COURT OF APPEALS

STATE OF NEW YORK

GARTHON BUSINESS INC. AND CRESTGUARD LIMITED,

Respondents,

-against- NO. 99

KIRILL ACE STEIN, ET AL.,

Appellants.

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20 Eagle Street
Albany, New York
September 12, 2017

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

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CHIEF JUDGE DIFIORE: Good afternoon. The first matter on today's calendar is number 99, Garthon Business v. Stein. Counsel?

MR. SIRI: May it please the court, thank you, Your Honor. Aaron Siri on behalf of Aurdeley Enterprises Limited, appellant. I'd like to respectfully reserve one minute for rebuttal.

CHIEF JUDGE DIFIORE: You may, sir.

MR. SIRI: Thank you.

The primary dispute on this appeal is who gets to decide the gateway issue of arbitrability. Appellant Aurdeley respectfully submits that as the Supreme Court held and the dissent in the First Department held, that issue was clearly and unmistakably reserved for the arbitrators. Here we have a arbitration clause that states - - -

JUDGE GARCIA: Counsel, before you get into language of that, one thing I'm - - - I'm kind of struggling with in this case is - - - at least the cases I'm familiar with where we look at this type of issue, is either there's as broad arbitration clause and a party is saying this particular issue doesn't fall within that clause and it should be litigated, or we had a recent case where there was a broad arbitration clause and there's a subsequent agreement saying we're going to litigate X

issue, and does that supersede the broad arbitration clause. So your starting point is a broad arbitration clause.

Here you have a broad clause in I think at least the 2000 contract - - - at least one of them - - - that says we're going to litigate these cases in New York. And then you have a contract nine years later that arguably has a broad arbitration clause. So I guess a meandering way of saying two - - - asking you two things.

One, is there a case you can point to me that has an analogous scenario where you have a broad litigation clause arguably superseded by an arbitration clause - - - a subsequent arbitration clause? Or if not, wouldn't there be different policy considerations in looking at whether or not the subsequent arbitration clause superseded a broad litigation agreement?

MR. SIRI: I - - - I'll start off by first pointing out that the syllabus, unfortunately, did say that the initial agreement was in 2000. It actually was January 1st, 2009. So it was six months' difference, to the extent that that's - - - that's relevant.

To answer your - - - your question more - - - more specifically, I believe what - - - what Your Honor is asking me is when you have an earlier agreement that's got a forum selection clause, and then a later agreement that

has an arbitration clause, which one - - - why is it that the later arbitration clause should govern in this particular instance?

Well, first, in terms of the breadth of the relative clauses, the later agreement is an archetypically broad arbitration clause. It states any - - -

JUDGE GARCIA: But I guess my question - - -

MR. SIRI: Yes.

JUDGE GARCIA: - - - is a little bit different. It's our approach to these arbitration clauses seems to be grounded on, you agreed to broad arbitration provisions, and then somehow you want to change that. You want to change it by a subsequent agreement to litigate, or you want to change it by saying this issue doesn't fall within your broad arbitration clause, for whatever reason.

This case is different fundamentally, it seems to me, because you have a broad litigation agreement which you're now trying to change with a subsequent agreement to arbitrate. And it seems there's a good argument there to be made that those policy considerations regarding what goes to the arbitrator don't apply or with less force.

MR. SIRI: I - - - I would submit respectfully that actually it applies with more force, because here it is the arbitration agreement that comes later. The parties entered into a forum selection clause and then later chose

in a subsequent agreement that terminated the earlier agreement that released all liability from the earlier agreement that had an integration clause. They provided a broad arbitration clause that provided any dispute arising out of or relating to the later agreement shall be submitted to arbitration, incorporating by reference, explicitly LCIA rules which provide that arbitrability is to be decided by the arbitrators. And - - - and therefore, the public policy - - - I believe that's what Your Honor is asking me about - - - the public policy in favor of arbitration is even more pronounced in - - - in this instance than - - - than where it would be I believe what Your Honor is talking about in other cases, where there is - - - and all of the cases cited by the majority and cited by the respondent, there was a forum selection clause, but the later agreements did not have any arbitration clause. Here it's the reverse.

