200
Los Angeles, CA 90025

Re: Leyser v. Gold

Dear Mr. Abell,

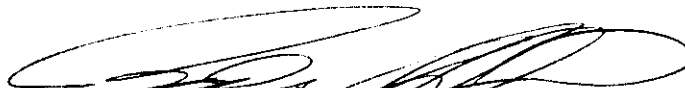
I understand that you are co-counsel to Mr. Jamie Gold with Mr. Israel.

On Monday, August 21, 2006, I communicated with Mr. Israel, who confirmed that he represented Mr. Gold, and I faxed him a copy of the Summons, Complaint, Ex Parte Application for Temporary Restraining Order and Preliminary Injunction, and the Temporary Restraining Order which schedules the next hearing for September 1, 2006, at 9:00am. During my telephone conversation with Mr. Israel I requested that he contact me after he had an opportunity to review the pleadings. Surprisingly, I have not heard from him since then.

I am not accustomed, under these circumstances, to having opposing counsel shun the opportunity to communicate prior to litigation. Accordingly, when I learned this afternoon that you are co-counsel to Mr. Gold, I decided to extend the same opportunity to you.

If you are interested in communicating regarding the issues in this litigation I am available.

Sincerely,



Richard A. Schonfeld, Esq.

 *** TX REPORT ***

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TX/RX NO 3521
 CONNECTION TEL 913102072680
 SUBADDRESS
 CONNECTION ID LAW OFFICE M.A.F
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August 24, 2006

Via Facsimile
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 Myman, Abell, et al.
 11601 Wilshire Blvd. #2200
 Los Angeles, CA 90025

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5 Nevada Bar No. 6815
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7 520 South Fourth Street
8 Las Vegas, Nevada 89101
9 Attorneys for Plaintiff
10 CRISPIN LEYSER

FILED

AUG 25 10 26 AM '06

Shirley B. Ingoglia
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

11 BRUCE CRISPIN LEYSER, an Individual,)

12)
13 Plaintiff,)

14 vs.)

15 JAMIE MILES GOLD, an Individual,)
16 DOE INDIVIDUALS ONE THROUGH 10)
17 INCLUSIVE; ROE CORPORATIONS ONE)
18 THROUGH 10 INCLUSIVE.)

19 Defendants.)

Case Number: A526845
Dept. Number: II

ACCEPTANCE OF SERVICE

20 I, Mark G. Tratos, Esq., do hereby accept service of process of the Summons, Temporary
21 Restraining Order, Verified Complaint for Injunctive Relief and Damages, Ex Parte Application for
22 Temporary Restraining Order and/or Preliminary Injunction: Request for Hearing and a copy of the
23 Bond in the above-entitled action, and further acknowledge that I am authorized to accept the same
24 on behalf of the Defendant, Jamie Miles Gold.

DATED this 25th of August, 2006.

Mark G. Tratos
Mark G. Tratos, Esq.
3773 H. Hughes Parkway, #500
Las Vegas, Nevada 89109

COUNTY CLERK
RECEIVED
AUG 25 2006

B