

1 LOS ANGELES, CALIFORNIA; MONDAY, JULY 28, 2014

2 1:40 P.M.

3 DEPARTMENT CE-5

HON. MICHAEL I. LEVANAS, JUDGE

4 APPEARANCES: (AS NOTED ON TITLE PAGE.)

5 (LAURA LOPEZ, OFFICIAL REPORTER, CSR #6876.)

6
7 (THE FOLLOWING PROCEEDINGS

8 WERE HELD IN OPEN COURT:)

9 ****(THIS IS A ROUGH DRAFT TRANSCRIPT.)****

10 THE COURT: OKAY. WE'RE BACK ON THE RECORD IN THE
11 STERLING MATTER. ALL COUNSEL ARE PRESENT AS WE WERE AT THE
12 TIME OF THE OUR BREAK. WE'RE NOW GOING TO PROCEED WITH
13 ARGUMENT AS TO THE ISSUE OF WHETHER THE COURT SHOULD MAKE
14 ORDERS PURSUANT TO PROBATE CODE SECTION 1310(B).

15 MR. O'DONNELL.

16 MR. O'DONNELL: THANK YOU, YOUR HONOR.

17
18 CLOSING ARGUMENT

19
20 BY MR. O'DONNELL:

21 WE ASK FOR A 1310(B) ORDER TO PREVENT INJURY OR
22 LOSS TO THE VALUE OF THE LOS ANGELES CLIPPERS WHICH HAS
23 BEEN ESTABLISHED TO BE TWO BILLION DOLLARS AS WE STAND AND
24 SIT HERE TODAY, AND THERE ARE TWO WORDS THAT SUM UP WHY
25 THIS ORDER IS URGENT AND COMPELLED, "DEATH SPIRAL."

26 THE CLIPPERS ARE IN A DEATH SPIRAL. IT
27 ACCELERATES EACH PASSING DAY. DICK PARSONS TOLD US ABOUT
28 THE PERNICIOUS EFFECT OF THE CONTINUED OWNERSHIP OF DONALD

1 STERLING. SPONSORS ARE AT THE SIDELINES. DOC RIVERS
2 DOESN'T WANT TO COACH. CHRIS PAUL DOESN'T WANT TO PLAY.

3 MR. RUTTENBERG: OBJECTION.

4 THE COURT: I'M SORRY?

5 MR. RUTTENBERG: OBJECTION. NOT IN EVIDENCE. THERE'S
6 NO EVIDENCE AS TO THESE STATEMENTS, ESPECIALLY AS TO CHRIS
7 PAUL.

8 THE COURT: WELL, AS TO CHRIS PAUL, YOU MAY BE CORRECT.
9 AS TO THE OTHERS, THIS IS APPROPRIATE ARGUMENT GIVEN THE
10 STATE OF THE EVIDENCE.

11 YOU MAY CONTINUE.

12 MR. O'DONNELL: THANK YOU, YOUR HONOR.

13 THE CLIPPERS ARE IN A MELTDOWN. HOW LONG WILL
14 THAT CONTINUE? UNTIL THE SALE OF THE TEAM TO STEVE BALLMER
15 FOR TWO BILLION DOLLARS WHICH WE FERVENTLY HOPE IS A MATTER
16 OF ONLY A FEW WEEKS AWAY.

17 SEVERAL THINGS HAVE BEEN ESTABLISHED BEYOND DOUBT.
18 ONE, IF THE CLIPPERS ARE WORTH TODAY TWO BILLION DOLLARS,
19 AS I'VE SAID, THE PRICE FROM ALL TESTIMONY IS THAT IT'S
20 STAGGERING. IT'S A KNOCK-OUT. IT'S A HOME RUN. IT'S A
21 SLAM DUNK. WE'VE EVEN HEARD THE INVOCATION OF NIRVANA FOR
22 THE STERLING FAMILY TRUST. IT'S NIRVANA. IT'S A PRICE
23 THAT'S HEAVENLY. IT'S A PRICE THAT NEVER COULD HAVE BEEN
24 IMAGINED. DONALD STERLING MUST BEGRUDGINGLY SAY IT'S NOT A
25 BAD DEAL.

26 SO WE'VE ESTABLISHED THAT THERE'S PROPERTY
27 EMBRACED BY 1013(B) WHICH MUST BE PRESERVED. WE MUST
28 PREVENT LOSS TO THIS VALUABLE ASSET. THE STATUTE IS CLEAR.

1 IT'S ANY PROPERTY. THE CASE LAW IS CLEAR. IT'S ANY LOSS
2 INCLUDING MONETARY LOSS. IN MC ELROY, A CONSERVATORSHIP,
3 THE ORDER OR EQUIVALENT ORDER WAS URGENTLY NEEDED BECAUSE
4 ESTATE PLANNING HAD TO BE DONE TO SAVE ESTATE TAXES AND
5 THERE WAS A RISK THAT THE CONSERVATEE WOULD DIE PENDING AN
6 APPEAL BEFORE THAT HAPPENED. TAXES, MONEY.

7 KANE IS AN UNUSUAL CASE WHERE THE GIRLFRIEND OF
8 THE DECEDENT WANTED TO GET VIALS OF HIS SPERM. SHE WAS 40.
9 THERE WAS A CHANCE THAT BY THE TIME AN APPEAL RAN ITS
10 COURSE AND SHE GOT THE SPERM, SHE MIGHT NOT BE ABLE TO GET
11 PREGNANT. A CHANCE IN BOTH OF THOSE CASES OUR COURTS HAVE
12 SAID THE ORDER'S APPROPRIATE.

13 I SUBMIT TO YOU, YOUR HONOR, THAT THOSE CASES PALE
14 IN SIGNIFICANCE COMPARED TO WHAT THE RECORD SHOWS HERE.
15 THIS IS THE PARADIGMATIC CASE OF EXTRAORDINARY
16 CIRCUMSTANCES WARRANTING A 1310(B) ORDER. THE PRICE IS
17 EXTRAORDINARY AND THE RISK IS SERIOUS.

18 THE CASE LAW SAYS THAT WE MUST ESTABLISH TWO
19 THINGS:

20 FIRST, THAT THERE'S A RISK OF LOSS TO THE ASSET;
21 AND SECONDLY, THAT RISK IS IMMINENT. I WOULD LIKE TO
22 ADDRESS THE SECOND FACTOR, IMMINENCE. WELL, IT'S IMMINENT
23 BECAUSE IT'S GOING ON RIGHT NOW. THERE'S NO DISPUTE IN
24 THIS RECORD. THE EVIDENCE IS OVERWHELMING THAT THE
25 CLIPPERS DIMINISH IN VALUE EVERY DAY DONALD OWNS THEM. SO
26 WHAT HAPPENS IS IF THERE'S A SALE BY THE NBA? IS THERE ANY
27 RISK? AND ALL THE CASE LAW REQUIRES, YOUR HONOR, IS A RISK
28 OR POTENTIAL. IS THERE A RISK THAT A LOWER PRICE WOULD BE

1 OBTAINED? YES.

2 FOR A NUMBER OF REASONS. FIRST, THERE WAS --
3 THERE'S LACK OF TRANSPARENCY. THE BIDS WERE 1.2, 1.6 AND
4 TWO BILLION DOLLARS. THE NBA TAKES THE TEAM, THE BIDDING
5 PROCESS STARTS ALL OVER AGAIN. AND MR. BALLMER KNOWS THAT
6 ONE GROUP ONLY BID 1.6. WHY WOULD HE PAY TWO BILLION
7 DOLLARS? THERE IS A RISK. DOESN'T HAVE TO BE A CERTAINTY
8 UNDER THE LAW, YOUR HONOR. THERE'S A RISK THAT MR.
9 BALLMER, OR ANY OTHER BIDDER, WILL BID HIS
10 RECORD-SHATTERING PRICE OF TWO BILLION DOLLARS.

11 SECOND, WHAT DID MR. ZAKKOUR TELL YOU?
12 UNCERTAINTY IS THE FOE OF VALUE. THERE IS GREAT
13 UNCERTAINTY OUT THERE IF THE NBA TAKES OVER THE TEAM. BY
14 THE WAY, ALMOST A FOREGONE CONCLUSION BECAUSE THE
15 SETTLEMENT AGREEMENT SAYS IF YOU DON'T SELL THIS TEAM,
16 MRS. STERLING, BY SEPTEMBER 15, WE TAKE OVER THE TEAM AND
17 WE SELL IT.

18 THAT'S A CERTITUDE. THE VALUE WILL BE LESS
19 BECAUSE OF UNCERTAINTY. THE UNCERTAINTY CONTINUING OF
20 OWNERSHIP EVEN IF THERE IS AN NBA SALE, YOUR HONOR, THE
21 PROCESS WILL TAKE WELL INTO THE SEASON, AND DICK PARSONS
22 SAYS IF YOU GET INTO THE SEASON, THE DEATH SPIRAL
23 ACCELERATES. THE TEAM, I SUBMIT, YOUR HONOR, THERE'S A
24 RISK IT WILL CRASH AND BURN.

25 ANOTHER FACTOR, YOUR HONOR, TRANSACTION COSTS. IF
26 THE NBA TAKES THIS TEAM, THEY HAVE TO HIRE INVESTMENT
27 BANKERS. THEY HAVE TO HIRE LAWYERS. THEY HAVE THEIR OWN
28 TRANSACTION COSTS EVEN IF THE IMPLAUSIBLE HAPPENED AND TWO

1 BILLION DOLLARS WAS FETCHED FOR THIS TEAM AT AN NBA SALE,
2 THE NET PROCEEDS WOULD BE LESS FOR THE TRUST. THEREFORE,
3 THERE'S A LOSS.

4 THIRDLY -- AND THIS IS SIGNIFICANT -- DONALD
5 STERLING WANTS TO SUE EVERYBODY. HE'S TESTIFIED ON THIS
6 STAND THAT HIS REMAINING LIFE WILL BE DEVOTED TO ONE THING,
7 SUING THE NBA, HIS LONG-TIME NEMESIS. THE NBA LITIGATION
8 IS SUCH THAT THE -- THE SUIT BY MR. STERLING IS SUCH THAT
9 ANY NEW BUYER SUFFERS EXPOSURE AND THE NBA SURELY WILL NOT
10 INDEMNIFY AGAINST DONALD STERLING. AS MR. ZAKKOUR
11 TESTIFIED, YOUR HONOR, THE ABSENCE OF AN INDEMNITY WILL
12 DRIVE DOWN THE PRICE.

13 SO IS THERE A RISK OF LOSS TO THE VALUE OF THIS
14 TWO-BILLION-DOLLAR ASSET? ABSOLUTELY. IS THERE A
15 CERTITUDE THAT THE STERLING FAMILY TRUST WILL GET TWO
16 BILLION DOLLARS? YES. IF WE PREVAIL ON THE OTHER TWO
17 SUBSTANTIVE ISSUES AND YOU ISSUE A 1310(B) ORDER, THIS SALE
18 WILL GO FORWARD AND THE FAMILY TRUST, THE STERLINGS, THEIR
19 CHILDREN AND GRANDCHILDREN WILL REAP THE REWARD OF WHAT
20 SHELLY STERLING ACCOMPLISHED HERE.

21 SO WE'VE ESTABLISHED RISK OF LOSS FOR SURE, YOUR
22 HONOR, IMMINENCE. THE IMMINENT LOSS TO THE TEAM FROM THE
23 FAILURE TO CLOSE. AND THE SEIZURE OR, AS MR. BLECHER LIKES
24 TO SAY, THE CONFISCATION OF THE TEAM BY THE NBA IS 49 DAYS
25 AWAY, NOT MONTHS, NOT YEARS. POTENTIALLY, AS IN THE
26 MC ELROY AND THE KANE CASE, 49 DAYS TO SEPTEMBER 15. THE
27 CLOCK IS TICKING. AS DICK PARSONS TESTIFIED, TIME MATTERS.

