

**Significant Excerpts from the  
Reporter's Transcript on June 22, 2009  
-Complete Transcript Attached-**

**Lloyd Charton et al. vs.  
National Financial Lending, LLC, et al.**

**Speakers on transcript:**

- **THE COURT:** Ronald Bauer, Judge Presiding
- **MR. GRANT:** Lloyd Charton's attorney
- **MR. BENICE:** National Financial Lending's attorney

**THE COURT:** ...Let me pose this question to you before you start your comments, Mr. Grant (Lloyd's attorney.)

A great deal of discussion here has been directed to likelihood of success, one of the things that the court is supposed to consider in the granting of a preliminary injunction. And the likelihood of success that has been discussed by both sides has, in substantial measure, been the question about whether there was or may be some use of investment funds or some use of investment proceeds for defense expenses, and so on and so forth.

I'm wondering if we shouldn't be discussing a preliminary showing of likelihood, and that is some showing that the defendants have done anything wrong in investing or paying themselves management fees. And I don't know that the evidence has even a penny's worth of defalcation in the moving party's papers.

And I think that if we start from the current state of the records, which I believe is no evidence of any mismanagement in terms of lies, fraud in the investment, stealing from the company, or exaggerated management fees, then that might lead us to the conclusion that the plaintiff loses the case.

Your thoughts?

**THE COURT:** That's what the contract requires, isn't it? (From Judge to Mr. Grant – Lloyd's attorney)

**THE COURT:** Your suggestion now is that the contract wasn't worth the paper it's printed on. But that's still the deal. (Directed to Mr. Grant – Lloyd's attorney)

**MR. BENICE:** ...The court's question is right on point, and it's on point on two levels. One, there is not one iota of evidence presented about anything that any of the defendants –N.F.L., Point Center, or the executives that were named...But moving on, the primary claims in the complaint there is no evidence at all presented about. So they would fail if that were the test.

But taking it a step further and accepting Mr. Grant's suggestion, well, what we really have to look at is a probability of success on the merits as to whether or not the defendants are entitled to use the various indemnity agreements. They offer utterly no evidence on those points as well, your honor.

In that vein too the plaintiffs have failed. They presented no evidence that suggests anything, any misconduct by the defendants.

These are operational funds, which under the operating agreement of N.F.L., which is an exhibit to the second amended complaint and it's an exhibit to Ms. Breneman's declaration, are perfectly permissible.

And, of course, they would be. This is an operating entity. The plaintiff sued an operating entity that they have an interest in, but they sued the entity. It's an LLC. And the operating agreement that all the plaintiffs who are members of N.F. L. signed, specifically says just above –Paragraph 5.6 of the operating agreement, at page 14 is the indemnification provision that we've talked about. Just above that is the provision involving the management's actual operation of the entity.

And paragraph five is very clear; reimbursement of organization expenses.

Paragraph six: Reimbursement of business expenses. And it says, “the company,” being N.F.L., “Shall pay its own general administrative and operating expenses. It shall reimburse the manager” – that’s Point Center – “For any expenses incurred by the manager that are properly considered ordinary and reasonable business expenses of the company, including, without limiting the generality of the foregoing, stationery, office supplies, postage, accounting, and legal fees related to the company’s business.”

Those are direct identified operational expenses. So the Plaintiff’s contention that they don’t exist or they can’t be operating expenses defies the clear language of the very document the plaintiff signed.

The final and, from the defense perspective, most significant issue is that these plaintiffs represent no more than approximately four percent of all the existing investors in the N.F.L. funds and the pool funds and the Point Center managed funds.

**THE COURT:** Mr. Grant, you’ve suggested in a way that I understand very well, because I often use such absurd analogies, that you can have a case from Pluto, or some surviving planet, and you would have the same right to assert this sort of request for preliminary injunction.

I think I probably disagree with that. If your underlying case were from Pluto, written on crayon on toilet paper, and shipped here from ataskadero, I don’t think you would have established the likelihood of success that is necessary for the relief you seek.

And I’ll ask you this question: Let’s assume for the moment, for the purpose of discussion that the plaintiff’s case goes down in flames. 92 causes of action 92 adverse results.

What remedy do you then have to impede reimbursement for defense expenses?

**MR. GRANT:** They’re entitled to those.

And, by the way, I was assuming there were investors on Pluto.

**THE COURT:** Yes. They've just been downgraded.

**THE COURT:** As we stand now, plaintiff loses. Right now. In the facts of this case, as they exist on my bench, plaintiff loses because you have no evidence.

**MR. GRANT:** Well, I don't think the court means to say that. We do have evidence. We haven't presented it to the court.

**THE COURT:** I absolutely take that word back.

**MR. GRANT:** Thank you, your honor.

**THE COURT:** Yes.

**MR. GRANT:** And two, if that were the standard, we would have presented the evidence and we have roomfuls of it. But we don't believe that's the standard to stop them from advancing without getting a court order or a proper undertaking or advancing for securities violations, the rescission claims, the claims involving LLC's and advancing funds to the world.

**THE COURT:** A couple other reasons why I'll deny this request. These are more procedural, perhaps, and less vital; but having said that, I interpret some of the things you've said, Mr. Grant, as a suggestion that these 92 causes of action have different – we know they have different contracts as their basis, we have different claims, and so forth, and yet your request is for a sweeping order denying any activity by any defendant in any fashion. And I'm wondering if it should haven't been more particularized. Just a question. That's not an answer; That's a question....

**Motion denied.**