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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

Transcript of Hearing

Date: February 19, 2021

Case: Depp, II -v- Heard

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

23500

Transcript of Hearing
Conducted on February 19, 2021

<p>1 VIRGINIA: 2 IN THE CIRCUIT COURT FOR FAIRFAX COUNTY 3 ----- x 4 JOHN C. DEPP, II : 5 Plaintiff, : Civil Action No. 6 v. : CL-2019-0002911 7 AMBER LAURA HEARD, : 8 Defendant. : 9 ----- x 10 11 Hearing before THE HONORABLE BRUCE D. WHITE 12 Conducted Virtually 13 Friday, February 19, 2021 14 10:31 EST 15 16 17 18 19 20 Job No.: 355099 21 Pages: 1 - 28 22 Transcribed by: Molly Bugher</p>	<p>1 A P P E A R A N C E S 2 3 ON BEHALF OF PLAINTIFF DEPP: 4 BENJAMIN G. CHEW, ESQUIRE 5 BROWN RUDNICK LLP 6 601 Thirteenth Street Northwest 7 Suite 600 8 Washington, D.C. 20005 9 (202) 536-1785 10 11 ON BEHALF OF DEFENDANT HEARD: 12 ELAINE CHARLSON BREDEHOFT, ESQUIRE 13 CHARLSON BREDEHOFT COHEN & BROWN, P.C. 14 11260 Roger Bacon Drive 15 Suite 201 16 Reston, Virginia 20190 17 (703) 318-6800 18 19 20 21 22</p>
<p>1 Hearing before the HONORABLE BRUCE D. WHITE, 2 conducted virtually: 3 4 5 6 7 8 Pursuant to notice, before Jesse Greer, 9 Notary Public in and for the Commonwealth of 10 Virginia. 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>1 C O N T E N T S 2 PAGE 3 ARGUMENT: 4 Ms. Bredehoft 5 5 Mr. Chew 12 6 RULING 22 7 8 E X H I B I T S 9 (None) 10 11 12 13 14 15 16 17 18 19 20 21 22</p>

