

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE: ) CASE NO: 17-35623  
) CHAPTER 11  
)  
OFFSHORE SPECIALTY FABRICATORS, ) Houston, Texas  
LLC, )  
) Wednesday, February 7, 2018  
)  
Debtor. ) (2:30 p.m. to 3:55 p.m.)  
)

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HEARING RE: 362 RELIEF FROM STAY / MOTION TO RECONSIDER

BEFORE THE HONORABLE MARVIN ISGUR,  
UNITED STATES BANKRUPTCY JUDGE

Appearances: See Next Page  
Court Recorder [ECRO]: Jesus Guajardo  
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<u>MOVANTS' TESTIMONY</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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1 Houston, Texas; Wednesday, February 7, 2018; 2:30 p.m.

2 (Ms. Faulk, Ms. Grabill and Mr. Mouledoux

3 Appeared Telephonically)

4 (Call to Order)

5 **THE COURT:** All right, good afternoon. We are here  
6 for two matters in the Offshore Specialty Fabricators case.  
7 It's Case Number 17-35623. We're going to start with the  
8 motion for relief from the stay. We'll take appearances in  
9 that matter first.

10 **MR. FRITZ:** Good afternoon, your Honor. Michael  
11 Fritz on behalf of the Debtor, OSF.

12 **THE COURT:** Good afternoon.

13 **MR. MORGAN:** Good afternoon, your Honor. My name is  
14 John Morgan on behalf of the movants.

15 **THE COURT:** Good afternoon. Any other appearances in  
16 that matter?

17 **MR. DORRELL:** Good afternoon, your Honor. Jeff  
18 Dorrell on behalf of the nine non-debtor respondents to the  
19 motion.

20 **THE COURT:** Good afternoon. Ms. Faulk?

21 **MS. FAULK:** Julie Faulk for DHD and Viral.

22 **THE COURT:** I'm sorry, for who now?

23 **MS. FAULK:** For DHD and Viral.

24 **THE COURT:** And are you involved in this motion for  
25 relief from the stay?

1           **MS. FAULK:** In this suit I didn't file a response.

2           **THE COURT:** All right.

3           **MR. FERRETTI:** Dan Ferretti, your Honor, on behalf of  
4 the Committee.

5           **THE COURT:** Thank you. All right.

6           **MR. MORGAN:** Your Honor, may I lodge an objection  
7 before we begin?

8           **THE COURT:** Sure.

9           **MR. MORGAN:** I object to Mr. Dorrell participating  
10 because he's not counsel for any party in this bankruptcy. So  
11 I don't know what standing he would have to argue before this  
12 Court.

13           **THE COURT:** Okay. Why don't you proceed and I'll let  
14 you object when he does something you think is inappropriate  
15 and I'll rule on it at that point.

16           **MR. SPEAKER:** Yes, your Honor.

17           **MR. MORGAN:** Good afternoon, your Honor. This is  
18 John Morgan. I represent -- excuse me -- the movants in this  
19 case, Klein Investigations and Consulting, a division of Klein  
20 Investments, Inc. They have a proof of claim against the  
21 bankrupt's entity, Offshore Specialty Fabricators, LLC.

22           The reason I'm here today, your Honor, is that I have  
23 on behalf of my clients a state court final judgment against  
24 ten companies for joint and several liability. One of these  
25 companies is Offshore Specialty Fabricators, LLC for which

1 there is a bankruptcy stay, which we do not challenge, and  
2 we're not trying to collect anything from that company.  
3 Counsel in state court, Mr. Dorrell, has filed a suggestion of  
4 bankruptcy that says the bankruptcy of Offshore Specialty  
5 Fabricators, LLC applies to all the other entities, okay.

6 I have filed a motion asking this Court to rule that  
7 is not the case, and I have several grounds for doing so. I  
8 had previously presented this motion to your Honor, and your  
9 Honor asked me to come back and brief the SI Acquisition case  
10 and the grounds for alter ego status. So I'm willing to  
11 proceed.

