

**DISTRICT COURT
CITY AND COUNTY OF DENVER, COLORADO**

**1437 Bannock Street
Denver, CO 80202**

Plaintiff:

BORGEN MEDIA, LLC,

vs.

Defendant:

SIEGEL MEDIA, LLC.

For Plaintiff and Third-Party Defendant:
Glenn W. Merrick, Reg. No. 10042
G.W. Merrick & Associates, LLC
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For the Defendant:

No appearance entered.

▲ COURT USE ONLY ▲

Case Number:

07 CV 5335

Courtroom 9

The matter came on for hearing on Tuesday, April 29, 2008, before the HONORABLE MICHAEL A. MARTINEZ, Judge of the District Court, and the following proceedings were had.

The above-referenced counsel was present in person.

Candy Campbell was present for defendant.

Western Deposition and Transcription, LLC
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1 DENVER, COLORADO; TUESDAY, APRIL 29, 2008

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3
4 (Call to Order of the Court at 11:00 a.m.)

5 THE COURT: Please be seated. Good morning.

6 MR. MERRICK: Good morning.

7 MS. CAMPBELL: Good morning.

8 THE COURT: This is 07 CV 5335, Borgen Media, LLC
9 versus Siegel medial -- Media -- I can't talk today -- Siegel
10 Media, LLC. Appearances, please?

11 MR. MERRICK: Good morning, Your Honor. Glenn
12 Merrick, 10042 registration number, on behalf of the plaintiff,
13 third-party defendant, as well.

14 THE COURT: Good morning, Mr. Merrick. I'll apologize
15 in advance. For some reason, the docket has you representing
16 all parties. But I know that you're not. So -- and you would
17 be Ms. Campbell?

18 MS. CAMPBELL: Yes.

19 THE COURT: All right. Good morning.

20 MS. CAMPBELL: Good morning.

21 THE COURT: The matter comes on for a trial management
22 conference. I believe we've got a trial coming up in about
23 three or four weeks. And I have a number of concerns regarding
24 the current status of this case.

25 Let's start with the obvious. I entered an order in

1 January that Siegel Media was to retain substitute counsel or
2 advise the Court -- and advise the Court of its intention to do
3 so. Ms. Campbell?

4 MS. CAMPBELL: Yes?

5 THE COURT: What's the status of that?

6 MS. CAMPBELL: Mark Bell with Hatch Jacobs was my
7 original attorney. They do not have a litigator on staff. We
8 had attempted to transition to Patricia Jordaan, who came from
9 Dallas. She is still waiting for her acceptance of her license
10 here in Colorado. She has been participating as more of
11 assistance, but not through legal assistance.

12 We've gone through, roughly, 15 different attorneys
13 that either could not take the case because of trial conflicts
14 or a conflict with Mr. Borgen.

15 THE COURT: Okay. Well, this is a difficult scenario
16 because, as you well know and as I've previously ruled, Siegel
17 Media is an entity into itself -- onto itself. It's a legal
18 entity. And, as such, it is a legal being, just as any person
19 that walked in the door.

20 The sole distinction is an individual person can
21 represent themselves, if they so choose. A corporate entity
22 cannot. A corporate entity has to be represented by counsel.

23 And the problem that I see in this case at this point
24 is, without representation for Siegel Media, anything that
25 you've done, purportedly, on their behalf -- and I see a number

1 of pleadings in here indicating that they're being filed on your
2 behalf, as well as Siegel Media -- doesn't count. There is
3 nothing I can do about that.

4 MS. CAMPBELL: Ms. Jordaan is interested in taking the
5 case, if we have a six-month extension for the trial deadline.

6 THE COURT: Who is this?

7 MS. CAMPBELL: Patricia Jordaan.

8 THE COURT: And who is she now? I guess she's from
9 Dallas you said?

10 MS. CAMPBELL: Yes, she's an attorney from Dallas.
11 Her brother-in-law is Hendrik Jordaan of HRO. Her resources
12 here are substantial. But she has not had her final acceptance
13 of her license. She's willing to take the case on contingency,
14 but would need four to six months.

15 THE COURT: Well, I don't want to know about the
16 specifics of your discussion --

17 MS. CAMPBELL: Sure. But --

18 THE COURT: -- with your attorneys, because that's
19 privileged. And, to the extent that you divulge them, then you
20 waive the privilege. So you should think twice about what you
21 say regarding those issues, but -- so you're telling me you have
22 engaged her as long as the Court vacates the existing trial
23 date? Or she has to be licensed first.

24 MS. CAMPBELL: Correct. It will take four to six
25 months for her final approval.

1 THE COURT: When did she submit a licensure?

2 MS. CAMPBELL: She submitted it when she first arrived
3 here in Colorado, but was injured in an accident and was in the
4 hospital. So a lot of her paperwork has been delayed.