28 SO, YOUR HONOR, HAVE WE MET THE STATUTORY

1 STANDARD? ABSOLUTELY.

2 A COUPLE OF POINTS ON MR. STERLING'S BRIEF.

3 FIRST, THEY CITE THE LEGISLATIVE HISTORY OF A
4 STATUTE OF AN AMENDMENT TO 1310(B) DEALING WITH TEMPORARY
5 GUARDIANSHIP. THERE WAS A GAP IN THE LAW AND APPARENTLY IN
6 2010 THE LEGISLATION ADDED THIS PROVISION. THEY CITE FOUR
7 PAGES OF THEIR BRIEF ON THE LEGISLATIVE HISTORY OF THIS NEW
8 PROVISION. IT HAS ABSOLUTELY AND UTTERLY NOTHING, NOTHING
9 TO DO WITH THE ORDER OF THE PROVISION BEFORE YOUR HONOR
10 TODAY. IT'S IN OPPOSITE.

11 SECONDLY, THEY READ INTO THE STATUTE SOMETHING
12 THAT I DON'T UNDERSTAND. THEY DON'T CITE A CASE. IT'S NOT
13 IN THE LITERAL LANGUAGE OF THE STATUTE THAT THIS ORDER IS A
14 APPROPRIATE ONLY IN LIFE OR DEATH DECISIONS. THERE'S
15 NOTHING TO SUPPORT THAT.

16 I WOULD SAY, HOWEVER, YOUR HONOR, IF YOU WANT TO
17 TALK ABOUT A DEATH TO VALUE, IF YOU WANT TO TALK ABOUT
18 LOSING A TWO-BILLION-DOLLAR GOLDEN BIRD IN THE HAND, LET'S
19 NOT HAVE THE SALE GO FORWARD.

20 THERE'S OTHER CONSIDERATIONS HERE, YOUR HONOR.
21 MR. STERLING CLAIMS THAT HE'LL HAVE A HOLLOW APPEAL. WELL,
22 THE LEGISLATURE MADE THAT DECISION, NOT FOR US TO MAKE.
23 THE LEGISLATURE SAID THERE ARE CIRCUMSTANCES EXTRAORDINARY
24 TO BE SURE IN WHICH THIS ORDER IS WARRANTED WHERE YOU AND
25 YOUR WISE EXERCISE OF DISCRETION MAY ORDER THAT THIS
26 HAPPENS. MR. STERLING'S HOLLOW APPEAL IS SOMETHING THAT
27 THE LEGISLATURE CONTEMPLATED AND YOU HAVE TO -- I'M SURE
28 YOU ARE; I'M SURE YOU ARE -- WEIGH THE INTEREST HERE. THE

1 SCALE DECIDEDLY WEIGHS IN FAVOR OF THE TRUST GETTING TWO
2 BILLION DOLLARS. THE SALE IS EXTRAORDINARY. THE RISK OF
3 LOSING TWO BILLION IS REAL, ALMOST A CERTITUDE, CERTAINLY A
4 RISK. THIS IS THE WEIGHTY CONSIDERATION THAT WE URGE YOU
5 TO TAKE INTO CONSIDERATION.

6 AND WHAT IS DONALD'S WEIGHTING INTEREST? A ** GEE
7 ODD, A CAMPAIGN FOR THE REST OF HIS LIFE AGAINST HIS BITTER
8 ENEMIES, THE NBA. AND HE WANTS TO RESTORE HIS DIGNITY AND
9 HONOR. THOSE ARE NOT THE KINDS OF CONSIDERATIONS THAT
10 SHOULD OUTWEIGH THE BENEFIT TO THIS FAMILY TRUST OF A
11 TWO-BILLION-DOLLAR SALE.

12 YOUR HONOR, IN CONCLUSION, THIS IS NOT AN EASY
13 MATTER FOR THE COURT TO DECIDE. BUT I SUBMIT TO YOU, THIS
14 IS THE CASE. THESE ARE THE FACTS. THIS IS THE OCCASION TO
15 EXERCISE YOUR DISCRETION AND ENTER A 1310(B) ORDER, ALLOW
16 THIS SALE TO OCCUR. MR. STERLING IS FREE TO PURSUE TO HIS
17 LIFE'S END LITIGATION, BUT THAT IS NOT ANY KIND OF A
18 CONSIDERATION TO DESTROY THE VALUE OF THIS FAMILY ASSET.

19 THANK YOU VERY MUCH, YOUR HONOR.

20

21

CLOSING ARGUMENT

22

23 BY MS. CUTLER:

24

25

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27

28

GOOD AFTERNOON, YOUR HONOR. THE GENERAL RULE IS
THAT APPEALS IN PROBATE PROCEEDINGS AUTOMATICALLY STAY THE
OPERATION AND EFFECT OF THE APPEALED ORDER. ONLY WHEN IT
IS NECESSARY TO TAKE IMMEDIATE ACTION TO PREVENT IMMINENT
INJURY OR LOSS TO A PERSON OR PROPERTY MAY A PROBATE COURT

1 DIRECT A FIDUCIARY TO EXERCISE SUCH POWERS AS IF NO APPEAL
2 WAS TAKEN.

3 SUCH AN ORDER IS THE EXCEEDINGLY RARE EXCEPTION TO
4 THE RULE. SO RARE THAT THERE'S ONLY TWO PUBLISHED OPINIONS
5 THAT APPLY THE EXCEPTION TO THE RULE IN THE MODERN ERA.
6 THIS IS BECAUSE 1310(B) AND ITS MANY PREDECESSOR STATUTES
7 CONTEMPLATE THE INJURY OR LOSS TO PERSON OR PROPERTY IN THE
8 CONTEXT OF CONTEMPLATED LIFE OR DEATH DECISIONS OR THE
9 THREAT OF DEATH OR CONVERSION BY A DEFALCATING FIDUCIARY.

10 WHAT THIS CASE IS REALLY ABOUT AND WHAT IS BEING
11 ASSERTED IS A SPECULATIVE ARGUMENT THAT IF THE SALE IS NOT
12 COMPLETED AT THIS TIME, THAT THE STERLINGS WILL RECEIVE
13 LESS MONEY FROM A POSSIBLE FUTURE SALE OF THE CLIPPERS.

14 MR. STERLING WILL ESTABLISH TODAY THREE SIMPLE
15 POINTS:

16 1310(B) IS AN EXTRAORDINARY REMEDY NOT APPLICABLE
17 TO THESE FACTS;

18 2, ANY LOSS TO PROPERTY IS PURELY SPECULATIVE;.

19 3, A 1310(B) RULING FOR SHELLY WOULD RESULT IN A
20 AN IRREVERSIBLE HARM TO MR. STERLING.

21 SHELLY CLAIMS THAT IF THE SALE OF THE CLIPPERS IS
22 NOT BLESSED BY THIS COURT, THE STERLING FAMILY TRUST MAY
23 SUFFER SPECULATIVE MONETARY LOSSES BECAUSE ANOTHER BUYER
24 WOULD POTENTIALLY OFFER LESS AND THAT OUTSTANDING FULLY
25 SECURED LOANS ON REAL PROPERTIES NOT OWNED BY LAC
26 BASKETBALL CLUB INC., WOULD PROBABLY NEED TO BE PAID OFF OR
27 RENEGOTIATED.

28 DARREN SHIELD'S TESTIMONY WAS PURE SPECULATION

1 BECAUSE THERE'S BEEN NO NOTICE OF DEFAULT. THE VALUE OF
2 THE TRUST PROPERTY MORE THAN COVERS ANY PROSPECTIVE
3 DEFAULT, AND THERE ARE A NUMBER OF OPTIONS TO CURE
4 INCLUDING NEGOTIATING NEW LOANS.

5 THE BANKS HAVE NOT ACTED SO THERE'S NO IMMINENT
6 RISK AND ANY POTENTIAL FUTURE INJURY IS READILY PREVENTABLE
7 AND WOULD BE CURED. ADDITIONALLY, THIS IS NOT THE LOSS OF
8 PROPERTY THAT THIS COURT SHOULD CONSIDER UNDER 1310(B).

9 THE VALUE OF THE CLIPPERS IS THE RELEVANT PROPERTY
10 FOR WHICH SHELLY ASKS 1310(B) TO BE IMPLEMENTED TO PROTECT
11 AGAINST THE SPECULATIVE DEATH SPIRAL.

12 BUT IT IS MORE LIKELY THAT MR. STERLING WILL
13 SUFFER A LOSS BY FORCING THE SALE OF THE TEAM IF THIS
14 COURT'S ORDER IS REVERSED ON APPEAL BECAUSE HE WILL LOOSE
15 HIS TROPHY ASSET AND HE WILL HAVE NO RECOURSE IF THE SALE
16 IS COMPLETED. THERE MAY BE NO WAY TO UNDOE THE SALE AND
17 SHELLY WILL BE IMMUNED FROM LIABILITY. THE APPLICATION OF
18 1310(B) WOULD NOT CREATE MORE CERTAINTY. IN THE SITUATION
19 WHERE THE TEAM IS SOLD AND AN APPELLATE COURT REVERSES THIS
20 COURT'S DECISION, THERE'S NO WAY TO KNOW WHAT WILL HAPPEN
21 AND HOW TO UNWIND THE TRANSACTION.

22 MR. ZAKKOUR TESTIFIED THAT THE CLIPPERS ARE A
23 TROPHY ASSET STATING: "THE CLIPPERS IS A TROPHY ASSET IN
24 ONE OF THE MOST GLAMOROUS MARKETS WITH ONE OF THE HIGHEST
25 CONCENTRATION OF BILLIONAIRES. SO I WOULD SAY THE CLIPPERS
26 RANKS UP THERE AS ONE OF THE BIG TROPHY ASSETS."

27 MR. PARSONS ALSO ADMITTED THAT THE CLIPPERS ARE A
28 TROPHY ASSET AND THAT THERE'S NO WAY TO CORRECTLY PRICE

1 SUCH AN ASSET ON A FINANCIAL METRIC BASIS. THIS MADE THE
2 TOTALITY OF HIS AND MR. ZAKKOUR'S TESTIMONY ON THE TOPIC OF
3 VALUATION OF THE CLIPPERS IRRELEVANT AND WHOLLY UNRELIABLE.

4 MR. PARSONS FURTHER TESTIFIED THAT'S IT'S NOT A
5 FINANCIAL TRANSACTION. IT'S LIKE BUYING A FABERGE EGG.
6 ITS VALUE IS TO THE PERSON WHO WANTS TO OWN IT, WHO WANTS
7 TO ACQUIRE IT BECAUSE YOU CAN'T GET THERE ON THE NUMBERS,
8 WHICH ONLY UNDERSCORES MR. STERLING'S POSITION.

9 IF THE TRANSACTION WITH MR. BALLMER DOES NOT TAKE
10 PLACE, THERE'S NO GUARANTEE THAT THE PURCHASE PRICE WOULD
11 BE DIMINISHED IF THE CLIPPERS WERE SOLD ON AN OPEN MARKET.
12 THE MARKET HAS SPOKEN. THE CLIPPERS HAVE BEEN PROVEN TO BE
13 WORTH TWO BILLION DOLLARS. IT'S COMPLETELY SPECULATIVE TO
14 ARGUE THAT THEY WOULD SELL FOR LESS IN A NORMAL BIDDING
15 PROCESS OPEN TO BOTH DOMESTIC AND INTERNATIONAL INDIVIDUALS
16 AND CORPORATE BIDDERS AS DONE WITH THE SALE OF THE LOS
17 ANGELES DODGERS.

18 THE UNUSUAL CIRCUMSTANCES AND UNUSUALLY SHORT TIME
19 LINE WITH SHELLY'S BIDDING PROCESS FOR THE CLIPPERS
20 POTENTIALLY DEPRIVED A COMPLETE BIDDING PROCESS AMONG ALL
21 INTERESTED PARTIES.

