

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK - CIVIL TERM - PART 43  
3 - - - - -X

3 JONY HEREDIA, personally and as the  
4 Administrator of the ESTATE OF ROSANNA  
5 MONTEAGUDO, individually and derivatively  
6 on behalf of LANCO BROKERAGE CORP.,

INDEX NUMBER:  
654513/2025

Plaintiffs,

- against -

7 LANCO BROKERAGE CORP., JESUS ACOSTA,  
8 KENIA TAVAREZ, JOHN DOE #1-5, JANE DOE  
9 #1-5, XYZ CORP. #1-5,

Defendants.

10 - - - - -X

11 PROCEEDINGS 60 Centre Street  
12 New York, New York  
13 December 2, 2025

14 B E F O R E :

15 HONORABLE ROBERT R. REED,

16 JUSTICE OF THE SUPREME COURT

17 (Appearances are listed on the following page.)  
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1 A P P E A R A N C E S :

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-and-

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KAREN PERLMAN, RMR, CRR  
SENIOR COURT REPORTER

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## PROCEEDINGS

1 THE COURT: Could I have appearances, Plaintiff,  
2 first.

3 MR. GARCIA: William A. Garcia,  
4 Garcia & Kalicharan, P.C., 710 West 190th Street,  
5 New York, New York 10040.

6 Good morning, Your Honor.

7 MS. PARKS: Good morning, Your Honor -- are you  
8 going to introduce --

9 MR. MENJIVAR: Sure.

10 Good morning, Your Honor.

11 Alejandro Menjivar, of counsel to  
12 Garcia & Kalicharan, at the same address. Attorney number  
13 is 6058069.

14 THE COURT: Not necessary.

15 Go ahead.

16 MS. PARKS: Good afternoon, Your Honor.

17 I don't remember my bar number, but my name is  
18 Kari Parks -- I'm very impressed -- my name is Kari Parks.  
19 I represent Lanco Brokerage Corporation, Jesus Acosta, and  
20 Kenia Tavarez. Mr. Acosta, and Mr. Tavarez, and their  
21 principals are with us this morning.

22 To my right is my associate, Timothy Curtis. We're  
23 with the law firm Gusrae Kaplan Nusbaum, PLLC, on  
24 Wall Street.

25 Thank you.

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1 THE COURT: Go ahead, Counsel. Everyone can have a  
2 seat.

3 MR. GARCIA: Thank you, Your Honor. May I ask my  
4 clients to come and sit at the table? Is that okay? My  
5 client is here.

6 THE COURT: It's fine.

7 MR. GARCIA: Thank you, Your Honor.

8 Your Honor, I had written to the Court. I filed a  
9 document last week and then emailed it, it was yesterday,  
10 Document Number 115. But I asked the Court to consider, in  
11 addition to the two motions, Motion Sequence 1 and 2, to  
12 also consider an important issue -- two important issues,  
13 one of which is the Court issued an injunction, back in  
14 August of this year, enjoining the defendants from using the  
15 assets of Lanco Corporation for purposes of paying legal  
16 fees.

17 I had filed this case and also requested an  
18 injunction because Lanco became the beneficiary of a  
19 \$500,000 insurance policy that was payable upon the death of  
20 my client's wife. She passed away on August 31, 2023. And  
21 Lanco received the \$500,000 and change September 21st, I  
22 believe it was.

23 And they refused to pay my client any -- my client,  
24 meaning Jony Heredia, surviving spouse of  
25 Rosanna Monteagudo, is also the sole distributee. She did

## PROCEEDINGS

1 not have any children. And he is also the administrator  
2 both in Massachusetts as well as in New York.

3 And he made a claim for his interest in Lanco as  
4 well as the proceeds of the insurance policy, and the  
5 defendants refused.

6 As a result, he was compelled to commence this  
7 litigation, understanding that Lanco is in possession of  
8 half a million dollars in addition to the other assets,  
9 would be unfairly advantaged in pursuing and litigating  
10 against my client. We request that that -- there be a  
11 limitation on what Lanco could do with the assets, and  
12 Defendants could do with the assets of Lanco, and that  
13 limitation was not to use that -- those funds for purposes  
14 of paying litigation expenses.

15 We, in the context of -- and following the Court  
16 rules, engaged in discovery soon after the case commenced,  
17 and soon after the defendants retained counsel. Counsel for  
18 the defendants filed an appearance on September 15, 2025.

19 And we recently found out, namely on the 24th of  
20 this month -- of -- I'm sorry, on the 24th of November,  
21 after the tremendous effort to obtain records from Chase,  
22 records which were delayed for a significant period of time  
23 because Defendants instructed Chase not to respond to the  
24 subpoena that was duly issued on behalf of Plaintiffs.

25 But soon -- after a letter that I sent to the Court

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1 on the 24th of November, Chase decided to produce the  
2 records. And on that day, I discovered that the order that  
3 was issued on August 7th by the Court was -- had actually  
4 been violated, and that the defendants had, in fact, on  
5 September 12th, issued a check for \$40,000 to their current  
6 attorneys in complete violation of the court order.

7 That, again, in my view, not only was a clear  
8 violation of the judge's order, but an unfair violation  
9 because, by using those funds, they were fighting my  
10 client -- have been fighting my client, who has been trying  
11 to pursue justice and trying to recover the funds that he,  
12 as the sole heir of his wife's estate, is entitled to.

