

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2022-053785

12/05/2022

HONORABLE ALISON BACHUS

CLERK OF THE COURT  
W. Thompson  
Deputy

JOSH BARNETT

JOSH BARNETT  
27613 N 25TH AVE  
PHOENIX AZ 85085

v.

KATIE HOBBS, et al.

DAVID ANDREW GAONA

KAREN HARTMAN-TELLEZ  
JOSEPH EUGENE LA RUE  
SAMBO DUL  
COURT ADMIN-CIVIL-ARB DESK  
DOCKET CV TX  
JUDGE BACHUS

RULING

The Court is in receipt of Plaintiff's "Emergency Motion To Set Aside the Dismissal for Fraud on the Court as per Rule 60(d)(3) or to Reverse the Order of Dismissal for Misrepresentation or Fraud or Judicial Mistake as per 60(b); and a Temporary Restraining Order or Preliminary Injunction; and an Emergency Stay," filed December 4, 2022.<sup>1</sup> After carefully considering the

<sup>1</sup> The Court observes that a mailing certificate was not included at the end of the motion. Ariz. R. Civ. P. 5(c)(3). As discussed on the record on December 2, 2022, copies of all filings are required to be provided to all parties. *See id.* The Court will not reject the motion for failing to include a mailing certificate, however, as the Court recognizes Plaintiff may have believed none was required because he was again requesting a temporary restraining order. Notice to the other parties is not required for a temporary restraining order without notice. Ariz. R. Civ. P. 65(b). However, Plaintiff relied on other Rules in his motion, e.g., Rule 60, which requires notice to adverse parties. Given the compressed timeframe, the Court has elected to consider the motion on its merits.

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filing, as well as applicable law and the Arizona Rules of Civil Procedure, the Court will deny the motion and all relief requested therein.

Finally, the Court notes that the motion was filed by Plaintiff “with *pro bono* assistance of counsel.” Mot. at 1. Given the similarities between the format and substance of the instant motion and Plaintiff’s previous filings, it appears the *pro bono* assistance being received by Plaintiff was likely by Mr. Leo C. Donofrio, who is not licensed to practice law in Arizona. As discussed on the record on December 2, 2022, Mr. Donofrio is listed by the New Jersey courts as being on “retired” status. To be sure, “retired” status is one of good standing in the New Jersey courts. <https://www.njcourts.gov/host/attyapps/GoodStandingStatusDefinitions.pdf> (last visited Dec. 5, 2022). That status is defined by the New Jersey courts as follows:

Retired – The attorney has certified that he or she is “completely retired from the practice of law” and that the attorney’s employment, if any, is not related in any way to the practice of law. **The attorney has certified that he or she “does not draft or review legal documents, render legal assistance or advice, teach law, or serve in a court system in any capacity,” in any jurisdiction. An attorney in Retired status is not permitted to practice New Jersey law;** provided however, that a retired attorney who certifies to the Supreme Court that the only aspect of the attorney’s participation in legal practice is by providing qualifying *pro bono* service as defined by Rule 1:21-11(a) for Legal Services of New Jersey and the associated legal regional programs; for a certified organization under Rule 1:21-11(b), or for an organization otherwise approved by the Supreme Court, may do so pursuant to those rules. Retired status may not be permanent.

*Id.* (emphasis added.)

On the record on December 2, 2022, this Court asked Mr. Donofrio if he had prepared the filings filed by Plaintiff up to that date.<sup>2</sup> Mr. Donofrio confirmed that he had. The Court read the above paragraph to Mr. Donofrio and inquired as to whether any of the exceptions in the last sentence applied to him. He responded that he was representing Plaintiff *pro bono*; however, he was not providing *pro bono* service for any legal aid program in New Jersey, or for any other certified organization. Therefore, no exception applied to him. As a professional courtesy to Mr. Donofrio, the Court elected not to go further with the inquiry and made no mention of it in its most

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<sup>2</sup> Among those were the briefs submitted in preparation for oral argument on December 2, 2022, which were apparently not filed by Plaintiff. The Court uses the term “apparently” because they have not yet been docketed, and the Clerk of Court (upon inquiry from the Court) has informed the Court that the Clerk’s office did not receive them. The Court will direct the Clerk of Court to file both versions emailed to the Division (one with Plaintiff’s name in the upper left corner of the brief, and the other with Mr. Donofrio’s name and “Pro Has (sic) Vice Forthcoming” in the upper left corner), so that the record is complete. Both versions were discussed at oral argument.

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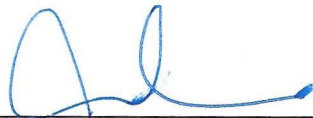
recent minute entry. However, the latest filing by Plaintiff causes the Court concern as to whether Mr. Donofrio may be engaging in the unauthorized practice of law, despite the Court having the above discussion with him on the record in open court. To be clear, the Court makes no finding that Mr. Donofrio has engaged in the unauthorized practice of law; indeed, Mr. Donofrio's name appears nowhere on the instant motion. The Court will not conduct any investigation into the issue or refer the issue to the New Jersey Bar. However, the Court will remind Plaintiff and Mr. Donofrio that Mr. Donofrio is not permitted to practice law at this time and he has certified to the New Jersey Bar that he does not draft or review legal documents or render legal assistance or advice in any jurisdiction. In the future, if Mr. Donofrio wishes to provide those services to a litigant in this State, it appears to this Court that Mr. Donofrio must adjust his status with the New Jersey Bar, and to appear *pro hac vice* in any Court in this State, he must first secure local, sponsoring counsel and fully comply with Rule 39(a) of the Rules of the Arizona Supreme Court. The Court emphasizes that the issue of Mr. Donofrio's licensure had no bearing on the Court's substantive ruling on the motion brought by Plaintiff.

Therefore, based on the foregoing,

IT IS ORDERED denying Plaintiff's "Emergency Motion To Set Aside the Dismissal for Fraud on the Court as per Rule 60(d)(3) or to Reverse the Order of Dismissal for Misrepresentation or Fraud or Judicial Mistake as per 60(b); and a Temporary Restraining Order or Preliminary Injunction; and an Emergency Stay," filed December 4, 2022.

IT IS FURTHER ORDERED that the Clerk of Court shall file both versions of Plaintiff's December 2, 2022 pre-hearing memorandum, which were emailed to this Division on December 2, 2022.

IT IS FURTHER ORDERED affirming this Court's prior Order dismissing this matter without prejudice. This is a final, appealable Order under Rule 54(c). No further matters remain pending.



JUDICIAL OFFICER OF THE SUPERIOR COURT