IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
CIVIL DIVISION

NADEZHDA WOOD,	:	
	:	CASE NO.: 23CV4452
Plaintiff,	:	
	:	JUDGE: David C. Young
v.	:	
VIACHESLAV KOVALKOV, *et al*,	:	
	:	
Defendants.	:	

PLAINTIFF'S MEMO CONTRA DEFEDANTS' OBJECTION TO MAGISTRATE'S OCTOBER 11, 2023, ORDER

Plaintiff, Nadezhda Wood, asks that the Court adopt the Magistrate's Order filed on October 11, 2023, denying Defendants' Second Motion to Continue the FE&D Hearing currently scheduled for October 25, 2023. Magistrate Petrucci correctly concluded that the party requesting the continuance – Defendants – have contributed to the circumstances which gives rise to the request for a continuance; namely, that Defendants have scheduled an overseas trip despite being aware of the ongoing litigation and then, despite receiving the notice of the scheduled hearing before their departure, refused to change the dates of their trip. Defendants further refuse to appear remotely, even though Plaintiff raises no objection to their remote appearance. Defendants have overstayed their tenancy by over six months, depriving Plaintiff of ability to collect fair-market rent. Further delay would be unjust.

In an attempt to justify their objection, Defendants wildly accuse Plaintiff and Plaintiff's Counsel of having access to Defendants' emails. This is simply false, and no support exists for such an accusation. Defendants further complain that the Court had "unilaterally" set a hearing date; though, a trial court has the inherent power and "right to control its docket." *Huntington Nat'l Bank v. Haehn*, 2018-Ohio-4837, 125 N.E.3d 287, ¶ 26 (10th Dist.). Regardless of Defendants' complaints and accusation, the law simply does not support a continuance based upon a voluntary absence from trial wherein ample notice was provided such that Defendants could have appeared.

APPLICABLE LAW

"The underlying purpose behind the forcible entry and detainer action is to provide a summary, extraordinary, and speedy method for the recovery of [the] possession of real estate . . . ." *State ex rel. GMS Management Co., Inc. v. Callahan*, 45 Ohio St.3d 51, 55, 543 N.E.2d 483, 487 (1989). The purpose of the forcible entry and detainer statute "is to provide immediate possession of real property." The drafters of the statute "were careful to avoid encrusting this special remedy with time consuming procedure tending to destroy its efficacy." *Id.* The grant or denial of a continuance is a matter within the sound discretion of the trial judge. *Hartt v. Munobe*, 67 Ohio St.3d 3, 9, 615 N.E.2d 617, 622 (1993). A party has a right to a reasonable opportunity to be present at trial and a right to a continuance for that purpose. *Id.* A party does not, however, have a right

unreasonably to delay a trial. *Id.* A continuance based on a party's absence must be based on unavoidable, not voluntary, absence. *Id.*

In evaluating a motion for a continuance, a court should consider: (1) the length of the delay requested; (2) whether other continuances have been requested and received; (3) the inconvenience to litigants, witnesses, opposing counsel and the court; (4) whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; (5) whether the defendant contributed to the circumstance which gives rise to the request for a continuance; and (5) other relevant factors, depending on the unique facts of each case. *State v. Unger*, 67 Ohio St.2d 65, 67–68, 423 N.E.2d 1078, 1080 (1981).

ARGUMENT

In this case, analysis of relevant factors favors denying Defendants' motion, as the Magistrate had done in his Order. The Defendants' absence would not be unavoidable as Defendants had two weeks from the Order of Reference in which to plan to appear.[1] Defendants could also have changed their flight to return early or may appear remotely, per Civ.R. 43(A). Defendants previously requested and obtained a continuance while the matter was still with the Municipal Court and filed Counterclaims which has already resulted in significant delay. Mag. Order, p. 1-2. While Defendants state they request only

[1] Plaintiff filed its Motion requesting a hearing on the FE&D Claim on Sept. 21, 2023, and on September 26, 2023, the Court's Order of Reference indicated a scheduled hearing date of October 25, 2023. Defendants' flight would not depart until October 4, 2023.

a "short delay", Magistrate Petrucci has already noted "there can be no guarantee that the next date that works for all parties will be anytime this year." *Id*., p. 3.