13 What is most disturbing is the fact that for -- in  
14 order to prevent me from seeing or to prevent us and the  
15 Court from seeing what had happened, they actually  
16 interfered with my client's ability to obtain books and  
17 records, particularly, the records from -- from Chase.

18 What I have found also is -- and I -- and it's  
19 another request that I have for the Court, that my review of  
20 the records from Chase actually substantiate the claims that  
21 my client had been making, that the funds of Lanco had been  
22 misused since his wife passed away.

23 And I have here, for the Court, copies of the  
24 Chase -- partial Chase subpoena records, particularly the  
25 records for account ending in '4465 that have a -- from

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1 2023, September of 2023, through September of this  
2 year -- close to \$189,000 in transfers that were made  
3 through various methods, including methods that included  
4 several Chase Bank accounts that are not listed as  
5 Chase Bank accounts in the reports that were -- in the  
6 records that Chase provided to us, payments that were -- had  
7 been made to those Chase Bank accounts. There were payments  
8 that were made to a Barclays Bank account that's presumably  
9 owned by Kenia Tavarez, one of the defendants in the case.

10 And also payments to a Wells Fargo credit card,  
11 totaling \$40,000 in payments, also that I believe that is  
12 associated with Alan Acosta.

13 What my client had feared was actually proven or is  
14 proven by the records that were -- that were provided by  
15 Chase. I have a copy of those records. I have provided  
16 counsel for the defendants --

17 THE COURT: Counsel, you just -- you've been  
18 talking for ten minutes now about something that's not  
19 before me. Right? Get to what we're dealing with today.  
20 I'm not going to just do a motion because you say so.  
21 Right? You have to give notice of a motion.

22 You put before me an order to show cause that  
23 hasn't been signed. If you've got discovery issues, you  
24 take it up in conference, you don't just come here, ambush  
25 the other side, ambush the Court and say, "I have papers."

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1           You're not -- I'm not receiving papers. I'm not dealing  
2           with papers that you sent by way of a letter. You submitted  
3           an order to show cause, right? I'm here to deal with that.  
4           Let's deal with that.

5                       MR. GARCIA: Thank you, Your Honor. I will deal  
6           with that Motion Sequence 1. And I will spare the Court  
7           with some of the information regarding that -- the history  
8           of the case.

9                       As I was mentioning, my client, between -- after  
10          his wife passed away, in August of 2023, attempted to  
11          recover a portion of the estate from the defendants, and the  
12          defendants refused. They went to the extent of  
13          issuing -- the motion that I'm -- that we have, Your Honor,  
14          this morning is a motion for a preliminary injunction  
15          seeking -- seeking to enjoin the defendants or compel the  
16          defendants to give access to -- to the plaintiffs to the  
17          books and records of Lanco, as well as to enjoin them from  
18          dissipating the corporate assets of Lanco, and the  
19          declaration of the payment of dividends, participation in  
20          management as well as the appointment of a receiver and a  
21          complete accounting.

22                      My client had tried to negotiate with the  
23          defendants in the case getting a resolution, and having not  
24          prevailed, was compelled to then commence this action.

25                      I -- we believe, Judge, that it is appropriate for

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1 the Court to enjoin or to grant the reliefs requested  
2 herein. The grant -- the granting of an injunction we must  
3 show --

4 THE COURT: That's it -- isn't that the ultimate  
5 relief that you're seeking? You're asking for your client,  
6 who has not been involved in this brokerage firm, has no  
7 experience in this area, to now be the co-manager -- that's  
8 a shift from what's been going on.

9 There is a brokerage firm that has been in place, a  
10 going concern, and, sadly, your client's wife passed away,  
11 right?

12 The fact that he is the surviving spouse doesn't  
13 necessarily mean that it makes sense for him to suddenly now  
14 be a co-manager of a -- of a business that he has no  
15 experience in and has never participated in.

16 So you're asking for, at this point, the ultimate  
17 relief that will come, so -- and that's not really  
18 appropriate for a preliminary injunction.

19 MR. GARCIA: Well, the -- the reason why the  
20 request is made, even though he has no experience in the  
21 area, he can always serve as a director of the corporation,  
22 and also be a part of the group that oversees the operations  
23 of the company. He doesn't necessarily have to be involved  
24 in the day-to-day management and operation of the company.

25 THE COURT: I understand. But it's a shift from

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1 the status quo. Right?

2 The status quo was his -- his late wife was someone  
3 who was experienced, and was a manager, and had a 50 percent  
4 interest. He's entitled, it would seem, to this 50 percent  
5 interest. But she was a working member of this body, with  
6 particular expertise. He has none of that. And so putting  
7 him in place now is a shift. It can happen at the end of  
8 the litigation, if it's demonstrated. But it's not assumed.  
9 Right? It's -- what you're asking for is to change the  
10 current circumstances of an ongoing business.

11 MR. GARCIA: Understood, Your Honor.

12 The -- on a related matter, the  
13 defendants -- meaning Kenia Tavaréz as well as Jesus  
14 Acosta -- have two sons, both of them who were never  
15 involved either in the management and operation --

16 THE COURT: From what I understand, they have a  
17 specific business background. So -- and, again, the people  
18 who were the surviving personnel of the firm who had an  
19 understanding of how the business worked had brought in  
20 family members who have business expertise to assist in  
21 making up for the loss of -- of the plaintiff's spouse.  
22 Right?

23 So it would not make sense for the business, having  
24 suffered the loss of someone with business experience, to  
25 simply go ahead without that. It would make sense for the

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1 business to try to fill that void. They happen to be family  
2 members.

