

Appendix A
Decision of State Court of Appeals

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

DEVIN ANDRICH,
Plaintiff/Appellant,

v.

JEROME FRANCIS MEYERS, JR., et al.,
Defendants/Appellees.

No. 1 CA-CV 20-0277
FILED 4-20-2021

Appeal from the Superior Court in Maricopa County
No. CV2018-000376
The Honorable James D. Smith, Judge

AFFIRMED

COUNSEL

Devin Andrich, Phoenix
Plaintiff/Appellant

Singer Pistiner, P.C., Scottsdale
By Jason Pistiner, Robert S. Singer
Counsel for Defendants/Appellees

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MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Jennifer M. Perkins joined.

THUMMA, Judge:

¶1 Plaintiff Devin Andrich appeals from a judgment against him and in favor of defendants Jerome Francis Meyers, Jr., and others. Because Andrich has shown no error, the judgment is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 For a time, Andrich lived with Jerome and Lisa Meyers in their home in Maricopa County. After Andrich moved out, he believed he left his laptop, server and some clothing with the Meyers. In early January 2015, Jay Seitz, Andrich's IT specialist, tried to contact the Meyers to recover Andrich's property. The Meyers first refused but then left property in their driveway for Andrich or Seitz to retrieve.

¶3 According to Andrich, Seitz picked up the server on January 8, 2015, and learned that its hard drives had been removed. Andrich claims he never received the laptop, and that the Meyers still have it. The Meyers, however, stated they returned the laptop to Andrich via Seitz on January 7, 2015. Jerome Meyers later would testify he never had possession of the laptop and only returned the server. Meyers also testified that Andrich used the terms "server" and "laptop" interchangeably.

¶4 Andrich sued the Meyers and others in January 2018, alleging fraud and a claim for "injunctive relief" based on the allegation that the Meyers "Continue to Remain in Possession of [his] Laptop and Server Hard Drive." The superior court granted the Meyers' motion to dismiss for failure to plead sufficient facts or cognizable claims. The court, however, granted Andrich leave to file an amended complaint.

¶5 Andrich filed a proposed amended complaint in August 2018, asserting fourteen causes of action, including negligence per se, tortious interference, invasion of privacy, intentional infliction of emotional distress, conversion, negligence, fraud, claims based on the residential landlord-tenant act or a purported contract, promissory estoppel and unjust enrichment. The court found thirteen of the proposed causes of action were

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futile, untimely, or both. The court permitted an amended complaint as to the promissory estoppel claim, which Andrich filed in September 2018.

¶6 In November 2018, the parties raised a disclosure dispute with the court. Andrich argued that, because Seitz planned to testify that the Meyers never returned the laptop, the Meyers' initial disclosure statement improperly omitted the location of the laptop. The Meyers, by contrast, maintained they did not have the laptop. The court ordered the Meyers to file a "supplemental disclosure statement that is unambiguous as to whether Defendants possess the computer or the hard drive, have back-up images from the hard drive, and disclose when they last had possession of the computer or hard drive."

¶7 The Meyers' supplemental disclosure statement, submitted six days late, declared that they left all of Andrich's remaining property, including a laptop, in their driveway, which Seitz picked up. In response, Andrich filed what was in substance a request for sanctions, *see* Ariz. R. Civ. P. 37(b) (2021),¹ asking the court to strike the Meyers' answer and enter default judgment due to the untimeliness of the disclosure and because the Meyers "refused to disclose the location and whereabouts of Plaintiff's laptop and server hard drive." In January 2019, the superior court denied Andrich's request for sanctions because he disregarded various procedural rules. The court also found Andrich failed to show how the untimely disclosure caused any prejudice. The court again ordered the Meyers to provide a supplemental disclosure and provided unambiguous form language for the Meyers to follow. The Meyers made a second supplemental disclosure in late January 2019, stating they last possessed Andrich's "computer and/or hard drive" on January 7, 2015, they never possessed an image of the hard drive, and were not in possession of Andrich's computer or hard drive.

¶8 In June 2019, during a pretrial hearing, the court told the parties that any trial would be a one-day trial. During a pretrial conference three months later, the Meyers agreed to a one-day trial while Andrich suggested the trial may go longer than one day. The court set a one-day trial, noting "in the unlikely situation that I conclude we need to go beyond one day, they don't need to be consecutive days."

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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¶9 At 4:11 p.m. the day before trial, Andrich filed a motion for change of judge for cause. *See* Ariz. R. Civ. P. 42.2. Andrich argued the assigned judge was biased against him because he was “very close” with another judge who presided over a criminal proceeding against Andrich. *See, e.g., State v. Andrich*, No. 1 CA-CR 18-0600 PRPC, 2019 WL 150497 (Ariz. App. Jan. 1, 2019). As evidence, Andrich pointed to a photograph from an investiture ceremony, where the assigned judge sat near the other judge as well as the fact that the two judges had previously worked at the same law firm. Andrich’s motion was assigned to the Presiding Judge of the Maricopa County Superior Court, who then designated the civil presiding judge to address the motion. Because the civil presiding judge was mentioned in the motion, she designated another judge to address the motion. That judge denied Andrich’s motion.

¶10 At the beginning of the trial, the court reiterated that it would be a one-day trial and each party would have about two hours and 20 minutes to present their case. During examination, the court informed Andrich his time had been exhausted and he had nine more minutes. Although Andrich did not testify, he spent approximately two hours and 30 minutes examining three witnesses, which he had estimated would take less than two hours. After Andrich rested in his case in chief, the Meyers moved for a directed verdict. The court granted the motion and held that Andrich failed to meet his burden of proving the elements of his promissory estoppel claim.

¶11 Andrich filed a motion for new trial claiming: “1) Irregularity in the court’s orders and proceedings, depriving Plaintiff of a fair trial; 2) Misconduct by defendants; 3) Errors in the rejection of evidence occurring both at trial and during the progress of the action; and 4) Decisions and the verdict issued by the court result from the court’s own admitted and memorialized passion and prejudice.” *See* Ariz. R. Civ. P. 59(a)(1)(A), (B), (F), (G). The court denied the motion in a lengthy ruling, finding Andrich’s arguments were not supported by competent evidence, were based on his misunderstanding of the applicable procedural rules, and were frivolous, specious, mendacious and unrelated to the case.

¶12 On January 27, 2020, the superior court issued an order proposing to designate Andrich a vexatious litigant. *See* A.R.S. § 12-3201. The court allowed Andrich until 5:00 p.m. on February 10, 2020, to respond. On February 5, 2020, Andrich filed an 18-page motion to extend time to oppose the court’s proposed vexatious litigant finding, arguing the deadline for his response should be 21 days from the entry of the court’s order. The court granted that request and extended the deadline to

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February 17, 2020. At 4:30 p.m. on February 17, 2020, Andrich filed a 15-page second extension request, seeking "45-60 days to obtain the trial transcript." The court denied this request, noting that Andrich "often wait[s] until a deadline to seek more time." Further, the court found Andrich did not need the hearing transcripts to respond to the court's proposed findings. The court declared Andrich a vexatious litigant in this matter and referred the matter to the presiding judge to consider whether to designate him a vexatious litigant in future cases.

¶13 The superior court awarded the Meyers attorneys' fees of \$3,708 and taxable costs of \$485.77, which represented the portion of fees associated with Andrich's unsuccessful contract claims. *See* A.R.S. § 12-341.01. This court has jurisdiction over Andrich's timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) and -2101(A)(1).

