

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**WO**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Ronnie George, an individual,  
Plaintiff,

vs.

JGM Group, LLC, an Arizona limited liability company; and Trojan Air Services, Inc., an Arizona corporation) d/b/a Village Sereno,  
Defendants,

JGM Group, LLC, an Arizona limited liability company; and Trojan Air Services, Inc., an Arizona corporation) d/b/a Village Sereno,  
Third-Party Plaintiffs

vs.

K-D Architects, LLC,  
Third-Party Defendant.

No. CV-09-1589-PHX-MHM

**ORDER**

This case arises on Third-Party Defendant K-D Architects LLC’s (“K-D Architects”) Motion to Postpone Settlement Conference and/or Excuse K-D Architects LLC from Participating in Scheduled Settlement Conference, docket # 50, and Motion to Expedite

1 ruling, docket # 49.<sup>1</sup> Defendants JGM Group, L.L.C.’s (“JGM Group”) and Trojan Air  
2 Services, Inc.’s, (“Trojan Air”) Response, docket # 51, oppose either postponing or excusing  
3 K-D Architects’ principal and insurance representative from participating in the settlement  
4 conference. Plaintiff Ronnie George joins in Defendants’ opposition. (docket # 52)

5           After reviewing the briefing, the Court finds that good cause exists to continue  
6 the settlement conference in order to conduct a more meaningful settlement conference with  
7 all parties, principals and representatives physically present. The settlement conference will  
8 be rescheduled to after the July 30, 2010 discovery deadline and before the August 30, 2010  
9 deadline for dispositive motions. Therefore, the Court will reluctantly grant K-D Architects’  
10 Motion to Postpone Settlement Conference.

11           Plaintiff George, a frequent filer in this District Court, filed this action on July  
12 31, 2009, alleging violations of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* and the  
13 Arizona Fair Housing Act, § A.R.S § 41-1491.31, *et seq.* (docket ## 1, 12 at 2) Plaintiff  
14 contends Defendants do business as Village Sereno, an apartment complex, located on North  
15 59th Avenue in Glendale, AZ. Plaintiff claims he is a prospective renter at Village Sereno.  
16 Mr. George lives with his minor son, Michael George, who requires a wheelchair for  
17 mobility. (docket # 12 at 2) When Mr. George visited Village Sereno, he alleges he  
18 encountered discriminatory practices against people with disabilities. Plaintiff’s claims of  
19 discriminatory housing practices are their alleged failure in designing and constructing  
20 apartments according to the level of accessibility required by the FHA. (*Id.*) Neither Plaintiff  
21 nor Defendants have requested a jury trial. (*Id.* at 8)

22           Defendants dispute Plaintiff’s allegations and deny they have violated the Fair  
23 Housing Act or the Arizona Fair Housing Act. (*Id.* at 4) After the assigned trial Judge, the  
24 Honorable Mary H. Murguia, United States District Judge, conducted the November 17,  
25

---

26           <sup>1</sup> K-D Architects’ Motion for Expedited Ruling and Reply do not comply with the  
27 Rules of Practice of the United States District Court for the District of Arizona (“Local  
28 Rules”) because each was not properly filed in text-searchable format. See, LRCiv 7.1(c) and  
definition of “.pdf,” ECF Manual, at I(A), p. 2.

1 2009 Rule 16 scheduling conference, setting the current July 30, 2010 discovery and other  
2 deadlines and ordering a settlement conference “in June, 2010,” docket ## 15, 17,  
3 Defendants were granted leave to file their Third-Party Complaint against K-D Architects.  
4 (docket # 29) On January 29, 2010, Defendants filed their Third-Party Complaint, alleging,  
5 *inter alia*, K-D Architects was a small architecture and design firm, provided construction  
6 administration services for the apartments that are the subject of Plaintiff’s claims against  
7 Defendants, and is, or may be, liable to Defendants for all or part of any judgment for  
8 damages that Plaintiff may recover in this action. (docket # 30) K-D Architects waived  
9 service of process by acceptance of service on February 4, 2010 but did not file its Answer  
10 to Defendants’ Third-Party Complaint until April 20, 2010, less than two months ago. K-D  
11 Architects denies third-party liability, alleging, *inter alia*, that “K-D’s contract with Trojan  
12 Air . . . requires mediation and arbitration of any claims [and] is specifically enforceable  
13 under the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* . . . .” (docket # 30)