5 THE COURT: Okay. So do you know at the outset a time
6 frame by which we can expect that she's going to be admitted?
7 Or is there another attorney that you are prepared to go forward
8 with if I vacate the trial? That the corporation is prepared to
9 go forward with?

10 MS. CAMPBELL: I have spoken with Valeri Pappas. And
11 her conflict was the trial date. She had an existing trial on
12 those dates.

13 THE COURT: Okay. Well, Mr. Merrick, I'm sure this is
14 not music to your ears. Is there something that you want me to
15 know? Do you have a position on the -- what I'm going to treat
16 as a motion to continue the trial?

17 MR. MERRICK: I do, Your Honor. We, not surprisingly,
18 oppose it. This matter has been set for a very long time. At
19 one point in time, there was a motion filed by Mr. Bell, the
20 prior counsel, for an extension of time to serve the expert
21 reports.

22 The Court, with reluctance, granted that motion, but
23 made very clear in the order that it would not grant a trial
24 continuance. We have proceeded on that basis. And we have
25 prepared for trial.

1 Among the things that we have done in reliance on the
2 Court's order are incorporated into a cheat sheet that I've put
3 on the bench prior to your coming into the courtroom,
4 Your Honor.

5 THE COURT: Yeah, I saw that. And, thanks. It
6 matches pretty nicely with mine. So -- but go ahead.

7 MR. MERRICK: And what the cheat sheet that I have --
8 and I've given a copy to Ms. Campbell, as well, so she can
9 follow along -- reflects a number of pending motions and a
10 number of failures by Ms. Campbell -- or, more particularly, by
11 Siegel Media to comply with the Court's orders and to prepare
12 consistent with the rules governing pretrial preparation.

13 I think there are -- and I'll go through these, if
14 that's the Court's wish -- go through the pending motions. But
15 there are something like ten of them.

16 THE COURT: Right.

17 MR. MERRICK: And Ms. Campbell has confused things a
18 little bit further by, in some of her pleadings or some of the
19 documents that she has filed with the Court and/or served on us,
20 gratuitously incorporated herself as a party. She is not a
21 party to this litigation.

22 THE COURT: That was my next question. I mean, I see
23 the caption that has Candy A. Campbell as a defendant and a
24 third-party plaintiff. But I don't recall granting that relief.
25 Am I missing something?

1 MR. MERRICK: There was no motion, nor has there been
2 an order. Ms. Campbell has, on some of her papers, included
3 herself as a party to the litigation. But there is no motion
4 nor order.

5 THE COURT: Okay. Go ahead.

6 MR. MERRICK: So that presents some confusion. But,
7 strictly speaking, there is no party before the Court
8 unrepresented by me other than Siegel Media. That's the first
9 problem.

10 THE COURT: Okay.

11 MR. MERRICK: The second problem the Court identified
12 is the failure, of course, of Siegel Media to retain counsel
13 despite the fact that the Court has made it very clear in prior
14 orders that it would not continue the trial date.

15 And the Court has previously stricken pleadings filed
16 by Ms. Campbell on behalf of Siegel Media for precisely the
17 reason that she is not an attorney and that Siegel must be
18 represented by counsel before the Court.

19 Indeed, I don't think that Ms. Campbell can
20 appropriately represent Siegel Media in a trial management
21 conference because she's now appearing in court and, strictly
22 speaking, practicing law without a license. That's yet another
23 problem.

24 There has been a motion for summary judgment timely
25 filed based on the existing trial date which the Court has not

1 yet ruled on. There's claims to dismiss the third-party
2 complaint. There's the motion for default by Borgen Media.

3 There's the motion to strike what are characterized as
4 pro se pleadings, although Siegel Media, of course, cannot be
5 pro se. There is a motion for summary judgment filed by Siegel
6 Media filed by and signed by Candy Campbell, which is a nullity.

7 There's a motion to compel pending before the Court
8 which Ms. Campbell has ruled on -- has responded to. And the
9 Court has not yet ruled on that motion. Siegel Media has not
10 filed timely any witness or exhibit list.

11 I did get in court, as I walked in today, from
12 Ms. Campbell a series of documents, one of which is
13 characterized as defendant and third-party plaintiff's exhibit
14 list, when -- of course, again it's done by Ms. Campbell.

15 And it's, apparently, according to the file stamp was
16 filed yesterday at about two o'clock in the afternoon. There's
17 a motion in limine that's been filed timely in reliance on the
18 trial date.

19 And so we've prepared at great length, Your Honor,
20 with the expectation that the Court will stick with its order
21 that there was not going to be a trial continuance and with the
22 fact that the Court has placed Ms. Campbell on notice on at
23 least two separate occasions, that I'm aware of, with respect to
24 the need to get separate counsel.

