

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA**

Daniel J. Stermer

Plaintiff,

v.

Peter Beck,

Defendant.

Case No.: 50-2021-CA-008718-XXXX-MB

CIVIL DIVISION

MOTION FOR RECONSIDERATION OF THE ORDER DENYING “DEFENDANT'S
MOTION TO CANCEL UMC HEARING SCHEDULED FOR DECEMBER 4, 2024, AND
FOR SANCTIONS” FOR THAT PORTION OF THE MOTION REGARDING SANCTIONS

Peter Beck, through his undersigned counsel, hereby files his opposition to Plaintiff's proposed order propounded to the court on December 4, 2004, and in furtherance thereof states as follows:

1. On October 1, 2024, Defendant filed his Motion to Dismiss the Original and Supplemental Proceedings as to Defendant Beck. On November 8, 2024, Plaintiff filed a Motion to Strike that Motion to Dismiss.
2. On November 11, 2024, Defendant's Counsel received an e-mail from Berger Singerman seeking availability for a UMC at 8:45 am on Wednesday, November 20, 2024, on Plaintiff's Motion to Strike. Defendant's Counsel indicated that a 5-minute UMC was not the proper format for this motion.
3. On November 12, 2024, Defendant's Counsel received from Berger Singerman an e-mail stating that the previous proposed hearing date [Nov. 20] was no longer available and sought the Defendant Counsel's availability for a UMC hearing on December 3, 2024.
4. Thereafter, Defendant's Counsel was led to believe that Plaintiff's Motion to Strike was set to be heard at UMC on December 4, 2024. It did not strike Defendant's Counsel as odd that he did not receive a scheduling notice from Plaintiff or that Plaintiff's Counsel had not conferred with him prior to setting the hearing. Plaintiff had demonstrated similar gamesmanship in another case in which the undersigned represented another party pursued by Plaintiff.

5. At a later point, Defendant's Counsel received an order which scheduled a special set hearing for 3:00pm on December 4, 2024. The order did not denote which defendant was the subject of that special set hearing. Again, Plaintiff's Counsel misled Defendant's Counsel into believing that the special set on December 4, 2024, was to address Plaintiff's motion to strike.
6. In at least one telephone conversation, Defendant's Counsel specifically questioned Plaintiff's Counsel as to why the scheduling order identified that the hearing was for a motion to dismiss rather than a motion to strike. Plaintiff's Counsel eluded the question but, importantly, made no mention that the December 4, 2024, hearing was not related to Beck. Again, it did not strike Defendant's Counsel as unusual that Defendant's Counsel did not answer his question, as it was just another instance of the bad faith conduct which Defendant's Counsel had come to expect from Plaintiff's Counsel.
7. As a result of misleading conversations between Counsel, Defendant filed, on November 27, 2024, the motion to continue the December 4, 2024, hearing. On the same day, two other motions to continue were filed with the Court: a January 7, 2025, 30-minute special set purportedly on Beck's motion to dismiss and a February 6, 2025, 30-minute special set hearing on a motion to dismiss in the Cucuait case.
8. Plaintiff's Objection to Defendant's motion to continue the December 4, 2024, and January 7, 2025, hearings is entirely performative. On the evening of Sunday, December 1, 2024, in a series of text messages, Plaintiff's Counsel clarified for the first time with Defendant's Counsel that those hearings pertained to different cases. The fact that Plaintiff's Counsel waited until that point in time to unravel the misinformation he had presented (and negated to correct) with respect to Defendant's Counsel is demonstrative of bad faith conduct. Plaintiff's Counsel's comments in Plaintiff's present motion, that Defendant's Counsel filed motions on November 27, 2024, because he was confused is quite true, in part; but not at all for the reasons suggested.
9. In conversations prior to the filing of the motions on November 27, 2024, Plaintiff's Counsel led Defendant's Counsel to believe that a special set hearing on January 7, 2025 for 30-minutes had been scheduled by Plaintiff on Beck's Motion to Dismiss. Again, the hearing was set without prior consultation with Defendant's Counsel, without receipt by Defendant of a notice of scheduling, where the Scheduling Order made no mention of

which matter was to be addressed and, importantly, without Defendant Counsel's knowledge that another motion to dismiss had been filed.