JUDGE FAHEY: You know, plaintiffs, I think, had - - - had raised the issue that you had not preserved the question of the applicability of English law. Are you familiar with that?

MR. SIRI: I am, Your Honor. Well, we did raise - - - we - - - we stated numerous times in the Supreme Court papers - - -

JUDGE FAHEY: Um-hum.

MR. SIRI: - - - as well as the First Department papers, that English law governs these agreements. We did state that. And - - - and, and the decision by the Supreme Court as well as the First Department both decided that English - - - that New York law - - - and - - - and in fact did apply New York law to interpret the relevant agreements here.

And so that's an issue before this court. And if the court so chooses - - -

JUDGE FAHEY: So - - -

MR. SIRI: - - - can decide it.

JUDGE FAHEY: It's not a major issue, but where in the record would I look to find this?

MR. SIRI: It's in our reply brief, Your Honor. We - - - we - - - on page - - - page 17 of our reply brief, that's Aurdeley's reply brief. We delineated the - - -

JUDGE FAHEY: That's fine. That's all I need.

MR. SIRI: Thank you, Your Honor.

CHIEF JUDGE DIFIORE: Thank you, counsel.

MR. SIRI: Thank you, Your Honor.

CHIEF JUDGE DIFIORE: Counsel? Would you care to reserve rebuttal time, sir?

MR. GROSSMAN: Yes, I would like to reserve one minute for rebuttal time.

CHIEF JUDGE DIFIORE: Of course.

MR. GROSSMAN: Good afternoon, Your Honors. I'm Jason Grossman with Gaddi Goren on behalf of appellant Kirill Ace Stein. May it please the court.

As alluded to by my co-appellant's counsel, the issue here today is was the gateway issue of arbitrability clearly and unmistakably reserved for the arbitrator? This is the standard that is set forth in this court and adopted by this court as recently as in Monarch Consulting. And that case as well as other authority before this court, clearly Li - - - Life Receivables, Zachariou, and Icdas Celik, provide for the fact that when there is a broad arbitration clause, as there is here, and it's broad, evidenced by the language that basically says any dispute arising out of or in connection with this agreement, and there is a case that - - -

JUDGE GARCIA: But why isn't the - - - the reverse analysis apply? Where you have such a broad agreement to litigate, and let's use the agreement to litigate in New York courts, and then later you're trying to change that - - - and I thought it was 2000 to 2009 was the difference but - - -

MR. GROSSMAN: No, it's a vastly different scenario. It's a - - - it's - - - instead of a nine-year clip, it's a six-month - - -

JUDGE GARCIA: But - - -

MR. GROSSMAN: - - - limited engagement agreement.

JUDGE GARCIA: - - - whatever it is, you have this broad litigation agreement, and then you're trying to change that agreement, not change the arbitration agreement. You're trying to change an agreement the parties came to, to litigate by a subsequent arbitration clause.

And why doesn't the reverse apply and say since you had this clear agreement to litigate at least certain issues in a certain time period, why don't you have to show some heightened level - - -

MR. GROSSMAN: Well, because - - -

JUDGE GARCIA: - - - of intent to supersede that litigation clause?

MR. GROSSMAN: Well, the standard is clear - - - again, we're - - - we're talking about just what is clear and unmistakable evidence of reserving the issue of arbitrability for the arbitrators. And what we're talking about here is a situation where the parties decided at - - - at arm's length to sit down together and negotiate a new set of documents to supersede, amend, and terminate the prior documents.

In the context of doing so, the parties expressly incorporated a - - - a lo - - - a broad forum - - -

arbitration clause coupled with the reference to the LCIA rules, 23.1, which states that: "The Arbitr, Arbitral Tribunal shall have the power to rule on its own jurisdiction and authority, including any objection to the initial or continuing existence, validity, effectiveness or scope of the arbitration agreement."

That is precisely the analysis that the court should undertake here in the sense that the scope of the arbitration dispute - - - I'm sorry - - - the scope of the arbitration agreement is ultimately what is at play here. Because the - - - the key distinction and the key issue before the court is what impact and - - - and what effect the subsequent agreements' arbitration clauses had on the underlying forum selection clause.