25 Obviously, when Mr. Bell withdrew, the Court entered

1 its order instructing that substitute counsel be gotten. And
2 the Court has previously entered an order striking pleadings on
3 the basis that Siegel Media cannot be represented by
4 Ms. Campbell. So she's been on notice of all of these things.

5 We think the appropriate thing to do, Judge, is to,
6 one, grant the motion for summary judgment with respect to the
7 claims by Borgen Media against Siegel Media because we think
8 that there is no genuine issue of fact about that in any event.

9 And with respect to the third-party claims against
10 Mr. Borgen, we ask the Court to dismiss those with prejudice on
11 the basis that Siegel Media has failed to get counsel consistent
12 with this Court's orders.

13 THE COURT: Were the third-party claims originally
14 brought by counsel? Or were they brought by Siegel Media
15 pro se --

16 MS. CAMPBELL: By counsel.

17 THE COURT: -- through Mrs. Campbell?

18 MS. CAMPBELL: They were brought by counsel.

19 THE COURT: Is that right?

20 MR. MERRICK: That is my recollection.

21 THE COURT: Okay. Well, this is a bit of a sticky
22 wicket. And the reason is because, you know, candidly, there's
23 not a lot of support in the appellate court for the trial court
24 managing the docket in the cases in a fashion that without
25 ruling on issues on the merits.

1 So, candidly, there's every likelihood that were I to
2 grant the motion for summary judgment today on the grounds that
3 there's been no response, that the appellate courts will be back
4 here. And Ms. Campbell and Siegel Media will be back here in
5 two or three years on that basis.

6 That's not the main reason why I would be concerned
7 about it, but it is something that the parties need to be aware
8 of in terms of additional expense that can possibly be incurred.

9 I guess the frustrating thing for me, Ms. Campbell, is
10 I've made every effort that I can to advise Siegel Media -- and,
11 you know, obviously, you have some connection with Siegel Media;
12 and I'm not actually quite sure what it is, but -- of the
13 requirement. You know, this is serious.

14 The expectation is that, you know, this matter be
15 addressed. But filing papers and complaints and amended
16 third-party complaints, I don't know if they're ghostwritten by
17 some other attorney. If they are, they're not reflecting that
18 someone ghostwrote them, which is required under the Rule. But
19 they certainly appear to be consistent with that pleading
20 format.

21 And, you know, in terms of mea culpa, I think my law
22 clerk saw this stuff and assumed that there was representation
23 because of the manner in which they were filed. That's not a
24 fair assumption, but that very clearly appears to have been the
25 case, at least in the management of some of the subsequent

1 motions that were filed by Ms. Campbell.

2 So let me do this first: The record reflects that
3 Siegel Media has not retained substitute counsel. It's
4 April 29th, which is a full four months after I entered my prior
5 order.

6 And the reason I did that then was with the
7 expectation that there was plenty of time between the date of
8 that order and the prior withdrawal of counsel and the existing
9 trial date to retain new counsel and have them ramp up and be
10 prepared to proceed to trial on the scheduled date.

11 The number one cause of expense and increased
12 litigation costs, at least in terms of where the Court's coming
13 from, is delay -- delay in the trial settings, delay in getting
14 cases tried. In fact, there's even a new standard now that, you
15 know, we should have 90-plus percent of our cases completed
16 within the year from when they're filed -- completed.

17 So that, combined with the Court's prior orders in
18 this regard, is significant -- certainly to the trial court.
19 Perhaps not as much to the appellate court.

20 Well, I think the first thing that's appropriate to do
21 at this point is once again to strike any and all pleadings
22 filed by Ms. Campbell on behalf of Siegel Media.

23 And so the motion to strike pro se papers is granted.
24 That includes and incorporates the amended third-party complaint
25 and jury demand filed March 14th; motion to extend time to file

1 cross-motions for summary judgment filed March 17th; motion to
2 strike the plaintiff's request for default judgment filed
3 March 18th.

4 Those matters are stricken. Likewise, Siegel Media's
5 motion for summary judgment is stricken. What exactly is your
6 connection with Siegel Media, Ms. Campbell?

7 MS. CAMPBELL: Siegel Media was my company. It's
8 an LLC that I established. I was the founding member and the
9 only member --

10 THE COURT: Okay.

11 MS. CAMPBELL: -- and was liable for any and all
12 signings and documents related to it.

13 THE COURT: Okay. Well, yes and no. I mean, I'm not
14 going to give you a legal lesson.

15 But one of the reasons we've created these legal
16 entities called corporations and, even beyond that, limited
17 liability companies or corporations is to, in part, shield the
18 investors or the officers, and so forth, of said such
19 organizations from liability in most circumstances and absent
20 certain factual findings that I don't need to go into here.

