

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BNY MELLON, NATIONAL ASSOCIATION
and THE BANK OF NEW YORK MELLON,

Plaintiffs,

v.

OCCUPY PITTSBURGH, an unincorporated
association, JANE DOES (1-50), and JOHN
DOES (1-50),

Defendants.

CIVIL DIVISION

No.: GD 11-025549

**PLAINTIFFS' EMERGENCY MOTION
TO SUPPLEMENT THE JANUARY 10-11,
2012 HEARING RECORD WITH POST-
HEARING ADMISSIONS OF
DEFENDANTS**

Code: 003-Trespass Against Property Owner

Filed on behalf of Plaintiffs BNY Mellon,
National Association and The Bank of New
York Mellon

Counsel of Record for These Parties:

Daniel I. Booker, Esquire
PA I.D. No. 10319
Joel P. Aaronson, Esquire
PA I.D. No. 28067
Michael E. Lowenstein, Esquire
PA I.D. No. 34880
Jeffrey G. Wilhelm, Esquire
PA I.D. No. 201935

Reed Smith LLP
Firm I.D. 234
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222
Telephone: 412.288.3131
Facsimile: 412.288.3063

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BNY MELLON, NATIONAL ASSOCIATION and THE BANK OF NEW YORK MELLON,)	Civil Division
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PLAINTIFFS' EMERGENCY MOTION TO SUPPLEMENT THE JANUARY 10-11, 2012 HEARING RECORD WITH POST-HEARING ADMISSIONS OF DEFENDANTS

Plaintiffs, BNY Mellon, National Association, and The Bank of New York Mellon, (collectively, "BNY Mellon"), by their undersigned counsel, respectfully submit the following Emergency Motion to Supplement the January 11-12, 2012 Hearing Record with Post-Hearing Admissions of Defendants. In support, BNY Mellon states:

1. On January 10 and 11, 2012, the Court conducted a hearing on Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter (the "Hearing").
2. As of January 26, 2012, a video was publicly available on Defendants' website at <http://www.occupypittsburgh.org/> entitled "day 103 General Assembly." Affidavit of John Worobij ("Worobij Aff."), Exhibit 1 hereto, at ¶¶ 2-4. Given that Defendants' occupation of BNY Mellon Green (the "Occupation") began on October 15, 2011, BNY Mellon believes this General Assembly was held by Defendants on or about January 25, 2012, the 103rd day of the Occupation. Defendants' day 103 General Assembly was made publicly available through <http://www.occupypittsburgh.org/> by clicking on the livestream icon. *Id.*

3. During the day 103 General Assembly, Defendants made several admissions that are material to BNY Mellon's Motion for Preliminary Injunction.
4. Excerpts of Defendants' day 103 General Assembly and a transcript of such excerpts are provided herewith. Worobij Aff. at ¶¶ 5,6, Exhibits A, B.
5. At approximately the one hour, forty minute point of the video of the day 103 General Assembly, a participant in the General Assembly reported an incident involving knives.

This report was confirmed by another speaker on the video:

“Speaker 1: You know, you – because you don't know what that person had. Because when Helen jumped in between it, that man and his girlfriend had a knife. I was watching his girlfriend. She was getting ready to get you.

Speaker 2: She was actually holding two knives behind her back –

Speaker 1: Right.

Speaker 2: -- waiting to get you until she saw me coming from behind.”

6. A few moments later, a female speaker, identified on the video as Helen, stated: “We're in a dangerous chaotic situation at that camp....”
7. At approximately the one hour, twenty-two minute point of the video of the day 103 General Assembly, an incident was reported involving theft of needles from Defendants' medical tent. As to that incident, an occupier, identified on the video as Don, had the following exchange with others at the General Assembly:

“Ok. Don?

Uh, yea. Last night we had to take out all of the needles from the med tent. I think we all know why. Umm, there is a person with us that uh is looking for those kind of things and leaving with our medical supplies to engage in risky behavior, so maybe a conversation we can all have –

With that person.

-- off-camera. We could maybe figure out what's going on right now because at this point we have six City of Pittsburgh police cars that drive by every night in single file, spot-lighting this person's tent and are also towing innocent people's cars now to search them. ”

...

“We need to shut livestream off to talk about this.

No we don't. Livestream stays on.

No. You know what? Sometimes livestream needs to be shut off for things.

Yea.

All right.

Can we take a vibes(?) check on whether or not we want live stream on for this conversation?

Can we include the people watching our live stream, whether they agree as well?

Are we going to ask BNY? Or the cops watching, too?