3 But -- and there's nothing to demonstrate that  
4 they're family members who are specifically unqualified.  
5 And, in fact, it's the opposite.

6 MR. GARCIA: I understand the limitations, Judge,  
7 as it relates to the request to participate in management.

8 There are other requests that we are making. And  
9 one of the requests includes access -- complete access to  
10 the books and records, as well as an accounting. Judge, the  
11 fact that they have been in possession and control of  
12 the -- of Lanco and the business, and they have hired their  
13 two sons to then participate in -- in the business, the fact  
14 that they have used the assets of Lanco to benefit  
15 themselves, as well as their children, and also the -- used  
16 them to pay personal expenses, I think that warrants the  
17 granting of the relief of access to -- full access to the  
18 books and records as well as to the accounting.

19 THE COURT: What personal expenses do you lay out  
20 in Motion Sequence Number 1 that they've used?

21 MR. GARCIA: Your Honor, the -- the -- the motion  
22 itself does not have any indication of the actual personal  
23 expenses. And the reason being that we were prevented from  
24 having access to any of the records. In fact, we were  
25 prevented from --

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1 THE COURT: I understand that, Counsel. So there  
2 is a general indication that they haven't shared the books  
3 and records. I got that.

4 But now you've asserted that they've used personal  
5 expenses, and that's -- that's in the motions to come, I  
6 take it?

7 MR. GARCIA: So the records -- again, I'm making  
8 reference to the documents that were produced by Chase, that  
9 also show, particularly credit cards owned by Lanco, that  
10 contained numerous transactions that have to be explored,  
11 obviously, by Plaintiff. And without the full access to the  
12 records that we have requested, we won't be able to  
13 understand and establish what those transactions were for.  
14 In -- particularly, the transactions that relate to the  
15 credit cards owned by Lanco.

16 There were other payments that were made to credit  
17 cards that were not owned by Lanco because they do not  
18 appear in the Chase report. And it is our belief, Judge,  
19 that those are payments that were made for personal  
20 expenses.

21 Again, because we were prevented from obtaining  
22 those records ahead of time, we were not able -- we were not  
23 able to supply those to the Court. However, the Court,  
24 under 22 -- CPLR 2214(c), has the power to consider  
25 additional evidence that is presented at the -- after the

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1 motion papers are filed.

2 And given the fact -- for good cause shown, and  
3 given the fact that we have very good cause shown, I submit  
4 to the Court that it would be appropriate for the Court to  
5 consider that and -- and to consider the records that were  
6 presented by Chase.

7 The fact that we were prevented from accessing the  
8 records and we were stifled in our approach or our attempt  
9 to subpoena those records for a while, we weren't able to  
10 provide those to the Court, but the Court has the power and  
11 the discretion to use that for good cause shown, and I think  
12 that this constitutes good cause under the circumstances.

13 In addition, we're requesting an accounting for the  
14 same reason. They have been in possession and control of  
15 Lanco for over two years, have not provided any payments of  
16 dividends or any benefits or any records other than the  
17 summary financial statements from 2019 to 2023, the profit  
18 and loss, as well as the balance sheet, and one single tax  
19 return. We have no access to any records. We have no  
20 access to anything else, other than what we have gathered  
21 from third parties through subpoenas that we have issued.

22 We -- we are requesting -- given that the  
23 defendants in this case, being in control of the  
24 corporation, being managers of the corporation are -- and  
25 co-shareholders are fiduciaries, and as fiduciaries they

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1 have an obligation to behave in a way that does not  
2 undermine the interests both of the corporation as well as  
3 of the other shareholders.

4 And in this case, it is our -- we submit that they  
5 are undermining their interest. My client is entitled also  
6 as a shareholder, both under the BCL as well as under common  
7 law, to access books and records and also to receive an  
8 accounting. And we are requesting that because  
9 the -- because of the fact that they are -- have been in  
10 control.

11 One thing that is very troubling is the fact,  
12 Judge, that during the time that the defendants were  
13 negotiating with my client, they obtained two separate  
14 appraisals. One appraisal was obtained -- and this is  
15 Document Number 53 in the record, and Number 54 is the  
16 second appraisal.

17 One appraisal was obtained in March of 2024. The  
18 appraisal, for some reason that I cannot imagine what it  
19 was, appraises the business as of March -- I believe that  
20 that appraisal appraises the business as of August of 2023.  
21 But they left out -- they did not tell the appraiser that  
22 the corporation had an extra \$500,000. And as a result, the  
23 appraiser did not take that into account and came up with a  
24 value of about \$399,000 for the entire corporation. And  
25 they presented that to my client. They presented that to

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1 the Court as being an appraisal that they did in order to  
2 try to satisfy my client's requirements.

3 In November of 2024, they requested another  
4 appraisal from HFM, and that appraisal -- they asked HFM to  
5 do the appraisal as of March of 2023. Why, I don't know.  
6 But they also left behind the fact that Lanco had half a  
7 million dollars in the bank. So the appraisal came out for  
8 \$672,000 for the total business, but never included the half  
9 a million dollars that were in the account. Why would they  
10 do that and then present that to my client as a way of  
11 saying this is what the business is worth, take it?

12 It's -- it's a way of oppressing my client. It's a  
13 way of deceiving my client into accepting something that  
14 he's not -- you know, he should not accept. So  
15 those -- those are -- again, Documents Number 53 and 52, or  
16 I believe it's 50 -- 53 and 54, Judge.