JUDGE GARCIA: But it - - - it just seems to me the presumption that if you're going to - - - if you're going to send something to an arbitrator to decide the gateway factor, it's a lot easier to accept if it's a broad arbitration clause that you're saying was somehow changed. But where you have an initial agreement to litigate and it's a broad agreement to litigate in New York, isn't that counsel more towards interpreting that as the gateway factor would be for the courts to see if the subsequent arbitration agreement changed that?

MR. GROSSMAN: Well, that would preclude the

parties' ability to amend an earlier agreement to ultimately overturn - - -

JUDGE GARCIA: No, it wouldn't.

MR. GROSSMAN: - - - the forum selection clause.

JUDGE GARCIA: It would just change who gets to decide it. It wouldn't preclude - - -

MR. GROSSMAN: And it would ultimately - - -

JUDGE GARCIA: - - - them.

MR. GROSSMAN: - - - but it would strip their ability, their bargained-for clause, to ultimately have that issue and reserve that issue - - -

JUDGE GARCIA: You could've bargained for a clause that - - -

MR. GROSSMAN: - - - for the arbitrator.

JUDGE GARCIA: - - - said we would like any issues related to the prior agreement or this agreement including whether or not arbitration applies, to be decided by the arbitrator. But you didn't say that; which is why we're here.

So the parties are free to select whatever language they want in their subsequent agreement. The only reason we're here is because the language here is subject to different interpretations.

JUDGE FEINMAN: Which - - -

JUDGE GARCIA: I'm sorry.

JUDGE FEINMAN: - - - which brings me to my question, which is when we look at that, what's the standard of review, is it full review because it's contract, or is it a question of law and we're using - - - I mean, is this an abuse-of-discretion standard?

MR. GROSSMAN: Well, I - - - I think the - - - the - - - there are two issues. But before we get to the issue of was the actual forum selection clause terminated, as the majority held, I - - - I think the - - - that's putting the cart before the horse.

I think the proper issue and the issue that doesn't allow us to get to the subsequent issue of the actual termination of the forum selection clause is did the parties reserve the gateway issue of arbitrability for the arbitrators? And it is clear under New York law that when courts - - - when there is a broad arbitration clause, as is the case here, and the parties incorporate by reference rules that provide - - - specifically provide the arbitral panel the right to rule on its own jurisdiction, courts leave questions of arbitrability - - -

JUDGE STEIN: I guess the question is, though - - -

MR. GROSSMAN: - - - to the arbitrators.

JUDGE STEIN: - - - is that a discretionary determination, or is that an issue of law on which we have

- - -

MR. GROSSMAN: I believe it's an issue of law.

JUDGE STEIN: Okay.

MR. GROSSMAN: I believe it's an issue of law. And to just touch briefly on the policy points in that regard, when parties are free to contract with respect to arbitration agreements, there's a - - - a - a strong and pronounced New York policy that says any doubts concerning the scope of that arbitration should be resolved in favor of arbitration. And the minimal oversight assigned to the courts in this regard is intended to preclude parties from playing one forum off against the other, which is precisely what the case is here.

CHIEF JUDGE DIFIORE: Thank you, counsel.

Counsel?

MR. VAN TOL: May it please the court, Pieter Van Tol, counsel for the respondents.

JUDGE STEIN: So are you - - - is it your argue - - - well, as I see it here, the - - - the subsequent agreements release all liability whatsoever under the first Aurdeley and Quennington agreements. And so if they did that, how could they have intended the forum selection clause in those agreements to survive when there's no liability left to pursue - - - pursue under those agreements?

MR. VAN TOL: The answer is twofold. The first answer is it was not a complete release of liability. In other words, the release language that the appellants rely on is referring to who is going to pay the compensation for the work done going forward. It says nothing about past liability. And in fact, there's a limitation-of-liability clause in agreement 4, which refers to agreements 1 and 2.

You wouldn't need such a limitation-of-liability clause if you were absolving all liability with that last agreement. So it was not a complete release. That's one.

JUDGE WILSON: Doesn't that just say for clarifica - - - "for the avoidance of doubt" or something like that, that clause you're referring to?

MR. VAN TOL: I don't see how it could, because - - -

JUDGE WILSON: But isn't that the language of the clause?

MR. VAN TOL: And by that you mean the limitation of liability?

JUDGE WILSON: Yes.

