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RES APPENDIX A

**ORDER, UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA
(MAY 24, 2023)**

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

REINARD SMITH,

v.

ALEX KERSHENTSEF, ET AL.

Civil Action No. 19-4159

Before: Eduardo C. ROBRENO, Judge.

AND NOW this 24th day of May, 2023, upon consideration of (1) Plaintiff's motion under "Federal Rules of Civil Procedure Rule 60(B) (3) Fraud Upon the Court" (ECF No. 82), (2) Plaintiff's "Motion for an Immediate Hearing for Plaintiff's New Action for Fraud Upon the Court under FRCP Rule 60(d) (3)" (ECF No. 90), (3) Plaintiff's "Motion for a Temporary Restraining Order and Preliminary Injunction Federal Rules Civil Procedure, Rule 65(b)"¹ (ECF No. 94), (4) Defendant's "Motion to Strike Plaintiff's Arbitration Award Rejection" (ECF No. 77), and the responses, replies, and sur-replies thereto, and after a hearing on this same date, it is hereby ORDERED that:

¹ Despite its title, this is essentially a motion to recuse.

1. Plaintiff's motions (ECF Nos. 82, 90, and 94) are DENIED²; and
2. Defendants' motion (ECF No. 77) is GRANTED and Plaintiff's rejection of the arbitration award and demand for a trial de novo is STRUCK as untimely.³

² In these three motions, the pro se Plaintiff again disagrees with the Court's determination that there were genuine disputes as to material facts that precluded granting summary judgment in his favor on one of his claims. Plaintiff fails to assert any valid grounds for relief or establish any appearance of impropriety on the part of the Court.

³ Disappointed with the Court's ruling that it would not recuse itself from the case, Plaintiff abandoned the hearing and left the courtroom before the parties could argue Defendants' motion. *See* attached transcript. Thus, the Court will rule on Defendants' motion on the papers.

Defendants contend that Plaintiff's trial demand was untimely. The Court agrees. The arbitration award was entered on the docket on March 15, 2023. Plaintiff's demand for trial de novo was entered on April 18, 2023 after it was received in the mail by the Clerk's Office. *See* Fed. R. Civ. P. 5(d)(2) (A) (providing that non-electronically filed papers are deemed filed when delivered to the clerk).

Pursuant to Local Rule of Civil Procedure 53.2(7), Plaintiff was required to file his demand for a trial de novo within thirty days of the arbitration award's entrance on the docket. Pursuant to Federal Rule of Civil Procedure 6(a), "in computing any time period specified in . . . any local rule" the Court will "exclude the day of the event that triggers the period" and will continue the period to the next business day that is not a weekend or holiday. Fed. R. Civ. P. 6(a)(1) (A) & (C). Thus, Plaintiff was required to file his demand by April 17, 2023, which he failed to do.

Plaintiff argues that Federal Rule of Civil Procedure 6(d) adds three days to the deadline because he received the arbitration award by mail (having previously refused to consent to electronic filing). However, Rule 6(d) only applies "[w]hen a party may or must act within a specified time after being served and service is made" pursuant to Rule 5(b) (2) (C), (D), or (F) (which includes service by mail). Service under Rule 5(b) regards the service of papers between parties. *See* Fed. R. Civ. P. 5(a) (listing which papers must be served). Here, the deadline was set by a rule and triggered by the arbitration

The arbitration award is entered as the FINAL JUDGMENT of this Court and the Clerk of Court shall mark this case as CLOSED.

AND IT IS SO ORDERED.

/s/ Eduardo C. Robreno
EDUARDO C. ROBRENO, J.

award's entry on the docket. Service under Rule 5(b) is not part of the equation. Thus, Rule 6(d) is inapplicable and cannot make Plaintiff's demand timely.

Moreover, Plaintiff does not argue good cause for his failure to file which might cause the Court to consider extending the deadline. *See* Fed. R. Civ. P. 6(b) (1). Plaintiff merely states in his response that he previously tried to hand deliver his demand, but the courthouse was closed. This is not good cause for a tardy filing or excusable neglect. *See* Fed. R. Civ. P. 6(a) (4) (describing the "Last Day" as ending "when the clerk's office is scheduled to close"). It is unclear when Plaintiff attempted to hand deliver his demand and, by walking out on the hearing, he abandoned his opportunity to explain further or argue good cause.

RES APPENDIX B

TRANSCRIPT OF FINAL PRETRIAL CONFERENCE,
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA
(MAY 24, 2023)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

REINARD SMITH,

Plaintiff,

v.

ALEX KERSHENTSEF, ET AL.,

Defendants.

Case No. 2:19-cv-04159-ER

Before: Honorable Eduardo C. ROBRENO,
United States District Court Judge

[May 24, 2023 Transcript, p. 2]

(Call to Order of the Court)

THE DEPUTY CLERK: All, rise. The United States District Court for the Eastern District of Pennsylvania is now in session. The Honorable Eduardo C. Robreno presiding.

THE COURT: Good morning. Please be seated.

MARC VOGIN: Good morning, Your Honor. Thank you.

THE COURT: Yeah, Mr. Smith, Mr. Vegin.

MR. VOGIN: Yes, sir.

THE COURT: Okay. Guess this is in the nature of a final pretrial conference, and there are a number of Motions to be addressed here today. And I proposed to do that.

