

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

<hr/>)	
MATTHEW L. CHATHAM and))	
ERIN CHATHAM,))	
))	
Plaintiffs,))	
))	
v.))	Civil Action No. 1:17-cv-11473-IT
))	
DANIEL J. LEWIS and))	
CANTERBURY VENTURES, LLC,))	
))	
Defendants.))	
<hr/>)	

**PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO CONDUCT VIRTUAL
JURY-WAIVED TRIAL**

Plaintiff Matthew L. Chatham and Erin Chatham (“Plaintiffs”) hereby oppose Defendants Canterbury Ventures, LLC and Daniel J. Lewis (collectively, “Defendants”)’s Motion to Conduct Virtual Jury-Waived Trial (“Motion for Virtual Trial”) (dkt. 272).

Plaintiffs’ lives have been upended, to put it kindly, by these Defendants for the past 4+ years, and Plaintiffs both wish to confront the Defendants live in court *and* feel strongly that virtual testimony will simply be inadequate. Plaintiffs specifically agreed to waive their constitutional right to a jury trial in exchange for a live bench trial. The Defendants agreed and the Court so ordered. Defendants expressly agreed to a live bench trial in email correspondence, specifically stating, “The Defendants will waive the right to a jury trial and will agree to a live jury waived trial before Judge Talwani.” *See* November 18, 2020 email from Mark Corner to Tom McNulty, Paul Mordarski, and Jordan Carroll, a copy of which is attached as Exhibit A to the Declaration of Thomas McNulty (“McNulty Decl.”) filed herewith. Defendants *again* agreed to a live trial and signed Joint Statement Regarding Scheduling, specifically stating, “1. The parties agree to waive the right to a jury and to conduct a live bench trial.” *See* Joint Statement

Regarding Scheduling (dkt. 253) at 1; November 23, 2020 email from Mark Corner to Tom McNulty, Paul Mordarski, and Jordan Carroll (attached hereto as Exhibit B to the McNulty Decl.) (agreeing to the Joint Statement Regarding Scheduling and indicating that his electronic signature could be added to the statement and filed). Notably, Colorado counsel for Defendants were both copied on each of these emails, and they each appear on the signature block of the Joint Statement Regarding Scheduling, which was served via ECF on both of them in November. Yet now, just weeks before trial, Defendants move to abrogate their agreement and move to a fully virtual trial that had been expressly declined by the Plaintiffs in November.

The timing of this motion calls into question the actual reasons for its being filed. Defendants' counsel asserts that the concerns are based on the age of trial counsel – saying that all are at least 53 years old. Yet this factor existed at the time they agreed to a live trial. Counsel further states that “*not all* of [Defendant Lewis and his three trial counsel] have been vaccinated,” which clearly suggests that at least some of them have been vaccinated – likely at least Defendant Lewis, based on his status as a firefighter. *See* <https://www.bostonherald.com/2021/01/04/massachusetts-police-firefighters-ems-to-get-coronavirus-vaccines-starting-next-week/> (indicating that firefighters would be eligible to receive the Covid vaccine beginning on January 11, 2021); <https://www.riemerlaw.com/news/coronavirus-information/> (noting that “In January and February, 400 first responders from Franklin, Medway, Millis, Milford, and Bellingham were receiving vaccinations at Franklin High School. Clinics for each dose were held over a two-day period, totaling 4 days of first responder clinics.”); <https://www.wickedlocal.com/story/country-gazette/2021/01/13/franklin-hosts-covid-vaccination-clinic-area-first-responders/6629686002/> (noting that police and fire personnel from Franklin and surrounding towns were to receive

vaccinations beginning January 13, 2021) . Further, even without being vaccinated, the spread of Covid is significantly lower now than it was in November when Defendants agreed to a live trial. See <https://www.mass.gov/info-details/covid-19-response-reporting> showing the 7-day average of confirmed cases presently at 1082 and trending downward versus 2637 on November 23rd).