22 MR. PARSONS ALSO UNEQUIVOCALLY TESTIFIED THAT HE
23 WAS INFORMED BY COMMISSIONER SILVER THAT THE NBA WOULD
24 QUICKLY AND SWIFTLY MOVE TO REINSTITUTE THEIR PROCEEDINGS
25 TO REMOVE MR. STERLING AS AN OWNER FROM THE NBA IF THE SALE
26 OF THE CLIPPERS TO MR. BALLMER WAS NOT APPROVED. THIS
27 EVIDENCE ALONE DEMONSTRATES THAT THERE WOULD BE NO
28 IRREPARABLE OR IMMEDIATE LOSS TO SHELLY IF THIS COURT DOES

1 NOT GRANT HER PETITION. MR. PARSONS' PROPHECY OF A DEATH
2 SPIRAL CANNOT COME TRUE BECAUSE THE DEATH SPIRAL IS CURED
3 WHEN THE NBA HOLDS A VOTE TO SEIZE THE TEAM AND FORCE THE
4 SALE.

5 THERE'S BEEN NO EVIDENCE OFFERED BY SHELLY THAT
6 MR. BALLMER IS WALKING AWAY FROM THIS TEAM IF THIS COURT
7 DOES NOT GRANT HER PETITION. MR. BALLMER DID NOT TESTIFY.
8 HE DID NOT SAY THAT HE WASN'T GOING TO BE AROUND AGAIN TO
9 BID ON THE CLIPPERS AND BENEFIT FROM A NEW NATIONAL AND
10 LOCAL T.V. DEAL IN THE GLAMOROUS LOS ANGELES MARKET. TO
11 THE CONTRARY, HE'S A VERY EAGER BUYER. THERE'S NO EVIDENCE
12 THAT HE OR SOME OTHER BUYER WILL NOT PAY THE SAME PRICE OR
13 MORE FOR THE CLIPPERS.

14 THE MERE POSSIBILITY OF THE NBA'S SEIZURE OF THE
15 TEAM DOES NOT CONSTITUTE EVIDENCE OFFERED TO ESTABLISHING
16 AN EXTRAORDINARY CIRCUMSTANCE OF IMMEDIATE OR IMMINENT RISK
17 OF INJURY OR LOSS TO PROPERTY.

18 MR. ZAKKOUR'S TESTIMONY THAT THE CLIPPERS MIGHT
19 SELL FOR LESS IF THE NBA SEIZES THE TEAM DOES NOT RISE TO
20 THE LEVEL OF INJURY OR LOSS UNDER 1310(B) BECAUSE
21 MR. PARSONS' TESTIMONY CLEARLY ESTABLISHES THAT THIS IS
22 SPECULATIVE. WHEN ASKED SO WE REALLY CAN'T BE SURE WHAT'S
23 GOING TO HAPPEN IF THE LEAGUE CONFISCATED THE CLIPPERS AND
24 RESOLD THEM?

25 MR. PARSONS' RESPONSE WAS: "I'D HAVE TO AGREE
26 WITH THAT." AND HE FURTHER TESTIFIED THAT HE COULD NOT BE
27 SURE WHAT THE FUTURE HOLDS.

28 MOREOVER, IF THE NBA SEIZED THE TEAM, THE NBA CAN

1 MAINTAIN OWNERSHIP OF THE TEAM UNTIL TITLE IS PERFECTED AND
2 ALL OTHER ISSUES ARE RESOLVED.

3 JUST LIKE THEY APPOINTED MR. PARSONS AS THE
4 INTERIM CEO TO MANAGE THE BUSINESS SIDE OF THE
5 ORGANIZATION, THEY COULD KEEP MR. PARSONS IN PLACE OR HIRE
6 SOMEONE TO RUN THE ORGANIZATION UNTIL ALL APPELLATE
7 REMEDIES WERE EXHAUSTED.

8 WE CAN EXPECT THE TEAM'S VALUE WILL INCREASE
9 BECAUSE THE STERLINGS WILL BE OUT, AND THIS CERTAINLY IS
10 NOT UNPRECEDENTED. THE NBA AND MLB HAVE BOTH DONE THIS
11 BEFORE. A SMART LEGAL TEAM FOR A POTENTIAL BUYER COULD
12 ALSO NEGOTIATE A DEAL CONTINGENT ON ALL FUTURE LEGAL ISSUES
13 WITH THE NBA BEING RESOLVED.

14 MR. PARSONS' SPECULATION THAT THE CLIPPERS
15 FRANCHISE WILL BE IMMEDIATELY AND IRREPARABLY HARMED BY
16 POSSIBLE COACHES AND PLAYERS DEFECTIONS IF MR. STERLING
17 REMAINS AS THE OWNER PENDING AN APPEAL IS NOT PERSUASIVE.

18 MR. STERLING OWNED THE TEAM 33 YEARS AGO, OWNED
19 THE TEAM IN APRIL AND THROUGHOUT THE PLAYOFFS AND OWNS THE
20 TEAM TODAY. NO PLAYERS HAVE QUIT. NO PLAYERS HAVE STEPPED
21 DOWN. SEASON TICKET SALES ARE FINE, AND THE SPONSORS ARE
22 THERE.

23 GAME 4 OF THE PLAYOFFS ON APRIL 27 WAS THE MOST
24 VISIBLE WEEKEND OF THIS CONTROVERSY AT THE HEIGHT OF PUBLIC
25 OUTRAGE. THERE WAS NO BOYCOTT THEN. A PENDING APPEAL
26 WOULD BE NO DIFFERENT A SITUATION THAN THE COACHES AND
27 PLAYERS FIND THEMSELVES IN TODAY. NO PLAYER OR COACH
28 TESTIFIED TO THE TRUTH OF THIS MATTER THAT THEY'RE WILLING

1 TO WALK AWAY FROM THEIR MULTI-MILLION DOLLAR CONTRACTS AND
2 ASSUME SIGNIFICANT LIABILITY IN DOING SO.

3 LASTLY, THERE'S A SAFETY NET ALREADY IN PLACE BY
4 THE INSTALLATION OF MR. PARSONS AS AN INTERIM CEO AND IS
5 ROUGHLY EQUIVALENT TO THIS COURT APPOINTING A TEMPORARY
6 TRUSTEE OF AN ASSET IN QUESTION TO ENSURE ITS PRESERVATION
7 DURING AN APPEAL.

8 SHELLY'S ARGUMENTS DO NOT RELATE TO THE TYPE OF
9 IRREPARABLE LOSS THAT THE LEGISLATURE CONTEMPLATED AS
10 DISCUSSED IN THE LIMITED CASE LAW INTERPRETING 1310(B) AND
11 PREDECESSOR STATUTES. THE INJURY PREVENTION EXCEPTION DOES
12 NOT AND CANNOT APPLY HERE BECAUSE THERE'S NO EVIDENCE THAT
13 THERE'S A TRUE AND NON-SPECULATIVE IRREPARABLE HARM THAT
14 EXISTS IF THIS COURT'S ORDER IS STAYED ON APPEAL.

15 SHELLY'S COUNSEL WOULD HAVE THIS COURT BUY INTO
16 THEIR ARGUMENT THAT THIS STATUTE WAS CREATED TO PREVENT
17 MONETARY LOSS. IF THIS WAS TRUE, THERE MOST CERTAINLY
18 WOULD BE OTHER CASES OVER THE PAST 150-PLUS YEARS
19 DISCUSSING SUCH TYPE OF LOSS. THE ONLY TWO CASES THAT THEY
20 CITE, THEY CITE FOR THE WRONG HOLDINGS.

21 IN CONSERVATORSHIP OF MC ELROY, THE APPELLATE
22 COURT FOUND THAT THE CONSERVATOR'S PETITION FOR SUBSTITUTED
23 JUDGMENT SHOULD BE GRANTED BECAUSE THE CONSERVATEE WAS OLD,
24 ILL AND FRAIL AND THE CONSERVATEE'S ESTATE PLAN COULD ONLY
25 BE EXECUTED BY THE CONSERVATOR DURING THE CONSERVATEE'S
26 LIFETIME SINCE NO ACTION COULD BE TAKEN AFTER HIS DEATH.

27 IN THAT DECISION, THE COURT'S FINDINGS DID NOT
28 HAVE TO DO DO EXPLICITLY WITH THE TAX CONSEQUENCES. IT HAD

1 TO DO WITH THE ACTUAL EXECUTION OF THE ESTATE PLAN BECAUSE
2 IT CAN'T BE DONE AFTER SOMEBODY DIES.

3 THE MC ELROY COURT CONTEMPLATED THE RISK OF HARM
4 TO THE DECEDENT'S LONG-TERM GIRLFRIEND IN ALLOWING THE
5 CONSERVATOR TO TAKE SUCH STEPS. THE RISK OF HARM TO THE
6 GIRLFRIEND IN ALLOWING THE CONSERVATOR TO TAKE THE
7 REQUESTED ACTIONS WAS INSIGNIFICANT IN RELATION TO THE RISK
8 OF HARM TO THE ESTATE IF THE ACTIONS WERE NOT TAKEN. THE
9 POTENTIAL HARM TO THE ESTATE WAS THE ESTATE PLAN WOULD NOT
10 AND COULD NOT BE EXECUTED IF THE CONSERVATEE WERE TO DIE
11 BEFORE THE ACTIONS WERE TAKEN.

12 HERE THE RISK OF HARM TO MR. STERLING IS
13 SUBSTANTIAL. HE WILL LOSE THE TROPHY ASSET THAT CANNOT BE
14 REPLACED AND BE FORCED TO PAY CAPITAL GAIN TAXES CLOSE TO
15 \$650 MILLION THAT WOULD OTHERWISE BE AVOIDED IF THE ASSETS
16 WERE RETAINED UP UNTIL THE PASSING OF EITHER OF THE
17 STERLINGS. AND POTENTIALLY HE WOULD BE DEPRIVED OF HIS
18 ABILITY TO PURSUE HIS REMEDIES AGAINST THE NBA.

19 IN REACHING ITS HOLDING AS IN MC ELROY REGARDING
20 THE APPLICATION OF 1310(B), THE COURT RELIED ON
21 KANE VS. SUPERIOR COURT. IN KANE, THE TRIAL COURT
22 SPECIFICALLY DIRECTED THE FIDUCIARY TO TURN OVER 3 OUT OF
23 15 VIALS OF THE DECEDENT'S FROZEN SPERM TO THE DECEDENT'S
24 GIRLFRIEND TO PREVENT THE GIRLFRIEND FROM SUFFERING
25 IMMINENT INJURY OR LOSS BECAUSE SHE WAS IN HER 40S AND HER
26 ABILITY TO CONCEIVE WOULD HAVE BEEN ELIMINATED BEFORE THE
27 APPEAL PROCESS ENDED.

28 AGAIN, THIS IS ANOTHER CASE ABOUT IMMINENT AND

1 IMMEDIATE INJURY OR LOSS WHERE THE PERSON SEEKING RELIEF
2 CANNOT WAIT OUT THE APPELLATE PERIOD.

3 IN GUARDIANSHIP OF WALTERS, A TEMPORARY GUARDIAN
4 WAS ORDERED FOR ALLIE WALTERS SACKS OVER HER OBJECTIONS AND
5 THE TEMPORARY GUARDIAN TOOK IMMEDIATE POSSESSION OF ALL OF
6 HER REAL AND PERSONAL PROPERTY PENDING THE APPEAL. ON
7 APPEAL, THE TRIAL COURT WAS REVERSED BECAUSE MRS. SACKS HAD
8 A MANAGEMENT TEAM IN PLACE TO ASSIST HER IN MANAGING HER
9 ASSETS. THE COURT HELD THAT THERE WAS INSUFFICIENT
10 EVIDENCE TO SUPPORT A FINDING OF LOSS OR INJURY TO THE
11 ESTATE PENDING THE APPEAL.

12 ALL OF THE CASES APPLYING THE EXCEPTION HAVE ONE
13 COMMON THEME. IF THE APPEAL WAS STAYED, THE PARTY -- THE
14 PARTY SEEKING TO APPLY THE STAY EXCEPTION WOULD SUFFER A
15 READILY KNOWN AND ASCERTAINABLE HARM, NOT BASED ON
16 SPECULATION, IF THEY HAD TO WAIT OUT THE APPELLATE PROCESS.