12 The state court lawsuit involved a contract between  
13 my clients, who I will collectively call Klein, and a group of  
14 companies, okay, called the William Kallop Companies. And all  
15 of the companies that are at issue in the state court judgment  
16 are part of the William Kallop group of companies. This is not  
17 a situation where the debtor is Offshore Specialty Fabricators,  
18 LLC and we're making a claim against other companies to pay  
19 Offshore's debt. Under the contract -- and may I approach with  
20 a copy, your Honor?

21 **THE COURT:** Yes, sir. This is all opening argument  
22 though. I mean we're going to at some point introduce evidence  
23 so --

24 **MR. MORGAN:** Oh, I'll stay with argument then.

25 **THE COURT:** All right.

1           **MR. MORGAN:** Okay. Under the contract all of these  
2 companies are collectively liable because they collectively  
3 accepted the services of my client. Now, in the judgment we  
4 have joint and several liability. The reason why there is no  
5 alter ego liability is because we did not plead or prove --  
6 plead or seek to prove alter ego status at the trial court  
7 level. Instead we simply argued that they're co-obligors and,  
8 therefore, joint and several liability is appropriate.

9           Furthermore, your Honor, I would like to point out  
10 that the standards at issue in the SI Acquisition, Inc. case  
11 from the Fifth Circuit in 1987 had been overruled by the Texas  
12 Legislature. In order to have alter ego status now you have to  
13 plead and prove that the company is being used as a vehicle to  
14 perpetrate a fraud for the benefit of other companies or  
15 individuals. Since my case in state court did not rely upon  
16 that in any way, rely upon that theory, there is no basis to  
17 say that by seeking to lift the stay against companies who are  
18 not in bankruptcy that this is an alter ego situation.

19           In short, your Honor, because this is a Chapter 13  
20 commercial case for which there is no co-debtor liability I  
21 would ask the Court to rule that any stay that is -- the  
22 bankruptcy stay that is applicable applies only to Offshore  
23 Specialty Fabricators, LLC.

24           **THE COURT:** All right. Anybody else wish to make an  
25 opening statement?

1           **MR. DORRELL:** Your Honor, on behalf of the non-debtor  
2 respondents, as the Court may recall, this is the second time  
3 we've been here on this. The last time the movant was alleging  
4 that there was no co-debtor stay and the Court informed  
5 Mr. Morgan that that was not what was at issue here and denied  
6 the motion.

7           What he's done now is kind of re-engineered his  
8 motion. He's taken out the word "co-debtor" stay and he has  
9 treated us to several pages of discussion of the SI Acquisition  
10 case, which I don't believe the Court ever mentioned in our  
11 December 22, 2017 hearing. Essentially, his argument is  
12 because he didn't argue alter ego in the trial court -- and I  
13 agree that he did not -- that, therefore, there can't be any  
14 protection for the assets of the non-debtor entities.

15           Here's the problem. And your Honor focused on this  
16 in the December 22nd hearing like a laser beam. And I hope the  
17 Court doesn't think I'm throwing its words back in its face. I  
18 realize judges change their minds and hear different facts of  
19 law. But your Honor I think was exactly correct when you said  
20 to Mr. Morgan: But that's not what you pled, Mr. Morgan. You  
21 didn't plead that these companies were all obligors under a  
22 contract. You pled single business enterprise. And under the  
23 single business enterprise theory you have alleged and obtained  
24 a state court judgment on the theory that these companies are  
25 operating as a single entity.

1           Now, I cited some law to the Court where the Texas  
2 Supreme Court has thrown the single business enterprise theory  
3 out the window. We have this judgment up on appeal, and I  
4 don't believe it's going to survive appellate review in the  
5 Ninth Court of Appeals. Nevertheless, the movant has obtained  
6 this judgment saying that the ten defendants, nine of whom I  
7 represent here, that is, the nine who are not filing a  
8 bankruptcy, were all operating as a single unit. He is  
9 estopped now to claim something different for purposes of  
10 collecting the judgment than he claimed when he obtained the  
11 judgment. Even though I don't agree with his single business  
12 enterprise theory, the fact that the judgment he is seeking to  
13 collect is based on it means, as your Honor pointed out to him  
14 on December 22nd, that these claims are owned by the trustee.

15           So we don't think there's any basis for relief here,  
16 and nothing has really changed from when we were before you  
17 seven weeks ago.

18           **THE COURT:** What's happening on the appeal?