Transcript of Hearing
Conducted on February 19, 2021

<p style="text-align: right;">5</p> <p>1 PROCEEDINGS 2 (Court Reporter sworn) 3 THE COURT: Okay. Defendant's Motion 4 for Appointment of a Conciliator and Motion to 5 Compel. Ready to go? 6 MS. BREDEHOFT: Thank you, Your Honor. 7 Good morning. Good morning. Elaine Bredehft 8 representing Amber Heard, the Defendant and 9 Counter-Plaintiff. 10 Your Honor, I'm here on two different 11 matters. The first is the -- for an appointment 12 of a conciliator. The second a very brief motion 13 to compel witness interrogatories. 14 We believe, Your Honor, that appointing 15 a conciliator and having the parties follow the 16 process that I set forth in the attachment to my 17 proposed order that I sent in two days ago -- I 18 don't know if Your Honor has had an opportunity 19 to look at it, but it's just a protocol -- 20 THE COURT: Well, I got the order, but 21 I don't believe the order was attached to your 22 motion. But I do have the order and I've got the</p>	<p style="text-align: right;">7</p> <p>1 trial. Your trial, I know, is very important to 2 everybody, but I am going to be taking some time 3 off. 4 Go ahead. 5 MS. BREDEHOFT: Your Honor, then all 6 that much more important to have the conciliator 7 under those circumstances. Because what we have 8 here is we have a number of motions still moving 9 forward and I'm not -- I'm just going to give by 10 way of description, Your Honor, some of the 11 important ones still going that I think if we had 12 a conciliator that Your Honor appointed we could 13 work through a number of these, narrow it down, 14 have consent orders for the things we can narrow 15 down and then be able to just come in to Your 16 Honor on very narrow issues. 17 We've had a lot of times here, Your 18 Honor may recall, where we file a motion and the 19 opposing side says oh, we'll agree to this, this, 20 this, and this; which we should have been able to 21 do, but couldn't in a meet and confer. But we 22 can do it surely, with a conciliator.</p>
<p style="text-align: right;">6</p> <p>1 protocol in front of me. 2 MS. BREDEHOFT: Yes. We developed 3 that, frankly, with opposing counsel Blankenship 4 and Keith, in another case we have -- the court 5 has assigned. And actually it's been working 6 very well and that's -- so I took that -- 7 actually that protocol and suggested it here. 8 But I think it would aid the parties 9 and, more importantly, this Court, in resolving 10 and narrowing important remaining discovery 11 issues before and in time for trial. Your Honor, 12 we're 87 days from trial. We have some 13 significant discovery disputes remaining. Mr. 14 Depp has filed motions to fill the Court's Friday 15 dockets through March 19. Your Honor has four 16 dates remaining before trial after that on the 17 Friday civil motions docket. March 10th -- 18 THE COURT: Hold on. 19 MS. BREDEHOFT: Go ahead. 20 THE COURT: Let me just tell you; as 21 you all know, I retire July 1. I don't plan to 22 work every single week between now and your</p>	<p style="text-align: right;">8</p> <p>1 Many times we have arguments over 2 whether there was a meet and confer, it takes 3 that out because the conciliator will work with 4 us through that. So we can just get to the 5 issues that are left. 6 And let me just give you a backdrop, 7 Your Honor, of what remains here. We have -- we 8 served Adam Waldman at the Washington, D.C. 9 address that Mr. Chew and Ms. Velasquez confirmed 10 was his correct address. Yesterday, Mr. Chew 11 informed us that we had not achieved the service 12 that we believed we had. We asked for a meet and 13 confer and indicated that the attorney in my 14 office, Mr. Murphy, who researched this and 15 oversaw it is skiing today and he'll be back on 16 Monday and could we have the meet and confer on 17 Monday. 18 They are going to file a motion because 19 they want to get Your Honor's next Friday date. 20 So that's three dates in a way -- in a row there. 21 We have three sets of outstanding requests for 22 production. One was sent out immediately after</p>

Transcript of Hearing
Conducted on February 19, 2021

<p style="text-align: right;">9</p> <p>1 the answer and grounds of defense to the 2 counterclaim, and it asks for the documents 3 supporting their affirmative defenses and 4 specific denials. They have objected and 5 produced no documents. 6 Now, we are going to be at April 9 as 7 the earliest Friday date we get if Your Honor is 8 hearing motions that day; that's a week before 9 the discovery cutoff. We also issued expert 10 witness discovery, very timely, earlier. Mr. 11 Chew -- or Mr. Depp objected but said that they 12 would produce the responsive documents upon the 13 scheduling order. 14 This week they actually designated 15 seven expert witnesses, and five unretained 16 expert witnesses. I don't even know what that 17 means. None of them come close to meeting the 18 Crane v. Jones requirements. And they didn't 19 produce the documents they said they would on the 20 scheduling order, so we have a motion to compel 21 and a motion to strike with that. But again, 22 those will be argued sometime in April, well</p>	<p style="text-align: right;">11</p> <p>1 We just are asking the Court to appoint 2 a conciliator and then let us work with the 3 process and try to resolve these and then 4 minimize what has to come back to Your Honor. 5 The second motion, Your Honor, is a 6 very quick one. It's a motion to compel the 7 contact information. October 2019, Ms. Heard 8 sent out her witness, persons with knowledge 9 interrogatory. October 28, 2019 they responded. 10 Mr. Depp identified 42 people with knowledge. Of 11 those 42, they've claimed that they don't know 12 any contact information for 35 of them. They put 13 unknown. And we attached it as Exhibit 2, Your 14 Honor. 15 A number of them still work for them, 16 including managing his Bahamas island. In any 17 event, Your Honor, in July 2020 18 of the people 18 they have listed as unknown gave witness 19 statements and/or testified at the UK trial on 20 their behalf, so obviously they had contact 21 information, but have never supplemented it. 22 Your Honor saw when I sent these</p>
<p style="text-align: right;">10</p> <p>1 after the discovery cutoff. 2 We also have another set of request for 3 production of documents on documents relating to 4 these other litigations. What we found out, 5 unfortunately, when we went in to take Tracy 6 Jacob's deposition, that's the 30-year agent of 7 Mr. Depp, and remember he's claiming \$50 million 8 in damages. During the deposition, the other 9 side produced two depositions that Ms. Jacobs had 10 given and a number of documents she had produced 11 that are very much on point with this case and 12 they used them in the deposition, but we didn't 13 have them. 14 So this is another issue that we have 15 to deal with here. A conciliatory to us makes 16 sense in this case. We can air all these issues; 17 we can do it on an expedited basis, we can work 18 through them in a constructive manner and bring 19 to Your Honor the truly remaining disputes. And 20 particularly, given Your Honor's sentiment of not 21 wanting to be working every Friday it seems to 22 make perfect sense.</p>	<p style="text-align: right;">12</p> <p>1 emails, and I had asked for this earlier, but I 2 came back to it. You saw in the email exchanges 3 they never told me that they were unknown. They 4 said, gee, we responded, no we didn't respond. 5 And now, in their opposition they claim they 6 still are all unknown. 7 Well, if that's the case, Your Honor, 8 what we'd like is an order compelling them to 9 produce them, if they don't give us addresses for 10 them within sufficient time for us to be able to 11 depose them. And it may already be too late. 12 Then, we would ask that they cannot call them as 13 witnesses at trial. I thank that's fair. 14 Your Honor, may recall they did the 15 same thing to us in December. They moved to 16 compel. We had already supplemented all of our 17 contact information but they still asked for a 18 court order to protect them, and you Your Honor 19 did it. 20 So those are my two motions, Your 21 Honor. 22 MR. CHEW: Thank you, Your Honor. Good</p>

