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11
12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

13 **IN AND FOR THE COUNTY OF MARICOPA**

14 **ADVOCATES FOR INDIVIDUALS WITH**
15 **DISABILITIES FOUNDATION, INC., a**
charitable non-profit foundation, et. al.;

16 Plaintiffs,

17 vs.

18 Consolidated Defendants,

19 Defendants,

20 vs.

21 **STATE OF ARIZONA, ex rel. Mark**
22 **Brnovich,**

23 Defendant-Intervenor.
24
25
26

Case No: CV2016-090506

**STATE OF ARIZONA'S OPPOSITION
TO EMERGENCY MOTION TO
CONTINUE ORAL ARGUMENT**

(Assigned to the Hon. David M. Talamante)

1 On January 30, 2017, in the *Ahern Rentals* case, plaintiffs’ counsel filed a “Notice of
2 Arbitration Hearing,” setting the hearing for February 17, 2017, at 12:30 PM. Motion Exh. 1.

3 On February 8, 2017, the week before the oral argument, Mr. Zazueta emailed
4 undersigned counsel asking for a forty-day continuance and representing that Mr. Strojnik “has
5 an arbitration that conflicts with the oral argument scheduled for February 17.” Exh. B at 3-4.

6 Undersigned counsel noted that the oral argument was scheduled almost a month earlier,
7 and that a lengthy delay would result for around a thousand defendants who were waiting on
8 resolution of the motion. *Id.* at 3. Nevertheless, undersigned counsel did not dismiss the idea
9 out of hand. *Id.* Instead, in an effort to consider Mr. Strojnik’s request, undersigned counsel
10 asked Mr. Zazueta to provide additional details about three issues: (1) how an arbitration was
11 scheduled on a date where Mr. Strojnik already had a set court hearing, (2) what efforts Mr.
12 Strojnik made to reschedule the arbitration, and (3) why Mr. Strojnik was requesting a forty-day
13 continuance. *Id.* Undersigned counsel also asked for “[a]ny documentation [Plaintiffs] have
14 related to these points.” *Id.*

15 In Mr. Strojnik’s curt responses, he confirmed that the arbitration was scheduled after the
16 oral argument was set, but dodged the issue of how the conflict arose. *Id.* at 2. He claimed only
17 that an “arbitration deadline prevents rescheduling.” *Id.* As for the forty-day continuance, Mr.
18 Strojnik’s sole reason given was that he would “attempt to get some vacation time.” *Id.*
19 Undersigned counsel asked for documentation showing the scheduling of the arbitration. *Id.* at
20 1-2. Two minutes later, Mr. Strojnik flatly refused the request, stating: “No. Either agree or we
21 file a motion.” *Id.* at 1. Undersigned counsel then informed Mr. Strojnik that the State would
22 oppose his motion, given the lack of explanation and the lengthy delay the requested
23 continuance would create. *Id.*

1 **LEGAL STANDARD**

2 “A motion for a continuance is addressed to the trial court’s discretion and its ruling will
3 not be disturbed on appeal unless there was an abuse of that discretion.” *Ornelas v. Fry*, 151
4 Ariz. 324, 329, 727 P.2d 819, 824 (App. 1986).

5 **ARGUMENT**

6 Mr. Strojnik has demonstrated no good cause for a continuance, for three reasons:
7 (1) there is no conflict between the arbitration and the oral argument; (2) Mr. Strojnik agreed to
8 set the arbitration on that date after agreeing to set oral argument on the same date; and (3) it
9 would be more appropriate (and far easier) to push the start time of the arbitration back thirty
10 minutes instead of rescheduling the oral argument to April.

11 **I. There is No Conflict Between the Arbitration and the Oral Argument.**

12 The arbitration is set for February 17 at 12:30 PM, at 24th Street and Camelback Road.
13 Motion Exh. 1. The oral argument is set for February 17 at 11:00 AM in this Court’s courtroom,
14 and is scheduled for one hour. The driving distance between the two location is approximately
15 25 minutes, according to Google Maps. Therefore, there is no conflict. Even if the oral
16 argument takes the entire scheduled hour, Mr. Strojnik can drive to the arbitration and still be on
17 time. Moreover, opposing counsel in *Ahern Rentals* has confirmed that he is willing to move
18 the arbitration to 1:00 PM, and that the arbitration will likely last less than one hour. Exh. G.