17 The -- so -- so the bad faith, the desire to -- to  
18 oppress my client and have him take a deal that really he  
19 shouldn't take because the company is not valued at those  
20 numbers, clearly because it was omitting half a million  
21 dollars from the equation.

22 In addition, Judge, we are asking that the Court,  
23 consistent with the prior order of August 7th, enjoin them  
24 from spending or dissipating Lanco's assets, and,  
25 particularly, spending the assets for purposes of fighting

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1 my client in his desire to seek justice.

2 They now have unlimited resources, and my client  
3 has to fund litigation on his own. And it is not only  
4 unreasonable, it's unfair for them to actually hold on to  
5 the information, hold on to the records, hold on to the  
6 money, and then fund their own litigation, their own fight  
7 against my client with the money that they received from my  
8 client's -- from the death of my client's spouse.

9 And as a result, we ask, Judge, that -- that the  
10 Court grant my client's request to enjoin them from  
11 continuing to use Lanco's money in order to -- to fund the  
12 litigation, and, more particularly, that they also -- that  
13 the Court enjoin them from misusing the corporate funds or  
14 dissipating the corporate assets.

15 THE COURT: Now, you sought a judicial dissolution.

16 MR. GARCIA: Yes, Your Honor.

17 THE COURT: And they have responded by filing a  
18 notice of purchase election. That would trigger a valuation  
19 process, which would have you get the -- access to the books  
20 and records that you're seeking. So they've taken a step  
21 that gets you that -- the access that you're saying is part  
22 of the issue.

23 Now, we have \$500,000. There is no indication that  
24 they have inappropriate access to that. The \$500,000 in  
25 life insurance was directed to the firm, right? Your client

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1 has an interest in that, to the extent that he's -- he's  
2 entitled to step into his spouse's shoes. But the company  
3 was tendered the \$500,000 of -- by way of the life insurance  
4 proceeds.

5 So the interest is not your client's in the  
6 \$500,000 life insurance; that went to the country -- the  
7 company appropriately. The interest is in your client's  
8 access to a 50 percent share of what he believes the company  
9 is -- is worth, or what it's demonstrated that the company  
10 is worth.

11 So there's -- I mean, to the extent that they've  
12 used anything, it really is -- everyone is diminishing the  
13 pot. You know, there's a limited pot of money that the  
14 business has. And, frankly, your client has instituted a  
15 lawsuit that put the business's interests at issue. A named  
16 defendant is the company, in addition to -- in addition to  
17 the individual defendants.

18 So -- but my point is that the notice of purchase  
19 election starts the process for the valuation, and it gives  
20 you access to the books and records. And so there's no  
21 separate need for an injunction to that effect because it's  
22 part of the -- the process that they have -- that they  
23 responded to your request for judicial dissolution.

24 So everything is -- everything can be resolved in  
25 that arena once it's appropriately referred to a referee for

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1 affixing of the value. And the referee will have access to  
2 the \$500,000, in terms of identifying it, and where it may  
3 be, and whatever is left of it.

4 And the referee might have access to the books and  
5 records, and you will have access to those books and records  
6 as part of that proceeding.

7 So, again, injunction -- a preliminary injunction  
8 is supposed to be for something that cannot be had through  
9 the normal process.

10 MR. GARCIA: Well, Your Honor, the -- and I  
11 understand that the BCL 1118 election has changed the  
12 dynamics of the case. And our position is that it changes  
13 the dynamics of the case relative to the one cause of action  
14 for judicial dissolution. And the remaining causes of  
15 action are still at play, and based --

16 THE COURT: But are they -- the remaining -- the  
17 remaining actions are still at play, but they -- they can be  
18 resolved by -- they can be resolved by money damages.  
19 Right?

20 So, again, separate out each aspect of the case.  
21 Here, we're addressing the preliminary injunction, and I  
22 don't want to get far afield from that. The task at hand is  
23 to address the preliminary injunction, and to the extent  
24 money damages at the end of the day -- much of that could be  
25 resolved, presumably, after a review of books and records

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1 with a referee, exchange of discovery through the referee's  
2 process, making sure to account for all assets of the  
3 business, including the proceeds of a life insurance policy,  
4 a forensic examination of what's involved in the -- what's  
5 available to the company, and what's been used by the  
6 company in the recent past or since the passing of your  
7 client's spouse would be able to identify if there's been a  
8 misuse of monies. And to the extent there has been a misuse  
9 of monies outside of the bounds of what the company should  
10 be doing, then that's a damages -- it's a proof of damages.

11 MR. GARCIA: Your Honor, in the context of the  
12 election -- BCL 1118 election, BCL 1118 Subdivision C has a  
13 substitute for what would be an injunction in a case, in  
14 that it grants the Court the power to set a bond and  
15 also -- and all the security that the Court deems prepared  
16 in order to protect the interest of the remaining -- of the  
17 shareholders being bought out.

18 So, if, for example, the Court, in this particular  
19 case, does not believe that -- the injunction that we're  
20 requesting through the order to show cause, we are asking  
21 that the Court consider the imposition of a bond in this  
22 case for an amount that would sufficiently secure and  
23 protect my client.

24 And the idea that the legislatures and -- had and  
25 the courts had was that, in the meantime, once the election

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1 is made, it is an irrevocable election. They are now the  
2 purchasers, and eventually will be the owner unless  
3 something grave happens that then will merit the termination  
4 of that election.

5 But in the meantime, they can continue to misuse  
6 and abuse my client's interest, and eventually not have  
7 sufficient resources to pay for the purchase price.