DISCUSSION

¶14 Andrich seeks to press eight issues on appeal, each of which he claims constitute reversible error. In several material respects, Andrich's opening brief fails to comply with this court's rules. *See* ARCAP 13(a)(7) (requiring, *inter alia*, "citations of legal authorities and appropriate references to the portions of the record"). In addition, some of Andrich's arguments are unfounded or unsupported, meaning they are waived. The discussion that follows addresses the arguments Andrich apparently seeks to press on appeal.

I. The Court Did Not Err in Rejecting Thirteen of Andrich's Proposed Causes of Action.

¶15 Andrich argues the court erred in rejecting all but one of the causes of action alleged in his proposed amended complaint as futile, arguing the court improperly determined accrual dates of his claims in finding they fell outside the applicable statutes of limitations. The denial of a motion for leave to amend is reviewed for an abuse of discretion. *Swenson v. Cnty. of Pinal*, 243 Ariz. 122, 128 ¶ 21 (App. 2017) (citing cases). "A court does not abuse its discretion in denying a motion for leave to amend if the amendment would be futile." *Id.* (quoting *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 292 ¶ 26 (App. 2010)). An amendment is futile if it would not survive a motion to dismiss for failure to state a claim. *Swenson*, 243 Ariz. at 128 ¶ 22 (citing Ariz. R. Civ. P. 12(b)(6)); *accord Sw. Non-Profit Hous. Corp. v. Nowak*, 234 Ariz. 387, 392 ¶ 17 (App. 2014).

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¶16 The court determined twelve of the fourteen proposed causes of action failed to “plead cognizable claims.” Andrich does not challenge that conclusion on appeal, meaning any such challenge is waived. *See, e.g., Lunney v. State*, 244 Ariz. 170, 181 ¶ 40 (App. 2017).

¶17 The other proposed cause of action the court rejected was for conversion. Conversion claims are subject to a two-year statute of limitations. A.R.S. § 12-542(5). Under the discovery rule, such a claim accrues when the plaintiff is aware of the underlying facts. *See, e.g., Gust, Rosenfeld & Henderson v. Prudential Ins. Co. of Am.*, 182 Ariz. 586, 588 (1995). Andrich’s proposed amended complaint alleged he became aware that the Meyers refused to return his property to him no later than January 8, 2015. Under the statute of limitations, Andrich had until January 8, 2017 to file a claim for conversion. By waiting until August 2018, Andrich missed the limitations period, meaning the claim was untimely.

¶18 Andrich incorrectly quotes *Amfac Distribution Corporation v. Miller*, 138 Ariz. 152, 153 (1983) for the proposition that a claim for conversion does not accrue until actual injury or damages occur. *Amfac* holds that actual injury is required for *negligence* claims, *id.*, while conversion is an intentional tort, *see Miller v. Hehlen*, 209 Ariz. 462, 472 ¶ 37 (App. 2005). Further, a plaintiff is not required to prove damages to prevail on a conversion claim. *See Focal Point, Inc. v. U-Haul Co. of Ariz., Inc.*, 155 Ariz. 318, 319 (App. 1986). On this record, Andrich has not shown the court abused its discretion in rejecting the thirteen causes of action.

II. The Court Did Not Abuse its Discretion in Resolving the Disclosure Dispute.

¶19 Andrich argues the superior court improperly denied his request for relief involving the disclosure dispute, a ruling this court reviews for abuse of discretion. *City of Casa Grande v. Ariz. Water Co.*, 199 Ariz. 547, 598 ¶ 26 (App. 2001). Andrich has shown no abuse of discretion.

¶20 Andrich alleged a disclosure dispute existed because there was a disagreement about whether the Meyers still had his property. The court ordered the Meyers to supplement their disclosure describing whether they had the laptop. They did so, stating they did not have the laptop. Andrich argues the court erred in not compelling the Meyers to disclose the location of the laptop. But the court cannot compel a party to disclose information it does not have. Andrich also argues the court erred by failing to sanction the Meyers. But Andrich has shown no sanctionable

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conduct or that the court abused its discretion in denying his request for sanctions.

III. Andrich Has Shown No Constitutional Violation in the Resolution of His Motion for Change of Judge for Cause.

¶21 To the extent Andrich seeks to challenge the denial of his motion for change of judge, this court lacks appellate jurisdiction to consider such a challenge. *See Taliaferro v. Taliaferro*, 186 Ariz. 221, 223–24 (1996). Andrich argues that his constitutional rights were violated when the civil presiding judge “hand selected” the judge who would resolve his motion. Andrich argues the civil presiding judge instead should have had the Maricopa County Superior Court Presiding Judge select the judge to preside over his motion for change of judge.

¶22 The assignment complied with applicable rules. *See* Ariz. R. Civ. P. 42.2(a). Andrich cites no case law for the proposition that the process used here violated his rights. In fact, even if a presiding judge is personally disqualified from hearing a case, it is nevertheless proper for him or her to reassign the case to another judge. *State v. Watkins*, 125 Ariz. 570, 611 (1980). Judges are presumed to be impartial, *State v. Ramsey*, 211 Ariz. 529, 541 ¶ 38 (App. 2005), and Andrich has shown no violation of his rights in the process used here.²

IV. Andrich Was Not Prevented from Filing a Response to the Proposed Vexatious Litigant Findings.

¶23 Andrich argues his constitutional rights were violated because he was not allowed to respond to the superior court’s vexatious litigant findings. Not so. The court afforded him an opportunity to respond. Instead, Andrich filed a lengthy motion to extend the deadline, which the court granted. Rather than respond within that extended deadline, Andrich filed a second lengthy request for additional time, noting that he needed transcripts to respond. The court denied that request and provided supporting findings, including that he did not need transcripts to respond. Andrich does not challenge those findings. Andrich cites no case law to support his claim that, by denying his second request for additional time, the court prevented him from making a filing or violated his constitutional rights.

² Andrich’s related argument that “the trial court retaliated against” him because he moved to change judge for cause is unsupported legally or factually.

V. The Court Did Not Err by Imposing Time Limits for Trial.

¶24 The court may impose time limits and allocate trial time to “facilitate a just, speedy, and efficient resolution of the action,” Ariz. R. Civ. P. 40(b)(1), 16(j), provided they are reasonable under the circumstances, *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, 91 ¶ 29 (App. 1998). The court provided Andrich several months’ notice that the trial would last no longer than one day. Andrich did not object to that limitation and he did not ask for more time after his examination of witnesses. Accordingly, he has waived any arguments regarding time limits for the trial. See *Cullum v. Cullum*, 215 Ariz. 352, 355 ¶ 14 n.5 (App. 2007). Andrich has not shown the time limits were unreasonable and the expiration of Andrich’s time was solely attributable to his conduct. See *Gamboa v. Metzler*, 223 Ariz. 399, 402 ¶¶ 14–15 (App. 2010). Nor has he shown how he was harmed by the time limits — a requirement to prevail on a due process claim. *State v. Dunlap*, 187 Ariz. 441, 450 (App. 1996) (quoting *United States v. Lovasco*, 431 U.S. 783, 790 (1977)). Therefore, Andrich has shown no error.