Transcript of Hearing
Conducted on February 19, 2021

<p>13</p> <p>1 morning, Your Honor. May it please the Court, 2 Ben Chew for Johnny Depp. 3 At the risk of following Ms. Bredehoft 4 down rabbit holes that weren't raised for this 5 morning's hearing, I'll just follow one of them. 6 Your Honor will recall that the Court 7 denied Ms. Heard's motions to compel Mr. 8 Waldman's deposition based on a faulty notice of 9 disposition sent to me, and I don't represent Mr. 10 Waldman, and granted our motion for protective 11 order. 12 Her next gambit was to go to Mr. 13 Waldman's house. Her process server made two 14 attempts and actually filed an affidavit saying 15 that that was somehow proper service. Now a 16 first year law student knows -- in Washington 17 knows that that's not proper service under Rule 18 45. Also, it's under the jurisdiction of the 19 Superior Court for the District of Columbia I met 20 and conferred with Ms. Bredehoft on Tuesday. I 21 asked her how on earth that could constitute 22 proper service. She had no answer.</p>	<p>15</p> <p>1 Judge White." 2 And yet, even though she knew that we 3 didn't agree to conciliation and that it was a 4 voluntary process she moved for it anyway. And 5 this is the same as Ms. Heard, who at the outset 6 of the case requested that one judge be appointed 7 to the case because of its complexity and because 8 we anticipated a -- or because she anticipated 9 there would be a lot of issues that it would make 10 it better for one judge to deal with. 11 And when Ms. Heard made that motion she 12 understood that no judge is going to be available 13 on every Friday motions day. So she made the 14 tactical choice that she wanted one judge anyway, 15 even knowing that he or she would not be 16 available every Friday motions day. Ms. 17 Bredehoft and I have practiced in this court for 18 a long time. We know how it works, she better 19 than I do. 20 And as far as monopolizing motions 21 days, I mean, give me a break. I mean they have 22 filed about 80 percent of the motions, many of</p>
<p>14</p> <p>1 And on Thursday I sent her the Rule and 2 the on point case from the D.C. Circuit Court of 3 Appeals that says, not so shockingly, that to 4 have in-person service you need to actually have 5 in-person service. So yes, we are filing that 6 emergency motion for protective order in Superior 7 Court to protect the attorney/client privilege 8 which belongs to Mr. Depp. We don't have a -- we 9 don't represent Mr. Waldman, but we certainly 10 represent Mr. Depp. So that's not a dispute that 11 would even come before this Court. This Court 12 has already ruled that Ms. Heard's last attempt 13 to serve Mr. Waldman did not pass the straight- 14 face test. 15 In any event, Your Honor, as to what is 16 on the docket today, we do not believe a 17 conciliator would be helpful. If we thought it 18 would be helpful we would agree. But as Your 19 Honor knows, under Section 3 of the practice 20 manual the conciliation program is entirely 21 voluntary. Ms. Bredehoft raised this on January 22 and I responded, "We respectfully decline and prefer to stay with the status quo and Chief</p>	<p>16</p> <p>1 which have been denied. And she filed two 2 motions today, despite the very same practice 3 manual which says you can only file one motion in 4 one case on one motions day unless they're 5 related. There's no relationship between a 6 motion for a conciliator and a motion to compel a 7 supplemental interrogatory, and yet she does it 8 all the time. 9 And Your Honor has told her not to do 10 that but she does it all the time. And that's 11 fine. 12 Your Honor, I have used the 13 conciliation process. My friend, Chuck Kerrin 14 (phonetic) used to do conciliation. He may still 15 do it, he's terrific, but in this case we are 16 very close to trial. Your Honor has a memory of 17 all these discovery disputes. I fear that if 18 Your Honor were to appoint a conciliator, and I 19 say this with the utmost respect to my opponent, 20 she would eat the guy alive. 21 There's no way that would facilitate 22 the process because we'd have to relitigate</p>