17 IN KANE, THE GIRLFRIEND'S ABILITY TO CONCEIVE
18 WOULD HAVE BEEN ELIMINATED, AND IN MC ELROY, THE
19 CONSERVATEE WAS OLD, FRAIL AND ILL, AND IT WAS UNCLEAR IF
20 HE WOULD SURVIVE THE APPEAL TO ALLOW HIS CONSERVATOR TO
21 EXECUTE A NEW ESTATE PLAN.

22 THIS CASE IS AKIN TO WALTERS. HERE, AS IN
23 WALTERS, THERE'S A SYSTEM IN PLACE TO MANAGE THE DAY-TO-DAY
24 OPERATIONS OF LAC BASKETBALL CLUB, INC. MR. PARSONS
25 TESTIFIED THAT HE'S BEEN ABLE TO STABILIZE THE
26 ORGANIZATION. SEASON TICKET SALES, WHICH COMPRISE 85
27 PERCENT OF THE TEAM'S LARGEST REVENUE STREAM, ARE ON PAR
28 WITH LAST YEAR AND REVENUE IS ACTUALLY UP DUE TO HIGHER

1 TICKET PRICES. THE ONLY SPONSOR WHO HAS NOT RENEWED THEIR
2 CONTRACT WAS BURGER KING. IT IS CERTAIN THAT IF THEIR
3 NON-RENEWAL OF THEIR CONTRACT HAD SOMETHING TO DO WITH
4 MR. STERLING, THAT MR. PARSONS WOULD HAVE TOLD US.

5 THE LEGISLATURE'S INTENT TO LIMIT THE APPLICATION
6 OF 1310(B) IS FURTHER ILLUSTRATED BY THE FACT THAT ARE NO
7 PUBLISHED DECISIONS WHICH RELATE TO A TRUST PROCEEDING.
8 THE LEGISLATIVE HISTORY ALSO SUPPORTS MR. STERLING'S
9 POSITION. IT ESTABLISHES THAT THE WORDS "TRUST" AND
10 "TRUSTEE" WERE ADDED TO 1310(B) BECAUSE THE LEGISLATURE WAS
11 CONCERNED ABOUT A TRUSTEE CONTINUING TO RAID OR LOOT A
12 TRUST ESTATE DURING THE PENDENCY OF AN APPEAL. THE
13 LEGISLATURE DID NOT WANT THE FOX GUARDING THE HEN HOUSE.

14 THERE'S NO EVIDENCE THAT MR. STERLING IS LOOTING
15 OR RAIDING THE TRUST ESTATE. THIS ACTION DOES NOT APPLY TO
16 THESE FACTS. THE ONLY TYPE OF LOSS SHELLY COULD SUFFER IS
17 A 50-PERCENT INTEREST IN A SPECULATIVE MONETARY LOSS. IF
18 HOWEVER, THERE WAS A MONETARY LOSS, THIS COURT MUST ALSO
19 WEIGH THE ACTUAL AND IRREPARABLE LOSS TO MR. STERLING.

20 BUT GRANTING SHELLY'S REQUEST UNDER 1310(B) WOULD
21 CREATE, TO USE YOUR HONOR'S WORDS, A "HOLLOW APPEAL."
22 AGAIN, SHELLY RECEIVING LESS MONEY FOR THE CLIPPERS IS NOT
23 THE TYPE OF LOSS CONTEMPLATED BY THE LEGISLATURE. KNOWING
24 THAT THIS MATTER WILL BE TAKEN UP ON APPEAL, IF THIS COURT
25 MAKES SUCH A FINDING, IT WOULD SET AN UNTENABLE PRECEDENT.

26 THIS COURT SHOULD LOOK BEYOND THE FACT THAT THIS
27 MATTER INVOLVES BILLIONS OF DOLLARS AND INSTEAD FOCUS ON
28 THE TYPE OF LOSS CONTEMPLATED, AN IRREDEMIABLE LOSS BECAUSE

1 OF A LIMITED PERIOD OF TIME DUE TO A LIFE OR DEATH MATTER
2 OR BY THEFT OR CONVERSION PENDING AN APPEAL.

3 THE REFUSAL OF THIS COURT TO APPLY THIS
4 EXTRAORDINARY REMEDY WOULD NOT DEPRIVE THE STERLINGS OF
5 THEIR ASSETS. TO THE CONTRARY, IT WOULD ALLOW MR. STERLING
6 TO CONTINUE TO FIGHT THE NBA IN FEDERAL COURT. AN ORDER
7 UNDER SECTION 1310(B) IS NOT APPROPRIATE WHERE, AS HERE,
8 THE TRUST'S ASSETS ARE BEING COMPETENTLY MANAGED AND NOT AT
9 THE RISK OF LOSS BY LEFT, CONVERSION OR OTHERWISE. THE
10 MERE POTENTIAL OR SPECULATIVE LOSS, OR GAIN FOR THAT
11 MATTER, IF A PARTY IS FORCED TO SELL THEIR VALUABLE
12 PERSONAL PROPERTY AGAINST THEIR WILL, IS NOT A LOSS THAT
13 FALLS WITHIN THE SCOPE OF 1310(B). OTHERWISE, 1310(B)
14 WOULD BECOME THE GENERAL RULE RATHER THAN THE EXTREMELY
15 RARE AND LIMITED EXCEPTION INTENDED BY THE LEGISLATURE.

16 THE COURT IS AWARE THAT AN ORDER PURSUANT TO
17 1310(B) EVISCERATES ANY MEANINGFUL APPEAL BY MR. STERLING.
18 THE DEPRIVATION OF AN APPEAL IS MAGNIFIED BY THE RIGHTS AT
19 ISSUE INCLUDING THE PARTY'S AUTHORITY TO SERVE AS TRUSTEE
20 AND THE DEPRIVATION OF A PARTY'S PROPERTY RIGHTS AND SALE
21 OF HIS VALUABLE PROPERTY OVER HIS REFUSAL TO SELL. SUCH
22 AND ORDER ESSENTIALLY ELIMINATES THE OTHERWISE EXISTENT
23 RIGHT TO APPEAL.

24 IN THE EVENT THIS COURT ORDERS -- ENTERS AN ORDER
25 PURSUANT TO 1310(B), MR. STERLING ASKS THIS COURT TO STAY
26 THE EFFECT OF THE ORDER FOR A LIMITED PERIOD OF TIME TO
27 ALLOW MR. STERLING TO PREPARE AND FILE A WRIT OF MANDATE OR
28 SUPERSEDEAS REGARDING THE APPLICATION OF 1310(B) TO THE

1 CIRCUMSTANCES THIS CASE. A BRIEF STAY WILL NOT PREJUDICE
2 ANY PARTY OR RESULT IN ANY LOSS TO THE TRUST ESPECIALLY
3 SINCE THE CLIPPERS ARE SUBJECT TO PROFESSIONAL MANAGEMENT.
4 MOREOVER, A BRIEF STAY WILL ENSURE THAT ALL PARTIES'
5 INTERESTS ARE PROTECTED AND PROVIDE MR. STERLING WITH A
6 MEANINGFUL OPPORTUNITY FOR REVIEW OF THE SIGNIFICANT RIGHTS
7 AT STAKE.

8 IN CONCLUSION, MR. STERLING REQUESTS THAT THIS
9 COURT DENY SHELLY'S PETITION.

10 THANK YOU.

11
12 REBUTTAL ARGUMENT

13
14 BY MR. O'DONNELL:

15 BRIEFLY, YOUR HONOR. NEVER SEEN TENS OF HUNDREDS
16 OF MILLIONS OF DOLLARS SO CASUALLY DISMISSED IN ALL OF MY
17 CAREER.

18 THE EVIDENCE IS CLEAR THAT THERE IS A RISK OF
19 SUBSTANTIAL DEVALUATION EVERY DAY THAT MR. STERLING OWNS
20 IT. IT'S DEVALUED. MR. PARSONS GAVE TESTIMONY THAT FOR
21 NOW HE'S STABILIZED TICKET SALES. HE SAID, HOWEVER, IF
22 THIS ENDURES MUCH LONGER INTO THE SEASON, OCTOBER, SPONSORS
23 WON'T SPONSOR; PLAYERS WON'T PLAY, ET CETERA; AND SEASON
24 TICKET HOLDERS WILL ASK FOR REFUNDS.

25 WHAT WE ARE HEARING IS THE REASON NOT TO PUT IN A
26 1310(B) BECAUSE THIS IS A TROPHY ASSET. THIS IS NOT
27 DONALD'S PERSONAL PROPERTY TO DO WITH AS HE WILL. THIS IS
28 COMMUNITY PROPERTY NOW THAT THE TRUST HAS BEEN REVOKED.

1 AND WHAT WE'RE TOLD IS DON'T ISSUE A 1310(B) ORDER. THE
2 SALE WILL BE KILLED BECAUSE HE'S TAKING AN APPEAL SO DONALD
3 CAN LITIGATE FOREVER AGAINST THE NBA. THAT'S NOT VALID,
4 YOUR HONOR.

5 BY THE WAY, THERE WILL BE \$650 MILLION OF TAXES
6 WHETHER SHELLY SELLS THE TEAM OR THE NBA SELLS THE TEAM.
7 MONETARY LOSS, MC ELROY INCREASED TAXES.

8 FINALLY, YOUR HONOR, THE REQUEST FOR A STAY. THAT
9 WOULD DEFEAT THE WHOLE PURPOSE OF A 1310(B) ORDER. THE
10 LEGISLATURE GIVES YOU THE DISCRETION TO ENTER THE ORDER.
11 COUNSEL'S FREE -- THERE'S CASE LAW THAT SAYS THEY CAN BRING
12 A WRIT, BUT I WOULD URGE YOU NOT, YOUR HONOR, TO ISSUE A
13 STAY.

14 FINALLY, HOLLOW APPEALS GO BOTH WAYS. SHELLY
15 PREVAILS ON THE TWO SUBSTANTIVE ISSUES. LET'S ASSUME THE
16 COURT DOES NOT TURN A 1310(B) ORDER. THE SALE IS KILLED.
17 SHE TAKES AN APPEAL. IT'S OVER.

18 I RESPECTFULLY REQUEST, YOUR HONOR, THAT WE'VE
19 MADE AN OVERWHELMING SHOWING ON THE EVIDENCE, ON THE LAW
20 THAT YOU SHOULD ENTER THE 1310(B) ORDER AND NOT STAY THAT
21 ORDER.

22 THANK YOU VERY MUCH.

23 THE COURT: CAN I ASK COUNSEL WHO WAS ARGUING ON BEHALF
24 OF DONALD STERLING TO JUST GIVE ME YOUR THOUGHTS. YOU'VE
25 ASKED FOR A STAY. IS THERE ANY REASON YOU CANNOT RUN A
26 WRIT ON A 1310(B) ORDER OF THIS COURT WITHOUT A STAY?

27 MS. CUTLER: YOUR HONOR, WE'RE CONCERNED THAT THEY WILL
28 SELL THE TEAM TODAY IF -- THE MOMENT THAT THE ACTUAL ORDER

1 OF THIS COURT IS SIGNED. AND SO THERE WILL BE ACTUALLY NO
2 ABILITY TO GO AND FILE THE WRIT.

3 THE COURT: YOU REALLY BELIEVE THAT IF THEY ENTERED A
4 CONTRACT CONDITIONAL UPON A 1310(B) FINDING AND OTHER
5 FINDINGS, INCLUDING THAT SHE HAD THE AUTHORITY TO BIND THIS
6 TRUST, THAT PENDING THE COURT'S REVIEW OF A WRIT, THEY
7 WOULD MOVE FORWARD WITH A SALE? I DON'T UNDERSTAND THAT.
8 WHY WOULD THEY DO THAT WHEN THE WHOLE PURPOSE OF THIS
9 PROCEEDING IS TO GET ASSURANCES?

