

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA (RENO)

IN RE: Case No. 13-52337-BTB
DAVID M. SEMAS and Chapter 11
SUSAN O. SEMAS,
Debtors.
METALAST SURFACE Adv. No. 14-05036-BTB
TECHNOLOGY, LLC,
Plaintiff,
v.
DAVID M. SEMAS and 300 Booth Street
METALAST INTERNATIONAL, INC., Reno, NV 89509
Defendants. Tuesday, January 27, 2015
3:21 p.m.

TRANSCRIPT OF SETTLEMENT CONFERENCE
BEFORE THE HONORABLE GREGG W. ZIVE
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For David and Susan Semas: Harris Law Practice, LLC
By: STEPHEN R. HARRIS, ESQ.
6151 Lakeside Drive, Suite 2100
Reno, NV 89511
(775) 786-7600

For D&M-MI, LLC and Metalast
Surface Technology, LLC: Armstrong Teasdale LLP
By: JANET L. CHUBB, ESQ.
50 W. Liberty Street, Suite 950
Reno, NV 89501
(775) 322-7400

APPEARANCES CONTINUED.

Audio Operator: David Lindersmith, ECR

Transcription Company: Access Transcripts, LLC
10110 Youngwood Lane
Fishers, IN 46038
(855) 873-2223
www.accesstranscripts.com

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

APPEARANCES (Continued):

Special Counsel:

Ian F Burns & Associates
By: IAN F. BURNS, ESQ.
4790 Caughlin Parkway
Reno, NV 89519
(775) 826-6160

Rowe Hale Yturbide, LLP
By: MICHAEL S. ROWE, ESQ.
1638 Esmeralda Avenue
Minden, NV 89423
(775) 782-8141



I N D E X
1/27/15

<u>VOIR DIRE EXAMINATION:</u>	<u>PAGE</u>
Susan Semas	12
David Semas	13
Madylon Meiling	14
Dean Meiling	15



1 (Proceedings commence at 3:21 p.m.)

2 THE COURT: Be seated. This is in the matter of
3 Metalast Surface Technology, LLC v. Semas, and that's Adversary
4 14-05036, as well as in the bankruptcy case 13-52337, David and
5 Susan Semas. May I have appearances first.

6 MR. HARRIS: Your Honor, Steve Harris. I represent
7 David and Susan Semas. They are both present, and also present
8 is Mike Rowe, special counsel, and Ian Burns, special counsel.

9 MS. CHUBB: Good afternoon, Your Honor. Janet Chubb.
10 I represent Madylon and Dean Meiling and MST.

11 THE COURT: Metalast Surface Technology?

12 MS. CHUBB: Yes.

13 THE COURT: That's an LLC and they're the managing
14 members of that LLC. Is that correct?

15 MS. CHUBB: Yes.

16 THE COURT: Is that right?

17 MS. CHUBB: Yes.

18 THE COURT: All right. Please be seated. Pursuant
19 to an order entered by Judge Bruce Beesley, I presided at a
20 settlement conference today and have reviewed a number of
21 pleadings and other materials submitted by the parties, as well
22 as their confidential settlement statements.

23 Following hours of good-faith negotiations, the
24 parties have entered into an agreement. I have advised the
25 parties that I will place the agreement on the record, give

1 counsel a chance to correct any errors I've made or note any
2 omissions that I have made, then I will ask the parties if they
3 understand the terms of the agreement and agree to be bound by
4 the agreement. And of course if they have any questions at
5 that time, they should ask me.

6 And I've also advised the parties that if the
7 agreement is placed on the record, as I understand it, that
8 they are bound immediately upon the completion of this hearing,
9 that there will be a motion brought pursuant to Federal Rule of
10 Bankruptcy Procedure 9019 on a stipulated request for an order
11 shortening time for Judge Beesley to consider the settlement
12 pursuant to that rule, and he will enter an order after
13 exercising his discretion. But as between the parties, there
14 is an agreement now, it's fully enforceable, and that I would
15 enforce it if necessary by use of contempt or any other remedy
16 available to me, and that each said they understood that and
17 agreed.