21 But, you know, your role in the formation of that
22 company -- and I understand business. You know, you start
23 something. It's your baby, you know. I understand that.

24 But, unfortunately, in the legal process you don't get
25 to, you know, protect your baby by filing legal pleadings. I

1 mean, I think there's significant indication here that what
2 you've effectively been doing is practicing law without a
3 license. And that's a problem. The Supreme Court frowns on
4 that -- okay? -- I mean, very much so.

5 MS. CAMPBELL: I absolutely agree. But the cost of
6 litigation was \$100,000 from all the firms that stated yes,
7 so --

8 THE COURT: Well, I understand that, you know.

9 MS. CAMPBELL: -- in lieu of that --

10 THE COURT: And these are realistic concerns. But the
11 answer is not to just start filing pleadings because what that
12 does is put yourself, personally, at risk from the Supreme
13 Court -- okay? -- because you're not an attorney. And I
14 understand that to be the case, right? You're not licensed in
15 any state.

16 MS. CAMPBELL: Correct.

17 THE COURT: And you're not an attorney here in
18 Colorado licensed to practice. Have you had legal education or
19 training?

20 MS. CAMPBELL: No.

21 THE COURT: Okay. Well, for what it's worth, if you
22 were filing on behalf of yourself as a party, you did a fine
23 job. But, again, you know, that's probably hollow consolation
24 because --

25 MS. CAMPBELL: There was a motion to file myself as

1 the individual in re a party of interest. And that was
2 submitted on April 10th.

3 Because the agreement with Mr. Borgen was between
4 myself and all the documents that were drawn up with our -- with
5 respect to the promissory notes and operating agreements were
6 with Mr. Borgen and myself -- that I asked to add myself so that
7 I would be able to represent myself pro se in the event that I
8 did not have appropriate representation.

9 THE COURT: Okay. Well, the problem is that that's
10 entitled as defendant and third-party plaintiff's motion
11 requesting permission. And so you're not actually a party yet.
12 You don't become a party until you are allowed to intervene in
13 the action as a party. And I know I haven't granted that
14 relief.

15 So, you know, there's -- you know, in most -- this is
16 a difficult scenario because the reality is there's not a whole
17 lot I can do. I mean, you're not licensed to practice. I have
18 to strike the pleadings. They're not -- it's as if they didn't
19 happen. Okay?

20 So, just so I'm clear and the record is clear, the
21 response to plaintiff's motion of summary judgment filed
22 March 14th is stricken. The answer to motion to strike memo
23 response to motion for summary judgment is stricken. The answer
24 to motion to dismiss third-party claims is stricken.

25 So I guess the third-party defendant's motion to

1 strike answer and reply in support of motion to dismiss is
2 granted. The answer to strike -- answer to motion to strike
3 answer and answer to reply in support of motion to dismiss is
4 stricken. The answer to the motion to dismiss third-party
5 claims is stricken.

6 The motion to strike plaintiff's request for default
7 judgment is stricken. That was filed March 18th. Motion to
8 extend time to file cross-summary judgment motion is stricken.
9 The motion to compel, the motion for a new witness deposition,
10 the motion to extend discovery deadline March 26th is stricken.

11 By so doing, the plaintiff's motion to strike and
12 response in opposition to the emergency motion is granted. The
13 March 28th motion to strike pro se papers is granted, as I
14 stated. The answer to the same is stricken.

15 The cross-motion for summary judgment filed April 10th
16 is stricken. The motion to strike in response and opposition to
17 the cross-motion is granted. And the defendant and third-party
18 plaintiff's motion requesting permission to add a claim filed
19 April 10th is also stricken.

20 Mr. Merrick, has any of the relief that you've sought
21 in this complaint been upon -- or in this action been upon the
22 personal guarantee? Or do you seek to enforce the personal
23 guarantee of Ms. Campbell on these obligations of Siegel Media?

24 MR. MERRICK: Your Honor, in all candor to the Court,
25 although Ms. Campbell has said in deposition that she thinks she

1 has personally guaranteed the obligation, she has not.

2 THE COURT: Okay. Well, that speaks volumes
3 because -- and, frankly, the plaintiff's silence as to that
4 claim speaks volumes, in terms of why they wouldn't have named
5 you as a party. That's one of the preeminent questions here I
6 hadn't had a chance to -- I mean, you guys have been filing
7 pleadings left and right. You're up to two full volumes now and
8 almost into a third. So you're certainly acting like a lawyer,
9 Ms. Campbell.

10 Nonetheless, since I asked a direct question,
11 Mr. Merrick was required to answer it, irrespective of whether
12 it behooved the interests of his client at that point. The
13 bottom line is you're not named as a party.

