

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 MIAMI DIVISION
4 CASE NO. 17-20741-CIV-CMM

5 SERIES INTERNATIONAL, LLC,
6 Plaintiff,

7 vs.

8 Miami, Florida
9 October 30, 2017
10 Pages 1-12

11 DUCHARME SEATING INTERNATIONAL
12 1991, INC., doing business as
13 DUCHARME SEATING,

14 Defendant.

15 TRANSCRIPT OF TELEPHONIC HEARING
16 BEFORE THE HONORABLE CHRIS M. MCALILEY
17 UNITED STATES MAGISTRATE JUDGE

18 APPEARANCES:

19 FOR THE PLAINTIFF:

20 *St. Onge, Johnston, Steward & Reens, LLC*
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26 APPEARING TELEPHONICALLY

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1 P-R-O-C-E-E-D-I-N-G-S

2 COURTROOM DEPUTY: United States District Court is now
3 in session, the Honorable Chris McAliley presiding.

4 Calling case of Series International, LLC, case number
5 17-20741-civil-Judge McAliley.

6 THE COURT: All right. Good afternoon.

7 Let's start with Plaintiff's counsel appearance.

8 MR. LEHBERGER: Your Honor, this is Ben Lehberger, John
9 Winter and Gene Winter for series.

10 THE COURT: Okay, welcome.

11 And for the Defendant?

12 MR. ASCHEN: Good afternoon, Judge. This is Mike
13 Aschen and my partners Jeffrey Schwab and Anthony Di Filippi of
14 Abelman, Frayne and Schwab for the Defendant Ducharme Seating.

15 THE COURT: Okay. welcome. I thought I wanted really
16 just to touch base with you all because I know your mediation, I
17 think, is wednesday and --

18 MR. ASCHEN: That's correct.

19 THE COURT: And I have a draft of my order on claim
20 construction. I would have liked to have finished it before
21 today, but I'm prepared to tell you what the claim constructions
22 are and it will be followed with an order that lays out my
23 reasoning. But I thought it might be helpful for you all to
24 have that information when you go to mediation. And after I
25 give you that -- and I'm not going to lay out all my reasoning

1 here other than the ones that I'll note, I think we reached --
2 we had some agreements at the end of the hearing so I'll note
3 that. But then I would turn for a moment and get a little
4 information from you all regarding some of what you wrote in
5 your joint motion to amend the schedule. So -- and then I can
6 hear anything else that you want to address.

7 So if it's okay with you, what I'll go to first is my
8 -- the bottom line on the claim construction. I'm sorry. Let
9 me get to the last page here. Okay. And I'll go slowly and
10 I'll say it twice so that you can make any notes and shout out
11 if you need me to say it again.

12 "Insertion angle" I'm going to define as a range of
13 angles appropriate for insertion. Okay? So a range of angles
14 appropriate for insertion.

15 I am not going to construe "pivot pin", because I'm
16 reaching the conclusion that its meaning is clear from the
17 language of the claims and the way that it's used.

18 I'm going to decline to construe "outer surface of said
19 saddle bracket portion", because I conclude that the meaning is
20 sufficiently clear in the language of the claims.

21 "Adjacent" I'm going to construe as close or next to,
22 relatively near, or nearby or abutting. So that's close or next
23 to, relatively near or nearby or abutting.

24 "Protective cap" I'm going to construe as a cap that
25 protects the inner pivot channel from dirt, debris and objects

1 falling therein. So I'll read that again. "Protective cap" is
2 a cap that protects the inner pivot channel from dirt, debris
3 and objects falling therein.

4 Consistent with the agreement of the parties, I'm going
5 to decline to construe "removable" and simply rely on its
6 ordinary meaning.

7 Consistent with the agreement of the parties, I will
8 construe "occupied position stop" as meaning where the stop pin
9 comes to rest when the seat is occupied. So that's where the
10 stop pin comes to rest when the seat is occupied.

11 And last, consistent with the agreement of the parties,
12 I will decline to construe "hingedly connected" in favor of its
13 ordinary meaning.

14 Are you all able to write that down? Do I need to
15 repeat anything?

16 MR. LEHBERGER: I believe we got it for Plaintiffs.

17 THE COURT: Okay. Mr. Aschen?

18 MR. ASCHEN: Same here Your Honor. Same for
19 Defendants.

20 THE COURT: Okay. Okay. Well, this is not a perfect
21 process, but that's as close as I could get.

22 So I'm not going to invest more time in that order
23 until I find out how you do on Wednesday, so I'll direct that on
24 Thursday, you just file something that says either settled,
25 impasse or if you have ongoing negotiations. And if you want

1 to, you know, if you're in that position of continuing your
2 mediation and you gave me a sense of timing, you know, if you
3 thought you were close and you would like to report to the Court
4 the following week, again, I would choose not to invest more
5 time in the opinion. If it was, you know, you were going to
6 continue the mediation over some extended period of time, you
7 could tell me that. Does that part make sense about how to
8 report on the mediation outcome? Okay. Okay.

