

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: CACE-20-017078 (05)

ALBERTIN A. CHAPMAN DE LA CRUZ,

Plaintiff,

v.

PRO MANAGEMENT RESOURCES INC.,
ANTHONY CHIRICOSTA, BENITO
ZAVALA, JR., CHANDLER COSTA,
DERRICK COSTA, CASSANDRA
AGUILAR,

Defendants.

PLAINTIFF'S MOTION TO SET TRIAL DATE

Plaintiff, Albertin A. Chapman de la Cruz ("Mr. Chapman"), pursuant to Florida Rule of Civil Procedure 1.440, moves for an Order setting a date for the commencement of the trial of this action and, in support thereof, states as follows:

1. On April 8, 2022, Mr. Chapman served and filed a Notice of Jury Trial confirming that this action—which Mr. Chapman commenced on October 14, 2020—is at issue and is ready to be set for a jury trial. A copy of the Notice of Jury Trial is attached hereto as **Exhibit A**.

2. As contemplated by this Court's Civil Division Procedures, on April 9, 2022, counsel for Mr. Chapman transmitted an email to counsel for all other parties to this action requesting counsel's cooperation in setting a trial date. In accordance with the directives requiring the timely disposition of civil cases in trial courts set forth in Rule 2.250 of the Florida Rules of General Practice and Judicial Administration and this Court's Administrative Order 2021-19-Civ, entered on April 30, 2021, Mr. Chapman's counsel requested in his email that all parties assent to scheduling the trial for the Court's trial period commencing on November 7, 2022, *i.e.*, the earliest

trial period of this Court during which Mr. Chapman (who is a professional baseball player) will be available to participate in the trial in light of his professional schedule. A copy of the email chain described in this paragraph and in paragraphs 3-6, below, is attached hereto as **Exhibit B**.

3. As Mr. Chapman's counsel did not receive any response to his foregoing email, on April 18, 2022, he transmitted a further email to all counsel again requesting their assent to the November 7, 2022 trial commencement date.

4. Shortly thereafter, James Gibson, counsel for Defendants, Chandler Costa and Derrick Costa (the "Costa Defendants"), finally responded advising, without offering any detail or explanation, that he is "not available for the November trial period."

5. In light of Mr. Gibson's representation regarding his supposed unavailability for trial in November of 2022, on April 22, 2022, Mr. Chapman's counsel transmitted a further email to all counsel requesting their assent to the Court's immediately subsequent trial period, commencing on December 5, 2022.

6. Two days later, on April 24, 2022, Mr. Gibson responded advising that, due to his being scheduled on trial dockets in other matters, he is in fact not available to participate in the trial of this action until "June 2023 or thereafter," *i.e.*, at least 32 months after the commencement of this action.

7. No other defendant has objected to setting the date for the trial of this action for the Court's November or December, 2022 trial periods.

8. Rules 2.545 and 2.250 of the Florida Rules of General Practice and Judicial Administration provide, respectively, that "Judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so," and that a period of 18 months between "filing to final disposition" is a "presumptively reasonable time period [for] the

completion of [jury] cases.” Pursuant to this Court’s Administrative Order 2021-19-Civ, entered on April 20, 2021, implementing Florida Supreme Court Administrative Order AOSC20-23, Amendment 12, this Court has adopted the time standards prescribed by Rule 2.250 as directives.

9. Mr. Gibson’s refusal to consent to the Costa Defendants’ participation in the trial of this action until at least 32 months after Mr. Chapman commenced the action not only flouts the foregoing Rules and judicial directives but it is reflective of a transparent effort to impede and delay the adjudication of Mr. Chapman’s claims against the Costa Defendants for their unauthorized diversion of Mr. Chapman’s funds to their own use and benefit, including, *inter alia*, to purchase a nearly \$1,000,000 residence (with funds stolen from Mr. Chapman) in which Ms. Costa continues to reside and a \$100,000 luxury automobile (also purchased with funds stolen from Mr. Chapman) that Ms. Costa continues to drive.

