

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED  
CLERK**

6/12/2018 1:03 pm

MELISSA ZARDA,

Plaintiff,

v.

ALTITUDE EXPRESS, INC., et al.,

Defendants.

**U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE**

: 10-CV-04334 (JFB)

: May 21, 2018

: Central Islip, New York

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE  
BEFORE THE HONORABLE JOSEPH F. BIANCO  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: GREGORY S. ANTOLLINO, ESQ.  
375 Seventh Avenue, Suite 705  
New York, New York 10001

For the Defendants: SAUL D. ZABELL, ESQ.  
Zabell & Associates, PC  
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Court Transcriber: MARY GRECO  
TypeWrite Word Processing Service  
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Saratoga Springs, New York 12866

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service

1 (Proceedings began at 11:37 a.m.)

2 THE CLERK: Calling case 10-CV-4334, Zarda v.  
3 Altitude Express. Counsel, please state your appearance for  
4 the record.

5 MR. ANTOLLINO: Greg Antollino appearing by phone as  
6 arranged for plaintiff.

7 MR. ZABELL: Saul Zabell with the law firm of Zabell  
8 & Associates for the defendants.

9 THE COURT: Good morning. Can you hear Mr. Zabell  
10 okay?

11 MR. ANTOLLINO: Yes.

12 THE COURT: As you know, I scheduled this because I  
13 had received Mr. Antollino's letter back in April asking for a  
14 conference to address the issues that he raised in that  
15 letter. I have seen the back and forth letters since the  
16 initial letter.

17 So the first issue I want to address is whether or  
18 not -- has a sur petition been filed? I haven't seen  
19 anything.

20 MR. ZABELL: It has not been filed yet. It is in  
21 the process of being filed. I believe we have another week.

22 THE COURT: The deadline of 90 days is next week?

23 MR. ZABELL: Correct. Yes.

24 THE COURT: Okay.

25 MR. ZABELL: And it will be filed.

1 THE COURT: So Mr. Antollino, in light of that, I  
2 know you have two others suggestions in your letter. One was  
3 some type of settlement conference, the other one related to  
4 discovery on successor liability. But if Mr. Zabell is not  
5 interested in trying to resolve the case while the sur  
6 petition is pending, I don't know, what's your position on  
7 that?

8 MR. ZABELL: We have reached a --

9 MR. ANTOLLINO: Well --

10 THE COURT: Hold on. Let me just ask Mr. Zabell.  
11 Go ahead.

12 MR. ZABELL: We have reached out to Mr. Antollino  
13 before we started drafting the sur petition. It did not seem  
14 that we were -- that we had the same view, and therefore we  
15 started the sur petition. So at this point there's no  
16 interest in pursuing settlement.

17 THE COURT: Go ahead, Mr. Antollino.

18 MR. ANTOLLINO: Well, if there's no interest,  
19 there's no interest. But there is the issue of the caption.  
20 There's no Altitude Express anymore. So the caption has to be  
21 amended. And Mr. Maynard, as Mr. Zabell has pointed out, is  
22 not liable although he might be liable under some contractual  
23 basis and that would be addressed later. He can't send the  
24 Supreme Court a case where there are no parties, the parties  
25 don't exist.

1 THE COURT: Well, I don't think anything should be  
2 done while the sur petition is pending. You know, obviously  
3 there is a new company apparently from the letters. Whether  
4 or not that's a successor company or not under the law  
5 obviously is something that would have to be determined. But  
6 I don't think there's any basis at this point simply to just  
7 amend the caption to put in a new defendant. The case is  
8 still being litigated. What would that accomplish at this  
9 point to have discovery on whether or not it is a successor  
10 company or not, and if so, to amend the caption? What would  
11 that accomplish?

12 MR. ANTOLLINO: Well, my strength in appeal is that  
13 -- and I've done two or three sur petitions in my career, they  
14 want to know who's the party. And if Altitude Express, Inc.  
15 is a defunct corporation and Maynard is not liable under Title  
16 7, the Supreme Court is going to want to know that I think.

17 THE COURT: I don't know whether they --

18 MR. ANTOLLINO: I usually don't -- I don't usually  
19 represent companies but I know that Rule 7.1, or whatever it  
20 is, corporate disclosure and whatnot, there's no entity that  
21 can appeal. What's the entity?