9 So I wanted to turn to your proposed or your joint
10 report and the schedule that you all agreed to. So I'm looking
11 at Docket Entry 73 which is the joint motion that you filed.
12 You have one through five number of dates that you've agreed on
13 and I'm totally fine with that.

14 Mr. Aschen, the notion of my not giving you a trial
15 date and waiting?

16 MR. ASCHEN: Yes.

17 THE COURT: That's not going to fly. You know, that's
18 -- I can't think of a good reason to do that. You didn't really
19 give me one. Is there something really obvious I'm missing?

20 MR. ASCHEN: Yeah. I think, Your Honor, that if you
21 rule in one party's favor or the other on motions for summary
22 judgment, which I think are almost inevitable in this case, and
23 the parties, while we're waiting for the outcome of those
24 motions, are preparing for trial, it's going to be a lot of, you
25 know, frankly wasted resources. And on the other hand, if the

1 rulings on the motions for summary judgment are dispositive,
2 it's unlikely there's going to be a need for trial, or at least
3 trial will be streamlined to a large extent.

4 So our thought was until the motions for summary
5 judgment are resolved, it's somewhat of a moving target to
6 prepare for trial. On the other hand, Your Honor, if by some
7 chance motions for summary judgment were filed, obviously we
8 would be on a faster track toward trial, and I think that our
9 proposal provides for that as well. If no motions for summary
10 judgment are filed, there's a short period of time after which
11 the date to file motions afterwards. There could be a
12 conference with the Court and then you could set a trial date
13 depending on your and everyone else's schedule.

14 THE COURT: well, so here's -- and I appreciate your
15 reasons, but here's what I think is too significant a downside.
16 I think to do it that way just builds in delay and not only do
17 you need deadlines, I need a deadline when it comes to two fat
18 summary judgment motions sitting on my desk. So I think we all
19 need deadlines.

20 Now, if you all decide to not file summary judgment
21 motions, at the earliest point that you decide that, you notify
22 me of that, and it's possible that we could advance our trial
23 date. I would be very open to that. So -- and I really can't
24 envision this now because what you say, Mr. Aschen, really is
25 true of any case with summary judgment. You know, depending on

1 the outcome, it could obviously shape the trial. So that's also
2 going to be true. If something were to come up, and again I
3 don't know what your issues are in summary judgment so I really
4 just can't even go there right now, but if something were to
5 come up about the outcome of summary judgment that really
6 obviously affects something about trial preparation or trial
7 date, you can always talk to me about it. But I would like to
8 get something on our calendars that we all understand is when we
9 would try the case. So that's my thinking on it.

10 MR. ASCHEN: I think -- is there any possibility that
11 the motions for summary judgment wouldn't even be resolved by
12 the time the trial date rolls around. And I think maybe that's
13 a different way of saying what I said before. We're just
14 concerned that there will be significant unknowns leading up to
15 trial that will affect trial preparation potentially even on the
16 first day of trial.

17 THE COURT: I think --

18 MR. ASCHEN: On a case like this with expert witnesses
19 whose testimony has to be prepared, you know, having that much
20 uncertainty trying to prepare for trial I think presents a real
21 hardship.

22 THE COURT: well, the answer to your first question is
23 no. You need a ruling on summary judgment before trial. I
24 couldn't do that to you. I mean, I've never heard of that,
25 although by your question I gather I guess that happens

1 sometimes.

2 MR. ASCHEN: It does.

3 THE COURT: well, it's not going to happen here. And
4 the trick is to come up with a scheduling order that allows me
5 enough time to rule on it, you know, before -- so that you get a
6 ruling at a time that it makes sense in terms of your
7 preparation. So that's what I think I really need to focus on.

8 Do you both feel confident that you will file a motion
9 for summary judgment or is that still an open question? What
10 about the Defendant?

11 MR. ASCHEN: Well Your Honor, I think to some -- on how
12 the depositions of the various expert witnesses unfold. I think
13 that there are potentially motions for summary judgment on both
14 the issue of validity and infringement. Again, all parties are
15 going to have expert witnesses on those two issues, and it's a
16 little bit early to assess what motions are going to be
17 appropriate at least until those depositions occur.

18 Your Honor, if I could just comment on the last thing
19 you said?

20 THE COURT: Yeah.

21 MR. ASCHEN: We're comfortable in suggesting that
22 you're going to have rulings on motions for summary judgment
23 sufficiently ahead of trial to allow the parties to prepare
24 appropriately. I think that's perfect. Frankly, I didn't want
25 to suggest that you do that. I didn't think it would be

1 appropriate for us to do that.

2 THE COURT: I see.

3 MR. ASCHEN: But if you're saying that that's, you
4 know, how you run your cases, then we're perfectly fine with
5 that.