10. Mr. Gibson’s claimed unavailability for trial until June of next year is not happenstance, but reflects a further component of the strategy to delay the just resolution of this action so that his clients can continue to benefit from their receipt and use of funds that it is undisputed were stolen from Mr. Chapman. Specifically, Mr. Gibson is well aware that Mr. Chapman’s professional schedule prohibits his participation in the trial of this action until after the Major League baseball season concludes in October. As such, Mr. Gibson is, in effect, attempting, through his refusal to cooperate in setting a reasonable and appropriate trial date, to delay the adjudication of Mr. Chapman’s claims—and the inevitable judgment that Mr. Chapman will obtain requiring, *inter alia*, the disgorgement the Costa Defendants’ ill-gotten gains—until after October 2023, *i.e.*, more than three years after Mr. Chapman commenced this action.

11. While the undersigned (and likely all Florida trial attorneys) appreciate and understand that Florida attorneys are now regularly scheduled on several concurrent trial dockets given the current rules seeking to expedite matters, being scheduled on one or multiple dockets is

no reason to refuse to be scheduled on another. The simple reality is that any number of events could arise in Mr. Gibson's other matters between now and November to cause those matters not to proceed to trial. The proper way to proceed is to schedule this matter for trial and true conflicts can then be addressed as the docket period and/or specific trial date nears.

12. In light of the foregoing, and consistent with the directives of both this Court and the Florida Rules of General Practice and Judicial Administration requiring the timely disposition of civil cases, Mr. Chapman respectfully requests that the Court enter an Order setting this action for trial during Court's November 7, 2022 through November 23, 2022 trial period.

WHEREFORE, Plaintiff Albertin A. Chapman de la Cruz respectfully requests that this Court enter an Order granting this motion, setting the date of the trial of this action for the Court's November 7, 2022 through November 23, 2022 trial period, and granting such other relief as the Court deems necessary and appropriate in the circumstances.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service on all counsel for Pro Management Resources, Inc., Anthony Chiricosta, Chandler Costa and Derrick Costa via the Florida Courts E-Filing Portal this 10th day of May, 2022, and by email and U.S. Mail to Defendant Benito Zavala, JR., 102 Marty Drive, Milford, IL, 60953, BenitoZavala3784@yahoo.com this 10th day of May, 2022.

LOREN & KEAN LAW
Attorneys for Plaintiff
7111 Fairway Drive, Suite 302
Palm Beach Gardens, FL 33418
Phone: (561) 615-5701
Fax: (561) 615-5708

s/ Michael I. Kean

MICHAEL I. KEAN

Florida Bar No. 970750
mkean@lorenkeanlaw.com
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s/ Kyle W. Ohlenschlaeger
KYLE W. OHLENSCHLAEGER
Florida Bar No. 111685
kohlenschlaeger@lorenkeanlaw.com
awhite@lorenkeanlaw.com

and

ROSENBERG, GIGER & PERALA P.C.
Attorneys for Plaintiff
152 West 57th Street, 18th Floor
New York, NY 10019
Phone: (646) 494-5000

s/ John J. Rosenberg
JOHN J. ROSENBERG
Admitted *Pro Hac Vice* by Order dated 1/14/2021
jrosenberg@rglawpc.com

s/ Brett T. Perala
BRETT T. PERALA
Admitted *Pro Hac Vice* by Order dated 1/14/2021
bperala@rglawpc.com

EXHIBIT A

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: CACE-20-017078 (05)

ALBERTIN A. CHAPMAN DE LA CRUZ,

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DERRICK COSTA, CASSANDRA
AGUILAR,

Defendants.

PLAINTIFF'S NOTICE OF JURY TRIAL

Plaintiff, Albertin A. Chapman De La Cruz, by and through the undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.440, hereby files this Notice that the above-captioned action is at issue and ready to be set for trial. This trial will be on the original action and will be by jury.¹ Plaintiff anticipates that the trial of this matter should take approximately seven (7) days.

[REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

¹ Plaintiff notes that the pleadings in the crossclaim filed by Defendants Chandler Costa and Derrick Costa against Pro Management Resources, Inc. and Anthony Chiricosta remain open. However, pursuant to Florida Rule of Civil Procedure 1.440(a), the "existence of crossclaims among the parties shall not prevent the court from setting the action for trial on the issues raised by the complaint, answer and any answer to counterclaim."