19 Therefore, despite Mr. Strojnik’s inexplicable decision to schedule an arbitration on the
20 date he previously agreed to for oral argument, Mr. Strojnik can still do both, and the Motion to
21 Continue should be denied.

22 **II. Mr. Strojnik Chose to Schedule the Arbitration on the Same Date Set for**
23 **Oral Argument.**

24 Mr. Strojnik states in his Motion to Continue that “[o]n January 30, 2017, Arbitrator
25 Raymond S. Dietrich scheduled the arbitration hearing in CV [sic] CV2015-096056 ... for 12:30
26 p.m. on February 17, 2017 (Exhibit 1).” Motion to Continue at 1. But Exhibit 1 shows that the

1 arbitration was scheduled not by Mr. Dietrich, but by counsel in the *Ahern Rentals* case. That
2 counsel has confirmed that the February 17, 2017 date was agreed to by Mr. Strojnik on January
3 18, 2017—after Mr. Strojnik agreed to the same date for oral argument for the Consolidated
4 Cases. *See* Exh. G. Therefore, any conflict between the arbitration and the oral argument was
5 created by Mr. Strojnik, and the Motion to Continue should be denied.

6 **III. It Would Be Appropriate to Reschedule the Arbitration, Rather than the**
7 **Oral Argument.**

8 Arbitration dates are set by the parties with a private arbitrator. They simply do not have
9 the same force as a date set by the Court. But even if they did, Maricopa County Local Rule 2.2
10 counsels in favor of rescheduling the arbitration, rather than the oral argument.

11 Under Local Rule 2.2(a), if there are conflicting trial dates, the attorney “shall promptly
12 notify the judges and other counsel involved so the conflict may be resolved.” Here, Mr.
13 Strojnik did not “promptly notify” anyone. Rather, he created the supposed conflict, waited for
14 three weeks, and then filed the “emergency” Motion. There is also no indication that Mr.
15 Strojnik notified the other counsel involved in the supposed conflict—in fact, when the State
16 asked Mr. Strojnik what attempts he made to reschedule the arbitration, he refused to answer.
17 Furthermore, the counsel in *Ahern Rentals* has confirmed to the State that the arbitration could
18 easily be pushed back to 1:00 PM, readily obviating any potential conflict. Exh. G. Mr.
19 Strojnik failed to raise this issue in a timely fashion, and failed to attempt to resolve the conflict
20 with opposing counsel. As such, his Motion to Continue should be denied.

21 Even if Mr. Strojnik had properly addressed this issue, the proper course of action would
22 be to reschedule the arbitration. Under Local Rule 2.2(b), once the judges involved are aware of
23 the conflicting trial dates, they shall confer and consider the following factors in considering
24 how to resolve the conflict:¹

25 _____
26 ¹ Of course, in this instance, the Court is presiding over both cases. This allows the Court
to resolve the supposed conflict even more expeditiously than envisioned by the Local Rule.

- 1 (1) the nature of the cases as civil, criminal, or juvenile, and the presence of any speedy trial
- 2 problems;
- 3 (2) the length, urgency, or relative importance of the matters;
- 4 (3) the involvement of out-of-town witnesses, parties or counsel;
- 5 (4) the age of the cases;
- 6 (5) the matter that was set first;
- 7 (6) any priority granted by rule or statute; and/or
- 8 (7) any other pertinent factor.

9 Factor 4 (the age of the cases) weighs slightly in favor of the arbitration (the *Ahern*
10 *Rentals* complaint was originally filed a few months before the underlying case here—however,
11 the amended complaint in *Ahern Rentals* was filed after the operative complaint in the original
12 case here). Factors 2, 5, 6, and 7 weigh in favor of the oral argument. The relative importance
13 of approximately one thousand consolidated cases, collectively seeking millions of dollars,
14 exceeds the relative importance of one contract dispute where approximately \$25,000 is at issue.
15 The urgency of resolving a motion to dismiss that could end litigation against about one
16 thousand defendants outweighs the urgency of a single arbitration. The oral argument was set
17 before the arbitration, as discussed above. And of course, under applicable statutes and rules, if
18 a person fails to attend a court hearing, they may be held in contempt or be subject to
19 sanctions—arbitrators have no such power. Other pertinent factors also weigh in favor of the
20 oral argument, including Mr. Strojnik’s decision to schedule the arbitration on the same day as
21 the oral argument, his tardiness in addressing the issue, his failure to try to reschedule the
22 arbitration, and the ease in which the arbitration can be rescheduled to 1:00 PM.

