

**July 24, 2024**

**Honorable Alan S. Trust  
Chief United States Bankruptcy Judge  
Eastern District of New York  
Alfonse M. D’Amato Federal Courthouse  
290 Federal Plaza  
Central Islip, New York 11722**

**Dear Respected Honorable Chief Judge Trust,**

**Sub: - Request for Stay of Trial, Due to current lack of Legal Representation.**

**Ehrenberg v. Abruzzi Investments, LLC and John Petrozza Adv. Pro. No. 20-08052-ast."**

## **PRELIMINARY STATEMENT**

Defendants John Petrozza and Abruzzi, LLC (together, the “Petrozza Defendants”), by and through John Petrozza Pro Se, respectfully submit this Memorandum in support of their Motion to Stay the trial and extend the discovery period by 60 days. This urgent request stems from recent developments and a critical change in legal representation. The Plaintiffs seek to commence the trial on July 25, 2024, based on a previously agreed-upon schedule. However, the Petrozza Defendants have faced significant challenges due to

inconsistent and inadequate legal representation, necessitating the termination of their attorney. Without an extension, the Petrozza Defendants, who have substantial defenses, will be severely prejudiced, **any assertion that the Petrozza Defendants are responsible for delays by requesting an extension is unfounded. Since the Plaintiff spent almost 4 years of inactivity on this case additional two months for a proper defense from Petrozza defendants will not change the truth.** Therefore, to ensure a fair trial and justice, the trial should be stayed, and an extension provided.

## **FACTS**

Petrozza Defendants were investors in the CH, LLC followed with CHT, Petrozza Defendants participated in various fund raises by CHT on the public market on AIM

Petrozza Defendants were not involved in operations nor were observers on a regular basis. Only participated in Fund raise discussion due to the understanding that if CH, LLC and later CHT does any sale of equity or is looking for any Loans, Petrozza Defendants have the right to take a first look and decide if they would like to participate.

On March 16, 2018 (the “Petition Date”), the Debtors in this case filed for relief under Chapter 11 of the Bankruptcy Code. The Debtors comprise approximately twenty-two distinct entities.

on Feb 25<sup>th</sup>, 2020, Orion issued the following threat **“The Liquidating Trustee reserves his rights to move forward against your clients, Abruzzi Trust and Constellation Health Investment LLC on all fronts in the event the attached stipulation is not executed.”**

Which was a frivolous threat as if there were real claims why would the Trustee wait for deadline of 2 years and just use it as a threat Feb 25<sup>th</sup> 2020, and the fact that the trustee used Abruzzi Trust and CHI as threat against whom he had claims against, and then when the threat did not work, out of spite Trustee looked hard to see who can he go after even remotely and came up with Frivolous claims against Salil Sharma, John Petrozza, Kiran Sharma and Abruzzi Investments, LLC

**On March 13<sup>th</sup>, the trustee issued this threat that if settlement agreement is not finalized then they would start claw back action against**

1. “Sage Group Consulting, Inc. and Salil Sharma.
2. John Petrozza, Abruzzi Investments, LLC, the Abruzzi Trust, Constellation Health Investment, LLC, First United Health, LLC and The Red Fronted Macaw Trust; and,
3. Windels Marx Lane & Mittendorf, LLP

On May 15<sup>th</sup>, 2020, Petrozza Defendants filed an answer to the complaint denying the alleged claims with a counter claim “Plaintiff knew or should have known that the amounts claimed in the Complaint, to the extent received by Defendants, were repaid in full. With actual or constructive knowledge of these facts Plaintiff nevertheless proceeded to bring this action which lacked any factual

basis. Accordingly, Defendants request costs for this action and attorney's fees for defending this action."

On or Around March 16<sup>th</sup>, 2020, which is past two full years since commencing the bankruptcy filing, Orion filed an adversary action against John Petrozza and Abruzzi Investments, LLC . This adversary proceeding ("Adversary Proceeding") seeks to recover, as a fraudulent conveyance, the transfer (the "Transfer") of \$250,000 (the "Funds") from a Robinson Brog Leinwand Greene Genovese & Gluck, P.C. ("Robinson Brog") IOLA account to Abruzzi.