10. During the same conversation, Defendant's Counsel also discussed with Plaintiff's Counsel, a similarly scheduled 30-minute special set hearing by Plaintiff, for February 6, 2025, in the Cucuait case. Unlike Beck, Plaintiff did schedule a 30-minute special set hearing on February 6, 2025, on Cucuiat's Motion to Dismiss.
11. The gamesmanship as to the scheduling of that hearing is set forth in detail in Cucuiat's motion to continue the February 6, 2025, hearing filed on November 27, 2024. In short, Defendant Counsel's acknowledgment in an email back to Berger Singerman that he was available for a 15-minute scheduling conference at 10:30 on February 6, 2025, somehow resulted, the following day, in an order for a 30-minute special set hearing to decide Cucuiat's motion to dismiss. Curiously, the scheduling notice and order in this instance both identified that Cucuait was the subject of the hearing.
12. That Plaintiff had definitively scheduled the 30-minute special set hearing on Cucuiat's motion to dismiss, without prior consultation of anything other than an intent to set a 15-minute 'scheduling hearing,' only presented additional credibility to the notion that Plaintiff had also scheduled the Beck hearing on January 7, 2025.
13. As further proof of Plaintiff's ruse, in one of their conversations, Defendant's Counsel stated to Plaintiff's Counsel that 30 minutes was an insufficient amount of time to argue the motions to dismiss and further requested that Plaintiff stipulate to the cancelation of both the January 7, 2024, and February 6, 2025, special set hearings. Plaintiff's Counsel responded that he would consider doing so, however he made no mention that the January 7, 2025, hearing did not relate to Beck.
14. Thus:
 - a) Up until Sunday, December 1, 2024, Plaintiff continued to mislead Defendant's Counsel regarding the purpose of the December 4, 2024, special set hearing.
 - b) The December 4, 2024, hearing as to Beck had not actually been scheduled, contrary to what Defendant's Counsel was falsely led to believe.
 - c) There was no scheduling notice received by Defendant's Counsel setting the December 4, 2024, hearing as to Beck. There was also no scheduling notice received by Defendant's Counsel setting the December 4, 2024, hearing for any matter other than

Beck.

- d) The order scheduling the December 4, 2024, special set hearing at 3:00pm, gave no indication as to which matter the hearing pertained.
 - e) Defendant's Motion to Continue the December 4, 2024, special set hearing was clearly and obviously filed based on the deception perpetrated on Defendant by Plaintiff's Counsel.
 - f) Plaintiff's Counsel did not file until December 2, 2024, its opposition to Defendant's Motion to Continue filed on November 27, 2024.
 - g) At 4:34 P.M., on December 4, 2024, Plaintiff's Counsel sent an e-mail to Defendant's Counsel stating that "We were surprised you were not in attendance at the hearing on the Ezrine matter today at 3:00."
 - h) The same e-mail stated: "As we advised you, the hearing today had nothing to do with Beck." Yet, that email went on to explain that at the conclusion of the hearing, Plaintiff's Counsel advised the Court: "about your motion and our opposition." and that, "The Court directed us to upload an order." That order was drafted to deny as moot, Peter Beck's Motion to Cancel UMC Hearing Scheduled for December 4, 2024 and for Sanctions.
15. Defendant acknowledges the obvious; that a motion to cancel something which never existed has no legal significance and is therefore, moot. However, the circumstances which caused Defendant's Counsel to file such a motion (and which formed the basis for Defendant's request for sanctions), should not be so summarily disregarded.
16. In short, the circumstances leading to Plaintiff's present proposed order, submitted to the Court on December 4, 2024, are shockingly unwarranted but not at all surprising. They are in keeping with the bad faith conduct which Defendant's Counsel has routinely manifested and Defendant's Counsel has unfortunately come to expect.
17. By causing the Court to proceed in the fashion which it did during the December 4, 2024, hearing, the Court has denied Beck due process by considering matters which had not been properly noticed for hearing. In support thereof, Defendant cites Caballos v. Barreto, 47 Fla. L. Weekly D874 (4th DCA April 5, 2022). In that case, the Fourth DCA reversed that portion of the Order that reached the time-sharing issue:

because it exceeded the scope of the hearing,

thereby denying the mother due process.

See also: Romero v. Brabham, 300 So. 3d 665, 668 (Fla. 4th DCA 2020)

“Generally, due process requires fair notice and a real opportunity to be heard and defend in an orderly procedure *before* judgment is rendered.” Further, “[g]enerally, a prior judgment, decree or order must be set aside where there is excusable neglect in the form of a litigant's failure to receive notice of a pending hearing or trial.” Liberty Mut. Ins. Co. v. Lyons, 622 So. 2d 621, 622 (Fla. 5th DCA 1993). Schuman, 50 So. 3d at 76-77 (citation omitted).

Conclusion

Therefore, based on the foregoing, Defendant respectfully requests that the Court reconsider its decision with respect to Defendant’s motion to continue, as to the matter of sanctions and afford Defendant the opportunity to present its arguments after proper notice, such that the appearance of bias may be avoided.

Dated: December 6, 2024

Respectfully submitted



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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2024 the foregoing was filed using the Florida E-Portal Filing System, which will serve a copy of the foregoing to the Plaintiff electronically upon electronic service.

Dated: December 6, 2024


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