14 And, as I understand it, the reason you're not named
15 as a party is there's no -- any lawyer, before they bring a
16 claim against anyone, has an ethical and professional obligation
17 under Rule 11 to have investigated it and asserted it and
18 ensured that, before they asserted it, there's a sound basis in
19 the law and the facts to make that claim.

20 And so what I'm hearing -- and it doesn't surprise me
21 from what I've reviewed in the file -- is there is no personal
22 guarantee by you as to -- at least not one that's, apparently,
23 binding or enforceable as to the obligation to Siegel Media,
24 LLC. And, if that's the case, there's no basis upon which I can
25 grant your request to be added as the real party in interest.

1 I was going to consider that motion, and I have, as a
2 -- really, as a motion to intervene in the action. But if
3 there's no claim presently pending against you and there's no
4 basis from what I'm hearing as an officer of the Court from
5 Mr. Merrick to bring such a claim, then it's futile for me to
6 allow you to intervene in this case as a party because they're
7 not seeking anything from you as a party. And, from what I
8 gather, they have no means of doing so.

9 So, on that basis and on that record, the motion to
10 add Candy Campbell individually as a real party in interest
11 which the Court -- which was filed April 10th of this year, which
12 the Court will treat as a motion to intervene, is denied.

13 Mr. Merrick, it would appear that the relief requested
14 in the motion for default judgment is somewhat inconsistent with
15 the relief requested in the motion for summary judgment. Do you
16 agree with that?

17 MR. MERRICK: Let me make sure --

18 THE COURT: I mean, if I were to grant the motion for
19 summary judgment, then that would obviate the appropriateness
20 for a motion for default judgment -- because if I'm granting a
21 motion for default judgment, then we're proceeding to a hearing
22 for trial on the merits of any damages being claimed.

23 But if I'm granting the summary judgment, then there
24 is no need for a hearing on damages because you're telling me
25 that it's the damages are as you pled them.

1 MR. MERRICK: That is correct. And as they are
2 asserted to be in the affidavit in support.

3 THE COURT: Right. What I'm going to do is I'm just
4 going to take a moment to go back through and look at the
5 complaint and the original answer that was filed -- okay? -- as
6 well as the third-party complaint -- to see if there are any
7 issues sufficiently raised at that point when the entity was
8 represented sufficient to raise a genuine issue of material fact
9 on the issues identified in your summary judgment motion.

10 I'm sure you probably disagree that there are.

11 MR. MERRICK: There is, Your Honor. But I would
12 also -- and I'm sure the Court's aware, and I certainly don't
13 mean to lecture the Court in any sense. But the Court is aware
14 that mere pleadings are not sufficient to withstand a motion for
15 summary judgment. And there is affidavits in support.

16 THE COURT: Right. But I need to look at them,
17 nonetheless, because whenever a motion for summary judgment is
18 submitted and unresponded to, it is inviting error for me to
19 just grant it without making that assessment.

20 MR. MERRICK: Very well, Your Honor.

21 THE COURT: And so that's why I do it.

22 MR. MERRICK: Very well, Your Honor.

23 THE COURT: Okay? So those cases are somewhat at odds
24 and at conflict. And I think it's because they are different
25 panels of the court of appeals. And sometimes they come to

1 different conclusions.

2 But the most recent cases, in particular -- in fact,
3 that's just what I was asking my law clerk about just now was to
4 pull the two cases I know I just did within the last two weeks
5 on this issue because they specifically require that the Court
6 make an assessment as to whether they raised, even in the answer
7 in the complaint, any sufficient indicia of a question of fact
8 such that might demonstrate a triable issue. So, to be fair, I
9 have to do that.

10 MR. MERRICK: Very well, Your Honor.

11 THE COURT: Okay? And I'll give you the cases in a
12 moment because she's pulling the orders.

13 (No discussion from 11:35 a.m. to 11:46 a.m.)

14 THE COURT: Okay. Turning to the plaintiff's motion
15 for summary judgment filed March the 5th, I have reviewed the
16 motion, the affidavits, and the exhibits attached thereto.

17 I've also reviewed the original verified complaint,
18 the exhibits attached thereto, together with the answer to the
19 complaint, third-party complaint, and jury demand and any and
20 all attachments thereto.

21 The motion for summary judgment was filed March 5th of
22 this year. I'll note that the within action, at least as it was
23 initiated by the plaintiff, was an effort to collect on two
24 unpaid promissory notes that were made by the defendant, Siegel
25 Media, LLC, of \$100,000 each, for a total of \$200,000.

1 The plaintiff has contended that the defendant,
2 Siegel, LLC, has failed to meet the terms of the promissory
3 notes; in particular, failed to remit payment on a timely
4 fashion as due and contemplated under those promissory notes.

