

THE ADVOCATE

FROM MY SIDE OF THE BENCH

The Opening Statement

by Hon. Randy Wilson

157th District Court,

Harris County, Texas



LITIGATING IN FEDERAL COURT



FROM MY SIDE OF THE BENCH

The Opening Statement

BY HON. RANDY WILSON

I HAVE OFTEN PREACHED THAT THE OPENING STATEMENT should tell a story. It should make the jury want to hear the evidence. Opening statements should be personal. I recently presided over a trial in which a lawyer gave one of the best opening statements I've ever heard. In talking to the lawyers after the trial, everyone agreed—one lawyer's opening was outstanding. What makes this even more remarkable is that the case involved what would ordinarily be a very boring business dispute—an alleged constructive trust. Nevertheless, this lawyer managed to personalize an otherwise dry topic into an interesting story for an opening statement. Rather than merely talking about the opening, I thought I'd repeat large portions of it.

So the opening will make some sense to the reader, let me set the stage.¹ MetroBank and others were alleging that Wellington Yu committed fraud. The plaintiffs were seeking damages against Wellington Yu and his now ex-wife, Serena Yu. The plaintiffs alleged that ill-gotten gains were distributed to Serena. If plaintiffs prevailed and were awarded damages from Wellington, plaintiffs sought to recover some of those proceeds from Serena. Here's Serena Yu's opening:

During this trial, you will not hear a shred of evidence that Serena Yu forged anything, participated in any forgery, defaulted on anything, conspired with anyone or did anything in connection with obtaining the loans, dealing with MetroBank on these loans on these properties or anything in connection with the sale of the properties. You will also not hear that Serena Yu has made any claims against anyone in this case.... This dispute is really between MetroBank and Wellington Yu.

So why are we here? You will hear evidence during the case that there were a series of money transfers between Serena Yu and Wellington Yu at the same time that [the alleged fraud] was taking place.... That was the year that Serena and Wellington got a divorce.

I will tell you about [the alleged fraud] in a minute, but first I would like to tell you a little bit about Serena Yu. Her story starts in Taipei, Taiwan, and it was there in 1968 that Serena met Wellington Yu when she was just 14 years old. They were middle school classmates. Serena was a beautiful girl from a privileged family, and Wellington was a smart, witty boy, and he made Serena laugh. And they became great friends. But the next year, Wellington moved with his family, first to England and then to Texas. Serena couldn't forget Wellington. He used to call her once a week on Saturday night. He worked a lot of odd jobs: mowing lawns, cleaning pools to make money so that he could call her, because long distance calls weren't cheap back then from the United States to Taiwan. He would record his voice on cassette tapes and send them to her. He would play the guitar, and he would tell her what was going on in his life. And she would take these tapes and listen to them and just wish she could be with Wellington. And they went on like this for four years.

Finally, after a year of trying to get a visa to leave Taiwan to see Wellington, Serena got a visa to London, and Wellington met her there. The trip took an entire day, 24 hours. It was a lot of time to travel for an 18-year-old girl who didn't speak a word of English. But Wellington arrived in London the day after she did. And when she saw him in the airport, he kissed her right there. It was the first kiss she had ever had from anyone. They talked that first night, and they decided to get married. And they got married 30 days later. And Serena moved with Wellington back to Texas as soon as they could, within just a few days, and promised to take care of each other for the rest of their lives.

Wellington was attending Rice University here in Houston, and he was beginning his sophomore year. So they moved back and got an apartment, and

Serena quickly realized she needed to get a job. But since she didn't speak any English, the only job she could find was a job at a Chinese restaurant where she worked as a cocktail waitress. And after many nights of coming home at midnight and putting her tips in a little jar on their kitchen counter, she realized that they couldn't pay their rent. So she got a job as a nanny so she could live with a family in their garage apartment. And she worked as a nanny all day for a four-year-old boy, and then came home at night and worked as a cocktail waitress all night until after midnight. And she did this for years, and she saved every penny had she earned. When she had a day off, Wellington would take her to the Rice University library so that she could learn English and she would study.

Finally, Wellington graduated from Rice, and he got a good job. He got a job at IBM. And for a while, Serena went back to school at the University of Houston Downtown and took some classes, but she didn't get to finish school. Her older sister and her husband wanted to immigrate to the United States, and Serena's parents asked if Serena and Wellington could help them find some kind of business, some kind of job. And so they researched it, and they talked to a friend who recommended that they start a fried chicken franchise. And so her parents gave her a little bit of money to start this business for her sister, and Serena and Wellington applied, and they found a franchise called Ron's Crispy Fried Chicken. I don't know if any of y'all have been there. I used to go there a lot. So they started a Ron's Crispy Fried Chicken out near Gulfgate Mall, and Serena was all about the fried chicken business: cutting chicken, marinating, breading, cleaning the equipment, counting the inventory. And when her sister and her husband weren't able to immigrate to the United States, Serena and Wellington opened the Ron's store instead. And two months after she opened the Ron's store, she had her first daughter Christina. After just a month, Serena was back at work, and she worked in the fried chicken store until a couple of years later when she had her second daughter, Catherine, who you met yesterday. She took a month off when Catherine was born and then she was back to the fried chicken store.