This complaint was filed after substantial threat issued to Parmar from walking away from a settlement discussion which was on going for a period of over 6 plus months. On Feb 25<sup>th</sup> Parmar Defendants refused to execute a settlement proposed by Orion,

### **Transfer of Funds**

Petrozza requested a short-term loan from Paul Parmar ("Parmar") to lease property in Florida. Parmar received the necessary wiring instructions and subsequently transferred the funds to an account held by Abruzzi. When the lease deal did not materialize, the Defendants notified Parmar of their intention to repay the loan and requested wiring instructions. Parmar directed the repayment to an account specified in an email, and Abruzzi complied by wiring the funds as instructed.

This transaction was a personal loan requested by Petrozza Defendants from Parmar Parties. Parmar, having substantial funds of his own and from Parmar Parties, directed the wire transfer from the Robinson Brog IOLA account to Abruzzi Investments. Because Parmar did not utilize Debtors' funds, there is no corresponding loan entry in the Debtors' books for this transaction with Abruzzi.

Upon receiving wire instructions to return the funds, Parmar, who was jointly extending a loan with Petrozza to the Ranga Bhoomi project for real estate acquisition, directed the funds to an account under the name of Sunshine Star, LLC ("Sunshine"), an entity created for Elena Sartison ("Sartison"), the manager of the project for equestrian services.

Here is the original email from Paul Parmar to Robinson Brog requesting to wire funds to Abruzzi Investments LLC, No where in this email Paul Parmar is instructing that these funds should be from Debtors, Paul Parmar is requesting the funds be wired from his escrow account.

**From:** A. Mitchell Greene <[amg@robinsonbrog.com](mailto:amg@robinsonbrog.com)>  
**Sent:** Wednesday, May 24, 2017 9:06:56 PM  
**To:** Paul Parmar  
**Cc:** Sam Zaharis; Stephen R. Hope  
**Subject:** Re:

Ok

On May 24, 2017, at 8:39 PM, Paul Parmar <[paul@constellationhealthgroup.com](mailto:paul@constellationhealthgroup.com)> wrote:  
Pl. Wire from escrow 250k to following address

Abruzzi Investments, LLC  
225 Ellis Street  
Staten Island, NY 10307

Wire Routing [REDACTED]  
Account # [REDACTED]

My General Comments here as to my state of mind regarding this loan. I sent a message on my group chat with Tomer Vardi and Paul Parmar, which was essentially created to discuss the Red Wine we produced together, in that group I requested that “Guys thank you very much for help me out in this pinch.....” No where I request that the funds should come from the debtors, nowhere I was given any impression that Parmar would lend the funds from the debtor, and from my years of experience with companies with partners, I would assume a formal process to lend funds and with Chinh Chu as the chairman and a very institutional investor, there would be a formal document and lending approval, was there one ? I was not made aware of, but definitely I did not execute a loan document with the debtors for these funds, in this scenario my assumption based on my casual request and Paul parmar reply “we will get it done” implied he was personally extending the loan. Now on examination of the information it is clear, the funds did not come from the debtors at all, it came from Parmar parties escrow account, from which the Trustee has already taken \$1,723,877.58.

**This ESCROW ACCOUNT WAS OPENED BEFORE ANY DEBTORS WERE IN EXISTANCE AND WAS NEVER MODIFIED TO INCLUDE THE DEBTORS. Debtors were never a party to the escrow agreement now did they have any funds of theirs in escrow.**

**The funds in the escrow account never belonged to the debtors, they were Co-Mingled Parmar Parties, Parmar, Petrozza Defendants funds.**

The burden rests on the Plaintiff to prove that John Petrozza or Abruzzi received Debtors' funds, which forms the basis of their complaint.

The same IOLA account had a surplus of \$1,723,877.58 which was property of Parmar Parties and Petrozza defendants, a distribution deal between Windels and Trustee handed over the full funds to the trustee. At this point I am and will be counter Claiming those funds in addition to attorney fees for this frivolous action.

Trustee has relied on parties not defending, information not available, and information being misrepresented and misleading to influence it to their favor. An example of that is the Judgement against Aquila Alpha, trustee used an affidavit that implied Orion was insolvent meanwhile the funds were CHT funds and moved from CHT and CHT was solvent and nothing to do with Orion which is a separate entity. If the trustee would have revealed that funds were moved from CHT they could not have under the bankruptcy rules obtained a default judgement on Aquila Alpha. Please look at the

**The Funds in The IOLA Account is NOT The Debtor's Property.**

The IOLA Account from where Petrozza Defendants received a wire was in Control of CH, FUH, Parmar parties and Petrozza defendants and was used by parmar party's manager for collective funds for that belonged to Parmar personally, FUH, CHI, CH and CHT at no time the funds belonged to the debtors or any portion thereof.

