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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

RACHEL A. TURLEY, *et al.*

Plaintiffs,

v.

LEO R. BEUS, *et al.*,

Defendants.

No. CV2014-009811

MOTION FOR RULE 60 RELIEF

(Assigned to the Honorable Karen Mullins)

Ariz. R. Civ. P 60(c)(2) permits a party to file a motion seeking relief “from a final judgment, order or proceeding [when there is] newly discovered evidence which by due diligence could not have been discovered [previously].” A motion under this rule is timely if brought within six months of the Court’s ruling.¹ Defendants file this motion regarding the Court’s April 1, 2015 ruling (the “April 1 Order”) because one of the Apostles² has recently produced evidence unequivocally establishing that the Court misunderstood the Apostles’ agreement and their willingness to perform an ongoing role with the Board created by the Management Agreement—a mistake that was an important element in the Court’s analysis, and that may impact further proceedings in this matter if the April 1 Order is not corrected.

In her April 1 Order, Judge Katherine Cooper ruled that none of the Plaintiffs are bound to arbitrate their dispute with the Board because it would be “unreasonable, unconscionable,

¹ Ariz. R. Civ. P 60(c).

² Of the Church of Jesus Christ of Latter-day Saints.

1 and frankly absurd to have Defendants Wil, Wilford, and Beus³ – three of the five members of
2 the Board – decide the claims against them.”⁴ That finding rested in part on the erroneous
3 conclusion that the Board would not be guided by the Apostles in their decision-making
4 process. In resisting arbitration, the Plaintiffs said that they thought the Apostles would be
5 guiding the Board, but that they had since discovered that the Apostles would not (and could
6 not) offer such guidance. Although Defendants repeatedly maintained that the Plaintiffs had
7 misconstrued the Apostles’ position, they had no direct evidence of the Apostles’ intent.
8 Without that direct evidence, Judge Cooper erroneously concluded “that *the Apostles want*
9 *nothing to do with the [Management Agreement] or the Board. . . .* The Apostles maintain
10 that *they will not be involved for any Board member. Period.*”⁵ This erroneous conclusion
11 was pivotal in Judge Cooper’s mind because “[*the Apostles*] *position impacts all parties* to
12 the [Management Agreement], not just Patrick and Wilford.”⁶ Having incorrectly concluded
13 that the Apostles, whom Plaintiffs wanted involved in the process, would have nothing to do
14 with the Board, Judge Cooper further concluded that it was “frankly absurd” to compel the
15 Plaintiffs to arbitrate through the Board.

16 Defendants provided the Apostles with a copy of the Court’s April 1 Order. Although
17 the Apostles had been unwilling to take any part in the litigation previously given their
18 positions in the church, they recognized that the Court’s ruling was simply wrong.
19 Accordingly, Elder Andersen decided to sign and provide the attached declaration.⁷ There,
20 Elder Andersen explains under oath that the Court misunderstood the Apostles’ role, their
21 support of the Board, and their willingness to remain involved. Specifically addressing Judge
22 Cooper’s conclusion that the Apostles wanted nothing to do with the Board, Elder Andersen
23 says Judge Cooper was wrong. “It is true that [we] refuse to accept or exercise any *legal*

24 ³ Notably, Judge Cooper did not believe it was absurd for Plaintiffs to arbitrate their claims
25 before Todd Nelson, even though he too is a Defendant. What’s more, there were no claims
26 against Wilford when Judge Cooper issued the April 1 Order.

27 ⁴ See Under Advisement Ruling, April 1, 2015, at 3.

28 ⁵ *Id.* at 4.

⁶ *Id.* at 4.

⁷ See Exhibit A.

1 authority over Cardon family members. But we care deeply about the family and therefore
2 stand ready in the future, as we have in the past, to offer spiritual advice to the Board and the
3 family in an effort to bring the family's members together.”⁸ Although Elder Andersen
4 described his role as a “spiritual” guide rather than a “legal” arbiter,⁹ the technical distinction
5 between ecclesiastical guidance and legal rulings made no practical difference for the Board.

6 In fact, the Management Agreement provided for the possibility that the Apostles would
7 choose to only offer spiritual guidance rather than “legal” rulings, yet the Board was bound to
8 follow them anyway: “[T]he [Apostles’] decision whether to confirm, reverse or modify a
9 particular decision or action, *as well as any guidance or direction* . . . shall be binding . . . and
10 the Board shall seek to implement the decision, *direction or guidance* from the Apostles as
11 promptly as is feasible.”¹⁰ Messrs. Beus and Nelson were true to their charge. In fact, although
12 they urged the Apostles to uphold their sanction of Wilford, they nonetheless unconditionally
13 affirmed that they would “always follow [the Apostles’] counsel.”¹¹ And indeed, they still
14 intend to follow the Apostles’ guidance, in whatever form it may be expressed.¹² Significantly,
15 the Plaintiffs never identified a single instance in which the Board did not follow the Apostles’
16 guidance, regardless of how that guidance was given. Under these facts, the Apostles’ spiritual
17 role yields the same result as a legal arbiter, so the Apostles did not need legal authority to bind
18 the parties.