14           As directed by Judge Murguia, this settlement conference has been scheduled  
15 by court order for June 15, 2010 at 2:00 p.m., three weeks before K-D Architects appeared  
16 in this action and **over two months** before K-D Architects filed its June 9, 2010 Motion to  
17 Postpone Settlement Conference and/or Excuse K-D Architects LLC from Participating in  
18 Scheduled Settlement Conference. (docket # 50) Obviously, K-D Architects’ counsel did  
19 not participate in the November 17, 2009 Rule 16 scheduling conference. Nobody notified  
20 the settlement conference Judge’s chambers that a new party had been added to this litigation  
21 and, therefore, the Settlement Conference Order does not address K-D Architects’  
22 obligations before and at the June 15, 2010 settlement conference. It is believed, however,  
23 that K-D Architects’ counsel has known, or should have known, that this settlement  
24 conference has been scheduled for June 15, 2010 for weeks, if not months, yet counsel  
25 delayed filing K-D Architects’ Motions until late in the afternoon on Wednesday, June 9,  
26 2010 and has the audacity to request expedited consideration of its Motions.

27           K-D Architects’ Motion to Postpone Settlement Conference and/or Excuse  
28 K-D Architects LLC from Participating in Scheduled Settlement Conference contends that

1 because of its recent addition to this case it “has much less information about the case than  
2 does counsel for Plaintiff and Defendants.” (docket # 50 at 2) The Court notes that the  
3 District Court’s file reflects the absence of any formal discovery initiated by K-D Architects  
4 and its initial disclosures were only recently filed on June 8, 2010. Essentially, K-D  
5 Architects’ counsel argues he has had insufficient time to adequately prepare for the June  
6 15 settlement conference and needs an additional 60-90 days before K-D Architects can  
7 “meaningfully participate” in a settlement conference. Significantly, K-D Architects informs  
8 the Court that Kent Dounay, the sole owner K-D Architects, “recently died after a lengthy  
9 illness, and K-D’s office has closed and any employees who might have knowledge of this  
10 project have been discharged.” (*Id.*) K-D Architects’ counsel claims he “has not yet been  
11 able to obtain the records of K-D from Mr. Dounay’s widow . . . [and] counsel does not have  
12 all the information needed to assess the claims asserted against K-D.” (*Id.*) Under penalty  
13 of perjury, K-D Architects’ counsel avows that “Mr. Dounay passed away on 22 February  
14 2010, before providing [counsel] with the requested information and documentation.”  
15 (docket # 53, attached Declaration of Benjamin L. Hodgson, ¶ 8) To date, K-D Architects’  
16 counsel has been unsuccessful in “obtaining additional information and documentation from  
17 K-B and Mr. Dounay’s widow.” (*Id.*, ¶ 9) Adding to K-D Architects’ counsels’ challenges,  
18 “K-D’s only small office has closed, and any employees who might have knowledge of this  
19 project have been discharged.” (docket # 53 at 3)

20 K-D Architects’ counsel also contends K-D Architects intend to file a Rule  
21 12(b)(6) dismissal motion on the grounds that Defendants have no right to indemnity or  
22 contribution for disability claims under either state or federal law, citing *U.S. v. Quality Built*  
23 *Constr., Inc.*, 309 F.Supp.2d 767 (E.D.N.C. 2003); *U.S. v. Murphy Development, LLC*, 2009  
24 WL 3614829 (M.D.Tenn 2009); and *Equal Rights Center v. Niles Bolton Associates*, 2010  
25 WL 1544088 (4th Cir. 2010). (docket # 50 at 4) Incredibly, K-D Architects’ counsel offers  
26 no excuse why he waited to three business days before the settlement conference to file his  
27  
28

1 Motions.<sup>2</sup> K-D Architects' counsel also points out a calendar conflict with Maricopa County  
2 Superior Court case *Rhodes Homes of Arizona, LLC v. Stanley Consultants, Inc.*, et al., No.  
3 CV2006-011358 which is apparently set for mediation also on June 15. The Court gives no  
4 weight to this conflict because this federal settlement conference has been set for June 15  
5 longer than this State case has been set for mediation, K-D Architects' counsel waited to the  
6 last minute to move to continue the federal settlement conference, and has not followed  
7 established State protocol to resolve the calendar conflicts between different cases and  
8 judges.