Transcript of Hearing
Conducted on February 19, 2021

<p style="text-align: right;">17</p> <p>1 issues that Your Honor has already decided 2 because that's what happened in California. And 3 by the way, Judge Boick (phonetic) has reached 4 the very same conclusions Your Honor has. It 5 just wouldn't expedite the process. 6 It would just add a layer of 7 bureaucracy and expense which our client can't 8 afford. Unlike Ms. Heard, who has an anonymous 9 donor who seems to be paying all of her bills and 10 all of her bills to the charitable deductions 11 that she said she made and did not, Mr. Depp 12 doesn't have, you know, a rabbi or an angel 13 paying his bills. And I would be loath to agree 14 to something that would only add to his expense. 15 As to the second motion, improperly 16 noticed before Your Honor, we recognize that if 17 we come into information about addresses of the 18 people we've identified, we will supplement. For 19 example, Ms. Bredehoft mentioned the address of 20 Mr. Waldman. We confirmed that that was his 21 address. She knows where he lives. She just has 22 to get a process server who sticks it out and</p>	<p style="text-align: right;">19</p> <p>1 is the fact. We did not represent Mr. Depp in 2 the London trial so she's making a statement that 3 I cannot verify or not verify. 4 I can commit to the Court that if we -- 5 we can consult with counsel and if that's the 6 case we will supplement. But we're already under 7 an obligation to supplement and we will. And we 8 have. We're not playing games here, Your Honor. 9 We're not the ones who redacted in -- 10 THE COURT: All right. Well, let me 11 just stop you for a second because the fact that 12 you or your client could contact the attorney in 13 England and find those things and haven't done 14 that makes me wonder what reasonable 15 investigation you and your client have done to 16 find the addresses and contact information for 17 these people. 18 MR. CHEW: Your Honor, let me clarify. 19 I don't know what Ms. Bredehoft is referring to. 20 And I will commit to going back and doing it, but 21 I don't want the Court to think that we have not 22 done that already. I -- this is -- I'm hearing</p>
<p style="text-align: right;">18</p> <p>1 serves him. 2 But Mr. Depp cannot certify that which 3 he does not know. So we would ask that both 4 motions that Ms. Bredehoft has noticed for today 5 be denied. And if she's worried about Friday 6 motions day I think she's wasted one today. I 7 mean, if there are really some bonified issues 8 that she has she should raise them. This is not 9 one of them. A conciliator will not help the 10 process. We know that when we come into 11 possession of addresses we will supplement them. 12 So Your Honor, for those reasons we 13 respectfully request that the Court deny both 14 motions. Thank you, Your Honor. 15 THE COURT: Mr. Chew, Ms. Bredehoft 16 says that 20 of the witnesses who you have not 17 given addresses for testified on your client's 18 behalf in England. How can that be possible and 19 he has no information about where they are now, 20 or how to contact them? 21 MR. CHEW: I don't know that that is 22 possible, Your Honor. And I don't know that that</p>	<p style="text-align: right;">20</p> <p>1 for the first time that she says that there's 2 information in possession of Mr. Depp's English 3 counsel with respect to this issue. It may well 4 be that Ms. Vasquez has already done that but we 5 can do that today. 6 If there are any other addresses that 7 they know of that we haven't already asked about 8 we'll do that. But I don't want the Court to 9 think that we haven't done something. This is 10 something that's new to me and my knowledge is 11 that we have produced every single piece of 12 information we have. We're not hiding the ball. 13 THE COURT: I'm concerned that the 14 possibility exists that Mr. Depp miraculously 15 discovers this contact information at the 16 discovery cutoff date. I just don't think 17 there's been a reasonable investigation based 18 upon what I've been hearing today to try to find 19 contact information for these folks. 20 And I think it is going to be 21 appropriate to set a cutoff date by which if he 22 doesn't come up with contact information he's</p>

