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Attorney for Defendant Santa Damms

JOYCE DAMMS g/a/l "S.D."
and S.D.

Plaintiffs,

vs.

SANTA DAMMS,

Defendant,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION □ MERCER COUNTY

DOCKET NO: L-1278-17

CIVIL ACTION

**CERTIFICATION OF COUNSEL IN
SUPPORT OF CROSS MOTION TO
RELAX TIME AND IN OPPOSITION
TO MOTION TO CONFIRM
ARBITRATION AWARD**

I, David P. Schroth, being of full age certify and say:

1. I am an Attorney-at-Law State of New Jersey and represent the defendant Santa Damms in this case and as such am fully familiar with the facts set forth herein.
2. On July 29, 2019 counsel for defendant Santa Damms filed a motion to vacate an Order confirming the July 9, 2019 Arbitration award and Order confirming the arbitration award.
3. On September 16, 2019 argument was held for the vacating of the Order confirming an arbitration award and for relief from the arbitration award itself.
4. The Motion was granted and an Order was entered on September 18, 2019.
5. After some dialogue between the Court and counsel over confusion as to exactly what was to be done procedurally, because the Court also indicated the case was going to

be set for trial per the direction of the Presiding Civil Judge, on the record the Court indicated counsel would have 30 days from the date of the Order to file a *trial de novo*.

6. The Court stated at T43:14-17, “**so you’ll get, let’s see, 30 days. I don’t know if I’ll get the Order out today, but 30 days from, probably it’s going to be from the 17th”, ... (emphasis added) T43:14-17 (Exhibit 1)**
7. This excerpt of the transcript is attached and e-filed. A full courtesy copy of the transcript will be hand delivered to the Court. (Exhibit 1)
8. The clear instruction was that I would get 30 days from the date of the filed Order, not the date of argument.
9. On September 18, 2019, the Order was entered, and the Superior Court granted the defendant’s motion to vacate and the Order instructed counsel to file a *trial de novo*.
10. The Order, however, indicated at the bottom, that defense counsel had until October 16, 28 days from the filing of the Order, to file the *trial de novo* not October 18, 30 days from the date of the Order.
11. On October 17 defendant filed a *trial de novo*, which was 29 days after the 18th, but one day after the 16th. On the same date, plaintiff’s counsel filed a motion to confirm the arbitration award.
12. A trial date has been set by the Court for January 6, 2020. (Exhibit 2)
13. I believed he had 30 days from the date of the Order which was entered on September 18, 2019 and did not notice the discrepancy in the Order versus the clear statement on the record that counsel would have 30 days from the entry of the Order.

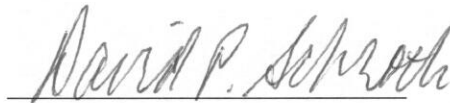
14. The Court clearly indicated on the record the deadline would be 30 days from the entry of the Order.
15. Pursuant to R. 1:3-4, the Court has the authority to relax and enlarge time in its Order in order to avoid an injustice. The standard of review is specifically “to avoid injustice”.
16. In the instant matter, the deadline was set by the Court in its Order of September 18, 2019.
17. The Court is within its authority to relax the October 16, 2019 deadline (28 days from the date of the Order) that it set and extend it one day to include October 17, 2019 or two days to the 18th. This would be within 30 days of the date of the Court Order.
18. The defendant has a meritorious defense to the claims made by plaintiff against her.
19. As the Court is aware, the original arbitration award was for \$5,000,000.
20. Defendant is an 82-year-old disabled woman. She maintains she had no idea her husband molested their grandchildren alleged by plaintiff. Submitted herewith is defendant’s prior certification where she asserts she had no idea her husband was engaging in such behavior and that she has a meritorious defense. (Exhibit 3)
21. Indeed, consistent with that the Prosecutor’s Office did not charge her with endangering the welfare of a child.
22. It would be a grave injustice to defendant Santa Damms if given this good faith mistake by counsel for her to be saddled with a \$5,000,000 judgment by default without the ability to present a defense.
23. The application sought by the defense is a relaxation of time allowing the filing of the *trial de novo* which was filed on October 17, one day after the October 16 deadline

set forth in the Court's Order of September 18, 2019, but within 30 days of the entry of the Order.

24. Annexed hereto as Exhibit 4 is my previously filed certification in support of our original motion to vacate the Arbitration judgment and award.

25. I respectfully submit this certification and ask that the Court modify its Order and allow the October 17 *trial de novo* as timely filed. A copy of the trial de novo is annexed hereto as Exhibit 6.

I certify the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

A handwritten signature in cursive script, reading "David P. Schroth", is written over a horizontal line.

David P. Schroth, Esq.

Date: October 31, 2019

set forth in the Court's Order of September 18, 2019, but within 30 days of the entry of the Order.

24. Annexed hereto as Exhibit 4 is my previously filed certification in support of our original motion to vacate the Arbitration judgment and award.

25. I respectfully submit this certification and ask that the Court modify its Order and allow the October 17 *trial de novo* as timely filed. A copy of the trial de novo is annexed hereto as Exhibit 5.

I certify the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

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David P. Schroth, Esq.

Date: October 31, 2019