9           Joined by Plaintiff, docket # 52, Defendants oppose K-D Architects' Motion,  
10 because (1) "Defendants' representative has been in Canada for the last month and has  
11 already purchased non-refundable plane tickets so that he may travel to and from Arizona  
12 in order to participate in the Settlement Conference[;]" (2) "K-D has been aware of the  
13 claims in this case since Defendants made an arbitration demand against it on November 17,  
14 2009[;] and it is Plaintiff's "intention to proceed directly against K-D. Thus, K-D will remain  
15 in this lawsuit regardless of its stated defense." (docket # 51 at 2) "K-D is an essential party  
16 to the mediation as Defendants will not settle without K-D's participation." *Id.*

17           Because Plaintiff has not sought to amend his Complaint by the January 24,  
18 2010 amendment deadline, docket # 17 at 1, and no party has moved to extend the current  
19 and dispositive deadlines known by all counsel, it is unlikely the assigned Judge will find  
20 good cause to extend the deadlines, especially considering the tenor of Judge Murguia's  
21 April 8, 2010 text-entry order. All counsels' lack of due diligence in timely moving to extend  
22 the current Rule 16 deadlines does not constitute good cause under Rule 16(b), especially  
23 when the Ninth Circuit has made clear that the Rule 16 deadlines "must be taken seriously."  
24 *Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994) ("Federal Rule of Civil  
25

---

26           <sup>2</sup> If either Plaintiff or Defendants incurred any economic loss, such as, the purchase  
27 or penalty for changing a non-refundable airline ticket to attend the June 15, 2010 solely due  
28 to K-D Architects' untimely filing of the subject Motions, a motion for sanctions may be  
filed with the assigned District Judge *after* the settlement conference has concluded.

1 Procedure 16 is to be taken seriously.”). Despite K-D Architects’ counsel’s apparent failure  
2 to take the July 30, 2010 discovery deadline seriously and his unreasonable delay in moving  
3 to postpone the scheduled settlement conference, the death of Mr. Dounay was clearly  
4 beyond the control of K-D Architects’ counsel, creating substantial challenges to defend  
5 Defendants’ claims. Although no party has provided this settlement conference Judge with  
6 a copy of the Defendants’ contract with K-D Architects, confirming the existence of a  
7 contractual arbitration clause between Defendants, or one of them, and K-D Architects,  
8 Defendants have not denied the existence of such an arbitration clause. Therefore, it is likely  
9 K-D Architects’ counsel will move to compel arbitration in the near future rather than risk  
10 waiving its client’s right to arbitration by urging a dispositive motion to dismiss. See, *AZ*  
11  *Holding, L.L.C. v. Frederick*, 2010 WL 500443 (D.Ariz. 2010) and the relevant authority on  
12 waiver and prejudice cited therein.

13           Based on the foregoing, continuing this settlement conference to after the July  
14 30, 2010 deadline for all parties, counsel and representatives to participate in a mandatory  
15 settlement conference is the best of the lesser options presented to the settlement conference  
16 Judge at this time.

17           Accordingly,

18           **IT IS ORDERED** that Third-Party Defendant K-D Architects LLC’s Motion  
19 to Postpone Settlement Conference and/or Excuse K-D Architects LLC from Participating  
20 in Scheduled Settlement Conference, docket # 50, and Motion to Expedite ruling, docket #  
21 49, are **GRANTED**.

22           **IT IS FURTHER ORDERED** resetting the Settlement Conference from June  
23 15, 2010 to **Wednesday, August 4, 2010 at 2:00 p.m.**

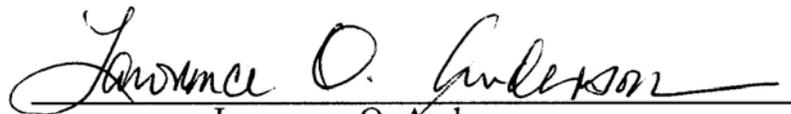
24           **IT IS FURTHER ORDERED** affirming all orders contained in the Court’s  
25 Settlement Conference Order, docket # 41, except for the date and time of said conference  
26 and that all such orders therein shall apply to Third-Party Defendant K-D Architects LLC  
27 except as set forth below. Plaintiff and Defendants are not required to submit additional  
28 settlement conference memoranda but are required to provide complete copies to K-D

1 Architects' counsel **no less than 5 business days** before the rescheduled settlement  
2 conference.

3 **IT IS FURTHER ORDERED** that Third-Party Defendant K-D Architects  
4 shall provide to this settlement conference Judge's chamber's email box and all counsel its  
5 settlement conference memorandum **no less than 5 business days** before the rescheduled  
6 settlement conference. K-D Architects' insurance representative shall be physically present  
7 at the settlement conference.

8 If Mr. Dounay's widow has substantively nothing to contribute toward the  
9 factual issues in dispute and her consent to settle the claims alleged against K-D Architects  
10 is not a condition precedent to any settlement by K-D Architects' insurance representative,  
11 K-D Architects' counsel must file a motion to excuse her physical presence from the  
12 rescheduled settlement conference **no less than 5 business days** before the rescheduled  
13 settlement conference.

14 Dated this 14<sup>th</sup> day of June, 2010.

15  
16 

17 Lawrence O. Anderson  
18 United States Magistrate Judge  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28