19 Elder Andersen’s declaration does more than clarify their position; it also establishes
20 that everyone intended for the Board to make *binding* decisions to “eliminate the need for
21 litigation among Cardon family members.”¹³ If this evidence had been available previously, the
22 Court would have (and should have) reached a different result. Having believed that the Board
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24 ⁸ *Id.* at ¶ 13 (emphasis added).

25 ⁹ *Id.* at ¶ 8.

26 ¹⁰ See Management Agreement, attached as **Exhibit B**, at § 1.9(f).

27 ¹¹ See Opening Brief re Validity of Management Agreement, filed December 31, 2014
28 (“Opening Brief”), at Exhibit 49 to Exhibit 2.

¹² See Opening Brief at Exhibit 2, ¶ 161.

¹³ See Exhibit A at ¶ 5.

1 was not being guided by the Apostles whom the Plaintiffs wanted involved,¹⁴ the Court found
2 that the arbitration process was absurd. But now that it is clear that the Apostles are still
3 guiding the Board—as surely as provided by the Management Agreement¹⁵—there is no
4 absurdity to preclude compelling arbitration.

5 Elder Andersen’s declaration also demonstrates the Apostles’ full support of the Board
6 process, and their desire to see the family members participate in that process: “We signed the
7 November 12, 2013 agreement to encourage and support the family’s effort to resolve their
8 differences [through the Board process].”¹⁶; “[W]e encouraged Mr. Beus to do his best to lead
9 the board in deciding the issues.”¹⁷; “On January 15, 2004, we sent a letter to the people who
10 had been appointed as board members to encourage them to proceed ... to resolve the family’s
11 disputes.”¹⁸; “[The letter] confirmed our continuing support for Mr. Beus and Mr. Nelson as
12 members of the board.”¹⁹; “[W]e encouraged the family to address their legal and business
13 concerns to each other and to the board.”²⁰; “I express deep appreciation to Mr. Beus and Mr.
14 Nelson for their honest efforts to assist the family in resolving their disputes.”²¹

15 Defendants could not have obtained this evidence before, even with due diligence.
16 Under the Management Agreement, “[i]n the unlikely event of an unresolved dispute among
17 the Board, the Parties and/or Cardon Family Members, each Party, Director and signatory
18 hereto agree[d] and covenant[ed] not to involve the Brethren in any way in a legal proceeding,
19 arbitration or other similar proceeding instituted for the purpose of resolving such dispute,

20 ¹⁴ After having repeatedly said that they only participated in the Board because they felt
21 spiritually compelled to do so by the Apostles, surely the Plaintiffs will not continue to reject
22 the Board now that the Apostles have so clearly endorsed it. If the Plaintiffs continue to reject
23 the Board, the Court can safely conclude that the Plaintiffs were not really trying to follow the
24 Apostles; they simply wanted an excuse—any excuse—to avoid the Board, and they were
25 willing to falsely invoke their religion to further their litigation strategy.

26 ¹⁵ The Management Agreement explicitly permitted the Apostles to choose whether to offer
27 their guidance or to abstain. See Exhibit B at § 1.9(d). So the Plaintiffs could not reasonably
28 claim that they were *entitled* to have the Apostles act as the final arbiter of their disputes.

¹⁶ See Exhibit A at ¶ 5.

¹⁷ *Id.* at ¶ 6.

¹⁸ *Id.* at ¶ 8.

¹⁹ *Id.*

²⁰ *Id.* at ¶ 9.

²¹ *Id.* at ¶ 14.

1 including, but not limited to, subpoenas, depositions, and requests for interviews or
2 affidavits.”²² Thus, Defendants could not obtain this evidence until it was voluntarily given by
3 Elder Andersen. And again, the Apostles did not want to be involved in litigation, but Elder
4 Andersen felt compelled to do so when he saw Judge Cooper’s incorrect conclusions.

5 This Court’s primary role is to enter a correct ruling on the merits.²³ As Elder
6 Andersen’s declaration shows, the Court’s prior ruling misstates critical facts about what the
7 Apostles knew about and intended for the Board process, and about the Apostles’ ongoing
8 support for and encouragement of that process. Rule 60 provides a vehicle to correct these
9 misstatements. Defendants respectfully request that the Court withdraw its April 1 Order or, at
10 a minimum, correct its misstatements that the Apostles wanted nothing to do with the Board,
11 that the Apostles would not be further involved in the process, and that as a result it would be
12 “unreasonable, unconscionable, and frankly absurd” to compel arbitration.

13 RESPECTFULLY SUBMITTED this 16th day of October 2015.

14 **STINSON LEONARD STREET LLP**

15 By: /s/ James E. Holland, Jr.

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27 ²² See Exhibit B at § 1.9(h).

28 ²³ See, e.g., *Clemens v. Clark*, 101 Ariz. 413, 414, 420 P.2d 284, 285 (1966).