VI. The Court Did Not Err in Refusing to Reopen the Case.

¶25 After the court ended Andrich’s time for examination, it became apparent that Andrich failed to present evidence of several elements essential to his promissory estoppel claim. Andrich offered to testify to provide such evidence, but the court denied his offer because his allocated time had been exhausted. The court has discretion, but is not required, to reopen a case to introduce omitted testimony. See Ariz. R. Civ. P. 40(d). Andrich has presented no argument as to why justice required the court to reopen the case, particularly given the court’s finding (supported by the record) that his failure to present relevant testimony was due to Andrich’s time mismanagement. Andrich has shown no error here.

VII. The Court Did Not Abuse Its Discretion When Denying Andrich’s Motion for New Trial.

¶26 A superior court’s denial of a motion for new trial is reviewed for an abuse of discretion. *State v. Mills*, 196 Ariz. 269, 271 ¶ 6 (App. 1999). On appeal, Andrich challenges the denial of his motion for new trial on the grounds that the superior court “ratif[ied] . . . Appellees[’] disclosure violations.” But the court otherwise addressed his claim that the Meyers had not complied with their disclosure obligations. The Meyers consistently specified they had returned Andrich’s property as discussed above and they did not know where the property was by the time the litigation began. The court found that Andrich “did not provide competent evidence before

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or during trial" to rebut the Meyers' statements. Andrich has shown no error.

VIII. The Court Did Not Abuse Its Discretion When Awarding Attorneys' Fees to the Meyers.

¶27 The superior court awarded the Meyers \$3,708 in attorneys' fees under A.R.S. § 12-341.01(A). Although couched as an assertion that the fee award was improper, Andrich's argument "is that the State and the [State Bar of Arizona] are actively assisting [the Meyers] in the continued theft of" Andrich's property, noting that "[n]othing has stopped the Supreme Court of Arizona, State or SBA from either appointing a conservator, or executing search warrants upon" the Meyers. Such an argument does not show how the fee award was improper. Accordingly, that award is affirmed.

CONCLUSION

¶28 The judgment is affirmed. The Meyers seeks attorneys' fees pursuant to A.R.S. §§ 12-341.01 and -349. In the court's discretion, the request for fees is denied. The Meyers, as prevailing parties, are awarded their taxable costs on appeal, contingent upon their compliance with ARCAP 21.



AMY M. WOOD • Clerk of the Court
FILED: AA

Appendix B
Order of State Court of Appeals
Denying Rehearing

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 5/7/21
AMY M. WOOD,
CLERK
BY: RB

DEVIN ANDRICH,)
) Court of Appeals
) Division One
Plaintiff/Appellant,) No. 1 CA-CV 20-0277
)
v.) Maricopa County
) Superior Court
JEROME FRANCIS MEYERS, JR., et) No. CV2018-000376
al.,)
)
Defendants/Appellees.)
_____)

ORDER DENYING MOTION FOR RECONSIDERATION

The court has considered Appellant's Motion For Reconsideration filed May 6, 2021.

After consideration,

IT IS ORDERED denying the Motion For Reconsideration.

/S/

SAMUEL A. THUMMA, Judge

A copy of the foregoing
was sent to:

Devin Andrich
Jason Pistiner
Robert S Singer

Appendix C
Decision of State Trial Court

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-000376

01/23/2020

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
P. Culp
Deputy

DEVIN ANDRICH

DEVIN ANDRICH
3104 EAST CAMELBACK RD # 1246
PHOENIX AZ 85016

v.

JEROME FRANCIS MEYERS JR., et al.

JASON PISTINER

JUDGE J. SMITH

TRIAL MINUTE ENTRY
DAY 1

Courtroom 814-ECB

9:25 a.m. Judge Timothy J. Thomason assumes the bench and addresses Plaintiff Devin Andrich's Motion for Change of Judge for Cause.

IT IS ORDERED denying Plaintiff Devin Andrich's Motion for Change of Judge for Cause. A ruling from Judge Thomason addressing the motion will be issued under a separate minute entry.

9:26 a.m. Matter concludes.

9:27 a.m. This is the time set for Trial to Court. Plaintiff Devin Andrich is present on his own behalf. Defendants' Jerome Francis Meyers and Lisa Freeman Meyers are present and represented by counsel, Jason Pistiner.

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A record of the proceedings is made digitally in lieu of a court reporter.

Plaintiff's case:

Jay Steitz is sworn and testifies.

Plaintiff's exhibits 31, 32, 33, 25, 34, and 5 are received in evidence.

Defendants' exhibit 64 is received in evidence.

The witness is excused.

10:48 a.m. Court stands at recess.

10:56 a.m. Court reconvenes with respective parties and counsel present.

A record of the proceedings is made digitally in lieu of a court reporter.

Lisa Meyers is sworn and testifies.

11:33 a.m. Court stands at recess.

11:35 a.m. Court reconvenes with respective parties and counsel present.

A record of the proceedings is made digitally in lieu of a court reporter.

Lisa Meyers continues to testify.

The witness is excused.

Jerome Francis Meyers, Jr. is sworn and testifies.

Plaintiff's exhibit 4 is received in evidence.

12:00 p.m. Court stands at recess.

1:36 p.m. Court reconvenes with respective parties and counsel present.

A record of the proceedings is made digitally in lieu of a court reporter.

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Jerome Francis Meyers, Jr. continues to testify.

Plaintiff's exhibit 27 is received in evidence.

Defendants' exhibit 53 is received in evidence.

Upon motion of Defendants, Plaintiff's exhibit 16 is received in evidence.

Plaintiff's exhibits 24 and 21 are received in evidence.

The Court informs Plaintiff that he has exhausted the allotted time for his case, reviews Rule 40(b) procedures, and describes Plaintiff's usage of time.

Defendants' case:

Counsel for Defendants' moves for a directed verdict regarding partial findings.

Based on the reasons stated on the record,

IT IS ORDERED granting Defendants' motion for judgment on partial findings.

2:39 p.m. Trial concludes.

LATER:

The Court held a bench trial to resolve Plaintiff's promissory estoppel claim against the Meyers Defendants on January 23, 2020. Defendants moved for judgment on partial findings after Plaintiff's case-in-chief concluded. Ariz. R. Civ. P. 52(c). The Court granted that motion and explained its reasons on the record. This order supplements the oral ruling.

Importantly, the Court had broader discretion to make a judgment on partial findings than judgment as a matter of law in a jury trial:

In rendering that judgment, the court is not as limited in its evaluation of the nonmovant's case as it would be on a motion for judgment as a matter of law. The trial judge is not to draw any special inferences in the nonmovant's favor nor concern itself with whether the nonmovant has made out a *prima facie* case. Instead, since it is a nonjury trial, the court's task is to weigh the evidence, resolve any conflicts in it, and decide for itself in which party's favor the preponderance of the

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evidence lies. Since it is serving as the trier of fact, the court even may assess the credibility of the witnesses.

9C ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE: CIVIL § 2573.1 (2019) (footnotes omitted).

Procedural History

A recap of some procedural history is warranted. The Court granted Defendants' motion to dismiss. [Min. Entry (filed July 3, 2018).] Plaintiff then sought, and the Court granted, leave to seek to file an amended complaint. Plaintiff filed his motion to amend on August 1, 2018. In a Minute Entry filed August 29, 2018, the Court denied as futile Plaintiff's request to amend his complaint to add several claims. That ruling disposed of all putative claims against 855 FASNPAK, Inc., Jason Pistiner, Kristina Keating, and Singer Pistiner, P.C. The Court entered a judgment with Arizona Rule of Civil Procedure 54(b) language in favor of those dismissed Defendants on October 25, 2018. Plaintiff timely appealed. In an order entered November 12, 2019, the Court of Appeals dismissed the appeal, finding the 54(b) judgment improper. Thus, today's order refers to those dismissed Defendants although the bench trial did not address any claims regarding them.