19           **MR. DORRELL:** The Ninth Court of Appeals has stayed  
20 the appeal because of the bankruptcy.

21           **THE COURT:** So how are we going to get that resolved?

22           **MR. DORRELL:** I filed a motion to reinstate the  
23 appeal on the ground that the appeal brought by my client is an  
24 action not against a bankrupt but on behalf of the bankrupt  
25 estate and, therefore, is not stayed under the automatic stay.

1 I failed to persuade the Ninth Court of Appeals that that  
2 statement of the law was correct, so we are now presently still  
3 abated --

4 **THE COURT:** Okay.

5 **MR. DORRELL:** -- under a state appellate procedural  
6 rule that --

7 **THE COURT:** Okay, thank you. Anybody else want to  
8 make an opening statement?

9 **MR. FRITZ:** Your Honor, Michael Fritz on behalf of  
10 the debtor. I tend to agree with Mr. Dorrell in that I don't  
11 think anything has really changed. If you recall, when we were  
12 back here in December, the debtor's position, especially since  
13 the relief sought is not to prosecute any claims against the  
14 debtor, simply that I think Mr. Morgan's motion is, in effect,  
15 a request for an advisory opinion. And really to the extent  
16 that Mr. Dorrell has argued that a form of stay applies to  
17 co-obligors or non-debtors, I think that's an issue for  
18 Mr. Dorrell and Mr. Morgan and in the state court. But I think  
19 as far as your Honor is concerned, I think Mr. Morgan is just  
20 asking you to declare rights that really probably should be  
21 confined to the state court at this point.

22 **THE COURT:** Thank you. All right, Mr. Morgan. Go  
23 ahead, please.

24 **MR. MORGAN:** Your Honor, at this time I'd call  
25 Mr. Philip Klein to the stand.

1           **THE COURT:** Thank you. Mr. Klein.

2           **(Pause)**

3           Good afternoon, sir. Would you raise your hand,  
4 please?

5                           **PHILIP KLEIN,**

6           **KLEIN INVESTIGATIONS AND CONSULTING'S WITNESS, SWORN**

7           **THE COURT:** Thank you. Go ahead please, Mr. Morgan.

8                           **DIRECT EXAMINATION**

9           **BY MR. MORGAN:**

10          Q       Can you state your name for the record, please?

11          A       My name is Philip Klein.

12          Q       And are you the owner of Klein Investigations and  
13 Consulting?

14          A       I am the President, Chief Executive Officer.

15          Q       Is that a division of Klein Investments, Incorporated?

16          A       It is.

17          Q       All right. Can you describe generally to the Court the  
18 type of services rendered by your company?

19          A       To Mr. Kallop and to --

20          Q       No, just generally.

21          A       Oh, in general? We are personal protection officers and  
22 investigators.

23          Q       All right. I want to show you --

24                   **MR. MORGAN:** Your Honor, may I approach?

25                   **THE COURT:** Yes, sir.

1 **BY MR. MORGAN:**

2 Q I'm going to show you a copy of a contract called Klein  
3 Services Agreement, the Kallop Group (phonetic), January 1,  
4 2007. Can you identify that for the record?

5 A That looks like our contract with Mr. Kallop that was  
6 written back a long time ago, about 2007.

7 Q All right. I'd like you to take a look at Page 6 and  
8 authenticate the signatures. If you'll turn to Page 6.

9 A Yes.

10 Q All right. It says at Page 6 "approved client." Do you  
11 recognize the signature?

12 A It's Mr. Kallop's signature.

13 Q When you say "Mr. Kallop," can you be more specific?

14 A Bill Kallop. He's President of probably 15 different  
15 companies that we work for -- worked for.

16 Q Is that the same William Kallop that's identified as a  
17 party?

18 A Yes.

19 Q Okay. And it says "approved KIC." Do you recognize that  
20 signature?

21 A Yes. That's my signature.

22 Q All right. Take a look at Page 3 of this contract,  
23 please. Well, first of all, is this a true and correct copy of  
24 the original contract?

25 A Yes, it seems to be.

1 Q And where is the original contract?

2 A Mr. Kallop has it in his possession.

3 **MR. MORGAN:** At this time, your Honor, I'd like to  
4 offer into evidence the contract and I'd like to mark it as  
5 Exhibit 1.