8 THE COURT: That assumes that they have an interest  
9 in destroying the company.

10 How long has this company been in business?

11 MR. GARCIA: The company has -- as far as I know,  
12 it was purchased by the -- by my client and the two  
13 defendants in 2006, but it has been in existence prior to  
14 that, that date, for many years.

15 THE COURT: So over 20 years, it's been an ongoing  
16 business.

17 Now they've hired family members to come in to  
18 assist them to make up for the loss of your client's spouse.  
19 What is the interest -- what would be the interest in them  
20 in trying to run the business into the ground, simply  
21 dissipate the assets? Something that's been generating an  
22 income for over 20 years? Why would they now decide we will  
23 take the -- the under million dollars and run? Right?

24 It's -- it's -- you said they have -- they've  
25 offered some -- a couple of different valuations that didn't

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1 include the \$500,000, one in the area of 300-plus thousand,  
2 and one in the area of 600-plus thousand.

3 So it doesn't -- it doesn't make business sense for  
4 them to take what is an entity that had been generating  
5 income for over 20 years, that now has a valuation, you  
6 know, 1.1 million, based upon the things that they've told  
7 you, assume it's that limited, it wouldn't make any sense  
8 for them.

9 And if it was -- if it was more than that, it  
10 certainly wouldn't make sense for them to try to dissipate  
11 the assets, to undermine the business structure and just  
12 squeeze out that money. All the bond does here is further  
13 hamper the business.

14 MR. GARCIA: Well, Your Honor, I don't think that  
15 they may have an interest in actually destroying the  
16 business. But -- but at least using the assets that he has  
17 at hand, and then not be able to pay the purchase price at  
18 the time of the determination of a fair value is made by the  
19 referee, or whoever the Court delegates to conduct the  
20 assessment.

21 At this particular point in time, they do have the  
22 assets. They have the resources. They have the money that  
23 is necessary for them to -- or that may contribute to the  
24 payment of the purchase price.

25 My concern is that at the rate at which they are

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1 moving, back in 2024, based on the financial statements that  
2 are part of the record, they had about \$1.5 million in the  
3 bank. That now at -- based on the 2025 balance sheet is  
4 down to 1.2. And that's after the children of the  
5 defendants joined the firm. So they have additional -- they  
6 have depleted or lowered the -- the -- the assets.

7 Their -- the company was making money based on the  
8 same financial statements. It was running positive; the  
9 last year it's running negative. It lost money. So I  
10 am -- I don't --

11 THE COURT: Maybe it's because your spouse -- your  
12 client's spouse was a big contributor.

13 MR. GARCIA: Well --

14 THE COURT: So it's going to take time if  
15 she's -- if she was -- it stands to reason that if she was a  
16 50 percent owner of this company, and had such faith in the  
17 company that she assigned a life insurance to the company,  
18 that this was -- that she was putting -- giving her all to  
19 the company, and it may just be that losing that is a  
20 significant loss to the company. And it may take some time  
21 to ramp up.

22 Now, they've hired sons with business education and  
23 experience to come in, but they don't have the years'  
24 experience that your client's spouse had. So, yeah, it  
25 makes sense that it would take some time to get back up to

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1 speed. Litigation doesn't help.

2 MR. GARCIA: The concern that I have, Judge, is the  
3 business lost money even though it made more money,  
4 generated more gross profit, which is basically the cost of  
5 the insurance minus the -- it essentially boils down to what  
6 they make in -- in commissions.

7 Even though they made more money in 2024 in  
8 commissions, it still ended up being less. And that  
9 suggests, Judge, that they're not necessarily -- they're  
10 overspending or not using the funds that they're generating  
11 appropriately, even though they had more cash in the bank to  
12 leverage whatever activities they had, less debt, because  
13 what they did is that they grabbed probably a portion of the  
14 funds that they had in the \$1.5 million to reduce some of  
15 the debt, they still made less money at the end of the year,  
16 even though they made -- they generated more gross profit.

17 And, again, our concern is that given the fact that  
18 they are using -- based on the Chase records -- paying at  
19 least five different credit cards -- one for Kenia, one  
20 for -- Kenia Tavarez, one for Jesus, one for Alan Acosta,  
21 and the other two credit cards that are just not  
22 identified -- they're not part of Chase's credit cards.  
23 Their using those credit cards leads us to believe that  
24 there's a possibility or a risk that they may not have the  
25 funds to cover the purchase price at the time that a

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1 determination of the fair value is made by a referee  
2 following the -- after they complete discovery.

3 So we are concerned, and we are asking the Court  
4 that the Court consider setting a bond for a reasonable  
5 amount. I can use, for example, the same formula that is  
6 used -- that was used by HFM, one of the valuers, to give  
7 the Court an indication of what the value of the company  
8 should have been based on the numbers that exist as of  
9 March 31st of 2025, or as of March 31st of 2024, and the  
10 value of the company based -- using the same formula, based  
11 on the same assets that are reported in the balance sheet by  
12 their own CPA for 20 -- 2024, I submit that the value of the  
13 company would be about \$1.4 million, \$1,470,000 for 2024.  
14 And my client owns 50 percent of that.

15 And, therefore, 2025, using the same numbers, the  
16 same formula that was used by the appraiser, HFM, and the  
17 balance sheet for 2025, and the profit and loss statement  
18 would yield a value of 1.76, 1,760,000.

19 Again, our concern, if we were to take 50 percent  
20 of that, \$880,000 has been the amount, my concern is that  
21 they might not have the funds at that particular point in  
22 time, when that determination is made to protect my client.