IT IS ORDERED confirming the dismissal of Defendants 855 FASNPAK, Inc., Jason Pistiner, Kristina Keating, and Singer Pistiner, P.C. and for the reasons stated in the Minute Entry filed August 29, 2018. The final judgment here will include judgment in favor of those Defendants against Plaintiff. That Minute Entry also dismissed all of Plaintiff's claims other than promissory estoppel against the Meyers Defendants. The Court confirms that ruling today, too.

Facts Introduced At Trial

1. It is essential to note that Plaintiff did not testify. The Court heard from only non-party Jay Steitz and Defendants. Steitz admitted he had no knowledge of any promises between Defendants and Plaintiff and that he never knew if Defendants possessed Plaintiff's laptop, removed hard drives from a server, or discarded Plaintiff's clothes.

2. Defendants were very credible witnesses based on demeanor while testifying, consistency, whether other evidence supports the testimony, and quality of recollections.

3. Defendants offered to allow Plaintiff to stay in their home and to store his property there in approximately March 2014.

4. Plaintiff did not present competent evidence of either Defendant making a sufficiently definite promise then that Plaintiff could store property with Defendants until

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Plaintiff's release from prison. Indeed, Plaintiff did not present competent evidence of Defendants promising anything about Plaintiff's property during his incarceration.

5. In October 2014, Defendants told Plaintiff to leave their home. This was an acrimonious exchange between the parties. Jerome Meyers made it clear to Plaintiff that Plaintiff was not welcome to remain, that Meyers would call the police if Plaintiff did not leave, and that both Defendants wanted nothing to do with Plaintiff.

6. Plaintiff left with what Defendants believed was all of Plaintiff's property that he wanted to take.

7. In December 2014, Plaintiff arranged for Jay Steitz to ask Jerome Meyers to return personal property that Plaintiff left in Defendants' home.

8. But long before Steitz contacted Defendants, Jerome Meyers had placed Plaintiff's remaining clothes in a plastic bag. Lisa Meyers deposited the bag in a clothing donation bin near her home.

9. Defendants found some of Plaintiff's remaining property after Steitz contacted Jerome Meyers. That included a server, some computer cables, and various office supplies. Defendants left any of Plaintiff's personal property that they possessed in their driveway in January 2015. Steitz retrieved the personal property.

10. Both Meyers testified that they did not possess Plaintiff's laptop after he left their house. Defendants did not make a sufficiently definite promise to hold or store Plaintiff's personal property while Plaintiff was incarcerated.

11. It was not reasonably foreseeable that Plaintiff would alter his conduct in reliance on any communication from Defendants about Plaintiff's personal property.

12. Based on the acrimony surrounding Defendants' eviction of Plaintiff, it would be unreasonable for Plaintiff to rely on any alleged promise to keep his personal property in those circumstances.

13. Defendants did not remove any hard drives from Plaintiff's computer(s), did not refuse to return Plaintiff's laptop, and did not keep Plaintiff's client files. There is no competent evidence that Defendants possessed such personal property of Plaintiff.

14. Defendants made available to Jay Steitz in January 2015 whatever personal property of Plaintiff that Defendants possessed.

15. Because Plaintiff did not testify, he did not present any evidence of a promise by either Defendant. At most, he showed that Defendants offered to let him stay in their house and bring his property there in March 2014 when Plaintiff had nowhere else to stay. There is no evidence of either Defendant promising to hold Plaintiff's property after he left the house and during Plaintiff's incarceration.

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16. Likewise, Plaintiff did not present any evidence of either Defendant making a second promise to forgo relying on the statute of frauds.

Conclusions of Law

1. Promissory estoppel requires that Plaintiff justifiably relied on the Meyers' promises to continue storing his property until his release from incarceration. *Trollope v. Koerner*, 106 Ariz. 10, 18, 470 P.2d 91, 99 (1970) ("both forms [of estoppel] require a justifiable right to rely on the part of the representee or promisee."); *Higginbottom v. State*, 203 Ariz. 139, 144, ¶ 18, 51 P.3d 972, 977 (App. 2002) ("Higginbottom can only recover under the theory of promissory estoppel if he had a 'justifiable right to rely' on the alleged promise.").

2. Expressing an intention to do something is not a promise. *Johnson Int'l Inc. v. City of Phx.*, 192 Ariz. 466, 474, ¶ 51, 967 P.2d 607, 615 (App. 1998).

3. Promissory estoppel requires a promise that is sufficiently definite in nature. *See Sch. Dist. No. 69 v. Altherr*, 10 Ariz. App. 333, 340, 458 P.2d 537, 544 (1969), *disapproved in part on other grounds by Bd. of Trs. v. Wildermuth*, 16 Ariz. App. 171, 492 P.2d 420 (1972); *see also Santoni v. FDIC*, 677 F.2d 174, 179 (1st Cir. 1982) (for promissory estoppel to apply, the promise "must be definite and certain"; "mere expression of future intention . . . does not constitute a sufficiently definite promise"); *Allied Vista, Inc. v. Holt*, 987 S.W.2d 138, 140, 142 (Tex. App. 1999) (alleged promise by defendant of "whatever equipment [plaintiff] needed" to start business was too indefinite for reasonable or justifiable reliance giving rise to promissory estoppel).

4. Promissory estoppel also requires that the promisee make a "substantial and material change of position." *Weiner v. Romley*, 94 Ariz. 40, 45, 381 P.2d 581, 584 (1963).

5. Plaintiff must prove that Defendants made a promise upon which it was reasonably foreseeable Plaintiff would rely, and that Plaintiff actually and detrimentally relied on the promise. *See Diaz-Amador v. Wells Fargo Home Mortg.*, 856 F. Supp. 2d 1074, 1079 (D. Ariz. 2012).

6. The detriment suffered must be substantial and material. *See Weiner v. Romley*, 94 Ariz. 40, 45, 381 P.2d 581, 584 (1963); *Emp'r Reinsurance Corp. v. GMAC Ins.*, 308 F. Supp. 2d 1010, 1018 (D. Ariz. 2004) ("Under Arizona law the prejudice necessary for estoppel must be substantial; the injury must be real and not technical or formal in nature.").

7. Promissory estoppel is not a claim arising out of contract for purposes of A.R.S. § 12-341.01. *Double AA Builders, Ltd. v. Grand State Constr., L.L.C.*, 210 Ariz. 503, 511, ¶ 45, 114 P.3d 835, 843 (App. 2005). "The remedy granted may be limited as justice requires" under this theory. *Id.* at 506, ¶ 13, 114 P.3d at 838 (quotations omitted).

8. "Because a promise made binding under the theory of promissory estoppel is a contract, Plaintiffs may not recover punitive damages or damages for noneconomic injuries for a claim of promissory estoppel." *Davis v. Bank of Am. Corp.*, 2012 WL 5984939, *3 (D. Ariz. Nov. 28, 2012) (collecting Arizona cases).

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01/23/2020

9. Plaintiff's prison sentence exceeded one year. It would be impossible to perform a promise to keep Plaintiff's belongings in less than one year. The statute of frauds applied. A.R.S. § 44-101(5).