23
24
25 For example, the Court could simply extend the arbitration deadline in the *Ahern Rentals* case
26 *sua sponte*, thus removing the supposed impediment. But the simplest course of action would
be for the parties in *Ahern Rentals* to move the arbitration to 1:00 PM on February 17, 2017,
which plaintiffs’ counsel in that case has indicated he is willing to do.

1 Mr. Strojnik has said the “arbitration hearing cannot be continued,” because of the
2 arbitration deadline. Motion to Continue at 1-2; *see* Exh. B. But there are over two weeks
3 between the scheduled arbitration and the arbitration deadline, which is currently set for
4 February 28, 2017. Moreover, Mr. Strojnik previously agreed to (or did not oppose) an
5 extension to the arbitration deadline in *Ahern Rentals* on **three separate occasions**, and Mr.
6 Strojnik gives no reason why the same could not be done again. *See* Exhs. H-J. Finally, the
7 arbitration could simply be moved to 1:00 PM to alleviate any supposed conflict, a time which
8 opposing counsel in *Ahern Rentals* has already agreed to use. *See* Exh. G.

9 **IV. If the Oral argument is Continued, It Should Not Be Moved to April**

10 Finally, Mr. Strojnik does not simply ask to continue the oral argument to the following
11 week or the next available date. He asked the State for a forty-day continuance to “attempt to
12 get some vacation time.” Exh. B at 2. His Motion to Continue goes even further, asking for a
13 date almost two months from today. Motion to Continue at 2. This request is unwarranted.

14 In addition to his ongoing cases (including the two listed in the Motion to Continue), Mr.
15 Strojnik elected to file over 1,700 cases last year, taking on a case load far in excess of what any
16 reasonable attorney could handle.² Furthermore, the timing of the request is suspect—with
17 around one thousand cases potentially about to be dismissed, Mr. Strojnik suddenly wants to
18 extend the process further.

19 This request does not come in a vacuum. The Court should weigh Mr. Strojnik’s self-
20 created, supposed conflict and desire for vacation time against the interests of around 1,000
21 consolidated defendants. Since their cases were consolidated last September, those defendants

22 ² In addition, Mr. Strojnik cannot dispute that he was recently able to get vacation time. A
23 few months ago, Judge Wake scheduled a hearing in *Advocates for Individuals with Disabilities,*
24 *LLC & Ritzenthaler v. MidFirst Bank*, CV-16-01969-PHX-NVW to discuss, among other issues,
25 “whether Mr. Strojnik has engaged in a pattern of professionally unethical conduct by
26 demanding attorney fees for bringing litigation that is unnecessary and for which the reasonable
attorney fees would be nothing.” Exh. D. Mr. Strojnik asked for the hearing to be continued,
Exh. E, and stated in a sworn affidavit that he was taking a week-long trip to Hawaii, Exh. F.
Judge Wake granted the continuance.

1 have waited months for the resolution of the motion to dismiss. In the meantime, Mr. Strojnik
2 wrote letters urging settlement by telling defendants that the Court’s stay in this matter “delays
3 the adjudication of the matters for many months to come” and that Plaintiffs’ “cost and expenses
4 will rise” over time. Exh. C (previously attached as Exh. C to Dkt. 251). Now, with oral
5 argument on the motion to dismiss just days away, Mr. Strojnik wants to delay the adjudication
6 of the matter for additional months, during which time Plaintiffs can continue to attempt to
7 extract monetary settlements for claims that may be about to be dismissed.

8 **CONCLUSION**

9 Plaintiffs’ Motion to Continue should be denied, and oral argument should be held on
10 February 17 at 11:00 AM, as agreed to by all parties one month ago.

11
12 RESPECTFULLY SUBMITTED: February 13, 2017.

13 MARK BRNOVICH,
14 ATTORNEY GENERAL

15 BY: /s/ Matthew du Mée

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1 Document electronically transmitted
2 to the Clerk of the Court for filing using
3 AZTurboCourt this 13th day of February, 2017.

4 **COPY** of the foregoing *e*-delivered via
5 AZ TurboCourt this 13th day of February, 2017, to:

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20 **COPY** of the foregoing *e*-mailed to the Attorney's
21 General's distribution list and posted to the
22 Attorney General's website this 13th day of February,
23 2017.

24 /s/ Sophia Descheeny