(laughter)”

8. At the Hearing, Defendants explained that General Assemblies are conducted by Defendants and are the process by which Defendants make decisions. Hearing Transcript at p. 256, line 16 – p. 257, line 2. Statements at Defendants' General Assemblies are thus admissible, *inter alia*, as statements against interest. PA. R. EVID. 803(25).
9. “[T]he general rule is that a court may, in its discretion, reopen the case after a party has closed for the taking of additional testimony, but such matters are peculiarly within the sound discretion of the trial court. . . . Such a ruling will be disturbed only if the court has abused its discretion. However, *a case should ordinarily be reopened where it is desirable that further testimony be taken in the interest of a more accurate adjudication and where an honest purpose would be justly served without unfair disadvantage.*”

Beaumont v. ETL Services, Inc., 761 A.2d 166, 168-69 (Pa. Super. Ct. 2000) (citations and internal quotations omitted) (emphasis original).

10. In this case there was no failure by BNY Mellon to bring the evidence forward at the Hearing as the evidence did not exist at the time of the Hearing. Plaintiffs also provided counsel for Defendants with a copy of the within Motion in advance of filing it.
11. The within Motion is brought as an emergency motion to enable the Court to have before it these relevant post-hearing facts in ruling on Plaintiffs' Motion for Preliminary Injunction.

WHEREFORE, BNY Mellon respectfully moves the Court for an Order permitting BNY Mellon to supplement the record with the Affidavit of John Worobij and the Exhibits attached thereto.

Respectfully submitted,

Dated: January 27, 2012



Daniel I. Booker, Esquire
PA. I.D. 10319
Joel P. Aaronson, Esquire
PA I.D. No. 28067
Michael E. Lowenstein, Esquire
PA I.D. No. 34880
Jeffrey G. Wilhelm, Esquire
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Reed Smith LLP
Firm I.D. 234
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222
Telephone: 412.288.3131
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Counsel for Plaintiffs BNY Mellon,
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**EXHIBIT 1 TO
PLAINTIFFS' EMERGENCY MOTION TO
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AFFIDAVIT OF JOHN WOROBIJ

John Worobij, being duly sworn, deposes and says:

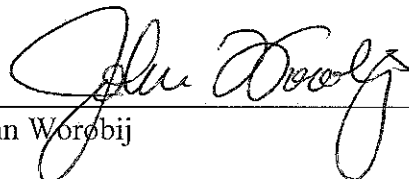
1. I am a Senior Litigation Support Analyst with the law firm of Reed Smith, LLP. My job responsibilities include, *inter alia*, collecting and storing information publicly available from the Internet. I have personal knowledge of the facts set forth in this affidavit.
2. Because of my job responsibilities, on January 26, 2012, I was instructed to and did collect and copy a video titled “day 103 General Assembly.”
3. At the time I collected the video of the “day 103 General Assembly”, the video was publicly available through <http://www.occupypittsburgh.org/> by clicking on the livestream icon. The livestream icon takes the viewer to:

<http://www.livestream.com/occupypittsburgh>.
4. The video of the “day 103 General Assembly” was available as of January 26, 2012 at: http://www.livestream.com/occupypittsburgh/video?clipId=pla_2f2a1578-b5a7-

4e57-b5f7-8b3555fb866e. The video is approximately one hour and forty-nine minutes long.

5. Attached as Exhibit A to this affidavit and incorporated herein by reference are true and correct copies of two excerpts of the video from the "day 103 General Assembly" broadcast, from the approximately 1 hour, 22 minute mark of the video and the approximately 1 hour, 40 minute mark of the video, respectively. Exhibit A accurately depicts excerpts of the video from the "day 103 General Assembly." I prepared these excerpts on January 27, 2012.
6. Attached as Exhibit B to this affidavit and incorporated herein by reference is a transcription of the video excerpts set forth in Exhibit A. The transcript attached as Exhibit B attempts to accurately set forth the statements on the excerpts attached as Exhibit A.

FURTHER THE AFFIANT SAYETH NAUGHT.

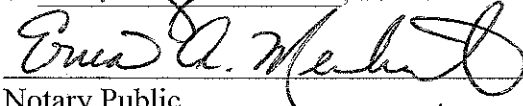


John Worobij

Sworn to and subscribed

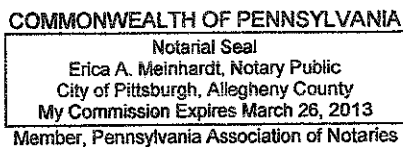
before me this 27th day

of Jan, 2012.