Covid remains serious, albeit less so than it was at the time Defendants agreed to a live trial. This Court has addressed safety concerns surrounding Covid, however, in its General Order 20-35 dated September 28, 2020. This Court, after “consult[ing] with epidemiologists and public-health experts to determine appropriate protocols for the conducting of proceedings in the Courthouse” determined that it is safe to conduct in-person proceedings following the protocols set forth in the General Order. If this Court felt that it was not safe to hold in person proceedings, the Court would certainly not have in-person proceedings as an option and would not have offered it as an option to the parties in this case back in November 2020, nor continued to make a live trial available during the Pre-Trial Conference on February 23, 2021.¹ Indeed, when the Court informed counsel that the trial would proceed in person at the Pre-Trial Conference, Defendants offered no objection.²

Finally, to the extent that this motion serves as a precursor to delay trial and to move to allow the current residents to extend the lease on the house, Plaintiffs vigorously oppose such a chain of events. The Court will recall that Defendants snuck the Carmichaels in under the cover of night, without informing Plaintiffs or the Court that it was seeking to lease the house or that it had, in fact, leased the house – Plaintiffs only discovered that the house was being leased when

¹ The CDC warning cited by the Defendants (*see* Motion for Virtual Trial at p. 2, n. 1) does not suggest that the Court’s decision to permit live trials under these protocols, which had been in place for five months at the time the warning was issued, should be revisited, but merely cautioned against relaxing restrictions that are already in place.

² Reimer Braunstein, the law firm of Defendants’ Counsel Mark Corner, announced that their offices were open on October 13, 2020.

they were informed that a moving van was parked at the property, unloading someone's belongings into the house. *See* Plaintiffs' Emergency Motion for Preliminary Injunction (dkt. 142) at 2. Magistrate Judge Cabell noted at that time that the family moving in

caught everybody by surprise and it shouldn't have caught anybody by surprise, because everybody should have been aware of anything going on with the property. In part, our options, the Court's options, were limited from the get-go because we were unable to get involved and address some of these matters before people were moving things into the house and were, you know, waiting for their Certificate of Occupancy to issue... I'll be candid, the concern is that it was deliberate, and if that is the case, that would bother me greatly given the history of this litigation and what we've been arguing about, or the parties have been arguing about, with some passion over the last several months.

See Transcript of May 7, 2019 hearing at 9-10. The Court, with Defendants' agreement, entered an Order prohibiting Defendants from extending the lease beyond its current 18-month term.

Order (dkt. 169). Yet when the lease was due to end, Defendants came back to Court, asserting that they needed to extend the lease "during the pendency of the case" (Transcript of 10-30-2020 Hearing at 5 and 12) because "as far as I know, [the Carmichaels] have no place to go."

Transcript of 10-30-2020 Hearing at 7. Judge Cabell agreed at that time to a final extension of the Carmichael lease until May 1, 2021, primarily because the end of the lease was at hand and the Carmichaels had not moved out. Order on Defendants' Emergency Motion for Clarification or Stay (#238) (dkt. 246) at 3-4. The Order specified that "[t]he defendants ***may not extend the lease*** beyond April 30, 2021... The defendants shall take all reasonable steps to ensure that the property is vacant as of May 1, 2021, including if necessary, by initiating summary process proceedings. In that regard, the defendants shall immediately notify the court if they come to have a basis to believe the premises may not be vacant as of May 1, 2021, or if legal process may be necessary to achieve that result." *Id.* Given the sudden change in direction with respect to a live trial, the impending end of the Carmichael lease, and the actions of the Defendants with

respect to the prior Order prohibiting an extension of the lease, Plaintiffs suspect that this Motion is the beginning of an attempt to delay and extend the lease, and should therefore be denied.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that Defendants' Motion to Conduct Virtual Jury-Waived Trial be *DENIED*.

Dated: March 18, 2021

Respectfully submitted,

MATTHEW L. CHATHAM and
ERIN CHATHAM,

By their attorneys,

/s/ Thomas P. McNulty
Thomas P. McNulty (BBO# 654564)
John N. Anastasi (BBO# 566725)
Nathan T. Harris (BBO# 675533)
LANDO & ANASTASI, LLP
60 State Street, 23rd Floor
Boston, MA 02109
Telephone: (617) 395-7000
Facsimile: (617) 395-7070
Email: emailservice@lalaw.com

Paul R. Mordarski (BBO #561803)
MORRISSEY, HAWKINS & LYNCH
One International Place, Suite 3220
Boston, MA 02110
Telephone: (617) 748-5410
Email: pmordarski@mhlaw.com

CERTIFICATE OF SERVICE

I certify that on March 18, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which automatically sends email notification of such filing to registered participants. Any other counsel of record will receive the foregoing via e-mail in PDF format.

/s/ Thomas P. McNulty

Thomas P. McNulty