6 **THE COURT:** Any objections?

7 **MR. SPEAKER:** No objection.

8 **MR. DORRELL:** Your Honor, my client has asked to  
9 inspect the original contract. He does not have it in his  
10 possession. My client thinks that this signature on this  
11 contract has been forged. Since Mr. Morgan is offering into  
12 evidence a photocopy, then we object to that as lacking  
13 authenticity.

14 **THE COURT:** It's not under the rules that unless  
15 there was a bona fide question as to the validity of the  
16 signature, that is, you can put your client up that says that,  
17 that photocopies were, in fact, admissible and this witness has  
18 just testified that Mr. Kallop signed it. So why wouldn't I  
19 admit it?

20 **MR. DORRELL:** I wasn't quite prepared for testimony  
21 today. Mr. Morgan served me with this motion yesterday. I  
22 don't know why. He knows that I represent these non-debtor  
23 entities. So, you know, I have thrown together a response as  
24 quickly as I could and filed it this morning. To the extent  
25 that I have been blindsided and caught off guard by somebody

1 who just refuses to serve me with copies of motions against my  
2 clients, then I request that the Court continue this hearing  
3 until I've had an ample opportunity to prepare for it. I would  
4 have had my client here to testify had I known what was going  
5 to happen.

6 **THE COURT:** You're telling me that you didn't know  
7 that the motion for relief had been filed or that a hearing had  
8 been set until yesterday?

9 **MR. DORRELL:** That's correct, your Honor. Mr. Morgan  
10 served it to me by e-mail yesterday afternoon.

11 **THE COURT:** Is that right, Mr. Morgan?

12 **MR. MORGAN:** Your Honor, we -- he's not counsel of  
13 record. I e-filed --

14 **THE COURT:** Is that -- well, let's start with is that  
15 right that you didn't serve him with it until yesterday.

16 **MR. MORGAN:** That's correct. I assumed he would have  
17 retrieved it from the e-File system even though he's not  
18 counsel of record. I did not give it to him until yesterday is  
19 an accurate statement.

20 **THE COURT:** Well, let's see if he got served by the  
21 e-File system. Here's the e-File system.

22 **MR. MORGAN:** And may I say why I believe that, your  
23 Honor?

24 **THE COURT:** First I want to figure out if he was  
25 served.

1           **(Pause)**

2           Okay. I reviewed the e-File system. He was not  
3 served. Now, go ahead.

4           **MR. MORGAN:** Well, again, your Honor, I served  
5 counsel of record in the bankruptcy of the first hearing in  
6 this occasion. He received the motion and knew about the  
7 hearing. I attended by telephone and he was here in person.  
8 So I naturally assumed that he'd been communicating with  
9 bankruptcy counsel and would receive it from them.

10           Also, your Honor, he knew about the hearing date  
11 prior to requesting a copy, and when he requested a copy I had  
12 my secretary provide him one, albeit via e-mail. But it is  
13 accurate he got it yesterday from me for the first time.

14           **THE COURT:** When was the first hearing that you said  
15 he should have known about?

16           **MR. MORGAN:** The first hearing he was present, your  
17 Honor.

18           **THE COURT:** But when was that? Do you know?

19           **MR. MORGAN:** I believe it was early December.

20           **MR. SPEAKER:** December 22nd.

21           **MR. MORGAN:** Oh, okay. Late December 2017. I  
22 attended via telephone. Mr. Dorrell was present.

23           **THE COURT:** I'm going to open the transcript of that  
24 hearing to see whether that gave him notice.

25           **(Pause)**

1           The transcript was filed ECF260.

2           **MR. DORRELL:** I actually attached the transcript as  
3 Exhibit C to my response to that motion.

4           **MR. MORGAN:** The transcript does not identify this  
5 hearing date, your Honor, if that's what your Honor is looking  
6 for.

7           **THE COURT:** Yeah, I was trying to -- I thought that  
8 you were -- and I may have misunderstood you. I thought you  
9 said, well, he was there so he would have known about today's  
10 hearing.