23 And in light of what we have seen from the records  
24 from -- from Chase, the fact that they have misrepresented  
25 what the value of the company was by hiding from the

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1 appraisers that there was half a million dollars, the two  
2 appraisers, and the fact that they have tried to hide the  
3 information from us by preventing us from accessing the  
4 books and records, and that they have violated this Court's  
5 order of August 7th, shows us that they have no respect for  
6 the truth, they have no respect for the rule of law.

7 For the defendants to go to such length as to tell  
8 Chase, you do not -- you are excused from responding to  
9 Plaintiff's subpoena, so that we would never find out that  
10 they misused -- that they violated the Court order of  
11 August 7th -- and, Judge, it gives us tremendous pause and  
12 tremendous worry, and I'm very concerned about, you know, my  
13 client's ability to be able to receive a fair value if they  
14 don't have the funds that -- that the corporation needs to  
15 then buy out my client's interest.

16 So -- so, again, the statute, BCL 1118(c) does  
17 not -- unlike the same section where a motion is required  
18 for a stay, 1118(c) does not require a motion, it just gives  
19 the Court the power to impose a bond or other security that  
20 will protect the non-purchasing shareholder during the time  
21 of the valuation process and until the shares are purchased.

22 And I think that we have seen enough, Judge,  
23 to -- to make that kind of request for the Court, and ask  
24 the Court to consider imposing that bond or other security.

25 And, again, I have -- I have examined the balance

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1 sheets and the profit and loss, I have used the same formula  
2 that was used by their own appraisers, particularly HFM.

3 I'm not suggesting that the Court will necessarily  
4 use that same formula, or that the referee will necessarily  
5 use that same formula, but, rather, would use a formula that  
6 is appropriate for this particular type of business, but at  
7 least something to work with, and with real numbers  
8 that -- as of a certain set date, so...

9 THE COURT: What are you saying would be an  
10 appropriate bond?

11 MR. GARCIA: I believe, Judge, that 750,000 to  
12 850,000 would be appropriate under the circumstances.

13 And, again, following the same approach, and I've  
14 given counsel a copy of the file that I have. And right  
15 after the table of contents, towards the end, is the  
16 calculation that I have made using the same numbers that  
17 come from the balance sheet and profit and loss statements  
18 that were generated by their own accountant, their own CPA.

19 The value, according to that formula, is not -- you  
20 know, \$672,000 for the entire company or \$399,000 for the  
21 entire company. But, rather, between 1.4 to \$1.7 million,  
22 assuming -- and we have not yet seen everything.

23 So -- so in the context of valuation, the -- based  
24 on an 1118 election, the wrongdoings and the damage that was  
25 caused by the wrongdoing of the shareholders can be taken

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1 into account and also can be used to adjust the value of the  
2 company.

3 So anything that they paid to themselves in -- in  
4 the form of direct or -- or de facto dividends, or some  
5 other way, can be used to adjust. And, again, given what  
6 we've seen, we think that those adjustments will take place.

7 And, in fact, Judge, just for purposes of clarity,  
8 the estimated calculation that I -- that I have at the end  
9 of the -- of the table of contents includes an adjustment of  
10 \$189,000 based on what we perceived to have been  
11 inappropriate expenditures by the -- by the defendants.

12 They have been in control of the corporation. They  
13 could come out and say, no, these are legitimate expenses.  
14 They have not done any of that, Judge. They have not given  
15 us a report. They have not given us an accounting. So we  
16 don't know.

17 In fact, there is a liability that is listed in the  
18 balance sheet of close to \$500,000, maybe more than that.  
19 What is that? It's -- you know, so those are things, you  
20 know, that raise a lot of concerns to us. And I agree with  
21 the Court that these issues can be addressed in the context  
22 of the valuation process.

23 But, again, I believe that it would be appropriate  
24 for the Court to consider setting a bond or other security.  
25 And particularly since they have that half a million

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1 dollars, I don't think that there is any limitation on how  
2 the Court may want to break that up, whether in the form of  
3 a restriction of the use of those funds, and then an  
4 additional bond for the rest -- for the difference. And I  
5 ask that the Court consider it and certainly leave it to the  
6 discretion of the Court.

7 So these are our requests, Judge.

8 I think that my clients -- my clients, in this case  
9 being Mr. Heredia, the administrator, and on behalf of  
10 himself as well as he's suing derivatively -- derivatively  
11 on behalf of the corporation, make the request that the  
12 preliminary injunction be granted restricting the use of the  
13 funds and compelling an accounting, access to the books and  
14 records.

15 We had asked also for the --

16 THE COURT: Counsel, it's five minutes to 1:00.

17 MR. GARCIA: Sure.

18 THE COURT: I'm going to hear -- anything else  
19 we'll take on submission.

20 MR. GARCIA: I'm sorry, Judge?

21 THE COURT: Anything else we'll take on submission.

22 We have your papers. You've taken up 45 minutes.

23 Go ahead.

24 MS. PARKS: Thank you, Your Honor.

25 Kari Parks for the Lanco parties.

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1           Unless Your Honor has any specific questions you  
2           want me to address, I would like to focus on Motions 1 and  
3           2, and hopefully briefly.