MR. VAN TOL: Well, it - - - I don't see how it could, because it wouldn't be necessary. If you're releasing all liability, then that one release clause in the termination agreement should suffice. You wouldn't have to go back and say and if there is liability, it's

going to be limited to - - - to X, Y, or Z. Because the presumption is, if the appellants are right, there is no liability.

JUDGE STEIN: So - - -

MR. VAN TOL: So my point is, the mere existence of a limitation-of-liability clause shows that it wasn't a full release.

JUDGE STEIN: But in - - - in - - - in - - - is it your view that in order to - - - to take the question of arbitrability and - - - you've got two agreements; you've got one that says it's arbitration and another one that says it's litigation. In order to take that out of the courts, that the second agreement has to explicitly say: and we are hereby terminating the forum selection clause in the first agreement? Is that the only way you can do it? And if not, how else can you do it?

MR. VAN TOL: That is the way to do it. Under - - -

JUDGE STEIN: Well, that's the best way to do it, clearly.

MR. VAN TOL: Yeah.

JUDGE STEIN: But - - - but is that the only way it can be done?

MR. VAN TOL: It's the only way in accord - - -

JUDGE STEIN: And have we - - -

MR. VAN TOL: Sorry.

JUDGE STEIN: - - - have we ever said that?

MR. VAN TOL: Yes, you have. It's the only way in accordance with Schlaifer. The Schlaifer case, 1980 Court of Appeals case, involved a release. And it said you have to have an instrument of obliteration and a complete - - -

JUDGE STEIN: But this is more than just release. This is a - - - this is a termination agreement.

MR. VAN TOL: I understand. But nowhere in the termination agreement do they refer back to the prior agreements and say they are terminated.

So you could do it in one of two ways. You could have an equally broad clause, which I'd like to come back to in a minute, and say the arbitration covers everything that's covered under prior agreements. So it would be equal. Then it would be conflicting. Or you could say: and for avoidance of doubt, any disputes regarding any of the agreements shall be governed by this agreement.

Now, I'd like to return to the breadth of the arbitration clause, because that issue gets lost. While the arbitration clause in agreement 4 in the termination agreement is broad if you're only talking about disputes under that clause, while it's broad in that respect, it is not broad vis-a-vis the litigation clause in the

Quennington agreement, which is the original point. And - - -

JUDGE STEIN: But that's how you interpret it. There's multiple interpretations of that as well. And then that gets us into do we - - - do we decide that under New York law or - - - or English law. And - - - and that's - - -

MR. VAN TOL: Well - - -

JUDGE STEIN: - - - that's a whole other issue.

MR. VAN TOL: Well, I'd - - - I'd like to address both those, if I may? I think the only interpretation that really hangs together is there's no doubt that the clause in the Quennington agreement is broad. There is substantial doubt, and I think it isn't broad at all, about whether the arbitration agreement in the later agreements is equally broad, because what it says is, it says "this agreement".

JUDGE RIVERA: Is - - -

MR. VAN TOL: The first clause says "this agreement or the relationship created thereunder" - - -

JUDGE RIVERA: Okay, so what - - - what - what is covered then, by "or the legal relationship established by this agreement"? What did that add?

MR. VAN TOL: What it added is - - -

JUDGE RIVERA: Because you say it's broader.

MR. VAN TOL: If there was a freestanding dispute post July 1, 2009, it would be covered by that arbitration clause. We don't have that here. What we have here - - -

JUDGE RIVERA: You mean a freestanding dispute that's not about the matters arising under the agreement?

MR. VAN TOL: No, what I was referring to was as a temporal matter. So if on July 1, 2009 going forward, there is a dispute relating to that agreement, it is covered by the later agreements.

Our case is very different. We have a case that starts before. It starts in the spring of 2009, and we have a fiduciary relationship claim that begins there and continues all the way on to the later agreement.

JUDGE RIVERA: Um-hum.

MR. VAN TOL: So the limitation to this agreement is not as broad as the earlier clauses - - -

JUDGE RIVERA: Then I'm not clear. So what's the point of the language: "any claim, dispute, or matter of difference which may arise out of or in connection with"?