10 THEY'RE NOT -- I DON'T KNOW WHAT THEY'RE GOING TO
11 DO, BUT THEY CERTAINLY AREN'T GOING TO DO SOMETHING PENDING
12 ANY KIND OF WRIT THAT YOU HAVE OR POTENTIAL. YOU CAN HAVE
13 THE COURT OF APPEAL LOOK AT IT. I JUST DON'T QUITE
14 UNDERSTAND THAT ARGUMENT.

15 MS. CUTLER: YOUR HONOR, IT'S ANOTHER PROTECTIVE
16 MEASUREMENT. IF YOU RULE AGAINST MR. STERLING ON ALL OF
17 THE GROUNDS, AT THE VERY LEAST, AT THE VERY LEAST, A VERY
18 SHORT LIMITED PERIOD OF TIME SHOULDN'T MAKE THAT BIG OF A
19 DIFFERENCE. AND IF YOUR HONOR IS SAYING THAT THEY WOULDN'T
20 DO ANYTHING ANYWAY UNTIL A WRIT IS FILED --

21 THE COURT: I'M SORRY. I'M SORRY. IT WOULD NOT BE
22 PRUDENT TO COME FROM WHERE THEY COME FROM TO PROCEED WITH
23 SOMETHING UNTIL THE FINAL ORDER OF THIS COURT. THIS ORDER
24 WOULD BE A TENTATIVE ORDER. I'VE ALREADY SAID THAT I'M
25 GOING TO BE GIVING AN ORAL TENTATIVE. SOMEONE'S GOING TO
26 PREPARE A STATEMENT OF DECISION CONSISTENT WITH THAT.

27 ASSUMING IT WAS AGAINST YOUR CLIENT IN ALL
28 RESPECTS, YOU THINK THEY WOULD MOVE FORWARD WITHOUT THAT

1 ORDER BEING FINAL WITHOUT EVEN GETTING A FINAL ORDER OR
2 JUDGMENT WHICH WON'T BE FINAL UNTIL WE REVIEW YOUR
3 OBJECTIONS TO THAT STATEMENT OF DECISION AND ADOPT A
4 STATEMENT OF DECISION AS AN ORDER OR JUDGMENT OF THE COURT?

5 MS. CUTLER: I UNDERSTAND, YOUR HONOR.

6 THE COURT: ALL RIGHT. THANK YOU.

7 ALL RIGHT. AND SO I WANT TO THANK ALL THE LAWYERS
8 AGAIN. THIS HAS GOT SOME REALLY INTERESTING ISSUES. AND
9 THERE ARE -- BECAUSE THEY'RE INTERESTING ISSUES, THERE ARE
10 A LOT OF GOOD ARGUMENTS THAT HAVE BEEN GIVEN TO THE COURT
11 ON ALL OF THESE ISSUES. AND I'M GOING TO START BY WORKING
12 THROUGH SOME FINDINGS REGARDING CREDIBILITY. AS I SAID
13 BEFORE, I'M GOING TO GIVE AN ORAL TENTATIVE STATEMENT OF
14 DECISION, AND THAT'S WHAT THE NEXT HOUR OR SO IS GOING TO
15 TAKE UP. SO IF THERE'S NOTHING ELSE, I'LL BEGIN; OKAY.

16 FIRST OF ALL, IN TERMS OF THE FINDINGS REGARDING
17 CREDIBILITY AND COMMENTS ABOUT MY ANALYSIS OF THE LEGAL
18 ISSUES, I'LL START WITH ON DECEMBER 13, 2013, DONALD AND
19 ROCHELLE STERLING EACH SIGNED THE STERLING FAMILY TRUST
20 AGREEMENT WHICH WAS RECEIVED IN EVIDENCE AS EXHIBIT 42.
21 THE TRUST ESTABLISHED THAT BOTH DONALD AND ROCHELLE WOULD
22 BE ACTING AS CO-TRUSTEES.

23 THE LAW IN SPECIFICALLY PROBATE CODE SECTION
24 810(A) STATES THAT EVERY PERSON IS PRESUMED TO HAVE
25 CAPACITY, AND THERE HAS BEEN NO EVIDENCE PRESENTED THAT
26 DONALD STERLING LACKED CAPACITY WHEN HE SIGNED THE TRUST IN
27 DECEMBER OF 2013.

28 SECTION 7.5.C OF THE TRUST DEALS WITH THE REMOVAL

1 OF AN INDIVIDUAL DUE TO INCAPACITY, AND SECTION 10.24 OF
2 THE TRUST DEALS WITH A SECTION WHERE A PERSON, MEANING A
3 TRUSTEE, IS DEEMED INCAPACITATED AND NO LONGER THEN IS
4 ACTING AS A TRUSTEE.

5 SPECIFICALLY PARAGRAPH 10.24 WHICH IS ENTITLED,
6 "INCAPACITY" SETS OUT THREE WAYS A TRUSTEE CAN BE
7 DETERMINED TO BE INCAPACITATED AND REMOVED:

8 "A, CERTIFICATION BY THE INDIVIDUAL'S
9 REGULAR TREATING PHYSICIAN;

10 "B, TWO REPORTS FROM LICENSED PHYSICIANS
11 WHO REGULARLY PRACTICE IN AREAS INVOLVING
12 CAPACITY OR;

13 "C, ESSENTIALLY AN ORDER OF THE COURT THAT
14 THE INDIVIDUAL IS INCAPACITATED."

15 THE COURT DOES NOT FIND ANY CREDIBLE OR COMPELLING
16 EVIDENCE OF A SECRET PLAN B. AS STATED ABOVE, THE ALLEGED
17 SECRET PLAN B IS SECTION 10.24(B) OF THE TRUST WHICH
18 CLEARLY SETS FORTH IN THE TRUST SIGNED BY DONALD STERLING
19 ON DECEMBER -- IN DECEMBER 2013 THAT OPTION. IT CLEARLY IS
20 NOT A SECRET OPTION AND IT'S NOT A SECRET TO DONALD
21 STERLING.

22 THE COURT FINDS CREDIBLE AND COMPELLING,
23 ROCHELLE'S TESTIMONY THAT OVER A PERIOD OF ABOUT TWO TO
24 THREE YEARS, SHE NOTICED THAT DONALD'S BEHAVIOR WAS
25 CHANGING, BECOMING FORGETFUL, SLURRING WORDS AND GETTING
26 AGITATED FOR NO REASON. THE COURT BELIEVES THAT SHE,
27 DURING THAT TIME AND AT ALL TIMES UP UNTIL MAY 29, WAS
28 LEGITIMATELY CONCERNED ABOUT DONALD STERLING'S WELL-BEING.

1 ROCHELLE'S CONCERNS WERE SIGNIFICANTLY INCREASED
2 WHEN SHE SAW THE ANDERSON COOPER INTERVIEWS ON OR ABOUT
3 MAY 12. THEREAFTER, FRIENDS CALLED HER, URGED HER TO GET
4 DONALD EXAMINED, AND THE COURT FINDS THAT ROCHELLE'S
5 MOTIVATIONS IN SETTING UP THE TESTING AND THE EVALUATIONS
6 BOTH BY PLATZER AND SPAR WERE MOTIVATED SOLELY BY HER
7 CONCERNS FOR HIS WELL-BEING.

8 THE COURT SHOULD NOTE AND DOES NOTE THAT DESPITE
9 ROCHELLE AND DONALD BEING SEPARATED, ROCHELLE WAS
10 EXTENSIVELY INVOLVED IN HIS CARE, INCLUDING SETTING UP
11 MEDICAL APPOINTMENTS, GETTING MEDICATIONS AND COORDINATING
12 HIS CAREGIVERS AT HIS HOME.

13 THE COURT NOTES THAT BOTH DONALD AND ROCHELLE
14 PROFESSING STRONG AFFECTIONS FOR THE OTHER ON THE WITNESS
15 STAND, AND THE COURT FOUND THAT TO BE GENUINE IN SPITE OF
16 ONE EMOTIONAL COMMENT MADE BY MR. STERLING DURING THE
17 TRIAL.

18 THE COURT FINDS THAT ROCHELLE ACTED APPROPRIATELY
19 IN SEEKING OUT DR. PLATZER AND DR. SPAR, BOTH RECOGNIZED
20 AND RESPECTED EXPERTS IN THE FIELD OF CAPACITY BASED ON HER
21 CONCERNS FOR DONALD.

22 THE COURT ALSO FINDS THAT SHE APPROPRIATELY SOUGHT
23 OUT RECOMMENDATIONS, INCLUDING THROUGH HER ATTORNEY, FOR
24 SOMEONE TO GIVE A SECOND OPINION ON THE FIRST DIAGNOSIS BY
25 DR. PLATZER, A SERIOUS DIAGNOSIS REGARDING ALZHEIMER'S.

26 THE COURT FINDS THE WEIGHT OF THE CREDIBLE
27 EVIDENCE AND COMPELLING EVIDENCE IS THAT ROCHELLE SET THESE
28 APPOINTMENTS BASED SOLELY ON HER CONCERN FOR DONALD AND NOT

1 AS A SECRET PLAN TO REMOVE HIM AS A TRUSTEE OF THE TRUST.

2 IN THIS REGARD, DR. PLATZER TESTIFIED SHE DID NOT
3 KNOW OF THE PLAN TO REMOVE DONALD AS A TRUSTEE. DR. SPAR
4 TESTIFIED HE WAS ADVISED BUT DID NOT TELL ROCHELLE, AND THE
5 COMPELLING EVIDENCE IS THAT SHE FIRST WAS ADVISED BY HER
6 ATTORNEYS ABOUT THAT SECTION -- THOSE SECTIONS OF THE TRUST
7 WHEN DONALD ABRUPTLY CHANGED HIS MIND AND REFUSED TO SIGN
8 THE BINDING TERM SHEET ON MAY 29.

9 THE COURT FINDS THAT UP UNTIL THAT TIME, SHE HAD A
10 GOOD FAITH REASONABLE BELIEF AND HAD BEEN AUTHORIZED BY
11 DONALD TO SELL THE CLIPPERS AND SPECIFICALLY HE APPROVED OF
12 THE DEAL. SHE NEGOTIATED WITH BALLMER. SHE REASONABLY
13 EXPECTED HE WOULD SIGN THE AGREEMENT. THERE'S NO NEED FOR
14 HER TO FOCUS ON A DIFFERENT PLAN.

15 DONALD WILLINGLY PARTICIPATED IN THE EVALUATIONS
16 BY BOTH DR. SPAR AND DR. PLATZER. HE TESTIFIED: I AGREED
17 TO BE EXAMINED BY DR. PLATZER AND DR. SPAR. THERE'S NO
18 CREDIBLE OR COMPELLING EVIDENCE THAT DONALD WAS DISTRACTED
19 OR UNDER STRESS DURING THE EVALUATIONS BY DR. PLATZER OR
20 DR. SPAR AS SUGGESTED BY DR. CUMMINGS.

21 DR. CUMMINGS HAD NO FACTS THAT SUPPORTED HIS
22 OPINION OUTSIDE OF THE FACT THAT HE WAS ADVISED THEY WERE
23 SEPARATED. AND TO THE CONTRARY -- OR CONTRARY TO
24 DR. CUMMINGS' TESTIMONY, DR. PLATZER AND DR. SPAR DESCRIBED
25 HIM AS COMFORTABLE AND COOPERATIVE AND THAT HE ASKED
26 ROCHELLE TO REMAIN AT EACH OF THESE EXAMINATION.

27 NO CREDIBLE EVIDENCE PRESENTED THAT DR. PLATZER
28 CONTINUED HER EVALUATION OF DONALD AT THE POLO LOUNGE OR

1 THAT DR. PLATZER WAS INTOXICATED. DR. PLATZER AND ROCHELLE
2 STERLING WERE CREDIBLE, AND THE COURT FINDS THAT DONALD'S
3 TESTIMONY THAT DR. PLATZER SAID "CAN WE FINISH THE
4 EVALUATION AT THE POLO LOUNGE AFTER DRINKS," UNQUOTE, TO BE
5 NOT CREDIBLE.