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service on all counsel for Pro Management Resources, Inc., Anthony Chiricosta, Chandler Costa and Derrick Costa via the Florida Courts E-Filing Portal on April 8, 2022, and by email and U.S. Mail to Defendant Benito Zavala, JR., 102 Marty Drive, Milford, IL, 60953, BenitoZavala3784@yahoo.com on April 8, 2022.

LOREN & KEAN LAW

Attorneys for Plaintiff

7111 Fairway Drive, Suite 302

Palm Beach Gardens, FL 33418

Phone: (561) 615-5701

Fax: (561) 615-5708

s/ Michael I. Kean**MICHAEL I. KEAN**

Florida Bar No. 970750

mkean@lorenkeanlaw.commmarin@lorenkeanlaw.coms/ Kyle W. Ohlenschlaeger**KYLE W. OHLENSCHLAEGER**

Florida Bar No. 111685

kohlenschlaeger@lorenkeanlaw.comawhite@lorenkeanlaw.com

and

ROSENBERG, GIGER & PERALA P.C.

Attorneys for Plaintiff

152 West 57th Street, 18th Floor

New York, NY 10019

Phone: (646) 494-5000

s/ John J. Rosenberg**JOHN J. ROSENBERG**Admitted *Pro Hac Vice* by Order dated 1/14/2021jrosenberg@rglawpc.coms/ Brett T. Perala**BRETT T. PERALA**Admitted *Pro Hac Vice* by Order dated 1/14/2021bperala@rglawpc.com

EXHIBIT B

From: [James D. Gibson](#)
To: ["Kyle Ohlenschlaeger"](#); ["Forest Newman"](#); scott@babbittlaw.com; ["Eric Babbitt"](#); kamla@babbittlaw.com; legaljimws2@comcast.net
Cc: ["Michael Kean"](#); ["Marlene Marin"](#); ["Amy White"](#); [John Rosenberg](#); [Brett Perala](#)
Subject: RE: Chapman v. Pro Management Resources et al
Date: Sunday, April 24, 2022 3:40:25 PM
Attachments: [image007.png](#)
[image010.png](#)
[image012.png](#)
[image013.png](#)
[image002.png](#)
[image003.png](#)

I am already set for 2 trials during this trial period so this will not work..

I have 2 trials in January 2022, 2 in February 2023, One in March 2023, One in federal court in April 2023, one in May 2023.

Realistically we are looking at June 2023 or thereafter.

Thank you.

James D. Gibson, Esquire
Board Certified - Business Litigation
AV Rated by Martindale Hubbell
Gibson, Kohl & Wolff, P.L.
1800 Second Street, Suite 717
Sarasota, FL 34236
Phone: 941-362-8880
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DISCLAIMER REGARDING TAX ADVICE - IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter communicated to you. For consumer debts: This is a communication by a debt collector attempting to collect a debt and any information obtained will be used for that purpose.

From: Kyle Ohlenschlaeger <kohlenschlaeger@lorenkeanlaw.com>

Sent: Friday, April 22, 2022 1:45 PM

To: James D. Gibson <legaljimjdg@comcast.net>; 'Forest Newman' <legaljimws1@comcast.net>; scott@babbittlaw.com; 'Eric Babbitt' <ebabbitt@babbittpa.com>; kamla@babbittlaw.com;

legaljimws2@comcast.net

Cc: Michael Kean <mkean@lorenkeanlaw.com>; Marlene Marin <mmarin@lorenkeanlaw.com>; Amy White <awhite@lorenkeanlaw.com>; 'John Rosenberg' <jrosenberg@rglawpc.com>; 'Brett Perala' <bperala@rglawpc.com>

Subject: RE: Chapman v. Pro Management Resources et al

Jim/Scott:

Given Jim's unavailability for November, please confirm there are no objections to the following docket: Calendar Call November 18, 2022, trial period December 5 – December 15.