4           Holistically, what we've heard over the  
5           past -- call it 45 minutes -- is that what Mr. Heredia cares  
6           about is money. He wants to be paid for the value of the  
7           estate's shares, which is reasonable, and my clients never  
8           disputed that, right? There's also a grievance about the  
9           life insurance policy, which, as Your Honor pointed out, for  
10          whatever reason, the only policyholder was Lanco, the only  
11          beneficiary was Lanco, the only payor was Lanco, and  
12          Ms. Monteagudo took it out before her passing, right?

13          But even assuming the policy proceeds are in play  
14          in some respect, the fact of the matter is that what  
15          Mr. Heredia wants is money; he wants cash.

16          And why I'm emphasizing that is, as Your Honor and  
17          your clerks are well aware, in a motion for a temporary  
18          restraining order and preliminary injunction, one of the  
19          three conjunctive factors is proving irreparable injury.  
20          And it's black letter law, all over the state, the Court of  
21          Appeals, the United States Supreme Court, that if all you  
22          want is cash, that is not irreparable harm. That is  
23          something that can be satisfied with money damages at some  
24          point. So Mr. Heredia has not met his burden to clearly  
25          prove irreparable injury.

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1           He's not clearly met his burden to prove success on  
2           the merits, or that the equities balance his position  
3           either.

4           I'm happy to answer any specific questions  
5           Your Honor may have about that. But based on Your Honor's  
6           questions, it -- I don't know that I have much more else to  
7           offer that -- on that issue.

8           I will say, as far as practicalities are concerned  
9           with the TRO and preliminary injunction, I do -- and this  
10          will tie into the bond issue, which we submit it could be  
11          briefed, and I'd be happy to look at it, and maybe we can  
12          figure out what the right solution is.

13          But let's say that Your Honor is inclined to issue  
14          a bond in response to the 1118 valuation at some point,  
15          whether today or at a later course, why I'm bringing it up  
16          in the context of Motion Sequence 1 is that my clients  
17          voluntarily have never spent a cent of the policy proceeds  
18          that they received about two years ago at this point. They  
19          still haven't touched it. They're happy to continue to  
20          stipulate, as we've said many, many times to opposing  
21          counsel and in papers, to still not touch it.

22          We're happy to leave the half a million dollars  
23          alone, for now, even if Mr. Heredia is not legally entitled  
24          to it, just to save everybody time and headache and argument  
25          and this. We're happy to keep not touching it.

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1           Where the policy proceeds have actually been  
2 placed, actually before the litigation began, my clients  
3 moved it into like a high-yield savings account because in  
4 the Chase account it wasn't making much money. Right?

5           So if that makes things easier, we are still happy  
6 to agree to not touch that money.

7           But the part of the TRO financially, though, that  
8 gives us concern is the prohibition on Lanco spending any  
9 money in connection with this litigation.

10           I heard Mr. Garcia's comments on fairness. The  
11 problem is he hasn't found a single case, and neither have  
12 I, that just because a plaintiff sues a defendant and says  
13 the defendant owes them money, he gets to prevent the  
14 defendant from spending any money at all to litigate the  
15 case. That's, of course, not the rule.

16           The American rule, as we generally all know, is  
17 that each side bears its own expenses, and hopefully that's  
18 a good incentive for people to settle things in an  
19 economically rational manner that spares the public this  
20 burden of having to deal with that.

21           So on that stipulation -- you know, as Your Honor  
22 pointed out, to the extent that the Motion Sequence 1 seeks  
23 any relief other than just money, it is, first of all, money  
24 that's -- or, excuse me, actions that are the ultimate  
25 relief sought in the case, which is just not appropriate to

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1 issue on a preliminary injunction; second, you know,  
2 Mr. Heredia's primary focus seems to be the books and  
3 records accounting issue. But, of course, as this case is a  
4 live litigation, there is discovery in the ordinary course,  
5 which gives him all of the books and records.

6 And pursuant to the BCL exercise as well, we've  
7 agreed and tried to get a stipulation to that effect, that  
8 he can have anything he needs to figure out what the proper  
9 value of the estate's shares is.

10 So there is simply no need to add an additional  
11 injunction just to get discovery to which Mr. Heredia is  
12 already entitled.

13 I'll pause there on Motion Sequence 1.

14 I'll say generally there were many, many facts and  
15 assumptions and speculations we don't agree with, but I  
16 don't want to waste anybody's time with that unless  
17 Your Honor had a specific question about any of those.

18 THE COURT: All right. Move on.

19 MS. PARKS: Okay. And then on Motion Sequence 2,  
20 which was the disqualification motion, I don't think  
21 Mr. Garcia mentioned it at all.

22 I think, frankly, it's borderline frivolous. But,  
23 again, we're not trying to make more motions here. I just  
24 submit that Your Honor should reject the motion in its  
25 entirety. There's no conflict when the controlling

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1 shareholders in the company are all sued together. They've  
2 all moved to dismiss together.

3 Pursuant to the letter, BCL 1118, they've all  
4 irrevocably elected to buy Mr. Heredia out together, so, on  
5 the law, there's certainly no conflict.

6 On the facts, as a practical matter, as the sole  
7 operators of the company -- of course Lanco is supposed to  
8 have its own counsel, and Lanco is supposed to participate  
9 in discovery, Lanco is a corporation, and it needs humans to  
10 do that. So even on that practical aspect, it really  
11 doesn't make much sense.

12 And as we submitted in the paper, to the extent  
13 that Your Honor thinks that there might potentially be a  
14 conflict, even though we didn't find a single case where at  
15 this early stage of a case a single lawyer can't represent  
16 both the corporation and the individuals, that conflict is  
17 curable and it's waivable, and it has been waived by the  
18 people with appropriate authority.