6 THE COURT: well, but the trick is am I doing a
7 scheduling order that gives me enough time, and what I don't
8 know yet is whether you're both filing motions for summary
9 judgment or not. That's double the work than simply one with a
10 response. I mean, unless they're cross-motions that raise the
11 same issues. So you know, and you can address with me -- I
12 mean, so we're going to have a scheduling order, a deadline for
13 summary judgment, a date for trial, and I'll give you a date
14 specific, you know, not a rolling two week calendar. And if
15 there's some particular issue that arises between the briefing
16 of the summary judgment and the trial date that you need to
17 address with me, you know, do it. And I, you know, I should be
18 pretty accessible to you. So I'm not looking for you to do
19 wasting work and spend legal fees unnecessarily. I'm very --
20 that's -- I should be doing what I can to avoid that. So I'm
21 happy to listen, but you all need to have a firm date that
22 you're going to be ready for.

23 So that's the balance we're trying to strike here.
24 Okay?

25 MR. ASCHEN: Yeah. well, thank you, Your Honor. We

1 appreciate that.

2 THE COURT: No problem. Any comment on that point by
3 Plaintiff's Counsel?

4 MR. LEHBERGER: No, Your Honor.

5 THE COURT: Okay. So on the scheduling order, my
6 thought is, unless you all tell me something I'm missing, now
7 that you have what claim construction, the answer, the
8 resolution of your Markman hearing motions, now that you have
9 that, you don't have the opinion yet, my thought is if you
10 impasse at your mediation, that you're ready to go with your
11 expert discovery. The order is -- I always hate to say this
12 because then something gets in my way. But I think a week or so
13 after an unsuccessful mediation you'll probably have my order,
14 something like that.

15 So my inclination is if you impasse at your mediation,
16 that after -- immediately after that I issue a scheduling order
17 and it's going to start your clock running on your expert
18 discovery.

19 Plaintiff, is there any reason why I shouldn't do that?

20 MR. LEHBERGER: No. That sounds fine for us, Your
21 Honor.

22 THE COURT: Okay. And defense counsel?

23 MR. ASCHEN: Yeah, I think it's appropriate, Your
24 Honor.

25 THE COURT: Okay. Great. So another thing I was

1 curious about; Plaintiff, you propose that there is a -- that
2 you file, you collectively, file your exhibit and witness list
3 before your pretrial stipulation and that you stagger the filing
4 of that. Typically I've had the parties file a pretrial
5 stipulation, exhibit list and witness list all at the same time
6 and I would typically do that maybe six or seven weeks before
7 trial, the trial date. But maybe there's some reason why you
8 want to do it, Plaintiff, the way you suggested, and so I
9 thought I'd ask you about that.

10 MR. LEHBERGER: I think we would be fine doing it the
11 same day. I recall, I believe this was in our previous order
12 following Judge Moreno's standard orders, and that's why it was
13 originally adopted. But we would be perfectly fine having it
14 the same day.

15 THE COURT: Okay. And Mr. Aschen? Do you have a
16 different feeling about that?

17 MR. ASCHEN: No. That's fine, Your Honor.

18 THE COURT: Okay. And what I would typically do is
19 hold a pretrial conference usually a couple weeks before trial
20 and I would want -- just so you know, I would want to have
21 proposed jury instructions in addition to your pretrial
22 stipulation, your exhibit list, your witness list filed at that
23 point, and I would want to know at that point if there are any
24 -- you know, what the issues are and in particular, what jury
25 instructions. That's a place where I do not want to be doing a

1 last minute, you know, kind of fire drill and sorting out
2 significant issues on jury instructions. So we would spend
3 probably a few hours together, maybe not, that would be great if
4 we didn't have to, but I'm ready to, at a pretrial conference
5 just going through the issues so that when you show up here for
6 trial, you know, we know what they are, we'll know if there's
7 issues with exhibits, major issues with admissibility, there are
8 major disputes on a jury instruction. Things of that nature
9 really have ironed it out in advance.

10 So my -- so Plaintiff, although you proposed kind of a
11 schedule for doing those things, I would modify it along the
12 lines of what I just said to you. Do you have any suggestions
13 or comments about that?

14 MR. LEHBERGER: No, Your Honor. I think what you
15 described sounds fine to us. It would be fine to get it all
16 done at the pretrial.

17 THE COURT: Okay. And Mr. Aschen? Any additional
18 thoughts about that?

19 MR. ASCHEN: No. That's fine, Your Honor. The sooner
20 we resolve those issues, the better I think.

21 THE COURT: Yeah. Okay. All right. So I think that's
22 everything I had for today. Is there anything else that you --
23 either of you need to raise?

24 MR. LEHBERGER: Nothing from Plaintiffs, Your Honor.

25 THE COURT: Okay.

1 MR. ASCHEN: Nothing from Defendant, Your Honor.

2 THE COURT: Okay. well, I'll be lighting a candle in
3 chambers on wednesday for you. Just saying. I don't know if
4 that works but, you know, can't hurt.

5 So do file a notice presumably the next day of what the
6 outcome is and we'll take it from there.

7 MR. ASCHEN: Okay. Thank you, Your Honor.

8 THE COURT: All right.

9 (PROCEEDINGS CONCLUDED)
* * * * *

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C E R T I F I C A T E

11 I certify that the foregoing is a correct transcript from the
12 digital audio recording of proceedings in the above-entitled
matter.

13

14 11-8-2017
Date

/s/ Dawn M. Savino
DAWN M. SAVINO, RPR

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