MR. VAN TOL: There - - - here's an example. If there is a claim from July 1, 2009 going forward and the other party said I don't think that claim is covered; I don't think it's in the scope - - -

JUDGE RIVERA: Um-hum.

MR. VAN TOL: - - - that issue would have to be

arbitrated.

Now, if I could quickly go on to preservation, because I think that's an important issue that hasn't been touched upon.

What was argued below is that if there is an arbitration, it would be subject to English law. Nowhere below - - -

JUDGE FAHEY: Well, counsel, I just asked the other side about that specifically, and they make specific reference in their brief, I think, to - - - I asked them where in the record they argued it, and they - - - they say it's set out at page 17 of the reply brief.

MR. VAN TOL: It is, Your Honor. And what it says is that the agreement must be governed - - - this is a quote from them: "must be governed and construed under the laws of England and Wales, agreement 4."

Well, that's in the agreement. What they're arguing on appeal is something very different.

JUDGE FAHEY: Um-hum.

MR. VAN TOL: They're saying that the forum selection issue should be governed by English law. That was never argued at the Supreme Court. That was never argued to the First Department. You won't find an English case cited anywhere at all until we get to this appeal.

JUDGE FAHEY: Um-hum.

MR. VAN TOL: That's the first time.

That's improper procedure, as Your Honors know. You're supposed to have expert evidence on that. It shouldn't be for me or counsel to opine on what English law is. We're not admitted in England.

There's a reason to have that preservation rule. So I would submit that the issue has not been preserved.

JUDGE WILSON: What would be wrong with concluding the Supreme Court's dismissal here was actually on forum non grounds?

MR. VAN TOL: I'm sorry, Your Honor, I did not hear you.

JUDGE WILSON: What - - - what would be wrong with concluding the Supreme Court's dismissal here was actually on forum non grounds?

MR. VAN TOL: Well, the judge did not expressly say anything like that. What she said was I don't understand what the parties' connections are to New York.

JUDGE WILSON: She did condition the dismissal, though, on your waiving - - - sorry, your adversary's waiving a variety of defenses, which they agreed they would do.

Could you do that if the dismissal were simply for - - - on the arbitration clauses or failure to dismiss - - - or failure to state a claim?

MR. VAN TOL: I - - - I'm not sure if you could. And I recall that was an odd exchange with the court, because weren't talking about forum non. It was not an issue raised. But I can go to the forum non issue, which is that Mr. Stein is a New York-trained lawyer. He lived here. We believe that he did the first draft of the agreement, which I think is relevant that a New York-trained lawyer did it.

So we think - - - we're very comfortable we have both personal jurisdiction and - - -

JUDGE STEIN: When did he last live here?

MR. VAN TOL: That's - - - that's a matter of dispute, Your Honor.

JUDGE STEIN: Okay.

MR. VAN TOL: We say he last lived here in 2013 or '14. My friends, the appellants, say he left in 1997 and was traveling. It would be a litigated issue below if this case were to continue.

JUDGE FEINMAN: Well, if we were to agree with the dissent in this case, the Appellate Division dissent, to - - - to get around this issue, wouldn't the remedy be just to - - - rather than dismiss it, modify and leave the complaint intact and stayed while you went and arbitrated it in England?

MR. VAN TOL: The issue with that is, the New

York law on the - - - on how broad forum selection clauses are. And what I'd like to do is hark back to what the dissent said. The dissent said we take no issue with the majority's finding that there was not a negation of the forum selection clause. So in other words, there was full agreement by five judges below that the clause was never terminated - - - the forum selection clause was never terminated.

JUDGE STEIN: But if - - -

MR. VAN TOL: The problem with what you suggested, Your Honor, is it tramples upon my client's rights under New York law to have litigation right now, not later, not four or five years from now, once there's a hotly contested arbitration in England, but today.

And if appellants wanted to avoid such a situation, they needed to do what Judge Garcia mentioned, which is make it expressly clear in a later agreement - - -

JUDGE FEINMAN: So you're back to saying you have to have an obliteration clause?

MR. VAN TOL: If not obliteration, then at least a mention in the clause itself of the prior clause. It was - - - it's not hard to do as a New York lawyer to realize I've got this other clause, I better deal with it, and I better get rid of it, because it's problematic.