6 THE COURT DOES NOTE THAT IN GENERAL, ROCHELLE
7 STERLING'S TESTIMONY WAS FAR AWAY MORE CREDIBLE THAN
8 DONALD'S. DONALD'S ANSWERS WERE OFTEN EVASIVE AND IN ONE
9 INSTANCE INCONSISTENT WITH HIS PREVIOUS SWORN TESTIMONY ON
10 THE RECORD CITING THE TRIAL TRANSCRIPT WHICH IS MARKED AS
11 EXHIBIT 31.

12 IN ADDITION, THERE WERE WILD FLUCTUATIONS IN THE
13 VALUE OR DAMAGE ESTIMATES THAT HE HAD NO EXPLANATION FOR.
14 FOR EXAMPLE, DONALD AGREED THAT -- TO THE BALLMER DEAL FOR
15 TWO BILLION IN MAY, LATE MAY 2014, YET WHEN HE TESTIFIED IN
16 JULY, HE VALUED THE TEAM AT TWO-AND-A-HALF TO FIVE BILLION
17 DOLLARS.

18 DONALD FILED HIS FEDERAL LAWSUIT AGAINST THE NBA
19 CITING DAMAGES OF ONE BILLION DOLLARS, YET A SHORT TIME
20 LATER IN TESTIMONY HE TESTIFIED HIS DAMAGES WERE NINE
21 BILLION. IN ADDITION, IT IS NOT -- IN ADDITION, IT IS NOT
22 SURPRISING OR UNUSUAL TO THE COURT THAT SHELLY WOULD WANT
23 TO TALK AFTER THE EVALUATION TO DR. PLATZER ABOUT HER
24 DIAGNOSIS OF ALZHEIMER'S. IT WOULD BE LOGICAL THAT ANYONE
25 HEARING THAT WOULD WANT TO ASK THE EXPERT AS TO WHAT DOES
26 THAT MEAN, WHAT'S IT LOOK LIKE GOING FORWARD, ESPECIALLY
27 WHEN SHE'S INVOLVED IN HIS LIFE TO THE EXTENT THAT SHE WAS.

28 FINALLY, THE COURT READS NOTHING SINISTER INTO

1 ROCHELLE'S CONDUCT WHEN DONALD AND HIS LAWYER, MR. SIMINI,
2 ARRIVED AT THE POLO LOUNGE LATER AFTER THE EXAMINATION
3 TERMINATED.

4 THE COURT HAS PREVIOUSLY RULED ON THE ALLEGED
5 HIPAA VIOLATIONS AND RULED THAT THERE'S NO EXCLUSION REMEDY
6 OR REMEDY FOR CMIA VIOLATIONS IN THIS ACTION.

7 THE COURT DOES FIND THE SECTION 7.5.C OF THE TRUST
8 INCLUDES A BROAD MEDICAL PRIVILEGE WAIVER REGARDING THE
9 ISSUES OF CAPACITY OF A TRUSTEE INCLUDING HIPAA WAIVERS.
10 THE COURT NOTES THAT WITHOUT THIS WAIVER, A NUMBER OF THE
11 PROVISIONS OF THAT TRUST OF -- A NUMBER OF THE PROVISIONS
12 OF 10.24 WOULD BE MEANINGLESS.

13 IN REACTION, IN PART, TO -- I'M SORRY. IN
14 REACTION, IN PART, TO DONALD'S ANDERSON COOPER INTERVIEW ON
15 MAY 18, 2014, THE NBA REPORTED THAT THEY WOULD VOTE TO TAKE
16 THE CLIPPERS FROM DONALD AT THE JUNE 3, 2014 MEETING.

17 THE COURT FINDS CREDIBLE THAT THIS REPORT CAUSED
18 DONALD GREAT CONCERN AND HE WAS INSISTENT THAT THE TEAM BE
19 SOLD BEFORE THAT MEETING TELLING SHELLY: WE NEED TO SELL
20 THE TEAM BEFORE THIS OCCURS.

21 SHELLY TESTIFIED THAT DONALD TOLD HER THAT HE KNEW
22 THEY WOULD VOTE HIM OUT. SHELLY TESTIFIED THAT SHE WAS
23 CHOSEN AND AUTHORIZED TO SELL THE TEAM ON MAY 22. THE
24 LETTER SIGNED BY DONALD, EXHIBIT 14, CONFIRMS THAT SHE WAS
25 GIVEN FULL AUTHORITY TO NEGOTIATE THE SALE OF THE TEAM WITH
26 THE NBA.

27 SHELLY TESTIFIED THAT SHE WAS PRESENT WHEN DONALD
28 SIGNED THE MAY 22, 2014 LETTER AND SHE TESTIFIED I

1 ABSOLUTELY HAD AUTHORITY TO SELL THE TEAM. I WAS TO DO THE
2 BIDDING AND THE SALE BEFORE THE JUNE 3, 2014 NBA MEETING.

3 SHELLEY WAS CREDIBLE WHEN SHE TESTIFIED THAT DONALD
4 TOLD HER THAT HE WANTED HER TO BE HAPPY AND TO GET
5 OWNERSHIP OR PERKS IF SHE COULD. THE COURT FINDS SHELLEY'S
6 TESTIMONY CREDIBLE THAT DONALD TOLD HER, QUOTE: "HONEY, I
7 WANT YOU TO GET WHATEVER YOU CAN GET TO MAKE YOU HAPPY."
8 THEREAFTER, ROCHELLE RETAINED VALUATION EXPERTS, UNDERTOOK
9 A SEARCH FOR BUYERS AND CONDUCTED THE AUCTION WHICH
10 PRODUCED BIDS OF 1.2 BILLION, 1.6 BILLION AND TWO BILLION.

11 ROCHELLE TESTIFIED THAT SHE SPOKE WITH DONALD
12 DAILY DURING THE BID PROCESS AND AT ALL TIMES HE CONTINUED
13 TO ENCOURAGE THE SALE. SHE TESTIFIED SHE DISCUSSED THE
14 TWO-BILLION-DOLLAR OFFER FROM BALLMER, AND DONALD WAS HAPPY
15 SAYING, "YOU REALLY MADE A GOOD DEAL."

16 THERE'S NO CREDIBLE EVIDENCE THAT DONALD REMOVED
17 HIS CONSENT TO THE SALE UNTIL MAY 29, 2014. UP TO THAT
18 DATE, AS THE COURT HAS FOUND, SHE'S HAD EVERY GOOD REASON
19 TO BELIEVE HE HAD AUTHORIZED THE SALE OF THE TEAM AND
20 DONALD WAS HAPPY WITH THE TWO-BILLION-DOLLAR OFFER AND THAT
21 HE WOULD SIGN.

22 ON MARCH 28, 2014, ROCHELLE CALLED DONALD TO
23 COORDINATE TO GET HIS SIGNATURE. HE SAID HE DIDN'T FEEL
24 WELL. THE NEXT DAY SHE CALLED AGAIN AND HE BECAME HOSTILE
25 AND REFUSED TO SIGN.

26 ON MAY 29, 2014, AFTER DONALD UNEXPECTEDLY REFUSED
27 TO THE SIGN THE BTS, IN CONSULTATION WITH HER LAWYER,
28 DONALD WAS BEING NO LONGER A TRUSTEE PER THE SECTION 7.5.C

1 AND 10.24.D OF THE TRUST, AND SHE SIGNED THE BINDING TERM
2 SHEET WITH BALLMER TO SELL THE CLIPPERS.

3 THE COURT FINDS THAT DONALD'S CHANGE OF HEART WAS
4 NOT BECAUSE THE TWO-BILLION-DOLLAR OFFER WAS NOT IN THE
5 BEST INTEREST OF THE TRUST. THE COURT FINDS NO CREDIBLE
6 EVIDENCE TO SUPPORT THE ARGUMENT THAT DONALD WAS DEFRAUDED,
7 SUBJECTED TO UNDUE INFLUENCE OR THAT ROCHELLE PROCEEDED
8 WITH UNCLEAN HANDS IN OBTAINING THE PSYCHOLOGICAL
9 PSYCHIATRIC EVALUATIONS.

10 AND EVEN IF IT WAS TRUE, WHICH THE COURT DOES NOT
11 FIND, THE COURT DOES NOT BELIEVE THAT IS GOING -- WOULD
12 CAUSE THE COURT TO STRIKE THE REPORTS PREPARED BY THE
13 EXPERTS.

14 AND AS DISCUSSED EARLIER, THERE IS NO SECRET
15 PLAN B. IT WAS A CLEAR OPTION, OPTION B. WHEN DONALD
16 SIGNED THE TRUST, DONALD TESTIFIED THAT HE HAD BEEN -- HE
17 HAD BEEN REMINDED OF THE -- OF 1310(B). HE WOULD HAVE
18 COOPERATED WITH THE EXAMINATIONS ANYWAY. DONALD WAS
19 MANDATED TO COOPERATE WITH THE EXAMINATIONS REGARDING HIS
20 CAPACITY IN 7.5.C OF THE TRUST. DONALD VOLUNTARILY
21 PARTICIPATED IN BOTH EVALUATIONS. THERE IS NO REQUIREMENT
22 THAT HE BE ADVISED ABOUT THE PURPOSE OF AN EXAMINATION.

23 THERE'S NO CREDIBLE EVIDENCE PRESENTED BY
24 DR. CUMMINGS THAT THERE IS SOME PROFESSIONAL DUTY OR
25 ETHICAL REQUIREMENT THAT THE -- THAT EITHER DOCTOR NEEDED
26 TO ADVISE DONALD OR THAT, IN GENERAL, A DOCTOR MUST ADVISE
27 A PATIENT ABOUT POSSIBLE LEGAL CONSEQUENCES OF AN
28 EXAMINATION. AND, IN FACT, CREDIBLE EVIDENCE IS THAT SUCH

1 WARNING WOULD MAKE SOMEONE TENSE AND COULD CAUSE NEGATIVE
2 EFFECTS ON THE RESULTS.

3 THE CREDIBLE EVIDENCE PRESENTED BY DR. PLATZER AND
4 DR. SPAR IS THAT YOU CANNOT PREPARE FOR THIS TYPE OF A
5 NEUROLOGICAL EVALUATION.

6 THE COURT CONCLUDES THAT DONALD CANNOT COMPLAIN
7 ABOUT BEING DEFRAUDED BY SHELLY TO DO SOMETHING THAT DONALD
8 WAS LEGALLY OBLIGATED TO DO ANYWAY, AND THAT IS TO
9 PARTICIPATE IN THE EVALUATIONS.

10 THE COURT DOES NOT FIND THE CONTRACT WAS ENTERED
11 INTO WITH ROCHELLE -- OR I'M SORRY -- THAT THE CONTRACT
12 ENTERED INTO WITH BALLMER PROVIDED ROCHELLE WITH AN UNFAIR
13 ADVANTAGE. IT'S CLEAR THAT THE AMOUNT OF MONEY GOING TO
14 CHARITY WILL ONLY GO IF DONALD AGREED, AND THAT THE PERKS
15 IN THE CONTRACT WERE ASSIGNED TO THE TRUST.

16 THE COURT DOES NOT FIND ANY DIRECT OR COMPELLING
17 EVIDENCE OF A PATTERN OF UNCLEAN HANDS BY ROCHELLE. THAT
18 WOULD BAR THE RECEIPT AND CAUSE THE COURT TO STRIKE THE
19 EVALUATIONS BY DR. SPAR AND DR. PLATZER.

20 BASED ON THAT EVIDENCE RELATING TO THE FIRST ISSUE
21 WHETHER DONALD STERLING WAS PROPERLY DEEMED NO LONGER A
22 CO-TRUSTEE PURSUANT TO THE TERMS OF THE TRUST, THE COURT
23 FINDS THAT HAS BEEN SHOWN, AND THE COURT FINDS THAT
24 ROCHELLE WAS ACTING AS A SOLE TRUSTEE WHEN SHE ENTERED THE
25 BINDING TERM SHEET, BTS, ON MAY 29, 2014.