18 So at this time I am going to place the terms of the
19 parties' settlement on the record. Metalast Surface Technology
20 is a creditor in this case. It's a limited liability company
21 and its managing members are Mr. and Mrs. Meiling. The Semases
22 are debtors in possession in their individual Chapter 11 case.
23 The parties have agreed as follows:

24 That there is a trademark regarding the name
25 Metalast. There is a dispute regarding ownership. That

1 dispute has been resolved as follows:

2 Metalast Surface Technology through the Meilings will
3 continue to use the mark for 90 days following entry of the
4 order approving the settlement agreement by Judge Beesley, if
5 he does approve it. At the end of that 90-day period, Metalast
6 Surface Technology, the Meilings, and any other entity in which
7 the Meilings have an interest, will no longer be able to use
8 the name Metalast in any fashion or manner whatsoever.

9 Following that 90 days, the mark will be owned by Mr. and
10 Mrs. Semas, or any entity in which they choose to transfer that
11 mark.

12 As to the proofs of claim filed by Metalast Surface
13 and/or the Semases, two of those claims are premised upon
14 guarantees signed by Mr. Semas. The total amount of those two
15 guaranteed claims is approximately \$540,000. The Semases
16 and/or Metalast shall -- because I don't remember exactly who
17 filed the proof of claim.

18 MS. CHUBB: The Meilings I think you mean.

19 THE COURT: Meilings? Am I saying that wrong?
20 Meilings.

21 MS. CHUBB: Yes.

22 THE COURT: Is the claim in the Meilings' name or
23 Metalast?

24 MS. CHUBB: I --

25 THE COURT: I think it's Meilings.

1 MS. CHUBB: I think it's Meilings.

2 THE COURT: Whomever --

3 MS. CHUBB: I thought you had them up there. Sorry.

4 THE COURT: -- made the claim will have an allowed
5 claim in the total amount of \$540,000. However, the debtors
6 will only be liable to pay \$268,000 of that amount.

7 There is presently pending a motion to approve a sale
8 of the real property that it is anticipated will provide
9 approximately \$2 million in net proceeds to the estate.
10 Creditors are to be paid a pro rata payment from that, from
11 those proceeds. However, as part of this settlement, it is
12 agreed that the Meilings or Metalast, whomever is the claimant,
13 will be paid the total amount of \$268,000.

14 In the event there is an objection, and that
15 objection is sustained by Judge Beesley, in that event the
16 Meilings or Metalast, whomever the creditor is, will be paid
17 the pro rata amount, which is approximately \$200,000, from the
18 net proceeds. I believe it's roughly the equivalent of one-
19 ninth of the total amount of the proceeds. The remaining
20 portion, which is anticipated to be approximately \$68,000, will
21 then be paid pursuant to the terms of a confirmed plan of
22 reorganization.

23 The Meilings, by and through their counsel, have
24 agreed not to object to plan confirmation so long as the sale
25 that is presently pending is consummated and closes. In the

1 event that sale does not close, then the Meillings shall have
2 the right to object to plan confirmation.

3 Those are the terms as I understand them. Ms. Chubb,
4 have I missed anything?

5 MR. HARRIS: You have the mutual release language --

6 THE COURT: Oh, I'm sorry. As the underlying
7 predicate for all of this, there is a pending adversary seeking
8 relief under various claims for relief, including non-
9 dischargeability under three separate subdivisions of Section
10 523 of the Code.

11 The Meillings agree to dismiss that adversary with
12 prejudice and to waive any and all claims they have from the
13 beginning of time and through the date of entering of the
14 settlement agreement that they may have, known or unknown,
15 anticipated or unanticipated, against Mr. and Mrs. Semas.
16 Likewise, Mr. and Mrs. Semas and any of their entities agree to
17 release the Meillings and Metalast Surface Technology from any
18 claims they may have, including any patent infringement claims,
19 but not limited to patent infringement claims, any claims
20 whatsoever from the beginning of time until the settlement
21 agreement is approved, known or unknown, anticipated or
22 unanticipated, foreseen or unforeseen. In other words, mutual
23 releases of any claims between these parties or related
24 entities.

25 Anything else?



1 MR. HARRIS: I think Mr. Burns wanted to say
2 something.

3 THE COURT: Mr. Burns?

4 MR. BURNS: I'd just like to clarify, Your Honor,
5 that it's agreed among the parties that the trademark is
6 currently owned by the Semases and that there -- no assignment
7 is necessary to transfer any trademark rights.

8 THE COURT: But that -- at the same time that the --
9 for the purpose of settlement only is that recognized, and that
10 Metalast Surface and the Meilings have the right to use that
11 mark without compensation and in the ordinary course of their
12 business for a period not to exceed 90 days from the date of
13 the entry of the order approving the settlement by Judge
14 Beesley, correct?