JUDGE STEIN: But counsel, if - - - if New York

law were applied to interpretation of the - - - the forum clause, then wouldn't - - - wouldn't we - - - in some of the - - - the contracts here, be applying English law to some aspects of the contract and New York law to that provision? And couldn't that result in really inconsistent results? I mean, wouldn't that be a problem?

MR. VAN TOL: So you're saying - - - you're saying below, if the - - - if the case goes back for litigation. Well, we would argue that - - - we would have another fight, I think, about choice of law. We would argue that the act arose under the Quennington agreement and that it's governed by New York law. And - - - and also, Your Honors, this is a - - - this is a pretty plain vanilla breach of contract - - - breach of fiduciary duty case.

I hate to guess, but - - -

JUDGE STEIN: These are like identical contracts except for - - - the first two, right? In - - - in - - -

MR. VAN TOL: In terms of their services, yes, Your Honor. But what I was - - - to finish my thought, what I was going to say is I'd be very surprised if there were a true conflict between U.S. law and English law on a breach of contract issue or something as plain vanilla as this.

CHIEF JUDGE DIFIORE: Thank you, counsel.

MR. VAN TOL: Thank you. I see my time is up. Thank you very much.

CHIEF JUDGE DIFIORE: Counsel - - - Mr. Siri?

MR. SIRI: Thank you. Four - - - four very quick points.

First, in the Schlaifer case, the second agreement did not have a forum selection clause in it, which distinguishes it from our situation where you first had a forum selection clause and then you have an arbitration clause and a later contract which also explicitly references the earlier agreements, states it wants to amend the earlier agreements, terminated the earlier agreements, as well as released all liability and had an integration clause. Quite different than the Schlaifer situation.

Second is in terms of the back-and-forth regarding the breadth of the arbitration clause, I respectfully submit that the breadth of the arbitration clause was explicitly reserved to be decided by the arbitrators. The arbitration clause here states - - - it explicitly states - - - it incorporates by reference the LCIA rules, which is different than most other cases that just reference the - - - the arbitration rules.

And those rules explicitly provide that the arbitrators decide the question of arbitrability, including

explicitly the scope of arbitration. That's Rule 23.1 of the LCIA rules.

And - - - and if I may just point out that with regard to the legal relationship under the Quennington agreement, Aurdeley was not a party. My client was not a party to that initial agreement. So the relationship that arose from that agreement, at the most, was between Mr. Stein and - - - and - and the other side. It wasn't - - - it didn't involve Aurdeley.

And then as to - - - finally as to whether the - - - the question of whether the later agreement superseded and eliminated the forum selection clause, again, the question of interpreting those later agreements and whether or not they superseded the forum selection clause, I respectfully submit, is a question for the arbitrators. Thank you very much. I appreciate the indulgence.

CHIEF JUDGE DIFIORE: Thank you, Mr. Siri.

Mr. Grossman?

MR. GROSSMAN: Thank you, Your Honors. Just a quick point of conclusion. With respect to the parties' rights under the respective agreements, it is respectfully submitted that the later agreements were arm's-length, duly-negotiated agreements between the parties, which sought to clearly and unmistakably not only amend, terminate, supersede, and release all liability under the

prior agreements, but also provide for a new forum selection clause via arbitration.

In doing so, that arbitration clause was definitively broad as it relates to any dispute arising out of or in connection with this agreement. Even taking appellant's counsel's word as true for a second with respect to that clause being limited to this agreement, even if it were limited to the second agreement, the fact that this dispute is in connection with that agreement, meaning the second agreement, clearly encompasses the issue of arbitrability and who gets to decide that.

With respect to the documents, again, the later documents specifically reference the earlier documents and the parties' intent to amend same. The later agreements formally terminate the earlier documents.

And with respect to the interpretation of agreement 4 and the termination agreement, it is respectfully submitted that it is up to the arbitrator to determine - - - to determine the scope of those arbitration clauses and the impact and net effect on the prior forum selection clause in the Quennington agreement.

CHIEF JUDGE DIFIORE: Thank you, counsel.

MR. GROSSMAN: Thank you.

(Court is adjourned)

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of Garthon Business Inc. and Crestguard Limited v. Kirill Ace Stein, et al., No. 99 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Penina Wolicki

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