26 THE SECOND QUESTION THAT HAS BEEN POSED IS WHETHER
27 OR NOT THIS COURT AND SHELLY HAS THE AUTHORITY TO PROCEED
28 WITH THE 17200 PETITION AFTER A SETTLOR REVOKES THE TRUST.

1 OR ASKED IN ANOTHER WAY: DOES THE TRUSTEE RETAIN POWER TO
2 PROCEED WITH THE 17200 PETITION ASKING THE COURT TO CONFIRM
3 A CONDITION IN A CONTRACT HAS BEEN MET WHEN THE CONTRACT IS
4 VALIDLY ENTERED INTO BY THE TRUSTEE BEFORE REVOCATION BY
5 THE SETTLOR.

6 THERE'S BEEN MUCH ARGUMENT TODAY ABOUT ALL THE
7 CASES THAT ARE LINED UP ON THIS ISSUE, AND I'LL HAVE TO SAY
8 THAT ALTHOUGH I THINK THE LEGAL ARGUMENT IS MORE COMPELLING
9 FROM SHELLY'S -- ROCHELLE'S POINT OF VIEW. IN CITING
10 MYRICK AND BOTSFORD, THERE IS NO CASE LAW THAT IS DIRECTLY
11 ON POINT TO ANSWER THIS QUESTION.

12 IN LIGHT OF THAT, THE COURT, AND WITHOUT ANY
13 DIRECT AND -- WITHOUT ANY CASE THAT IS ON ALL POINTS AND
14 ALL -- IS SIMILAR IN ALL RESPECTS TO OUR FACTS, THE COURT
15 NEEDS TO GO TO THE LANGUAGE OF THE PROBATE CODE, AND THE
16 COURT IS COMPELLED BY SECTION 15407(B) WHICH STATES:

17 "ON TERMINATION OF THE TRUST, THE TRUSTEE
18 CONTINUES TO HAVE THE POWER REASONABLY NECESSARY
19 UNDER THE CIRCUMSTANCES, REASONABLY NECESSARY
20 UNDER THE CIRCUMSTANCES TO WIND UP THE AFFAIRS
21 OF THE TRUST."

22 AND THAT'S WHERE I'M GOING TO GROUND MY ARGUMENT
23 THAT I BELIEVE THE COURT DOES RETAIN JURISDICTION TO HANDLE
24 THIS 17200; THAT SECTION 15407(B) DOES NOT STATE THAT THE
25 LANGUAGE ONLY APPLIES TO IRREVOCABLE TRUSTS AS HAS BEEN
26 ARGUED BY DONALD STERLING LAWYERS. THEREFORE, I INTERPRET
27 THAT THIS SECTION APPLIES TO BOTH REVOCABLE TRUSTS AND
28 IRREVOCABLE TRUSTS.

1 THE COURT BELIEVES THAT THIS CODE SECTION PROVIDES
2 THIS COURT WITH SIGNIFICANT LEEWAY TO DETERMINE WHEN AN
3 ACTION IS REASONABLY NEGLIGENCE FOR A TRUSTEE IN WINDING
4 DOWN THE AFFAIRS OF THE TRUST.

5 THIS 17200 IS, IN THIS COURT'S OPINION, REASONABLY
6 NECESSARY UNDER THE CIRCUMSTANCES AS IT IS INTERPRETING A
7 CONDITION IN A CONTRACT ENTERED INTO BY THE TRUSTEE BEFORE
8 REVOCATION BY THE SETTLOR. AND THE ISSUE PRESENTED IS
9 ESSENTIALLY HOW THE TRUSTEE IS TO DISTRIBUTE THE ASSETS OF
10 THE TRUST. HERE THE TRUSTEE EITHER DISTRIBUTES IN CASH, IF
11 THE SALE IS APPROVED, OR IN -- THE STOCK IS DISTRIBUTED IN
12 KIND TO DONALD AND SHELLY.

13 IT PRESENTS SIGNIFICANT QUESTIONS REGARDING WHAT
14 THE APPROPRIATE DISTRIBUTION IS WHICH ARE TRADITIONAL ACTS
15 OF A TRUSTEE IN POST-REVOCATION ACTIONS.

16 IN THIS CASE, THE TRUSTEE ESSENTIALLY IS FACED
17 WITH TWO OPTIONS: CONFIRM THE SALE TO BALLMER AND
18 DISTRIBUTE THE MONEY IN CASH OR DISTRIBUTE THE SHARES TO
19 DONALD AND SHELLY OUT OF THE TRUST WHICH ACT WILL THREATEN
20 MAJOR LOSS TO THE TRUST AS THE NBA COULD SEIZE AND
21 TERMINATE THE TEAM AS AN NBA FRANCHISE IF SHE UNDERTOOK
22 THAT DISTRIBUTION BECAUSE THAT IS WHAT THE NBA CONTRACT AND
23 RULES ARE.

24 FINALLY, AS TO THE ARGUMENT THAT ROCHELLE DID NOT
25 HAVE AUTHORITY TO TRANSFER THE SHARES OF THE CORPORATION,
26 THE BTS CLEARLY STATES THAT SHELLY WAS THE CHAIRMAN OF THE
27 BOARD OF L.A. BASKETBALL CLUB, INC., ON MAY 29, 2014, THE
28 DAY SHE ENTERED INTO THE CONTRACT AND BEFORE ANY TRANSFER

1 TO RICHARD PARSONS, WHICH I UNDERSTAND WAS DONE ON MAY 30.
2 SO SHE CLEARLY HAD THE AUTHORITY TO ENGAGE IN THIS CONTRACT
3 AND TRANSFER THE SHARES OF THE LAC BASKETBALL CLUB, INC.,
4 WHICH WERE -- WHICH WERE IN THE TRUST AT THAT TIME.

5 DONALD CONCEDES THAT AT THE TIME THE BTS WAS
6 EXECUTED PRIOR TO HIS REVOCATION, 100 PERCENT OF THE STOCK
7 IN LAC BASKETBALL CLUB, INC., WAS OWNED BY THE STERLING
8 FAMILY TRUST. AND THAT'S IN DONALD'S BRIEF, PAGE 1,
9 FOOTNOTE 1, THEREFORE UNDISPUTED THAT AS OF THE DATE SHE
10 ENTERED INTO THE CONTRACT, THE TRUST OWNED 100 PERCENT OF
11 LAC BASKETBALL, CLUB, INC., WHICH IN TURN OWNS THE
12 CLIPPERS.

13 SO THE ANSWER TO NO. 2 IS I BELIEVE THAT THE COURT
14 DOES HAVE THE AUTHORITY TO RULE ON THE 17200, AND I ALSO
15 BELIEVE THAT IT'S APPROPRIATE FOR THE TRUSTEE TO BRING THIS
16 MATTER TO THE COURT AND STILL HAVE THE POWERS OF THE
17 TRUSTEE IN WINDING DOWN THE AFFAIRS TO HAVE THE COURT
18 RESOLVE THIS ISSUE.

19 THE LAST ISSUE BEFORE THE COURT IS PROBABLY THE
20 MOST DIFFICULT TO DECIDE, AND THAT IS WHETHER OR NOT THE
21 COURT SHOULD PROVIDE 1310(B) PROTECTION UNDER THE FACTS OF
22 THIS CASE.

23 AND AS HAS BEEN ARGUED BY COUNSEL, AN APPEAL
24 ORDINARILY STAYS THE OPERATION AND EFFECT OR JUDGMENT
25 ORDER. HOWEVER, THE COURT DOES HAVE THE CODE SECTION. IT
26 IS PART OF THE PROBATE CODE. 1310(B) PROVIDES THIS COURT
27 HAS DISCRETION TO DIRECT A TRUSTEE TO TAKE ACTIONS AS IF NO
28 APPEAL WERE PENDING FOR THE PURPOSES OF PREVENTING INJURY

1 OR LOSS TO A PERSON OR PROPERTY IN AN ESTATE OR TRUST.

2 DONALD IN HIS WRITTEN -- HAD PROVIDE POINTS AND
3 AUTHORITIES AND ARGUED THAT SECTION 1310(B) CAN ONLY BE
4 APPLIED IN A LIMITED CLASS OF CASES WHERE THERE'S A SHOWING
5 THAT A STAY OF APPEAL HAS A DIRECT EFFECT ON LIFE OR DEATH
6 DECISIONS, AND THAT'S IN DONALD STERLING POST-TRIAL BRIEF
7 PAGE 62, LINES 12 THROUGH 13.

8 I DON'T BELIEVE THAT'S THE LAW. AND AS CITED BY
9 BOTH SIDES, THERE IS A CASE, IN RE THE CONSERVATORSHIP OF
10 MC ELROY, 104 CAL.APP.4TH, AND IT WAS, IN FACT, CITED BY
11 DONALD, WHERE A TRIAL COURT WAS UPHELD ON APPEAL AFTER
12 APPLYING THE PROTECTIONS OF 1310(B) TO AVOID A POTENTIAL
13 PECUNIARY LOSS TO A CONSERVATEE'S ESTATE. THE COURT OF
14 APPEAL FOUND THAT THE TRIAL COURT DID NOT ABUSE ITS
15 DISCRETION IN DETERMINING THAT IMMEDIATE ACTION WAS
16 NECESSARY TO AVOID TAX LIABILITIES THE ESTATE WOULD
17 UNNECESSARILY INCUR UPON THE DEATH OF THE CONSERVATEE
18 BEFORE THE ACTION WAS TAKEN.

19 THE COURT OF APPEALS IN MC ELROY FOUND NO ABUSE OF
20 DISCRETION WHERE THE APPLICATION OF 1310(B) SERVED ONLY TO
21 PREVENT FINANCIAL HARM TO THE ESTATE OF THE CONSERVATEE AND
22 NOT TO THE CONSERVATEE HIMSELF. IN FACT, EVEN TRIGGERING
23 SUBSTANTIAL TAX LIABILITY TO THE ESTATE WOULD HAVE BEEN THE
24 DEATH OF THE CONSERVATEE. ACCORDINGLY, 1310(B) CANNOT BE
25 SAID TO APPLY ONLY IN CASES OF LIFE AND DEATH OR DEATH
26 DECISIONS AS ARGUED BY DONALD STERLING.

27 IN ADDITION, THE COURT DOES NOT FIND THAT THE
28 1310(B) STATUTE IS EITHER UNCLEAR OR AMBIGUOUS AS ARGUED BY

1 MR. STERLING.

2 IN DECIDING THIS ISSUE, THE COURT NEEDS TO FIRST
3 DISCUSS THE EVIDENCE THAT'S BEEN PRODUCED REGARDING
4 VALUATION AND DAMAGES. THE COURT FOUND THAT RICHARD
5 PARSONS, THE INTERIM CEO OF THE CLIPPERS, AND ANWAR
6 ZAKKOUR, THE VALUATION EXPERTS FOR THE BANK OF AMERICA,
7 WERE EXCEPTIONALLY QUALIFIED AND VERY COMPELLING AND
8 PRODUCED VERY COMPELLING EVIDENCE OF THE VALUATION OF THE
9 CLIPPERS AND ON DAMAGES TO THE CLIPPERS IF THE SALE DID NOT
10 GO THROUGH, THE BALLMER SALE.

11 ON THE OTHER HAND, THE COURT FINDS THAT THE EXPERT
12 TESTIMONY PRESENTED ON THE SAME ISSUES TO BE NOT CREDIBLE.
13 IN THAT REGARD, THIS IS THE TESTIMONY OF DEAN BONHAM. THE
14 COURT FOUND HIS TRAINING AND EXPERIENCE TOTALLY LACKING
15 INCLUDING NO HIGH SCHOOL DIPLOMA, NO COLLEGE DEGREE, NO
16 FORMAL TRAINING IN ACCOUNTING FOR VALUATION OF BUSINESSES.
17 HE WAS UNABLE TO RECALL IF HE EVER TESTIFIED AS A VALUATION
18 EXPERT IN A COURT BEFORE, AND HIS BLATANT MISREPRESENTATION
19 OF HIS EXPERTISE WAS REMARKABLE TO THE COURT.