A continuance would not only prejudice Plaintiff – depriving Plaintiff of possession and opportunity for fair market rent – but Plaintiff, knowing the importance of her appearance, significantly altered her life and schedule to ensure she could fly to Ohio to be present for the hearing. Plaintiff went so far as to significantly delay her start date at her new job,[2] coordinated travel arrangements to Ohio for the hearing, and would need to immediately seek leave from her new job to accommodate a continued hearing. Moreover, the story that Defendants are trying to sell the Court in justifying their absence does not appear to be legitimate. It is inconsistent with the documents presented to the U.S. Citizenship and Immigration Services. These documents and letters filed on the Defendants' behalf with their review and consent show they have no ties to Ukraine and no living relatives in Ukraine, and contradict the story presented in text message provided within Defendants' objection.

Because Defendants' absence would be voluntary and the stated reasons for their absence are not legitimate, Plaintiff asks that the Court overrules their Objections and proceeds to hold a hearing on the unlawful detainer that Plaintiff has been asking for since April.

[2] Plaintiff's start date at her new position is now Nov. 6, 2023, and was chosen to accommodate the hearing currently scheduled for Oct. 25, 2023.

I. Defendants' absence would be voluntary.

The Court issued an Order setting a hearing date on September 24, 2023. A week later, on October 3, 2023, Defendants filed a motion asking for a continuance, claiming that they are leaving the next day on overseas trip. Defendants claimed that their tickets were "nonrefundable," but neglected to mention that they were able to re-schedule their trip. The attachments to their October 3 motion show that they purchased SAS Go Light tickets, which allow for rebooking.[3] That rebooking policy allows for changes to tickets up to 1 hour before departure and for up 361 days ahead of time.[4] Meaning, when the Court set the hearing in September, Defendants could have rescheduled their trip for after the October 25 hearing. They had more than a week before the departure to change their travel plans.

Defendants left on the trip anyway, fully aware of the upcoming hearing. Defendants are represented by counsel whose responsibility it is to advise his clients of the consequences of travel amidst litigation. By not rescheduling their trip when they had the opportunity, Defendants accepted any such consequence. Moreover, Defendants could have returned earlier, before October 25, by rescheduling their return flight. The Magistrate issued his Order denying Defendants' Motion for Continuance on October 11,

[3] *See* SAS webpage, Ticket Types, https://www.flysas.com/us-en/fly-with-us/ticket-options/ticket-types/ (last accessed Oct. 23, 2023).

[4] *See* SAS webpage, Change Your Ticket, https://www.flysas.com/us-en/customer-service/rebook-change-ticket/ (last accessed Oct. 23, 2023).

again giving Defendants plenty of time to return before the October 25 hearing; notwithstanding the Magistrate's Order, Defendants refused to do so.

Even if the Court were to accept Defendants' story as true, that the purpose of the trip was to relocate relatives, nothing in the Defendants' pleading explains why they *both* had to go. Defendant, Larisa Kovalkova, is 77 years old, legally blind, and does not drive. It is not clear what contribution she may provide to the "relocation effort." Being involved in litigation, Defendant Larisa Kovalkova could very well have stayed behind to testify. As Plaintiff has indicated, there exists no objection to the Defendants appearing remotely. Defendants appear to have no trouble communicating with their counsel, sending him emails and text messages, so communicating with the Court should not be an issue.

Because Defendants refused to reschedule their trip knowing that there would be an upcoming hearing, refused to reschedule a flight back when their motion was denied, and have refused to appear remotely, their absence is voluntary; indeed, their absence was avoidable.

II. Defendants have previously sought and obtained continuances.

Defendants have already postponed this eviction hearing for most of the year. Defendants have known since February that their tenancy has been terminated. Defendants have known since April that the Plaintiff has initiated the forcible detainer action against them in the municipal court. Defendants have already convinced the municipal court to postpone their eviction hearing once, then filling counterclaims,

triggering the transfer of the case from municipal court to the Court of Common Pleas. Defendants then engaged in motion practice, attempting to add—and then drop—completely unrelated claims. Now they ask for yet another extension, claiming that Plaintiff has not sought a hearing before they purchased tickets; however, Plaintiff's motion requesting a hearing merely "reminded the court that an FE&D is a claim that attempts to expedite the legal issues." Mag. Order, p. 2-3.

III. Plaintiff would be prejudiced and inconvenienced by further delays.

After the date for the hearing was set, Plaintiff accepted an offer of new employment and scheduled the start date of new employment and leave from the old position specifically to accommodate this hearing, starting her new job on November 6, instead of October 23, as was initially offered to her. To schedule the hearing on November 9 would require Plaintiff to take time off during the first three days in her new position. Moreover, Plaintiff has not been able to rent out the property since April and receive fair market rent. Further delays mean further financial losses.