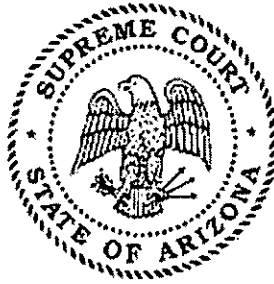
10. Promissory estoppel defeats the statute of frauds only "where the party asserting the Statute of Frauds defense has misrepresented that the statute's requirements have been met or promises to put the agreement in writing. . . . Promissory estoppel is applied to defeat the Statute of Frauds only where there is a second promise not to rely on the statute." *Mullins v. S. Pac. Transp. Co.*, 174 Ariz. 540, 851 P.2d 839 (App. 1992).

THE COURT FINDS that Plaintiff did not meet his burden of proving the elements of his promissory estoppel claim.

THE COURT GRANTS Defendants' motion for judgment on partial findings under Arizona Rule of Civil Procedure 52(c).

Defendants must submit a proposed form of judgment and statement of costs within 20 days of the Clerk filing this order.

Appendix D
Decision of State Supreme Court
Denying Review



Supreme Court

STATE OF ARIZONA

ROBERT BRUTINEL
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
TELEPHONE: (602) 452-3396

TRACIE K. LINDEMAN
Clerk of the Court

October 12, 2021

RE: DEVIN ANDRICH v JEROME FRANCIS MEYERS JR et al
Arizona Supreme Court No. CV-21-0152-PR
Court of Appeals, Division One No. 1 CA-CV 20-0277
Maricopa County Superior Court No. CV2018-000376

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 12, 2021, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

A panel composed of Chief Justice Brutinel, Vice Chief Justice Timmer, Justice Beene and Justice King participated in the determination of this matter.

Tracie K. Lindeman, Clerk

TO:
Devin Andrich
Jason Pistiner
Robert S Singer
Amy M Wood
lg

Appendix E
Appendix to Petitioner's Opening
Brief to Arizona Court of Appeals

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

DEVIN ANDRICH,)
)
Plaintiff,)
)
vs.) Case No. CV2018-000376
)
JEROME MEYERS, et al.,)
)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF VIDEO RECORDED PROCEEDINGS
BEFORE THE HONORABLE JUDGE JAMES D. SMITH

Phoenix, Arizona
January 23, 2020
9:25 a.m.

PREPARED FOR:

DEVIN ANDRICH
(COPY)

TRANSCRIBED BY:
Cindy Bachman
Arizona CCR No. 50763
AZ Registered Reporting Firm No. R1008

REPORTER'S TRANSDCRIPT OF VIDEO RECORDED PROCEEDINGS,
commencing at 9:25 a.m., recorded on January 23, 2020,
at the Superior Court of the State of Arizona, before
the HONORABLE JUDGE JAMES D. SMITH.

COUNSEL APPEARING:

SINGER PISTINER, P.C.
BY: Jason Pistiner, Esq.
7502 East Pinnacle Peak Road
Suite B118
Scottsdale, Arizona 85255
Attorneys for Defendants

ALSO PRESENT:

Devin Andrich, Plaintiff, Pro Per
Jerome Meyers, Defendant
Lisa Meyers, Defendant
Jay Steitz, Witness

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PLAINTIFF'S EXHIBITS	DESCRIPTION	REFERRED
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Exh. 16	Email from Mr. Meyers to Mr. Thrasher ..	162
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1 (Commencement of video recorded proceedings.)

2 * * * * *

3 (Conversations off the record.)

4 MR. MEYERS: Sometimes it's casual.

5 MS. MEYERS: More than...

6 MR. MEYERS: I should make a good
7 supervised babysitter when (indiscernible).

8 COURT STAFF: All rise.

9 JUDGE THOMPSON: Please be seated.

10 Good morning. I am not, as you know,
11 Judge Smith. I'm Judge Thomason. I am here in -- and
12 this is Case CV2018-000376.

13 I am here because of the motion for change
14 of judge that was filed. That motion was designated by
15 Judge Welty to be addressed by Judge Gates, who is the
16 presiding civil judge. And in light of the fact that
17 she is mentioned in this motion, she designated me to
18 look at and rule on this particular motion.

19 I have read the motion, and I've looked at
20 all the attachments and the other material and looked
21 at the applicable law. And I am going to issue a
22 minute entry that I'll try to get done this morning,
23 but I am going to deny the motion for change of judge,
24 because I don't believe that there is cause under
25 Arizona law to remove Judge Smith at this point.

1 And like I said, I am going to enter a
2 minute entry that I'll try to get out this morning.
3 Okay?

4 COURT STAFF: All rise.

5 (Conversations off the record.)

6 MR. MEYERS: That was pretty much
7 expected, right?

8 He was trying to get our judge
9 disqualified. I told you that. And he was just told
10 no. I'm sure he's going to be happy about that.

11 (Indiscernible.) Somebody just doesn't know when to
12 stop gambling. (Indiscernible) all upset about
13 (indiscernible).

14 COURT STAFF: All rise.

15 THE COURT: Please be seated.

16 This is CV2018-000376, Andrich v Meyers.
17 Will the parties state their appearances,
18 please.

19 MR. ANDRICH: Good morning, Your Honor.
20 Devin Andrich, Plaintiff, pro se.

21 MR. PISTINER: Good morning, Your Honor.
22 Jason Pistiner on behalf of the defendants, who are
23 present in the courtroom and seated to my right.

24 THE COURT: Good morning.

25 This is the time for the bench trial in

1 Q. Mr. Pistiner is stating in Exhibit 24 that the
2 laptop was returned to Mr. Steitz, correct?

3 A. Yes.

4 Q. Looking back at Exhibit 16, if it's still up
5 there.

6 A. Yes.

7 Q. Isn't it true in Exhibit 16, you're telling
8 Plaintiff's attorney, Mr. Thrasher, that you never had
9 a laptop?

10 A. Yes, we never had your laptop.

11 Q. Yet the date of the -- what is the date of the
12 email in Exhibit 16?

13 A. May 12, 2015.

14 Q. So three years later, Mr. Pistiner says you
15 returned the laptop to Mr. Steitz, and three years
16 earlier, you never had the laptop. Is that my
17 understanding of the exhibits?

18 A. I don't know what your understanding is. I
19 have never had your laptop. My lawyer, for a very
20 small moment, was confused on the way you worded
21 things, that the laptop was the server or vice versa.

22 Q. Okay. Well, let's look back to Exhibit 25.
23 Let's not use your lawyer's words. Let's look at
24 Exhibit 25 and go back to your words.

25 Exhibit 25, you see your signature there

1 on page 8, correct?

2 A. Yes.

3 Q. And you state on page 8 in the verification
4 that the facts set forth therein are true, accurate,
5 and complete?

6 A. To the best of my knowledge and belief, yes.

7 Q. All right. And now we're looking at page 2,
8 line 21 of Exhibit 25. Do you see page 2 of
9 Exhibit 25?

10 A. Yes.

11 Q. Do you see line 21? Start reading lines 21 to
12 the bottom of the page.

13 A. "On or about January 7, 2015, the defendants
14 placed in the driveway for pickup by Mr. Steitz all
15 remaining items of personal property of the plaintiffs
16 in their possession, including, but not limited to, a
17 laptop. Upon information and belief, Mr. Steitz picked
18 up the property within one hour."