11           **MR. MORGAN:** No, your Honor. My position was he was  
12 there at the first hearing. I also just served counsel of  
13 record in the bankruptcy. Since he was there at the first  
14 hearing, I naturally assumed that, of course, counsel of record  
15 in the bankruptcy would have provided him a copy of my motion  
16 and this notice. Because I've never not -- I've never gone  
17 beyond just serving counsel of record in the case.

18           **THE COURT:** Okay. Let me open the local rules and  
19 see what they say.

20           **(Pause)**

21           Here's the local rules. Yeah, you are required under  
22 the local rules to specifically serve parties who are  
23 identified as a party against whom relief is sought in the  
24 motion, and specifically you're trying to collect against his  
25 clients. I think it's clear he was -- you're required to serve

1 him.

2 I'm not going to dismiss the motion but I'm going to  
3 give him a continuance.

4 **MR. MORGAN:** Understood, your Honor.

5 **THE COURT:** Can I also be practical about this  
6 instead of us coming back one more time? I will grant the  
7 continuance. We'll come back on reasonable notice, maybe  
8 another 12 or 14 days.

9 This is going to turn out, I'm pretty sure -- and I  
10 will listen to all the evidence anyone wants to introduce. But  
11 I'm pretty sure the bottom line of this thing is going to be  
12 whether in state court the judgment can be affirmed or would be  
13 affirmed on alternative grounds. If the judgment will be  
14 affirmed on alternative grounds, go collect against this client  
15 all you want. If the judgment can only be affirmed on a single  
16 business enterprise theory, then that is merged into under  
17 SI Acquisition in Texas law something that only the estate can  
18 assert.

19 So what I'm inclined to do is to lift the stay to  
20 allow the appeal to move ahead so that everybody knows where  
21 they are. And then if you can get your judgment affirmed on  
22 some basis other than SBE, we're done, you go collect against  
23 them. If it can only be affirmed on an SBE basis, then we're  
24 not done and we'll have to figure out where we go with it until  
25 I lift the stay to allow the appeal to move ahead so that you

1 can start collecting. I don't know if that works for everybody  
2 but --

3 **MR. DORRELL:** The State Court of Appeals rules  
4 specifically say that if a federal court advises that the  
5 appeal may proceed, then the appeal may be reinstated.

6 **THE COURT:** That's what I'm saying is I may issue an  
7 order that does that, but only if the parties --

8 **MR. DORRELL:** That would be great.

9 **THE COURT:** -- can reach an agreement on this. He's  
10 entitled -- Mr. Morgan is entitled to a full hearing on his  
11 motion. If you want a full hearing, I'm going to give you one.  
12 But if what you really want to do is to go figure out what  
13 happened up at the Court of Appeals, I'll do that really  
14 without any more of a hearing and just do it.

15 **MR. MORGAN:** Your Honor, I would welcome the stay  
16 being lifted for the appeal to go forward.

17 **MR. DORRELL:** Thank you, your Honor.

18 **MR. FRITZ:** I have no objection, your Honor.

19 **THE COURT:** Okay. Then let me see if I can craft an  
20 order that works for everybody now that I understand better.  
21 And I am sorry if I didn't understand fully before what the  
22 issues were. But it sounds like everybody really just wants  
23 that appeal so that we can figure out whether Mr. Klein can go  
24 collect his money. So let's figure it out. Let me see if I  
25 can do an Order and we'll see if anybody objects.

1           **(Pause)**

2           Can somebody look up what the appeal number is so  
3 that I can put that in there?

4           **(Pause)**

5           **MR. DORRELL:** Your Honor, the cause number in the  
6 Ninth Court of Appeals is 09-17-00333-CV, and the style is  
7 Offshore Express, Inc. and the other eight parties listed in  
8 the last page of Mr. Morgan's motion today, versus Klein  
9 Investments, Inc.

10          **(Pause)**

11           So this can only be done voluntarily by the parties  
12 and if there's any objection to this, we're going to come back  
13 for the hearing. But I think this is what I heard the parties  
14 say they wanted to stipulate to.

15           **MR. FERRETTI:** Your Honor, I did want to ask -- Dan  
16 Ferretti on behalf of the Committee. I did want to ask for  
17 clarity in Paragraph One. Bank collection may -- collection  
18 may then proceed as to the, I guess, non-debtor defendants.