Moreover, as the Magistrate stated in his Order, there is no guarantee that the next date that works for all parties will be anytime this year. As of right now, Plaintiff and the Court have been planning to hold this hearing and Plaintiff made significant accommodations to her schedule and employment to attend in person. Defendants' voluntary absence is not a valid ground for postponing the hearing in a proceeding meant

to "provide a summary, extraordinary, and speedy method for the recovery of [the] possession of real estate . . . ." *Callahan*, 45 Ohio St.3d at 55.

IV. The requested delay is not for legitimate reasons.

Defendants insist that "their trip is not for leisure," claiming "relocating relatives" as the reason for the trip makes their absence anything other than voluntary. Even so, their stated reason for the trip does not appear to be legitimate, and is contradicted by the documents they filed with the U.S. Citizenship and Immigration Services.

1. Defendants are fabricating the reasons for the trip to avoid admitting they lied to the Court in their previous filings.

Defendants have backed themselves into a corner. In their original counterclaim, Defendants claimed that there was an agreement to transfer the property in their name because they could not obtain the financing. Answer & Counter Claim, generally. When Plaintiff's Counsel pointed out Defendants' Counsel that the allegations were nonsensical, since it was a cash purchase, Brief in Opp.,[5] Defendants changed their story and tried to amend. In their proposed amendment, Defendants falsely claimed that the Plaintiff induced them "to give up their home, many of their possessions, their business and lives in Russian Federation and move to a foreign country." Def. Reply, at 6, 13.[6] Defendants still have all their possessions, their flat (condominium), car, and their business in Russia. To avoid admitting that what they swore to Court earlier about

[5] Plaintiff's Brief in Opposition to Defendants' Motion to Amend.

[6] Filed September 26, 2023, by Defendants.

"giving it all up" was a lie, they now spin an increasingly wild tale of a dramatic rescue of previously unheard-of relatives in Ukraine, hoping that tugging at the heartstrings will substitute for evidence.

The evidence is as follows:

a) Defendants flight tickets filed with this Court show that they are headed nowhere near Ukrainian border.

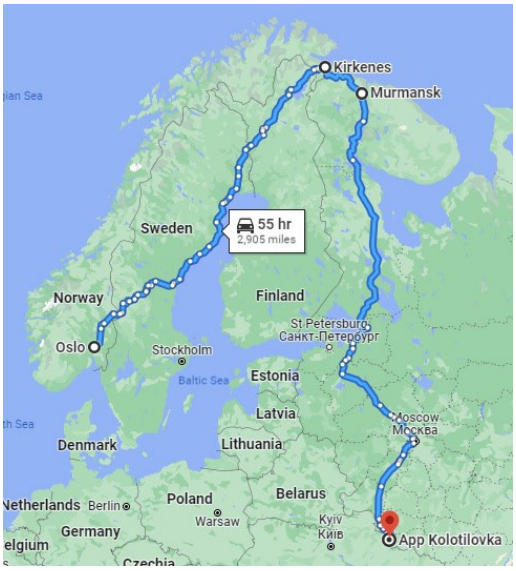
b) Representations that Defendants are making to the Court now are directly contradicted by the documents they filed when applying for their permanent residency in this country.

c) The border between Russia and Ukraine is closed. There is just one entry point, and it allows Ukrainian citizens—and only Ukrainian citizens—to return to Ukraine. Travel in other direction is not possible. U.S. Department of State has issued a No-Travel advisory. Defendant's purported travel destination, according to the documents filed with this Court, is 1,200 miles north of the border crossing. There are about a half-dozen relatives who live much closer to the Ukrainian border, in Moscow region, and are much younger than Defendants, who are 77 years old.

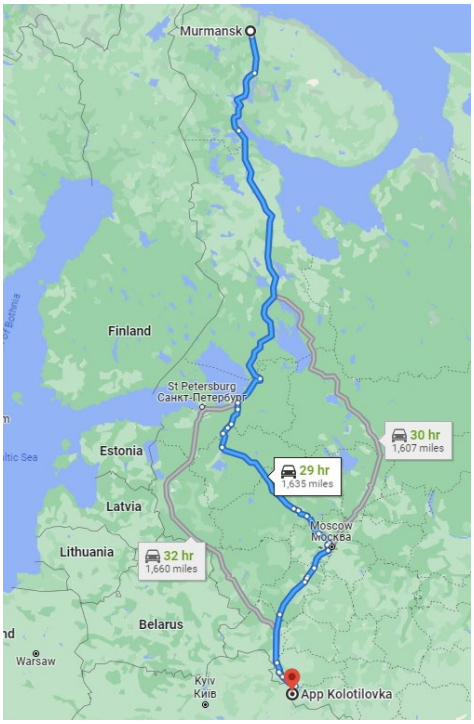
d) Even if Defendants' statements are taken at face value, Defendants are asking the Court to give them more time so they can violate numerous laws in at least two other countries. Ukraine prohibits Russian citizens from entry (and the Defendants still hold Russian citizenship) and prohibits adult males from leaving the country. Defendants are telling the Court that they want to enter Ukraine and facilitate their niece's husband leaving. Both acts are illegal.