19 Q. And you heard Mr. Steitz testify earlier this
20 morning that he never received a laptop from you,
21 correct?

22 A. I believe so.

23 Q. So to set the timeline here, we've got January
24 2015, Mr. Steitz testifies he never had a laptop. Then
25 we have May 2015, where you've testified you tell

1 Bobby Thrasher you never had a laptop.

2 Then we have -- fast-forward to 2018, we
3 have a sworn statement from you and a statement made on
4 behalf of your attorney that the laptop was returned to
5 Mr. Steitz.

6 A. I know. The --

7 Q. So I'll ask you today, Mr. Meyers, where is the
8 laptop?

9 A. You know you have it. I do not have it, and
10 you -- you know that.

11 Q. What became of the laptop?

12 A. You took it with you.

13 Q. But that's not what you've testified to.
14 You've testified you gave the laptop to Mr. Steitz.

15 A. I have stated --

16 Q. And then you testified that you never had it.

17 THE COURT: Wait. One at a time.

18 THE WITNESS: I have --

19 BY MR. ANDRICH:

20 Q. So where is that?

21 A. I have stated multiple times that it was never
22 left in my possession, and --

23 Q. You've stated multiple times --

24 THE COURT: Wait. Stop, stop, stop.

25 We go one at a time. We're not going to

1 keep talking over one another. Let the witness finish
2 the answer.

3 Go ahead.

4 THE WITNESS: I don't even know where I
5 was at.

6 THE COURT: Okay. Why don't we move on to
7 the next question.

8 BY MR. ANDRICH:

9 Q. Mr. Meyers, don't you think it's time that
10 Plaintiff's clients get their files back?

11 A. I believe you should have returned them.

12 Q. Mr. Meyers, did you ever tell the State Bar the
13 story, the banker's boxes story where Plaintiff threw
14 away banker's boxes?

15 A. I believe it's possible.

16 Q. I looked at 174 pages of State Bar files
17 yesterday. I didn't see one statement from you talking
18 about Plaintiff destroying files.

19 A. I do not know what was in the banker's boxes.
20 They never asked me.

21 Q. Did you give --

22 A. What was I supposed to do?

23 Q. Did you give the State Bar any of the emails
24 and text messages you exchanged with Mr. Steitz about
25 the hard drive?

1 MR. PISTINER: Objection to relevance,
2 Your Honor.

3 THE COURT: Overruled.
4 You can answer.

5 THE WITNESS: I don't recall them asking
6 me that information.

7 MR. ANDRICH: Judge, how much time do I
8 have? I don't want to go too far over.

9 THE COURT: About a minute and 20 seconds.

10 MR. ANDRICH: Thank you, Judge.

11 Exhibit 21.

12 (Plaintiff's Exhibit No. 21 referenced.)

13 BY MR. ANDRICH:

14 Q. Mr. Meyers, do you recognize what's been marked
15 as Exhibit 21?

16 A. (No response.)

17 Q. Would you look at page 8 of Exhibit 21, sir.

18 A. Is that the only page I need to look at?

19 Q. For now, yes.

20 A. And?

21 Q. Is that your signature on page 8 of Exhibit 21?

22 A. Yes.

23 MR. ANDRICH: Enter 21?

24 THE COURT: Any objection?

25 MR. PISTINER: Objection to relevance,

1 Your Honor.

2 THE WITNESS: Party admission, Judge.

3 THE COURT: Well, it doesn't make it
4 relevant necessarily, but overruled. We'll admit it.

5 (Plaintiff's Exhibit No. 21 was admitted
6 into evidence.)

7 BY MR. ANDRICH:

8 Q. Mr. Meyers, would you read the last four
9 paragraphs -- the last two full paragraphs of page 8,
10 Exhibit 21, beginning with "In consideration of the
11 foregoing."

12 A. Let's see. "In consideration of the foregoing,
13 the claimant agrees to cooperate with the investigation
14 of the claim and also on any related disciplinary
15 proceedings against the lawyer in question. And as a
16 condition, set precedent to any payment" -- it's a hard
17 copy -- "from paid fund. Claimant agrees to execute
18 and deliver to the trustee such instrument or
19 instruments as may be required."

20 Q. Thank you, Mr. Meyers. That's good enough
21 right there.

22 Aren't you agreeing with the State Bar to
23 assist them in any disciplinary investigation versus
24 Plaintiff?

25 A. Yes. I gave them everything they asked.

1 Q. So as long as this --

2 THE COURT: Wait, wait, sir. Mr. Andrich,
3 we have exhausted your time.

4 MR. ANDRICH: Thanks, Judge.

5 THE COURT: We've actually gone over.

6 So we've got a complete record. Of course
7 Rule 40(b) gives me substantial discretion in managing
8 the trial and to impose limits and to allocate trial
9 time.

10 On the witness information form, Plaintiff
11 listed 18 witnesses, including Jason Pistiner, Robert
12 Singer, Stacy Lynn Shuman, Detective José Garcia,
13 Charles Worken, Ashley Destafano, Tracy Killingsworth,
14 Raiza Ahman, and Bobby Thrasher. All of those
15 witnesses I just named, of course, did not testify.

16 If you tallied up the time estimated in
17 the witness information form that Plaintiff allocated
18 to the folks who actually have testified, Mr. Meyers
19 and Ms. Meyers and Mr. Steitz, that total time on
20 direct and redirect, the plaintiff estimated would have
21 only been one hour and 50 minutes.

22 So if Plaintiff had actually stuck to the
23 estimates of the people who actually testified, there
24 would still be ample time remaining. Plaintiff used
25 considerable time, much longer than the estimated

1 15 minutes for Mr. Steitz, much of the time delved into
2 issues regarding the State Bar's investigation, law
3 enforcement, and issues not pertaining to promissory
4 estoppel.

5 So that explains why I'm cutting off
6 Plaintiff after he has received two hours, and at this
7 point, ten minutes of -- or I'm sorry, two hours and
8 30 minutes of time.

9 So, sir, you can step down.

10 THE WITNESS: Thank you. Should I just
11 leave this here?

12 THE COURT: You can leave those there.

13 As Plaintiff has used all of his allocated
14 time, we'll turn it over to Defendants for their case
15 in chief.

16 MR. PISTINER: Sure, Your Honor.

17 Before I present my case, I'd ask for a
18 directed verdict, Your Honor, that the plaintiff has
19 failed to meet his burden to show that there was an
20 initial promise, a subsequent reaffirmation of a
21 portion of that promise, a discussion regarding no need
22 for a written agreement, to memorialize a promise in
23 conjunction with the Statute of Frauds.

24 Since we've had no testimony at all
25 regarding any of those things from the plaintiff, I'd

1 ask for a directed verdict at this time, Your Honor.

2 THE COURT: Okay. Mr. Andrich, would you
3 like to respond?

4 MR. ANDRICH: Briefly, Judge.

5 We have the testimony from Mr. Meyers, and
6 I'm speaking to his affidavit in support of summary
7 judgment that he signed under oath, dated January 9,
8 2019, in which in paragraph 4, Mr. Meyers may have not
9 called it a promise, but he admits to making a
10 representation to Plaintiff to allow Plaintiff to store
11 his possessions at the residence. We know that --

12 THE COURT: So was that an indefinite
13 promise even after they asked you to leave?

14 MR. ANDRICH: We know also from
15 Mr. Meyers' affidavit that there were statements that
16 Plaintiff should leave. There are no statements in the
17 affidavit or the testimony that Plaintiff should take
18 his stuff with him.