Notary Public

My Commission Expires: 3/26/13



**EXHIBIT A TO
AFFIDAVIT OF JOHN WOROBIJ**

**EXHIBIT B TO
AFFIDAVIT OF JOHN WOROBJ**

Transcription of Excerpts of Video of Day 103 General Assembly

Excerpt 1 (at approximately 1 hour 22 minutes)

Ok. Don?

Uh, yea. Last night we had to take out all of the needles from the med tent. I think we all know why. Umm, there is a person with us that uh is looking for those kind of things and leaving with our medical supplies to engage in risky behavior, so maybe a conversation we can all have –

With that person.

-- off-camera. We could maybe figure out what's going on right now because at this point we have six City of Pittsburgh police cars that drive by every night in single file, spot-lighting this person's tent and are also towing innocent people's cars now to search them.

Yes.

All right.

So we –

Paul?

We need to shut livestream off to talk about this.

No we don't. Livestream stays on.

No. You know what? Sometimes livestream needs to be shut off for things.

Yea.

All right.

Can we take a vibes(?) check on whether or not we want live stream on for this conversation?

Can we include the people watching our live stream, whether they agree as well?

Are we going to ask BNY? Or the cops watching, too?

(laughter)

I just don't think it's fair to the people that look on our live shoot, like –

But see -- Ok, but they're not the ones living in the camp.

All right.

Excerpt 2 (at approximately 1 hour 40 minutes)

Ok. I'm going to change the subject here a little bit.

(laughs)

Conflict mediations. Conflict mediations, ok? Now, what happens when it don't work and it can't? And it's going to come. These young boys and these young girls, they run in packs. It's going to come that you won't be able to talk your way out of it. It's either going to be fight or flight. You know? So you all got to be prepared to do that. And two – you women? I need to quit jumping in between when the men are arguing. (laughs). Yea, you get mad if you want to. I'm glad you did. Cause the simple fact is, Helen did it (cross/talk) and Helen could have got stabbed cause the man had a knife. The man and his girlfriend had a knife.

(cross/talk)

Somebody else take stock. I can't do this--

I'll take – no.

I mean, no. It ain't that. I'm dealing with a situation. Don't jump in between me when I'm trying to handle it.

Well, no one should do that if and if there is an individual at risk because you're handling a situation, no one should do that. Their bits of [inaudible] have nothing to do with that.

[inaudible]

Men want chops because he doesn't care if your blood is spilling evidently. (cross/talk)

(cross/talk) situation. I don't care if it's a man or a woman that I see. You don't jump in between. If a woman wants to help me de-escalate a situation and feels as though she can –

Well, if I feel that I can [inaudible] de-escalate it and I had it de-escalated – who [inaudible]. I know how to de-escalate situations.

This has nothing to do with it.

I had nothing. You know, you – because you don't know what that person had. Because when Helen jumped in between it, that man and his girlfriend had a knife. I was watching his girlfriend. She was getting ready to get you.

She was actually holding two knives behind her back --

Right.

-- waiting to get you until she saw me coming from behind.

I know how to deal with a person with a weapon. I'm trained to do that.

(cross/talk)

All right. Can we get a time check?

I'm done.

(cross/talk)

Fifteen minutes.

All right. Helen, we can hear what you have to say, but after that, how does everyone feel about ending the GA and cleaning up a little bit?

Yea.

All right.

We're in a dangerous chaotic situation at that camp and we need to make some major changes. And I do think that the location's working group is going to be very useful. We're talking about some [inaudible] alternatives to our current situation. I know I've made some really bad judgment calls, partly because we're all, you know, we're all really tired. We're really exhausted. We're not getting sleep. We're all, you know. So, at this point, things are not just working guys in a lot of ways.]

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ORDER

AND NOW, this _____ day of _____, 2011, it is HEREBY ORDERED that Plaintiff's Emergency Motion to Supplement the January 10-11, 2012 Hearing Record with Post-Hearing Admissions of Defendants is GRANTED. The Affidavit of John Worobij, including its attached Exhibits A and B, shall be identified as Plaintiffs' Exhibit 36 to the record on Plaintiff's Motion for Preliminary Injunction.

BY THE COURT:

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Plaintiff's Emergency Motion to Supplement the January 10-11, 2012 Hearing Record with Post-Hearing Admissions of Defendants to be served upon the following via email and hand delivery:

Michael J. Healey, Esquire
Healey & Hornack, P.C.
436 7th Avenue, Suite 2901
Kopper Building
Pittsburgh, PA 15219

Dated: January 27, 2012



Counsel for Plaintiffs
BNY Mellon, National Association and
The Bank of New York Mellon