15 MR. BURNS: Yes, Your Honor.

16 THE COURT: Thank you.

17 MS. CHUBB: Your Honor, I thought it would be
18 appropriate to just prepare a release by Metalast and the
19 Meilings. That's M-E-I-L-I-N-G-S for purposes of the reporter.

20 THE COURT: I'm sorry I mispronounce it. I
21 apologize.

22 MS. CHUBB: With respect to the trademark, so that's
23 (indiscernible) that way.

24 THE COURT: Whatever the -- whatever counsel for the
25 parties believe is the most effective and efficient way of

1 accomplishing that clarification regarding ownership so there's
2 no further dispute, I have no objection.

3 MS. CHUBB: And I will represent to the Court that
4 the Meilings and MST will make all efforts to get the Metalast
5 name off everything and I understand that Mr. Semas has agreed
6 to fully cooperate with respect to anything that needs to be
7 done in that regard. And if, in fact, they haven't been able
8 to do it, there's not going to be a lawsuit about that because
9 --

10 THE COURT: No.

11 MS. CHUBB: -- they're trying.

12 THE COURT: There is -- once again, I'll make it part
13 of the record. There's a covenant of good faith with any
14 contract and this is a contract. And part of that covenant of
15 good faith is to cooperate, and that's cooperate to get the --
16 any issue regarding the transition of the creditor from
17 Metalast Surface Technology to another name accomplished within
18 that 90 days. If there's some issue that arises beyond the
19 control of both parties, then they agree to work, you know,
20 cooperatively to resolve it. Mr. and Mrs. Semas have agreed to
21 cooperate, your clients have agreed to cooperate. That's my
22 understanding.

23 MS. CHUBB: Thank you.

24 And with respect to the prestige claim, it's our
25 understanding that no objection will be filed to that claim.

1 THE COURT: Mr. Semas told me that there has been no
2 objection filed to the prestige claim and none is anticipated,
3 correct, Mr. Harris?

4 MS. CHUBB: I thought the representation was that
5 there wouldn't be.

6 THE COURT: Oh, there would not be.

7 MS. CHUBB: Yes.

8 THE COURT: Correct, Mr. Harris?

9 MR. HARRIS: Would not be? I don't know. We have a
10 prestige claim. I don't know if they're going to object or
11 not. I --

12 THE COURT: No, no.

13 MS. CHUBB: Well, wait.

14 THE COURT: No. The debtor will not object to their
15 claim, proof of claim.

16 MR. HARRIS: To the prestige?

17 MS. CHUBB: To the prestige claim.

18 THE COURT: That's what Mr. Semas said.

19 MR. HARRIS: He says they're not objecting to
20 prestige claims.

21 THE COURT: There you go. Thank you.

22 (Counsel confer)

23 THE COURT: Thank you.

24 MS. CHUBB: No, but I'll tell you later.

25 THE COURT: Thank you.

1 MR. HARRIS: Okay.

2 THE COURT: Anything I've missed?

3 MR. HARRIS: And you have continuing jurisdiction
4 over the enforcement of this --

5 THE COURT: I've already said that.

6 MR. HARRIS: Okay.

7 THE COURT: I do.

8 MR. HARRIS: I like to hear it twice.

9 THE COURT: No. If there's any question about
10 enforcement, interpretation, you come see me. I don't
11 anticipate that should be a problem.

12 Okay. I'm going to ask the parties to step forward
13 at this time, please. Would you please step forward right in
14 front of the podium.

15 Please swear, Courtney.

16 THE CLERK: Please raise your right hand.

17 (Parties sworn)

18 THE COURT: Thank you. I'll start with Ms. Semas.

19 SUSAN SEMAS, DEBTOR/DEFENDANT, PREVIOUSLY SWORN

20 VOIR DIRE EXAMINATION BY THE COURT:

21 Q Ms. Semas, you heard the terms of the settlement that I
22 placed on the record. Is that correct?

23 A Yes.

24 Q And you were present when I explained that I considered
25 this agreement to be binding upon you at this time, correct?

1 A Yes.

2 Q You understand the terms of the settlement?

3 A I do.

4 Q And do you agree to be bound by the terms of the
5 settlement?

6 A Yes, I do

7 THE COURT: Okay.

8 DAVID SEMAS, DEBTOR/DEFENDANT, PREVIOUSLY SWORN

9 VOIR DIRE EXAMINATION BY THE COURT:

10 Q Mr. Semas, you were present when I placed -- and your
11 counsel and opposing counsel placed the terms of the settlement
12 on the record. Is that correct?