Later, Wellington and Serena decided that they should find a different business other than Ron's,

and they settled on applying for and ultimately got a McDonald's franchise. They sold their fried chicken business and their home, and they put all of their money into the McDonald's. And they opened their first McDonald's on Greens Road. They were always very busy with McDonald's. Back then -- I didn't know this, but Serena told me that back then, McDonald's made all their biscuits from scratch. And they had to be made every morning. And so Serena would get up and go to McDonald's every day at 5:00 o'clock in the morning to make the biscuits, to make the pancake mix, and to open the store. And she and Wellington alternated duties at the McDonald's. But when she got home every day from work, she would do the payroll and she would do the bookkeeping. And she worked hard, 18-hour days, and she worked and worked and worked, and she did this for years. And she was successful. Later, McDonald's sold Serena and Wellington more stores. They lived frugally, so they were always able to put in a down payment, and ultimately, they ended up owning six McDonald's.

Somewhere along the way, Wellington decided he wanted to become a real estate developer. And Serena and Wellington formed Peterson Group so that Wellington could do that. And Serena continued to manage the McDonald's stores while Wellington ran the Peterson Group. Wellington formed a relationship with MetroBank in connection with his work with Peterson Group, and it was mutually beneficial for a long, long time. In 2006, Wellington and Serena sold their McDonald's. Their girls had grown up. That year, Catherine graduated from law school, and Christina graduated from medical school. And Serena had worked hard to put them through school, the best schools, to do all the right things for them. And in 2006, she sold her McDonald's stores.

But what Serena didn't know at that time was that Wellington had started seeing someone else. And somewhere in there, he had started diverting money to her, too. In 2007, Serena learned about Wellington's affair. Wellington filed for divorce, and then he changed his mind, and then he filed for divorce again a few months later. Serena didn't want to get divorced. Serena hadn't forgotten the long distance phone calls and the audiotapes, and she hadn't lost touch with that young girl who married the first boy she ever kissed. She wanted her husband back. She

wanted her family to stay together, and she would give anything to make that happen. You will hear in this case that in June and July in 2008, while their divorce was pending but not final, Serena transferred some of her money out of her own account that she had earned from McDonald's to Wellington and his company, the Peterson Group.

And without more information, it may seem strange that in the middle of her divorce, she was transferring large sums of money, because he told her he needed them for some of his real estate business. It might seem strange that she would do this with a man that she was in the process of divorcing. You will hear from Serena about this, and she can tell you about it much better than I can. But I think she'll tell you that she really thought she could bring her family back, that Wellington would wake up and realize what he was losing, and that he would regret it. But that didn't happen. And in November of 2008, Serena and Wellington's divorce was final. Along the way, Serena asked Wellington to repay some of that money that she had given him, and he did give some of it back, but not all of it. And that is why we are here today. The plaintiffs have claimed that if MetroBank prevails here, that some of that money should be taken from Serena and given to them. That is the only claim against her in this case. At the conclusion of the evidence, we are going to ask you to find... that the money that Serena Yu got from Peterson Group in the fall of 2008, that Peterson owed that to her and that she earned it. We look forward to presenting the case to you.²

This opening told a simple yet powerful story. The jury was enraptured by the story. At one point, my court reporter remarked that she was about to cry during the opening. Think about it—in a case involving an alleged constructive trust, the court reporter is on the verge of tears. The opening didn't get bogged down in legal theories; rather, the lawyer simply told a story. And by humanizing otherwise dry legal theories, this lawyer made her case in opening. There was no chance this jury was going to find a constructive trust attached to money paid to Serena.³ There's a lesson here for all trial lawyers.

Judge Randy Wilson is judge of the 157th District Court in Harris County, Texas. Judge Wilson tried cases at Susman Godfrey for 27 years and taught young lawyers at that firm before joining the bench. He now offers his suggestions of how lawyers can improve now that he has moved to a different perspective. ★

¹ Although there's more to the dispute than described here, I'm simplifying the issues and condensing the opening somewhat.

² Thanks to Elizabeth Fletcher of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing P.C. for providing this opening and consenting to its publication.

³ As it turned out, the jury found that Mr. Yu did not commit fraud, and thus no damages were awarded against him or his company, and thus there was no reason to impose a constructive trust on Serena Yu's assets.