5 There was also a request for a summary judgment as to
6 the third-party claim made in the answer and the third-party
7 complaint.

8 Now, the standard of review on motions for summary
9 judgment is well established. It is appropriate -- "Summary
10 judgment is appropriate when, based on the pleadings, there are
11 no genuine issues as to any material fact that exists and the
12 moving party has demonstrated that they are entitled to judgment
13 as a matter of law."

14 That's Colorado Rule of Civil Procedure 56(c). Also
15 citing Cotter Corporation versus American Empire Surplus Lines
16 Insurance Company, found at 90 P.3d 814 at 819, Colorado 2004.

17 "Moreover, the purpose of summary judgment is to
18 permit the parties to pierce the formal allegations of the
19 pleadings and save the time and expense associated with trial
20 when, as a matter of law, one party could not prevail." --
21 citing Peterson versus Halsted, found at 829 P.2d 373, 1992
22 Colorado Supreme Court case.

23 "Further, the nonmoving party must receive the benefit
24 of all favorable inferences that may reasonably be drawn from
25 the undisputed facts." -- Clementi versus Nationwide Mutual Fire

1 Insurance Company, 16 P.3d 223, Colorado 2000.

2 "All doubts as to whether an issue of fact exists must
3 be resolved against the moving party." -- Dominguez versus
4 Babcock, 727 P.2d 362.

5 "When a party against whom" -- excuse me. "When a
6 party moving for summary judgment has met their initial burden
7 of production, the burden then shifts to the nonmoving party to
8 establish that there remains a triable issue of fact."

9 That's Continental Airlines, Inc. versus Keenan,
10 731 P.2d 708, 1987 Colorado Supreme Court case. Also citing
11 Brown versus Teitelbaum, 831 P.2d 1081, Colorado Court of
12 Appeals from 1991.

13 The record here reflects, based on the Court's rulings
14 earlier today and the failure of Siegel Media, LLC to retain
15 counsel and, more importantly, as an entity to respond to the
16 pleadings in their current state, the motion for summary
17 judgment is unabated and unresponded to.

18 "Generally, where an affirmative showing of facts
19 probative of a right to summary judgment goes wholly
20 uncontroverted by the nonmoving party, the trial court may
21 conclude that no genuine issue of material fact exists." That's
22 Pinder versus Civil Service Commission, 812 P.2d at 645.

23 "A party against whom summary judgment is sought takes
24 a risk by not submitting controverting affidavits or other
25 evidence. However, if the moving party's evidence does not

1 establish the lack of any genuine issue of material fact, the
2 summary judgment is inappropriate." -- citing Wolther,
3 W-o-l-t-h-e-r versus Schaarschmidt, S-c-h-a-a-r-s-c-h-m-i-d-t,
4 738 P.2d 25, Colorado Court of Appeals 1986.

5 In this case, the plaintiffs filed a motion for
6 summary judgment supported by affidavits and exhibits, which
7 have gone wholly uncontroverted by any opposing motion or
8 affidavits from the respondent -- from the defendant.

9 I did review the allegations in the complaint,
10 specifically in the allegations in the answer to assess,
11 ascertain whether the defense at that time and the content of
12 the pleadings and the allegations therein provided any
13 information that might rise to the level of creating a triable
14 issue of fact.

15 The information here indicates that the defendant,
16 generally, denied the plaintiff's allegations in their answer,
17 but has provided no evidence in response to the motion for
18 summary judgment or at any time thereafter supporting those
19 assertions.

20 The motion for summary judgment and the affidavits in
21 support thereof, as well as the exhibits, demonstrate sufficient
22 evidence to establish a lack of any genuine issue of material
23 fact.

24 I believe it was an affidavit of Mr. Borgen, as well
25 as the promissory notes, themselves -- Exhibit A, Exhibit B --

1 the promissory note dated April 18, 2006, the promissory note
2 June 26, 2006, Exhibit C -- both are secured promissory notes --
3 indicate that Siegel Media promised to repay \$200,000 principal
4 back to Borgen Media on April 18, 2007, plus 8 percent interest
5 per annum.

6 Exhibit D is the security agreement supporting those
7 contracts. So the uncontroverted evidence before me demonstrate
8 that there was an obligation by Siegel Media, LLC to remit
9 payment on the promissory notes by April 18, 2007.

10 While I'll note that the answer, as well as the -- let
11 me back up -- the answer constitutes the general denials of the
12 allegations. I'm looking at paragraphs 4 through 8 of the
13 general allegations on the answer. Paragraph 4 indicates as to
14 the allegations in paragraph 5 of the complaint, Defendant,
15 Siegel, admits Exhibits 1 and 2 are promissory notes.

16 As to the terms, they speak for themselves. Well, the
17 terms were, as I cited in a moment ago, remuneration and
18 remittance by April 18, 2007.