2. <u>Defendants flight plan makes no geographical sense.</u>

Since Defendants are representing to the Court they are "somewhere near Moscow." Objection, fn. 3 at 5. According to the documents they submitted to this Court, Defendants flew to Norway with intent to enter Russia by car. Id., at 4. They first flew to Oslo, Norway, which is located north of Moscow. Oslo is several countries away and nowhere near the Ukrainian border, which is south of Moscow. The Defendants then flew even further north to Kirkenes, Norway. The nearest city on the Russian side to Kirkenes on the Russian side is Murmansk, Russia, where Defendants resided for decades. It's only about a couple of hours by car or bus from Kirkenes to Murmansk.



In their Objection, Defendants are referencing their flat in Russia (which they told the Court they gave up but are now saying that they merely disconnected the internet in it), which is in Murmansk, Russia. Murmansk is 1,200 miles north of Moscow – and about 1,635 miles north of the one-way border crossing into Ukraine. Flying to the northern-most point in Norway to drive to Russia and then



Ukraine is akin to flying to Detroit from Houston only to then drive into to Tampa. Defendants' travel plan only makes sense if Defendants went home, to their condo, car, business, and other possessions they told the Court they gave up.

3. <u>Defendants claimed they had no connections to Ukraine and no living relatives in Ukraine when applying for their permanent residency.</u>

In their Objection, Defendants represent to the Court that "when Slava [Defendant Viacheslav Kovalkov] was born, his mother refused to take care of him and left him in the village where her family lived in Ukraine." <u>Objection</u>, at 4. They represent to the Court that these relatives took care of the Defendant Kovalkov until he was four years old, then his mother "took him to Siberia." <u>Id</u>. Defendants also claim that the Plaintiff was born in Ukraine and that "her grandparents lived and died and were buried in Ukraine."

When Plaintiff filed for permanent residency on the behalf of the Defendants, however, Defendants provided multiple documents and requested that Plaintiff represent to the U.S.C.I.S. on their behalf, the following:[7]

1) "Mr. Kovalkov is a citizen of Russia and has lived in Russia since he was about 1 or 2 years old. Although Mr. Kovalkov was born in Ukraine, shortly after his birth, his mother moved Mr. Kovalkov to Russia. He has resided in Russia since then." The letter then encloses Mr. Kovalkov's residence history. Defendants told no story of abandonment then and made no mention of relatives in Ukraine. The

[7] To the extent this Court requires supporting documentation, Plaintiff shall come prepared with all supporting documentation at the October 25, 2023, hearing as compiling and labeling the same would result in further delaying the instant filing. Plaintiff is currently compiling the documentation and to the extent the same is available prior to the hearing, an amended filing containing the documentation will be filed with the Clerk of Courts, immediately.

letter was sent to U.S.C.I.S. on Defendants' behalf and the emails show that they reviewed and approved of the letter.

2) "Siberia" is a region in Russia East of Ural Mountains. As Defendant's residency history shows, he never lived in Siberia. His mother's documents submitted to the U.S.C.I.S. show that she lived and studied in Murmansk, Russia, and then in Scheckino, Russia, near Moscow.

3) Email from Defendant Larisa Kovalkova mentions Defendant Viacheslav Kovalkov visiting his mother's grave in Scheckino, Russia, not Ukraine.

4) Email from Defendant Larisa Kovalkova shows that her mother's grave is near Murmansk, Russia, not Ukraine.

5) Plaintiff's certified and translated copy of her birth certificate sent to her and Defendant Larisa Kovalkova by her brother shows she was born in Murmansk, Russia, not Ukraine.

6) When eight years ago, U.S.C.I.S. scheduled to interview Defendant Larisa Kovalkova in Kiev, Ukraine, instead of Moscow, she asked that Plaintiff plead with the agency to change the location of the interview to Moscow, because she had no ties with Ukraine and travel to Ukraine would be greatly inconvenient for her and physically difficult. It was so important to Defendant Larisa Kovalkova to change the interview location from Kiev to Moscow, that she insisted that Plaintiff send multiple emails for nearly a year until she obtained the desired change in location.