Even if the Trustee makes a claim to any portion of the funds in a specific period ("Co-Mingled"), they have provided no proof directly and distinctly tracing the alleged transfer of \$250,000 from IOLA directly to the debtors as required by law in Co-Mingled funds.

## **Robinson Brog IOLA Account Facts**

This account was opened with Robinson Brog before any of the debtors were known to Parmar or Parmar Parties, around Oct 2012. When Parmar first met with partners at Robinson Brog.

Funds in IOLA account belonged to Abruzzi Investments, LLC and Parmar Parties prior to any debtors ever known to Parmar Parties.

Here are some of the incoming funds into Robinson Brog IOLA account from Abruzzi Investments, LLC and Parmar Parties.

- A. On 6/13/2013 John Petrozza directed Abruzzi Investments to wire \$4,000,000 dollars into IOLA account
- B. On 6/14/2013 CHG wired \$11,000,000 dollars into IOLA account
- C. On or around 8/18/2014 in multiple wired CHI, and CH wired a total of \$1,537,000 into IOLA account
- D. June 2015, FUH funded the IOLA account with \$3,000,000 dollars.
- E. Jan 2016, CHI, FUH, and Parmar Parties wired \$5,350,886.40 into the IOLA account
- F. From March 2016 to July 2017 various Parmar Parties in multiple wires over the period wired approximately over \$20,350,840 dollars into IOLA account

Clearly a substantial amount of funds in the IOLA account came from non-debtors like Abruzzi Investments, LLC and Parmar Parties.

## **Blatant False Facts used to influence judgement**

On March 16, 2020, the Plaintiff filed a complaint (the “Complaint”) initiating this Adversary Proceeding to avoid the Transfer as either an intentional or constructive fraudulent conveyance. The Complaint lacks clarity, failing to specify which of the Debtors’ funds were transferred to Abruzzi. The Plaintiff broadly defines the “Debtors” without distinguishing among them. **For instance, paragraph 17 alleges that Parmar directed the “Debtor” to transfer funds to Abruzzi, which did not occur; instead, Parmar instructed Robinson Brog, to wire the funds.** At this point the trustee knew the funds in IOLA belonged to non-debtors but chose to ignore this fact to avoid the issue of traceability and possibility that when John Petrozza asked for Loan, Parmar used Non-Debtors funds.

Robinson Brog was the attorney of record for Paul Parmar personally, FUH, CH, CHG, CHI, CHT, John Petrozza, Tomer Vardi, Abruzzi Investments, LLC, John Petrozza Trust amongst other connected parties and investors, and the IOLA account had Co-Mingled funds of all these clients Robinson Brog represented including John Petrozza and Abruzzi Investments, LLC

## **Procedural Issues and Mismanagement**

Given the Debtors are not a single entity, the Complaint's lack of distinction is critical. The Plaintiff must establish that the specific “Debtor” from whom the Transfer was made was insolvent at the time or had a judgment creditor. Plaintiff fails to do so. Furthermore, it can be easily demonstrated that the Transfer originated from a non-debtor escrow account maintained by Robinson Brog, not from the Debtors.

## **Inactivity by Trustee in the Case as to Petrozza Defendants**

From March 16<sup>th</sup>, 2020, trustee initiating this adversary complaint, the trustee had a period of inactivity for 2 full years and filed a motion for

summary judgement on or around March 2022. Petrozza defendants prevailed in the plaintiffs summary judgement motion and post May 2022, there was a complete period of inactivity again till now July 25<sup>th</sup> 2024.

**Plaintiff through its own inactivity and continuously extending the schedules has shown that time delay is not prejudicial to the trustee as seen in this case trustee decided to take a long break of 2 years at the start of the case from March 2020 to March 2022 and followed with till now.**

Hence by requesting this extension not all delay can be attributed to the Petrozza Defendants, the trustee has had 4 years of inactivity on this case, and the Second Circuit has held that “delay alone is not a sufficient basis for establishing prejudice.” *Todtman, Nachamie, Spizz & Johns, P.C. v. Ashraf*, 241 F.R.D. 451, 455 (S.D.N.Y 2007).