19           **THE COURT:** Right.

20          **(Pause)**

21           Mr. Morgan?

22           **MR. MORGAN:** One more moment, your Honor, please.

23           **THE COURT:** Sure.

24           **MR. MORGAN:** The only issue I see on line two, number  
25 one, is a typographical error, your Honor.

1           **THE COURT:** Thank you.

2           **MR. MORGAN:** The relief -- the order the Court -- let  
3 me consult with my client.

4           **(Pause)**

5           Otherwise, I have no objection to it, your Honor.

6           **THE COURT:** Thank you.

7           **MR. MORGAN:** Thank you, your Honor.

8           **MR. FRITZ:** And your Honor, with Mr. Ferretti's  
9 comment the debtor doesn't have any objection.

10          **THE COURT:** Mr. Dorrell?

11          **MR. DORRELL:** I don't have any objection to it the  
12 way you've worded it, your Honor. I have a related appellate  
13 proceeding which the Ninth Court of Appeals also abated in the  
14 same order as they abated this appeal. It is a mandamus  
15 proceeding because the trial court refused to rule on the  
16 motion to dissolve the improper writ of garnishment. Can I  
17 give you that cause number and have the Court also lift the  
18 stay to allow that mandamus proceeding to (indiscernible /  
19 background noise) because the Court is misunderstanding the  
20 application of the stay.

21          **THE COURT:** I'm going to do something slightly  
22 different and let's see if this draws an objection.

23          **MR. MORGAN:** May I respond, your Honor?

24          **THE COURT:** I don't think you'll need to after I do  
25 this because I'm --

1           **MR. MORGAN:** Yes, your Honor. I'm happy to wait. I  
2 apologize, Judge.

3           **THE COURT:** -- probably going to deny it.

4           **(Pause)**

5           So I think that's the same as I said in paragraph one  
6 and two, but just to make it clear, you can't go collect on  
7 that judgment until you're done with the appeal. That should  
8 moot any mandamus because who cares if they can't live with it.

9           **MR. DORRELL:** Well, the problem is that my client's  
10 money has been tied -- the writ of garnishment was improper and  
11 my client's money has been tied up now for almost five months.  
12 The law is that a trial court must rule on a motion to dissolve  
13 the writ of garnishment within ten days. And the trial court  
14 just refused to do it, which is why I had to bring a mandamus  
15 proceeding.

16           **THE COURT:** I'll let you file a separate motion  
17 before me if you need to do that. I don't have it here now.

18           **MR. DORRELL:** Thank you, your Honor.

19           **THE COURT:** Unless you want to agree to it I'm not  
20 going to --

21           **MR. MORGAN:** No, I will oppose any motion. Thank  
22 you, Judge.

23           **THE COURT:** Yeah. I don't have it now and so if  
24 somebody wants to file it, I'll take that up. But I don't  
25 think it's fair to take it up without notice to your client on

1 an oral motion. Okay.

2 So I have no objection insofar as the relief that was  
3 sought before me today that this will be the tentative remedy.  
4 I understand we may be coming back in a year once you all  
5 finish in the state court, and I understand I may get another  
6 motion with respect to relief with respect to the garnishment.

7 All right. This will be entered later today, so you  
8 all proceed and God bless the Ninth Court of Appeals. Let's  
9 see what they do.

10 **(Counsel thank the Court)**

11 **THE COURT:** Thank you. All right.

12 The next case that we have is the motion to  
13 reconsider, ECF Number 390. We'll take separate appearances in  
14 that if we could, please.

15 **MS. ROMERO:** Good afternoon. Taylor Romero on behalf  
16 of the movant, Mickel Hahn.

17 **THE COURT:** Good afternoon.

18 **MR. FERRETTI:** Dan Ferretti on behalf of the  
19 Committee.

20 **THE COURT:** Good afternoon.

21 **MR. FRITZ:** Michael Fritz on behalf of the Debtor,  
22 OSF.

23 **THE COURT:** Thank you. Mr. Peck?

24 **MS. GRABILL:** Mary Grabill on behalf of Crosby Tugs.

25 **THE COURT:** Good afternoon, Ms. Grabill. Anyone else