4. <u>The border between Russia and Ukraine is closed.</u>

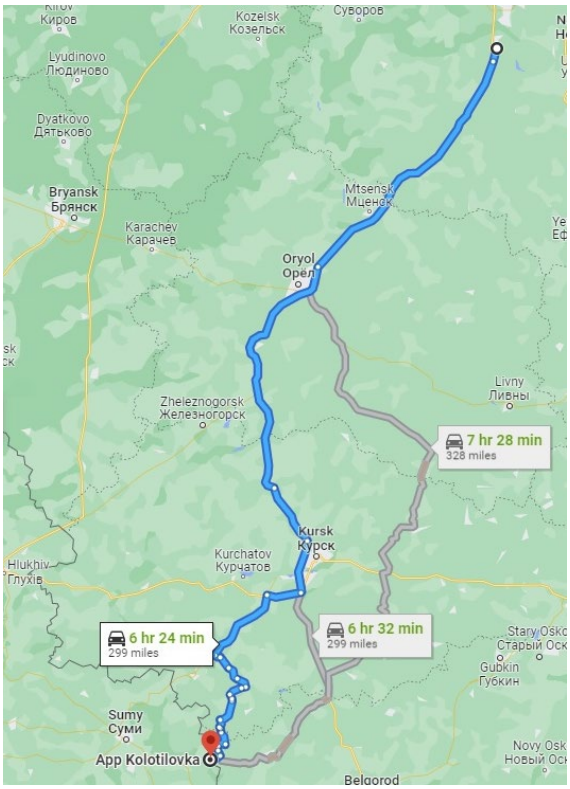
Defendants do not explain to the Court how they plan to enter Ukraine, which has long ago closed borders with Russia, or how they plan to leave:

> After Moscow launched its full-scale invasion in February 2022, Ukraine officially closed all its border crossings with Russia and Belarus. . . The small Kolotylivka-Pokrovka border crossing, between Russia's Belgorod region and Ukraine's Sumy region, is the only place where Ukrainians can enter government-controlled

> Ukrainian territory from Russia. Travel in the opposite direction is not possible.[8]

Defendants have not renounced their Russian citizenship. They cannot enter Ukraine. The niece's[9] husband cannot leave Ukraine, because Ukraine restricted adult males from leaving.[10] Moreover, U.S. Department of State has issued a Level 4 Travel Advisory for Ukraine – Do Not Travel.[11]

Further contradicting any necessity that Defendants assist with relocating a family member, Defendant Viacheslav Kovalkov has a much younger sister living in Scheckino, Russia. That sister has adult children in their 30s and early 40s, who have their own families. Collectively, that set of relatives lives about 300 miles from the border with Ukraine and is far younger and



[8] Akeksander Palikot, *'Without Leaving Home, We Became Foreigners': Ukrainians Escape Russian Occupation Through The Only Open Border Crossing*, https://www.rferl.org/a/ukrainians-escape-russian-occuption-border-crossing/32636052.html, Radio Free Europe (Oct. 13, 2023).

[9] Although Defendants' describe this relative as "a niece," a daughter of Defendant mother's sister would be a cousin.

[10] Asha C. Gilbert, *Reports: Ukraine bans all male citizens ages 18 to 60 from leaving the country*, USA Today (Feb. 26, 2022), *available at* https://www.usatoday.com/story/news/world/2022/02/25/russia-invasion-ukraine-bans-male-citizens-leaving/6936471001/.

[11] https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/ukraine-travel-advisory.html

more able to assist in relocation. Defendants do not explain why these relatives wouldn't be able to drive six hours to the Ukrainian border instead of Defendants taking a month-long overseas trip.

CONCLUSION

The Rules of Civil Procedure and the Ohio Supreme Court precedent contemplate that the hearing can proceed without the Defendants in the event Defendants' absence is voluntary. Despite ample notice and opportunity to reschedule their flights – flights Defendants incorrectly represented to the Court as being impossible to reschedule – Defendants failed to take any action which would otherwise result in their attendance at the hearing and refuse to appear remotely. Defendants can clearly communicate with Counsel regarding the matter, and it must be presumed that appearance via alternative and/or telecommunication means are feasible. Plaintiff asks this Court deny Defendants objection, adopt the Magistrate's October 11th Order, and permit the FE&D Hearing on this matter to move forward.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed with the Court and served upon the below parties and or Counsel of record this same day of filing electronically through the Court's CM/ECF System, and electronic mail, pursuant to Civ.R. 5(B)(2)(f).

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