Mr. Smith, the first one is your Rule 60 Motion involving fraud by the Defendants in fabricating evidence. And I guess the second one relates somewhat to the same Claim.

We will have to let the jury decide that. I don't know the facts of the case. Maybe they were fabricating evidence. Maybe they were not.

REINARD SMITH: But why?

THE COURT: I have no facts.

MR. SMITH: Why would you be determining that—because you might be—I might have to allege the same thing under the Court—well, not the Court, under Your Honor, Mr. Judge Robreno.

THE COURT: Yeah, right. I—

MR. SMITH: Because—

THE COURT: —don't follow you. Say that again.

MR. SMITH: Okay. Let me try to make it clear. You denied my IFP. So, therefore, you have—

THE COURT: Your IFP?

MR. SMITH: Yeah, my In Forma Pauperis—

THE COURT: Right.

MR. SMITH: —Petition. You denied that. So you have awareness that I did file an Injunction that had to do with fraud upon the Court due to Mr. Marc—Mr. Attorney Marc Vogel and as well as yourself.

So I'm trying to understand, according to the Judicial Conduct Rules of Judicial Officers—I don't even want to pull it out. But—

THE COURT: Sure.

MR. SMITH: —I'm quite sure—

THE COURT: Just tell me what—

MR. SMITH: But if you're—

THE COURT: —you think.

MR. SMITH: —a Party to that, why would you be presiding over that?

THE COURT: Okay. Okay. Oh, you're saying that I should not be the Judge in your case?

MR. SMITH: Basically.

THE COURT: Okay. Well, as I said, I don't know anything about your case. What I said is there's an issue of fact that goes to the jury. And they decide the issue.

I don't know where there's an issue of fraud. I don't know that. You say that they made it up. They say they didn't make it up.

MR. SMITH: You accepted it.

THE COURT: I did what?

MR. SMITH: I said you accepted it.

THE COURT: No, I didn't accept it. If I had accepted it, they would have won the case and we wouldn't be here.

MR. SMITH: You accepted the Affidavit that they submitted for the Summary Judgment Motion.

THE COURT: Okay.

MR. SMITH: And you ruled in favor of their Affidavit, saying that they affixed something—

THE COURT: No.

MR. SMITH: —to the car. And—

THE COURT: That's not accurate.

MR. SMITH: —now you're saying that there was credible—so, you're saying that you didn't do that?

THE COURT: No.

MR. SMITH: Oh, okay.

THE COURT: I—

MR. SMITH: So—

THE COURT: —said that there was an issue of fact. I didn't know. They said no. You said yes.

MR. SMITH: —how is it a issue of fact if there's no evidence?

THE COURT: Their Affidavit contradicted your contentions.

MR. SMITH: It contradicted it how?

THE COURT: I don't—

MR. SMITH: I mean, it wasn't supported.

THE COURT: Okay.

MR. SMITH: It was just a allegation.

THE COURT: Okay.

MR. SMITH: So how is it a fact?

THE COURT: So—

MR. SMITH: I mean—

THE COURT: —your—

MR. SMITH: —that's what I was trying to understand. How is it—

THE COURT: Right.

MR. SMITH: —a fact?

THE COURT: Right; when there is a dispute between the Parties as to a fact—

MR. SMITH: Fact means something actually exists.

THE COURT: Exactly; you claiming that—

MR. SMITH: I'm of claiming—

THE COURT: —it—

MR. SMITH: I got a document of theirs that say they didn't—

THE COURT: Okay, fine.

MR. SMITH: —provide it.

THE COURT: Okay. And they said they did.

MR. SMITH: But where's the evidence?

THE COURT: The person that provided it has knowledge that they provided it.

MR. SMITH: He wasn't even a person that sold me the car.

THE COURT: Okay. Well, you'll—

MR. SMITH: He was a—

THE COURT: —tell the—

MR. SMITH: That's hearsay.

THE COURT: You tell the jury that. And you'll win the case.

MR. SMITH: Okay. So—

THE COURT: So—

MR. SMITH: —you're saying you're not ruling on the Motion for Fraud Upon the
Court?

THE COURT: No, I'm denying the Motion, because—

MR. SMITH: You're denying it?

THE COURT: —it's going to go to the jury.

MR. SMITH: Okay. All right, so—

THE COURT: I—

MR. SMITH: —I'm going to let you all continue your procedures.

THE COURT: Okay. Are you leaving the court?

MR. SMITH: I'm leaving the court.

THE COURT: Okay. The case is dismissed.

MR. VOGIN: Thank you, Your Honor. May I be excused, Your Honor?

THE COURT: Yes.

MR. VOGIN: Thank you.

MR. SMITH: Now, what's dismissed?

THE COURT: Your case.

MR. SMITH: How I—

THE COURT: You're leaving. You're leaving the court. You don't want to participate
in the proceeding.

MR. SMITH: Because you don't really have jurisdiction over this.

THE COURT: Okay, good.

MR. SMITH: Okay? Right.

THE COURT: Have a good day.

MR. SMITH: All right, I will. You do the same.

THE DEPUTY CLERK: All, rise.

(Proceedings concluded at 10:27 a.m.)

CERTIFICATION

I, VICTORIA O'CONNOR, court-approved transcriber, certify that the foregoing
is a correct transcript from the official electronic sound recording of the proceedings
in the above-entitled matter.

/s/ Victoria O'Connor

CET

Date: May 24, 2023