Transcript of Hearing
Conducted on February 19, 2021

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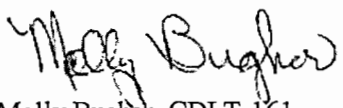
<p style="text-align: right;">21</p> <p>1 barred from calling them, even if that is well in 2 advance of the discovery cutoff date. 3 MR. CHEW: Well, Your Honor, if I may 4 just ask -- well, I'll need to consult, 5 obviously. And we will find out and report back 6 to Ms. Bredehoft and to the Court as to what 7 investigation has been made and what 8 investigation -- you know, we're happy to go back 9 and recheck. 10 THE COURT: Okay. Because I'm -- I 11 know you're a good lawyer, a good firm. Ms. 12 Bredehoft is as well, and it seems strange that 13 someone would say I'm potentially going to call 14 45 witnesses at trial, yet 90 days from trial I 15 have no idea how to contact these people to get 16 them to come for trial. That seems inconsistent 17 with the preparation -- 18 MR. CHEW: (Inaudible). 19 THE COURT: -- that I have seen you 20 exhibit in the past. 21 MR. CHEW: Well, we will redouble our 22 efforts, Your Honor. We'll do that today. But I</p>	<p style="text-align: right;">23</p> <p>1 you have them and he doesn't then you give them 2 to him because I don't find that to be a good 3 faith claim that you don't know where they are if 4 they took the witness stand and gave their 5 address. 6 Okay? 7 MS. BREDEHOFT: Your Honor, they 8 didn't -- just so we're clear, they didn't give 9 their addresses when they were on the witness 10 stand. They do things differently in the UK. 11 But they did give witness statements to Mr. 12 Depp's counsel. All of them did. And I do have 13 the list from there and Ms. Vasquez also attended 14 the entire trial, Your Honor. The co-counsel 15 with Mr. Chew, and they did represent Mr. Depp 16 throughout. They had another counsel that came 17 in, Mr. Sherbourne (phonetic), but Brown Rudnick 18 was present. Camile Vasquez, the co-counsel was 19 present the entire trial just like I was. 20 THE COURT: Let me -- Ms. -- let me 21 stop you for a second. Are you attempting to 22 certify to me that at no time in connection with</p>
<p style="text-align: right;">22</p> <p>1 just want the record to be clear; I am not sure 2 that that matter has not already done. I would 3 suspect it has had but we'll do it again. 4 THE COURT: All right. 5 Motion for a conciliator is denied. 6 Ms. Bredehoft, the part of Mr. Chew's 7 argument that I found as convincing as anything 8 is that you would relitigate before the 9 conciliator many things that I've already ruled 10 on. And I know you'll deny that you do that, but 11 you would. I'm 100 percent confident that you 12 would on that. And that would be unfair to 13 anybody. So that part is denied. 14 And the motion to compel I'm going to 15 reserve ruling on that based upon Mr. Chew doing 16 some investigation, and Ms. Bredehoft, you 17 providing Mr. Chew with a name of -- the names of 18 the 20 witnesses who testified in the English 19 trial that are listed by them and you don't have 20 addresses for them. 21 And since you were present at that 22 trial, if they gave addresses at that trial and</p>	<p style="text-align: right;">24</p> <p>1 any of the proceedings in England that the 2 addresses of these witnesses was disclosed in 3 either a statement or in testimony? 4 MS. BREDEHOFT: Actually no, Your 5 Honor. I can't remember that. I'll have to go 6 back and look at that. But why would that be my 7 obligation instead of theirs? They were there 8 and they are the ones that procured the witness 9 statements. And it's very likely -- 10 THE COURT: Because there is an issue 11 of good faith in any discovery motion. And to 12 say I can't -- I don't know, I can't possibly 13 take their depositions, judge, I don't know where 14 they are. That's what you, in essence, told me, 15 and you may well have that information. 16 MS. BREDEHOFT: Your Honor, I asked 17 them -- 18 THE COURT: So go find out whether you 19 do or don't. 20 MS. BREDEHOFT: Your Honor, I asked 21 them to supplement and that's attachment 3, and 22 they just ignored me.</p>