19 What I submit is what we have right now is
20 a genuine issue of fact whether, at minimum, under
21 paragraph 4, in March 2014, we know that the defendants
22 made a promise to Plaintiff to store Plaintiff's
23 possessions. There is no indication from the testimony
24 if -- that there -- indefinite.

25 But we also know from paragraph 4 that at

1 the time Mr. Meyers made the promise, Mr. Meyers knew
2 that Plaintiff was under criminal indictment.
3 Mr. Meyers knew that Plaintiff's bank accounts had been
4 frozen. Mr. Meyers knew that Plaintiff was suspended
5 from the practice of law.

6 Mr. Meyers even testified that if
7 defendant -- strike that, if Plaintiff hadn't accepted
8 Mr. Meyers' promise, then Plaintiff would be homeless
9 and his possessions would be scattered.

10 So we know the existence of a promise
11 and --

12 THE COURT: I thought the alleged promise
13 was about keeping your property there or allowing you
14 to store the property because you were going to go --
15 you were going to be remanded to the DOC.

16 MR. ANDRICH: No.

17 THE COURT: Okay. So the only alleged
18 promise is March of 2014. You're not saying there was
19 another promise in October of '14?

20 MR. ANDRICH: It depends on how we want to
21 describe it. It could be a second promise, or it could
22 be an affirmation. But I don't --

23 THE COURT: So I remember at some point,
24 I think summary judgment, you provided either a
25 declaration or an affidavit saying Mr. Meyers assured

1 you that you did not need a written agreement, in
2 essence.

3 MR. ANDRICH: Correct. And obviously what
4 I can do is Mr. Pistiner has not deposed me;
5 Mr. Pistiner can certainly call me to the stand.

6 THE COURT: Well, I mean, the only reason
7 that would be relevant is if we were talking about a
8 promise to maintain your property while you were in
9 prison --

10 MR. ANDRICH: Correct.

11 THE COURT: -- to get around the Statute
12 of Frauds. So is that what you're saying the March
13 2014 promise was?

14 MR. ANDRICH: Both of the promises. Both
15 the promise of -- in March/April 2014, as well as the
16 reaffirmation on October 26, 2014.

17 THE COURT: So are you saying in March of
18 2014 the promise was also tied to them knowing that you
19 were going to go into prison?

20 MR. ANDRICH: Yes, Judge.

21 THE COURT: Okay. So where is the
22 evidence in the record that's come in today that
23 Mr. Meyers made that representation to you about no
24 need for a written agreement, such that the Statute of
25 Frauds was satisfied?

1 MR. ANDRICH: I have put it -- my
2 recollection is I put in my request for findings of
3 fact.

4 THE COURT: That's not evidence. Evidence
5 is testimony or exhibits. Proposed findings of facts
6 and conclusions of law are just that, they're proposed.

7 MR. ANDRICH: And I'm happy to testify,
8 Judge. I just --

9 THE COURT: No, we've already exhausted
10 your time, Mr. Andrich.

11 So, I mean, are you admitting there's no
12 evidence through a witness or a document of Mr. Meyers
13 making that sort of promise that there would be no need
14 for a written agreement, such that the Statute of
15 Frauds would be satisfied?

16 MR. ANDRICH: I think -- I think without
17 the judge asking me that question or allowing my
18 affidavits to be considered, then...

19 THE COURT: Well, did you -- did you
20 submit your affidavits as exhibits and tender them
21 here?

22 MR. ANDRICH: (No response.)

23 THE COURT: Because I've been following
24 the exhibits as you've gone through. You guys were
25 kind enough to give them to me in electronic format.

1 I don't show any of the admitted exhibits that I've
2 seen today as any of your affidavits or declarations.

3 MR. ANDRICH: I don't recall if they're in
4 the record, Judge.

5 THE COURT: So I have no testimony or
6 evidence in the record of Mr. Meyers making a statement
7 sufficient to overcome the Statute of Frauds, do I?

8 MR. ANDRICH: I think where you -- the
9 exception to the Statute of Frauds, at least when we
10 look at it in this context, is admission. And Mr.
11 Meyers has admitted there's an admission.

12 And the other thing that we --

13 THE COURT: What has he admitted?

14 MR. ANDRICH: He's admitted in March of
15 2014, there's a promise.

16 And the other thing that we have also
17 established today is for Mr. Steitz, there is --
18 testified that the emails that I contend, at least in
19 argument, where the promise is memorialized.

20 Mr. Meyers testifies that he just came off
21 of a phone call. My contention is there are -- emails
22 and text messages are on the laptop. And it comes down
23 to the issue of whether the Court believes Mr. Steitz
24 has the laptop or Mr. Meyers has the laptop or the
25 laptop is somewhere else.

1 But in order to obtain the definite terms
2 of the promise, to the extent the Court is concerned
3 about definiteness, to the extent the Court is
4 concerned about duration or reaffirmation, it starts
5 with an order to produce the laptop so the Court can
6 see precisely what promises have been stored on the
7 laptop.

8 THE COURT: Well, we've been around and
9 around on that, Mr. Andrich. I can't order them to
10 produce something they say they don't possess.

11 MR. ANDRICH: But they've admitted in
12 earlier -- if the Court accepts the evidence that's in,
13 they've admitted that at one time they possessed the
14 laptop and gave it to Mr. Steitz January 7, 2015.

15 So if the Court believes Mr. Steitz'
16 testimony that they never gave him the laptop, then
17 they either still possess the laptop or they are aware
18 of its whereabouts.

19 THE COURT: But the only testimony in the
20 record today is their explanation that confusion
21 existed based on your pleadings and your submissions
22 about whether it was a laptop or an external server.

23 And the only testimony from either of the
24 Meyers is we do not have your laptop. We -- the only
25 time that anybody saw it in their house was when you

1 possessed it.

2 So there's no competent evidence that they
3 ever had the laptop in their house after you left.

4 MR. ANDRICH: There's --

5 THE COURT: Go ahead.

6 MR. ANDRICH: To respond, Judge, I still
7 have sworn statements from them signed, that what
8 they're stating is true and complete and correct. And
9 at that time, they were even --

10 THE COURT: Do you mean the disclosures?

11 MR. ANDRICH: The disclosure statement and
12 the party admission from Mr. Pistiner to me. But more
13 particularly, the disclosure statement. It was a
14 verified statement. It was signed in the presence of a
15 notary under oath, under penalty of perjury.

16 THE COURT: No, I'm -- yeah, I'm familiar
17 with how disclosures work, so...

18 MR. ANDRICH: So they testified, and
19 that's what it is. It's sworn testimony. They
20 testified that at least as of November 2018, they gave
21 Mr. Steitz the laptop on January 7, 2015.

22 The Court also has Mr. Steitz' testimony
23 that they never gave the laptop. The Court has
24 Mr. Steitz' testimony that --

25 THE COURT: No, I think it's a given that

1 Mr. Steitz never --

2 (Court security is no longer in the
3 courtroom.)

4 THE COURT: Kim, he's okay.

5 COURT STAFF: Yeah. He thought that we
6 pressed the button.

7 THE COURT: No. He should remain in here.

8 COURT STAFF: Oh, oh.

9 THE COURT: So I think it's -- everybody
10 agrees that Mr. Steitz did not get a laptop that night
11 in January of 2015. There's no dispute about that.