22 THE COURT: Well, I think, Mr. Zabell, correct me if  
23 I'm wrong, but you're still representing Altitude Express,  
24 correct?

25 MR. ZABELL: That's correct.

1 THE COURT: I mean he's saying it's defunct.

2 MR. ANTOLLINO: It doesn't exist.

3 THE COURT: He's saying it doesn't exist.

4 MR. ZABELL: I'm saying that the corporation has  
5 closed up and I'm still employed by them to represent their  
6 interests here if for no other --

7 MR. ANTOLLINO: It's been dissolved by the Secretary  
8 of State.

9 THE COURT: Has it been dissolved?

10 MR. ZABELL: I believe it has, yes.

11 THE COURT: Well, I haven't looked at that issue  
12 before but if the corporation, he's still retained by the  
13 corporation. How long was it dissolved?

14 MR. ZABELL: I believe it was dissolved at or around  
15 the time that the trial was going on.

16 THE COURT: Right. So it --

17 MR. ANTOLLINO: No, it was dissolved in 2016.

18 THE COURT: Okay. So at the time of the en banc  
19 decision it was dissolved, right? So I don't know. You're  
20 suggesting this is a new issue that has to be resolved here  
21 because the Supreme Court is going to want to know. But  
22 apparently, the Second Circuit, it didn't affect their  
23 disposition of the case, right? They still went forward.

24 MR. ANTOLLINO: I didn't know about it, frankly. I  
25 think there is an affirmative responsibility when appellants

1 go up and they say who is who. But if Your Honor doesn't want  
2 to address it, that's your ruling.

3 THE COURT: Yes. I don't think it makes any sense  
4 to address that right now while the petition is pending. If  
5 in fact the Supreme Court doesn't want to hear the case  
6 because the company is dissolved, then that's up to them I  
7 guess. But this is where the case is at, this is where it's  
8 been at for years. To start substituting in parties while a  
9 sur petition is pending seems to me to be an unwise thing to  
10 do and doesn't make any sense from a cost standpoint to start  
11 having discovery would make any sense. I don't know how long  
12 it will take for the sur petition to get resolved but I don't  
13 know what the timeframe -- do you have any idea what the  
14 timeframe for that is? No.

15 MR. ZABELL: Virgin territory to me, Your Honor.

16 THE COURT: Yes. All right. But --

17 MR. ANTOLLINO: All right. So --

18 THE COURT: If you want to research it and put in a  
19 letter to me on that issue, Mr. Antollino, I'm always willing  
20 to look at it. You're raising issues I hadn't really thought  
21 about. So my instincts are that I should not be changing the  
22 parties while there is a sur petition pending. But if you  
23 want to show me case law that says otherwise, I'm happy to  
24 look at it.

25 MR. ANTOLLINO: I don't think it's my

1 responsibility. I'm just raising the issue. This is the  
2 first time that Mr. Zabell is concerned that he's going to  
3 petition for sur. So I raised the issue and it's been  
4 confirmed that the corporation is dissolved. That's all we  
5 have to say until the last day that sur can be filed arise --

6 THE COURT: All right. And Mr. Zabell, I would  
7 obviously make the [indiscernible] to you. If you think that  
8 the petition would be moot because the company is dissolved,  
9 obviously let me know. I'm happy to look at amending the  
10 caption if either side suggests that it's something I should  
11 do at this point in the case while the petition is pending.  
12 Okay?

13 MR. ZABELL: Yes.

14 THE COURT: But I don't think given what I heard, I  
15 don't think a settlement conference would be useful. So I'll  
16 just await the resolution of the petition and then obviously  
17 we'll have another conference depending on the outcome.  
18 Either way we'll have a conference.

19 MR. ANTOLLINO: Or maybe not.

20 THE COURT: Maybe not.

21 MR. ANTOLLINO: All right. Thank you, Judge.

22 THE COURT: All right. Have a good day.

23 MR. ANTOLLINO: Bye.

24 (Proceedings concluded at 11:45 a.m.)

25 \* \* \* \* \*

1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

4  
5 *Mary Greco*

6 \_\_\_\_\_  
7 Mary Greco

8 Dated: June 12, 2018  
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