19 Siegel has admitted in their answer that they had
20 promised to repay Borgen all principal accrued and accrued
21 interest on April 18, 2007. That's contained in paragraph 6 of
22 the verified complaint.

23 Paragraph 5 of the answer, general allegations, Siegel
24 admits the allegations set forth in paragraph 6 of the
25 complaint. So they're admitting that they owed it or that they

1 agreed to pay it by April 18, 2007.

2 Denies, generally, the allegations in paragraph 7 and
3 any obligations pursuant to the notes. Exhibit 3, the note
4 speaks for itself. Defendant, Siegel, has, likewise, admitted
5 in its answer -- paragraph 7 -- as to the allegations set forth
6 in paragraph 8 of the complaint.

7 Siegel admits that it did not pay the plaintiff, but
8 denies that it is in default. And they deny, generally, the
9 allegations -- paragraphs 9 and 10 -- it does not indicate why
10 it denies it was in default. General denial as to the first
11 claim for relief. General denial as to the second claim for
12 relief.

13 Interestingly, Siegel Media, LLC asserted numerous
14 affirmative defenses -- 1 through 15 -- including some that
15 would have no applicability in this type of a case. It's a
16 contract case.

17 Plaintiff's injuries, if any, were caused by
18 intervening acts or omissions of parties other than Siegel to
19 which were the proceeding cause of plaintiff's losses.
20 Negligence, affirmative defenses, any amount of damages claimed
21 due and owing were caused in whole or in part by another's
22 negligence -- not the negligence or fault of Siegel.

23 Limitation on damages for noneconomic loss or
24 injury -- that's a tort affirmative defense. Economic loss
25 rule -- there is no allegation of tort or even sounding in tort

1 in this case. Claims are a breach of contract on two contracts.
2 So I don't know how those affirmative defenses would be
3 applicable here.

4 And then, even in the third-party complaint, there's a
5 reference to an indication that Siegel Media, LLC received the
6 \$100,000 installment from Borgen Media, the plaintiff, on
7 April 18, 2006 and then again on June 26, 2006.

8 MS. CAMPBELL: May I make a statement?

9 THE COURT: No, ma'am. Third-party complaint seeks
10 claims for breach of contract, intentional interference with
11 contractual obligations, breach of fiduciary duty, detrimental
12 reliance and estoppel primarily based upon a purported
13 promise by Bjorn or Borgen Media to invest \$500,000 in Siegel
14 Media, LLC.

15 I'll note that Borgen Media and Siegel Media entered
16 into an option agreement contemporaneous to the promissory notes
17 and security agreements on April 18, 2006 -- that's Exhibit E --
18 which gave Borgen Media the option of purchasing an ownership
19 stake in Siegel Media -- page 2, Exhibit E.

20 Borgen Media did not exercise the option. And the
21 option expired April 18, 2007. An option is commonly referred
22 to and more specifically as set forth in that document is just
23 that. It's an opportunity and a right to invest -- in this case
24 to purchase an ownership stake. It's not an obligation to do
25 so.

1 There's no evidence before me that would indicate that
2 Borgen Media was obligated to do so -- only that they had the
3 opportunity and the right. There's no indication in anything in
4 the answer, or even the third-party complaint filed by and on
5 behalf of Siegel Media, LLC, that there's any ambiguity in the
6 contracts or the language or the terms.

7 In fact, to the contrary, the answer reflects that the
8 language and the documents, themselves, speaks for themself.

9 There's no evidence before me that -- in support of
10 the allegation -- that plaintiff promised to make an investment.
11 There's no affidavits. There's no exhibits -- nothing. The
12 contracts are not ambiguous. There's no allegation that they
13 are.

14 As noted, the Court finds that the plaintiff's
15 evidence is sufficient to establish the lack of any genuine
16 issue of material fact as to the claims on their complaint and
17 the claims brought against them in the third-party complaint.

18 According to the affidavits, the defendant, Siegel
19 Media, is in default on the promissory notes that were executed.
20 And plaintiff's motion and the exhibits and affidavits attached
21 establish that the notes were entered into between the parties
22 on April 18, 2006 and again on June 26, 2006 and that there was
23 an option agreement entered into simultaneous to the June 18,
24 2006 agreement.

25 The plaintiffs performed their obligations by loaning

1 the money. The plaintiffs chose not to exercise their option to
2 purchase an ownership interest in the defendant, Siegel Media,
3 LLC. The notes became due April 18, 2007. And the option to
4 purchase an ownership interest expired on April 18, 2007.

5 The evidence is unrefuted and unrebutted that the
6 defendant, Siegel Media, LLC, defaulted under the terms of the
7 notes failing to repay the amount of money that they promised to
8 repay by April 18, 2007 in the amount of \$200,000.