1 **ORIGINAL** of the foregoing e-filed this
16th day of October 2015:

2 Clerk of the Court
3 Maricopa County Superior Court
201 West Jefferson
4 Phoenix, Arizona 85003

5 **COPY** of the foregoing delivered via
6 TurboCourt this 16th day of October
2015, to:

7 Honorable Karen Mullins
8 Maricopa County Superior Court
125 West Washington, OCH 309
Phoenix, Arizona 85003-2243

9 **COPIES** of the foregoing e-mailed this
10 16th day of October 2015, to:

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EXHIBIT A

DECLARATION OF NEIL L. ANDERSEN

Neil L. Andersen, having been sworn upon oath, declares as follows:

1. I am a resident of Davis County in the State of Utah. I make this declaration on the basis of my personal knowledge.

2. At all times relevant to the matters stated below, I have been a member of the Quorum of the Twelve Apostles, one of the governing bodies of the Church of Jesus Christ of Latter-day Saints (the "Church"), as has Elder M. Russell Ballard.

3. In the Fall of 2013, at the request of Wilford A. Cardon and members of his family, Elder Ballard and I became personally involved in attempting to provide spiritual advice to members of the family with regard to a series of disputes among them concerning the ownership and control of family assets. We undertook this effort consistent with our pastoral responsibility to members of the Church who seek our help on family matters.

4. On several occasions late in 2013, Elder Ballard and I met with members of the Cardon family, urging them to resolve their differences. Family members advised us that they were considering entering into an agreement that would establish a board whose responsibility would be to assist the family in resolving specific legal and financial issues.

5. We met with members of the family on November 12, 2013, and we reviewed with them the agreement mentioned in the paragraph above, which established the board that was to assist the family in resolving specific issues. As we eventually came to understand, the board would consist of selected members of the Cardon family and two outsiders, Leo R. Beus and Todd S. Nelson, who had been selected by the family. Although neither Elder Ballard nor I knew Mr. Beus or Mr. Nelson personally, we knew both of these men by reputation as devout members of the Church, prominent members of the business and legal community in Phoenix, Arizona, and

men of integrity. We were gratified that the Cardon family had selected Mr. Beus and Mr. Nelson to help them resolve the family's disputes. We understood that the Board would have the authority to make decisions so as to eliminate the need for litigation among Cardon family members. We signed the November 12, 2013 agreement to encourage and support the family's effort to resolve their differences in this manner.

6. Over the course of the next year, Mr. Beus (who we understood was to lead the board) sought advice and consulted with us from time to time. In response, we provided what spiritual advice we could, and we encouraged Mr. Beus to do his best to lead the board in deciding the issues.

7. In an email dated December 9, 2013, Mr. Beus advised Elder Ballard and me that the family was considering entering into a management agreement that would allow family members who were dissatisfied with a decision of the board to "appeal" the decision to us and that we would have discretion to decline to take the "appeal." We were advised that Wilford A. Cardon insisted that this provision be included in the management agreement. We were not provided with a copy of the proposed management agreement at that time.

8. Elder Ballard and I did not specifically respond to Mr. Beus's email regarding the appeal provision, but we made it clear to all concerned that, although we remained willing to provide spiritual advice to family members, we were unwilling to participate in "legal" processes. We were willing to act solely as spiritual advisors, and we encouraged the family to be prayerful, humble, and forgiving of family members. On January 15, 2014, we sent a letter to the people who had been appointed as board members to encourage them to proceed—without our participation—to resolve the family's disputes, and to do so in a spirit of unselfishness, humility, and patience. The letter advised board members that we were unwilling and unable to participate

in the board's formal dispute resolution process. It confirmed our continuing support for Mr. Beus and Mr. Nelson as members of the board.

9. On April 15, 2014, Elder Ballard and I wrote to all members of the Cardon family involved in the dispute resolution process. We again advised them that we would be unable and unwilling to become involved in the family's business decisions, and we encouraged the family to address their legal and business concerns to each other and to the board.

10. In June 2014, we were sent copies of the management agreement pursuant to which the board was operating. We were surprised to learn that the management agreement purported to grant us legal authority over members of the Cardon family, including the authority to decide appeals.

11. On July 10, 2014, Elder Ballard and I again wrote the members of the board to clarify our role. We made it clear in this letter that, as members of the Quorum of the Twelve Apostles, we could not, and would not, accept legal authority over family members, and we asked that references to such authority be removed from the agreements.

12. We have been provided with a copy of a written ruling issued by the Superior Court for Maricopa County, Arizona, in Rachel A. Turley, et al. vs. Leo R. Beus, et al., dated April 1, 2015. In this ruling, the Court referred to our role in the Cardon family's dispute resolution process. The Court wrote: "It is undisputed that the Apostles want nothing to do with [the management agreement] or the Board. . . . The Apostles maintain that they will not be involved for any board member. Period."

13. I must respectfully take issue with this categorical statement. It is true that Elder Ballard and I refuse to accept or exercise any legal authority over Cardon family members. But we care

deeply about the family and therefore stand ready in the future, as we have in the past, to offer spiritual advice to the Board and the family in an effort to bring the family's members together.

14. I express deep appreciation to Mr. Beus and Mr. Nelson for their honest efforts to assist the family in resolving their disputes.

Dated this 7 day of October, 2015.


Neil L. Andersen