20 HE TESTIFIED ON DIRECT THAT HE WAS THE PRESIDENT
21 OF THE DENVER NUGGETS IN 1990 WHEN IT WAS CLEAR ON
22 CROSS-EXAMINATION THAT WAS AN INTENTIONAL MISREPRESENTATION
23 WHERE AT WHICH TIME HE CONCEDED THAT HE WAS ONLY PRESIDENT
24 OF MARKETING AND SALES FOR THE DENVER NUGGETS.

25 WHEN HE WAS ASKED WHAT FACTS HE RELIED ON IN
26 FORMING HIS OPINION, HE SAID, "I CAN'T GIVE YOU A FACTUAL
27 BASIS" AND THAT HE HAD NOT DONE ANY VALUATIONS FOR THE
28 CLIPPERS. HE INDICATED HE WAS TESTIFYING JUST BASED ON HIS

1 EXPERIENCE.

2 SO MR. BONHAM'S TESTIMONY THE CLIPPERS WOULD FETCH
3 TWO BILLION DOLLARS OR MORE AT AN NBA AUCTION, IN THE
4 COURT'S OPINION, WAS TOTAL SPECULATION AND NOT GROUNDED IN
5 ANY TRAINING OR EXPERTISE, AND THE COURT GIVES IT NO
6 WEIGHT.

7 THE COURT FOUND CREDIBLE AND COMPELLING THE
8 TESTIMONY OF MR. ZAKKOUR THAT THE AUCTION PROCESS
9 UNDERTAKEN BY ROCHELLE IN OBTAINING THE TWO-BILLION-DOLLAR
10 BALLMER OFFER WAS, AS HE DESCRIBED IT, THE PERFECT STORM
11 AND IT PRODUCED HIGHER BIDS THAN ONE COULD EXPECT AT A
12 TYPICAL OR MORE PROLONGED AUCTION IN PART BECAUSE OF
13 TRANSPARENCY. HE TESTIFIED THAT THE BLIND, ONE-BID AUCTION
14 WORKED TO PRODUCE THE HIGHEST BIDS POSSIBLE.

15 BASED ON THE EVIDENCE PRESENTED, THE COURT NEEDS
16 TO DETERMINE WHETHER THAT EVIDENCE IS SUFFICIENT TO MAKE A
17 FINDING UNDER 1310(B) AND DECIDE WHETHER IT IS LIKELY THAT
18 WITHOUT -- IT THIS -- I'M SORRY -- IF THE APPEAL IS
19 APPROVED AND MR. BALLMER'S SALE GOES FORWARD, THIS TRUST IS
20 LIKELY TO SUFFER A MASSIVE LOSS IN VALUE, SUCH THE TYPE OF
21 LOSS THAT WOULD SUPPORT THIS TYPE OF AN ORDER.

22 THE COURT FINDS THAT IF THE COURT DOES NOT PROTECT
23 THE TWO-BILLION-DOLLAR OFFER WITH A 1310(B) FINDING, THREE
24 THINGS ARE LIKELY TO OCCUR:

25 ONE, THE CREDIBLE EVIDENCE IS THAT BALLMER PAID AN
26 AMAZING PRICE THAT CANNOT BE EXPLAINED BY A MARKET ANALYSIS
27 AND WAS SO FAR IN EXCESS OF THE COMPREHENSIVE BANK OF
28 AMERICA MARKET VALUATIONS, EXHIBIT 42 AND 43 THAT WERE DONE

1 BY MR. ZAKKOUR, THAT HE USED TERMS LIKE KNOCK-OUT, SLAM
2 DUNK, HOME RUN, AND NIRVANA.

3 MR. ZAKKOUR TESTIFIED THAT ANYONE RECEIVING THIS
4 PRICE WOULD BE EXCEEDINGLY ECSTATIC. HE TESTIFIED THAT THE
5 MOST RECENT SALE OF AN NBA TEAM, THE MILWAUKEE BUCKS LAST
6 YEAR, SOLD FOR FOUR TO FIVE TIMES REVENUES. THIS SALE IS
7 12 TIMES REVENUES. THAT IS THE HIGHEST REVENUE MULTIPLES
8 EVER OFFERED FOR A SPORTS TEAM.

9 THIS STUNNING OFFER BY MR. BALLMER WAS PREMISED
10 AND CONDITIONAL UPON CERTAINTY REGARDING OWNERSHIP AND
11 LITIGATION THAT 1310(B) PROVIDES.

12 MR. ZAKKOUR PRODUCED CREDIBLE EVIDENCE THAT THE
13 ONE-SHOT, BLIND BID AUCTION BY ROCHELLE CREATED THE HIGHEST
14 BIDS POSSIBLE WHICH WILL NOT BE DUPLICATED IN ANY OF -- IN
15 ANY OTHER ACTION GOING FORWARD SUCH AS THE NBA AUCTION. WE
16 KNOW FROM THE EVIDENCE PRESENTED THAT THE NEXT BEST OFFER
17 FOR THE CLIPPERS IS 1.6 BILLION. IF BALLMER'S OFFER FAILS
18 BECAUSE THE COURT DOES NOT PROVIDE 1310(B) PROTECTION, THE
19 TRUST WILL LOSE 400 MILLION DOLLARS IN VALUE. A MASSIVE
20 AND IMMINENT LOSS OF VALUE SUPPORTS THE COURT EXERCISE ITS
21 DISCRETION UNDER 1310(B).

22 BUT THEN YOU CAN SAY, OKAY, IF THE SALE DOESN'T GO
23 FORWARD AND THE NEXT BEST OFFER WE CAN EXPECT FROM ANYONE
24 IS 1.6 BILLION, WHAT ELSE DO WE HAVE LOOKING FORWARD? IF
25 THE BALLMER DEAL DIES, THE NBA IS SCHEDULED TO VOTE TO TAKE
26 THE TEAM FROM DONALD AND AUCTION IT OFF.

27 LET'S FIRST ASSUME THAT THREE QUARTERS OF THE
28 OWNERS VOTE TO TAKE THE TEAM FROM DONALD AND SELL IT AT

1 AUCTION. WE KNOW FROM ZAKKOUR THE NBA AUCTION WILL NOT
2 PRODUCE BIDS AS HIGH AS THE ROCHELLE AUCTION. MORE
3 IMPORTANTLY, ANY BIDDER THAT THE NBA AUCTION WILL BE BUYING
4 IT FROM, THE NBA IS A CURRENT DEFENDANT IN DONALD STERLING
5 FEDERAL AND NOW STATE LAWSUITS SO THERE IS TREMENDOUS
6 UNCERTAINTY ABOUT OWNERSHIP. ANY BIDDER IS FACED WITH A
7 RISK THAT A COURT MIGHT, IN THE FUTURE, SET ASIDE THE NBA
8 SALE AND RETURN OWNERSHIP BACK TO DONALD.

9 IN ADDITION, ANY BIDDER HAS THE UNCERTAINTY ABOUT
10 WHETHER THEY WOULD BE EMBROILED IN DONALD'S LAWSUITS
11 INVOLVING THE NBA AND THE COST ASSOCIATED WITH THAT.

12 MR. ZAKKOUR TESTIFIED THAT UNCERTAINTY IS THE
13 ENEMY OF VALUE, AND HUGE OWNERSHIP LITIGATION,
14 UNCERTAINTIES WOULD LOGICALLY CAUSE THE TEAM'S VALUE TO
15 DROP SUBSTANTIALLY AT AUCTION BY THE NBA. A MASSIVE RISK
16 TO THE VALUE OF THE CLIPPERS IS LIKELY.

17 GIVEN THE TESTIMONY OF PARSONS AND ZAKKOUR, THE
18 RISK OF HARM IS NOT SPECULATIVE.

19 NO. 3, LET'S ASSUME THAT THE NBA HAS THEIR VOTE
20 AND THE NBA OWNERS DO NOT -- THREE QUARTERS OF THEM DO NOT
21 VOTE TO TAKE THE TEAM FROM DONALD AND DONALD REMAINS THE
22 OWNER. MR. PARSONS, THE INTERIM CEO OF THE CLIPPERS, IS
23 CREDIBLE IN SPELLING OUT WHAT IS LIKELY TO HAPPEN. THE
24 TEAM WOULD EXPERIENCE A LOSS OF VALUE SPIRALED, AS HE
25 DESCRIBES IT, A DEATH SPIRAL. HE TESTIFIED THAT THE
26 NUMBER, FIVE OR SIX MAJOR SPONSORS, INCLUDING KIA, MANDALAY
27 BAY, HAVE TOLD HIM IF DONALD'S IN, WE'RE OUT. HE TESTIFIED
28 THAT THE WIDELY POPULAR FATHER FIGURE OF THE TEAM, COACH

1 DOC RIVERS, AND PLAYERS WOULD LIKELY DEFECT AND REFUSE TO
2 PLAY FOR DONALD. RESULTING DEFECTIONS OF SPONSORS, COACH,
3 PLAYERS WOULD AFFECT THE TICKET SALES, PROMOTIONS. THE
4 VALUE OF THE TEAM WOULD BE THE VICTIM OF THIS SPIRAL. THE
5 CLIPPERS WOULD SUFFER A MASSIVE LOSS OF VALUE IF IT
6 SURVIVED AT ALL.

7 GIVEN THE TESTIMONY OF PARSONS AND ZAKKOUR, THE
8 RISK OF HARM IS NOT SPECULATIVE.

9 SO UNDER ALL THESE SCENARIOS, THE CLIPPERS WOULD
10 SUFFER A MASSIVE LOSS OF VALUE. THE COURT FINDS, BASED
11 UPON ALL THE EVIDENCE AND ARGUMENTS PRESENTED, THE COURT
12 CLEARLY HAS THE DISCRETION TO ORDER AND DOES ORDER THE
13 PROTECTIONS OF 1310(B). THE COURT HEREBY INCORPORATES INTO
14 THIS TENTATIVE RULING THE ARGUMENT OF ROCHELLE'S COUNSEL,
15 PAGES 1 THROUGH 39 THROUGH LINE 15, PAGE 42 THROUGH 48
16 THROUGH LINE 8, AND ROCHELLE'S POST-TRIAL BRIEF FILED
17 7/24/2014.

18 A FEW ADDITIONAL COMMENTS, THE COURT DOES NOT FIND
19 ROCHELLE'S ESTOPPEL ARGUMENT COMPELLING. ROCHELLE DID NOT
20 CHANGE HER CONDUCT TO HER DETRIMENT IN ENTERING INTO THE
21 CONTRACT WITH BALLMER AS URGED -- AS AGREED TO BY DONALD.
22 THERE'S JUST NO DETRIMENTAL RELIANCE ON THAT.

23 ADDITIONALLY, THE COURT DOES NOT BASE ITS 1310(B)
24 FINDING ON BANK LOANS BEING CALLED DUE TO THE FACT THAT
25 THERE'S INSUFFICIENT EVIDENCE, UNLIKE THE TESTIMONY OF
26 PARSONS AND ZAKKOUR THAT THERE IS A LIKELY SUBSTANTIAL AND
27 MASSIVE HARM OF VALUE TO THE TEAM. BASED ON THAT, MOSTLY
28 IN PART BECAUSE THERE IS NO ACTION CURRENTLY BEING TAKEN BY

1 THE BANK TO CALL THOSE LOANS.

2 THE COURT IS ORDERING ROCHELLE STERLING TO PREPARE
3 THE PROPOSED STATEMENT OF DECISION CONSISTENT WITH THE
4 COURT'S TENTATIVE AND THE PORTIONS OF THE POST-TRIAL BRIEF
5 AS NOTED, AND SERVE AND FILE IT NO LATER THAN TOMORROW AT
6 4:00 O'CLOCK.

7 MR. O'DONNELL: THANK YOU VERY MUCH, YOUR HONOR.

8 MR. RUTTENBERG: THANK YOU, YOUR HONOR.

9 (AT 2:45 P.M. THE PROCEEDINGS WERE CONCLUDED.)

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