13 A Yes.

14 Q And did you understand those terms?

15 A Yes, I did.

16 Q And you agree to be bound by those terms?

17 A Yes, I do.

18 Q And as with your wife, you were present when I described
19 both on the record and before we went on the record that I
20 consider this agreement to be binding upon the parties at this
21 time and I would enforce it if necessary?

22 A Yes, I do.

23 THE COURT: Thank you. Do either of you have any
24 questions for me?

25 MS. SEMAS: No.

1 MR. SEMAS: No.

2 THE COURT: All right.

3 MADYLON MEILING, PLAINTIFF, PREVIOUSLY SWORN

4 VOIR DIRE EXAMINATION BY THE COURT:

5 Q Ms. Meiling.

6 A Yes.

7 Q Have you heard the terms of the settlement that was placed
8 on the record by me and counsel?

9 A Yes, Your Honor.

10 Q Do you understand the terms of that agreement?

11 A Yes, Your Honor.

12 Q Do you agree to be bound by those?

13 A Yes.

14 Q And do you have authority to enter into this agreement on
15 behalf of Metalast Surface --

16 A Technology.

17 Q -- Technology, LLC?

18 A Yes, I do, sir.

19 Q And do you agree that that entity shall be bound by the
20 terms of the settlement agreement?

21 A Yes.

22 Q And you were present both before and after we were on the
23 record when I explained that I would enforce the agreement
24 because I consider it binding as of this time between the
25 parties and then subject to, of course, the approval by Judge



1 Beesley, but as between the parties it would be binding now and
2 that I would enforce it if necessary?

3 A Yes.

4 Q All right. Do you have any questions of me?

5 A Yes. When you related to the release --

6 Q Yes.

7 A -- I would like the release to include whatever new name
8 we use as well.

9 Q Any what?

10 A The new name for the company.

11 Q Of course.

12 A Thank you.

13 Q We want this as broad as possible.

14 A Thank you, Your Honor.

15 Q That's why I said any entities.

16 A Thank you.

17 DEAN MEILING, PLAINTIFF, PREVIOUSLY SWORN

18 VOIR DIRE EXAMINATION BY THE COURT:

19 Q Mr. Meiling, you heard the terms of the agreement that
20 were placed on the record?

21 A Yes.

22 Q Did you understand those terms?

23 A I did.

24 Q Do you agree to be bound by those terms?

25 A I do.



1 Q Do you have also -- do you also have the authority to act
2 on behalf of Metalast Surface Technology, LLC?

3 A Yes, I do.

4 Q And do you agree that the -- that Metalast Surface
5 Technology, LLC shall be bound by the terms of this agreement?

6 A Yes.

7 Q And you also heard the Court, me, say that I would enforce
8 the terms of this agreement because I consider it to be binding
9 as of this time?

10 A Yes.

11 Q Okay. Do you have any questions of me?

12 A No questions.

13 THE COURT: Okay. Mr. Burns?

14 MR. BURNS: One concern, Your Honor, as to Mrs.
15 Meiling's clarification. We want to make sure that there's no
16 confusion in the marketplace and that the new mark that you
17 adopt, the new name, is not confusingly similar.

18 THE COURT: Well, it has -- yeah, we talked about
19 that. The name cannot be confusing in the marketplace, it has
20 to be totally separate, but the question that she had was to
21 insure that the settlement and the release also applied to the
22 new entity, as well as to the old entity and themselves
23 personally. Correct? Did I understand the question correct?


24 MS. MEILING: Yes, Your Honor.

25 THE COURT: Okay. They'll come up with something



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

I, Ilene Watson, court-approved transcriber, hereby
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter, and to the best of my ability.



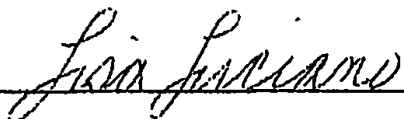
ILENE WATSON, AAERT NO. 447

DATE: March 3, 2015

ACCESS TRANSCRIPTS, LLC

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

I, Lisa Luciano, court-approved transcriber, hereby certify
that the foregoing is a correct transcript from the official
electronic sound recording of the proceedings in the above-
entitled matter, and to the best of my ability.



LISA LUCIANO, AAERT NO. 327

DATE: March 3, 2015

ACCESS TRANSCRIPTS, LLC

ACCESS TRANSCRIPTS, LLC



1-855-USE-ACCESS (873-2223)