12 MR. ANDRICH: Okay.

13 THE COURT: So I think the issue is
14 whether they actually had it and refused to produce it
15 or give it to Mr. Steitz.

16 MR. ANDRICH: Which what I have from them
17 at this point is they know I had a laptop there and
18 they know they have -- at least we have filings where
19 they've testified they at least had a laptop up until
20 January 7, 2015. And then it's their testimony that
21 they gave it to Mr. Steitz.

22 (Court security is now present in the
23 courtroom.)

24 THE COURT: No, that's -- I disagree.
25 That's not what they testified to.

1 MR. ANDRICH: At least in the
2 verifications.

3 THE COURT: And they've explained that.

4 So for purposes of promissory estoppel
5 circumventing the Statute of Frauds, Mullins v Southern
6 Pacific Transportation Company, 174 Ariz. 540, it kind
7 of is the essential case on that.

8 And we can only get around the Statute of
9 Frauds, quote, "Where the party asserting the Statute
10 of Frauds defense" -- that would be the Meyers -- "has
11 misrepresented the statute's requirements have been met
12 or promises to put the agreement in writing.
13 Promissory estoppel is applied to defeat the Statute of
14 Frauds only where there is a second promise not to rely
15 on the statute."

16 There is no evidence in this record of a
17 second promise not to rely on the Statute of Frauds.

18 Under Plaintiff's theory of the case, any
19 promise made was tied to Plaintiff being remanded to
20 the Department of Corrections for a period of longer
21 than one year. So there's no way any promise could
22 have been performed within one year.

23 Also, Plaintiff has presented his case in
24 the time allotted, and there will be a more formal
25 order going out, but he has not satisfied the elements

1 of promissory estoppel. He has not shown that he
2 justifiably relied on any promises to continue storing
3 Mr. Meyers' -- or Mr. Andrich's property. He has not
4 satisfied the requirement of showing a sufficiently
5 definite promise, that could be enforced through
6 promissory estoppel.

7 The evidence that Plaintiff presented also
8 did not meet his burden of showing that he made a
9 substantial and material change in position, based on a
10 promise. Indeed, Plaintiff has not testified here, so
11 we have not heard from him about anything, about why he
12 did anything, why he did not do anything here.

13 He needs to show that Defendants' promise
14 made it so that it is reasonably foreseeable that
15 Plaintiff would rely and that Plaintiff actually and
16 detrimentally relied on the promise. Plaintiff has not
17 provided evidence to that effect.

18 So the Court agrees with Defendants.
19 Defendants framed it as a motion for -- essentially a
20 directed verdict, new parlanse judgment as a matter of
21 law. It's truly a motion under Rule 52(c), judgment on
22 partial findings because this is a bench trial.

23 So Rule 52(c) says "If a party has been
24 fully heard on an issue during a nonjury trial and the
25 Court finds against a party on that issue, the Court

1 may enter a judgment against that party on a claim or
2 defense that, under the controlling law, can be
3 maintained or defeated only with a favorable finding on
4 that issue."

5 So based on the record that Mr. Andrich
6 has made in trial today, I do find on those issues
7 regarding promissory estoppel for Defendants, in terms
8 of the lack of definiteness of a promise, the lack of
9 reliance, the lack of foreseeability that Plaintiff
10 would detrimentally rely. As well as the fact the
11 plaintiff has not provided evidence sufficient to
12 overcome the Statute of Frauds for an alleged agreement
13 that could not be performed in less than one year.

14 So there will be a formal order that goes
15 out to that effect, but in essence, based on this
16 record, I am going to grant judgment on partial
17 findings under Rule 52(c) for Defendants.

18 Today's order will indicate, whenever it
19 goes out, that if there's a statement of cost to be
20 submitted, it will be due within 20 days of the date of
21 the clerk filing the order, as well as a proposed form
22 of judgment.

23 Are there any questions from Plaintiff
24 before we adjourn for the day?

25 MR. ANDRICH: No, Judge. Thank you.

1 THE COURT: Okay. Any questions from
2 Defendants?

3 MR. PISTINER: No, Your Honor, except I
4 would ask the Court to consider, given the history of
5 the pleadings and vexatious litigant standard, that the
6 plaintiff be prohibited from filing an appeal without
7 first posting a bond for whatever the Court may award
8 as costs of attorney's fees.

9 THE COURT: Well, I'm not going to resolve
10 that on an oral motion right now. So if you think
11 there's something to that end, then you should file a
12 motion and then Mr. Andrich can respond to it as well.

13 MR. PISTINER: Thank you, Your Honor.

14 THE COURT: Okay. So all right. I've
15 asked the deputy to step in. Thank you, Deputy.

16 So why don't we have Defendants leave
17 first. And then about five minutes after the
18 defendants leave, then we'll have Mr. Andrich leave.

19 So thank you. We're adjourned.

20 COURT STAFF: All rise.

21 MR. MEYERS: Thank you, Your Honor.

22 MS. MEYERS: Thank you.

23 (Conversations off the record.)

24 MR. PISTINER: Do you want me to sign off
25 or anything of the exhibits going back or anything?

1 COURT STAFF: We're waiting for that
2 information. When today's minute entry goes out, I'll
3 include that information.

4 MR. PISTINER: Okay. Thank you.

5 COURT STAFF: Mr. Andrich, did you hear
6 what I had said about the exhibits?

7 MR. ANDRICH: No.

8 COURT STAFF: Okay. Mr. Pistiner had
9 asked if we were going to go ahead and do anything
10 regarding the exhibits. That information will be in
11 today's trial minute entry --

12 MR. ANDRICH: Okay.

13 COURT STAFF: -- when that goes out for a
14 later date to come and pick them up. Okay?

15 MR. ANDRICH: Sounds good.

16 COURT STAFF: Did you get locked out?
17 Okay. Mr. Andrich, you're free to go.

18 MR. ANDRICH: Okay. Thank you.

19 COURT STAFF: You're welcome.

20 Oh, I've got it back on. I've got to turn
21 the thing off before I shut down. I hate when I do
22 that.

23 All right. Now I've got to turn it off.

24 (Conclusion of video recorded proceedings
25 at 2:45 p.m.)

1 STATE OF ARIZONA)
2) SS.
3 COUNTY OF MARICOPA)

4 BE IT KNOWN that the foregoing transcript was
5 prepared from an electronic recording; that research
6 was performed on the spelling of proper names and
utilizing the information provided, but that in many
cases, the spellings were educated guesses; that the
transcript was prepared by me or under my direction and
was done to the best of my skill and ability.

7 I FURTHER CERTIFY that I am in no way related
8 to any of the parties hereto nor am I in any way
interested in the outcome hereof.

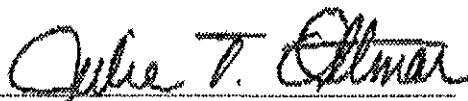
9 I CERTIFY that I have complied with the ethical
10 obligations set forth in ACJA 7-206(F)(3) and ACJA
11 7-206(J)(1)(g)(1) and (2). Dated in Phoenix, Arizona,
12 this 7th day of July 2020.
13
14
15

16 

17 Cindy Bachman

18 AZ Certified Reporter No. 50763

19 I CERTIFY that OTTMAR & ASSOCIATES, INC., has
20 complied with the ethical obligations set forth in ACJA
21 7-206(J)(1)(g)(1) through (6).
22
23

24 

25 OTTMAR & ASSOCIATES, INC.

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