19 Plaintiff's argument --

20 THE COURT: I guess the only issue there is that  
21 the -- to the extent that your adversary is saying that  
22 Defendants have presented an undervaluation of the company  
23 so far, leaving in the hands of the attorney for the same  
24 defendants to get a maximum valuation --

25 MS. PARKS: Right.

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1 THE COURT: -- the valuation process, there is that  
2 concern.

3 MS. PARKS: There is that concern.

4 What I would say, Your Honor, is that that is a  
5 normal concern in any purchase-and-sale negotiation, but  
6 it's not a conflict of interest under the law, and it's  
7 certainly not an unwaivable conflict of interest.

8 And the reason why, Your Honor, is that pursuant to  
9 BCL 1118, when that irrevocable election is made, the  
10 statute is clear, the people, quote/unquote, who can make  
11 the election are the corporation, other shareholders of the  
12 corporation, or any combination thereof. Right? So in this  
13 case, all three of them have jointly made the election.

14 As Mr. Garcia correctly points out, once they have  
15 made that election, the date on which Mr. -- Mr. Heredia's  
16 value of the estate has been fixed, right?

17 So the fact of the matter is that he is entitled to  
18 a certain amount of money that no matter what these people  
19 do, if for some reason they ask their sons to leave their  
20 investment banking and private equity jobs, and join the  
21 family company and run it all into the ground so they're all  
22 broke -- right? -- if they for some reason choose to do  
23 that, he's still entitled to a certain fixed sum that  
24 happened before they did that, and he'd be entitled to  
25 personal judgments against them.

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1           So in this case, Your Honor, there is no conflict  
2           of interest. The fact of the matter is that let's say,  
3           under the election, the three of them, meaning Mr. Acosta,  
4           and Ms. Tavaréz, and Lanco decided that, you know what,  
5           Lanco is going to use Lanco money to buy it out. That is no  
6           longer Mr. Heredia's concern because his shareholding was  
7           fixed months ago. And the only people who were left on the  
8           hook, if you drain Lanco, are Lanco's two other  
9           shareholders, right? And so that's why, especially in these  
10          closely held corporate situations, it's almost a fiction at  
11          this point, who is who and where does the money come from.

12                 It's -- it's their company, it's their money, where  
13          they put it or don't put it, once Mr. Heredia no longer has  
14          rights, which he doesn't, is, you know, between them and the  
15          IRS, frankly, but it's not a matter for this Court, and it's  
16          certainly not a matter in this breach of fiduciary  
17          duty-based case.

18                     Any other questions from Your Honor?

19                     Thank you.

20                     MR. GARCIA: Your Honor, may I?

21                     THE COURT: One minute.

22                     MR. GARCIA: Thank you, Judge.

23                     Very briefly, in terms of the issue of undervaluing  
24          the business, the -- their brief in opposition to the motion  
25          to disqualify explicitly said that their desire is to

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1 achieve the lowest fair value. So their interest is not in  
2 maximizing fair value for the interest or the benefit of all  
3 of the shareholders. And the corporation exists in order to  
4 maximize value -- maximize for the shareholders.

5 In terms of conflict, the conflict here is  
6 unwaivable. In fact, the statute requires that --

7 THE COURT: What would you have them do? I'm  
8 unclear. You sued the company, right? What would you have  
9 them do? The company has to proceed by an attorney.

10 MR. GARCIA: Right.

11 THE COURT: Which you have -- I mean, the -- the  
12 cure is for you to stay involved, right? And you stay  
13 involved, there's no -- you have -- you have -- your client  
14 has sued the company. The company has to have a lawyer  
15 because of your client, so where would the lawyer come from?

16 MR. GARCIA: Well, I believe that --

17 THE COURT: No one is going to -- no one is going  
18 represent them pro bono. What is the -- where is the theory  
19 on who represents the company?

20 MR. GARCIA: The company -- the company has a lot  
21 of interests in this litigation that are in conflict with  
22 the defendants' interests. And that is because of the --

23 THE COURT: That's because you've set the terms of  
24 the allegations. Your client has set the terms of the  
25 allegations. And he has represented that he in his aspect

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1 of -- as an administrator of the estate and in this other  
 2 role, he's chosen you to pursue the company, and now the  
 3 company has to respond with a lawyer. You want to  
 4 disqualify that lawyer and put who in?

5 MR. GARCIA: Well -- the point here, Judge, is that  
 6 the interests of having the same law firm represent the  
 7 defendants who are accused of wrongdoing, and the  
 8 company --

9 THE COURT: So we add another lawyer, and that  
 10 benefits the company? That benefits the valuation of the  
 11 company?

12 MR. GARCIA: Well, the company is a nominal  
 13 defendant in the case.

14 (Transcript continues on the following page.)  
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1 THE COURT: But, Counsel, I'm asking a question.  
2 Literally, what would you have them do?

3 MR. GARCIA: Well --

4 THE COURT: To represent, without any form of  
5 conflict, we'd have to hire yet another lawyer, which,  
6 again, would reduce the pot of money available to all of the  
7 litigants here.

8 I'm done.

9 I'll take this on submission.

10 MR. GARCIA: Thank you, Your Honor.

11 MS. PARKS: Thank you, Your Honor.

12 \* \* \* \*

13 The foregoing is hereby certified to be a true and  
14 accurate transcript of the proceedings as transcribed from  
15 the stenographic notes.

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KAREN PERLMAN, RMR, CRR  
SENIOR COURT REPORTER

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