## **Representation History and Issues with Legal Counsel**

From the commencement of this action, the Petrozza Defendants were initially represented by Amsel from May 2020 to July 2020. Subsequently, from September 2020, they were represented by Anthony Giuliana, whose performance was inadequate. Mr. Giuliana failed to properly inform and act on behalf of the Petrozza Defendants, including failing to timely notify them of filings and consistently requesting extensions. This mismanagement placed the Petrozza Defendants in a reactive position, rather than allowing for any real defense against this frivolous complaint.

As a result, the Petrozza Defendants were unprepared and unaware of significant developments in the case. Despite having a strong meritorious defense and potential counterclaims, the last-minute and reactive nature of the representation prevented the proper assertion of these defenses. Additionally, no discovery, whether documentary or through depositions, was requested from the plaintiff to ascertain the basis of their complaint. This situation was further exacerbated by inadequate and inconsistent advice, and a breakdown in communication and trust with Mr. Giuliana.

## **Termination of Representation**

The termination of Mr. F. Giuliana's representation was necessitated by his failure to adequately represent the Petrozza Defendants and to keep them informed about significant developments in the case. Mr. Giuliana's persistent neglect and inadequate handling of the case severely compromised the defense strategy and left the Petrozza Defendants without effective legal counsel. Consequently, his services were terminated on July 10, 2024.

*It is important to clarify that this termination was not intended to delay the proceedings. Instead, it was an essential measure taken in response to Mr. Giuliana's ineffective and inconsistent representation, which undermined the Petrozza Defendants' ability to present a proper defense.*

## **Courts order allowing Giuliana to withdraw and Request for Extension Due to Change in Legal Representation**

On July 17th, Your Honor approved Anthony Giuliana's request for withdrawal as counsel, which we also support for the reasons previously stated. However, Your Honor did not grant an extension to allow us time to secure new legal representation. This lack of extension has placed the Petrozza Defendants at a significant disadvantage and Abruzzi Investments, LLC can not present its case without legal representation, with no one willing to take the matter so

days away from trial, leaves Abruzzi Investment, LLC to lose the trial, while having proper defense and counter claims.

Since the withdrawal, we have consulted with several attorneys who, upon reviewing the case docket, recognized the injustices that have Petrozza Defendants have suffered. We have ultimately retained a good law firm for Aquila Alpha, which Giuliana was also handling. Unfortunately, this firm cannot represent us in this instant matter due to the impending trial date, which at that time was just five days away. They declined to take on the case under such constrained timelines.

However, if a reasonable extension is granted, we can secure this law firm's representation in the current matter. As detailed in this letter, we have a meritorious defense and a counterclaim that require thorough preparation. The law firm we intend to retain will be able to step in immediately and work to bring this trial back on schedule, ensuring no prejudice to any party involved.

Your Honor Therefore, we respectfully request an extension to allow for proper representation and preparation.

### **NO PREJUDICE TO PLAINTIFFS**

from the initiation of this adversary complaint by the trustee on March 16th, 2020, there has been a significant period of inactivity on the plaintiff's part. The trustee did not take substantive action for a full two years until filing a motion for summary judgment around March 2022. The Petrozza Defendants successfully opposed this motion.

After May 2022, following the decision on the summary judgment motion, there was yet another complete period of inactivity until the present date, July 25th, 2024. This extensive inactivity demonstrates that the plaintiff, through its own actions, has not treated the timeline as a critical factor. The trustee's decision to take prolonged breaks, including a two-year hiatus at the start of the case and another lengthy period thereafter, clearly indicates that delays have not prejudiced the trustee's position.

**Thus, any assertion that the Petrozza Defendants are responsible for delays by requesting an extension is unfounded.** The plaintiff's actions, or lack thereof, have significantly contributed to the protracted nature of this case. If the Plaintiff's believe that they are owed the funds then it will not change by allowing me time for proper defense, time cannot change the truth. The Second Circuit has held that "delay alone is not a sufficient basis for establishing prejudice" (Totdman, Nachamie, Spizz & Johns, P.C. v. Ashraf, 241 F.R.D. 451, 455 (S.D.N.Y. 2007)).

## **CONCLUSION**

For the foregoing reasons, the Petrozza Defendants respectfully request that this Court grant a stay of the trial and an extension of the discovery period by 60 days. This will allow them sufficient time to secure competent legal representation and adequately prepare their defense, ensuring that justice is served.