Regards,

Kyle

Kyle W. Ohlenschlaeger

Associate

Loren & Kean Law

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Palm Beach Gardens, Florida 33418

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Fax: (561) 615-5708

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From: James D. Gibson <legaljimjdg@comcast.net>

Sent: Monday, April 18, 2022 4:03 PM

To: Kyle Ohlenschlaeger <kohlenschlaeger@lorenkeanlaw.com>; 'Forest Newman' <legaljimws1@comcast.net>; scott@babbittlaw.com; 'Eric Babbitt' <ebabbitt@babbittpa.com>; kmla@babbittlaw.com; legaljimws2@comcast.net

Cc: Michael Kean <mkean@lorenkeanlaw.com>; Marlene Marin <mmarin@lorenkeanlaw.com>; Amy White <awhite@lorenkeanlaw.com>; 'John Rosenberg' <jrosenberg@rglawpc.com>; 'Brett Perala' <bperala@rglawpc.com>

Subject: RE: Chapman v. Pro Management Resources et al

Kyle –

I am not available for the November trial period. I am sorry for my delayed response.

Thank you.

James D. Gibson, Esquire
Board Certified - Business Litigation
AV Rated by Martindale Hubbell
Gibson, Kohl & Wolff, P.L.
1800 Second Street, Suite 717
Sarasota, FL 34236
Phone: 941-362-8880
Fax: 941-362-8881
E-mail: legaljimjdg@comcast.net
Web site: legaljim.com

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DISCLAIMER REGARDING TAX ADVICE - IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter communicated to you. For consumer debts: This is a communication by a debt collector attempting to collect a debt and any information obtained will be used for that purpose.

From: Kyle Ohlenschlaeger <kohlenschlaeger@lorenkeanlaw.com>

Sent: Monday, April 18, 2022 2:28 PM

To: Forest Newman <legaljimws1@comcast.net>; scott@babbittlaw.com; 'Eric Babbitt' <ebabbitt@babbittpa.com>; kamla@babbittlaw.com; 'James Gibson' <legaljimjdg@comcast.net>;

legaljimws2@comcast.net

Cc: Michael Kean <mkean@lorenkeanlaw.com>; Marlene Marin <mmarin@lorenkeanlaw.com>; Amy White <awhite@lorenkeanlaw.com>; John Rosenberg <jrosenberg@rglawpc.com>; Brett Peralo <bperala@rglawpc.com>

Subject: RE: Chapman v. Pro Management Resources et al

Counsel:

I am following up on my email from 10 days ago. Please advise by close of business on Wednesday, April 20, 2022, whether you have an objection to the proposed calendar call date.

Regards,

Kyle

Kyle W. Ohlenschlaeger

Associate

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From: Kyle Ohlenschlaeger

Sent: Saturday, April 9, 2022 12:07 PM

To: Forest Newman <legaljimws1@comcast.net>; scott@babbittlaw.com; 'Eric Babbitt' <ebabbitt@babbittpa.com>; kamla@babbittlaw.com; 'James Gibson' <legaljimjdg@comcast.net>; legaljimws2@comcast.net

Cc: Michael Kean <mkean@lorenkeanlaw.com>; Marlene Marin <mmarin@lorenkeanlaw.com>; Amy White <awhite@lorenkeanlaw.com>; John Rosenberg <jrosenberg@rglawpc.com>; Brett Peralo <bperala@rglawpc.com>

Subject: Chapman v. Pro Management Resources et al

Counsel:

As you are aware, pursuant to Rule 1.440, Plaintiff has filed the attached Notice of Jury Trial. Pursuant to Judge Bidwell's Divisional Instructions, we are charged with coming to an agreement on trial and calendar call dates. Plaintiff proposes the Court's November 7, 2022 through November 23, 2022 trial period, with calendar call being conducted on October 28, 2022 at 9:30am. Please advise if this is acceptable and also confirm your availability for the calendar call. We will advise the Court through the online scheduling system upon your confirmation.

Regards,

Kyle

Kyle W. Ohlenschlaeger

Associate

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LEAP Email Reference [F:083e0a9e-eda8-47a1-b022-07ecaa3626cc][M:4e6feeb9-5245-0045-b6c1-29ae293d389a] (Please do not delete)