9 Therefore, since the defendant has put forth no
10 effort, whatsoever, to controvert the plaintiff's motion and the
11 exhibits and, to the contrary, all of the evidence before me --
12 the exhibits and affidavits -- demonstrate that, as a matter of
13 law, the plaintiff is entitled to judgment on their claims and
14 on the third-party claim against them, the Court finds that
15 there are no genuine issues of material fact regarding whether
16 defendant, Siegel Media, LLC, breached the promissory note and
17 contract agreements and, specifically, whether the plaintiff
18 third-party defendant reached any promise or obligation or
19 completed any -- committed any of the acts that it described in
20 the third-party complaint.

21 There's no evidence or facts before me to support it.
22 The only evidence in front of me and relied upon, in part, on
23 the third-party complaint is the option agreement which expired
24 on April 18, 2007 and which was just that from its very face --
25 an option for the plaintiff, Borgen Media, to purchase an

1 ownership interest in Siegel Media, LLC.

2 The Court finds the plaintiff has met its burden of
3 production and is entitled to summary judgment as a matter of
4 law in what appears to me to be a simple contract dispute.
5 There are no issues of material fact that exist. The plaintiff
6 is entitled to summary judgment as a matter of law.

7 This defendant has failed to controvert this
8 conclusion with any countervailing motions or affidavits. The
9 Court must conclude, as a matter of law, that no triable issues
10 and material fact exist. The plaintiff is, therefore, entitled
11 to recovery as a matter of law.

12 Based on those findings, it's ordered that the
13 plaintiff's motion for summary judgment is granted in all
14 respects. And this case is dismissed. That's the Court's
15 order. Those are the Court's findings.

16 Based on that ruling, the remaining motions that are
17 pending are denied as moot. The motion for default judgment is
18 denied as moot. I think that's the only other one that was
19 pending because I ruled on all the others.

20 The May 19th trial date is stricken and vacated as
21 unnecessary. The Court will enter its findings and order today
22 as final judgment under Rule 58. Judgment enters on behalf of
23 the plaintiff and against the defendant on its claims in the
24 verified complaint.

25 Judgment enters on behalf of the third-party defendant

1 plaintiff and against the third-party plaintiff defendant,
2 Siegel Media, on the third-party complaint. Judgment enters
3 under Rule 58 and is effective today.

4 Judgment shall not be delayed for the taxing of costs.
5 And the clerk will record the same on the register of actions
6 pursuant to Rule 79 of the Colorado Rules of Civil Procedure. I
7 think I got the lingo right.

8 So, if you want a copy of the formal order under
9 Rule 58, this is it. Get a copy of the transcript. And my
10 clerk will tell you how to do that.

11 Mr. Merrick, you'll have 15 days to submit a bill of
12 costs, if should you so desire. Is there anything else we need
13 to address today?

14 MR. MERRICK: One housekeeping matter, Your Honor.
15 During the course of your ruling, you sometimes refer to the
16 third-party complaint as being addressed to the third-party
17 defendant plaintiff. In fact, the plaintiff and the third-party
18 defendant --

19 THE COURT: You're right.

20 MR. MERRICK: -- are different parties.

21 THE COURT: My bad.

22 MR. MERRICK: And I'm sure that the Court meant that
23 the third-party complaint is dismissed as against the
24 third-party defendant. But I did want to point out they are
25 different.

1 THE COURT: No. And then that's fair enough, and
2 that's appropriate. If I refer to the third-party defendant as
3 the plaintiff, Borgen Media, it's actually an error. The
4 third-party defendant is the defendant -- is the individual
5 Bjorn K. Borgen who executed the option.

6 MR. MERRICK: Does the Court wish me to submit a form
7 of judgment, Your Honor, to calculate the interest? Or will the
8 Court be doing that?

9 THE COURT: Go ahead and do that. You can do that
10 within 15 days, as well. Please serve it under Rule 5 upon
11 Siegel Media, LLC, which is a pro se party in this case.

12 MR. MERRICK: I will do so, Your Honor.

13 THE COURT: All right.

14 MR. MERRICK: Thank you.

15 THE COURT: All right. Thank you for your time. The
16 Court's adjourned.

17 COURT CLERK: Here are -- in case you want them -- the
18 transcript request forms. And all the instructions are on there
19 about how to --

20 MR. MERRICK: Thank you. I appreciate it.

21 COURT CLERK: -- handle that.

22 (Court adjourned.)

23 (Proceedings concluded at 12:10 p.m.)

24
25 ///

CERTIFICATE

I hereby certify that the foregoing is a true and correct transcript from the electronic sound recording of the proceedings in the above entitled matter.

_____/s/_____

September 28, 2009

Constance Johnston

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