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23506

Transcript of Hearing
Conducted on February 19, 2021

<p style="text-align: right;">25</p> <p>1 THE COURT: I'm not going to argue with 2 it anymore. 3 MS. BREDEHOFT: (Inaudible). 4 THE COURT: This is exactly why we 5 would not have a conciliator. You will not 6 listen to me and not pay attention. Mr. Chew 7 sometimes listens to me but doesn't pay 8 attention, I think. But we're just stuck with 9 that. But no conciliator should have to put up 10 with this litigation. 11 All right. The hearing is adjourned. 12 MR. CHEW: Thank you, Your Honor. 13 MS. BREDEHOFT: So Your Honor, just so 14 we're clear on the order so should we -- 15 THE COURT: I'm not -- I'm not entering 16 any order today except -- 17 MS. BREDEHOFT: Okay. 18 THE COURT: -- denying the conciliator. 19 Okay? 20 MS. BREDEHOFT: All right. Thank you, 21 Your Honor. 22 MR. CHEW: Thank you, Your Honor.</p>	<p style="text-align: right;">27</p> <p>1 CERTIFICATE OF COURT REPORTER 2 I, Jesse Greer, the officer before whom 3 the foregoing proceedings were taken, do hereby 4 certify that said proceedings were electronically 5 recorded by me; and that I am neither counsel 6 for, related to, nor employed by any of the 7 parties to this case and have no interest, 8 financial or otherwise, in its outcome. 9 10 Notary Registration No.: 7846248 11 My Commission Expires: 9/30/2020 12 13  14 15 Jesse Greer, Court Reporter 16 In and for the Commonwealth of Virginia 17 18 19 20 21 22</p>
<p style="text-align: right;">26</p> <p>1 THE COURT: Thank you all. 2 (Off the record at 10:51 a.m.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">28</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Molly Bugher, do hereby certify that 3 the foregoing transcript is a true and correct 4 record of the recorded proceedings; that said 5 proceedings were transcribed to the best of my 6 ability from the audio recording as provided; and 7 that I am neither counsel for, related to, nor 8 employed by and of the parties to this case and 9 have no interest, financial or otherwise, in its 10 outcome. 11 12  13 14 Molly Bugher, CDLT-161 15 DATE: February 19, 2021 16 17 18 19 20 21 22</p>